

Study EmH-451

May 25, 1999

Memorandum 99-34

**Condemnation by Privately Owned Public Utility:
Revised Draft**

BACKGROUND

At its April 1999 meeting, the Commission reviewed the Connecticut administrative approach to providing access to buildings for telecommunications service. The Commission directed the staff to prepare a draft tentative recommendation along the lines of the Connecticut statute for Commission consideration, taking into account comments made at the meeting as well as comments submitted after the meeting.

Comments made at the meeting included:

(1) The draft should address the obligation of a telecommunications company to provide service to a building on request of the building owner.

(2) The draft should address the issue of removal of wiring from a building, including the cost burden of removal.

(3) The draft should not impose on the Public Utilities Commission the duty to approve a compensation agreement made between a telecommunications company and building owner.

(4) The draft should not eliminate eminent domain authority of telephone corporations.

(5) Many of the issues that have been raised in connection with the Connecticut approach may be addressed in Assembly Member Wright's bill (AB 651) as amended.

Comments received after the meeting are attached:

	<i>Exhibit pp.</i>
1. Building Owners and Managers Association of California	1-4
2. Pacific Bell	5-6

Also attached are copies of the two pending bills addressed to this matter:

3. SB 177 (Peace & Burton)	7-10
4. AB 651 (Wright)	11-21

Finally, a revised staff draft is attached:

5. Telecommunications Access to Buildings	22-26
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This memorandum discusses issues in the draft. The memorandum concludes with the staff's suggestion that the Commission complete its resolution of these issues, but hold off circulating a tentative recommendation until after legislative action on the pending bills has been completed.

PENDING LEGISLATION

Two relevant bills have been introduced in the current legislative session. The Commission has decided to monitor the pending legislation while it proceeds on this study. The pending legislation, if enacted, may fully address the identified problems, in which case further Commission study of the matter would be unnecessary. If the pending legislation is not enacted, or does not fully address the identified problems, the Commission will be in a position to make a recommendation to the 2000 legislative session.

The status of the two bills is indicated below.

SB 177 (Peace & Burton) — Limitation on Public Utility Condemnation

Authority

SB 177 (Peace & Burton) would, among other provisions, prohibit condemnation by a telephone corporation except as a carrier of last resort seeking to serve an unserved area. Condemnation by public utilities generally for competitive purposes is also prohibited, unless the Public Utilities Commission makes a finding, after a local public hearing, that it would serve the public interest. A copy of the latest amended version of the bill is attached as Exhibit pp. 7-10.

The bill has been approved by policy and fiscal committees in the Senate and is now on the Senate floor.

AB 651 (Wright) — Administrative Procedure for Access to Buildings

AB 651 (Wright) is comparable to the draft currently being developed by the Commission, in that it presents a Connecticut-style solution to the problems that

have been identified. The bill provides a significantly greater amount of detail on a number of issues than does the Commission's current draft. A copy of the latest amended version of the bill is attached as Exhibit pp. 11-21.

The bill has been approved by policy and fiscal committees in the Assembly and is now on the Assembly floor.

ISSUES ON STAFF DRAFT

Obligation to Provide Service

The Building Owners and Managers Association argues that a telecommunications company ought to be required, on demand of a building owner, to provide service at least to the building's minimum point of entry.

This request is problematic in an era of deregulation. Suppose the building owner wants service from a particular telephone company that is operating in another part of the state and has no plans to expand into the area where the building is located?

The Public Utilities Commission has considered the same issue in the past and decided that, if the telephone corporation is a carrier of last resort, it may be required to provide universal service. Decision 96-10-066. But if the telephone corporation is a facilities-based local carrier, it cannot be required to provide service except within 300 feet of one of its existing facilities. Decision 95-07-054, Appendix A.

Of course, these rules could change as circumstances develop. We are feeling our way through the complexities of deregulation. The staff suggests that the issue be addressed in the statute by reference to the authority of the Public Utilities Commission to compel service, thus:

Section 7913.5. Service on request of building owner

7913.5. A telephone corporation shall provide service to an occupied building on request of the owner of the occupied building, to the extent authorized by regulations adopted by the commission.

Comment. For adoption of implementing regulations under Section 7913.5, see Section 7914(a).

Section 7914. Regulation by Public Utilities Commission of right to access

7914. (a) The commission shall adopt regulations that prescribe the circumstances in which a telephone corporation is permitted access to or required to provide service to an occupied building

pursuant to this article. The regulations shall take into account the following, among other considerations:

(1) The number and type of telecommunications service providers already serving the building, and the extent to which joint use of existing facilities is feasible.

(2) The available remaining space in the building to accommodate additional telecommunications infrastructure.

(3) The portion of the building that the telephone corporation desires to access, and how intrusive the proposed access is on the building's layout and design.

(4) The financial and operational capabilities of the telephone corporation, to ensure that the facilities will be competently installed and completed in a timely manner, and the qualifications and credentials of the installation contractor (including proper licensing, qualifications, and bonding for the work), including a procedure for resolution of any objections by the owner to access by a particular telephone corporation on the basis of prior unsatisfactory experience with that telephone corporation.

(5) The relative hardships to the owner of the building of permitting access and to the telephone corporation of denying access or of requiring service.

Comment. Section 7914 has no analogue in Connecticut law. It is intended to limit the potential for multiple separate access proceedings by competitive telecommunications service providers, and ensure that the demanded access or demanded service is otherwise necessary, and to address the possibility of a disagreement between the telephone corporation and property owner over whether the access sought by the telephone corporation or the service demanded by the owner is required under this article. It is also intended to authorize a procedure to disqualify a telephone corporation that has an unsatisfactory prior history with installations in other buildings or that has failed to comply with building rules or Public Utilities Commission rules and regulations.

Removal of Wiring

The Building Owners and Managers Association has requested a statute to ensure that funds are available for the installation to be removed when service to the tenant terminates.

AB 651 (Wright) seeks to address this issue. It provides for removal of a telecommunications installation to the extent it is obsolete and hinders a new installation:

If the independent inspection reveals that the telephone closet or designated area contains obsolete unused telecommunications

equipment, upon the request by another telecommunications service provider or upon an order of the commission, the owner of that equipment shall remove or replace, at its own expense, the equipment to ensure the provision of upgraded and advanced telecommunications services to occupants of the occupied building. If the owner of the obsolete unused equipment is out of business, the telecommunications provider that seeks to install equipment shall either remove the obsolete unused equipment or pay another entity to remove the obsolete unused equipment from the telephone closed or designated area, to the extent necessary to install the equipment of the telecommunications provider.

Proposed Pub. Util. Code § 626(f).

While this approach does not provide a fund for removal, it does provide a mechanism. It appears to the staff to be a reasonable solution to the problem.

Public Utilities Commission Approval of Compensation Agreement

The Connecticut statute requires Public Utilities Commission approval of a compensation agreement entered into between a telephone corporation and a building owner. The California Public Utilities Commission and the Building Owners and Managers Association have indicated that they see no purpose for this requirement. The staff agrees; we have deleted the provision from this draft.

Elimination of Eminent Domain Authority

The impetus for the current Commission study is concern that eminent domain authority is being inappropriately used to provide telecommunications company access to buildings. After exploring options for controlling eminent domain use, the Commission has decided to focus instead on an administrative access procedure. The administrative access procedure would replace condemnation authority for this purpose. See proposed Public Utilities Code Section 616(b).

Pacific Bell objects to elimination of condemnation authority. Exhibit pp. 5-6. In their view the legislation should focus on providing nondiscriminatory access for telecommunications providers; they note that the Connecticut statute, for example, does not eliminate condemnation authority. They also point out there is no evidence of abuse of eminent domain authority in California. Obstinate or profit-seeking property owners should not be allowed to interfere with or escalate the price of placement of telecommunications facilities.

The staff disagrees with this analysis. The administrative access procedure isn't worth much if, when disagreements arise, instead of working them out through the process provided, the telecommunications company can simply override everything and condemn its way into a building.

However, the statute should be clear that condemnation authority is only removed for those purposes for which the administrative access procedure is available. The condemnation authority remains effective for other telecommunications purposes such as right of way, switching stations, etc. The staff would clarify the proposed language:

Pub. Util. Code § 616 (amended). Telephone corporation

...

(b) A telephone corporation may not condemn property for the purpose of the installation or provision of service to an occupied building ~~within the meaning of~~ to the extent access for that purpose may be obtained pursuant to Article 2 (commencing with Section 7910) of Chapter 3 of Division 4.

Comment. Section 616 is amended in recognition of the supervening provisions of Sections 7910-7916 (access to occupied building by telephone corporation). Condemnation authority is eliminated only for those purposes for which the access procedure is available; condemnation authority is preserved for other purposes.

Technical and Minor Substantive Revisions

The Building Owners and Managers Association raises a number of other issues the staff would characterize as either technical or minor substantive issues. These we have implemented in the draft statute.

CONCLUSION

Both SB 177 (Peace & Burton) and AB 651 (Wright) appear to have developed into thoroughly-articulated approaches to the problems of public utility condemnation in general (SB 177) and telecommunications access to buildings in particular (AB 651). Both bills appear well on the road toward enactment.

In light of this development, the staff recommends that the Commission complete its work on this phase of the project and then put the draft on hold pending the outcome of legislative action on these proposals. This means that we would not circulate a tentative recommendation for comment at this time, but

would hold off until we are able to assess the final outcome of legislative action on these bills.

The staff is motivated in this suggestion in part by the fact that the interested parties appear to be fully engaged in the context of the two bills and, given the posture of the bills, the parties ought not to be required to divert resources to the Commission's parallel project. As Pacific Bell has expressed it, "The Law Revision Commission should consider 'standing down' on the issues of premises access and eminent domain pending conclusion of legislative events." Exhibit p. 6.

If the legislation as enacted appears to be inadequate, we can readily pick up where we have left off with this draft, circulating it for comment as a tentative recommendation and having a final recommendation ready for the 2000 legislative session.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Heim, Noack, Kelly & Spahnn

G O V E R N M E N T A L R E L A T I O N S

April 26, 1999

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Mr. Nat Sterling
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Law Revision Commission
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APR 27 1999

File: _____

Dear Mr. Sterling:

Please forgive this late response to the Commission's Memorandum 99-19 concerning Condemnation by Privately Owned Public Utilities. I have been rather busy with the legislative schedule of committee hearings on bills which includes AB 651 and SB 177, both of which address this very issue. However, a spare moment has arisen and I am happy to provide you with detailed comments regarding the draft exhibit contained in the Memorandum, on behalf of my client, the Building Owners and Managers Association of California (BOMA).

The exhibit contained in Memorandum 99-19 is an adaptation of a statute enacted in the state of Connecticut pertaining to telco access to third party customer premises. The Commission's draft seeks to establish a California statute which would foster access for telco access to occupied buildings, without violating building owners' private property rights. For the record, I must state that BOMA believes that in reality, no statute is actually needed. For the most part, owners want multiple telco service in their buildings so that they can compete for tenants with other buildings, and as we know, telcos wish to have this access, so that they can profit from the services they provide. Moreover, given the mutual interests of both parties, free market negotiations should prevail in the determination of who obtains access and under what terms and conditions such access is provided.

Unfortunately, the situation today is filled with recriminations by parties on both sides of this issue, and the dispute over access has landed in both your and the Legislature's respective laps. This has resulted in the introduction of two bills and the Commission's Memorandum to which this letter refers; and in this light we will stipulate that a carefully crafted statute may provide a workable solution to access problems, which protects property rights and fosters competition in the telecommunications market.

For the most part I will proceed in my comments according to the sectioned format of your exhibit. But allow me to make a couple of brief remarks on the overall draft. First, BOMA concurs that any statute enacted which grants telco access to occupied buildings should be in lieu of any eminent domain

authority telcos have over such property. Owners should not face double jeopardy, having to comply with a complex regulatory scheme providing access, and also be subject to condemnation actions by telcos who are unsatisfied with the outcome of the regulatory process. It should be one way or the other.

Second, the draft fails to address the question of telcos which choose not to serve a building upon the request of an owner. BOMA members, particularly those who operate class 'B' buildings, have had difficulty in making their properties more competitive by having installed modern communications infrastructure. Owners have requested telcos to install high end communications systems in these structures so that the buildings would attract tenants, but the telcos have sometimes refused to install, or if they have agreed, they have done so for exorbitant charges. The Commission's draft should include provisions which require a telco to at least connect their systems to a building's minimum point of entry (MPOE) at an owner's request. Owners should be required to pay for such connections at the telcos' actual cost. The owner and telco can then have a non-exclusive marketing agreement to sell these services to existing and prospective tenants.

BOMA is also concerned that this draft, as does AB 651, gives too much discretion to the California Public Utilities Commission (PUC). BOMA views the PUC more as an advocate for entities it is charged to regulate than a protector of consumers. Hence, any direction to the PUC to adopt implementing regulations should be done with as much specificity as is possible. My comments below will reflect this concern.

Now, as to the specifics of your draft:

7912 (a) The term "wiring" should be expanded to include or refer to the installation of telecom equipment and ancillary facilities.

7912 (a) (1) Telcos should have a signed or enforceable agreement with a building tenant in order for this scheme to be triggered. The agreement should be subject to review by the building owners.

7912 (a) (2) Specify that telcos should also be responsible for any building supervisory costs associated with the installation of telecom wiring and equipment.

7912 (a) (3) Indemnification of building owners should include protection for the loss of any service to an existing tenant resulting from a telco's installation activities.

7912 (a) (3) This provision should also specify that telcos should record a bond in favor of the owner to ensure installation work is properly completed. The telco should record an additional bond to ensure that the wiring and equipment the telco has installed is removed when either there is no longer any tenant to serve, or the telco has gone out of business. In fact, the draft should include a direction to the PUC to adopt a regulation specifically addressing the need for telcos to remove old, obsolete or unused wiring and equipment from buildings.

7912 (a) (4) This provision should specify that the telco needs to comply with "written building rules". Furthermore, it should instruct the PUC that its regulations should include matters concerning aesthetics, security and safety, special rules concerning the handling of hazardous materials such as asbestos and building safety systems (e.g. fire sprinklers in the telco utility closets), and necessary permits to be acquired by the telco.

7914 (a) (4) We recommend that language be added making clear that the regulations permit an owner to submit justification to the PUC to prohibit a particular telco from accessing a building if that telco has a demonstrated poor track record for installations in other buildings, or they have failed to abide by either building and PUC rules and regulations.

7914 (a) (4) The regulation should specify that the telco installation contractor or work force should be properly licensed, qualified and bonded to conduct such work.

7915 (a) The use of the term "taking" should be replaced with the term "occupying", inasmuch as this is not a matter of eminent domain, but rather a license to use or occupy space.

7915 (a) The PUC should not have to receive and approve an application from an owner every time there is an access agreement between the owner and a telco. The regulations should specify various items that can be included in a compensation agreement and the standards for such agreements (e.g. fair market rental value for the space to be occupied). The PUC's involvement, after adopting such a regulation, should be limited to those situations when the owner and telco reach an impasse in the negotiations over compensation. In other words, the PUC should be there to resolve disputes, not review and approve each and every agreement. When you consider that BOMA represents

over 2,500 commercial properties, with thousands more in this state, and there are nearly 200 licensed telcos, the PUC workload could be overwhelming.

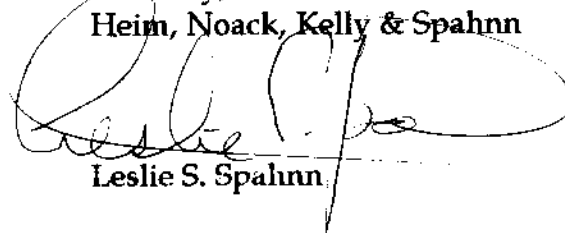
7915 (a) (3) The regulation should specify that it shall include, but not be limited to, building costs such as maintenance, engineering, supervision and security, and other directly related ongoing building costs.

7915 (b) This subdivision should refer to an owner as well as a corporation. Furthermore, the entire section should include a provision which permits the grandfathering of any existing agreements consummated before the enactment of this statute and the completion of rule making pursuant to the statute.

In conclusion, let me say that BOMA appreciates the diligent work the Commission has put into this effort. As mentioned earlier, the need to balance constitutionally protected private property rights with the national and state policies fostering telecommunications competition is a thorny issue. While BOMA would prefer to let the process of open and free negotiations prevail, we are prepared to help you and the Legislature construct a fair and workable statute.

I would be happy to discuss any of the comments contained herein at your convenience. Thank you for the time and consideration of BOMA's thoughts.

Sincerely,
Heim, Noack, Kelly & Spahn



Leslie S. Spahn

LSS/kmg

cc: BOMA Executive Committee
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April 29, 1999

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Re: Condemnation by Privately Owned Public Utility: The Connecticut Approach

Dear Mr. Sterling:

These comments are in response to the California Law Revision Commission's Staff Memorandum 99-19 of March 16, 1999, regarding condemnation by privately owned public utilities. The comments are intended to formalize and expand upon testimony I provided on behalf of Pacific Bell at the April 8, 1999 California Law Revision Commission meeting held in Sacramento.

As I indicated at the meeting, any legislation that is needed in this area more properly should focus on allowing all telecommunications providers to have nondiscriminatory access to building premises. This is the focus of legislation in Connecticut and Texas. Exercise of eminent domain rights by public utilities is not the real issue, and should not be a part of any Law Revision Commission proposal. It is important to note that in Connecticut and Texas, premises access legislation was enacted without changing the rights of telephone companies to condemn private lands where necessary. Likewise, no change is necessary in California.

As your investigation last year determined, there is no abuse or overuse of condemnation by telephone service providers. Your investigation found only limited instances where telecommunications providers have exercised eminent domain rights. Furthermore, it is interesting to note that an exemplar instance described as "not untypical" involved a situation where the telecommunications provider had already been allowed to place cabling in the building under an interim license arrangement (Staff Memorandum 98-68, p. 7 (September 4, 1998)). The provider was not attempting to "force" its way into the building. Instead, the dispute was over the terms of a permanent license. Limited examples of hard bargaining between companies over monetary terms do not demonstrate a problem with the eminent domain law.

Proponents of limiting the eminent domain rights of telecommunications providers argue that they are subject to entry by up to 200 local exchange providers that have received

California Public Utilities Commission permission to provide local exchange service in California. This is an exaggeration. Almost half of the 200 are actually resellers that don't place their own facilities. Second, currently only about 38 of the 100 of the facilities-based providers are ordering interconnection facilities that allow them to exchange telephone traffic in Pacific Bell's territory in California. (Note that some of the 38 have both facilities-based and resale authority and may only be operating as resellers.) In addition, not all of these carriers are providing service statewide. Thus fears of an impending catastrophe in multi-tenant premises access are overblown.

In our February 4, 1999 letter on this subject, we raised the concern that limiting eminent domain rights might interfere with Pacific Bell's ability to serve our customers (see pages 3 and 4). We re-emphasize those concerns here. What appears on the surface to be a "minor" change to eminent domain rights could cause major problems for Pacific Bell as the provider of last resort in its service territory. If obstinate or profit-seeking property owners are able to interfere with -- or dramatically escalate the price of -- placement of Pacific Bell's vaults, huts and equipment boxes along our facility routes, the cost of telephone service for all customers could rise. At worst, service to hundreds or possibly thousands of customers could be hindered.

A Connecticut-type approach is superior -- if legislation is necessary at all. The Connecticut approach prohibits property owners from engaging in various forms of discrimination against telecommunications providers or building tenants that might result in tenants being unable to receive the services they want, while at the same time protecting the rights of building owners to impose reasonable conditions or limitations on a provider's ability to gain access to the property. Current legislation, AB 651 (Wright), is moving down this path. The Law Revision Commission should consider "standing down" on the issues of premises access and eminent domain pending conclusion of legislative events.

Very truly yours,

Randall E. Cape
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cc: Lori Ortenstone
Martha Johnson

AMENDED IN SENATE MAY 19, 1999
AMENDED IN SENATE APRIL 21, 1999
AMENDED IN SENATE APRIL 7, 1999
AMENDED IN SENATE MARCH 16, 1999

SENATE BILL

No. 177

Introduced by Senators Peace and Burton

January 12, 1999

An act to add Sections 625 and 626 to, and to repeal and add Section 616 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 177, as amended, Peace. Public utilities: eminent domain.

(1) The Public Utilities Act authorizes certain public utilities to condemn property, as prescribed.

This bill would amend the act to prohibit a telephone corporation from condemning any property unless that ~~telephone corporation provides~~ *property is necessary to provide* telecommunications services as a carrier of last resort seeking to serve currently unserved areas. The bill would amend the act to prohibit a ~~public utility specified public utilities~~ that ~~offers~~ *offer* competitive services from condemning any property for the purpose of competing with another entity in the offering of those competitive services, unless the Public Utilities Commission finds, pursuant to a petition or complaint filed by the public utility ~~and~~, an

adjudication hearing in accordance with specified provisions of the act governing hearings and judicial review, *and a local public hearing, as prescribed*, that such an action would serve the public interest. The bill would authorize the commission to make such a finding if, in the determination of the commission, either of specified conditions is met. The bill would require the commission to develop procedures to facilitate access for affected property owners to eminent domain proceedings pursuant to those provisions, and to facilitate the participation of those owners in those proceedings. ~~The bill would prohibit a public utility from entering into any exclusive access agreement with the owner or lessor of, or a person controlling or managing, a property or premises served by the public utility, or from committing or permitting any other act that would limit the right of any other public utility to provide service to a tenant or other occupant of the property or premises.~~ The bill would specify matters relating to certain existing provisions of the Code of Civil Procedure governing eminent domain proceedings. *The bill would prohibit a public utility from entering into any exclusive access agreement with the owner or lessor of, or a person controlling or managing, a property or premises served by the public utility, or from committing or permitting any other act, that would limit the right of any other public utility to provide service to a tenant or other occupant of the property or premises.* Because a violation of the act is a crime, this bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 616 of the Public Utilities Code
2 is repealed.

3 SEC. 2. Section 616 is added to the Public Utilities
4 Code, to read:

5 616. A telephone corporation may not condemn any
6 ~~property unless that telephone corporation provides~~
7 ~~telecommunications services as a carrier of last resort~~
8 ~~seeking to serve currently unserved areas.~~ *property*
9 *unless that property is necessary for that telephone*
10 *corporation to provide telecommunications services as a*
11 *carrier of last resort seeking to serve unserved areas.*

12 SEC. 3. Section 625 is added to the Public Utilities
13 Code, to read:

14 ~~625. (a) For the purpose of this article, a public~~

15 625. (a) (1) *For the purpose of this article, except as*
16 *specified in paragraph (4), a public utility that offers*
17 *competitive services may not condemn any property for*
18 *the purpose of competing with another entity in the*
19 *offering of those competitive services, unless the*
20 *commission finds, pursuant to a petition or complaint*
21 *filed by the public utility and, an adjudication hearing in*
22 *accordance with Chapter 9 (commencing with Section*
23 *1701) of this part, and a local public hearing in*
24 *accordance with paragraph (2), that such an action would*
25 *serve the public interest. The commission may make such*
26 *a finding public interest.*

27 (2) *Before making a finding pursuant to this*
28 *subdivision, the commission shall conduct a public*
29 *hearing in the local area that would be affected by the*
30 *proposed condemnation within _____ days of the date that*
31 *the petition or complaint is filed. The commission shall*
32 *notify the local governmental entity and provide public*
33 *notice of the hearing pursuant to both the procedures of*
34 *the commission and of the local governmental entity.*

35 (3) *The commission shall render a decision on making*
36 *a finding in accordance with this subdivision within _____*
37 *days of the date of the local public hearing.*

1 (4) *This subdivision does not apply to a railroad*
2 *corporation or a water corporation.*

3 (b) *The commission may make a finding pursuant to*
4 *subdivision (a) if, in the determination of the*
5 *commission, either of the following conditions is met:*

6 ~~(1) The public utility is providing services as a~~
7 ~~provider of last resort that seeks to serve unserved areas.~~

8 (1) *The proposed condemnation is necessary to*
9 *provide service as a provider of last resort to an unserved*
10 *area.*

11 (2) *The public utility is able to show all of the following*
12 *with regard to the proposed condemnation:*

13 (A) *The public interest and necessity require the*
14 *proposed project.*

15 (B) *The property to be condemned is necessary for*
16 *the proposed project.*

17 (C) *That, if the commission does not permit the*
18 *acquisition of the property by eminent domain, the*
19 *hardship to the public utility will outweigh any hardship*
20 *to the owners of the property.*

21 (D) *The proposed project is located in a manner most*
22 *compatible with the greatest public good and least*
23 *private injury.*

24 ~~(b)–~~

25 (c) *A public utility may not condemn property and*
26 *subsequently use that property for any purpose other*
27 *than a public utility purpose, or sell that property, unless*
28 *that property has been used by the public utility for a*
29 *public utility purpose for 50 years from the date of*
30 *condemnation.*

31 (d) *The commission shall develop procedures to*
32 *facilitate access for affected property owners to eminent*
33 *domain proceedings pursuant to this section, and to*
34 *facilitate the participation of those owners in those*
35 *proceedings.*

36 ~~(e)–~~

37 (e) *Nothing in this section relieves a public utility from*
38 *complying with Section 1240.030 of the Code of Civil*
39 *Procedure or any other requirement imposed by law.*

40 ~~(d)–~~

1 (f) A public utility that does not comply with this
2 section may not exercise the power of eminent domain,
3 including, but not limited to, any authority provided by
4 Title 7 (commencing with Section 1230.010) of Part 3 of
5 the Code of Civil Procedure.

6 ~~(e)~~

7 (g) The authority provided in this section
8 supplements, and does not replace or otherwise affect any
9 other limitation in law on the exercise of the power of
10 eminent domain, including, but not limited to, any
11 authority provided by Title 7 (commencing with Section
12 1230.010) of Part 3 of the Code of Civil Procedure.

13 SEC. 4. Section 626 is added to the Public Utilities
14 Code, to read:

15 626. On or after January 1, 2000, a public utility may
16 not enter into any exclusive access agreement with the
17 owner or lessor of, or a person controlling or managing,
18 a property or premises served by the public utility, or
19 commit or permit any other act, that would limit the right
20 of any other public utility to provide service to a tenant
21 or other occupant of the property or premises.

22 SEC. 5. No reimbursement is required by this act
23 pursuant to Section 6 of Article XIII B of the California
24 Constitution because the only costs that may be incurred
25 by a local agency or school district will be incurred
26 because this act creates a new crime or infraction,
27 eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section
29 17556 of the Government Code, or changes the definition
30 of a crime within the meaning of Section 6 of Article
31 XIII B of the California Constitution.

AMENDED IN ASSEMBLY MAY 10, 1999
AMENDED IN ASSEMBLY APRIL 15, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 651

Introduced by Assembly Member Wright

February 23, 1999

An act to amend Section 610 of, and to add Section 626 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 651, as amended, R. Wright. Telecommunications: private property: agreements.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations and other specified entities. The Public Utilities Act authorizes certain public utilities to condemn property, as prescribed.

This bill would, under the Public Utilities Act, state that the commission may exercise specified authority to the extent, and in the manner, that it determines to be appropriate, and would require the commission to exercise its authority with regard to access to buildings by a public utility in a specified manner. The bill, except as specified, would prohibit ~~an owner of an occupied~~ a building owner, as defined, from demanding or accepting payment in any form, and a telecommunications service provider, as defined, from offering or making payment in any form, in exchange for permitting a

telecommunications ~~service~~ provider access to tenants or occupants of an occupied building or the property or premises upon which an occupied building is sited. The bill would require ~~an owner of an occupied~~ a building owner to ~~permit~~ allow wiring, facilities, and related equipment to provide telecommunications service by a telecommunications ~~service~~ provider, if specified requirements are met, as prescribed. *The bill would authorize a telecommunications provider to file a formal complaint with the commission against any other telecommunications provider or building owner that is party to an agreement, alleging that the agreement has the effect of restricting the access of telecommunications providers to an occupied building, as prescribed, and would require the commission to impose certain fines if it makes a specified finding.* The bill would require the commission to adopt specified regulations ~~governing agreements for, and compensation for, the installation of wiring and ancillary facilities for the provision of telecommunications service~~ authorizing telecommunications providers to reasonably compensate a building owner for any use or occupation of property associated with the installation of wiring and ancillary facilities for the provision of telecommunications service, in accordance with prescribed compensation standards. The bill would require any person, firm, or corporation that the commission determines has failed to comply with specified provisions to pay a civil penalty of \$1,000 for each day following the issuance of a final order by the commission. Because a violation of the act is a crime, the bill would impose a state-mandated local program by creating new crimes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of*
2 *the following:*

3 (a) Every person deserves telecommunications
4 service.

5 (b) It is the policy of this state to encourage the
6 development of advanced telecommunications services
7 and infrastructure and to promote nondiscriminatory
8 business practices in the telecommunications industry.

9 (c) Tenants have the reasonable expectation that rent
10 will include a choice of telecommunications services.

11 SEC. 2. Section 610 of the Public Utilities Code is
12 amended to read:

13 610. (a) This article applies only to a corporation or
14 person that is a public utility.

15 (b) The commission may exercise any authority
16 provided in this article to the extent, and in the manner,
17 that it determines to be appropriate.

18 (c) The commission shall exercise its authority with
19 regard to access to buildings by a public utility in a
20 manner consistent with Section 626.

21 ~~(d) Nothing in this article shall be construed to limit or~~
22 ~~otherwise affect the right of a public utility to exercise the~~
23 ~~authority granted by Section 611 or 616.~~

24 SEC. 2.

25 SEC. 3. Section 626 is added to the Public Utilities
26 Code, to read:

27 626. (a) As used in this section, the following terms
28 have the following meanings:

29 (1) “Building owner” means the owner of an occupied
30 building, the building owner’s manager, agent, broker, or
31 lessor, or a person managing or otherwise controlling the
32 property, premises, or occupied building.

33 (2) “Occupied building” means a building or a part of
34 a building that is rented, leased, hired out, arranged or
35 designed to be occupied, or is occupied as one of the
36 following:

37 (A) As the home or residence of two or more families
38 living independently of each other.

1 (B) In its entirety by one business, or as the place of
2 business of two or more persons, firms, or corporations
3 conducting business independently of each other.

4 (C) By any combination of families and persons, firms,
5 or corporations described in subparagraphs (A) and (B)
6 totaling two or more, and includes trailer parks, mobile
7 manufactured home parks, nursing homes, hospitals, and
8 condominium associations.

9 ~~(2) “Telecommunications service~~

10 ~~(3) Telecommunications provider”~~ means a person,
11 firm, or corporation authorized to provide intrastate
12 telecommunications services by the commission, but does
13 not include ~~either of the following:~~

14 ~~(A) A~~ a commercial mobile radio service provider
15 whose wireless facilities on an occupied building are
16 intended to serve a broad geographical area and not just
17 the tenants or occupants of a specific occupied building.

18 ~~(B) A facsimile transmission service.~~

19 ~~(3) one or more occupied buildings.~~

20 (4) “Telecommunications service” means any
21 telecommunications service regulated by the
22 commission.

23 ~~(4)~~

24 (5) “Wiring” includes, but is not limited to, inside wire,
25 ~~house riser (both vertical and horizontal), and conduit.~~
26 *house riser (vertical, horizontal, and related equipment),*
27 *prewiring, wire between occupied buildings, and*
28 *conduit.*

29 (b) Except as provided in subdivision (i), ~~an owner of~~
30 ~~an occupied building~~ a building owner may not demand
31 or accept payment in any form, and a provider of
32 telecommunications service may not offer or make
33 payment in any form, in exchange for permitting a
34 telecommunications service provider access to tenants or
35 occupants of an occupied building or to the property or
36 premises upon which an occupied building is sited.

37 (c) A building owner may not discriminate among
38 telecommunications providers in the provision of
39 telecommunications service between tenants who
40 receive that service and those who do not, or those who

1 receive telecommunications service from different
2 providers. A building owner may not be required to bear
3 any cost for the installation or provision of
4 telecommunications service *to a tenant*.

5 ~~(d) An owner of an occupied building shall permit~~

6 *(d) A building owner shall allow* wiring, facilities, and
7 related equipment to provide telecommunications
8 service by a telecommunications ~~service~~ provider in the
9 building if all of the following requirements are met:

10 (1) A tenant of the building requests services orally or
11 in writing from that telecommunications ~~service~~
12 provider in the manner that customarily results in an
13 enforceable agreement between the tenant and that
14 telecommunications ~~service~~ provider.

15 (2) The telecommunications ~~service~~ provider
16 indemnifies and holds harmless the ~~owner for any~~
17 *building owner for any actual or direct* damages caused
18 *by the installation, repair, or maintenance of* wiring and
19 related equipment.

20 (3) The telecommunications ~~service~~ provider is the
21 holder or beneficiary of insurance policies for ~~workers~~
22 *both of the following*:

23 (A) *Workers compensation and comprehensive*.

24 (B) *Comprehensive* general liability in an amount not
25 less than two million dollars (\$2,000,000).

26 (4) The telecommunications ~~service~~ provider shall
27 keep as a foremost consideration the safety and
28 convenience of tenants in the occupied building, and
29 shall conduct installation and work pursuant to the
30 written rules and regulations of that building *and any*
31 *applicable building codes* to the extent that those
32 building rules and regulations *and building codes* are
33 consistent with this act. In any case, those considerations
34 shall not unduly prohibit or impede the wiring of an
35 occupied building to proceed and be completed.

36 (5) The telecommunications ~~service~~ provider
37 complies with all rules and regulations of the commission
38 pertaining to wiring. The commission shall adopt
39 regulations that set forth terms that ~~may~~ *shall* be
40 included, and terms that may ~~shall~~ not be included, in any

1 agreement to be entered into by an owner of an occupied
2 building and a telecommunications service provider
3 concerning wiring. A telecommunications service
4 provider may not present to an owner of an occupied
5 building for review or for signature a contract that
6 contains a term prohibited from inclusion in a contract by
7 regulations adopted pursuant to this paragraph.

8 (6) *The telecommunications provider, or a tenant*
9 *requesting telecommunications service, shall be*
10 *responsible for the costs of installing wiring, including,*
11 *but not limited to, the actual cost of restoring the building*
12 *to its condition prior to the installation of wiring.*

13 (e) Prior to the completion of construction or
14 significant reconstruction of an occupied building, an
15 owner of a building in the process of construction shall do
16 both of the following:

17 (1) Provide in design and construction adequate space
18 to accommodate current and future telecommunications
19 equipment or facilities.

20 (2) Permit rewiring to provide telecommunications
21 services in the building if both of the following
22 requirements are met:

23 (A) The telecommunications service provider
24 complies with all of the provisions of paragraphs (2) to ~~(5)~~
25 (6), inclusive, of subdivision (d) and subdivision (h).

26 (B) All wiring other than that to be directly connected
27 to the equipment of a telecommunications service
28 customer shall be concealed within the walls of the
29 building or placed within the telephone closet or other
30 ~~designated area.~~ *area designated by the building owner.*

31 (f) In existing buildings that are not being significantly
32 reconstructed or extensively remodeled, space for new
33 telecommunications equipment shall be allocated on a
34 first-come-first-served basis. A telecommunications
35 provider that seeks to provide services to a tenant
36 pursuant to paragraph (1) of subdivision (d) may inspect
37 the telephone closet or other area designated by the
38 building owner in accordance with subparagraph (B) of
39 paragraph (2) of subdivision (e). If a building owner
40 declares that there is ~~no further~~ inadequate space in a

1 telephone closet or designated area for additional
2 telecommunications equipment the building owner shall
3 permit a requesting telecommunications service
4 provider to inspect the occupied building to verify that
5 declaration and to inspect for additional space for the
6 placement of equipment. That inspection shall be by the
7 employment of an independent third party, ~~the expenses~~
8 ~~and costs of which shall be divided equally between the~~
9 ~~building owner and the requesting telecommunications~~
10 ~~service provider. If the independent inspection verifies~~
11 ~~the. The expenses and costs of an independent~~
12 ~~third-party inspection shall be borne by the building~~
13 ~~owner, if, after the declaration by a building owner that~~
14 ~~there is inadequate space in a telephone closet or~~
15 ~~designated area, an independent inspection determines~~
16 ~~that there is available space in the telephone closet or~~
17 ~~designated area. If an independent inspection verifies the~~
18 ~~declaration by the building owner that there is~~
19 ~~inadequate space in the telephone closet or designated~~
20 ~~area, the requesting telecommunications provider shall~~
21 ~~bear the costs of the independent inspection. If the~~
22 ~~independent inspection verifies the building owner's~~
23 ~~declaration that there is no further inadequate space in~~
24 ~~the telephone closet or designated area, any placement~~
25 ~~of additional equipment shall be subject to negotiation~~
26 ~~between the building owner and the requesting~~
27 ~~telecommunications service provided. That negotiation~~
28 ~~may include terms of cost-based rent or market-based~~
29 ~~rent in accordance with subdivision (h) but may not~~
30 ~~result in an agreement that violates any rule or decision~~
31 ~~of the commission or this section. If the independent~~
32 ~~inspection reveals that the telephone closet or designated~~
33 ~~area contains obsolete unused telecommunications~~
34 ~~equipment, upon the request by another~~
35 ~~telecommunications service provider or upon an order of~~
36 ~~the commission, the owner of that equipment shall~~
37 ~~remove or replace, at its own expense, the equipment to~~
38 ~~ensure the provision of upgraded and advanced~~
39 ~~telecommunications services to occupants of the~~
40 ~~occupied building. If the owner of the obsolete unused~~

1 equipment is out of business, the telecommunications
2 provider that seeks to install equipment shall either
3 remove the obsolete unused equipment or pay another
4 entity to remove the obsolete unused equipment from
5 the telephone closet or designated area, to the extent
6 necessary to install the equipment of the
7 telecommunications provider.

8 ~~(g) A telecommunications service provider may not~~
9 ~~enter into any exclusive agreement with the owner or~~
10 ~~lessor of, or person controlling or managing, an occupied~~
11 ~~building serviced by that provider, or commit or permit~~

12 (g) (1) In accordance with Decision 98-10-58,
13 adopted by the commission October 22, 1998, a
14 telecommunications provider may not enter into any
15 agreement with a building owner, or commit or permit
16 any act, that would limit the rights of a
17 telecommunications service provider to provide service
18 to any tenant of the occupied building.

19 (2) A telecommunications provider may file a formal
20 complaint with the commission against any other
21 telecommunications provider or building owner that is
22 party to an agreement, alleging that the agreement has
23 the effect of restricting the access of telecommunications
24 providers to an occupied building. The complainant shall
25 have the burden of proving one of the following:

26 (A) The defendant telecommunications provider is
27 the exclusive provider of service to the occupied building.

28 (B) The defendant telecommunications provider is
29 the beneficiary of more favorable terms of access granted
30 by the building owner in violation of paragraph (1).

31 (C) The building owner is discriminating among
32 telecommunications providers in violation of subdivision
33 (c).

34 (3) If, after a hearing, the commission finds that a
35 telecommunications provider's agreement or
36 arrangement with a building owner violates paragraph
37 (1), the commission shall require the renegotiation of the
38 agreement or arrangement within 60 days from the date
39 of that finding. If the agreement or arrangement is not
40 renegotiated within 60 days of the finding by the

1 *commission, the commission shall impose on the parties*
2 *to the agreement or arrangement a fine of not less than*
3 *five hundred dollars (\$500), and not to exceed two*
4 *thousand dollars (\$2,000), per day, based on the number*
5 *of lines served in the building, until the agreement or*
6 *arrangement is renegotiated.*

7 ~~(h) The commission shall adopt regulations~~
8 ~~authorizing telecommunications service providers, upon~~
9 ~~application by the owner of an occupied building and~~
10 ~~approval by the commission to reasonably compensate~~
11 ~~the owner for any taking of property associated with the~~
12 ~~installation of wiring and ancillary facilities for the~~
13 ~~provision of telecommunications service. The~~
14 ~~compensation due the building owner shall be reasonable~~
15 ~~and appropriate and based on the actual costs incurred~~
16 ~~including the expense of restoration to prior condition. If~~
17 ~~the telecommunications service provider requires space~~
18 ~~for equipment and related facilities outside of the~~
19 ~~telecommunications space normally provided by the~~
20 ~~building owner, then, consistent with subdivision (f), the~~
21 ~~building owner shall be compensated at cost for space not~~
22 ~~normally occupied by tenants, and at market value for~~
23 ~~space normally occupied by building tenants. Nothing in~~
24 ~~this section~~

25 *(h) (1) If a telecommunications provider requires*
26 *space for equipment and related facilities outside of the*
27 *telecommunications space normally provided by the*
28 *building owner, then, consistent with subdivision (f), the*
29 *telecommunications provider shall compensate the*
30 *building owner at the cost for space not normally*
31 *occupied by tenants, and at market value for space*
32 *normally occupied by building tenants. As used in this*
33 *section "space not normally occupied by building*
34 *tenants" is space for which the building owner does not*
35 *receive revenue from nonutility providers. If the*
36 *telecommunications provider requires space that*
37 *encroaches on regularly used tenant common areas,*
38 *including, but not limited to, hallways, foyers, or*
39 *entryways, the telecommunications provider shall pay a*
40 *market-based rental rate for the use of that space. The*

1 *commission shall deem the compensation standards*
2 *described in this paragraph to be just, reasonable, and*
3 *appropriate compensation due the building owner.*

4 (2) *The commission shall adopt regulations*
5 *authorizing telecommunications providers to reasonably*
6 *compensate a building owner for any use or occupation*
7 *of property associated with the installation of wiring and*
8 *ancillary facilities for the provision of*
9 *telecommunications service in accordance with this*
10 *section. The regulations shall include, but not be limited*
11 *to, an expedited dispute resolution process.*

12 (3) *Nothing in this subdivision shall be construed as*
13 *giving the building owner the right to charge any*
14 *monthly recurring fee for access to an occupied building.*

15 (i) *Nothing in this section precludes a*
16 *telecommunications ~~service~~ provider from installing*
17 *telecommunications equipment or facilities in an*
18 *occupied building prior to the commission's*
19 *determination of the compensation due the building*
20 *owner.*

21 (j) *Except as provided by this article, and excluding*
22 *any provider of shared tenant services that are regulated*
23 *by the commission pursuant to commission Decision*
24 *87-01-063, as modified by the commission Decision*
25 *87-05-009, any building owner who seeks to receive, or*
26 *receives, revenue from the use of inside*
27 *telecommunications wiring or the placement of*
28 *telecommunications facilities and equipment within his*
29 *or her building shall be considered a telecommunications*
30 *~~service~~ provider subject to regulation by the commission*
31 *pursuant to Sections 216, 234, and 1013. That building*
32 *owner shall provide service to the building's tenants in a*
33 *manner that is nondiscriminatory to any tenant or*
34 *telecommunications provider, and in compliance with all*
35 *commission rules applicable to telecommunications*
36 *~~service~~ providers, including collection and payment of all*
37 *surcharges. An agreement authorized by subdivision (f)*
38 *or (h), and any commission received for the nonexclusive*
39 *referral of tenants to a telecommunications service*

1 provider shall not make a building owner subject to
2 regulation under this subdivision.

3 (k) Any person, firm, or corporation that the
4 commission determines, after notice and opportunity for
5 a hearing, has failed to comply with subdivisions (c) to (j),
6 inclusive, shall pay to the state a civil penalty of not more
7 than one thousand dollars (\$1,000) for each day following
8 the date of the issuance of a final order by the commission
9 that the person, firm, or corporation fails to comply with
10 any of those provisions.

11 ~~SEC. 3.~~

12 (l) *Nothing in this section prohibits a*
13 *telecommunications provider from maintaining or*
14 *entering into an exclusive advertising or sponsorship*
15 *relationship with a tenant, user, or owner of a*
16 *multipurpose sports facility or a multipurpose sports and*
17 *entertainment facility, which may have the collateral*
18 *effect of limiting the rights of a telecommunications*
19 *provider to provide service to the facility specified in the*
20 *exclusive advertising or sponsorship relationship.*

21 SEC. 4. No reimbursement is required by this act
22 pursuant to Section 6 of Article XIII B of the California
23 Constitution because the only costs that may be incurred
24 by a local agency or school district will be incurred
25 because this act creates a new crime or infraction,
26 eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section
28 17556 of the Government Code, or changes the definition
29 of a crime within the meaning of Section 6 of Article
30 XIII B of the California Constitution.

31 _____
32 CORRECTIONS

33 **Text — Pages 5,6,7, and 8.**
34 _____
35

1 **TELECOMMUNICATIONS ACCESS TO BUILDINGS**

2 **Pub. Util. Code § 616 (amended). Telephone corporation**

3 SECTION 1. Section 616 of the Public Utilities Code is amended to read:

4 616. A (a) Except as provided in subdivision (b), a telephone corporation may
5 condemn any property necessary for the construction and maintenance of its
6 telephone line.

7 (b) A telephone corporation may not condemn property for the purpose of the
8 installation or provision of service to an occupied building within the meaning of
9 Article 2 (commencing with Section 7910) of Chapter 3 of Division 4.

10 **Comment.** Section 616 is amended in recognition of the supervening provisions of Sections
11 7910-7916 (access to occupied building by telephone corporation).

12 **Pub. Util. Code § 7901 (added). Article heading**

13 SEC 2. An article heading is added immediately preceding Section 7901 of
14 Chapter 3 of Division 4 of the Public Utilities Code, to read:

15 Article 1. General Provisions

16 **Comment.** An article heading is added for Public Utilities Code Sections 7901-7907 to
17 facilitate addition of a new article on access to an occupied building by a telephone corporation.
18 See Sections 7910-7916.

19 **Pub. Util. Code §§ 7910-7916 (added). Access to occupied building by telephone corporation**

20 SEC. 3. Article 2 (commencing with Section 7910) is added to Chapter 3 of
21 Division 4 of the Public Utilities Code, to read:

22 Article 2. Access to Occupied Building by Telephone Corporation

23 **§ 7910. “Occupied building” defined**

24 7910. As used in this article, “occupied building” means a building or part of a
25 building that is rented, leased, hired out, arranged or designed to be occupied, or is
26 occupied as the residence of three or more persons or families living independently
27 of each other, as the place of business of three or more persons conducting
28 business independently of each other, or by any combination of such persons and
29 families totaling three or more, and includes a trailer park, mobile manufactured
30 home park, nursing home, hospital, and condominium association.

31 **Comment.** Section 7910 is drawn from Connecticut General Statutes Section 16-2471(a)(1).
32 For other definitions relevant to this article, see Sections 20 (commission), 205 (person), 234
33 (telephone corporation).

34 **§ 7911. Limitations on owner of occupied building**

35 7911. No owner of an occupied building shall demand or accept payment in any
36 form, except as provided in Section 7915, in exchange for permitting a telephone

1 corporation on or within the owner's property or premises, or discriminate in
2 rental charges or the provision of service between tenants who receive service and
3 those who do not, or those who receive service from different providers, provided
4 the owner shall not be required to bear any cost for the installation or provision of
5 service.

6 **Comment.** Section 7911 is drawn from Connecticut General Statutes Section 16-2471(b).

7 **§ 7912. Installation of wiring and ancillary facilities**

8 7912. (a) An owner of an occupied building shall permit installation of
9 telecommunications wiring and ancillary facilities to provide service by a
10 telephone corporation in the building provided:

11 (1) The telephone corporation has an agreement with a tenant of the building
12 requesting service from the telephone corporation. The agreement is subject to
13 inspection by the owner.

14 (2) The entire cost of the installation is assumed by the telephone corporation,
15 including but not limited to building supervisorial and related overhead costs
16 associated with the installation.

17 (3) The telephone corporation indemnifies and holds harmless the owner for any
18 damages caused by the installation, including any loss of existing service to a
19 tenant that results from installation activities. On request of the owner, the
20 telephone corporation shall provide a bond, recorded with the county clerk, in
21 favor of the owner to ensure that the installation work is properly completed.

22 (4) The telephone corporation complies with written rules of operation of the
23 building and with all rules and regulations of the commission pertaining to the
24 installation. The commission shall adopt regulations that set forth terms that may
25 be included, and terms that shall not be included, in a contract entered into by the
26 owner and the telephone corporation concerning the installation. Regulations for
27 terms that may be included should cover, without limitation, esthetics and
28 architectural compatibility of the installation, security and safety considerations,
29 terms and conditions relating to treatment of hazardous materials (including
30 asbestos) affected by the installation, building safety systems (such as fire
31 sprinklers in telecommunications utility closets), and necessary permits that must
32 be obtained by the telephone corporation. No telephone corporation shall present
33 to an owner for review or for signature a contract that contains a term prohibited
34 by regulations adopted pursuant to this paragraph.

35 (5) The owner may require the installation work when the owner is present and
36 may approve or deny the location at which wiring enters the building.

37 (b) Before completion of construction of an occupied building, an owner of a
38 building in the process of construction shall permit rewiring to provide services
39 in the building provided that all wiring other than that to be directly connected to
40 the equipment of a customer is concealed within the walls of the building and the
41 telephone corporation complies with all provisions of subdivision (a) and of
42 Section 7915.

1 **Comment.** Section 7912 is drawn from Connecticut General Statutes Section 16-2471(c)-(d).
2 For additional regulatory requirements that must be satisfied to obtain access to a building under
3 this article, see Section 7914.

4 The types of conditions that should be authorized by regulation under subdivision (a)(4) in an
5 access contract include such matters as:

- 6 (1) Insurance and indemnity requirements for the telecommunications carrier.
- 7 (2) Health and safety, legal compliance, and security and construction considerations that might
8 arise from the proposed installation.
- 9 (3) Compliance with standard telecommunications construction access rules and regulations for
10 buildings.
- 11 (4) Bonding requirements to insure proper installation of facilities.
- 12 (5) Exclusion of non-complying carriers.

13 Cf. Conn. Reg. §. 16-247c-6.

14 **§ 7913. Limitations on telephone corporation**

15 7913. No telephone corporation may enter into an agreement with the owner or
16 lessee of, or person controlling or managing, an occupied building served by the
17 provider, or commit or permit an act, that would have the effect, directly or
18 indirectly, of diminishing or interfering with existing rights of a tenant or other
19 occupant of the building to use or avail itself of the services of other telephone
20 corporations.

21 **Comment.** Section 7913 is drawn from Connecticut General Statutes Section 16-2471(e).

22 **§ 7914. Regulation by Public Utilities Commission of right to access**

23 7914. (a) The commission shall adopt regulations that prescribe the
24 circumstances in which a telephone corporation is permitted access to an occupied
25 building pursuant to this article. The regulations shall take into account the
26 following, among other considerations:

27 (1) The number and type of telecommunications service providers already
28 serving the building, and the extent to which joint use of existing facilities is
29 feasible.

30 (2) The available remaining space in the building to accommodate additional
31 telecommunications infrastructure.

32 (3) The portion of the building that the telephone corporation desires to access,
33 and how intrusive the proposed access is on the building's layout and design.

34 (4) The financial and operational capabilities of the telephone corporation, to
35 ensure that the facilities will be competently installed and completed in a timely
36 manner, and the qualifications and credentials of the installation contractor
37 (including proper licensing, qualifications, and bonding for the work), including a
38 procedure for resolution of any objections by the owner to access by a particular
39 telephone corporation on the basis of prior unsatisfactory experience with that
40 telephone corporation.

41 (5) The relative hardships to the owner of the building of permitting access and
42 to the telephone corporation of denying access.

1 (b) The commission shall adopt regulations that prescribe a dispute resolution
2 mechanism if the telephone corporation and the owner of an occupied building are
3 unable to agree on the terms of access sought by the telephone corporation.

4 **Comment.** Section 7914 has no analogue in Connecticut law. It is intended to limit the
5 potential for multiple separate access proceedings by competitive telecommunications service
6 providers, and ensure that the demanded access is otherwise necessary, and to address the
7 possibility of a disagreement between the telephone corporation and property owner over whether
8 the access sought by the telephone corporation is required under this article. It is also intended to
9 authorize a procedure to disqualify a telephone corporation that has an unsatisfactory prior history
10 with installations in other buildings or that has failed to comply with building rules or Public
11 Utilities Commission rules and regulations.

12 **§ 7915. Compensation**

13 7915. (a) The commission shall adopt regulations requiring a telephone
14 corporation, on application by the owner of an occupied building, to reasonably
15 compensate the owner for any occupancy of property associated with the
16 installation of wiring and ancillary facilities for the provision of service. The
17 regulations may include, without limitation:

18 (1) A procedure under which an owner may petition the commission for
19 additional compensation.

20 (2) Authorization for an owner and telephone corporation to negotiate a
21 settlement agreement regarding the amount of compensation.

22 (3) Establishment of criteria for determining any additional compensation that
23 may be due, including but not limited to costs of maintenance, engineering,
24 supervision, security, and other ongoing building costs directly related to the
25 installation.

26 (4) Establishment of a schedule of compensation under specified circumstances.

27 (5) Establishment of fees for an application under this section.

28 (b) Nothing in this section precludes a telephone corporation and owner from
29 installing equipment or facilities in an occupied building before the commission's
30 determination of reasonable compensation.

31 (c) Any determination by the commission under this section regarding the
32 amount of compensation to which an owner is entitled is subject to judicial review.

33 **Comment.** Section 7915 is drawn from Connecticut General Statutes Section 16-2471(f)-(h).
34 Cf. Conn. Reg. § 16-247d-1 et seq.

35 **§ 7916. Civil penalty**

36 7916. Any person that the commission determines, after notice and opportunity
37 for a hearing, has failed to comply with a provision of this article shall pay to the
38 state a civil penalty of not more than one thousand dollars for each day following
39 the issuance of a final order by the commission that the person fails to comply
40 with the provision.

41 **Comment.** Section 7916 is drawn from Connecticut General Statutes Section 16-2471(i) and
42 broadened to apply to all parties, including a telephone corporation.

1 **§ 7917. Existing agreements**

2 7917. This article is operative on January 1, 2001. Nothing in this article
3 invalidates or affects an agreement between a telephone corporation and an owner
4 of an occupied building made before the operative date of this article or the
5 operative date of implementing regulations adopted pursuant to this article.

6 **Comment.** Section 7917 grandfathers in existing agreements.