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June 16, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

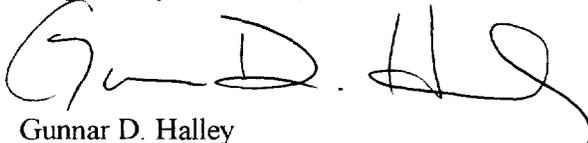
Re: Ex Parte Presentation in WT Docket No. 99-217 and CC Docket No. 96-98

Dear Ms. Salas:

Please find attached a letter from Philip Verveer, on behalf of Winstar Communications, Inc., delivered today to Commissioner Susan Ness regarding the above-referenced proceedings.

In accordance with the Commission's rules, for each of the above-mentioned proceedings, I hereby submit to the Secretary of the Commission two copies of this notice of Winstar's written ex parte presentation.

Respectfully submitted,



Gunnar D. Halley
Counsel for WINSTAR COMMUNICATIONS, INC.

cc: Commissioner Susan Ness	Mark Schneider	Thomas Sugrue (WTB)
Jeffrey Steinberg (WTB)	Joel Taubenblatt (WTB)	Leon Jackler (WTB)
Mark Rubin (WTB)	Lauren Van Wazer (WTB)	David Furth (WTB)
Paul Noone (WTB)	Eloise Gore (CSB)	Jim Swartz (WTB)
Cheryl King (CSB)	Wilbert Nixon (WTB)	

Enclosure

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The Honorable Susan Ness
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

Re: WT Docket No. 99-217 and CC Docket No. 96-98

Dear Commissioner Ness:

During the course of our meeting on Thursday, June 1st, you inquired as to the practical implementation of building access rules in the context of the *Competitive Networks* rulemaking. The experience of this Commission, the Connecticut statute and implementing regulations and the proposed nondiscriminatory access rules the Texas Public Utility Commission presently is considering suggest approaches for implementing nondiscriminatory access rules at the federal level without imposing undue burdens on the Commission's resources.

The Commission should adopt a strict nondiscrimination requirement and provide an opportunity for adjudication of the reasonableness of rates, terms, and conditions. The standards for gauging reasonableness should be embodied in benchmarks. These benchmarks would be used as legal presumptions where disputes were submitted to adjudication. Because a nondiscrimination requirement will tend to be self-executing, we believe there will be relatively infrequent invocation of an adjudication process. Indeed, carriers prefer to reach voluntary, negotiated access arrangements and, in most cases, will do so once building owners recognize the obligation to permit access. Experience suggests that in the short run, parties are more likely to rely on adjudicatory mechanisms. However, over time, administrative responses to disputes will become predictable, reducing the need for parties to approach the Commission for resolution. The mere existence of adjudication mechanisms is likely to promote voluntarily-negotiated solutions to access disputes.

The experience of the Texas Public Utility Commission is instructive in this regard. Two access complaints have been filed with the Texas PUC under the Texas building access statute. In both

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instances, the complainants withdrew their complaints within a week of filing because the building owner agreed to cease the unreasonable practices.

Expeditious resolution of disputes is critical to the effective operation of the building access rules. Summary procedures, aided by benchmark-based legal presumptions, should be employed. The procedural mechanisms contained in the current pole attachment complaint procedures (47 C.F.R. § 1.1401, *et seq.*) recommend themselves. Where the policies will be achieved through nondiscrimination requirements imposed on telecommunications carriers, the Commission's Section 208 accelerated complaint process also would be available. Indeed, the mediation component of the accelerated complaint process should play a role in any adjudicatory mechanism adopted by the Commission.

The Public Utility Commission of Texas has proposed an alternative to petitioning the PUC for resolution of a dispute whereby parties may voluntarily submit any controversy or claim under the access rules to settlement by alternative dispute resolution. Proposed 16 TAC § 26.129(i)(1). (Copy attached hereto.) Given the Commission's expressed preference for voluntarily negotiated solutions in other contexts,¹ the Commission may consider permitting an option for resolution of disputes within certain time limits under federal access rules similar to the one provided by the Texas PUC.

If an access dispute concerns solely the appropriate rate to be paid (*i.e.*, there are no outstanding issues of space constraints or safety hazards), the Commission should expedite service to consumers by permitting access while the rate dispute resolution occurs. The carrier would be responsible for true-up to the building owner for the Commission-approved rate for the period during dispute resolution in which the carrier received access. Connecticut has adopted this approach. C.G.S.A. § 16-2471(g). Copies of the Connecticut statute and implementing regulations are attached hereto for your reference.

¹ See, e.g., Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party, GC Docket No. 91-119, *Initial Policy Statement and Order*, 6 FCC Rcd 5669 at ¶ 9 (1991)("[T]he Commission will make every effort possible to resolve appropriate disputes through mediation, arbitration, settlement negotiation, negotiated rulemaking and other means of dispute resolution where the parties involved consent to their use and where such practice is consistent with our statutory mandate. We have successfully employed alternative dispute resolution techniques on an informal basis in past Commission proceedings. Based on that experience we are confident that alternative dispute resolution procedures provide us with an effective tool for dealing with conflict, while avoiding the expense and the delay of adversarial proceedings.").

Benchmarking will facilitate private negotiations and, where negotiations fail, will streamline the adjudication process. The Commission has successfully utilized benchmarks for determining the reasonableness of rates in a variety of contexts including cable rate regulation, subscriber list information, and international settlement rates. The Supreme Court has approved this approach:

It is plain that the Constitution does not forbid the imposition, in appropriate circumstances, of maximum prices upon commercial and other activities. A legislative power to create price ceilings has, in "countries where the common law prevails," been "customary from time immemorial . . ." Its exercise has regularly been approved by this Court. No more does the Constitution prohibit the determination of rates through group or class proceedings. This Court has repeatedly recognized that legislatures and administrative agencies may calculate rates for a regulated class without first evaluating the separate financial position of each member of the class; it has been thought to be sufficient if the agency has before it representative evidence, ample in quantity to measure with appropriate precision the financial and other requirements of the pertinent parties.²

The benchmarks for access would become legal presumptions in the event of an adjudication. They could be established on a variety of bases. The rates paid by ILECs probably are the most reliable measure of reasonableness. If warranted, the Commission could vary the benchmark rates by other factors such as geographic or metropolitan region or age of building.

The Commission may also identify factors it would consider particularly relevant in resolving claims that the benchmark rates are inappropriate in any given case. The Texas PUC's effort in this regard offers an example. After several hearings and rounds of written comments on the matter, the Texas PUC has proposed a list of seven factors to consider in assessing the reasonable amount of compensation due a building owner for the installation of a telecommunications carrier's equipment. Proposed 16 TAC § 26.129(i)(3)(B)(iii)(I)-(VII). Those seven factors are:

1. the location and amount of space occupied by installation of the requesting carrier's telecommunications equipment;
2. evidence that the property owner has a specific alternative use for any space which would be occupied by the requesting carrier's telecommunications equipment and which would result in a specific quantifiable loss to the property owner;

² Permian Basin Area Rate Cases, 390 U.S. 747, 768-69 (1968)(citations omitted).

3. the value of the property before and after the installation of the requesting carrier's telecommunications equipment and the methods used to determine such values;
4. possible interference of the requesting telecommunications carrier's telecommunications equipment with the use and occupancy of the property which would cause a decrease in the rental or resale value of the property;
5. actual costs incurred by the property owner directly related to installation of the requesting carrier's telecommunications equipment;
6. the market rate for similar space used for installation of telecommunications equipment in a similar property; and
7. the market rate for tenant leasable space in the property or a similar property.

Similarly, the Commission may also establish guidelines unrelated to rates -- such as negotiation time limits and acceptable access conditions -- to assist carriers and building owners in their access negotiations. This approach is similar to the approach successfully adopted in the context of implementing Section 224 of the Communications Act.

The Texas PUC has proposed rules to facilitate private negotiations by giving carriers and building owners the right to demand certain information from the other and to inspect the premises. Specifically, these proposed rules facilitate privately-negotiated solutions by:

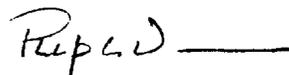
1. establishing time limits for different phases of negotiations (end-to-end this is a period of 45 days, which is slightly longer than the carriers had requested);
2. allowing carriers to tour and inspect the property (under the supervision of the building owner) to determine whether sufficient space exists and to determine an appropriate location for the telecommunications equipment;
3. allowing carriers to obtain from building owners technical drawings of the property in order to assist the carrier in developing plans and specifications for the equipment installation; and
4. requiring carriers to notify the building owner of the proposed installation timeline, the type of equipment to be installed, the proposed location, space requirements, engineering drawings, conduit requirements, and other specifications of the telecommunications equipment.

Similar facilitating rules would ease implementation of federal access requirements.

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In summary, we believe that an adjudication regime predicated upon a strict prohibition of discrimination and benchmarks identifying reasonable rates, terms, and conditions will be effective in securing consumers' rights to select the carrier and services they wish. We would be happy to amplify on any of the points in this letter if you or Mr. Schneider would find it helpful.

Very truly yours,



Philip L. Verveer
Counsel for WINSTAR COMMUNICATIONS, INC.

Enclosures

cc: Mark Schneider Thomas Sugrue (WTB) Jeffrey Steinberg (WTB)
Joel Taubenblatt (WTB) Leon Jackler (WTB) David Furth (WTB)
Mark Rubin (WTB) Lauren Van Wazer (WTB) Jim Swartz (WTB)
Paul Noone (WTB) Eloise Gore (CSB) Cheryl King (CSB)
Wilbert Nixon (WTB)

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.129

The Public Utility Commission of Texas (commission) proposes new §26.129 relating to Standards for Access to Provide Telecommunications Services at Tenant Request. The purpose of this proposed rule is to implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §§54.259, 54.260, and 54.261 (Vernon 1998 & Supplement 2000) (PURA), regarding the non-discriminatory treatment of telecommunications utilities by property owners. Project Number 21400 has been assigned to this proceeding.

The proposed rule sets forth procedures whereby a requesting telecommunications carrier may seek access to the lease owner's property to install telecommunications equipment upon a tenant's request. The rule encourages independent negotiations between the telecommunications carrier and the property owner, and establishes procedures for resolution by the commission in the event an agreement cannot be reached. Further, the proposed rule addresses situations in which the property owner may deny access to the building for safety concerns or space constraints.

In 1995, the Legislature enacted PURA §§54.259, 54.260, and 54.261 as part of a comprehensive package of legislation to open Texas' telecommunications market to competition. The thrust of these particular PURA sections is to promote competition in the telecommunications market by allowing a tenant under a real estate lease to choose the provider of its telecommunications services. As the competitive marketplace has developed, the need for specific rules to implement these sections has become evident. Accordingly, the commission initiated this rulemaking proceeding to ensure the access of a telecommunications utility to the owner's property to serve a tenant as requested, thereby promoting tenant choice.

As part of the drafting process, commission staff conducted workshops in Austin, Houston, and Dallas to receive input from potentially affected persons. Further, staff participated in building tours to promote an understanding of the technical aspects of and potential space constraints due to the installation of telecommunications equipment.

The commission has prepared a takings impact assessment pursuant to Texas Government Code Annotated §2007.043. Interested persons may obtain a copy of this assessment by contacting the commission's Central Records department and referencing Project Number 21400. In summary, the commission finds that adherence to PURA §54.259 and proposed §26.129 may result in takings of real property. The purpose of the statute and proposed rule is to promote competition in the telecommunications market by effectuating a tenant's choice of telecommunications services provider. This purpose is advanced by ensuring the reasonable access of the telecommunications services provider to the owner's property to provide service to a tenant that has chosen such company as its telecommunications provider. Although PURA §54.259 and the proposed rule impose a burden on private real property, any taking that might result will be compensated. PURA §54.260 and the proposed rule require a telecommunications services provider to pay reasonable compensation to the affected property owner for the use of such space on the property.

The commission finds that the citizens of Texas will benefit from the proposed rule because it will foster competition in the tenant sector of the telecommunications services market. The language of PURA specifically sets forth the interrelationship between the property owner and the telecommunications services provider chosen by the tenant and authorizes the provider's access to the property as the means for accomplishing a tenant's choice in a telecommunications services provider. PURA further grants the commission plenary jurisdiction to enforce the statute's requirements. See PURA §54.259(c) and §54.260(b).

Evan Farrington, Attorney, Office of Policy Development, has determined that for the first five-year period the proposed rule is in effect there are no foreseeable implications relating to cost or revenues of the state or local

governments as a result often forcing or administering the section.

Mr. Farrington has also determined that for each year of the first five years the proposed rule is in effect the public benefits expected as a result of enforcing the rule will be that customers will have increased choice of telecommunications providers. Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed section. There may be economic costs to persons who are required to comply with the proposed section. These costs are likely to vary from business to business, and are difficult to ascertain. However, the benefits accruing from implementation of the proposed section will outweigh these costs.

Moreover, Mr. Farrington has determined that the proposed rule will not affect a local economy for each year of the first five years it is in effect. Therefore, a local employment impact statement is not required under Administrative Procedure Act, Texas Government Code Annotated §2001.022.

The commission seeks comments on the proposed rule from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the proposed rule. Additionally, the commission invites specific comments from interested persons on the proposal of using six months as the measure of time remaining on a lease for purposes of defining the term "tenant" in the definitions section of the proposed rule. The commission also seeks comment regarding any applicable Texas Supreme Court case law that delineates the standards necessary to determine whether compensation is adequate pursuant to the requirement in PURA §54.260(a)(6). The commission invites comment on whether the proposed rule provides property owners with adequate measures to address the security, safety, liability and other concerns specified in PURA §54.260(a)(1)-(5). Lastly, the commission seeks comment on whether it should adopt a section that allows parties to opt into alternative dispute resolution. If so, what procedures should the commission adopt for referral to mediation or arbitration?

Comments on the proposed rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 21400.

The commission staff will conduct a public hearing on this rulemaking pursuant to Texas Government Code §2001.029 on **Tuesday, June 13, 2000 at 9:30 a.m. in the Commissioners' Hearing Room** at the commission's offices, 1701 North Congress Avenue, Austin, Texas, 7th floor.

This new section is proposed pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated (Vernon 1998 & Supplement 2000) §14.002, which provides the commission with authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this rule pursuant to PURA §54.259, which provides it with authority to enforce the prohibition on discrimination by property owners; PURA §54.260, which provides it with authority to enforce conditions imposed by property owners; and PURA §54.261 regarding shared tenant services contracts.

Cross Reference to Statutes: PURA §§14.002, 54.259, 54.260, and 54.261.

§26.129. Standards for Access to Provide Telecommunications Services at Tenant Request.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §§54.259, 54.260, and 54.261 regarding the non-discriminatory treatment of a telecommunications utility by the property

owner upon a tenant's request for telecommunications services.

(b) Application.

(1) This section applies to the following entities:

(A) "Telecommunications utilities" or "telecommunications utility" as defined in PURA §51.002(11) that hold a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality and hold a certificate if required by the Public Utility Regulatory Act ;

(B) Public or private property owners of commercial property and the property owner's authorized representative(s); and

(C) Public or private property owners of commercially operated residential property with four or more dwelling units and the property owner's authorized representative(s).

(2) This section does not apply to institutions of higher education as set forth by PURA §54.259(b).

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Conduit - A pipe installed on the property, in a building between floors, attached to walls, between buildings, located in the ceiling or floor space of a building, located on a customer's premise, or from a public right of way into a building or buildings for the purposes of containing and protecting cable.

(2) Existing carrier - A telecommunications utility that has installed telecommunications equipment on the property and is providing telecommunications services to a tenant on the property through the use of its own installed telecommunications equipment at the time the requesting carrier seeks access to the property.

(3) Property - A building or buildings that are under common ownership and which are located on a single piece of land, or a campus, or a parcel of land.

(4) Property owner - The owner of the property or its authorized representative(s).

(5) Requesting carrier - A telecommunications utility, that is not the existing carrier, seeking access to space in or on one or more buildings on the property for the purpose of providing telecommunications services to one or more tenants who have requested such services.

(6) Space - Area of the property for which access is being requested by the requesting carrier, which will be used to install the telecommunications equipment needed to provide telecommunications services to a requesting tenant on the property. Space includes conduit and may be located in or on the rooftop of a building or buildings on the property.

(7) Telecommunications equipment - The equipment installed or used by the existing carrier or the requesting carrier to provide telecommunications services to a tenant who has requested telecommunications services from the existing carrier or there questing carrier.

(8) Tenant - Any occupant of a building or buildings on the property under the terms of a lease with the property owner which has a remaining term of more than six months and who is not subject to filed bona fide eviction proceedings under such lease with the property owner, or an authorized subtenant of such occupant whose

occupancy is subject to the terms of the primary lease which has a remaining term of more than six months.

(d) Rights of parties.

(1) Tenant's right to choose requesting carrier. A tenant is entitled to choose the provider of its telecommunications services.

(2) Property owner's rights to manage access. The requirements of this subsection are not intended to eliminate or restrict the property owner's rights to manage access to public or private property pursuant to PURA §§54.259, 54.260, and 54.261.

(A) A property owner may:

(i) impose a condition on the requesting carrier that is reasonably necessary to protect:

(I) the safety, security, appearance, and condition of the property; and

(II) the safety and convenience of other persons;

(ii) impose a reasonable limitation on the time at which the requesting carrier may have access to the property to install telecommunications equipment;

(iii) impose a reasonable limitation on the number of such requesting carriers that have access to the property, if the property owner can demonstrate a space constraint that requires the limitation;

(iv) require a requesting carrier to agree to indemnify the property owner for damage caused installing, operating, or removing telecommunications equipment;

(v) require a tenant or requesting carrier to bear the entire cost of installing, operating, or removing telecommunications equipment; and

(vi) require requesting carrier to pay compensation that is reasonable and nondiscriminatory among such telecommunications utilities.

(B) A property owner may not:

(i) prevent the requesting carrier from installing telecommunications equipment on the property upon a tenant request;

(ii) interfere with the requesting carrier's installation of telecommunications equipment on the property upon a tenant request;

(iii) discriminate against such requesting carrier regarding installation, terms, or compensation of telecommunications equipment to a tenant on the property;

(iv) demand or accept an unreasonable payment of any kind from a tenant or the requesting carrier for allowing the requesting carrier on or in the property; or

(v) discriminate in favor of or against a tenant in any manner, including rental charge discrimination, based on the identity of a telecommunications utility from which a tenant receives telecommunications services.

(3) Requesting carrier's right to access.

(A) Upon a tenant request, the requesting carrier has the right to install telecommunications equipment on the property:

(i) for a period no longer than the remaining term of the requesting tenant's lease unless otherwise agreed to by the requesting carrier and the property owner;

(ii) without interference from the property owner, except as provided in this subsection; and

(iii) at terms, conditions, and compensation rates which are non-discriminatory.

(B) The requesting carrier shall comply with all applicable federal, state, and local codes and standards, e.g., fire codes, electrical codes, safety codes, building codes, elevator codes.

(4) Restriction on exclusive agreement. A telecommunications utility shall not enter into an agreement, contract, pact, understanding or other like arrangement with the property owner to be the sole or exclusive provider of telecommunications services to a specific or defined group of actual or prospective tenants on the property:

(e) Procedures upon tenant request.

(1) Tour of property.

(A) Upon receiving a request for telecommunications services from a tenant, but prior to or concurrently with providing the property owner with notice of intent to install telecommunications equipment as described in paragraph (3) of this subsection, the requesting carrier may request, in writing, a tour of the property to determine an appropriate location for the telecommunications equipment needed to provide the telecommunications services requested by such tenant. This request shall identify the requesting tenant and be sent by certified mail, return receipt requested.

(B) The property owner shall provide such property tour within ten calendar days of receipt of the requesting carrier's written request.

(2) Request for technical drawings.

(A) In its written request for a tour of the property, the requesting carrier may request that the property owner provide computer aided design (CAD) drawings or similarly detailed drawings of the mechanical room(s), risers and other common spaces, if available, in order to assist the requesting carrier in developing plans and specifications for placement of telecommunications equipment.

(B) Such drawings should be provided to the requesting carrier, at the requesting carrier's expense, within ten calendar days of the property owner's receipt of the requesting carrier's written request.

(3) Notice of intent to install telecommunications equipment.

(A) Upon receiving a request for telecommunications services from a tenant, the requesting carrier shall notify the property owner not fewer than 30 calendar days before the proposed date on which installation of telecommunications equipment needed to provide the telecommunications services requested by a tenant is to commence.

(B) Such notice shall be sent by certified mail, return receipt requested, to the property's on-site manager and to

the person identified in the tenant's lease to receive notices. The requesting carrier shall also provide a copy of the notice of intent to any person designated by the property's on-site manager as the proper party to receive such notice.

(C) The requesting carrier shall include, but is not limited to, the following in its notice of intent:

(i) the identity of the requesting tenant;

(ii) the property address and building number (if applicable);

(iii) the proposed timeline for the installation of telecommunications equipment;

(iv) the type of telecommunications equipment to be installed;

(v) the proposed location, space requirements, proposed engineering drawings, and other specifications of the telecommunications equipment;

(vi) the conduit requirements, if any; and

(vii) a copy of PURA §§54.259, 54.260, and 54.261 and this section (Substantive Rule §26.129).

(f) Requirement to negotiate for 45 days.

(1) Upon receipt of the requesting carrier's notice of intent to install telecommunications equipment, the property owner and the requesting carrier shall attempt to reach a mutually acceptable agreement regarding the installation of the requesting carrier's telecommunications equipment and reasonable compensation due the property owner as a result of such installation.

(2) If such an agreement is not reached within 45 calendar days of the property owner's receipt of the requesting carrier's notice of intent, either party may file for resolution with the commission pursuant to subsection (i) of this section.

(3) The requesting carrier and the property owner may agree, in writing, to extend the period of negotiation prescribed by this subsection.

(g) Parameters for installation of telecommunications equipment. The property owner shall not deny the requesting carrier access to space, except due to inadequate space or safety concerns.

(1) Inadequate space.

(A) Property owner's denial due to inadequate space. The property owner may deny access to space if it does so within ten calendar days of its receipt of the requesting carrier's notice of intent to install telecommunications equipment, where the space and/or conduit required for installation is not sufficient to accommodate the requesting carrier's request.

(B) Demonstration of inadequate space.

(i) In the event the property owner denies access to space, the property owner shall demonstrate that there is insufficient space and/or conduit to accommodate the requesting carrier's request for space. The property owner shall allow the requesting carrier to inspect the space and/or conduit to which it is denied access; or it may utilize

any other method of proof mutually agreed upon by the property owner and the requesting carrier.

(ii) Such demonstration shall be completed within ten calendar days of the requesting carrier's receipt of the property owner's denial.

(iii) Following such demonstration or other agreed upon method of proof, the requesting carrier shall have ten calendar days to dispute the property owner's assertion that a space limitation exists by pursuing commission resolution pursuant to subsection (i) of this section.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(2) Safety concerns.

(A) Property owner's denial due to safety concern. The property owner may deny access to space if it does so within ten calendar days of its receipt of the requesting carrier's notice of intent to install telecommunications equipment, where the installation of the requesting carrier's telecommunications equipment would cause an unreasonable circumstance that would compromise the safety of the property and/or persons on the property.

(B) Demonstration of safety concern.

(i) In the event the property owner denies access to space, the property owner shall demonstrate that an unreasonable safety hazard that requires the denial of access to space exists. The property owner shall specify the alleged safety hazard and cite any applicable codes and/or standards. The property owner shall allow the requesting carrier to inspect the space and/or conduit to which it is denied access, or it may utilize any other method of proof mutually agreed upon by the property owner and the requesting carrier.

(ii) Such demonstration shall be completed within ten calendar days of the requesting carrier's receipt of the property owner's denial.

(iii) Following such demonstration or other agreed upon method of proof, the requesting carrier shall have ten calendar days to dispute the property owner's assertion that a safety hazard exists by pursuing commission resolution pursuant to subsection (i) of this section.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(h) Parameters for determining reasonable compensation for access.

(1) The property owner and the requesting carrier shall attempt to reach a mutually acceptable agreement regarding reasonable and non-discriminatory compensation due the property owner as a result of the requesting carrier's installation of telecommunications equipment required to provide telecommunications services to a requesting tenant.

(2) The property owner shall not impose a fee on the requesting carrier unrelated to the requesting carrier's usage of space and/or provision of telecommunications services to a requesting tenant, except as provided by agreement of the property owner and the requesting carrier.

(3) The property owner and the requesting carrier shall negotiate terms and conditions concerning the removal of the requesting carrier's telecommunications equipment upon the departure of a tenant served by such requesting

carrier or the end of the service agreement between a tenant and the requesting carrier.

(4) The property owner may require a security deposit not to exceed an amount equal to one month of fees or rents as determined by the agreement between the requesting carrier and the property owner.

(i) Failure to reach negotiated agreement.

(1) Alternative Dispute Resolution. As an alternative to petitioning the commission for resolution of a dispute, parties may voluntarily submit any controversy or claim under this subsection to settlement by alternative dispute resolution. This alternative dispute resolution shall be conducted under the alternative dispute resolution procedures of Chapter 2009, Administrative Procedure Act, and Chapter 154, Civil Practice and Remedies Code.

(2) Petition to commission for resolution of dispute. If a mutually acceptable agreement regarding the installation of the requesting carrier's telecommunications equipment, the reasonable compensation due the property owner as a result of such installation, or other disputed issues is not reached within 45 calendar days of the property owner's receipt of the requesting carrier's notice of intent to install telecommunications equipment, either the property owner or the requesting carrier may petition the commission for resolution. The petition shall include proof of the requesting carrier's proper service of notice of intent to the property owner in the form of an affidavit and attached copy of return receipt.

(3) Types of disputes and information required for each.

(A) Installation dispute.

(i) The property owner may deny access consistent with subsection (g) of this section.

(ii) The property owner and the requesting carrier shall each provide the commission with information specifying the space or safety related installation dispute(s) that is preventing a negotiated agreement.

(iii) The property owner and the requesting carrier shall each provide the commission with information supporting its position in the dispute(s).

(B) Reasonable compensation dispute.

(i) The property owner shall provide the commission with the amount of compensation being sought and the basis for such claim, including information supporting the factors listed in clause (iii) of this subparagraph.

(ii) The requesting carrier shall provide the commission with information supporting the amount of compensation it deems reasonable to compensate the property owner for installation of its telecommunications equipment.

(iii) In determining a reasonable amount of compensation due the property owner for installation of the requesting carrier's telecommunications equipment, the commission may consider, but is not limited to, the following:

(I) the location and amount of space occupied by installation of the requesting carrier's telecommunications equipment;

(II) evidence that the property owner has a specific alternative use for any space which would be occupied by the requesting carrier's telecommunications equipment and which would result in a specific quantifiable loss to the property owner;

(III) the value of the property before and after the installation of the requesting carrier's telecommunications equipment and the methods used to determine such values;

(IV) possible interference of the requesting carrier's telecommunications equipment with the use and occupancy of the property which would cause a decrease in the rental or resale value of the property;

(V) actual costs incurred by the property owner directly related to installation of the requesting carrier's telecommunications equipment;

(VI) the market rate for similar space used for installation of telecommunications equipment in a similar property; and

(VII) the market rate for tenant leaseable space in the property or a similar property.

(C) Other disputed issues.

(i) The property owner and the requesting carrier shall each provide the commission with information specifying any other dispute(s) preventing a negotiated agreement.

(ii) The property owner and the requesting carrier shall each provide the commission with information supporting its position regarding these other dispute(s).

(4) Procedure.

(A) Upon the proper filing of a petition, as set forth in paragraph (1) of this subsection, the commission may proceed to resolution of a dispute pursuant to the commission's procedural rules as set forth in Chapter 22 of this title (relating to Practice and Procedure).

(B) In addition to the requirements set forth in paragraph (1) of this subsection, all petitions shall comply with the requirements of Chapter 22, Subchapter D of this title (relating to Notice) and Chapter 22, Subchapter E of this title (relating to Pleadings and Other Documents).

(C) The commission may grant interim relief, subject to true-up, so as not to impair or delay, the right of the requesting carrier to install, maintain, and remove its telecommunications equipment, or to provide telecommunications services to a requesting tenant, during the pendency of the proceeding.

(j) Administrative penalties. The provisions set forth in §22.246 of this title (relating to Administrative Penalties) shall apply to any violation of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002642

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 28, 2000

For further information, please call: (512) 936-7308

**This document has been amended. Use UPDATE.
See SCOPE for more information.**

**CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 16. PUBLIC SERVICE COMPANIES
CHAPTER 283. DEPARTMENT OF PUBLIC UTILITY CONTROL: TELEGRAPH,
TELEPHONE,
ILLUMINATING, POWER AND WATER COMPANIES**

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Current through Gen.St., Rev. to 1-1-1999

§ 16-2471. Occupied buildings and access to telecommunications providers: Service, wiring, compensation, regulations, civil penalty

(a) As used in this section:

(1) "Occupied building" means a building or a part of a building which is rented, leased, hired out, arranged or designed to be occupied, or is occupied (A) as the home or residence of three or more families living independently of each other, (B) as the place of business of three or more persons, firms or corporations conducting business independently of each other, or (C) by any combination of such families and such persons, firms or corporations totaling three or more, and includes trailer parks, mobile manufactured home parks, nursing homes, hospitals and condominium associations.

(2) "Telecommunications provider" means a person, firm or corporation certified to provide intrastate telecommunications services pursuant to sections 16-247f to 16-247h, inclusive.

(b) No owner of an occupied building shall demand or accept payment, in any form, except as provided in subsection (f) of this section, in exchange for permitting a telecommunications provider on or within his property or premises, or discriminate in rental charges or the provision of service between tenants who receive such service and those who do not, or those who receive such service from different providers, provided such owner shall not be required to bear any cost for the installation or provision of such service.

(c) An owner of an occupied building shall permit wiring to provide telecommunications service by a telecommunications provider in such building provided: (1) A tenant of such building requests services from that telecommunications provider; (2) the entire cost of such wiring is assumed by that telecommunications provider; (3) the telecommunications provider indemnifies and holds harmless the owner for any damages caused by such wiring; and (4) the telecommunications provider complies with all rules and regulations of the Department of Public Utility Control pertaining to such wiring. The department shall adopt regulations, in accordance with the provisions of chapter 54, [FN1] which shall set forth terms which may be included, and terms which shall not be included, in any contract to be entered into by an owner of an occupied building and a telecommunications provider concerning such wiring. No telecommunications provider shall present to an owner of an occupied building for review or for signature such a contract which contains a term prohibited from inclusion in such a contract by regulations adopted hereunder. The owner of an occupied building may require such wiring to be installed when the owner is present and may approve or deny the location at which such wiring enters such building.

(d) Prior to completion of construction of an occupied building, an owner of such a building in the process of construction shall permit prewiring to provide telecommunications services in such

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building provided that: (1) The telecommunications provider complies with all the provisions of subdivisions (2), (3) and (4) of subsection (c) of this section and subsection (f) of this section; and (2) all wiring other than that to be directly connected to the equipment of a telecommunications service customer shall be concealed within the walls of such building.

(e) No telecommunications provider may enter into any agreement with the owner or lessee of, or person controlling or managing, an occupied building serviced by such provider, or commit or permit any act, that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of the services of other telecommunications providers.

(f) The department shall adopt regulations in accordance with the provisions of chapter 54 authorizing telecommunications providers, upon application by the owner of an occupied building and approval by the department, to reasonably compensate the owner for any taking of property associated with the installation of wiring and ancillary facilities for the provision of telecommunications service. The regulations may include, without limitation:

(1) Establishment of a procedure under which owners may petition the department for additional compensation;

(2) Authorization for owners and telecommunications providers to negotiate settlement agreements regarding the amount of such compensation, which agreements shall be subject to the department's approval;

(3) Establishment of criteria for determining any additional compensation that may be due;

(4) Establishment of a schedule or schedules of such compensation under specified circumstances; and

(5) Establishment of application fees, or a schedule of fees, for applications under this subsection.

(g) Nothing in subsection (f) of this section shall preclude a telecommunications provider from installing telecommunications equipment or facilities in an occupied building prior to the department's determination of reasonable compensation.

(h) Any determination by the department under subsection (f) regarding the amount of compensation to which an owner is entitled or approval of a settlement agreement may be appealed by an aggrieved party in accordance with the provisions of section 4-183.

(i) Any person, firm or corporation which the Department of Public Utility Control determines, after notice and opportunity for a hearing as provided in section 16-41, has failed to comply with any provision of subsections (b) to (e), inclusive, of this section shall pay to the state a civil penalty of not more than one thousand dollars for each day following the issuance of a final order by the department pursuant to section 16-41 that the person, firm or corporation fails to comply with said subsections.

CREDIT(S)

1998 Main Volume

(1994, P.A. 94-106, § 1.)

[FN1] C.G.S.A. § 4-166 et seq.

< General Materials (GM) - References, Annotations, or Tables >

ADMINISTRATIVE CODE REFERENCES

Telecommunications regulations, see Regs. Conn. State Agencies, § 16-247c-6.

LIBRARY REFERENCES

1998 Main Volume

Encyclopedias

Words and Phrases (Perm.Ed.)

NOTES OF DECISIONS

Compensation 1

1. Compensation

Until the Department of Utility Control adopts regulations implementing a compensation mechanism for the taking of the building owner's property, the mandated access requirements of § 16-2471 cannot be enforced. Op.Atty.Gen. No. 95-009.

C. G. S. A. § 16-2471

CT ST § 16-2471

END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
TELECOMMUNICATIONS REGULATIONS**

The Connecticut Regulations titles are current with material published in Conn.L.J. through 8/10/1999.

Sec. 16-247c-6. Contracts for access and wiring between telecommunications providers and owners of occupied buildings

(a) In contracts pertaining to access and wiring between telecommunications providers and owners of occupied buildings, the following terms shall not be included:

(1) Any term that unreasonably restricts the ability of a telecommunications provider to enter an occupied building to restore service to a tenant in the event of a service interruption.

(2) Any term that interferes with the ability of the owner of an occupied building to guarantee building safety and security and which unreasonably interferes with the operation of existing tenants.

(3) Any term that grants an exclusive license to any telecommunications provider.

(4) Any term that precludes any telecommunications provider from negotiating with the owner of an occupied building at a tenant's request pursuant to subsection (c) of section 16-247l of the Connecticut general statutes.

(5) Any term that has the effect, directly or indirectly, of diminishing or interfering with the right of tenants to use or receive telecommunications service from other telecommunications providers.

(6) Any term that discriminates in favor of any one telecommunications service provider with respect to the provision of access or compensation requested.

(b) In contracts pertaining to access and wiring between telecommunications providers and owners of occupied buildings, the following terms may be included:

(1) Any term that requires a telecommunications provider to follow reasonable procedures before entering an occupied building to restore service in the case of a service interruption, such as contacting the occupied building's security officer prior to entering the occupied building.

(2) Any term that reasonably limits the ability of a telecommunications provider to enter an occupied building to install or upgrade service, so long as such limitation(s) are related to building safety and security.

(3) Any term that establishes liquidated damages in the event that a telecommunications provider fails to complete an installation and, after an opportunity to cure, the telecommunications provider fails to remove any and all wiring installed by the provider or otherwise fails to restore the occupied building to its preinstallation condition.

(4) Any term that limits the application or operation of indemnification provisions in situations of gross negligence or willful misconduct on the part of the owner of an occupied building.

(5) Any term that exempts a building owner from liability to telecommunications providers with respect to interruptions in building services, damage to wiring or equipment, or failures of wiring or equipment unless such interruptions, damage or failure result from the gross negligence or willful misconduct of the building owner.

(6) Any term that requires the telecommunications provider to supply the owner of an occupied building with detailed plans and specifications for all wiring, equipment and construction work for approval by owner. The terms of approval shall specify that such approval shall not be unreasonably withheld.

(7) Any term that requires the owner of an occupied building to provide, if reasonably available, building and riser conduit or cabling for the use of the telecommunications provider, at a rate of compensation agreed to by the parties and in compliance with the provisions of subsection (f) 16-247l of the Connecticut general statutes and Section 16-247d-7 of the Regulations of Connecticut State Agencies.

(8) Any term that requires the telecommunications provider to construct additional building and riser conduit, provided that the entire cost of such wiring is assumed by the telecommunications provider pursuant to Subsection (c) 16-247l of the Connecticut general statutes.

(9) Any term that requires, upon voluntary termination of telecommunications service by a tenant, a telecommunications provider to give the owner of the occupied building the opportunity to acquire the wiring at the replacement cost before removing installed inside wiring.

(Added, effective October 26, 1995.)

CT ADC § 16-247c-6

END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with
material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-1. Rights of owners to just compensation

The owners of occupied buildings may apply to the Department of Public Utility Control for compensation for any taking of property associated with the installation of wiring and ancillary facilities by a telecommunications provider for the provision of telecommunications services to the occupied building, in accordance with the criteria outlined in Section 16-247d-7.

(Added, effective October 26, 1995.)

CT ADC § 16-247d-1
END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with
material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-2. Notice to owners regarding intent to install telecommunications facilities

The telecommunications provider seeking permission to install facilities in an occupied building shall notify the owner of the building not fewer than thirty days before the proposed date on which installation is to commence. The telecommunications provider shall include in this notice its proposed plan of installation for the telecommunications service. Said notice shall be sent by certified mail, return receipt requested.

(Added, effective October 26, 1995.)

CT ADC § 16-247d-2
END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with
material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-3. Notice to department, telecommunications provider and OCC regarding intent to seek compensation

Any owner of an occupied building who wishes to petition for compensation shall file an application with the department no later than thirty days following receipt of the Notice of intent to install telecommunications facilities, required under section 16-247d-2. The owner also shall send a copy of said application to the telecommunications provider seeking to install facilities and to the Office of Consumer Counsel. This application shall include the amount of compensation being sought and the basis for such claim. Failure of the owner to petition the department within the time limit specified under this section shall be deemed a waiver by the owner of the right to seek compensation for said installation.

(Added, effective October 26, 1995.)
CT ADC § 16-247d-3
END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with
material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-4. Application fee

Any application submitted under Section 16-247d-3 shall be accompanied by an application fee of
\$50.00.

(Added, effective October 26, 1995.)

CT ADC § 16-247d-4
END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with
material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-5. Authorization for negotiations

Upon the filing of the application authorized under Section 16-247d-3, the owner of an occupied building and the telecommunications provider shall attempt to reach a mutually acceptable agreement regarding the amount of reasonable compensation due the owner as a result of the installation of telecommunications facilities in the occupied building. Upon request of either the owner or the telecommunications provider, the Office of Consumer Counsel may participate in such negotiations.

(Added, effective October 26, 1995.)
CT ADC § 16-247d-5
END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with
material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-6. Department proceedings

(a) Any proposed agreement between the owner of an occupied building and the telecommunications provider shall be submitted to the department within sixty days of the date of the application submitted under Section 16-247d-3 for approval by the department. Such agreement shall contain the criteria considered, as outlined in Section 16-247d-7, upon which the amount of compensation was calculated. The department shall render a final decision either approving or denying said proposed agreement within ninety days of the receipt of the agreement by the department. The department may hold a public hearing on the proposed agreement before rendering its decision.

(b) If the owner and the telecommunications provider are unable to reach an agreement within the sixty days provided under Section 16-247d-6 (a), or if the department has denied the agreement submitted by the owner and the telecommunications provider, the department shall commence proceedings for a hearing to determine the appropriate compensation. The telecommunications provider, the owner and the Office of Consumer Counsel shall be designated as parties to such proceeding. The department shall complete such investigation and render a decision not later than ninety days after initiation of the proceeding.

(c) Nothing in Section 16-247d-6 shall be deemed to impair or delay the right of the telecommunications provider to install, maintain or remove telecommunications facilities, or to provide service to an individual unit in the subject premises, during the pendency of these proceedings.

(Added, effective October 26, 1995.)
CT ADC § 16-247d-6
END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-7. Criteria

In its determination of an appropriate award of compensation due the owner, the department shall consider the following:

- (1) The location and amount of space occupied by the installation;
- (2) Any evidence that the owner has a specific alternative use for any space which would be occupied by the telecommunications facilities, the loss of which will result in a specific quantifiable loss to the owner;
- (3) The value of the applicant's property before the installation of telecommunications facilities, and the value of the property subsequent to the installation of telecommunications facilities and the method or methods used to determine such values;
- (4) Whether the installation of the telecommunications facilities will interfere with the use and occupancy of the building, which interference would cause a decrease in the rental or resale value of the building; and
- (5) Any actual costs incurred by the property owner directly related to the installation of the telecommunications facilities.

(Added, effective October 26, 1995.)

CT ADC § 16-247d-7
END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 16. PUBLIC SERVICE COMPANIES
DEPARTMENT OF PUBLIC UTILITY CONTROL
COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS**

The Connecticut Regulations titles are current with
material published in Conn.L.J. through 8/10/1999.

Sec. 16-247d-8. Appeal

Any determination made by the department under Section 16-247d-6 of these regulations may be appealed by an aggrieved party in accordance with the provision contained in Section 4-183 of the General Statutes of Connecticut.

(Added, effective October 26, 1995.)
CT ADC § 16-247d-8
END OF DOCUMENT