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S. 1301

To provide reasonable and non-discriminatory access to buildings owned or used by the Federal Government for the provision of competitive telecommunications services by telecommunications carriers.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 1999

Mr. STEVENS (for himself, Mr. LOTT, Mr. HOLLINGS, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide reasonable and non-discriminatory access to buildings owned or used by the Federal Government for the provision of competitive telecommunications services by telecommunications carriers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Competitive Access to
5 Federal Buildings Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1 (1) non-discriminatory access to, and use of,
2 the rooftops, risers, telephone cabinets, conduits,
3 points of entry or demarcation for internal wiring,
4 and all utility spaces in or on federal buildings and
5 commercial property is essential to the competitive
6 provision of telecommunications services and infor-
7 mation services;

8 (2) incumbent telecommunications carriers
9 often enjoy access to such buildings and property
10 through historic rights of way that were developed
11 before the advent of new means of providing such
12 services, in particular the provision of such services
13 using terrestrial fixed wireless or satellite services
14 that enter a building through equipment located on
15 rooftops;

16 (3) the National Telecommunications and Infor-
17 mation Administration is the Federal agency tasked
18 with developing policies for the efficient and com-
19 petitive use of emerging technologies that combine
20 spectrum use with the convergence of communica-
21 tions and computer technologies for the utilization of
22 telecommunications services and information services
23 by Federal agencies;

24 (4) that several States, for example Connecticut
25 and Texas, have already enacted measures to pro-

1 mote non-discriminatory access by telecommuni-
2 cations carriers to rooftops, risers, conduits, utility
3 spaces, and points of entry and demarcation in order
4 to promote the competitive provision of telecommuni-
5 cations services and information services; and

6 (5) that the Federal Government should en-
7 courage States to develop similar policies by estab-
8 lishing as Federal policy requirements to promote
9 non-discriminatory access to Federal buildings and
10 commercial property used by agencies of the Federal
11 Government so that taxpayers receive the benefits
12 and cost savings from the competitive provision of
13 telecommunications services and information services
14 by telecommunications carriers.

15 **SEC. 3. ACCESS TO BUILDINGS FOR COMPETITIVE TELE-**
16 **COMMUNICATIONS SERVICES.**

17 The National Telecommunications and Information
18 Administration Organization Act (Title I of Public Law
19 102–538; 47 U.S.C. 901 et seq.) is amended—

20 (1) in section 103(b)(2) (47 U.S.C. 902(b)(2))
21 by adding at the end the following new subpara-
22 graph:

23 “(U) The authority to implement policies
24 for buildings and other structures owned or
25 used by agencies of the Federal Government in

1 order to provide for non-discriminatory access
2 to such buildings and structures for the provi-
3 sion of telecommunications services or informa-
4 tion services by telecommunications carriers,
5 and to advise the Commission on the develop-
6 ment of policies for non-discriminatory access
7 by such carriers to commercial property in gen-
8 eral for the provision of such services.”; and

9 (2) in section 105 (47 U.S.C. 904) by adding
10 at the end the following new subsection:

11 “(f) PROHIBITION ON DISCRIMINATORY ACCESS.—

12 “(1) IN GENERAL.—No Federal agency shall
13 enter into a contract with the owner or operator of
14 any commercial property for the rental or lease of all
15 or some portion of such property unless the owner
16 or operator permits non-discriminatory access to,
17 and use of, the rooftops, risers, telephone cabinets,
18 conduits, points of entry or demarcation for internal
19 wiring, easements, rights of way, and all utility
20 spaces in or on such commercial property, for the
21 provision of telecommunications services or informa-
22 tion services by any telecommunications carrier that
23 has obtained, where required, a Federal or State
24 certificate of public convenience and necessity for
25 the provision of such services, and which seeks to

1 provide or provides such services to tenants (includ-
2 ing, but not limited to, the Federal agency for which
3 such rental or lease is made) of such property. Such
4 owner or operator may—

5 “(A) charge a reasonable and non-discrimi-
6 natory fee (which shall be based on the com-
7 mercial rental value of the space actually used
8 by the telecommunications carrier) for such ac-
9 cess and use;

10 “(B) impose reasonable and non-discrimi-
11 natory requirements necessary to protect the
12 safety and condition of the property, and the
13 safety and convenience of tenants and other
14 persons (including hours when entry and work
15 may be conducted on the property);

16 “(C) require the telecommunications car-
17 rier to indemnify the owner or operator for
18 damage caused by the installation, mainte-
19 nance, or removal of any facilities of such car-
20 rier; and

21 “(D) require the telecommunications car-
22 rier to bear the entire cost of installing, oper-
23 ating, maintaining, and removing any facilities
24 of such carrier.

1 “(2) STATE LAW OR CONTRACTUAL OBLIGATION
2 REQUIRED.—No Federal agency shall enter into a
3 contract with the owner or operator of any commer-
4 cial property for the rental or lease of all or some
5 portion of such property unless the owner or oper-
6 ator submits to such agency a notarized statement
7 that such owner or operator is obligated under State
8 law, or is obligated or will undertake an obligation
9 through a contractual commitment with each tele-
10 communication carrier providing or seeking to pro-
11 vide service, to resolve any disputes between such
12 telecommunication carriers and such owner or oper-
13 ator that may arise regarding access to the commer-
14 cial property or the provision of competitive tele-
15 communications services or information services to
16 tenants of such property. To meet the requirements
17 of this paragraph such State process or contractual
18 commitment must—

19 “(A) provide an effective means for resolu-
20 tion of disputes within 30 days (unless other-
21 wise required by State law or agreed by the
22 parties involved), either through arbitration or
23 order of a State agency or through binding ar-
24 bitration;

1 “(B) permit the telecommunications car-
2 rier to initiate service or continue service while
3 any dispute is pending;

4 “(C) provide that any fee charged for ac-
5 cess to, or use of, building space (including con-
6 duits, risers, and utility closets), easements or
7 rights of way, or rooftops to provide tele-
8 communications service or information service
9 be reasonable and applied in a non-discrimina-
10 tory manner to all providers of such service, in-
11 cluding the incumbent local exchange carrier;
12 and

13 “(D) provide that requirements with re-
14 spect to the condition of the property are lim-
15 ited to those necessary to ensure that the value
16 of the property is not diminished by the instal-
17 lation, maintenance, or removal of the facilities
18 of the telecommunications carrier, and do not
19 require the telecommunications carrier to im-
20 prove the condition of the property in order to
21 obtain access or use.

22 “(3) EFFECTIVE DATE.—Paragraphs (1) and
23 (2) shall take effect six months after the date of en-
24 actment of this subsection for all lease or rental

1 agreements entered into or renewed by any Federal
2 agency after such date.

3 “(4) WAIVER PERMITTED.—The requirements
4 of paragraphs (1) or (2) may be waived on a case
5 by case basis—

6 “(A) by the head of the agency seeking
7 space in a commercial property upon a deter-
8 mination, which shall be made in writing and be
9 available to the public upon request, that such
10 requirements would result in the affected agen-
11 cy being unable, in that particular case, to ob-
12 tain any space suitable for the needs of that
13 agency in that general geographic area; or

14 “(B) by the President upon a finding that
15 waiver of such requirements is necessary to ob-
16 tain space for the affected agency in that par-
17 ticular case, and that enforcement of such re-
18 quirements in that particular case would be
19 contrary to the interests of national security.

20 Any determination under subparagraph (A) may be
21 appealed by any affected telecommunications carrier
22 to the Assistant Secretary, who shall review the
23 agency determination and issue a decision upholding
24 or revoking the agency determination within 30 days
25 of an appeal being filed. The burden shall be on the

1 agency head to demonstrate through the written de-
2 termination that all reasonable efforts had been
3 made to find suitable alternative space for the agen-
4 cy's needs before the waiver determination was
5 made. The Assistant Secretary shall revoke any
6 agency determination made without all reasonable
7 efforts being made. The decision of the Assistant
8 Secretary shall be binding on the agency whose waiv-
9 er determination was appealed.

10 “(5) LIMITATIONS.—

11 “(A) Nothing in this subsection shall waive
12 or modify any requirements or restrictions im-
13 posed by any Federal, State, or local agency
14 with authority under other law to impose such
15 restrictions or requirements on the provision of
16 telecommunications services or the facilities
17 used to provide such services.

18 “(B) Refusal by an owner to provide ac-
19 cess to a telecommunications carrier seeking to
20 provide telecommunications services or informa-
21 tion services to a commercial property due to a
22 demonstrated lack of available space at a com-
23 mercial property on a rooftop or in a riser, tele-
24 phone cabinet, conduit, point of entry or demar-
25 cation for internal wiring, or utility space due

1 to existing occupation of such space by two or
2 more telecommunications carriers providing
3 service to that commercial property shall not be
4 a violation of paragraphs (1)(B) or (2)(D) if
5 the owner has made reasonable efforts to per-
6 mit access by such telecommunications carrier
7 to any space that is available.

8 “(6) DEFINITIONS.—For the purposes of this
9 subsection the term—

10 “(A) ‘Federal agency’ shall mean any execu-
11 tive agency or any establishment in the legisla-
12 tive or judicial branch of the Government;

13 “(B) ‘commercial property’ shall include
14 any buildings or other structures offered, in
15 whole or in part, for rent or lease to any Fed-
16 eral agency;

17 “(C) ‘incumbent local exchange carrier’
18 shall have the same meaning given such term in
19 section 251(h) of the Communications Act of
20 1934 (47 U.S.C. 251(h)); and

21 “(D) ‘information service’, ‘telecommuni-
22 cations carrier’, and ‘telecommunications serv-
23 ice’ shall have the same meaning given such
24 terms, respectively, in section 3 of the Commu-
25 nications Act of 1934 (47 U.S.C. 153).”.

1 **SEC. 4. APPLICATION TO PUBLIC BUILDINGS.**

2 Within six months after the date of enactment of this
3 Act the Secretary of Commerce, acting through the Assist-
4 ant Secretary of Commerce for Telecommunications and
5 Information, shall promulgate final rules, after notice and
6 opportunity for public comment, to apply the requirements
7 of section 105(f) of the National Telecommunications and
8 Information Administration Organization Act, as added by
9 this Act, to all buildings and other structures owned or
10 operated by any Federal agency. In promulgating such
11 rules the Assistant Secretary may, at the direction of the
12 President, exempt any buildings or structures owned or
13 operated by a Federal agency if the application of such
14 requirements would be contrary to the interests of national
15 security. The Assistant Secretary shall coordinate the pro-
16 mulgation of the rules required by this section with the
17 Administrator of the General Services Administration and
18 the heads of any establishments in the legislative and judi-
19 cial branches of government which are responsible for
20 buildings and other structures owned or operated by such
21 establishments. Such rules may include any requirements
22 for identification, background checks, or other matters
23 necessary to ensure access by telecommunications carriers
24 under this section does not compromise the safety and se-
25 curity of agency operations in government owned or oper-
26 ated buildings or structures. For the purposes of this sec-

1 tion, the term “Federal agency” shall have the same
2 meaning given such term in section 105(f)(6) of the Na-
3 tional Telecommunications and Information Administra-
4 tion Organization Act, as added by this Act.

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