

106TH CONGRESS
1ST SESSION

H. R. 2891

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1999

Mr. DAVIS of Virginia (for himself and Mr. MORAN of Virginia) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

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

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

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

1 (4) that several States, for example Connecticut
2 and Texas, have already enacted measures to pro-
3 mote non-discriminatory access by telecommuni-
4 cations carriers to rooftops, risers, conduits, utility
5 spaces, and points of entry and demarcation in order
6 to promote the competitive provision of telecommuni-
7 cations services and information services; and

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

17 **SEC. 3. ACCESS TO BUILDINGS FOR COMPETITIVE TELE-**
18 **COMMUNICATIONS SERVICES.**

19 The National Telecommunications and Information
20 Administration Organization Act (Title I of Public Law
21 102–538; 47 U.S.C. 901 et seq.) is amended—

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

1 “(U) The authority to implement policies
2 for buildings and other structures owned or
3 used by agencies of the Federal Government in
4 order to provide for non-discriminatory access
5 to such buildings and structures for the provi-
6 sion of telecommunications services or informa-
7 tion services by telecommunications carriers,
8 and to advise the Commission on the develop-
9 ment of policies for non-discriminatory access
10 by such carriers to commercial property in gen-
11 eral for the provision of such services.”; and

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

14 “(f) PROHIBITION ON DISCRIMINATORY ACCESS.—

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

1 has obtained, where required, a Federal or State
2 certificate of public convenience and necessity for
3 the provision of such services, and which seeks to
4 provide or provides such services to tenants (includ-
5 ing, but not limited to, the Federal agency for which
6 such rental or lease is made) of such property. Such
7 owner or operator may—

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

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

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

24 “(D) require the telecommunications car-
25 rier to bear the entire cost of installing, oper-

1 ating, maintaining, and removing any facilities
2 of such carrier.

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

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

1 order of a State agency or through binding ar-
2 bitration;

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

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

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

24 “(3) EFFECTIVE DATE.—Paragraphs (1) and
25 (2) shall take effect six months after the date of en-

1 actment of this subsection for all lease or rental
2 agreements entered into or renewed by any Federal
3 agency after such date.

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

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

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

21 Any determination under subparagraph (A) may be
22 appealed by any affected telecommunications carrier
23 to the Assistant Secretary, who shall review the
24 agency determination and issue a decision upholding
25 or revoking the agency determination within 30 days

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

11 “(5) LIMITATIONS.—

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

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

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

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

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

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

18 “(C) ‘incumbent local exchange carrier’
19 shall have the same meaning given such term in
20 section 251(h) of the Communications Act of
21 1934 (47 U.S.C. 251(h)); and

22 “(D) ‘information service’, ‘telecommuni-
23 cations carrier’, and ‘telecommunications serv-
24 ice’ shall have the same meaning given such

1 terms, respectively, in section 3 of the Commu-
2 nications Act of 1934 (47 U.S.C. 153).”.

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

4 (a) RULES REQUIRED TO APPLY REQUIREMENTS.—

5 (1) IN GENERAL.—Within six months after the
6 date of enactment of this Act the Secretary of Com-
7 merce, acting through the Assistant Secretary of
8 Commerce for Telecommunications and Information,
9 shall promulgate final rules, after notice and oppor-
10 tunity for public comment, to apply the requirements
11 of section 105(f) of the National Telecommuni-
12 cations and Information Administration Organiza-
13 tion Act, as added by this Act, to all buildings and
14 other structures owned or operated by any Federal
15 agency.

16 (2) EXEMPTIONS.—In promulgating such rules
17 the Assistant Secretary may, at the direction of the
18 President, exempt any buildings or structures owned
19 or operated by a Federal agency if the application
20 of such requirements would be contrary to the inter-
21 ests of national security.

22 (3) COORDINATION.—The Assistant Secretary
23 shall coordinate the promulgation of the rules re-
24 quired by this section with the Administrator of the
25 General Services Administration and the heads of

1 any establishments in the legislative and judicial
2 branches of government which are responsible for
3 buildings and other structures owned or operated by
4 such establishments.

5 (4) SAFETY AND SECURITY.—Such rules may
6 include any requirements for identification, back-
7 ground checks, or other matters necessary to ensure
8 access by telecommunications carriers under this
9 section does not compromise the safety and security
10 of agency operations in government owned or oper-
11 ated buildings or structures.

12 (b) DEFINITION.—For the purposes of this section,
13 the term “Federal agency” shall have the same meaning
14 given such term in section 105(f)(6) of the National Tele-
15 communications and Information Administration Organi-
16 zation Act, as added by this Act.

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