

**PUC DOCKET NO. 24604**  
**SOAH DOCKET NO. 473-02-0358**

<b>COMPLAINT OF TIME WARNER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TELECOM OF TEXAS, L.P.</b>	<b>§</b>	
<b>AGAINST TANGLEWOOD</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PROPERTY MANAGEMENT AND</b>	<b>§</b>	
<b>EMISSARY GROUP</b>	<b>§</b>	

**ORDER ON CERTIFIED ISSUE**

**I. BACKGROUND**

On September 5, 2001, Time Warner Telecom of Texas, L.P. (TWTC) filed a complaint and request for access to GeoQuest Center, 5599 San Felipe, Houston, Texas. TWTC claimed that Tanglewood Property Management, Emissary Group, and 5599 San Felipe, Ltd. (collectively Tanglewood) denied TWTC access to the building to provide telecommunications services to the requesting tenant, Schlumberger, Ltd.

On October 5, 2001, the Commission referred this case to the State Office of Administrative Hearings (SOAH), and on November 21, 2001 the Commission issued a preliminary order in this docket that discussed procedures that should be followed when addressing requests for interim relief under P.U.C. Subst. R. 26.129(i)(4)(C).

On January 16, 2002 in response to Order No. 10, TWTC, Tanglewood, and Commission Staff filed briefs regarding the installation of equipment. After reviewing the briefs, the ALJ issued Order No. 12 certifying the issue to the Commission. The certified issue was considered at the July 25, 2002 Open Meeting.

The certified issue is as follows:

**Do Sections 54.259 and 54.260 of PURA authorize the Commission to order an owner of a multi-tenant property to allow a telecommunications provider to make accommodating changes, such as drilling an entrance hole, drilling a core, attaching a conduit, running wire, hanging junction boxes, and removing abandoned cable, to the property to the extent necessary to enable the provider to install facilities in order to provide services requested by the tenant?**

## II. COMMISSION RULING

Having considered the law, Commission rules, and the positions of the parties, the Commission finds that its authority to enforce PURA §§54.259 and 54.260 includes the authority to order a building owner to allow installation of a telecommunications service facility. The statute plainly grants the telecommunications utility access to the property to install telecommunications service facilities for a requesting tenant, which includes the right to make changes to the property to accommodate this access, subject to the property owner's rights under the statute. The Commission's role is simply to enforce the statute.

The focus of PURA §§54.259 and 54.260 is on the rights and obligations of telecommunications utilities and property owners. The Commission must recognize those rights in the exercise of its authority. Accordingly, the statute in question does not provide that the Commission will order accommodating changes in the sense that the Commission will determine exactly what changes should be made to the property to provide telecommunications services. Instead, the statute provides that the Commission has jurisdiction to enforce the statute after the telecommunications provider and the property owner have exercised their rights and privileges under the statute.

On the one hand, a telecommunications utility may install equipment to meet the needs of the requesting tenant without interference from the property owner, and on terms that are reasonable and nondiscriminatory.<sup>1</sup> On the other hand, this right of access by the telecommunications utility must be balanced with the rights of the property owner to impose reasonable conditions and limitations to protect the safety, security, appearance, and condition of the property and the safety and convenience of other persons.<sup>2</sup> Furthermore, the property owner may: limit the time of access to the building; impose a limitation the number of utilities offered access; require indemnification for damage caused to the building; require the telecommunications utility to bear the cost of

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. § 54.259 (Vernon 1998 & Supp. 2002) (PURA).

<sup>2</sup> PURA §54.260.

installing, operating, and removing equipment from the facility; and require the utility to pay reasonable and nondiscriminatory compensation.<sup>3</sup>

The Commission's primary role with regard to these sections is to enforce the rights and obligations of both the telecommunications utility and the property owner, not to operate as an engineer or construction superintendent and order specific accommodating changes. Once a tenant requests service from a telecommunications utility, the right of the telecommunications utility to access private property to install telecommunications service facilities necessarily includes the right to make the required changes to the building. Changes such as drilling an entrance hole, drilling a core, attaching a conduit, running wire, hanging junction boxes, and removing abandoned cable are necessary to enable the provider to install facilities in order to provide services requested by the tenant. Without this right to make these types of necessary changes, the right to install telecommunications service facility for a requesting tenant is rendered meaningless. Accordingly, in ordering a property owner to permit access to install telecommunications service facilities for a requesting tenant, the Commission essentially orders that changes necessary to effect the installation be allowed.

However, the right of the telecommunications utility to access the property, and the Commission's authority to order access along with any necessary changes, are subject to the property owner's right to impose reasonable conditions and limitations. The Commission's duties to enforce the property owner's rights are no less than its duties to enforce access to the building. But the property owner cannot assert its rights and the Commission cannot exercise its authority to a general request for access. Rather both the property owner and the Commission must have a particular plan for access. For the property owner, the plan is required to properly evaluate whether any reasonable conditions are necessary to protect the property and people. For the Commission, the plan is necessary so that it may evaluate such conditions, if any, and enter an order, if necessary, that is clear and definite as to the access to which the telecommunications utility is entitled.

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<sup>3</sup> *Id.*

Once the Commission orders access to the property under a specific plan of access, if the property owner refuses to allow the telecommunications utility to make the changes necessary for the installation, the Commission has the authority to respond appropriately to enforce this section. If the property owner chooses not to comply with these statutes, the Commission can refer this matter to the Attorney General of Texas to enforce this section.

The Commission emphasizes that this ruling does not find that any specific type of changes are appropriate or authorized. Each installation must be evaluated on its own merits with due consideration given to both the telecommunication utility's access plan and to any limitations or conditions dictated by the design, location, or other factors related to the building.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of \_\_\_\_\_ 2002**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**REBECCA KLEIN, CHAIRMAN**

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**BRETT A. PERLMAN, COMMISSIONER**