

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 3, 2015

Opinion No. 15-16

Exercise of Eminent Domain by Competing Telecommunications Service Provider

Question

Is a telecommunications provider that has been granted a certificate of public convenience and necessity by the Tennessee Regulatory Authority to provide competing access services and transport telecommunications services in Tennessee entitled to exercise right-of-way and eminent domain powers under Tennessee law, specifically Tenn. Code Ann. § 65-21-201 *et seq.*?

Opinion

Yes. A provider of competing telecommunications services is entitled to exercise the power of eminent domain.

ANALYSIS

Tennessee Code Ann. § 65-21-201 provides:

Any person or corporation organized for the purpose of transmitting intelligence by magnetic telegraph or telephone, or other system of transmitting intelligence the equivalent thereof, which may be invented or discovered, may construct, operate, and maintain such telegraph, telephone, or other lines necessary for the speedy transmission of intelligence, along and over the public highways and streets of cities and towns, or across and under the waters, and over any lands or public works belonging to this state, and on and over the lands of private individuals, and upon, along, and parallel to any of the railroads, and on and over the bridges, trestles, or structures of such railroads.

Tennessee Code Ann. § 65-21-204 further provides:

In the event such telegraph or telephone companies should fail, upon application to such individuals, railroads, companies, to secure such right-of-way, by consent, contract, or agreement, then such telegraph or telephone corporations shall have the right to proceed to procure the condemnation of such property, lands, rights, privileges, and easements, in the manner prescribed by law for taking private property for works of internal improvement.

Providers of telephone service, therefore, are entitled to exercise the power of eminent domain to condemn land as necessary to provide their service. *American Tel. & Tel. Co. v. Proffitt*,

903 S.W.2d 309, 311 (Tenn. Ct. App. 1995) (statute authorizes long-distance telecommunications provider to exercise eminent domain power in order to lay fiber-optic cable under private land).

Competing telecommunications service providers may exercise eminent domain power under Tenn. Code Ann. § 65-21-204 as well. A “competing telecommunications service provider” is any individual or entity that provides, among other things, telephone and telegraph services and is certified as a provider of those services after June 6, 1995. Tenn. Code Ann. § 65-4-101(1). The General Assembly recognized the existence of such companies in Chapter 408 of the 1995 Tennessee Public Acts and amended the laws accordingly. No changes were made after this enactment to Tenn. Code Ann. § 65-21-204 or any other provision related to the exercise of eminent domain by telephone companies, and no other provision limits the power of eminent domain to “incumbent local exchange telephone companies,” *see* Tenn. Code Ann. § 65-4-101(4), a term that describes the entities to which Tenn. Code Ann. § 65-21-204 applied before “competing telecommunications service providers” were recognized. As a provider of telephone (now commonly called “telecommunications”) services, therefore, a provider of competing services is entitled to exercise the power of eminent domain under Tenn. Code Ann. § 65-21-204.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

JONATHAN N. WIKE
Senior Counsel

Requested by:

The Honorable Charles M. Sargent
State Representative
206 War Memorial Building
Nashville, Tennessee 37243