expected to produce a widespread public benefit and applicable to all similarly situated property."[716] More recently, in *Lucas v. South Carolina Coastal Council*,[717] the Court explained "noxious use" analysis as merely an early characterization of police power measures that do not require compensation. "[N]oxious use logic cannot serve as a touchstone to distinguish regulatory 'takings'—which require compensation—from regulatory deprivations that do not require compensation."[718]

Penn Central is not the only guide to when an inverse condemnation has occurred; other criteria have emerged from other cases before and after *Penn Central*. The Court has long recognized a *per se* takings rule for certain physical invasions: when government permanently[719] occupies property (or authorizes someone else to do so), the action constitutes a taking regardless of the public interests served or the extent of damage to the parcel as a whole.[720] The modern case dealt with a law that required landlords to permit a cable television company to install its cable facilities upon their buildings; although the equipment occupied only about 1½ cubic feet of space on the exterior of each building and had only a *de minimis* economic impact, a divided Court held that the regulation authorized a permanent physical occupation of the property and thus constituted a taking.[721] Recently, the Court sharpened further the distinction between regulatory takings and permanent physical occupa-

---

[716] *Penn Central*, 438 U.S. at 133–34 n.30.

[717] 505 U.S. 1003 (1992).

[718] 505 U.S. at 1026. The *Penn Central* majority also rejected the dissent's contention, 438 U.S. at 147–50, that regulation of property use constitutes a taking unless it spreads its distribution of benefits and burdens broadly so that each person burdened has at the same time the enjoyment of the benefit of the restraint upon his neighbors. The Court deemed it immaterial that the landmarks law has a more severe impact on some landowners than on others: "Legislation designed to promote the general welfare commonly burdens some more than others." Id. at 133–34.

[719] By contrast, the *per se* rule is inapplicable to *temporary* physical occupations of land. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 428, 434 (1982); PruneYard Shopping Center v. Robins, 447 U.S. 74, 84 (1980).

[720] The rule emerged from cases involving flooding of lands and erection of poles for telegraph lines, *e.g.*, Pumpelly v. Green Bay Co., 80 U.S. (13 Wall.) 166 (1872); City of St. Louis v. Western Union Tel. Co., 148 U.S. 92 (1893); Western Union Tel. Co. v. Pennsylvania R.R., 195 U.S. 540 (1904).

[721] Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). *Loretto* was distinguished in FCC v. Florida Power Corp., 480 U.S. 245 (1987); regulation of the rates that utilities may charge cable companies for pole attachments does not constitute a taking in the absence of any requirement that utilities allow attachment and acquiesce in physical occupation of their property. *See also* Yee v. City of Escondido, 503 U.S. 519 (1992) (no physical occupation was occasioned by regulations in effect preventing mobile home park owners from setting rents or determining who their tenants would be; owners could still determine whether their land would be used for a trailer park and could evict tenants in order to change the use of their land).