

Weaving the wireless Web: leasing property for cell phone equipment

Some say "plugging in" is passé. We live in a wireless world, with cell phones and laptops that enable us to stay connected at the grocery store, the airport, the doctor's office, and nearly everywhere else. A wireless Web transmits the frequency that rings your cell phone – and embarrasses you – during a moment of prayerful silence at church. The wireless frequency is invisible – it is broadcast through the air between infrastructure such as freestanding cell towers and antennae topping tall structures.

The broadcast range of cell towers and rooftop antennae varies from a few city blocks to a few miles, depending on the topography of the area. Additionally,

wireless equipment has a maximum capacity – for example, a freestanding tower can only facilitate a certain number of users at any given time. The burden on towers and antennae has increased dramatically in

the past few years – not only do more people use cell phones, more people use the multi-tasking "smart phones" that receive a streaming signal for text messaging, e-mail and Internet access.

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Local governments and rural water districts usually own land or structures – particularly tall water storage tanks – that are desirable for the placement of wireless equipment. You may be approached by a cell service

wants to build a cell tower on your land or install antennae on your building or water tower. The relationship is typically proposed as a "landlord-tenant" relationship – the provider or tower builder is the "tenant" who installs, owns and maintains the wireless equipment, while you are the "landlord" who leases land or rooftop space for this use. Before

signing a lease, you should consider whether the relationship is appropriate and desirable for your entity. While these leases are considered a good source of revenue with minimal obligation, you should balance the need for the revenue against the protection of your entity's other interests.

After you have decided to lease your property for the installation of wireless equipment, you may be asked to

review and sign a lease that governs your relationship with the tenant. The lease will contain some familiar and common lease



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This is a typical 4-foot in diameter antenna mounted on a structure leg.



This water storage tank has several antennae mounted on the top of the structure.

Here is a general overview of issues to consider in the landlord-tenant relationship; however, you should seek legal advice from an attorney before you make any promises to the tenant:

- **Term.** Generally, tenants want a long-term lease, from 10 to 20 years, to ensure that their investment is paid for by the provision of years of cell phone service in a community. If you don't want to be locked into a 20-year relationship, consider a lease with four renewal periods of five years. Be sure to specify how the relationship is renewed, and if the rent increases during each renewal period. Also, the lease

should specify if/when you or the tenant can terminate the lease early. If the tenant terminates, will a penalty or termination fee apply? Also, what will happen to the equipment when the relationship ends? Will the tenant remove it, or will you assume ownership of it?

terms, but it may also include technical provisions related to the wireless equipment. In reviewing the lease, it is important to clarify the meaning of the "techno-jargon," to identify negotiable and non-negotiable issues, and to understand the obligations of each party.

- **Rent.** The key to the appropriate rental rate is the same as the familiar mantra of real estate: "location, location, location." The rental rate will vary depending on the size of the population served, the coverage area, the type of lease (land or structure), and the amount of space leased. If possible, contact neighboring and similar communities to determine their rental rates. Also, ask the lease representative why your property was selected for installation of wireless equipment. Is the property desirable in a unique way (for example, atop a hill or near a busy highway)? Is the purpose of the equipment to increase capacity, improve coverage, or both?

- **Premises.** The lease should specifically describe the "premises" – where the tenant's wireless equipment will be located on the parcel, building, or water tower. You should ensure that the installation on the premises will not damage your structure or interfere with your use of it. Also, consider whether the tenant will have exclusive use of the area, or whether you want to keep space available for other tenants. Tall water towers are attractive locations for wireless antennae, and they can often accommodate more than one tenant's equipment.

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Don't limit yourself – and your revenue stream – unless you need to do so. If your lease is non-exclusive, meaning that you can lease space to other tenants, you may not want to be required to seek the tenant's permission before you sign a lease with a different tenant. In fact, each tenant should be required to move its equipment, if necessary to facilitate the placement of other wireless equipment or to preserve your use of the site.

• **Access to Premises/Equipment.** The tenant may require 24/7 access to the premises in order to install, inspect and maintain its equipment and respond to equipment failures or emergencies. However, you may specify the way the tenant may access its premises (through a particular service entrance, for example). The type of access will depend on the premises. For example, you may not need to limit a tenant's access to an

undeveloped parcel of land, but you may want to accompany a tenant who wants to access the top of your water tower. Also, you should narrowly tailor the tenant's access to the wireless equipment, and prohibit access to and interference with other parts of your property.

• **Installation/Maintenance.** The lease should specify what equipment the tenant may install on the premises, and the tenant should prove compliance with all laws in the installation process. You may also impose other structural or construction guidelines for the equipment to ensure the quality and safety of the wireless equipment, such as requiring compliance with local building or electrical codes. In the case of a freestanding cell tower, you may require that the tower is designed and constructed to collapse on itself, or require that the tower is setback from property lines within a designated "fall zone," to prevent damage to

neighboring properties. To ensure the continued integrity and safety of the wireless equipment, the tenant may be required to routinely inspect, maintain, or upgrade the equipment.

• **Collocation.** To minimize the number of freestanding towers in your community, you can require collocation – location of more than one cellular provider on a single wireless structure. The number of providers that can reasonably locate on a tower is determined by the height, location and type of tower. Your lease should specify a method for you to determine if collocation has occurred – or if the tenant has made reasonable attempts to facilitate collocation. Also, the lease should specify if you will share in any rent paid by other providers, or if your rent with the tenant includes collocation rent. Note that collocation is probably not possible for a tenant who is placing wireless antennae atop a water tower – in that situation,



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you should maintain your ability to rent the remaining portion of the water tower to other providers (see previous).

- **Design Guidelines.** Although beauty may be in the eye of the beholder, most people would not consider a cell tower – a 150-foot steel pole stretching into the blue sky – to be a thing of beauty. Indeed, opposition to the installation of wireless equipment usually focuses on the equipment’s disruption of the visual landscape. Because of community outcry, many tenants prefer locating on top of tall, existing structures – where steel poles are less noticeable. However, in the case of either a freestanding tower or rooftop antennae, you should consider whether aesthetic design requirements are appropriate. Often referred to as “stealth design,” aesthetic requirements attempt to help blend wireless equipment into the surrounding environment. Freestanding towers may be disguised as trees or flagpoles. Rooftop equipment may be setback from the edge of the structure, limited in height, or painted a certain color to blend with the structure.

- **Alteration, Damage or Destruction.** Wireless equipment is usually designed and constructed to endure severe weather conditions; however, in Kansas, high winds, tornadoes, electrical storms and ice storms may damage or destroy the tenant’s equipment. Therefore, the lease should specify if and when the tenant is required to repair or rebuild, and if a particular level of destruction terminates the lease agreement automatically or upon agreement of the parties. Also, if the site is abandoned due to damage or destruction, the lease should specify who will be responsible for the expense and task of removing any remaining equipment from the premises.

- **Abandonment.** Technology evolves and changes at a fast pace, so be prepared for equipment obsolescence. Consider whether your tenant is required to update its equipment, or what occurs if the tenant abandons (meaning that

lease should contain indemnification and insurance provisions. Finally, the lease should require the tenant to prove and maintain compliance with all laws – including onerous FAA and FCC regulations.

Our wireless Web will expand as more people use wireless technology, and governmental entities play an important role in ensuring that wireless services are available in their communities. However, if property is leased to a cell provider or tower builder, it is paramount to understand and carefully negotiate the lease so that the organization does not get stuck in the wireless Web.

the wireless equipment remains on the premises but remains unused). In the event of abandonment, the lease may permit you to assume title of the wireless equipment for your use or to rent to others. Also, the lease may specify if the tenant is required to remove the equipment, or if you may remove it if the tenant fails to do so. If the equipment is abandoned before the termination of the lease, the lease should address whether any of the future rent is due as a penalty for early termination. The lease may also assess a penalty if the provider abandons the site and fails to remove the equipment, leaving you with responsibility for the expensive and intricate wireless equipment.

- **Other Issues.** The lease may also contain a wide variety of standard contract terms, such as the following: who pays real estate taxes and utility fees; whether you must provide prior approval for assignment or subletting; whether the contract is governed by Kansas law; and whether a party has an opportunity to cure a breach of the lease. The

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