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"TELECOMMUNICATIONS"

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TELECOMMUNICATIONS

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Background

Policies implemented by the Canadian Radio-Television Telecommunication Commission (the "CRTC") and in particular, Decision 99-10 have opened up competition in the telecommunications industry. This has created a new series of business connections and opportunities that have built into a tidal wave of activity associated with need of telecommunication providers and their customers to obtain access through the risers and communication pathways situated in buildings. Competition is fierce and relentless. This is made more so by the fact that many buildings have limited riser space available in them for new cable, and limited space for the equipment rooms or rooftop space required for installation of the telecommunication providers equipment. In many cases the risers and communication pathways, conduits and ducts within a building are filled with a morass of old cables installed by Bell Canada and others that are not labeled. It is essential for a building owner to respond to these pressures with a well thought out strategy to ensure that it obtains the maximum financial return possible for granting privileges of access to the buildings by these service providers while at the same time ensuring that the tenants of the building receive the widest possible choice and the best service possible so that their expanding needs for a wide range of telecommunication services and highspeed communication are satisfied.

Attached as Exhibits "1" and "2" are two papers. "Telecommunications License Agreements in Multi Unit Commercial Buildings" and "New Opportunities and Challenges-Communication and Other Service Access Agreements" which offer background to and insight.

CRTC Public Notice 2000-124

Since CRTC decision 99-10, the level of activity, particularly competitive activity in the sphere of telecommunications and building management has been growing by leaps and bounds. The issues of the telecommunication providers' rights to gain access to buildings of private sector owners, and the need to ensure that tenants and occupants of those buildings receive the maximum possible choice, at competitive rates, have drawn much comment and elicited conflicting views. Generally, the telecommunication providers would like to have the CRTC step in and regulate access so that:

- (1) access is available to all telecommunication providers at reasonable rates (subject only to reasonable space, and timing, and security issues affecting buildings);
- (2) access will be provided quickly, with a minimum of time expended on negotiating complicated agreements that might delay installation of the telecom provider's equipment and the delivery of service to tenants in the building; and
- (3) all telecom providers will be able to compete on a reasonably fair and similar footing.

These objectives of the telecommunication industry seem to be running up against the private property rights of the building owners, and the physical and economic realities of building, development, ownership, operation and leasing. In response to the need to implement CRTC policies, while at the same time respecting building owners' interests and the interests of the public, the CRTC issued a Public Notice 2000-124 to obtain submissions from the various participants in the industry concerning what problems exist, and how they should be solved. Specifically comments were invited on fees, charges, and terms for access. A copy of Public Notice CRTC 2000-124 can be obtained by visiting www.crtc.gc.ca/archive/notices/2000/PT2000-124.htm.

The Public Notice elicited several in-depth and comprehensive submissions from telecom providers as well as building owners and their respective associations. Those submissions can also be reviewed by visiting the CRTC website noted above. Highlights include the suggestions:

- that subject only to reasonable physical space and building security constraints, all local exchange carriers should be given the right to access every building which would include the right to install their telecommunication equipment in main terminal rooms, and to install cables where necessary and other equipment within the building without interference by the building owner;
- that a standard telecommunication agreement should be imposed or that a specific model policies and provisions be incorporated into telecommunication license

agreements which would have to be adhered to by all participants including the building owners;

- that the maximum time period for a telecom provider to be delayed in installing equipment from the date of its request be 30 days, or 45 days;
- that the fees for access should be based on the simple rental value of the equipment room space calculated having regard to the market rental values of storage or parking space and that the fee for access should reflect only the administrative and actual costs and expenses of the building owner in making the access available, plus a reasonable regulated mark-up;
- that market forces are not appropriate to regulate these fees or access and that the government must intervene;
- that the telecommunication companies (i.e. Bell Canada) that are already occupying telecommunication space (ILEC's) should be required to permit other providers to use their in building wire for a regulated fee in certain circumstances. (The CRTC actually made decisions implementing that policy earlier this year in that regard.);
and

- that these companies (ILEC's) be required to help clean up, at their cost, the quagmire of old, abandoned, or poorly organized and disorderly clusters of wires that they have installed in existing buildings over the years, to ameliorate crowding in riser spaces and to make it easier for building owners and other competitors to use them.

The main concern from the perspective of building owners is that forcing them to make available buildings, and facilities in their buildings, and to deal with the administration and management involved places a very severe burden on them for which they should be fully compensated based on market conditions and not otherwise. Moreover, they point out that to impose limited access fees on them and to force them to give access to third parties is a form of expropriation. Under the *Telecommunications Act, Statutes of Canada, Chapter 38, Section 46* expropriation procedures do exist to permit a carrier to acquire land or an interest in land without the consent of the owner where it is needed for the purpose of providing telecommunication services to the public. Obviously in that situation, compensation must be paid. In addition, under Section 42 of that Act, the Commission may by order, in exercising its powers under the Act require or permit any telecommunication facilities to be provided, constructed, installed, altered, moved, operated, used, repaired or maintained or any property to be acquired or any system or method to be adopted, by any person interested in or affected by the order or within such time, subject to such conditions as to compensation or otherwise and under such supervision as the Commission determines to be just and expedient. The telecommunication industry is exerting pressure on the CRTC to exercise its rights under this legislation to facilitate telecommunication services growth and competition. As one might

expect the CRTC will not exercise this discretion lightly. There may be substantial costs to the public having regard to the need to pay compensation.

What is ultimately decided in response to these submissions is difficult to predict. The process implemented by CRTC Public Notice 2000-124 contemplates that once submissions are made, interrogatories in connection with those submissions can be submitted and must be responded to and the process of submitting interrogatories and responding is expected to be ended by December 13, 2000. Ultimately what will emerge as the CRTC decision is difficult to predict. Building owners and telecom providers are pushing ahead negotiating agreements, making installations, and building infrastructure (both facilities and staff). How those agreements may be impacted is uncertain. In the meantime, hopefully, the suggestions and insights offered in the rest of this paper will be of some benefit.

The Ten Commandments

Attached as Exhibit "3" is a copy of the "Ten Commandments for Successful Building Owner Telecommunications Provider Relations". It offers some basic guidelines for dealing with this phenomenon. (It is based loosely on Chapter 3 from the book "Critical Connections" published by BOMA International. This book is a valuable resource. Should you wish to obtain a copy you can reach BOMA International at 202-408-2662 or visit the webpage at www.boma.org.)

A Basic Checklist

Attached as Exhibit "4" is a basic checklist for drafting and negotiating and telecommunications license agreements.

It should be noted that the basic form of telecommunications license agreement for which this checklist has been prepared is designed for the situation where the telecommunications license provider is to provide its own telecommunication services directly to tenants in the building.

BCPP's

There is another type of telecommunication service arrangement that also needs to be addressed in the telecommunications building management sphere. It concerns what is referred to in the telecommunications industry as "building centric platform provider" or "BCPP" service providers.

Some telecommunication companies (BCPP's) specialize in installing within an equipment room (a "POP Room") equipment that they make available to other communication providers in order to permit them to obtain access to a building. The BCPP engages the building owner in a co-marketing, sort of joint venture. Often the BCPP relies upon arrangements with either the building owner or other companies that have already installed cable, to enable the BCPP to cross-connect to that cable for the purpose of providing service by third party telecom providers. The fee structure associated with these arrangement is typically comprised of two components. The first component is a percentage of the revenue derived by the BCPP from providing access to the building for other

telecom providers. The second component involves a percentage of revenue derived from customers within the building that sign up for the services.

Arrangements with BCPP might in some cases, involve a positive commitment on the part of a BCPP to install cable within the building which is intended to be used by other telecom providers. Where such a positive commitment is made, the building owner, in consideration of the cost savings involved in having the cable and infrastructure installed at the cost of the BCPP may forgo or accept a much smaller percentage of the revenue derived from third party telecom providers that may contract directly with the BCPP to obtain access to the building. It is also common for the building owner in dealing with such a BCPP provider to accept a simple percentage of gross revenue derived from in-building customer subscribers as its fee for permitting the access.

Also fee unlike the conventional telecommunication license agreement, agreements with BCPP's will often set out on a gross basis without any contribution to operating costs, or realty taxes, and with fewer or no administration fees. (This is because the venture is regarded as a joint undertaking where the parties cooperate to maximize gross revenue which is shared.)

Riser Managers

Another form of agreement involves a phenomenon which, at least in Canada, has not yet really taken hold but which has been anticipated and discussed. It involves an arrangement where a facilities management company (a "Riser Manager Company") installs, or assumes control of a central distribution system which serves all of the needs of all telecom providers in the building. The

Riser Manager assumes responsibility and control on behalf of the building owner of all aspects of installation, operation, licensing, and management of the telecommunication facilities of a building including the in-building wire. The reason for this phenomenon being slow to catch on appears primarily to be the concern of building owners about liability for operation of these facilities and a lack of confidence in expertise and resource levels needed to operate a central distribution system profitably and successfully.

Another form of riser management is more common in Canada. This involves retaining a company that specializes in dealing with telecommunication related issues in buildings. Such a company would typically (a) have software to enable it to track telecom installations and changes, (b) investigate and report concerning the in-building wiring, riser capacity, rooftop space, and other facilities, (c) prepare a report of lease restrictions and other agreements containing rights relating to telecommunication facilities within the building, and (d) deal with plans review, approval, supervision, and other aspects of the operation of the building as they relate to the telecommunication providers and their customers within the building. Such a company would not assume responsibility or control of the operation of cable and circuits but would, in effect, operate as a consultant and supervisor in connection with the activities of the various telecom providers and tenants in the building and would control all aspects pertaining to the physical use of communications pathways, and facilities in the building. These arrangements, unlike the form of riser management arrangement discussed above, are emerging in Canada and are likely to be common.

Facilities Providers (Carriers' Carriers)

Another form of telecommunication agreement that will impact building owners involves companies that provide fibre optic or other cable infrastructure for the benefit of other companies (carriers) to facilitate those other carriers obtaining access to buildings and other facilities. This kind of telecommunication service provider is often referred to as a "Carriers' Carrier" or "CC". Arrangements with CC's would involve allowing the CC to install fibre optic cable in the building usually through an entrance duct running from the property line through the building foundation into a lower level equipment room or, through an antenna on the roof. The customers of a CC would be other communication providers such as internet service providers, application service providers, and local exchange carriers. The form of agreement to be entered into with such a provider would be very similar to a typical telecommunications license agreement except that it is acknowledged in this agreement that the CC effectively provides access to the building through the cables installed by it and in some cases may make available within the space licensed to it as an equipment room, facilities for permitting other communication providers to provide services to tenants and occupants of the building. In this sense, the arrangement bears similarity to the BCPP arrangement set out above. The main difference is that the CC does not promote its services directly to tenants. It focuses its marketing efforts at other communication providers. Developing a fee structure for CC's is an issue which the industry seems at this time not to have sorted out. It does appear however that some percentage of gross revenue derived from the communication providers that utilize services of the CC may be the fee structure model that is finally resolved.

Antenna - Hub and Similar Agreements

Buildings in downtown core areas, due to their favorable site lines, their height, or their proximity to trunk lines may be ideal sites for installation of clusters of antennas or for the installation of convergence points for a cable based ground network. The form of agreement to be used in situations like this is very different from the typical telecommunications license agreement. In many ways it bears the characteristics of a lease of space or a license of space but, there are two key aspects of these arrangements that need to be different.

1. There needs to be very careful consideration given to exculpatory provisions, indemnity provisions, and liability insurance issues so as to protect the owner against liability should a catastrophe damage or interrupt service in the telecommunications hub space or on the roof area antenna cluster. The potential for third party claims from customers and other users of the network outside of the building is very large.
2. The second major concern has to do with restricting the licensee or tenant of these facilities from connecting into customers within the building to provide service to them without entering into a separate form of license agreement reflecting the value of that particular form of access.

Where antenna sites are provided for, there will also be a need to deal with "Occupational Health and Safety" risks associated with radio frequency ("RF") emissions. If the emissions exceed governmentally imposed levels, there may be liability involved not only for tenant but also for the

building owner. In some cases a safety plan is required, including training to ensure that tenants, employees and contractors who work in and around RF antennas are aware of the potential risks imposed by RF exposure. Before allowing any antenna to be installed the building owner should first obtain an express representation and warranty from the telecommunication provider that emissions do not exceed the maximum permissible exposure (the "MPE") and an appropriate indemnity should also be required. The tenant for whose benefit the antenna is installed should be required to take responsibility for compliance as well. Generally the following guidelines should be considered:

- (1) dishes or antennas that only receive voice, video or data would not usually violate RF emission standards;
- (2) fixed, wireless competitive local exchange carriers would not normally violate MPE standards but if the roof of the building were used as a HUB for such a fixed wireless provider it may exceed those standards;
- (3) dishes and antennas that both send and receive data are suspect for violating the MPE standards. These devices are used for providing pager services, cellular and PCS phone service, public safety and two way radio services;
- (4) broadcast facilities would often (almost invariably) exceed MPE standards.

The agreement with the antenna installer and operator should require it to fund an RF study and implement an RF safety program that meets governmental requirements if necessary. Moreover, it is not enough for the one specific antenna that is installed to meet MPE levels because, the accumulation of antenna in a particular location may push the levels higher than the MPE standards.

Lease Clauses that Respond to Tenant and Landlord Concerns Relating to Communication Facilities

Not surprisingly, it is necessary in preparing lease documents to address specific concerns relating to telecommunication services and the building. You may wish to refer to the paper "Technology and Tenants" prepared by the writer which is included in these seminar materials and in particular the section entitled "Lease Clause Concerns" for a description of several of the key areas.

Attached as Exhibit "5" is a sample clause that may usefully be included in standard lease forms prepared by building owners to address their need to maintain flexibility and control and to reduce risk.

Lengthier, and more detailed versions of model lease clauses may also be found in the book "Wired for Profit" (referred to below). These clauses may also be downloaded from www.boima.org (for a fee). The model lease language included in the "Wired For Profit" material mentioned above address three primary areas for the property management professional:

- (1) owner's autonomy over the premises, including:

- (a) the right to install buildings, telecommunications backbone;
 - (b) the right to relocate any tenants' telecommunication equipment; and
 - (c) the right to deny access to a telecommunication service provider without being in breach of the lease.
- (2) clauses limiting the owner's liability; and
- (3) clauses requiring the tenant to indemnify the landlord for damages associated with the telecommunication related activities of the tenant and the tenant's telecommunication providers.

The Jargon

A factor that makes dealings with telecommunication related matters a source of frustration for many and which has the effect of deterring some solicitors from becoming involved to the extent they should, is the jargon and the bewildering list of acronyms that appear in literature and documents. Attached as Appendix "6" is a glossary of common terms that should assist in demystifying this aspect of telecommunication related negotiations. It might also be useful to obtain a copy of Newton's Telecom Dictionary which is distributed by Publishers Group West, 1700 Fourth St. Berkeley, C.A. 94710. Book stores such as "Indigo" also have copies.

Wired for Profit

A final recommendation concerns the book "Wired for Profit" which is published by BOMA International. It can be obtained by visiting the website www.boma.org, or by phoning BOMA International at the telephone number noted above (1-800-426-6292). This book serves as an excellent introduction into this area. Although it is written for the United States and refers to U.S. legislation pertaining to this area, it addresses a phenomena which in Canada are remarkably similar to what is occurring in the United States and is therefore highly recommend. One word of caution, however, is that the forms included in that book as model forms need to be carefully considered and adapted for each particular building owner and situation.

Conclusion

Telecommunications related issues in the context of commercial lease negotiations and building management will not go away. Solicitors involved in commercial leasing that resist becoming familiar with the new environment will, inevitably, do a disservice to their clients. We can't afford to drag our feet. Hopefully, the materials included in and referred to in this paper and the writer's companion paper "Technology and Tenants" will serve as a catalyst for some who have not yet jumped on the bandwagon.

Exhibit "1"

**TELECOMMUNICATIONS LICENSE AGREEMENTS
IN MULTI UNIT COMMERCIAL BUILDINGS**
November, 1999
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Background

There was very little competition in the telephone business in Canada until 1992 when long distance competition was introduced. That set in motion a review process that culminated in the series of decisions announced by the Canadian Radio-television, and Telecommunication Commission (the "CRTC") in May of 1997, the purpose of which was to introduce competition into the local telephone exchange market. The intent was also to facilitate the convergence of the telecommunications and broadcasting distribution (i.e. cable company) industries.¹

These developments have resulted in new entrants into the industry and are affecting many aspects of business. Particularly important, for our purposes, is the way they affect owners and managers of multi tenant buildings (for simplicity, referred to in this paper merely as "buildings"). In the latter part of this paper, there are suggestions for the forms of agreement that are used between building owners or managers and telecommunication service suppliers (whom I refer to simply as "suppliers"). Also a new area of focus for the due diligence process is suggested.

Typically, the supplier wants to gain access to a building to bring wires or cables from the property line through an entrance duct to an equipment room (usually referred to as a "point of presence" room or a "POP" room) in a basement or similar area where a connection box or panel is to be situated for connecting distribution wires that will either already have been installed by Bell or another supplier in existing buildings, or that the Licensee wishes to install in the risers and conduits leading up to the several floors in the building. These distribution wires would lead to equipment rooms on each floor, and from there additional distribution wires would lead into the various leased premises on the floor. This would enable the Licensee to seek customers in the building who would obtain telephone and other communication services from it.

¹Speech "Green Light to Local Competition" F. Bertrand, Chairperson, CRTC, May 1, 1997, <http://www.crtc.gc.ca/ENG/NEW/speeches/1997>

The Real Sources of Value

Getting access to customers in buildings is the real source of value in the arrangement for the supplier, and considering the small area of the typical equipment room, the fee charged for use of the POP room and access to the risers, when determined as rental figure per square foot, having regard to typical rental rates for basement, equipment room, or storage space, would be low. Building owners are now aware of the large sums of revenue that are earned by suppliers of telecommunication services to customers (tenants) in their buildings. They also realize that there is now competition among local telephone exchange carriers, and other suppliers, as well as cable companies whose businesses are converging with the telecommunications suppliers. The ability of a building owner to limit or to grant exclusive access rights to suppliers creates new opportunities. As one might expect, this is out of harmony with the CRTC'S goal of encouraging competition and ensuring customer choice in order to facilitate lower rates, improved service and a robust telecommunication and broadcasting distribution industry. On the other hand, directly restricting building access fees chargeable by building owners is like expropriation. The CRTC prefers to avoid this, and has instead focussed on prohibiting the suppliers from agreeing to exclusive arrangements. To ensure that tenants in buildings would have the benefit of direct service from the suppliers of their choice, the CRTC, in Paragraph 206 of Telecom Decision CRTC 97-8¹ decided that a local telephone exchange company (often referred to as a "LEC") must ensure that customers are able to access services provided by any other LEC operating in the same area, and this must be done on reasonable terms and conditions. This recognized the fact that technology allows the same cable to be used by several suppliers to the same customers. It means that a supplier that a building owner permits to take wire into a building, can not enter into an agreement with the building owner not to permit other suppliers (competitors) to use its wire on reasonable terms.

This decision to require LECs to share their lines with each other generated debate about the particular point where this forced sharing should end in a building (the "service provider demarcation point"). Submissions were made by some, that the point should be at the telephone room on each floor. Others maintained that it should be at the customer's in suite phone room and still others thought it should be in the main terminal room. The location has major implications because the service provider demarcation point is that point at which the building owner can take control of the wire, thereby affecting access to tenants. Its location can deter, or facilitate higher building access fees.

In paragraph 32 of CRTC Decision 99-10 (August 1999)² it was decided that the service provider demarcation point would be moved to the main terminal room:

- (a) in all new buildings;
- (b) where the property owner provides a written notice for transfer of responsibility and control of in-building wire to the serving local exchange carrier; or

¹ www.crtc.gc.ca/ENG/TELECOM/DECISION/1997/D978.TXT

² www.crtc.gc.ca

- (e) where more than one local exchange carrier has installed feeder transmission facilities to the main terminal room in the building and wishes to use existing in-building wire, and the property owner accepts responsibility and control for it.

In paragraph 33 of the last mentioned decision it was confirmed that where a property owner accepts responsibility and control for in-building wire, it also assumes responsibility for managing those facilities. The term "in-building wire" is defined in that decision as follows:

"wire and other facilities which are in the "MDU" [a multiple dwelling unit, but later expanded in a clarification letter by the CRTC, to include any multiple occupancy building], (e.g. wires in the MDU risers, running from the main terminal room to the telephone closet on each floor and from there to the customer's suite); in-building wire may be owned by a telecommunications service provider or by the property owner".

It should be apparent from these decisions that, in any new building, and in any building where the property owner is willing to assume responsibility for, and control of in-building wire, the building owner is in a position to control connection by its tenants to local exchange carrier services. It appears therefore, that the "gate-keeping" problem has not been addressed as directly or as completely as LECs would prefer.

Code of Conduct for Building Access

To ameliorate concerns about gate-keeping, the "Code of Conduct for Building Access"¹ was developed by a number of industry participants including the Building Owners and Manager's Association of Canada, "BOMA", and the Canadian Institute of Public Real Estate Companies "CIPREC", and various suppliers including virtually all the major ones.

Of particular interest is Part II which sets out an "Escalation Process" for dealing with complaints where a local exchange carrier believes that it is being discriminated against by a building owner. The process does not appear to have real sanctions and seems to be a kind of "motherhood" statement. Still, it does have persuasive effect and it should have some value in keeping building access fee rates to competitive levels.

It is the view of the CRTC that rates should be set so as to reflect the costs to the building owner of operating the in-building wire plus an administration fee, usually 25%. There is still a substantial amount of discussion concerning what "costs of operation" should be recoverable but it's a matter that must be left for later discussion.

The Burden of Control

There are certain aspects of assuming responsibility and control of in-building wire, in addition to the opportunity to impose access fees for connection to customers, that need to be considered.

¹ www.crtc.gc.ca/ENG/NEWSRELEASES/1999/R990908e.htm

Controlling in-building wire gives the owner the opportunity for minimizing the crowding of wires and cables within the ducts and risers of the building, and a better opportunity to manage access, supervise connections, minimize damage to wires that various contractors might cause, and a better ability to inventory, ensure labelling, and generally run the process efficiently. This also entails the responsibility of satisfying the service needs of tenants. Modifications, new installations and connections need to be attended to on a daily basis. Day to day management of the operation must be run in such a manner as to keep the tenants of the building happy. The option of simply saying "let Bell look after the matter" disappears. Those functions can also result in increased liability. For this reason, it is still unclear to most building owners whether it is in their interest to assume responsibility. I understand as well that Bell is more than happy to divest itself of responsibility because, maintaining a staff (at union rates) to service these requirements is expensive. A building owner needs to be careful before taking on this responsibility because, once it takes on the responsibility it can't change its mind unless it sells the building. Paragraph 36 of Decision 99-10 states that a property owner cannot relinquish responsibility and control for the in-building wire once it has been accepted. However, a property owner who has declined or not elected to accept responsibility and control for in-building wire can later decide to accept it. Paragraph 37 states that where the ownership of an "MDU" changes if a local exchange carrier owns the in-building wire any purchaser of the MDU can accept or decline responsibility, notwithstanding that the previous owner had assumed responsibility and control.

It is important to note that if the building owner owns the in-building wire or has acquired ownership of it, the new owner must also assume responsibility and does not have the option provided for in paragraph 37 of declining that responsibility.

Riser Management Companies

There are several well known "riser management companies" in the United States and Canada that provide management and operating services in connection with in-building wires for building owners for a fee. It is reasonable to expect that more of this kind of arrangement will be seen. For each building, the need to ensure that the building owner has the flexibility of assigning responsibility for in-building wire to a riser management company or similar facilities management company, or to itself taken control should be evident.

It should be noted that the restrictions in CRTC Decisions 97-8 and 99-10 do not apply to all forms of telecommunication services. Rather, at this stage, they apply to voice grade copper and local dial tone services. They do not apply to data transmission, high speed phone, IST, or fax transmission, or other forms of communication that were not historically monopolized and which do not need the same competition enhancement as voice grade telephone services. On the other hand, as the telecommunication and broadcasting distribution industries converge, and as business becomes more dependent on these services, it is reasonable to expect that additional regulations may come forward. In addition, the flexibility of a building owner to manage communication infrastructure within the building, and, the need for tenants to obtain services at competitive rates will not change.

What is set out above is intended to serve as thumbnail sketch of the situation, and, to provide a context in which the specific, practical suggestions set out in the balance of this paper will make sense.

LICENSE AGREEMENTS

Here are some suggestions for access agreements used by building owners and suppliers.

1. The Form The form should be that of a license and not a lease. A building owner should avoid granting a leasehold interest. Exclusive possession is usually not needed or appropriate for the supplier. In addition, when selling a building, mortgaging or otherwise dealing with it, the covenants implied at law in leases, and the principles relating to the running of covenants are, generally not suitable for arrangements such as this. Also, the rights which tenants have to apply for relief from forfeiture, the technical requirements relating notice of defaults, and restrictions on termination tend to add confusion to the relationship. From the licensee's perspective, dealing with remedies such as distress, and trying to sort out the court's position concerning what constitutes breaches of quiet possession, fundamental breach, and determining when a landlord is required to mitigate damages is probably an unwarranted headache.

2. Special Considerations Many of the same matters that are dealt with in typical commercial leases, such as the term and renewals, fees, default remedies, notice requirements, obligations insure, and to repair, releases and indemnities, obligations for the licensee to adhere to building security requirements, restrictions on transfer, responsibility for utilities, insurance and similar matters tend to be covered reasonably well in typical license agreements entered into with suppliers. There are, however, some specific issues that need to be considered. These are addressed below.

3. The Fee Rate Clause Because of the uncertainty concerning what rulings the CRTC is likely to issue, and the uncertainty of predicting the permutations that are happening within the telecommunications and broadcasting distribution industries, setting a rate for the fees is difficult to do with any level of comfort. Therefore, provision needs to be made for the rate to be reviewed at periodic intervals (for example, two year intervals) and to have that rate adjusted to reflect the "going rate" for comparable suppliers in comparable buildings. Even when the rate is established, the shadow of the CRTC and the potential for rulings that would cutback, over-rule, or invalidate agreed rates need to be considered. It is common to include a clause in which the parties acknowledge that they must adhere to CRTC laws and regulations and that to the extent any provision in the agreement is invalid or unenforceable the rest of the agreement will remain in place and, provisions will be enforced only to the extent that they are enforceable. The clause might also state that the owner may take steps or do things that the CRTC establishes to be permissible (for example acquire ownership of inside wire). An escape clause allowing the parties, or either of them to terminate the agreement on specified terms, should rulings make the agreement no longer viable might also be considered. An arbitration clause to deal with issues relating to interpretation of CRTC

rulings, and policies and to sort out issues of viability and terms for termination might also be useful

4. Assumption of Control Clause It is important to reserve to the licensor (building owner) the right to assume control and management, and perhaps also ownership of, any in-building wire that is installed by the licensee so that the building owner can enter into facilities management arrangements ("riser management" deals), or itself take on the management and control if it determines that it is profitable for it do so.

5. Financing Restrictions This need to be able to take control or even ownership of in building wire also has implications for financing. If the supplier grants a personal property security interest in respect of in-building wires to third parties, this might impact the ability of the building owner to take control, or ownership of the in-building wire. Even if control is not taken, financing by the supplier could be a problem. If for example, the license agreement terminated and the building owner wanted to obtain the removal of the in-building wires, it would need to deal with the interest of the equipment lender. The equipment lender should be made a party to the license agreement, at least for the purpose of acknowledging whatever arrangements are made between the building owner and the licensee for removal, and use of that wire.

6. Liability Issues (Especially with "Hubs") If the in-building wire or other equipment of the supplier is damaged as the result of a fire or some other mishap, there is a potential for claims against the building owner, not only for damage to the property but also as the result of disruption to the customers within the building. Generally, this may be minimized by the exculpatory and indemnity clauses in the leases which the building owner gets tenants of the building to sign, and the exposure is no different now than it was when Bell had a monopoly. The greatest concern comes when the supplier uses the equipment room but as a "hub room" or a "switch hotel" housing equipment that is used to provide services not only to customers within the building but to various other customers in multiple locations within a network. When the equipment in such a room is damaged or malfunctions, the potential for claims against the building owner from a large segment of the public exists. Protecting itself against this liability is a challenge for the building owner. Some forms of license agreement expressly prohibit the supplier from operating a hub, switch room, or similar type of facility on the premises for this reason. Generally, the liability insurance limits of a supplier imposed under the license agreement should be high (no less than \$10,000,000.00) and, it is important to ensure that the building owner is added as an insured under that policy. That policy should also contain a strong indemnity in favour of the building owner against claims by third parties for disruption of service. This of course entails the liability policy containing a contractual liability endorsement. Where the parties do intend for a hub room or switch room to be operated on the premises, the building owner must take extra precautions relating to insurance, indemnity, and exculpatory provisions. The indemnity and exculpatory provisions need to expressly excuse the building owner from liability even if the people under its control are negligent. Without such an exclusion, the rate charged as a license fee would rarely be adequate to cover the additional liability exposure.

7. Rights of Termination Relocation etc. It should be obvious that rights of termination must be given to the building owner where major damage occurs to the building and, rights of relocation and perhaps even termination should also be provided for if the building owner wants to redevelop the building. It would also be prudent to include an express statement that there is no representation warranty or agreement that the building will be maintained at any particular occupancy level or that even the kinds of occupants within the building will not change. For example, a building owner may wish to convert an office building to a retirement home and, these changes would certainly affect the profitability of the arrangement from the licensee's perspective. From the licensee's perspective, a right of termination and the right to compensation for the unamortized costs of installations should be provided for in situations where the building owner elects to terminate the agreement due to changes in use of the building or redevelopment.

8. Transfer Rights and Restrictions These agreements need particular care in the clauses dealing with assignments, sublicensing, and other transfers. For example if a LEC is permitted to install in-building wire, and the building owner does not assume control of it, the LEC can not agree to obtain the building owner's consent before sharing the use of the in-building wire if the installed wire is voice grade wire. Nor is it clear that the LEC can require other LEC's to enter into an agreement with the building owner to be bound by the license agreement that the installing LEC signed. A clause allowing the building owner to refuse to permit a transfer, sublicensing, or co- sharing, in situations where the supplier is being paid value primarily due to the number and type of customers or potential customers in the building may be very important. However, at least where the service involves voice grade wire it might be enforceable. As the CRTC examines issues in the evolution of the industry, these provisions, even in agreements involving data transmission and other services that are not dealt with in the existing decisions of the CRTC may be invalidated.

It must also be remembered that a license, unlike a lease, does not bind subsequent purchasers of the building. Conversely, when a license agreement is assigned, the assignee is not bound by the covenants in the license agreement unless it enters into an agreement directly with the licensor. In fact a license, being a mere permission to use, is personal to the licensee, and can not be transferred or shared unless the licensor permits it. There is no presumption of transferability, as there is with leasehold interests.

DUE DILIGENCE ISSUES

What is set out above indicates certain matters that need to be considered in the due diligence process for a purchaser of a building, or a lender that is considering taking security on a building. Traditionally, there has been a tendency for a building purchaser or a lender to focus on the leases in a building in determining its value. As various telecommunication and other supplier agreements, and the ability to generate revenue from the customers in the building become more important, an analysis of the existing license agreements, and various other communication technology service supply contracts associated with the building should gain more importance. This analysis should take into consideration factors such as the following:

1. Are the rates of fees specified in the agreements actually recoverable and do they comply with CRTC regulations?
2. Are the agreements transferable to the purchaser and, conversely, does the purchaser have the right to terminate them.
3. Is there a potential for improving the fees on a transfer of the agreement by the supplier to another supplier?
4. Has a supplier been denied access to the building by the building owner, and has an "Escalation Process" been initiated as the result of a supplier complaint?
5. It is critical to determine who owns the in-building wire because, that would impact whether the new owner must take on the burden of managing the in-building wire or whether it has the option of electing not to do so.
6. Are there hubs or switch hotel rooms within the building and if so how does the license agreement deal with the liability associated with them?
7. Has the ability of the building owner to make alterations to the building been hampered by the license agreements?
8. Have components within the building been financed in favour of security holders whose security rights may interfere with the ability of the building owner (purchaser or lender) to deal with the building or the communication services within the building?
9. Have the various cables and wires installed within the Risers of the building and the various other items of communication equipment been properly labelled, identified and protected?
10. Is there a facilities or riser management contract in force and if so, is the revenue sharing structure incorporated within it a satisfactory one and is the scope of management services suitable? Is it terminable by the purchaser and if so under what conditions?

Caution

Since this paper has been prepared as part of "6 Minute" session, it is not exhaustive or complete. Its purpose is to highlight areas of concern for further focus. Additional items, no doubt, will be needed to be added to the list that is set out above before a suitable level of comfort can be achieved. In the meantime, it is hoped that this paper will be considered as a step in the right direction.

Acknowledgements

I need to thank Michael Brooks, Executive Director of CIPREC, for the help that he gave me in tracking down information, identifying issues, and generally assisting me to make sense (assuming I have done so) of a confusing area. Bob Beallor of O&Y Enterprise, who is a member of the Telecommunications Committee of BOMA, and Craig Tresham, V.P., of Avison Yonge TCN have

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Exhibit "2"

NEW OPPORTUNITIES AND CHALLENGES COMMUNICATION AND OTHER SERVICE ACCESS AGREEMENTS

February 2000

J.E. Dennis Daoust

Daoust Vukovich Baker-Sigal Banka

Building owners are discovering a new source of revenue that involves virtually no capital outlay by them and does not encroach upon the rentable areas of their buildings while adding a range of services that are very much in demand by tenants. Canadian Federal regulations affecting the telecommunication industry have been introduced to encourage competition. These regulations, combined with new digital communication technology, data transmission, internet service, cable broadcasting, and satellite communication facilities and similar services have created a very competitive and active group of service providers seeking access to multiple occupant office buildings and shopping centres. In this article "suppliers" refers generically to these service providers.

Where access is granted, it usually involves giving to the supplier the right to run conduit or cables and wires through a duct from the property line into an equipment room in the basement or lower level of a building, where a connecting panel is situated. From the connecting panel, wires and cables are run through ducts and conduits and up the shafts and risers into equipment rooms on each floor. From there, they are further distributed to the individual tenants in the spaces. In other situations, an antenna or a dish is installed on the roof of the building and wires are run down through its risers usually to connect below in an equipment room in a lower level. In shopping centres the arrangements are basically the same except that the wires are run more through horizontal ducts and conduits than vertically through shafts and risers.

This situation creates new opportunities and new risks, both of which require careful management. To capitalize on the opportunities, a building owner must deal with issues such as those described below.

1. The Fee Structure

Establishing a fee for access should not be approached in the same way as rent for space within the building. What the supplier really needs is access to the tenants of the building. Regardless of how much space (usually a very small area) is made available to the supplier, it is the size of the building, and the types and the number of tenants in the building that are of real interest. Initially owners tended to treat agreements with these suppliers as a form of lease of a portion of otherwise surplus and unleaseable space within the building. Experience indicates, however, that this approach ignores the essential nature of the benefit that the supplier has when it obtains access to the building and its occupants. It may also ignore the high volumes of pedestrian traffic, transactions and the large volume of services that might be consumed by retail customers and other invitees. Also, long term arrangements that do not provide for fee adjustments to reflect the rapidly changing market and that do not reflect market conditions can seriously hamper the building owner's opportunities.

2. The Equipment Sharing Problem

Technology allows one cable or conduit, and one item of equipment to satisfy the needs of several communication suppliers and therefore, once the equipment is installed, the supplier may be in a position to itself capitalize on the value of the building by permitting others to connect to its equipment. Prohibiting the supplier from assigning or subletting or parting with or sharing possession of the space that it occupies misses the point. The real value is in sharing the capacity of the equipment

that is installed. Monitoring this equipment use and controlling the various suppliers that will gain access to people within the building through that equipment is a major challenge. For example, local telephone exchange carriers are prohibited by regulation from agreeing to exclusive use arrangements. These carriers must share, on reasonable terms, their wires with other similar suppliers.

3. Crowding Problems

The duct, riser and equipment room, as well as roof space of a building, are usually limited. If a particular supplier is allowed to install equipment and take up too much space (for example by installing wide diameter conduit), the opportunity to use the duct, and riser space and equipment room space will be encroached on and limited.

4. Interference and Other Facilities Management Issues

The introduction of high technology equipment to crowded areas creates a high risk of interference, inadvertent damage, and disruption and imposes a major challenge to a building manager that wants to keep track of whose equipment is installed in what parts of its building and for what purposes. The variety of technical personnel and other representatives and suppliers that will need to attend for installation, maintenance, repair and alteration of equipment poses new challenges to security personnel. Also, modern commercial buildings are dynamic. There is constant turning over, altering, and reconfiguring of space, and the buildings are frequently altered by expansion and other redevelopment. It is essential for the building owner to maintain control and flexibility. Building components that need to be altered can affect installed equipment. However, ownership and control of the telecommunication wire within the building that serves the various tenants and customers within the building carries with it the responsibility to ensure that services are provided to an acceptable level and that the equipment is maintained and repaired. It also involves making available the required personnel to modify the equipment as new customers and tenants connect to it or alter their own needs. The connecting, disconnecting, altering, supplementing, and modifying of communication services and equipment within a building is a continuous process that involves a high degree of co-ordination, planning and responsibility.

5. The Facilities Manager Option

There are facilities management companies that will manage communication services for a building owner and in fact will pay a substantial fee for the privilege. This is because the facilities management company will charge suppliers fees for access and other services pertaining to their equipment. However, to take advantage of this option the building owner needs to have retained control of the equipment, and must not have permitted suppliers to install equipment that the building owner does not have the right to manage.

6. Financing Issues

Financing of equipment installed by suppliers takes various forms. It is common for lenders to take security on the equipment, and dealing with the equipment once installed may entail addressing the secured lender's interests and concerns. For example, taking control of equipment will not be permitted if it threatens the lender's security, and terminating an access arrangement may involve negotiating with the secured lender having regard to its interest in the equipment.

7. Termination, Relocation and Transfer Rights

The need to terminate these arrangements is essential in certain circumstances, such as where the building is to be redeveloped or where there is substantial damage and it is not feasible to rebuild. In

other situations, the need to relocate equipment installed by a supplier may be critical. It might also be critical to allow termination of the agreement, on specified terms if the building is sold to a new owner that does not want to continue the arrangement. On the other hand, a building owner will need to be able to transfer the benefit of the various agreements that it enters into with suppliers so that purchasers of the building and lenders that provide security on the building by way of mortgage can assume them.

8. Liability Risks

The potential for liability for negligence is greatly enhanced by the communication equipment that is installed within a building. A fire has the potential of exposing the negligent party to huge claims where persons or businesses within the building or even outside of the building that are dependent upon continued networked communication services are disrupted. The number of persons that can be affected by a relatively minor act of advertence is huge. Insurers and risk managers are only now beginning to come to terms with this exposure. The impact on insurance costs is unpredictable. Strong exculpatory and release clauses and a rigorous insurance program are essential.

9. The Impact on Business Value

As businesses become more attuned to e-commerce and to transacting business in the "cyber world", availability of telecommunication and similar services becomes increasingly important and adds an entirely new element to the traditional means of valuing buildings. Traditionally, value had more to do with location than anything else. Now, the quality and range of telecommunication services available within the building will have an increasingly important impact. Building owners need to be pro-active to ensure that these critical services are made available at economic rates and at the very highest level of service in order to attract and keep the best tenants in the market.

Despite the opportunities and risks and the potential for mismanagement resulting in lost profits or unmanaged liability, many forms of agreement entered into between building owners and telecommunication suppliers are brief and unsophisticated. They are modelled on the simple forms of license agreements or short-term leases used in connection with storage areas and surplus equipment room areas and they are drafted without input from technological experts that understand the industry. Perhaps it is time to recognize that a more sophisticated approach is appropriate.

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Exhibit "3"
Ten Commandments of Telecommunications Relations

The following suggestions, if implemented should greatly improve relations between building owners and telecommunication providers and the customers and tenants in buildings. They are directed, however, primarily at building owners. They are as follows:

1. **REMEMBER YOUR BUSINESS** - The building owner's main source of revenue and main business involves leasing space to tenants. Telecommunications issues are important but, they are nevertheless ancillary to the main business of leasing space and satisfying the needs of tenants.
2. **BE FAIR** - This is simple general suggestion that acting in good faith, on a non-discriminatory basis, having regard to bona fide business concerns is always the best course. In addition, sharing information concerning building capacity, the ability of staff to deal with telecom requests, and, from the telecommunication provider's perspective, sharing information that the building owner needs in order to assist the impact of the provider's facilities in the building is critical. Holding back information in this regard can only result in frustration, lost opportunities, and potentially, litigation.
3. **NO AGREEMENT, NO ACCESS** - It should be apparent from what is set out in the paper that accompanies these Ten Commandments that a failure to fully address issues relating to risk, insurance, safety, security, scheduling and numerous other matters can be disastrous in this area. In no situation should a telecommunication provider be permitted to install equipment where a comprehensive agreement dealing with these key issues has not been signed. A mere permission to provide access can be disastrous.
4. **LICENSE, DON'T LEASE** - Granting a lease instead of a license in respect of a telecommunication access would usually be problematic for a building owner. Landlord and tenant law in most jurisdictions, including Ontario, is out of date, carries forward arcane poorly understood principles, and imposes restrictions and rights that are poorly understood even by experienced lawyers. It is preferable to use a license agreement that does not grant exclusive possession of space to a licensee (except perhaps in those limited critical areas where it is necessary), and which deals in generally understood commercial terms with the various rights and obligations of the parties.
5. **KNOW AND ADAPT INDUSTRY FORMS** - Circulating within the telecommunication building management industry are a number of excellent forms that have been prepared for use by members of BOMA, and which serve as a good starting point for most forms of agreements involving telecommunication services and related matters. It is important however to recognize that these forms are merely starting points and that they need to be supplemented, revised, and carefully adapted before using them, to suit the specific situation of each building, installation, and service.

6. **ASK QUESTIONS AND USE EXPERTS** - It is of critical importance to both telecom providers and building owners to obtain full information concerning developments and practices within the industry. The advice of an experienced and reputable telecommunication's consultant or expert can be invaluable. Equally important is that legal advice that is based on knowledge of the industry be obtained.
7. **USE AN APPROPRIATE FEE STRUCTURE** - Changes are taking place within the industry at light warp speed. It is difficult to predict market rates and accordingly, it is important to ensure that your fee structure allows adjustment at short intervals to remain competitive. It is important also to take into consideration the various soft costs and other costs associated with dealing with telecommunication providers in your buildings. Extra heating, ventilating and air-conditioning, real property tax, supervision, management, consultant (plans review and supervision), and various other cost and charges can have a serious impact on your bottom line. They should be addressed. Consideration of fees involving a percentage of gross revenue is always useful as a means of allowing building owners to share in the rapid growth of the industry.
8. **DON'T GET CAUGHT IN END RUNS** - It is common for a tenant and a telecommunication provider to make arrangements for service before the building owners' concerns are addressed. There is a temptation for the telecommunication provider to apply pressure on the building owner by making arrangements with the customer. Bowing to this pressure may be very disruptive and harmful in situations where a comprehensive properly thought out riser management strategy has not yet been put in place. Care must be taken to structure arrangements in these cases to leave flexibility in the building owner to make changes in the future when the comprehensive strategy has settled upon.
9. **NO EXCLUSIVES** - The CRTC policies discourage exclusives (in some cases actually prohibit them). Granting an exclusive arrangement to a telecommunication provider will almost invariably act against the interest of the building owner.
10. **MANAGE RISK** The potential for liability as the result of disruption, damage and destruction, injury, and similar matters runs very high in the telecommunication industry. It is absolutely critical that access not be permitted where appropriate requirements relating to insurance (particularly liability insurance), protecting the building owner, and releases of liability, and indemnities in favor of the building owner in connection with damage or loss suffered by the telecommunication provider be incorporated. The concept of negligence is a very general concept. Many instances may occur where it is entirely unclear whether the cause of damage arises from negligence on the part of the building owner or someone for whom the building owner is responsible. Covering this exposure can be very expensive and certainly does not, in most cases, constitute the kind of expense and exposure that the fees payable by the telecom providers would warrant. This risk exposure should be transferred to the telecom providers.

Exhibit "4"
Basic Checklist

1. GRANT OF LICENSE (no exclusive possession, no leasehold, easement, or other property right - mere permission for specified access, and occupancy)
2. IDENTIFY PARTS OF BUILDING TO BE AFFECTED
 - entrance duct from lot line through wall
 - duct from point of entry to POP Room
 - roof area
 - entrance sleeve
 - POP Room
 - ducts from POP Room to vertical risers
 - risers
 - termination points on each floor
 - other communications pathways
3. AS IS CONDITION
Licensee, to satisfy itself concerning building; in particular with regard to,
 - occupancy levels,
 - total floor areas,
 - riser capacity,
 - hazardous substances,
 - HVAC and other building facilities, and the locations and design of all physical spaces
4. LICENSEE'S EQUIPMENT
 - Design, type of equipment, and method of installation, to accord with governmental requirements and requirements of Licensor
 - All cable to be identified and labelled as required by licensee
 - As built drawings to be provided
 - All installation to be done to allow easy removal
 - No changes to Licensee's equipment
5. ACCESS CONTROLS
 - Security rules (including requirement for Licensee personnel to be escorted) to be strictly adhered to
 - No access (1) by unauthorized persons
 - (2) without evidence of insurance, or (3) without signed agreement
 - Construction liens to be removed

- Workplace Safety and Occupational Health and Safety legislation to be complied with
6. USE RESTRICTIONS
- Identify the particular type of telecom service that Licensee is allowed to offer to customers, and prohibit all others
 - Do not allow any third party to use any part of Licensee's equipment in the building (to avoid Licensee re-selling access rights)
 - Include right for Licensor to terminate if Licensee does not install equipment by a stated date, or if it has no customers for a stated period of time
7. TERM AND RENEWALS
- Term not usually more than 5 years
 - Not usually more than 1 renewal term (5 years)
8. RELOCATION AND ALTERATIONS
- Licensor may require relocation of licensed areas to accommodate changes in building (at Licensee's cost unless it is to benefit another carrier)
 - Licensee must reconfigure its equipment to help eliminate crowding, and must permit co-location of other equipment
 - Licensor reserves right to alter all parts of the building
9. SPECIFIC TERMINATION RIGHTS
- In addition to rights to terminate for default, Licensor needs right to terminate where
- (1) major damage to building,
 - (2) demolition or redevelopment, or
 - (3) expropriation make, it impractical to continue.
10. FEES
- BASIC, usually 1 or 2 cents /sq ft of building per yr, often with a minimum
 - ensure that fee adjusts upward based on prevailing rates at least every two years
 - ADDITIONAL: utilities, realty taxes, share of building operating costs, plans review charges, escort and supervision fees, change application fees, share of riser management costs; other administration fees
11. PERCENTAGE ARRANGEMENTS
- More common in BCSP deals
 - Also common on joint marketing arrangements between Licensor and Licensee
12. MARKETING RESTRICTIONS
- No marketing campaigns in building without Licensor consent
 - No public notices, press releases

- No use of building name or Licensor's name in advertising materials
13. OBLIGATIONS ON TERMINATION
- Licensor can require "in-building wire" cable to be left in place as property of Licensor
 - Licensee must remove all cables and equipment as required by licensor
 - Licensee must restore all damage
14. CENTRAL DISTRIBUTION SYSTEM
- Licensor can establish a "CDS" and assume control of all "in-building" wire (including that installed by Licensee)
 - Licensee to pay fees for use of CDS (share of operating costs, plus an appropriate user fee)
15. RISER MANAGEMENT CLAUSE
- Licensor can hire a riser management company to control all aspects of building telecom systems, and facilities, including activities affecting risers, and all communication paths and facilities
 - Licensee will pay a share of riser manger's costs and expenses
16. FINANCING RESTRICTIONS
- Licensee must not encumber "in-building wire" or associated conduit
 - Licensee must not pledge or encumber rights under the TLA
17. TRANSFER RESTRICTIONS
- Licensee must not assign, share use, sublicense, or undergo a corporate change of control
 - Licensor can effect transfer to person acquiring interest in Building, and is released when it does so
18. INSURANCE; RISK MANAGEMENT
- EXCULPATORY CLAUSES, AND INDEMNITY CLAUSES IN FAVOUR OF LICENSOR ARE CRITICAL
 - DO NOT MAKE AN EXCEPTION FOR NEGLIGENCE
 - LICENSEE MUST CARRY ALL RISKS PROPERTY INSURANCE FOR ITS PROPERTY
19. LIABILITY COVERAGES
- Licensee must carry at least \$5,000,000 of CGL on a primary basis with Licensor as a named insured, and with usual endorsements, (cross liability, severability of interest); coverage to expressly include liability for pure economic loss
 - Contractual Liability endorsement is critical to support strong indemnities

20. DEFAULT

- Self help remedies important
- Special remedies needed where Licensee's equipment causes interference with other equipment
- Define Event of Default
- Specify termination rights
- STATE LICENSOR NOT LIABLE IN DAMAGES FOR UNREASONABLY WITHHOLDING CONSENT

Exhibit "5"
Sample Clauses

Section ____ Telephone and Computer Systems

Tenant may utilize a telecommunication service provider of its choice with Landlord's prior written consent which Landlord may withhold in its discretion, subject to the provisions of this Lease, including but not limited to the following:

- (a) the service provider shall execute and deliver Landlord's standard form of license agreement which shall include a provision for Landlord to receive compensation for the use of the space for the service provider's equipment and materials;
- (b) Landlord shall incur no expense or liability whatsoever with respect to any aspect of the provision of telecommunication services, including without limitation, the cost of installation, service, materials, repairs, maintenance, interruption or loss of telecommunication service;
- (c) Landlord must first reasonably determine that there is sufficient space in the risers of the Building for the installation of the service provider's equipment and materials;
- (d) Tenant shall indemnify and hold harmless Landlord for all losses, claims, demands, expenses, and judgments against Landlord caused by or arising out of, either directly or indirectly, any acts or omissions by the service provider or Tenant or those for whom they are responsible at law; and
- (e) Tenant shall incorporate in its agreement with its service provider a provision granting the Tenant the right to terminate the service provider agreement if required to do so by Landlord and Landlord shall have the right at any time from time to time during the Term to require Tenant at its expense to exercise the termination right and to contract for telecommunication service with a different service provider.

As part of the Work, Tenant shall be responsible for the costs associated with the supply and installation of telephone, computer and other communication equipment and systems and related wiring within the Premises to the boundary of the Premises for hook up or other integration with telephone and other communication equipment and systems of a telephone or other communication service provider, which equipment and systems of the service provider are located or are to be located in the Building pursuant to Landlord's standard form of license agreement.

Landlord shall supply space in risers in the Building and space on floor(s) of the Building in which the Premises are located, the location of which shall be designated by Landlord in its discretion, to telecommunication service providers who have entered into Landlord's standard form of license

agreement for the purpose, without any cost or expense to Landlord therefor, of permitting installation in such risers and on such floor(s) of telephone and other communication services and systems (including data cable patch panels) to the Premises at a point designated by Landlord.

Landlord shall have the right to assume control of cables and other telecommunication equipment in the Building and may designate them as part of the Common Areas.

Exhibit "6"
Glossary of Terms

"ADSL": asymmetric digital subscriber. A service that allows the transmission of highspeed data over standard copper wire telephone lines. It provides higher speeds downloading than uploading and allows you to cram more stuff down the same wire.

"Bandwidth": the carrying capacity (usually measured in bits per second) available for data traffic on a network, broadband system: a system that can transmit large quantities of voice, data, and video by digital or analogue signals.

"Carrier": a company that provides telecommunication services by its own network or by a network that it leases.

"CDS": central distribution system - a central cable or set of cables (usually fibre optic) that is made available within the building (within the building's risers) and is intended to be utilized by various telecommunication providers who wish to provide access to tenants in the building.

"CLEC": competitive local exchange carrier - Telecommunication companies that compete for local exchange service as well as long distance, Internet, Internet access and entertainment (such as cable t.v., video etc.). CLEC must all comply with CRTC requirements.

"CO" Central Office: local exchange carriers require a central location for the installation of the switching and other equipment that they use to serve their local telephone subscribers. Such a location is referred to as a "central office".

"Conduit": a pipe (metal or plastic) that is intended to contain wiring or cable.

"Core Sleeve": a hole in a floor, wall, or roof, through which cable or conduit is intended to pass.

"CRTC": Canadian Radio, Television and Telecommunications Commission - this federal regulator is responsible for the regulation of rates and inter-connection agreements under the Telecommunications Act. They make up the rules.

"Dark Fibre": unused fibre though which no light is transmitted, or installed fibre optic cable not carrying a signal. Sometimes dark fibre is sold without the accompanying transmission service. The customer is expected to provide its own electronics and signals to make it "light".

"Demarcation Point": the place in the building (usually in the MTR) where the wires and facilities on one side of a point are the responsibility of one communication provider and the wires and facilities of the other side are under the control of a different party. This is the place where the

CLEC connects to the wires in the building that are either controlled by an ILEC or by the building owner or some other third party.

"DS-0", "DS-1", "T-1", DS-3", "OC-3", "OC-12": labels for signal formats distinguishable by the bit rate transmitted per second.

"Fibre Optic Cable": a glass fibre that sends laser light pulses across glass strands to transmit digital information.

"ILEC": incumbent local exchange carrier. These are the traditional telephone companies such as Bell Canada, Telus, Sask. Tel, MTS, Netcom, etc. that created the messy rooms in the basements where the CLEC want to be.

"In-Building Wiring": typically copper wire or "twisted pair", coaxial cable, or fibre optic cable. The term is often used to describe the components of the wiring within the building between the POP Room and the telephone room of each floor.

"ISP": Internet service provider.

"LMCS": local multi-point communication service. A high bandwidth fixed wireless two way broadband service. These are the companies that want space on the roof for antennas as well as space in the basement for equipment needed in connection with the operation of the antennas.

"MDF": main distribution frame. The board within a telephone room that serves as the in-building end of all communication wiring.

"MDU": a multiple dwelling unit (which, by virtue of a clarification letter issued by the CRTC is defined to include also a multiple occupancy building (i.e. an office building)) for the purposes of CRTC regulatory matters.

"MPOE": minimum point of entry. The closest practical point to where the carrier facilities cross the property line or the closest practical point to where the carrier cabling enters a multiple unit building. It establishes the point (the demarcation point or "demarc") at which the carrier's responsibility ends and the end user or building owner's responsibility begins.

"MTR": main terminal room. This is the equipment room usually in the basement area of the building to which the main telecommunication conduit is lead from the property line through the building wall and where most of the electronic equipment associated with inter-connection of that cable in the rest of the building is situated.

"POP Room": point of presence room. A physical space where the electronic equipment of a CLEC or ILEC has electrical equipment needed to permit it to provide access to its network to the occupants of the building.

"POT": plain old telephone company (ma Bell and her ilk).

"Riser": a conduit or a series of conduits in which building wire is placed.

"Riser Management Firm": a company given authorization by the building owner to co-ordinate, supervise, enforce, restrict or approve work of telecommunication contractors in building risers.

"Riser Room": a room contiguous to a riser where electronic equipment, and switches are installed to facilitate distribution of services on the floor of the building on which it is situated.

"Telephone Closet": the space on a floor where all the floor wiring connects to the riser (another way of referring to a Riser Room).

"TP": twisted pair. Standard telephone wire in which pairs of wires are twisted together. If the twisting is done properly, cross-talk and interference is reduced or eliminated.