

Telecommunication Articles

TELECOMMUNICATION SERVICE PROVIDERS - MINIMUM BUSINESS CRITERIA (The Tenant's Perspective)

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The following is a list of items a telecommunications service provider ("TSP") would require in any access agreement, whether it be described as a lease, license or easement:

1. LONGEST TERM POSSIBLE

A TSP will seek the longest term possible since it hopes to be providing telecommunications services to the occupants of any building for as long as possible. In addition, a TSP, particularly a facilities based TSP rather than a mere reseller, incurs considerable expense to install point of presence equipment, antennas, cabling and accessories and will wish to obtain a term which will permit it to obtain a reasonable return on its capital investment.

2. SUCCESSIONS/ASSIGNMENT

TSP's will seek liberal assignment rights to corporate affiliates, potential purchasers and its primary lenders. TSP's are typically very heavily capitalized and intra-corporate transfers and reorganizations take place frequently. In addition, due to the high cost of entry into this business, primary lenders will wish to have rights not only to the equipment located in the building, but also a right to step into the shoes of the TSP and take an assignment of its rights under the lease. Finally, consolidation and restructuring are also daily events in the world of TSPs and to ensure that typical large scale transactions of the TSP's assets can take place, a TSP will require the right to assign its assets including the lease to a purchaser of all or a material part of its business.

To ensure that tenure is not disturbed, a TSP will request that the lease or notice thereof be registered on title. Many landlords would prefer to grant the TSP a license and this is satisfactory provided adequate assurances are provided to the TSP that any purchaser from the landlord will take title subject to the license agreement.

3. SPEED MARKET/DEPLOYMENT

A TSP will request that the landlord act with reasonable dispatch in approving any installation of equipment and any modifications or upgrades as may be required to enhance or improve service. Often it will have a customer already waiting for service before it approaches the landlord. Unfortunately, a landlord's cautious approach is inconsistent with the speed by which the telecommunications industry moves. The landlord's desire to become familiar with the intricacies of the TSP's business as a precondition to allowing entry and the marketing of services makes it difficult for new entrants to deliver the promises made both to the landlords and their tenants. Suitable wording must be found to balance the TSP's need to install services quickly and the landlord's need to control and monitor such installations.

4. EVENHANDEDNESS

Many landlords are now seeking to control telecommunications by introducing the notion of a central distribution system through which all TSP's will provide their services. As long as each and every TSP is treated with an even hand and is required to redeploy through the common platform and pay equivalent rates, a TSP should not object to the landlord's desire to control telecommunications within its building through this process. TSPs and landlords are aware that

the expense and risk of creating and managing a central distribution system is currently uneconomic, except for the largest buildings.

5. SUBORDINATION

Landlords seeking a TSP's covenant to subordinate the lease or any rights granted to the TSP to any rights granted by the landlord to its lenders is acceptable to a TSP provided the landlord's lenders agree not to disturb the TSP if the TSP performs its obligations under the terms of the lease or license as the case may be. This ensures the continuity of access for the term, including extensions, sought by the TSP in the first instance.

6. 24 X 7

A TSP will require access to the landlord's building 24 hours a day, seven days a week to services its customers and equipment. Other than in the case of emergencies, a TSP should not object to providing prior notice to the landlord and detailing the nature of the work intended to be conducted. In addition, a TSP is prepared to pay for any additional costs that may be incurred by a landlord if the landlord is required to retain additional staff to supervise the access outside of ordinary business hours.

7. EARLY TERMINATION

A TSP which requires rooftop premises will also seek to have a right of termination in the event that its network does not function as a result of interference. For instance, a TSP's antenna on a landlord's rooftop may not be able to receive and transmit a signal if a new building is constructed which interferes with the line of sight of the TSP's antenna.