

Know the Risks Before Signing Wireless Rooftop Leases



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Rooftop leases can mean good money, but there are potential pitfalls.

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A tenant that takes space nobody else can use, requires virtually no building services and pays the rent on time might seem to be a landlord's dream come true. But owners should consider a reality check before committing to a long-term lease of their rooftop space to telecom equipment site lessees.

The vast market penetration of cell phones, pagers and other wireless personal communication devices necessitates the placement of antennas, transmitters, receivers and related equipment in cities and towns across the country. Often, a building owner doesn't even need to do anything to attract rooftop tenants – if the building height and location meet the needs of telecom equipment site lessees, they will find the owner. Buildings may not even need to be tall. In suburban and rural areas, a three-story building might attract multiple equipment site lessees.

For the uninitiated property owner, rooftop site lessees make the process as easy as signing on the dotted line. Lessees typically arrive with short, pre-printed form documents, which they may refer to as "license agreements." They want to sign deals quickly, to get their wireless telecom networks up and running. Landlords, seeing the opportunity for extra income with no apparent downside, are tempted to sign the agreements without giving much thought to the possible rights they may be giving up or problems that could occur. This is a mistake.

One question to consider is what will happen to the equipment at the end of its useful life. The wireless telecom industry is evolving so rapidly that equipment installed on a rooftop today is likely to be obsolete before the lease has expired. Landlords should make lessees responsible for removal of equipment when the lease term is up.

A more complicated set of issues involves the wireless industry's consolidation trend and concerns over certain lessees' financial stability and solvency. As companies are acquired by or merged into competitors, there's likely to be redundancy of equipment leasing sites. That might cause lessees to seek ways to worm out of their leases.

Also, given the volatility of the stock market and venture capital investment in the telecom industry, careful scrutiny of each lessee's financial statements is essential, and securing substantial security deposits and/or guarantees is advisable. As a rule, landlords should give these issues the same (or greater) attention that they would for a tenant with a roof over its head.

Landlords should also be aware that hazardous waste issues could be a concern, due to the alleged health hazard of non-ionizing microwave radiation and electromagnetic fields. Although these substances are not now classified as hazardous, property owners should include language in their site agreements protecting their tenants and the surrounding community if any wireless technology should become classified as hazardous in the future.

The visual impact of wireless telecom equipment should be another consideration. This problem has diminished in recent years, as wireless telecom equipment makers have made their products more compact and less obtrusive. Still, building owners will have more success at keeping rooftops free of clutter if they work with site lessees up front to take advantage of camouflaging cornices and precipices wherever possible.

Building owners should also determine what forms of access and utility easements wireless telecom tenants may need. In addition to rooftop access, equipment site lessees often must place equipment in a building's mechanical areas, so some level of access there is necessary. A lease document that fails to account for this isn't in the landlord's best interest.

As telecommunications firms continue to woo customers with promises of improved signal clarity, their need to place equipment on rooftops increases. The "found money" they bring can be a dream come true for a building owner who takes the proper precautions to ensure that the dream does not turn into a nightmare. Owners shouldn't be dissuaded from making rooftop leases because of the potential pitfalls, but they should give the transaction documents the same scrutiny that they would for any other tenant. □