companies such as OpTel, GE ResCom, Castle **Cable, and Cable** Plus, estimates that independent companies servicing properties with 500 or more units account for about 1.25 million to 1.5 million "passings," or units both built and under construction with access for **cable** and telephony. But the number of actual subscribers serviced at multifamily properties by private **cable** companies was 847,380 in 1995, a slight easing off from 1991's 870,000 subscribers, according to Carmel, Calif., **cable** consultant Paul Kagan Associates Inc.

Despite lackluster **cable** subscriptions for the first half of the decade, private phone and **cable** service **revenue** sharing represents a significant portion of the STS industry's targeted 6 million apartments found in buildings with 200 or more units. OpTel, one of the largest independents, serves more than 100,000 customers at more than 700 multifamily properties. Several Lincoln Property Co. communities and Dallas-based Basic Capital Management, which owns nearly 20,000 units, are among those that have entered into agreements with OpTel for **cable,** phone, and security channel services.

Anne Walker, a principal with Santa Rosa, Calif.-based Castle **Cable** and a board member of ICTA, says the industry standard's range of property-owner royalties is 5 percent to 12 percent of gross **revenues.** Assuming residents spend, on average, $ 90 a month for phone and **cable,** owners could earn from $ 55 to $ 130 per unit, per year. In addition, these agreements allow owners to save on wiring costs, up to $ 1,000 per unit in some cases.

"The deregulation of the telephone industry is making the opportunities become a reality," says Steve Quist, vice president of product development for Insignia Financial Group's Compleat Resource Group (CRG) a resident products and services group-discount organization. "You don't have to install the costly premise gear at sites and can still offer the convenience and savings to residents."

CRG has rolled out 100,000 units in its program, which includes a **revenue** sharing agreement on telephone service through GE Capital ResCom, a General Electric unit. Residents of CRG's program receive 10 to 20 percent savings on local and long-distance services and can have service set up for move-in date when they fill out their application. CRG has also started to offer **cable** packages to some properties.

Private phone and **cable** used to be an amenity reserved for luxury apartments such as those owned and managed by Dallas-based Columbus Realty Trust, AMO[R]. Columbus Realty residents have been receiving private **cable** service since the '80s and independent telephone service switched via on-site private branch exchanges (PBXs) since 1992. Through services provided by Dallas-based MultiTechnology Services (MTS), tenants enjoy the amenities of wake-up calls, four-digit dialing, and a property channel.

"By participating in the process of providing telecommunications services, we can offer properties at lower rent while still making a yield that's attractive," says Tom Wilkes, senior vice president of management for the Dallas REIT's 22 apartment properties. Columbus Realty's typical property is around 300 units, making the venture feasible. "Below 150 units, if you don't have an adjacent property to share the switch with, it's just not practical," says Wilkes.

Not every deal with the independents has been rosy. Some hard lessons have been learned. "This is an industry in its infancy, and it has had some growing pains," says Wilkes. "There have been some real nightmares out there with private providers, companies that have put switches in and been unable to service the residents or have gone bankrupt during the installation."

Dallas-based ICS Communications, for example, grew too fast with properties that were too small. Backer MCI Communications may have written off a $ 100 million investment in ICS, according to Forbes magazine. "When ICS bellied up, more than 200,000 units across the country were in disarray," says Houston telecommunications and multimedia consultant Charley Bassler. "Owners couldn't make them perform and couldn't make them conduct a quick exit from the properties. There was damage to the properties and to the residents." Bassler stresses the importance of exit strategies in the agreement language if a provider needs to pull out because of poor performance.

"We look at the track record of service that [the independent] has provided," comments Wilkes. "We also look at the size of the company to see if they are going to be able to invest the money and then service the customer."

In addition to private **cable** and phone, there are a number of independent providers offering Internet access to multifamily properties with a **revenue** sharing program. Part of the game is keeping up with the technology needed to deliver higher-speed communications. Most existing wiring won't accommodate renters who want to hook up their lap tops using today's standard-speed modems. Perhaps a wiring retrofit is in order.

"In the old days, you had four wires in a building: red, green, yellow, and black. If you see that, you're in trouble," explains Bassler. The colors of upgraded wiring now run blue and white or orange and white. "If you see that, you're OK; you have twisted pairs. The tighter the twist, the higher the speed."

Wide-area network resellers (WNRs), like Gary Berzack, managing director of Manhattan-based Tribeca Technologies, analyze the **profitability** of telecommuting and Internet connections, install them, and also market their benefits to residents. Berzack says putting in a T1 line, a high-speed digital telephone line ideal for Internet data, is just like providing **cable.** The property manager can distribute the cost of the line and subscription through shared access. For $ 3,500 to $ 4,000 a month, says Berzack, an owner can economically put in a T1 line with a router that allows up to 100 simultaneous users.

"On a 500-unit property, property owners could realize a long-term return of $ 60,000 to $ 100,000 per year, if the telecommunication services are packaged correctly," says Berzack, assuming a $ 20 per-month, per-unit income and up-front costs ranging $ 50,000 to $ 100,000 to install an ethernet and other building wiring improvements.

The Bells Have Whistles, Too

"[Private providers] have awakened a sleeping giant in the form of the local franchise providers, and the LECs have come out firing," says Wilkes. The LEC response to the **revenue**-sharing programs of the private telecommunications providers is to offer signing bonuses or commissions. Because of the volatility

of the industry, owners have become cautious and have kept open discussions with the LECs, who are ardently attempting to retain their existing telephone customers.

"Every [local] phone company I know - U.S. West, Southwest Bell, Bell South, Ameritech - has a commission program and will train your leasing staff to sell its services," says Andy Bane, director of corporate service at Apartment Investment & Management Co., an apartment REIT based in Denver. "Their goal is to lock down existing customers and to eventually offer them bundled services." The LECs tout their ability to offer passive dial tones, where the line is always live for 911 or 811 calls. New residents can plug in the phone, dial 811, and have phone service hooked up remotely within two to four hours of the call. Many of the private providers cannot offer such a quick turnaround.

Another advantage the LECs offer is extended services through central office switching. Most private providers offer phone service through an on-site PBX that is limited to call waiting, three-way calling, and caller i.d. without names. The central office switch allows for caller i.d. naming, call trace, and other services.

But local telephone companies come with their own set of problems. Because the Bells are so heavily regulated by the FCC to meet a "checklist" of requirements before they can offer long distance service, they are limited on what bundled services and **revenue** share they can offer property owners.

The Bells have been slugging it out in state arbitrations with the long distance carriers and other CLECs that want to offer local service. Roughly 180 arbitrations were in the courts at press time, attempting to resolve differences over the interconnection order issued by the telecommunications law, which set up deep discounts for CLECs to encourage competition.

The Bells typically hold sway with state utility commissions, which appears, in some states, to be drawing out the issue of setting fair rates for at least another year. A recent stay of FCC interconnection rules indicates that local-phone rates and bundling opportunities may be determined at the state level.

All-Purpose **Cable**

Bundled services are not quite there yet for **cable.** It may be a couple of years before **cable** companies offer telephony due to technology and capital obstacles - not to mention arbitrations. Some estimate that it would take $ 2 billion for Time Warner, for example, to hook up all its **cable** customers to fiber optic networks.

Cable also faces certain regulatory hurdles before open competition becomes a reality. There are 13 states that still uphold forced access by the local franchise, excluding other providers. Whether or not the FCC will overrule the access laws has yet to be determined.

But if access laws are not an issue in your state, you could stand to gain something by arranging for **cable** service to residents. "In the past, the franchise **cable** operator took the subscriber as free fruit on a tree," says Heifner. "Now they'll pay $ 500 to $ 2,000 per subscriber to get access."

Do-It-Yourself Options

For those with enough capital, there are several do-it-yourself options. Installing and running your own private **cable** system is one option that companies like Heifner Communications specialize in. Heifner has set up over 1,000 private-**cable/**satellite-receiver systems nationwide, representing almost 500,000 units. He relates an example of one property owner of a 400-apartment community who invested $ 100,000 in a **cable** system and sold **cable** service at $ 1 a month to attract college students. Eventually he charged $ 30 a month, still
beating the local franchise by $ 6 a month, and saw a 5 percent occupancy increase.

But installing your own **cable** or telephone equipment requires serious capital outlay, and, for some, a partner. Houston-based Camden Property Trust has joined forces with Teleport to create a fiber optics network on which it plans to spend several million dollars. Through a "complex agreement" and investment in operations with Teleport, Camden has wired its 8,000 units in Houston and Dallas for fiber optic telephone service with high-speed Internet access to follow property by property early this year.

Boyer Taylor, senior vice president of Camden, says that although it costs $ 10,000 to $ 50,000 per property to tap into the local Bell's paired **cable** lines, "The rate of return is a higher percentage basis than the return on the real estate." According to Taylor, the cost is justified by the advantages of fiber interconnection: central office switching, a "self-healing sonet ring network" that protects against call interruption, and the ability to offer multiple services over the same line. The primary advantage of Teleport's fiber network is central office switching, says Taylor, which offers the same benefits as the LEC and better economies of scale.

Through an affiliate, Teleserve, Camden has also begun offering its fiber network as a third-party service to owners in other cities. It is part of a trend that includes companies that, because of the network unbundling, can use their customer base and brand name to start a telecommunications company.

"One could start a telephone company and serve customers, complete their calls, send them bills, and get paid - all without operating any physical network equipment because you can do it through the resale of the components through other carriers," says Tobin, "provided that the state regulatory bodies carry out the wholesale pricing properly."

Future Services

In these heady days of the Information Age, a new means of communication delivery seems to come out every quarter. A host of new systems, including **cable** modems and asymmetric digital subscriber line (ADSL) modems, hybrid coaxial fiber, and wireless Internet connections, will be hitting the market over the next decade.

The latest technology upgrade race is between the **cable** companies' **cable** modems and the telephone companies' ADSL modems. Both are extremely fast, high-speed wiring connections (up to six times faster than a T1 line) ideally

suited for Internet connections. But while **cable** modems are slightly faster, ADSL has the two-fold advantage that it runs on existing telephone lines and offers the security of point-to-point dedicated lines. Thus, the dozen or so **cable** modem operators are pushing for home markets, where data security is not as crucial, and ADSL will most likely be marketed by CLECs and Bells as suited for the office sector.

Experts predict that costly ADSL modems (in the thousands of dollars) will drop to competitive prices ($ 250 to $ 300) within two years in order to compete with **cable** modems on price. **Cable** modem services, available in limited areas, are running $ 50 a month for unlimited Internet access, plus $ 100 installation.

"If the **cable** modem guys offer you 10 percent of gross and are selling Internet services for $ 35 or $ 40 a month, that's like adding another **cable** subscriber," says AIMCO's Bane. "With just 30 subscribers you could get back your investment in a couple of months."

The other big roll out ahead is wireless. The selling of $ 18 billion worth of personal communications services (PCS) licensing by the FCC to companies has created a surge of wireless networks that will air faxes, e-mail, and Web pages on pocket-sized devices. Some experts predict that by the end of the year as many as nine wireless providers will pop up in major metropolitan markets that are now served by two.

Keeping the Gates Open

Though some say the multifamily market is small fry to telecommunications companies in light of the enormous customer pool dwelling in single-family homes, as the apartment industry continues to grow, more activity is being directed toward renters.

"More and more property owners are starting to look at leveraging their gateway," says Bane. "As the multifamily industry continues to be more competitive, property owners will look for new **revenue** streams and more amenities to give residents an incentive to move in."

Kent Hansen Wadsworth is associate editor of the **Journal of Property Management.**

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The pending rulings on telecommunications law have caused a stir in the multifamily industry over its rights. The commotion has been agitated by the Telecommunications Act of 1996, which set goals to encourage competition, remove regulatory delays on telecommunications and **cable** providers, and expand service access. To define what that means on the street, the Federal Communications Commission (FCC) must conduct as many as 80 proceedings in addition to those it started prior to the Act to address technology convergence issues. Many parties - from owners and independent telecommunication companies to a few Baby Bells - have expressed the opinion that the FCC should back off from imposing any more mandates in the rulings affecting the multifamily marketplace.

"There is no need for the FCC to take Draconian measures like limiting the rights of the property owner to decide how it will contract with respect to telecommunications services," says Michael Katzenstein, vice president and general counsel of OpTel, a large private **cable** and telecommunications company. Katzenstein and others are reacting to interpretations of certain dockets that would potentially wreak havoc with private property rights and **revenue** sharing opportunities for owners and managers of commercial real estate.

Currently, four major rule makings that affect property owners and managers are slowly snaking through FCC review. The first two, which were required by the Act, emerged in August: Dockets 95-59 and 96-83, the satellite zoning and MMDS (multi-channel multi-point distribution service, or "wireless **cable**") dockets. These had been loosely interpreted to mean that tenants could place satellite dishes and antennas on balconies and windows without an owner's consent. The consequent ruling on these dockets prevented condominium associations from restricting residents from installing dishes in areas under the exclusive occupancy of the dish owner. Commercial property was exempted from this ruling, but the impact on condominium common areas and multifamily owner/renter agreements was left unresolved. The FCC asked for further comment on these issues and received letters of concern from property owners about heightened safety, security, structural, and aesthetic concerns.

"In Germany and France, you look up at a five-story apartment building and see 30 dishes mounted on the window frames," says telecommunications consultant Charley Bassler, who adds that the proposed satellite ruling could have owners ending up with a real wiring mess. "When you have a complex with 500 people and 500 different providers, it's not realistic. We're trying to get recognition of a single point of entry."

One potential outcome of the satellite ruling is that the FCC may decide instead to require apartment owners to install large community-type dishes on the roof and then provide feeds to individual subscribers on the property at a reasonable cost to the residents. The concern among property owners is that installing a master system might be too costly for smaller property owners if mandated and that current master systems have been plagued with bad reception and delivery. To address the cost issue, some direct broadcast satellite (DBS) companies, such as DirecTV and Echostar, are offering smaller, affordable ($ 200) shared-dish packages for apartment owners who can pass the majority of the costs ($ 600 a year) on to subscribers.

The other two rule makings, which could require rewriting of the regulations, have raised even more hackles among the real estate industry. They are Dockets 95184 and 92-260, the inside wiring and **cable** home wiring proceedings. The **cable** home wiring docket deals mainly with owners' rights to buy wiring from the incumbent **cable** provider if service is terminated, but the inside wiring docket is the potential thorn in real property's side. Among its proposed rules are mandatory access parity to residents for providers regardless of owner/renter agreements, non-exclusivity between owners and third-party providers, and relocation of the demarcation point inside the current standard of 12 inches away from the customer's wall.

While the competitive local exchange carriers (CLECs) have pushed for mandatory access parity and non-exclusivity, smaller concerns say let the market decide. "The inside wiring docket's mandatory access component is questionable in terms of its legal authority," says Katzenstein, defending the private providers' right to compete.

The movement of the demarcation point for **cable** providers has raised logistical wiring concerns because, unlike telephone, **cable** cannot just be switched at a minimum point of entry (MPOE) box off the property, yet.

"Over a period of time, we will get the same rules for **video** as we have for telephone," says Austin, Texas, telecommunications attorney Steve Bickerstaff. "The tenant will have the right to choose, but there will be a minimum point of entry. There will be dozens of competing companies and controlling access is important to the property owner."

The FCC is expected to resolve these proceedings later this year.

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RIGHT HERE, RIGHT NOW

A Snapshot of the Industry

KIM HITSELBERGER

It's 1997. Do you know where your industry is going? Plenty of people think they do. Whether they're talking about the public's image of the multifamily industry, utility deregulation, or the impact of Megan's Law and crime disclosure regulations across the nation, there seems to be a clear vision for the long-term future of the apartment business. Each action has a specific reaction and the actions taking place now, experts say, will have a clear reaction later on down the road. Those reactions are receiving more attention now than they have in the past to ensure a profitable, viable industry years down the road.

The issues faced today are more complex than ever. That fact alone is receiving a lot of attention as technology comes more and more into play. No longer good for just accounting and word processing, computers are used as a vital communications link between different offices, between properties, and between individuals who may work just down the hall from each other. E-mail and the World Wide Web mean not only the most accurate, up-to-the-minute information is at the fingertips of professionals nationwide, but that the information provided over the wires must be just that accurate. This means more training and more attention to detail than ever before.

The basic product is changing as well. As has been the trend for the last several years, more and more developers are turning to fireplaces and garages as luxury rental communities creep up on the traditional B and C-class apartments. Where once a phone jack in the kitchen and

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master bedroom was enough to satisfy most renters, today stand bundles of wires for computers, faxes, multiple telephone lines, cable television services, recessed lighting, and dozens of other purposes other than basic phone service. And kiss Ma and Pa Bell good-bye too - more and more apartment owners and managers are teaming up with telecommunications experts and providers to bundle their own services to residents, thereby reducing the costs to renters and increasing the bottom line for apartment owners.

It seems that just about everything is changing. Is that the case? The experts say yes ... and no.

THE IMAGE IS THE THING

'We as an industry have a whole new image,' says Mary Beth Marshall, vice president with Summit Management Company, Charlotte, North Carolina. Marshall holds responsibility for more than 12,000 rental apartments and keeps a close eye on the industry through both her company and her involvement with the National Apartment Association, where she currently serves as First Vice President.

'People have a more hectic lifestyle,' she explains. Instead of planting roots in one community for 40 years as past generations did, today's professionals prefer the flexibility of knowing that they can relocate at virtually any time to pursue greater opportunities. 'I think that's why renting is now a choice rather than an economic necessity,' she said.

Others agree. 'I think the positive change in multifamily is a result of demographics,' said Thomas Shuler, president of Insignia Financial, Greenville South Carolina, currently the nation's largest owner of apartment properties. 'We are now seeing a more and more mobile society that has lost, to a certain degree, the fascination with home ownership. In fact, in many cases, these people have chosen to be renters and in having done so are feeling a lot freer. At any time, they can say forget it and move on.'

The image of the industry is changing because of two major factors, experts say. These are: Property type. As developers move more and more towards class A and premiere apartments, the units are becoming homes rather than places to stay until renters can afford to purchase homes. With physical amenities ranging from whirlpool garden-style bathtubs all the way to French doors and private patios and gardens, these apartments

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are designed for upscale professionals rather than just-graduated twenty-somethings; and Service, service, service. From watering plants while residents are on vacation, picking up and delivering dry cleaning, and car washes, to business center services and hotel-like housekeeping services, owners are offering more amenities than ever. They are designed to cater to upscale professional renters who demand only the best for themselves, their families, and their guests.

As Marshall put it, 'We're offering fabulous amenity packages and benefits.'

Others shared the same sentiment. 'We're seeing more developers thinking about going with premier product and going to their lenders to tout it,' said Jennifer Nevitt, president of Bravo Strategic Marketing, Reno, Nevada.

These developers are also looking more closely at their prospecitve markets, Nevitt added. Some even consider the stability of neighborhood schools and the local police department before making a decision as to build or not.

Some companies have gone so far as to enact policies designed to ensure residents' happiness, doing whatever it takes (within reason) to meet the needs of an increasingly demanding rental population.

'Owners are becoming more sensitive to residents' needs,' concurred Richard Kadish, president of CAPREIT, Rockville, Maryland. 'We are offering a better quality and greater quantity of service to our residents.'

In fact, CAPREIT has adopted a policy of POS - Positively Outrageous Service. Through this program, on-site managers and employees are encouraged to do whatever it takes to keep residents happy and, further down the line, keep them renting from the company. 'Our people who practice POS are rewarded through both recognition and compensation,' Kadish added. 'We try and spread that philosophy throughout our company. It's reflective of an industry which is trying to achieve better and higher standards.'

Because so many companies are offering enhanced services, experts say that leasing concessions are not only unnecessary, but well on their way to becoming dinosaurs.

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'I still see concessions where people don't even need concessions,' Nevitt said. 'The less sophisticated owners think they can go from 94 percent occupancy to 96 percent by offering this concession. What that does is catapult the whole market into thinking they can go from 94 to 96 by offering the same concessions. It's nuts.'

The services go beyond meeting today's needs. Companies are looking ahead into the future and taking steps to ensure that development completed today will meet those needs.

'In the year 2000 and beyond a lot of people will work out of their homes through computers,' Marshall pointed out. 'Apartments will be an environment for both a work life and a personal life. I think that's going to be something that's a reality.' That's why many apartments under development include a den or office, complete with adequate wiring and outlets to handle the projected increased needs.

Technology means more than better computer wiring for the industry. As laws change to handle more and more complex issues, apartment owners find themselves reacting in new and different ways.

UTILITY DEREGULATION: FRIEND OR FOE?

When telephone service became deregulated, hundreds of phone companies cropped up across the country in an effort to capitalize on a new market thrown wide open. After all, just about everyone needs phone services, right?

Today, the same thing is happening in the utility market. As deregulation takes effect and is debated in state houses across the country, the issues it brings to the multifamily industry are undeniable. The industry is reacting now and in the near future to the possibility of electricity deregulation and the possibilities it brings to apartment owners.

Luckily, the maze of questions and answers thus far indicates that the news is good, both for the industry and for its customers. Competition among various providers of electrical energy will, most agree, provide renters with lower rates and owners with greater profits.

'I see energy deregulation as a positive thing,' Shuler said. He envisions that electrical deregulation will occur in much the same way telephone service was deregulated during the mid-1980s. New providers

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will be engaged in a scramble to determine the best ways to purchase the power in bulk and resell it to customers nationwide. 'That resale will create lower prices,' Shuler said.

While the lower prices are passed on to owners of multifamily housing, they will in turn pass some savings on to their residents. As Shuler explained, 'Where a resident is currently paying their electric, an owner can come in and cut their bill from 100 percent to 85 percent of what they're currently paying. At the same time, because of bulk purchasing, the owner just picked up 15 percent per month in income that he never had the opportunity to get before. The owner wins and the resident wins.'

'As utilities continue to increase, we continue to hold the burden of paying those costs,' agreed Marshall. 'In some way, it's all going to have to get passed on.'

Marshall foresees a future in which not only electricity, but telephone, water, and gas services are purchased by apartment owners and bundled for sale to residents as a package. 'This is a whole new ball of wax. I think you're going to see people creating these new resident services and creating this revenue stream for owners.'

A major indicator of this trend was seen earlier this year, when Insignia partnered with GE Capital ResCom to produce the Compleat Resource Group (CRG), designed to provide communications services to residents of Insignia properties.

'This is going to be an exploding industry over the next couple of years. It's going to rival what you'll collect in rent after awhile,' Marshall said.

Still others said that while they do see these services becoming more and more important over the next few years, they're not sure that owners and communications service providers have taken adequate steps to ensure the quickest growth.

'I'm a little bit disappointed in the telephone and cable spread throughout the whole real estate industry,' Kadish said. 'Last year, many of us in the industry predicted that communications outfits ... would have a dramatic impact on assisting our cash flows, certainly. That hasn't happened.'

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Kadish said that while some movement has taken place in the cable television and telephone service end of the issue, he thought there would be mope activity in other utilities by now.

'Our company is looking hard at it and will probably do bulk contracts on cable and in turn, pass that along to our residents,' he said. 'It will add to our bottom line somewhat. Rendering more services to our residents obviously means happier residents which means happier numbers coming into our company.'

In the meantime, CAPREIT is looking at ways to conserve energy on all of its properties, thus saving money for both owners and residents. 'The utility side of our business is one of the most costly areas,' he pointed out.

Another costly area is liability. Laws across the country are now demanding disclosure on all properties, and that's an entirely different issue.

MEGAN'S LAW

Across the nation, states are enacting laws that mandate that registries be kept of individuals who have been released after having been convicted of sex crimes. Laws nationwide vary from releasing the information to the surrounding community immediately, to providing it upon request, possibly for a fee.

The issues for multifamily owners are big. If a property owner knows that a sex offender is living on his property but does not disclose the information, a liability suit is a distinct possibility should another crime occur.

'The issue here is disclosure,' Shuler said. 'I think the industry has been somewhat afraid of disclosure to the resident for fear that it will be a negative marketing issue.' Instead, he said, owners need to recognize that residents will appreciate the honesty coming from their property managers.

'The residents read this in the paper and they see this stuff all the time,' he said. 'We do notify residents on crime or other issues. If there is a rape on a property, we do a notice on it. I think the residents appreciate that. It's the right way to go, and I don't think it can hurt you to be upfront on issues.'

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Security and liability experts have long argued that open disclosure is the safest way to go to avoid legal problems down the road. Instead of ignoring or hiding security problems on a property, they advise, property owners and managers should be as upfront and as forthcoming as possible. Not only will this policy keep lawsuits away from the front door, but it could help bring out eyewitnesses and people with information on a recent crime.

As these laws are passed in different states, the impact will grow, particularly for the multifamily industry because of the sheer numbers of renters nationwide.

Other issues have also captured the attention of experts and top professionals

THE FINAL WORD

Much attention is currently being paid to the issue of consolidation and mergers, particularly concerning REITs. As an example, CAPREIT recently announced its merger with three CRITEF partnerships, bringing 3,765 more units into the company's portfolio.

'This was a tremendous deal for us,' Kadish said. 'We see a lot more of this kind of thing over the next several years.'

These consolidations of staff and expenses are a logical step for companies eager to improve the services they provide and retain renters for the long-term. 'It makes sense for the industry and it makes sense for the companies involved,' he said.

Shuler also sees expansion coming into play within the industry. 'Unless you are really growing and expanding your base, you don't necessarily have the resources to enhance your systems,' he said.

Finally, Shuler sees a future of expanded REITs. This, he says, spells good things for the industry and its image.

'The REITs and the pension and the other public entities are now dealing with Wall Street,' he said. 'In so doing, they are now having to report on their performance, not only on an individual property but also their operating costs as a company. This has put a new microscope, if you will, over how real estate is managed and operated that has never been there before.'

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'I think this is good in the sense that it is forcing management organizations and owners to truly focus on property performance on a daily, weekly, monthly, and yearly basis,' he continued. 'You make sure the right decisions are being made to maximize the short-term and the long-term values of real estate. It used to be that inflation would bail you out of anything and hide a lot of sins. That's not true anymore.' U

Hitselberger is assistant editor of Units.

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LOOK BEFORE YOU LEASE: TELECOMMUNICATIONS PROVIDERS FINDING SPACE UP ON THE ROOF

By Loren Singer
Topical Editor of West's Legal News

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RELATED INFORMATION

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1.0 Overview

Rooftops, billboards and water towers are just some of the sites being sought by telecommunications providers for the antennas and other equipment needed for cellular and wireless phones, digital pagers, and other communications products.

Owners of commercial and residential buildings are cashing in on the scramble for sites. Rooftop spaces, for example, earn rents anywhere from $300 to $5,000 a month, depending on the building's location and the type of devices installed.

Lawyers, too, are profiting from new telecommunications technologies. Gary Pudles, General Counsel for Apex Site Management told West's Legal News the site acquisition business is "filled with contract attorneys" and the

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telecommunications industry itself has a "high concentration of nonpracticing attorneys" pursuing nontraditional uses of their law degrees.

Lawyers and leasing agents stress that knowledge is the key to successful site leasing. One obvious concern is knowing what your property is worth to telecommunications providers. Care must also be taken in drafting the lease, to make sure that legal and technical considerations don't crimp the owner's ability to earn money from additional tenants and future technologies.

This article focuses on rooftop leasing, and it includes a checklist of items to consider before entering into a lease. The same considerations discussed here will often be true for site leasing at free-standing structures, such as signs and billboards.

It should be emphasized, however, that site leasing isn't the only way property owners can profit from the competition to provide communications services. Providers of local telephone and cable services and Internet providers are also seeking something found in apartment and commercial buildings: your tenants.

The markets for phone, cable, and Internet services are "driven by the ability to get customers," according to John Rosato of CS Technology, a site leasing firm. "Building owners have tenants. Services providers are willing to share revenue and provide free services to get access to your tenants."

2.0 Site suitability

The use of rooftops as sites for communications equipment isn't new. Television and radio stations, for example, use skyscrapers as sites for the antennas that broadcast their signals

What's new is the introduction of small, seemingly unobtrusive antennas, plus the fact that in even single-story buildings can be useful to telecommunications providers, in some circumstances.

The two hottest technologies are cellular phones and personal communications services, also known as PCS or as wireless phones. Cellular and wireless phones require the installation of antennas in a grid (or cell) pattern throughout the carrier's service area. As the phone user moves from one cell to another, the signal is communicated through the nearest transmission device.

Unlike the antennas used by over-the-air broadcast television and radio stations, telecommunications antennas don't have to be installed at the tallest buildings in town. Providers of cellular phones and paging devices may be interested in buildings of 15 to 20 stories, while wireless phone providers can use buildings of 5 to 10 stories.

Or, as Jim Innes of Apex Site Management explains, telecommunications companies generally are looking for commercial and multifamily residential buildings that are 50 to 180 feet high. Land elevation can substitute for

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building height, so a low-rise building on a hill can be just as attractive as a mid-rise building.

For example, Innes says a four-story hotel in Columbia, Md., is earning $60,000 to $70,000 in gross rents per year because it is located on a hill, making it the highest building in its area.

Sites in high-traffic areas are also important to communications networks; high traffic usually translates into a relatively high number of end users, meaning the consumers who use the phones and pagers that rely on the networks. Sites adjacent to major freeways and highways are especially desirable because they typically have less restrictive zoning classifications than sites in commercial and residential areas.

To describe some of the additional factors in site suitability, Jim Innes uses an acronym he calls PEA-squared (or PEAA).

."P" stands for power. The site must be capable of meeting the equipment owner's power needs. While the equipment owner will usually bear the cost of paying for the electricity needed to run its equipment, this assumes the site has the physical means of providing that power.

."E" stands for equipment. While some rooftop equipment will be relatively small in size and light in weight, other types of equipment can be quite heavy -- the roof must be able to support their weight. Weatherproofing and ventilation are often needed for larger equipment. Consider, too, that interior cable connections may be needed, but not all cables are designed to bend. So, for example, if the antenna must be connected to equipment located inside the building, it may be advantageous if the interior equipment is near the antenna, thus shortening the cable connections.

."A" stands for antennas. Buildings with historic designations or other architectural restrictions might be restricted in the types of equipment that can be installed

.The second "A" stands for access. Technicians from the communications providers need access to their equipment for inspections and maintenance. Ease of access is significant because "the technicians don't carry ladders and they don't like to climb," Innes says.

3.0 Bargaining leverage

Building owners may have a strong position when negotiating rooftop leases.

Leasing prices are driven by the same three factors that enter into traditional real estate transactions: location, location, and location. Telecommunications providers are seeking locations with clear sight lines to the provider's nearest equipment. "A suburban or exurban site that's the tallest thing in the neighborhood is a gold mine," Apex Site Management's Pudles told WLN.

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Consider, too, that wireless phone providers are facing "certain time frames to get their operations going," in Rosato's words. The PCS providers collectively spent billions of dollars in FCC auctions to purchases licenses for radio frequencies. The licenses impose deadlines for getting the phone networks up-and-running, and in any event, the licensees are eager to start earning money on their sizeable investments.

This makes wireless phone providers "very flexible in negotiating the terms of the lease," Rosato said, as they scramble to acquire an estimated 200,000 new sites for their equipment in the next six years. (The site estimate comes from the Journal of Property Management.)

Site owners also benefit from the competition in the telecommunications industry. Pudles describes site leasing as "leasing common area spaces to competitors, meaning companies that compete in the marketplace and on the radio frequency spectrum," where their signals might interfere with those of their competitors. Many markets will have four to six wireless phone licensees, plus providers of cellular and paging services.

To be sure, rooftops aren't the only venues for communications equipment. Free-standing poles and towers, for example, can carry the equipment of one or more carriers. But the installation of poles and towers may require zoning variances and can face opposition from neighborhood groups.

In some areas, such as North Carolina or north or central Florida, poles and towers are quite common, Innes says; in Florida, a lot of towers were built by speculators and many are located along highways. But in northern New Jersey -- a highly urbanized area -- 60% to 70% of the installations will be in buildings, 30% or more will be in existing poles and towers, and only 5% will be in new poles and towers, Innes told WLN.

4.0 Who is watching out for the building owners?

Not knowing the legal and business aspects of rooftop leasing "can cost you your rooftop," says Jim Innes.

That's why firms like Apex Site Management and CS Technology are specializing in site leasing for telecommunications.

Apex, based in suburban Philadelphia, represents only building owners and currently manages over 2,400 sites, from Boston to Florida to Chicago. CS Technology of Jersey City, N.J., represents both site lessors and lessees.

Gary Pudles, the General Counsel for Apex, says that among practicing lawyers, in-house counsel for both telecommunications companies and for large property owners have the most experience in site leasing transactions.

And site acquisition firms are "filled with contract attorneys" who specialize in these transactions, Pudles adds.

As for the representation of building owners, Pudles notes that most lawyers

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in private practice "won't have the volume to get up to speed" in these transactions. So law firms commonly call on contract attorneys to represent their clients in site leasing transactions.

Pudles believes that the skills of a lawyer can be very useful in site leasing, a line of work that involves representing clients, negotiating deals, and drafting documents. He points out that four of the 26 Apex employees are lawyers, while "some site acquisition firms are almost all lawyers."

Nevertheless, "nonlawyers can give the lawyers a run for their money," Pudles says, because site leasing involves not only legal issues, but also business issues and technical expertise in telecommunications technologies.

5.0 A checklist of leasing issues

Site acquisition agents often supply a building owner with a telecommunications provider's form of lease document. Understandably, such documents place paramount importance on protecting the lessee's rights, not the building owner's.

For example, Pudles says he's heard of lease agreements that ask for exclusive use of the rooftop -- usually a bad bargain for the building owner, who might be able to accommodate more than one lessee. In one egregious case, Pudles says the lessee asked not only for exclusive rights over the lessee's rooftop, but also for the exclusive right to install equipment at all of the owner's buildings within a three mile radius!

Here's a checklist of legal and practical issues to consider before signing a lease.

.Site evaluation. The most valuable sites will have clear visual sight lines in at least one direction toward the communications providers' other antennas. Zoning restrictions must also be considered. And then there's the PEA-squared factors described by Jim Innes: Power, Equipment, Antenna, and Access.

.Leasing vs. licensing. Telecommunications companies seek leases, not licenses, because licenses are generally terminable at will by the licensor, explains attorney Kenneth L. Samuelsonof D.C.'s Wilkes, Artis, Hedrick & Lane, Chtd Licenses are most frequently used at sites owned by public entities, but some private building owners prefer licensing because of the ease of termination. Samuelson comments that when his telecommunications company clients are "stuck with" a license, he tries to negotiate lease-like provisions; for example, the license will provide that it survives the death of the licensor. Samuelson might also record the license in the real property records, even though a license is a contract right and not an interest in real estate.

.Defining the terms. Innes says the lease must identify the physical aspects of the transaction. How much space is being leased? Where are the spaces located on the roof? How many antennas (or other devices) will be installed? How many

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transmission lines or cables will be installed? What is their size? These details are important because the number of antennas installed by one lessee, and the alignment of those antennas, could make it impossible to lease space to anyone else. Loss of good sight lines is one reason; interference with other antennas is another.

.Interference. Will signals from the lessee's equipment interfere with your or your tenant's equipment? Will you be able to reposition the lessee's equipment if interference occurs? The lease should define the radio frequencies and types of signals to be used.

.Engineering plans. A building owner's ability to understand the physical demands of the lessee's operations can be enhanced by having a copy of the lessee's engineering plans. The building owner often needs to ask for the plans in the lease, Pudles says.

.Internal needs. What are the technology needs of your tenants? For example, your current tenants may want rooftop space for their antennas and other equipment, and prospective may have similar needs. Will you rooftop leases make your property less attractive to inside-the-building tenants?

.Lease term. Communications providers typically seek lease terms of 15 to 20 years, with an initial term of five to 10 years plus renewal options in five-year increments, Innes advises. Escalator clauses are often appropriate, to account for inflation during the lease term.

.Early termination for the lessee. A penalty of six month's rent is reasonable if the lessee terminates the lease before it expires, Innes says, but it's appropriate to provide for penalty-free termination if the site is no longer compatible with the lessee's operations, from a technical standpoint.

.Early termination for the lessor. Innes says that when a potential lessee is eager to acquire a site, it may be willing to give early termination rights to the lessor, in exchange for the same rights for the lessee. Early termination can help the lessor regain its rooftop space for use by its building tenants, or give the lessor the opportunity to make a new (and more profitable) leasing deal with someone else.

.Capital outlays. Modifications to the roof may be necessary, and other expenses might be incurred, such as legal expenses to gain zoning variances. Telecommunications providers will usually pay these expenses.

.Systems usage and servicing. Often, the lease will be "cost-free" to the building owner, other than the expenses of negotiating the lease. If the provider's equipment will use electricity, you may want to make sure the equipment uses a separate meter.

.Restoration. If the installation or removal of the lessee's equipment will significantly alter the rooftop, the lease should state who bears the responsibility of restoring the rooftop to a defined state of usefulness.

.FAA lighting requirements. The building owner should determine if the antenna

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or other structure is subject to the Federal Aviation Administration's lighting requirements. If it is, the lease should define the lessor's and lessee's responsibilities for meeting these requirements. See 47 C.F.R. § 17.7 ("Antenna structures requiring notification to the FAA").

.Damages. If interference from other antennas on the roof or problems with building systems cause a lessee's equipment to stop functioning, what is the lessor's potential liability to the lessee? Or to the lessee's end users? Liability for consequential damages can be a "blank check," Kenneth Samuelson says, because "there's no way of telling" how many people will be affected by the interruption in service; the failure of one antenna can be the loose link that breaks the "chain" of antennas in the lessee's network. The lease itself may be silent on the point, with liability imposed under common law principles. Samuelson adds that when building owners are willing to assume express liability for consequential damages, the dollar amount of liability is usually capped and the events that trigger the building owner's liability are carefully circumscribed.

.Remedies. If the lessee doesn't make its lease payments, the building owner wants to be able to get the leased space back by removing the lessee's equipment. The lessee is concerned with alleviating the kinds of problems that can lead to consequential damages, and may want the lease to provide for equitable relief or for self-help mechanisms that remove interferences and get the lessee's equipment up-and-running.

.Health risks. Are there health risks associated with antennas, satellites and transmitters? The Journal of Property Management points out that one study found wireless equipment is only "as harmful as the clock radio on your bedstand." Nevertheless, some people -- including, possibly your tenants and your neighbors -- see a radiation risk from electrical and magnetic fields (EMFs).

.The future. "Many building owners are being bombarded by vendors who want to provide building services or lease space for communications equipment," Rosato says. If owners aren't careful in sorting through the offers and in structuring the actual deal, it may "limit them in the future" by foreclosing opportunities to profit from new technologies.

RELATED INFORMATION

LAW

--Section 704(a) of the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (S. 652), Feb. 8, 1996, codified at 47 U.S.C.A. § 332(c)(7) ("National wireless telecommunications siting policy" regarding local zoning approval), 110 Stat 56

REGULATIONS

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