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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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April 23, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Submission, WT Docket No. 99-217 & CC Docket No. 96-98

Dear Ms. Salas:

Please find attached a letter from Kathleen Wallman, on behalf of the Real Access Alliance, to Thomas Sugrue, Chief of the Wireless Telecommunications Bureau, delivered today in connection with the proceedings noted above.

In accordance with the Commission's rules, for each proceeding I submit two copies for the record.

Respectfully submitted,

Brett Tarnutzer

Brett Tarnutzer

cc: Peter Tenhula
Adam Krinsky
Thomas Sugrue (WTB)
Jim Schlichting (WTB)
Mark Schneider
Ben Golant
Jeffrey Steinberg (WTB)
Lauren Van Wazer (WTB)

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FEDERAL COMMUNICATIONS COMMISSION
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Thomas J. Sugrue, Esquire
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chief Sugrue,

I am pleased to update you on the latest, very encouraging developments in the Real Access Alliance's efforts to reinforce choice in telecommunications to consumers in multi-tenant office buildings. In December, I sent you a copy of the draft model license agreement the RAA created to help streamline and speed the process for the entry of telecommunications providers into commercial multi-tenanted buildings. That contract was developed by incorporating provisions from numerous forms and executed access agreements involving a broad variety of telecommunications carriers and building owners. The draft agreement was disseminated for comment to a wide range of telecom companies and industry associations, and to companies and associations in the real estate business as well. The response was impressive, with over one thousand particularized comments received to date from numerous real estate, ILEC, CLEC and BLEC commenters.

The RAA collated these comments and, in an extraordinary effort, sorted and considered each of them. Most of the comments were adopted and the materials accompanying the recirculated draft indicate where those changes were made. Where major comments could not be accommodated, the reasoning for not including the comment was also briefly recorded in those same materials.

The new draft has now been circulating for some time, and the RAA anticipates receiving final comments on the revised and recirculated model license agreement this week, including comments from the Smart Building Policy Project. We have included a copy of the latest version of the draft model license agreement along with a catalog of comments. The red lined version that incorporates the comments that were accommodated is very voluminous and rather than attach it here, the RAA has made it and all of the other documents available for public review on the RAA web site at www.realaccess.org.

In addition to the ongoing process of developing a model agreement for telecom provider access to office buildings, the Alliance is continuing its substantial educational efforts. The educational programs by Alliance members have focused on how the model agreements can be used to expedite tenant access to competitive services and have been well received by real estate and telecom audiences. A major session on the model agreements at a San Francisco program will soon be repeated in Atlanta and another program — focusing on use of the model agreement in buildings with Federal tenants — is slated for May here in D.C.

In addition to developing and educating relevant sectors of the public regarding beneficial use of the model license agreement, the RAA recently released the results of a tenant survey conducted by Knowledge Systems & Research, Inc. to assess the level of customer satisfaction with telecommunications service and the degree to which tenants reported unmet needs. The results show that an impressive ***94 percent*** of tenant respondents indicated that the telecommunications services currently being offered meet their needs, while only one percent said building management had ever denied requests to obtain services from a provider not already serving the building. The complete results were filed by RAA in its reply comments to the Wireless Bureau's Further Notice, and more information is also available on the RAA web site.

I am pleased to report to you on these ongoing efforts - both the model license agreement and the continued data gathering – which have involved monumental work by the RAA and a renewed openness in the dialogue between building owners and telecom service providers. These efforts well serve the shared goal of the FCC, the RAA, and, we believe, the CLEC industry: protecting and promoting commercial tenants' choice in telecom services.

We expect to provide a copy of the final model license agreement as soon as it is ready, and would be happy to field any questions you might have about the document.

Respectfully,

Kathleen M.H. Wallman

cc: Peter Tenhula
Adam Krinsky
Thomas Sugrue (WTB)
Jim Schlichting (WTB)
Mark Schneider
Ben Golant
Jeffrey Steinberg (WTB)
Lauren Van Wazer (WTB)

Enclosures

CATALOG OF COMMENTS ON THE DECEMBER 13, 2000 DRAFT MODEL LICENSE AGREEMENT

Sec. No.	Comments:	Actions Taken:
TRANSACTION SPECIFIC TERMS AND CONDITIONS ("TSTC")		
TSTC Page 1, Intro	Agreement should be entitled "Telecommunications Lease Agreement"	Agreement to continue to be a License. Language added to §24 Successors and Assigns.
	In the 1st paragraph, 4th line, after "Services to" insert ", or for the benefit of,"	No change. Services are to Tenants only.
TSTC 1.2	"Licensor" shall be defined as "_____, as landlord under this Agreement."	No change. Consistent with Agreement being a license.
TSTC 1.3	"Licensee" shall be defined as "_____, as tenant under this Agreement."	No change. Consistent with Agreement being a license.
TSTC 1.4	In the 2nd line, after "known as" insert "(more particularly described in the legal description attached as Exhibit ___)"	No change. Legal description unnecessary.
TSTC 1.6	Fill in the blank with "five (5)" and delete "months/"	No change. All time periods to be negotiated by the parties.
TSTC 1.6, 1.8 & 1.15	Commercial leases always have specific terms, usually a number of years. This real estate concept, however, does not easily translate to ILEC operations within buildings. The nearest equivalent to the termination of a lease, in the context of a telecommunications license with an ILEC, is to move the demarcation point to the building's minimum point of entry (MPOE). For example, the typical ILEC form of license agreement generally allows the landlord to require the demarcation point to be moved to MPOE after the first five years of the license, at the option of the landlord, so long as the landlord pays the ILEC the then net book cost of the infrastructure and the cost of re-terminating the demarcation point. This deals with the concept of termination of an ILEC's rights within the Building in the context of telecommunications laws and regulations rather than inapplicable commercial leasing principles, and also protects the ILEC from a stranded investment.	No change. All TSPs to be subject to mutually agreed to terms, including the ILEC. Note that §1.15 is now §2.3.
TSTC 1.7	In the last line, after "first" insert ", subject to the termination provisions in Section 1.14 of the Transaction-Specific Terms and Conditions."	Changed. Note that §1.14 is now §1.13.
	Fill in the blank with "ninety (90)"	No change. All time periods to be negotiated by the parties.
TSTC 1.8	Replace "year" with "month"	Changed to delete either. All time periods to be negotiated by the parties.

Sec. No.	Comments:	Actions Taken:
	Fill in 1st blank with "two"; fill in 2nd blank with "five (5)"	No change. All time periods to be negotiated by the parties.
TSTC 1.9	License Fees should be described on a separate exhibit, Exhibit N	Changed. All fees to be shown on an Exhibit. Parties can negotiate other financial provisions.
	Create an exhibit for license fees	Changed.
TSTC 1.9, 1.10 & 1.12	ILECs do not pay rent or license fees for the right to serve tenants in office buildings. Their tariffs in each state generally provide that their obligation to serve tenants in a building is contingent upon obtaining access from the building owner and/or the tenants. While a CLEC, which can pick and choose the buildings it serves, might decide to pay a landlord for access, an ILEC is the "provider of last resort" and serves many thousands of buildings. ILECs cannot establish a precedent of paying landlords for access to commercial office buildings. Also, ILEC's do not support what would amount to a transfer payment from the ILECs to the real estate industry with no value added to the end-user customer.	No change. Note that §1.12 is now §2.1.
TSTC 1.10	Delete section	No change. This can be separately bargained for.
TSTC 1.11	Delete section	No change. This can be separately bargained for.
	Fill in the blanks with "two percent (2%)"	No change. All time periods to be negotiated by the parties.
	This provision is inapplicable	No change.
TSTC 1.12	Delete section	Default rate remains, but additional provisions as to interest rate are eliminated. Note that §1.12 is now §2.1
	In the 3rd line, after "installments" delete "on" and insert "no later than"; before "day" delete "first" and insert "fifth" In the 6th line after "an amount equal to" delete ": the Annual Increase; multiplied by (b) the License Fees for the prior calendar year (including the accumulation of prior Annual Increases)" and insert "(%) per year"	No change.
	After the phrase "without demand, offset, abatement, diminution or reduction," add the phrase "(except as expressly provided herein)." Interest should not accrue until after 10 days notice and opportunity to cure; provided,	Revised as requested, subject to all time periods being left to negotiations between the parties.

Sec. No.	Comments:	Actions Taken:
	however, in no event should the Licensor be required to provide more than two such notices in any calendar year.	
	In the 2nd line, delete "monthly" and insert "quarterly" In the 3rd line, delete "calendar month" and insert "quarter" In the 4th line, delete "calendar months" and insert "quarter" In the 8th line, after "diminution or reduction" insert "except when a good faith dispute exists as to amounts due which will be resolved in accordance with Section 40 of this Agreement." Add the following as the last sentence in the section: "In the event that the Tenant occupancy level in the Building falls below fifty percent (50%), the amount of the License Fees to be paid by Licensee will be reduced by fifty percent (50%) until the occupancy rate rises above fifty percent (50%).	No change, but the parties can modify as applicable.
TSTC 1.13	Delete section	No change. Note that §1.13 is now included in §1.9 and Exhibit M.
TSTC 1.14	At the end of the 3rd line, delete "approved by Licensor in its reasonable" In the 7th line, after "restore" add "the portion of" and after "Premises" add "damaged by Licensee" In the 8th line, delete the sentence "Prior to its entry into…" In the 6th line from the bottom, insert ", subject to latent defects" after "Effective Date" In the 3rd line from the bottom, insert "directly" after "arising"	Revised, other than the last 2 requested revisions. Note that §1.14 is now §2.2.
	In the 4th line, after "in its reasonable" insert "discretion"	Revised.
	While a CLEC may be able to look at a building and decide not to serve it, an ILEC, as "provider of last resort," does not have that luxury. Therefore, this provision is inapplicable. If the landlord provides the ILEC with suitable access, the ILEC will provide the service.	Can strike if inapplicable.
	In the 4th line, after "reasonable" insert "discretion"	Revised.
	At the end of the first sentence, the phrase "for the Services," should be expanded to "for the Services and Licensee's Equipment." In addition, many transactions will include some covenant concerning the condition of the Building, especially legal compliance. Consequently, the phrase "As	Revised other than the last comment.

Sec. No.	Comments:	Actions Taken:
	Is condition as of the Effective Date" should be followed by the phrase "except as expressly provided herein." Also, the indemnification by the Licensee should be limited by the following language: "(except to the extent such Claims arise from the negligence or intentional misconduct of the Licensor or its agents or contractors)."	
	In the 4th line, after "in its reasonable" insert "opinion" In the 23rd line, before "Licensee will indemnify" insert "Except to the extent due to the negligence or willful misconduct of Licensor,"	Revised.
TSTC 1.15	In the 5th line, fill in the blank with "ninety (90)" In the last line, delete "either at the time of exercise or at the commencement of the Extension Term." and insert "after all applicable notice and cure periods, at the time of exercise of the Extension Term."	No change. All time periods to be negotiated by the parties. Note that §1.15 is now §2.3.
	In the 5th line, fill in the blank with "ninety (90)"	No change. All time periods to be negotiated by the parties.
Table of Con-tents	Delete Exhibits H and J, add Exhibit N (Other Financial Provisions, if any) and Exhibit O (Security Procedures)	Revised but not deleted. Exhibits now consist of: Exhibit A: Definitions Exhibit B: Communications Spaces and Pathways Exhibit C: Equipment Exhibit D: Equipment Room Plan Exhibit E: Rooftop Space Exhibit F: Services Exhibit G: Technical Standards Exhibit H: Work Plan Exhibit I: Access Request Form Exhibit J: CDS Rider Exhibit K: REIT Representations, Warranties and Covenants Exhibit L: Building Rules and Regulations Exhibit M: License Fees and Other Financial Provisions Exhibit N: Building Security Procedures

Sec. No.	Comments:	Actions Taken:
GENERAL TERMS AND CONDITIONS		
1	After "Exhibit A," insert "and in the Transaction-Specific Terms and Comments"	Revised as requested.
2(a)	In the 2nd line, after "Building," insert "provided that true, accurate and complete copies thereof have been delivered to Licensee prior to the execution of this Agreement," In the 4th line, after "maintain" insert ", upgrade" In the 6th line, after "Pathways," insert "and Licensee may use the Building's interior telecommunications wiring and cabling to the extent owned or under control of Licensor (to the extent the interior telecommunications wiring and cabling are owned and/or controlled by the Incumbent Local Exchange Carrier ("ILEC"), then Licensor shall take ownership of such interior wiring and cabling)" Delete the last sentence in the paragraph and insert the following: "Notwithstanding any provision herein to the contrary, Licensee shall have the exclusive right to use the Equipment Room, the Rooftop Space and the portions of the Communications Spaces and Pathways actually occupied by Licensee's Equipment."	Revised to add most of the requested revisions. Must be a written request for copies of readily available material, provided at no cost to Licensor and without representation or warranty by the Licensor.
	In the 6th line, after "Services to" insert ", or for the benefit of" In the last line after "Licensee shall have the" delete "exclusive"	No change. Will be some exclusivity as to limited identified portions of the space.
	The ILECs cannot be expected to know of covenants, conditions and restrictions recorded against the building. Also, we do not understand why the License grants an exclusive right to use the rooftop of the building. ILEC's frequently to not require landlords to grant them exclusive access to buildings.	Revised for Owner to share copies it has in its control or readily available.
	In the first sentence, the phrase "and any covenants, conditions or restrictions recorded against the Building" should be deleted. It is not practical and defeats expeditious completion of this kind of documentation. Restricting the provision of Services only to the Tenants in a specific building is not acceptable in cases where Licensee intends to use the building as a fixed wireless hub site. While this right may be negotiated on a case-by-case basis, it would be helpful to include any optional provision to address this	The Model Agreement is not intended to be a "hub site" agreement.

Sec. No.	Comments:	Actions Taken:
	concern in the model agreement.	
	In the last line, after "Rooftop Space" insert "and the space within the Equipment Room designated for Licensee's use."	Revised per the comment.
2(b)	Delete the first sentence and insert the following: "The type, size and location of the Equipment located in or on the Building and the Premises shall be limited by the terms and conditions of this Agreement."	Revised per the comment.
	In the 5th line, after "Services to" insert ", or for the benefit of,"	Revised per the comment.
	Once initial installation plans have been approved, limits on modifications, additions or alterations to the type and size of Equipment are not acceptable, except to the extent the Equipment affects the size or condition of the Premises, the Building systems or the structural integrity of the Building. 24x7 access is required to the Communications Spaces and Pathways.	Revised per the comment.
	In the 1st line, before "Licensor shall have" insert "This Agreement also grants building access to third-party telecommunications companies who need to install equipment or facilities in the Building in order to provide services to Licensee. Such access by third-party telecommunications companies will be permitted in and to the Equipment Room and the Communications Spaces, as well as on and to the Rooftop Space, as needed." Delete the 2nd sentence (repetitive of 2(a))	See new §2(j).
2(c)	In the 1st line, fill in the blank with "ninety (90)" In the 2nd/3rd lines, delete "or reduce the amount of Rooftop Space available to Licensee if Licensee is not using a portion of the Rooftop Space" In the 4th line, delete "or modification" In the 5th line, after "operation of the Equipment", insert "adversely affect Licensee's ability to provide Services to the Tenants," Add the following to the end of the last sentence: ", except to the extent of Licensor's gross negligence or willful misconduct. In addition to Licensee's right to relocate set forth in Section 3(c) if the Equipment is interfered with as a result of circumstances arising after the installation of the Equipment, Licensee shall have the right, at its sole cost and	All time periods to be negotiated by the parties. Reduction in Rooftop Space revised to require indication from Licensee that will not be used. Revisions made to address operation of the Equipment and relocation as requested by the comment.

Sec. No.	Comments:	Actions Taken:
	expense, to relocate all or a portion of the Equipment to avoid such interference, provided that adequate space is available elsewhere in or on the Building."	
	In the 5th line, after "Equipment" insert "to its intended transmission locations" In last line after "such relocation" insert "unless arising out of the gross negligence or willful misconduct of Licensor"	No change as to first comment. Revised per the second comment.
	ILECs' tariffs and policies generally allow a landlord to request them to relocate their infrastructure, if the landlord pays for the cost of relocation (including the cost of labor – much of this work would be performed by ILEC employees and not by third parties). However, if the cables being relocated contain active circuits, the tenants in the building may not be pleased by this landlord requirement because of the possible disruption of service to those tenants.	No change.
	Equipment relocation is not acceptable, unless the following conditions are satisfied: permanent relocation limited to once per term; there can be no impact on operations, Equipment, or delivery of Services as a result of the relocation; and, Licensor must reimburse Licensee for all costs incurred in connection with such relocation. In addition, Licensee cannot accept a provision permitting the Licensor to reduce the amount of Rooftop Space unless Licensee is not using and does not intend to use all of the allocated Rooftop Space at any time during the term and so notifies Licensor in writing. Licensor's limitation of its responsibility for damage must carve out Licensor's negligence or willful misconduct.	Comments addressed in revised §2(c).
	In the 1st line, before "Licensor" insert "Once during the Term," In the 6th line, delete "paid" and insert "incurred" In the 6th line, delete "to third parties" In the last line, after "such relocation" insert "except to the extent caused by the negligence or willful misconduct of Licensor or its agents."	Comments addressed in revised §2(c).
2(d)	In the 1st/2nd lines, delete "to Licensor's Equipment" In the 2nd line, after "replace", insert "a significant portion of the Building that includes, but is not limited to," In the 4th line, fill in the blank with "thirty (30)"	All time periods to be negotiated by the parties. Other comments have been incorporated into the revised §2(d).

Sec. No.	Comments:	Actions Taken:
	In the 8th line, delete "technically" In the 9th line, after "Work" insert "and which will not interfere with Licensee's business or the provision of Services to Tenants or with Licensee's regulatory requirements to keep equipment operational, utilize spectrum, or meet common carrier standards. Licensor will use diligent and commercially reasonable efforts to perform the Premises Work in a manner so as not to substantially change the operation of the Equipment or materially degrade the quality of transmission of the Equipment." In the 2nd line from the bottom, after "after" add "receipt of notice that" Add the following at the end of the paragraph: "Notwithstanding any provision herein to the contrary, Licensee's obligation to pay for any relocation in connection with the Premises Work, shall be limited to once per term. If any of the Premises Work is likely to interrupt Licensee's ability to provide continuous Services to the Tenants, then Licensor will, if requested by Licensee notify such Tenants of the likely interruption prior to such interruption and the reasons therefor."	
	In the 7th line, after "installation of temporary equipment" insert "and which will permit Licensee to provide uninterrupted Service to, or for the benefit of, the Tenants"	See revised §(2)(d).
	As stated in our general comments, a requirement that an ILEC notify the landlord several days in advance before performing a repair in the building is unworkable. ILECs dispatch hundreds of repair technicians each day by means of an automated system. As a practical matter, their technicians must comply with reasonable access or security requirements of the building's on-site management, if any. However, we are willing to agree to notify a landlord before starting any substantial construction activity in the building. Construction work is usually accomplished in cooperation with building management, whereas a repair is usually dispatched at the request of a tenant/customer.	This comment has been addressed in §9. Access during Business Hours only requires compliance with security procedures. After hours requires notice, except in an Emergency Situation, which includes disruptions in service.
	Please provide a definition of "Licensor's Equipment." Assuming that Licensor's Equipment refers to telecommunications equipment, and not other equipment, facilities or building systems, Licensee can agree to use commercially reasonable efforts to cooperate with Licensor's	Comment incorporated in the revised section.

Sec. No.	Comments:	Actions Taken:
	maintenance, repair or replacement provided Licensee incurs no additional cost and its Equipment and Services are not adversely affected. We would propose to delete in its entirety the third sentence of Section 2(d) as all costs in connection with activity under proposed Section 2(d) must be borne by the Licensor.	
	In the 3rd line, delete "and work" In the 3rd line, delete "achieve said Premises Work" and insert "provide adequate access in order for Licensor to achieve said Premises Work." In the 6th line, delete "Licensee's cost" and insert "Licensor's cost" In the 9th line, after "Premises Work" insert "or the provisioning of Licensee's services."	The revised language in §2(d) addresses these comments.
2(e)	In the 6th line, after "for Licensee." Insert the following: "Except to the extent caused by Licensor's gross negligence or willful misconduct and as may otherwise be set forth herein," In the 9th/10th lines, delete "fire protection, life, safety, security," In the 13th/14th lines, delete "if the provisions of Section 1.14 of the Transaction Specific Terms and Conditions of this Agreement are not stricken,"	Adopted Rejected Rejected
	In the 7th line, after "Equipment" insert "provided Licensor is in compliance with its non-interference obligations hereunder"	Revised per the comment.
	While ILECs generally work in buildings in their "as is" condition (another commercial lease concept), there are certain limited exceptions. For example, if asbestos or other dangerous conditions are present in the work environment, the ILEC may require the landlord to correct the conditions so that there is a safe working environment. Also, ILECs' tariffs may require the tenant/customer or the landlord to provide the necessary electricity, adequate ventilation and, where necessary, adequate heat and air conditioning, in the telecommunications equipment room. However, ILECs generally do not expect landlords to be liable to them for interruptions in electrical service or HVAC.	See revised section as to Licensor's obligations.
	While Licensee can accept the premises "as is" upon	See revised section as to Licensor's

Sec. No.	Comments:	Actions Taken:
	completion of its due diligence inspections, Licensor must make standard representations regarding compliance of the Building with all applicable laws, rules and regulations.	obligations.
	In the 6th line, before "Licensor shall" insert "However, Licensor agrees that it will properly maintain the Building. Except to the extent caused by the negligence or willful misconduct of Licensor or Licensor's agents, and except to the extent of Licensor's duty to properly maintain the Building," Delete the last sentence and insert the following: "Notwithstanding the foregoing, if Licensor elects to modify or replace any existing systems in the building, Licensor will take reasonable measures to notify and work with Licensee to reduce potential interference with Licensee.	See revised section as to Licensor's obligations. Rejected.
2(f)	In the 4th line, delete "its" and replace with "their respective"	The language has been revised.
2(g)	Add the following to the end of the sentence "; provided, however, that such equipment does not interfere with Licensee's Equipment, regulatory requirements, or the provision of Services to Tenants."	No change as to "regulatory requirements", but the other comments have been recognized in the revised section.
	Add the following to the end of the sentence ", subject to Licensor's non-interference obligations hereunder."	Addressed in the revised section. Licensor has little or no obligation to insert itself into interference disputes between or among competing providers.
	The location and operation of telecommunications equipment in or on the Building by tenants, other occupants of the building, or Licensor must not have any adverse impact on the operation of Licensee's equipment or operations. As noted below, certain portions of the Building will be used by the Licensee on an exclusive basis. Paragraph 2(g) should include a carve out for space occupied and used by the Licensee on an exclusive basis.	Addressed in the revised section.
	In the 1st line, before "Licensor reserves" insert "Licensor represents and warrants that it has the full right and authority without further consent from any other party to grant to Licensee the license and rights contained in this Agreement." Add the following as the last sentence: "Licensor agrees, however, not to enter into agreements that would restrict the rights granted to Licensee hereunder or that would have the effect of preventing Licensee from providing service to any Tenants of the Building."	Authority is addressed in §40(f). The second comment has been addressed in the revised section.

Sec. No.	Comments:	Actions Taken:
2(h)	Delete subsection (iii)	Changed per the comment. See new §2(j).
	Delete subsection (ii) In the last line, after "Services to" insert "or for the benefit of, the"	No change as to subsection 2, but the other comment has been addressed.
	The restrictions on co-location and interconnection may frustrate efforts by regulatory bodies to allow CLECs to cross-connect to ILEC riser facilities and avoid the necessity of overbuilding existing riser facilities.	Co-location has been addressed in new §2(j).
	We propose to delete subsection 2(h)(iii) in its entirety as restrictions on its Services are not acceptable unless there is some impact to the size of the Premises or structural integrity of the Building or Building systems. As noted earlier, the restrictions in Section 2(h)(i) are not acceptable for wireless hubsites.	See above as to how this section has been addressed.
	Comment: the language in subsection (ii) prevents hubbing	The Model Agreement is not structured to address hub sites.
	ADD AS SECTION 2(i): "Notwithstanding any provision in this Agreement to the contrary, Licensor shall not discriminate in its treatment of the service providers in the Building (including, without limitation, the ILEC and all authorized or certificated Service Providers (the "Building Service Providers"). Without limiting the foregoing and without limiting Licensee's other rights hereunder, Licensee shall generally have access to the same facilities in the Building to which the ILEC or such Building Service Provider has access, and generally under the same terms and conditions."	Provisions have been added in the agreement to encourage and require fair and consistent treatment of all Services Providers.
	ADD AS SECTION 2(i): "In the event that Licensee determines that the Building is unsuitable for its needs, Licensee may terminate this Agreement by providing written notice to Licensor."	See new §16(e) and §16(f) as to Licensee's termination rights.
	ADD AS SECTION 2(j): "Notwithstanding any provision herein to the contrary, Licensor understands that Licensee will continue to upgrade its current technology and create new technologies to provide Services to its customers. Licensor hereby agrees to allow Licensee to upgrade its Equipment and implement new technologies for the provision of Services in the Building, provided that (i) such upgrade or implementation does not	Changed per the comment.

Sec. No.	Comments:	Actions Taken:
	impair Licensor's hereunder or otherwise materially increase Licensee's rights to use space within the Building, and (ii) such upgrade or implementation is instituted in accordance with, and remains governed by, the terms of this Agreement."	
	ADD AS SECTION 2(k): "In no instance shall any aspect of this Agreement operate to constitute an unauthorized assignment or transfer of control of spectrum licenses issued by the FCC and held by Licensee and any affiliate of Licensee."	Added to §40(e).
3(b)	In the 2nd line, after "(ii) Tenants" insert "leasing personnel-occupied office space" In the 3rd line, after "shall not" insert "materially" In the 5th line, after "telephone systems" insert ", except as otherwise permitted by FCC regulations" In the 6th/7th line, after "on or behalf of Licensor," insert "or any radio or telecommunication equipment installed by or on behalf of any" In the 7th line, after "Existing Licensees and Tenants" insert "prior to the Commencement Date." In the 9th line, delete "twenty-four (24)" and insert "seventy-two (72)" In the 9th line, after "(except for" insert "intermittent" In the 9th line, after "approved by Licensor," insert "which approval shall not be unreasonably withheld, conditioned or delayed" In the 10th line, after "corrected to the" insert "reasonable" In the 10th line, after "satisfaction of the Licensor" insert ", unless Licensee can reasonably establish such interference is not caused by Licensee's Equipment, in which case, Licensee may operate its Equipment pursuant to the terms of this Agreement." In the 11th line, after "any and all interference" delete "as set forth in this Agreement." and insert "caused by Licensee's Equipment in violation of this Agreement." In the 12th line, after "has not been corrected" insert "and is continuing"	Other than periods of time, which have been left for individual negotiations, these comments have been incorporated into the revised section.

Sec. No.	Comments:	Actions Taken:
	In the 12th line, delete "_____(__) days, Licensor may (i)" and insert "thirty (30) days after notice to Licensee of its occurrence, Licensor or Licensee may terminate this Agreement upon thirty (30) days prior written notice, or Licensor may" In the 13th line, after "require Licensee to" insert "(i)" In the 14th line, after "at Licensee's expense" insert ", provided such interference is actually caused by Licensee's Equipment." In the last line, after "from all Claims arising" insert "directly" In the last line, after "any interference" insert "proved to be caused by Licensee's Equipment."	
	In the 12th line, delete "_____ (__) days" and insert "thirty (30) days and Licensee is in fact the cause of such interference"	All time periods are to be negotiated by the parties.
	This section contains provisions which might appear to make sense from a real estate prospective, but as written would be unacceptable to many ILECs. Unfortunately, there may be occasions where some interference occurs. However, most landlords recognize that ILECs are generally not a problem in this regard. To the extent a problem does occur, ILECs are unlikely to agree to create a private right of action in favor of landlords, even if the problem is caused by the ILEC's negligence (see our General Comments).	No changes were made in response to this comment.
	With regard to the proposed indemnity of Licensor from claims arising from interference, and with regard to all indemnifications, please carve out the indemnified parties' negligence or willful misconduct.	This comment has generally been addressed throughout the agreement.
	In the 8th-10th lines, delete "and shall, within twenty-four (24) hours, cease all operations (except for testing as approved by Licensor) until the interference has been corrected to the satisfaction of the Licensor" and insert "and will use reasonable efforts to cease such interference." In the last line, after "interference" insert "with Existing Licensees' equipment that is caused by Licensee's equipment in violation of this Section 3(b)."	All time periods have been left to individual negotiation. Licensee can continue operating upon a showing that Licensee's Equipment has not caused the interference.
3(c)	In the 4th line, after "cost and expense" delete the remainder of the sentence and insert "(except that if such interference is	These comments have generally been addressed in the revised section.

Sec. No.	Comments:	Actions Taken:
	caused by Licensor or any Future Licensee, then the cost of such relocation shall be borne by Licensor or such Future Licensee) to an appropriate space in the Building with the approval of Licensor (Licensor's approval shall not be unreasonably withheld, conditioned or delayed) or terminate this Agreement without further obligation to Licensor." In the 7th line, after "FCC license," insert "and such non-compliance is not caused by Licensor or any Future Licensee," In the 9th line, after "responsibility" insert ", except as provided herein," In the 10th line, after "resulting from Licensor's" delete the remainder of the sentence and insert "gross negligence or intentional misconduct."	Licensee and Future Licensee shall have primary responsibility for resolving interference matters, rather than Licensor.
	Insert the following at the beginning of the section: "Subsequent to the Commencement Date, Licensor shall not install or permit any other tenant or licensees to install, any equipment or improvement, which will interfere with the Line of Site of the rooftop equipment. "Line of Site" is defined as the clear, open-air, direct transmission path between the Equipment and equipment located at another site." In the 1st line, delete "If the Equipment of any Future Licensee" and insert "If any equipment or improvements" In the 3rd line, delete "irresolvable" In the 4th line, after "Licensee may relocate the Equipment at" delete "its sole cost and expense, or subject to Licensor's approval not to be unreasonably withheld, delayed or conditioned," and insert "Licensor's sole cost and expense or" In the 2nd line from the bottom, after "resulting from Licensor's" delete "intentional misconduct in"	These comments have generally been addressed in the revised section.
	Please provide a definition of "Future Licensee" and include in that definition the equipment of Licensor or any tenants that is installed after the date of Licensee's installation of its equipment. In addition, Licensor must have the obligation to eliminate interference; it is not acceptable that Licensee's only remedy would be to relocate equipment at its cost or, upon Licensor's approval, terminate the agreement.	Future Licensee has been defined. The other comments have generally been addressed in the revised section.

Sec. No.	Comments:	Actions Taken:
	In the 2nd line, before "If Licensor" insert "If any Future Licensees cause irresolvable interference with the equipment, Licensor will require that the Future Licensee immediate cease operation of and remove the interfering equipment. In the 3rd line, delete "or licensees or future tenants or licensees should" and insert "should inadvertently and in good faith" In the 10th line, after "Licensor's" insert "gross negligence or"	These comments have generally been addressed in the revised section.
3(d)	In the 1st line, delete "emergency situation" and insert "Emergency Situation (as hereinafter defined)" In the 2nd line, delete "in its sole discretion" In the 3rd and 4th lines, delete "emergency situation" and insert "Emergency Situation" In the 4th line, after "Should Licensee" delete "fail" and insert "be the cause of such Emergency Situation, and Licensee fails" In the 5th line, delete "emergency" and insert "Emergency Situation" In the 6th line, delete "down" and insert "off power to" In the 6th/7th lines, after "as a result of such action" insert ", provided that such Equipment actually caused such Emergency Situation, and further provided, that Licensor shall give Licensee notice of such power shut off as soon as possible after such shut off has occurred. For purposes hereof, "Emergency Situation" shall mean a situation in which an immediate threat is posed to (i) the health and safety of the Tenants or any occupant or visitor to the Building, or (ii) the structural integrity of the Building."	These comments have generally been addressed in the revised section.
	It is difficult to envision an emergency that would necessitate shutting down telephone service, and we note that emergency situations often require the use of a telephone. We would not be willing to give a landlord the right to shut down a portion of their network, even if the landlord believed an emergency existed.	No changes have been made in response to this comment.
	It is not acceptable that Licensor have the ability to shut down the Equipment, except in the case of eminent personal injury or property damage.	See definition of Emergency Situation.

Sec. No.	Comments:	Actions Taken:
	In the 1st line, after "exists which" insert "is likely to cause imminent danger to person or property and" In the 2nd line, delete "in its sole discretion, to be" and insert "that such an emergency is" In the 4th/5th lines, delete "or should Licensor reasonably determine that the response time by Licensee is not adequate given the nature of the emergency" In the last line, after "such action" insert "unless Licensor acted with gross negligence or willful misconduct."	These comments have been generally addressed in the revised section.
3(e)	In the 1st line, after "levels of noise" insert "as established by the EPA, OSHA or other Governmental Agency," In the 2nd line, after "Unless" delete "the" In the 4th line, after "which are" delete "noisy" and insert "deemed to be noisy by any Tenant" In the 4th line, after "Building" delete "or any Tenant: In the 5th line, delete "sole" and insert "reasonable"	These comments have generally been addressed in the revised section.
	The sound, if any, emanating from an ILEC's equipment in buildings is negligible, and this section is not relevant. This is a commercial lease concept that does not apply to an ILEC's in-building cable, wiring and equipment.	No changes have been made in response to this comment.
4(a)	Delete section	These comments have generally been addressed in the revised section.
	Delete the entire section and replace with the following: "Licensee shall provide Services to Tenants pursuant to a service agreement, which shall contain the following language: Licensee may from time to time execute agreements with building owners or managers. Service is entirely independent of any such agreements. Licensor acknowledges that Licensee is the sole provider of Service and that Licensor will not have any rights against such owners or managers and shall not seek recourse from such owners or managers as a result of such agreements."	These comments have generally been addressed in the revised section.
	Delete the 1st sentence in its entirety. The first issue is mandatory expiration/termination at the end of the term of the License. In general, we understand the rationale for this clause, however, it needs to be balanced with a longer term agreement – 5 years, as an example.	The entire section has been revised, and partially responds to these comments.

Sec. No.	Comments:	Actions Taken:
	Because the length of our standard customer agreement is 2 years, any license agreement term shorter than five years necessitates renegotiation of the license agreement after a short period of time. By way of example, we have been in several negotiations situations where we have only been granted a two year term. This effectively forces us to sign customers to non-standard term lengths, or renegotiate a just completed agreement. The second issue is inclusion of clauses in our service agreements. While we understand property owners' desire to ensure they do not incur liability as a result of carriers' contracts with the tenants, we feel that our standard agreement which contains a clause that exempts third party suppliers (including tenant's landlord) from consequential damages is sufficient to cover property owners' risks. As property owners are not a party to the agreements between carriers and tenants, the less it appears a property owner is imposing its will on such agreement, the less property owners would presumably be exposed to any liability. To require that a service contract specifically state that the property owner is not a party to the agreement would seem to raise a red flag for the tenant more than anything else. If property owners have concerns about whether interruption or cessation of services constitute a default or constructive eviction of the tenant, those concerns are better suited to be addressed in the lease between the property owner and the tenant.	
	Licensee is thoroughly regulated by the FCC and state public utility commissions. Section 4(a) is unnecessary and should be deleted in its entirety.	Changed as requested.
4	Section 4(a), which provides that the telecommunications companies serving the building shall enter into service agreements with tenants/customers on terms reasonably acceptable to landlords, is wholly inapplicable to an ILEC. We sell our services to millions of customers pursuant to tariffs and regulatory requirements. In some cases, very large or sophisticated customers may order special services pursuant to negotiated contracts or limited service offerings, but those customers/tenants are usually large enough to fend for themselves without the help of the landlord. Tariffs are filed with state utility commissions and/or the FCC and the terms of the tariffs must be acceptable to those regulatory	The section has been revised in a manner that responds to this comment.

Sec. No.	Comments:	Actions Taken:
	bodies. We would not want landlords (or the Real Access Alliance) to dictate the terms of those tariffs or any limited service offerings any more than landlords would want an ILEC to dictate the terms of the leases between landlords and their tenants.	
4(b)	Delete section. Licensees need marketing rights included in the Agreement.	Changed to respond to this comment.
5	In the heading, delete "and Technical" In the 3rd line, delete "and technical capacity and standards" and insert "capacity reasonably necessary" In the 4th line, delete "as set forth in Exhibit H." Delete the last sentence.	Section 5 has been completely restructured and revised.
	In the 3rd line, delete "and technical capacity and standards" and insert "capacity" In the 5th line delete "and technical" In the last line, fill in the blank with "two (2) times"	See above.
	There is little point in asking financial and technical capacity questions of an ILEC that has been in business for decades. Please note that financial information on ILECs is often available from the applicable regulatory bodies and many of the ILECs also have rated debt. Given the desirability of ILECs as real estate tenants, their financial capacity should not be an issue.	See above.
	Delete the reference to Exhibit H and any requirement that Licensee furnish current financial or technical information. Given the minimal financial obligations of Licensee and the rapidly changing technical aspects of the industry, this Section 5 will create unnecessary burdens.	See above.
	In the 3rd line, delete "and standards" In the 4th line, delete "as set forth in Exhibit H." Delete the last sentence	See above.
6(a)	In the 1st line, after "Building Rules" insert "and Regulations" In the 2nd line, delete "other" In the 2nd line, after "operation of the Equipment," delete "the"	These comments have generally been addressed in the revised section.

Sec. No.	Comments:	Actions Taken:
	In the 4th line, after "provision of Services" insert "within the Building" In the 5th line, after "upon request." insert "Licensor will not cause Licensee to become non-compliant with all Applicable Laws, Work Plans, Building Rules, and Regulations." In the 6th line, delete the sentence beginning with "Licensee shall also pay..." In the 8th line, after "Section requires" insert "material" In the 8th line, after "no" insert "such" In the 9th/10th lines, after "not be unreasonably withheld" delete the remainder of the sentence and insert ", conditioned or delayed."	
	In the 6th line, delete the sentence beginning with "Licensee shall also pay..."	These comments have generally been addressed in the revised section.
	We are certainly willing to agree to comply with all applicable laws and obtain all necessary permits for their operations in buildings. However, we cannot agree to comply with all of the landlord's rules and regulations for a building, since many typical building rules and regulations require payments to landlords (for example, payments for the use of the building's freight elevator) or impose other requirements (such as the use of a landlord's approved contractor) that an ILEC may be unable to agree to. The building rules and regulations may also impose special notice requirements that an ILEC would be unable to comply with. However, the resolution of this issue is entirely practical. Service technicians usually have no way of knowing in advance a building's rules and regulations, but upon arriving at a building they will often be told of the building rules by the building's on-site management, and if the rules are reasonable under the circumstances, they are generally not a problem. If the service technician is unreasonable, then the on-site management may refuse access to the building.	No changes have been made in response to this comment.
	Delete the last sentence of the section and any reference to requirements that Licensee obtain consent to modify or alter its equipment. As described above, the reference to "other contractual obligations with respect to ... the Building" will lead to an unduly prolonged and unnecessary debate concerning underlying documents. It should be deleted.	These comments have generally been addressed in the revised section.

Sec. No.	Comments:	Actions Taken:
	In the 1st line, before "Licensee agrees" insert "Licensor agrees to comply with all Applicable Laws and other contractual obligations with respect to the Building." In the 3rd line, after "the Building" insert "so long as they are provided to Licensee in advance and any modifications thereto do not materially affect Licensee's rights hereunder." In the 7th line, delete "royalties or other" insert "required" In the last line, delete "and may be granted on such reasonable terms and conditions as Licensor may determine."	These comments have generally been addressed in the revised section.
6(b)	In the 1st line, before "Licensee shall cooperate" insert "To the extent Licensee is operating RF emitting equipment on the roof of the Building," In the 3rd line, after "relating to" delete "radio frequency emission levels and maximum permissible exposure" and insert "guidelines for human exposure to radio frequency electromagnetic, as may be issued from time to time," In the 5th line, delete the sentence beginning with "Licensee shall (A) ..." In the 15th/16th lines, after "In the event Licensee believes" delete "that any of the Equipment in the Rooftop Space is excluded from coverage under" and insert "the operation of its Equipment in the Rooftop Space does not obligate Licensee to submit filings in accordance with" In the last line, delete "any such" and insert "Licensee's operation of the"	These comments have generally been addressed in the revised section.
	In the 5th/6th lines, after "pro rata share of the" insert "reasonable" In the 10th line, after "in accordance with Licensor's" insert "reasonable"	These comments have generally been addressed in the revised section.
	These detailed requirements regarding the building's rooftop are inapplicable to an ILEC and appeared to be aimed at CLECs having wireless networks that make extensive use of rooftops.	No changes have been made in response to this comment.
	Delete the requirement that Licensee is responsible for its pro rata share of roof surveys. Modify the provision to require that if Licensor obtains a rooftop survey that discloses no interference, such survey will be at Licensor's sole cost and expense.	The section has been revised to address this comment.

Sec. No.	Comments:	Actions Taken:
	In the 5th line, after "Licensee" insert "if utilizing the Rooftop Space," In the 13th line, after "at its option" insert "and so long as such relocation or alteration was not made at the request of Licensor"	The section has been revised to address this comment.
7	This section contains two pages of detailed provisions pursuant to which the landlord controls every aspect of the construction of in-building telecommunications facilities in much the same way that the landlord would control a tenant's buildout of its office space. Many of these provisions are unnecessary and some of them attempt to place construction obligations on the telecommunications company that an ILEC would not accept. An ILEC's view of the construction process is much simpler – they can agree to obtain the landlord's consent before constructing their facilities in the building, and will work with the landlord during the construction process, just as their operating telephone companies have done for decades. This process can be described in a couple short paragraphs. Some of the work items in the License that an ILEC would not be in a position to agree to include providing plans and specifications for repair work, providing core drilling or in-building conduit, working only during overtime hours at the request of the landlord, labeling each circuit, allowing the landlord to specify the labor (or labor unions) to be used by the ILEC, and giving the landlord approval rights over the quality of the telecommunications work performed by the ILEC.	No changes have been made in response to this comment, but the section has been revised and simplified.
7(a)	In the 1st line, before "Licensee shall not install" insert "Licensor and Licensee agree that the Equipment will be installed in the locations depicted in the drawings attached hereto as Exhibits B, D and E (collectively, the "Work Plan"). If no such drawings are attached, then" In the 1st line, after "Licensee shall not install" delete ", alter, improve, maintain, or repair" In the 2nd line, after "is depicted in" delete "a work plan containing detailed specifications and drawings and any additional information required by Licensor, the form of which is attached hereto as Exhibit I (such work plan referred to hereinafter as a "Work Plan")" and insert "such Work Plans" In the 5th line, after ""Approved Work Plan")" insert ", which	These comments have generally been addressed in the revised section.