

Broadcast Towers Can Be Moneymakers

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Leasing tower space (or excess ground space) to multiple wireless tenants (cellular, PCS, ESMRS, WiMax) can be especially remunerative at a time when broadcast revenues have been shrinking: wireless antennas are compact and lightweight, and can be installed at relatively low levels on a tower with no effect on a broadcast signal.

Many broadcasters that operate from their own towers have been reluctant to lease space to wireless tenants or other providers of nonbroadcast services for various reasons. This thinking may no longer make much economic sense. Most wireless carriers are reliable long-term tenants. They install and maintain high-quality equipment and often are willing to fund improvements to a broadcaster's site.

Carriers are on the lookout for additional tower sites in order to eliminate gaps in coverage or to expand their networks. In many cases carriers prefer to place their antennas on existing towers rather than incur the expense and hassle of acquiring land and securing new zoning or variances.

Although federal laws purport to make it easier for carriers providing mobile telephone service to avoid zoning holdups, the process may still take years to complete. Nor can frustrated zoning applicants look to the FCC for relief. Also, proposals for new construction often result in protests by environmental and other groups or may require compliance with historic preservation laws.

By contrast, in the majority of cases, renting space on existing structures will not require additional zoning or other clearances, and municipalities tend to encourage the collocation of wireless antennas at established sites. Indeed, broadcasters whose zoning permits do not restrict the number of towers that can be built on their property may be able to enter into several ground leases with terms as long as 30 years. In some cases a carrier may be willing to purchase the tower, and enter in a ground lease and an antenna leaseback arrangement.

AM broadcasters have shied away from adding wireless antennas to their towers because of interference concerns. Engineering consultants usually advise their clients not to collocate AM and wireless tenants. Wireless carriers are fearful that their subscribers might "hear" the AM audio on their phones and cancel service. (Number portability has facilitated subscriber mobility.) However, many AM towers have been standing for decades in or near urban areas where zoning restrictions disfavor new construction and where signal penetration is problematic. Space on these towers may command premium rates.

Wireless collocation has been around since the advent of cellular, and with adequate shielding and filtering of electronic equipment, AM towers can accommodate wireless carriers without interfering with conversations or broadcast signals. AM broadcasters should listen to their engineers, but ought not accept their opinions as Gospel.

When negotiating tower or ground leases with wireless carriers, caution must be the byword. It's customary for prospective wireless tenants to present tower owners with small-print form leases. Each lease is presented as a *fait accompli*, a contract of adhesion like an auto insurance policy.

In fact, leases are negotiable and carriers know it. It's therefore important for broadcasters to avoid provisions that can present problems later on.

For example, many leases contain opt-out clauses permitting the tenant to terminate without penalty if it decides that the site is no longer "suitable." Leases may contain exclusivity clauses or may prohibit leasing to competing carriers. Most leases do not mention revenue sharing, which grants the owner a percentage of the carrier's sublease income. Leases often fail to provide for additional rent where the carrier adds antennas or other equipment.

Almost all leases give the prospective tenant a year or more to complete a rent-free due diligence investigation. Again, the carrier may reserve the right to opt out for any reason during or upon completion of its due diligence, without incurring a financial penalty.

Such biased provisions should be carefully and thoroughly vetted, and are valid topics for discussion and negotiation. Before signing a carrier-drafted lease, consider seeking input from legal and engineering counsel.

Leasing tower or ground space can be profitable. Broadcasters that are willing to participate in another line of business may find that being a landlord as well as a programmer can require little or no additional capital investment.