



PROGRAM MATERIALS
Program #3138
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Turning your Rooftops into Gold Mines

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Wireless Cell Towers: Turn Your Roof Tops into Gold Mines

March 5, 2021 – 2:00 p.m. ET

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I. Wireless Industry Need For Antenna Location

The Telecommunications industry is expanding its infrastructure with **MILLIONS** of new antennas, large and small and this, along with fiber upgrades to traditional copper lines. In part that means the industry is seeking cell tower rooftop (and other Property) sites.

<http://wirelessestimator.com/articles/2016/fcc-chief-says-the-path-to-5g-has-challenges-and-millions-of-antennas/>

Mobile Industry Background

- 2009 - Obama Administration Endorses **Mobile as Part of National Broadband Plan (BB)**
- **“Millions” of New Antennas** Are Needed to Cover the Nation and feed our Smart Phones and Machine to Machine Connections
- Avg: **20,000 -120,000 new Antennas/State**
- **Result: Industry Desperate = Increased Market Value** for Antenna Sites as Landlords of existing Cell Towers, Water Towers, Municipal and Private Buildings etc
- Industry Also Trying to Shape the Market rates “downward”
- This evolution also requires upgrades from copper to fiber lines requiring new easement access
- And then came 2020 and ...

COVID-19

- The Result of Covid -19 on Broadband is to focus public attention on gaps and shortcomings
- The effect is expected to drive more demand and therefore even more antennas ASAP

II. Pictures of Various Wireless Facilities

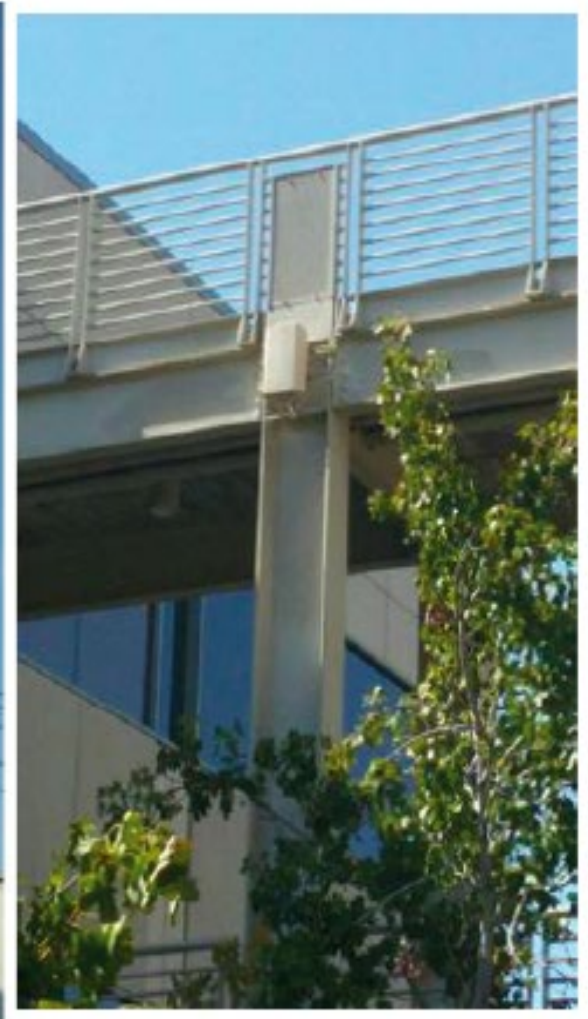
Examples of Traditional Sites



Examples of Current DAS Sites



Examples of Current Sites

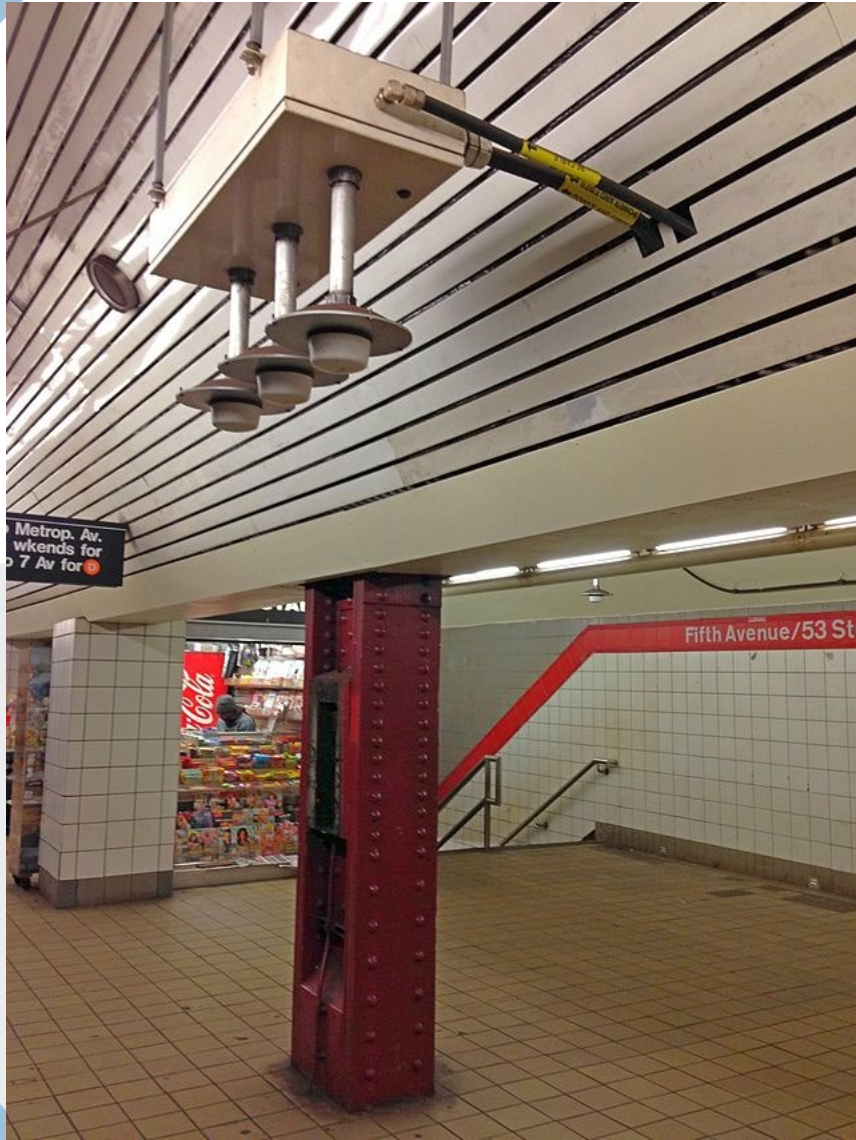


Examples of Current Sites



Examples of Current Sites





Cable Industry WiFi/Wireless





WHY THE FUSS OVER “SMALL” CELLS IN THE ROW?



“What? We Worry about Cell Towers?”



III. Rules Are Changing

- Local Community Rules
- FCC Rules
- Congress
- State Legislature

Local Community Rules

- Zoning
 - Applies to the outside of your buildings
 - Varies by Community
 - Not technically your problem
 - Let the Provider/Installer handle
 - But make sure they have done so because –
you get the citation if they didn't follow through
 - BB Pressures on Cities will cause rule changes
 - Example: See City of Southfield Cell Tower Zoning Ordinance here:
https://library.municode.com/mi/southfield/codes/code_of_ordinances?nodeId=PTIICO_TITVZOPL_CH45ZO_ART4GEPR_S5.58WICOFA

FCC & Sec 6409 & 30' Underground Expansion

- Allows expansion of existing Cell sites including most recent related rule allowing 30' expansion of underground site access
 - See FCC WC Docket # 17-84
<https://ecfsapi.fcc.gov/file/0610971105336/FCC-20-75A1.pdf> and
<https://docs.fcc.gov/public/attachments/FCC-20-153A1.pdf>
- No clear path for Landlord Control or Compensation – Address in Drafting

Traditional OTARD Regulations

- Tenant can install satellite dish, certain other antennas, and WIFI in areas under tenant's "exclusive use or control."
 - Public Notice issued June 24, 2004, clarified WiFis in hotels, airports and college dorms are protected.
- The FCC's rules governing **Over The Air Reception Devices** (cited as 47 C.F.R. Section 1.4000) are known as the "OTARD" rules.
- An OTARD can be a device to send and/or receive wireless communications for voice, video or data.
- FCC regulations limited governmental and non-governmental restrictions on a consumer's ability to install an antenna for transmitting or receiving fixed wireless signals, or receiving multi-channel video programming signals.

FCC & “OTARD” Changes

- OTARD Rules are subject to a pending FCC Order expanding OTARD Access for the Wireless Industry for use of your building not just for tenants, but for connector sites solely for the industry
 - “The FCC seeks...updating the Over-the-Air Reception Devices (OTARD) rule by eliminating the restriction that currently excludes **hub and relay antennas** from the scope of the rule”. WT Docket No. 19-71 FCC 19-36
 - Presumably building owners would be compensated – but that is not clear – Potential for increased demand and revenue – If compensation allowed

Legislation – State and Federal

- COVID-19 and Recent election has created a new paradigm.
- Proposed Legislation to date probably obsolete
- Wait and See in 2021

IV. Negotiations and Drafting Critical Terms

- Make sure to address the following critical terms in your agreements:
 - **Lease vs License**
 - License grants permission, not a property right – but limits landlord control)
 - **Non Exclusivity/Collocation**
 - **Modification and Expansion**
 - Per FCC Sec 6409 and OTARD Rules changes
 - **Interference among Wireless Tenants**
 - “If the Owner/building determines, in its sole discretion, that the Wireless Access Point or signals being transported by means of the Wireless Access Point, are the cause of any Objectionable Interference, the Owner/building may direct the Contractor/Provider to immediately cease operation of all or any portion of the Wireless Access Point, or otherwise take action to eliminate the Objectionable Interference.”
 - But FCC guards its authority closely
 - **Utility access and provision**
 - **BUILDING APPEARANCE**
 - Protect it with requirement of “Stealth” designs and Location

Critical Terms Cont'd

- **Ownership of facilities (support structures)**
- **Removal of facilities at termination**
- **Bond for Removal of facilities at termination**
- **Access for Construction and Maintenance**
- **Term**
 - Typically 5 yr renewable terms at tenant election
 - Include a penalty for early termination or non renewal
- **Rent: Rise above Industry market making**
 - Rooftops are 6 figure assets
- **RFR**
 - Strong **Indemnity** and Additional Insured on **Insurance**
 - Provider policy primary

V. Wireless RFR – The Elephant in the Room?

- **IS WIRELESS THE NEXT TOBACCO? ASBESTOS?**
- National Toxicology Program National Institutes of Health Public Health Service U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES March, 2018
 - https://ntp.niehs.nih.gov/ntp/about_ntp/trpanel/2018/march/tr595peerdraft.pdf
- FCC Claims safest Cell (Phone) standards in the world (August 9, 2019)
 - <https://www.fcc.gov/document/chairman-pai-proposes-maintain-current-rf-exposure-safety-standards>

Wireless RFR Cont'd

NTP TECHNICAL REPORT ON THE TOXICOLOGY AND CARCINOGENESIS STUDIES

- IN...RATS EXPOSED TO WHOLE-BODY RADIO FREQUENCY RADIATION AT A FREQUENCY (900 MHz) AND MODULATIONS (GSM AND CDMA) USED BY CELL PHONES
- March, 2018

Wireless RFR Cont'd

- “2-YEAR STUD[Y]...increased incidences of cardiomyopathy...malignant schwannoma in the heart...malignant glioma in the brain, adenomas in the pituitary gland...pheochromocytomas of the adrenal...in the liver...malignant glioma...prostate ...of GSM and CDMA male rats and CDMA female rats that were not observed in sham control animals.... And...significant increase in DNA damage ...observed in hippocampus cells of male rats exposed to the CDMA modulation.
- Pp 8-10

Take Away

What all This Means for You as

Landlords: **Control and Revenue**

- When you receive a call or letter from the Telecom/Mobile/Cellular Industry “offering” upgrades to wiring or wireless equipment and service, and modest agreements for new or small “bonuses” to amend Current Agreements:
- You now know:
 - 1. Industry DESPERATE to Upgrade to Fiber and Add Antennas and Associated Connections to your Buildings
 - 2. Consult with Counsel
 - 3. Renegotiate Entire Agreement
 - 4. Demand Market Rates
 - 5. Require full Indemnity

Michael J. Watza Biography

**Martindale Hubbell AV Rating
Super Lawyer Designation
Detroit Business Top Lawyer**



- Michael J. Watza is Co-Chair of the Governmental and Commercial Litigation Practice Groups at Kitch, a full service Law firm based in Detroit, with offices in Lansing, Marquette, Mt. Clemens, Chicago, Ill. and Toledo, OH.
- Mr. Watza's practice provides litigated, legislative and regulatory solutions on behalf of municipal, health care and private sector clients concerning legislation, Complex Litigation, Governance Issues, Telecommunications including Cable and Cell Towers, Energy and Insurance.
- Michael has managed multiple legislative initiatives, represented clients in State and Federal trial and appellate courts across Michigan as well as attended to regulatory matters before the Michigan Public Service Commission, Michigan Tax Tribunal, Department of Labor and Economic Growth and the Federal Communications Commission and Department of Transportation (PHSMA).
- Michael has represented clients in the halls of the Michigan Legislature and Congress through negotiation, drafting and testimony regarding legislation on various issues including energy, transmission line siting, telecommunications (cable and cell towers), pipeline regulation, the formation of inter-governmental authorities and tort reform.
- Michael also serves as General Counsel to PROTEC and the Mobile Technology Association of Michigan, the Michigan Gaming Control Board, Covenant House Central School Board in Detroit, Chairman of the Novi EDC, Chairman of Attorney Grievance Commission Grievance Panel #9, Immediate Past Chairman of the Administrative Law Section of the State Bar and Treasurer/Secretary of the Public Corporation Law Section of the State Bar and Chairman of the International Municipal Lawyers Technology Committee.
- Michael has served as an adjunct faculty member at Michigan State University College of Law having taught Communications Law and Policy and Ethics and the Practice of Law.
- In 2008, Michael successfully led a coalition of Michigan Cities to Federal Court and Congress to oppose Comcast's effort to move PEG channels to the 900 channel range and digital, at a time when all other cable channels were analog.
- In 2013, Michael provided the legal components to the development of the 1st new Municipal Fiber to the Home and Business (FTTP) project and the development of a DDA sponsored WIFI system in Michigan in the face of legislative impediments

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