

How to Make Money (Or Save Some!) Renting Space to Wireless Service Providers

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Renting space to a wireless company for an antenna often looks like an easy way to gain additional income without added expenses. The space to be rented is not often used, the tenant visits infrequently, the equipment to be installed is fixed, silent, odorless, and is out of the way. All one has to do is sign the lease and start collecting rent.

Sometimes it works that way. But it is not always that simple. While there are many examples of single antenna on remote sites in the hills, a site that is good for one wireless provider is often good for many. This creates the opportunity to generate substantial income, but also significant expenses and potential conflicts between the multiple users of a site.

This article focuses on sites that have the potential for multiple users, whether they use free-standing towers or antennae mounted on utility facilities, such as water tanks and buildings. It discusses some of the issues, problems, and methods to maintain control over the site, reduce management expenses, and retain more of the income.

An Example

The example we use to help illustrate our point is a 2 million gallon reservoir in a suburban community near a freeway. The reservoir is actively used by its water district owner. The reservoir is located on a hillside at an altitude that makes it desirable as a multi-antenna site. There are three antennae mounted on the reservoir under leases signed 15 years earlier. The District has enjoyed the income from the leases, but the rent is fixed and has not kept up with inflation and surrounding property value increases. The District also has incurred unexpected expenses in administering the site and maintaining the reservoir. The existing leases are coming to the end of their term, and the District has been contacted by several new wireless providers who are interested in the site. How should the new agreements be structured?

1. How to Structure the Deal: Lease v. License.

The more control the owner can retain, the better. A lease is an agreement transferring exclusive control of land. A long term lease thus puts the lessee in exclusive control of land for a long period, sometimes at a fixed price. A lease provides the owner with a reliable flow of income, usually for a longer period, and gives the tenant the assurance of occupancy for a longer period to amortize the cost of equipment and facilities. A lease will also require compliance with surplus property statutes¹ for municipalities.

¹ See, e.g., for water districts, RCW 57.08.120. For first class cities, see RCW 35.94.040.

The alternative to a lease is a license. A license is a right to use property. A license does not grant an interest in land, and can be exclusive or non-exclusive, and generally has a shorter term than a lease.

Tying up land with a long term lease makes it difficult to deal with multiple tenants. Licenses work better for use with multiple tenants in most situations because they do not grant one tenant exclusive control. Shorter terms provide the owner with more control because the property comes back to the owner sooner and the owner can change the license fee, the terms, or regain use of the property. In rising markets this can increase revenue from the site.

So which is best? It depends. Every transaction is different, but with multiple tenant properties, particularly when antennae equipment is mounted on an owner's facility, licenses work best. For single tenant properties where the owner has no facilities and wants long term reliable income, a lease may be the best choice.

In either case, be prepared for lengthy and costly negotiations. Wireless providers are very experienced in these transactions, and not reticent to return the lease or license document you send them with a multitude of changes.

If the market will allow, you may want to charge a site fee to recover some of your costs. Those in stronger positions may want to charge an application fee to defray costs of reviewing an application fee and negotiations.

2. Be Careful What You License (Identify All Property Interests)

Utility properties with water reservoirs come in all sizes, locations and configurations. All have some kind of water storage facility. Some may have a pump station, equipment shed, shop or office building and in some cases, space for equipment such as generators and fuel storage. All have areas for access and utility lines.

Wireless users have similar requirements. A typical antenna needs a monopole, tower, or mounting space on an existing reservoir or other structure, an equipment shed, space for power and communication lines above and below ground, and access to these facilities. All of the above need to be well planned and provided for in a lease or license ("Site Agreement") to prevent conflicts between all users of the site.

A Site Agreement needs to identify common access and utility corridors. The owner needs to have the authority to establish rules regarding their use.

The first step is to identify the location of all existing facilities, utilities and encumbrances on the site. Some situations may require a survey, which is a very important tool to define the location of existing building, utilities, and areas to be used by wireless us. This is to ensure that power and communication lines are laid in designated areas that do not disrupt other users of the Site, and to insure that areas for the equipment pads, mounting and other equipment locations are clearly designated.

For multiple user sites the planning framework needs to provide for the addition of future users. This means making sure that all rights granted, except the pad and antenna mounting locations, are non-exclusive.

3. Access and Security

A typical property with multiple users involves shared access through a security gate. In many cases maintenance work is performed by contractors who may do normal recurring maintenance or major work. The owner needs to have a well thought out process to control who has a key to the site, who enters the site, a way to require that the owner's rules are followed, and a way to hold contractors accountable for any damage they do.

As an example, site owners may require contractors using the site to register and provide the owner with insurance certificates naming the District as an insured, at least where major work is done.

The Site Agreement should authorize the owner to establish rules for access, security, and use of the site. The Site Agreement should also authorize the owner to charge users for services the owner is required to provide, such as letting a maintenance person into the site during off hours, or planning and coordinating installation or maintenance projects on the site.

4. Maintenance and Repairs

Repairs, perhaps even normal periodic maintenance should be scheduled with the owner. Maintenance may include the use of cranes, lift trucks and other heavy equipment and activities that may affect other users and which raise safety and liability issues.

The Site Agreement should provide the owner with full authority to coordinate and restrict activities on the site, including maintenance at all levels. Each user of the site should have full responsibility for safety and compliance with laws, regulations and ordinances in all their activities. The owner should be careful and seek the advice of counsel regarding how it becomes involved in safety matters.²

5. Antennae Mounted On Water Reservoirs

A water reservoir is a core utility facility and caution must be used when allowing others to drill, punch, weld, paint and do other things to a reservoir that might weaken, reduce its life, make it more expensive to maintain, or create a safety hazard. Owners should have a well thought out plan with input from engineers on what structures on the reservoir will work for multiple users without sacrificing the functionality of the reservoir. This may require a structural engineering report to evaluate the condition of the reservoir and its capacity to support antenna. The report should consider neighborhood aesthetics as well as long and short term maintenance needs for both the municipality and telecoms, and the space available for such activities. Engineered plans for structures to support antennae should be provided by the user and reviewed by the owner.

² See *Afoa v. Port of Seattle*, 160 Wn. App. 234 (2011)

The installation and maintenance of wireless equipment – antenna, cabling, mounting devices – has the risk of damage to a water reservoir. A Site Agreement should require that any such activity be spelled out in advance and subject to approval by the owner in advance, with technical drawing and specifications provided as needed. The Site Agreement should also include provisions requiring users to repair any damage to the reservoir at their own expense. Where the risk of damage is high the owner may require a deposit or an inspector on site to ensure compliance with approved drawings.

The reservoir should be restored to its original condition or equal to the extent it has been used when the Site Agreement expires or is terminated. A deposit should be required to pay for this work if it is not done by the user.

6. Sublicensing

This is one of the most potentially complex subjects in Site Agreements.

There is significant turnover in the wireless industry. Mergers and acquisitions are frequent. It can be difficult for a site owner to track these transactions and control changes regarding the entity that is actually using equipment that is subject to a Site Agreement on their property.

Some users may no longer need the site and want to sublicense it to try to recoup costs.

Where antennae are mounted on a separate tower or monopole, some users may want to add antenna, charge rent, and make a profit. This is particularly problematic where the user has a long term lease that has no limits on subleasing. Some companies are in the business of obtaining a long term lease that controls a site and re-letting spaces to multiple users at a price the market will allow.

Site Agreements should permit sublicensing, subletting, assignment of rights (collectively "sublicense") only with the owner's prior written consent. A right to assign in the event of a purchase, merger or consolidation is typical; however, at least basic information (parties, dates, new billing information, etc.) regarding the transaction should be disclosed and the current user should not be released from the Site Agreement.

All other transfers and sub-user situations need to be reviewed carefully and controlled by the owner and strong provisions included in the Site Agreement that precludes unauthorized transactions and allows owners to participate in the additional income if there is a transfer of rights to a new user or additional users.

The Site Agreement should also have provisions that require reimbursement to cover owner's administrative costs in these situations.

7. Recapturing Site Management Costs

Managing a multi-user antenna site requires a good Site Agreement, knowledgeable employees, labor, a good plan and a budget. There are several options to recapture some of these costs in a Site Agreement.

The first is to incorporate the right to charge users for specified costs the owner incurs for a specific user. This can be a general hourly rate or piece rates. The weakness of this approach is that it does not capture the general costs of managing the site, such as surveys, dealing with utilities, contractors, file maintenance, periodic notices, calculating rate increases, reviewing proposals, and other tasks that must be done and take the time of an employee.

Another approach is for the owner to build all of these costs into the monthly or annual fee for use of the site. This can work well and make deals easier to do, but ultimately the market will dictate the monthly or annual fees that can be charged regardless of the owner's costs.

A third approach is for the Owner to create a management fee that is spread to the users like the common area charge in a condominium. This too can work well. However, whether prospective customers will tolerate such a fee is another question.

Regardless of which approach is chosen, owners should give careful thought to the costs they will incur in managing a site and the options to recover those costs. They also need to be prepared for the multitude of questions, documents, requests and demands that often surface in negotiations.

8. Summary

The above touches on some of the major issues dealing with wireless Site Agreements. These are not simple transactions, particularly where multiple users of a site are involved. However, with good planning and an understanding of how Site Agreements work, a well-prepared owner can generate significant net income from a good wireless site.

If you are interested in learning more about this subject, please contact Michael Jonson at mike@jonson-jonson.com or Richard Jonson at richard@jonson-jonson.com

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