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MODEL CELL TOWER, WiMAX TOWER LEASE

FROM: John W. Pestle

RE: Model Lease - - Why Needed, How It Can Help, How to Obtain It

Many New Towers: The cell phone industry adds 12,000 new cell towers or antennas annually.

And in 2009-2010 Clearwire, Sprint, Comcast and others are adding high speed over-the-air broadband service to 40% of the U.S. The service, commonly called WiMAX service, although marketed under different proprietary names (e.g., Clear, Xohm, Comcast High Speed 2go), is similar to Wi-Fi, but covers an entire city or county. WiMAX will require thousands of new towers and antennas, which are similar to those for cell phones.

Challenge for Property Owners: Many property owners (such as municipalities, schools, forest products companies, and a wide range of private companies) and their attorneys will thus be approached for new tower leases.

Model Lease, Level Playing Field: In response, based on our communications work and recent representation of property owners on cell tower/WiMAX leases with several cellular and WiMAX companies, we have prepared a new model cell tower/WiMAX tower lease. It is a completely revised and updated version of the model lease which hundreds of property owners have obtained from Varnum since 1996. It should help "level the playing field" as property owners negotiate with cellular/WiMAX companies (who typically have the advantage, as they negotiate such leases every day). Some key points as to the 22 page model lease:

- It is a generalized form of actual leases that have recently been signed.
- It requires the tower, antennas and site to be built exactly per attached engineering plans, unless the property owner agrees to the contrary.
- It sets forth the key provisions on rent - - initial amount, payment frequency, escalator percentage and frequency of increases.
- It allows the property owner to capture the rents from second and third companies placing their antennas on the tower, which can double or triple the rent the property owner gets.
- It protects the property owner in case the provider goes bankrupt, which could happen due to technological change or market changes during the lengthy term of tower leases.
- It has detailed provisions to protect the property owner from liability arising from the lease or problems with the tower.
- It is for a new tower to be built, but can be readily adapted for antennas to be placed on an existing building, water tower, communications tower or other structure.

For more details on the model lease, go to www.varnumlaw.com/lease where you can see the actual memo that accompanies its purchase, and goes into detail on some of its key substantive provisions. Without sounding like late night TV, if you order the lease and do not like it, send it back and we won't charge you for it!

How to Order: Fax (or scan and email) the form on the next page. We will send the lease and our presentation from a recent national seminar on WiMAX Tower Leases. Contact John Pestle or his assistant, Barb Allen (phone 616-336-6743, fax 336-7000) if you have questions.

Caution: The lease does not constitute legal advice. Your request for it and our provision of it does not create an attorney-client relationship. Purchasers should consult their attorneys to ensure compliance with applicable law and that the lease meets their needs.



Communications Practice: VarnumLLP is one of Michigan's largest and oldest law firms. In addition to a corporate practice, it has a communications law practice in which, for example, it represents municipalities nationwide on Federal aspects of cable and telecommunications matters. It has represented over 200 municipalities on such matters. The firm is also municipal attorney for several cities and municipalities.

John Pestle of Varnum prepared the model lease. He is Chair of the firm's Cable and Telecommunications Practice Group and for over 25 years has worked on communications, utility and energy law matters. Cell tower and WiMAX tower leases are part of his practice, where he represents landowners (municipalities, schools, private parties) on leases, and municipalities on zoning issues and litigation. He is a former Chair of the Municipal Lawyers Section of the State Bar of Michigan and is a graduate of Harvard College, Yale Graduate School and University of Michigan Law School. He can be contacted at jwpestle@varnumlaw.com or 616-336-6725.

****Model Cell Tower, WiMAX Tower Lease Order Form****

Please send me the model form of lease for a new cellular or WiMAX tower, @ \$275.

NOTE: Licensed for one user only.

Email documents
Send by overnight delivery (add \$28 to total)
Mail documents

Our check is enclosed for \$ _____ -or- Please invoice us for the total of \$ _____

Specify format:

MS Word 97-2003(.doc) MS Word 2007(.docx) Other (if available) _____

Please add me to your email and mailing list

Orders will be shipped within 2-3 working days after receipt or order; call Barb Allen if needed sooner.

Company/Municipality/Law Firm: _____

Name: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____

Please email, mail, or fax this form to the attention of Barb Allen at:

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