



Comments and Instructions for Model Cellular, Wireless Internet Lease for Antenna on Building or Other Structure

1. General

Thank you for purchasing this model form of lease from www.varnumlaw.com/lease. It is a generalized form of lease we have successfully negotiated on behalf of property owners with several cellular and wireless internet providers for cellular or wireless internet antennas to be placed on our clients' buildings. It is thus a model agreement for use by companies, municipalities, or other property owners (Landlords, in the terms of the lease) in negotiating a lease with a cell phone or wireless internet provider to put their antennas on a building or other structure. It is not drafted for the laws of any particular state and should be reviewed by a property owner's local attorney for compliance with applicable state and local laws prior to using it. In addition, a lease should be tailored to the individual situation in question. The model lease thus needs to be reviewed by anyone using it to make sure it conforms to that person's particular situation, needs, legal restrictions (e.g., municipal charters) and the like.

2. Antennas on Building, Existing Structure

This lease is for the common situation where rather than building a new tower, the provider wants to place its antennas on an existing building, existing communications tower, or other existing structure owned by the property owner. We have a separate model lease for a new tower to be built, usually on a vacant piece of land.

3. Not Legal Advice

The lease, this memo and other materials do not constitute legal advice. Your request for them and our provision of them do not create an attorney-client relationship. You should consult your attorney to assure that the lease, as used, complies with applicable law and that it meets your needs.

4. Single/Multiple Users

This model lease is licensed to the person or entity purchasing it for use only by such person or entity and a non-exclusive license under the copyright in the model lease is hereby provided for that purpose. In some instances (such as a law firm with many clients, trade groups) uses of the model lease for multiple persons or entities may be desired. We will license the lease for such multiple use upon payment of double the normal fee for it (if you paid \$275, pay an additional \$275) – contact Barbara Allen at (616) 336-6743 to arrange this.

5. General Approach

The general approach taken in this model lease is to specify exactly what is to be put on the building in question – typically a cell (or wireless internet) antenna – such that the property owner's reasonable expectations are met, with changes only allowed with the owner's written approval. Thus the model

lease specifies that the antennas can only be used for cellular (or wireless internet) service and requires that the antennas and equipment enclosure comply with the engineering drawings that are to be attached to the lease as Exhibit B, as well as any photo simulations of the antennas in place (Exhibit D to the lease) that have been provided. This helps prevent the property owner from being told that the antennas will be of a certain type, shape, and color so as to blend with the existing building and be unobtrusive antennas and ending up with something different. By contrast, the first drafts of leases offered by cell companies typically have no restrictions, such that they might claim they could put any type of radio station, TV or communications antennas or antennas on the property in question, and not harmonize with the building, contrary to the property owner's expectations.

Comments on other specific provisions are as follows.

6. Option/Lease/Rent

The lease is styled as an option to lease, followed by the lease itself. During the option period (Section 1 of the lease), the provider can make sure it can get local zoning approval, conduct a Phase One environmental assessment, and determine that it in fact wishes to enter into the lease. Sections 2 and following of the lease set forth the lease terms.

Rents vary significantly, and the lease addresses the four key elements, with appropriate provisions and blanks, namely: The amount of the rent in the first year; how often it is paid (annually, in advance); the escalator in succeeding years (a percentage); and how often the rent escalates (annually). In combination, these provisions can have a significant impact over the lengthy term of a cellular or wireless internet lease.

7. Cell Phone or Wireless Internet

Choose one of the two options (cell phone or wireless internet) in Section 3 of the lease, depending on whether the provider is a cell phone provider or a wireless internet company, and then select the corresponding option in Section 15(a). Keep in mind that wireless internet antennas take up as much space as cellular antennas, so the rents for the two should be the same – wireless internet antennas reduce the number of cellular antennas a building can accommodate.

8. Bankruptcy

There is a potential that cellular or wireless internet providers (or the special purpose subsidiaries they create to own leases such as this) will encounter financial difficulties. Analysts are providing contradictory reports on whether as a general matter (outside rural areas) wireless internet will be a business success. In the past, several cellular providers have filed for bankruptcy, and technological (or other) changes during the several decades of a cellular or wireless internet lease could lead to the provider's bankruptcy. This lease has therefore been drafted consistent with the provisions of the Federal Bankruptcy Code so that if the provider files for bankruptcy, it immediately has to either accept the lease and cure any defaults, or turn it back to the property owner. Without such provisions, there is a risk that, during the pendency of a lengthy bankruptcy proceeding, the provider would not pay rent or insurance and could allow the antennas or equipment enclosure to fall into disrepair (raising liability concerns); and the property owner would get no back rent/payment for liability claims at the end of the bankruptcy. Persons using this model lease should have the rent, default and related provisions of this lease reviewed by counsel familiar with bankruptcy and real estate law, as applied in the state and bankruptcy district where the leased property is situated.

9. Generators, Backup Power Supplies

The lease has options in Section 7(p) to expressly state whether or not the provider is allowed to put a backup generator or battery backup on the site. In some situations, property owners may not want generators due to the noise/fire hazard they (and their fuel tanks) create, or due to the risks created by allowing hazardous fuels/battery acid on the site. The FCC does not require backup power at cell sites,

contrary to what providers may say (the 2007 FCC backup power rule did not so require and was later overturned in its entirety by the courts on procedural grounds).

10. Equipment Enclosure, Antennas, Access

The lease is for a cellular or wireless internet antenna which is located on an existing building, or other structure. It basically contemplates (1) the provider leasing a small piece of land next to the building for an "Equipment Enclosure" where equipment cabinets, transmitters, receivers, other electronic gear and standby generators/provisions for standby power will be located, (2) only the actual "Antennas" being located on the building itself, along with (3) cables and cable trays (included in the definition of "Antennas") running from the Antennas to the Equipment Enclosure. The lease will need to be modified for variations from this basic arrangement (for example, if the electronic equipment is located inside the building).

In addition, there are specific requirements that the provider has to shut down the Antennas and other electronic equipment whenever workers (such as maintenance workers, painters, roofers) will be near the Antennas. This is done so as to comply with FCC safety rules and common sense on not exposing people to the radio frequency emissions from the antennas, which are basically like those from a microwave oven. Related provisions require measurement of these emissions to make sure they are within bounds and safety signs warning of the Antennas at all points providing access to the Antennas, rooftops or other areas near them.

11. Antennas of Other Providers

The lease specifically states that it does not prevent other cellular or wireless internet other providers (or the property owner) from locating their antennas on the building. This complies with Federal law prohibiting exclusive leases for wireless antennas.

12. Liability, Indemnity, Insurance, Assignment

The potential for significant liability arising from the lease is a concern for many property owners, especially municipalities or other entities which have "deep pockets" and are often target defendants. This is especially the case, given that the lease may run for several decades, during which many changes may occur. The lease is drafted with such concerns expressly in mind – it has broad indemnity provisions, requires broad, detailed, meaningful insurance coverage from highly rated insurance companies (with the insurance amounts able to escalate with inflation), and prohibits the provider from assigning the lease to entities with a lesser credit rating than the provider.

13. Antenna Relocation

The lease gives the property owner – at its expense – the ability to relocate the Antennas and Equipment Enclosure to another site. This allows the property owner to move the them, if their current placement would prevent some highly beneficial or desirable use of the building – or removing the building for some major new project.

14. John Pestle, Comments

This lease was principally prepared by John Pestle of Varnum LLP. He is Chair of the firm's Cell Tower and Telecommunications Group, and for over 25 years has worked on communications, utility and energy law matters. He practices before the Federal Communications Commission and Michigan Public Service Commission. Among other things, he represents municipalities nationwide (over 200 to date) on cable and telecommunications matters such as franchising, transfers, rate regulation, Wi-Fi and FCC cases. Cell tower and wireless internet tower leases are another part of his practice, where he typically represents landowners (municipalities, schools, private parties) on leases for towers, and municipalities on cell tower zoning issues and litigation. John is a graduate of Harvard College, Yale Graduate School, and the University of Michigan Law School.

For comments and suggestions on the model lease, please contact John at:

John Pestle
Varnum LLP
P.O. Box 352
Grand Rapids, MI 49501-0352
Phone 616/336-6000 or 6725, Fax 616/336-7000
jwpestle@varnumlaw.com

15. History, Communications, Municipal and Utility Practice

Varnum LLP is one of Michigan's largest and oldest law firms. In addition to a corporate practice, it has a communications and utility law practice. For example, it represents municipalities nationwide on Federal aspects of cable and telecommunications matters, and is one of the principal firms with such a practice. It also represents alternative energy producers (such as cogenerators and wind farms), oil and gas producers, and major energy users. The firm also has a large municipal practice and is municipal attorney for several cities, counties, and townships. See the firm's web page at www.varnumlaw.com.

