

Let's Strike a Deal: Legal Strategies and Best Practices

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CONFERENCE & EXPOSITION

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Process Complications

Getting a Proposal or System Design (Pre-Contract)

- Ask Early; Ask Often



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- Will Serve Letters



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Getting a Proposal or System Design (Pre-Contract)

- Ask Early; Ask Often
- Will Serve Letters
- “Design Fees”



Process Complications

Deal Points (Pre-Contract)

- Term (including potential renewals)



Process Complications

Deal Points (Pre-Contract)

- Term (including potential renewals)
- Compensation (Door Fee, Revenue Share)



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- Compensation (Door Fee, Revenue Share)
- Marketing Rights (Exclusive, non-exclusive)



Process Complications

Deal Points (Pre-Contract)

- Term (including potential renewals)
- Compensation (Door Fee, Revenue Share)
- Marketing Rights (Exclusive, non-exclusive)
- Courtesy Accounts



Process Complications

Contract Process

- Contract Forms Changing



Process Complications

Contract Process

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- Business Models Changing



Process Complications

Contract Process

- Contract Forms Changing
- Business Models Changing
- Disputes Over Proper Technology



Process Complications

Review Process – How many are involved?

- Owner and Provider (and their attorneys)



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- Third Party Consultants



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- Owner's internal counsel



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Review Process – How many are involved?

- Owner and Provider (and their attorneys)
- Third Party Consultants
- Owner's internal counsel
- Owner's equity partners (including institutional investors)
- Lenders



FTTU Deployment

New Construction

- Get Granular



FTTU Deployment

New Construction

- Get Granular
- System Design and Approval



FTTU Deployment

New Construction

- Get Granular
- System Design and Approval
- Distribution Plant



FTTU Deployment

New Construction

- Get Granular
- System Design and Approval
- Distribution Plant
- Home Run Wiring



FTTU Deployment

New Construction

- Get Granular
- System Design and Approval
- Distribution Plant
- Home Run Wiring
- Distribution Panels



FTTU Deployment

Existing Properties (FTTU Overbuilds)

- How exactly is that fiber being installed to each unit?



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- Survey and System Design/Approval Process



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- Access to interior of units/Impact on Residents and Property Staff



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Existing Properties (FTTU Overbuilds)

- How exactly is that fiber being installed to each unit?
- Survey and System Design/Approval Process
- Access to interior of units/Impact on Residents and Property Staff
- Contractual Considerations and Tradeoffs (new contract or amendment)



FTTU Deployment

Review Other Contracts

- Wiring Usage Rights



FTTU Deployment

Review Other Contracts

- Wiring Usage Rights
- Marketing Rights



FTTU Deployment

Review Other Contracts

- Wiring Usage Rights
- Marketing Rights
- Bulk Service Prohibitions



FTTU Deployment

Review Other Contracts

- Wiring Usage Rights
- Marketing Rights
- Bulk Service Prohibitions
- Facilities Usage and Space Consideration (distribution panels, space in units)



FTTU Deployment

The “Need” for Gigabit

- Get Commitments



FTTU Deployment

The “Need” for Gigabit

- Get Commitments
- Commitment to Provide Gigabit



FTTU Deployment

The “Need” for Gigabit

- Get Commitments
- Commitment to Provide Gigabit
- Commitment to Provide Competitive Services



Financial Considerations

- Door Fees



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- Revenue Share – are old models viable?



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- Courtesy Services (Fitness Equipment, WiFi)



Financial Considerations

- Door Fees
- Revenue Share – are old models viable?
- Courtesy Services (Fitness Equipment, WiFi)
- Buyout options (upon sale of Property or otherwise)



Bulk Contracts

- Owner “buy in” is key



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- Flexibility-Conversion to retail option



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- Option to upgrade to faster bulk Internet service



Bulk Contracts

- Owner “buy in” is key
- Flexibility-Conversion to retail option
- Option to upgrade to faster bulk Internet service
- Fiduciary duties of developer to COA/HOA



Sneaky Sneaky

- Network Upgrades Without Consent



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- Access Agreements and Easements



Sneaky Sneaky

- Network Upgrades Without Consent
- Access Agreements and Easements
- Beware Perpetual or Long-Term Commitments



At any time after the expiration of the Term, if Provider is not using the Equipment to provide services to any customer at the Property on the anniversary of the Effective Date, Owner may terminate this Agreement upon at least 60 days' prior written notice to Provider. If, during this sixty day notice period, Provider enters into an agreement with a customer to provide services, Owner's notice of termination will be ineffective. The time period in which this Agreement is in effect will be referred to in this Agreement as the "Term."



Grantor (Owner) hereby grants to Grantee (Provider) a perpetual, non-exclusive easement on, over, under, across and through Grantor's Property, together with all rights of access, ingress and egress for the purposes stated hereafter.



Notwithstanding anything herein to the contrary, Provider (a) shall not be obligated to continue delivering Services at the Property, and (b) will be entitled to a full refund of all payments made to Owner hereunder, and (c) may terminate this Agreement upon thirty (30) thirty days written notice, if Provider requires an easement from Owner and Owner does not grant the easement.



The Provider, upon sixty (60) day prior notice to Owner, may terminate this Agreement with no penalty or liability if the Provider determines, in its sole discretion, that the Property is no longer technically or economically compatible for its use.



This Service Agreement and the following additional documents incorporated herein by this reference govern the Provider's provisioning of the Services and the parties' performance hereunder (collectively, the "Agreement"): the attached Pricing Schedule, the Provider's Tariffs and Guidebooks as may subsequently be amended, the Provider's Acceptable Use Policies, and the Provider's Service Guides.



“Services” means those services then available to occupants of the premises.



Company shall have exclusive use of every communications closet, in-unit distribution panel, and demarcation point at the Property. Notwithstanding the expiration or any earlier termination of this Agreement, Company will continue to have the exclusive right to use its System and the non-exclusive right to provide its Services at the Property.



Company owns the Distribution Plant. Owner owns the Inside Wiring, which consists of all wiring from the telecommunications closets to the outlets in each unit. The Distribution Plant and the Inside Wiring make up the System.

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Owner agrees that no one other than Company may use the System for any reason.



Within 10 business days of receiving Company's design plan, Owner will either approve the design plan or identify with specificity the revisions needed to the design plan. If Owner does not respond within the specified time frame, Owner will be deemed to have approved Company's design plan.



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