



## **2002 Telecommunications Check List**

### **INTRODUCTION**

The year 2002 will be challenging to property owners and development professionals as they seek to meet the technology needs of their tenants and overcome a loss of credibility that may have been suffered due to the business failure of a preferred Telecommunications Service Provider (TSP.). The challenge is made even greater by market forces that favor tenants and their increasingly sophisticated demands for access to redundant and competitive broadband services as bankruptcies have drastically reduced the supply of such providers.

While not a "cure-all," the following checklist is offered to assist owners and development professionals address the challenges of 2002. If you disagree with any claims or suggestions in this article, or would like to add to the discussion, email the author at [glederer@millervaneaton.com](mailto:glederer@millervaneaton.com). All such comments will be incorporated into updates on this article, which will be available at [www.millervaneaton.com/Resources](http://www.millervaneaton.com/Resources).

### **1. LOOK TO NAIOP AND THE REAL ACCESS ALLIANCE FOR WARNINGS ON MANDATORY ACCESS.**

Despite the bankruptcies of leading proponents of mandatory access such as Teligent and Winstar, 2002 will see serious efforts to establish mandatory access. In recent filings with the Federal government, Telecommunications giants such as WorldCom, BellSouth and RCN have asserted limiting the rights of building owners to manage their telecommunications space. These parties will join a newly created associations of integrated voice, video and Internet providers called the Broadband Service Providers Association (BSPA), and the Smart Building Policy Project as a chorus calling for mandatory access.

The federal government will not be the only forum for mandatory access debates. At a minimum, debate will take place in Texas and Massachusetts, with likely challenges in at least five other states.

NAIOP and the Real Access Alliance supported by the lawyers at Miller & Van Eaton, is well positioned to identify and characterize these threats. Please respond promptly and aggressively should NAIOP or the Real Access Alliance call upon you.

### **2. ENSURE THAT EVERYONE IN YOUR ORGANIZATION UNDERSTANDS THAT AT NO TIME SHOULD AN "EASEMENT" BE GRANTED TO A TSP.**

TSPs, including cable, CLECs and Bell companies are submitting easements rather than

licenses for access to your buildings. **PLEASE DO NOT EXECUTE AN EASEMENT FOR ACCESS.**

Unlike a license agreement, which conveys limited business rights to the telecommunications service provider, an easement confers a property right upon the carrier. Armed with such a property right, a TSP will be difficult, if not impossible, to govern. Also, an easement granted in favor of the local Bell company may render space in your building subject to rules governing access to utility spaces.

An access license agreement, such as the model agreement that may be downloaded from the Real Access Alliance's homepage [www.realaccess.org](http://www.realaccess.org), can more than meet the needs of a TSP seeking access.

### **3. CONDUCT A 2002 TENANT NEEDS SURVEY.**

You can never know too much about your tenant's needs, especially their technology needs. For instance, many tenants have recently received mandates from corporate headquarters regarding their minimum technology requirements. These mandates follow not only the attacks of September 11, but also the numerous business failures of webpage hosting companies. Do you know what these requirements are? Do not be surprised if they are required to have multiple vendors providing access both by wire and wireless.

The only way you may avoid being surprised regarding a tenant's needs is to ask. Email

[glederer@millervaneaton.com](mailto:glederer@millervaneaton.com) for model communication vehicles.

#### **4. CONDUCT A PHYSICAL AND LEGAL AUDIT OF YOUR TELECOMM SPACE.**

You, or your counsel, should conduct an audit of all existing leases, license and other access agreement to see who has a preexisting right to your telecommunications spaces. This is especially important if you have any bankrupt providers that have equipment in your building. You should also determine what space you have available to accommodate the wires and equipment of a TSP that might like to serve your building. (Visit [www.millervaneaton.com/REsources](http://www.millervaneaton.com/REsources) for a model survey.)

#### **5. DEVELOP AND IMPLEMENT A BANKRUPTCY RESPONSE PROGRAM.**

The past year has seen a large number of bankruptcy filings by TSPs, and the trend seems to be growing. (Visit [www.millervaneaton.com](http://www.millervaneaton.com) for a complete list of TSPs in bankruptcy.)

It is important to remember that just because a TSP has declared bankruptcy that they will stop providing services to tenants. While ensuring that tenants have access to the services they need to be successful will always be the primary concern to owners, TSP bankruptcies do present operational challenges such as:

- Loss of anticipated current and future rents;
- Need to clear title of mechanic lines filed against the building; and
- Vigilance regarding the bankrupt's efforts to assign the access license agreement to a third party without the building owner's consent.

You will need a plan to address each of these contingencies. Also, you should ensure that any access agreements you sign in the future contain language such as the following to ensure that you have the right to abandoned equipment.

*In the event of the abandonment of telecommunications service facilities, the building owner may order the TSP to promptly remove the facilities from the building and restore the building to their prior condition or may declare the ownership of such facilities to have been abandoned and forfeited to the building.*

#### **6. PROACTIVELY ENSURE THAT YOUR TENANTS HAVE REDUNDANT ACCESS (WIRED AND WIRELESS) TO THE NEAREST TELEPHONE CENTRAL OFFICE.**

There are active discussion taking place in corporate headquarters following the September 11 attacks that all offices must be served by redundant, independent and viable networks. This is quickly translating into corporate-wide edicts for wired and wireless connection to the national telecommunications network. The prospect of being offline for the time it might take to reconstruct a wired infrastructure resulting from something as simple as a backhoe cut, to something as unforeseen as an earthquake or terrorist act, is something that corporate America can no longer tolerate. Can your building meet these new requirements? If you have a federal or state government tenants, they may soon require such dual access or be forced to move. Do not wait for the ultimatum to be delivered, ensure your building has redundancy now.

#### **7. AMEND YOUR LEASE TO ADDRESS RESIDUAL WIRES IN THE TENANT'S SUITE.**

Discussions with building engineers reveal that increasingly tenants are leaving behind network wiring within the vacated premises. Buildings are then faced with a decision to simply leave the wires in the ceiling or pay someone to have the wires removed. Why is such a predicament acceptable to landlords? How would you handle a tenant that vacated the premises and left desks there? This problem is exacerbated in that there is little, if any, salvage value as most tenants will not use a previous tenant's wires as their installers and IT professions prefer to use their own.

While security deposit's have traditional been utilized to address abandoned materials in a suite, some landlords have been reticent to employ the fund to pay for removal of wiring because it was not addressed in the lease or the wiring was not discovered as an issue until too late. This defect should be cured in 2002. You can do so by proactively addressing wiring removal in leases and by ensuring that your telecommunications audit of the building reveals where such excess wires exist.

## **8. AMEND YOUR LEASE TO ADDRESS WIRELESS INTERFERENCE.**

In 2002 there will be a big push by providers to show tenants just how easy it is to connect computing devices to an organization's local area computer network, or to set up temporary wireless networks so long as they stay within about 2,000 feet. Since industry research reveals tenants have up to 40% annual churn of space within the rented suite, such wireless devices will result in significant cost savings with the added plus of flexibility. The result will be an explosion of wireless office applications. That is the good news.

The bad news is that these services will be utilizing what is known as "unlicensed" spectrum. The public is free to use instruments that operate within the unlicensed frequency range, but they have no recourse against another user of the spectrum for interference, thus the term unlicensed. Common uses in this "Wild West" of spectrum (i.e. no law west of the Pecos's megahertz) are wireless remote controls, walkie-talkies, garage door openers, cordless phones and baby monitors.

Before you are forced to referee a battle between tenants on the 7 and 8<sup>th</sup> floors that have shifted to a "wireless" office you should insert simple lease language, which addresses the issue of interference. This language can be easily crafted and should be included in any lease you sign moving forward.

## **9. PURSUE POTENTIAL IN BUILDING WIRELESS NETWORK PARTNERS.**

The wireless industry, faced with the technical challenge of serving so many new customers and supporting the explosion of wireless applications, is forced to reduce the size of individual cells. This change in infrastructure is resulting in an explosion of wireless transmission sites. The impact of these changes for the real estate industry is that the wireless industry will increasingly need "In building wireless networks" to meet their customers needs as roof tops and external sites for antennas are increasingly insufficient to meet their growing needs. If you do not believe this statement, just think for yourself how often you employ a cell phone within a building and transmit messages from a pager, palm pilot or Blackberry? The terms of the "Model Access License" agreement developed by the Real Access Alliance (available at [www.realaccess.com](http://www.realaccess.com)) can

be easily modified to address the issues arising from the deployment of an in building wireless network.

## **10. INVESTIGATE & DETERMINE IF VOICE OVER INTERNET (VOIP) COULD WORK FOR YOUR COMPANY.**

Up until now we have been talking about accommodating the technological needs of your tenants. This last point address what you might consider with respect to your own technological needs and potential cost savings. The promise of cheap quality Internet telephony has been promised for some time, and may soon be available for commercial application. While you should not read this point to warrant the quality of such services, 2002 would be a good year to begin investigating whether such a service might be of benefit to you and your company. This is especially true if you can employ such a service to support video transmissions and international connections so as to avoid travel and hefty international tariffs. And by the way, trust me, you will not be the only commercial real estate firm investigating such applications.

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**About the Firm: Miller & Van Eaton, P.L.L.C.** is a law firm that offers specialized services in telecommunications. Clients rely on Miller & Van Eaton for counsel and legal representation on a wide range of business and regulatory matters that relate to every communications industry: cable television, broadcasting, telephony, and wireless communications.



**About the Author: Gerry Lederer** of Miller & Van Eaton is one of the nation's leading voices on the integration of telecommunications technology into traditional workspace. Lederer has authored numerous texts on tenant needs and telecommunications. Most of his research was done as BOMA International's Research and Advocacy Division head.