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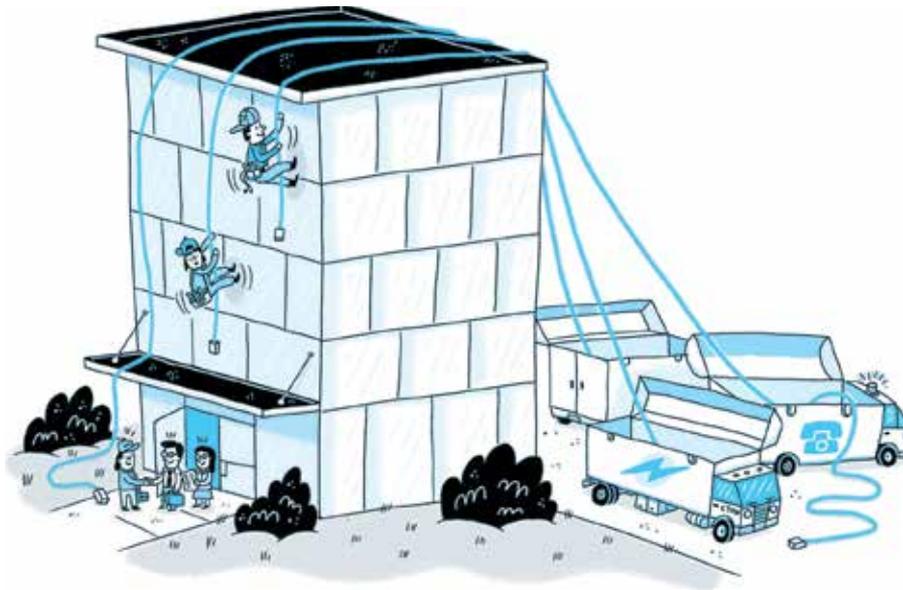


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Technology

Telecommunication Agreements

What You Need to Know



One topic that we are frequently asked about by our condominium corporation clients is agreements with telecommunication providers. In a world of ever-expanding options for internet, television and telephone services, there is an ever-growing number of companies that are competing to provide these services. These companies often approach condominium corporations seeking to access the building to install infrastructure and communicate with the residents about the services that they offer. Like any other agreements, especially those with longer terms, condominium corporations must be diligent while negotiating and reviewing telecommunication

agreements.

While each situation needs to be addressed based on its particular circumstances, there are some general questions that frequently arise that we can answer within the confines of this article.

Does the corporation have to provide access?

One of the first questions that often comes up, especially for corporations that already have multiple service providers' equipment installed in the building, is whether the corporation can refuse to allow another provider to access the building. The answer to this question is generally 'no'.

The CRTC (the federal agency that regulates telecommunications services providers, among others) has mandated that the provision of telecommunications service by a service provider to a multi-unit residential building (which, in the case of a condominium building, is the condominium corporation) is subject to the condition that all service providers wishing to serve residents in that building are able to access them on a timely basis under reasonable terms and conditions. The service provider and the corporation can, however, negotiate the conditions of access subject to certain guidelines established by the CRTC:

"The guidelines address issues such as exclusive and preferred access arrangements which are not permitted, and preferred marketing agreements which are permitted. The guidelines also address fees to compensate a corporation for space occupied by the telecommunications facilities, which are permitted. Similarly, fees for additional utility services that are not already included in the fees for use of the space are permitted based on metered charges. Notably, fees to compensate the corporation for negotiations of the access agreement are not permitted. One key consideration, however, is that the corporation is only required to provide access if it can accommodate the new service provider within the existing infrastructure of the building. If, for example, the conduits that the service pro-

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vider would use to install its new wiring are already full and cannot accommodate additional wiring, then the corporation would be within its rights to refuse access."

Having said that, a corporation must allow a service provider to install or upgrade in-building wiring and related facilities. The corporation must also allow access to the closets, panels and any common pathways required for the purpose of installing or upgrading its facilities. However, the service provider would be responsible for the associated

wifi for common areas, or free telephone service for the security/concierge desk. If, however, the provider wishes to use the building as a 'hub' to expand its service network (by, for example, installing rooftop antennas), terms of access should be carefully considered, and additional fair compensation should be negotiated. This compensation would be in the nature of a monthly or annual rental fee for use of the building for this purpose.

Second, if the equipment to be installed by the service provider is going to draw

ration will not necessarily want to restrict it's residents' ability to continue to receive services from the provider if they wish to do so, the corporation may want to consider negotiating a threshold of units receiving services from the provider (e.g. ten per cent) below which the corporation will not be obligated to renew the agreement.

Finally, the agreement should provide appropriate indemnities to protect the corporation. Among other things, if the service provider damages the common elements or another service provider's equipment in the course of installing or removing its own equipment, then the service provider should be held responsible to cover the costs of repairing that damage, and should defend the corporation from any claim by another service provider in connection with that damage.

If, however, the provider wishes to use the building as a 'hub' to expand its service network (by, for example, installing rooftop antennae), terms of access should be carefully considered, and additional fair compensation should be negotiated

costs. Where there is insufficient space available in risers to install additional in-building wiring, a corporation may either permit the service provider to construct additional riser space, or allow it to upgrade or replace existing in-building wiring and related facilities to make more efficient use of the available riser space.

What should the corporation look for in a telecommunications agreement?

Assuming that the corporation is moving forward with providing access to a telecommunications service provider, the arrangement between the parties should be set out in detail in a telecommunications agreement. While these agreements tend to be similar in form and content from one corporation or service provider to another, there are some material points that the corporation should ensure are properly addressed.

First, the scope of what is being provided should be defined. The provider may only wish to access the building to offer services to the unit residents. In that case, the compensation that will typically be provided to the corporation would be something along the lines of free internet for the property management office, free

electricity from the building's electrical supply, a check meter should be installed to measure the electricity consumed, and the agreement should specify that the service provider will pay for this electrical consumption. The installation of the check meter should be at the cost of the service provider.

Third, the rights of the service provider to access the building should be carefully considered. Typically, service providers will want broad access to provide information to the unit residents about the services offered by the provider (e.g., by way of an information table in the lobby, or pamphlet material to be distributed door-to-door), and unlimited access to service the equipment in the event of an issue. The corporation should ensure that any right of access that is being provided is appropriately limited, and that any access is on reasonable prior notice to management.

Fourth, the terms on which the agreement may be terminated should be considered. Most service providers will seek to negotiate a provision stating that the telecommunications agreement is automatically renewed for so long as there is at least one unit resident in the building receiving services from the provider. While the corpo-

Is the corporation required to give notice to the owners?

Yes. While a telecommunications agreement – unlike other agreements in which the corporation is granting an access license over the common elements – does not require a special by-law, notice to owners is still required as if the agreement is a change to a service provided by the corporation. As such, pursuant to sections 22(3) and 97(3) of the Condominium Act, 1998, the corporation is required to give notice to owners before entering into the agreement. The notice must: (1) describe the nature of the license being granted by the corporation; (2) disclose whether the agreement will result in any cost to the corporation, and if so, how this cost will be paid for; (3) advise the owners that they have the right to requisition a meeting to vote on the agreement within 30 days of the notice; and, (4) provide owners with a copy of sections 97(3) and 46 of the Condominium Act, 1998.

Any agreement that the corporation is considering entering into should be reviewed and commented on by the corporation's lawyers. A telecommunications agreement is no exception, particularly considering that most telecommunications agreements have a term of five years or more. Similarly, the corporation's notice to owners should be reviewed by the corporation's lawyers to ensure that it complies with **CV** above-described legal requirements.