



Telecom Building Access Update: May 2004

Almost 10 months have passed since the Canadian Radio-television and Telecommunications Commission (CRTC) released decision 2003-45. However, it is not clear whether much has changed in the building access process for Telecommunications Service Providers (TSPs). During this time, BOMA Canada has participated in the CRTC Interconnection Steering Committee (CISC) in an effort to help resolve some of the differences between landlords and carriers.

The attempt to create a template access agreement is a noble one, but also potentially dangerous. While there may be several issues on which both parties can agree and come to a common ground, it is clear that there are several major issues remaining. Both industries hope to continue some form of meaningful discussion, however, there are three major obstacles which need to be cleared first:

The Competition Bureau

Several landlords in the downtown Toronto core were subjected to an investigation by the Competition Bureau in the summer and fall of 2003, which alleged that landlords had colluded together to escalate access fees. During the proceedings, it was noted that several landlords used the same law firm and that their agreements were very similar forms. Therefore there is considerable reservation in working on a template agreement unless both parties have competition counsel present. Another concern in this area is the discussion of recoverable costs. Merely describing the method of recovery and types of costs that can be recovered could be construed as collusion. In order for discussions to continue, landlords will need assurances from the Competition Bureau as to what can and cannot be discussed.

BOMA /CIPPREC Appeal of CRTC's Section 42 Powers

In decision 2003-45, the CRTC referenced Section 42 of the Telecommunications Act whereby it has the power to grant forced access for telecommunications equipment. Typically this clause has been reserved to gain access to public property such as municipal rights of way or utility poles. If Section 42 is used to force access to private property, this will set a dangerous precedent. BOMA Canada and the Canadian Institute of Public and Private Real Estate Companies (CIPPREC) have expressed concern over the erosion of private property rights, and are appealing elements of the ruling. The Appeal is expected to be heard in the fall of this year and a decision might be available before the end of the year. Therefore, any meetings would need to be held without prejudice to the Appeal and outside of the formal CISC process, so that they would not be seen as an endorsement of CRTC jurisdiction.

Availability of Forms

Some members of CIPPREC and BOMA are not sold on the benefits of yet another agreement form. Given the CRTC's decision to post documents on each carrier's Web site, there are many readily available documents that have been executed to date between landlords and telecommunications carriers. Also, BOMA has participated with CIPPREC to create a template document, which has been available for several years. After 2003-45, this document was updated to be compliant with the new decision.



Even with the above hurdles, it is important to keep the communication lines open between the landlords and carriers. Both parties have incentives to ensure that access to buildings is happening in a fair and reasonable manner since the carrier's customers are the landlord's tenants.

Changes in technology continue to happen much faster than the regulatory bodies can move. Time will tell whether Voice Over IP (VOIP,) wireless networks and other technologies will change the telecommunications landscape once again.

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