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BOMA Canada and the CRTC

BOMA Canada has partnered with the Canadian Institute of Public and Private Real Estate Companies (CIPPREC) to defend commercial real estate on the issue of telecom access. We filed a joint submission with the Canadian Radio-Television and Telecommunications Commission (CRTC) in response to Public Notice 2000-124, and will continue to advance the industry's position through the interrogatory process as the Commission considers a regulatory regime for telecom access to multiple-tenant buildings.

October 31, 2000

Ms. Ursula Menke
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Menke:

Submission Re: Public Notice CRTC 2000-124: Reference 8644-C12-03/00

This is the submission of the Canadian Institute of Public and Private Real Estate Companies (“CIPPREC”) and the Building Owners and Managers Association - Canada (“BOMA”) to the request for submissions contained in Public Notice CRTC 2000-124.

CIPPREC and BOMA appreciate the opportunity to present the views of the commercial real estate industry to this important public notice.

I. Executive Summary

A. *CIPPREC and BOMA support and encourage the development of competitive markets for local exchange telecommunications services in Canada, and support the policy of end user choice in respect thereto as articulated in Paragraphs 205 and 206 of CRTC Decision 97-8. However, competitive markets and end user choice should not evolve at the expense of private property rights. Local exchange carriers (“LECs”) and Broadcast Distribution Undertakings (“BDUs”) are for-profit entities. Some may be subject to limited and temporary price controls on certain types of services only. LEC or BDU status should not disenfranchise other types of telecommunications and broadcast providers needing to occupy scarce space in MDUs.*

B. *CIPPREC and BOMA advocate a non-interference model in respect of possible terms and conditions of LEC and BDU occupancy of multiple tenant units (“MDUs”) in Canada, on the basis of limited CRTC jurisdiction over private property, the alignment of MDU owner’s and CRTC objectives in facilitating end user choice, the need not to discriminate against other types of telecommunications service providers demanding occupancy within the same space, the MDU owner’s unique incentive to maximize the long term value of its assets, and the reliance on the private market to mediate effectively terms and conditions of Occupancy License Agreements and possible occupancy fees.*

C. *Accordingly, all incumbent local exchange carriers (“ILECs”), competitive local exchange carriers (“CLECs”) and BDUs carrying on business on private property are compellable to enter into Occupancy License Agreements and pay possible fees as a condition of occupancy of private property. CLECs and BDUs have generally always signed agreements and paid negotiated fees or provided other adequate consideration. The appropriate transition schedule for ILECs to change their business practices to conform to current CLEC and BDU practices remains a singular administrative issue.*

D. *Main terminal room (“MTR”), point of presence (“POP”) room and building vertical riser space is a scarce commodity that must be carefully managed and allocated amongst various users demanding space. MDU owners alone have the legal right, moral*

right, and appropriate economic incentive to decide who gets occupancy of scarce space within an MDU. MDU owners will make MTR and POP occupancy decisions to maximize the long-term attractiveness of the MDU to tenants, which in almost all cases, will mean providing reasonable choice amongst several LECs within each MDU.

E. *In all circumstances, MDU owners are entitled to demand license agreements (called "Occupation License Agreements") from CLECs, BDUs and ILECs. MDUs are private property. The form of such Occupation License Agreements are the prerogative of the MDU owners granting occupancy on its private property. However, model forms could be developed collaboratively, perhaps through the Telecom and Cable Building Access and Inside Wire Sub-Working Groups ("BAIW SWG") of the CRTC.*

F. *MDU owners can charge market-based or negotiated fees for occupation of scarce MTR or POP room space in MDUs and for usage of risers or in-building wire owned by the MDU owner. MDUs are private property. The fees may be cost-based, market based or negotiated. It is the sole choice of the MDU owner. Such fees apply to both CLECs and ILECs whether multiple LECs have facilities in an MDU or not. These fees are subject to market forces. The same principles will apply to in-building wire owned by the MDU owner. Tenants exert pressure for LEC occupancy and use of MDU facilities. LECs may share comparable occupancy fee data. Leasing local loops provides a pricing alternative. Excessive pricing will reduce choice within the MDU leading to loss of tenants, and some MDU owners may choose to waive or internalize some costs. A cost plus model, regardless of the jurisdictional arguments, is a subsidy to for-profit LECs and BDUs.*

II. Background of CIPPREC and BOMA

1. CIPPREC is Canada's senior national real estate trade association comprised of the largest public and private real estate development and investment companies, Real Estate Investment Trusts, and the real estate investment arms of most of Canada's chartered banks, life insurance companies and pension funds. Members also include Canada's largest investment dealers and the three senior real estate brokerages in Canada. CIPPREC members directly employ approximately 7,350 Canadians in real estate activities, pay approximately \$900 million in property taxes

nationally, and own and manage more than 450 million square feet of office, industrial, retail, multi-unit residential, and hotel space in Canada, almost all of which would be categorized as MDU space for the purposes of PN CRTC 2000-124.

2. BOMA Canada is the voice of the Canadian commercial real estate industry. With strong local associations in Atlantic Canada, Quebec, Toronto, Manitoba, Regina, Saskatoon, Calgary, Edmonton, and British Columbia, BOMA is a dynamic federation comprised of over 1,900 members in the industry including building owners, managers, developers, facilities managers, asset managers, leasing agents and brokers, investors and service providers. BOMA members manage over 31 million square feet of commercial real estate in Canada.
3. Both BOMA and CIPPREC have been active on the CRTC's BAIW SWG, since the fall of 1997 and the spring of 1998, respectively, and have contributed widely to the discourse, made many TIF submissions, taken minutes and responsibly debated. CIPPREC and BOMA have maintained an open working relationship on issues as they arise with CLECs, ILECs and BDUs during this time.
4. CIPPREC and BOMA's interest in responding to Public Notice 2000-124 is ensuring that the private property rights, economic rights and moral rights of Canadian individuals and companies who are MDU owners are respected in the Commission's deliberations on PN 2000-124. CIPPREC and BOMA have endorsed and are strongly in favor of competitive markets developing for telecommunications services and the end user choice. Competition and private property go hand in hand. Private property is a hallmark of true democracy throughout the world.

III. Non-Interference Model Advocated

5. CIPPREC and BOMA advocate a non-interference model in respect of possible terms and conditions of LEC and BDU occupancy of multiple tenant units ("MDUs") in Canada, on the basis of limited CRTC jurisdiction over private property, the alignment of MDU owners' and Commission objectives in facilitating end user choice, the need not to discriminate against other types of telecommunications service providers demanding occupation of the same space, the MDU owners' unique incentive to maximize the long term value of its assets and effectively allocate scarce space, and the reliance on the private market to mediate effectively terms and

conditions of occupancy license agreements and possible occupancy fees. The CRTC ought not to regulate the terms and conditions of agreements with MDU owners nor the fees that are chargeable.

III. CRTC has no Jurisdiction over Private Property

6. CIPPREC and BOMA suggest that the CRTC has no jurisdiction over private property rights, and accordingly no direct method of forcing adverse occupation of MDUs by its regulated entities, whether a LEC, CLEC or BDU. Neither the *Telecommunications Act* nor the *Broadcast Act* give the CRTC the jurisdiction to permit any carrier or BDU to occupy private property without the owner's authorization, absent expropriation. Although it is now settled law that telecommunications is a matter falling under federal jurisdiction, the provinces alone have jurisdiction over private property on the basis of Section 92 (13) of the *Constitution Act*, which delegates property and civil rights to the provincial legislature. On the basis of such provincial jurisdiction over private property, and the common law, private property owners can exclude others, including LECs or BDUs from entering their private property or installing facilities, and owners of private property have the exclusive right to manage occupancy within their private property.
7. Provincial laws governing private property, such as the Ontario *Trespass to Property Act* that may incidentally affect a carrier's right to occupy land for purposes of carrying on federally sanctioned undertakings, are constitutionally valid as jurisdiction of the Provincial Legislature. Statutes governing occupancy of private property are not aimed at regulating telecommunications carriers, nor are they a class of legislative authority exclusively reserved to Parliament.
8. Accordingly, the CRTC has no jurisdiction as described in paragraph 5 of Public Notice 2000-124 to mandate occupancy of a main terminal room or POP room, use of riser space to install in-building wire for a LECs or BDUs own use, or rights to travel over any other areas of an MDU that a LEC or BDU may require, rights of connection to in-building wire owned by the MDU owner or, indeed, connection to in-building wire controlled by a LEC or BDU if such connection needs to be made on private property and there is no authorization for occupancy. In Broadcast PN CRTC 1994-18, the CRTC stated that it does not want to mandate access to private property.

IV. Unauthorized Occupation May be a Trespass

9. Therefore, unauthorized occupancy by a telecommunications carrier or BDU to private property in Canada constitutes a trespass. This proposition would not only include LECs installing or upgrading switching equipment or wiring in an MDU MTR or riser without authorization, but would also include LECs installing entrance cable facilities in new buildings without proper authorization. It would also include BDUs installing or upgrading equipment or wiring in an MDU. Failure to object to a trespass does not constitute authorization.

10. ILECs and BDU operators may have continuing rights to occupy MTRs and risers in MDUs in Canada either by express agreement or by implied license. However, absent a specific agreement, an MDU owner may terminate an implied license to occupy an MTR by a LEC or cable company, at any time on reasonable notice. Neither do telecommunications carriers or BDUs have any express or implied right to remain on private property simply because their personal property (for example, switching equipment, wiring or cabling) is situated on the property. Accordingly, for example, in a situation where a cable operator owns cable wiring in a MDU after the expiry of an Occupation License Agreement, the owner of that private property would be within its rights to require the removal of that private property or, failing which, declare the property forfeited or remove it itself, in conjunction with terminating any express or implied occupation license.

V. No Jurisdiction over form of Occupation License Agreements or Fees

11. Since the CRTC does not have jurisdiction over private property, it equally does not have any authority to control the form of the agreements required by owners of private property as a condition of granting occupancy, nor over the fees or charges that an owner of private property may impose as a condition of allowing occupancy. Equally, occupancy guidelines as suggested by paragraph 5 c) of PN 200-124 are unenforceable against the MDU owner or MDU.

12. While the CRTC may regulate the types of agreements its regulated entities may sign (such as those with exclusivity provisions), or the fees that its regulated entities may pay, those pronouncements are not binding on the MDU owner and the MDU owner cannot be forced to

accept those terms in an Occupation License Agreement in return for permitting occupancy. The CRTC has no jurisdiction, binding on MDU owners, to mandate appropriate terms, conditions and types of costs or fees eligible for recovery that BDUs or LECs and building owners can use as the basis for negotiating in-building wire, riser space and meter room space agreements, or even guidelines in respect thereof, as contemplated in paragraph 5C of Public Notice 2000-124. As a matter of policy, those measures are likely to be counterproductive to the evolution of competitive markets.

VI. Expropriation an Ineffective Tool

13. Section 46(1) of the *Telecommunications Act* allows carriers to apply for the expropriation of lands required for the purpose of providing telecommunications services to the public. Any such expropriation is subject to full compensation based on market values. Any intention to deprive individuals of property without paying compensation in return for that deprivation must be made clear by statute. Legislation that impairs property rights is strictly construed, as a matter of policy. Furthermore, there is also a presumption in favor of full compensation and not just partial compensation. Section 46(3) of the *Telecommunications Act* specifically requires compensation to be paid for land expropriated under Section 46.
14. Therefore, where appropriate, the CRTC could expropriate occupancy rights to MTRs and risers in MDUs. However, expropriation is a poor remedy. It could only be effected if:
 - (a) Such expropriation was essential to the CRTC's policy objectives;
 - (b) Fair market value was paid;
 - (c) Reference plans were prepared by a qualified surveyor describing precisely the boundaries of the entrance cable conduit, MTR facilities, and riser conduit and telephone room space necessary to show the actual property expropriated from the property line to a tenant's suite; and,
 - (d) Terms and conditions of co-habitation (normally the contents of an Occupation License Agreement) would have to be prescribed by regulation or negotiated, dealing with staffing, security, insurance, indemnities, rights to travel over common elements to the expropriated property, allocation of common expenses (heating, air conditioning and power) and similar provisions some of which are described in Schedule "A-1", attached

hereto. The jurisdiction to prescribe terms and conditions of access as part of an expropriation does not exist.

VII. CRTC Jurisdiction Over LECs and BDUs

15. Through CRTC Decisions 97-8 and 99-10, the CRTC confirmed the ILECs obligation (which at the time was the ILEC but which may in the future be a CLEC) to unbundle local loops and make them available to CLECs to gain access to tenants in an MDU.
16. The CRTC has only interfered in private contracts between a regulated entity and an MDU owner by declaring unenforceable by the regulated entity any exclusive right to local exchange or cable services negotiated for by such entity. As a matter of policy, CIPPREC and BOMA support this objective.
17. While the CRTC may order the denial of any telephone service by a LEC or all LECs serving an MDU or by a BDU serving an MDU, this may be a poor remedy for perceived anti-competitive behaviour by an MDU owner since termination of rights to occupy the MDU may adversely impact affected LEC or BDU revenues, may abrogate commercial contracts in place with customers, and may create liabilities for affected parties. It may also punish existing tenant customers who rely on such service more immediately than it punishes the MDU owner. The MDU owners' liability, if any, would likely only be found in its lease with such tenant.
18. The CRTC ought not to seek to interfere, limit, or prescribe appropriate terms of Occupation License Agreements that can be signed by regulated entities in any event. The form of these agreements is best left to the private market as a policy matter. There are far too many variables on a building-by-building basis to create a one-size-fits all agreement. Policies and practices amongst MDU owners may vary depending on geographical market, demand (or lack of demand) by CLECs for occupation, costs incurred to facilitate competition, ownership of in-building wire, and tenant composition, to name a few. Tenant needs may also vary dramatically between MDUs, with the service needs of residential MDUs potentially much simpler than commercial MDUs.
19. Any effort by the CRTC to limit or constrain the types of occupancy agreements that a regulated entity, whether a LEC or a BDU, can sign, or the fees that can be paid, may be seen as an

unjustified intrusion into provincial jurisdiction, as discrimination against private property owners, an interference with their private property rights, and/or an uncompensated transfer of risk, cost or liability to MDU owners. It will provide an enormous disincentive for MDU owners to co-operate with the development of a competitive market in local exchange and cable services. It may create a backlash against over regulation. It is unnecessary in any event.

20. Similarly, an effort to limit the types of fees that can be charged by MDU owners, either completely or just to a prescribed class of “costs”, will be perceived as discrimination against private property owners, an indirect tax of MDU owners or an explicit subsidy of another for-profit sector of Canadian society (LECs and BDUs). It will discriminate against new CLECs and new or expanding BDUs who wish to gain occupancy in MDUs and compete with incumbents, by preventing or delaying competitive entry into MDUs. It will further insulate ILECs from competition if they are shielded from having to pay any fees. It will disincent MDU owners from proactively constructing the new POP rooms and facilities needed to facilitate competition, and from acquiring in-building wire from ILECs.

VIII. Finite MTR and Riser Space: Better Sharing Required Amongst LECs, not Adverse Occupation

21. There is a very finite amount of space available in existing MDU MTRs and risers. This means that a regulatory policy aimed at specifically getting all LECs and BDUs rights of occupation in MTRs and POP rooms will not work. A regulatory policy aimed at ensuring regulated entities are more efficient consumers of scarce space, and are better houseguests, will be much more productive in obtaining MDU owner co-operation and in ensuring end user choice.
22. Almost all of the existing building stock in Canada was designed and built presuming one monopoly telecom provider, and MTRs and risers were often sized accordingly. In most instances, architects did not contemplate multiple wiring infrastructures in buildings.
23. MDU owners have noted that space within the existing MTR can often be reorganized and used more efficiently, often by multiple LECs and/or BDUs not just the ILEC. However in some cases, this requires an investment in moving or replacing, in some cases, an older main distribution frame (“MDF”) to more modern wall mounted blocks or relocating other facilities

that LECs or BDUs have installed in MTRs (e.g. T-1 and fibre cabinetries). This is an investment that the ILECs have apparently been reluctant to make, since it may be expensive to undertake. Accordingly, many MTRs are now, in hindsight, used inefficiently and require re-organization to accommodate the facilities of other service providers. Mandating better MTR joint use practices by LECs, better “guest” behaviour by LECs and BDUs may enable more LECs and BDUs to have facilities within MDUs.

24. In transitioning to a competitive environment in local exchange services and faced with poor space availability in existing MTRs, some building owners have cannibalized revenue generating storage space or other basement or ground floor space to create “Point of Presence” or “POP” rooms to accommodate CLECs. While some MDU owners may have the ability to cannibalize other space to create POP rooms, many buildings have no such additional space available. Riser space is similarly constrained.
25. MTRs come in a variety of sizes and locations with an MDU and there are a variety of physical and engineering challenges that come with making space available for facilities based competitors, either in those MTRs or in alternate space, if any, that may be available at or near the MTR. Horizontal wiring trays joining MTRs with POP rooms often require careful and expensive routing. New utility, security, heating ventilation and air conditioning (“HVAC”) services need to be made available or created, not only for new POP rooms, but often for existing MTRs.
26. Some MDU owners have constrained the expansion of ILEC facilities in MTRs so as to leave room for future CLEC facilities. This has also occurred due to the reluctance of some ILECs to sign Occupation License Agreements to legitimize their occupancy of private property.
27. Many of the risers in current MDUs have become clogged with copper and other wiring as a result of the previous (and possibly current) practices of many ILECs in pulling new wire to serve a new customer rather than sorting out and reusing existing copper wiring. Most current copper wiring is untagged and unorganized. Some inventories report redundant “dead” wiring comprises up to 60% of the bulk in the risers of commercial buildings. Some wiring technologies, such as coaxial cable or interfloor wiring, are bulky and inefficient users of riser space. ILEC wiring diagrams are often either non-existent or general only. In response to clogged risers, some MDU

owners have created new riser space by core drilling through concrete slabs, although most MDU owners are reluctant to do so as there are structural implications, and it is expensive. Most MDU owners believe better use of existing risers could be made through more prudent management of wire located in the riser. There are very few riser management companies, not otherwise affiliated with an ILEC or CLEC currently in Canada, for MDU owners to consult or retain.

28. Risers clogged with redundant wiring may impede telecommunications and cable access to tenants in an MDU, to the extent that little space may remain for fibre, coaxial cable or copper wiring to be pulled to the tenant.
29. Because of the finite MTR, POP room and riser space in Canadian MDUs today, end user choice must be achieved through a combination of facilities based occupancy of MTRs by LECs and the leasing of local loops from LECs who have facilities in the MDU MTR.

IX. Controlling Occupation of Private Property: MDU Owners in Best Position

30. MDU owners, outside of their legal rights, are in the best position to choose which local exchange providers should have rights to occupy to scarce MTR, POP room and riser space. For most MDU owners, the choice of which telecom service provider should be granted occupancy is based on both breadth and depth. It is based on general as well as specific tenant demand, balanced against space availability, capital resources, and future tenant needs. The MDU owner has the economic interest of the capital asset, the MDU building, as well as the source of income, the tenants in mind, and needs to ensure the long-term prudent management of the asset. MDU owners must balance a desire for depth of LECs with other telecommunications services that the tenants demand, each requiring space in the MTR, POP room or riser. LECs only have the interests of their current and prospective customers in mind, not the MDU as a community.
31. MDU owners cannot afford to lose control of scarce space, and must be able to ensure prudent management of all building systems for its tenants. The externalities and legacy of the monopoly local exchange service model, including underutilized space in MTRs and telephone closets, lack of accurate and detailed wiring diagrams maintained by ILECs, and indifference to space-consuming and redundant wiring, is evidence that LECs do not have strong economic incentives

to be good houseguests in MDUs, but do as little as possible to be able to serve the tenant customer. This is practical evidence of the need for Occupation License Agreements.

32. Local facilities based exchange carriers are competing to be allowed to occupy scarce riser, POP room and MTR space not only with each other, but also with data service providers, high speed fibre network providers, Internet service providers, building centric application service providers, centrex facilities, building centric telecommunications service providers, BDUs and other content providers, private exchanges, dedicated tenant networks, cell phone equipment and other similar types of telecommunications and broadcast services, some of which are regulated but most of which are not.
33. With finite space in the MTR and risers and many competitors for this space, MDU owners have a daunting task: determining how to allocate this scarce space so as to maximize the utility and choice of its present and future tenants. If the mix as selected by the landlord is inappropriate, it will lose tenants to other buildings where such services are available. If an MDU owner fails to respond to a specific tenant demand for a specific telecommunications service or supplier, it may either fail to sign that tenant to a lease, or may lose that tenant upon lease renewal.
34. Only the landlord has the full information and economic incentive to balance all competing interests appropriately, and to allocate this scarce space effectively.
35. Using the analogy of a food court, it is not in any landlord's best interest to have all the available food court restaurants serving Mexican food. The landlord's job is ensure that a sufficient variety of food is available at all times to maximize traffic to the food court and satisfy most peoples' needs and wants.
36. Similarly, in allocating scarce space in an MTR, POP room or riser, MDU owners will take a "food court" approach and ensure that it has sufficient breadth and depth in each service category demanded to appeal to the most number of tenants all of the time, and to adjust this mix from time-to-time. The landlord may not be able to accommodate all tenants' requests for different facilities-based local exchange carriers all the time, and in many cases, would not choose to do so as a matter of policy.

37. The ability of a landlord to be close to its tenants means that landlords often have a better and more impartial view of a tenant's telecommunications needs than any single service provider might, to the extent that the single service provider may only see the tenant's needs in terms of the services that provider is capable of offering, but not in respect of alternatives.
38. For example, if voice over internet protocol becomes a dominant technology in the next two years, some landlords may decide to allocate more space to competing Internet service providers, since tenant demand is for choice and variety over Internet service providers and for high speed fibre wiring. The CRTC ought not to determine winners and losers in technology, but should allow the marketplace to do that.
39. Which LECs are allowed to occupy scarce MTR, POP and riser space could be based on a first come, first served basis (i.e., first sales call to the MDU owner). This could discriminate against later CLECs, potentially with better technologies and higher tenant demand. There may be no incentive by earlier CLECs to use scarce MTR or riser space efficiently since excessive utilization may pre-empt competition from new CLECs.
40. CLECs granted occupancy of an MDU may make little attempt to sign contracts with customers. The equipment may sit unused. MTR occupancy may have capital market value to CLECs, but has no value to MDU owners or their tenants if alternative services are not being offered. Today, prudent MDU owners require that CLECs granted occupancy of scarce MTR and POP room space in MDUs, sign Occupation License Agreements requiring service contracts be entered into by the LEC with a minimum number of MDU tenant customers within a specified period of time and maintain a specified minimum customer base within the MDU. Otherwise, the space occupied may be more useful to a CLEC or other telecommunications service provider who has a greater number of existing or potential tenant customers within the MDU.
41. Which LEC is allowed to occupy scarce MTR, POP and riser space could be based on who is first to sign up a tenant customer. Indeed, many CLECs have argued with CIPPREC and BOMA members, and many seem to still believe, that the end user choice contemplated in CRTC Decision 97-8 and 99-10 *necessarily* means they are allowed to occupy the MTR or POP room if they sign a service contract with single tenant.

42. Again, CIPPREC and BOMA members have found abuses, where CLECs demand occupation of private property on the basis of CLEC-tenant agreements representing expressions of interest only, non-binding trial periods or other “soft” commitments. CLECs may also demand rights to occupy on the basis of firm tenant commitments, but from very small tenants, from tenants on month-to-month tenancies, and from tenants nearing the expiry of their leases.
43. Which LECs are allowed to occupy scarce MTR, POP and riser space could be based on CLEC versus ILEC in new buildings. Since ILECs have an obligation to serve, they would argue, they are entitled to occupy in new buildings. This discriminates against CLECs and slows competition. CLECs are already concerned as to their ability to compete since ILECs are in almost every MDU in Canada, and started the competitive market with 100% penetration and 100% of the customers.
44. In order to assist MDU owners in understanding relevant criteria in allowing facilities-based occupancy of scarce MTR, POP and riser space, CIPPREC and BOMA have promulgated Building Access Principles (attached hereto as Schedule “B”). These principles are designed to assist the MDU owner to maximize choice for their tenants and maximize the use of scarce MTR, POP and riser space by enabling the MDU owner to choose amongst the best telecommunications service providers to populate that space. The Building Access Principles encourage MDU owners to act responsibly and reasonably in selecting which local exchange service providers will have occupancy of its private property to install facilities, and makes transparent some of the considerations that go into the MDU owner’s MTR occupancy decision. The Building Access Principles reflect a private competitive market approach by prudent businesspeople acting under enlightened self-interest to deal with occupancy issues of finite space.
45. Some tenants may be disappointed that a Landlord will not or cannot accommodate the new LEC MTR occupancy required as a result of a tenant’s desired mid-term switch of telecommunications service provider. Over time, tenants may move to buildings where their preferred LEC has facilities, and so facilities-based end user choice may diffuse amongst MDUs. The opposite problem, of course, would be where the term of a tenant’s lease is longer than the term of its LEC provider’s Occupation License Agreement and that Occupation License Agreement is not renewed. However, these particular types of issues can be addressed directly between the landlord and tenant in the lease documentation between them and by the LEC in requesting a

license term matching the longest of its major customers. If the tenant were a substantial tenant, it would be very difficult for the landlord to make a decision terminating the MTR or POP room occupancy rights of that tenant's preferred LEC mid-term, for obvious financial reasons.

X. Terms and Conditions of Occupation License Agreements should be left to the Private Market

46. MDU owners are entitled to demand that LECs and BDUs occupying part(s) of their private property enter into written Occupation License Agreements. This includes CLECs wanting occupancy within MDUs and also ILECs currently providing existing local exchange facilities, regardless of whether there are competing facilities in the MDU or not. Written Occupation License Agreements will provide authorization for LECs occupancy of certain parts of an MDU for a specified period of time and offer a defense to a claim of trespass.
47. LECs are for-profit businesses operating on and in private property. Quite apart from the legal entitlement of MDU owners to demand them, there is no reasonable policy justification not to require Occupational License Agreements from all LECs in all situations where private property is occupied in Canada. CLECs have been executing Occupational License Agreements for all occupancy situations: to not require them of ILECs discriminates against CLECs and gives ILECs an unfair advantage.
48. MDU owners need Occupation License Agreements from ILECs in non-competitive buildings to address and assign rights, risks and responsibilities of occupancy. A sample agreement, previously filed as part of the BAIW SWG of the CISC process, has been excerpted and a copy is attached hereto as Schedule "A-1". Occupation License Agreements will also allow MDU owners to redress and address the problems incurred to date from ILEC occupation of MDUs. These provisions may include:
 - (a) The requirement for the preparation and maintenance by the LEC of detailed wiring diagrams for the MDU, accessible by the owners of the MDU, and provision of copies thereof to the owner of the MDU from time-to-time;
 - (b) The obligation to tag existing wiring to identify its source, destination and usage, tying into the diagrams referred to in (a) above;

- (c) The obligation to remove redundant wiring not otherwise required to maintain adequate surplus capacity;
 - (d) The obligation to adopt modern wiring equipment and utilize space economically in MTRs, risers and other locations within the building. This includes the ability of the owner to require relocation of equipment within the MTR from time-to-time;
 - (e) The ability to control use of the MTR, including control of marketing and administrative operations conducted from desks and phones located in the MTR;
 - (f) The provision of adequate security systems and processes for control of access by various LEC personnel to the MDU and the MTR and the various communications closets; and
 - (g) The provision of utility, HVAC and other building services to the MTR and communications closets.
49. The form of such Occupation License Agreements will be determined by the MDU owner from time-to-time, based on individual building policies, industry best practices, type of MDU building and tenant makeup, LEC equipment, operating practices and unique MDU configuration, amongst others. CIPPREC and BOMA agree that exclusive contracts for the provision of local exchange services are generally undesirable as contrary to the development of competitive markets and end user choice.
50. Some landlords may unbundle the types of license agreements they require and allow for separate and individual Occupation License Agreements for:
- (a) Occupation of MTRs throughout a portfolio of properties, subject to principal or partner approval;
 - (b) Entrance cable facilities;
 - (c) The placement and maintenance of communications equipment in the MTR or POP room;
 - (d) Use of risers for LEC wiring or alternatively, use of in-building wiring owned by the MDU owner; and
 - (e) Riser management services, amongst others.
51. Tenants in an MDU will want to know that their preferred LEC has the legal right to occupy space within the MDU pursuant to a written Occupation License Agreement, and may be relying

on the landlord to not only have pre-qualified that LEC, but also to have ensured that the LECs activities within the MDU building are tightly regulated, professionally installed, and secure on an ongoing basis.

52. CIPPREC has voluntarily co-operated with Bell Canada within the past six months on the form of a standard license agreement that could be proffered by Bell in newly competitive buildings. Approximately 60% of the Bell-drafted agreement was sufficiently well balanced that it could be recommended with minor enhancements, as a non-binding “model” of an Occupation License Agreement that both CIPPREC and Bell could advertise and circulate. In CIPPREC’s opinion, some remaining elements of the agreement favored Bell, or there were clauses that it was anticipated prudent MDU owners would request, including possibly a section on fees. CIPPREC and BOMA are also prepared to work with the CCTA or other groups on standards and model forms of agreement.
53. It is recommended that these non-binding efforts at settling a form of master Occupation License Agreement continue, perhaps through the BAIW SWG. All parties stand to gain by standardizing the language of these agreements as much as possible.
54. While requiring written Occupation License Agreements in all MDUs may seem a daunting task to ILECs, this is indeed the practice that the CLECs have been used to over the past few years, and MDU owners have the right to insist on them. ILECs should immediately develop a model form of agreement, and staff up with the same types of building access managers and administrative staff that the CLECs now have. It would be more of an urgent priority for those ILECs to enter into written Occupation License Agreements in those buildings where CLECs have facilities and then in those buildings where there currently are no other competing LECs having facilities. Having said that, some finite time periods need to be established or the effort will not be made. The ILECs should propose a timetable for doing so, subject to an MDU owners right to demand an agreement at any time.
55. The form of the Occupation License Agreement and the quantum of fees, if any, are for the ILEC and the MDU owner to negotiate. Clearly, in non-competitive buildings, the MDU owner is in a weak bargaining position since it may have no effective remedy so long as the ILEC is the only LEC in the building. This will have a positive competitive effect since the MDU owner will be

encouraged to seek out other CLECs so it has facilities-based local exchange alternatives to the ILEC and can therefore be in a stronger negotiating position with the ILEC.

XI. An MDU Owner Is Entitled to Charge fees for Use of Scarce Space

56. CIPPREC and BOMA make no comment on fees as between LECs as requested in paragraph 5(b) of PN CRTC 2000-124 and the rights described under paragraph 5(d) at this stage, but reserve the right to do so at a later stage.
57. MDU owners are entitled to a market or negotiated fee for providing occupation of private property by entrance cable facilities, by equipment in MTRs, by wiring in the risers, and for usage of in-building wire owned by an MDU owner, as well as for building specific services that may be provided, such as riser management services.
58. While MDU owners have the sole right and jurisdiction to charge market or negotiated fees in return for occupancy of scarce MTR, POP and riser space, the CRTC as a matter of policy should not seek to indirectly control fees as between MDU owners and LECs. Since CRTC Decision 97-8, it has become very clear both in pricing CLEC occupancy arrangements and indeed BDU occupancy arrangements that neither landlords nor new entrants nor continuing cable competitors are interested in a “menu of costs” or “cost-plus” approach to occupancy pricing. These competitors have by their actions been in favor of an annual market based pricing structure for each building. CLECs and cable companies desiring prompt occupancy for their facilities have been offering single annual license fee structures sometimes including percentage of gross revenue components.
59. Market fees have sometimes been driven by the CLEC and BDU marketplaces. Market-based fees are consistent with real world approaches to pricing, desired by new entrants as a simple budgeting tool, are predictable, finite and comparable across other MDUs that the particular CLEC or cable company is occupying.
60. Charging for the use of a scarce asset such as MTR, POP room or riser space encourages more efficient use of the asset. A “food court” approach ensures the best competitors gain occupancy of the most desirable locations and allows market-based fees to evolve.

61. Such fees apply to both CLECs and ILECs whether multiple LECs have facilities in an MDU or not. These fees are subject to market forces. The same principles will apply to in-building wire owned by the MDU owner. Tenants exert pressure for LEC occupancy and use of MDU facilities. Tenants will not want to hear from their preferred service provider that its Landlord is charging unreasonably high rates for occupation or placement of equipment, use of risers or in-building wire, as the case may be.
62. LECs may share comparable occupancy fee data. CLECs with a portfolio of license agreements now know comparable fees. This data comprises a “market”, and third parties will evolve to publicize these private rates over time, as it does with leasing rates for tenants in MDUs.
63. Leasing local loops provides a pricing alternative. The upper limit on fees chargeable by an MDU owner may be met where a LEC can lease a local loop at an equivalent or cheaper unit cost or overall cost.
64. Excessive pricing by an MDU owner for occupancy will reduce choice within the MDU leading to loss of tenants. If the fees charged are prohibitive, the CLECs may choose to negotiate with other MDU owners, and the tenants of that original MDU may as a result be left with inferior service or inferior choice.
65. Some MDU owners may choose to waive or internalize costs or fees in order to incent competitive entry by CLECs so as to provide competitive choice for its tenants.
66. There is no policy justification for tying MDU owners’ recoverable costs to a cost based formula. Of course LECs and BDUs want the right to occupy private property at the lowest cost. If the CRTC can find a way to accomplish it, they would be the beneficiaries. LECs and BDUs are used to some tariffed costs as regulated entities, because as between each other there may be natural monopolies that need regulating. MDUs number in the hundreds of thousands in Canada. There are no locational MDU monopolies. Tenants are always mobile. Costs vary. It is highly impractical to undertake a cost study for each building. As discussed above, MDU owners will not embrace capped costs in favor of for profit enterprises, whether such enterprises are providing an essential service or a tariffed service or otherwise.

67. Ignoring for the moment the absolute and sole right of the MDU owner to charge a fee for occupancy, there are three potential policy counter-arguments to the ability of the MDU owner to request fees from LECs for occupancy:

- (a) The suggestion that fees should be non-discriminatory between LECs and CLECs, and that, since ILECs (ignoring for the moment the CLECs related to an ILEC, such as Bell Intrigna) do not want to pay any fees for being in either competitive or non-competitive MDUs, the CRTC should mandate all LECs not to pay fees. However, this obviously disincentivizes MDU owners to co-operate in facilitating CLEC occupation of MDUs forces the CRTC into continual enforcement proceedings, and perpetuates the ILEC facilities-based dominance. It also amounts to an explicit taxation of MDU owners in favour of for-profit LECs.
- (b) The suggestion that telecommunications is a base building amenity that should be added to operating costs and passed through to the MDU tenants, and therefore any costs incurred by the MDU owner in facilitating and managing competitive telecom facilities should be added to the tenant's bill. This contention of course discriminates against the entire multi-family apartment sector, where rents are gross (a landlord cannot pass through any additional building operating costs including telecommunications costs onto a tenant's monthly rent), the commercial sector where rents are gross rents (such as medical/dental buildings and many one-off tenancies) and in MDUs where there are no rents but several potential customers, such as hospitals and universities. The language of the leases for those tenancies, where operating costs are rechargeable to the tenants, may not allow all or some of the costs to be passed through. Other net leases may have caps on the amount(s) that could be passed through. Some allow operating, but not capital costs, to be recovered. More importantly, MDU owners try to achieve equity in any recharges to tenants, so that costs are charged on a consumption basis. Hydro is often directly metered to separate high users from low users and tenants are direct billed or recharged accordingly. Property taxes have also been assessed against separate tenancies in some provinces, to allow landlords to allocate high taxes to highly assessed space (e.g. retail) and lower taxes to lower assessed space (e.g. office) within the same MDU. Telecommunications does not lend itself to such recharging. Consumption may vary widely from tenant to tenant and the landlord is in no position to value the electrons, light

pulses or signal going down a variety of technologies or through the air so as to “match” consumption with cost drivers in an MDU. Limited phone service users should not be subsidizing the MTR, POP and riser space needs of communications-intensive tenants. That is up to the communication provider to do. It is inappropriate and counterproductive to expect tenants to indirectly pay for telecommunications infrastructure improvements and management in MDUs.

- (c) Owners of MDUs pay for them as base building costs. Owners of MDUs cannot be forced to make the required investment in facilities, although many may do so. Many have made an investment in an MDU based on a required rate of return, and may not wish to lower their return by making substantial capital improvements with no direct and immediate payback. Requiring owners to voluntarily pay for required improvements will slow competition and continue to perpetuate the ILEC dominance over local exchange markets. It also amounts to an explicit taxation of MDU owners in favour of for-profit LECs.

XII. Concluding Remarks

- 68. CIPPREC and BOMA support and encourage the development of competitive markets for local exchange telecommunications services in Canada, and support the policy of end user choice in respect thereto as articulated in Paragraphs 205 and 206 of Telecom Decision 97-8. However, competitive markets and end user choice should not evolve at the expense of private property rights. Local exchange carriers (“LECs”) and Broadcast Distribution Undertakings (“BDUs”) are for-profit entities. Some may be subject to limited and temporary price controls on certain types of services only. LEC or BDU status should not disenfranchise other types of telecommunications and broadcast providers needing rights of occupancy over scarce space in MDUs.
- 69. CIPPREC and BOMA advocate a non-interference model in respect of possible terms and conditions of LEC and BDU occupancy of MDUs in Canada, on the basis of limited CRTC jurisdiction over private property, the alignment of MDU owners’ and Commission objectives in facilitating end user choice, the need not to discriminate against other types of telecommunications service providers

demanding rights of occupation over the same space, the MDU owners' unique incentive to maximize the long term value of its assets, and the reliance on the private market to mediate effectively terms and conditions of occupancy license agreements and possible occupancy fees.

70. Accordingly, all incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs") and BDUs carrying on business on private property are compellable to enter into occupancy license agreements and pay possible fees as a condition of occupancy of private property. CLECs and BDUs have generally always signed agreements and paid negotiated fees. The appropriate transition schedule for ILECs to change their business practices to conform to current CLEC and BDU practices remain a singular administrative issue.
71. MTR, POP room and building vertical riser space is a scarce commodity that must be carefully managed and allocated amongst various users demanding space. MDU owners alone have the legal right, moral right, and appropriate economic incentive to decide who gets occupancy of scarce space within an MDU. MDU owners will make the MTR and POP occupancy decision to maximize the long-term attractiveness of the MDU to tenants, which in almost all cases will mean providing reasonable choice amongst several LECs within each MDU.
72. In all circumstances, MDU owners are entitled to demand license agreements (called "Occupation License Agreements") from CLECs, BDUs and ILECs. MDUs are private property. The form of such Occupation License Agreement(s) is the prerogative of the MDU owners granting occupancy on its private property. However, model forms could be developed collaboratively, perhaps through the Telecom and Cable Building Access and Inside Wire Sub-Working Groups ("BAIW SWG") of the CRTC.
73. MDU owners can charge market-based or negotiated fees for occupation of scarce MTR or POP room space in MDUs and for usage of risers or in-building wire owned by the MDU owner. MDUs are private property. The fees may be cost-based, market based or negotiated. It's the sole choice of the MDU owner. Such

fees apply to both CLECs and ILECs whether multiple LECs have facilities in an MDU or not. These fees are subject to market forces. The same principles will apply to in-building wire owned by the MDU owner. Tenants exert pressure for LEC occupancy and use of MDU facilities. LECs may share comparable occupancy fee data. Leasing local loops provides a pricing alternative. Excessive pricing will reduce choice within the MDU leading to loss of tenants, and some MDU owners may choose to waive or internalize some costs.

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**SCHEDULE “A-1”:
PURPOSE AND DESCRIPTION OF TYPICAL TELECOMMUNICATIONS
LICENSE AGREEMENT FROM BICO 025, SEPTEMBER 8TH, 1998,
BAIW SWG CISC**

The purpose of a Telecommunications License Agreement is as follows:

- To make explicit the terms under which a telecommunications service provider (Licensee) is allowed access to private property;
- To establish the terms under which the Licensee’s trade fixtures can be affixed to private property; (and also the circumstances and methods under which they may be removed);
- To allocate risk in respect of costs and damages; and,
- To generally establish, in clear unambiguous language, the parties’ ongoing rights and obligations with respect to construction, management and control, maintenance and repair and travel throughout the complex and service.

Under common property law, agreements affecting land must generally be in writing. The request for a written Telecommunications License Agreement satisfies this concern.

The major elements that should be included in a typical Telecommunications License Agreement for a point of presence (POP) type installation in a multi-tenant building are described below. Although most of the key elements are described herein, this is not intended to be exhaustive in its coverage of all practical scenarios.

The wording presented is descriptive in nature and does not represent the wording that is used in a formal license document. Section headings in bold italic below correspond to the headings used in the comparison table (Table 2) in Section B of this submission. [*Note: attached hereto as Schedule “A-2” for the purposes of this submission for PN CRTC 2000-124*].

Identification of Landlord (Licensor) and Telecommunications Service Provider (Licensee)

The first section of the document will typically state the names of the legal entities that are party to the agreement (the Licensee and Licensor). In addition the legal description of the subject property will be stated in this section.

Grant of License

The granting section creates legal rights in favor of the Licensee (Telecommunications Service Provider) to be on private property and is a defense to any assertion of trespass, provided the occupancy is consistent with the terms of the License Agreement. Generally, the grant section will define the Licensee’s rights of operation in the building. Specifically, this will include a statement of the services to be delivered in the building as well as the Licensee’s right to use, occupy or gain access to other areas of the building as agreed to with the Licensor. Unless a separate area is demised to a single licensee, the license is typically non-exclusive (i.e. others may be given occupation rights to the same

telecommunications rooms). This has to be designed to apply to all forms of use: copper, fibre, co-axial, rooftop, as well as MDF and risers.

Term

This section will provide specific dates during which the License Agreement will be in force, including any options to extend the term of the agreement.

License Fees/Rent

Landlords require the ability to recover reasonable costs that they incur in providing telecommunications service providers access to their private property throughout the term of Telecommunications License Agreement. However, given the diversity of building types, ages, layouts, and Landlord interest in controlling telecommunications service providers, no single cost or fee menu can be applied in all circumstances. Accordingly, in Section C a list of potential costs and charges that may be charged by a Landlord to a telecommunications service provider is given. These costs may be comprised in or intended to be offset by a single monthly, quarterly, annual or one time license fee arrangement, comprised in a two stage license fee system (up front fee and ongoing charge), or may be specifically itemized and charged separately from time to time as in a “net” lease (such charges and charging systems being collectively described as the “License Fee”). A breakdown of the heads of costs, which may be comprised in the License Fee, are as set out in Section C of this submission.

Responsibility for Utility Consumption

This section states whether the Licensee is responsible for hydro consumption of its equipment.

Licensee Insurance

This section describes the insurance that the Licensee is required to carry, so that the Landlord can be sure the Licensee has the wherewithal to deal with claims made against it in the course of its operations in the building. These claims may come from a tenant or other occupant or licensee, or may come from the Landlord or its insurer if the Landlord suffers damages caused by a Licensee’s negligence.

Licensor Covenants

This section describes obligations of the Landlord, such as for HVAC, power, and access. It may include an obligation to acquire inside wiring or to provide it.

Licensee Operating Covenants

The licensee operating covenants outline the Licensee’s responsibilities to the Licensor and other occupants of the building. This section deals with such items as maintenance and repair obligations, and the impact of the licensee’s operations on the building and other tenants. It may include a positive obligation of the Licensee to offer telecommunications services to all occupants.

Indemnities

An indemnity in favor of the Landlord gives the Landlord an explicit right of recovery over the Licensee if the Landlord is put to costs otherwise the fault of the Licensee. This typically exists at common law anyway. This section makes it explicit and broadens the indemnified items.

Licensee Events of Default

This section lists what events are to be considered as events of default by the Licensor and Licensee. It prescribes remedies, including rights of termination, and the fair processes to be followed if a default is alleged. Certain events are deemed to be defaults (e.g. bankruptcy of the Licensee).

Electronic Interference

Describes what electronic interference is and provides for methods of dealing with electronic interference caused by a Licensee's equipment with other telecommunications suppliers' equipment and other devices in the building used by a third party, the Landlord or even a tenant. The choices range from requiring the Licensee to find a technological solution to it being deemed an event of default under the License if no solution is found within a reasonable period of time.

Compliance with all Government Laws

Requires the Licensee to comply with all applicable government laws. This may be expanded to include those rulings of the CRTC having the force of law.

Landlord's Work Description

Describes the work that the Landlord will undertake to facilitate the installation of the Licensee's equipment. This section gives the Licensee remedies if the POP room or other infrastructure provided is not what the Licensee bargained for.

Landlord's Approval of Licensee's Work

Requires the Licensee to let the Landlord approve the Licensee's construction and installation plans since the Landlord will have to review for safety, layout efficiency, HVAC capacity and electrical feed, amongst other issues.

Rules and Regulations regarding Access, Servicing etc.

Requires the Licensee to comply with the Landlord's Rules and Regulations made from time to time. These rules and regulations may change over the life of the Telecommunications License Agreement. They deal with operational matters of lesser importance, such as how to gain access, use of common hallways, when construction is to be done, when tenant elevators may not be used, use of the loading dock, access to building systems, proper identification of personnel etc.

Ownership of Fixtures

Generally rebuts the presumption at common law that equipment affixed to real property becomes part of the land (and therefore title transfers to the Landlord). This clause states that, notwithstanding the degree of affixation of telecommunications equipment by the Licensee that title to the equipment stays with the Licensee and does not pass to the Landlord. It may include a positive obligation to remove the equipment upon the expiry of the Term at the Licensee's cost.

Assignment by Licensee

The terms under which or process that Licensee should follow in the event that the Licensee should elect to assign the license or sublicense another LEC or telecommunications company.

Notice Clause

Gives the key addresses, telephone and facsimile (and email) listings for each party for the purpose of "official" notices under the License Agreement.

Control of Hazardous Materials

Prevents the Licensor from bringing into the building hazardous materials, which may be defined to include PCBs, asbestos, or other carcinogenic substances, and may include flammable materials such as gasoline, propane and natural gas. This section may also include notice to the Licensee of any pre-existing conditions in the building that the Licensee should be aware of in doing installations (e.g. asbestos insulation).

Plans of POP Premises

This section will include a floor plan of the POP room, a visual map of where the Licensee's equipment is to go and the routing of wiring. It may define the demarcation point within the building as well as the means by which the Licensee shall deliver its services from the demarcation point or point of presence to the customer. It may also include an equipment list.

Option to Renew

This clause may describe any options for the Licensee to renew the License and the process for doing so.

Other (Miscellaneous)

Any other issues deemed necessary by either the Licensor or Licensee and agreed to as may be required to address the operational or legal needs of either party.

**SCHEDULE "A-2":
 COMPARISON OF SOME TELECOMMUNICATION LICENSE AGREEMENTS AS FILED IN BICO 025, SEPTEMBER
 8TH, 1998**

The following table summarizes elements of some sample agreements CIPREC has recently reviewed. Thanks to those four SWG participants who have supplied us with their standard forms. Since consent to include an analysis of their forms was not obtained in time, the names have been obscured to protect the innocent.

Table 1

	BOMA/RMS Form	National CLEC	Western Canada CLEC	Western Canada CLEC (2 pager)
1. Grant of License	License	2 forms almost identical, except one a lease and one a license	License	License
2. Term	Fixed initial term plus renewals	Fixed initial term plus renewals	Fixed initial term plus renewals	Month to month-schedule
3. License Fees/Rent	Annual License Fee, payable monthly, plus fee for use of spine ("CDS") if LL owned	Annual License Fee	Annual License Fee	Annual License Fee (by schedule)
4. Responsibility for Utility Consumption	Yes	Yes	No	Yes
5. Licensee Insurance	Yes	Yes	Yes	Yes
6. Licensor Covenants	Limited	Limited	Yes	No
7. Licensee Operating Covenants	Yes	Yes	Yes	Yes
8. Indemnities	Yes	Yes	Yes – reciprocal	No
9. Licensee Events of Default	Yes: some notice and cure rights	Yes: 30 day cure, if not then termination	Yes: notice and cure: default if no rent payable	Yes: notice and cure rights, then arbitration
10. Electronic Interference	Yes: notice and cure	Yes: notice and cure, not default	No	Yes: obligation to resolve
11. Compliance with all government laws	Yes	Yes	Yes	Yes

	BOMA/RMS Form	National CLEC	Western Canada CLEC	Western Canada CLEC (2 pager)
12. Landlord's Work description	Yes	Yes	Yes	Schedule
13. Landlord Approval of Tenant's Work	Yes	Yes	Yes	Yes
14. Rules and Regulations re Access, Servicing etc.	Yes	Yes	Yes	Yes-limited
15. Ownership of Fixtures	Retained by Licensee	Retained by Licensee	Retained by Licensee	Retained by Licensee
16. Assignment by Licensee	Controlled	Controlled	Allowed	Permitted assigns-vague
17. Notice Clause	Yes	Yes	Yes	No
18. Control of Hazardous Materials	Yes	No	Yes	No
19. Plans of POP Premises	Yes and specs	Yes	Yes	Schedule
20. Option to Renew	Yes	Yes at Market rate for comparable buildings	Yes	No
21. Other	Confidentiality, restoration obligation, use clause, positive obligation to offer services to all in building, prohibition of rooftop, wireless, construction rules and regulations, warranty on construction, standards of workmanship, mandatory labeling, waiver of subrogation, removal of liens, MPOE rights if landlord provides CDS, termination right by LL if major building		Licensee routing options if encounter hazardous materials; owner marketing help, voluntary cable labeling, Owner to acquire inside wire from incumbent if poss., connecting equipment reverts to Owner upon termination	Licensee 60 day right of termination if not economically viable, restoration obligation

	BOMA/RMS Form	National CLEC	Western Canada CLEC	Western Canada CLEC (2 pager)
	damage			

In comparison to agreements in use, the BOMA/RMS modified agreement, except for the inclusions in the “other” category, is reasonably typical. A form of the BOMA/RMS agreement could be used by some of the larger commercial landlords in Canada.

**SCHEDULE “B”:
CIPPREC TELECOMMUNICATIONS BUILDING ACCESS PRINCIPLES, V 3.0**

1. Landlords will permit tenants to have a choice of telecommunications service providers in the buildings that they occupy.

- Landlords recognize the benefits of competition in respect to improving telecommunications service and lowering costs to end-users.
- Landlords should not, generally speaking, enter into exclusive agreements for the provision of local exchange services to their tenants.

2. Landlords have the right to determine which LECs occupy scarce space within their buildings. (i.e. those LECs that are granted permission to establish a base of operations in their buildings.)

- CRTC Decision 99-10 states that tenants of Multi-Dwelling Units (MDUs)- a term which applies to both commercial and residential buildings- should have access to the LEC of their choice in all situations.
- Landlords acknowledge that both CRTC Decisions 97-8 and 99-10 encourage facilities-based competition (i.e. an in-building occupation by LECs), as opposed to LECs co-locating in another LECs central office and leasing a local loop in order to provide service to a tenant.
- On the other hand, as a result of the finite amount of space available in and adjacent to MTRs, for the establishment of POP sites, as well as the limited amount of space in risers, it is a physically impossible proposition that any LEC that can identify a willing tenant within a building will, as a result, automatically obtain occupation of scarce space within the building as a facilities-based LEC.
- LEC occupation of an MDU is not provided on a first come, first served basis. Further, the existence of a services contract with a tenant does not guarantee occupation in a building. LECs should confirm their status as a facilities based LEC with a Landlord, in writing, (e.g. a license agreement or an executed offer to license) prior to committing to provide service to a tenant on a facility-based basis.
- Private property rights must be respected.
- Those LECs who are unable to obtain rights to occupy a building may have the option to provide services to the tenants of that building by leasing a local loop from a LEC that has already established a presence in the building.
- All LECs should be required to make local loops from their Central Office available to other LECs in order to assist such other LECs in the provision of services into a building.
- Landlords have the long-term interests of the building in mind when determining which telecommunications service providers to do business with. This includes consideration of: present tenants and future tenants; present and future technologies; and the scarce telecommunications space available in the building which must be carefully allocated among LECs and other users in order to maximize the overall benefit of competition to the tenants.
- A Landlord’s criteria for selection of facilities-based LECs may include:
 - a. *LEC covenant strength, financing and operating experience*

- b. LEC technology and service offering*
- c. Profile of typical tenant telecom needs*
- d. Willingness of LEC to sign an Occupation License Agreement and pay a fee*
- e. Space required by such LEC*
- f. Whether that LEC has contracts with existing tenants*
- g. Number of competitors offering that service in the building already*
- h. Flexibility to enable future technologies within scarce space in building*
- i. Security considerations*
- j. Special service requirements*
- k. Trust, reputation, reliability and integrity of the LEC and the working relationship between the LEC and Landlord, and*
- l. Ability of that LEC to offer additional services to Landlord.*

3. Landlords will require reasonable Occupation License Agreements to be signed by all LECs wishing to occupy their private property.

- These Occupation License Agreements are currently signed by CLECs throughout Canada.
- ILECs will need to sign Occupation License Agreements in all situations upon reasonable notice from a Landlord.
- ILECs may become constrained in their ability to obtain additional space for expanding their enhanced services to tenants within such buildings if they are unwilling to sign such Occupation License Agreements, or may be asked to remove facilities.

4. Landlords should be able to recover a fee, from LECs for allowing occupancy of scarce space and resources.

- Landlords are entitled to be fairly compensated for allowing LEC occupancy of scarce space.
- There is finite amount of space available in MTRs, POP rooms and risers. Building owners can charge for the use of these facilities. Market rates for occupation of such space have evolved in the marketplace. Some of these fee models are relatively simple, while others are more creative.
- Landlords are free to negotiate fee structures, which reflect the infrastructure model for their buildings as well as the market for occupancy of scarce MTR, POP and riser space in their buildings.

*** * * END OF DOCUMENT * * ***