



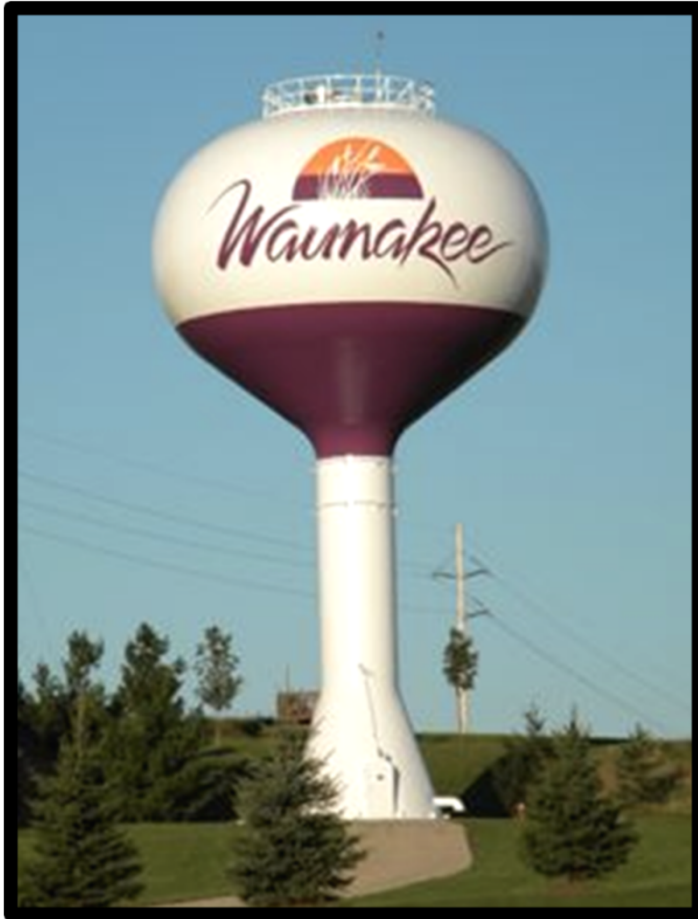
Managing Cellular Installations on Municipal Water Towers

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BoardmanClark 

What's a Water Tower Site Worth?

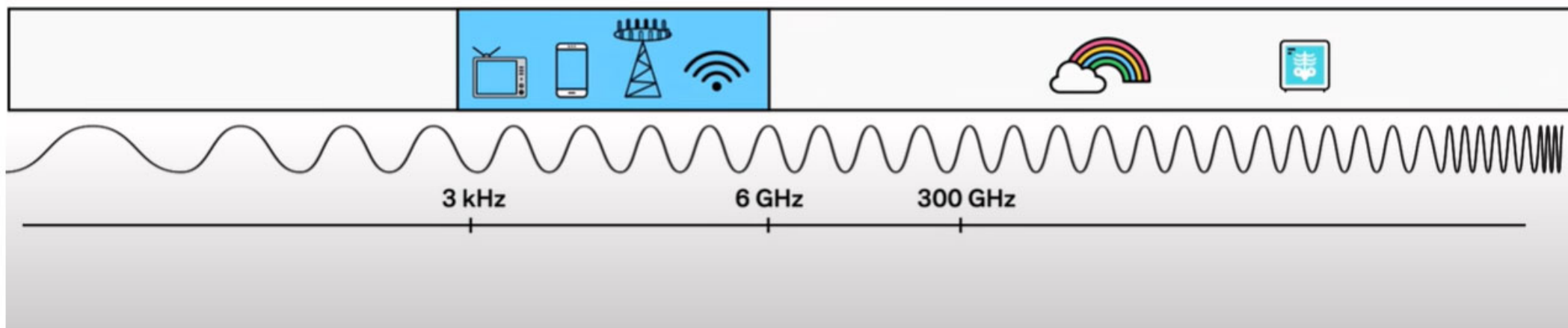


What's It Worth?

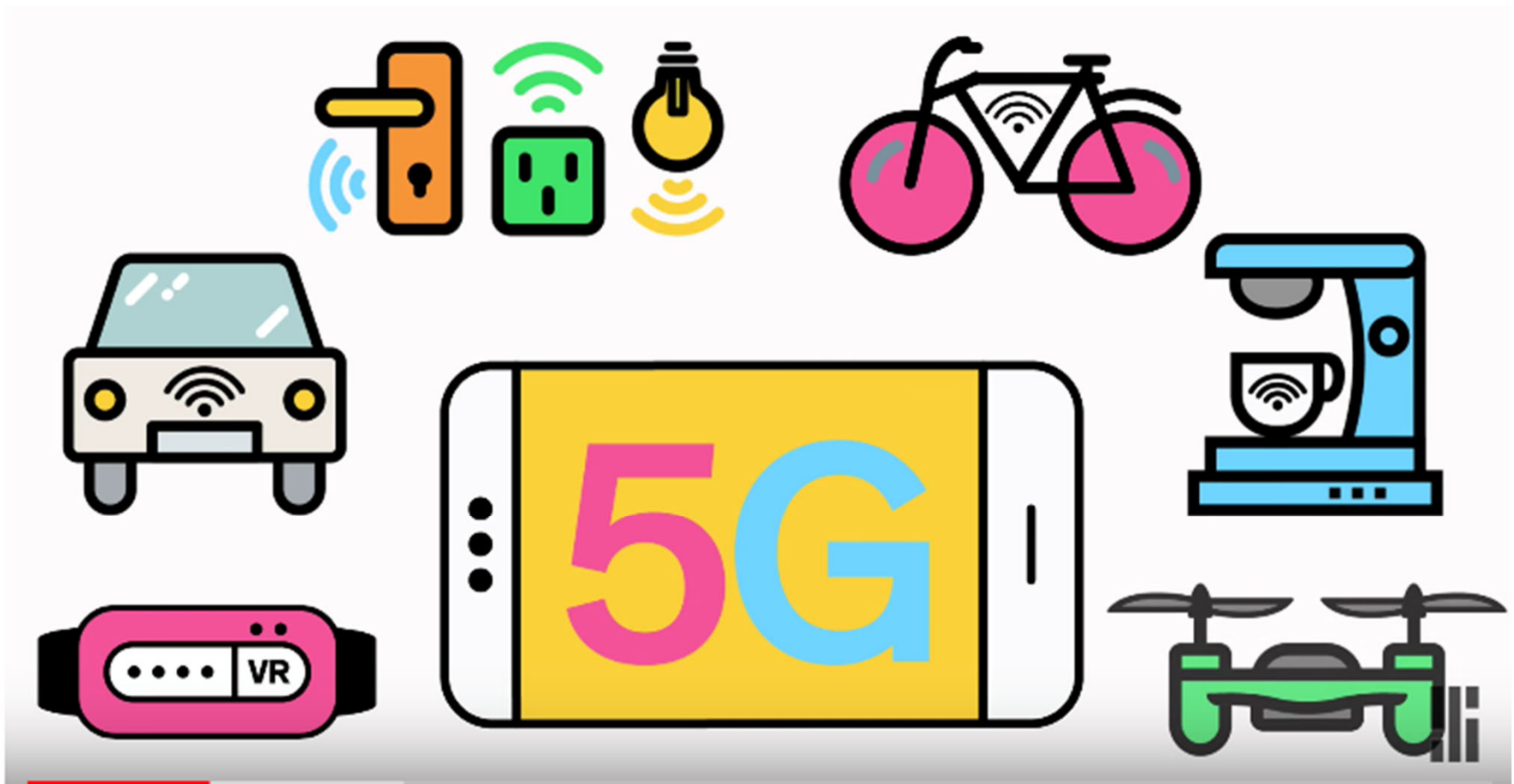
- Financial Perspective:
 - Operating Revenue: \$2M
 - 1 Lease -- \$30,000/yr
 - .015 of Op. Revenue
- Community Perspective:
 - Avoid proliferation of cell tower sites on private property
 - More important factor since Wis. Stat. § 66.0404

Be Wary of Site Acquisition Agents

- Change in law and technology has reduced Water Tower's value
- Must do deal quickly or carrier will go to private site
- Carrier will walk if you:
 - Want too many changes to carrier's standard contract
 - Demand a higher rent payment
- Will go to council/board if you don't "cooperate"



Source: https://www.youtube.com/watch?v=GEx_d0SjvS0



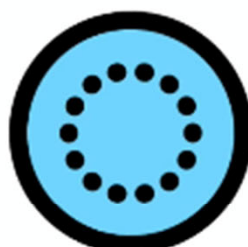
Source: https://www.youtube.com/watch?v=GEx_d0SjvS0



**Millimeter
Waves**



Small Cell



**Massive
MIMO**



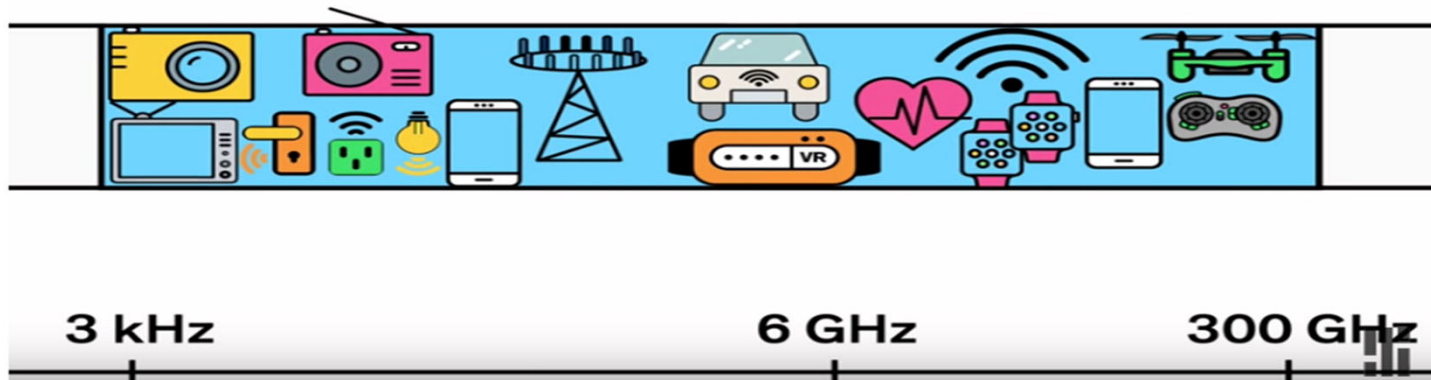
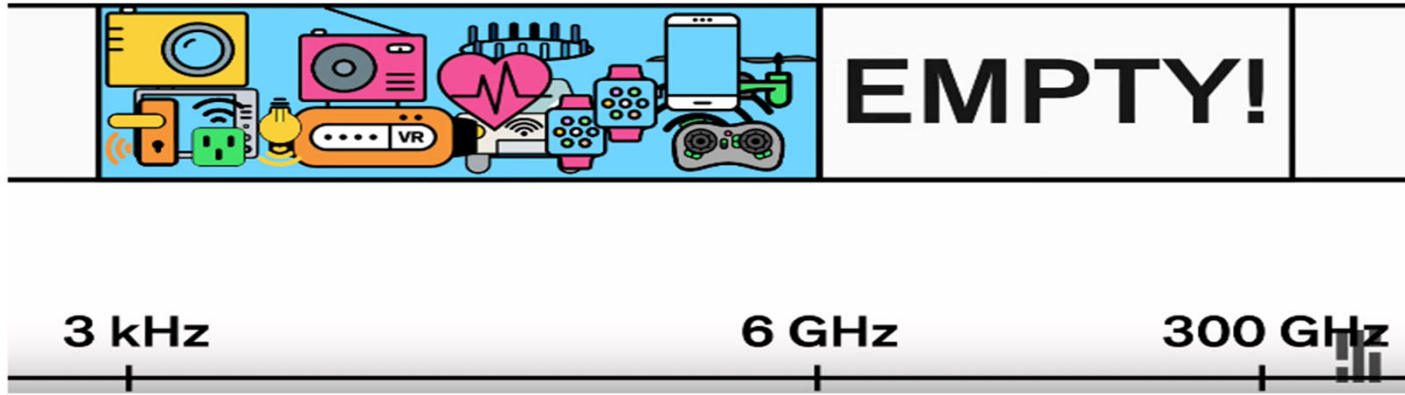
Beamforming



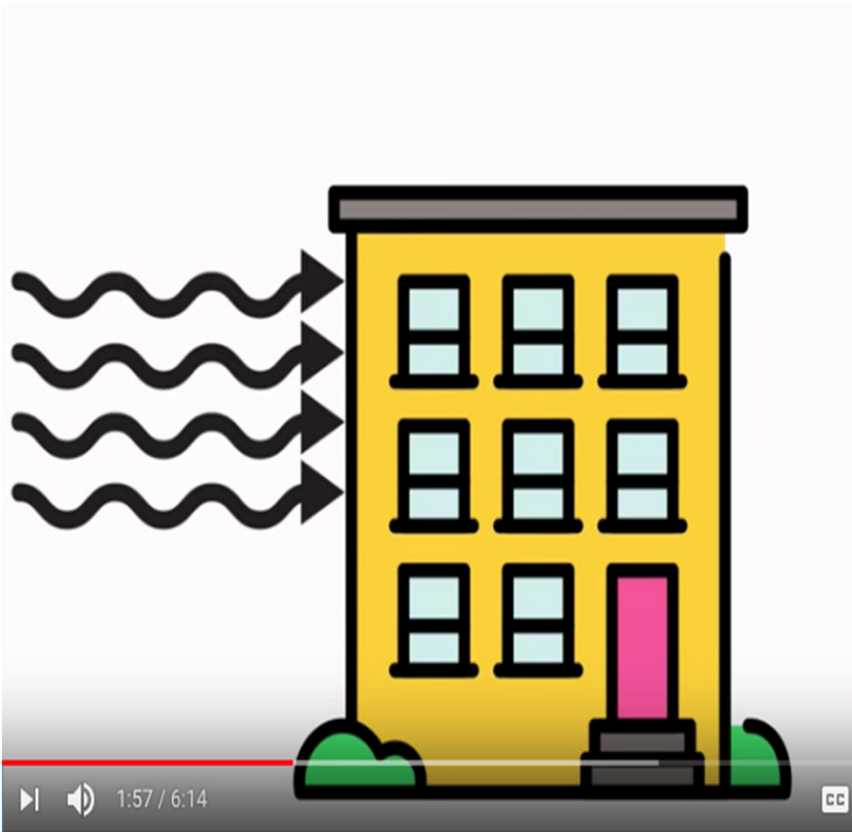
Full Duplex



Source: https://www.youtube.com/watch?v=GEx_d0SjvS0

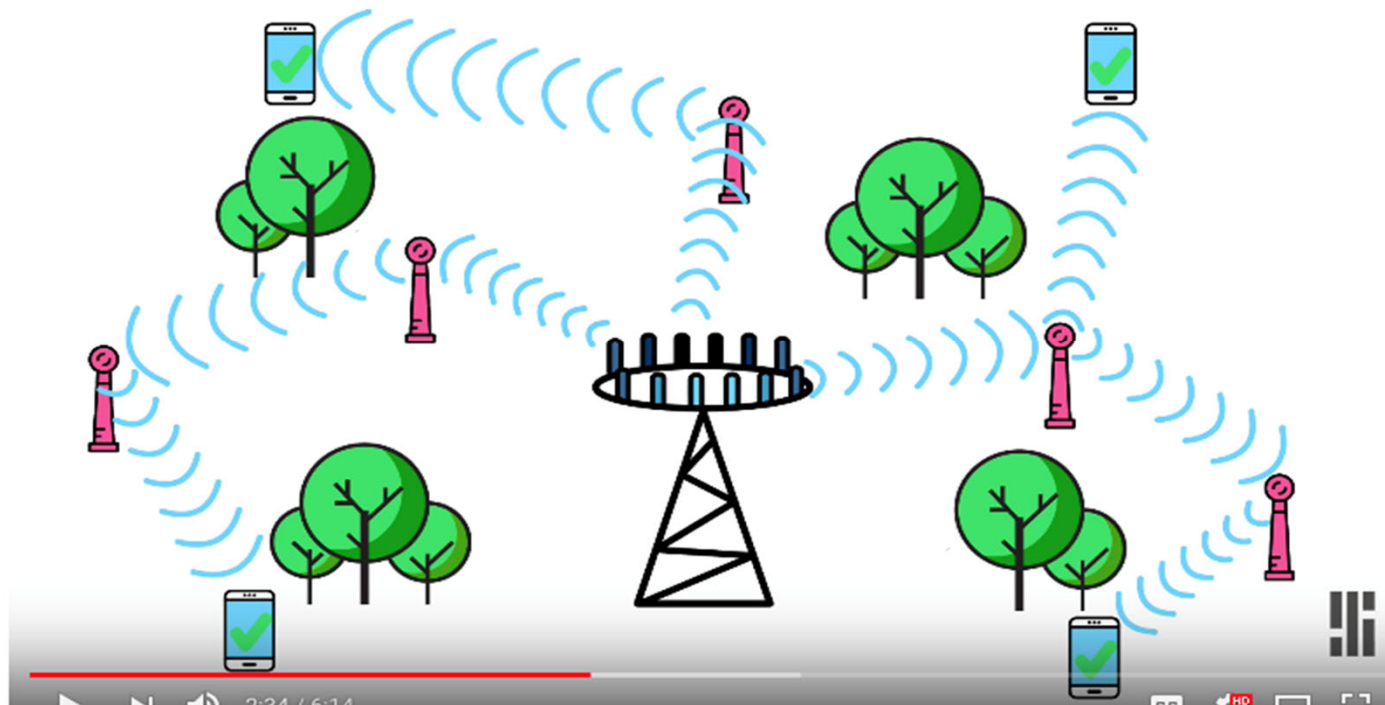


Source: https://www.youtube.com/watch?v=GEx_d0SjvS0



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Has 5G Made Water Towers Less Valuable? No!



Pressure to Renegotiate Lease with Weaker Terms

- Letter from carrier's agent asking for better terms or else carrier will have to consider another site
- Terms usually include:
 - Reduction in Rent with lower or no Rent Escalator
 - Right of First Refusal
 - Greater latitude in modifying carrier's facilities on tower and ground space

Lease Buyout Offers

- What Is a Lease Buyout?
 - Company Buys Remaining Lease Cash Flow
 - One-Time Payment for Lease Assignment
 - *OR* Permanent Easement in Exchange for Right to Collect Future Rents
 - Usually Includes Right to Add Additional Tenants
- Not Generally Recommended:
 - Loss of Control over Essential Public Asset
 - Upfront money usually way short of value of remaining Lease term

Agreement Terms: Key Do's and Don'ts



Terms You Should Insist On

- Clear description of the leased premises
 - Legal description and site survey of ground space
 - Construction drawings and equipment list for the antenna space
- Clear description of the equipment to be installed on the Tower and the method of installation
- Landlord approval for upgrades or additional equipment

Terms You Should Insist On

- Upfront payment for professional fees
 - Technical Consultant Fees
 - Legal Fees
- Annual rent escalator
- Fixed rent commencement date

Terms You Should Insist On

- No unsupervised access to the tower
- Carrier reimburses Landlord for cost of supervision
- Identification for those accessing tower
- Provisions for emergency access

Terms You Should Insist On

- Landlord's use is superior--may temporarily interfere with carrier's communications facilities
- Carrier to relocate antennas to temporary pole to facilitate tower painting/reconditioning **at carrier's sole cost** (or, at **landlord's** option, leave antennas in place and pay for the increased cost of tower painting)

Terms You Should Insist On

- Non-interference with existing **and future** utility or public safety communications equipment
- Non-interference with existing communications equipment of other tower users
- Consistent non-interference provisions for leases on the same tower

Terms You Should Insist On

- Broad indemnity from carrier to landlord
- Carrier to maintain insurance
 - City as additional insured
 - CGL to include contractual liability coverage for indemnity
 - Insurance requirements for contractors
 - Consult with risk manager!
- Limitation of liability; no waiver of immunity, liability limits

Terms You Should Insist On

- Covenant to comply with environmental laws
- Environmental indemnification from carrier
- No diesel-powered generators

Terms You Should Insist On

- Termination on carrier's uncured default
- Termination on decommissioning of the tower
- Removal of improvements to a depth of 4'
- Performance or removal bond
- Self-help remedy
- Holdover rent

Terms You Should Avoid

- Exclusive rights for one carrier
- Environmental warranty given by landlord
- Warranties as to title, fitness
- Insurance requirements for landlord
- Unsupervised access to the Tower
- Carrier's right of first refusal
- Mutual indemnification

Terms You May Have to Accept

- Long lease term (35+ years)
- Renewal terms at carrier's option only
- Liberal assignment/transfer provision

***New or Amended Agreements:
Process Is Key***

Approval Process - Site Application

- Application can have two functions:
 - Obtain information regarding the proposed project for landlord's and consultant's review
 - Type of installation (e.g., 5G)
 - Equipment to be installed or removed
 - Agreement to pay fees
 - carrier must pay all consulting and attorney's fees associated with the project
 - Carrier must provide an initial deposit to cover those fees, which is to be replenished if it is used up
- Executed Application is incorporated into the final agreement as an Exhibit

Approval Process - Construction Plans and Structural Analysis

- Carrier must submit detailed Construction Drawings (“CDs”) and a Structural Analysis (“SA”)
- CDs and SA (along with the Application) to be reviewed by technical consultant, but not until deposit is received
- Consultant either recommends approval (with or without conditions) OR identifies weaknesses and requests revised CDs
- Approved CDs are attached to the Agreement as an Exhibit

Construction Oversight

- Pre-construction conference between consultant and carrier's contractors
- Post-construction inspection by consultant to ensure that installation corresponds to the CDs
- Consultant develops a Punch List, if necessary
- Carrier may not power up until Punch List items are addressed
- After construction, carrier submits As-Built Drawings

“Maintenance” Request



Upgrade Installation



Future Upgrade Project or Maintenance?

- Service Notification Form:
 - If Carrier is doing maintenance or repair Carrier must submit a Service Notification Form describing the work to be done
 - Landlord reviews the Form to determine whether the work is truly maintenance/repair work or actually an upgrade project

Future Upgrade Projects

- Upgrade Projects should be addressed in the agreement
- Carrier must submit same information for initial construction or Upgrade Project:
 - Site Application + New Deposit
 - Construction Drawings
 - Structural Analysis
 - Site Survey, if anything on ground is to be relocated or expanded

Future Upgrade Projects

- Landlord may require an amendment to the agreement to do the following:
 - Increase Rent due to increased burden on Tower/ground space
 - Incorporate the new Exhibits into the Lease
 - Take opportunity to get out from under onerous provisions in existing Lease

Questions?

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