

# Legally (Relevant



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## Leasing of Water Storage Tanks for Commercial Antennas

**M**any water systems in Kansas have permitted antennas to be installed on their elevated storage tanks. These include commercial cellular phone antennas, law enforcement/emergency preparedness antennas and commercial wireless internet antennas. Depending on location, these arrangements can produce a significant source of income for water systems without much inconvenience or expense.

Why are antennas owners willing to pay to locate on water storage tanks? Their height and location may not be ideal, but they are already in place. Constructing a new purpose-built communications

tower is very expensive. Perhaps more importantly, obtaining of permits to build a new communications tower may be difficult and time consuming. In some cases, those permits may be nearly impossible to obtain.

The decision whether to allow attachment of one or more antennas on a water system's storage tank involves several considerations, some of which are legal in nature, some of which are not. Some of the more important issues are discussed below.

**1. WRITTEN AGREEMENT:** A couple of rules can be applied to all of these situations. First, never allow anyone to attach a commercial antenna to a water storage tank without a written agreement. Second, never sign an agreement without the review and approval of your attorney.

An agreement will usually be in the form of a lease. Major antenna owners, such as the national cellular telephone carriers, have standard form leases that will be proposed. These are typically well-written and are reasonably fair lease agreements from which to start your negotiations. Smaller companies, such as local wireless companies, may not have a standard form lease, or one that is not as well developed as those from the major cell companies.

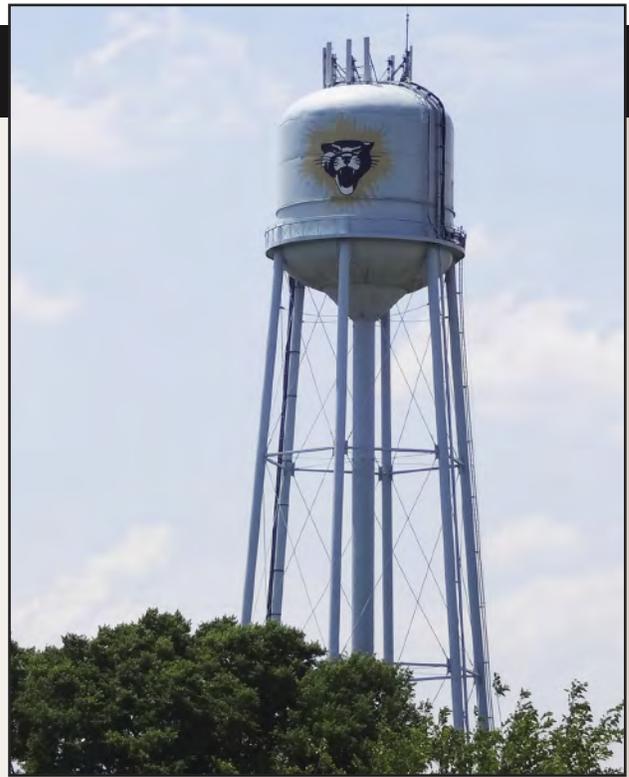
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In any event, there are some terms that need to be sure are covered in any lease:

- ◆ **Compatibility of antennas:** Ensure that the antennas to be installed are of a type compatible with the water system antennas used for telemetry or otherwise.
- ◆ **Attachment of antennas:** The water system should confirm how antennas, cables and the power supply will be physically located on the tank. Many leases will prohibit certain practices such as welding on or otherwise penetrating the tank. Ensure that whatever attachment methods are employed will not damage the tank coating or cause safety, structural or sanitary problems.
- ◆ **Notice; Access:** The lease should specify how the lessee is to obtain access, provide for notice to the water system of intended access, and for the right of the water system to have personnel present when the lessee or its contactors are on site.
- ◆ **Tank Maintenance:** The lease should make provision for the lessee to accommodate tank maintenance by timely removing or relocating the lessee's equipment as necessary to accommodate maintenance and repair, such accommodation to be at the lessee's expense.
- ◆ **Insurance; Taxes:** Require the lessee to insure its own equipment and provide proof of adequate liability insurance. Water systems should carefully review this with legal counsel and the water system's insurer to be certain that there is adequate, seamless coverage. Require the lessee to pay any property taxes that may be assessed against the leased property as a result of the antenna installation.

These are but a few of the critical items to be covered by a good antenna lease. Thorough consideration of items like these involves a team effort, including management, business, legal and technical consultants.

**2. SPECIAL CONSIDERATIONS:** Special attention needs to be paid to restrictions that may exist on the land where the tank is located to be sure that the proposed antennas are authorized. If on land subject to an easement, does the easement allow for the



**This elevated water tank along I-29 north of Kansas City serves as the base for numerous antennas owned by Verizon Wireless.**

installation of antennas for commercial use? Kansas easement law provides that the scope of the easement – that is the uses that are permitted by the easement – are limited to the clear meaning of the language of the easement and the intent of the parties at the time the easement was granted. Many water tank site easements are silent on the subject of antennas. Does the easement simply authorize construction and use of a water tank or standpipe and waterlines? Or does it authorize use of the land for water district purposes? The water system's attorney should be consulted for advice. Installation of antennas on a tank without authority for such use could result in a claim by the landowner for trespass, including a claim for monetary damages and/or removal of the antenna. These are bad results for a water system simply trying to add some needed revenue to the system, to accommodate local law enforcement or facilitate availability of wireless internet to the area.

These same considerations apply if the water tank is on leased land. They can apply even to an owned tank site if there are conditions attached to the land by the deed to the site or the tank construction was

approved under a conditional use permit that specified the uses authorized on the site.

**3. SPECIALIZED ADVICE:** Water tank antenna leasing has become commonplace to the point where there are consultants available to consult on technical, legal and business considerations. One of the most difficult aspects of an antenna lease, particularly with cellular telephone companies, is how to evaluate the rent being offered. The value of a particular tower is very site specific, so that it is very difficult to compare one lease to the next. A tower near the KSU football stadium will have a very different value than one located miles from any city or highway. An online search will reveal consultants such as [www.steelintheair.com](http://www.steelintheair.com) that can be retained to help evaluate a specific tower site and advise the water system on how to negotiate a fair rental.

### The Future of Water Tower Antenna Leasing

The future of leasing of water towers for antennas has been in doubt for many years. Predictions of wholesale replacement of antennas with satellites as

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the means of signal transmission has been long predicted. These predictions have largely failed to materialize as the need for antenna space seems to be greater than ever. The recently announced plan to merge Sprint and T-Mobile,

the number three and four major cell service providers, if approved, will likely reduce the number of antennas used by those combined companies by about one-third. This may or may not have a material or lasting effect on the overall market for cellular phone antenna locations.

### Conclusion

Leasing of elevated water storage tanks or standpipes for commercial antennas can be a very attractive opportunity for water systems. Care should be given to the written agreement with the antenna owner. All available resources, including the water system's consultants, and in some cases, specialized consultants should be utilized to make sure the water system is protected.



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