



February 05, 2002

Robert (Bob) Beatty
Telus Communications Inc.
5th Floor, West Tower
2700 Matheson Blvd. E.
Mississauga, Ontario
L4W 4V9

DRAFT FOR DISCUSSION
PURPOSES ONLY

BY FACSIMILE

Re: Master Access Letter of Intent
Kolter Property Company
4 King Street West
155 & 700 University Avenue
2425 Matheson Boulevard
55, 105, 125 & 165 Commerce Valley Drive

Dear Robert:

This letter will outline the more significant financial and operational issues that need to be agreed to between Telus Communications Inc. and Kolter Property Company to permit completion of agreements to allow access to the eight properties listed above and located within the Greater Toronto Area.

Term: 3 years

Base Access Fee: 2 cents per SF of leasable area. To be paid annually in advance in January of each year of the Term.

Additional Fees: One (1) cent per \$250,000 in gross revenue over \$250,000 per address, payable annually in advance based on the prior years gross revenues. In support of these additional fees, Telus is to supply Kolter on an annual calendar basis a 12-month signed statement of estimated gross revenues for each property under Agreement (the 'TELUS Annual Gross Revenue Statement'). The Base Access Fee is to be adjusted annually based on the results of the Telus Annual Gross Revenue Statement or the results of the Kolter audit as outlined below.

Renewal



Provision: TELUS to have one, three-year renewal right to renew subject to agreement on fees payable.

Audit Provision: Kolter retains the right on an annual basis to informally audit the Telus Annual Gross Revenue Statement referred to above. The informal audit, to be undertaken by Kolter, will involve a survey of 3 to 5 Telus customers selected by Kolter that are located within each property. If the results of the informal audit differs materially from the Annual Gross Revenue Statement provided by Telus, the Base Access Fee will be increased by the percentage increase in billings to the Telus customers surveyed over the prior year. If no increase in telecom revenues is discovered, or if the telecom revenues from the selected Telus customers have decreased, then the Base Access Fee will not be adjusted. The first informal audit, to take place during January-February, 2003, will serve as the base year audit. This provision is for the sole benefit of Kolter and can be waived by Kolter at their discretion. Kolter acknowledges that TELUS has confidentiality agreements with its customers and has no obligation or right to approve or support an audit of its customer's records.

Other Agreement Clauses:

CDS Clause

Telus will have the right to continue using any in-building wire installed by it and this right will apply throughout the term. However, if a CDS is installed then, to the extent Telus needs to add additional cable or wire to satisfy its customers or to serve additional customers it must use the CDS instead of adding cable or wire. This obligation however is subject to the CDS being adequate to satisfy the service levels to Telus' customers that were provided prior to establishment of the CDS. The fees payable for use of the CDS must be reasonable. If there are reasonable objections to the fees or the design construction operation or capacity of the CDS they must be resolved before Telus is required to use the CDS. If there is a disagreement, it will be determined by arbitration.



Indemnity/Waiver & Insurance Clauses:

- (a) Telus shall maintain in force, at its expense, during the term and any renewal term, a policy of Commercial General Liability issued by an insurer acceptable to Kolter insuring Telus and, as additional insureds, Kolter, the legal owners of the Building, any property manager or any lender that holds security on the Building that Kolter may reasonably designate by written notice, only in respect of matters related to the operations of Telus in the Building, with a combined single limit of Ten Million Dollars (\$10,000,000) for injury or death or property damage including damage to the Building and any property of Kolter in the Building, the legal owners of the Building, or injury or death of Kolter's or legal owners' employees, or any injury or loss suffered by any of the customers of Telus and their employees in the Building. Telus' liability insurance will contain owners' and contractors' protective coverage, contingent employer's liability insurance, a cross liability and severability of interests clause, will be written on an occurrence basis, and will provide protection against economic and consequential loss;
- (b) Telus will also maintain an automobile liability insurance policy;
- (c) Telus shall maintain all risk property insurance on the Equipment in sufficient amounts to cover any loss thereof, with waiver of subrogation against Kolter; and
- (d) Telus' insurance shall contain provisions providing that such insurance shall be primary insurance insofar as Kolter, the legal owners and Telus are concerned, with any other insurance maintained by Kolter and legal owners of the Building being excess and non-contributing with the insurance of Telus required hereunder and providing coverage for the contractual liability of Telus to indemnify Kolter. Telus shall obtain the agreement of Kolter's insurers to provide proof of such insurance to Kolter prior to commencement of any construction and to notify



Kolter, in writing, that a policy is cancelled or materially changed at least thirty (30) days prior to such cancellation or material change.

- (e) Telus shall indemnify and hold the Kolter and legal owners of the Building and their officers, directors and employees harmless from and against any claims, losses, costs, damages, expenses and legal fees on a solicitor and own client basis for liability from:
- i. the construction, installation, operation, maintenance, repair and removal of the Equipment; and
 - ii. Telus' use of and access to the Building as provided in this Agreement

including any claims or demands made by customers of Telus or users of the Equipment in the Building, arising directly or indirectly from any act, omission or negligence of Telus;

- (f) Telus shall indemnify and hold Kolter and the legal owners of the Building and their officers, directors and employees harmless from and against claims, losses, costs, damages and expenses for liability resulting from bodily injury or property damage and any resultant economic and consequential loss only, made by Telus or customers of Telus or users of the Equipment, which are a result of the acts, omissions or negligence, excepting wrongful acts or gross negligence, of Kolter and legal owners of the Building to the maximum amount of Ten Million (\$10,000,000) Dollars;

- (g) Notwithstanding anything contained in this License, in no event is Telus required to indemnify and hold harmless Kolter or legal owners and their officers, directors and employees, or any other person or entity from and against any claims, losses, costs, damages and expenses and legal fees on a solicitor and own client basis arising directly from any wrongful act, omission or negligence of any Riser Manager or pursuant to any malfunction of a CDS that is due to the negligence or wrongful act of omission of Kolter or Riser Manager in operating the CDS;



(h) Kolter will be released from all claims arising from property damage, business interruption, personal injury or otherwise that are suffered by Telus in connection with any occurrence on, in, or in connection with a Building that affects the use or operation of Telus' Equipment and this release will apply regardless of whether there is negligence alleged or proven on the part of Kolter. There will not be any release however to the extent of the gross negligence or wrongful act of Kolter.

Installations: Installations to be completed by Telus within 2 months, after signature of the access agreement, at 4 King Street West, 155 University Ave and 700 University Ave. Installations at 105 Commerce Valley Drive and 125 Commerce Valley Drive, 55 and 165 Commerce Valley Drive, and 2425 Matheson Boulevard, will be completed within 12 months, subject to fiber access. TELUS will access the above properties through an alternative telecommunications provider if required.

AND. *gm*

Please give me a call to discuss at your earliest convenience.

Sincerely,

Louis Meandro
Louis Meandro
Vice President

Agreed to this 5th day of Feb. 2002.

T. Bennett
Telus Communications Inc.
AUP BUILDING ACCESS