

# Is “Broker” a Dirty Word?

A good broker levels the playing field and provides the seller with the insight, knowledge and experience gained from many transactions.

**By Tom Engel**

I have been kicking around in the communications sector for 40 years. In 1972, an engineer from the space program convinced me that there was a future in cable television. Since then I have had the privilege of participating in cable television, broadcast, publishing, the advent of cellular, and now the consolidation of wireless infrastructure. I ascended from management to senior management, but I realized early on that the thing I liked best about what I was doing was buying or selling major assets. It is either black or white. You either win or lose. In most cases, the party with the best resources comes out on top. As time went on, I realized that there could be a win-win in most transactions if both parties were equally represented. So, in the mid-1980s, I began to represent buyers and sellers of cable systems, broadcast stations, newspapers, spectrum, telephone companies, Internet service providers and, now, telecommunications tower sites.

Bill Daniels, sometimes referred to as the godfather of cable television, wrote, “Why is it that when people enter into business negotiations they feel they have to act in a certain way? A plaque in my office reads, ‘Neither a scrooge nor a patsy be.’ This motto has taught me a lot of lessons. You have to be solid and

upstanding in your principles and ideals. You have to be strong in the boardroom and shrewd in negotiations. But also make it a point to be compassionate and understanding. Listen to what the other person has to say. And, give more than you have to. If you’re really going to find success in this world, you need to remember that there’s a time to be tough and a time to be tender.”

If we look up broker in a thesaurus we find: dealer, agent, middleman, intermediary, mediator, liaison. The dictionary defines broker as a person who buys and sells goods or assets for others.

Similar to the brokerage of commodities, hotels, banks, insurance, commercial and residential real estate, the brokerage of communications assets requires specific knowledge of the financial, regulatory and technological aspects associated with the assets that are acquired or sold. A network of relationships and recurring experience with the buyers and sellers provides an added benefit.

Unlike the brokerage of real estate, investments and insurance, there are few if any licensing requirements for the bro-

kerage of cable systems, publications, spectrum, broadcast or towers. Some brokers, especially those involved in stock transactions and financing, hold a security dealers license, and most states require any party dealing with any transaction involving a real estate interest to hold a real estate license. Because the sale of communications assets usually involves assets in multiple jurisdictions purchased by companies rather than individuals, licensing is difficult. The downside to the lack of licensing requirements is that anyone from any background can instantly become a broker. All that’s needed are a business card and a website.

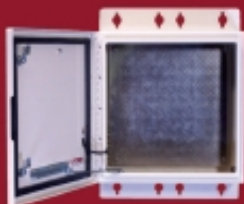
During the mid-1980s, the cable industry was consolidating at a rapid rate. By 1985, a handful of established brokerage companies serviced thousands of cable systems owned by hundreds of companies. I estimate that by 1988, just before the rules about highly leveraged transactions brought cable deals to a screeching halt, there were over 100 brokerage companies with nearly 300 brokers chasing about 2,500 to 3,000 cable systems. Independent cable sys-



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## buying and selling assets

tem owners were receiving several calls a week from brokers who were soliciting listing agreements.

Many of these brokers would promise an unrealistic price and ask the seller to sign a listing agreement. The agreement would provide long-term protection of the broker's fee, so they would simply send the information to all (hundreds) of the possible buyers and sit back and wait for something to happen. A similar scenario took place in the broadcast sector when the FCC eliminated ownership limitations.

In the communications sector, "broker" became a dirty word.

### So, why use a broker?

The broker levels the playing field and can bring a non-emotional perspective to the transaction. If the broker is experienced, knowledgeable and well connected, the small, first-time seller can be as well represented as the large company that closes multiple transactions per year or per month.

Based on numerous previous transactions, the experienced broker will understand what makes the assets of any particular transaction more or less attractive to certain buyers. Experience with previous transactions with various buyers will provide the broker with a basis of understanding as to the language and provisions of the various purchase-and-sale documents, and a knowledge of which provisions are negotiable and to what extent they have been negotiated in the other transactions.

Technical and financial knowledge related to the assets being sold can be invaluable in negotiating the best price possible for the seller. Most transactions include unique relationships and complex issues that can usually be resolved based upon the knowledge of previous deal experience. Knowledge of tax issues, potential engineering concerns and environmental issues allows the broker to refer the seller to professionals who can provide appropriate advice.

The well-connected broker has built a network of relationships with the purchasing companies, attorneys practicing in the sector and service companies, including title companies,

contract engineering firms, surveyors, and environmental firms. If the broker has earned the respect of these entities, it can go a long way toward mitigating issues that could crater a transaction or result in significant value loss.

Finally and most importantly, if both parties trust the broker, a good broker can mitigate the emotion on both sides of the transaction to resolve complex differences. Although the broker's fiduciary duty is to his client, in most cases he can provide a neutral perspective on complex issues that can sideline or crater a transaction. By presenting a fair and neutral perspective on these issues, in most cases a compromise can be reached and the transaction can be consummated.

### Selecting a broker

A number of resources list individual brokers and brokerage companies specializing in the sale of communications infrastructure, including tower sites, DAS networks and fiber. Select two or three companies and talk with representatives of each of them. It is vital that the firm is experienced and knowledgeable, but it is equally important that the seller and broker have a comfortable working relationship.

When selecting a broker, the most important factors in the seller's selection decision are trust and integrity. Obtain and check three references. Meet the broker. Ask questions.

No, "broker" is not a dirty word.

There may be some companies or individuals who are not qualified or who lack integrity, but the same is true in many disciplines, including doctors, attorneys, mechanics, accountants and repairmen.

A good broker levels the playing field and provides the seller with the insight, knowledge and experience gained from many transactions. The competitive experience created by a qualified broker maximizes the value of the assets for the seller and minimizes missteps, terms and conditions that might otherwise devalue or crater a sale. ■

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# What to expect from your broker

## The right broker should do the following:

- ✓ The broker should meet the sellers personally so both parties have a comfort level with one another.
- ✓ The sale process should be thoroughly explained to the seller, from engagement to closing.
- ✓ The seller should be given a realistic expectation of market value and a time frame for completion (closing) of the transaction.
- ✓ The broker should provide a simple, clear, easy-to-read, one-page listing or engagement agreement with a fee payable only at closing.
- ✓ The broker working with the seller should assemble all of the information related to the technical aspects, cash flow and nature of the assets.
- ✓ The broker should review the information and gather additional details related to issues that he knows the sellers will request.
- ✓ The brokerage company should put together a request for proposal (RFP) and an executive summary of the asset being sold.
- ✓ The RFP should include terms and conditions for the proposed transaction (and any allowable variances), a time frame for completion of the various steps, and special assumptions that the various buyers may want to consider.
- ✓ The broker and seller should work together to collect, categorize and present the due-diligence documentation required for the sale.
- ✓ The broker should select the best possible potential purchasers for the particular assets.
- ✓ Once all the proposals (usually in the form of a letter of intent) have been received, the broker should present a quantitative and qualitative analysis to the seller to provide a basis for final selection. In many cases, the broker will go back to the best two or three proposals to qualify certain issues or enhance the proposals.
- ✓ Once the letter of intent has been executed, the broker should begin work with the purchaser's due-diligence staff to resolve any open issues.
- ✓ Upon receipt of a definitive purchase and sale agreement, usually referred to as an asset purchase agreement (APA), the broker should redline (with comments) various areas that would benefit the seller. That redline agreement should be sent to the seller's counsel to allow the counsel to create or remove language as necessary.
- ✓ The purchaser should coordinate all information requests and site visits through the broker for site inspection, surveys, tower inspection and environmental reports in order to maintain the confidentiality of the transaction until closing.
- ✓ Once the due-diligence defects have been resolved and the APA has been executed, the broker should coordinate the closing and either produce a draft settlement statement or review the draft settlement statement produced by the buyer.
- ✓ On the day of closing, the broker should work closely with the seller and his counsel to facilitate document execution and transfer sufficient to justify funding.