

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 28th day of March, 2002, by and between MONTGOMERY COUNTY, MARYLAND, 101 Monroe Street, Rockville, Maryland 20850, a body corporate and politic and a political subdivision of the State of Maryland (hereinafter referred to as the COUNTY), WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a body corporate and public, an agency and instrumentality of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia, created pursuant to Section 1, Paragraph 4 of Public Law 89-774, approved November 6, 1966 (hereafter referred to as "LICENSEE". (COUNTY and LICENSEE together the "Parties").

WITNESSETH

In consideration of the fees herein after reserved and other good and valuable covenants and obligations as hereinafter contained, the PARTIES agree as follows.

1. (a) COUNTY hereby grants to LICENSEE a non-exclusive license to occupy and use, subject to all of the terms and conditions herein, space for a communications facility consisting of the equipment listed in Section 5 hereof ("Equipment") to be installed on the roof and in the penthouse at 101 Monroe Street, Rockville, Maryland, as more particularly described on Exhibit A attached hereto and made part hereof ("Property"). The designated location of the Equipment on the Property is shown on Exhibit B attached hereto and made a part hereof ("Premises"). No variation is to be permitted without the consent of the COUNTY, such consent not to be unreasonably withheld, delayed, or conditioned. The County will grant to the LICENSEE, access for ingress and egress to and from the Premises to install and maintain utility wires, pipes, cables, conduits or other connections for use of its Equipment and for utilities, if needed, on a non-exclusive basis. The LICENSEE and its authorized personnel, contractors and subcontractors shall have reasonable access to the Premises twenty-four (24) hours a day, seven (7) days a week for the purposes of routine and emergency maintenance of the LICENSEE'S facilities and equipment. LICENSEE will provide the COUNTY a LICENSEE'S authorized list of personnel to be submitted to the County's Security Department. No one representing the LICENSEE will be allowed access by the COUNTY to the LICENSEE'S premises or equipment areas that are not named on the LICENSEE'S Authorization List. The LICENSEE'S Authorization List will be updated as required by addition or deletion of LICENSEE'S personnel, LICENSEE'S contractor personnel and LICENSEE'S subcontractor personnel. The COUNTY reserves the right to approve all personnel named on the LICENSEE'S Authorization List and such approval shall not be unreasonably withheld, delayed or conditioned.

(b) At LICENSEE'S sole cost and expense and with minimal disruption to COUNTY, LICENSEE may install, erect, maintain and operate the Equipment and supporting structures thereto on the Premises. In connection therewith, LICENSEE may complete all work necessary to prepare the Premises for operation of the Equipment, including but not limited to installation of the transmission lines and appurtenances. Notwithstanding affixation to the Premises, title to the Equipment and all structures, transmission lines, cables, wires and conduits associated therewith installed by LICENSEE shall remain in the LICENSEE. LICENSEE may

remove all or part of the Equipment at its sole expense on or before the expiration or earlier termination of this Agreement and shall make any necessary repairs to the Premises, normal wear and tear excepted, necessitated by such removal, as determined by COUNTY.

2. After completion of installation of the Equipment on the Premises, LICENSEE shall have as-built drawing of the Premises made, which shall be attached hereto and made a part hereof. Cost of such work shall be borne by the LICENSEE.

3. (a) This Agreement shall be for the term of five (5) years ("initial Term") commencing on the date (the "Commencement Date") which is 60 days after the issuance of a building permit issued with respect to the activities contemplated herein. 6/3/02

(b) This agreement may be renewed by the mutual agreement of the COUNTY and the LICENSEE for two (2) additional five (5) year terms ("Renewal Terms"), provided that the PARTIES hereto reach an agreement no later than six (6) calendar months prior to the end of the Initial Term or the then current Renewal Term on the Terms of this Agreement for the next five (5) year term, subject to a determination by the COUNTY that it can grant such an extension. The parties agree to negotiate in good faith and that the renegotiated license fee shall be based on a reasonable determination of the fair market value for substantially similar licenses in the Washington, D. C./Montgomery County areas.

(c) The license fee ("License Fee") for the initial five (5) year term is \$1.00 per year.

4. Upon the expiration or earlier termination of this Agreement, the LICENSEE shall, within ninety (90) days of such expiration or termination, remove all of its equipment and facilities from the Property and the Premises. LICENSEE shall pay rent at the same rate as in effect immediately prior to such expiration or termination until such equipment and facilities are removed. If LICENSEE fails to remove its equipment from the Property or the Premises within the period specified herein, COUNTY may remove the equipment upon written notice to LICENSEE provided that LICENSEE has not removed its equipment within thirty (30) days of such notice, and charge the LICENSEE for the cost of such removal with no liability of the COUNTY to turn over such equipment and facilities to LICENSEE.

5. LICENSEE shall use the Premises for the purpose of constructing, maintaining and operating a Communications Facility ("Facility") consisting of (i) three (3) transmit antennas and one (1) receive antenna on the roof; (ii) nine (9) equipment cabinets in the penthouse; (iii) install and maintain two (2) self-contained air conditioning units, (iv) one (1) generator with sub-base fuel tank, 60kw diesel 120/208v, located in Garage Level One. The facility build-out includes the following: 1 - the construction of an approximately 240 square foot radio equipment room within the existing penthouse level 2 - the installation of a new 480v power panel that is fed off of an existing spare breaker location within the building's main electrical service switchboard. 3 - the installation of two self-contained air conditioning units with their associated outdoor units 4 - the installation of antenna cable from the new equipment room, through the penthouse and onto the roof for connection to new roof-top antennas. 5 - the installation of a non-penetrating roof top structural steel support system for mounting 3 transmit antennas and one receive antenna and enough penthouse space, approximately (12 x 20) two

hundred forty (240) square feet, to house base station equipment cabinets and related wires, pipes, cables, conduits and other connections, as per Exhibit "B". All work on the Premises and improvements thereto shall be at LICENSEE'S expense, and shall be subject to review and approval of the COUNTY, which approval shall not be unreasonably withheld. LICENSEE will maintain the Premises in good condition. It is understood and agreed that LICENSEE'S ability to use the Premises is contingent upon its obtaining, after the execution date of this Agreement, all certificates, permits, and any other approvals ("Approvals") required by any federal, state, or local authorities, including but not limited to the Montgomery County Telecommunications Tower Facility Coordinating Group. In the event that any such application should be finally rejected or any Approval is canceled, expires, lapses or is otherwise withdrawn or terminated by government authority, or; if LICENSEE in its sole discretion determines within ninety (90) days from the execution hereof, that it will be unable to use the Premises for its intended purposes, LICENSEE shall have the right to terminate this Agreement. Notice of LICENSEE'S exercise of its right to terminate, shall be given to the COUNTY in writing by certified mail, return receipt. All fees for all periods prior to the effective date of such termination shall be paid and retained by the COUNTY.

6. Indemnification.

a. At all times during the term of this agreement, Licensee or Licensee's contractors shall indemnify and save harmless the COUNTY, its Officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, occurring in connection with; or in any way arising out of the use, occupancy and performance of the work permitted by this Permit.

b. Licensee shall, or shall require its Contractor(s) to indemnify and hold harmless the COUNTY against any and all liabilities, remedial costs, environmental claims, fees or other expenses related to, arising from or attributable to any effluent originating from the Licensee's work site.

c. If any action or proceeding as described in this Section is brought against the COUNTY, then upon written notice from the COUNTY to the indemnitor, the indemnitor shall, at the indemnitor's expense, resist or defend such action or proceeding by counsel approved by the COUNTY in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

7. Insurance. At all times during the term of this agreement, Licensee shall provide, or shall require its Contractor(s) to provide the following types of insurance and to comply with the following requirements prior to commencement of any work on the Premises:

a. Worker's Compensation. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to any of the Licensee or its Contractors' personnel with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, the Licensee and/or its Contractor will provide coverage for these requirements.

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

b. Contractor's Commercial General Liability Insurance. A Comprehensive Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Permit and all obligations assumed by Licensee under this Permit. Coverage shall include Products, Completed Operations and Contractual Liability Insurance in addition to coverage for explosion, collapse, and underground hazards, wherever required. The coverage under such an insurance policy or policies shall have not less than the following limits:

Personal Injury and Property Damage Liability
\$1,000,000 Combined Single Limit Each Occurrence

The COUNTY shall be named as additional insured under the coverage for Contractor's Commercial General Liability Insurance with respect to all activities under this Permit.

c. Automobile Liability Insurance. An insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing, or under the circumstances in which they are being used, required by the Motor Vehicle Laws of the District of Columbia, Maryland or Virginia to bear license plates and not covered under the aforementioned Commercial General Liability Insurance. The coverage under such policy or policies shall not be less than a Combined Single Limit for Bodily Injury Liability and Property Damage Liability or \$1,000,000 per occurrence. The COUNTY shall be included as additional insured under the coverage for Automobile Liability Insurance with respect to all activities under this Permit. If the Licensee or its Contractor are hauling contaminants or pollutants, they must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.

d. Insurance Companies. Insurance companies providing the aforesaid coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to the COUNTY and licensed and authorized to conduct

business in the State of Maryland. COUNTY approval or failure to disapprove the insurance shall not release the Licensee of full responsibility for liability for damage and accidents.

e. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without sixty (60) days prior written notice from Licensee to the COUNTY's Office of Risk Management. If required insurance policies should be canceled, terminated or modified so that the insurance is not in full force and effect, then the COUNTY can hold Licensee in default of this Permit. Under such circumstances, the COUNTY shall give Licensee a notice of default and after the expiration of the cure period, the COUNTY may terminate this Permit for an event of default or obtain insurance coverage equal to that required herein, the full cost of which shall be paid by Licensee.

f. Evidence of Insurance. Evidence of the requisite insurance policies in the form of certificates of insurance shall be submitted to the COUNTY at least ten (10) working days prior to commencement of operations and from time to time at the COUNTY's request. A certified copy of each insurance policy shall be sent to the COUNTY upon request with respect to all activities under this Permit.

(1) Licensee's Contractor(s) are required at all times to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to the COUNTY prior to commencement of work. Such coverage shall remain in full force and effect during the performance of activities under this Permit.

(2) Any contract of insurance or indemnification naming the COUNTY, or any municipal departments, government agencies, administrators or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that the Licensee is not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public entities.

(3) In the event the required certificates of insurance as specified herein are not furnished within ten (10) calendar days after the execution of this Permit, the Licensee's Contractor(s) shall not be permitted to enter upon the property to perform the duties outlined in this Permit until all required insurance certificates or evidence of self-insurance has been received.

g. Liability for Negligence The COUNTY shall have no liability for the actions or negligence of Licensee, its Contractor, their employees, subcontractors or agents. Neither the grant of this license, nor any provision thereof, shall impose upon the COUNTY any new or additional duty or liability or enlarge any existing duty or liability of the COUNTY.

8. LICENSEE, upon the expiration and termination of this Agreement, either by lapse of time or otherwise, shall peaceably surrender to the COUNTY the Property and Premises in good condition.

9. It is agreed and understood that this Agreement contains all agreements, promises, and understandings between the COUNTY and LICENSEE, and any addition, variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties.

10. This Agreement and the performances thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maryland.

11. This Agreement may not be sold, assigned or transferred at any time by LICENSEE without the prior written consent of the COUNTY which will not be unreasonably withheld, delayed or conditioned, except LICENSEE may sell, assign or transfer this Agreement without COUNTY'S prior written consent to LICENSEE'S principal, affiliates or subsidiaries of its principal or an assignee of LICENSEE'S FCC license. LICENSEE must give written notice to the COUNTY of such sale, assignment, or transfer at least sixty (60) days prior to its occurrence.

12. All notices hereunder must be in writing and shall be deemed validly given if hand delivered to the other party or if sent by certified mail, return receipt requested, addressed as follows (or such other address as the party to be notified has designated to the sender by like notice):

COUNTY:

Montgomery County
Division of Real Estate Management
101 Orchard Ridge Drive, 2nd floor
Gaithersburg, Maryland 2087
Tel. 240-777-6080
Fax. 240-777-6047

LICENSEE:

Washington Metropolitan Area Transit Authority
Director, Office Property Development and
Management
600 Fifth Street, NW
Washington, DC 20001
Tel. 202-962-1588
Fax. 202-962- 2396

With a copy to: Montgomery County Government
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850

13. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the parties hereto.

14. LICENSEE agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11-B-33 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The LICENSEE assures the COUNTY that, in accordance with applicable law, it does not and agrees that it will not discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation or genetic status.

15. LICENSEE represents that it has not retained anyone to solicit or secure this Agreement from the COUNTY upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling or leasing agencies maintained by the LICENSEE for the purpose of securing business or an attorney rendering professional legal service consistent with applicable canons of ethics.

16. LICENSEE understands that unless authorized under Section 11B-52 or Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for a person transacting business with the COUNTY to employ a public employee for employment contemporaneous with his or her public employment.

17. It is expressly understood that the COUNTY shall not be construed or held to be a partner, co-venturer, agent or associate of LICENSEE; it being expressly understood that the relationship between the Parties hereto is and shall remain at all time that of the COUNTY and LICENSEE.

18. The LICENSEE shall attach, energize, and operate its antenna and related equipment at all times in such a manner that the reception and transmission signal of the COUNTY are not interfered with or degraded. If any such interference occurs, in the reasonable assessment of the COUNTY, based upon verifiable data or testing, and is not corrected by LICENSEE within twenty-four (24) hours after written notification, the COUNTY shall have the right to require LICENSEE to shut down and repair LICENSEE'S equipment, except for brief tests (not to exceed 5-10 minutes every hour) to eliminate such interference. The COUNTY shall not be held responsible for any interference to LICENSEE'S equipment or operations, provided the COUNTY exercises due care and otherwise complies with this Agreement.

19. LICENSEE agrees to arrange for and to pay for all of the costs of providing separate metering for all utilities, which serve its operation on the Property. LICENSEE must pay the costs of any utility charges for the services provided to the LICENSEE for its operation on the Property.

20. Either Party shall be considered in default of Agreement upon the occurrence of any of the following:

(a) Failure to perform any term, covenant or condition of this Agreement and the continuance thereof for fifteen (15) days following receipt of notice from the non-defaulting Party with respect to a default which may be cured solely by the payment of money or for thirty (30) days following receipt of written notice from the non-defaulting Party specifying said failure with respect to a default which may not be cured solely by the payment of money. In either event, the non-defaulting Party may pursue any remedies available to it against the defaulting Party under applicable law, including but not limited to, the right to terminate this Agreement.

(b) If the non-monetary default may not be reasonably be cured within a thirty (30) day period, this Agreement may not be terminated if the defaulting Party commences action to cure the default within such thirty (30) day period and proceeds with due diligence to fully cure the default.

(c) In the event that the LICENSEE shall be found in default and shall fail to cure such default after notice given as set forth hereinabove, then the LICENSEE'S right to the Premises shall automatically be revoked.

21. Either Party shall have the right to terminate this Agreement upon the giving of two hundred seventy (270) days notice, effected by deliver of written notice of termination not less than two hundred seventy (270) days prior to the date upon which termination shall become effective.

22. Each Party warrants and represents that it will be solely liable for the clean-up and removal of Hazardous Substances that it generates, or causes to be placed on the Property as required by law.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have set their hand and affixed their respective seals the day and year first above written.

WITNESS:

COUNTY:

Montgomery County, Maryland

By: Rebecca S. Domaruk

By: William Mooney
William Mooney, Assistant
Chief Administrative Officer

Date: 3/28/02

WITNESS:

LICENSEE:

Washington Metropolitan Area Transit Authority

By: Malcolm E. Richard

By: Denton U. Kent
Denton U. Kent
Director, Office of Property Development
and Management

Date: 3/25/02

Approved for legal form and sufficiency:

Recommended:

By: Gileen J. Basaman

By: J. Ronald Smith
J. Ronald Smith, Chief
Division of Facilities and Services

Date: 3/22/2002

Date: 3/21/02

