

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this nd ~~23~~ ^{November} day of ~~October~~, 1999, by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (herein after designated "LICENSOR"), and APC REALTY AND EQUIPMENT COMPANY, LLC, a Delaware limited liability company, (hereafter designated "LICENSEE").

WITNESSETH

NOW THEREFORE, for and in consideration of the fees herein after reserved and other good and valuable covenants and obligations as hereinafter contained, LICENSOR and LICENSEE agree as follows.

1. (a) LICENSOR hereby grants to LICENSEE a non-exclusive license to occupy and use, subject to all of the terms and conditions hereof, space for a communications facility consisting of the equipment listed in Section 5 hereof ("Equipment") to be installed on the tower at 26149 Ridge Road, Damascus, Montgomery County, 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 Licensor. LICENSEE shall have the right of reasonable ingress and egress to the Property to install and maintain utility wires, pipes, cables, conduits, or other connections for use of its Equipment.

(b) At LICENSEE'S sole cost and expense and with minimal disruption to LICENSOR, 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 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 Licensor..

2. After completion of installation of the Equipment on the Premises, Licensee shall have an 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.

(b) This agreement may be renewed by the mutual agreement of the or LICENSOR and the LICENSEE for two (2) additional five (5) year terms ("Renewal Terms"), provided that the parties hereto reach an agreement no later than three (3) 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 annual license fee ("License Fee") for the initial five year term shall be as set forth below, payable in monthly installments, according to the following schedule: Year 1- \$21,600.00 / \$1,800 per month; Year 2- \$22,248.00/\$1,854.00 per month; Year 3-\$22,920.00/\$1,910.00 per month; Year 4- \$23,616.00/\$1,968.00 per month; Year 5-\$24,312.00/\$2,026.00 per month, without set off or deduction or demand for payment, and is payable to Montgomery County, Maryland, Leasing Management, P.O. Box 62077, Baltimore, Maryland 21264-2077, or at such other place as the LICENSOR may, from time to time, designate in writing at least thirty (30) days in advance of any fee payment date. The first month's License Fee shall be paid on the Commencement Date and thereafter paid in advance on the first day of each month, partial months to be prorated. Any License Fee payment or portion thereof received later than ten (10) days from the date when it becomes due and payable shall be subject to a late fee of five percent (5%) of the fee payment in question. Should LICENSEE'S failure to pay continue for more than thirty (30) calendar days after a monthly payment becomes due and payable, LICENSOR shall have the right to terminate this Agreement for default, and pursue any other legal remedies available to LICENSOR at law or under the terms of this Agreement.

(d) LICENSOR'S Tax Identification Number is 52-6000980

4. Upon the expiration or earlier termination of this Agreement, the LICENSEE shall, within thirty (30) days of such expiration or termination, remove all of its equipment and facilities from the Property and Premises, and shall vacate and discontinue its use of 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, LICENSOR may remove the equipment and charge the LICENSEE for the cost of such removal with no liability of Licensor 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" consisting of up to nine (9) panel antennas, and enough ground space, approximately (9x15) one hundred thirty (130) 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 LICENSOR 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 of 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 applications 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 the LICENSEE'S exercise of its right to terminate shall be given to LICENSOR in writing by certified mail, return receipt requested, and shall be effective ninety (90) days from the date LICENSOR receives such notice as evidenced by the return receipt. All fees for all periods prior to the effective date of such termination shall be paid to and retained by LICENSOR.

6. "LICENSOR" (subject to sovereign immunity laws, annual appropriation ordinances, and the Local Government Tort Claim Act) and LICENSEE shall each indemnify, defend and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of this Agreement, including the use and occupancy of the Premises by such party, its servants or agents, and deriving from such party's obligations hereunder, except to the extent such claims or damages are due to or caused by the act or omission of the other party, or its servants or agents.

8. LICENSEE shall obtain and maintain during the term of this Agreement, and until all of LICENSEE'S obligations which survive termination of this Agreement have been completed, a policy of public liability and property damage insurance as per the attached Exhibit B.

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

9. It is agreed and understood that this Agreement contains all agreements, promises, and understandings between LICENSOR and LICENSEE, and any addition,

variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by 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 LICENSOR which will not be unreasonably withheld, delayed or conditioned, except LICENSEE may sell, assign or transfer this Agreement without LICENSOR'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 LICENSOR 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):

LICENSOR:

Montgomery County
Division of Real Estate Management
110 North Washington Street
Rockville, MD 20850

LICENSEE:

APC Realty and Equipment Company
6905 Rockledge Dr, Suite 100
Bethesda, MD 20817
Attention: Legal Counsel

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 11B-33 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws regulations regarding employment discrimination. The LICENSEE assures the LICENSOR that, in accordance with applicable law, it does not and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference or disability.

15. LICENSEE represents that it has not retained anyone to solicit or secure this Agreement from LICENSOR 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 LICENSOR to employ a public employee for employment contemporaneous with his or her public employment.

17. It is expressly understood that the LICENSOR 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 times that of LICENSOR 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 signals of LICENSOR are not interfered with or degraded. If any such interference occurs, in the sole assessment of LICENSOR, based upon verifiable data or testing, and is not corrected by LICENSEE within twenty-four (24) hours after written notification, the LICENSOR shall have the right to require LICENSEE to shut down and repair LICENSEE'S equipment, to eliminate such interference. LICENSOR shall not be held responsible for any interference to LICENSEE'S equipment or operations, provided LICENSOR exercises due care and otherwise complies with this Agreement.

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

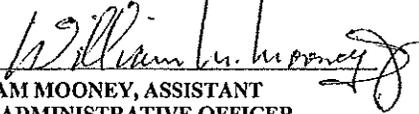
(b) If the non-monetary default may not reasonably be cured within a 30 day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30 day period and proceeds with due diligence to fully cure the default.

(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.

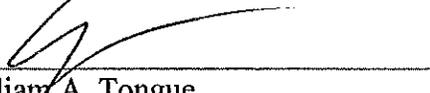
21. Either party shall have the right to terminate this Agreement upon the giving of two hundred seventy (270) days notice, effected by delivery of written notice of termination not less than two hundred seventy (270) days prior to the date upon which termination shall become effective.

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

LICENSOR
Montgomery County, Maryland

By: 
WILLIAM MOONEY, ASSISTANT
CHIEF ADMINISTRATIVE OFFICER

LICENSEE
APC Realty and Equipment Company, LLC

By: 
William A. Tongue
Regional Director, Site Development –
Baltimore/Washington

Date:

Date:

Witness:

Witness:

Approved for legal form and sufficiency:


Associate County Attorney

Recommended:

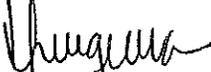
By: 
Rey Junquera, Leasing Manager
Division of Facilities

EXHIBIT A

Property

1. The street address of the Property is:
26149 Ridge Road
Damascus, MD
2. The Assessor's Parcel Number is:
FX43 P.818

EXHIBIT B

Insurance Requirements

INSURANCE REQUIREMENTS:

Commercial General Liability

A minimum limit of liability of **ONE MILLION DOLLARS (\$1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Automobile Liability Coverage

A minimum limit of liability of **ONE MILLION DOLLARS (\$1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Worker's Compensation/Employer's Liability

Meeting all requirements of Maryland Law and with the following minimum limits:

- Bodily Injury by Accident - \$100,000 each accident**
- Bodily Injury by Disease - \$500,000 policy limits**
- Bodily Injury by Disease - \$100,000 each employee**

Additional Insured

Montgomery County Government must be named as an additional insured on general liability policies.

Policy Cancellation

Forty-five (45) days written notice of cancellation or material change of any of the policies is required.