RESOLUTION 2019-063

AUTHORIZING AN AMENDMENT TO A COMMUNICATIONS SITE LEASE AGREEMENT WITH T-MOBILE CENTRAL LLC FOR TWO HUNDRED AND FORTY ADDITIONAL SQUARE FEET OF LAND FOR THE PURPOSE OF INSTALLING A GENERATOR AND SUPPORTING EQUIPMENT AT THE CITY'S NORTH WATER TOWER LOCATED AT 900 WEST DRESSER ROAD, DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb is authorized to lease real property pursuant to applicable laws; and

WHEREAS, the City of DeKalb owns various parcels of land and right of way with restricted use due to the City’s ownership of the property; and

WHEREAS, many parcels of said land and right of way may be used for purposes that do not cause interference with the City’s ownership; and

WHEREAS, it is the best interest of the City of DeKalb to allow for its North Water Tower to be used for the installation of wireless communication equipment and land it owns at 900 West Dresser Road, DeKalb, Illinois for rights-of-way for ingress and egress to the site and for the installation and maintenance of utility wires, poles, cables, conduits and pipes, all of which will enhance the operation of a local business and provide more consistent and clear wireless communication service to the subscribers within the City of DeKalb;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: That the Recitals set forth above are incorporated as though fully set forth herein.

SECTION 2: That the Mayor of the City of DeKalb is authorized and directed to execute an amendment to the current lease agreement substantially in the format attached hereto as Exhibit A, subject to such changes as shall be acceptable to him with the recommendation of City Staff. The City Council finds that such lease is necessary and appropriate and preserves the public health, welfare, and safety, and further finds that such lease does not interfere with any public use of the land, and is otherwise compliant with all applicable statutes, rules and ordinances.

SECTION 3: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor’s Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 8th day of April 2019 and approved by me as Mayor on the same day. Passed by a 7-0-1 roll call vote. Aye: Jacobson, Finucane, StuPEGia, Fagan, Noreiko, Faivre, Smith. Nay: None. Absent: Verbic.

ATTEST:

LYNN A. FAZEKAS, City Clerk

JERRY SMITH, Mayor
FIRST AMENDMENT TO COMMUNICATIONS WATER TOWER LEASE AGREEMENT

This FIRST AMENDMENT TO COMMUNICATIONS WATER TOWER LEASE AGREEMENT ("First Amendment") is made and entered as of the date last signed by the parties below ("Effective Date"), by and between the City of DeKalb, a local government ("Lessor") and T-Mobile Central LLC as successor in interest to Voicestream GSM I Operating Company, a Delaware limited liability company ("Lessee").

WHEREAS, Lessor and Lessee entered into a Communications Water Tower Lease Agreement, dated May 1, 2005 ("Lease") whereby Lessor leased to Lessee a certain portion of the real property located at 900 Dresser Rd, DeKalb, IL 60115 (the "Premises"); and,

WHEREAS, Lessor and Lessee now desire to amend the Lease to permit Lessee to make changes to its equipment installed on the Premises.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor and Lessee agree as follows:

1. Exhibit B to the Agreement is hereby deleted in its entirety and is replaced in full with Exhibit B-1, attached hereto and incorporated herein by this reference.

2. Lessee shall pay Lessor an additional Two Hundred and no/100 Dollars ($200.00) "Additional Rent" per month for two hundred forty (240) additional square feet of space for its Generator and supporting equipment.

3. Unless otherwise provided herein, all defined terms shall have the same meaning as ascribed to such terms in the Lease.

4. To the extent there is any conflict between the terms and conditions of the Lease and this First Amendment, the terms and conditions of this First Amendment will govern and control. All other terms and provisions of the Lease remain in full force and effect.

5. The persons who have executed this First Amendment represent and warrant that they are duly authorized to execute this First Amendment in their individual or representative capacity as indicated.

[Signature page immediately following]
IN WITNESS WHEREOF, Lessor and Lessee hereto have set their hands to this First Amendment as of the date last signed by the parties below.

LESSOR:

City of Dekalb
By: [Signature]
Printed Name: Jerry Smith
Title: Mayor
Date: 4-9-19

STATE OF Illinois
COUNTY OF Dekalb

I certify that I know or have satisfactory evidence that [Jerry Smith] is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the [Mayor] of the City of Dekalb to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-9-19

Notary Public
Print Name: Ruth A. Scott
My commission expires 7-24-22

(Use this space for notary stamp/seal)
LESSEE:

T-MOBILE CENTRAL, LLC
a Delaware limited liability company

By: ________________________________

Printed Name: Faisal Afridi
Title: Senior Director
Engineering & Operations
Date: 5/31/19

STATE OF Illinois )
COUNTY OF Cook ) ss.

I certify that I know or have satisfactory evidence that the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Senior Director of Engineering & Operations of T-Mobile Central, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/31/19

THEODORE FAIRCILD
Official Seal
Notary Public - State of Illinois
My Commission Expires Jan 9, 2023

(Use this space for notary stamp/seal)
Exhibit B-1

(See Attached Approved Construction Drawings, dated December 11, 2018)
Exhibit B-1 (Cont.)

(See Attached Approved Construction Drawings, dated December 11, 2018)
COMMUNICATIONS SITE LEASE AGREEMENT (WATER TOWER)

This Communication Site Lease Agreement (Water Tower) ("Agreement") is entered into this ___ day of ______________, 2005, between Voicestream GSM Operating Company, a Delaware limited liability company, d/b/a T-MOBILE ("Lessee"), and the City of DeKalb, an Illinois municipal corporation ("Lessor").

Whereas, the Lessor is a municipal corporation organized and existing under the laws of the State of Illinois; and

Whereas, the Lessor owns and operates a public water supply system pursuant to the applicable provisions of the Illinois Municipal Code, including certain real property legally described on Exhibit A (the "Property"), an elevated water storage facility, and certain associated facilities (the "Water Tower") located on the real property legally described on Exhibit A; and

Whereas, Lessee intends to install, operate and maintain certain wireless Antenna Facilities (as hereinafter defined) on the Water Tower and on the Premises (as hereinafter defined); and

Whereas, the Lessor agrees to lease certain space on the Water Tower for the installation of certain antennae, as depicted on Exhibit B and, further, to lease the Premises for the construction, operation and maintenance of Antenna Facilities, including space for cable, conduit and sleeves, across the Property to serve the Premises; provided, however, that the construction, operation and maintenance does not interfere with the principal use of the Property, including the Water Tower, as a water storage facility for the Lessor's public water supply system;

Now, THEREFORE, in consideration of mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1.0 Recitals Incorporated. That the above recitals are incorporated herein by reference as if set forth fully herein.

2.0 Definitions.

Antenna Facilities includes all personal property, equipment, improvements, and other related facilities as described and depicted pursuant to approved Plans and Specifications (as hereinafter defined), as may be amended from time to time with the approval of the Lessor, which approval shall not be unreasonably withheld or delayed. The term includes utility lines, transmission lines, air-conditioned equipment shelters, electronic equipment, radio transmitting and receiving antennas and supporting equipment and structures thereto.

Plans and Specifications The plans, drawings, specifications prepared by Lessee and approved by the Lessor, which approval shall not be unreasonably withheld,
depicting all facilities, structures, buildings, equipment, utility lines and conduits to be
installed or constructed on the Premises, and which shall, upon approval by the Lessor,
be a part of this Agreement as Exhibit B.

Premises That portion of the Property and the Water Tower leased to the Lessee
for the Antenna Facilities as set forth in Exhibit B, which includes approximately 600
square feet of the Property and space on the Water Tower as described on Exhibit B,
together with such ancillary rights of access and provisions for utilities, as described in
the Agreement.

Property The real Property owned by the Lessor and legally described on Exhibit A.

3.0 Lease. Lessor hereby leases to Lessee and Lessee leases from Lessor, the
Premises to be used and occupied by Lessee in accordance with the provisions of this
Agreement.

4.0 Permitted Uses.

4.1. Lessee shall use the Property, the Premises, or the Water Tower for
lawful telecommunications purposes, including the transmission and reception of radio
communications signals (Permitted Use). Such use shall be in compliance with all
applicable federal, state and local laws, regulations, ordinances and licenses, including
any regulations and licenses of the Federal Communications Commission ("FCC") or
any successor agency, and the provisions of this Agreement.

4.2. Lessee shall not, except as permitted by this Agreement, use the
Premises in any way which interferes with the Lessor's principal use of the Property and
the Water Tower as a water storage facility. The Lessor shall, at all times, have the right
to operate, maintain, paint, repair, ("Lessor's Work") any of its existing facilities on the
Property, including the Water Tower. Lessee shall cooperate with the Lessor to allow the
Lessor's Work to occur. Whenever necessary to accommodate the Lessor's Work,
Lessee shall have the right to install a temporary antenna on the Property with the
approval of the Lessor. Any expense, loss, or inconvenience sustained by Lessee as a
consequence of the Lessor's Work shall be the sole and exclusive responsibility of
Lessee. Except in the event of any emergency repairs, prior to the commencement of
any work by the Lessor which is in the immediate vicinity of Lessee's antenna
installation, or which may require the cooperation and presence of Lessee's personnel,
the Lessor shall give Lessee not less than one month's notice of such work; provided,
however, that in case of repainting or other major repairs, the Lessor shall provide not
less than sixty (60) days' written notice. The Lessor shall not permit any new uses of the
Premises, except as may occur under paragraph 10(B) below, that in any manner
unreasonably interfere with Lessee's use of the Premises under this Agreement. The
Lessor agrees to notify Lessee of any intended installation within fifteen (15) feet of
Lessee's antennae in order for Lessee to determine whether such use will cause any
interference with the transmission or receipt of radio signals to Lessee's antenna or
unreasonably impair Lessee's ability to construct, operate, maintain, replace or remove
the Antenna Facilities.

5.0 Tests and Construction. Upon execution of this Agreement, Lessee shall have
the right to install a "Test Site" on the Premises until the permanent Antenna Facilities
are operational. Said "Test Site" shall be subject to Lessor's written approval, which
shall not be unreasonably withheld, contingent upon compliance with all applicable federal, state and local regulations. Upon execution of this Agreement, Lessee shall promptly make all necessary engineering surveys, inspections, site surveys, soil test borings, or other reasonable necessary tests for the purpose of preparing the Plans and Specifications ("Preliminary Work"). Lessee shall have the right upon notice to the Lessor within at minimum two (2) working days, following the full execution of this Agreement, to enter upon the Property for the purpose of undertaking the Preliminary Work. Upon conclusion of this Preliminary Work and prior to commencement of construction, Lessee shall submit to the Lessor for its approval copies of the Plans and Specifications, attached hereto as Exhibit B, which shall include spotted plats of survey, elevations depicting all structures and the antennas on the Water Tower, and such other additional information as the Lessor may reasonably require. Lessee shall apply for and secure all necessary building permits from the Lessor and any other permit that may be required from any other federal, state or local government agency as respects the work prior to the commencement of any work.

5.1. Lessee shall prepare all plans, specifications, and drawings ("Permit Plans") necessary for issuance of a building permit for the construction of the Antenna Facilities. Lessee shall diligently pursue and use best efforts to prepare Permit Plans in a timely manner and submit an application for building permit. Lessor shall within twenty-one (21) working days review the Permit Plans and issue a building permit or advise Lessee of any modifications, changes, corrections, necessary for permit issuance.

6.0 Term. The term of this Agreement shall be for five (5) years commencing on the date Lessee begins construction of the Lessee Antenna Facilities or May 1, 2005, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated sooner pursuant to other applicable provisions of this Agreement. The term "construction" shall mean when Lessee has obtained all permits, licenses and other necessary approvals to begin construction and has physically moved men and equipment onto the Premises. Lessee shall have the right to extend the Term for three (3) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein, except that Lessor shall be entitled to Rent increases as provided on Exhibit C, attached hereto and incorporated herein by reference. This Agreement shall automatically be extended for each successive Renewal Term unless the Lessee notifies the Lessor, or the Lessor notifies the Lessee, in writing not less than one hundred twenty (120) days prior to the end of the Term or any Renewal Term of its intention not to renew the Agreement for the succeeding Renewal Term.

Rent. Within thirty (30) days of the Commencement Date and on the first day of each month thereafter, commencing with the first month next following the month of the Commencement Date, Lessee shall pay to Lessor as rent One Thousand Four Hundred Thirty Two and 00/100 Dollars ($1,432.00) per month ("Rent") with an annual three percent (3%) increase to be imposed on the anniversary date of the Commencement Date and each anniversary thereafter. Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to the City of DeKalb at ATTN: Finance Department, 200 South Fourth Street, DeKalb, Illinois 60115. A late payment penalty of ten percent (10%) of the rent due shall be paid by the Lessee for any monthly payment received three (3) days after the first of each month.
An additional late payment penalty of ten percent (10%) of the rent due shall be paid by the Lessee for every additional thirty (30) days that a rent payment is past due.

7.1. Rent for any Renewal Term shall be in accordance with the schedule of rents set forth in Exhibit C.

7.2. Lessee shall be in default upon failure to pay Rent within thirty (30) days after written notice.

8.0 Construction, Operation and Maintenance.

8.1 Upon execution of this Agreement and securing all necessary approvals, permits, and licenses from any and all federal, state and local agencies having jurisdiction over the Property, Lessee may construct, install, operate, maintain, repair, replace or remove the Antenna Facilities, including sleeves, conduit, and cable across the Property to serve the Premises; provided however, that such construction, installation, operation, maintenance, repair, replacement, or removal is done in accordance with this Agreement, the Plans and Specifications, including any amendments approved by the Lessor, and all applicable federal, state and local laws, statutes, regulations and ordinances. No part of the Antenna Facilities shall become a fixture, but shall remain the personal property of Lessee and can be pledged by Lessee as collateral. Lessee shall not mortgage, encumber, hypothecate or pledge as collateral, or permit to be mortgaged, encumbered, hypothecated or pleaded as collateral, any Real Property of the Lessor, and Lessee shall indemnify and hold the Lessor harmless from same, including any reasonable attorneys’ fees and expenses. In the event any mechanic’s liens or similar encumbrances are recorded against the Property as a consequence of any work performed by Lessee, Lessee shall promptly post with the Lessor a cash bond equal to 150% of the amount of the lien of encumbrance. Lessee’s right to contest validity, nature or amount of any such lien does not excuse, forgive or in any way diminish its obligation to post bond. The Lessor waives all Lessor liens against the Antenna Facilities.

8.2. The Antenna Facilities shall be constructed, installed, operated, maintained, repaired, replaced or removed by Lessee in a good, safe and workmanlike manner consistent with good engineering practices and all applicable laws and regulations. Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the presence of the Antenna Facilities or by reason of the default or neglect of Lessee. Lessee shall be responsible for restoration of any trenching, earthwork or construction-related impacts to the Property and/or the Water Tower associated with the installation of the Lessee’s equipment within 30 days.

8.3. Any and all costs, fees, and expenses for construction, installation, operation, maintenance, repair, replacement, or removal of the Antenna Facilities shall be the sole and exclusive responsibility of Lessee.

8.4. Lessee shall install separate utility service to provide for all electrical needs of the Antenna Facilities. Such separate electrical service may be supplemented by a temporary standby electrical generator for Lessee’s exclusive use to be used solely in cases of emergency due to disruption of electrical service. Lessor, as property owner, shall execute such documents or easements as may be reasonably required by the
utility company providing electrical service to the Premises. The Lessee shall be responsible for reimbursement to the Lessor for any actual expenses as a result of executing the documents, such reimbursement not to exceed Two Hundred and 00/100 Dollars ($200.00).

8.5. Lessor shall permit access across the Property for all necessary utilities, as provided in Exhibit B. Lessee shall have the right to ingress and egress across the Property from the adjacent roadway; provided that the Lessor may, but is not obligated to, gate and fence the Property, so long as Lessee is provided a key or gate card to open any gate. Except when opening or closing any gate, Lessee shall leave any such gate locked. Lessee shall be permitted to park a vehicle on the Property for temporary servicing and maintenance only. Lessee shall be permitted access across, upon and under the Property at all reasonable times for purposes of constructing, installing, operating, maintaining, replacing or removing ("Lessee's Work") the Antenna Facilities. Lessee shall have access to the Antenna Facilities twenty-four (24) hours a day, seven (7) days a week for operating and maintenance purposes, provided that the Lessee is accompanied by the Lessor's Public Works Director or designee. The Lessee shall have access to the Antenna Facilities by contacting Lessor's Public Works Director or his designee in advance at (815) 748-2030, and upon proper identification as an authorized representative of the Lessee. Lessor shall have the right to have its Public Works Director, or designee, accompany Lessee or Lessee's representatives whenever Lessee accesses the Property. If the Public Works Director or his designee accompanies Lessee after the hours of 5:00 p.m. or before 8:00 a.m., Monday through Friday, or any time Saturday, Sunday or on nationally recognized holidays, Lessee shall pay Lessor a supervision fee equal to the Lessor's actual labor costs for providing access and accompaniment.

8.6. Lessee, Lessee's employees, agents, subcontractor, lenders and invitees shall have access to the Premises as provided above at no charge during normal City business hours. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right of access for pedestrian and vehicular ingress and egress across or through the Property as required by the electrical servicing utility company to provide utility services as provided herein.

8.7. Lessee agrees that Lessor has the right to have a structural engineer perform at Lessee's expense, not oftener than twice per term, an inspection of the Antenna Facilities and the Premises; provided Lessee shall reimburse the Lessor for any reasonable costs and expenses incurred by the Lessor. Such costs shall not exceed One thousand and 00/100 dollars ($1,000.00).

8.8. Plans and Specifications for the Antenna Facilities shall be certified by a structural engineer and shall be stamped by the structural engineer, prepared at the exclusive expense of the Lessee.

8.9. The Lessor will notify Lessee at least sixty (60) days in advance of the date when the Water Tower is scheduled to be painted. The Lessor shall solicit bids or proposals for the painting, which shall include as alternate bid items the cost of painting the Water Tower without the Antenna Facilities and the cost of painting the Water Tower with Lessee's Antenna Facilities left in place. The Lessor shall submit a bill to Lessee for its share of the cost of painting. Lessee shall pay the Lessor the difference within thirty (30) days of receipt of the invoice. Lessee shall be responsible only for its share of
the cost of painting the Water Tower, and shall provide to the Lessor specifications to be included in any bid or proposal regarding the Antenna Facilities.

9.0 Restoration of Property.

9.1. Upon the expiration of this Agreement, or if earlier termination or cancellation for any reason, Lessee shall, at its sole expense, remove from the Premises its Antenna Facilities, and Lessee shall repair any damage to the Premises or the Water Tower or the Property resulting from any installation and/or removal of the Antenna Facilities, ordinary wear and tear excepted. Any other items of Lessee's Property that shall remain on the property after the expiration or following an earlier termination date, may, at the option of the Lessor, be deemed to have been abandoned, provided Lessor has given Lessee sixty (60) days' prior written notice, and in such case, such items may be retained by the Lessor as its property or be disposed of by the Lessor, without accountability, in such a manner as the Lessor shall determine, at Lessee's expense. Anything in this Agreement to the contrary notwithstanding, upon expiration of this Agreement or its earlier termination or cancellation for any reason, any building or other such structure erected by Lessee with the approval of the Lessor, shall be dedicated to the Lessor for its sole and exclusive use; provided, however, that the Lessor at its option may require Lessee to tear down any such building or other structure and restore the Property to the same condition as that which existed upon commencement of this Agreement.

9.2. Upon completion of the construction of the Antenna Facilities, Lessee shall restore any areas of the Property damaged or disturbed by its construction to original conditions, normal wear and tear excepted. During the Term or Renewal Terms of this Agreement, Lessee shall repair or indemnify the Lessor for any damage to the Water Tower or Property caused by Lessee, Lessee's agents or contractors.

10.0. Interference

(A) Lessee shall operate the Lessee's Antenna Facilities in a manner that will not cause interference to Lessor and other lessees or licensees use of the Property that predates Lessee's installation. Such interference shall be deemed a material breach by Lessee. In the event such interference occurs, Lessee agrees to take all actions necessary to eliminate such interference within forty-eight (48) hours after having received notice of such interference by Lessor. In the event operation of the Lessee's Antenna Facilities interferes with the Lessor's emergency-response communications equipment, the Lessee shall immediately cease use of their facilities until such interference has been eliminated. In the event Lessee fails to correct any interference caused by it or its Antenna Facilities, Lessor may terminate this Agreement and/or pursue any other remedies it may have at law or in equity.

(B) In the event that the Lessor determines that the Lessee is responsible for interference to the Lessor and other lessees or licensees of the Property, the Lessee shall reimburse the Lessor for any reasonable costs and expenses incurred by the Lessor while determining the cause of the interference. In that event, the Lessee agrees to reimburse the Lessor in full within thirty (30) days of receipt of proof of expenses incurred by the Lessor. In the event Lessee fails to comply with this provision, Lessor may terminate this Agreement and/or pursue any other remedies it may have at law or in equity.
(C) Subsequent to the installation of the Lessee's Antenna Facilities, Lessor shall not permit itself, its lessees or licensees to install new equipment on the Property or property contiguous thereto owned or controlled by Lessor, if such equipment is likely to cause interference with Lessee's operations or the operations of other tenants that may also be present on said structure. Such interference shall be deemed as material breach by Lessor. In the event interference occurs, Lessor agrees to take all action necessary to eliminate such interference within a reasonable time period. In the event, Lessor fails to comply with this paragraph, Lessee may terminate this Agreement, and/or pursue any other remedies available under this Agreement, at law, and/or at equity.

11.0. Termination in the Event of a Casualty or Condemnation

(A) In the event of any damage, or destruction to the Premises which renders the Premises unusable or inoperable, the Lessor and the Lessee shall each have the right, but not the obligation, to terminate this Agreement and all of its duties and obligations herein by giving written notice to Lessor within thirty (30) days after such damage or destruction, if by virtue of such casualty the Premises are no longer adequate for Lessee to continue its operations or any repairs to the Water Tower have not been completed or cannot reasonable be completed within sixty (60) days from the date of the damage.

(B) If Lessee does not terminate the Agreement: (1) the Rent payable herein shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises; and (2) within sixty (60) days from the date of such damage or destruction, the Lessor shall make any necessary repairs to the Water Tower caused by any such damage or destruction, but only to the extent that the Lessor has received insurance proceeds with respect to damage or destruction to the Water Tower. The Lessor's obligation to make repairs to the Water Tower shall be limited to the amount of said insurance proceeds if any and in the event that such proceeds are not adequate to make all necessary repairs, the Lessor may elect not to repair the Water Tower or repair the Water Tower with other funds.

(C) In the event of condemnation, unless Lessee is allowed by the condemning authority to continue its operations on the Premises, this Agreement shall terminate as of the date title to the Property vests in the condemning authority or Lessee is required to cease its operations, whichever is earlier. Lessee shall be entitled to share in the proceeds of any condemnation award.

12.0. Liability and Indemnity.

Lessee shall indemnify and hold Lessor harmless from all claims (including attorneys' fees, costs and expenses of defending against such claims) arising from its use of the Premises and the negligence or willful misconduct of Lessee or Lessee's agent or employees. Lessor shall indemnify and hold Lessee harmless from all claims (including attorneys' fees, costs and expenses of defending against such claims) arising from the negligence or willful misconduct of Lessor or Lessor's agents or employees occurring in or about the Property. However, nothing contained in this Agreement shall be construed as a waiver or limitation of defenses available to Lessor under law,
including but not limited to the Tort Immunity Act. The duties described in Paragraph 12 survive the termination of the Agreement.

13.0 Taxes.

If personal property taxes are assessed, Lessee shall pay any portion of such taxes directly attributable to the Lessee's Antenna Facilities. Except as provided immediately below, Lessor shall pay all real property taxes attributable to the Land. Lessor shall reimburse Lessor for any increases in real property taxes, which are assessed as a direct result of Lessee's improvements or this Agreement. As a condition of Lessee's obligation to pay such tax increases, Lessor shall provide to Lessee a copy of the official or original documentation from the taxing authority, indicating the increase is due to Lessee's improvements.

14.0 Waiver of Lessor's Lien.

(A) Lessor waives any lien rights it may have concerning the Lessee's Antenna Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent after submitting written notice to the Lessor no less than two (2) working days prior to removal of said Antenna Facilities.

(B) Lessor acknowledges that Lessee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee's Antenna Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Lessor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

15.0 Termination.

This Agreement may be terminated without further liability in thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by Lessee for any reason or for no reason; provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; or (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Antenna Facilities; or (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons including, without limitation, signal interference. Lessee agrees to reimburse Lessor for administrative and/or equipment costs incurred by Lessor as a result of modifications made to the Water Tank and/or Lessee's Antenna Facilities in conjunction with the execution and subsequent termination of this Agreement, with such reimbursement not to exceed One Thousand Dollars ($1,000.00).
16.0 Insurance.
Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee's Antenna Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars ($1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessee shall name Lessor as an additional insured on Lessee's policy. Lessee shall provide to Lessor a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date. Lessor has a funded self-insurance program for commercial insurance. Lessor shall furnish to Lessee documentation to establish such self-insurance.

17.0 Assignment and Subletting. Lessee may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Premises without the prior written consent of Lessor; provided, however, that Lessee may assign its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquired fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement as set forth in Paragraph 14 above. Lessor may assign this Agreement upon written notice to Lessee, subject to the assignee assuming all of Lessor's obligations herein including, but not limited to, those set forth in paragraph 14 above. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instrument, or (iii) has obligation under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

18.0 Warranty of Title and Quiet Enjoyment. Lessor warrants that: (i) Lessor owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances and restriction; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

19.0 Hazardous Substances. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material (defined below) on, under, about or within the Property in violation of any law or regulation, except for the use of sealed batteries for emergency back-up. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorney's fees and costs) arising from any breach of any representation, warranty or agreement contained in this
paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

20.0 Water Tower Marking and Lighting Requirements. Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Water Tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC, except as may be required as a consequence of Lessee’s Antenna Facilities. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by the Lessor’s failure to comply with such requirements. Should Lessee be cited by either the FCC or the FAA because the Water Tower is not in compliance because of conditions other than those caused by Lessee’s Antenna Facilities and should Lessor fail to cure such conditions of noncompliance within the time frame allowed by the citing agency, Lessee may terminate this Agreement on 60 days’ notice to the Lessor, during which time the Lessor shall have the opportunity to cure any default. Lessee shall cure any non-complying condition caused by Lessee’s Antenna Facilities.

21.0 Miscellaneous.

21.1. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement shall be in writing and executed by both parties.

21.2. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21.3. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

21.4. Any notice or demand required to given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below.

Lessor: City of DeKalb
200 S. Fourth Street
DeKalb, IL 60015
Attn: City Manager

Lessee: VoiceStream GSM I Operating Company LLC c/o T-Mobile
8550 W. Bryn Mawr Ave.
Chicago, IL 60631
Attn: Market Manager
Copy to: Leasing Manager

VoiceStream GSM I Operating Company LLC c/o T-Mobile
12920 SE 88th Street
Bellevue, WA 98006

With copies to:

City of DeKalb
223 S. Fourth Street

CDD172C-03 Page 10 of 16 4/6/04
Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

21.5. This Agreement shall be governed by the laws of the State of Illinois and venue shall be in DeKalb County.

21.6. Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit D will be recorded by Lessee in the official records of the County where the Property is located. In the event, the Property is encumbered by a mortgage or deed of trust, Lessor agrees to obtain and furnish to Lessee a non-disturbance and attornment instrument for each such mortgage or deed of trust.

21.7. Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.

21.8. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonable delay or withhold its approval or consent.

21.9. All Riders and Exhibits annexed hereto from material parts of this Agreement.

21.10. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Lessor:
City of Dekalb, an Illinois municipal

By: [Signature]
Date: 2-10-05
Title: Mayor

Lessee:
Voicestream GSM I Operating Company, LLC

By: [Signature]
Date: Greg Cisewski
Vice President
Title: Engineering & Operations-Midwest

[Stamp]

APPROVED as to form
Michael A. Sievertson
EXHIBIT A

DESCRIPTION OF PROPERTY

to the agreement dated _____, 2005, by and between the City of DeKalb, Illinois, as Lessor, and, and Voicestream GSM I Operating company, LLC, a Delaware limited liability company, d/b/a T-Mobile, as Lessee.

The Property is described as follows: LOT 3 OF THE DRESSER FARM SUBDIVISION, CITY OF DEKALB, DEKALB COUNTY, ILLINOIS and commonly known as 900 Dresser Road, DeKalb, IL.

EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated __________________________, 2005, by and between the City of DeKalb, Illinois, and Voicestream GSM I Operating company, LLC, a Delaware limited liability company, d/b/a T-Mobile, as Lessee.

The Premises are described and/or depicted as follows: See Attached
EXHIBIT C

RENT SCHEDULE

to the Agreement dated _________________, 2005, by and between the City of DeKalb, Illinois, as Lessor, and Voicestream GSM I Operating company, LLC, a Delaware limited liability company, d/b/a T-Mobile, as Lessee.

The Monthly Rent Schedule is described and/or depicted as follows:

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EXHIBIT D

MEMORANDUM OF AGREEMENT

CLERK: Please return this document to: Voicestream GSM 1 Operating Company, LLC

This Memorandum of Agreement is entered into on this ___ day of 2005, by and between the City of DeKalb, Illinois, with an office at 200 South Fourth Street, DeKalb Illinois (hereinafter referred to as "Lessor") and Voicestream GSM 1 Operating company, LLC, a Delaware limited liability company, d/b/a T-Mobile, with an office at 8550 W. Bryn Mawr, Chicago, IL 60631 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement (Water Tower) ("Agreement") on the ___ day of __________, 2005, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. The term of the Agreement is for five (5) years commencing on __________, 2005, with three (3) successive five (5) year options to renew.

3. The Property which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Property being leased to Lessee (the "Premises") is described in Exhibit B annexed hereto.

Lessor: City of DeKalb, an Illinois municipal corporation

LESSEE: Voicestream GSM 1 Operating Company LLC

By: ___________________________

Mayor Greg Sparrow

ATTEST:

Donna Johnson, City Clerk

Date: ________________________ Date: ____________________
STATE OF ILLINOIS )
COUNTY OF DEKALB ) SS

On __________________________, Notary Public, personally appeared ________________ before me, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

_____________ (SEAL)

Notary Public
My commission expires:

STATE OF ILLINOIS )
COUNTY OF COOK ) SS

On __________________________, Notary Public, personally appeared ________________ before me, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

_____________ (SEAL)

Notary Public
My commission expires:
MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into on this 10th day of February 2005, by and between the City of DeKalb, Illinois, with an office at 200 South Fourth Street, DeKalb Illinois (hereinafter referred to as "Lessor") and Voicestream GSM I Operating company, LLC, a Delaware limited liability company, d/b/a T-Mobile, with an office at 8550 W. Bryn Mawr, Chicago, IL 60631 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement ("Agreement") on the 10th day of February 2005, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. The term of the Agreement is for five (5) years commencing on February 10, 2005, with three (3) successive five (5) year options to renew.

3. The Property which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Property being leased to Lessee (the "Premises") is described in Exhibit B annexed hereto.

Lessor:
City of DeKalb, an Illinois municipal corporation

LESSEE:
Voicestream GSM I Operating Company LLC

By:

ATTEST:

Donna Johnson, City Clerk

Date: 2-10-05

Michael A. Sievertson

APPROVED as to form
On ______________________________________ before me, Notary Public, personally appeared ______________________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public
My commission expires:

STATE OF ILLINOIS )
COUNTY OF DEKALB ) SS

On ______________________________________ before me, Notary Public, personally appeared ______________________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public
My commission expires: 3/30/05

"OFFICIAL SEAL"
TONYA CHRISTENSEN
Notary Public, State of Illinois
My Commission Expires Nov. 30, 2005
February 7, 2005

VIA OVERNIGHT DELIVERY

Mr. Ray Keller
City of DeKalb
223 E. Fourth Street, Ste. A
DeKalb, IL 60115

Dear Ray,

I am very pleased to enclose the following documents ready for full execution:

1. Four Copies of the Site Lease Agreement
2. The Memorandum
3. The W-9

Please have all of them executed and return them to me at the following address:

T-Mobile
8550 W. Bryn Mawr
Chicago, IL 60631
Attn: Ray Shinkle

Thanks and please call me if you have any questions.

Very truly yours,

Ray Shinkle

Enclosures