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JA-1307A
8-6-99

STANDARD TOWER LEASE AGREEMENT

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance Nos. 83931, dated April 11, 1996, and 89887, dated June 3, 1999, as **LANDLORD**, (hereinafter referred to as the **CITY**), and VoiceStream PCS BTA I Corporation (formerly named Western PCS BTA I Corporation and hereinafter referred to as the **TENANT**),

WITNESSETH:

WHEREAS, this Lease is in connection with Resolution No. 96-15-13 regarding the Wireless Telecommunications Report and Policy, and Ordinance No. 83930 regarding Zoning Amendments to Chapter 35 of the Unified Development Code; and

WHEREAS, the **CITY** is the owner of a large number of properties which may be utilized by private wireless telecommunications providers to erect communication towers; and

WHEREAS, it is the **CITY'S** goal to minimize the proliferation of telecommunications towers throughout the **CITY** by promoting the co-location of multiple providers on a single tower; and

WHEREAS, the **CITY** intends to balance its desire to accommodate the telecommunications market by providing tower sites with its desire to protect public interests; and

WHEREAS, in order to insure protection of public interests, and in anticipation of the request for a great number of Lease Agreements, the **CITY** has adopted Ordinance No. 83931 which describes and authorizes a procedure through which the **CITY** and a private telecommunications provider may enter this Standard Tower Lease Agreement to lease **CITY** owned property to the provider to erect telecommunications equipment without requiring City Council approval of each individual contract, so long as there is not a substantial change to this standard agreement; and

WHEREAS, a uniform structure is incorporated into this Lease in order to promote co-location and insure that all providers are treated indiscriminately; and

WHEREAS, a provider that wishes to erect a tower and does not agree to follow **CITY** codes (Zoning Codes, Building Codes or otherwise) or the terms and conditions of this Lease without substantial change, will be required to appear before the Zoning Commission and acquire the approval of City Council before such tower may be erected; and

WHEREAS, it is the policy of VoiceStream is to seek existing structures for antenna placement by utilizing existing telecommunication towers, building rooftops,

water tanks, and other structures that deliver the needed elevation, and VoiceStream has investigated all existing structures in the 36th Street and Commerce Street area and found no sites to meet their engineering needs;

WHEREAS, VoiceStream next searched the area for a non-obtrusive ground site to meet their engineering needs and the requirements of the City's Wireless Communication Ordinance, however, after nine months of research and analysis, VoiceStream was unable to find any tracts of land or existing structures in the area that met the 200 foot zoning setback from either the residential zoning boundary or a residential structure, except for the proposed location in Monterrey Park; and

WHEREAS, the Monterrey Park location will provide VoiceStream the opportunity to complete their wireless network service grid for that area of the City; and

WHEREAS, additionally, the site selected in the park is separated from the main area of the park by a large drainage channel and is currently utilized as a picnic area, however, construction of park improvements include the relocation of the picnic area to the west side of the drainage channel where all of the other park activities will be located, and, therefore, the impact to the park area and users of the park will be minimal; and

WHEREAS, in compliance with Chapter 26 of the State Parks and Wildlife Code, the City advertised a notice of public hearing and consideration of this proposed park use in the San Antonio Express-News on May 9th, 16th, and 23rd, 1999, and prior to CITY Council consideration a public hearing was duly held on June 3, 1999, at 2:00 p.m.; and

WHEREAS, a neighborhood meeting was held on June 2, 1999, at 6:00 p.m. to receive input on this project; and

WHEREAS, this request was heard and recommended for approval by the Planning Commission at its regularly scheduled meeting on May 26, 1999, at 2:00 p.m.;
NOW THEREFORE THE ABOVE PARTIES AGREE TO THE FOLLOWING:

I. DEMISE, DESCRIPTION, AND USE

1.01 The CITY is the owner of the following described real property lying and being situated in the County of Bexar, and State of Texas: being an approximate 1600 feet of land out of Block 2, New City Block 8243, as recorded in Volume 4735, Page 622 of the Bexar County, Texas Plat Records and being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, (hereinafter referred to as the "PREMISES").

1.02 A portion of the PREMISES is illustrated in Exhibit "A" showing the projected location of the Co-Tenant's shelter and improvements and is hereafter referred to as the "Co-Tenant's Sub-Premises." The Co-Tenant's Sub-Premises includes that

portion of the **COMMON UTILITY AREA** that is situated within the boundaries of the Co-Tenant's Sub-Premises, as shown on Exhibit "A".

1.03 A portion of the **PREMISES** is illustrated on Exhibit "A" showing the location of **TENANT'S** shelter, related appurtenances and improvements, and is hereinafter referred to as the "**TENANT'S SUB-PREMISES.**" The **TENANT'S SUB-PREMISES** includes that portion of the **COMMON UTILITY AREA** that is situated within the boundaries of the **TENANT'S SUB-PREMISES**, as shown on Exhibit "A".

1.04 Any part of the property not under the exclusive control of the **TENANT** and shown on the **PREMISES** illustrated on Exhibit "A" shall be considered a projected location of an additional telecommunications provider's shelter, with necessary appurtenances and improvements, and is hereinafter referred to as the "**ADDITIONAL SUB-PREMISES.**" The **ADDITIONAL SUB-PREMISES** includes that portion of the **COMMON UTILITY AREA** that is situated within the boundaries of the **ADDITIONAL SUB-PREMISES**, as shown on Exhibit "A".

1.05 A portion of the **PREMISES** is illustrated on Exhibit "A" showing the projected location of **TENANT'S** tower and related improvements and is hereinafter referred to as the "**COMMON TOWER AREA.**"

1.06 A portion of the **PREMISES** is illustrated on Exhibit "A" showing the projected location of electrical and telephone lines serving the **COMMON TOWER AREA** and is hereinafter referred to as the "**COMMON UTILITY AREA.**"

1.07 The **CITY** hereby leases to the **TENANT** (i) the **TENANT'S SUB-PREMISES** for the construction, operation, control and maintenance of a wireless telecommunications facility (e.g. shelter and related improvements); and (ii) the non-exclusive use of (a) the **COMMON TOWER AREA** for the construction, operation, control and maintenance of a wireless communications tower and related improvements; and (b) the **COMMON UTILITY AREA** for the construction, operation, control and maintenance of electrical and telephone lines serving the **COMMON TOWER AREA.**

1.08 **Co-location by CITY.** As part of the consideration due the **CITY** by the **TENANT**, only if antenna space is available on a tower, **TENANT** shall provide **CITY** antenna space, at no cost to the **CITY**, on **TENANT'S** tower, placement of which is not to interfere with the **TENANT'S** operations therein. The **CITY** shall be responsible, at its sole cost and expense to install and properly maintain its equipment located on the **TENANT'S** tower. In addition, if space is not available on a tower, then the **CITY** shall have the right to upgrade an occupied tower for the **CITY'S** use, at the sole cost and expense of the **CITY**. If the **CITY** does co-locate on a provider's tower, then the rental rate charged to that provider will be reduced pursuant the rate structure described in Section V. of this Lease. IF THE **CITY** CO-LOCATES AN ANTENNA ARRAY ON A TOWER, THEN THAT ANTENNA WILL BE USED EXCLUSIVELY FOR **CITY** PURPOSES. IN CONSIDERATION OF THE RIGHT TO CO-LOCATE, THE **CITY**

WILL NOT PROVIDE THE PUBLIC, AS CUSTOMERS, THOSE WIRELESS TELECOMMUNICATION SERVICES PROVIDED BY THE TENANT/PROVIDER.

II. ACCEPTANCE AND CONDITION OF TENANT'S ADDITIONAL SUB-PREMISES, ETC.

2.01 **TENANT** has had full opportunity to examine the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**, and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. However, such waiver of claims for damages is limited to damages resulting from an inherent danger or condition which the **TENANT** knew or should have known of by virtue of the inspection of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**. The **TENANT'S** taking possession of the **TENANT'S SUB-PREMISES** and the non-exclusive possession of the **COMMON TOWER AREA** shall be conclusive evidence of the **TENANT'S** acceptance thereof in good order and satisfactory condition, and the **TENANT** hereby accepts the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION**, as suitable for the commercial purpose for which leased.

2.02 **TENANT** agrees that no representations, respecting the condition of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**, and no promises to decorate, alter, repair, or improve the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**, either before or after the execution hereof, have been made by the **CITY** or its agents to the **TENANT** unless the same are contained herein or made a part hereof by specific reference herein.

III. ACCESS

3.01 **TENANT** shall use the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** and any **CITY** facilities to which it is given access under this Agreement with the same degree of care as it accords to its own properties, and insure that its equipment and use thereof shall not alter, damage or otherwise impair the usefulness of any such property, excepting for normal wear and tear, and shall in no way interfere with the operations of **CITY'S** property.

3.02 **TENANT** shall have access at all times 24 hours per day, 7 days per week, to the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** during the term of this Lease. The **CITY** shall make available to **TENANT** at all times the necessary arrangements required to gain access. Additionally, upon authorization by **TENANT**, its engineers, employees, contractors, or agents of **TENANT**, Federal Communications Commission representatives or person under their supervision shall be permitted to enter the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** at reasonable times for purposes of servicing equipment or other business related matters, with signing-in required of such parties.

3.03 At the discretion of the **CITY**, an escort may be required and a reasonable fee may be charged by the **CITY** for such escort.

3.04 Except when escorted by a designated **CITY** representative, the **TENANT'S** personnel are required to notify the party in charge, if designated, of the **CITY** facility prior to or immediately upon entering any secured **CITY** facility.

3.05 Except for subcontractors which the **CITY** has approved, subcontractors used by the **TENANT** shall at all times be escorted by a **TENANT** representative when on a secured **CITY** facility. Keys, lock combinations, magnetic access cards or other access control devices to the **CITY** properties that are issued to the **TENANT** shall not be loaned to subcontractor personnel.

3.06 While on the **CITY** premises, **TENANT'S** personnel must wear a suitable photo ID badge, to be provided by the **TENANT**, that includes a nominal 1 ½" square personal photo, unique logo and labeling that identifies the **TENANT** and the employee by name, and a telephone number where confirmation of employment may be readily confirmed.

3.07 **TENANT** shall at all times assure that the **CITY** has a current list of all of its personnel who are authorized to be on the **PREMISES** on its behalf. The **CITY** shall be notified to immediately remove the name of any employee subject to disciplinary probation or termination, and shall be notified of additional personnel to be added to this list. **CITY** shall have the right to exclude any employee, agent or representative of the **TENANT** from **CITY** property, for reasonable cause, if deemed by the **CITY** to be necessary for the proper security of its facilities or the safety of its employees.

3.08 **TENANT** shall park its maintenance truck, or any other vehicle owned by **TENANT**, at a location which does not unreasonably interfere with the public use of the park or with any other potential co-tenant. **CITY** shall have the final authority to determine parking locations. In no event, shall **TENANT** interfere with the operations of the **CITY'S** park.

3.09 **TENANT** shall have exclusive right to access and control its shelter (as described in Section 6.04 of this Lease). However, all other areas are common to all providers/co-tenants. The **CITY** shall have the right to enter and inspect the **PREMISES**, and upon notifying the **TENANT**, the right to inspect the **TENANT'S** shelter.

3.10 **TENANT COVENANTS NOT TO UNREASONABLY INTERFERE WITH ANOTHER PROVIDER'S, CO-TENANT'S OR CITY'S ACCESS TO SAID TENANT'S SUB-PREMISES and the COMMON TOWER AREA.**

IV. TERM AND OPTION TO RENEW OR EXTEND

4.01 The **CITY** hereby leases to the **TENANT** and the **TENANT** hereby leases from the **CITY** (i) the **TENANT'S SUB-PREMISES** and the non-exclusive use of (a) the **COMMON TOWER AREA**; and (b) the **COMMON UTILITY AREA** for use as a wireless telecommunications facility, and uses normally incident thereto, for a term of twenty (20) years, commencing on the date of execution and ending twenty (20) years thereafter.

4.02 **TENANT** is hereby granted and shall, if not at that time in default of this Lease, have, for good and valuable consideration given, an option to extend the term of this Lease for two (2) additional consecutive periods of five (5) years after the termination date hereof on the same terms, covenants, and conditions, and subject to the same exceptions and reservations herein contained, yearly rental excepted. However, the second five (5) year extension of this Lease must be approved by City Council.

4.03 Each extension shall be exercised by **TENANT'S** delivering to the **CITY** in person or by the United States mail, at any time on or before ninety (90) days prior to the expiration date of the initial term of this Lease or the expiration date of the first five (5) year renewal option period, if the term is so renewed and extended, written notice of its election to extend the term of this Lease as herein provided, which approval shall not be reasonably withheld.

4.04 **Holding Over.** In the event the **TENANT** does not extend the term of this Lease as provided herein, and holds over beyond the expiration of the term hereof, and the first five (5) year renewal option period, if said term is renewed and extended, such holding over shall be deemed a month-to-month tenancy only, at a fair market value rental per month, payable on first day of each and every month thereafter, until the tenancy is terminated in the manner provided by this Agreement or by law.

4.05 The right is expressly reserved to the **CITY** to temporarily suspend this Lease in case of an emergency.

4.06 Further, in accordance with the current San Antonio City Charter provisions, the Council may terminate this Lease in the event the use of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** shall have been found to be a nuisance. In the event of termination by City Council, the **CITY** shall give the **TENANT** notice in writing at least one hundred eighty (180) days prior to the termination date, except in cases of emergency.

4.07 **TENANT** may cancel this Lease by giving one hundred eighty (180) days written notice to the **CITY**.

4.08 Upon termination of this Lease by either the **CITY** or the **TENANT**, or by operation of law, the **TENANT** agrees to restore the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** to its condition prior to the commencement of this

Lease, except for reasonable wear and tear. **TENANT** also agrees to remove any improvements, including, but not limited to any buildings or antennas installed by the **TENANT**, at the request of the **CITY**.

V. LEASE RATE STRUCTURE

5.01 **TENANT** agrees to pay the **CITY** at the Department of Asset Management or elsewhere as designated in writing by **CITY**. The rent for the term of years is to be divided as follows:

I. ONE TOWER, ONE PROVIDER

		<u>5-Year Total Income</u>
A.	1 st 5-year period: \$12,500 per year	\$ 62,500.00
B.	2 nd 5-year period: \$14,400 per year	72,000.00
C.	3 rd 5-year period: \$16,600 per year	83,000.00
D.	4 th 5-year period: \$19,100 per year	<u>95,500.00</u>
	20-year total	\$313,000.00

II. ONE TOWER, TWO PROVIDERS

		<u>5-Year Total Income</u>
A.	1 st 5-year period: \$ 8,750 per yr. per provider	\$ 87,500.00
B.	2 nd 5-year period: \$10,100 per yr. per provider	101,000.00
C.	3 rd 5-year period: \$11,600 per yr. per provider	116,000.00
D.	4 th 5-year period: \$13,400 per yr. per provider	<u>134,500.00</u>
	20-year total	\$438,500.00
		(\$219,250.00 Per Provider)

III. ONE TOWER, THREE PROVIDERS

		<u>5-Year Total Income</u>
A.	1 st 5-year period: \$ 7,000 per yr. per provider	\$105,000.00
B.	2 nd 5-year period: \$ 8,050 per yr. per provider	120,750.00
C.	3 rd 5-year period: \$ 9,300 per yr. per provider	139,500.00
D.	4 th 5-year period: \$10,700 per yr. per provider	<u>160,500.00</u>
	20-year total	\$525,750.00
		(\$175,250.00 Per Provider)

5.02 In consideration for the use of the **TENANT'S SUB- PREMISES** and the **COMMON TOWER AREA**, the **TENANT** shall tender to the **CITY** at the office shown in Section 5.01 above a yearly rental based on the rates set out in Section 5.01 above, each year, on or before the 10th day of January of each calendar year during the term of this Lease Agreement. The lease rate is to be prorated from the date of execution to December 31st of that year.

5.03 At the time of any execution of an extension of this Lease for both the first five (5) year renewal option period and subsequent five (5) year renewal option periods, **TENANT** will pay a yearly rental, beginning on the first day following the end of the initial term or on the first day following the end of the first five (5) year renewal option (second renewal being subject to City Council approval), based on an appraisal of the then current fair market rental rates for leasing of comparable property in the San Antonio Metropolitan Statistical Area or a value based on the annual change in the consumer price index, whichever is higher. Such appraisal shall be conducted pursuant to the provisions of Section 5.04 hereafter.

5.04 On or before one hundred eighty (180) days prior to the expiration of (i) the initial term of this Lease Agreement and (ii) the first five (5) year renewal option period, if the **TENANT** desires to exercise the second five (5) year renewal option, only with City Council approval, the **CITY**, at its sole cost and expense, shall select an appraiser who is qualified to appraise the fair market rental rates for leasing comparable property in the San Antonio Metropolitan Statistical Area. The **CITY** agrees to advise the **TENANT** of the new rental rate on or before one hundred twenty (120) days' prior to the expiration of the initial term and first five year renewal option period. **TENANT** shall have thirty (30) days to accept such new rate or select its own appraiser to determine fair market rentals and negotiate a rate with the **CITY**. **TENANT** shall advise **CITY** of its decision to renew the Lease at any time on or before ninety (90) days prior to the expiration date of the initial term and of the first five year renewal option period, if the terms are so renewed and extended in the manner provided in Section 4.03 hereof. If the two (2) appraisals are at variance and the parties cannot agree on a rental rate, then said two appraisers shall select a third appraiser, whose fee shall be paid equally by the **CITY** and the **TENANT**, and the parties agree that such third appraiser's value shall be binding, subject to City Council approval.

5.05 **Effect of Default.** If the **TENANT** defaults in the payment of any installment of rent hereunder, such installment shall bear interest at the highest rate allowed by Texas law at the time of default, from the date it is due until actually paid. In like manner, all other obligations, benefits, and moneys which may become due to the **CITY** from the **TENANT** under the terms hereof, or which are paid by the **CITY** because of **TENANT'S** default hereunder, shall bear interest at the highest rate allowed by Texas law, from the date due until paid, or in the case of sums paid by the **CITY**, because of the **TENANT'S** default hereunder, from the date such payments are made by the **CITY** until the date the **CITY** is reimbursed by **TENANT** therefor. **CITY**, in its sole discretion, may waive any interest.

5.06 **Right to Renegotiate Rent.** The **CITY** expressly reserves the right to renegotiate the amount of rental payments every five (5) years, if the market so justifies. The standard for renegotiation of rent shall be the same as described in Sections 5.03 and 5.04 above.

5.07 **Processing Fee.** Prior to erecting a communication tower, platform or antenna, **TENANT** agrees to satisfy a processing fee of two thousand and five hundred dollars (\$2,500.00), if formally adopted by the **CITY**.

VI. CO-LOCATION AND SHARED TOWER COSTS

6.01 **CITY**, in its sole discretion, has the authority to determine whether a **CITY** owned property is suitable for a wireless telecommunications tower or antenna. **CITY** will identify possible sites through a Site Selection process. Sites identified by the **CITY** through its Site Selection process do not preclude the **CITY** from approving additional **CITY** owned sites suggested by a provider. However, each time an additional site is approved; all locally licensed wireless telecommunications providers will be notified and given the opportunity to co-locate on that site.

6.02 If **TENANT** constructs the tower it shall support a minimum of two (2) antenna arrays from separate wireless communication providers; and if the constructed tower only accommodates two providers, agrees to allow, at a minimum, a third provider to co-locate and upgrade said tower at the sole cost and expense of the third provider. If the **CITY** co-locates on a tower, then the requirement that a third provider be allowed to upgrade the tower may be waived by the **CITY**.

6.03 All **TENANTS** shall abide by the requirements set by the **CITY** related to the erection of towers through all applicable City Ordinances, including Zoning rules and regulations, Unified Development Code rules, Building Code rules and regulations, and all other rules and policies set by the **CITY**, including, but not limited to, those described in Section VIII. of this Lease Agreement.

6.04 **TENANT** shall be responsible for the construction of its own shelter, provided, however, that each shelter be construed uniformly so that another provider may adjoin a separate shelter. **TENANT** agrees to construct its outdoor equipment cabinets on an approximate 3 ft. by 10 ft. equipment pad as indicated on Exhibit "B" attached hereto (industry standard) which will accommodate similar add-ons, if the **TENANT'S SUB-PREMISES** and the **ADDITIONAL SUB-PREMISES**, as applicable will accommodate such modules. If the **TENANT'S SUB-PREMISES** and the **ADDITIONAL SUB-PREMISES**, as applicable will not accommodate such modules, then the shelter size and construction will be subject to the approval of the **CITY'S** Department of Asset Management and Building Inspections.

VI.A SHARED CONSTRUCTION COSTS

6.01A **If multiple providers are awarded one site.** As a result of the CITY'S Site Selection process for wireless communications towers, if more than one (1) telecommunications provider timely proposes to erect a tower and related appurtenances at one (1) of the sites identified by the CITY, or a CITY property suggested by a provider and approved by the CITY, then it is directed that those providers communicate, negotiate and agree to the costs, terms and conditions related to the erection of a tower. In the event that such providers cannot agree, then the CITY, in its sole discretion, shall have the authority to determine, in a fair and equitable manner, which provider(s) will be awarded that site.

6.02A If more than one provider submits a timely proposal for the same site and it is determined that the site cannot reasonably accommodate each provider, then a lottery will be conducted in an equitable manner to determine which providers will be awarded the site.

VI.B METHOD FOR REIMBURSEMENT

6.01B **Tower with space.** If one provider has begun or completed the construction of a tower and related appurtenances on a site, and an additional provider(s) subsequently requests to co-locate on said tower, then a proportionate share of costs of construction, engineering or otherwise, for that particular site, shall be reimbursed to the provider originally responsible for construction. The goal is that construction costs be shared equally between both providers who wish to locate on that tower. For example, if one provider constructs, or is constructing, a tower and a second provider is allowed to co-locate, then the second provider will reimburse the first provider fifty percent (50%) of all costs of construction already completed and share the costs of remaining construction fifty percent-fifty percent (50%-50%). Also, for example, if one provider constructs, or is constructing, a tower, and two (2) or more additional providers timely request to co-locate on that tower, then the additional providers will proportionately reimburse the provider responsible for construction costs, and the additional providers will be responsible for sharing the upgrading costs. If three (3) or more providers timely request to erect a tower, then those providers will share construction costs proportionately.

6.02B Each TENANT shall maintain records of construction costs. These records shall be made available to the CITY upon request. Construction costs of a tower and related appurtenances must be allocable to that specific site. Costs which cannot be verified through records or cannot be allocated to a specific tower site will not be reimbursed.

6.03B Tower construction costs must meet industry standards for reasonableness or they will not be reimbursed. The CITY shall have the discretion to determine the reasonableness of the costs.

VI.C UPGRADING COSTS

6.01C **Tower without space.** If a tower is occupied to capacity without upgrading the tower, and an additional provider subsequently requests to co-locate on said tower, then all costs of construction, engineering or otherwise, for upgrading that site to accommodate the additional provider, shall be borne by that additional provider.

VI.D HEIGHT POSITION

6.01D As a result of the **CITY'S** Site Selection process for wireless communications towers, if more than one (1) telecommunications provider timely proposes to erect a tower and related appurtenances at one (1) of the sites identified by the **CITY**, then it is directed that those providers negotiate and agree to the height position on the tower at which each provider will locate its antenna array.

6.02D **Spacing.** The providers agree to cooperate and make a good faith effort to negotiate positioning on the tower. The **CITY** is not mandating a spacing distance because in some cases two or more providers may be able to locate their antenna arrays with little or no spacing between arrays. However, if the providers cannot agree to positioning on the tower, then the **CITY** reserves the right to determine positioning in a fair and equitable manner.

6.03D A provider who has already established position on an existing tower is given priority over any provider who wishes to subsequently co-locate on that tower. Any provider which subsequently wishes to co-locate on an existing, occupied tower, must select its height position subject to the positioning of the other provider(s).

VII. TOWER REQUIREMENTS

7.01 All providers shall abide by the requirements set by the **CITY** related to the erection of tower, including, but not limited to following:

- a. the maximum height of all towers, or monopoles, shall not exceed one hundred and ninety-nine (199) feet;
- b. the structure shall not be used to support signs other than those required by governmental agencies for aircraft warning or other safety purposes;
- c. the structure shall be designed to accommodate at least two (2) separate telecommunication providers;
- d. unless otherwise governed by State or Federal requirements, the structure shall be a galvanized finish;
- e. all landscaping requirements of the particular zoning district shall be complied with fully;

- f. all structures shall meet the minimum and structural load standards specified in the City of San Antonio building code;
- g. all structures will meet the requirements of Chapter 35 of the Unified Development Code;
- h. any tower or monopole which was originally used, but is no longer used for telecommunication purposes for a continuous period of six (6) months shall be removed at the tower owner(s) expense; and
- i. in historically sensitive areas, the site is subject to review by the **CITY'S** Historical Preservation Office.

7.02 If a provider is awarded a site, then that provider must complete construction within six (6) months of execution of this Lease Agreement for that site, and such site shall be operational for wireless telecommunications (i.e. the antenna shall be in use), or that provider shall forfeit the rights to that site.

7.03 As a condition of being awarded this park site, **TENANT** agrees to the following as further conditions to the **CITY'S** Standard Tower Lease Requirements:

- a. tower placement shall comply with park use considerations;
- b. installation and maintenance of a native landscape buffer around perimeter fence per the planting plan supplied by the **CITY**, park area lighting on the tower, asphalt service road and vehicular control off of Commerce Street; and
- c. final approval of the plans and specifications for items a. and b. above by the Director of Parks and Recreation Department.

VIII. INTERFERENCE

8.01 **TENANT** agrees that its equipment on the **TENANT'S ADDITIONAL SUB-PREMISES** and the **COMMON TOWER AREA** and the operation thereof will not cause any harmful interference, electromagnetic or otherwise, to the useful operation of the **CITY'S** fire, police and emergency services equipment and/or any communications equipment.

8.02 Should the **CITY** determine that the **TENANT'S** operation is causing such harmful interference, it shall notify the **TENANT**, and after receipt of such notice, **TENANT** will be given a reasonable period of time, at least thirty (30) days, to correct such harmful interference or remove the equipment which is causing such interference. However, if such interference creates an emergency situation, as determined by the **CITY**, then the thirty (30) day period does not apply, and the provider shall rectify the

problem immediately, or cease operations on that tower until the problem is rectified. Costs of reducing such interference shall be borne by the **TENANT**.

IX. UTILITIES

9.01 **TENANT** shall maintain separate utility meters or sub-meters on the **PREMISES**. **TENANT** shall, during the term hereof, pay all charges for telephone, gas, electricity, water or any other power or utilities used by it for or on the **TENANT'S ADDITIONAL SUB-PREMISES** and the **COMMON TOWER AREA** before they shall become delinquent and shall hold the **CITY** harmless from any liability therefor.

9.02 The **CITY** leases to **TENANT** the non-exclusive use of the **COMMON UTILITY AREA** for the construction, operation, control and maintenance of electrical and telephone lines to service the **COMMON TOWER AREA**.

X. INSURANCE

10.01 **TENANT** agrees to secure, prior to commencing any activities under this Lease Agreement, and to maintain, with respect to the Leased Premises from the execution date of this Lease Agreement and for the duration of this Lease Agreement and for the duration of this Lease Agreement and any extensions thereof, insurance, with companies admitted to do business in the State of Texas, in the following types and amounts to cover the indemnity provision as described in Article IX of this agreement.

<u>Type</u>	<u>Amount</u>
A. Workers' Compensation and Employer's Liability	Statutory - \$500,000.00 each occurrence
B. Commercial General Liability to include coverage for the following where the exposure exists: (1) Premises/Operations (2) Independent Contractors (3) Products/Completed Operations (4) Personal Injury (5) Contractual Liability	Combined Single Limit for Bodily Injury and Property Damage: \$1,000,000.00 per occurrence (or its equivalent)
C. As applicable, if requested by City's Risk Manager: Business Automobile Liability Insurance - to include coverage for: (1) Owned/Leased Automobiles	Combined Single Limit for Bodily Injury and Property Damage - \$500,000.00 or its equivalent

- (2) Non-owned Automobiles
- (3) Hired Automobiles

- D. Property Insurance – for physical damage to the property of **TENANT**, including improvements and betterments to the **TENANT SUB-PREMISES** and the **COMMON TOWER AREA** Coverage for a minimum of one hundred percent (100%) of the replacement cost of **TENANT'S** improvements
- E. **TENANT** may choose to provide Self-Insurance for C. and D. above only if the **TENANT** provides a certification, executed by an officer of VoiceStream PCS BTA I Corporation., that San Antonio MTA, L.P. has a financial worth and provable assets sufficient to meet Self-Insurance standards and which will be available to cover the indemnity provisions as described in Article IX in this agreement. The Self-Insurance certification is subject to the approval of **CITY'S** Risk Management Director. If approved, the **TENANT** agrees to maintain its financial worth and provable assets to sufficiently cover the applicable insurance and indemnity provisions.

10.02 **TENANT** further agrees that with respect to the above required insurances, the **CITY** shall:

- A. Be named as an additional insured on General Liability coverage.
- B. Be provided with a Waiver of Subrogation, but only as it pertains to Workers' Compensation and Employers' Liability.
- C. Be provided with thirty (30) days' advance notice, in writing, of cancellation of material change.
- D. Be provided with Certificates of Insurance evidencing the above required insurance, prior to the commencement of this Lease and thereafter, with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of such policy. Said notices and Certificates of Insurance shall be provided to:
 - (1) City Clerk of the **CITY OF SAN ANTONIO**, and
 - (2) City's Director of Risk Management, Office of Finance, and
 - (3) City's Director of Asset Management.

10.03 Any alternate plan for Employer's Liability must be approved in advance by the **CITY'S** Risk Manager.

10.04 The CITY'S Risk Manager is hereby authorized to reduce or increase the requirements set forth above in the event he or she determines that such reduction or increase is in the CITY'S best interest.

10.05 TENANT further agrees that with respect to the above required insurance, each insurance policy required by this Lease shall contain the following clauses:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days' written notice has been given to:

- (a) City Clerk, City of San Antonio
City Hall/Military Plaza
P. O. Box 839966/2nd Floor
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

- (b) City Clerk, City of San Antonio
City Hall/Military Plaza
P. O. Box 839966/2nd Floor
San Antonio, Texas 78283-3966
Attention: Director of Asset Management

"It is agreed that the insurance provided by TENANT is primary to any insurance or self-insurance maintained by the City of San Antonio."

XI. INDEMNITY

11.1 TENANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to TENANT'S activities under this AGREEMENT, including any acts or omissions of TENANT, and any respective agent, officer, director, representative, employee, consultant or sublessor of TENANT, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the city under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, ACTION, LIABILITY

AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this indemnification are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any person or entity. TENANT shall promptly advise the city in writing of any claim or demand against the CITY or TENANT known to the TENANT related to or arising out of TENANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

11.2 it is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this article (ARTICLE XI), is an INDEMNITY extended by TENANT to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of THE CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XII. MAINTENANCE AND SAFETY

12.01 TENANT shall not commit, or suffer to be committed, any waste on the PREMISES, nor shall it maintain, commit, or permit the maintenance or commission of any nuisance on the TENANT'S SUB-PREMISES and the COMMON TOWER AREA or use the TENANT'S SUB-PREMISES and the COMMON TOWER AREA for any unlawful purpose and, TENANT shall, at all times, keep the TENANT'S SUB-PREMISES and the COMMON TOWER AREA neat, clean, and clear of any potential safety hazards and unused equipment.

12.02 TENANT shall prominently post easily readable signs on the TENANT'S SUB-PREMISES and the COMMON TOWER AREA advising of any hazard(s) which may be common, known, or that the provider should be aware of through the exercise of ordinary diligence, to the operation of the equipment located on said TENANT'S SUB-PREMISES and the COMMON TOWER AREA.

12.03 TENANT shall have a reasonable time, not to exceed ten (10) days after CITY mails notice to the TENANT, to correct any safety hazard that exists on the TENANT'S SUB-PREMISES and the COMMON TOWER AREA after receipt of notice from any appropriate CITY official. Failure to comply with this provision may

result in termination of this Lease, however, the **CITY** will extend such time period if good faith efforts are being made by the **TENANT**, to the **CITY'S** satisfaction, to correct said hazard.

12.04 **TENANT** will make all arrangements for installation of any control lines, or other equipment as may be required for the operation of its radio equipment. If, under the terms of this Lease, power is not specifically included in the rental, **TENANT** shall arrange for and bear the cost of the installation and use of power facilities using space provided by the **CITY** for the power meter.

12.05 **TENANT** will, at the termination of this Lease, return the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** to the **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.

12.06 **TENANT** agrees that the **CITY** shall not be liable for any theft, damages, or destruction of signs, goods, and/or other property of the **TENANT** both during the initial term and any extended terms of this Lease and as so left on the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** after the **TENANT** vacates the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**. If said signs, goods, and/or other property placed by the **TENANT** upon the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** are not removed by it within thirty (30) days after the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** are vacated, then the **CITY** may remove and sale at public sale the same without further notice or liability therefor to the **TENANT**.

XIII. ABATEMENTS

13.01 It is understood and agreed that the **CITY** is not an insurer, and that the rental herein provided is based solely on the value of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** provided in this Agreement. If the **TENANT'S** use of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** is interrupted due to acts of God, the rent for the period during which use is interrupted shall abate, and the **CITY** shall have no other liability beyond the rental payment abatement.

XIV. ASSIGNMENT AND SUBLET

14.01 **TENANT** shall not transfer or assign this Lease Agreement or the **TENANT'S** interest in or to the Lease Premises or any part thereof without having first obtained the prior written consent of the **CITY** which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas, provided, however, that the foregoing shall not apply to and shall not prevent the assignment of this Lease Agreement to **TENANT'S** affiliate or to any corporation with which the **TENANT** may merge or consolidate or which may succeed to a controlling interest in the business of the **TENANT**. Notwithstanding the foregoing and for so long as any pledge or collateral assignment of the **TENANT'S** interest in the Lease Agreement shall be by instrument

substantially in such form as shall have previously been approved by the City Council, the consent of the **CITY** to such pledge or collateral assignment may be given by the **CITY** acting by and through the **CITY'S** Asset Management Director.

14.02 **TENANT** shall not sublet the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** herein leased or any part thereof without having first obtained the written consent of the **CITY'S** Asset Management Director. In the event the **TENANT** requests permission to sublease, the request shall be submitted to the Asset Management Director at least thirty (30) days prior to the effective date of the sublease requested and shall be accompanied by a copy of the proposed sublease agreements and of all agreements collateral thereto. The identity of the sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history and all other information requested by said Director shall be specified. **TENANT** shall not sublease a total of more than 50% of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**. If such limit is exceeded, the **CITY** shall have the right, upon 30 days written notice, to recapture the space described in the sublease, and terminate the entire Lease Agreement on the expiration of such 30 day period. In the event of any recapture, **TENANT'S** rental payments shall be adjusted on a prorated basis provided, however, that all options of the **CITY** contained in Provision XIV shall be available to Lessor.

14.03 In the event of a sublease where the rental value established in the sublease exceeds the rental value established in the Lease Agreement, **TENANT** shall pay to the **CITY** as additional rent the excess of the rental received from the sublessee over that specified to be paid by the **TENANT** herein, provided that the **TENANT** may charge a reasonable fee for administrative costs in addition to the sublease rental not to exceed 15% of the specified sublease rental. Such 15% shall not be considered as excess rental. Nothing herein shall prevent the **TENANT** from charging a reasonable fee to others for the use of capital equipment and facilities on the subleased premises and charging for use of utilities and other services being paid for by the **TENANT**. The provisions of this paragraph will apply if the rental received for the proportionate area of the Leased Premises by the **TENANT** exceeds the rental paid to the **CITY** for said proportionate area of the Leased Premises.

14.04 Each transfer, assignment or subletting to which there has been consent shall be by the instrument in writing, in form satisfactory to the **CITY**, and shall be executed by the transferee, assignee or sublessee who shall agree in writing for the benefit of the **CITY** to be bound by and to perform the terms, covenants and conditions of this Lease Agreement. Four (4) executed copies of such written instrument shall be delivered to the **CITY**. Failure to first obtain in writing the **CITY'S** consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer, assignment or subletting from becoming effective.

14.05 Should there be an assignment of this Lease Agreement pursuant to the terms of Section 14.01 of this Lease, and to the extent that such assignee assumes the **TENANT'S** obligations hereunder, **TENANT** shall by virtue of such assignment be

released from such obligation. Should the subletting of the Leased Premises be approved by the **CITY**, however **TENANT** agrees and acknowledges that **TENANT** shall remain fully and primarily liable under this Lease Agreement, notwithstanding any such sublease and that any such sublessee shall be required to attorn to the **CITY** under the terms of this Lease.

14.06 The receipt by the **CITY** of rent from an assignee, subtenant or occupant of the Lease Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the **TENANT** from further observance or performance by the **TENANT** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver be in writing, signed by the **CITY'S** Asset Management Director.

XV. IMPROVEMENTS AND REPAIRS

15.01 **TENANT** shall not construct any material improvements or structures on the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** not otherwise allowed under the terms of this Lease, nor shall **TENANT** make any material alterations to said **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**, other than repairs in the ordinary course of business without the prior written approval of the **CITY** as evidenced by the passage of an ordinance, if necessary, and any and all other necessary departments and agencies of the **CITY**, including the **CITY'S** Planning Commission and Historical Design and Review Commission, which approval shall not be unreasonably withheld.

15.02 **TENANT** covenants that it shall not bind, or attempt to bind, the **CITY** for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on, or about the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**. Further, the **TENANT** agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding any mechanic's or materialman's liens filed against the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

XVI. PERMITS, TAXES, AND LICENSES

16.01 **TENANT** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**, or upon **TENANT**, or upon the business conducted on the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**, or upon any of the **TENANT'S** property used in connection therewith; and shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the **TENANT**. Failure to comply with the foregoing provision shall constitute grounds for termination of this Lease by the **CITY**, however, the **TENANT** reserves the

right to contest the tax, if such contest occurs, **TENANT** agrees to post a bond in **CITY'S** favor in the amount of said taxes contested, including the amount of all penalties and interest due or to be due during the period of such contest.

XVII. DEFAULT AND REMEDIES

17.01 The following events shall be deemed to be events of default by the **TENANT** under this Lease:

- A. **TENANT** shall fail to pay installment of rent as provided for in this Lease and such failure shall continue for a period of ten (10) days following receipt of written notice of failure to pay any installment of rent when due and owing,
- B. Except for the correction of safety hazards as provided in Section 12.03 and of interference as provided in Section 8.02 hereinbefore, **TENANT** shall fail to comply with any material term, as reasonably determined by the **CITY**, provision or covenant of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to the **TENANT**.
- C. The taking by a court of competent jurisdiction of the **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

17.02 Upon the occurrence of an event of default as heretofore provided, **CITY** may, as its option, declare this Lease, and all rights and interest created by it, terminated. Upon **CITY** electing to terminate, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or the **CITY**, its employees, representatives, agents, or attorney may, at its option, resume possession of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** and relet the same for the remainder of the term, whether initial or an extended term, for the best rent the **CITY**, its employees, representatives, agents, or attorney may obtain for the account of the **TENANT** without relieving the **TENANT** of any liability hereunder as to rent still due and owing in this Lease, or any extension thereof, as applicable. **TENANT** shall make good any deficiency.

17.03 Any termination of this Lease as herein provided, except under Article IV, Section 4.06, shall not relieve the **TENANT** from the payment of such sum or sums that shall then be due and payable or become due and payable to the **CITY** hereunder, or any claim for damages then or theretofore accruing against the **TENANT** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from the **TENANT** for any default hereunder. All rights, options, and remedies of the **CITY** contained in this Lease shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy

or relief available at law or in equity, whether or not stated in this Lease. No waiver by the **CITY** of a breach of any of the covenants, conditions, or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any covenant, condition, or restriction herein contained.

17.04 Upon any such expiration or termination of this Lease, **TENANT** shall quit and peacefully surrender the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** to the **CITY** within a reasonable period of time, and **CITY**, upon or at any reasonable time after such expiration or termination may, without further notice, enter upon and re-enter the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** and possess and repossess itself thereof, by force, summary proceedings, ejectment, or otherwise, any may dispossess **TENANT** and remove the **TENANT** and all other persons and property, including all signs, furniture, trade fixtures, and other property which may be disputed as to its status as fixtures, from the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA**, and such action by the **CITY** shall not constitute the **CITY'S** acceptance of abandonment and surrender of the **TENANT'S SUB-PREMISES** and the **COMMON TOWER AREA** by **TENANT** or prevent the **CITY** from pursuing all legal remedies available to it.

17.05 Bankruptcy on the part of the **TENANT**, or of any of its assignees or sublessees, shall be deemed an act of default and a breach of this Lease.

XVIII. QUIET ENJOYMENT

18.01 **CITY** covenants and agrees, subject to the provisions of this Lease, that the **TENANT**, on paying the rent and all other charges in this Lease provided for and observing and performing the covenants, agreements, and conditions of this Lease on its part to be observed and performed, shall lawfully and quietly hold, occupy, and enjoy the **PREMISES** during the term without hindrance or molestation of any kind whatsoever.

XIX. CONFLICT OF INTEREST

19.01 **TENANT** acknowledges that it is informed that Texas law prohibits contracts between the **CITY** and any local public official, such as a **CITY** officer or employee, and that the prohibition extends to an officer and employee of **CITY** agencies, such as **CITY** owned utilities and certain **CITY** boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. **TENANT** certifies (and this Lease Agreement is made in reliance thereon) that neither it, its individual officers, employees, or agents, nor any person having a substantial interest in this Lease Agreement, is an officer or employee of the **CITY** or any of its agencies. The **TENANT** further certifies that it has complied with the **CITY'S** ethics ordinance.

XX. ENTIRE AGREEMENT/AMENDMENT

20.01 This Lease Agreement, together with its attached Exhibit "A" and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parol agreement with the **CITY** being expressly waived by the **TENANT**. Exhibit "A" includes the tower construction plan title sheet, general notes, survey, site plan, antenna and elevation, construction details, foundation details, structural details, electrical plan, elec/telco wiring, grounding layout and grounding details. Any significant deviation, as determined by **CITY**, from the details of Exhibit "A" by the **TENANT** shall require further **CITY** approval.

20.02 No amendment, modification, or alteration of the terms of this Lease shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

20.03 It is understood that the Charter of the **CITY** requires that contracts with the **CITY** be in writing and adopted by Ordinance. All amendments also need approval evidenced by Ordinance. However, pursuant to the **CITY** Ordinance referenced on page 1 hereof, which adopted this written Standard Tower Lease Agreement, the **CITY** has adopted a procedure and policy through which this Standard Tower Lease Agreement may be executed by the City Manager's Office. Any substantial change to this Lease must be in writing, approved by City Council and adopted by Ordinance.

XXI. SEPARABILITY

21.01 If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease, then and in that event it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable, there be added as part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

XXII. NOTICES

22.01 Any notice or demand given under this Lease shall be in writing and shall be effectively delivered when deposited in the United States Mail, in Certified or Registered form, postage prepaid, addressed as follows:

If to the **CITY**: CITY Clerk's Office
 City of San Antonio
 P. O. Box 839966/2nd Floor City Hall
 San Antonio, Texas 78283-3966

With copy to: Director of Asset Manager
 City of San Antonio

P. O. Box 78283-3966/2nd Floor City Hall
San Antonio, Texas 78283-3966

If to **TENANT**: VoiceStream PCS BTA I Corporation
3650 131st Ave. SE, Suite 400
Bellevue, WA 98006
Attention: Leasing Administration
Tel. (425) 586-8700
Fax (425) 586-8040

With a copy to: VoiceStream PCS BTA I Corporation
3650 131st Ave. SE, Suite 400
Bellevue, WA 98006
Attention: Legal Department

22.02 Notice given in any other manner shall be effective only when actually received. Either party may change the address herein specified from time to time giving five days written notice of same.

22.03 This Contract is to be construed under the laws of the State of Texas and is performable in Bexar County, Texas.

XXIII. PARTIES BOUND

23.01 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their respective legal representatives, successors, and assigns, and if there shall be more than one party designated as the **TENANT** in this Lease, they shall each be bound jointly and severally hereunder.

XXIV. LAW TO APPLY

24.01 THIS LEASE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

XXV. GENDER

25.01 Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVI. CAPTIONS

26.01 The captions contained in this Lease are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Lease.

XXVII. AUTHORITY


27.01 The signer of this Lease for the **TENANT** hereby represents and warrants that he or she has full authority to execute this Lease on behalf of the **TENANT**.

IN WITNESS WHEREOF, in duplicate originals, we have affirmed our signatures this 6th day of AUGUST, 1999.

CITY OF SAN ANTONIO
a Texas Municipal Corporation

VOICESTREAM PCS BTA I CORPORATION

By: Christopher J. Brady
ALEXANDER E. BRISNO
City Manager



By: Eric Baker
Printed Name: ERIC Baker
Title: Assistant Vice-President

ATTEST:

NORMA S. RODRIGUEZ
City Clerk

ATTEST:

Georgia Lamb May
Printed Name: Georgia Lamb May
Title: Corporate Notary

APPROVED AS TO FORM:

FRANK J. GARZA
City Attorney

