

LICENSE AGREEMENT
BETWEEN THE CITY OF AUSTIN AND
VOICESTREAM PCS II CORPORATION

→ On this the 25th day of Jan, 2001, the CITY OF AUSTIN (the "City"), a Texas home rule municipal corporation, executes a license agreement with VOICESTREAM PCS II CORPORATION ("Licensee"), a Delaware corporation, to use certain City property and facilities for placement of wireless telecommunication facilities, in exchange for valuable reasonable consideration set forth in this agreement..

The City and Licensee agree as follows:

1. RECITALS

- 1.1 The City owns or otherwise controls City of Austin Fire Station No. 10, the parking lot, and other surrounding property and improvements located at 3009 Windsor Road in Austin, Travis County, Texas as depicted in Exhibit A and legally described as Lot 6, Block 17, Westfield "A", a subdivision in Travis County, Texas and further described in Vol. 3, Page 107 of the Plat Records of Travis County, Texas.
- 1.2 The City grants to Licensee a non-exclusive License to install and operate a personal communication base station and related antenna(s), equipment and accessories on and near existing Fire Station No. 10, and related facilities.

2. DEFINITIONS

- 2.1 Days means calendar days.
- 2.2 Emergency means an unexpected or sudden occurrence warranting urgent and immediate action to protect lives or property, or to promptly restore communications or utility services.
- 2.3 Fire Station Chief means the Austin Fire Department officer in charge of Fire Station # 10, or designee.
- 2.4 Licensed Premises means the specific area indicated in Exhibit A.
- 2.5 Station means a wireless telephone antenna, amplifier, receiver, repeater, and other devices or equipment, along with cables, risers, guy wires, anchors and other appurtenant facilities necessary or incidental to the provision of wireless telephone service from the licensed premises.

2.6 Usage Fee means the annual use and occupancy charge payable to the City for the use of the licensed premises.

→ 3. PURPOSE

3.1 The City grants Licensee a non-exclusive license for the right to use the licensed premises to install a wireless communication station for the purpose of providing wireless communication services to its customers in the Austin, Texas area.

3.2 Nothing in this agreement grants the Licensee the right to use or occupy the public streets or rights of way of the City of Austin.

3.3 Licensee will install its station as described in Exhibit B, utilizing an existing wooden pole located on the licensed premises. The Licensee is responsible for all costs associated with the installation of Licensee's station.

3.4 The existing wood pole shall be jointly used by the City and by Licensee. The City may license additional uses of the licensed premises, including the wood pole, subject to the terms of this license.

3.5 Licensee is granted the exclusive use of only that portion of the licensed premises necessary to the installation and function of the station. The City will not interfere with Licensee's operation except in the event of an emergency. Non-Emergency interference will result in a material breach of this agreement by the interfering party. The breach may be cured only if the responsible party terminates the interference.

3.6 The City retains priority over all uses of the licensed premises. If a City's use of the licensed premises conflicts with an actual or proposed use by the Licensee, the City's use maintains priority.

3.7 The City retains ownership and control over the licensed premises. No payment remitted by the Licensee creates any ownership right, title, or interest in the premises.

3.8 Nothing in this agreement limits the City's right to enter the licensed premises at any time to maintain, repair, or replace City facilities, or to conduct any official City business.

3.9 Licensee is granted a non-exclusive license to use the licensed premises. Nothing in this agreement limits the use of the licensed premises by another licensee, and does not limit the City's right to grant additional licenses to the premises so long as Licensee's rights and privileges are not adversely affected.

4. COMPLIANCE WITH LAWS

- 4.1 The Licensee must conform its use of the licensed premises to all applicable State, Federal and local laws, rules, and regulations, including rules governing the placement of equipment to provide wireless telephone service. Licensee must also comply with all reasonable directives of the Fire Station Chief.
- 4.2 Nothing in this license exempts the Licensee from obtaining licenses, permits or other authorizations as required to provide service or to use, operate or maintain its station. If Licensee is denied any required license, permit or authorization, Licensee may terminate this license and any other permit predicated upon the grant of such license, permit or authorization. However no termination by Licensee under this section shall entitle Licensee to any refund of prepaid usage charges.
- 4.3 Licensee shall construct, install, use, operate and maintain its station so as not to interfere, either physically or electronically, with the use of the licensed premises by the City or other Licensees. If interference does occur, Licensee shall use its best efforts to promptly eliminate the interference, including as necessary the replacement, relocation or modification of its station. If the interference cannot be eliminated within a reasonable time, then either party may terminate this agreement upon thirty days' written notice without incurring any liability to the other party as a result of the termination. If the agreement is terminated under this section, Licensee shall be entitled to a pro-rata refund of any pre-paid but unearned usage fees. Use of the licensed premises by a subsequent licensee may not interfere, either physically or electronically, with the use of the licensed premises by Licensee.

→ 5. ESTABLISHING USE

- 5.1 The City expressly disclaims all express or implied warranties regarding the licensed premises and its condition or fitness for any purpose, including the actual or proposed use by the Licensee. The City make no claim as to the propriety of the licensed premises for the proposed use by the Licensee. Licensee accepts the licensed premises **AS IS, WHERE IS, and WITH ALL FAULTS**. Licensee represents that it has inspected the licensed premises, and finds it acceptable for Licensee's stated purpose.
- 5.2 The licensed premises may not be used for any purpose other than the purpose expressly set forth in this agreement. An unauthorized use of the licensed premises, or use of any additional City property or facilities other than that described in Exhibit A, is a material breach of this agreement.

5.3 The construction, installation, use, operation, relocation, and maintenance of Licensee's station shall be performed by Licensee at Licensee's sole expense. The Licensee shall pay for any preparation of the licensed premises necessary to facilitate installation of its station.

5.4 Licensee is solely responsible for the security of its station. The City assumes no responsibility for the security of Licensee's station, nor makes any representation concerning the adequacy of any security measures currently in place for the City's benefit.

6. STATION CHANGES AFTER INITIAL INSTALLATION

6.1 Except as provided in Section 6.2, Licensee shall not change the type, nature, or location of its station or alter its use of the licensed premises without prior written consent from the City. Licensee may not install or construct any other equipment or facility on the licensed premises unless authorized by this license or by prior written consent from the City. Equipment changed or added in violation of this section constitutes a material breach of the agreement. The City may require an additional fee before approving a change or addition to the station.

6.2 Licensee is not required to obtain prior consent from the City for:

- (a) changes incident to routine maintenance and repair of its facilities,
- (b) changes necessitated by an emergency,
- (c) changes required by the City, or
- (d) removal of its station from the licensed premises.

However, Licensee must provide the Fire Station Chief with written notice identifying all such changes no later than the 10th day after initiating the change.

6.3 The Licensee shall remove, relocate, or alter its station and any other equipment on the licensed premises when the City determines that removal, relocation, or alteration is reasonably necessary to avoid interference (either physical or electronic) with City equipment, with other licensed uses in existence on the effective date of this license, to accommodate changes to the licensed premises, or to allow redevelopment of the licensed premises. The Licensee must remove, relocate, or alter its station or equipment no later than the 30th day after the City sends written notice to the Licensee. However, in case of an emergency as determined by the City and after verbal notice to the Licensee, the City may remove, relocate, or alter Licensee's station or equipment without incurring liability. All removal or relocation expenses shall be paid by the Licensee. If Licensee is required to relocate, remove, or alter its station or equipment, Licensee may elect to terminate this agreement and receive a pro rata refund of all unaccrued usage fees prepaid to the City.

- 6.4 Licensee, at Licensee's expense and risk, shall relocate its station to allow for redevelopment of the licensed premises if requested to do so in writing by the City.
- 6.5 If the Licensee must relocate its station due to redevelopment of the licensed premises, the City will use its best efforts to locate a substitute location suited to the Licensee's intended use.
- 6.6 If the Licensee does not remove, relocate or alter its station on or before the 30th day after the City sends written notice, the City may remove, relocate, or alter the Licensee's station or equipment at the Licensee's sole risk and expense. The Licensee shall pay the City the full cost of performing such work, including overhead, general, and administrative expense.
- 6.7 The Licensee shall remove, relocate, or alter its station if the City determines that removal, relocation, or alteration is reasonably necessary to avoid interference (either physical or electronic) with a use licensed after the execution of this license if Licensee's use and operation of its station and equipment, and the quality of its wireless service is not materially impaired. The licensed use that benefits from such change shall pay the Licensee the full cost of performing such work, unless otherwise negotiated by the parties.
- 6.8 The City may use, change, operate and maintain the licensed premises as the City determines is necessary to its original intended use. The City shall not be liable to the Licensee for any damage to or interference with the use, maintenance, or operation of Licensee's station that result from the City's use, maintenance or operation of the licensed premises. The Licensee has the right to terminate this license without penalty if the City's use, maintenance or operation of the licensed premises has a materially adverse effect on the operation or use of the Licensee's facilities and equipment. Licensee may terminate the license and receive a refund of a pro rata share of unearned usage fees prepaid to the City only if the City received written notice of the termination.
- 6.9 If Licensee fails or refuses to change, alter, improve, or move its station within thirty (30) days after receipt of the City's written notice (or as otherwise provided in such notice), the City shall have the right (but not the obligation) to perform such work at Licensee's sole risk and expense. Licensee shall pay the City upon receipt of invoice for the City's full cost for performing such work including overhead and general and administrative expense.

7. LICENSEE OPERATIONS

- 7.1 All work performed by or on behalf of Licensee on the licensed premises shall be done in a good and thoroughly workmanlike manner, consistent with the best industry practices and according to all applicable Federal, State and local laws,

rules and regulations. Licensee and its contractors shall employ only orderly and competent workers for all of the work on the licensed premises. Licensee and its contractors shall comply with all City safety practices and procedures. Workers may not possess any weapon, or use, possess or be under the influence of any alcoholic or other intoxicating beverage, illegal drug or controlled substance while on the licensed premises. Anyone performing service for the Licensee who violates this provision shall be removed and may not return to the licensed premises.

- 7.2 Licensee has a right of access to the licensed premises throughout the term of this agreement. However, except in an emergency, the Licensee must notify the City no less than 24 hours in advance of entering the licensed premises. The City may, in cooperation with the Licensee, designate an access route that must be used when entering the licensed premises.
- 7.3 Licensee shall pay all taxes and assessments levied on its station. No lien may be filed against the licensed premises as a result of any claim or dispute against the Licensee. If a lien is filed against the licensed premises, Licensee agrees to promptly pay or bond whatever amount is necessary to discharge the lien and pay all fees and other expense associated with the claim.
- 7.4 The City shall provide access to electrical service on the licensed premises. Licensee shall be solely responsible for the costs of establishing, maintaining, and receiving electrical and other utility service directly attributable to operation of Licensee's station.
- 7.5 Licensee must remove all construction debris and trash remaining after work is completed, leaving the licensed premises in the same clean condition as it appeared prior to performing the work. If Licensee fails to leave the licensed premises in a condition satisfactory to the Fire Station Chief, the City may perform the clean up and removal work. The Licensee shall reimburse the City for the full cost of performing such activity immediately upon receipt of an invoice.

8. INDEMNITY

- 8.1 Licensee shall, at the City's option, defend, indemnify, and hold the City, its successors, assigns, officers, elected and non-elected officials and employees harmless from and against any and all claims, demands, suits, causes of action, judgments and liability of every character type or description, including all expenses of litigation, court costs and attorney's fees 1) arising out of or concerning this agreement, or 2) the installation, use, operation, maintenance, transfer, rearrangement or removal of Licensee's station on the licensed premises. Indemnification extends, but is not limited, to:

- (i) damage to or loss of the property of any person, including, but not limited to the licensed premises, the station, and all equipment located on the licensed premises;
- (ii) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person,

caused in whole or in part, by the fault of Licensee or its agents, employees or contractors. The City shall in all instances be indemnified by the Licensee against all such loss, damages or claims, regardless of whether the loss, damages or claims are caused in part by the negligence or fault of the City. As used in this section, the term fault shall include negligence of every degree and kind, willful misconduct and strict liability.

- 8.2 The Licensee shall not indemnify the City if the loss, damage, or claim arises from the sole negligence of the city. Any contractor performing work or service for Licensee at the licensed premises must indemnify the City in writing to the same extent as provided above as a condition of being granted access to the License Premises.

9. INSURANCE

- 9.1 Licensee shall at all times during the term of this agreement carry insurance to protect Licensee and the City against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind which may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this agreement. Insurance must be provided by companies duly licensed by the State of Texas, with an AM Best rating of A or higher.
- 9.2 At a minimum, Licensee shall carry and maintain, at a minimum, the following coverage:
 - Commercial General Liability coverage in the minimum amount of \$1,000,000 per occurrence;
 - Worker's Compensation coverage with statutory benefits as set forth in the Texas worker's Compensation Act and Employer's Liability coverage of not less than \$250,000 bodily injury per accident, \$500,000 bodily injury per disease and \$250,000 per disease per employee; and,
 - Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.
- 9.3 The Commercial General Liability and Business Liability Policies shall name the City of Austin as an additional named insured. Licensee shall furnish to the City's Risk Manager certificates of insurance showing that the City is a named insured

on the each policy. Each policy shall contain an endorsement obligating the insurer to notify the City Risk Manager not fewer than 30 days before any non-renewal, cancellation or material change in coverage. The "other insurance" clause shall not apply to the City; each policy covering the Licensee shall be considered primary coverage for the City. Except as required by law, each policy shall contain a waiver of all rights of recovery or subrogation against the City, its officers, agents, employees, and elected officials.

- 9.4 Any contractor performing work or service for the Licensee on the licensed premises shall carry insurance to the same extent as provided above as a condition of being granted access to the licensed premises.

10. USAGE CHARGES AND PAYMENT

- 10.1 Licensee shall pay to the City usage charges for the first year and each subsequent year for the term of this agreement, as follows:

For Licensed Premises	\$7,250.00 for first year
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The annual usage charge shall increase by four percent (4%) per annum on the anniversary of the execution date each year.

- 10.2 On or about January 1st of each calendar year, the Licensee will pay City for that calendar year's usage charge. Except for 2002, said payment shall factor the 4% adjustment to the usage charge for that calendar year.
- 10.3 All monetary payments under this agreement shall be due and payable within thirty (30) days after January 1. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of the maximum lawful rate or the prime rate of interest charged by Texas Commerce Bank of Austin, N.A. from the due date until paid. Failure to pay any monetary obligation in full when due shall constitute a material default of this agreement.

11 TERM

- 11.1 The initial term of this agreement is five years unless terminated sooner under Section 12.
- 11.2 The Licensee has the right to renew the agreement for two additional terms of five years each if not in default at the end of the initial term. Renewal is automatic on the anniversary of the effective date under the same terms and conditions, except for an increase in the usage charge as provided above.

→ 12. MUTUAL TERMINATION, SUSPENSION, TERMINATION BY DEFAULT

12.1 Mutual Termination. Either party may terminate this agreement at any time during the term, but only if written notice is delivered to the City at least one year prior to the termination date. No liability shall result for either party if the agreement is terminated under this section. If the termination is initiated by the City, the Licensee is entitled to a pro rata refund any unearned usage charges prepaid to the City. No refund is due if the termination under this section is initiated by the Licensee.

12.2 Suspension. The Licensee may have all rights under this License suspended if the Licensee does not remit a required payment by the 10th working day after the due date, or does not timely perform a material obligation under this License. The City must send the Licensee a written notice of suspension, listing any action the Licensee must take to have the suspension lifted. During the suspension, the Licensee may operate and maintain its station, but may not (1) add to, modify, remove, or alter any of its existing facilities; or (2) install or construct new facilities. The City shall also suspend the review or approval of any pending permit applications.

→ 12.3 Termination by Default.

(a) A default occurs when:

- (1) either party commits a material breach of this agreement;
- (2) either party fails to make a required payment when due, and no payment has been received by the 30th day after written notice of non-payment was issued;
- (3) either party fails to substantially perform a material obligation under this agreement, and no performance has taken place by the 30th day after written notice of the failure was issued;
- (4) the Licenses' license from the Federal Communications Commission has expired, been revoked or has terminated, and the license has not been restored or renewed by the 60th day after notice was sent by the City;
- (5) the Licensee makes an assignment for the benefit of creditors, appoints a receiver over its assets, files a petition for relief under the United States bankruptcy laws, or is the subject of an involuntary bankruptcy petition that is not dismissed by the 30th day after the filing date.

→ (b) If an event of default occurs, the party not in default may immediately terminate this agreement upon serving written notice to the defaulting party.

→ 12.4 If the licensed premises is substantially destroyed by fire, storm, or other catastrophe, the City shall be under no obligation to rebuild or replace the facility.

The City may instead elect to terminate this agreement by written notice to the Licensee without further obligation or liability to the Licensee. The Licensee may elect to terminate this agreement with no further liability to the City if, by the 90th day after the event, the City has not repaired the licensed premises. If the City terminates under this Section, the Licensee is entitled to a pro rata refund any unearned usage charges prepaid to the City. No refund shall be due if the Licensee terminates this agreement under this section.

- 12.5 Licensee shall abide by these terms until its station is removed from the licensed premises, and includes the payment of usage charges for its station. If the Licensee has not removed the station from the licensed premises by the removal date, the Licensee shall pay the City liquidated damages in the amount of one and one-half times the annual usage fee for each month that the station occupies the licensed premises after the removal date. Neither payment of the fee by the Licensee, nor the acceptance of the fee by the City, shall serve to cure the default that triggered the termination, or restore the Licensee's rights to use the licensed premises.

→ 13. ASSIGNMENTS

- 13.1 Licensee may not assign or otherwise transfer this agreement, in whole or in part, without the prior written consent of the City. However, Licensee may mortgage any or all of its property, rights, privileges and franchises, or enter and/or assign to any parent or affiliate as a result of any merger, consolidation, or sale of its assets without obtaining such consent. In case of the foreclosure of such mortgage, or in case of such merger, consolidation, or sale of Austin area assets, Licensee's rights and obligations under this agreement pass to successors only if the City receives written notice of the foreclosure, merger, consolidation or sale, together with certified copies of the documents evidencing the succession.
- 13.2 A purported assignment or transfer made in violation of the provisions of this section shall not be binding upon the City, but is instead a material default of this agreement by Licensee.
- 13.3 The City may assign this agreement in whole or in part without the consent of Licensee to a successor entity acquiring the licensed premises occupied by Licensee's station. The City shall give Licensee written notice of the transaction not later than 10 days after the closing.
- 13.4 Licensee's station or that of any Third Party User shall at all times be and remain its or their respective property, with the full right of removal, and shall not become subject to any liens against any other party.

14. NOTICES

Any notice required by this agreement must be given by one party to the other in writing and mailed or delivered to such party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt. Routine communications may be sent by first class mail, telefax, or other commercially acceptable means.

CITY OF AUSTIN

Telecommunications
& Regulatory Affairs
P. O. Box 1088
Austin, Texas 78767
Attn: TARA Officer
Phone: (512) 974-2999
Fax: (512) 974-2416

LICENSEE

VoiceStream Wireless
4401 Freidrich Lane, Suite 110
Austin, Texas 78744
Attn: Lease Coord.
Phone: (512) 437-6500
Fax: (512) 437-6511

With a Copy to:
VoiceStream Wireless Corporation
12920 SE 38th Street
Bellevue, WA 98006
Attn: Legal Department
Phone: (425) 378-4000
Fax: (425) 378-4040

15. MISCELLANEOUS

- 15.1 Integration. This agreement constitutes the entire understanding of the parties relating to the use of the licensed premises no modification or waiver shall occur unless in writing, signed by both parties.
- 15.2 No Waiver. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and shall remain at all times in duly force and effect.
- 15.3 Headings. The descriptive headings of the provisions of this agreement are intended to be used only for the convenience of the parties, and do not affect the meaning or construction of any provision.
- 15.4 No Third Party Beneficiary. There is no third party beneficiary to this agreement, and the provisions of this agreement shall not impart any rights enforceable by any person not a party, successor, or assign to this agreement.

15.5 Applicable Law. The parties to this agreement intend that all disputes that may arise from, out of, under or respecting these terms and conditions, concerning the rights or obligations of the parties, or respecting any performance or failure of performance by either party, shall be governed by the laws of the State of Texas. The parties further agree that venue shall lie exclusively in Travis County, Texas.

15.6 Future Amendment. Either party may propose amendments intended to address any substantially changed or unforeseen circumstances relevant to the performance of the agreement or the use, maintenance or operation of the station. Such changes, on the agreement of both Parties, may be approved administratively by the City's Director of Real Estate Services. Neither party, however, shall ever be obligated to propose, consider or accept any amendment.

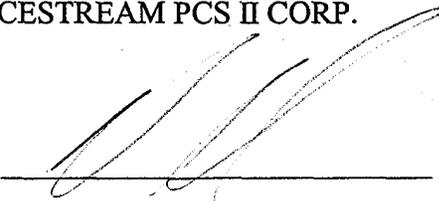
→ 15.7 Redevelopment. The City is contemplating a possible redevelopment of the licensed premises. If the redevelopment requires the removal of Licensee's station, the City will give Licensee at least six (6) months in advance written notice of such required relocation and will use its best efforts to relocate the station on or within the existing or proposed improvements situated at the Property. If the City and Licensee cannot agree on a location at the Property to relocate the station, the City will use its best efforts to relocate the station on other City owned property located near the Property. The Licensee is responsible for all costs associated with relocating the station whether on the property or elsewhere. In the event that the station is relocated to other property owned by the City, the City and Licensee agree to either amend this agreement or enter into another agreement on the same terms and conditions for the new location. In the event that the City designates a relocation site unacceptable to Licensee, Licensee may terminate this agreement effective on or before the date of such required relocation and remove the station. Licensee will receive a pro rata refund of all unapplied usage fees prepaid to the City, and all rights and responsibilities under the agreement are terminated. If the City and Licensee agree on an alternative location that Licensee later determines is unacceptable for technical considerations, Licensee may terminate this agreement no sooner than 60 days after written notice is sent to the City. Licensee shall, after removing its station, receive a pro rata refund of all unapplied usage fees prepaid to the City. All other rights and responsibilities under the agreement are terminated.

IN WITNESS WHEREOF, the undersigned have executed this agreement in Austin, Travis County, Texas through their duly authorized representatives.

THE CITY OF AUSTIN

VOICESTREAM PCS II CORP.

By: 

By: 

Name: Bondella Pugh

Title: Telecom officer

Date: 1/28/02

Name: CODY SANFORD

Title: REGIONAL DIRECTOR

Date: 11/28/01