Staff Summary Report

Tempe

Council Meeting Date: 07-10-03 **Agenda Item Number:** 54

SUBJECT: This is the first public hearing for the review and approval of Ordinance 2003.20 approving the Lease Agreement with Voicestream PCS III for real property located in downtown Tempe.

DOCUMENT NAME: 20030710cddnc01 **CENTRAL BUSINESS DISTRICT (0-403-05)**

SUPPORTING DOCS: Yes

COMMENTS: ORDINANCE NO. 2003.20 authorizes the lease of a portion of the roof located at 525 S. Mill Ave to Voicestream PCS III dba T-Mobile Wireless.

PREPARED BY: Neil Calfee, Principal Planner x2912

REVIEWED BY: Steve Nielsen, Community Design and Development Director x8294

LEGAL REVIEW BY: Janis Bladine, Assistant City Attorney x8609

FISCAL NOTE: The proposed lease will generate approximately $14,400 per year in revenue and will also provide for security enhancements to the north side of the 525 building at no cost to the City.

RECOMMENDATION: Approve and authorize the Mayor to sign the Lease Agreement with Voicestream PCS III, dba T-Mobile Wireless.

ADDITIONAL INFO: N/A

ORDINANCE NO. 2003.20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING THE LEASE AGREEMENT WITH VOICESTREAM PCS III FOR REAL PROPERTY LOCATED IN DOWNTOWN TEMPE.

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WHEREAS, Section 2.11(g), Tempe City Charter, requires an ordinance to convey or authorize the conveyance or lease of any lands in the City of Tempe;

WHEREAS, it is in the best interests of the City of Tempe to lease to Voicestream PCS III, dba T-Mobile Wireless, the City owned real property as described in attached Exhibit "A" in return for the consideration specified in the attached Lease Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1: That the Lease Agreement with Voicestream PCS III for the real property described on the attached Exhibit "A" presented to the City Council is hereby authorized, approved, and ratified.

Section 2: That the Mayor is authorized and directed to execute the Lease Agreement and other such documents deemed necessary and/or desirable, for the lease of the real property.

PASSED AND ADOPTED by the City Council of the City of Tempe, Arizona, this___day of ,2003.

_____
Mayor, City of Tempe Arizona

ATTEST: _____
City Clerk

APPROVED
AS TO FORM: _____
City Attorney

EXHIBIT A
Legal Description

The Property is legally described on the pages attached hereto.

That portion of Block Three (3), West Tempe, according to the plat of record in the office of the Maricopa County Recorder in Book 2 of Maps, Page 26, described as follows:

BEGINNING at the Southwest corner of Block 3, West Tempe;

THENCE North assumed bearing along the West line of Block 3, West Tempe 134.97 feet to a point from which the Southwest corner of Lot 19, Block 3, bears North 24.53 feet;

THENCE South 89 degrees 55 minutes East along the South face of a wall a distance of 125.00 feet;

THENCE North parallel with the West line of Block 3, West Tempe, a distance of 24.69 feet to the Southeast corner of Lot 19, Block 3, West Tempe;

THENCE South 89 degrees 59 minutes East along the North line of South of Block 3, West Tempe 50.00 feet;

THENCE South parallel with the West line of Block 3, West Tempe, a distance of 159.50 feet to a point on the South line of Block 3, West Tempe;

THENCE North 89 degrees 59 minutes West along the South line of Block 3, West Tempe, a distance of 175.00 feet to the POINT OF BEGINNING.

RESERVING to the Grantor, his heirs and assigns an easement for ingress and egress over the following described property;

BEGINNING at the Southeast corner of Lot 19, Block 3, West Tempe;

THENCE South 24.69 feet;

THENCE South 89 degrees 55 minutes East a distance of 20 feet;

THENCE North 24.72 feet to the North line of Lot 3, Block 3, West Tempe;

THENCE West 20 feet to the POINT OF BEGINNING.

ROOFTOP LEASE WITH OPTION

THIS ROOFTOP LEASE WITH OPTION ("Lease") is by and between City of Tempe, a municipal corporation ("Landlord") and VoiceStream PCS III Corporation, a Delaware corporation ("Tenant").

1. Option to Lease

(a) In consideration of the payment of One Thousand Two Hundred and No/100 Dollars ($1,200.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease the use of a portion of the real property described in the attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of One Thousand Two Hundred and No/100 Dollars ($1,200.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communication Commission ("FCC") (the "Governmental Approvals"), including appointing Tenant as agent for all land use and zoning permit applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant certain space located on the Property sufficient for placement of Antenna Facilities (as defined below) together with easements for access and utilities. The location and orientation of Tenant's space on the Property, together with all necessary space and easements for access and utilities, is generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at 525 S. Mill Avenue, Tempe, AZ 85280, comprises approximately 400 square feet.

2. Term. The initial term of the Lease shall be five (5) years commencing on the date of the exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Permitted Use. The Premises may be used by Tenant for, among other things, the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

4. Rent. Tenant shall pay Landlord, as rent, One Thousand Two Hundred and No/100 Dollars ($1,200.00) per month ("Rent"). Rent shall be payable in advance beginning on the Commencement Date prorated for the remainder of the month in which the Commencement Date falls and thereafter Rent will be payable monthly in advance by the fifth day of each month to City of Tempe at Landlord's address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Tenant, and all prepaid Rent shall be immediately refunded to Tenant.

5. Renewal. Tenant shall have the right to extend this Lease for five (5) additional, five-year terms ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, except that Rent shall be increased by fifteen percent (15%) of the Rent paid over the preceding term. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

6. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord, with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the

operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines (collectively the "Antenna Facilities"). Tenant shall have the right to replace or enhance the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property. In the event separate meters are not installed, Tenant shall pay the periodic charges for all utilities attributable to Tenant's use. Tenant shall have the right to install necessary conduit and sleeving from the roof to the point of connection within the Building. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant an easement in, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease or any Renewal Term (collectively, "Easement"). The Easement provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Initial Term of this Lease and any Renewal Term.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;

(b) upon thirty (30) days written notice by either party if the other party commits a non-monetary default and fails to cure or commence curing such default within that thirty (30)-day period, or such longer period as may be required to diligently complete a cure commenced within that thirty (30)-day period;

(c) immediately if Tenant notifies Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including without limitation an FCC license), permit or Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(d) upon ninety (90) days written notice by Tenant if the Property, the Building or the Antenna Facilities are or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(e) immediately upon written notice by Tenant if the Building or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or

(f) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

9. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes directly attributable to, the Antenna Facilities. Landlord shall pay any real property taxes or other fees and assessments attributable to the Property. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease.

10. Insurance and Subrogation.

(a) Tenant will provide Commercial General Liability Insurance in an aggregate amount of One Million and no/100 Dollars ($1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

11. Hold Harmless. Tenant agrees to hold Landlord harmless from claims arising from the installation, use, maintenance, repair or removal of the Antenna Facilities, except for claims arising from the negligence or intentional acts of Landlord, its employees, agents or independent contractors.

12. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to Tenant, to:	With a copy to:	If to Landlord, to:
VoiceStream PCS III Corporation 12920 SE 38th Street Bellevue, WA 98006 Attn: PCS Leasing Administrator With a copy to: Attn: Legal Department Telephone: (425) 378-4000 Fax: (425) 378-4040	VoiceStream PCS III Corporation Attn: Lease Administrator 2601 West Broadway Tempe, AZ 85282 Telephone: (888) 202-2999 Fax: (602) 643-3503	City of Tempe P.O. Box 5002 Tempe, AZ 85280 Telephone: (480) 350-2912 Fax:

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property and the Building free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses,

judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not by Landlord or Tenant prior to and during the Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

15. Assignment and Subleasing. Tenant may assign this Lease and any Easement granted herein upon written notice to Licensor. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Premises, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 8 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Premises as provided in Section 17 of this Lease.

16. Successors and Assigns. This Lease and the Easement granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached as Exhibit C) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(f) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the Premises location within the Property), may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, and/or B, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Tenant with such final, more complete exhibit(s). The terms of all Exhibits are incorporated herein for all purposes.

(j) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.

The effective date of this Lease is the date of execution by the last party to sign ("Effective Date").

LANDLORD: City of Tempe, a municipal corporation

By: _____

Printed Name: _____

Its: _____

Date: _____

TENANT: VoiceStream PCS III Corporation, a Delaware corporation

By: _____

Printed Name: Bryon Gunnerson

Its: Vice President, Development and Operation-Western Region

Date: 6/6/03

APPROVED AS TO FORM:

By: _____

Printed Name: Steve Gibson

Its: Regional Counsel

Date: 6/6/03

ADDENDUM TO ROOFTOP LEASE WITH OPTION
[Additional Terms]

In the event of conflict or inconsistency between the terms of this Addendum and the Lease, the terms of the Addendum shall govern and control. All capitalized terms shall have the same meaning as in the Lease.

1. Section 1(b) shall be deleted in its entirety and replaced with the following:

   (b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communication Commission ("FCC") ("Governmental Approvals"), including appointing Tenant as agent for all land use and zoning permit applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Tenant shall give Landlord twenty-four (24 hours) notice prior to accessing the Property. Landlord shall have the right to accompany Tenant or Tenant's consultants during the performance of any tests or investigations on the Property. Notwithstanding the foregoing, Tenant may not change the zoning classification of the Property without first obtaining Landlord's written consent. During the Option Period and any extension thereof, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

2. Section 3 shall be deleted in its entirety and replaced with the following:

   Permitted Use. The Premises may be used by Tenant for, the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

3. Section 4 shall be deleted in its entirety and replaced with the following:

   Rent. Tenant shall pay Landlord, as rent, One Thousand Two Hundred and No/100 Dollars ($1,200.00) per month ("Rent"). Rent shall be payable in advance beginning on the Commencement Date prorated for the remainder of the month in which the Commencement Date falls and thereafter Rent will be payable monthly in advance by the fifth day of each month to City of Tempe at Landlord's address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Tenant, and all prepaid Rent shall be refunded to Tenant within thirty (30) days of the date of termination.

4. Section 6 shall be deleted in its entirety and replaced with the following:

   Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord, with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference by either party shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

5. Sections 7(b), (d), and (f) shall be deleted in their entirety and replaced with the following:

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities as set forth in Tenant's Construction Drawings. Landlord shall provide Tenant twenty-four (24) hours written notice to enter the Premises. In case of an emergency Landlord shall make reasonable efforts to notify Tenant prior to entering the Premises.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators), provided Tenant has obtained Landlord's consent, which shall not be unreasonably withheld, conditioned or delayed. Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property. In the event separate meters are not installed, Tenant shall pay -for all utilities attributable to Tenant's use. Tenant shall have the right with Landlord consent, which shall not be unreasonably withheld, conditioned or delayed, and subject to any license, permit, or authorization requirements to install necessary conduit and sleeving from the roof to the point of connection within the Building. Landlord shall diligently correct any variation, interruption or failure of utility service. Landlord shall have thirty (30) days after receipt of the design drawings to review and approve any utility improvements. If Landlord has not notified Tenant of any objections within the thirty (30) day period, Landlord consent to any improvements shall be deemed granted.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Initial Term of this Lease and any Renewal Term. Landlord agrees to provide Tenant with any necessary cards to secure access to the Premises (the "Access Card"). If at any time during this Lease the Landlord installs a different security access system or changes the access codes such that Tenant's Access Card no longer provides access to the Premises, the Landlord further agrees to provide Tenant with any necessary equipment and/or codes to access the Premises. However, in the event that Tenant's Access Card does not provide access to the Premises and Tenant is unable to contact the Landlord, then the Tenant shall call the Tempe Police Department at (480) 350-8311 in order to gain access to the Premises.

6. Subsection (g) shall be added to section 7 as follows:

g) Tenant agrees to install, at Tenant's expense, a storefront and low energy automatic doors, as depicted on Exhibit B-1 and B-2 and as set forth in Tenant's Construction Drawings, to consist of the following materials: a) 1 ¾" x 4 ½" dark bronze aluminum; b) ¼ "clear glass; c) door to match existing facade; d) two (2) remote controlled surface applied push plates; e) caulking and weather sealing; and (f) 1-year warranty by installer ("Storefront"). Tenant shall also install one (1) new security card reader device, magnetic locking system for the Storefront doors, install all necessary conduit, and make all necessary connections to the existing security system in the Building as depicted on Exhibit B-3 ("Storefront Security System"). Landlord shall credit Tenant's rental payments in the amount equal to the total expenses associated with the installation of the Storefront Security System. After the installation of the Storefront by the Tenant, ownership of the Storefront shall pass to Landlord.

7. Subsection (g) shall be added to section 8 as follows:

(g) Immediately if Tenant becomes insolvent, or makes a transfer in favor of creditors, or makes an assignment for the benefit of creditors, or files a petition under any section or chapter of the Federal Bankruptcy Code, as amended, or under any similar statute of the U.S. or any state thereof, or is adjudged bankrupt or insolvent in proceedings filed against Tenant hereunder, or if a receiver or trustee is appointed for all or substantially all of the assets of Tenant due to Tenant's insolvency.

8. Section 9 shall be deleted in its entirety and replaced with the following:

Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes directly attributable to, the Antenna Facilities.

9. Section 10 shall be deleted in its entirety and replaced with the following:

Tenant will provide Commercial General Liability Insurance in an aggregate amount of One Million and no/100 Dollars ($1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

10. Section 11 shall be deleted in its entirety and replaced with the following:

Hold Harmless. Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Lease. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnifying the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property, including the Premises.

11. Section 14 shall be deleted in its entirety and replaced with the following:

Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on the Property. Tenant shall be responsible for and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance caused solely by Tenant's use of the Premises. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not by Landlord or Tenant prior to and during the Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

12. Section 15 shall be deleted in its entirety and replaced with the following:

Assignment and Subleasing-Tenant may assign this Lease in its entirety only upon the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed; provided that Tenant may assign this Lease to a parent, affiliate, subsidiary or purchaser of all or substantially all of Tenant's assets upon prior written notice to Landlord.

Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests,

including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Premises, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 8 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Premises as provided in Section 17 of this Lease.

13. Sections 18(a) and (e) shall be deleted in their entirety and replaced with the following:

(a) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(e) This Lease shall be construed in accordance with the laws of the state of Arizona

14. Subsection (k) shall be added to section 18 as follows:

(k) Compliance with laws. Tenant, in its performance of its Permitted Uses as defined in this Lease, shall comply with all applicable laws, statutes, ordinances, permits, rules and regulations relating to those uses.

15. Section 19 shall be added as follows:

19. Force Majure. Neither Party shall be considered to be in default in performance of any obligation herein if failure of performance shall be due to uncontrollable forces, the term "uncontrollable forces" meaning any cause beyond the control of the Party affected, including, but not limited to, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court order or public authority, which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by exercise of due diligence it is unable to overcome

16. Continued Effectiveness. Except as expressly modified by this Addendum, the Lease shall remain in full force and effect in accordance with the original terms of the Lease.

17. Counterparts. This Addendum may be executed (including by facsimile signature) in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

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

19. Conflict of Interest. This lease is subject to cancellation under the provisions of Arizona Revised Statues Section 38-511.

IN WITNESS WHEREOF, this Addendum is effective and entered into as of the date first written above.

LANDLORD:	City of Tempe, a municipal corporation	APPROVED AS TO FORM
By:	_____	By: _____
Printed Name:	_____	Printed Name: _____
Its:	_____	Its: City Attorney
Date:	_____	Date: _____
ATTEST:	City Clerk	
By:	_____	
Name:	_____	

TENANT:	VoiceStream PCS III Corporation, a Delaware corporation	APPROVED AS TO FORM:
By:	_____	By: _____
Printed Name:	Bryon Gunnerson	Printed Name: Steve Gibson
Its:	Vice President, Development and Operation-Western Region	Its: Regional Counsel
Date:	6/6/03	Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ____ signed this instrument, on oath stated that ____ was authorized to execute the instrument and acknowledged it as the _____, of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Bryon Gunnerson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President, Development and Operation of Western Region, of VoiceStream PCS III Corporation, a Delaware corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6/6/03

Ana M. Hemmert
Notary Public
Print Name Ana M. Hemmert
My commission expires 6/29/06

ANA M. HEMMERT
COMMISSION EXPIRES
NOTARY
PUBLIC
6-29-06
STATE OF WASHINGTON

(Use this space for notary stamp/seal)

Site Number: PH 40250 C
Site Name: 525 Building
Market: Phoenix

Rev. 2/00

EXHIBIT A
Legal Description

The Property is legally described on the pages attached hereto.

That portion of Block Three (3), West Tempe, according to the plat of record in the office of the Maricopa County Recorder in Book 2 of Maps, Page 26, described as follows:

BEGINNING at the Southwest corner of Block 3, West Tempe;

THENCE North assumed bearing along the West line of Block 3, West Tempe 134.97 feet to a point from which the Southwest corner of Lot 19, Block 3, bears North 24.53 feet;

THENCE South 89 degrees 55 minutes East along the South face of a wall a distance of 125.00 feet;

THENCE North parallel with the West line of Block 3, West Tempe, a distance of 24.69 feet to the Southeast corner of Lot 19, Block 3, West Tempe;

THENCE South 89 degrees 59 minutes East along the North line of South of Block 3, West Tempe 50.00 feet;

THENCE South parallel with the West line of Block 3, West Tempe, a distance of 159.50 feet to a point on the South line of Block 3, West Tempe;

THENCE North 89 degrees 59 minutes West along the South line of Block 3, West Tempe, a distance of 175.00 feet to the POINT OF BEGINNING.

RESERVING to the Grantor, his heirs and assigns an easement for ingress and egress over the following described property;

BEGINNING at the Southeast corner of Lot 19, Block 3, West Tempe;

THENCE South 24.69 feet;

THENCE South 89 degrees 55 minutes East a distance of 20 feet;

THENCE North 24.72 feet to the North line of Lot 3, Block 3, West Tempe;

THENCE West 20 feet to the POINT OF BEGINNING.

Parcel No.132-27-045 A

EXHIBIT C

Memorandum of Lease and Option
Between City of Tempe, a municipal corporation ("Landlord")
and VoiceStream PCS III Corporation, a Delaware corporation ("Tenant")

A Rooftop Site Lease with Option ("Lease") by and between City of Tempe, a municipal corporation ("Landlord") and VoiceStream PCS III Corporation, a Delaware corporation ("Tenant") was made a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of twelve (12) month after date of Lease, with up to one additional twelve (12) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date") and shall terminate at midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred. Tenant shall have the right to extend this Lease for five (5) additional five-year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: City of Tempe, a municipal corporation

By: _____

Printed Name: _____

Its: _____

Date: _____

TENANT: VoiceStream PCS III Corporation, a Delaware corporation

By: _____

Printed Name: Bryon Gunnerson

Its: Vice President, Development and Operation-Western Region

Date: 6/6/03

EXHIBIT A
Legal Description

The Property is legally described on the pages attached hereto.

That portion of Block Three (3), West Tempe, according to the plat of record in the office of the Maricopa County Recorder in Book 2 of Maps, Page 26, described as follows:

BEGINNING at the Southwest corner of Block 3, West Tempe;

THENCE North assumed bearing along the West line of Block 3, West Tempe 134.97 feet to a point from which the Southwest corner of Lot 19, Block 3, bears North 24.53 feet;

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RESERVING to the Grantor, his heirs and assigns an easement for ingress and egress over the following described property;

BEGINNING at the Southeast corner of Lot 19, Block 3, West Tempe;

THENCE South 24.69 feet;

THENCE South 89 degrees 55 minutes East a distance of 20 feet;

THENCE North 24.72 feet to the North line of Lot 3, Block 3, West Tempe;

THENCE West 20 feet to the POINT OF BEGINNING.

After recording, please return to:

VoiceStream PCS III Corporation
Attn: Leasing Administration
2601 West Broadway
Tempe, AZ 85282

Memorandum of Lease and Option
Between City of Tempe, a municipal corporation ("Landlord")
and VoiceStream PCS III Corporation ("Tenant")

A Rooftop Site Lease with Option ("Lease") by and between City of Tempe, a municipal corporation ("Landlord") and VoiceStream PCS III Corporation, a Delaware corporation ("Tenant") was made regarding the following property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of twelve (12) month after date of Lease, with up to one additional twelve (12) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date") and shall terminate at midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred. Tenant shall have the right to extend this Lease for five (5) additional five-year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: City of Tempe, a municipal corporation

By: _____

Printed Name: _____

Its: _____

Date: _____

TENANT: VoiceStream PCS III Corporation, a Delaware corporation

By: _____

Printed Name: Bryon Cummerson

Its: Vice President, Development and Operation-Western Region

Date: 6/6/03

Site Number: PH 40250 C
Site Name: 525 Building
Market: Phoenix

Rev. 2/00

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ____ signed this instrument, on oath stated that ____ was authorized to execute the instrument and acknowledged it as the _____, of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Bryon Gunnerson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President, Development and Operation of Western Region, of VoiceStream PCS III Corporation, a Delaware corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6/6/03

Ana M. Hemmert
Notary Public
Print Name Ana M. Hemmert
My commission expires 6/29/06

ANA M. HEMMERT
COMMISSION EXPIRES
NOTARY
PUBLIC
6-29-06
STATE OF WASHINGTON

(Use this space for notary stamp/seal)

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