

RADIO COMMUNICATION SITE LEASE

This Lease, made this 12th day of April, 2001, between KITTCOM, a municipal corporation, Lessor and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington, Lessee, for and in consideration of the terms and conditions specified herein, as follows:

1. **Premises.** Lessor hereby leases to Lessee space within an existing building and space on an existing communications tower owned and operated by Lessor located at a radio site referred to as Sky Meadows and which is more particularly described in Exhibit "A" attached and by this reference made a part hereof (hereinafter Leased Premises).
2. **Use.**
 - A. The Lessee may install and operate within the building located on the Leased Premises one 19 inch electronic communications equipment rack for multi-channel radio repeater with all necessary appurtenances for its operation. One 19 inch electronic communications equipment rack installed in the building for multi-channel microwave radio system and multiplex.
 - B. Lessor shall provide Lessee with tower space on the tower located on the Leased Premises for one omni-directional antenna, approximately 6 feet in length to be top-mounted. One 6 foot standard, solid parabolic dish for microwave at the 155 foot level aimed for the Lessee's facility at Bullfrog.
3. **Term.** The initial term of this Lease shall commence May 1, 2001 and end at midnight April 30, 2017. In addition, the Lessee shall be given the option of two (2) ten year extensions of this lease.
4. **Rent.**
 - A. During the initial term, the rental amount is \$2,100.00 per year. Annual payments are due on or before the anniversary date of commencement of this lease. Payments shall be made to KITTCOM at 700 Elmview Road, Ellensburg, WA 98926.
 - B. Lessee has a rent credit in the amount of \$35,000.00 and the rent will be deducted from this credit until it is used up. Consequently, no payments will be required of the Lessee until on or before the seventeenth anniversary date of commencement of this lease. If the Lessee should exercise its right to add an additional equipment rack, as provided elsewhere in this document, said rent credit shall be reduced proportionately based upon a charge of \$2,100.00 per year for the additional equipment rack.

- C. The rental rate for any extensions of this lease will be taken from the **Wireless Communications Non-Commercial Use Rates** schedule as compiled by the Washington State Department of Transportation, which is in force at the time of the extensions. If the schedule is discontinued, the rent from May 1, 2017 forward shall be calculated by using \$2,100.00 multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, WA. Area, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84=100) (the "Index") as if the Index had been applied to the first payment amount of \$2,100.00 and increased annually by the Index thereafter. If the Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

5. Termination

- A. Lessor may terminate this Lease, without penalty or further liability, with thirty (30) days written notice to Lessee, if Lessee defaults and fails to cure such default within that 30-day period, or such longer period, as may be reasonably determined by Lessor, if Lessee is diligently working to cure the default;
- B. Lessee may terminate this Lease, without penalty or further liability as follows:
- (1) Upon thirty (30) days written notice for any reason within the sole discretion of the Lessee;
 - (2) Upon thirty (30) days written notice, if Lessor defaults and fails to cure such default within that 30-day period, or such longer period, as may be reasonably determined by Lessee, if Lessor is diligently working to cure the default;
 - (3) Immediately, upon written notice, if in Lessee's judgment the Premises is destroyed or damaged so as to substantially and adversely affect the effective use of the Leased Premises.
 - (4) Immediately, upon written notice, if Lessor causes material interference as provided in paragraph 12 (Interference) herein and mutual efforts to resolve said interference have not been successful within ninety (90) days of Lessee's notice to Lessor of said interference.
- C. All Rent pre-paid for the Premises by the Lessee prior to the termination date shall be retained by the Lessor: Provided that, Lessee shall be entitled to a pro rata refund of pre-paid Rent in the event Lessee terminates this Lease as provided in **5.B(2), 5.B(3), or 5.B(4) above.**

6. **Equipment Removal.** The Lessee shall, upon expiration or termination of this Lease, remove all of the Lessee's equipment from the Leased Premises at Lessee's sole cost and expense, and shall restore the Leased Premises to its original condition, with wear and tear excepted. In the event that the Lessee does not remove such equipment as agreed above, Lessor or its agent may remove from the premises such equipment from the Leased Premises and place the same in storage at a public warehouse at the expense and risk of the Lessee. Personal property so stored shall be subject to the rules and regulations as set down for such public warehouse, and RCW 59.18.310.
7. **Equipment Location.** Lessor or its designated representative shall have the sole right initially and during the term of this Lease to determine the location of the Lessee's equipment; Provided that any relocation of the Lessee's equipment shall not unreasonably interfere with the operation and maintenance of the Lessee's radio facility. Lessor shall provide the Lessee ten (10) days written notice of intent to relocate its equipment.
8. **Access.** During the term of this Lease, Lessor shall provide the Lessee with a nonexclusive right to use the existing roads over which Lessor has access control over and across the location shown on the map marked as Exhibit "B" attached hereto and by this reference made a part hereof, for the purpose of operating equipment commonly used for the construction, operation, use and maintenance of a communication site.
9. **Compliance.** The Lessee has full power and authority to enter into this Lease in accordance with its terms. The Lessee's equipment and installation will comply with all applicable federal, state, and local building, safety, health, fire, and electrical codes and with the applicable rules and regulations of the Federal Communication Commission.
10. **Power.** Lessor agrees to furnish all power to the Leased Premises necessary to operate the Lessee's communication facility located thereon. Lessor further agrees to restore such power and/or microwave circuits in a timely manner at Lessor's expense.
11. **Warranties and Covenants.** Lessor warrants and covenants that (a) Lessor has legal right to possession of the Premises and the power and the right to enter into this Lease and that Lessee, upon the faithful performance of all the terms, conditions and obligations of Lessee contained in this Lease, shall peaceably and quietly hold and enjoy the Leased Premises upon the terms, covenants and conditions set forth in this Lease throughout the term of this Lease and any extensions thereof; (b) Lessor shall deliver the Leased Premises to Lessee clean and free of debris on the Commencement Date and shall maintain the Leased Premises, including the Lessor Improvements in a manner which will not interfere with Lessee's use of the Leased Premises as contemplated hereby; (c) Lessor shall, during the term hereof, make payment of all real property taxes and general

and special assessments levied against the Leased Premises which it has the duty to pay within the time allowed by the taxing authorities in order to avoid penalty. Lessor shall maintain at its expense throughout the term of this Lease a policy of property insurance for perils usual to a standard "all risk" insurance policy in an amount equal to the full replacement cost of all Lessor improvements now or hereafter located on the Leased Premises, (which shall not include Lessee's personal property, trade fixtures and tenant improvements).

12. **Interference.** Lessor shall provide Lessee with notice of any proposed installation of communication antennas on the Leased Premises. Such notice shall include technical information from the party proposing such installation, which is sufficient for Lessee to determine whether the installation will interfere with Lessee's operation. Lessee shall advise Lessor within ten (10) days receipt of such notice whether, in Lessee's sole discretion, the proposed use will cause any interference with Lessee's operation of the system. Lessor will not grant a lease to any party for use of the Leased Premises, nor materially modify its use of the Leased Premises, if such new use would interfere with Lessee's operation of the system or diminish the superiority of Lessee's signal quality. Any future lease of the Leased Premise, which permits the installation of communication equipment, shall be conditioned upon not interfering with Lessee's operation. Lessee shall not be required to modify its operation to prevent interference with any new communication use of the Leased Premises so long as Lessee operates within its assigned frequencies and in compliance with all applicable FCC rules and regulations. The parties agree to follow and comply with the engineering practices and standards adopted by the Western Washington Cooperative Interference Committee (WWCIC) in engineering standard number six (6), revision "C" dated February 1997, which by this reference is hereby incorporated into this Lease.

13. **Indemnification.** Lessor shall have the right to use the lands subject to the provisions set forth herein for the purposes not inconsistent with Lessee's full enjoyment of the rights granted to it. Lessor shall indemnify and defend Lessee against any claims, which may be made arising out of the use by Lessor or its agents, invitees or licensees of any of the Leased Premises over which Lessee is granted a leasehold interest by this document. It is understood and agreed the Lessor shall indemnify and defend Lessee from any and all liability arising from environmental hazardous substances introduced to the Leased Premises by Lessor, or its agents, employees, invitees, licensees or lessees other than the Lessee herein. The obligation contained in this paragraph shall not include such claims that may be caused by the sole negligence of the Lessee or its authorized agents or employees; provided that, if the claims or damages are caused by or result from the concurrent negligence of (a) the Lessee, its agents or employees and (b) Lessor, its agents employees, invitees, licensees, or lessee other than the Lessee herein, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Lessor or its agents employees, invitees, licensees or lessees other than the Lessee

herein. The indemnification provisions contained in this paragraph shall survive the termination or expiration of the Lease.

14. **Liability.** Lessor and Lessee agree that each party shall, at all times, be solely responsible for its own acts and omissions associated with the performance of this Lease. Each party shall indemnify, defend, and hold the other party harmless from any claims, damages or judgments, including attorney's fees, expert fees and all other costs said party may sustain as a result of the acts or omissions by the other party. The obligations contained in this paragraph shall not include such claims that may be caused by the sole negligence of the Lessee or its authorized agents or employees; provided that, if the claims or damages are caused by or result from the concurrent negligence of (a) the Lessee, its agents or employees and (b) Lessor, its agents employees, invitees, licensees, or lessee other than the Lessee herein, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the indemnifying party or its agents employees, invitees, licensees or in the case of the Lessor, its lessees other than the Lessee herein. The indemnification provisions contained in this paragraph shall survive the termination or expiration of the Lease.
15. **First Right of Refusal.** Should Lessor, its heirs, successors, or assigns during the term of this Lease, or any extension thereof, elect to sell all or any portion of the Leased Premises, whether separately or as a part of the larger parcel of which the Leased Premises is a part, Lessee shall have the right of first refusal to meet any bona fide offer of sale on the same terms and conditions of such offer. Upon the Lessee's failure to meet such a bona fide offer within sixty (60) days after written notice thereof from Lessor, Lessor shall be free to sell the premises or portion thereof to such third person in accordance with the terms and condition of this offer subject to the terms of this lease. If Lessee elects to exercise this right of refusal, any un-amortized rent credit shall be applied to the purchase.
16. **Entirety.** This Lease constitutes the entire Lease and understanding of the parties and supersedes all offers, negotiations and other leases. 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.
17. **Interpretation.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.
18. **Venue.** This Lease shall be deemed executed in the State of Washington and the laws of the State of Washington shall govern the interpretation and application of its provisions. Venue for any suits between Lessor and Lessee arising from this Lease shall be brought and maintained in the Superior Court of Kittitas County for the State of Washington before a visiting judge from another county.

19. **Hazardous Substances.** Lessor and Lessee each hereby agree to indemnify the other and hold each other harmless for any costs or liabilities associated with the removal or remediation of any hazardous substances that have been released, or otherwise come to be located on the site by means other than the activities of themselves, including those that may have migrated from the site through water or soil to other properties. "Hazardous substances" shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., and shall include gasoline and other petroleum products. "Costs" shall include but not be limited to all response cost, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601; the Clean Water Act, 33 U.S.C. Section 1251; the Clean Air Act, 42 U.S.C. Section 7401; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Washington Model Toxics Control Act, RCW 70.105D.010.


Both Lessor and Lessee further agree to retain any and all liabilities arising from the offsite disposal, handling, treatment, storage, or transportation of any hazardous substance, including petroleum products, removed from the site.

The provisions in this section shall survive the termination of this Lease.

20. **Notice.** All notices, demands, requests, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed by certified mail, return receipt requested, in the case of notice to Lessor addressed to: KITTCOM, 700 Elmview Rd, Ellensburg, WA 98926, and in the case of the Lessee, addressed to: Washington State Department of Transportation, Director, Real Estate Services, P. O. Box 47358, Olympia, WA 98504-7358.
21. **Lease to Run With the Easement.** This Lease including but not limited to the right of first refusal referred to herein, shall run with the easement, and shall be binding on and inure to the benefit of the parties, their heirs, successors and assigns.
22. **Binding Contract.** It is understood and agreed that the delivery of this Lease is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, Department of Transportation, by the Secretary of Transportation or his duly authorized representative.

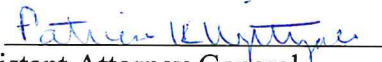
Signatures:

Washington State
Department of Transportation

By: 
Gerald L. Gallinger
Director, Real Estate Services

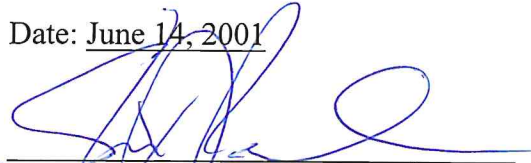
Date: June 6, 2001

Approved as to form:

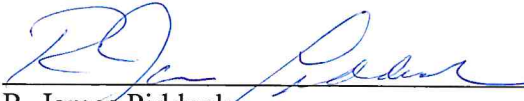
By: 
Assistant Attorney General

KITTCOM

By: 
~~Perry Huston~~, KITTCOM THEODORE A.
Administrative Board Chairman BARKLEY
VILE

Date: June 14, 2001

ATTEST: Steven N. Reinke
Administrative Board Secretary

Approved as to form:


R. James Pidduck
Ellensburg City Attorney

STATE OF WASHINGTON)

: ss

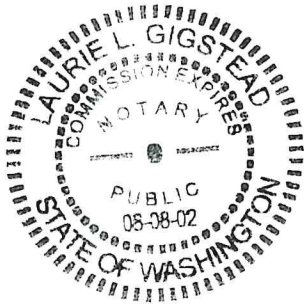
COUNTY OF KITTITAS)

On this 18th day of June, 2001 before me personally appeared

Theodore A. Barkley

to me known to be the Administrative Board Vice-Chairman of the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that Theodore A. Barkley is authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.



Laurie L. Gigstead

Notary Public in and for the State of
Washington

Residing at Ellensburg

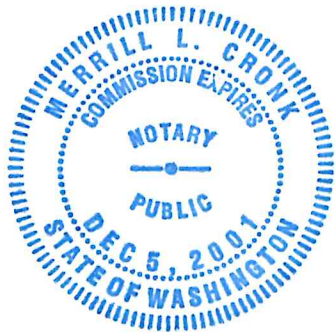
My Appointment expires 8-8-02

STATE OF WASHINGTON)

Country of Thurston) : SS

I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 6th day of June, 2001, before me personally appeared Gerald L. Gallinger, Director, Real Estate Services, for the State of Washington Department of Transportation, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Merrill L. Cronk
Notary Public in and for the State of
Washington,
Residing at Bremerton
My appointment expires 12-5-2001

EXHIBIT A

Legal Description of Leased Premises

That portion of the Northeast Quarter of the Southwest Quarter of Section 17, Township 19 North, Range 16 East, W.M., Kittitas County, State of Washington, which is bounded by a line described as follows:

Beginning at the southwest corner of said Section 17, which is marked by a pin with survey cap (NELSON LS 8092); reference bearing S88°19'24"E, toward the 5/8" pin and cap near the south quarter corner of said Section 17;

THENCE N46°44'39"E, 2997.74 feet, more or less, to a point on the projected northwesterly boundary of that certain parcel of land conveyed to the United States of America (Gov't parcel) by instrument recorded under AFN 270 450 in Book 102 of Deeds, page 345, Records of Kittitas County; said point being S45°40'30"W, 140.00 feet to the said westerly most point of said Gov't parcel;

THENCE S44°19'30" E, 200.00 feet to the south most corner of said Gov't parcel;

THENCE N45°40'30"E, along the southeasterly boundary of said Gov't parcel, 75.00 feet;

THENCE S44°19'30"E, 80.00 feet;

THENCE S45°40'30"W, 215.00 feet;

THENCE N44°19'30"W, 280.00 feet, more or less, to the true point of beginning.

Containing 1.04 acres, more or less.

2) Legal Description of Beam Path W-1

A beam path easement 30.00 feet in width, lying 15.00 feet on each side of the following described centerline:

Beginning at the KITTCOM tower to be constructed on the above described communications facility easement parcel, which is the true point of beginning for said described centerline;

THENCE approximately N68°25"W, toward the KITTCOM tower to be constructed near Latitude 47°15'25"W, Longitude 121°19'17"W, to a point which is 150.00 feet beyond the perimeter of the above-described communications facility easement parcel and the terminus of said centerline.

3) Legal Description of Beam Path E-1

A beam path easement 30.00 feet in width, lying 15.00 feet on each side of the following described centerline:

Beginning at the KITTCOM tower to be constructed on the above described communications facility easement parcel, which is the true point of beginning for said described centerline;

THENCE approximately S63°48' E, toward the KITTCOM tower now existing at the KITTCOM site at Bowers Field near Latitude 47°01'38.5"N, Longitude 120°32'18.7"W, to a point which is 316.00 feet beyond the perimeter of said communication easement parcel boundary and the terminus of said described centerline.

4) Legal Description of Beam Path E-2

A beam path easement 30.00 feet in width, lying 15.00 feet on each side of the following described centerline:

Beginning at the KITTCOM tower to be constructed on the above described communications facility easement parcel;

THENCE approximately S63°48' E, toward the KITTCOM tower now existing at the KITTCOM site at Bowers Field near Latitude 47°01'38.5"N, Longitude 120°32'18.7"W, to a point which is 316.00 feet beyond the perimeter of said communications facility easement parcel boundary and the true point of beginning of said described centerline,

THENCE continuing toward said KITTCOM tower at Bowers Field, approximately S63°48' E, a distance of 1,500.00 feet to the terminus of said described centerline.

5) Legal Description of Beam Path E-3

A beam path easement 40.00 feet in width, lying 20.00 feet on each side of the following described centerline:

Beginning at the KITTCOM tower to be constructed on the above described communications facility easement parcel;

THENCE approximately S63°48' E, toward the KITTCOM tower now existing at the KITTCOM site at Bowers Field near Latitude 47°01'38.5"N, Longitude 120°32'18.7"W, to a point 1,816.00 feet beyond the perimeter of said communications facility easement parcel boundary and the true point of beginning of said described centerline,

THENCE continuing toward said KITTCOM tower at Bowers Field, approximately S63°48' E, a distance of 1,200.00, more or less, to the ease line of said Section 17 and the terminus of said described centerline. The sidelines of said easement to be lengthened or shortened to intersect said section line.

6. Legal Description of Road Easement for Ingress, Egress and Utilities

Township 19 North, Range 16 East, W.M.

Section 17: N 1/2 SE 1/4 & NE 1/4 SW 1/4

Said easement being forty (40) feet in width, twenty (20) feet on each side of the centerline of the road located approximately as shown on Exhibit B attached hereto and made a part hereof.