

This Instrument Prepared by:

90285073

JONATHAN W. ROYSTON
Attorney at Law
CELLULAR ONE-Chicago
840 East State Parkway,
Schaumburg, Illinois 60173
(708) 303-3750



DEPT-01 RECORDING \$29.50

Permanent Index Number: 18-13-100-003-0000 T43333 TRAN 9620 06/15/90 14:46:00
#1997 # *90-285073

SITE AGREEMENT NO. 141 COOK COUNTY RECORDER

THIS AGREEMENT, made as of the ___ day of June, 1990, between PARKER-HOLSMAN CO., an Illinois corporation, as agent for HYDE PARK BANK FACILITIES, INC., an Illinois corporation ("LESSOR"), and SOUTHWESTERN BELL MOBILE SYSTEMS, INC., d/b/a CELLULAR ONE-Chicago, a Delaware and Virginia corporation ("LESSEE").

W I T N E S S E T H:

IN CONSIDERATION of the terms hereof, the parties hereto agree as follows:

1. LESSOR hereby demises and leases to LESSEE certain premises consisting of Suite 730 (the "Suite 730 Premises") on the seventh floor of the existing building (the "Building") commonly known as 1523 East 53rd Street, Chicago, Illinois 60637 situated in the County of Cook and State of Illinois (the "Real Estate"), which Building and Real Estate are described in Exhibit "A" and depicted in Exhibit "B", both of which are attached hereto and made a part hereof, together with all right, title and interest of LESSOR in and to all easements, privileges and other appurtenances pertaining to the Real Estate (which space in the Building, and the aforesaid right, title and interest of LESSOR collectively shall be called the "Premises"), and hereby grants and conveys to LESSEE certain Easements (as hereinafter defined) appurtenant to the Premises; TO HAVE AND TO HOLD the Premises and the Easements unto LESSEE, for the benefit of LESSEE, its affiliates and their respective lenders, mortgagees, deed of trust trustees, consultants, subtenants, employees, agents, partners, shareholders, directors, officers, contractors, subcontractors and licensees and their respective successors and assigns (collectively, "LESSEE's Related Parties"), for a term (the "Term") commencing on the date of this agreement and expiring May 31, 2010.

2. A. LESSEE shall pay rent as provided below to PARKER-HOLSMAN CO., 1461 E. 57th Street, Chicago, Illinois 60637, as agent, or to such other person or place as LESSOR may designate from time to time by notice to LESSEE. Rent shall be payable monthly commencing with the first to occur of (i) the first day of the calendar month following LESSEE's receipt of the last of the necessary local, state and federal approvals, licenses and permits so as to permit construction on and use of the Premises for all of the purposes permitted by this Agreement (such approvals, licenses and permits hereinafter collectively called the "Approvals"), and (ii) the first day of the calendar month following LESSEE's commencement of construction pursuant to this Agreement. Subject to the preceding sentence, monthly rent shall be payable in advance on the first day of each calendar month of the Term through the date of expiration of the Term, or such earlier date as this Agreement is terminated, in the amounts set forth in Schedule 1 attached hereto and made a part hereof. Any monthly rent remaining unpaid after the tenth (10th) day of the month shall bear interest from that day until paid at the rate of eighteen percent (18%) per annum.

B. LESSEE shall have two (2) successive options to

29.50
Murd

90285073

UNOFFICIAL COPY

11/11/2011

11/11/2011

Property of Cook County Clerk's Office

extend the Term of this Agreement for two (2) additional periods of five (5) years each (the "Extended Terms"), any of which may be exercised by giving written notice to LESSOR at least six (6) months prior to the expiration of the original Term or any Extended Term. All of the terms and provisions of this Agreement shall be in effect during each Extended Term, except that the monthly rent payable during the Extended Terms shall be as set forth in Schedule 1 attached hereto. The word "Term" as used in this Agreement shall be deemed to include the Extended Terms when and as LESSEE's options to extend shall be exercised.

3. The Premises may be used for the operation of a communications tower, radio equipment, antennas and microwave and other dishes and for transmitting and receiving communications signals, and, in connection therewith, for the installation, repair, maintenance, operation, housing and removal of antennas, microwave and other dishes, wires, transmitters, receivers, appliances, machinery, trade fixtures and communications and other equipment (collectively, the "Equipment"), whether freestanding or located on existing improvements or in the improvements to be constructed upon or in the Premises, or for any other related or similar, lawful purpose. Subject to reasonable floor loading limitations, LESSEE may have all such Equipment as LESSEE desires in Suite 730 from time to time; however, LESSEE may have no more than twelve (12) antennas and two (2) microwave dishes not to exceed 120 inches in diameter (and Equipment incidental thereto) on the exterior of the Building, unless LESSOR gives written consent to allow additional antennas or microwave dishes.

4. A. LESSOR hereby grants and conveys to LESSEE, for the benefit of LESSEE and LESSEE's Related parties, the following easements ("Easements"), which shall remain in effect and shall be irrevocable during the Term:

(i) An Easement on, about and above the roof and parapet walls along the north, west and south sides of the west end of the Building and certain outdoor wall space of the Building which Easement is partially and approximately depicted on that certain drawing identified as CELLULAR ONE-Chicago Roof Detail, 1525 East 53rd Street, Chicago, Illinois Site #141, Job Number 60022, prepared by Cordogan, Clark & Associates, Inc., sheet numbered A1 dated April 4, 1990, a copy of which is attached hereto and made a part hereof as Exhibit "C", and an Easement upon, over and through such portions of sidewalks, driveways, entryways, aisles, hallways, stairways, loading docks and facilities, utility chases, pipes, shafts, and other common areas and service areas of the Real Estate and the Building (collectively the "Useful Areas"), all to provide access twenty-four (24) hours each and every day, seven (7) days each and every week, for ingress and egress and passage of pedestrians, vehicle and construction materials and equipment, to and from the Premises from and to the nearest public way, and to provide parking and temporary storage for service vehicles, equipment and supplies during any time from time to time, that LESSEE or one of LESSEE's Related Parties is constructing, installing, removing, repairing, relocating, replacing, maintaining or operating improvements and/or Equipment pursuant to this Agreement;

(ii) An Easement upon, over, under and across other real estate owned by LESSOR described on Exhibit "A" attached hereto and described and depicted on Exhibit "B" attached hereto as "Easement for Ingress and Egress", for the purpose of construction, installation, removal, repair, relocation, replacement, maintenance and operation of electrical, telephone and other communication facilities as may be required in connection with the transmission and distribution of electricity, telephone and other

communications, and sounds and signals, and to provide access twenty-four (24) hours each and every day, seven (7) days each and every week, for ingress and egress and passage of pedestrians, vehicle and construction materials and equipment, from and to the nearest public way, and to provide parking and temporary storage for service vehicles, equipment and supplies during any time from time to time, that LESSEE or one of LESSEE's Related Parties is constructing, installing, removing, repairing, relocating, replacing, maintaining or operating such facilities; and

(iii) An Easement upon, over, under and across other real estate owned by LESSOR, adjacent to the Premises, described on Exhibit "A" attached hereto and described and depicted on Exhibit "B" attached hereto as "Easement for Construction", for storage and use of construction materials and equipment during any time, from time to time, that LESSEE or one of the LESSEE'S Related Parties is constructing, installing, removing, repairing, relocating, replacing, maintaining or operating improvements or Equipment pursuant to this Agreement, and during the time of set-up operations before, and clean-up operations after, any such construction, installation, removal, repair, relocation, replacement, maintenance or operation. After any such use, LESSEE shall restore the area so used to at least as good a condition as before such use.

LESSOR shall maintain in good condition and repair, the areas covered by the Easements ("Easement Areas") throughout the Term and any Extended Terms. No additional rent or other payments shall be payable by reason of LESSOR's grant of the Easements.

B. LESSOR represents and warrants that:

(i) during the Term and any Extended Terms, LESSEE and LESSEE's Related Parties shall have free and unrestricted access for ingress and egress and passage of pedestrians, vehicles and construction materials and equipment, to and from the Premises from and to an open public street, road or highway in accordance with paragraph 4A(i) twenty-four (24) hours each and every day, seven (7) days each and every week subject to circumstances beyond LESSOR's control;

(ii) during the Term and any Extended Terms, LESSOR shall provide LESSEE with a telephone number which, if called by LESSEE or one of LESSEE's Related Parties, will ring at a location that is staffed by LESSOR or LESSOR's agents twenty-four (24) hours each and every day seven (7) days each and every week; and LESSOR shall notify LESSEE promptly in the event of any change in such telephone number; and

(iii) LESSOR shall not permit or suffer any interference with access required under this paragraph.

C. At the request of LESSEE or one of LESSEE's Related Parties from time to time, and without further payment or consideration, LESSOR shall grant and convey to LESSEE or to the electric and/or telephone utility companies serving or authorized to serve the Premises, by and using such forms of instrument or easement agreement as are then being used by LESSEE, any of LESSEE's Related Parties or any of such companies, rights to use any existing poles owned by LESSOR and/or easements to go upon, over, under and across the Building, the Real Estate and other real estate owned by LESSOR (i) for the purpose of construction, installation, removal, repair, relocation, replacement, maintenance and operation of electrical, telephone and other communication facilities as may be required in connection with the transmission and distribution of electricity, telephone and other communications, and sounds and signals; and (ii) to provide access twenty-four (24) hours each and every day, seven

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(7) days each and every week, for ingress and egress and passage of pedestrians, vehicle and construction materials and equipment, from and to the nearest public way, and (iii) to provide parking and temporary storage for service vehicles, equipment and supplies during any time from time to time, that LESSEE or one of LESSEE's Related Parties or one or more of such companies is constructing, installing, removing, repairing, relocating, replacing, maintaining or operating such facilities on LESSEE's improvements and/or Equipment; such easements to be on such terms and conditions as are customarily contained in such instrument or easement agreement as are then being used by LESSEE or any of such companies; provided that, without LESSOR's prior consent, which consent shall not be unreasonably delayed or withheld, said easements shall not exceed in duration the longer of (i) the combined length of the Term and any Extended Terms, and (ii) the length of time requested by any of such utility companies; and LESSOR shall take any and all actions and execute, acknowledge and deliver any and all documents requested by LESSEE, any of LESSEE's Related Parties or any of such companies in order to accomplish the foregoing.

D. Notwithstanding anything to the contrary contained in this Agreement, no Easements or other rights are granted by LESSOR to LESSEE over or concerning property not owned by LESSOR, which Property is outside of the Building.

5. A. LESSOR represents and warrants that LESSOR owns good and marketable title in fee simple to the Premises and the Easement Areas, free and clear of all liens and encumbrances except as set forth on Exhibit "C" attached hereto and made a part hereof, and LESSOR acknowledges that LESSEE is relying upon the foregoing representation and warranty in entering into this Agreement and in expending monies in connection herewith. LESSOR shall not encumber or permit any encumbrances, liens or restrictions on the title to the Premises or the Easement Areas other than those set forth in Exhibit "C" hereto, except with the prior written approval of LESSEE; provided that LESSEE's approval shall not be required if LESSOR hereafter encumbers the Premises and the Easement Areas with the lien of a first mortgage given to secure a loan made to LESSOR by a bank, savings and loan association or insurance company.

B. LESSOR represents and warrants that no litigation or governmental, administrative, or regulatory proceeding is pending, proposed or threatened with respect to the Premises, the Buildings, the Easement Areas or the Real Estate, including, without limitation, claims of third parties.

C. LESSOR shall indemnify, defend, and hold harmless LESSEE and LESSEE's Related Parties (collectively "Indemnitees") from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages or expenses, including, without limitation, attorneys' and expert witness' fees sustained or incurred by Indemnitees pursuant to any federal, state or local laws and implementing regulations, and/or the common law, dealing with matters relating to the environment and/or contamination of any type whatsoever caused or contributed to by LESSOR and/or its predecessors, or originating from causes existing on or before the date of this Agreement, including, without limitation: (i) any disposal of wastes, including, without limitation, any toxic or hazardous substances, mixtures or compounds, in, upon or beneath the Premises, the Easement Areas, the Building or the Real Estate (collectively, the "Relevant Area"), or the improvements now or hereafter located thereon or forming a part thereof, or into the water and sewerage systems which serve the Relevant Area or the improvements now or hereafter located thereon or forming a part thereof; (ii) pollution or protection of the environment; (iii) emissions, discharges, leaching, injections, spills, escapes, dumping, disposal, ground water or ambient air contamination, leaks,

releases or threatened releases of pollutants, contaminants and/or chemicals into the environment (including, without limitation, ambient air, surface waters, ground waters or land); (iv) noise pollution; (v) protection of wildlife, marine sanctuaries or wetlands; (vi) otherwise related to manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or solid or hazardous wastes; (vii) related to underground tanks or storage vessels or equipment located in, upon or beneath the Relevant Area, or the improvements now or hereafter located thereon or forming a part thereof; or (viii) injury, illness and/or death (or aggravation of a pre-existing injury of illness), which is related to the physical condition, status, quality, nature, contamination or environmental state of the Relevant Area, or the improvements now or hereafter located thereon or forming a part thereof; provided, however, that this indemnification shall not apply to any matters as aforesaid which are caused by, or arise from, LESSEE'S activities on, or use of, the Relevant Area or the improvements now or hereafter located thereon or forming a part thereof. Notwithstanding anything to the contrary herein contained, if any action taken by LESSEE pursuant to paragraph 6 hereof, or any other provisions of this Agreement, results in, or gives rise to, the shipment, removal or other disposition of any "toxic" or "hazardous" "substance" or "substances" as those terms are defined or may be defined from time to time in any applicable federal, state or local laws, LESSOR shall, at all times, be named as the "generator" or "owner" as the case may be, of said toxic or hazardous substance or substances.

D. LESSEE shall not locate at or in the Premises, without LESSOR'S consent, any hazardous substances within the meaning of federal, state or local laws except that LESSEE may maintain, at the Premises, certain batteries used for emergency power for LESSEE'S Equipment.

E. Except as expressly provided otherwise in this Lease, LESSEE has examined and knows the condition of the Premises and accepts the Premises in the condition existing on the date hereof.

6. A. LESSEE shall pay all charges for utilities used by LESSEE in connection with the Premises during the Term and any Extended Terms.

B. In the event of any default hereunder by LESSOR, or if LESSOR otherwise

(i) takes any action in contravention of this Agreement or which impairs or threatens to impair (a) LESSEE'S exercise of its rights under this Agreement, (b) LESSEE'S use of the Premises or the Easement Areas as permitted hereunder, or (c) the condition of LESSOR'S title to the Premises or the Easement Areas as mandated by this Agreement, or (d) the environmental status, condition or quality of the Premises, the Easement Areas or the Relevant Area, or

(ii) fails to take any action required by this Agreement or required to preserve and maintain (a) LESSEE'S rights under this Agreement (b) LESSEE'S ability to use the Premises and the Easement Areas as permitted hereunder, (c) the condition of LESSOR'S title to the Premises and the Easement Areas as mandated in this Agreement, or (d) the environmental status, condition or quality of the Premises, the Easement Areas or the Relevant Area.

then LESSEE may, without being obligated to do so, immediately or at any time thereafter, without notice, cure such default or take

action to reverse the effect of LESSOR's action or inaction, all for the account and at the expense of LESSOR; and if LESSEE from time to time, by reason of such default, action or inaction by LESSOR, is compelled to pay, or elects to pay, any sum of money or do any act which will require the payment of money, then the sum so paid by LESSEE, plus interest thereon from the date so paid by LESSEE to the date repaid by LESSOR, at eighteen percent (18%) per annum, shall be due from LESSOR to LESSEE upon demand, and LESSEE may set-off or deduct such sum, including interest as aforesaid, from LESSEE's rent obligations hereunder until LESSEE is fully reimbursed therefor.

7. LESSEE and LESSEE's Related Parties shall have the right, at any time during the Term, at their own expense (a) to construct or make any improvements of whatever kind or description upon or in the Premises, (b) to install Equipment upon or in the Premises, (c) to install Equipment such as wires, cables, junction boxes and related or similar fixtures upon or in the Easement Areas (d) to remove any such improvements and Equipment so constructed, made or installed. LESSEE agrees that any such alterations shall be (e) performed so as to cause no permanent damage to the Premises or the Building; (f) performed in a good and workmanlike manner and (g) performed so as not to disrupt unreasonably other tenants in the Building. Any and all improvements and Equipment so constructed, made or installed which are readily removable without causing material damage to the Premises, shall remain personal property and shall belong to and be removable by LESSEE during the Term and any Extended Terms, and for a reasonable time after the expiration of the Term and any Extended Terms or such earlier date as this Agreement is terminated not to exceed ninety (90) days, however, such ninety (90) day period may be extended if LESSEE is diligently pursuing to remove such improvements and Equipment.

8. A. Except to the extent of LESSOR's obligation pursuant to paragraphs 8B, 8C and 8D hereof, LESSEE shall keep the Premises in good condition and repair in accordance with applicable state and municipal laws, and, at the expiration of the Term and any Extended Terms, or such earlier dates as this Agreement is terminated, LESSEE will yield up the Premises in at least as good a condition as when the same were entered upon by LESSEE, loss by casualty and ordinary wear and tear excepted. LESSEE shall not use the Premises or permit the Premises to be used in any manner or do or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule, regulation or requirement currently in force or which may hereafter be enacted or promulgated. LESSEE specifically undertakes and agrees, at its own expense, to repair, as shall be deemed reasonably necessary by LESSOR, all damage to the Building and/or the roof area caused by or attributable to LESSEE, LESSEE's Related Parties or LESSEE's Equipment.

B. Except as otherwise provided in this Agreement, LESSOR shall maintain and keep in good condition, order and repair and in compliance with state and municipal laws, the Useful Areas (as defined in paragraph 4A(i) hereof) and the foundations, walls (other than walls constructed by LESSEE), ceilings and floors (other than ceilings and floors constructed by LESSEE), windows, roofs, fixtures and structural columns and components of the Building, including, without limitation, the basic heating and electrical systems, and fixtures installed or furnished by LESSOR, unless such maintenance and repairs are necessitated by the negligent act or omission of LESSEE, its agents, employees or invitees, in which case LESSEE shall pay to LESSOR the reasonable cost of such maintenance and repairs. LESSOR shall also keep the Useful Areas adequately lighted, to the extent necessary for the normal use thereof.

C. Notwithstanding anything to the contrary contained

in this Agreement, LESSOR shall use its best efforts to cause the services described in this Agreement to be provided, maintained and, if interrupted, restored promptly; provided, however, that LESSOR shall not be liable in damages, by abatement of rent or otherwise, for failure to furnish or for delay in furnishing any service when such failure or delay is caused, in whole or in part, by circumstances completely beyond LESSOR's control; but LESSEE may terminate this Agreement if LESSEE is unable to operate its Equipment for three (3) or more consecutive days as a result of such failure or delay. In the event that such services and utilities or access to the Premises should be interrupted other than due to such circumstances completely beyond LESSOR's control, there shall be a proportionate abatement of the rent applicable to the month or months during which such interruption occurred.

D. If the Premises or the Building is damaged or destroyed by fire or other cause, LESSOR shall, promptly and with continued due diligence, at its sole expense, repair, replace, restore or rebuild the same forthwith to the same condition existing prior to the happening of such fire or other casualty; and this Agreement shall remain in full force and effect, except that LESSEE shall be entitled to a proportionate reduction of the rent while such repairs are being made. However, if the Building and the Premises are so damaged that, in LESSEE's reasonable judgment, the Premises are unusable by LESSEE and, in LESSOR's reasonable judgment, repairs cannot be made within one hundred (100) days after the occurrence of any such damage, then LESSOR may elect (a) to terminate this Agreement as of the date of the occurrence of the damage by written notice to LESSEE within thirty (30) days after such occurrence or (b) to repair and restore the Building and the Premises (except LESSEE's improvements and Equipment) at LESSOR's expense within one hundred (100) days after occurrence of the damage. Unless LESSOR elects to so terminate, LESSOR will complete the work within one hundred (100) days after occurrence of the damage; otherwise, LESSEE may terminate this Agreement at any time within one hundred eighty (180) days after occurrence of such damage. At the expiration of the Term or the Extended Term, or such earlier date as this Agreement is terminated, LESSEE will remove all improvements and Equipment constructed, made or installed by LESSEE upon or in the Real Estate and the remainder of the Premises, and will otherwise yield up the Premises in at least as good a condition as when the same were entered upon by LESSEE, ordinary wear and tear and loss by causes beyond LESSEE's control excepted.

9. LESSEE and its agents may apply to governmental authorities and public companies, in LESSEE's or LESSOR's name, or jointly, for any Approvals and easements required or deemed useful by LESSEE for its use of the Premises, or in order to construct or make improvements, or to install Equipment, pursuant to this Agreement. LESSOR shall cooperate fully with LESSEE in connection with the foregoing and, upon request of LESSEE, shall take any and all actions and execute, acknowledge and deliver any and all documents and instruments reasonably requested by LESSEE in connection therewith, including, without limitation, easements for public utilities. LESSEE shall reimburse LESSOR for any reasonable costs expended by LESSOR in connection with the foregoing. LESSEE shall pay all license, permit and inspection fees required in connection with its use of the Premises or the conduct of its business thereon.

10. This Agreement and LESSEE's obligations hereunder are contingent upon the occurrence of the following events on or before July 15, 1990:

- (a) LESSEE shall have received the Approvals and easements referred to in paragraphs 2, 4C and 9 hereof;
- (b) LESSEE shall have received results of soil and/or

radio frequency tests (to be obtained by LESSEE at LESSEE's expense) relating to the Premises, and such results are satisfactory to LESSEE in its sole discretion.

If by said date one or more of such events shall not have occurred, then at LESSEE's option, which shall be exercised, if at all, on or before August 15, 1990, LESSEE may waive such contingencies and thereby keep this Agreement in effect, or LESSEE may terminate this Agreement by giving a notice to LESSOR on or before said date. Upon such termination by LESSEE, the Term and all of LESSEE's obligations contained herein shall forthwith terminate and end on the date specified in such notice. If LESSEE terminates this Agreement, LESSOR shall be entitled to retain all rent theretofore paid by LESSEE.

11. LESSEE shall indemnify LESSOR and the Premises from all liens or claims for lien for labor or material by reason of any work done or material furnished LESSEE in connection with construction pursuant to this Agreement. If any such lien or claim for lien is filed against the Premises, LESSOR shall give LESSEE notice thereof and demand that LESSEE remove the same, and if the same is not removed within thirty (30) days after LESSEE receives such notice and demand, then (and only then) LESSOR may (unless within such thirty (30) day period LESSEE furnishes to LESSOR reasonable security to protect against such lien), without inquiring into the validity thereof, remove the same at LESSEE's expense, and in such event, all reasonable sums paid by LESSOR in connection therewith shall be deemed to be additional rent due and payable hereunder within fifteen (15) days after receipt of LESSOR's statement therefor.

12. A. During the Term and any Extended Terms, LESSOR shall, at its expense, maintain in effect a policy or policies of insurance issued by a company or companies authorized to do business in Illinois, covering the Premises and the Building, providing full replacement cost protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against vandalism and malicious mischief; provided, however, that at any time insurance providing full replacement cost protection is unavailable, LESSOR shall maintain in effect insurance providing the greatest percentage of replacement cost protection as is then available. LESSOR shall send LESSEE certificates evidencing such coverage within a reasonable time after a request therefor by LESSEE; provided that LESSEE shall not make such a request more than a reasonable number of times.

B. During the Term and any Extended Terms, LESSEE shall, at its expense, obtain liability insurance issued by a company authorized to do business in Illinois, providing coverage in limits of at least \$1,000,000.00, in the event of bodily injury or death, or property damage, or both, as a result of any one accident or occurrence on the Premises. LESSEE shall send a certificate therefore to LESSOR within a reasonable time after receipt of LESSOR's request therefor; provided that LESSOR shall not make such a request more than once during any twelve (12) month period. Such certificate shall list LESSOR as an additional insured and shall contain a statement substantially as follows: "should any of the policies described [therein] be cancelled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days' written notice to the certificate holder named [therein], but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

13. LESSEE and LESSOR shall each be responsible for maintaining insurance covering their own property, whether or not it is located on the Premises. LESSOR and LESSEE each hereby waive any and all rights of recovery, claim, action or cause of

action each may have against the other, its affiliates and their respective officers, directors, shareholders, partners, employees or agents, or any of their successors or assigns, on account of any loss or damage occasioned to LESSOR or partners, employees or agents or any of their successors or assigns, as the case may be, or their respective property, by reason of fire, the elements or any property insurance policies, regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees. Each party hereto, on behalf of its respective insurance companies insuring its property against any such loss, does hereby waive any right of subrogation that such companies may have against the other party hereto. The parties hereto covenant with each other that, to the extent such insurance endorsement is available, they will each obtain, for the benefit of the other, an explicit waiver of any right of subrogation from its respective insurance companies.

14. For purposes of this Paragraph, each of the following dates is a "Rent Stop Date": the last day of the month of May in each of the years 1995, 2000, 2005, 2010, and if and as LESSEE's options to extend the Term are exercised pursuant to Paragraph 2 hereof, the last day of the month of May in each of the years 2015 and 2020. If this Agreement has not been terminated pursuant to paragraph 10 hereof, then at LESSEE's option, LESSEE may terminate this Agreement, effective as of a termination date selected by LESSEE in its discretion (the "Termination Date"), by sending a termination notice ("Lessee's Termination Notice") to LESSOR, and upon such termination, the Term and all obligations of LESSEE contained herein shall forthwith terminate and end on the Termination Date specified in LESSEE's Termination Notice; provided that, notwithstanding any termination pursuant to this paragraph, and irrespective of the actual Termination Date, LESSEE's obligation to pay rent shall continue through (and shall end on) the Rent Stop Date (hereinafter defined) next following the Termination Date; but if the Termination Date is the same as the Rent Stop Date, then LESSEE's obligation to pay rent shall end on the Termination Date. The foregoing right to terminate shall not be deemed to be exclusive and shall not preclude a termination by LESSEE in the event of a default by LESSOR.

15. Except as provided below in this paragraph 15, LESSOR's prior written consent [which consent shall not be unreasonably withheld or delayed] shall be required in the event LESSEE wishes (a) to sublease the entirety of the Premises or the improvements and Equipment constructed, made or installed pursuant to this Agreement and/or (b) to assign or transfer this Agreement, all or any of LESSEE's rights or interests hereunder and/or the Easements contained herein; provided that any sublease, assignee or transferee shall be restricted to the uses expressly permitted by this Agreement. Within ten (10) business days after a written request to assign or sublease the Premises, LESSOR will provide written evidence of LESSOR's consent or refusal to consent, and in the event of such refusal, a statement of the specific grounds for refusal. Any such sublease, assignment or transfer may be absolute, conditional or in consideration of or as additional security for any financing or equipment leasing arrangement into which LESSEE may enter. Notwithstanding the above, LESSEE shall have the unconditional right to so sublease, assign or transfer, without LESSOR's consent, to a corporation or partnership in control or controlled by or under common control with LESSEE or to a corporation or partnership which shall acquire or succeed to all or substantially all of the assets of LESSEE's Chicago operations or to a corporation or partnership to whom the Federal Communications Commission approves the transfer of LESSEE's cellular telephone license or to a corporation or partnership as part of a sale and leaseback of assets or similar financing arrangement. LESSEE shall have the right to record, register and/or file such evidence of any such sublease, assignment or transfer as LESSEE may deem appropriate, without

thereby committing a default under this Agreement. If LESSEE subleases, assigns or otherwise transfers the Premises, LESSEE shall not be relieved of any of its obligations, except to the extent any such obligations are actually performed or satisfied by the sublessee, assignee or transferee.

16. LESSOR, on behalf of LESSOR and all persons, corporations and other entities claiming by, through or under LESSOR, and their respective heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees with LESSEE that as long as LESSEE, or one of LESSEE's Related Parties pays the rent herein reserved and performs all of LESSEE's obligations hereunder, LESSEE and LESSEE's Related Parties shall (a) have quiet and peaceful enjoyment and possession of the Premises and the Easement Areas throughout the Term and any Extended Terms free from claims and demands by LESSOR and all persons, corporations and other entities claiming by, through or under LESSOR or claiming under title paramount to LESSOR and (b) be entitled to exercise all of LESSEE's rights hereunder during the Term and any Extended Terms.

17. Each party hereto shall, from time to time, within fourteen (14) days after a written request is made by the other party, execute, acknowledge and deliver to the requesting party a certificate in writing (a) stating that, to the knowledge of the certifying party, this Agreement is unmodified and in full force and effect (or, if modified, stating in detail the nature of such modifications known to the certifying party, and stating that to the knowledge of the certifying party this Agreement, as so modified, is in full force and effect) and stating the date to which rent and other charges have been paid, and (b) either stating that to the knowledge of the certifying party no default exists hereunder or specifying each default of which the certifying party has knowledge. Any such certificate may be conclusively relied upon by any person or entity. Failure to deliver such a certificate within fourteen (14) days after such request is made shall be conclusively against the party failing to deliver such certificate that (a) this Agreement is in full force and effect without modification except as may be represented by the party that requested such certificate, and (b) the party that requested such certificate is not in default hereunder.

18. If (a) LESSEE shall default in the payment of rent and such default shall continue for fifteen (15) days after written notice thereof is received by LESSEE, or (b) LESSEE shall default in the performance of any other of LESSEE's material obligations herein contained and such default shall continue for thirty (30) days after written notice thereof is received by LESSEE (provided however, that if the default reasonably cannot be cured within thirty (30) days, said thirty (30) day period shall be extended for such additional time as is reasonably necessary to cure such default), or (c) LESSEE is adjudicated a bankrupt or a trustee is appointed for LESSEE after a petition has been filed against LESSEE under the Bankruptcy Act of the United States, or a receiver is appointed for LESSEE's business or property (and the order of adjudication or appointing a trustee or receiver has not been vacated within sixty (60) days after the entry thereof), then, upon ten (10) days' notice to the LESSEE, LESSEE's right to possession of the Premises may be terminated and the mere retention of possession thereafter by LESSEE shall constitute a forcible detainer of the Premises, and if LESSOR so elects by notice to LESSEE, this Agreement shall thereupon terminate, and upon termination of LESSEE's right to possession, whether this Agreement be terminated or not, LESSEE shall surrender possession of the Premises immediately. LESSOR hereby expressly waives any and all right to distraint for rent due and any and all landlord's liens or claim of such upon any or all property of LESSEE and LESSEE's Related Parties, on the Premises or the Easement Areas.

19. If any suit or action shall be brought to enforce or

declare any of the terms of this Agreement, to terminate this Agreement, to recover possession of the Premises or to recover any rent or damages sustained as a result of a default in the performance of any obligations under this Agreement or a breach of any of the representations and warranties herein contained, the party not prevailing in such suit or action shall be liable to the prevailing party for the prevailing party's costs and expenses, including, without limitation, court costs, reasonable attorneys' fees, including the value of time spent by in-house counsel, and expert witnesses' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered. In addition, whether or not any suit or action is involved, each party shall pay all costs and expenses, including, without limitation, court costs, reasonable attorneys' fees, including the value of time spent by in-house counsel, and expert witnesses' fees, incurred by the other party in any litigation, negotiations transactions or disputes [including, without limitation, citations, fines, penalties or building code violations], in which the other party, without its fault, becomes involved or concerned by reason of this Agreement.

20. All notices and demands under this Agreement shall be in writing, and shall be deemed to have been given when delivered in person or by courier, or when mailed by United States registered or certified mail with proper postage prepaid, to LESSOR, if intended for it, at the address for payment of rent designated by LESSOR from time to time by notice to LESSEE or to LESSEE, if intended for it, with a required copy to SOUTHWESTERN BELL MOBILE SYSTEMS, INC., d/b/a CELLULAR ONE-Chicago[®], 840 East State Parkway, Schaumburg, Illinois 60173, Attn: Business Manager. Either party hereto may change the place for notice to it by sending like written notice to the other party hereto.

21. Except with LESSEE's prior written consent, LESSOR agrees that LESSOR and its officers, directors, shareholders, partners, employees, agents and other representatives, will not, whether during or subsequent to the term of this Agreement, in any fashion, form or manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation, in any manner whatsoever, any information of any kind, nature or description concerning the terms of this Agreement; provided, however, that LESSOR may disclose such information (i) to its legal and financial advisors to the extent necessary to conduct LESSOR's ordinary business and operations; (ii) to a purchaser of the Real Estate and (iii) to those of its employees to whom it shall be reasonably necessary to disclose such information for purposes of LESSOR's performance of its obligations under the terms of this Agreement.

22. Each party hereto represents and warrants that it has full power and authority to enter into this Agreement and to perform the covenants and obligations herein contained. Each person executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement.

23. At any time during the term hereof, in the event that LESSOR substantially remodels the Building and said remodeling requires the Suite 730 Premises to be taken over, or LESSOR leases all or substantially all of the seventh floor, including the Suite 730 Premises to one tenant for a term of five (5) years or more, LESSOR may substitute for the Suite 730 Premises other space of equivalent size ("the Substitute Premises") in the top five (5) floors of the Building pursuant to this paragraph. LESSOR will (a) give LESSEE at least one hundred eighty (180) days advance written notice of such substitution prior to the date (the "Substitution Date") LESSEE must vacate the Suite 730 Premises, designating the Substitute Premises; (b) make this Substitute Space available for LESSEE to install its Equipment no later than one hundred twenty (120) days prior to the Substitution Date; and (c) permit LESSEE to begin operating its

Equipment in the Substitute Space prior to the Substitution Date.

24. LESSEE shall not attach, affix or exhibit or permit to be attached, affixed or exhibited, except by LESSOR or LESSOR's agent, any signage of a permanent character or any sign, attached or detached, with any writing or printing thereon, to any window, floor, ceiling, door or wall in any place in or about the Premises, or upon any of the appurtenances thereto, without in each case the written consent of LESSOR first had and obtained.

25. LESSOR shall only have the right to enter the Premises during reasonable business hours accompanied by a representative of LESSEE and after giving at least ten (10) days' prior notice to LESSEE, for the purpose of examining or inspecting the same, to show the same to bona fide prospective purchasers of the Building and to make such alterations, repairs, improvements or additions, whether structural or otherwise, to the Premises or the Building as LESSOR may reasonably deem necessary. LESSOR shall use reasonable efforts in the case of such entry not to interrupt or interfere with LESSEE's use and occupancy of the Premises. LESSOR shall not incur any liability in the exercise of this right of entry except for damages arising out of LESSOR's failure to exercise due care for LESSEE's property. In the event LESSOR enters, or allows anyone else to enter the Premises due to an emergency when the giving of prior notice was not possible, LESSOR agrees to notify LESSEE as soon as possible by telephone with confirmation in writing and LESSOR agrees to immediately secure the Premises as it was prior to such entry.

26. This Agreement and all the rights, covenants and obligations contained in this Agreement shall inure to the benefit of and be binding upon LESSOR, LESSEE, LESSEE's Related Parties and their respective heirs, executors, administrators, personal representatives, successors and assigns. It is understood that as of the date of this Agreement, LESSOR is comprised only of the party or parties named as such in this Agreement or any other instrument executed herewith. If now or at any time hereafter LESSOR is comprised of more than one person or entity, LESSOR's obligations under this Agreement shall be the joint and several obligations of all persons and entities comprising LESSOR.

23. In any case where the approval or consent of LESSOR is required, requested or otherwise to be given under this Agreement, an approval or consent by any of the persons or entities comprising LESSOR shall be sufficient, and LESSEE may rely upon any such approval or consent. In any case where the approval or consent of LESSOR is required under this Agreement, LESSOR shall not unreasonably delay or withhold its approval or consent.

24. This Agreement supersedes all prior agreements and understandings, both written and oral, of the parties with respect to the subject matter hereof. This Agreement may be executed in any number of counterparts, and by the different parties on different counterparts, each of which when executed shall be deemed an original, and all of which together shall constitute one and the same agreement. If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor any other clause, phrase, provision or portion hereof to other persons or circumstances. Changes in the number, gender and grammar of terms and phrases herein, when necessary to conform this Agreement to the circumstances of the parties hereto, shall, in all cases, be assumed as though in each case fully expressed herein. This Agreement shall be construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LESSOR

LESSEE

PARKER-HOLSMAN CO., as agent for HYDE PARK BANK FACILITIES, INC.

SOUTHWESTERN BELL MOBILE SYSTEMS, INC., d/b/a CELLULAR ONE-Chicago

By: [Signature]

By: [Signature]

Name: Pamela Tolker

Name: DANE F. ERSHEN

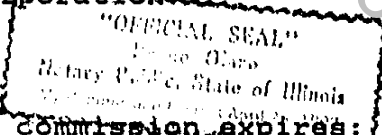
Title: Vice President

Title: VICE PRESIDENT NETWORK OPERATIONS

NOTARY ACKNOWLEDGEMENT FOR LESSOR

STATE OF ILLINOIS)
COUNTY OF COOK) SS

I, DEANA E. OLAZO, a Notary Public in and for the said County and State aforesaid DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 8th day of JUNE, 1990, by PAMELA TOLKER, personally known to me to be the VICE PRESIDENT of PARKER-HOLSMAN CO., an Illinois corporation, as agent for HYDE PARK BANK FACILITIES, INC., an Illinois corporation, on behalf of the corporation.



Deana Olazo
NOTARY PUBLIC

My Commission Expires: April 25, 1992

NOTARY ACKNOWLEDGEMENT FOR LESSEE

STATE OF ILLINOIS)
COUNTY OF COOK) SS

I, KAY DAWN TOWER, a Notary Public in and for the said County and State aforesaid DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 11th day of JUNE, 1990, by DANE ERSHEN, personally known to me to be the Vice-President of Network Operations of SOUTHWESTERN BELL MOBILE SYSTEMS, INC., d/b/a CELLULAR ONE-Chicago, incorporated under the laws of the State of Delaware and the Commonwealth of Virginia, on behalf of the corporation.

Kay Dawn Tower
NOTARY PUBLIC

My commission expires: 12/18/93

30285073



UNOFFICIAL COPY

2011/01/11 10:00 AM
2011/01/11 10:00 AM

Property of Cook County Clerk's Office

PROPERTY OF
CLERK OF COOK COUNTY
2011/01/11 10:00 AM
2011/01/11 10:00 AM

EXHIBIT A

Common address or approximate location of Premises:

Suite 730, 1525 E. 53rd Street, Chicago, Illinois

Legal Description(s):

LOT ONE IN BLOCK THIRTY-ONE IN HYDE PARK, A SUBDIVISION OF THE EAST HALF OF THE SOUTHEAST QUARTER AND THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION ELEVEN AND THE NORTH PART OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION TWELVE AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION FOURTEEN, TOWNSHIP THIRTY-EIGHT NORTH, RANGE FOURTEEN, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 8, 1857 AS DOCUMENT NO. 85568 IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

30285073

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/11

UNOFFICIAL COPY
9 3 2 3 5 0 7 3

15

EXHIBIT B

PLAT OF SURVEY AND/OR SITE PLAN

Property of Cook County Clerk's Office

30285073

EXHIBIT C

ROOF DETAIL

Property of Cook County Clerk's Office

00:85073

EXHIBIT D

Liens and encumbrances to which the Premises and the Easement areas are subject:

LESSEE's rights under the Agreement of which this Exhibit is a part.

It is hereby understood that LESSOR may encumber the Premises and Easement Areas with the lien of a first mortgage given to secure a loan made to LESSOR by a bank, savings and loan association or insurance company.

Property of Cook County Clerk's Office

98285073

SCHEDULE 1

Rent

\$ 750.00 per month for the period through May 31, 1995;

\$ 900.00 per month for the period from June 1, 1995 through May 31, 2000;

\$1,050.00 per month for the period from June 1, 2000 through May 31, 2005; AND

\$1,200.00 per month for the period from June 1, 2005 through May 31, 2010.

Monthly Rent during Extended Terms.

| | | |
|----------------------|---|----------------------|
| First Extended Term | - | \$1,350.00 per month |
| Second Extended Term | - | \$1,500.00 per month |

Property of Cook County Clerk's Office

90285073

UNOFFICIAL COPY

page 70

JENNIFER W. PETERSON

4/6 CELEBRATE OUR SERVICES

4/6 FAIR TRADE MARKET

SKOKIE, ILLINOIS 60077

Property of Cook County Clerk's Office

4/6/07