DATE: October 17, 2005

SUBJECT: Approval of a Deed of Lease between The County Board of Arlington County, Virginia and Omnipoint Communications CAP Operations, LLC, on the County's real property at 2400 Wakefield St., Arlington, VA (RPC #05005072).

C. M. RECOMMENDATIONS:

1. Approve the attached Deed of Lease between The County Board of Arlington County, Virginia (“Lessor” or “County Board”), and Omnipoint Communications CAP Operations, LLC (“Lessee” or “Omnipoint”), for existing antennas and equipment on the County's real property at 2400 N. Wakefield St., Arlington, VA.

2. Authorize the County Manager, or his designee to execute, on behalf of the County Board, the Deed of Lease and all related documents, subject to approval as to form by the County Attorney.

ISSUE: None.

SUMMARY: The County terminated the existing outdated lease and replaced it with the attached new lease for the existing tenant improvements at Lee Heights Reservoir. By the County Board approving the deed of lease and after it has been properly executed, Omnipoint d/b/a T-Mobile may continue to have its antennas and related equipment at 2400 N. Wakefield St.

BACKGROUND: The original Deed of Lease Agreement (“Lease”), dated November 22, 2000, will expire on November 30, 2005. Staff has finalized the negotiation for a 27-month lease with the Lessee for the operation and maintenance of Lessee’s six existing antennas and Lessee's Equipment, together with the Equipment Room on the Site for the operation of the Equipment Platform and Base Station, as such terms are defined in the Deed of Lease. The terms of the new lease are identical to those of another tenant's lease for the same use at this same site.

The proposed Deed of Lease is attached to this Report. The Deed of Lease has been structured to provide a commercially viable agreement with the Lessee while protecting the County’s rights.
and needs as a local government. Some of the pertinent provisions of the Deed of Lease are as follows:

- The lease term is for 27 months, with two five-year renewal options.
- Base rent equates to $58,000 for the first 12-month period, plus $4,000 for a one-time administrative fee.
- The base rent increases by 3 percent per annum.
- The Lessee is responsible for all costs and expenses relating to the connection, disconnection, consumption and use of any utilities and/or services in connection with Lessee’s operation and maintenance, including lighting and painting.
- The Lessee shall continue in effect Special Use Permit U-2823-94-4, which is shared with APC Equipment and Realty, d/b/a Sprint.
- The Lessee must comply with the requirements of the Federal Communications Commission, the Federal Aviation Administration, Arlington County's Interim Guidelines for Placement of Telecommunications Facilities on County-Owned Property, Adopted May 1997, and other federal, state or local government authorities having jurisdiction over the Base Station.
- The Lessee shall have the Equipment tested at least once per calendar year. The Lessee's equipment and frequency will not cause frequency interference with other forms of radio on the Site.
- The County and Lessee both have the right to terminate after providing notice of termination.
- The Lessee shall maintain a policy of commercial general liability insurance insuring the Lessor and Lessee against liability arising out of the use, operation or maintenance of the Leased Premises and the installation, repair, maintenance, operation, replacement and removal of the Base Station.
- The Lease specifically provides that the County does not waive its rights as a local government.

**FISCAL IMPACT:** If the attached Deed of Lease is approved and executed on behalf of the County, then the County shall collect $133,123 as revenue during the initial term of the Deed of Lease. The revenue shall be placed into the General Fund.
ATTACHMENT "A"

DEED OF LEASE

SITE: Lee Pumping Station
2400 Wakefield Street
Arlington, Virginia 22207

THIS DEED OF LEASE ("Lease"), made and entered into this ___ day of _____________, 2005 (the "Effective Date"), by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate, with an address of 2100 Clarendon Boulevard, Arlington, Virginia 22201, herein referred to as “Lessor,” and OMNIPoint COMMUNICATIONS CAP OPERATIONS, LLC, a Delaware limited liability company, herein referred to as “Lessee,” recites and provides as follows:

RECITALS

WHEREAS, Lessor is the owner of the parcel of the real property located in Arlington County, Virginia known as Lee Pumping Station, in the Lee Heights Subdivision, Section 3, Lots 378A-386A; Section 7, Lots 700-703; Moses Pelham Subdivision, Lots 4, 5 and 6 (Lessee’s Site Number 7WAC005A), as described in Exhibit A attached hereto and incorporated herein by reference, together with the improvements thereon ("Property" or "Site"), including a water tank ("Tank").

WHEREAS, Lessee requests to lease from the Lessor on a non-exclusive basis: (i) space on the Tank for the purpose of maintaining and operating the existing six (6) antennas and related facilities, which are shared with APC Realty and Equipment Company, LLC, a Delaware limited liability company, a subsidiary entity of Sprint Corporation, and (ii) 130 square feet, more or less, of fenced space inside the equipment area ("Equipment Area") in close proximity to the Tank to maintain and operate an equipment platform ("Equipment Platform") to support communications equipment and equipment cabinets for the purpose of establishing a Personal Communications System Base Station ("Base Station") on the Site. The Tank, Equipment Area, Equipment Platform and Equipment are depicted on Exhibit A, Exhibit A-1, Exhibit A-2, Exhibit B, Exhibit B-1 and Exhibit B-2, which Exhibits are attached hereto and incorporated herein by reference;

WHEREAS, Lessor and Lessee are parties to an existing Deed of Lease Agreement, dated November 22, 2000, for a portion of the Site, dated November 22, 2000, which expires on November 30, 2005 ("Original Lease");

WHEREAS, the parties hereunder agree that the Original Lease shall have terminated and no longer be of any force or effect as of 11:59 p.m. on November 30, 2005, and this new Deed of Lease shall become effective as of December 1, 2005 ("Effective Date");

WHEREAS, The parties now desire to set forth the terms pursuant to which Lessor shall lease a portion of the Site to Lessee for the purposes set forth below;

NOW THEREFORE, in consideration of the sum of Ten Dollars ($10.00), the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. LEASED PREMISES:

   Subject to and in accordance with the provisions of this Lease, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, space on the Tank for the operation and maintenance of Lessee’s existing six (6) antennas which are shared by the Lessee with APC Realty and Equipment Company, LLC, a Delaware limited liability company, a subsidiary entity of Sprint Corporation, and Lessee's Equipment as described on Exhibit B-1, together with the Equipment Area on the Site for the operation of the Equipment Platform and Base Station, all as shown on Exhibits A, A-1 and B. The portion of the Equipment Area is hereby leased to Lessee as depicted on Exhibit B, which, together with the space on the Tower described on Exhibit B-1 shall be referred to collectively as the “Leased Premises.” Lessee has inspected the Leased Premises and accepts the Premises “as is” and in its present condition, without any representation or warranty by Lessor. Lessee, at its sole cost and expense, shall complete the improvements to the Equipment Area shown on Exhibit B, Sheet E-1. Lessee acknowledges that Lessor’s use and
operation of the Leased Premises shall continue, and that Lessee’s rights under this Lease are subject to Lessor’s continuing use and operation of the Leased Premises and the Site. Lessee warrants that it has made such structural analyses of the Leased Premises as necessary to satisfy that: (i) the Site may be shared by Lessee and all other carriers currently using the Site, without adverse impact to Lessor or such other carriers; and, (ii) the Site can support the equipment currently on the Site and the equipment owned by the other carriers and Lessor, as well as the equipment that Lessor has approved for the Equipment Area. Lessee further warrants that Lessee’s installation, operation and maintenance of Lessee’s equipment shall not interfere with or be interfered with by the current operation or maintenance of the other carriers’, Lessor’s and/or Lessee’s equipment currently located on the Site. Lessee acknowledges, by entering into this Lease, that Lessor has not made, and shall not be deemed to have made, any such analyses or determinations. Lessee shall defend and indemnify and hold harmless, Lessor and its elected and appointed officials, officers, employees and agents from all losses, costs, claims, causes of actions, demands and liabilities arising in connection with: (i) the structural capacity of the Tank and Leased Premises to support the equipment currently on the Site, including the Leased Premises; and, (iv) any other matters arising from Lessee’s use of the Leased Premises except with respect to claims due solely to Lessor’s negligence or willful misconduct.

2. EASEMENT SERVING LEASED PREMISES:
   A. Lessor hereby grants to Lessee a non-exclusive easement ("Easement") over designated portions of the Site, as shown on Exhibit A, which designated portions may be reasonably re-designated by Lessor from time to time, for ingress to and egress by Lessee to and from the Leased Premises for vehicular traffic for the sole purposes of maintaining, operating, repairing and removing the Base Station, Equipment and Equipment Platform. If Lessee damages any grassed area when accessing the Tank, then Lessee shall promptly restore and re-sod the disturbed areas at its sole cost and expense.
   B. Lessor shall have the right, in Lessor's sole discretion, to reasonably relocate the Easement hereby granted to other portions of the Site.
   C. The Term of such Easement shall automatically expire upon termination of this Lease, without the need for any further act of either party to this Lease. Notwithstanding the foregoing, if requested by Lessor, Lessee shall execute and deliver to Lessor, in recordable form, such documents as Lessor may request to evidence of record the termination of such Easement.

3. USE OF LEASED PREMISES:
   A. Lessee shall use the Leased Premises solely for the operation and maintenance of the Equipment, Equipment Platform and Base Station as provided herein, and shall use the Easement solely for the applicable purposes described in Section 2A. Lessor makes no representation or warranty whether such use is permitted by any laws or regulations applicable to the Leased Premises. Lessee is solely responsible for determining whether such use is permitted, and for securing all necessary licenses, permits and approvals thereof. Lessee acknowledges that this Lease specifically is conditioned upon the Lessee obtaining, and continuing in effect during the Term and any Renewal Terms of this Lease, a Special Use Permit for the placement of the specific items of Equipment on the Leased Premises, and the Lessee’s use thereof. Failure of the Lessee to obtain and to continue in effect Special Use Permit #U-2823-94-4, which is shared with APC Equipment and Realty, d/b/a Sprint, shall constitute cause for immediate termination of the Lease, at the sole discretion of Lessor, notwithstanding any provision herein to the contrary.
   B. Notwithstanding any other provision of this Lease, Lessee acknowledges the absolute primacy of the Lessor’s ownership and right to use the Site for water storage, treatment and/or distribution, and Arlington County Emergency Communications Center ("ECC"), and that Lessee’s rights under this Lease are subject and subordinate to Lessor’s use and operation of the Site. In exercising its rights under this Lease, Lessee shall use all reasonable efforts to avoid any adverse operation or other impacts on the Site and Lessor’s use and operation thereof, whether such impacts arise from activities conducted on or off the Site. Prior to any entry upon the Leased Premises, Lessee shall provide a twenty-four (24) hour advance notice by telephone or facsimile to Lessor – Attention: Water Distribution Supervisor, Arlington County Department of Environmental Services, Water, Sewer and Streets Bureau ("Water, Sewer and Streets Bureau") 4202 28th Street, South, Arlington, VA 22206 [telephone number 703-228-6555; facsimile number 703-228-6585] of such entry and of any work or activities to be conducted on the Leased Premises. Such entry, work and other activities shall occur only at such times, and shall occur in such manner, as may be required by Lessor to avoid any adverse impacts of such work and activities. In case of emergencies
threatening life or safety, Lessee shall contact the Water Distribution Supervisor at 703-228-6555 gain access to the Leased Premises.

C. If at any time during the Term or Renewal Terms of this Lease, Lessor reasonably determines that the Base Station has not been and/or can not be operated in a manner that does not materially and adversely impact the Lessor’s use and operation of the Site for water storage, treatment and/or distribution and ECC, then Lessor may terminate this Lease, without further obligation or liability whatsoever, by giving Lessee thirty (30) days prior written notice of termination.

D. This Lease may be terminated by Lessor upon providing Lessee one hundred twenty (120) days prior notice should Lessor desire to demolish in its entirety the water tank on the Site. In such event, all rights and obligations of the parties except as set forth in this Lease shall cease as of the date of termination. Lessee shall remove its Equipment, Base Station and Equipment Platform from the Leased Premises prior to the end of the one hundred twenty (120) day notice period at Lessee's sole cost and expense.

E. Lessor reserves the right to add improvements to or redevelop the Site (including the Leased Premises) in any manner, including additional communications facilities necessary for Lessor’s communications needs, and in connection therewith to relocate, at Lessor’s expense, the Base Station and the Leased Premises. Lessor shall make reasonable efforts to cause any such improvements or redevelopment to be performed in a way that does not require relocation of the Base Station, Equipment or Equipment Platform and the Leased Premises or undue interference to Lessee’s use and operation of the same; provided, however, that if such relocation or interference cannot reasonably be avoided, then either party may (i) terminate this Lease by giving the other party thirty (30) days prior written notice of termination or (ii) Lessor may allow Lessee, at Lessee's sole cost and expense, to relocate Lessee's Equipment, Base Station and Equipment Platform. If Lessee chooses to relocate as set forth in paragraph 3E(ii) above, such relocation will (a) be performed exclusively by Lessee or its agents, (b) not result in any interruption of the communications service provided by Lessee on or from the Site, (c) not impair, or in any manner alter, the quality of communications service provided by Lessee on or from the Site. Upon relocation of Lessee's Equipment, the access and utility easement(s) required by Lessee, if any, will be relocated at Lessee's sole cost and expense, as determined by the Lessor, to operate and maintain the Equipment, Base Station and Equipment Platform.

F. Lessor may, at its expense but without charge by Lessee, use any portion of the Tank, Equipment Platform and Equipment Area, Base Station and the Property for mounting and operating additional communications equipment of Lessor or other Arlington County or other governmental agencies. Any equipment to be installed on Lessee's Equipment Platform shall (a) be performed exclusively by Lessee or its agents, (b) not result in any interruption of the communications service provided by Lessee on or from the Site, (c) not impair, or in any manner alter, the quality of communications service provided by Lessee on or from the Site. Such additional equipment shall not interfere with the operation of Lessee's equipment.

4. TERM:

A. This Lease shall be for a term of two (2) years and three (3) months or twenty-seven (27) months ("Term") commencing on December 1, 2005 ("Commencement Date"), and ending at midnight on February 29, 2008 ("Expiration Date"). If Lessee is not in default of any terms or conditions of this Lease, then Lessee may renew this Lease, specifically including additional or revised provisions as required by the Lessor, in its sole discretion, for two (2) additional terms of five (5) years each ("Renewal Term" or "Renewal Terms"). To effect each such five year Renewal Terms, Lessee shall give written notice to Lessor at least two hundred seventy (270) days prior to the end of the then current Term that Lessee desires that this Lease be so renewed; provided, however, notwithstanding any notice from Lessee to the contrary, that if Lessor notifies Lessee within sixty (60) days after Lessor’s receipt of Lessee’s renewal notice that Lessor does not desire such renewal, then this Lease shall terminate at the end of the then-current Term, and no further renewals shall be applicable. A condition precedent to any renewal of this Lease is that no event of default under the Lease which remains uncured beyond any applicable notice and cure period by Lessee shall exist at or from the time any renewal notice is given through the first day of the Renewal Term.

B. At the end of the Term, whether by the passage of time or the exercise by any party of any right of termination, unless this Lease is renewed, Lessee shall surrender the Leased Premises to Lessor in the condition specified in this Section. Within thirty (30) days prior to the end of the Term, Lessee shall dismantle and remove, all at Lessee’s sole cost, the Base Station, its support structure, the Equipment Platform, the Equipment, and all other alterations, additions, fixtures and improvements (jointly "Improvements") made by Lessee to the Site and Lessee shall restore the Site to its condition before the Improvements were made or installed. Such dismantling and removal of Improvements shall be coordinated in advance with Lessor's Water Distribution Supervisor in Department of Environmental Services, Water, Sewer and Streets Bureau and shall be scheduled at times, and
conducted in a manner, as may be reasonably required by Lessor to avoid any adverse impacts on the use and operation of the Site by the Lessor and others. Any damage to protective coatings (paint) caused by installation and or removal of the Improvements by Lessee shall be repaired at Lessee's expense under direction of Department of Environmental Services, Water, Sewer and Streets Bureau personnel. Department of Environmental Services, Water, Sewer and Streets Bureau shall specify coating (paint) and method of repair. Department of Environmental Services, Water, Sewer and Streets Bureau reserves the right to oversee and inspect the installation or removal of the Improvements on the Site, e.g., including the Tank, Equipment Area, Equipment Platform and Base Station. If Lessee is in default under this Lease at the time of termination, Lessee shall have no right to remove any of such Improvements, all of which shall become the property of Lessor upon such termination. However, if Lessor so requires, then Lessee shall dismantle and remove, at Lessee’s sole expense, all or such components of the Base Station as Lessor may require. Lessor shall have the additional option of requiring Lessee to restore the Leased Premises to its condition immediately prior to commencement of Lessee’s work or other activities.

C. Subject to Section 4.B., Lessee's Equipment, Equipment Platform and equipment cabinets which establish the Lessee's Base Station (but not including the Tank, and any lights, antennae, and other equipment either belonging to Lessor or any third parties or required for the continued use of any equipment belonging to Lessor or any third party on the Property) shall at all times be deemed Lessee's personal property and shall be subject to distraint (as well as any other rights or remedies of Lessor) for non-payment of Rent or additional rent.

5. RENT & SECURITY DEPOSIT:
A. Beginning on the Commencement Date, Lessee shall pay to the Lessor, in legal tender of the United States of America without demand, setoff or deduction whatsoever, as annual rent for the Leased Premises, the sum of Fifty-Eight Thousand and 00/100 Dollars ($58,000) ("Rent"). Such Rent shall be payable in monthly installments of Four Thousand Eight Hundred Thirty-Three and 33/100 Dollars ($4,833.33) in advance, on the Commencement Date and on the first calendar day of each month thereafter during the Term of this Lease. All Rental payments shall be made by check payable to the Treasurer of Arlington County, with a notation on the check stating the month that the remittance covers, and delivered to the following address: Arlington County, Virginia, Department of Environmental Services, Engineering and Capital Projects Division, 2100 Clarendon Boulevard, Suite 813, Virginia 22201, or such other address as the Lessor may provide, in writing, to Lessee.
B. In addition to the Rent described in the preceding paragraph, any other amounts payable under this Lease to Lessor, however denominated, shall be deemed additional rent ("Additional Rent") and shall be paid by Lessee within thirty (30) days after receipt of an invoice. Lessor shall have all rights and remedies in respect of payment and collection thereof as are applicable to Rent. Any amounts payable hereunder by Lessee that are not paid when due shall bear interest at the rate of five percent (5%) per annum until such amount is paid.
C. Pursuant to the following schedule, on the first anniversary of the Commencement Date, and thereafter on each succeeding anniversary of the Commencement Date throughout the Term (including any Renewal Terms) of this Lease, Rent, as described in Section 5A, (and the monthly installments thereof) shall be increased by three percent (3%) per annum:

<table>
<thead>
<tr>
<th>Lease Period</th>
<th>Annual Rent</th>
<th>Monthly Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/1/2005-11/30/2006</td>
<td>$58,000.00</td>
<td>$4,833.33</td>
</tr>
<tr>
<td>12/1/2006-11/30/2007</td>
<td>$59,740.00</td>
<td>$4,978.33</td>
</tr>
<tr>
<td>12/1/2007-02/29/2008</td>
<td>$61,532.20</td>
<td>$5,127.68</td>
</tr>
</tbody>
</table>

The increased Rent thereby established by each such adjustment shall continue in effect as the annual Rent required to be paid hereunder in equal monthly installments until again adjusted as herein provided.
D. Prior to the Effective Date of this Lease, Lessee shall deposit with Lessor the sum of Five Thousand and 00/100 Dollars ($5,000) as security for the faithful performance and observance by Lessee of the terms, provisions and conditions of this Lease. It is agreed that in the event Lessee defaults with respect to any of the terms, provisions and conditions of the Lease, including, but not limited to, the payment of Rent or Additional Rent, Lessor may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Rent and Additional Rent or any other sum as to which the Lessee is in default or for any sum which the Lessor may expend or may be required to expend by reason of Lessee’s default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, repairs or restoration of the Property after the termination of the lease, any damages or deficiency in the re-letting of the Leased Premises, whether such damage or deficiency
occurred before or after summary proceedings or other re-entry by Lessor, without waiving any other remedies Lessor may have hereunder. If Lessor so uses any portion of the security deposit, Lessee will restore the security deposit to its original amount within fifteen (15) days after written demand from Lessor. Lessor may commingle the security deposit with its other funds, and shall not be obligated to pay any interest thereon.

E. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security deposit shall be refunded to Lessee after the date fixed as of the end of the Lease and after delivery of the entire possession of the Leased Premises to Lessor in the manner required herein. The security deposit may not be used by Lessee as Rent and Additional Rent.

6. REAL ESTATE TAXES, UTILITIES, MAINTENANCE:
   A. Upon execution of this Lease, Lessee shall pay to Lessor a one-time facility fee of Four Thousand and 00/100 Dollars ($4,000).
   B. Lessee shall be solely responsible for all costs and expenses relating to the connection, disconnection, consumption and use of any utilities and/or services in connection with Lessee’s operation and maintenance of the Base Station, Equipment and Equipment Platform on the Leased Premises including, without limitation, any electric consumption by its equipment. Lessee agrees to pay all costs for service and installation of an electric meter directly to the local utility company.
   C. Lessee shall be responsible for the declaration and payment of any applicable taxes or assessments directly attributable against the Base Station, Equipment and Equipment Platform or other equipment owned or used by Lessee or allocable (on a pro rata basis) to the Leased Premises, including, but not limited to, any sales and property taxes, as well as any taxes based on the Rent payable hereunder, including gross receipts taxes. During the Term, Lessee shall pay all taxes levied upon the leasehold improvements on the Leased Premises.
   D. Lessee, at its expense, shall at all times during the Term of this Lease maintain the Base Station and the Leased Premises in proper operating condition and maintain same in good and attractive condition. Lessee shall repair all damage to the Base Station and Leased Premises, to the extent caused by Lessee, its contractors, subcontractors, agents or servants, excepting damage that is caused solely by Lessor, its agents or servants. Lessee shall keep the Leased Premises free of debris at all times.
   E. Lessee shall maintain the Leased Premises at all times in compliance with Lessor’s rules and regulations and all governmental regulations including, without limitation, those relating to the lighting and painting of the Base Station, and requirements of the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), and other federal, state or local government authorities having jurisdiction over the Base Station. Lessee shall have the Equipment tested at least once per calendar year, within two (2) months of each anniversary date of this Lease, for compliance with all FCC Regulations. This testing shall be performed by an independent engineering firm, approved by the Lessor, and shall be at Lessee’s sole expense. At all times, the emissions of electromagnetic radiation shall be in compliance with the conditions of Special Use Permit #U-2823-94-4, which is shared with APC Equipment and Realty, d/b/a Sprint, for the use of the Base Station. Compliance information with the FCC Regulations shall be made available by the Lessee to civic associations neighboring the Site and to the public.
   F. Lessee agrees to promptly reimburse Lessor for its pro rata share of reasonable costs for maintaining the Tank after receiving an invoice reasonably describing such costs. In no event shall Lessor be required to maintain or repair the Leased Premises, or pay or reimburse Lessee for any costs associated therewith.

7. PERMITS AND APPROVALS BY LESSEE:
   A. Lessee shall obtain all necessary approvals, including, without limitation, those required by the FAA and the FCC, for the operation and maintenance of the Base Station and Equipment. After obtaining the necessary permits and approvals therefore, Lessee, at its sole cost and expense, may perform or cause to be performed all of the following work:
      (1) Maintaining and operating on the Tank up to six (6) antennas, which are shared with APC Equipment and Realty, d/b/a Sprint.
      (2) Subject to Lessor’s approval thereof as provided in this Section, performing or causing to be performed all other improvements and work associated with the work described above that may lawfully be required by the Lessor or any other governmental body or official having jurisdiction, as part of or in connection with the work described above.
   B. Lessee’s agreement to perform or cause to be performed, at its sole cost and expense, all of the work described above, shall be construed broadly to provide for all costs and liabilities of such work, whether or not such costs are anticipated and without regard to Lessee’s present estimates for the cost of same, so that all of such work is fully and properly performed and paid for by Lessee, and upon completion of same the Site, as altered by Approval of the Deed of Lease for Omnipoint
2400 Wakefield St., Arlington, VA
such work, is as fully functional and suitable for continued use by Lessor as it was prior to the start of Lessee’s work. Accordingly, the phrase “all work” shall include, without limitation, all of the following work, and Lessee’s promise to pay for such work shall include, without limitation, all of the costs and liabilities associated with the following all labor and materials; design work; legal and professional fees of Lessee’s consultants; permit drawings and materials; construction costs; construction equipment and materials; utilities extension or relocation; provision of protective fencing and other safety measures; maintenance; removal of construction related debris from the Site; liability, property tax and workers’ compensation insurance premiums; bond fees; development and construction permits, inspections and approvals; re-sodding of all disturbed areas not covered with impervious surface; replacement or relocation of landscaping; re-stripping of paved areas for traffic control and parking; relocation, replacement or provision of new safety and traffic/directional signage; connection of new sidewalks, drives, parking areas and other facilities to Lessor’s existing facilities; and repairs and restoration required as a result of any damage to the Site caused in the performance of the work.

C. If Lessee’s use of the Site threatens the safe, proper and timely conduct of Lessor’s operations or use of the Site, then Lessor shall have the right to take all measures as it may deem necessary to avoid or abate any interference with such safe, proper and timely conduct of such classes or other operations or uses. Such measures may include, without limitation, engaging additional contractors, stopping any work from occurring on the Site, removing interfering construction equipment, materials or facilities, and providing alternate or additional drives, sidewalks, parking areas or other facilities. All such measures shall be at the sole cost, expense and liability of Lessee, and any costs expended by Lessor in connection therewith including, without limitation, reasonable attorneys’ fees, shall be reimbursed by Lessee to Lessor promptly after demand. Lessor shall endeavor in good faith to give Lessee prior notice before commencing any such measures and to coordinate with Lessee in determining the measures that may be necessary, but Lessee reserves the unqualified right to take any and all measures that it may deem necessary to assure the safe, proper and timely conduct of other operations or uses of the Site. Lessee shall permit Lessor’s designated inspector full access to all of Lessee’s Leased Premises and shall provide such inspector access to all construction plans, drawings and other information reasonably requested.

D. Lessee’s specifications and requirements must meet the approval of Lessor and those of the Occupational Safety and Health Administration ("OSHA"), the FCC, the FAA, and regulations of any governmental agency (town, county, state or federal) including, but not limited to the Interim Guidelines for Placement of Telecommunications Facilities on County-Owned Property, Adopted May 1997 (see Exhibit A-2) and applicable requirements of the local planning and zoning and building, electrical, communications and safety codes of Arlington County, Virginia. Lessee, at its sole cost and expense, shall secure all necessary permits and approvals required to permit the operation and maintenance of the Base Station and required for any work permitted to be performed pursuant to this Lease. Lessor agrees to cooperate reasonably with Lessee in any necessary applications or submissions required to permit improvements by Lessee and operation of Lessee’s Base Station as described herein, provided that Lessor shall be reimbursed by Lessee for all expenses incurred in providing such cooperation within thirty (30) days of incurring the expenses, and provided further that Lessee’s obtaining permits and approvals shall not result in the imposition of any material restrictions or limitations or adverse impacts on the Site or Lessor’s use, operation improvement or redevelopment thereof. Lessor, through the Water Distribution Supervisor in the County’s ("Department of Environmental Services, Water, Sewer and Streets Bureau"), reserves the right to oversee and inspect the installation of equipment on the Site, e.g., including the Tank, Equipment Area, Equipment Platform, Equipment and Base Station. Lessee hereby assigns to Lessor all warranties and guaranties of contractors and subcontractors applicable to any of Lessee’s work on the Site. In addition, if Lessor so requests, Lessee shall cause the applicable contractors and its subcontractors to perform any such warranty or guaranty work as Lessor may reasonably require. All of Lessee’s work and facilities shall be installed free of mechanics’, materialmen’s and other liens, and claims of any person. Lessee agrees to defend and to indemnify and save harmless Lessor, its elected and appointed officials, officers, employees and agents from all loss, cost, damage or expense including, without limitation, reasonable attorneys’ fees, occasioned by or arising in any connection with the work contemplated by this Lease, and shall bond off or discharge any such liens or other claims within thirty (30) days after notice from Lessor.

E. Prior to commencing any activities on the Site pursuant to this Lease, Lessee shall provide Lessor with evidence satisfactory to Lessor, in its sole discretion, that Lessee and its contractors and agents who will be working on the Site are covered by insurance as required by Section 13 hereof.

F. Lessee’s antennae and Equipment shall operate only on the following frequencies: FCC [10 Digit Code] Registration Number ("FRN") ____________, Call Sign #__________, transmit band of frequencies ________ MHz and receive band of frequencies ________ MHz or any other frequency required by the FCC. A copy the written correspondence from the FCC regarding changes to the frequency shall be submitted by the Lessee, in writing, within five (5) days to Lessor at its Notification Address. If Lessee wishes to use a frequency or frequencies other than the frequency set forth in the preceding sentence, Lessee

Approval of the Deed of Lease for Omnipoint
2400 Wakefield St., Arlington, VA
shall request Lessor’s permission in writing. Lessor may grant or withhold such permission in its sole discretion. Without limiting the generality of the foregoing, it shall be reasonable for Lessor to (1) withhold consent if other antennas on the Site (whether or not owned by Lessor) are operating in the range requested by Lessee, (2) withhold consent if Lessor believes that its policy requiring co-location of transmitting antennas would not be served by permitting Lessee to expand its frequencies, and/or (3) condition its consent on the payment of Additional Rent. Nothing in this Lease shall be construed to limit Lessor’s right to grant other parties the right to construct, operate or modify Tanks, equipment platforms or antennas on the Site (including the Tank); provided, however, that such construction, operation or modification does not interfere with the operation of Lessee’s Equipment Platforms, antennas, Equipment or Base Station.

G. Lessee shall, upon Lessor’s request, fence and buffer the Leased Premises or any portion thereof. The Base Station shall not affect the structural integrity of the existing structure or structures. Lessee shall provide to Lessor, at its request, a report prepared by an independent third-party professional engineer confirming the structural integrity of the existing structure or structures following any tenant improvements made to the Base Station.

H. Lessee shall not make any additions or improvements to the Base Station or on the Site without first obtaining Lessor’s prior written consent through the Arlington County, VA, Department of Environmental Services, Real Estate Bureau, located at 2100 Clarendon Boulevard, Suite 900, Arlington, Virginia. All plans submitted for such additions or improvements on the Site, or additions or modifications of such installations ("Work"), shall include a detailed analysis of their impact on the structural integrity of all structures on the Site. Prior to the commencement of the Work, Lessee must submit five (5) complete sets of its plans and specifications of the Work to Lessor's Real Estate Bureau. The Lessor's Real Estate Bureau is required to seek approval/denial for the Work from Department of Environmental Services, Water, Sewer and Streets Bureau, ECC and Zoning, and such other agencies as Lessor shall deem applicable. After the Lessor's Real Estate Bureau obtains all of the required approvals, Lessor shall return one (1) complete set of the approved plan and the approved specifications for the Work to Lessee. Lessee must schedule and coordinate its schedule for the Work through the Department of Environmental Services, Water, Sewer and Streets Bureau Water Supervisor. The Department of Environmental Services, Water, Sewer and Streets Bureau Water Supervisor reserves the right to oversee the Lessee's completion of the Work and shall certify that the Lessee's Work is acceptable.

I. Lessee, its employees, contractors, subcontractors and agents shall not cut, remove, disable, disengage or tamper with any locks, doors, fences within the Leased Premises. Violation of this provision shall constitute a default.

J. Lessee shall comply with the bonding requirements of Virginia Code §2.2-4337, where applicable.

8. OPERATION OF BASE STATION:

A. Lessee shall operate the Base Station in strict compliance with Lessor’s rules and regulations, now or hereafter promulgated, and all applicable statutes, codes, rules, regulations, standards and requirements of all federal, state and local governmental boards, authorities and agencies including, without limitation, OSHA (including, without limitation, OSHA regulations pertaining to RF radiation), the ECC, the FCC and the FAA. Lessee has the sole responsibility of carrying out the terms of its FCC license in all respects, including, without limitation, those relating to supporting structures, lighting requirements and notification to FAA. Lessee shall have and deliver to Lessor, copies of all required permits, licenses and consents to operate the Base Station. If the operation of the Base Station violates any of the terms or conditions of this Lease, then Lessee agrees to suspend operation of the Base Station immediately after receipt of notice of such violation. In such event, Lessee shall not to resume operation of the Base Station until such operation is in strict compliance with all of the requirements of this Lease. If Lessee refuses to suspend operation of the Base Station when so notified, or in the event of an emergency, then Lessor shall have the right to suspend or terminate the supply of electrical power to the Base Station, and Lessor shall have no liability to Lessee for such suspension. If Lessee has not corrected any such problem within three (3) days after notice, Lessor may terminate this Lease by upon providing thirty (30) days prior notice of termination. Upon any such termination, Lessee shall, if Lessor so requests, remove the Base Station (or components thereof as required by Lessor) from the Leased Premises in accordance with Section 4.B.

B. In exercising its rights under this Lease, Lessee shall avoid any adverse construction or other impacts on the Site and Lessor’s use and operation thereof, whether such impacts arising from work being conducted on or off the Site including, but not limited to, (utility outages arising from off-site utility relocation.) Lessee shall provide reasonable advance notice to Lessor of any work or other activities that may impact the use or operation of the Site, and shall cause such work or activities to be performed at such times and such manner as the Lessor may require to avoid any adverse impacts. Lessee further covenants that Lessee’s Equipment, Equipment

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Platform, transmission lines and appurtenances thereto, and the construction, installation, maintenance, operation and removal thereof, will in no way damage Lessor’s property or interfere with the use of the Site, Tank or Lessor's Equipment by Lessor, its successors and assigns. Lessee agrees to repair any damage caused to the Site by such installation, construction, maintenance, operation or removal and shall be responsible for the payment of any costs incurred therefor. If Lessee’s activities in the Site result in the need to restore or replace any grass areas, such areas shall be sodded, rather than seeded.

C. Lessee states that (1) Lessee’s Base Station will be used directly and exclusively in rendering a public utility service subject to the jurisdiction of the FCC and the FAA, and (2) Lessee’s Base Station may not be disconnected, terminated or interrupted in any manner without the approval of the FCC or the FAA, if required by such agencies, prior to any disconnection, termination or interruption.

D. If, after the execution of this Lease, Lessee is unable to operate the Base Station, Equipment or Equipment Platform due to the action of the FCC or by reason of any law, physical calamity, condemnation, governmental prohibition or other reasons beyond Lessee’s control, this Lease may be terminated by Lessee by delivering to Lessor a sixty (60) day, in advance, notice of termination, subject to Lessee’s restoration obligations under Section 4.B. hereof.

E. Notwithstanding any provision contained in this Lease, Lessee, may, in Lessee's sole and absolute discretion and at any time and for any or no reason, terminate this Lease without further liability by delivering to Lessor, at Lessor's Notification Address, a sixty (60) day in advance notice of termination, subject to Lessee's restoration obligations under Section 4.B. hereof.

9. PERMITS AND SITE SPECIFICATIONS:

It is understood and agreed by the parties that Lessee’s ability to use the Leased Premises is contingent upon Lessee obtaining all of the certificates, permits and other approvals that may be required by federal, state or local authorities for Lessee’s use of the Leased Premises as set forth in this Lease. Lessee shall obtain such certificates, permits and approvals, at Lessee’s sole expense. If any such applications should be finally rejected or any certificate, permit, license or approval issued to Lessee is canceled, expires or lapses, or is otherwise withdrawn or terminated by governmental authority, or soil boring tests are found to be unsatisfactory so that Lessee will be unable to use the Leased Premises for the purposes set forth herein, then either Lessee or Lessor shall have the right to terminate this Lease by giving the other party thirty (30) days prior notification of termination within sixty (60) days after the date of the event which is the basis of termination. All Rent paid to said termination date shall be retained by Lessor. Upon such termination, the parties shall have no further obligations for charges and liabilities which accrue after the effective date of termination, including the payment of monies, to each other except as otherwise provided herein; however, Lessee shall restore the Leased Premises in accordance with Section 4.B.

10. INDEMNIFICATION:

Lessee shall defend and indemnify and hold harmless, Lessor, and its elected and appointed officials, officers, employees and contractors from all losses, costs, claims, causes of actions, demands and liabilities arising from (1) any breach by Lessee of any covenant of this Lease; (2) any misrepresentation by Lessee contained in this Lease and/or any breach of any warranty contained in this Lease; and (3) any occurrence arising from (i) Lessee’s construction, installation, improvements, maintenance, repair, operation, replacement or removal of the Equipment, Equipment Platform and/or Base Station or any other equipment, or any other activities of Lessee on the Leased Premises, and (ii) the condition of the Base Station, Equipment, Equipment Platform and Leased Premises including, without limitation, any personal injury, death, or other accident in any way relating to Lessee’s use of the Leased Premises. Such indemnification shall include the cost of investigation, all expenses of litigation, and the cost of appeals, including, without limitation, attorney’s fees and court costs, and shall be applicable to Lessee’s activities on the Site whether prior to the Commencement Date or after the termination of this Lease.

11. INTERFERENCE:

A. Should any interference with the ECC be detected by any of Lessor's employees, contractors, agents, or an FCC regulatory entity, Lessee and all other tenants and persons or entities given permission to use the Site shall be notified immediately by Lessor, and Lessor may require Lessee and all other tenants, persons, or entities using the Site for telecommunication purposes to immediately cease operations of the suspected Equipment causing such interference and not resume until the source of the interference has been identified. Lessor shall permit Lessee to conduct intermittent testing of its Equipment to determine the cause of the interference. If it is determined, to Lessor's sole satisfaction, that Lessee's equipment is not the cause of the interference, then Lessor shall permit Lessee to recommence with the transmit and receive operation of its equipment. Lessee and Lessor shall be notified orally at the following 24-hour response telephone numbers:

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Lessee must immediately notify Lessor, in writing, when Lessee's 24-hour response telephone number(s) changes. Notwithstanding any provision of this Lease to the contrary, Lessor may immediately terminate this Lease, without any liability whatsoever to Lessor, if Lessee fails to provide Lessor with a working 24-hour response telephone number or if Lessee fails to report any change to such telephone number.

Lessee will cooperate with any other tenants and persons or entities given permission to use the Site as necessary to identify and eliminate such interference. All proposed methods of testing for and eliminating such interference shall be subject to the prior written approval of Lessor's technical staff or consultant. Lessor will provide reasonable cooperation and assistance in these efforts. Failure of Lessee to eliminate, to Lessor's sole satisfaction, interference determined to derive from Lessee's equipment or operations shall be a default of this Lease. Lessor agrees that the tenants of the Site will be allowed to resume their operations in the order which it is determined that they are not the interfering entity.

B. Lessee agrees to install and operate the Equipment and frequency that will not cause frequency interference with other forms of radio, including any modification to any of its equipment, in a manner which shall not cause technical interference to Lessor, nor to other lessees with tenancies and rights for telecommunications equipment frequency communications existing on the Site as of the date of this Lease or as may be in existence in the future, so long as reasonably prevalent. Lessee shall comply with all current and future federal, state and local laws, ordinances, regulations, policies, and guidelines governing the installation and operation of the equipment and the use of the Site. Lessor shall not knowingly enter into any agreements which would allow any other use of the Site which use will knowingly cause interference with Lessee's use. In the event of such interference, Lessor shall take all reasonable steps to ensure that the party causing the interference takes appropriate action to correct and eliminate the interference to the extent that such steps do not cause Lessor additional financial liability or administrative expense. Should such interference continue after Lessor's attempts to eliminate the interference, Lessee may (i) take such legal or equitable action as lessee may deem appropriate to enforce its rights under this Lease and (ii) terminate this Lease, either immediately or after Lessee's efforts to obtain such enforcement, in either case without further obligation or liability whatsoever to Lessor hereunder. Interference shall mean degradation, interruption or blockage of signals transmitted or received on the Site by either party or acts which prevent or obstruct either party from operating or maintaining its equipment on the Site. Lessee agrees that, upon request, it will provide technical information to any other prospective tenants who may wish to install communications equipment on the Site, which information shall include the nature of the equipment, operating frequencies and power output, and equipment locations utilized by Lessee.

C. Lessor agrees that it will include provisions substantially similar to this Section in all other agreements it may enter into for the use of the Site for communications transmission or reception.

D. Upon discovery by either Lessor or Lessee of interference, damage or other emergency conditions in or affecting equipment belonging to either party, the party discovering the emergency condition shall notify the other by telephone at the 24-hour response numbers.

E. In the event Lessee’s equipment causes such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon receipt of notification of the interference. Lessee shall be obligated to respond to the problem of interference immediately from Lessor and if the interference is not corrected the equipment causing such interference shall be immediately removed from the Leased Premises.
12. DEFAULT:
   A. Each of the following shall be an event of default by Lessee under this Lease:
      (1) If the Rent, any installment, or Additional Rent thereof shall remain unpaid after it becomes due and payable, and is not paid within five (5) days after Lessor gives notice of non-payment. Notwithstanding the foregoing, however, if Lessee fails to pay Rent or Additional Rent when due three (3) times during any twelve-month period after the first year of the Term, then Lessee shall not be entitled to any notice or cure period;
      (2) If Lessee fails or neglects to keep and perform any one of the terms of Lessee's obligations, responsibilities and requirements pursuant to this Lease and such failure or neglect continues for more than five (5) days after Lessor gives written notice to Lessee specifying the default;
      (3) If Lessee fails to provide Lessor, in writing, with a working 24-hour response telephone number(s) or if Lessee fails to report, in writing, any changes to such telephone number;
      (4) If Lessee abandons the Leased Premises; and
      (5) If Lessee files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved or makes an assignment for the benefit of creditors, or if involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of Lessee are instituted against Lessee, or a receiver or trustee is appointed for all or substantially all of Lessee's property, and the proceeding is not dismissed or the receivership or trusteeship is not vacated within sixty (60) days after institution or appointment.
   B. In the case of any event of default, Lessor shall have the following remedies, together with any additional rights and remedies that may be available at law or in equity:
      (1) Give Lessee written notice of Lessor's intention to terminate this Lease on date specified in the notice, and, on the date specified in the notice, Lessee's right to possession of the Leased Premises (which Term as used in this Section shall be deemed to include the Base Station) will cease and this Lease will be terminated as if the date fixed in the notice were the end of the Term. If this Lease is terminated pursuant to the provisions of this subparagraph, then Lessee will remain liable to Lessor for damages in an amount equal to the Rent and other sums that would have been owing by Lessee under this Lease for the balance of the Term if this Lease had not been terminated, less the net proceeds, if any, of any reletting of the Leased Premises by Lessor subsequent to the termination, after deducting all Lessor's expenses in connection with reletting. Lessor will be entitled to collect damages from Lessee monthly on the days in which the Rent and other amounts would have been payable under this Lease if this Lease had not been terminated, and Lessor will be entitled to receive damages from Lessee on each such day. Alternatively, at the option of Lessor, if this Lease is terminated Lessor will be entitled to recover from Lessee:
         (a) the worth at the time of award of the unpaid Rent or Additional Rent which had been earned at the time of termination; plus
         (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of Rent loss that Lessee proves could reasonably have been avoided; plus
         (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term of this Lease after the time of award exceeds the amount of Rent loss that Lessee proves could reasonably be avoided; plus
         (d) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result from the failure.

      The "worth at the time of award" of the amount referred to in clauses (1) and (2) is computed by allowing interest at the highest rate permitted by law. The "worth at the time of award" of the amount referred to in clause (3) is computed by discounting the amount at the discount rate of the Federal Reserve Bank of Atlanta at the time of award.

      (2) Without demand or notice, re-enter and take possession of the Leased Premises or any part thereof; repossess the Leased Premises as of the Lessor's former estate; expel the Lessee from the Leased Premises and those claiming through or under Lessee; and remove the effects of both or either, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or preceding breach of covenants or conditions. If Lessor elects to re-enter as provided in this subparagraph, or if Lessor takes possession of the Leased Premises pursuant to legal proceedings or pursuant to any notice provided by law, then Lessor may, from time to

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time, without terminating this Lease, relet the Leased Premises or any part of the Leased Premises, either alone or in conjunction with other portions of the Site, in Lessor’s or Lessee’s name but for the account of Lessee, for the Term or Renewal Terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such terms and conditions (which may include concessions or free Rent, and the alteration and repair of the Leased Premises) as Lessor, in its subjective discretion, may determine. Lessor may collect and receive the Rents for the Leased Premises. Lessor shall not be responsible or liable for any failure to relet the Leased Premises, or any part of the Leased Premises, or for any failure to collect any Rent due upon the reletting. No re-entry or taking possession of the Leased Premises by Lessor will be construed as an election on Lessor’s part to terminate this Lease unless a written notice of termination is given to Lessee. No notice from Lessor under this Lease or under a forcible entry and detainer statute or similar law will constitute an election by Lessor to terminate this Lease unless the notice specifically says so. Lessor reserves the right following any re-entry or reletting, or both, to exercise its right to terminate this Lease by giving Lessee written notice, and in that event the Lease will terminate as specified in the notice. If Lessor elects to take possession of the Leased Premises according to this subparagraph without terminating this Lease, then Lessee will pay Lessor the Rent and other sums which would be payable under this Lease if the repossession had not occurred, less the net proceeds, if any, of any reletting of the Leased Premises after deducting all of Lessor’s expenses incurred in connection with the reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, tenant concessions, attorneys’ fees, expenses of employees, alteration, remodeling and repair costs, and expenses of preparation for the reletting. If, in connection with any reletting, the new lease Term extends beyond the existing Term, or the premises covered by the reletting include areas that are not part of the Leased Premises, a fair apportionment of the Rent received from the reletting and the expenses incurred in connection with the reletting will be made in determining the net proceeds received from reletting. In addition, in determining the net proceeds from reletting, any Rent concessions will be apportioned over the Term of the new lease. Lessee will pay the amounts to Lessor monthly on the days in which the Rent and all other amounts owing under this Lease would have been payable if possession had not been retaken, and Lessor will be entitled to receive the Rent and other amounts from Lessee on each such day.

C. If Lessor files an action to enforce any obligation of Lessee contained in this Lease or for breach of any covenant or condition, then Lessee shall pay Lessor’s reasonable attorney’s fees for the services of Lessor’s attorney in the action and court costs, all fees to be fixed by the court, provided Lessor prevails in such action.

D. If Lessor shall fail or neglect to keep and perform each and every one of the covenants, conditions and agreements contained herein, and such failure or neglect is not remedied within thirty (30) days after written notice from Lessee specifying the default, then Lessee may pursue any legal remedies available to Lessee, including the right to terminate this Lease.

13. INSURANCE REQUIREMENTS:
A. Lessor and Lessee agree that their respective obligations regarding damage, loss or injury to persons and property regarding the Leased Premises, and the Lessees occupation and use thereof, shall be governed by applicable law. Prior to the Effective Date and at all times during the Term and all Renewal Terms, Lessee shall obtain and maintain the following minimum insurance coverage protecting its respective insurable interests in the Leased Premises.
B. All insurance required will be issued by insurers licensed in Virginia, or approved by the Commonwealth of Virginia as qualified surplus lines insurers, or otherwise agreed to by the parties in writing. All insurers will have a minimum rating equivalent to a rating of A-IX by A.M. Best.
C. Required insurance may be subject to reasonable deductibles acceptable to the Lessor, in its sole discretion.
D. Failure to obtain and maintain any required insurance shall not relieve or excuse the parties or their surety, or their bond, from any obligations or liability under this Lease. The insurance requirements shall not be construed to conflict with or limit the obligations stated elsewhere in this Lease.
E. The Lessee shall provide evidence of coverage no later than the Commencement Date of this Lease. Lessor, its elected and appointed officers and officials, employees, and Lessor’s licensees shall be named as additional insureds by endorsement to the commercial general liability (including property liability), comprehensive automobile liability, and umbrella/excess liability insurance policies.
F. Notwithstanding any provision of this Lease to the contrary, no provision of this Lease shall be interpreted or construed to be a provision by which the Lessor, explicitly or implicitly, agrees to indemnify or hold harmless the Lessee or any third party or parties from liability of whatever nature.

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(1) **Lessee's Insurance.** At all times during the Term, and any Renewal Term, Lessee shall maintain a policy of commercial general liability insurance insuring the Lessor and Lessee against liability arising out of the use, operation or maintenance of the Leased Premises and the installation, repair, maintenance, operation, replacement and removal of the Base Station and Leased Premises. The insurance will be maintained for personal injury and property damage liability, adequate to protect Lessor against liability for injury or death of any person in connection with the use, operation and condition of the Leased Premises, and to insure the performance of Lessee’s indemnity set forth in Section 10 of this Lease. All property of the Lessee, its employees, agents, contractors and sub-contractors, business invitees, licensees, customers, clients, guests or trespassers, in and on the Leased Premises shall be and remain at the sole risk of the Lessee. Lessor shall not be liable to any person or entity for any damage to, or loss of such personal property arising from any act of God or any persons, nor from any other reason, nor shall the Lessor be liable for the interruption or loss to Lessee’s business arising from any of the above described acts or causes. The Lessor shall not be liable for any personal injury to the Lessee, its employees, agents, business invitees, contractors and sub-contractors, licensees, customers, clients, family members, guests or trespassers arising from the use, occupancy and condition of the Leased Premises except to the extent solely caused by Lessor or Lessor's agents, contractors, invitees or employees' negligence or willful misconduct.

During the Term, and any Renewal Term, Lessee shall maintain workers’ compensation and employers’ liability insurance, and such other insurance relating to the installation, repair, maintenance, operation, replacement and removal of the Base Station, and the ownership, use, occupancy or maintenance of the Leased Premises as Lessor may reasonably require. The limits of the insurance shall not limit the liability of Lessee. If the Lessee fails to maintain the required insurance the Lessor may, but does not have to, maintain the insurance at Lessee’s expense. The policy shall expressly provide that it is not subject to invalidation of the Lessor’s interest by reason of any act or omission on the part of Lessee.

Insurance carried by Lessee shall be with insurance companies acceptable to the Lessor. Prior to the Effective Date of this Lease, the Lessee shall deliver to the Lessor a certificate evidencing the existence and amounts of the insurance. No policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to the Lessor. Lessee shall, at least thirty (30) days prior to the expiration of the policies, furnish Lessor with renewals or “binders” for the policies, or Lessor may order the required insurance and charge the cost to Lessee.

Lessee shall not do anything or permit anything to be done or any hazardous condition to exist ("Increased Risk") which shall invalidate or cause the cancellation of the insurance policies carried by Lessee. If Lessee does or permits any Increased Risk which causes an increase in the cost of insurance policies, then Lessee shall reimburse Lessor for additional premiums attributable to any act, omission or operation of Lessee causing the increase in the premiums. Payment of additional premiums will not excuse Lessee from termination or removing the Increased Risk unless Lessee agrees in writing. Absent agreement, Lessee shall promptly terminate or remove the Increased Risk.

Lessor, its elected and appointed officers, officials, employees and agents shall be named as “additional insureds” on Lessee’s liability policies. It shall be stated on the Insurance Certificate that this coverage “is primary to all other coverage the Lessor may possess.”

All insurance required by this Section shall be written by insurers, in such forms, and shall contain such terms, as Lessor may reasonably require. The Certificate of Insurance must be submitted to the attention of the Real Estate Bureau Chief, Arlington County Real Estate Bureau, 2100 Clarendon Boulevard, Suite 900, Arlington, VA 22201.

Lessee waives all rights to recover against Lessor for any loss or damage arising from any cause covered by any insurance required to be carried by Lessee pursuant to this Section, or any other insurance actually carried by Lessee. Lessee will request its insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Leased Premises.

If an “ACCORD” Insurance Certificate form is used by the Lessee’s insurance agent, then the words, “endeavor to” and “...but failure to mail such notice shall impose no obligation or liability of any kind upon the company” in the “Cancellation” paragraph of the form shall be deleted or crossed out.

(a) Lessee agrees to carry and maintain $2,000,000 all-risk property insurance (with replacement cost coverage) covering the Building and Lessor's Property therein in an amount required by its insurance company to avoid the application of any coinsurance provision. Lessee hereby waives its right of recovery against Lessor and releases Lessor from any and all liabilities, claims and losses for which Lessor may otherwise be liable to the extent Lessee is covered by property insurance therefor. Lessee shall secure a waiver of
subrogation endorsement from its insurance carrier. Lessor shall carry and maintain commercial general liability insurance (but in no event less than the limits required of Lessee pursuant to this Section).

(b) Property insurance – insuring against fire and lightning, extended coverage, rent, vandalism and such other perils as are usually available under a “special coverage form”, insuring 100% of the current replacement cost of the Building, including structures, Building service equipment, fixtures and supplies related to the Building, with a deductible not to exceed $100,000. There shall be no coinsurance provision. If the Property direct damage coverage is provided by a different insurance company than the machinery coverage, each policy shall include a joint loss agreement, loss adjustment agreement, or similar agreement to assure timely resolution of claims.

c) Commercial General Liability insurance – providing coverage against claims or losses resulting from bodily injury, advertising injury, personal injury and property damage caused by or arising out of the operations under this Lease, and without any right of contribution from any other self-insurance plan or program in insurance carried by any of the parties to this Lease. Such insurance will include coverage for premises operations, products, completed operations, broad form contractual liability, and broad form property damage liability. Such insurance will provide limits of at least $1,000,000 per occurrence and $2,000,000 in the aggregate annually, with no deductible for bodily injury, personal injury and property damage.

d) Umbrella/Excess Liability insurance – providing coverage against claims and losses resulting from bodily injury, personal injury or property damage in excess of the limits of insurance specified above for commercial general liability and comprehensive automobile liability. The limits of this umbrella/excess liability insurance will be sufficient to provide total coverage of at least $2,000,000, including the underlying primary limits. Any self-insured retention applicable to this umbrella/excess insurance will require the Lessee to provide to the Lessor, satisfactory evidence of arrangements for adequate financing of this exposure.

e) The policy must include a provision stating that coverage may not be changed or cancelled by the insurer without a sixty (60) day advance written notice provision to the Lessor at its Notification address.

(f) Lessor, its elected and appointed officers and officials and employees shall be named as additional insureds by endorsement to the commercial general liability (including property liability) and umbrella/excess liability insurance policies.

(2) Lessor’s Insurance. Lessor shall maintain at all times during the Term the self insurance program specified in the Self Insurance Resolution attached hereto as Exhibit C.

14. HAZARDOUS MATERIALS:

A. Lessee shall not cause or permit any hazardous or toxic wastes, substances or materials (collectively, "Hazardous Materials") to be used, generated, stored or disposed of on, under or about, or transported to or from, the Leased Premises (collectively "Hazardous Materials Activities") without first receiving Lessor’s prior written consent, which may be withheld for any reason whatsoever and which may be revoked at any time, and then only in compliance (which shall be at Lessee’s sole cost and expense) with all applicable legal requirements and using all necessary and appropriate precautions. Lessee shall indemnify, defend with counsel acceptable to Lessor and hold Lessor, its elected and appointed officials, officers, employees and agents harmless from and against any claims, damages, costs and liabilities, including court costs and legal fees, arising out of Lessee’s Hazardous Materials Activities on, under or about the Leased Premises, regardless of whether or not Lessor has approved Lessee’s Hazardous Materials Activities. For the purposes of this Lease, Hazardous Materials shall include but not be limited to oil, radioactive materials, PCBs, and substances defined as “hazardous substances” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq.; and Resources Conservation and Recovery Act, 42 U.S.C. Sec. 9601 et seq., and those substances defined as “hazardous wastes” in the regulations adopted and publications promulgated pursuant to said laws. Subject to the foregoing provisions of this Section, Lessee shall, prior to the Commencement Date, submit to Lessor for Lessor’s review and approval, a list of Hazardous Materials Activities, including types and quantities, which list to the extent approved by Lessor shall be attached hereto as Exhibit D. Prior to conducting any other Hazardous Materials Activities, Lessor shall update such list as necessary for continued accuracy. Lessor shall also provide Lessee with a copy of any Hazardous Materials inventory statement required by any applicable legal requirements. If Lessee’s activities violate or create a risk of violation of any legal requirements shall cease such activities immediately upon notice from Lessor. Lessor, Lessor’s representatives and employees may enter the Leased Premises at any time during the Term for any purpose, including, but not limited to, the purposes to inspect Lessee’s compliance herewith, and may disclose any

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violation of legal requirements to any governmental agency with jurisdiction. The provisions of this Section shall survive termination or expiration of the Term of this Lease.

B. Lessor acknowledges that Lessee’s equipment cabinets shall contain batteries for back-up power and that, provided Lessee’s use of same is in compliance with this provision, the presence of such batteries does not violate this provision if such batteries comply with all laws, regulations and ordinances relating to Hazardous Materials.

C. Lessee shall immediately notify Lessor and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Leased Premises or compliance with environmental laws. Lessee shall promptly cure and have dismissed with prejudice any of those actions and proceedings to the satisfaction of Lessor. Lessee shall keep the Leased Premises free of any lien imposed pursuant to any environmental laws.

D. Lessor shall have the right at all times to conduct environmental audits of the Leased Premises, and Lessee shall cooperate in the conduct of those audits. The audits will be conducted by a consultant of Lessor’s choosing, and if any Hazardous Materials generated, stored, transported or released by Lessee are detected or if a violation of any of the representations or covenants in this Section is discovered, the fees and expenses of such consultant will be borne by Lessee.

E. If Lessee fails to comply with any of the foregoing representations and covenants, Lessor may cause the removal (or other cleanup acceptable to Lessor) of any Hazardous Materials from the Leased Premises. The costs of removing Hazardous Materials and any other cleanup (including transportation and storage costs) shall be reimbursed by Lessee promptly after Lessor’s demand and will be Additional Rent under this Lease. Lessee will give Lessor access to the Leased Premises to remove or otherwise clean up any Hazardous Materials. Lessor, however, has no affirmative obligation to remove or otherwise clean-up any Hazardous Materials, and this Lease will not be construed as creating any such obligation.

15. NO PARTNERSHIP:

Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Lessor and Lessee, or to create any other relationship between the parties hereto other than that of lessor and lessee.

16. NOTICES:

Except as otherwise specifically provided herein, any notice required or permitted to be given under this Lease shall be given in writing and shall be deemed given:

A. On the delivery date, as certified by Airborne Express or Federal Express; or
B. If delivered by hand, on the date of delivery.
C. All notices hereunder shall be addressed to the parties as follows:

To Lessor:

THE COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA
2100 Clarendon Boulevard
Arlington, Virginia 22201
Attn: County Manager

With a copy to the following (which shall not of itself constitute notice to Lessor): Arlington County, VA
Department of Environmental Services, Real Estate Bureau
2100 Clarendon Boulevard
Suite 900
Arlington, Virginia 22201
Attn: Real Estate Bureau Chief

And to Lessee as follows:

Omnipoint Communication
12920 SE 38th Street
Bellevue, WA 98006
Attn: Leasing Department

With a copy to:

Omnipoint Communication
360 Newark Pompton Tpk
Wayne, NJ 07470
Attn: Lease Management Department

Omnipoint Communication
4 Sylvan Way

Approval of the Deed of Lease for Omnipoint
2400 Wakefield St., Arlington, VA
 approval of the deed of lease for Omnipoint
2400 Wakefield St., Arlington, VA

Parsippany, NJ 07454
Attn: Lease Management Department

C. Or to such other addresses as either of the parties may designate from time to time by giving written notice as herein required.

17. ACCESS AND INSPECTIONS:

After providing Lessor with a twenty-four (24) hour advance notice, coordinated with the Water Distribution Supervisor, Department of Environmental Services, Water, Sewer and Streets Bureau, 4202 28th Street South, Arlington, Virginia 22206, [telephone number 703-228-6555], Lessee shall have full access to the Leased Premises and the Base Station during Lessor’s normal business hours for operating, repairing, removing, installing and otherwise working with communications equipment owned by Lessee or any third party permitted to use the Base Station pursuant to this Lease. In addition, Lessor shall have the right to enter the Leased Premises or any part thereof at any time, for any purpose, and in a manner so as not to interfere more than reasonably necessary with Lessee’s use of the Base Station. The aforesaid procedures are subject to change, as deemed necessary by Lessor.

18. QUIET ENJOYMENT:

Lessee shall be entitled to use and occupy the Leased Premises during the Term hereof for the purposes herein permitted and subject to the terms and conditions herein contained, without molestation or interference by Lessor in its sole discretion.

19. DAMAGE AND DESTRUCTION:

A. If the Leased Premises or the Base Station are damaged or destroyed by reason of fire or any other cause, or if damage to the Leased Premises or the Base Station causes damage to portions of the Site or other property of Lessor, Lessee shall immediately notify Lessor and Lessee shall promptly repair or rebuild the Base Station, incidental improvements, and other damage to Lessor’s property to its condition immediately prior to such damage, at Lessee’s sole expense.

B. Monthly Rent and Additional Rent will not abate pending the repairs or rebuilding except to the extent to which Lessor receives a net sum as proceeds of any rental insurance.

C. If at any time the Leased Premises, Equipment, Equipment Platform or Base Station are damaged by fire or otherwise that the cost of restoration exceeds fifty percent (50%) of the replacement value of the Base Station immediately prior to the damage, Lessee may, within thirty (30) days after such damage, give notice of its election to terminate this Lease and, subject to the further provisions of this Section, this Lease will cease on the tenth (10th) day after the delivery of that notice. Monthly Rent will be apportioned and paid to the time of termination. If this Lease is so terminated, Lessor shall have no obligation to repair or rebuild and Lessee shall be obligated to remove its Equipment, Equipment Platform and Base Station and repair any damage to the Site at no cost to Lessor in accordance with Section 4B.

20. CONDEMNATION:

If all or any part of the Leased Premises is taken by eminent domain, and if said taking renders the Leased Premises unusable for its intended purpose hereunder, then, at Lessor’s or Lessee’s option, this Lease may be terminated in accordance with Section 8.D. and there will be no further payment of Rents or Additional Rent, except that which may have been due and payable at the time of said taking or sale. In the event of a partial taking, and Lessee, subject to mutual agreement with Lessor, wishes to maintain its operation, Lessee may continue to use and occupy the Leased Premises under the terms and conditions hereunder, provided Lessor’s and Lessee’s obligations under this Lease are not otherwise altered, and provided Lessee, at its sole cost, restores so much of the Leased Premises as remains to a condition substantially suitable for the purposes for which it was used immediately before the taking. In connection with any taking subject to this Section, Lessee may prosecute its own claim by separate proceedings against the condemning authority for damages legally due to it (such as the loss of fixtures which Lessee was entitled to remove and moving expenses) only so long as Lessee’s award does not diminish or otherwise adversely affect Lessor’s award.

21. MISCELLANEOUS:

This Lease, including Exhibit A, Exhibit A-1, Exhibit A-2, Exhibit B, Exhibit B-1, Exhibit B-2, Exhibit C and Exhibit D, contain the entire agreement between the parties and may not be amended, altered or otherwise changed except by a subsequent writing signed by the parties to this Lease. The invalidation of any one of the terms or provisions of this Lease by judgment or court order shall in no way affect any of the other terms of this Lease.

Approval of the Deed of Lease for Omnipoint
2400 Wakefield St., Arlington, VA
which shall remain in full force and effect. Lessee agrees to execute any additional documents necessary to further implement the purposes and intent of this Lease. Time is of the essence with respect to each provision of this Lease. The Recitals are hereby incorporated into this Lease.

22. **LESSOR’S RIGHT TO PERFORM:**

   If Lessee fails to perform any obligations under this Lease, then Lessor shall be entitled, but shall not be obligated, to perform any or all of such obligations and any cost of performing same shall be payable by Lessee to Lessor upon demand as Additional Rent hereunder. Any amounts so incurred by Lessor and not repaid by Lessee within ten (10) days after demand shall bear interest at a rate of five percent (5%) per annum.

23. **HOLDING OVER:**

   If Lessee remains in possession of the Leased Premises after the end of the Term or any Renewal Term, then Lessee will occupy the Leased Premises as a lessee from month to month, subject to all conditions, provisions, and obligations of this Lease in effect on the last day of the Term, except Lessee shall pay Lessor 150% of the amount of Rent then applicable prorated on a per diem basis for each day that the Lessee shall retain the Leased Premises or any part thereof after expiration or earlier termination of this Lease. The foregoing provisions shall not serve as permission for Lessee to holdover, nor serve to extend the Term (although Lessee shall remain bound to comply with all provisions of this Lease until Lessee vacates the Leased Premises) and Lessee shall have the right at any time thereafter to enter and possess the premises and remove all property and persons therefrom in accordance with the applicable legal process. Lessee shall be considered a Lessee at sufferance during such holdover period. No acceptance by Lessor of any Rent during or for any period following the expiration of termination of this Lease shall operate or be construed as an extension or renewal of the lease Term. The holding over period can be cancelled by either party by providing a thirty (30) day advance written notice or such lesser time period as may be permitted by law.

24. **NO WAIVER:**

   No waiver of any condition or agreement in this Lease by either Lessor or Lessee shall imply or constitute a further waiver by such party of the same or any other condition or agreement. No act or thing done by Lessor during the Term of this Lease shall be deemed an acceptance of surrender of the Leased Premises, and no agreement to accept the surrender shall be valid unless in writing signed by Lessor. The delivery of Lessee’s keys to Lessor shall not constitute a termination of this Lease unless Lessor has entered into a written agreement to that effect. No payment by Lessee, or receipt from Lessor, of a lesser amount than the Rent, Additional Rent, or other charges stipulated in this Lease will be deemed to be anything other than a payment on account of the earliest stipulated Rent. No endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed an accord and satisfaction. Lessor will accept the check for payment without prejudice to Lessor’s right to recover the balance of the Rent or to pursue any other remedy available to Lessor.

25. **AUTHORITY:**

   Lessee warrants to Lessor that the persons executing this Lease on behalf of Lessee is authorized to do so, and that Lessee is a duly organized and existing limited liability corporation under the law, that Lessee is authorized to do business in the Commonwealth of Virginia, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Prior to consideration of this Lease by the Lessor, Lessee shall provide to Lessor evidence satisfactory to Lessor confirming these representations.

26. **LESSOR’S OBLIGATIONS SUBJECT TO APPROPRIATION OF FUNDS:**

   A. All of Lessor’s obligations under this Lease are subject to appropriation of funds by the County Board of Arlington County, Virginia for the specific purpose of satisfying the payment and performance of such obligations. In the event that funds are not appropriated for the specific purpose of satisfying the obligations of the Lessor under this Lease, then this Lease shall become null and void and shall terminate on the last day of the Lessor’s fiscal year for which appropriations were made without any termination fee or other liability whatsoever to the Lessor.

   B. It is agreed by both Lessor and Lessee that, notwithstanding any provision in this Lease to the contrary, this clause shall supersede any and all obligations imposed by any other provision of this Lease. No subsequent Amendment of this Lease shall compromise the full legal implication of this section between the parties hereto or their respective successors or assigns.

27. **NO WAIVER OF SOVEREIGN IMMUNITY BY LANDLORD:**

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Notwithstanding any other provisions of this Lease to the contrary, nothing in this Lease nor any action taken by Lessor pursuant to this Lease nor any document which arises out of this Lease shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Lessor, or of its elected and appointed officials, officers and employees.

28. NO RIGHTS IN THIRD PARTIES:

The parties hereto mutually agree that no provision of this Lease shall create in the public, or in any person or entity other than those signing this Lease as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Lease or otherwise.

29. ASSIGNMENT AND SUBLETTING:

Lessee shall not assign or transfer this Lease or any portion of the Leased Premises without the prior written consent of Lessor. However, the Lessee shall first provide Lessor with a thirty (30) day advance written notice, along with legal documentation, then the Lessor, in its sole discretion, may provide written consent to permit the Lessee to assign or transfer its rights under this Lease in whole or in part to: (a) any subsidiary entity controlling, controlled by or under common control with Lessee; or (b) any entity acquiring substantially all of the assets of Lessee.

30. RATIFICATION OF LEASE BY LESSOR:

Lessee must execute and deliver this Lease to Lessor at least three (3) weeks prior to the scheduled Board Meeting, which the County Board of Arlington County, Virginia is scheduled to consider this Lease. This Lease shall not become effective unless and until the County Board approves this Lease after it is first executed by Lessee. If this Lease is not approved by the County Board, then no liability whatsoever shall accrue to the Lessor or Lessee and the Lessor and Lessee shall have no obligations whatsoever to each other.

31. GOVERNING LAW AND JURISDICTION:

The laws of the Commonwealth of Virginia shall govern and construe the validity, performance and enforcement of this Lease. Any action brought to enforce or interpret this Lease shall be brought in the Circuit Court of Arlington County, Virginia, which shall be the proper forum, for any dispute arising hereunder, and in no other court. In the event of any dispute arising from Lessee’s default hereunder, or any other covenant, condition or obligation hereunder, Lessee shall be obligated to pay Lessor for all court costs and reasonable attorneys’ fees incurred by Lessor to enforce or defend its rights hereunder or at law.

32. BINDING EFFECT:

This Lease shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

33. RECITALS: The Recitals are incorporated into this Lease.

IN WITNESS WHEREOF, the parties hereto execute this Lease in two parts on the dates indicated.

LESSOR: THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate

Witness:_________________________ By:_________________________
Printed Name:________________________
Title:_________________________
Date:_________________________

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2400 Wakefield St., Arlington, VA
LESSEE: OMNIPoint COMMUNICATIONS
CAP OPERATIONS, a Delaware
Limited Liability Company

By: __________________________________________
Printed Name: _________________________________
Title: _________________________________
Date: __________________________________________

STATE OF _____________________________
CITY/COUNTY OF _______________________

The foregoing instrument was acknowledged before me this ____ day of _________________________,
2005, by ____________________________________________.

_________________________________________
Notary Public

My Commission expires: _______________________

Approved as to form:

_________________________________________
County Attorney
Exhibit A

Site Plan showing the property boundaries, the locations of the telecommunications facility, support structure and other existing structures

Approval of the Deed of Lease for Omnipoint
2400 Wakefield St., Arlington, VA
Exhibit A-1
Aerial Photograph of the Site
Interim Guidelines for Placement of Telecommunications Facilities on County-Owned Property

Adopted May 1997
EXHIBIT A-2

INTERIM GUIDELINES FOR PLACEMENT OF TELECOMMUNICATIONS FACILITIES ON COUNTY-OWNED PROPERTIES

ADOPTED
MAY 17, 1997

1. A. Telecommunications facilities, including monopoles and antennas, may be permitted on County-owned properties zoned "S-3A" Special Districts and "P-S" Public Service districts and designated "Public" or "Government and Community Facilities" on the General Land Use Plan if there is no technically suitable, available site on an existing structure on privately owned land within the search area for the needed cell site, and if the proposed telecommunications facility is not inconsistent with current of possible future County facilities or functions (including, but not limited to, buildings, utilities, and park and recreational facilities) on those properties.

B. If the unavailability of suitable private property leads to a consideration of County-owned property, the County will give preference to placement of telecommunications facilities on County-owned sites that already have structures, electric and telephone service and road access.

C. County owned properties classified as Natural Resource Open Space Nature Preserves, and Waterfowl/Wildlife sanctuaries generally will not be available for telecommunications facilities.

D. It is the intent of the County that telecommunications facilities placed on County-owned property be as small and unobtrusive as reasonably possible, consistent with the requirements of the law.

2. Any use of County-owned property under these guidelines will require approval of a special exception use permit by the County Board pursuant to Section 1A.10.B of the Arlington County Zoning Ordinance. In granting a special exception use permit, the County Board may impose conditions to the extent that they conclude such conditions are necessary to minimize any adverse effect of the proposed telecommunications facilities on adjoining properties.

3. An application for a special exception use permit pursuant to these guidelines must include the following:

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EXHIBIT A-2

A. a site plan drawn to scale showing the property boundaries, telecommunications facility location, support structure location, any existing structures or accessory uses, utilities, access, parking, fences, landscape plan, and existing land uses around the site, including all adjacent structures on adjoining properties;

B. a written description of the facility design and a diagram of the cross-section of the facility and any support structures;

C. a list of all radio frequencies [transmit and receive] that are planned to be utilized at the site (including proposed output levels) by the applicant and an engineering study to establish that the frequencies will not cause any interference with any County communications systems. If it is determined that there would be no possible interference with the County’s Emergency Communications, then the County Manager or his designee may waive this guideline.

D. for new facilities, a letter of intent committing the applicant and all successors in interest to allow shared use of the facility, and to design and construct the facility accordingly, subject to reasonable terms and conditions for co-location;

E. for new facilities, a landscape plan consisting of the following:

(1) perimeter site landscaping consisting of a mix of evergreen trees (such as Scotch Pines, White Pines, Hemlocks or Leyland Cypress) or flowering shrubs at least four (4) feet high when planted, with a minimum ultimate height of eight (8) to ten (10) feet, and spaced not more than seven (7) feet apart.

(2) at least one row of evergreen shrubs or trees within twenty (20) feet of the base of the monopole, and enclosure by a black or green coated vinyl fence within eight (8) feet of the base.

(3) screening of any support structure of an eight foot fence or evergreen hedge with an ultimate minimum height of eight (8) to ten (10) feet and planted height of four (4) feet;

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EXHIBIT A-2

(4) preservation of existing on site vegetation to the maximum extent possible.

F. A map indicating the proposed cell site's coverage/service area and identification of any gray areas.

4. Any monopole proposed under these guidelines must meet the following criteria:

A. The monopole must be camouflaged and be designed to be aesthetically and architecturally compatible with the surrounding environment.

B. The facility should be so located on the site that when it is viewed from residential areas and the public right-of-way, it is neither visually solitary nor the most prominent feature of the site.

C. The related unmanned support cabinet structure must be aesthetically and architecturally compatible with the surrounding environment. The use of residentially compatible materials such as wood, brick or stucco will be required. Metal exteriors will not be permitted for an accessory building. All support cabinet functions must be located in an enclosed structure.

D. Only one (1) cabinet structure per site is permitted. The cabinet structure shall be single-story with a peaked or pitched roof and no larger than 500 square feet in area and must be located generally within fifteen (15) feet of the base of the pole, although aesthetic considerations at some sites may require placement of the structure at greater distances from the base of the pole.

E. The base of the monopole and any supporting structure must be screened from view of residential properties, and from public right-of-way and active park land, by a fence or hedge of adequate height and density.

F. Unless otherwise required by the Federal Aviation Administration of the Federal Communications Commission, the monopole shall not be illuminated. If a pole is required to be illuminated, the illumination will be effectively shielded from neighboring residential properties.
EXHIBIT A-2

G. The height of any monopole shall not be more than is reasonably necessary to achieve desired coverage and to permit co-location.

H. The appropriate placement of the pole/antennae and support structure on a site, and the setback from the property boundary, should reflect and balance concerns of safety, security, and aesthetics. In general, any monopole must be located so that the distance from the base of the pole to any adjoining property line or right-of-way is at least the same distance as the pole’s height. Accessory building structure should be located a minimum of fifty (50) feet from any adjoining property line. In cases where a proposed pole location is adjoining or abutting a commercial/industrial zone, consideration will be given to reduce the setback of the pole to 50% of its height and a setback of 25 feet for an accessory building.

I. For new facilities or utilities, utilities serving the facility shall be undergrounded from the perimeter of the County-owned property to the support structure and from the support structure to the pole/antennae in all instances in which new “telephone” poles or other constructions would be required to support the utilities lines.

J. For historic districts, the National Historic Standards should be taken into consideration in locating telecommunications facilities.

5. If a facility is to be located on an existing structure, including Lee Pumping Station water tower, the applicant must:
   
   A. demonstrate that the facility is physically and structurally compatible with the existing structure;
   
   B. comply with the requirements set forth in paragraph 4 above, to the extent applicable and relevant.

6. All plans submitted in connection with an application submitted under these guidelines, including those relating to landscaping and location of equipment, shall be subject to approval of the County Manager or his designee.

7. Any use of County-owned property under these guidelines will require execution by the applicant of a lease agreement with the County acceptable to the County Board. Lease agreements for telecommunications facilities will address issues including, but not limited to, access for maintenance, removal on cessation of use, bonding, availability and charges for shared use.
compensation to the County for use of public property, facility maintenance and security, and reimbursement of costs incurred by the County.

8. Any facility approved under these guidelines must comply with Federal Communications Commission regulations relating to radio frequency emissions. The frequency and method of demonstrating compliance will be addressed in each case by either the use permit condition or in the terms of the lease agreement between the County and the applicant. Compliance information will be made available to neighboring civic associations and the public.

9. Applicants shall notify all adjacent civic associations, homeowners associations, condominium associations and other appropriate groups as the desirability for public participation may dictate before the use permit application is filed. A community liaison must be established by the applicant with all adjacent civic associations immediately following County Board approval of the use permit.

10. An application submitted pursuant to these guidelines may be rejected if it is not consistent with safety requirements, or interferes with other uses of the property.

11. Upon showing of special circumstances, the County Board can depart from or modify the above guidelines and conditions.
Approval of the Deed of Lease for Omnipoint
2400 Wakefield St., Arlington, VA
Exhibit B-1
List of Equipment

The following is a list of Lessee's Equipment that is installed on the Leased Premises as of the Commencement Date in the locations shown on Exhibits B and B-2 and labeled as the Existing Layout:

- Cabinets
- Battery
- Panel Board

6 Antennas (which are shared with APC Equipment & Realty Company, LLC d/b/a Sprint) on the Water Tank.
Approval of the Deed of Lease for Omnipoint
2400 Wakefield St., Arlington, VA
EXHIBIT C

LIABILITY SELF-INSURANCE RESOLUTION

I. General Provisions and Definitions

A. Except as otherwise provided in this Resolution, Arlington County shall pay the costs and expenses incident to liability, including those for settlement, suit, or satisfaction of judgment, arising from the conduct of covered persons in the discharge of their duties; provided, however, that Arlington County shall not pay punitive damages on behalf of any covered person, and Arlington County shall not pay more than $1,000,000 for any claim or action against a covered person.

B. Notwithstanding any other provisions in this Resolution, Arlington County shall not pay in any fiscal year more than the amount available in the self-insurance reserve fund or one million dollars ($1,000,000); provided, however, that nothing in this Resolution shall limit the County Board’s authority under Va. Code Sections 15.1-19.2 and 15.1-19.2:1.

C. The County will pay, in uninsured and underinsured motorist coverage all sums which the covered person shall be legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle because of bodily injury sustained by the covered person or property damage, caused by accident and arising out of the ownership, maintenance or use of such motor vehicle as set forth below:

1. Under General Provisions and Definitions I(C), the County’s total limit of liability is twenty-five thousand dollars ($25,000.00) because of bodily injury or death of one person in any one accident and, subject to the limit for any one person, to a limit of fifty thousand dollars ($50,000.00) because of bodily injury to or death of two or more persons in any one accident, and a limit of twenty thousand dollars ($20,000.00) because of injury to or destruction of property of others in any one accident, in accordance with the requirements of section 46.2-172(3) of the Code of Virginia, as amended (1990).

2. Coverage under underinsured motorist provision of this section shall be excess over any other valid and collectable insurance.

3. Coverage under this Resolution shall not apply to bodily injury or property damage with respect to which the covered person or his legal representative should, without written consent of the County, make any settlement with any person or organization who may be legally liable therefor.

4. Such coverage is subject to the credit and set-off

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2400 Wakefield St., Arlington, VA
EXHIBIT C

provisions of section 38.2-2206 of the Code of Virginia, as amended (1950).

GD. The following words when used in this Resolution shall be defined as follows:

1. "Covered Person" means a volunteer, county officer, or county employee.

2. "Volunteer" means a person other than a county officer or employee who performs services for the County without remuneration and who performs them subject to direct and continuous supervision and control by county officers or employees.

3. "County Officer" means a member of the County Board, the County Manager, the County Attorney, and a member of a board or commission other than the School Board who is appointed by the County Board. It also includes members of any board provided for by Arlington County Code sections 21-10, 35-9, and 46-10, and any employee of any such board.

4. "County Employee" means a person other than a volunteer or county officer who performs services for the County, is paid wages or a salary by the County in exchange for the services, and who is subject to direct and continuous supervision and control by county officers or their designees.

5. "Occurrence" means an event or accident that results in personal injury or property damage.

6. "Personal Injury" means (a) death, bodily injury, sickness, disease, shock, mental anguish or mental injury, (b) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution, or humiliation, (c) libel, slander, defamation or invasion of rights to privacy, (d) assault and battery, and (e) deprivations of rights, privileges, or immunities secured by the Constitution of the United States or the Constitution of Virginia.

7. "Property Damage" means injury to or destruction of tangible property and all direct and consequential loss resulting therefrom.

8. "Uninsured motor vehicle" and "underinsured motor vehicle" shall have the meanings set out in section 38.2-2206.B of the Code of Virginia, as amended (1950).
EXHIBIT C

9. "Hit-and-run vehicle" means a motor vehicle which causes an accident resulting in bodily injury to an insured or property damage, provided:

(a) there cannot be ascertained the identity of either the operator or the owner of such motor vehicle;

and

(b) the covered person or someone on his/her behalf shall have reported in writing the accident promptly to either the Risk Manager or a law enforcement officer.

DE. The coverage provided by this Resolution shall be secondary to the coverage provided by any other insurance policy or self-insurance resolution or program.

EF. Arlington County may make such investigation, negotiation, and settlement of any claim or action against a covered person as it deems expedient.

II. Exclusions

This Resolution does not apply:

A. to any act committed by or at the direction of a covered person who intends to cause personal injury or property damage, but this exclusion does not apply where the covered person acts in good faith and believes in good faith that he is lawfully performing his duties;

B. to any liability arising from a covered person's willful and knowing violation of any law, statute, ordinance, rule, or regulation;

III. Duties of Covered Persons

This Resolution shall not apply where a covered person fails to comply with the following provisions, and such failure prejudices Arlington County's defense of any claim or action against the covered person:

A. Upon the happening of any occurrence reasonably likely to be covered by this Resolution, written notice containing the identity of the covered person, information with respect to the time, place, and circumstances of the occurrence, and the names and addresses of the injured party and of available witnesses shall be given as soon as practicable by or for the covered person to either (1) the County Risk Manager Administrator or and (2) the County Attorney or a designated Assistant County
EXHIBIT C

Attorney.

B. If a claim is made or an action is brought against a covered person as a result of an occurrence that is covered by this Resolution, the covered person shall immediately notify the County Risk Manager and the County Attorney in writing and forward to the County Attorney every demand, notice, summons, or other process received by the covered person or his representatives.

C. The covered person shall cooperate with Arlington County and, upon the County's request, assist in making settlements, in the conduct of law suits, and in enforcing any right of contribution or indemnification against any person or organization who may be liable to the covered person because of loss with respect to which this Resolution applies, and the covered person shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

D. The coverage under this Resolution is void in any case of fraud by the covered person/s as it relates to this Resolution at any time. It is also void if the covered person/s intentionally conceal or misrepresent a material fact concerning the covered property, an occurrence or a claim under this Resolution.
Exhibit D
List of Hazardous Materials Activities

None
Attachment 1

Vicinity Map