

RESOLUTION

WHEREAS, Mark Russert, agent for Voicestream, has applied for a Conditional Use to install a wireless communication facility on City-owned property at 1155 N. 73rd Street, located in the Parks and Open Space District, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED THAT the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Mark Russert, agent for Voicestream, to install a wireless communication facility on City-owned property at 1155 N. 73rd Street, located in the Parks and Open Space District; subject to proper nighttime illumination of the flagpole/antenna.

BE IT FURTHER RESOLVED THAT the proper city officials are hereby authorized the enter into a lease agreement with Voicestream for the installation of a wireless communication facility.

Action of the Common Council

Passed and dated AUG 05 2003

Carla A. Nedelma

City Clerk

Approved AUG 06 2003

Thomas M. Estren

Mayor

cc: Building; Planning; Assessor;
Dir. of Public Works

Adopted AUG 05 2003

See page 184 Journal No. 104

LICENSE AGREEMENT BETWEEN
VOICESTREAM COMMUNICATIONS AND THE CITY OF WAUWATOSA

License Agreement (this "License") dated effective August 1, 2003 by and between the City of Wauwatosa ("City") and VoiceStream PCS II Corporation; a Delaware Corporation with its principal office at 8550 West Bryn Mawr Ave. 1st Floor, Chicago, IL 60631 ("Company.")

RECITALS

A. City owns certain real property and surrounding property, located at 7300 Chestnut Street, in the City of Wauwatosa, Milwaukee County, Wisconsin, as more particularly described in the attached Exhibit A (the "Property").

B. Company desires to install, maintain and operate on the Property certain communications facilities described in the attached Exhibit B (the "Communications Facilities").

NOW, THEREFORE, FOR VALUABLE CONSIDERATION AND INTENDING TO BE BOUND, CITY AND COMPANY AGREE AS FOLLOWS:

LICENSE AGREEMENT

1. License. City hereby grants Company a nonexclusive License to install, maintain, and operate the Communications Facilities on part of the Property, in the specific locations designated on construction plans and drawings approved by the City (as hereinafter provided), which shall be attached hereto and incorporated herein as Exhibit C (the "Premises"). Company shall make no other use of the Premises.

This License is not a permit to use the public rights-of-way under any ordinance. Company must obtain any such permit separately from City.

Company shall use the Property for the purpose of installing, maintaining, and operating antenna arrays plus related cabling and equipment structure for provision of wireless communications and uses incidental thereto, including, without limitation, the construction of an 80' pole that will also be used as a flag pole by City. Company shall also receive an easement for utility lines as shown in Exhibit C. Copies of Company's FCC filing papers and any issued licenses must be provided to City. Company shall not use the Premises for the provision of "cable service" or as a "cable television system" as those terms are defined in state and federal law nor shall Company use the Premises as a "cable communications system" as defined in Chapter 5 of the Wauwatosa Municipal Code.

2. Term. The initial term of this License shall be for a period of five (5) years commencing on the date City issues the building permit to the Company and Company has received all necessary approvals to build its Communication Facilities, which

includes but is not limited to approvals required by all Local, State and Federal Governments and the FCC, provided that this document has been approved by the Wauwatosa Common Council and the Mayor (the "Commencement Date") and ending five (5) years from that date. Provided that Company is not then in default, this License shall automatically renew for up to five (5) successive five (5) year renewal terms unless Company notifies the City of its intention not to renew the License at least sixty (60) days prior to the expiration of the initial term or any renewal term. If Company gives such notice to the City, this License shall terminate upon expiration of the term during which notice was given. The initial annual License fee is due within fifteen (15) days of the COMMENCEMENT DATE. Should the Company fail to install its equipment upon the Premises described in this license within twelve (12) months of the Commencement Date, even though all License Fees (as described below) have been made, the City may choose to terminate this License. If termination is chosen, the City will inform the Company in writing. "

3. License Fees.

a. During the initial five (5) year term of this License, Company shall pay City annual license fees (the "License Fees") payable in advance of the Commencement Date as follows:

1)	Within 15 days after Commencement Date	\$18,378 annually	2003
2)	First anniversary of Commencement Date	\$19,297 annually	2004
3)	Second anniversary of Commencement Date	\$20,262 annually	2005
4)	Third anniversary of Commencement Date	\$21,275 annually	2006
5)	Fourth anniversary of Commencement Date	\$22,339 annually	2007

b. The annual License Fee for the renewal terms shall be increased as follows:

License Fee for the First five year extension	\$27,924 annually	2008
License Fee for the Second five year extension	\$34,905 annually	2013
License Fee for the Third five year extension	\$43,361 annually	2018
License Fee for the Fourth five year extension	\$54,201 annually	2023
License Fee for the Fifth five year extension	\$67,751 annually	2028

c. Each annual License fee shall be payable in advance on or before the First day of each anniversary of the Commencement Date.

d. All consideration to be provided by Company to City shall be paid or provided to City without offset. The License fee hereunder is reserved on an absolute net basis. Company shall pay to the persons entitled thereto all taxes, assessments, insurance premiums, maintenance charges and any other charges, costs and expenses against the Communications Facilities constructed on the Premises identified in this License.

4. Compliance With Laws. Throughout the term of this License, Company shall continuously use the Premises for the purpose of constructing, maintaining and operating

facilities for the transmission and reception of radio communication signals in such frequencies as may be assigned to Company by the Federal Communications Commission ("FCC"). Company, at its expense, shall diligently, faithfully and promptly wholly obey and conform with all federal, state and local orders, rules, regulations and laws, including all FCC and Federal Aviation Administration rules, in relation to any of its business, activities or other operations conducted upon, above or adjacent to the Premises. Company shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and permits required for Company's use of the Premises.

5. Installation and Maintenance of Communications Facilities.

a. Company shall, at its sole cost and expense, install, operate, and maintain the Communications Facilities on the Premises. Company's installation of the Communications Facilities shall be completed in a neat and workmanlike manner in accordance with sound engineering practices, applicable rules, regulations and laws and in strict compliance with Exhibit C (Construction Plans and Specifications Approved by City). Company's Communications Facilities shall be subject to architectural design review and approval by City. The Communications Facilities shall remain the exclusive property of Company.

Construction of the Communications Facilities includes the construction of a building on the location intended to house equipment necessary to operate the Communications Facilities. As part of the construction of the building, Company shall demolish the existing Hart Park Football Storage Shed and incorporate the space necessary for replacement of the functionality of the current Football Storage Shed into a portion of the Communications Facilities Building, which space shall be accessible by a separate entrance from the entrance to that portion of the building housing Communications equipment. The building shall be constructed at approximately the present location of the Football Storage Shed for the Hart Park Football facilities, and shall be designed in such a way that the facade of the building matches the design characteristics of the nearby Muellner and Administration Buildings in Hart Park. Final design of the building shall require approval of the City prior to commencement of construction. Such approval shall not be unreasonably conditioned, withheld or delayed. The City shall be provided use of that portion of the building designated as the replacement for the Football Storage Shed at no charge. Company shall be responsible for ongoing maintenance and upkeep of the entire building.

b. Company, at its expense, and within thirty (30) days after the installation of the Communications Facilities, shall provide to City "as built" drawings of the Communications Facilities installed on the Premises which show the actual location of all Communications Facilities. Such drawings shall be accompanied by a complete and detailed inventory of all Communications Facilities actually placed on the Premises, all of which shall be attached hereto and incorporated herein as Exhibit D.

c. Any damage done to the Property during installation or during operations shall be immediately repaired at Company's expense and to City's reasonable satisfaction. Company shall not permit any claim or lien to be placed against any part of the Property that arises out of work, labor, material or supplies provided or supplied to Company, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises or the Communications Facilities.

d. Company shall design, place and improve all of its Communications Facilities in a manner that will keep negative environmental and aesthetic impacts to a minimum practical level, which shall be deemed acceptable by the City upon approval of the plans and specifications as set forth herein.

e. Company shall separately meter charges for the consumption of electricity and any other utilities associated with its use of the Premises and shall pay all costs associated therewith.

f. Company, at its expense, shall have sole responsibility for the maintenance, repair, and security of its Communications Facilities and shall keep the same in good repair and condition during the term of this License.

g. Company shall be responsible to completely restore any damage to the Property resulting from any of its activities.

h. Company shall not apply advertising to the Communications Facilities.

i. Any reasonable additional costs for servicing or maintaining the Property that are due to the presence of the Communications Facilities, including additional driveway asphalt and snow plowing/ice control, shall be the responsibility of Company and shall be paid by Company, provided Company receives a detailed invoice of the charges that are due. Payment of these charges shall be due within (30) days of invoice date.

6. Modifications. Company may update or replace the Communications Facilities from time to time with reasonable prior notice to City, provided the replacement Communications Facilities installed are no greater in weight, -number or size and are substantially the same in appearance as the existing Communication Facilities. Company shall not make material modifications to the Communications Facilities without the City's prior written approval. Such approval shall be at the City's sole discretion. Company shall submit to the City a proposal for such material modifications and any supplemental materials as may be requested for City's evaluation and approval, which shall not be unreasonably conditioned, withheld or delayed. If approved, such material modifications shall be made at Company's sole expense and only upon it first obtaining all necessary governmental approvals and permits for such modifications. On making such modifications, Company shall provide to City updated "as built" drawings in the manner specified in Paragraph 5(b). Material modifications that result in additional weight, number, size, substantial change in location or substantial change in appearance may result in addition to the annual License Fee.

7. Studies. INTENTIONALLY OMITTED.

8. Access. Company shall not be entitled to exclusive use of the Premises and the Communications Facilities. Company shall have the ability to access the Premises and the Communications Facilities 7 days a week, 24 hours per day. Company shall, on demand, admit City, its employees or its agents to any part of the Premises used or occupied by Company with prior notice to Company.

9. Interference. Company's installation, operation, and use of the Communications Facilities shall not damage or interfere in any way with City's operations or related repair and maintenance activities. In the event it is determined that interference exists, Company, at its expense, shall provide immediate relief from that interference. City, at all times during this License reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Property and to temporarily interfere with Company's Communications Facilities as may be necessary in order to carry out any such activities. City agrees to give reasonable advance notice of such activities to Company and to reasonably cooperate with Company to carry out such activities with a minimum amount of interference with Company's transmission operations. Company shall have the right to place a temporary antenna facility on the Property during any period Company's Communication Facilities are disrupted by City activities.

a. Company warrants and represents that the Communications Facilities and the installation, operation and maintenance of the Communications Facilities shall not interfere with the operation of City's electronic equipment, wherever located, whether existing or installed at some future date, or with the electronic equipment of any other of City's existing Licensees or Lessees, wherever located. If such interference occurs, Company shall cease its operations immediately upon receipt of notice from City of such interference and shall promptly take all steps necessary to correct and eliminate the interference at Company's cost. Company shall not resume its operations until such time as Company has effectively eliminated the interference. If Company is unable to eliminate the interference within a reasonable period of time, Company shall have the option to terminate this License and remove the Communications Facilities from the Premises. Upon such termination, the Company shall remain liable for the annual License fee through the remaining term of this License ("Termination Penalty"). The Termination Penalty only shall apply to a termination of this License as a result of interference of electronic equipment that is already in existence on the date this License is executed.

b. City makes no warranties or representations regarding Company's exclusive use of the Premises or non-interference with Company's transmission operations or that the Premises or utilities serving the Premises, if any, are fit for Company's intended use and all such warranties and representations are hereby disclaimed.

10. Insurance.

a. General. At all times during the term of this License, Company shall keep in force and effect all insurance policies as outlined below, issued by a company or companies licensed to do business in the state of Wisconsin and satisfactory to City. Such insurance will be primary. Company shall use its best efforts to ensure that all contractors and all of their subcontractors who perform work on the Premises shall carry, in full force and effect, worker's compensation, commercial general liability and automobile liability insurance coverages of the type that Company is required to obtain under this paragraph with the same limits. Prior to the execution of this License and prior to each insurance policy expiration date during the term of this License, Company will furnish City with a Certificate of Insurance. The Certificate shall reference this License and worker's compensation and property insurance waivers of subrogation required by this License. City will be given thirty (30) days advance notice of cancellation or nonrenewal of insurance during the term of this License. City, its council, boards, commissions, agencies, officers, employees and representatives (collectively, "Additional Insureds") shall be named as additional insureds under all of the policies, except property (including builder's risk) and worker's compensation policies, which shall be so stated on the Certificate of Insurance. All policies, other than worker's compensation, shall be written on an occurrence and not on a claims made basis.

b. Worker's Compensation and Employers' Liability Insurance. Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than \$100,000 each accident. Company shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

c. Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities (commonly known as XCV coverage). Limits of liability not less than \$1,000,000 general aggregate, \$1,000,000 products/completed operations aggregate, \$1,000,000 personal injury, \$1,000,000 each occurrence. .

d. Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence,

e. Builder's Risk Insurance. At the start of and during the period of any construction, builder's all risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Communications Facilities. Upon completion of the installation of the Communications Facilities, Company shall substitute for the foregoing insurance the policy specified under Paragraph 10(h).

f. **Umbrella Liability Insurance.** Coverage to be in excess of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$5,000,000 each occurrence, \$5,000,000 aggregate. The aforesaid limits of liability may be increased or decreased by mutual consent of the parties.

g. **Worker's Compensation Waiver of Subrogation.** City shall not be liable to Company, Company's contractors or their subcontractors, for any injuries to Company's employees or those of its contractors or their subcontractors arising out of or in connection with the grant of this License including any and all work of any type performed upon the Premises or Property, including injuries arising during equipment installation, alteration, modification, improvement, maintenance, repair, replacement, or use, or ingress or egress to or from the Property unless caused solely by the intentional and willful acts of City. Company and Company's contractors and their subcontractors shall each waive any and all rights of recovery from City for worker's compensation claims made by their respective employees and shall obtain such waiver from their worker's compensation insurer. Company, for itself and its contractors and their subcontractors, agrees that the indemnification and hold harmless provisions within this License extends to any such claims brought by or on behalf of any employee of Company, any contractor of Company or their subcontractors.

h. **Property Insurance.** Company will be responsible for maintaining property insurance on its own buildings and other improvements, including all equipment, fixtures, utility structures, fencing, or support systems that may be built or placed upon the site to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage."

11. **Damage or Destruction of Property.** If the Communications Facilities are destroyed or damaged, in no way due to the action or inaction of Company, to an extent that it materially and substantially limits Company's effective use of the Communications Facilities, Company shall have the option to terminate this License by giving 30 days notice to City. Company's payments shall be pro-rated for that year and returned to Company. If Company elects to continue this License, then the License Fee shall abate until the Communications Facilities are restored to the condition existing immediately prior to such damage or destruction.

12. **Indemnification.** Company shall defend, indemnify and hold harmless City and all subsidiary entities of City, whether existing now or in the future, and their respective officials, officers, departments, agencies, counties, boards, representatives, employees, agents, contractors and attorneys (collectively, "Indemnified Parties") against any and all liability, claims, costs, damages, expenses, demands, lawsuits or disputes (including reasonable attorney fees of counsel selected by City and all other costs and expenses of litigation) arising in any way from (i) any condition, occurrence or accident upon the Premises which causes injury or illness to any person or persons whomsoever or to any property whatsoever, arising in any way from the installation, presence, operation, maintenance or removal of the Communications Facilities, unless caused solely by the

intentional and willful acts of City; (ii) work, labor, material or supplies provided or supplied to Company, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises or Communications Facilities, including any claim or lien arising therefrom; (iii) Company's breach of warranty, representation, obligation or other provision of this License; and (iv) any financing or securities offering by Company or its affiliates for violations of common law or any laws, statutes, or regulations of the State of Wisconsin or United States, including those of the Federal Securities and Exchange Commission, whether by Company or otherwise. This indemnification language specifically includes, among other things, any and all liability related to or associated with exposure to electromagnetic fields or radio frequencies.

13. Environmental Laws. City represents that it has no knowledge of any substance, chemical or waste (collectively "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state, or local law or regulation. Company shall not introduce or use any such substance on the Property in violation of any applicable law. City shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, of all spills or other releases of Hazardous Substance not caused solely by Company, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify, and hold the other harmless from and against any and all claims, causes of action, demands, and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments, and attorney's fees that the indemnitee may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment, that relate to or arise from the indemnitor's activities during or prior to the Commencement Date of this License. Each party agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands, and liability (collectively "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments, and attorney's fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively "Actions"), that relate to or arise from the indemnitor's activities on the Property. Furthermore, the City agrees to defend, indemnify, and hold Company harmless from Claims resulting from Actions on the Property prior to the Commencement Date of this License.

14. Taxes: No Liens. Company shall pay and be responsible for any and all personal and real estate taxes and assessments, general and special, levied and assessed, directly attributable to the Communications Facilities. If any sales, use, income or other tax is ever assessed or levied against the License fee, charges payable by Company under this License or that otherwise relates in any way to this License, Company shall pay that tax upon demand by City. Company shall not do anything which might cause or result in and shall not permit the filing of a lien against any part of the Property, whether filed against City or Company. Company shall have the right to challenge, whether in a Court,

Administrative Proceeding, or other venue any personal property or real property tax assessments that may affect Company.

15. Limitations. City shall not be liable, after execution of this License for any damages or injuries (including death) except as specified in Section 13 above resulting from the condition of the property. No provision of this License is intended, or shall be construed, to be a waiver for any purpose by City of the provisions of Section 893.80 of the Wisconsin Statutes or other applicable limits on municipal liability. No indemnification provision contained in this License shall be construed to in any way limit any other indemnification provision contained in this License.

16. Default. A Party shall be deemed in default hereunder upon occurrence of any of the following events: (a) Company defaults in the payment of the License fee or any other sums to City when due, and does not cure that default within fifteen (15) days after receipt of written notice of such default; (b) A Party defaults in the performance of any other term of this License or any other agreement between Company and City and does not cure that default within thirty (30) days after written notice thereof; (c) A Party abandons or vacates the Premises; (d) A Party files for relief under federal bankruptcy laws or makes any assignment for the benefit of creditors; or (e) A Party becomes insolvent and other Party reasonably believes itself to be insecure.

17. Remedies on Default. In the event of any default by either party (the "Defaulting Party"), the other party (the "Non-Defaulting Party") may, in addition to any other remedy it may have under law, serve a written notice upon the Defaulting Party that it elects to terminate this License upon a specified date not less than ten (10) calendar days after the date of serving such notice, and this License shall expire on the date so specified as if that date had been originally fixed as the expiration date of the term granted herein. In the event this License is terminated as a result of a default by Company, Company shall immediately pay City a sum of money equal to the total of (a) the unpaid consideration accrued through the date of termination (b) all consideration reserved for the balance of the current five (5) year term of this License (as if the term had not expired as a result of termination) and (c) all other amounts necessary to compensate City for damages caused by Company's failure to perform. In the event this License is terminated as a result of a default by City, City shall immediately pay City a sum equal to the remaining unamortized cost to construct the Communications Facilities. Company shall not be released from any liability for the License Fee hereunder by reason of City's repossession of the Premises or by City's taking any other legal proceedings available to it upon such default, nor shall a termination of this License following default release Company from liability for the payment of the License fee as herein provided.

18. No Nuisances. Company shall not perform any acts or carry on any practices upon the Premises which may endanger or injure the Premises, Property, or surrounding area or any person or be a nuisance or menace to adjoining property owners and shall keep the Premises free and clear of debris, rubbish, junk, garbage, and graffiti.

19. Assignment. Company may assign this License upon written notice to City, to any person presently controlling, controlled by, or under common control with company, after first receiving the necessary FCC licenses, acquires Company's radio communications business or assets and assumes all obligations of Company under this License. Upon such assignment, Company shall be relieved of all liabilities and obligations hereunder and City shall look solely to the assignee for performance under this License and all obligations hereunder. Company may otherwise assign this License upon written approval of City, which approval shall not be unreasonably delayed or withheld.

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

20. Termination of License.

a. Upon termination or expiration of this License, Company shall at its expense, promptly and diligently remove all of the Communications Facilities and any other personal property installed in or on the Premises and leave the Premises in the same or better condition as existed prior to the date of this License, reasonable wear and tear excepted.

b. If, during the term of this License, City determines that the Property is needed for a special purpose by City or any of its bureaus or departments, which special purpose would exclude Company's Communications Facilities and all other similar uses by any party other than City itself, this License, and any extension thereof, shall be subject to cancellation by City upon twelve (12) months' written notice to Company. In the event of such termination, Company shall not be obligated to pay any License fee hereunder during the period between the date of City's notice of termination and Company's vacation of the Property. During such period, Company shall remove from the Property all of its Communication Facilities. In the event City terminates this License pursuant to this Section 20, City shall allow Company to install a temporary communications Facilities until such time as it is able to secure another suitable location, such location shall be in the sole judgment of Company.

c. Company may terminate this License at any time during the term hereof by providing written notice to City in the event that either (i) any license, permit or other governmental approval or authority is canceled, expires or is withdrawn or terminated and Company is no longer authorized to operate its Communication Facilities from the Premises; or (ii) due to changes in technology or other events beyond Company's control, Company is no longer able to utilize the Premises for its Communication Facilities. Upon notice of such termination, all prepaid License fees shall be retained by City and Company shall immediately pay to City as liquidated damages an amount equivalent to 200% of the annual License fee in effect at the time of termination.

21. Security for Performance/Removal. Company shall provide to City prior to Commencement Date, a performance bond in the amount of Thirty Thousand Dollars (\$30,000.00), which will be renewed and increased as necessary, to ensure that the Communications Facilities will be removed and the Premises restored at termination or expiration of this License. The City shall be named as the obligee in this bond.

22. Safety Risk. City may terminate this License with thirty (30) days written notice to Company if, it determines that the Communications Facilities pose a safety risk and Company has not corrected the condition within the thirty (30)-day time period.

23. Reimbursement of Costs. Company shall, on demand, reimburse City for all reasonable costs and expenses of any type City incurs in connection with this License (including performance and enforcement of its provisions), the Communications Facilities, or any City approval required hereunder, including engineering, legal, and other consulting fees in connection with the initial siting of the Communications Facility. In addition to any other reimbursements heretofore specified, the cost specified herein shall not exceed \$2000.

24. Relocation. City, at its option, upon 90, days prior written notice, may require Company to relocate the Communications Facilities for reasons other than painting or maintenance twice during the period of this License. Relocation shall be to another location on the Property, or to other property owned or controlled by the City that is located in the general vicinity of the Premises and reasonably suitable for Companies Communication Facilities uninterrupted wireless communications, which new location shall then constitute the Premises.

25. Compliance with Emissions Standards. Company agrees that at all times the power density level emitted from the Communications Facilities shall not exceed the American National Standards Institute's ("ANSI") "Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields" as set forth in the current ANSI standard (ANSIIEEE C.95.1 1992 or any standard which supersedes this standard), any other applicable rules or regulations of the FCC or other local, state or federal laws or regulations.

26. Regulatory Filings. Upon City's request, Company shall provide City with copies of all petitions, applications, reports and communications submitted by Company to the

FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting this License or Company's operation of its Communications Facilities.

27. Capital Consideration. Upon execution of this License, Company shall provide the City with, in addition to the consideration specified in Section 3, the following: \$11,500 cash payment.

28. Favored Customer Status. In addition to any consideration specified herein, Company shall make available to the City for purchase, any goods or services offered by the Company to any customer at the lowest rate or price charged by Company for said items or service.

29. Restoration and Removal After Termination. Company upon termination of this License, shall, within 60 days remove its personal property and fixtures and restore the Premises to its original condition, reasonable wear and tear and damage not caused by Licensee or its contractors excepted.

30. Survival of Provisions. All indemnification obligations of Company under this License, including Paragraphs 11, 13 and 14, shall survive the expiration or earlier termination of this License.

31. Estoppel Certificate. Company shall, at any time and from time to time upon not less than ten (10) days prior request by City, deliver to City a statement in writing certifying that (i) this License is unmodified and in full force (or if there have been modifications, that the License is in full force as modified and identifying the modifications); (ii) the dates to which the License fee and other charges hereunder have been paid; (iii) so far as the person making the certificate knows, City is not in default under any provisions of this License; and (iv) such other matters as City may reasonably request.

32. No Limitation on Authority. Nothing contained in this License shall limit or interfere with or be construed to limit or interfere with any of City's rights or powers, including City's authority in enforcement of its municipal ordinances, including its zoning code.

33. Memorandum of Agreement. The parties hereby agree to execute and record a short form memorandum of this License outlining the basic provisions of this License relating to the initial term, the Company's renewal options and access rights and such other basic terms mutually agreed upon by the parties.

34. Applicable Law and Severability. This License and any interpretation thereof shall be ruled by the internal laws (not merely choice of law provisions) of the State of Wisconsin. If one or more of the terms hereof are found to be void or invalid, those terms shall be deemed inoperative and null and void, and shall be deemed modified to conform to such rule of law, all without invalidating any of the remaining provisions of this License or the enforceability thereof, which shall continue in full force and effect.

35. Miscellaneous. This License constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this License must be in writing and executed by both parties. Company and City represent that each has full right, power and authority to sign this License.

36. Notices. All notices hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following address:

If to City:

Director of Public Works
City of Wauwatosa
7725 West North Avenue
Wauwatosa, WI 53213

With a copy to:

City Attorney
7725 W. North Avenue
Wauwatosa, WI 53213

If to Company:

VoiceStream PCS II Corporation
c/o T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Legal Department

With a copy to:

VoiceStream PCS II Corporation
c/o T-Mobile USA, Inc.
8550 Bryn Mawr, Ste. 100
Chicago, IL 60631
Attn: Legal Department

37. Quiet Enjoyment. So long as Company is not in material default under this License, City shall provide Company quiet enjoyment and possession of the Premises during the term of this License. The rights granted hereunder to Company are irrevocable, subject only to the expiration or sooner termination of the term of this License in accordance with the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties have caused this License to be executed on the date and year first written above.

CITY OF WAUWATOSA

BY: Theresa M. Estness
Theresa M. Estness, Mayor

BY: Carla M. Ledesma
Carla M. Ledesma, City Clerk

Approved as to form:

Alan R. Kesner 8/22/03
Alan R. Kesner, City Attorney

VOICESTREAM PCS II CORPORATION

BY: Raj Tank 9/22/03
Raj Tank

Title: Director of Engineering and Operations

APPROVED as to form
Michael A. Steverison
Michael A. Steverison

Exhibit "A"

WELLAUER SUBD ALL OF BLKS 2 TO 7 INCLUSIVE SW 1/4 SEC 22, CITY OF
WAUWATOSA, COUNTY OF MILWAUKEE, STATE OF WISCONSIN.