

STATE OF NORTH CAROLINA
ORANGE COUNTY

ENCROACHMENT AND LEASE AGREEMENT

This Encroachment Agreement, made this 12th day of November, 1996, by and between BellSouth Carolinas PCS, L.P., a Delaware Limited Partnership (the "Licensee"), and the Town of Chapel Hill, a municipal corporation under the laws of North Carolina (the "Town").

WITNESSETH THAT:

WHEREAS, the Licensee desires to encroach on the public right of way designated on the southern margin of Cleland Road as shown on the attached Exhibit A dated June 24, 1996, for the construction, installation, and/or erection of a tower for the purpose of providing wireless transmission of telephone signals (personal communication system) and the right to install and maintain associated utility wires, cables, conduits, and pipes over, under, or along a 20 foot wide easement from the nearest connection, and;

WHEREAS, the Town owns and maintains the public right of way at said location;

NOW, THEREFORE, for and in consideration of the sum of \$12,000 per year, for the first year, with an annual three percent (3%) increase thereafter, for the life of this Agreement, and in consideration of the mutual covenants and conditions set forth herein, the Town grants to the Licensee a license to encroach upon the right of way at the location described above to construct, install, erect, and maintain the above described encroachment in generally the location shown on the attached map in Exhibit A, together with the right of ingress and egress within said area whenever the same is necessary for the purpose of inspecting, maintaining and/or repairing said encroachment.

This Encroachment and Lease Agreement is subject to, and conditioned upon, the following covenants and provisions.

1. This Encroachment and Lease Agreement shall be binding upon the Town's and Licensee's respective successors in interest or title.
2. The Licensee, and his/their successors in interest and title, shall be responsible for construction, reconstruction, maintenance and repair of the above described encroachment at Licensee's expense.
3. The Licensee shall comply with any applicable Town ordinances, regulations and policies regarding construction and maintenance of said encroachment.

4. The Licensee, and Licensee's successors in interest or title, agree to defend, indemnify, and hold the Town of Chapel Hill and its employees and agents free and harmless from and against any and all damages, settlements, charges, professional fees or other liabilities of every kind arising out of or relating to any and all claims, actions and proceedings in connection with or arising directly out of the construction, installation, maintenance, or erection upon the right-of-way authorized by the Agreement excepting, however, such liabilities and losses as may be due to or caused by the acts or omissions of the Town or its employees or agents.

5. The Town may, upon 180 days' written notice by the Town Manager, or as otherwise required by the terms of the Franchise Ordinance, require relocation or removal of all or a portion of said encroachment at the Licensee's expense, or at the expense of Licensee's successors in interest or title, to allow street improvements in the right of way or for other necessary public purposes, and upon said relocation or removal of this license and encroachment and lease agreement shall thereupon terminate and cease.

6. The Licensee, and Licensee's successors in interest and title, agrees to prudently maintain the facility in accordance with applicable law so as to not adversely affect the public health, safety or welfare.

7. If Licensee allows additional parties to attach to its tower, the Town shall receive the income, whether provided as rent or otherwise, from said use.

8. The Town shall have the right to attach its radio communications equipment to the tower at no charge to the Town at a height of 60 to 65 feet so long as said use by the Town does not adversely affect the service provided by Licensee.

9. Initial Term and Rental. This Encroachment and Lease Agreement shall be for an initial term of five (5) years, beginning Nov. 15, 1996, at an annual rental of \$12,000 (with a three percent annual increase beginning in the second year and each year thereafter) to be paid in advance to the Town in equal monthly installments on the first day of each month during the term; provided, however, that if the Franchise Ordinance (as defined herein) is terminated or revoked, Licensee shall have no further obligation to pay any rental or other amounts due under this Agreement after the date of such termination or revocation.

10. Extension of Term. Licensee shall have the option to extend the term of this Encroachment and Lease Agreement for one (1) additional consecutive five (5) year period. The option for an extended term shall be deemed automatically exercised without notice by Licensee to Town unless Licensee gives Town written notice of its intention not to exercise any such option, in which case the term of this Agreement shall expire at the end of the then current term. All references herein to the term of this Agreement

shall include the term as it is extended as provided in this Agreement.

11. Extended Term Rental. The annual rental for the extended term shall be payable in the same manner as the annual rental for the initial term, including 3% annual adjustments.

12. Governmental Approvals. This Agreement is subject to Licensee's obtaining and maintaining in effect all certificates, permits, licenses and other approvals required by governmental authorities for its use of the property. If at any time during the term of this agreement, Licensee is unable to use the property for a communications facility in the manner intended by Licensee due to imposed governmental conditions or requirements, or any necessary certificate, permit, license or approval is rejected or any previously issued certificate, permit, license or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, or soil boring tests or radio frequency propagation tests are found to be unsatisfactory so that Licensee, in its sole discretion will be unable to use the property for a communications facility in the manner intended by the Licensee, Licensee shall have the right to terminate this Agreement by written notice to the Town and all rentals paid to the Town prior to the termination date shall be retained by the Town. Upon such termination, this Agreement shall become null and void and the Town and Licensee shall have no further obligations to each other under this Agreement other than Licensee's obligation to remove its property as hereinafter provided.

13. Removal of Improvements. Title to all improvements and equipment constructed or installed by Licensee on the property shall remain in Licensee, and all improvements and equipment constructed by Licensee shall at all times be and remain the property of Licensee, regardless of whether such improvements or equipment are attached or affixed to the property. Licensee, upon termination of this agreement, shall, within a reasonable period not to exceed sixty (60) days from the date of such termination, remove all improvements, fixtures and personal property constructed or installed on the property by Licensee and restore the property to its original above grade condition, reasonable wear and tear excepted. Notwithstanding the preceding sentence, in the event the Town revokes Licensee's franchise pursuant to the Franchise Ordinance, Licensee shall have a period of one hundred eighty (180) days from receipt of written notice of revocation in which to complete such removal and restoration and, if Licensee fails to so remove its equipment within such time period, the Town shall have the right to remove such equipment and to draw funds from the letter of credit or call upon the guarantee required under the Franchise Ordinance to cover its costs. Notwithstanding the foregoing, the Town may require the removal of said equipment in such shorter period as the Town may determine in the event the Town Manager determines said removal is necessary for public safety purposes. In such event the Town will provide as much advance notice as is reasonably feasible to Licensee.

14. Use. Licensee shall use the Property for the purpose of constructing, maintaining and operating a communications facility and uses incidental thereto, which facility may consist of such buildings as are necessary to house telecommunications equipment and for related office space, a free standing monopole or three sided antenna structure of sufficient height, as determined by Licensee but not greater than 70 feet from the ground elevation at the base of the pole, now or in the future to meet Licensee's telecommunications needs and all necessary appurtenances.

Licensee, at Town's option, may erect a self-supporting tower or a guyed tower suitable for its proposed use. Should Licensee choose to erect a guyed tower, the Town hereby grants an appurtenant easement to Licensee in, over, and across the property owned by the Town, as is deemed necessary by the Licensee or its successors or assigns, for the purpose of anchoring, mounting, maintaining, repairing and replacing guy wires extending from Licensee's tower. The easement granted herein shall extend such distance from the Licensee's tower as is reasonably necessary to properly support said tower with the area over which such wires extend being considered a part of the easement area and the leased property, provided that said wiring and anchoring shall not interfere with other public facilities in said right of way. The Town grants Licensee the right to clear undergrowth, or other obstructions and to trim, cut, and keep trimmed and cut, all tree limbs which may interfere with or fall upon Licensee's tower or the tower's guy wires or the Licensee's other improvements. Licensee shall not remove trees from the encroachment and easement areas authorized herein.

15. Hazardous Substances. Licensee, by entering this Agreement, assumes no responsibility or liability for the presence of hazardous substances on, under or around the property as long as the hazardous substances were not generated, stored, disposed of, or transported to, on, under or around the property by Licensee or its employees, agents or contractors. The Town, by entering this Agreement, assumes no responsibility or liability for the presence of hazardous substances on, under or around the property generated, stored, disposed of or transported to, on, under or around the property by Licensee or its employees, agents or contractors or otherwise resulting from Licensee's use of the property. For purposes of this Agreement, "hazardous substances" shall mean (i) any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, (ii) any substance which is flammable, radioactive, corrosive or carcinogenic, (iii) any substance the presence of which on the property causes or threatens to cause a nuisance or health hazard affecting human health, the environment, the property or property adjacent thereto, or (iv) any substance the presence of which on the property requires investigation or remediation under any hazardous substance law, as the same may hereafter be amended. "Hazardous Substance Law" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec.9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sec.6901 et seq.; the Hazardous Materials

Transportation Act, 49 U.S.C. Sec.1801 et seq.; the Clean Water Act 33 U.S.C. Sec.1251 et seq.; the Clean Air Act, 42 U.S.C. Sec.7401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sec.136 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sec.2601 et seq.; the Emergency Planning and Community Right to Know Act (SARA Title III) 42 U.S.C. Sec.11001 et seq.; and any applicable state law or regulation.

16. Franchise Ordinance. In connection with this Agreement, the Town has granted to Licensee a franchise to operate a personal communications service in the Town of Chapel Hill pursuant to that certain Ordinance Granting A Franchise to Bell South Carolinas PCS Limited Partnership to Provide Telephone Services In The Town of Chapel Hill (96-5-29/0-6) (the Franchise Ordinance), the terms and conditions of which have been accepted by Licensee. The Town and the Licensee agree that this Agreement shall automatically terminate upon termination of the Franchise Ordinance.

17. Opportunity to Cure. If Licensee shall fail to pay any rental or other amounts payable under this Agreement when due, or if Licensee should fail to perform any other covenants, terms or conditions of this Agreement, prior to exercising any rights or remedies against Licensee on account thereof, the Town shall first provide Licensee with written notice of the failure and provide Licensee with a ten (10) day period to cure such failure if the failure is a failure to pay rental or any other sum of money under this Agreement, or a thirty (30) day period to cure such failure if the failure is a failure to perform any other covenant, term or condition of this Agreement. If the failure is not a failure to pay rental or any other sum of money hereunder but is not capable of being cured within a thirty (30) day period, Licensee shall be afforded a reasonable period of time to cure the failure provided that Licensee promptly commences curing the failure after the notice and prosecutes the cure to completion with due diligence. In the event of a default hereunder that is not cured within applicable cure periods, or in the event the Town elects to revoke Licensee's franchise pursuant to the Franchise Ordinance, the Town may terminate this Agreement upon One Hundred Twenty (120) days prior written notice to Licensee.

18. Notices. All notices hereunder must be in writing and shall be deemed validly given on the date when deposited in the United States mail, by certified mail, return receipt requested, addressed as follows (or to any other address that the party to be notified may have designated to the other party by like notice at least ten (10) days prior thereto):

Licensee: BellSouth Carolinas, PCS, L.P.
c/o BellSouth Personal
Communications, Inc.
120 Southcenter Court, Suite 200
Morrisville, North Carolina 27560
Attention: Real Estate Manager

Town:

The Town of Chapel Hill
306 North Columbia Street
Chapel Hill, North Carolina 27516
Attention: Town Manager

The parties may substitute recipient's names and addresses by giving notice as provided hereunder. Rejection or refusal to accept delivery of any notice, or the inability to deliver any notice because of a changed address of which no notice was given, shall be deemed to be receipt of such notice.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their

respective seals the day and year first above written.

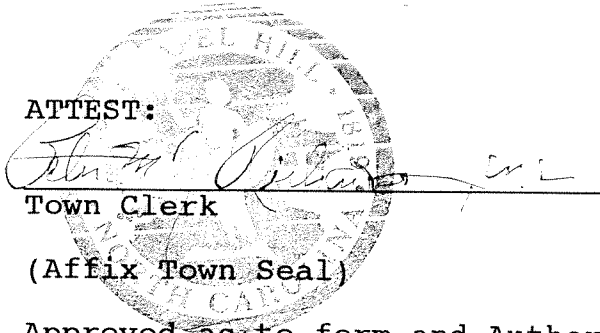
TOWN OF CHAPEL HILL

By: W. Calvin Horton

Print Name: _____

Title: _____

ATTEST:



[Signature]
Town Clerk

(Affix Town Seal)

Approved as to form and Authorization:


This instrument has been prepared
in the manner required by the
Government Budget and Control Act.

James M. Baker
Finance Director

Ralph D. Karpinos
Town Attorney

BELL SOUTH CAROLINAS PCS, L.P.
a Delaware Limited Partnership (SEAL)

By: B E L L S O U T H P E R S O N A L
COMMUNICATIONS, INC., a Delaware
Corporation, General Partner

By: 
Print Name: Scott Fox
Title: Vice President

ATTEST:

Asst. Amy W. Richards
Secretary

(Affix Corporate Seal)

STATE OF ~~NORTH CAROLINA~~ Georgia
COUNTY OF Fulton

I, Amy Lynne Keith a Notary Public in and for said County and State do hereby certify that on this day personally came before me Amy W. Richards, with whom I am personally acquainted, who being by duly sworn says that

Scott Fox is the ^{VICE} President, the said Amy W. Richards is the ^{Assistant} Secretary of Bell South

Personal Communications, Inc. the corporation described in and which executed the foregoing instrument; that he (she) knows the common seal of said corporation; that the seal affixed to said instrument is said common seal; that the name of the corporation was subscribed thereto by the said ^{VICE} President and that the said ^{Assistant} Secretary subscribed their names thereto and the common seal was affixed by order of the Board of Directors of said corporation and that said instrument is the act and deed of said corporation.

WITNESS my hand and Notarial Seal, this the 10th day of July, 1996.

Amy Lynne Keith
Notary Public

My commission expires:
NOTARY PUBLIC, DEKALB COUNTY, GEORGIA
MY COMMISSION EXPIRES FEB. 1, 1999

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

I, LOUI C. PENDERGRAFT a Notary Public in and for said County and State, do hereby certify that on this day personally came before me PETER M. J. RICHARDSON, Town Clerk, with whom I am personally acquainted, who being by duly sworn says that W. CALVIN HORTON is the Town Manager of the Town of Chapel Hill, a municipal corporation chartered under and by virtue of the laws of North Carolina and which executed the foregoing instrument; that he/she knows the common seal of said municipal corporation; that the seal affixed to the said instrument is said common seal; that the name of the Town of Chapel Hill was subscribed thereto by the said Town Manager and that the said Town Manager and said Town Clerk subscribe their names thereto and the common seal was affixed by order of the Town Council of the Town of Chapel Hill and that said instrument is that act and deed of said municipal corporation.

LOUI C. PENDERGRAFT
Notary Public

My commission expires:

July 8, 1997

Exhibit A Page 1 of 2

to Memorandum of Lease

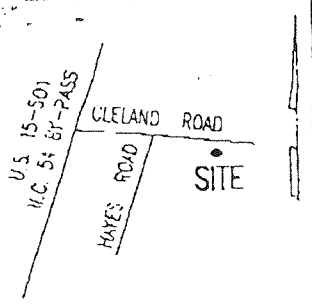
LEGAL DESCRIPTION

BEING the area shown and delineated as the "Lease Site" on the Lease Exhibit of Site 368-147-A-CLELAND ROAD prepared for BellSouth Carolinas PCS, L.P. by Piedmont Olsen Hensley dated April 23, 1996, and attached hereto and made a part hereof ("Lease Exhibit"), such Lease Site being a portion of the real property of the Board of Trustees of the Endowment Fund of the University of North Carolina at Chapel Hill, as such real property is described in that certain deed recorded in Book 549, Page 600, Orange County Registry, North Carolina.

TOGETHER WITH a utility easement across the lands of the Lessor in a location reasonably designated by the Tenant, or the utility provider installing the service, so as to provide electrical service to the Lease Site sufficient to operate the improvements of Tenant on the Lease Site.

TOGETHER WITH a nonexclusive right and easement for ingress and egress at all times, on foot or by motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes, and equipment, over, under, or along the existing entrance(s), driveway(s), parking area(s), roof, elevator(s), stairway(s), landscaped area(s), and open area(s) located on the property of which the Lease Site is a part extending to and from the Lease Site as described above to and from the adjoining public right of way, as such adjoining public right of way is shown and designated on the Lease Exhibit.

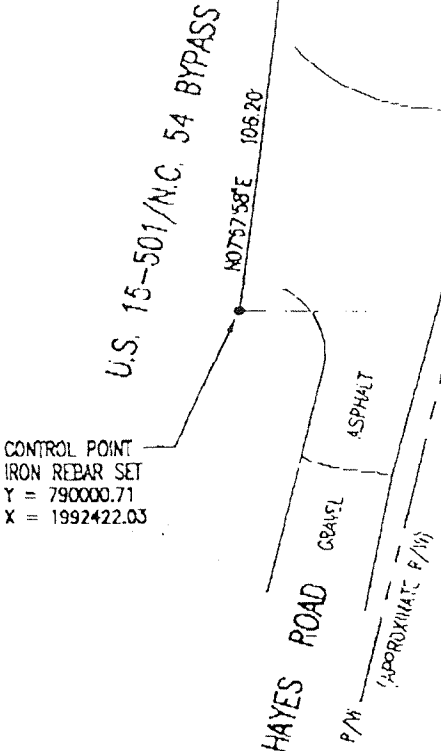
PRELIMINARY



VICINITY MAP

BOARD OF TRUSTEES OF THE
ENDOWMENT FUND OF THE
UNIVERSITY OF NORTH CAROLINA
O.B. 549, PG. 600

NORTH CAROLINA GRID (NAD 83)



NORTH CAROLINA
GRID COORDINATES
(NAD 83)
X = 789999.15
Y = 1992568.97

CLELAND ROAD
(NON-DEDICATED RIGHT-OF-WAY)

BOARD OF TRUSTEES OF THE
ENDOWMENT FUND OF THE
UNIVERSITY OF NORTH CAROLINA
O.B. 549, PG. 600

CONTROL POINT
IRON REBAR SET
Y = 790000.71
X = 1992422.03

NOTE:

- ACCESS TO LEASE SITE TO BE OVER OR ALONG THE EXISTING ENTRANCE(S), DRIVEWAY(S), PARKING AREA(S), STAIRWAY(S), LANDSCAPED AREA(S) AND OPEN AREA(S) LOCATED ON THE PROPERTY OF WHICH THE LEASE SITE IS A PART EXTENDING TO AND FROM THE LEASE SITE AS SHOWN HEREON TO AND FROM THE ADJOINING PUBLIC RIGHT OF WAY, AS SUCH ADJOINING PUBLIC RIGHT OF WAY IS SHOWN AND DESIGNATED HEREON.

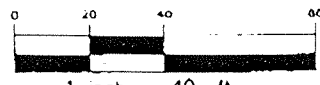
- NOTES:
- BEARINGS ARE NC GRID AND DISTANCES ARE HORIZONTAL UNLESS OTHERWISE NOTED.
 - THIS LEASE EXHIBIT HAS BEEN PREPARED PARTIALLY FROM AN ACTUAL FIELD SURVEY AND PARTIALLY FROM MAPS AND DEEDS OF RECORD.
 - THIS MAP REPRESENTS ONLY A SURVEY OF THE LEASE AREA AND IS NOT INTENDED FOR ANY OTHER USE.
 - GRID COORDINATES SHOWN ARE FROM AN ACTUAL GPS SURVEY PERFORMED TO 3RD ORDER CLASS I FGCC SPECIFICATIONS USING STATIC GPS FIELD PROCEDURES WITH (3) WILD SR299 GPS SENSORS.

| LEASE SITE | | |
|------------|--------------|----------|
| LINE | BEARING | DISTANCE |
| L1 | N05°26'23" E | 13.50' |
| L2 | S84°33'37" E | 35.00' |
| L3 | S05°26'23" W | 13.50' |
| L4 | N84°33'37" W | 35.00' |

LEASE AREA : 472.5 S.F.

LEGEND

- LINE SURVEYED
- - - LINE NOT SURVEYED
- LEASE CORNER
- IPF - IRON PIN FOUND



1 inch = 40 ft.
DATE : APRIL 23, 1998



Gordon S. Strout 4/24/98
GORDON S. STROUT NC L-2984 DATE

LEASE EXHIBIT FOR
BELLSOUTH
Carolinas PCS, L.P.
OF SITE 368-147-A-CLELAND ROAD BEING A 13.5' X 35'
PORTION OF THE PROPERTY LOCATED ON U.N.C. AT CHAPEL HILL
WHICH IS LOCATED NEAR THE INTERSECTION OF CLELAND ROAD
AND U.S. 15-501 BY-PASS IN ORANGE COUNTY, NORTH CAROLINA

Raleigh, NC
Chattanooga, TN
Greenville, SC
Atlanta, GA
Piedmont Olsent Hensley
ENGINEERS/ARCHITECTS/PLANNERS
2301 Renaissance Drive
Post Office Box 31368, Raleigh, NC 27622-1368
loc 919/782-3011 Fax 919/782-5800

K.L.D.A. 7/5/97, SPOKAS
C.S./J.S.
5/1/00