

ENROLLED ORDINANCE 171-20

APPROVE FOURTH AMENDMENT TO NASHOTAH
SUBSTATION CELLULAR TOWER LEASE

WHEREAS, pursuant to a February 14, 1997 Lease, as amended, with Verizon Wireless Personal Communications LP d/b/a Verizon Wireless (“Verizon”), the County leases space to Verizon on the Nashotah Sheriff Substation radio tower for use as a cellular tower and additional ground space for related equipment,

WHEREAS, pursuant to the lease, Verizon is permitted, with the County’s consent, to sublease space on the tower to T Mobile in exchange for the County receiving a percentage of the rent charged,

WHEREAS, T Mobile wishes to make upgrades to antennas and related equipment on the tower,

WHEREAS, the County is willing to permit the upgrades, and otherwise amend the Lease with Verizon without requiring an increase in rent,

WHEREAS, Verizon, and T Mobile are agreeable to such modifications,

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the fourth amendment to the February 14, 1997 Lease with Verizon Wireless Personal Communications LP d/b/a Verizon Wireless (“Verizon”), which is on file with the Department of Emergency Preparedness, for use of the Nashotah Sheriff Substation radio tower as a cellular tower and surrounding lands and permitting upgrades to antennas and related equipment, is approved.

BE IT FURTHER ORDAINED that the Director of Emergency Preparedness or his designee is authorized to execute the fourth amendment and any other documents necessary to effectuate the intent thereof.

APPROVE FOURTH AMENDMENT TO NASHOTAH
SUBSTATION CELLULAR TOWER LEASE

Presented by:
Judiciary & Law Enforcement Committee

Absent
Peter M. Wolff, Chair

Jim Batzko
Jim Batzko

Michael A. Crowley
Michael A. Crowley

Kathleen M. Cummings
Kathleen M. Cummings

Timothy Dondlinger
Timothy Dondlinger

Jennifer Grant
Jennifer Grant

Steve Whittow
Steve Whittow

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 6/28/16, Kathleen Novack
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 7/6/16, Paul Farrow
Paul Farrow, County Executive

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (the "Fourth Amendment") is made this ____ day of _____, 20__, between Waukesha County, a Wisconsin municipal corporation ("Lessor") and Verizon Wireless Personal Communications LP d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mailstop 4AW100, Basking Ridge, New Jersey 07920 ("Lessee").

WHEREAS, there is now in full force and effect a Lease Agreement between Lessor and Lessee dated February 14, 1997, as amended by the Amendment To Lease Agreement dated October 12, 2001 (the "First Amendment"), the Second Amendment To Lease Agreement dated November 18, 2010, and the Third Amendment to Site Lease Agreement dated July 10, 2015 (collectively, and together with this Fourth Amendment, the "Lease") that provides for the location, installation and operation of Lessee's communications equipment at the real property and on the tower ("Tower") owned by Lessor and located at N46 W33480 C.T.H.R., Nashotah, Wisconsin (the "Property"); and

WHEREAS, Section 4 of the Lease permits Lessee, with the consent of Lessor, to sublet all or any portion of the Site (as defined in the Lease). Such consent may be conditioned upon an agreement to allow Lessor to share in expected revenues from the sublet; and

WHEREAS, with the First Amendment, Lessor consented to Lessee's collocation or site license agreements ("SLAs") with TeleCorp Realty, LLC ("TeleCorp" d/b/a "AT&T") and VoiceStream PCS II Corporation ("VoiceStream" d/b/a "T-Mobile") at the Site on the terms set forth in the First Amendment; and

WHEREAS, pursuant to Section 5 of the Lease, Lessee is requesting Lessor's approval to allow T-Mobile to make certain antenna modifications to the Tower; and

WHEREAS, Lessor and Lessee wish to amend the Lease to authorize T-Mobile to modify its equipment on the Tower on the terms and conditions set forth herein and to address additional matters in the Lease.

NOW THEREFORE, for good and valuable consideration including the mutual covenants and agreements hereinafter set forth, Lessor and Lessee agree as follows:

1. The recitals set forth above are incorporated herein by reference.
2. **Approval of Tower Equipment Modifications.** Pursuant to Section 5 of the Lease, Lessor hereby approves the equipment modifications being performed by T-Mobile as shown by the drawings and specifications attached hereto as Exhibit 1 and incorporated by reference for the purpose of installation and operation of the additional equipment noted therein. In consideration of the Lessor's consent, approval of the equipment modifications specified in Exhibit 1, attached hereto and as part of the SLA amendment T-Mobile will execute with Lessee,

T-Mobile shall not be required to pay any increased amount to the Lessor other than amounts already due Lessor from T-Mobile pursuant to its respective SLA with Lessee:

- T-Mobile: Because the equipment modifications proposed by T-Mobile will not result in a net equipment increase on the Tower, no additional amounts shall be payable to Lessor. T-Mobile's existing rent to the Lessor shall continue to increase 4% annually during the term of its SLA.

Copies of the SLA amendment by and between Lessee and T-Mobile shall be provided to the Lessor for its records following full execution of the documents. If T-Mobile defaults in its payments to the Lessor, but continues to pay Lessee under the terms of its SLA, Lessee shall treat that default as a default under the SLA and Lessee: (1) shall take action against the party in default under the terms of the SLA; and (2) shall be responsible for paying Lessor the payment(s) due from T-Mobile. If T-Mobile defaults in its payments to Lessor and Lessee, Lessee will take action against the party in default under the terms of the SLA, and Lessor agrees that Lessee will not be responsible for paying Lessor any payment(s) due from T-Mobile except to the extent Lessee recovers amounts due Lessor.

3. **Tower Structural Modifications.** The parties agree that the tower capacity does not exceed 74.1%, as shown in the Structural Calculations identified in Exhibit 1. As such, no tower structural modifications are required at this time. Following the installation of the additional equipment pursuant to Paragraph 2 above, net Tower loading shall not exceed 74.1%.

4. Other than as specifically amended herein, all other terms and conditions of the Lease shall remain in full force and effect. Where there is conflict between the terms of the Lease and this Fourth Amendment, the terms of this Fourth Amendment shall control. Unless otherwise indicated or introduced in this Fourth Amendment, all defined terms referenced in this Fourth Amendment shall have the same meaning as those found in the Lease.

(Signatures continue on next page)

IN WITNESS WHEREOF, the parties hereto have executed in duplicate this Fourth Amendment effective as of the day and year first above written.

LESSOR:

WAUKESHA COUNTY, a Wisconsin municipal corporation

By: _____
Gary Bell
Director, Department of Emergency Preparedness

Date: _____

LESSEE:

VERIZON WIRELESS PERSONAL COMMUNICATIONS LP d/b/a Verizon Wireless

By: _____
Jacque Vallier
Executive Director- Network Field Engineering

Date: _____

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-06/28/16

(ORD) NUMBER-1710016

- | | |
|--------------------------|---------------------------|
| 1 R. KOLB.....AYE | 2 D. Zimmermann.....AYE |
| 3 R. MORRIS.....AYE | 4 J. BATZKO..... |
| 5 T. Dondlinger.....AYE | 6 J. WALZ.....AYE |
| 7 J. GRANT.....AYE | 8 T. Michalski.....AYE |
| 9 J. HEINRICH.....AYE | 10 D. SWAN.....AYE |
| 11 C. HOWARD.....AYE | 12 P. WOLFF.....AYE |
| 13 P. DECKER.....AYE | 14 C. Wood.....AYE |
| 15 B. MITCHELL.....AYE | 16 M. CROWLEY.....AYE |
| 17 D. PAULSON.....AYE | 18 L. NELSON.....AYE |
| 19 K. CUMMINGS.....AYE | 20 T. SCHELLINGER.....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 T. Wysocki.....AYE |
| 23 K. HAMMITT.....AYE | 24 S. WHITTOW.....AYE |
| 25 B. Johnson.....AYE | |

TOTAL AYES-24 TOTAL NAYS-00

CARRIED _____ DEFEATED _____

UNANIMOUS 2 TOTAL VOTES-24