

**Agreement for the Lease of  
City of Lawrence, Kansas Property**

This Lease Agreement ("Agreement") is entered into this 10th day of August, 1998, by and between the City of Lawrence, Kansas, a Municipal Corporation ("City"), and Kansas City SMSA Limited Partnership, a Delaware Limited Partnership, its successors and assigns ("Tenant"), with principal offices at Lenexa, Kansas and Dallas Texas. The Agreement provides for the granting and leasing of certain property interests ("the property") at the City owned water storage facility generally located at 6th & Kasold, Lawrence, Kansas, and known as the West 6th Street Water Tower (the "water storage facility") and grants Tenant permission for the installation of certain Tenant improvements on the property ("improvements") pursuant to the following terms and conditions.

The City and the Tenant, in recognition of good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, hereto agree as follows:

1. **NON EXCLUSIVE LEASE.** This is a non exclusive lease. Tenant agrees and acknowledges that Owner may, from time to time, at its option, offer to rent to other tenants, space on the property without the consent of the Tenant, subject to the conditions of Section 16.
2. **CITY APPROVAL OF TENANT PLANS AND CONSTRUCTION.** The City shall approve all plans for the installation of improvements on the City property. The Tenant shall submit all proposed drawings, plans, and specifications in sufficient detail concerning the proposed improvements to the property. Such drawings, plans, and specifications, shall include but not be limited to:
  - A. Construction drawings, plans, and specifications for the improvement, including information on any physical contact with the City water storage facility or other permanent City facilities on the property; and
  - B. Information concerning the appearance of the proposed improvements, including color and size of the proposed improvements; and
  - C. Information concerning the compliance of the proposed improvements with all applicable federal, state, and municipal laws, including compliance with Federal Communications Commission regulations for radio frequency requirements; and
  - D. Such other information as the City or City's consultant may determine as necessary.

At Tenant's sole cost and expense, Tenant will select a qualified consultant, to be approved by the City, to review and comment on the proposed plans for the improvements, and inspect and observe the construction of the improvements (the duties to be performed by the City's consultant pursuant to this section shall hereinafter be referred to collectively as the "Consultant's Duties"). The City or its consultant must first provide Tenant with a detailed description of the Consultant's Duties and a cost estimate thereof.

**3. PROPERTY SUBJECT TO AGREEMENT.** The property interests hereby leased and granted by the City are limited to the following, provided that unless designated as exclusive, the property interest leased shall be considered non exclusive to the Tenant:

- A. Real property comprised of approximately 400 square feet of land for placement of an 12 foot by 26 foot equipment building to house a described in Exhibit A; and
- B. Water storage facility exterior space for the attachment of antennas as described in the approved plans; and
- C. Water storage facility interior space required for cable runs to connect equipment and antennas as described in the approved plans; and
- D. Non-exclusive easements required to run utility lines and cables; and
- E. Non-exclusive easement across City's Property (hereinafter defined) for access, in or upon the City's real property described on Exhibit "A" attached hereto and subject to the specifications shown and described on said Exhibit "A". The water storage facility located on City's Property shall hereinafter be referred to as the "Water Storage Facility".

**4. TERM.** The term of this Agreement shall be that part of five (5) years commencing on the date designated in a notice that Tenant will deliver to the City (the "Commencement Date Notice") as the date on which Tenant will take possession which, if possession occurs at all, shall be no later than four (4) months from the date of execution of the lease. (the "Commencement Date") and terminating on December 31 following the fourth (4th) year anniversary of the Commencement Date (the "Term") unless otherwise terminated pursuant to this Agreement. If the Commencement Date Notice is not received by within four months of the execution of Lease, then neither party shall have any further rights or obligations under this Agreement.

**5. RENT.** Tenant's obligation to pay rent shall arise only upon delivery of the Commencement Date Notice. Thereafter, Tenant shall pay City rent monthly beginning on the Commencement Date (for that portion of the applicable month in which the Commencement Date occurs). The rent for the first month shall not be payable until ten (10) days after receipt by Tenant of properly executed and acknowledged signature counterparts of this Agreement and Memorandum (defined below) from City. The monthly rent for the Initial Term shall be, together with any applicable sales tax \$1,000.00 per month ("Initial Monthly Rent"). Any partial months will be prorated. Upon City's execution of this Agreement, Tenant shall pay Owner an additional payment of \$1,500.00. Tenant may extend the term of this Agreement for two (2) additional five (5) year periods (individually, and "Option Period" and collectively, the "Option Periods"). Tenant shall have elected to extend the term of each successive Option Period unless it gives the City written notice of its intention not to extend at least one hundred twenty (120) days prior to the expiration of the then-current term. The monthly rent for each Option Period shall be the Initial Monthly Rent, increased, upon the commencement of the Option Period, by a percentage of the Initial Monthly Rent which shall be computed by multiplying the number of years in the then expiring term (whether initial Term or an Option Period) times three percent (3%).

**6. USE AND ACCESS.** Tenant may use the Property for the purpose of installing, removing, replacing, maintaining and operating a wireless radio communications facility generally in accordance with Exhibit "A" subject to such modifications and alterations as may result from changes or improvements in technology (the "improvements"), provided that Tenant shall not be required to occupy the Property. The manner in which the improvements will be attached to the water storage facility shall be subject to the prior approval of City. City shall provide an administrative procedure to allow Tenant twenty-four (24) hour, seven (7) days a week year around access to the Property; provided that in the event of an emergency associated with the operation of the water storage facility, the City may deny the Tenant access for reasonable periods of time. It is understood that City, from time to time, will need to repair the water tank and/or remove and re-coat the tank with a new paint system. Following notification of the need and schedule for tank maintenance, the Tenant shall remove, secure, relocate, and/or protect its facilities during the entire duration of the maintenance activities. The cost of removing, securing, relocating, and/or protecting shall be borne by Tenant. Any other additional costs to perform coating maintenance due to the installation or presence of the facilities shall be borne by the Tenant.

Tenant shall pay all personal property taxes assessed against the improvements on the property. Tenant will not allow any mechanics' or materialmen's liens to be placed on the Property as a result of its work on the Property.

Tenant acknowledges and agrees that City is generally exempt from the payment of real and personal property taxes on the Property, which is used for governmental purpose. Should City's Property lose its exemption from real and personal property taxes, whole or in part, as a result of Tenant's improvements to the Property, Tenant shall pay in full and in a timely manner all such taxes incurred directly to the proper taxing authority. Should any such taxes or assessments be levied or assessed directly against City, Tenant shall reimburse City for the full amount of such taxes and assessments within ten (10) days after City notifies Tenant of City's payment of such taxes and assessments.

**7. UTILITIES.** Payment for electric service and for telephone or other communication services to the property improvements, including the extension of service lines and installation of meters, shall be Tenant's responsibility and Tenant shall timely pay all utility charges assessed by the utility.

**8. REMOVAL OF IMPROVEMENTS.** All personal property and trade fixtures of Tenant shall be removed by Tenant upon the termination of this Agreement unless otherwise agreed to in writing by the parties.

**9. INSURANCE.** Tenant shall maintain commercial general liability insurance insuring Tenant against liability for personal injury, death or damage to personal property arising out of use of the Property by Tenant, its agents and employees, with combined single limits of Two Million and no/ 100 Dollars (\$2,000,000.00). Tenant shall also maintain fire and extended coverage insurance insuring Tenant's personal property for its full insurable value (subject to reasonable deductibles). Tenant shall provide the City with a Certificate of Insurance demonstrating compliance with the provisions of this Section. Any policy required to be obtained pursuant to this Section 9 shall contain a Waiver of Subrogation in favor of the other party hereto to the extent required under Section 12, Indemnity. The Tenant's insurance policy shall contain the following endorsement:

"At least thirty (30) days prior written notice to the City shall be given by the insurer of any

intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the City Manager's Office, P.O. Box 708, Lawrence, Kansas, 66044."

The City warrants and represents to the Tenant that the City maintains either private insurance or self-insurance, in aggregate amounts, pursuant to the limits set forth in the Kansas Tort Claims Act to provide coverage against claims for liability for bodily injury, death, and property damage arising out of the City's ownership, use and management of the Property and Water Storage Facility, and fire and extended coverage on the Property and Water Storage Facility.

**10. CONDITION OF PROPERTY.** City warrants and represents that it shall deliver the Property to Tenant on the Commencement Date. Tenant shall not drill directly into the water storage facility located on, or attach any equipment to, the water storage facility until (a) plans for such attachments have been approved by City, and (b) City has been offered the opportunity to observe the installation of such attachments on other similar water storage facilities. Any alterations to the water tank must be pre-authorized by Owner. Nothing in this Agreement shall be construed or interpreted as creating a guarantee or warranty enforceable against the City that the property or site is or will remain suitable for use in transmitting or receiving communication signals for use by the Tenant.

**11. TERMINATION.** This Agreement may be terminated by Tenant for cause by giving City sixty (60) days written notice to City if any of the following events occur: (a) Tenant fails to obtain or loses any necessary permits, approvals, licenses or orders and is thereby unable to use the Improvements on the Property; (b) if Tenant determines at any time that the Property is not appropriate for locating the Improvements for technological reasons, including, without limitation, signal interference; or (c) City fails to comply with any material term, condition or covenant of this Agreement and does not cure such failure within thirty (30) days after Tenant's written notice thereof, or in the event of a cure that requires more than thirty (30) days to complete, if City has not commenced such cure within (30) days of such notice and is not diligently prosecuting said cure to completion. City may terminate this Agreement upon the occurrence of any of the following: (a) Tenant's failure to pay any rent required hereunder when due if such failure shall continue for more than ten (10) calendar days after Tenant receives City's written notice of such failure to make timely payment; (b) Tenant fails to comply with any material term, condition or covenant of this Agreement, other than the payment of rent, and does not cure such failure within thirty (30) days after Tenant's written notice thereof or in the event of a cure that requires more than thirty (30) days to complete, if Tenant has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion; (c) if Tenant becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition under any section or chapter of the Federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or is adjudged bankrupt or insolvent in proceedings filed against Tenant thereunder, or if a receiver or trustee is appointed for all or substantially all of Tenant's assets due to insolvency; (d) upon one years' written notice if in the sole discretion of the City it becomes necessary to do so for reasons other than leasing space on the water tower to a company or companies which are in competition with Tenant or, (e) if Tenant fails to pay real and personal property taxes in accordance with the provisions of Section 6 of this Agreement.

**12. INDEMNITY.** City and Tenant each indemnify the other against, and hold the other harmless from any and all costs (including reasonable attorney's fees and expenses) and claims, actions, damages, obligations, liabilities and liens which arise out of (a) the breach of this Agreement by the indemnifying party; and (b) the use and/or occupancy of the Property, or the balance of the City's

Property, by such indemnifying party. This indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from any negligent or intentional misconduct of the indemnified party and shall survive the termination of this Agreement. Except for the acts of City or its employees or agents, City shall not be liable for any loss or damages arising out of bodily injuries or property damage on the Property.

**13. HAZARDOUS SUBSTANCES.** City warrants that City has no knowledge of any substance, chemical, or waste on the City's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Tenant shall not use, generate, store or dispose of any such hazardous, toxic or dangerous substance, chemical or waste on City's Property in violation of any applicable federal, state or local law or regulation. Tenant and City shall defend, indemnify and hold harmless each other's respective officers, employees, agents and assigns against any and all losses, liabilities, claims or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this section.

**14. CASUALTY/CONDEMNATION.** If any portion of the Property or Improvements are damaged by any casualty and such damage adversely affects City's use of the Property, or if a condemning authority takes any portion of the City's Property and such taking adversely affects Tenant's use of the City's Property, this Agreement shall terminate as of the date of the casualty or the date the title vests in the condemning authority, as the case may be if Tenant or the City gives written notice of the same within thirty (30) days after it receives notice of such casualty or taking. The parties shall be entitled to make claims in any condemnation proceeding for the value of their respective interests in the Property in accordance with the laws of the State of Kansas. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

**15. DEFAULT.** Except as expressly limited hereby, City and Tenant shall each have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default to cure the same within fifteen (15) days.

**16. INTERFERENCE.** Tenant covenants and agrees that Tenant's equipment, its installation, operation and maintenance will:

A. Not interfere with the operation of any radio transmit/receive equipment installed at the site and necessary to the radio businesses of the City. In the event there is harmful interference to said electronic equipment Tenant will promptly take all steps necessary to identify the problem, and, if caused by Tenant's equipment, take all reasonable steps to eliminate said harmful interference within 24 hours after notice from City to Tenant advising of the interference. If said interference cannot be eliminated within three (3) days of notice thereof, Tenant agrees to suspend operations (transmissions) at the site while the interference problems are studied and a means found to mitigate them. If said interference cannot be eliminated, then this lease will be terminated, and Tenant shall remove its building and equipment from City's property.

City shall cause all subsequent users of the tower structure to first coordinate with Tenant to ensure that their frequencies and antenna locations will be compatible with Tenant's and to agree to a clause similar to this Paragraph 16A. herein, promising to immediately eliminate harmful interference if said user's radio equipment should interfere with that of the Tenant

herein.

B. Comply with all applicable rules and regulations of the Federal Communications Commission, and electrical codes of City and/or State. Under this lease the City assumes no responsibility for the licensing, operation and/or maintenance of Tenant's radio equipment, antennas, transmission lines or attachments.

C. With City's communication equipment installed and in operation, comply with all Federal, State, and Local safety and regulatory requirements, including requirements related to electromagnetic radiation standards.

Tenant has included as Exhibit "B" an intermodulation study analyzing the compatibility of the proposed frequencies of City and Tenant.

#### **17. MISCELLANEOUS.**

a. City represents and warrants that City has full authority to enter into and sign this Agreement and has good and marketable title to the City's Property.

b. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the City and Tenant. This Agreement may only be amended in writing signed by all parties. Exhibits "A" and "B" are incorporated into this Agreement by reference.

c. This Agreement may be signed in counterparts by the parties hereto.

d. The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of City and Tenant.

e. The prevailing party in any action or proceeding in court to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

g. Tenant shall not assign this Agreement or sublet all or any portion of the Property without City's prior written consent which shall not be unreasonably withheld or delayed.

h. Notices shall be in writing and sent by United States mail, postage prepaid, certified or registered with return receipt requested. Any such notice shall be deemed given when deposited in the United States mail. Notice to the City all be sent to City Manager, P.O. Box 708, Lawrence, Kansas, 66044. Notice the Tenant shall be sent to Real Estate Manager, Southwestern Bell Wireless Inc., 15529 College Boulevard, Lenexa, Kansas, 66219 and Vice President-General Attorney and Secretary, Southwestern Bell Wireless Inc., 17330 Preston Road, Suite 100A, Dallas, Texas, 75252.

A party shall notify the other party of a change in the address for notification purposes.

i. This Agreement shall be construed in accordance with the laws of the State of Kansas.

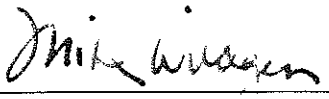
- j. Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.
- k. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- l. City and Tenant each represent that they have not been represented by a real estate broker or other listing agent in this transaction. Each party ("Indemnifying Party") shall indemnify and hold the other party harmless from any claims for commission, fee or other payment by such broker or any other leasing agent claiming to have represented the Indemnifying Party herein.
- m. Tenant shall maintain the improvements in a good and safe condition, consistent with industry standards. Tenant warrants that no additional markings or lighting (collectively, "Lighting") on the Water Storage Facility
- n. This Agreement is not a franchise agreement pursuant to the provisions of K.S.A.12-2001 et seq.
- o. Prior to construction the Tenant shall be required to receive all lawfully required land use approvals from the City of Lawrence, Kansas and all other regulatory bodies.
- p. The Tenant shall not install or maintain any signs, insignias, or logos on the property or the improvements without the written permission of the City.
- q. The City shall contemporaneously herewith execute, acknowledge and deliver to Tenant for recording a memorandum of this agreement ("Memorandum") in the form of Exhibit "B".
- r. Tenant, upon paying the rent and performing all of its covenants, agreements and obligations under this Agreement, shall peaceably and quietly have, hold and enjoy the Property in accordance with the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto bind themselves to this Agreement on the day and year first written above.

**CITY**

CITY OF LAWRENCE, KANSAS,  
a Municipal Corporation

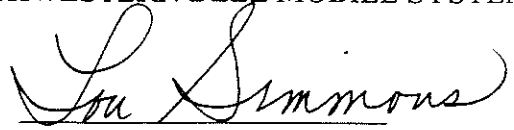
By:

  
Mike Wildgen, City Manager

**TENANT**

KANSAS CITY SMSA LIMITED PARTNERSHIP  
BY ITS GENERAL PARTNER  
SOUTHWESTERN BELL WIRELESS INC.  
SUCCESSORS IN INTEREST TO  
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

By:

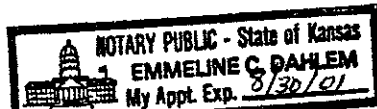
  
Lou Simmons  
Vice President & General Manager-Midwest Region



STATE OF KANSAS            )  
  ) ss.  
COUNTY OF DOUGLAS    )

On this 10<sup>th</sup> day of August, 1998, before me appeared Mike Wildgen, to me personally known, who, being by me duly sworn (or affirmed) did say that he is the City Manager, and that said instrument was signed on behalf of the City of Lawrence, Kansas by authority of its governing body and said acknowledged said instrument to be the free act and deed of said City.

Emmeline C. Dahlem  
Notary Public



Printed Name: Emmeline C. Dahlem

My appointment expires \_\_\_\_\_

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON    )

On this 20<sup>th</sup> day of July, 1998, before me appeared Lou Simmons, to me personally know, who being by me duly sworn (or affirmed) did say that he is the Vice President and General Manager, Kansas City SMSA Limited Partnership, a Delaware Limited Partnership, and that said instrument was signed on behalf of said partnership by authority of its board of directors and he acknowledges said instrument to be the free act and deed of said partnership.

Cheri Hardee  
Notary Public

Printed Name: Cheri Hardee

My appointment expires: \_\_\_\_\_

**CHERI HARDEE**  
Notary Public-State of Kansas

My Appt. Expires 1/26/2002

 **Southwestern Bell Wireless**  
15529 College Boulevard Lenexa, KS 66219

DATE:  
06-AUG-98

CHECK NO.:  
2005603

KANSAS CITY

CITY OF LAWRENCE

3580

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	DISCOUNT	NET
KASOLD '98	05-AUG-98	EXECUTION OF AGREEM	0.	1,500.00
THE ATTACHED CHECK IS IN PAYMENT FOR ITEMS DESCRIBED ABOVE.			<b>TOTAL</b>	0.00
				1,500.00

 **Southwestern Bell Wireless**

15529 College Boulevard  
Lenexa, KS 66219

Chase Manhattan Bank Delaware  
1201 Market Street Wilmington, DE 19801

CHECK NO.  
2005603

62-28  
311

8509-09

**PAY** One Thousand Five Hundred And No/100 Dollars

TO THE ORDER OF

CITY OF LAWRENCE  
P O BOX 708  
ADMINISTRATIVE SERVICES  
LAWRENCE, KS 66044 0708

3580

DATE  
06-AUG-98

CHECK AMOUNT  
\$\*\*\*\*\*1,500.00



CHECK VOID AFTER SIX MONTHS

THE BACK OF THIS CHECK CONTAINS A SOUTHWESTERN BELL FACSIMILE WATERMARK • CAN BE SEEN AT AN ANGLE.

⑈ 2005603⑈ ⑆031100267⑆ 6301485094 509⑈

**CERTIFICATE OF INSURANCE**  
**SBC COMMUNICATIONS INC.**

ISSUED: 09-20-97  
CERT #: 01115S7BB

INSURED:  
**SBC COMMUNICATIONS INC.**  
**SOUTHWESTERN BELL WIRELESS, INC.**  
**175 E. HOUSTON, ROOM 7-R-5**  
**SAN ANTONIO, TX 78205**

SBMS-

This is to certify that policies of insurance listed below have been issued to the named insured for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

TYPE OF INSURANCE COMPANY AFFORDING COVERAGE COVERAGES	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS OF LIABILITY
<b>COMMERCIAL GENERAL LIABILITY</b>  National Union Fire Insurance Co.      AMB#02351 ✓ Occurrence Form ✓ Products and Completed Operations	RMGL 1135038	06-01-97	06-01-98	General Aggregate      \$10,000,000 Products - Completed Ops.      \$1,000,000 Personal & Advertise Injury      \$1,000,000 Each Occurrence      \$1,000,000 Fire Damage (Any one fire)      \$1,000,000 Med. Exp. (Any one person)      \$ 10,000

**DESCRIPTION OF OPERATIONS / OTHER**

ENTRY AND TESTING AGREEMENT FOR SWBW TO DETERMINE THE VIABILITY AND FEASIBILITY OF THE PROPERTY AS A TOWER OR ANTENNA SITE, & THE NECESSITY OF SWBW'S EMPLOYEES, AGENTS OR CONTRACTORS TO ENTER UPON & INSPECT THE PREMISES AND/OR TEMPORARILY LOCATE COMMUNICATIONS EQUIPMENT ON THE PROPERTY & CONDUCT SHORT TERM TESTING. 12' X 26' EQUIPMENT SHELTER. 3708 W. 6TH STREET. LAWRENCE, KS. CERTIFICATE HOLDER IS LISTED AS ADDITIONAL INSURED. WAKARUSA, CENTER CODE #4817 KANSAS CITY MSA.

**CANCELLATION**

Should any of the above described policies be canceled before the expiration date thereof, the insurance company will endeavor to mail 30 days written notice to the certificate holder named below. Failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

**CERTIFICATE HOLDER**

**THE CITY OF LAWRENCE, KANSAS**  
**ATT: CITY MANAGER**  
**P.O. BOX 708**  
**LAWRENCE, KS 66044**

**PRODUCER**

Marsh & McLennan Inc.  
10 South Broadway  
St. Louis, MO 63102

**CONTACT**

SBC Communications Inc.  
Risk Management Department

**AUTHORIZED REPRESENTATIVE**

