

THIRD ADDENDUM TO
CELLULAR TELEPHONE FACILITY SITE LEASE AGREEMENT

THIS THIRD ADDENDUM TO CELLULAR TELEPHONE FACILITY SITE LEASE AGREEMENT ("Third Addendum") is made and entered into this _____ day of October, 2009, by and between the State of Colorado, **BOARD OF TRUSTEES for FORT LEWIS COLLEGE**, with its principal offices located at 1000 Rim Drive, Durango, CO 81301 ("Lessor") and **ALLTEL COMMUNICATIONS, LLC, formerly known as Alltel Communications, Inc.** ("Lessee") (collectively referred to as the "Parties" hereinafter).

WHEREAS, on the 16th day of September 1996, Lessor's predecessor in interest, State Board of Agriculture by and for Fort Lewis College ("Prior Lessor") and Lessee's predecessor in interest, Durango Cellular Telephone Company dba Cellular-One ("Cellular-One") entered into a Cellular Telephone Facility Site Lease Agreement ("Lease");

WHEREAS, on the 24th day of October, 2000, Prior Lessor and Lessee entered into a First Addendum to said Cellular Telephone Facility Site Lease Agreement ("First Addendum");

WHEREAS, on the 21st day of January, 2003, Lessor and Lessee entered into a Second Addendum to said Cellular Telephone Facility Site Lease Agreement ("Second Addendum");

WHEREAS, the parties seek to relocate the site on the College grounds, to provide for a conveyance of the new tower to the Lessor once it is constructed by the Lessee, to alter the escalation method and to extend the terms of the Lease;

NOW THEREFORE, the Lease is hereby modified as follows:

Effect of this Third Addendum on the Lease and First Addendum and Second Addendum.

Except as specifically amended in this Third Addendum, the Lease, and First Addendum and Second Addendum have not been otherwise amended, and remain in full force and effect as the entire agreement of the Parties with respect to the subject matter. All references in the Lease to the original lessee, Cellular-One, shall be deemed to include Lessee.

1. Paragraph 2. Paragraph 2 of the Lease and any subsequent modifications in the First Addendum and Second Addendum are hereby modified to include the following:

As of September 2009, the annual rental payment shall be \$34,575.04, which is a 3% increase over the September 2008 annual rental payment of \$33,568.00. Beginning with the September 2010 rent, and for each annual rent going forward, the annual rent shall be increased by 3% over the previous year's rent.

2. **Paragraph 3.** Paragraph 3 of the Lease and any subsequent modifications in the First Addendum and Second Addendum are hereby deleted in their entirety and replaced with the following:

3. (a) "Communications Facility" shall mean the tower, antennas, buildings, wall, fence, and other incidental uses. Lessee shall design and construct the Communications Facility in a manner agreed to by both parties. Said design shall be documented in Exhibit "A," attached hereto, which shall replace and supplant any previous Exhibit A associated with this Lease. Lessee or Lessee's agents shall install Lessee's equipment and Lessor's equipment on the tower as provided in Exhibit A. An itemization of Lessee's equipment on the tower and their transmission frequencies are provided in Exhibit B, attached hereto, which shall replace and supplant any previous Exhibit B associated with this Lease.

(b) Upon completion of the Communications Facility by Lessee, Lessee shall provide Lessor with copies of invoices, contracts, and other documentation to evidence the construction and engineering costs for the tower. Lessor shall remit the sum of \$50,000.00 to Lessee as a capital contribution to Lessee's construction expenses within thirty (30) days following receipt of said documentation from Lessee. After said contribution is remitted, Lessee agrees to execute any documentation necessary to convey ownership of the tower to the Lessor, after which Lessor shall accept ownership of the tower in an "as-is" state and assume any and all obligations and liabilities associated with the tower, and Lessee shall make no warranties or guarantees regarding the tower and will have no further obligations or liabilities associated with the ownership of the tower. With respect to the maintenance of the Communications Facility, Lessor shall be responsible for the maintenance of the tower, its equipment on the tower, its equipment shelter, the concrete wall and perimeter fence, and any other equipment or wiring of Lessor comprising the Communications Facility, while the Lessee shall be responsible for the maintenance of its equipment on the tower, its equipment shelter, and any other equipment or wiring of Lessee comprising the Communications Facility.

(c) So long as Lessee continues to lease space on the tower it may, in its discretion, replace its antennas on the tower, provided that the replacement antennas are of no significantly greater size or weight than the antennas or equipment originally installed by Lessee. Lessee may, in Lessee's discretion and with no additional compensation to Lessor, also install additional antennas and equipment on the tower provided that: (i) the additional antennas and equipment are installed at the same height as the antennas and equipment originally installed by Lessee, (ii) the Lessee performs a structural analysis of the tower that shows the additional antennas or equipment will not damage the tower or interfere with the use of the tower by Lessor, as determined by the Lessor, and (iii) the addition antennas and equipment will be owned and maintained by Lessee. In the event that the Lessee is unable to satisfy the aforementioned conditions as determined by Lessor, Lessor reserves the right to charge Lessee additional rent for additional antennas and equipment.

(d) If Lessee installs additional antennas or equipment in accordance with this section, the parties shall amend the Lease to update the description of Lessee's antennas and equipment on Exhibit "B," and where necessary, Exhibit "A."

(e) Lessor reserves the right to lease the tower to other tenants and third parties, subject to the provisions of Paragraph 11 of the Lease.

3. **Paragraph 5.** Paragraph 5 of the Lease and any subsequent modifications in the First Addendum and Second Addendum are hereby deleted in their entirety and replaced with the following:

5. Any utilities associated with Lessee's equipment will be independently metered and the financial responsibility of the Lessee.

4. **Paragraph 6.** Paragraph 6 of the Lease and any subsequent modifications in the First Addendum and Second Addendum are hereby deleted in their entirety and replaced with the following:

6. Termination. Without limiting rights otherwise set forth in this Lease or available at law or in equity, the Lease may be terminated without penalty or further liability, as follows:

(a) By either party in the event of default by the other party. A default shall occur if either party shall fail to keep and perform any express written provision of this Lease and such failure shall continue for a period of 30 days after receipt of written notice, unless such failure cannot reasonably be cured within a period of 30 days and, prior to the expiration of 30 days after receipt of notice, the party failing to keep or perform the provision commences to eliminate such failure and proceeds diligently to take steps to cure the same;

(b) By Lessee upon 6 months written notice to Lessor;

(c) Immediately by Lessee if the site or Communications Facility is damaged so as to, in Lessee's discretion, hinder Lessee's Use;

(d) Immediately by Lessee if Hazardous Materials are discovered to exist on or under the Premises.

5. **Paragraph 7.** Paragraph 7 of the Lease and any subsequent modifications in the First Addendum and Second Addendum are hereby deleted in their entirety and replaced with the following:

7. The Lease shall be extended through September 15, 2016. Beginning on September 16, 2016, Lessee shall have the right to extend this Lease for (3) three additional renewal

terms of five (5) years each. Unless Lessee notifies Lessor of its election not to exercise any renewal term at least 60 days prior to the expiration of any term, each renewal term shall automatically be exercised without notice or other action of any kind by Lessee. Upon the expiration of the final renewal term, unless this Lease has been otherwise extended by written agreement of the parties, this Lease shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term.

6. **Paragraph 8.** Paragraph 8 of the Lease and any subsequent modifications in the First Addendum and Second Addendum are hereby deleted in their entirety.

7. **Paragraph 16.** Paragraph 16 of the Lease and any subsequent modifications in the First Addendum and Second Addendum are hereby deleted in their entirety and replaced with the following:

16. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, by registered or certified mail, or by nationally recognized overnight courier having a record of receipt to the addresses indicated below:

If to Lessor: Fort Lewis College
1000 Rim Drive
Durango, Colorado 81301
Attn: Vice President of Finance & Administration

If to Lessee: Alltel Communications, LLC
ATTN: Prop. Mgmt. Dept., B2F2
P.O. Box 2177
Little Rock, AR 72203-2177
Phone: (877) 557-8226
Fax: (501) 905-6944

Hand Delivery Address: Alltel Communications, LLC
ATTN: Prop. Mgmt. Dept., B2F2
One Allied Drive
Little Rock, AR 72202

8. A new paragraph 18 shall be added to the Lease as follows:

“18. Lessee shall, at Lessee’s expense, purchase and maintain in full force and effect throughout the term of the Lease including any renewals or extensions, such public liability and property insurance coverage as Lessee may deem necessary. Such insurance coverage may be provided through a self insurance program and/or blanket policy covering other locations, will provide not less than a combined single limit of \$1,000,000 and will name Lessor as an additional insured. Lessee will provide Lessor

with a Certificate of Insurance and/or Certificate of Self Insurance evidencing such coverage.”

9. Special Provisions. The Parties agree to the covenants and conditions set forth in the “Special Provisions”, attached hereto and incorporated herein by reference as Exhibit “C.” All references in the Special Provisions to “State” shall be deemed to refer to Lessor, all references to “Contractor” shall be deemed to refer the Lessee, and all references to “contract” shall be deemed to refer to the Lease, as amended.

10. Exhibits to this Third Addendum. Attached and incorporated herein to this Third Addendum are the following Exhibits:

Exhibit A – Site Plan and Construction Drawings

Exhibit B – Lessee’s Equipment List and Transmission Frequencies

Exhibit C – Special Provisions

11. This Third Addendum shall be binding upon and inure to the benefit of each of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns.

12. In the event of a conflict between the terms of this Third Addendum and the terms of the Lease or the First Addendum or Second Addendum, the terms of this Third Addendum shall control. All of the defined terms in the Lease shall have the same meanings in this Third Addendum, unless otherwise defined herein.

13. Except as amended hereby, the Lease, the First Addendum, and the Second Addendum shall remain in full force and effect in accordance with the original terms and provisions, and the Lease, the First Addendum, and the Second Addendum are ratified and confirmed as valid and existing agreements between the parties.

IN WITNESS WHEREOF, the parties have executed this Third Addendum as of the day and year first above written.

LESSOR:

STATE OF COLORADO

**By and between the BOARD OF TRUSTEES
for FORT LEWIS COLLEGE**

By: Brad Bartel

Print Name: BRAD BARTEL

Title: PRESIDENT

Date: 11/2/09

LESSEE:

**ALLTEL COMMUNICATIONS, LLC
by Management Trust**

By: Barbara Bonds

Print Name: Barbara Bonds

Title: Trust Counsel

Date: 10/29/09

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER
David J. McDermott, CPA**

By: 8-188
Steven J. Schwartz, Designee

Date: 11/2/09

EXHIBIT “A”

See attached Site Plan

EXHIBIT "B"

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Three (3) BXA-80080-8CF at 38'

Six (6) runs of RFS 7/8' coax.

One (1) Microawave dish at 21'8"

One (1) run of 1 5/8' coax.

Ft. Lewis Frequencies:

A Band--> F1 - F6 = TX - 871.29-879.42, RX - 826.29-834.42 = V283, V241, V199, V157, E73

Carrier	Tx Frequency	Rx Frequency	Center Channel
F1	877.59-879.42	832.59-834.42	283
F2	876.33-878.16	831.33-833.16	241
F3	875.07-876.90	830.07-831.90	199
F4	873.81-875.64	828.81-830.64	157
F6	871.29-873.12	826.29-826.12	73

EXHIBIT "C"

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09