

USE AND OCCUPANCY PERMIT

THIS USE AND OCCUPANCY AGREEMENT made this 1st day of May, 1993 by and between the City of San Diego, a municipal corporation in the County of San Diego, State of California, hereinafter called "City," and the North County Dispatch, Joint Powers Authority, hereinafter called "Permittee."

W I T N E S S E T H:

The City of San Diego (City) hereby permits the North County Dispatch, Joint Powers Authority (Permittee) to utilize the premises described herein upon the following conditions.

1. PREMISES: A portion of the City's compound and antenna location on Black Mountain, comprising space on a utility pole to mount Permittee's signal cabinets, and space for two omni-directional antennas on the City's 90 ft. tower. Said real property is hereby called the premises and is shown on Exhibit A.
2. USE: The premises shall be used during the term hereof solely and only for the purpose of constructing, maintaining, repairing, altering and operating radio transmitting and receiving equipment as City may from time to time consent to in writing, and for no other purpose or purposes whatsoever.
3. TERM: 3 years beginning on May 1, 1993.
4. RENT: Permittee shall pay the City of San Diego for the use of the premises at the rental rate of Three Thousand Dollars (\$3,000) per year, payable annually in advance. Rent for a lesser period shall be prorated. Beginning with the first anniversary of the commencement of this permit and on each anniversary date thereafter, the annual rental provided for above shall be increased by an amount equal to five percent (5%) of the then current rental.

Rental payments will be addressed and mailed to the City of San Diego, City Treasurer, P.O. Box 2289, San Diego, CA 92112-4165.

5. INSTALLATION AND OPERATION OF EQUIPMENT: The installation and operation of Permittee's communications equipment in and about City's compound at Black Mountain shall be under the administration of the City. The use and operation of the Permittee's equipment at said site shall be subject to an "on the air" compatibility test (see Exhibit B attached). The compatibility test must result in reasonable assurance that the use will not cause interference to systems and users on Black Mountain. Only the Permittee, its properly qualified and authorized agents, employees, contractors, and servants, shall have the right of ingress to and egress from said premises. If communication equipment of PERMITTEE is operated or maintained by anyone other than its regular employees, the admission of such persons to said site shall be permitted only upon the express

written consent of the CITY having first been obtained. The equipment shall be installed in accordance with standards provided by C. &E. Division. Preliminary drawings shall be provided for C. &E. review prior to any installation.

6. IMPROVEMENTS AND ALTERATIONS: Permittee shall not make any improvements or alterations to the premises without the prior written consent of City. All fixtures, equipment and improvements installed or made by Permittee shall remain the property of Permittee and shall, at Permittee's expense, be removed upon expiration or termination of this agreement and the premises restored substantially to the same condition as when received; provided, however; that any repair or replacement of City's property shall remain property of City. Should Permittee fail to remove its fixtures, equipment and improvements as aforesaid, the City may do so at the expense of Permittee.
7. MAINTENANCE: Permittee agrees to assume full responsibility for the operation and maintenance of its facilities on the premises throughout the term hereof without expense to City, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to City and in compliance with all applicable laws. Permittee agrees that City shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises, and Permittee hereby waives all rights to make repairs or to cause any work to be performed at the expense of City as provided for in Sections 1941 and 1942 of the California Civil Code. During the term of this Agreement, City agrees to maintain the compound in good repair.
8. UTILITIES: City will provide a 120 volt, 60 Hz, A.C. commercial power source. Cost of power is included in the rental fee.
9. ASSIGNMENT AND SUBLEASE: Permittee shall not transfer nor assign this permit, and shall not sublet, license, permit or suffer any use of the premises or any part thereof, or lease space in any building constructed on said land, provide radio equipment for the use of others, or cause or permit any change of any equipment installed in such premises, including power outputs or changes in the use of the following frequencies: 154.235 MHz (192.8 Hz CTCSS), 154.385 MHz (192.8 Hz CTCSS), 155.085 MHz (103.5 Hz CTCSS), 154.280 MHz (103.5 Hz CTCSS), except upon making a written request to City for each such transaction and the obtaining of its prior written consent thereto. Permittee shall display on each piece of equipment the appropriate license from the federal regulation agency.
10. INSURANCE: City will not keep improvements which are constructed or installed by Permittee under the provisions of this permit insured against fire or casualty, and Permittee will make no claim

of any nature against City by reason of any damage to the business or property of Permittee in the event of damage or destruction by fire or other cause, arising other than from or out of negligence or wilful misconduct of agents or employees of the City of San Diego in the course of their employment.

11. ACCESS ROAD: City hereby grants to Permittee a nonexclusive right to use, during the term of this permit, that portion of an access road which serves Black Mountain. Said right shall be subject to provisions of paragraph 6 hereof, and to the following conditions and terms:
 - a. Permittee shall exercise said right through its authorized agents, employees, contractors, or servants whenever it is necessary for them or any of them to have access to Permittee's facilities now or hereafter located on said mountain.
 - b. Permittee shall use said road at its sole risk and avoid traveling upon it to the greatest practical extent at all times when weather conditions are such that excessive damage to the road surface may result from such use, and further Permittee shall, at its expense, promptly repair any abnormal or excessive road damage caused by its use, including such road surface protective features as water drains, berms, or culverts.
12. INDEMNITY: Permittee agrees that City, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Permittee, its representatives, agents, employees, guests, licensees, invitees, patrons or clientele, nor for personal injuries to, or deaths of any persons, caused by or resulting from any act or omission of Permittee or other person specified above in or about the premises. Permittee agrees to indemnify and save free and harmless City and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by City on account of any claim or claims thereof.
13. INSPECTION: City may enter and inspect the premises and the operation conducted thereon at any reasonable time.
14. ACCESS: City agrees to provide Permittee unobstructed access to the compound at all times during the term hereof.
15. NOTICES: Notices to City shall be mailed to the City of San Diego Property Director, 202 "C" Street, San Diego, CA 92101. Notices to Permittee may be mailed to the 16936 El Fuego -P.O. Box 410, Rancho Santa Fe, CA 92067, or may be personally served upon the Permittee.

16. ORAL REPRESENTATIONS: This agreement contains the complete expression of the whole agreement between the parties and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as are set forth herein. This agreement cannot be changed in any respect except by written agreement between the parties.
17. HOLDING OVER: Any holding over after the expiration of said term for any cause shall be construed to be a tenancy from month to month, at any rental selected by City which has been in effect during the term, and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding over shall include any time employed by the Permittee in removing fixtures and improvements as hereinbefore provided.

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 3-1-93

By Robert J. Collins for
James L. Spotts
Property Director

Date Feb 8, 1993

By W. Pedersen, Administrator
North County Dispatch, Joint Powers

APPROVED as to form and legality this 10 day of March, 1993.

JOHN W. WITT, City Attorney

By W. Witt
Deputy City Attorney

MLM:rc(2)
01/28/93

226° FROM SW POLE (LEG)
of PAC TEL TOWER

PAC TEL

PAC BELL

EXHIBIT A

DATE



1554.3

1554.1

1554.

1553.3

12X24X12

12X24X12

RANCHO
SANTA-FE
CABINET
SITE

EXIST.
AT&T
BLDG.

1647.2

1634.5

90° TOWER

ROCK PILES

B-E-N88°-25'-24"E 208.78'

8.65' TYP

1561.2

1540

1549.4

SATELLITE
DISH (E)

SW
CABLE

1577.0'

1550.4

1550

SATELLITE DISHS (E)

BLACK MOUNTAIN
COMMUNICATIONS
FACILITY

1540.6

1552.3

EXHIBIT "B"

USER COMMITTEE ELECTRONIC LAND USE "ON THE AIR" INSTRUCTIONS AND PROCEDURES

1. Explanation

Prior to the City's approval of an application for a new radio-electronic use authorization or modification of an existing authorization, pre-installation or pre-use tests will be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic type uses at the facility.

Should the interference problems result, it will be the responsibility of the user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves.

City may recognize the right of prior authorizees and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizees.

2. Pre-installation or Pre-Use Testing

- A. It will be the responsibility of the applicant to make the complete arrangements and conduct all tests in a technically sound manner.
 - 1) A listing of all radio-electronic land use authorizees operating at the facility will be obtained from the users committee.
- B. It will be the responsibility of the applicant to notify all radio electronic authorizees at the facility of the tests and details thereof, at least 14 days in advance of the tests.
 - 1) The notification shall be in the form of letter to each listed authorizee giving a technical summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the authorizees to have a qualified representative present for the tests to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the authorizees.
 - 2) A copy of these instructions, "City of San Diego Radio-Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.
 - 3) Notifications to Permittees shall be sent via U.S. Mail or hand delivered.

- 4) The notification letter to the City Communications Engineer shall include a list of all Permittees notified.
 - C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each PERMITTEE participating in the test and a list of those Permittees who did not respond.
 - D. In the event a notified PERMITTEE fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the PERMITTEE has assured himself that his operations will not be affected.
3. On-The-Air Tests - Technical Details
- Pre-installation or pre-use on-the-air tests shall be conducted by the applicant under the following technical conditions:
- A. The applicant's transmitting and receiving equipment shall be of the type planned for final use at the site.
 - 1) The transmitted RF power shall be the maximum to be used and authorized at the location.
 - 2) On-the-air transmitter tests shall include the use of full allowable modulation.
 - 3) Antenna height(s), location(s) and type(s) shall be the same as the final installation plan.
 - B. Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the applicant's electronic equipment.
 - C. All tests will include testing will all frequencies planned for use by the applicant at the location.

MLM:st(2)
11/24/92

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Rental payments will be addressed and mailed to the City of San Diego, City Treasurer, P.O. Box 2289, San Diego, CA 92112-4165.

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JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

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226° FROM SW POLE (LEG)
of PAC TEL TOWER

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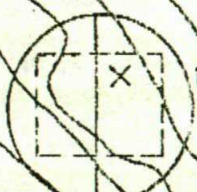
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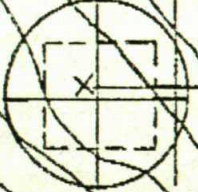
1550

SATELLITE
DISH (E)

1530



1540.6



1552.3

BLACK MOUNTAIN
COMMUNICATIONS
FACILITY

SATELLITE DISHS (E)

EXHIBIT "B"

USER COMMITTEE ELECTRONIC LAND USE "ON THE AIR" INSTRUCTIONS AND PROCEDURES

1. Explanation

Prior to the City's approval of an application for a new radio-electronic use authorization or modification of an existing authorization, pre-installation or pre-use tests will be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic-type uses at the facility.

Should the interference problems result, it will be the responsibility of the user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves.

City may recognize the right of prior authorizes and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizes.

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 - 1) A listing of all radio-electronic land use authorizees operating at the facility will be obtained from the users committee.
- B. It will be the responsibility of the applicant to notify all radio electronic authorizees at the facility of the tests and details thereof, at least 14 days in advance of the tests.
 - 1) The notification shall be in the form of letter to each listed authorizee giving a technical summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the authorizees to have a qualified representative present for the tests to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the authorizees.
 - 2) A copy of these instructions, "City of San Diego Radio-Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.
 - 3) Notifications to Permittees shall be sent via U.S. Mail or hand delivered.

- 4) The notification letter to the City Communications Engineer shall include a list of all Permittees notified.
 - C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each PERMITTEE participating in the test and a list of those Permittees who did not respond.
 - D. In the event a notified PERMITTEE fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the PERMITTEE has assured himself that his operations will not be affected.
3. On-The-Air Tests - Technical Details
- Pre-installation or pre-use on-the-air tests shall be conducted by the applicant under the following technical conditions:
- A. The applicant's transmitting and receiving equipment shall be of the type planned for final use at the site.
 - 1) The transmitted RF power shall be the maximum to be used and authorized at the location.
 - 2) On-the-air transmitter tests shall include the use of full allowable modulation.
 - 3) Antenna height(s), location(s) and type(s) shall be the same as the final installation plan.
 - B. Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the applicant's electronic equipment.
 - C. All tests will include testing will all frequencies planned for use by the applicant at the location.

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- 4) The notification letter to the City Communications Engineer shall include a list of all Permittees notified.
 - C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each PERMITTEE participating in the test and a list of those Permittees who did not respond.
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 - C. All tests will include testing will all frequencies planned for use by the applicant at the location.

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16. ORAL REPRESENTATIONS: This agreement contains the complete expression of the whole agreement between the parties and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as are set forth herein. This agreement cannot be changed in any respect except by written agreement between the parties.

17. HOLDING OVER: Any holding over after the expiration of said term for any cause shall be construed to be a tenancy from month to month, at any rental selected by City which has been in effect during the term, and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding over shall include any time employed by the Permittee in removing fixtures and improvements as hereinbefore provided.

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 3-1-93

By Robert J. Colman for
James L. Spotts
Property Director

Date Feb 8, 1993

By D. J. Hedeman, Administrator
North County Dispatch, Joint Powers

APPROVED as to form and legality this 10 day of March, 1993.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

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01/28/93