

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. **20040527**

1. REQUESTED MOTION:

ACTION REQUESTED: Approve the issuance of a Tower Antenna Site license to MetroPCS California/Florida, Inc., a Delaware corporation, for space on the County owned tower located on the Florida Gulf Coast University (FGCU) campus at 10501 FGCU Blvd, Ft. Myers, FL 33965.

WHY ACTION IS NECESSARY: This license conveys the non-exclusive right to use the FGCU Tower at the 150' level and ground space beneath the tower.

WHAT ACTION ACCOMPLISHES: Allows MetroPCS California/Florida, Inc., to place antennas and related equipment near and upon the communications tower, so that it may provide personal telephonic communications opportunities to local consumers through co-location.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #:**

C7A

3. MEETING DATE:

05-11-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT Independent
- C. DIVISION Public Safety
- BY: Michael C. Bridges, Deputy Director

7. BACKGROUND:

MetroPCS California/Florida, Inc., contacted Lee County representatives regarding the use of the FGCU Tower on which to place antennas for wireless telephonic communications. Since that time, they negotiated with County Staff the attached non-exclusive license for use of the tower. The term of the license is for five (5) years with four (4) five (5) year renewals. They will pay Lee County \$14,400 annually with an annual fee increase of 4% each year over the prior year's fee. By agreement with FGCU the university will receive \$3,600 of the \$14,400 revenue.

Revenue Account String: (FGCU tower) \$10,800 KF5290352000.369900.9044
Expense Account String: (Grants @ Aid State Govt.) \$3,600 KF5290352000.508150

Attachment 1 - Four (4) License Agreements
Attachment 2 - Four (4) Memorandum of License Agreement

8. MANAGEMENT RECOMMENDATIONS: Recommend approves the license.

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services <i>upon approval</i>				G County Manager
					OA	OM	Risk	GC	
<i>[Signature]</i>	<i>[Signature]</i>	<i>N/A</i>		<i>Andrea T. Jacee</i>	<i>4/29/04</i>	<i>4/29/04</i>	<i>OK</i>	<i>4/29/04</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

Rec. by CoAtty
Date: *4/28/04*
Time: *1:35 PM*
Forwarded to:
Budget
4/29/04 8:45A

RECEIVED BY
COUNTY ADMIN: *[Signature]*
4/29/04
9:15 am
COUNTY ADMIN
FORWARDED TO: *[Signature]*
4-29-04
3pm

HS

LEE COUNTY'S, FLORIDA GULF COAST UNIVERSITY
TOWER ANTENNA SITE LICENSE AGREEMENT

This Lee County Florida Gulf Coast University (FGCU) Tower Antenna Site License Agreement ("Agreement") entered into this ____ day of _____, 2004, between Lec County, a political subdivision of the State of Florida (hereinafter referred to as "Owner" or "County"), Florida and MetroPCS California/Florida, Inc., a Delaware corporation (hereinafter referred to as "Metro PCS").

RECITALS:

Whereas, the County, by an interlocal agreement, owns a tower located at Section 14, Township 46 South, Range 25 East, Latitude 26 Degrees 27 Minutes 56 Seconds North, Longitude 81 Degrees 46 Minutes 52 Seconds West, having an address of 10501 FGCU Blvd., Ft. Myers, FL 33965, on the campus of FGCU, Ft. Myers, Florida, in Lee County, ("Tower Property"); more particularly described in Exhibit "A" attached hereto; and

Whereas, Metro PCS desires to obtain a license from County to use portion of owner's property adjacent to and attached to the FGCU Tower Property (the "FGCU Tower Space") together with a right of access and a right to install utility service thereto (the "Access/Utility License"). Said Metro PCS Tower Site space and Access Utility License are more particularly shown on Exhibit "B" attached hereto and by reference made a part hereof, and collectively identified as the "Licensed Property." After the Licensed Property has been surveyed, then such survey and/or construction drawings shall then replace Exhibit "B" and become a part hereof and shall control the description of the Licensed Property if a discrepancy exists between the current Exhibit "B" and the survey and/or construction drawings.

Whereas, Metro PCS understands that in using the Licensed Property it may not do so in any way that materially interferes with the ability of the County to lease or grant a license of the said premises for the same uses to other operators of communications equipment or which interferes with County's use of its property, and that this understanding shall control the interpretation and application of this entire Agreement; and

Now therefore, in consideration of the foregoing, the mutual terms, covenants and conditions contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned parties acknowledge and agree as follows:

1. The above representations are true and correct and incorporated herein as a binding part of this Agreement.

2. **LICENSED PROPERTY:** County hereby grants a nonexclusive license to Metro PCS, and Metro PCS hereby accepts this license from County, for a portion of the Tower, on a not to interfere basis with other antennas that may be located in proximity, at a height of 150 feet above ground level (the "FGCU Tower Site Space") and a portion of the Licensed Property consisting of FGCU's Property for parking, pedestrian and vehicular access to and from the licensed property as may be required to construct, install, operate, maintain and repair antennas and associated equipment for its communications system (collectively, "Communication Facility"), together with the right over, under and across said portion of Property for the purposes of providing and maintaining necessary utilities to the Communication Facility. METRO PCS's plans and specifications for its Communication Facility must be approved by the County in order to avoid interference with any of the County's equipment, cables, lines, antennas or any other property which the County may wish to reserve for future use, as may be applicable. County approvals shall not be unreasonably delayed or withheld. Communication Facility is more particularly described on Exhibit "C," attached hereto and by reference made a part hereof.

A) **Tower Site Space:** County hereby licenses to METRO PCS space on the FGCU Tower Site as described in Exhibit "A" to enable METRO PCS to erect, maintain and operate a maximum of twelve (12) antennas as part of its Communication Facility and for no other purposes. The exact location on the FGCU Tower Site Space must be approved by County, which approval shall not be unreasonably withheld or delayed. County agrees (subject to the limitations set forth herein) that METRO PCS may attach at its sole cost, any necessary transmission lines, cables, antennas, fixtures, and other associated equipment from the Equipment Cabinet Space to the FGCU Tower Site Space to make said antennas operational. METRO PCS will provide all mounting hardware necessary for its

installation.

B) Equipment Cabinet Space: METRO PCS shall install equipment cabinet(s) at the location of the Equipment Cabinet Space to shelter its communications equipment ("Equipment Shelter"). Such Equipment Shelter shall be fully landscaped consistent with, and meet all requirements of, the Lee County Land Development Code.

C) Access: County agrees that METRO PCS shall have the right to nonexclusive access to the Equipment Cabinet Space and the Tower Site Space, 24 hours a day 7 days a week, as may be required to construct, install, operate, maintain and repair METRO PCS's Communication Facility, provided that said access does not interfere with County's access, create a safety hazard, or materially interfere with access to the FGCU Tower Site by others granted permission to use the FGCU Tower Site.

D) Utility Service: METRO PCS shall be solely responsible for, and shall promptly pay all charges for utilities serving the Licensed Property and for the cost of the installation, maintenance, and repair of all utility meters associated with such utility service. METRO PCS shall have an electric meter installed at the Property and has the right to run necessary utility lines and other electrical equipment as may be necessary from the utility source to the Equipment Cabinet Space and the FGCU Tower Site Space. County shall cooperate with METRO PCS in its efforts to obtain utilities from any location provided by the Licensor or the servicing utility.

E) Interference: In its use of the Licensed Property, METRO PCS shall be subject to the provisions of Section 14 hereunder which shall govern all license rights granted hereunder.

3. TERM AND LICENSE FEE:

A) The initial term of this License shall be for five (5) years.

B) The term of this License shall begin (The "Commencement Date") on the date of the issuance of the building permit. Within seven (7) days of the issuance of the building permit, METRO PCS shall pay to the County an annual license fee of Fourteen Thousand, Four Hundred and No/100 Dollars (\$14,400.00); METRO PCS shall have a period, commencing upon the date of full execution of this Agreement and ending three hundred sixty-five (365) calendar days thereafter (the "Due Diligence Period") to satisfy itself as to the condition of the License Premises and the suitability thereof for its intended use. METRO PCS shall utilize the Due Diligence Period to conduct its necessary tests and seek any approvals and/or permits from any governmental authority it may require in connection with its use of the License Premises. County shall cooperate with METRO PCS by timely providing appropriate plans and documentation and shall execute such document reasonably required to secure such approvals. If on or before the last day of the Due Diligence Period, METRO PCS elects, in its sole discretion, not to proceed with this transaction, METRO PCS may terminate this Agreement by written notice to County, whereupon this Agreement shall be terminated and both parties shall be released from all further obligations hereunder.

Thereafter, on each anniversary of the Commencement Date, METRO PCS shall pay to the County an annual fee increase of four percent (4%) of the prior year's rent.

(i) Prior to the Commencement Date, METRO PCS will be afforded reasonable access to the FGCU Tower Site Space and adjoining property for the purpose of conducting necessary tests, surveying, construction of its intended facility and equipment, etc., provided that METRO PCS does not interfere with County operations and minimizes interference with others on the property with County permission.

C) Extension of the initial term of this License is granted to METRO PCS for four (4) additional five (5) year extension periods. The License shall automatically be extended for the next extension period at the end of the then current term unless METRO PCS gives the County written notice of its intention not to extend at least ninety (90) days prior to the expiration of the then current term.

4. USE:

A) Use of the Licensed Property by METRO PCS shall be for the purposes of (1) installing, removing, replacing, maintaining and operating, at its sole expense, its communications equipment and uses incidental thereto,

including, without limitation, PCS antenna array, cables, wires, equipment shelters and accessories; and (ii) installing a concrete pad for the installation of equipment shelters.

All equipment, antenna support structures and trade fixtures placed on the Licensed Property, by METRO PCS are and shall remain the property of METRO PCS and shall not be deemed fixtures on the land. In the event that any modifications are needed to the FGCU Tower Site to accommodate METRO PCS 's Equipment, METRO PCS shall bear all costs associated therewith. METRO PCS shall submit plans and specifications to County for written approval prior to commencement of any modification. The County shall not unreasonably delay or withhold approval. No use by METRO PCS may materially interfere with or hinder County's use of the FGCU Tower Site or County Property. County and METRO PCS agree that in the event the FGCU Tower Site is no longer needed for use as a tower, County shall allow METRO PCS and all other license agreement holders, with superior rights belonging to Sprint who originally constructed the tower, to maintain the FGCU Tower Site as an existing structure to the conclusion of any term, and METRO PCS shall have the right to remain on the FGCU Tower Site for the purposes contemplated in this Agreement for the remainder of said term.

B) Plans, Specifications and Governmental Approvals: METRO PCS, at its expense, shall prepare all plans and specifications of its intended use and shall obtain all certificates, permits, licenses and other approvals required by and applicable federal, state and local authorities (collectively "Governmental Approvals") for the use of the Licensed Property. County shall have the right to approve, in County's reasonable discretion (consistent with County's use and desire to permit other use of the FGCU Tower Site and to consider aesthetic concerns), the plans and specifications for the installation of METRO PCS 's Equipment and any substantive modifications. To the extent feasible, County agrees to cooperate with METRO PCS to obtain the Governmental Approvals and to execute and deliver all applications and other documents required for METRO PCS to obtain the Governmental Approvals. Responsibility for obtaining permits remains solely with METRO PCS and County shall not be liable for any failure to obtain approvals.

METRO PCS shall maintain in a good state of repair and in good operating condition its antenna and transmitting and other equipment, all in accordance with good engineering practices and applicable governmental rules and regulations. METRO PCS shall observe and comply with all applicable laws, statutes, ordinances, rules and regulations of the federal, state and local governments and of all other governmental authorities, affecting METRO PCS 's Equipment or appurtenances thereto or any part thereof. METRO PCS shall provide County at the County's request with the documents necessary to assure County that it is meeting these requirements.

C) Access to County's Property: County hereby grants METRO PCS access to Licensed Property (and areas adjacent thereto) to conduct, at METRO PCS 's expense, such surveys, structural strength analysis tests, radio propagation tests, soils tests, environmental studies, wetlands studies, and other feasibility studies and tests deems necessary, in METRO PCS's sole and absolute discretion, for the use of the Licensed Property by METRO PCS.

D) Modifications to Complex Property: METRO PCS agrees to promptly secure or reimburse (at County's option) County for the cost of all necessary studies determining feasibility of the FGCU Tower Site loading due to METRO PCS 's equipment. Should modification be required, due to modifications required for or as a result of METRO PCS 's use, the cost of all such modifications shall be borne by METRO PCS. METRO PCS shall submit plans and specifications to County for written approval prior to commencement of any substantial modification(s). County shall use reasonable efforts to promptly review all submittals. No modifications shall be approved which require material alterations to County's operation of its complex system or related equipment.

E) Construction and Installing: METRO PCS shall have the right to construct and install its communication facilities, and related equipment, cables, antennas, accessories and improvements (collectively, the "Communication Facility") on the Licensed Property. METRO PCS, at METRO PCS 's expense, shall cause its Communication Facility to be constructed and installed in good workmanlike manner and in accordance with all governmental codes and regulations. METRO PCS shall be responsible for all constructions methods, techniques, sequences and procedures and the coordination of all construction activities relating to its Communication Facility. After completion of the construction and installation of the Communication Facility, METRO PCS shall have the right to make modifications, additions and substitutions to its Communication Facility provided such modifications, additions, and substitutions are consistent with the terms of this License and are constructed and installed in a good

and workmanlike manner.

5. RIGHTS TO EQUIPMENT; CONDITION ON SURRENDER:

A) During the initial term and any extended terms of this License, Ownership of METRO PCS's Communication Facility shall remain personal to and the property of METRO PCS. Upon termination or expiration of this License, METRO PCS shall remove its Communication Facility from the Tower and Licensed Property at no cost to the County. METRO PCS shall repair any damage caused by such removal and shall surrender the Licensed Property at the expiration of the term, as same may have been extended, or earlier termination thereof, in good condition, ordinary wear and tear, damage by fire and other casualty expected. Any of METRO PCS's Communication Facility or other property that has not been removed from the Licensed Property at the time this License is terminated shall be deemed abandoned by METRO PCS and County shall be free to dispose of same in any manner County chooses and without any liability to METRO PCS therefor.

B) Any claims relating to the condition of the Licensed Property must be presented by County in writing to METRO PCS within ninety (90) days after the termination of this License or County shall be deemed to have irrevocably waived any and all such claims.

6. OWNER'S MAINTENANCE:

County and METRO PCS recognize that the FGCU Tower Site may require maintenance and painting. Except in cases of emergencies, County shall notify METRO PCS no less than sixty (60) days in advance of any maintenance. County and METRO PCS agree to cooperate in arranging such maintenance to be performed in a manner to minimize interference with METRO PCS's Communication Facility. In the event METRO PCS shall be unable to operate at the complex property due to such maintenance for a period greater than twelve (12) hours, METRO PCS shall be given the right to locate and operate on County's Property temporary emergency equipment, including, but not limited to a portable antenna structure up to the height contemplated by this Agreement for placement of METRO PCS's Facilities on the FGCU Tower Site, necessary to maintain its telecommunications capability on the Licensed Property.

7. MAINTENANCE:

A) METRO PCS's Communication Facility shall be installed, constructed and maintained by METRO PCS, at METRO PCS's sole cost and expense, in a good and workmanlike manner in accordance with METRO PCS's specifications as approved by County, and shall not cause any damage to County's facilities, equipment, or property. METRO PCS, at METRO PCS's sole cost and expense, shall maintain METRO PCS's Communication Facility in good order and repair and keep the appearance in materially the form as approved.

B) County agrees that County's Property (including, without limitation, the Tower) and all improvements comply, and during the term of the License, shall continue to comply with all building, life/safety, disability and other laws, codes and regulations of any applicable governmental or quasi governmental authority necessary. METRO PCS shall be responsible for any costs or expenses incurred for compliance with all building, life/safety, disability and other laws, codes and regulations of any governmental authority which result from its use of the Licensed Property. All such compliance shall be accomplished at the responsible party's cost and expense, as stated above. Except for improvements made by METRO PCS, County, at its sole cost, shall maintain in good condition and repair, the Tower and other improvements upon which the Property is located.

8. DEFAULT:

A) The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by :

1) The failure by METRO PCS to make any payment of the license fee or any other payment required to be made by METRO PCS hereunder, as and when due, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by from County.

2) The failure by METRO PCS to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by METRO PCS, other than as specified in section (1) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from County specifying the failure, is received by METRO PCS, provided, however, that it shall not be deemed an Event of Default by METRO PCS if METRO PCS shall commence to cure such failure within said thirty (30) day period and thereafter diligently and continuously prosecutes such cure to completion.

B) If there occurs an Event of Default by METRO PCS , in addition to any other remedies available to County at law or in equity, County shall have the option to terminate this Agreement and all rights of hereunder.

C) If there occurs an Event of Default by METRO PCS, County shall not have the right, prior to the termination of this Agreement by a court of competent jurisdiction, to remove METRO PCS 's Communication Facility from the Licensed Property and/or remove persons or property from the Licensed Property. However, County shall have the absolute right to unrestricted access to the full use of all County property and equipment and may take all reasonable actions necessary to protect said property.

9. **OWNERS DEFAULT:** In the event of a breach by County of any of the material covenants or provisions hereof and County's failure to cure any breach by County of any other provision of the Agreement after thirty (30) days written notice and demand from METRO PCS specifying the breach, METRO PCS shall have the right of injunction or to terminate the Agreement upon ninety (90) days notice. This shall be METRO PCS's sole exclusive remedies for any default.

10. **NOTICE:** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if delivered by messenger at the address of the intended recipient, sent prepaid by Federal Express (or comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient at the address set forth below or at such other address as the intended recipient may have specified by written notice to the sender in accordance with the requirements of this paragraph. Any such notice, request, or demand so given shall be deemed given on the day it is delivered by messenger at the specified address, on the day after deposit with Federal Express (or a comparable overnight delivery service), or on the day that is three (3) days after deposit in the United States Mail, as the case may be.

Owner: Michael C. Bridges, Telecommunications
Lee County Division of Public Safety
P.O. Box 398
Fort Myers, Florida 33902

With a Copy to: Andrea R. Fraser, Assistant County Attorney
Lee County Attorney's Office
P.O. Box 398
Fort Myers, Florida 33902

METRO PCS: Metro PCS
1401 N.W. 136th Avenue
Suite 304
Sunrise, FL 33323-2861
Attn: Mike Haggerty

With a copy to: Metro PCS California/Florida, Inc.
8114 Walnut Hill Lane
Suite 800
Dallas, TX 75231-4316

Any party may change his, her or its address for notice purposes by giving notice in accordance with this paragraph.

11. ASSIGNMENT: METRO PCS will not assign or transfer this Agreement without the prior written consent of Owner, which consent will not be unreasonably withheld, delayed or conditioned; provided, however, METRO PCS may assign without Owner's prior written consent to any lender or mortgagee of the PCSF, party controlling, controlled by or under common control with METRO PCS or to any party which acquires substantially all of the assets of METRO PCS.

12. TERMINATION:

A) Termination of this Agreement may be exercised by METRO PCS at any time without further liability if METRO PCS cannot obtain all Governmental Approvals required from any governmental authority and/or any easements required from any third party to operate or access the Communications Facility, or if any such approval is canceled or expires, or lapses, or withdrawn or terminated, or if County fails to have proper ownership of the Licensed Property and/or authority to enter into this Agreement, or if any other reason, METRO PCS in its sole discretion, determines that it will be unable to use the site for its intended purpose. Notice of METRO PCS's exercise of its right to terminate shall be given to County in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by the County as evidenced by the return receipt. Upon such termination, this Agreement shall become null and void and all parties shall have no further obligations, including the payment of money to each other. METRO PCS shall use its best efforts to obtain all approvals and keep them current and obtain and keep current all necessary easements. If METRO PCS fails to do so, that shall be a default under this Agreement entitling the County to keep all monies paid to County.

13. HAZARDOUS SUBSTANCES:

A) County warrants and agrees that neither County nor, to County's knowledge, any third party has used, generated, stored or disposed of, any Hazardous Material (as defined in Paragraph B, below) on, under, or within County's Property in violation of any law or regulation. County and METRO PCS each agree that they will not use, generate, store or dispose of any Hazardous Material (as defined in Paragraph B, below) on, under, about or within County's Property in violation of any applicable law or regulation.

B) County and METRO PCS each agree to defend and indemnify the other against any and all losses, liabilities, claims, judgments and/or costs (including reasonable attorneys fees and costs) arising from any breach of any warranty or agreement contained in Paragraph A, above. As used in Paragraph A, above, "Hazardous Material" shall mean any substance, chemical or waste identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including, petroleum and asbestos).

14. INTERFERENCE: METRO PCS agrees to install and operate its Communication Facility of a type and frequency, and in a location which will not cause material interference with or damage to County's equipment. In the event METRO PCS's Communication Facility or its operation or use or maintenance of said Communication Facility causes damage or causes interference with County's equipment, facilities, or any of County's property of whatsoever nature, METRO PCS shall immediately, upon written notice from the County, take all steps necessary to correct and completely remedy such damage or eliminate such interference at METRO PCS's sole cost and expense. If the damage or interference requires repairs or alterations to County property, County shall make the repairs and METRO PCS shall reimburse the County for the entire cost within thirty (30) days of receipt of notice of the cost. This obligation on the part of METRO PCS supersedes and modifies all rights granted to METRO PCS hereunder. County agrees not to allow any future use of County's Equipment or addition and/or modification to any current use of the Tower or County's Property that may cause interference with or the improper operation of the Tower, METRO PCS's Communication Facility, or METRO PCS's communications signal or system. In the event that any addition or modification to the County's Equipment causes interference with METRO PCS's Communication Facility or communications signal or system, County upon notification of such interference, agrees to promptly seek a remedy for such interference at County's expense until such interference is corrected to METRO

PCS's sole satisfaction. In the event County and METRO PCS cannot resolve the interference problems, County and METRO PCS agree to resolve any interference disputes by arbitration which shall be performed in accordance with the Rules of the American Arbitration Association. The arbitration decision/award shall be binding upon County and METRO PCS and may be entered in any court having jurisdiction thereof. County and METRO PCS agree that the costs associated with any arbitration shall be borne by METRO PCS if METRO PCS is the cause of the interference or by County if County is the cause of the interference. In the case of an emergency, or failure by METRO PCS to promptly eliminate the damage or interference, the County may take any actions needed to resolve an emergency resulting from METRO PCS 's use or equipment and charge said costs to METRO PCS which shall pay said costs within thirty (30) days of receipt of documentation of said costs. County shall notify METRO PCS of such emergency and its actions to remedy said actions.

METRO PCS recognizes that other operators of communications equipment may be permitted to locate on the County Property or in the vicinity of the Licensed Property. The County shall require said operators to take actions to remedy any material interference with METRO PCS 's Communication Facility or operational capabilities upon written notice from METRO PCS. County shall enforce this obligation. If County is unable to remedy the material interference caused by another operation, County shall cause the interfering operator to cease its operations. If the County does not make a good faith effort to require other operators to remedy the material interference, METRO PCS shall have the additional remedy of specific performance to require the County to take reasonable available measures subject to sound and generally accepted engineering principles to remedy said material interference. In the event any such interference to Tenant's operations does not cease within the aforementioned cure period then the parties acknowledge that METRO PCS will suffer irreparable injury, and therefore, METRO PCS will have the right, in addition to any other rights METRO PCS may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to County.

METRO PCS shall fully cooperate with any other existing operators of communications equipment on the County's Property (and associated equipment in the areas in the vicinity) to minimize interference with such operations and take such reasonable actions as are necessary to minimize or eliminate such interference. This obligation shall be undertaken by METRO PCS in good faith and with diligence to minimize any such interference. The County agrees to require any other licensees upon the licensed premises to cooperate with METRO PCS to minimize interference.

15. INDEMNIFICATION:

A) By County: Subject to S768.28, Florida Statutes, and any other law, County shall indemnify and hold harmless METRO PCS against and from any and all liability, claims, demands, actions, losses, damages, orders, judgments and any all costs and expenses (including without limitation attorney's fees and expenses) incurred by METRO PCS or any affiliate or subsidiary of METRO PCS on account of or arising from County's use of the Licensed Property, or from any other activity of County on or about the County's property resulting from the negligence or misconduct by County. To the extent permitted by law, County, upon notice from METRO PCS, shall assist and defend at County's expense any such actions or proceedings by counsel reasonably satisfactory to METRO PCS . This indemnity shall not apply to any claims arising from any negligent or intentional misconduct of METRO PCS, its agents, employees, contractors or assigns, and shall not apply to METRO PCS conduct not permitted by this License Agreement. This indemnity shall survive any termination of this Agreement.

B) By METRO PCS: METRO PCS shall defend, indemnify and hold harmless County against and from any and all liability, claims, demands, actions, losses, damages, orders, judgments and any and all costs and expenses (including without limitation attorneys' fees and expenses) incurred by County on account of or arising from METRO PCS 's use of the Licensed Property. METRO PCS, upon notice from County, shall assist and defend at METRO PCS's expense any such actions or proceedings by counsel reasonably satisfactory to County. This indemnity shall not apply to any claims arising from any negligent or intentional misconduct of the indemnified party. This indemnity shall survive any termination of this Agreement.

16. INSURANCE:

METRO PCS shall maintain, at its sole cost, during the term of this Agreement, coverage in the

types and amounts as per the attached Exhibit "C". If METRO PCS shall fail to procure and maintain said insurance, County may, but shall not be required to procure and maintain said insurance, at the expense of METRO PCS.

METRO PCS may comply with the various requirements of Exhibit "C" through the purchase of no deductible Commercial Insurance, or the use of combination of self-insured retention (SIR) and Commercial Insurance commonly known as self-funded program. Approval by the Lee County Risk Management Office of the use of SIR's shall not be unreasonably withheld, providing METRO PCS provides information relating to the financial stability and solvency of such programs.

METRO PCS shall maintain, at its sole cost, during the term of this Agreement, commercial general liability insurance insuring METRO PCS against liability for personal injury, death or damage to personal property arising out of the use of the Licensed Property by METRO PCS. Such insurance shall provide coverage in an amount not less than \$1 million for property damage. The County shall be an additional insured on any such policy as it relates to the licensed property.

17. LIENS: METRO PCS shall keep the Licensed Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for METRO PCS. METRO PCS shall, within twenty (20) days following the imposition of any such lien, upon notice, cause the same to be released of record by payment or posting of a proper bond. No work, which County permits to be performed on the Licensed Property, shall be deemed to be for the use and benefit of County so that no mechanics or other lien shall be allowed against the County by reason of its consent to such work. County shall have the right to post notices that it is not responsible for payment for any such work and METRO PCS shall expressly state in any and all contracts entered into by METRO PCS or its agents that County is not responsible for any work performed, materials furnished or obligations incurred by METRO PCS.

18. SALE OR TRANSFER BY COUNTY: If County, at any time during the term or any extended term of this Agreement, sells, leases, transfers or otherwise conveys all or any part of County's Property to any transferee other than METRO PCS, such transfer shall be subject to the terms and provisions of this Agreement and all of its rights hereunder.

19. TAXES AND FEES: METRO PCS shall be liable for and shall pay to the applicable taxing authority if billed directly to METRO PCS, or to County if billed to County upon thirty (30) days prior written notice from County, any and all taxes and assessments levied against any personal property or trade or other fixtures placed by METRO PCS in or about the Property or on the real property if such tax is imposed as a result of the subject use of the property.

METRO PCS shall pay any state sales tax due upon the license fee. METRO PCS shall include said tax in its payments to the County. All other taxes, including any personal property tax, for equipment located upon the Licensed Property remain METRO PCS's responsibility.

METRO PCS shall pay as an additional license fee any increase in real property taxes levied against the licensed property as a result of the improvement constructed by METRO PCS on the Licensed Property.

The license shall not effect in any manner, the County's ability, subject to any relevant federal law, rule or regulation, to adopt or levy a telecommunications tax or franchise fee.

20. DAMAGE OR DESTRUCTION:

A) In the event that, at any time during the term of this Agreement, the Licensed Property shall be partially destroyed or damaged by any other party than METRO PCS, its agents, representatives, or employees, County, at its own cost and expense, shall cause the same to be repaired, replaced or rebuilt. In the event County has not commenced such repair, replacement or rebuilding within thirty (30) days after the date of such damage or destruction METRO PCS may, upon written notice to County terminate this Agreement as of the date set forth in such notice and all license fees and other sums shall be accounted for between County and METRO PCS as of the date the Licensed Property became unavailable to METRO PCS. License fees shall abate to the extent that, and for

the period that, the Licensed Property are not usable for the conduct of METRO PCS 's business. These shall be METRO PCS 's sole and exclusive remedies.

B) In the event of any such damage or destruction which renders METRO PCS 's Communication Facility non-operable for a period reasonably expected to exceed five (5) days, METRO PCS shall have, and County hereby grants to METRO PCS, the right to bring and maintain upon County's Property such temporary communications facilities as METRO PCS shall reasonably determine are the minimum necessary to continue to operate METRO PCS 's Communication Facility and provided (1) that such temporary facilities do not materially interfere with County's or any other tenant's or licensee's communications operations on County's Property or the repair or replacement of the damaged facilities; (ii) that obtains all necessary permits and authorizations for the construction and operation of such temporary facilities; (iii) that shall remove such temporary facilities upon the sooner of (a) the restoration of services by 's Facilities, or (b) termination of this Agreement. This shall be METRO PCS 's sole and exclusive remedy.

21. MISCELLANEOUS:

A) METRO PCS, upon paying the license fee, shall be able to use the Licensed Property subject to all terms and conditions set for herein, County shall not cause or permit any use of the County's Property or the Licensed Property to materially interfere with or impair the quality of the communications services being rendered by METRO PCS from the Licensed Property, nor shall County have unsupervised access to the METRO PCS 's Equipment. County's obligations, as set forth in this section, are subject to and governed by the rights and obligations set forth in Section 14, which supersedes all other sections. METRO PCS 's sole remedy for County's violation of this section shall be to terminate this agreement.

B) County represents and warrants that County has full authority to enter into and sign this Agreement.

C) This Agreement contains all agreements, promises and understandings between the County and METRO PCS. All exhibits are incorporated by reference.

D) The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of County and METRO PCS. Except to its affiliates or subsidiaries, METRO PCS may not permit any other use of Licensed Property for any purpose except as expressed herein and may not permit or assign to any third party to use the License unless approved by Lee County, whose approval shall not be unreasonably withheld.

E) The drafting of this Agreement has been a joint endeavor between the parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one party than the other.

F) The prevailing party in any action or proceeding in court to enforce any term 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) The validity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement.

H) In no case shall either party be liable to the other for either consequential or special damages of any kind whatsoever, including, but not limited to, lost revenues, profits, or any other damages of any kind whatsoever in any way related to damage, interference, down time, or relocation of METRO PCS's Communication Facility resulting from any METRO PCS or County breach or default under this Agreement. Further, County shall have no liability for damages or interference caused by parties other than the County.

I) All disputes arising under this Agreement shall be governed by the State of Florida.

J) Metro PCS's intention is to record an MOL.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year below as written.

WITNESSES:

Michael Haggerty
Print Name: MICHAEL HAGGERTY
Beatriz Ferrer
Print Name: Beatriz Ferrer

MetroPCS California/Florida, Inc.,
a Delaware corporation

By: *F. Bell*
Name: FRENK BELL
Its: VP/GM FLORIDA
Date: 4/16, 2004

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

Date: _____

APPROVED AS TO FORM:

By : _____

EXHIBIT LIST

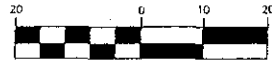
- EXHIBIT "A"** - Sketch of Owners Property
- EXHIBIT "A1"** - Depiction of Tower
- EXHIBIT "B"** - Description of Antenna(s) and Equipment
- EXHIBIT "C"** - Insurance Requirements

Exhibit "A"

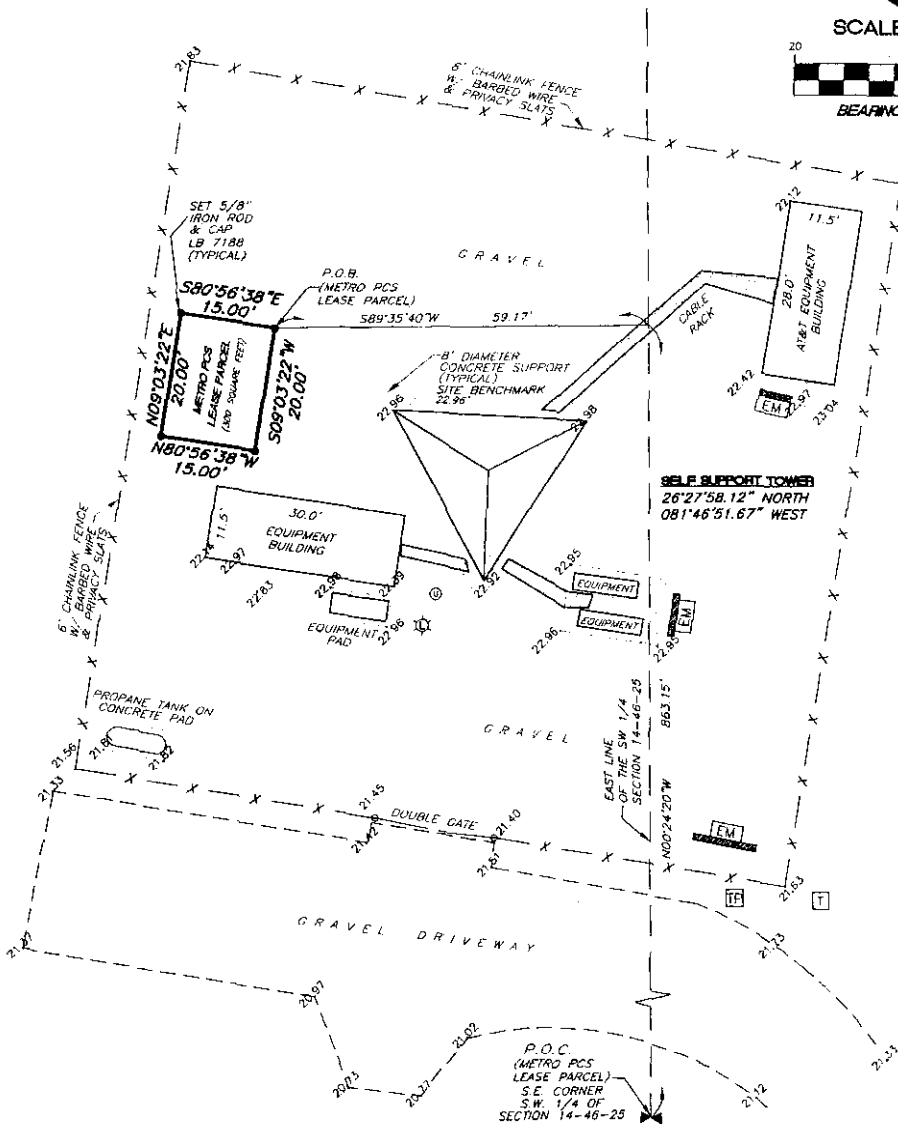
SKETCH OF METRO PCS LEASE PARCEL



SCALE: 1" = 20'



BEARINGS ARE GRID

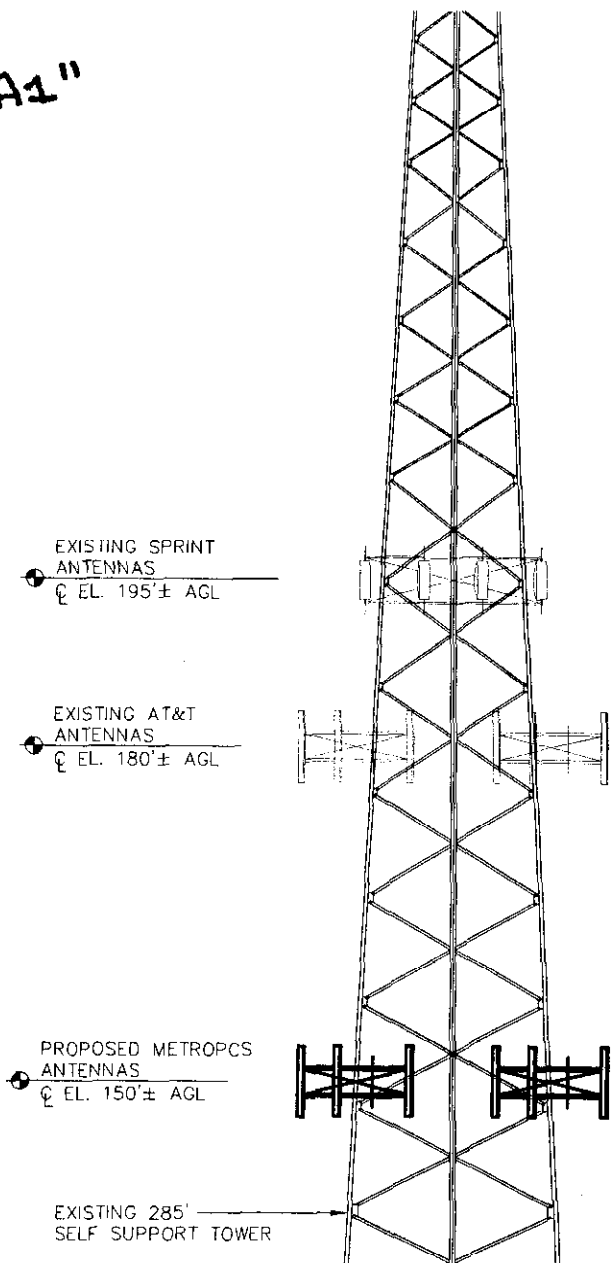


E. CORNER SECTION 14-46-25

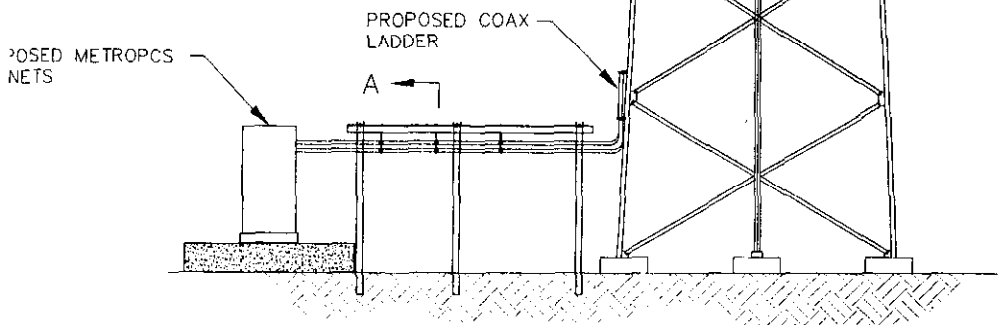
RD UNKNOWN

	SURVEY DATE:	01/21/04			
	DRAWN:	WSP			
	CHECKED:	WSP			
	MANAGER:	WSP			
FLOOR ELEV:	DWG FILE:	04-1002.DWG			
N/A	JOB FILE:	No.	DATE	REVISION	BY

Exhibit "A1"



NOTE: CONTRACTOR TO COORDINATE ANTENNA MOUNTS W/ METROPCS CPM.



TOWER ELEVATION

N.T.S.

EXHIBIT "B"

I. Tower Hardware Antenna Requirements:

Antenna Centerline Height:	150'
Antenna Quantity:	6
Manufacturer:	Decibel
Model Number:	950F65T2ZE-M
Cable Size:	1 5/8"
Cable Quantity:	6

II. Equipment Cabinets:

Total lease area dimensions:	15' x 20'
Cabinet Pad Dimensions:	8' x 15'
Manufacturer:	Lucent Technologies

III. Provisions for Future Installation: None

EXHIBIT "C"

Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability and broad form property damage with minimum limits of \$500,000 per occurrence and \$1,000,000 aggregate.

Property Insurance

"All Risk" coverage shall apply to damage by all perils, including wind, at full replacement cost value.

Certificate of Insurance

The Lee County Board of County Commissioners is to be shown as the certificate holder and shall be added as an additional insured with respect to the liability assumed by this agreement. Each policy shall provide a 30-day notification clause in the event of cancellation, non-renewal or adverse change.

A current, valid, original hand signed certificate shall be on file with an approved by Lee County Risk Management office during the term of this agreement.

In the event the insurance coverage expires, a renewal certificate shall be on file with Risk Management at least 15 days prior to the expiration date.

Effective 10-02-2001

This instrument prepared by:
Michael Christiansen
Mastriana & Christiansen
1500 North Federal Highway, Suite 200
Fort Lauderdale, Florida 33304

Return this instrument to:
Michael Christiansen
Mastriana & Christiansen
1500 North Federal Highway, Suite 200
Fort Lauderdale, Florida 33304

Do not write above this line - this space reserved for recording purposes

Site Name: Florida Gulf Coast University (FGCU)

Site I. D. FTM912WC8

Memorandum of License Agreement

This memorandum evidences that a License Agreement was made and entered into by written Tower Antenna License Agreement dated _____, 2004, between Lee County, a political subdivision of the State of Florida ("Owner") and MetroPCS California/Florida, Inc., a corporation ("METRO PCS").

Such Agreement provides in part that Owner grants a nonexclusive license to METRO PCS for a portion of the Tower and Licensed Property (collectively, "Communications Facility") located at 10501 FGCU Blvd, City of Ft. Meyers, County of Lee, State of Florida, within the property of Owner which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of five (5) years commencing on _____, 2004, which term is subject to four (4) additional five (5) year extension periods by METRO PCS.

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

"OWNER"

Lee County, a political subdivision of the State of Florida

By: _____
Name: _____
Title: _____
Address: _____

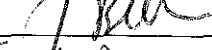
Witnesses as to Owner:

Printed Name: _____

Printed Name: _____

"METRO PCS"

MetroPCS California/Florida, Inc., a Delaware corporation

By: 
Name: FRANK BELL
Title: VP/GM FLORIDA
Address: 1401 NW 136TH AVENUE
SUWANEE, FLORIDA 33323

Witnesses as to METRO PCS:


Printed Name: MICHAEL HAGGERTY


Printed Name: Beatty Fener

Effective 10-02-2001

OWNER NOTARY BLOCK:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by _____, as _____ of _____, a _____ corporation.

(AFFIX NOTARIAL SEAL)

(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC—STATE OF _____

My commission expires:

(PRINTED, TYPED OR STAMPED NAME OF NOTARY)
COMMISSION NUMBER: _____

METRO PCS NOTARY BLOCK:

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 16th day of April, 2004, by Frank Bell, VP/Gen-Florida of MetroPCS California/Florida, Inc., a Delaware corporation, who executed the foregoing instrument on behalf of such corporation.

(AFFIX NOTARIAL SEAL)



Mari Arencibia
My Commission DD238563
Expires August 05, 2007

Mari Arencibia
(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC—STATE OF Florida

My commission expires:

August 5, 2007

Mari Arencibia
(PRINTED, TYPED OR STAMPED NAME OF NOTARY)

N/A

F FLOOR ELEV:

JOB FILE: DWG FILE: 04-1002.DWG

MANAGER: WSP

CHECKED: WSP

DRAWN: WSP

SURVEY DATE: 01/21/04

REVISION

DATE

No.

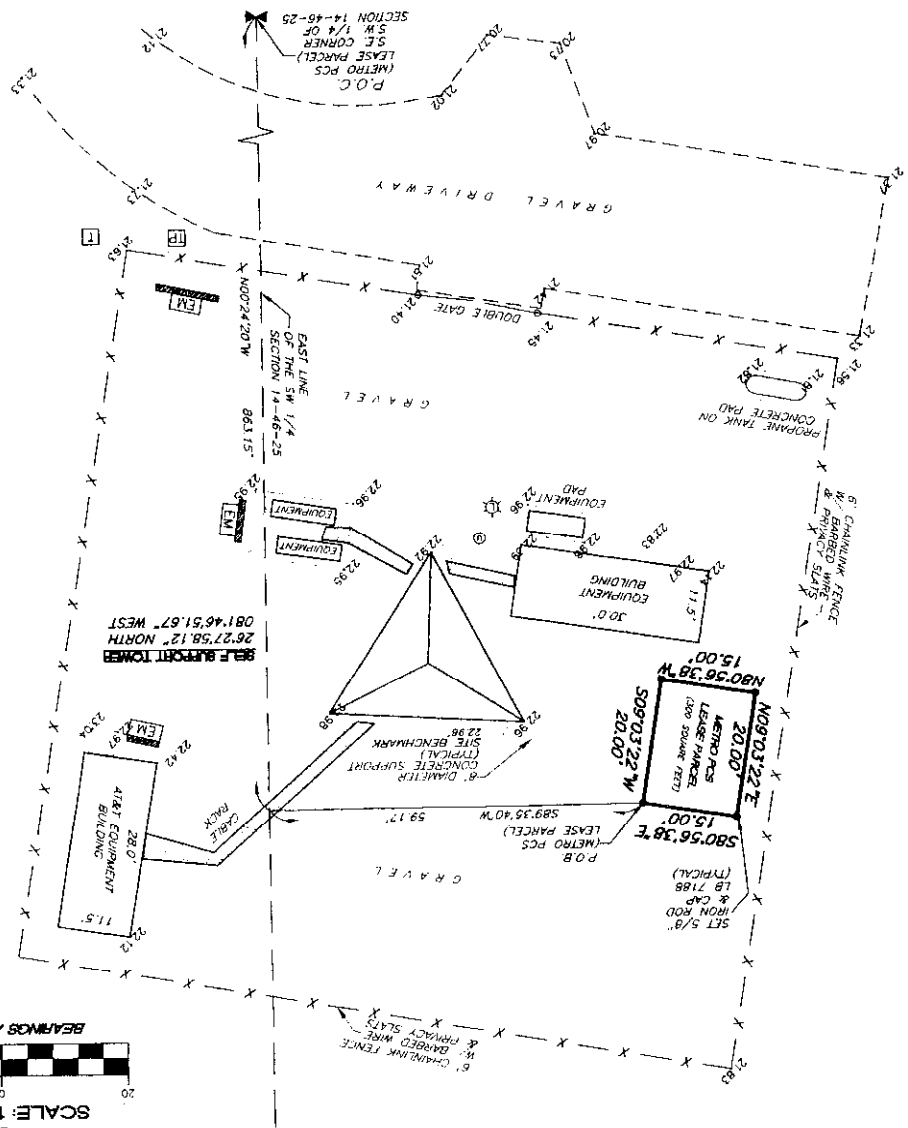
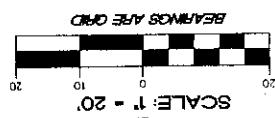
BY

RD (UNKNOWN)

21.72

E CORNER SECTION 14-46-25

SKETCH OF METRO PCS LEASE PARCEL



FC AE

Exh. B.1 "A"