

1. REQUESTED MOTION:

ACTION REQUESTED: Approve the issuance of a Tower Antenna Site license to Alltel Communications, Inc., for space on the Stockade Tower located at 2501 Ortiz Ave, Ft. Myers, FL 33905.

WHY ACTION IS NECESSARY: This license conveys the non-exclusive continued right to use the Stockade Tower and ground space beneath the tower.

WHAT ACTION ACCOMPLISHES: Allows Alltel to maintain their existing antennas and related equipment near and upon the communications tower, so that they may continue to provide personal telephonic communications opportunities to local consumers through co-location.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #:

C7A

3. MEETING DATE:

02-08-2005

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:

GTE originally built the tower and conveyed it to the County in exchange for free use of the tower for a 10 year period that ends July 2005. GTE conveyed their interest in the tower to Alltel in January 2001. Lee County was contacted by Alltel representatives regarding their continued use of the tower. Since that time, we negotiated the attached non-exclusive license for continued 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 \$25,000 annually with an annual fee increase of 4% each year over the prior year's fee. By agreement with the City of Fort Myers the city will receive \$12,500 of the \$25,000 revenue.

Revenue Account String: KF5290352000.369900.9012 (Stockade tower) \$12,500
Expense Account String: KF5290352000.508150 (Grants @ Aid Local Govt.) \$12,500

Attachment 1 – Four (4) License Agreements

8. MANAGEMENT RECOMMENDATIONS: Recommend approve the license.

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>[Signature]</i>	<i>[Signature]</i>			<i>[Signature]</i>	<i>[Signature]</i> 1/26/05	<i>[Signature]</i> 1/26/05	<i>[Signature]</i> 1/26/05	<i>[Signature]</i> 1/26/05	<i>[Signature]</i> 1-27-05

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *1/25/05*
Time: *3:55*
Forwarded To:
Admin 1/25/05

RECEIVED BY
COUNTY ADMIN: *[Signature]*
1/25/05
4:25 PM SET
COUNTY ADMIN
FORWARDED TO: *[Signature]*
1-27-05
3PM

**AMENDMENT TO ORTIZ CELLULAR TOWER SITE
LICENSE AGREEMENT**

THIS AMENDMENT to the Ortiz Cellular Tower Site License Agreement dated July 12, 1995, is made and entered into this _____ day of _____, 200~~5~~, by and between LEE COUNTY, a political subdivision and charter county of the state of Florida, hereinafter "County" and ALLTELL COMMUNICATIONS whose address is One Allied Drive Little Rock AR 72202 hereinafter referred to as "Alltel", collectively, the "Parties".

WHEREAS, the County and GTE Wireless Incorporated entered into a License Agreement for the construction of an antenna support structure on a portion of the County's property; and

WHEREAS, on January 31, 2000, GTE Wireless Incorporated and Alltel Communications entered into an agreement relating to the transfer of certain wireless markets to Alltel, including the market in which the County's property resides; and

WHEREAS, the County consented to the transfer and assignment releasing GTE from its obligations under the Agreement and Alltel became the other party to the Agreement, thereby becoming responsible for all of GTE's obligations under the Agreement; and

WHEREAS, it is in the public interest of both the County and Alltel to amend the License Agreement dated July 12, 1995, and First Amendment to the Agreement, attached hereto as Exhibits "A" and "B", respectively,

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the County and Alltel hereby agree to amend the Agreement as follows:

1. The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length.
2. **Section 3. of the Agreement is hereby amended as follows**, with underlined language being the amendment to previously adopted text and deleted language being shown by strike-through type.
 - (a) Term: The initial term of this Agreement shall be for ~~ten (10) years~~, five (5) years, and shall commence on July 12, 1995 and shall terminate on July 12, 2005, unless sooner terminated as provided herein.

Alltel shall have the right to extend the term of this Agreement for four (4) additional five (5) year extension periods. The Agreement shall automatically be extended for each successive extension period unless Alltel gives the County written notice of Licensee's intention not to extend at least ninety (90) days prior to the expiration of the then current term.
 - (b) License Fee: Alltel shall pay an annual fee of Twenty-Five Thousand Dollars (\$25,000.00). Subsequent payments of the license fee shall be payable on or before each anniversary of the fee commencement date, and the license fee shall increase annually during the initial term and any extension terms by four percent (4%), and such increases shall be effective on each anniversary of the fee commencement date.
3. **Section 6. of the Agreement is hereby amended as follows**, with underlined language being the amendment to previously adopted text and deleted language being shown by strike-through type.

6. Notice: All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective

Parties as follows:

COUNTY:

Michael C. Bridges, Deputy Director
Lee County Division of Public Safety
P.O. Box 398
Fort Myers, FL 33902-0398

With a Copy to:

Andrea R. Fraser, Assistant County Attorney
Lee County Attorney's Office
P.O. Box 398
Fort Myers, FL 33902

GTEM:

GTE Mobilnet of Tampa, Incorporated
600 N. Westshore Boulevard, Ste. 900
Tampa, FL 33609
(813) 282-6000

Alltel

Alltel Communications, Inc
Street Address
One Allied Drive
City, State Zip
Kettle Rock, Co. Attn: Property Mgmt
Phone Number 1-877-557-8226

The address to which any notice or demand may be given to either party may be changed by written notice.

4. **Section 9. of the Agreement is hereby amended as follows**, with underlined language being the amendment to previously adopted text and deleted language being shown by strike-through type.

9. Insurance: ~~During the term of this Agreement, GTEM shall procure and maintain insurance coverage in the types and amounts as per the attached Exhibit C. If GTEM 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 GTEM.~~

~~GTEM may comply with the various requirements of Exhibit C through the purchase of no deductible Commercial Insurance, or the use of a combination of self-insured retentions (SIR) and Commercial Insurance commonly know as a self-funded program. Approval by the Lee County Risk Management office of the use of SIRs shall not be unreasonably withheld, providing GTEM provides information relating to the financial stability and solvency of such programs.~~

Licensee will provide the following:

Commercial General Liability Insurance shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) per Bodily Injury per person (BI); One Million and No/100 (\$1,000,000.00) Property Damage (PD); an aggregate amount of One Million and No/100 Dollars (\$1,000,000.00); or Two Million and No/100 Dollars (\$2,000,000.00) Combined Single Limit (CSL) of BI and PD.

Worker's Compensation - Statutory benefits as defined by Chapter 440, Florida Statutes, encompassing all operations contemplated by this Lease to apply to all owners, officers and employees, regardless of the number of employees. Employers' liability will have minimum limits of: One Million and No/100 Dollars (\$1,000,000.00) per accident; One Million and No/100 Dollars (\$1,000,000.00) disease limits; One Million and No/100 Dollars (\$1,000,000.00) disease limit per employee.

5. **Section 19. of the Agreement is hereby amended as follows**, with underlined language being the amendment to previously adopted text and deleted language being shown by strike-through type.

19. Entire Agreement and Binding Effect: This Agreement and any attached exhibits, as signed by the Parties hereto, constitute the entire agreement between County and ~~GTEM~~ Alltel, no prior written promises, nor prior contemporaneous, or subsequent oral promises or representations, shall be binding. This Agreement shall not be amended or changed except by written instrument signed by the Parties hereto. Section captions herein are for convenience only and neither limit nor amplify the provisions of this instrument. The provisions of this instrument shall be binding upon and inure to the benefit of the heirs, executors, administrator, successors, and assigns of said County and ~~GTEM~~ Alltel.

The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of County and Licensee. Except to its affiliates or subsidiaries, Licensee may not permit any other use of

Licensed Premises for any purpose except as expressed herein and may not permit or assign to any third party to use the Licensed Premises unless approved by County in accordance with terms of assignment.

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.

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.

The validity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement.

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 Licensee's Equipment resulting from any Licensee 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.

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

IN WITNESS WHEREOF, The Lee County Board of County Commissioners and Altell

have executed this Agreement as of the date and year first above written.

Susan R Eudler

[1st Witness' Signature]

Susan R Eudler

[Type or Print Name]

Lindsey L Grace

[2nd Witness' Signature]

Lindsey L Grace

[Type or Print Name]

ALLTELL COMMUNICATIONS

BY:

[Signature]

[Signature]

James E. McDonald
V.P. Network Services

ATTEST: CHARLIE GREEN
CLERK OF COURTS

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

BY: _____

Deputy Clerk

BY: _____

Chairman

APPROVED AS TO FORM:

BY: _____

Office of the County Attorney