

DRAFT – Subject to terms acceptable to the County Attorney

**IN BUILDING RADIO DISTRIBUTION**  
**LICENSE AGREEMENT**

THIS IN BUILDING RADIO DISTRIBUTION LICENSE AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 20\_\_ ("Effective Date") between the County of Wake, a body politic and corporate located in the State of North Carolina, whose principal place of business is Wake County Justice Center, 300 S. Salisbury Street, Raleigh, North Carolina, 27601 ("Licensor"), and Cellco Partnership d/b/a Verizon Wireless, a Delaware general partnership, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Licensee").

WHEREAS, Licensor is a county government which owns multiple buildings located within Wake County, including the specific locations identified in Exhibit "A" (collectively, the "Premises"); and

WHEREAS, Licensor owns a Distributed Antenna System located in each of the Premises (each, a "DAS"); and

WHEREAS, Licensee desires to install and operate an In Building Radio Distribution System ("IBRD") as defined in Exhibit "B" at the Premises; and

WHEREAS, Licensor desires to provide to Licensee upon the terms and conditions enumerated herein a license for the installation and operation of the IBRD System at the Premises; and

WHEREAS, by providing such license to the Licensee, Licensor receives a value in the form of enhanced wireless communications at the Premises arising from operation of the IBRD System.

NOW, THEREFORE, in consideration of the terms, conditions, and mutual covenants contained herein and other good and valuable consideration received by each party, the sufficiency of which is hereby acknowledged, it is hereby agreed by and between Licensor and Licensee as follows:

1. Licensed Premises. Licensor hereby licenses to Licensee certain physical space on and within the Premises which physical space is shown on Exhibit "A" (also known as the "IBRD Space") for the installation of IBRD and the connection of the IBRD to the DAS. "IBRD" shall mean in-building radio-distribution devices and related equipment together with cables, fibers or the equivalent connecting such devices to the DAS, all as more specifically listed on Exhibit "B". The IBRD shall be for Licensee's exclusive use only. Licensee may replace and augment the IBRD or portions thereof with similar or comparable equipment and modify any frequencies upon which such equipment operate as needed to provide in-building coverage. This Agreement shall not extend to any other premises on or around the Premises, and the Licensee is not permitted to use any space other than the IBRD Space except as specifically set forth in this Agreement and any written amendments to this Agreement. The interest conveyed by this Agreement is non-exclusive, provided, however, (i) the IBRD shall be for Licensee's exclusive use only and (ii) the specific IBRD Space shall be for Licensee's exclusive use only. Licensor maintains exclusive possession of the Premises except for the non-possessory interest conveyed by this Agreement and has the right to license the common areas and/or adjacent Premises (to the extent not included in the IBRD Space) to other licensees as deemed necessary and appropriate.

2. Duration; Term; Default; Termination.

A. The term of this Agreement shall be five (5) years beginning on the Effective Date (“Initial Term”), with five (5) automatic 1-year renewal terms (“Renewal Term”), unless the Licensee terminates the Agreement by giving the Licensor written notice of intent to terminate at least six (6) months prior to the end of the Initial Term or any subsequent Renewal Term.

B. Notwithstanding anything to the contrary contained herein, Licensee shall have the right to terminate this Agreement at any time without cause provided that thirty (30) days prior notice is given the Licensor. In the event Licensee defaults in the performance of any of its covenants or obligations hereunder and such default continues for a period of thirty (30) days after written notice thereof from Licensor (unless the nature of the event takes longer to cure and Licensee commences a cure within the time period and diligently pursue it), Licensor may thereafter terminate this Agreement by written notice to Licensee.

C. This Agreement and all rights and obligations hereunder may be terminated by Licensor at any time and at no cost to the Licensor, whenever the Licensor determines that termination of this Agreement is in the best interest of the Licensor for any reason. Such termination shall be effective sixty (60) days from written notice of termination.

D. This Agreement may only be terminated in accordance with its terms or in accordance with specific termination rights expressly granted herein.

3. Use; Construction. Installation. Maintenance & Interference.

a. Licensee may use the IBRD Space for the installation, operation and maintenance of the IBRD and uses incidental thereto, and for no other purpose without Licensor's prior written consent. In no event shall Licensee make any use of the Premises which is in violation of any applicable governmental laws, ordinances, rules or regulations insofar as they might relate to Licensee's use and occupancy of the Premises. Nor may Licensee make any use of the Premises which is or might constitute a nuisance or trespass.

b. All construction, installation and maintenance of the DAS shall be performed by Licensor or its contractors in a safe manner consistent with current wireless industry engineering and construction standards and practices, lien-free. All construction, installation and maintenance of the IBRD shall be performed by Licensee using the Licensor's DAS service provider in a safe manner consistent with current wireless industry engineering and construction standards and practices, lien-free. Licensee, with Licensor's cooperation as or if needed, shall obtain all required governmental and quasi-governmental permits, licenses, approvals, and authorizations for the IBRD, and Licensor has obtained or shall obtain all required governmental and quasi-governmental permits, licenses, approvals, and authorizations for the DAS. All construction and installation shall be approved in advance by Licensor (which approval shall not be unreasonably withheld or delayed), provided, however, (i) Licensor and Licensee acknowledge and agree that Licensor has approved the initial construction and installation of the IBRD as set forth by reference in Exhibit “B” and (ii) approval shall not be required for Licensee to replace and augment components of the IBRD with similar or comparable equipment or modify any frequencies upon which such equipment operates. Licensee shall nonetheless be required to provide Licensor with the schedule for all construction, installation and non-emergency maintenance that requires physical access to the Premises. A per site preconstruction meeting with the Licensor and the Licensee contractors shall be required on site prior to work commencement (excluding, however, emergency maintenance, routine maintenance and IBRD component replacement). Nothing herein shall be construed to delegate or

restrict Licensor's governmental authority or require Licensor to pay any fees or costs associated with construction, installation, or maintenance.

c. Licensee agrees to only install radio equipment of the type and frequency that will not cause measurable interference to the equipment of Licensor or other tenants of the Premises existing as of the date this Agreement; provided that this provision shall not prevent or impair the primary use of the Premises. Should Licensee's equipment cause measurable interference, and provided Licensor gives written notice, Licensee will take all steps necessary to correct and eliminate the interference. Licensor agrees that, following the Effective Date, Licensor and/or any other tenant of the Premises (current or future) shall endeavor to install only such radio equipment that is of the type and frequency that will not cause measurable interference to the existing equipment of the Licensee. Should Licensor's or another tenants' equipment installed after the Effective Date cause measurable interference with Licensee, and provided Licensee gives written notice to Licensor of it, Licensor may attempt to correct and eliminate the interference, including causing other tenants of the Premises causing such interference to correct and eliminate the interference; or may terminate this Agreement pursuant to Section 2(C) if correction is not undertaken. The parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, either party shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction; provided that the remedy of specific performance shall not be available to require Licensor to correct or eliminate interference if Licensor has elected to terminate the Agreement in accordance with Section 2 or any of its subparts instead of undertake correction of interference.

4. Charges; Consideration. In consideration for the rights granted herein, Licensor's premises will receive the benefits of enhanced wireless communications arising from operation of the IBRD. The IBRD shall be acquired and installed at Licensee's sole cost. The design, construction, equipment, installation and maintenance of the DAS shall be at Licensor's sole cost.

5. Rules and Regulations. Licensee agrees to abide by Licensor's Premises rules and regulations as set forth in Exhibit "C" which is attached hereto and incorporated by reference herein (the "Rules"), provided, however, Licensor and Licensee expressly agree that none of the following provisions of the Rules shall be interpreted as applying to or limiting the rights of Licensee to install and operate the IBRD pursuant to this Agreement (subject to any Licensor approval that is otherwise required by this Agreement): (a) ALTERATION OF BUILDING, (b) WALLS, (c) OPERATION OF MACHINERY, (d) LIGHTING FIXTURES, (e) ELECTRICAL APPLIANCES and (f) INFORMATION TECHNOLOGY. In the event of an express conflict between the terms of this Agreement and the Rules, the former shall prevail. Licensor may reasonably amend or modify the Rules from time to time, provided that (i) such amendment or modification does not materially adversely affect the use of the Premises by Licensee or the rights granted to Licensee under this Agreement, (ii) such amendment or modification does not materially conflict with any terms of this Agreement and (iii) Licensor notifies Licensee of such amendment or modification. As used in the Rules, "Owner" shall refer to Licensor, and "Building" shall refer to the Premises.

6. Services by Licensor; Power and Fiber. Licensor will supply electrical power in quality, quantity, and levels currently available at the Premises, and customary for the operation of the IBRD, at Licensor's cost. Notwithstanding the foregoing, no interruption or discontinuance of such electrical power will render Licensor liable to Licensee for damages or relieve Licensee of any of its obligations hereunder. Licensor shall, if requested and not inconsistent with any other Licensor obligations or primary use of premises also grant to Licensee a license running co-terminous with this Agreement or

any extensions thereof for fiber/T-1 running from the nearest public right of way through Licensor approved entrance facility to the Premises to the extent necessary to serve the IBRD.. Licensee shall repair any area of Premises, DAS, adjacent premises owned by Licensor, or public right of way damaged or disturbed by Licensee's access to or use of fiber/T-1.

7. Public Areas. Public areas include parking areas and entrances and exits thereto, driveways and truck service ways, sidewalks, landscaped areas, and other areas and facilities provided for the joint use and benefit of occupants of the building, their employees, agents, clients, and invitees. Licensor reserves the right to exercise control and management of the public areas. The use and occupancy by the Licensee of the IBRD Space shall include the use, jointly with others entitled thereto, of the public areas, driveways, parking areas, sidewalks, corridors, exterior facade, landscaped and planted areas and all other areas and facilities provided by Licensor for the joint use and benefit of the Premises occupants; subject, however, to the terms and conditions of this Agreement and to the Rules. Licensor may at any time close any public areas to make repairs and changes thereto. Licensee, nor its agents, employees, clients or invitees shall not, at any time, interfere with the use of the public areas by Licensor or other occupants or other persons entitled to use the public areas.

8. Ownership & Control. The IBRD is personal property of the Licensee and the Licensee at all times owns and controls the IBRD. Licensor and Licensee agree, and Licensor shall so inform, any purchaser or mortgagee of the Premises, of this Agreement and that all equipment forming a part of the IBRD shall be and remain the property of Licensee under all circumstances, under Licensee's exclusive control, free and clear of any liens or encumbrances other than those permitted by Licensee, and shall be deemed to be and remain personal property and not part of the real estate on which the same are located. The DAS is personal property of Licensor and Licensor at all times owns and controls the DAS. Except if due to Licensee's negligence, Licensee shall have no obligation with respect to the maintenance, repair or replacement of the DAS, which shall be done solely by Licensor. Licensor represents and warrants that the DAS shall remain in good operating condition at all times. Licensee shall have the right to make any required connections and/or attachments to the DAS in order to allow Licensee to monitor the DAS, including summary alarm notification in the event of a DAS failure, from outside of the Premises via Licensee's infrastructure. Without limitation on any other rights of Licensee, the IBRD shall be removed by Licensee upon expiration or termination of the term of this Agreement, as the same may be from time to time extended or renewed, or upon earlier termination, for whatever reason and Licensee shall have 90 days after such expiration or termination to accomplish such removal. Licensee shall restore any areas of Licensor's premises damaged by such removal, except normal wear and tear. In the event that Licensee does not remove the IBRD or restore any area of Licensor's premises damaged by such removal as required by this Section 8 within ninety (90) days after the termination or expiration date, Licensor shall provide written notice to Licensee of such failure. If such required removal or restoration does not occur within ten (10) days after such written notice, then Licensor may at Licensor's sole option either (i) retain the IBRD, in which case the IBRD shall be deemed Licensor's sole property free and clear of any claims of Licensee or (ii) perform the removal of the IBRD and/or any required repair. In such event, Licensee agrees to reimburse Licensor for the actual cost of the labor and materials required to do the repair within thirty (30) days of receipt of an itemized statement for the labor and materials used.

9. Signs. Licensee may not erect, install or display any sign or advertising material upon the Premises, the walls thereof, or in any window therein, without the prior written consent of Licensor.

10. Access. Licenser agrees to provide Licensee, its employees and/or agents access to the Premises for the purpose of design, construction, installation, upgrading, maintenance and repair of the IBRD, and testing of the radio frequency coverage of the area, subject to the notice and scheduling requirements of this section. Licensee will coordinate non-emergency access with Licenser by giving Licenser at least 48 hours advance notice, and Licenser and Licensee shall reasonably cooperate in scheduling such non-emergency access. Non-emergency access shall be scheduled during Licenser's normal business hours. In the event of an emergency, Licensee will give Licenser such notice as is feasible under the circumstances, and Licenser will take all steps reasonably necessary and appropriate to facilitate emergency access. Emergency access shall not be limited to Licenser's normal business hours. For purposes of this section, notice by Licensee to Licenser will be directed (via telephone or e-mail) to:

Scheduling of Non-Emergency Access: Tim Tuck ([Timothy.Tuck@wakegov.com](mailto:Timothy.Tuck@wakegov.com))

Emergency Access: Wake County Security Center (919/856-7007)

Licenser will promptly notify Licensee in writing of any changes to the identity of the contact person or to the contact information in the immediately preceding sentence.

11. Indemnification, Insurance, Waiver of Consequential Damages. Licensee shall defend, indemnify and hold harmless Licenser from and against any and all losses, damages, liabilities and claims occasioned by, arising or resulting from or growing out of the acts or omissions of Licensee or its agents in connection with the use and occupancy of the Premises in connection with the IBRD, excepting claims or damages as may be due or caused by the acts or omissions of Licenser or its agents. Licensee shall maintain throughout the term of this Agreement insurance coverage as set forth in Exhibit "D" which is incorporated by reference herein. Licenser agrees that Licensee may self insure. The foregoing notwithstanding, whether the cause of any damage, loss or liability is insurable, insured or not insured, foreseen or unforeseen, in no event shall either party be responsible or liable to the other party for anticipatory profits or any indirect, special, incidental or consequential damages of any kind or nature arising directly or indirectly in connection with the construction, use or operation of the Premises or the exercise of any rights related thereto, whether based on an action or claim in contract or tort, including negligence, strict liability or otherwise.

12. Quiet Enjoyment. Licenser covenants that Licensee, upon performing all the covenants shall peaceably and quietly have, hold and enjoy the Premises for the purposes stated herein and Licenser further covenants that Licenser is seized of good and sufficient title and interest to the Premises and has full authority to enter into this Agreement.

Licenser represents, warrants and covenants that no lead paint, asbestos or other hazardous substance, as defined by any applicable state, federal or local law or regulation, is present at any Premises; Licenser owns or leases the Premises or otherwise has the right to grant the license given in this Agreement; the Licenser has obtained all required consents or approvals from any landlord, mortgagee or other person or entity having an interest therein; and Licenser is not in default under any lease with the owner of the Premises and the term of such lease extends to the term of this Agreement with any and all renewal terms.

13. Assignment and Sublease. This Agreement may be assigned by either party to its principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of its assets in the applicable Federal Communications Commission license area by reason of a merger, acquisition or other business reorganization without the consent of the other party, provided that the assignee assumes all responsibilities of the assignor under this Agreement related to the period from and after the effective

date of such assignment. The assigning party shall give written notice of assignment to other party within a reasonable period of time, but no later than fifteen (15) days following such assignment. Except as provided in the preceding sentences of this Section 13, any sale, assignment or transfer by either party must be with the written consent of the other party, such consent not to be unreasonably withheld. The Licensee or any assignee of Licensee is not permitted to sub-lease any right of access granted under this License Agreement.

14. Notices & Contacts. Except as otherwise specified in Section 10, all notices hereunder must be in writing, sent by overnight courier or by certified mail, return receipt requested, to:

If to Licensors: Mr. James K. Hartmann, County Manager  
Wake County Justice Center  
301 S. McDowell Street  
Raleigh, NC 27601

With a copy to: Mr. David Goodwin, General Services Director  
401 Capital Boulevard  
Raleigh, North Carolina 27603

If to Licensee: Celco Partnership d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07920  
Attn: Network Real Estate

15. Miscellaneous. Headings of paragraphs are for convenience only and shall not be considered in constructing the meaning of the contents of such paragraph. This Agreement contains all agreements, promises and understandings between the Licensors and the Licensee regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the Licensors or the Licensee in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. This Agreement and the performance thereof shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules. Whenever and wherever Licensors' consent or approval is required under the terms of this Agreement such consent or approval is valid only if given in writing by the County Manager or his authorized designee. The singular shall include plural, and the masculine or neuter includes the other. Each of the parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

16. Iran Divestment Act Certification. Licensee hereby certifies that Licensee and all subcontractors Licensee intends to use for any work performed in connection with this Agreement are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. Licensee shall not utilize any subcontractor identified on the List for any work performed in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands, intending to be bound, as of the Effective Date.

**LICENSEE:**

Cellco Partnership d/b/a Verizon Wireless

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LICENSOR:**

County of Wake, North Carolina

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Officer