

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR  
WIRELESS PCS, LLC (AT&T) FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR  
THE CONSTRUCTION, MAINTENANCE  
AND OPERATION OF A  
TELECOMMUNICATIONS TOWER  
FACILITY AT ST. MATTHEW LUTHERAN  
CHURCH AT 224 LOVELY STREET IN THE  
TOWN OF AVON

DOCKET NO. 373

April 22, 2009

NEW CINGULAR WIRELESS PCS, LLC ("AT&T")  
INTERROGATORIES TO THE TOWN OF AVON

1. Please review AT&T's responses to the Council's Third Set of Pre-Hearing Interrogatories (specifically, the material behind Exhibit 1) and advise if the Town of Avon still has a preference for siting a new tower facility at the Huckleberry Hill Open Space parcel owned by the Town in the specific location identified by AT&T and in lieu of a tower facility at St. Matthew Lutheran Church. If the Town does have an interest, as inquired above, please provide information and respond to the interrogatories below.
2. Please provide a legal opinion from the Town Attorney with copies of deeds which confirm that there are no legal restrictions on use of the Huckleberry Hill Open Space Parcel for a tower facility, that the Town of Avon is free to enter into a long term lease and easements with AT&T for a tower facility, and that conveyance of standard form permanent easements to CL&P and other utility companies for electric and telephone services to the tower compound would be legally permitted.
3. Comment on the potential environmental effects associated with extension of a new gravel drive 800' from the Northgate cul-de-sac up the ridge and clearing of the up to 20" dbh trees necessary for the access road and tower compound depicted in the Locus Plan included in Exhibit 1 of AT&T's responses to the Council's Third Set of Pre-Hearing Interrogatories.
4. Provide an opinion from the Town Planner on how a tower site (regardless of height) at the Huckleberry Hill Open Space parcel would be consistent with the following:
  - a) Section 8-1aa of the Connecticut General Statutes (and despite the exception for facilities defined in Section § 16-50i of the Statutes) which specifically notes "Huckleberry Hill" as an amphibolite ridge of some statewide importance?

b) The Town of Avon Comprehensive Plan of Development, Chapter 4, Policy #4 which specifically states as a Town objective:

"Prohibit additional transmitting towers on Talcott Mountain and other high elevation areas in Avon in order to maintain the natural character of the area."

5. Will the Town of Avon consider approval of a lease for up to a 150' tower in the specific location identified by AT&T for it and other carriers' potential use as a wireless facility site? Is your answer dependent on the type of structure (i.e. monopole, brown monopole with flush mount antennas, "flagpole", "stealth" evergreen tree)?
6. Will the Town Council consider a resolution at its May 7, 2009 meeting in furtherance of its prior resolutions (adopted pursuant to C.G.S. § 16-50gg) and authorize the Town Manager to execute the same basic lease executed by AT&T with St. Matthew Lutheran Church, as provided to the Siting Council and attached, which lease would allow AT&T to do additional due diligence on the property?
7. Will the Town Council refer its resolution, if any, to the Town Planning & Zoning Commission in furtherance of C.G.S § 8-24 for confirmation of the proposed use of Town land for purposes of a tower facility and execution of a lease with AT&T?
8. Will the Town Planning & Zoning Commission consider such a referral and a resolution of its own pursuant to C.G.S. § 8-24 at its May 12, 2009 meeting?

CERTIFICATION OF SERVICE

I hereby certify that on this day, an original and fifteen (15) copies of the foregoing was served on the Connecticut Siting Council via electronic and overnight mail with a copy to:

Mr. Juan Fernandez  
246 Lovely Street  
Avon, CT 06001

Andrew W. Lord, Esq.  
Loni S. Gardner, Esq.  
Murtha Cullina LLP  
Two Whitney Avenue  
PO Box 704  
New Haven, CT 06503

Ms. Jane Garrett  
15 Greenwood Drive  
Avon, Connecticut 06001

Mary Ann Keenan  
24 Quail Ridge Drive  
Avon, CT 06001

David Lampert  
4 Clearwater Court  
Avon, CT 06001

Carrie L. Larson, Esq.  
Pullman & Comely, LLC  
90 State House Square  
Hartford, CT 06103-3702

Mr. & Mrs. Thomas & Patricia McMahon  
21 Greenwood Drive  
Avon, Connecticut 06001

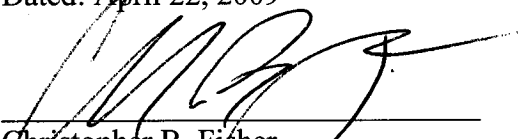
Stuart Noyes  
3 Clearwater Court  
Avon, CT 06001

Michael Pastore  
80 Wildwood Drive  
Avon, CT 06001

Mr. & Mrs. Mark & Sheridan Toomey  
9 Greenwood Drive  
Avon, Connecticut 06001

Hon. Peter Emmett Wiese  
240 Lovely Street  
Avon, Connecticut 06001

Dated: April 22, 2009

  
\_\_\_\_\_  
Christopher B. Fisher  
Cuddy & Feder LLP  
445 Hamilton Avenue, 14<sup>th</sup> Floor  
White Plains, New York 10601  
Attorneys for:  
AT&T

cc: David Akerblom; John Blevins; Michele Briggs; Derek Creaser; Kevin Dey;  
Christopher B. Fisher, Esq

Market: CT/WMA  
Cell Site Number: 1257  
Cell Site Name: Avon-Lovely Street  
Fixed Asset Number: 10117744

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by ST. MATTHEW LUTHERAN CHURCH OF AVON, CONN., also known as the ST. MATTHEW LUTHERAN CHURCH OF AVON, CONN., INC., formerly known as ST. MATTHEW'S LUTHERAN CHURCH OF COLLINSVILLE, CONN., and also formerly known as ST. MATTHEW'S LUTHERAN CHURCH OF COLLINSVILLE, CONN., a Connecticut Corporation having its principal place of business in the Town of Avon, County of Hartford and State of Connecticut (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, GA 30071 (hereinafter referred to as "**Tenant**").

### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 224 Lovely Street, in the County of Hartford, State of Connecticut (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

- 1. LEASE OF PREMISES.** Landlord leases to Tenant a certain portion of the Property containing approximately 2,500 square feet including the air space above such room/cabinet/ground space as described on attached **Exhibit 1**, together with unrestricted access for Tenant's uses from the nearest public right-of-way along the Property to the Premises as described on the attached **Exhibit 1** (collectively, the "**Premises**").
- 2. PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, , equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or surrounding property as described on **Exhibit 1** hereto (the "**Surrounding Property**"), as may reasonably be required during construction and installation of the Communications Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant's use ("**Tenant Changes**"). Tenant Changes include the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises, at Tenant's expense. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement.

Tenant will be allowed to make such alterations to the Property, subject to Landlord's approval, said approval not to be unreasonably withheld, conditioned or delayed, in order to accomplish Tenant's Changes or to insure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, and Tenant requires an additional portion of the Property (the "Additional Premises") for such modification or upgrade, subject to Landlord's approval, said approval not to be unreasonably withheld, conditioned or delayed, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises, by a reasonable amount consistent with rental rates then charged for comparable portions of real property being in the same area. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. **TERM.**

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5<sup>th</sup>) annual anniversary of the Effective Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If, at least sixty (60) days prior to the end of the fourth (4<sup>th</sup>) extended term, either Landlord or Tenant has not given the other written notice of its desire that the term of this Agreement end at the expiration of the fourth (4<sup>th</sup>) extended term, then upon the expiration of the fourth (4<sup>th</sup>) extended term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be equal to the rent paid for the last month of the fourth (4<sup>th</sup>) extended term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("**Term**").

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay the Landlord a monthly rental payment of [REDACTED] ("**Rent**"), at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

(b) In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly Rent will increase by three percent (3%) over the Rent paid during the previous year.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

(d) Payable with Rent, Tenant shall pay Landlord twenty-percent (20%) of lease rents or license fees that Tenant receives from any third party that uses the Premises ("**Shared Rents**"). Shared Rents shall not include any monies that Tenant receives from any third party, such as, but not limited to, application fees, capital reimbursements, attachment fees, utility and/or tax reimbursements, or any reimbursements or charges for services that Tenant may perform on behalf of any third party.

5. **APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Governmental Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Governmental Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) By Tenant upon written notice to Landlord for any reason, at any time prior to commencement of construction by Tenant; or

(d) by Tenant upon sixty (60) days prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Paragraphs 5(b), 6(a), 6(b), 6(c), 8, 11(d), 18, 19 or 23(j) of this Agreement.

7. **INSURANCE.**

Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of Two Million Five Hundred Thousand Dollars \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property.

8. **INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the Communication Facility, the operations of Tenant or the

rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it 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 Landlord.

#### 9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord, its Board members, collectively or individually, its volunteers, its employees, agents or independent contractors harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its Board members, collectively or individually, its volunteers, its employees, agents or independent contractors.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

(c) Notwithstanding anything to the contrary in this Agreement, and as more specifically limited in Section 13 of this Agreement, Tenant agrees to repair or pay for any damage to the Property caused by the installation or removal of its Communications Facility.

#### 10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and warrants that: (i) Landlord has legal title to the Property; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) to Landlord's actual knowledge, Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use commercially reasonable efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

#### 11. ENVIRONMENTAL.

(a) To the best of Landlord's knowledge, Landlord represents and warrants that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental

or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

12. **ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Paragraph 12, such failure shall be a default under this Lease. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

13. **REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remains Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Tenant will not be responsible for the replacement of any trees, shrubs, or other vegetation, nor will Tenant be required to remove from the Premises or the Property any underground utilities.

14. **MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, the Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will fully cooperate with any utility



company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of Landlord, to Tenant's parent or member company or any affiliate or subsidiary of, or partner in, Tenant or its parent or member company or to any entity which acquires all or substantially all of the Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located, by reason of merger, acquisition, or other business reorganization. Upon notification to Landlord of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Tenant shall have the right to sublease the Premises, in whole or in part, without the Landlord's consent. Tenant may not otherwise assign this Agreement without the Landlord's consent.

**17. NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:                   New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
6100 Atlantic Boulevard  
Norcross, GA 30071  
Re: Site #1257 Avon-Lovely Street (CT)  
Fixed Asset No: 10117744

With a copy to:               New Cingular Wireless PCS, LLC  
Attn.: Legal Department  
5 Wood Hollow Road  
Parsippany, NJ 07054  
Re: Site #1257 Avon-Lovely Street (CT)  
Fixed Asset No: 10117744

If to Landlord: St. Matthew Lutheran Church of Avon  
224-228 Lovely Street  
Avon, CT 06001

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord

- a. Old deed to Property
- b. New deed to Property
- c. Bill of Sale or Transfer
- d. Copy of current Tax Bill
- e. New W-9
- f. New Payment Direction Form
- g. Full contact information for new Landlord including all phone numbers

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Communications Facility, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communication Facility is completed.

20. **WAIVER OF LANDLORD'S LIENS.**

(a) Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law and Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

(b) In the event of Tenant's bankruptcy, Landlord retains the right to recover costs related to removal of Tenant's above-ground improvements.

21. **TAXES.** Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord. Tenant shall be responsible for all taxes levied upon Tenant's leasehold improvements (including Tenant's equipment building and tower) on the Premises. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Landlord. If Landlord fails to provide such notice within such time frame, Landlord shall be responsible for all increases in taxes for the year covered by the assessment. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefore. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant.

22. **SALE OF PROPERTY/RIGHT OF FIRST REFUSAL.**

(a) If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 22 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

(b) If at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking an assignment of the rental stream associated with this Agreement ("**Purchase Offer**"), Landlord shall immediately furnish Tenant with a copy of the Purchase Offer, together with a representation that the Purchase Offer is valid, genuine and true in all respects. Tenant shall have the right within thirty (30) days after it receives such copy and representation to match the Purchase Offer and agree in writing to match the terms of the Purchase Offer. Such writing shall be in the form of a contract substantially similar to the Purchase Offer. If Tenant chooses not to exercise this right of first refusal or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may assign the rental stream pursuant to the Purchase Offer, subject to the terms of this Agreement (including without limitation the terms of this Paragraph 22, to the person or entity that made the Purchase Offer provided that (i) the assignment is on the same terms contained in the Purchase Offer and (ii) the assignment occurs within ninety (90) days of Tenant's receipt of a copy of the Purchase Offer. If such third party modifies the Purchase Offer or the assignment does not occur within such ninety (90) day period, Landlord shall re-offer to Tenant, pursuant to the procedure set forth in this Subparagraph 22(b), the assignment on the terms set forth in the Purchase Offer, as amended. The right of first refusal hereunder shall (i) survive any transfer of all or any part of the Property or assignment of all or any part of the Agreement; (ii) bind and inure to the benefit of, Landlord and Tenant and their respective heirs, successors and assigns; (iii) run with the land; and (iv) terminate upon the expiration or earlier termination of this Agreement.

23. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; and (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(i) **No Electronic Signature/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(j) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

(k) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It is understood that all parties need not sign the same counterpart.


(l) **Signing Bonus.** Providing that Landlord has appropriately signed this Agreement and delivered all other related documentation as required at time of Landlord's signature(s); and delivered the signed Agreement and all other related documentation to Tenant no later than June 12, 2008, then Tenant shall pay Landlord the sum of two-thousand-five-hundred dollars, (\$2,500.00) as a Signing Bonus.


[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

**WITNESSES:**

CHURCH OF AVON, CONN

  
Print Name: RICHARD WITTINES

  
Print Name: Lynn Dillon

**"LANDLORD"**

ST. MATTHEW LUTHERAN

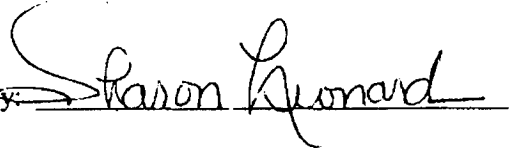
a Connecticut corporation

By: 

Print Name: Sim Austin

Its: President

Date: 6/4/08

By: 

Print Name: Sharon Leonard

Its: Secretary

Date: 6/4/08

**"TENANT"**

New Cingular Wireless PCS, LLC,

By: AT&T Mobility Corporation

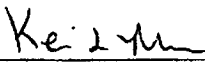
Its: Manager

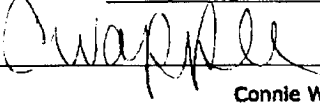
By: 

Print Name: James R. Hormann

Its: Executive Director-Network

Date: 6/12/08

  
Print Name: Kevin L. Mason

  
Print Name: Connie Wappel

**EXHIBIT 1**

**DESCRIPTION OF PREMISES**

to the Agreement dated JUNE 12, 2008 by and between ST. MATTHEW LUTHERAN CHURCH OF AVON, CONN , a Connecticut corporation, as Landlord, and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, as Tenant.

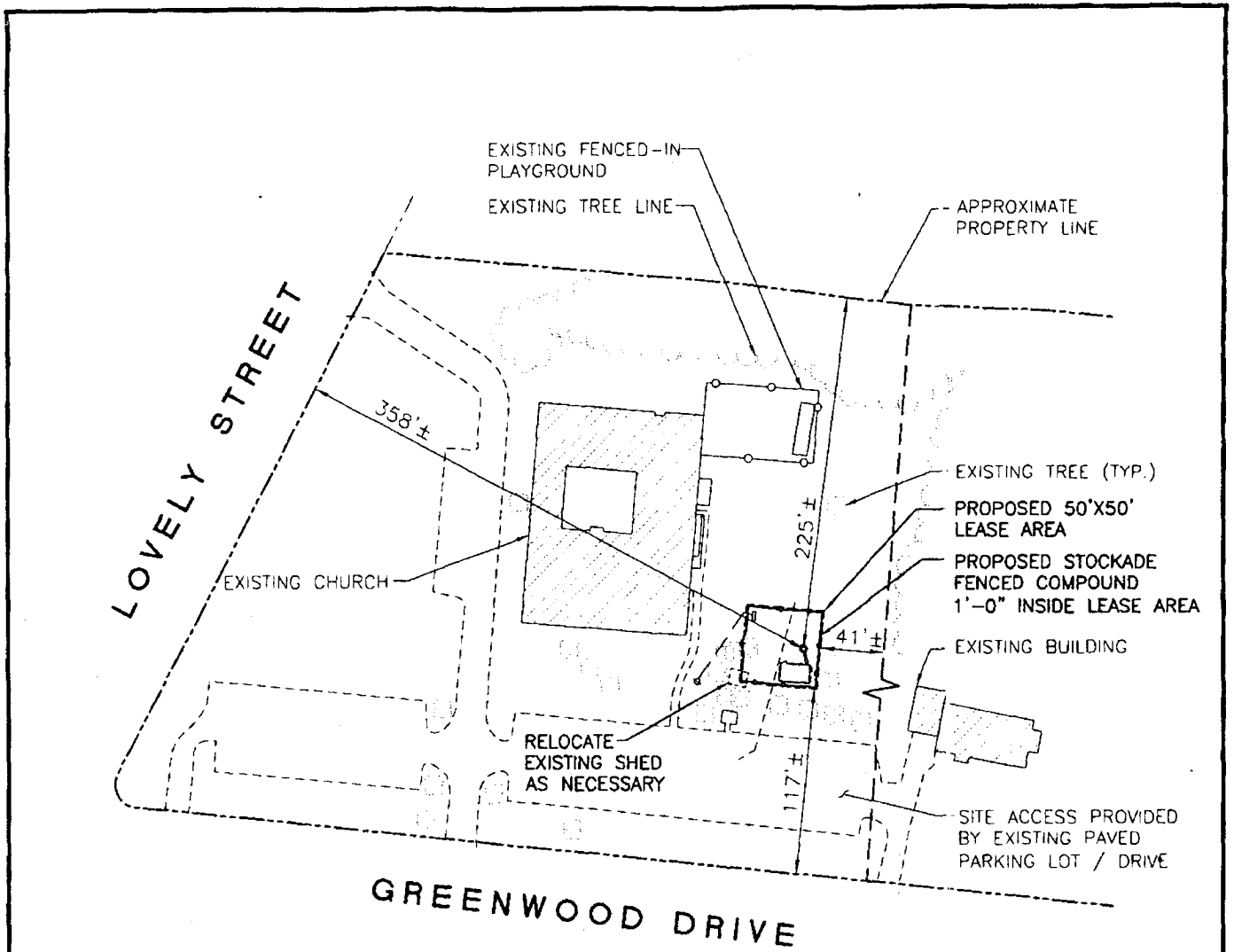
The Premises are described and/or depicted as follows:

-SEE ATTACHED DRAWINGS DATED 04/08/08-

1. SITE PLAN
2. COMPOUND LAYOUT
3. EAST ELEVATION

**Notes:**

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.



SITE PLAN  
N.T.S.



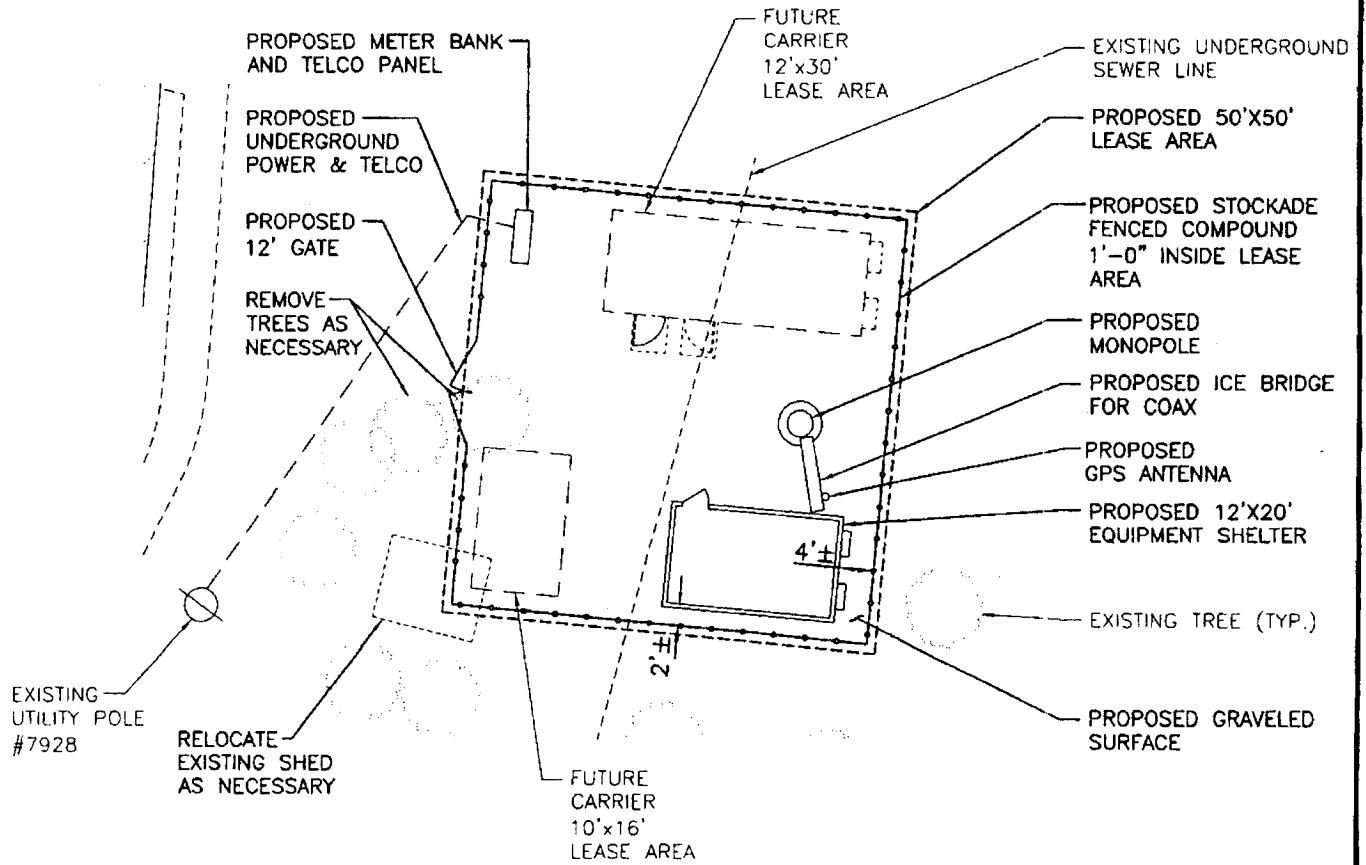
RF APPROVED: \_\_\_\_\_

REV.1 04/11/08 BR

<b>SITE NO:</b> <b>SITE NAME:</b>	2013 AVON ST. MATTHEW LUTHERAN CHURCH		<b>SITE TYPE:</b> RAW LAND	<b>DATE:</b> 04/08/08
<b>ADDRESS:</b>	224 LOVELY STREET AVON, CT 06001		500 ENTERPRISE DRIVE ROCKY HILL, CT 06067	<b>DRAWN BY:</b> PG

\*EQUIPMENT SPECIFICATIONS AND UTILITY EASEMENTS AS REQUIRED BY TELCO AND POWER COMPANY.

ALL EQUIPMENT LOCATIONS ARE APPROXIMATE AND ARE SUBJECT TO APPROVAL BY LESSEE/LICENSEE STRUCTURAL & RF ENGINEERS. LOCATIONS OF POWER & TELEPHONE FACILITIES ARE SUBJECT TO APPROVAL BY UTILITY COMPANIES.



COMPOUND LAYOUT  
N.T.S.



RF APPROVED: \_\_\_\_\_

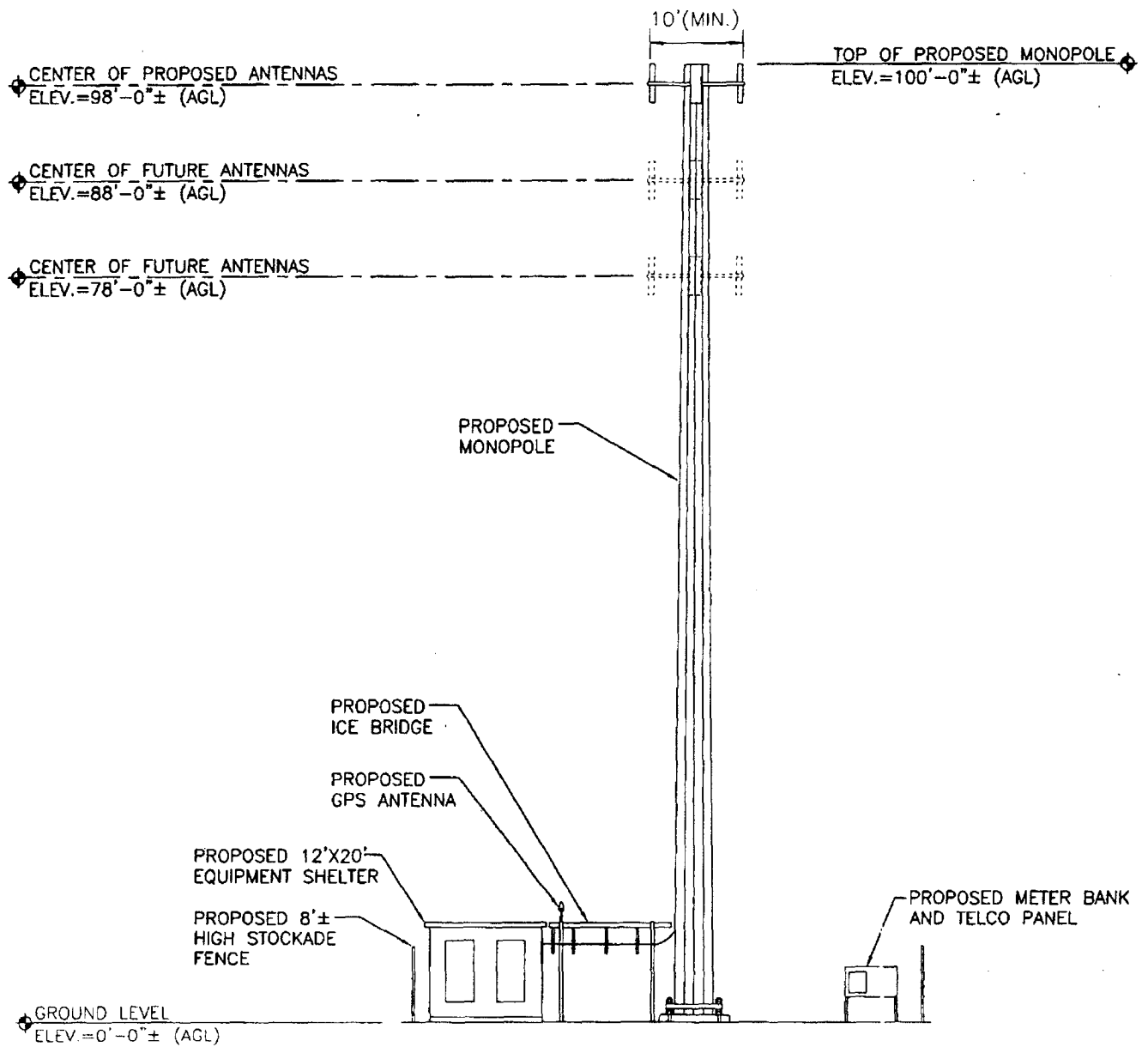
REV.1 04/11/08 BR

**SITE NO:** 2013  
**SITE NAME:** AVON  
 ST. MATTHEW LUTHERAN CHURCH  
**ADDRESS:** 224 LOVELY STREET  
 AVON, CT 06001



**SITE TYPE:** RAW LAND  
**DATE:** 04/08/08  
**DRAWN BY:** PG  
**SCALE:** NTS





EAST ELEVATION  
N.T.S.

RF APPROVED: \_\_\_\_\_

ALL EQUIPMENT LOCATIONS ARE APPROXIMATE AND ARE SUBJECT TO APPROVAL BY LESSEE/LICENSEE STRUCTURAL & RF ENGINEERS. LOCATIONS OF POWER & TELEPHONE FACILITIES ARE SUBJECT TO APPROVAL BY UTILITY COMPANIES.

REV.1 04/11/08 BR

**SITE NO:** 2013  
**SITE NAME:** AVON  
 ST. MATTHEW LUTHERAN CHURCH  
**ADDRESS:** 224 LOVELY STREET  
 AVON, CT 06001



SITE TYPE: RAW LAND

DATE:  
04/08/08

DRAWN BY: PG

SCALE: NTS