

Wild So

**BY CERTIFIED MAIL - # Z 267 724 863  
RETURN RECEIPT REQUESTED**

January 30, 1998

Davenport Ranch Municipal Utility District #1  
c/o Akin, Gump, Strauss, Hauer & Feld, LLC  
816 Congress, Suite 1900  
Austin, TX 78701

Attn: Jody Richardson

Re: Site Lease Agreement dated January 25, 1995, with amendments, if any, by and between Davenport Ranch Municipal Utility District #1, as Landlord, and AT&T Wireless Services of Austin, Inc., as Tenant, covering a certain portion of the property located at Loop 360, Austin, Texas (the "Premises")

Dear Landlord:

This is notice to you of the assignment by AT&T Wireless Services of Austin, Inc. ("Assignor") to Texas Cellular Telephone Company L.P. ("Assignee"), of all of the rights and interests of Assignor under the above-referenced Agreement. This assignment is part of an internal corporate reorganization. The management of the Austin market is not changing. Assignor expressly acknowledges and agrees that Assignor shall remain fully responsible and liable for the payment of the rent specified in the Lease and for compliance with all of Tenant's other covenants and obligations under the Lease. For purposes of the Site Lease Agreement,

Assignee's mailing address is:

With a copy to:

Texas Cellular Telephone Company L.P.,  
dba AT&T Wireless Services  
4544 South Lamar  
Suite 600  
Austin, Texas 78745  
Attn: Property Manager

AT&T Wireless Services  
Southwest Region Legal Department  
5757 Alpha Road  
Suite 1000  
Dallas, Texas 75240  
Attn: Regional General Counsel

If you have any questions regarding this matter, please contact us.

Sincerely,

AT&T Wireless Services

Linda Holmes  
Real Estate Manager

copy: Mike Morin  
ST Environmental Services  
11855 Research Blvd.  
Austin, TX 78759



June 6, 1997

AT&T Wireless Services  
Suite 1, Building 1  
1120 Loop 360 South  
Austin, TX 78746-6498  
512 750-7700  
FAX 512 750-7702

Davenport Ranch Municipal Utility District #1  
c/o Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
Attn: Jody Richardson  
816 Congress Ave., Suite 1900  
Austin, TX 78701

Re: Wild Basin cell site/Austin market

Dear Ms. Richardson:

Please make the following change, if necessary, to the notice address of Tenant in your lease with AT&T Wireless Services:

AT&T Wireless Services of Austin, Inc., a Nevada corporation  
4544 South Lamar, Suite 600  
Austin, TX 78745-1500  
Attn: Linda B. Holmes, Real Estate Manager  
Phone # (512) 436-7808

with copy to:

AT&T Wireless Services  
Southwest Region Legal Department  
5757 Alpha Rd., Suite 1000  
Dallas, TX 75240  
Attn: Regional General Counsel

Should you have any questions or concerns, please feel free to call me at (512) 436-7883.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Goldman".

Lisa A. Goldman, CLA  
FCC License Coordinator/Paralegal  
Central/South Texas District



**STATE:** Texas  
**MARKET:** Austin  
**SITE:** Wild Basin

**STATEMENT OF COMMENCEMENT DATE**

**THIS STATEMENT OF COMMENCEMENT**, for all purposes of the Site Lease Agreement, (the "Lease"), between Davenport Ranch Municipal Utility District #1, as ("Landlord"), and ACC/McCaw Cellular of Fresno, as ("Tenant"), hereby acknowledges the Commencement Date to be *February 1, 1995*.

**RECITALS**

- A. Landlord and Tenant have entered into the Lease dated January 25, 1995, pertaining to that certain premises located on the East side of Loop 360 just opposite the intersection of Pascal, Austin, Travis County, Texas.
- B. Paragraph #2 of the Lease indicates that the Lease commences on a certain "Commencement Date", which date was uncertain as of the date of the execution of the Lease.
- C. It is the intent of Landlord and Tenant to affix a date herein which shall be forever relied upon as the Commencement Date.

**NOW THEREFORE**, in consideration of the mutual promises contained in the Lease, it is hereby agreed the recitals set forth above are true and correct and are hereby incorporated into this Statement by reference.

**DAVENPORT RANCH MUNICIPAL UTILITY DISTRICT NO. 1**  
**c/o Akin, Gump, Strauss, Hauer & Feld, L.L.P.**  
**111 Congress Ave., Suite 2100**  
**Austin, Texas 78701**

March 14, 1995

ACC/McCaw Cellular of Fresno  
c/o Cellular One  
1120 Loop 360 South  
Austin, TX 78746-4498  
Attn: Ms. Linda Holmes

**Re: Amendment to Site Lease Agreement By and Between Davenport Ranch Municipal Utility District No. 1 to ACC/McCaw Cellular of Fresno Regarding Electric Service**

Dear Ms. Holmes:

This letter, when executed by a duly authorized representative of ACC/McCaw Cellular of Fresno, a Washington Joint Venture, d/b/a Austin Cellular Telephone Company, d/b/a Cellular One ("Tenant"), shall serve as an amendment (this "Amendment") to the Site Lease Agreement between Davenport Ranch Municipal Utility District No. 1 (the "District" or "Landlord") and Tenant dated January 25, 1995, with a commencement date of February 1, 1995 (the "Site Lease Agreement"), which is attached hereto as Exhibit "A". As set forth in the Site Lease Agreement, Landlord is leasing to Tenant certain property situated within the boundaries of the District (the "Property") for the purpose of installing facilities, antennas, and equipment for the transmission and reception of cellular telephones and radio communication signals. Landlord owns and operates an on-the-ground water storage tank and related facilities adjacent to the Property, and Landlord receives electric service from the City of Austin to operate its facilities through an electric meter located near Landlord's facilities at 07 North Capital of Texas Highway (the "Meter"). Subject to the terms in this Amendment, Tenant and Landlord have agreed that Landlord will request from the City of Austin an increase in electric power to the Meter from 100 amps to 200 amps, single-phase service, and that Landlord will permit Tenant to use the Meter for electric service to the Property. Landlord agrees to request the increase in electric power to the Meter and will permit Tenant to use the Meter to operate Tenant's facilities on the Property on the following conditions:

- (1) Upon execution of this Amendment, Tenant shall pay to Landlord \$5,000.00, which is anticipated to be the City of Austin's charge for electric service to the Meter for the ten-month period following execution of this Agreement. Landlord

shall segregate this amount from other funds of Landlord on the Landlord's books, and shall make withdrawals from such monies to make payments of monthly bills received on or after April 1, 1995, from the City of Austin for electric service to the Meter. Tenant and Landlord agree that such monies will be used to pay the entire amount of each monthly bill, including amounts attributable to electric usage of Landlord, as well as Tenant, from the Meter.

- (2) If at any time the amount of Tenant's money held by Landlord proves insufficient to pay the electric bill reflecting use at the Meter, Landlord shall notify Tenant by certified mail that the amount of Tenant's money held by Landlord is insufficient and shall request Tenant to transfer additional funds in the amount of two times the amount of the shortfall in funds to Landlord for deposit into the account, and Tenant shall within twenty (20) days of receipt of notice transfer funds in the requested amount to Landlord for deposit into the account. In the event Tenant declines or refuses to pay such funds, Landlord reserves the right to terminate electric service through the Meter to Tenant.
- (3) On or about January 10, 1996, and every year thereafter for so long as the Site Lease Agreement remains in effect, Landlord shall compute the City of Austin's charges for electric service to the Meter for the preceding 12 months (with estimated amounts for any months prior to Tenant's connection to the Meter), and Landlord shall request from Tenant in writing sent to Tenant by certified mail a sum equal to that amount, less any amounts remaining on deposit from Tenant from the previous payment made by Tenant to Landlord for electric services pursuant to this Amendment. Tenant shall pay said amount to Landlord within twenty (20) days of receipt of notice thereof by Tenant. In the event Tenant declines or refuses to pay such funds, Landlord reserves the right to terminate electric service through the Meter to Tenant.
- (4) Landlord and Tenant agree that Tenant shall maintain a \$1,000.00 deposit with Landlord, which may be used by Landlord to pay reasonable costs incurred by Landlord or its consultants in connection with this Amendment. If the amount

of Tenant's money held on deposit by Landlord is reduced below \$1,000.00, Landlord may request from Tenant in writing sent to Tenant by certified mail additional funds, not to exceed \$1,000.00, for use as set forth in this paragraph. In the event Tenant declines or refuses to pay such funds within twenty (20) days of receipt of notice, Landlord reserves the right to terminate electric service to Tenant through the Meter.

- (5) Tenant shall pay to Landlord at the time of execution of this Amendment, and on the first day of February in each year thereafter, during the term of the Site Lease Agreement, an administrative fee of \$200 as additional consideration for Landlord entering into this Amendment.
- (6) Section 4 (a) of the Site Lease Agreement is amended to read as follows: "Upon Commencement Date and on the first day of February in each year thereafter, Tenant shall pay Landlord as rent, the sum of \$6,000.00 Rent shall be payable to Davenport Ranch Municipal Utility District No. 1, at Landlord's address specified in paragraph 13 below."
- (7) Tenant agrees that it shall not at any time use in excess of 170 amps of electric power from the Meter or take any actions with respect to the Meter that will unreasonably impair Landlord's use of electric power from the Meter.

Tenant and Landlord agree that Landlord is authorizing Tenant to use the Meter and that Landlord will not interfere with such use unless authorized by this Amendment. Landlord is not liable to Tenant or its officers, agents, employees, successors or assigns for any termination of electric service from the Meter not caused by the act or failure to act of Landlord, or its officers, agents or employees. Tenant hereby agrees to indemnify and hold harmless Landlord and its officers, agents, employees, successors and assigns from all suits, actions, losses, damages, claims, liability or expense of any character, type, or description, including without limitation all expenses of litigation, court costs, and reasonable attorney's fees, arising out of, or occasioned by, directly or indirectly, the acts or failure to act of Tenant or its agents or employees, but not for the Landlord's own negligence or willful misconduct, in connection with the provision of electric power pursuant to this Amendment or otherwise in connection with the Tenant's obligations pursuant to this Amendment.

ACC/McCaw Cellular of Fresno  
March 14, 1995  
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This Amendment shall serve as an Amendment to the Site Lease Agreement and form a part thereof and remain in effect for so long as the Site Lease Agreement is in effect.

Very truly yours,

DAVENPORT RANCH MUNICIPAL UTILITY DISTRICT NO. 1

By: Robert B Greenwood  
President, Board of Directors

Attest:

By: Edmund Lead  
Secretary, Board of Directors

Agreed to and accepted this 13<sup>th</sup> day of April, 1995 by ACC/MCCAW CELLULAR OF FRESNO, a Washington Joint Venture d/b/a Austin Cellular Telephone Company, d/b/a Cellular One.

By: Kevin McKeand  
Kevin McKeand

Title: \_\_\_\_\_  
Business Manager  
(for and on behalf of McCaw Communications of Fresno, Inc., majority general partner)

**THIS LEASE IS THE PROPERTY OF:**  
ACC/McCaw Cellular of Fresno  
1120 Loop 360 South  
Building 1, Suite 100  
Austin, Texas 78746

STATE: Texas  
CITY: Austin  
COUNTY: Travis  
CELL ID: Wild Basin

**SITE LEASE AGREEMENT**

**THIS SITE LEASE AGREEMENT** (this "Lease") is entered into this 25<sup>th</sup> day of January, 1995, ~~1995~~ ("Execution Date") between Davenport Ranch Municipal Utility District #1, ("Landlord") and ACC/McCaw Cellular of Fresno, ("Tenant"). In no event shall this Lease be deemed executed unless and until Exhibit B (described below) is approved by Landlord and Landlord's engineer and legal counsel, as specified in 7(a) and 19(h) below.

1. **Premises.** Subject to the following terms and conditions, Landlord leases to Tenant a portion of the real property (the "Property") described in the attached Exhibit A. Tenant's use of the Property shall be limited to that portion of the Property, together with easements for access and utilities, described and depicted in attached Exhibit B (collectively referred to hereinafter as the "Premises")

The Premises located on the East side of Loop 360 just opposite the intersection of Pascal, Austin, Travis County, Texas.

2. **Term.** The initial term of this Lease shall be five years, commencing upon the earlier of (a) written notification by Tenant to Landlord of Tenant's receipt of all Governmental Approvals, or (b) eighteen (18) months from the date of the execution of this Lease by both parties (the "Commencement Date"), and terminating at Midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred.

If Tenant shall not have obtained all Governmental Approvals on or before the date specified in 2(b) above, then Tenant shall, by notice to Landlord, have the right to cancel all rights and obligations under this Lease.

3. **Permitted Use.** The Premises may be used by Tenant only for permitted uses, which are the transmission and reception of cellular telephones and radio communication signals and for the installation, maintenance, repair or replacement of related facilities, antennas, equipment and related activities. Tenant shall obtain, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises from all applicable government and/or regulatory entities (the "Governmental Approvals") and may (prior to or after the Commencement Date) obtain a title report, perform surveys, soils tests, and other engineering procedures or environmental investigations on, under and over the

Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations and Governmental Approvals. Landlord agrees to reasonably cooperate with Tenant (at no cost to Landlord), where required, to perform such procedures or obtain Governmental Approvals. Landlord agrees that Tenant shall have the right to immediately terminate this Lease if Tenant notifies Landlord of unacceptable results of any title report or survey, engineering or soils tests prior to Tenant's installation on the Premises of the Antenna Facilities (as described in paragraph 7 (a) and Exhibit B below). Landlord also agrees that if, based on the result of any environmental investigation or inquiry, Tenant determines that the condition of the Property is unsatisfactory or if Tenant believes that leasing or continued leasing of the Premises would expose Tenant to undue risks of government action or intervention or third-party liability, Tenant may, without any penalty, immediately terminate this Site Lease Agreement.

4. **Rent.**

(a.) Upon the Commencement Date, Tenant shall pay Landlord as rent, the sum of Five Hundred Dollars (\$500.00) per month ("Rent"). Rent shall be payable on the first day of each month, in advance, to Davenport Ranch Municipal Utility District #1, at Landlord's address specified in paragraph 13 below.

(b.) If this Lease is terminated at a time other than on the last day of a month for any reason other than a default by Tenant, Rent shall be prorated as of the date of termination and all prepaid Rents shall be refunded to Tenant.

5. **Renewal.** Tenant shall have the right to extend this Lease for five additional, five-year terms ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein except that Rent shall increase after each term to an amount equal to one hundred and twenty percent (120%) of the Rent for the immediately preceding five-year term. The monthly Rent for each renewal term shall be:

First renewal term	\$600.00 per month
Second renewal term	\$720.00 per month
Third renewal term	\$864.00 per month
Fourth renewal term	\$1,037.00 per month
Fifth renewal term	\$1,244.00 per month

This Lease shall automatically renew for each successive Renewal Term unless Tenant shall notify Landlord, in writing, of Tenant's intention not to renew this Lease, at least sixty (60) days prior to the expiration of the term or any Renewal Term.

If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease for a maximum of one year

at which time the Lease terminates without prejudice. During any given hold over period the Rent shall be paid at the rate appropriate to the Renewal Term applicable as listed above.

6. **Interference.** First and foremost Tenant acknowledges that the primary use of the Property is to accommodate water storage and Tenant shall not interfere in any way with this primary use. Landlord has the right to maintain Water Tank including painting as long as Landlord does not interfere with Tenant's operation. The parties hereto shall not use, nor shall they permit their employees, invitees or agents to use, any portion of Landlord's properties in any way which interferes with the operations of the other. The interfering party shall, upon notice from the other, terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury to the non-interfering party, and therefore such non-interfering party shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference

7. **Improvements; Utilities; Access.**

(a.) Tenant shall have the right, at its expense, to place and maintain on the Premises improvements, personal property and facilities, including, without limitation, radio transmitting and receiving antennas, and an electronic Equipment Shelter as described on attached Exhibit B, (collectively, the "Antenna Facilities"). Landlord's prior consent to the plans and installation of the Antenna Facilities shall be required but shall not be unreasonably withheld or delayed. Tenant shall have the right to replace or upgrade the Antenna Facilities at any time during the term of this Lease. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right and the obligation to remove the Antenna Facilities upon termination of this Lease.

(b.) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to, the installation of emergency power generators). Landlord hereby grants an easement to permanently place any utilities on, or to bring utilities across, the Property in order to service the Premises and the Antenna Facilities., Tenant shall pay the periodic charges for all electric use at the Property as long as Landlord does not add additional electric load without prior approval by Tenant.

(c.) As partial consideration for rent paid under this Lease, Landlord hereby grants Tenant an easement ("Easement") for ingress, egress and access (including access as described in paragraph 1) to the Premises adequate to service the Premises and the Antenna Facilities at all times during the term of this Lease or any Renewal Term. Upon notice, Landlord shall have the right, at Landlord's sole expense, to relocate the Easement to Tenant, provided such new location shall not materially interfere with Tenant's operations. Any Easement provided hereunder shall have the same term as this Lease and any Renewal Term thereof.

In the event this Lease is terminated electrical usage shall be prorated as of the date of termination.

(d.) Tenant shall have 24-hours-a-day, 7 days-a-week access to the Premises at all times during the term of this Lease and any Renewal Term.

8. **Default.** Any of the following occurrences, conditions, or acts shall be deemed a "Default" under this Lease:

(a.) if Tenant fails to pay amounts due under this Lease within ten (10) days of its receipt of written notice that such payments are overdue;

(b.) if either party fails to observe or perform its obligations under this Lease and does not cure such failure within thirty (30) days from its receipt of written notice of breach; or such longer period as may be required to diligently complete a cure commenced within the 30-day period.

9. **Termination.** Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a.) upon ten (10) days' written notice in the event of a Default (as defined above);

(b.) upon ninety (90) days' written notice by Tenant if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit or Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's business;

(c.) upon ninety (90) days' written notice by Tenant if the Premises are or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(d.) immediately upon written notice if the Property is destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, except the Tenant's obligation to remove the Antenna Facilities, as described in paragraph 7(a), utilities shall also be removed unless Landlord request otherwise and any restoration of the Premises necessary to leave the Premises in as good a condition as existed prior to use by Tenant, reasonable wear and tear excepted, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, there will be no rent abatement.

(e.) at the time title of the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Property unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power, shall be treated as a taking by condemnation.

(f.) after the completion of the third renewal term but upon two (2) years written notice to Tenant by Landlord.

10. **Taxes.** Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Landlord shall pay when due all real property taxes if applicable to Landlord and all other fees and assessments attributable to the Property. However, Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Property or the Premises (excluding any additional taxes that relate to the period prior to the Commencement Date, *i.e.*, roll-back taxes) which is directly attributable to Tenant's use of the Property or the Premises, and Landlord agrees to furnish proof of such increase to Tenant.

11. **Insurance and Subrogation.**

(a.) Tenant will provide Commercial General Liability including Products, Completed Operations, Independent Contractors and Contractual Liability with Aggregate, Occurrence and Personal Injury limits of \$1,000,000.00, fire damage with limits of \$50,000, which shall name Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance Tenant may maintain. Tenant shall provide evidence of its Workers' Compensation insurance that complies with the Texas Workers' compensation Act and Employers Liability insurance with limits of \$500,000. Tenant shall also provide automobile liability insurance covering any auto with combined limits of \$1,000,000 and shall provide property insurance on the Landlord's improvements (at replacement costs) located near the proposed lease site.

12. **Hold Harmless and Indemnification.** Tenant agrees to hold Landlord harmless from claims arising from the installation, use, maintenance, repair or removal of the Tenant's Antenna Facilities, except for claims arising from the negligence or intentional acts of Landlord. Tenant agrees to defend, indemnify, and hold Landlord harmless from and against any and all claims, causes of action, demands and liability including, but in no manner limited to damages, costs, expenses, assessments, penalties, fines, losses, judgments, all costs of defense including but not limited to attorney's fees (paid on a timely bases as incurred), that Landlord may suffer due to the presence, generation, increase, or decrease of nonionizing or ionizing electromagnetic radiation, radiofrequency radiation, electric fields, magnetic fields, or electromagnetic fields caused solely or in any part by Tenant's activities on the Property or its improvements, Tenant's agreement with respect to this paragraph shall in no manner be

contingent upon the proof, in scientific literature, by expert testimony, or by other methods, that exposure to nonionizing or ionizing electromagnetic radiation, radiofrequency radiation, electric fields, magnetic fields, or electromagnetic fields causes adverse biological effects, property damage, or diminishment in property use or value. The Landlord shall have the right to participate in its own defense and its reasonable costs of said participation, pursuant to this paragraph, shall be borne entirely by the Tenant. Any allegation contained in a petition filed or claim threatened by a plaintiff or potential plaintiff against Landlord (or against any person or entity who would reasonably seek recovery or indemnification from Landlord) with regard to the subjects of agreement set out in this paragraph shall automatically trigger the Tenant's duties to perform its agreements under this paragraph.

13. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses, which may be changed upon written notice:

If to Landlord, to:                   Davenport Ranch Municipal Utility District #1  
  c/o Akin, Gump, Strauss, Hauer, & Feld, L.L.P.  
  111 Congress Avenue, Suite 2100  
  Austin, Texas 78701  
  Attn.: Jody Richardson

with copy to:                           Mike Merin  
  ST Environmental Services  
  11855 Research Blvd.  
  Austin, Texas 78759

If to Tenant, to:                   ACC/McCaw Cellular of Fresno  
  c/o Cellular One  
  1120 Loop 360 - South  
  Building 1, Suite 100  
  Austin, Texas 78746  
  Attn.: Property Manager  
  (512) 750-7700

with copy to:                           McCaw Cellular Communications, Inc.  
  Southwest Regional Legal Office  
  14900 Landmark Blvd., Suite 400  
  Dallas, Texas 75240  
  Attn.: Elizabeth L. Wallin

14. **Quiet Enjoyment, Title and Authority.** Landlord covenants and warrants to Tenant that Landlord has full right, power, and authority to execute this Lease; it has good and unencumbered title to the Property and the Premises free and clear of any liens or mortgages,

except those disclosed to Tenant which will not interfere with Tenant's rights to or use of the Property and the Premises; the Property constitutes a legal lot; and execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.

Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Property and Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

15. **Environmental Laws**. Tenant represents, warrants and agrees that it will, to the best of its knowledge, conduct its activities on the Property in compliance with all applicable Environmental Laws (as defined in attached Exhibit C). Landlord represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable Environmental Laws and that the Property is free of Hazardous Substance (as defined in attached Exhibit C) to the best of Landlord's knowledge, as of the date of this Lease. If Tenant is alleged to be responsible in whole or in any part for the need for investigation or remediation required by Environmental Law or common law in connection with the Property, Tenant shall fully reimburse Landlord within thirty (30) days after receipt of written invoices from Landlord for the costs as they are incurred by Landlord even if prior to determination of Tenant's responsibility of said investigation and remediation which is judicially determined or agreed to be caused in whole or in part by Tenant.

Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, not caused solely or in part by Tenant, that have occurred or which may occur on the Property.

Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Landlord may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment arising solely or in part from Tenant's activities on the Property.

Landlord agrees to defend, indemnify and hold Tenant harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Tenant may suffer due to the existence or discovery of any Hazardous Substance on the property or the migration of any Hazardous Substance to other properties or released into the environment, are caused by Landlord's activities during this Lease.

The indemnifications in this section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

16. **Assignment and Subleasing.** Provided Landlord's rights and interests are not adversely affected, Tenant may assign this Lease to any person controlling, controlled by, or under common control with Tenant, or any person or entity that, after first receiving FCC or state regulatory agency approvals, acquires Tenant's radio communications business and assumes all obligations of Tenant under this Lease. Upon such assignment, Tenant shall not be relieved of all liabilities and obligations hereunder and Landlord shall look to the Tenant and assignee for performance under this Lease and all obligations hereunder. Tenant may sublet this Lease, upon Landlord's approval, only if such sublease is subject to the provisions of this Lease. All other assignments of this Lease must be approved by Landlord, which approval will not be unreasonably withheld.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any such mortgagees or holders of security interests including their successors or assigns (hereinafter collectively referred to as "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant except that the cure period for any Mortgagee shall not be less than ten (10) days after receipt of the default notice.

17. **Successors and Assigns.** This Lease shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

18. **Waiver of Landlord's Lien.** Landlord hereby waives any and all lien rights except tax lien rights, it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property under applicable laws, and Landlord gives Tenant the right to remove all or any portion of same from time to time in Tenant's sole discretion and without Landlord's consent.

19. **Miscellaneous.**

(a.) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b.) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c.) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d.) If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

(e.) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease) necessary to protect its rights or use of the Property or Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party.

(f.) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(g.) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

The Execution Date of this Lease is the 25<sup>th</sup> day of January, 1995, ~~1994~~.

**LANDLORD: DAVENPORT RANCH MUNICIPAL UTILITY DISTRICT #1**

Robert B. Greenwood

BY:

ITS: *President*

**TENANT: ACC/MCCAW CELLULAR OF FRESNO, a Washington Joint Venture dba Austin Cellular Telephone Company, dba Cellular One**

Kevin McKeand

BY: Kevin McKeand

ITS: Business Manager (for and on behalf of McCaw Communications of Fresno, Inc., majority general partner)

**ATTEST: DAVENPORT RANCH MUNICIPAL UTILITY DISTRICT #1**

Robert E. Head

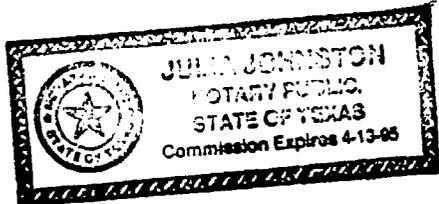
BY:

ITS: *Secretary*

STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

On this 6<sup>th</sup> day of January, 1995, before me a Notary Public in and for the State of Texas, personally appeared Robert B. Greenwood, known to me to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand the day and year first above written.

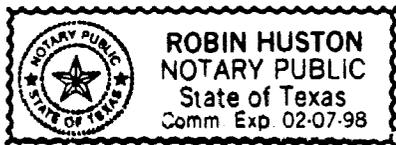


Julia Johnston  
NOTARY PUBLIC in and for the State of Texas.  
My commission expires: 4-13-95

STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

On this 6<sup>th</sup> day of January, 1995, before me a Notary Public in and for the State of Texas, personally appeared Ralph F. Ralph, known to me to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand the day and year first above written.

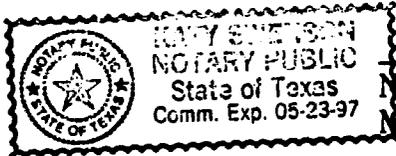


Robin Huston  
NOTARY PUBLIC in and for the State of Texas.  
My commission expires: 02-07-98

STATE OF TEXAS §  
§  
COUNTY OF Travis §

On this 25<sup>th</sup> day of January, 1995, before me a Notary Public in and for the State of Texas, personally appeared Kevin McLeod, known to me to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand the day and year first above written.



Katy Swensen  
NOTARY PUBLIC in and for the State of Texas.  
My commission expires: 5-23-97

1/8 24'00" E  
20117301

## EXHIBIT A

FIELD NOTES

FIELD NOTES for 2.722 acres of land situated in the Duchs Trammell Survey No. 3 and the John Beckham Survey No. 94 in Travis County, Texas, said 2.722 acres being out of a 316.88 acre tract described in a deed to Isaac Arnold, et al, trustees by deed recorded in Volume 4248, at Page 163 of the Deed Records of Travis County, said 2.722 acres being more particularly described by meets and bounds as follows:

STARTING FOR REFERENCE at a concrete monument located in the east right-of-way line of the Capital of Texas Highway (Loop 360) at highway reference station 830+00, same being the southwest corner of Lot 69, Davenport Ranch, Phase 5, Section 1, a subdivision of record, a plat of which is recorded in Book 86, at Pages 110C, 110D and 111A of the Travis County Plat Records, same being the most north corner of a 62.334 acre tract described in a deed to the City of Austin recorded in Volume 10933, Pages 1338-1366 of the Travis County Deed Records;

THENCE FOR REFERENCE, along the right-of-way line of Loop 360, the following five (5) courses:

1. S 59°12'28" W, 99.98 feet (concrete monument),
2. S 76°50'45" W, 208.85 feet (concrete monument),
3. S 58°08'19" W, 899.88 feet (concrete monument),
4. S 42°34'40" W, 188.56 feet (concrete monument) and,
5. S 50°34'17" W, 495.66 feet to a galvanized bolt located at a corner of the referenced 62.334 acre tract, same being the most north corner of the Davenport Ranch Municipal Utility District No. 1 water storage tank site, and the POINT OF BEGINNING for the herein described 2.722 acre tract;

THENCE, along the north line of the water storage tank site S 51°34'05" E, a distance of 232.32 feet to a galvanized bolt at the northeast corner of the water storage tank site, same being an interior corner of the 62.334 acre tract;

THENCE, along the east line of the water storage tank site, S 28°29'36" W, a distance of 149.52 feet to a galvanized bolt in the edge of a roadway easement fifty (50) feet in width;

THENCE, along the edge of the roadway easement the following (twelve (12) courses:

1. S 41°28'39" E, 126.04 feet (galvanized bolt),
2. S 52°36'08" E, 141.78 feet (galvanized bolt),
3. S 77°52'01" E, 89.83 feet (galvanized bolt),
4. S 71°33'34" E, 79.86 feet (galvanized bolt),
5. S 35°35'17" E, 83.16 feet (galvanized bolt),
6. S 25°47'28" W, 80.83 feet (galvanized bolt),
7. S 74°24'31" W, 281.06 feet (galvanized bolt),
8. N 78°34'25" W, 89.70 feet (galvanized bolt),
9. N 34°21'53" W, 167.59 feet (galvanized bolt).

EXHIBIT A

- 10. N 26°09'42" W, 290.11 feet (galvanized bolt),
- 11. N 58°00'31" W, 21.43 feet (galvanized bolt),
- 12. N 86°04'14" W, 59.18 feet to a galvanized bolt in the curving east right-of-way line of Loop 360, and from which a 3/8 inch rebar bears S 13°07'24" W, 489.41 feet and S 01°53'43" E, 90.82 feet, said rebar being at the northwest corner of Davenport Ranch, Phase 8, Section 1, a subdivision of record, a plat of which is recorded in Book 84 at Pages 81C and 81 D of the Travis County Plat Records;

THENCE, along the east right-of-way line of Loop 360 with a curve to the right, an arc distance of 56.44 feet, said arc having a radius of 1659.86 feet, a central angle of 01°58'34" and a chord which bears N 31°24'30" E, a distance of 56.44 feet to a galvanized bolt in the edge of the road easement;

THENCE, along the road easement the following twelve (12) courses:

- 1. S 86°04'14" E, 41.48 feet (galvanized bolt),
- 2. S 58°00'31" E, 48.18 feet (galvanized bolt),
- 3. S 26°09'42" E, 300.79 feet (galvanized bolt),
- 4. S 24°21'53" E, 143.69 feet (galvanized bolt),
- 5. S 78°24'28" E, 57.38 feet (galvanized bolt),
- 6. N 74°24'31" E, 251.53 feet (galvanized bolt),
- 7. N 35°47'38" E, 27.39 feet (galvanized bolt),
- 8. N 35°35'17" W, 31.02 feet (galvanized bolt),
- 9. N 71°23'34" W, 60.88 feet (galvanized bolt),
- 10. N 77°52'01" W, 109.29 feet (galvanized bolt),
- 11. N 53°36'06" W, 187.89 feet (galvanized bolt),
- 12. N 41°28'39" W, 122.05 feet to a galvanized bolt at the most south corner of the water storage tank site;

THENCE, along the south line of the water storage tank site, N 51°25'00" W, a distance of 232.47 feet to a galvanized bolt in the curving east right-of-way line of Loop 360, same being at the most west corner of the water storage tank site;

THENCE, along the curving east right-of-way line of Loop 360 with a curve to the right, an arc distance of 199.81, said arc having a radius of 1659.86 feet, a central angle of 08°53'50", and a chord which bears N 32°22'08" E, a distance of 199.69 feet to the POINT OF BEGINNING, containing 2.722 acres more or less.

Field Notes prepared from records in the office of Jones and Neuse, Inc., 2720 Bee Cave Road, Austin, Texas 78746.

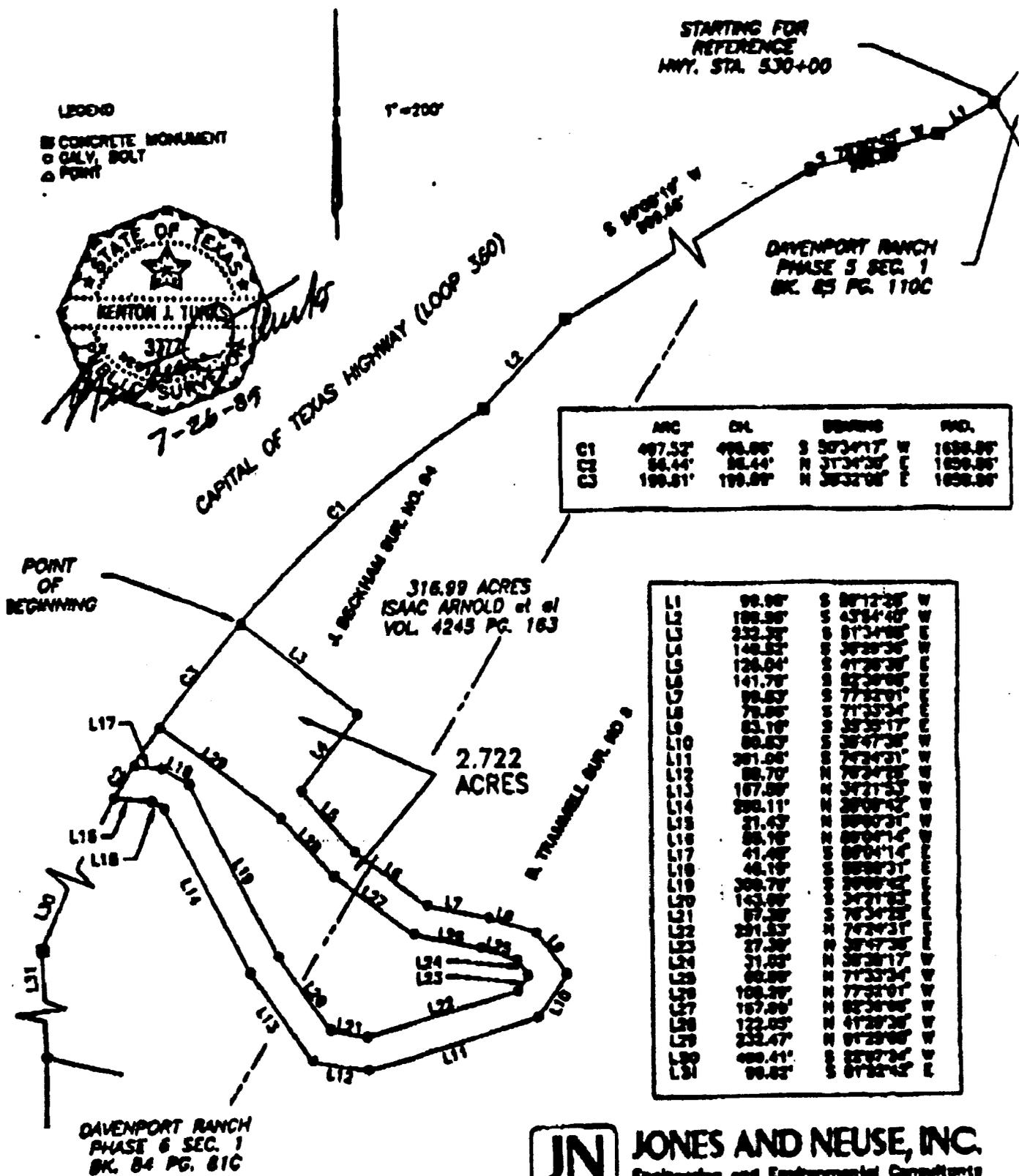
*Kenton J. Turck*  
 \_\_\_\_\_  
 Kenton J. Turck  
 Registered Public Surveyor  
 No. 3777

12-6-87  
 Date



EXHIBIT A

SKETCH TO ACCOMPANY FIELD NOTES FOR 2.722 ACRES OUT OF A 316.99 ACRE TRACT, VOL. 4245 PG. 163, TRAVIS COUNTY DEED RECORDS



**JN** JONES AND NEUSE, INC.  
 Engineering and Environmental Consultants

EXHIBIT B-1  
METES AND BOUNDS DESCRIPTION

BEING ALL OF THAT OF PARCEL OF LAND CONTAINING 1.745 ACRES OF LAND, MORE OR LESS, DESIGNATED AS A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS, INSTALLATION AND MAINTENANCE OF ELECTRICAL AND TELEPHONE COMMUNICATION LINES, SAID TRACT BEING LOCATED IN J. BECKHAM SURVEY NO. 94 AND B. TRAMMELL SURVEY NO. 3 LOCATED IN TRAVIS COUNTY, TEXAS, SAID 1.745 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for the same at a 1/2 inch iron rod found at the southwest corner of the conveyance to Davenport Municipal Utility District No. 1 as recorded in Volume 11093, Page 468, of the Real Property Records of Travis County, Texas, said point being on the south easterly R.O.W. on the Capital of Texas Highway (Loop 360);

THENCE, leaving said POINT OF BEGINNING, so fixed, and with the lines of conveyance to the Davenport Municipal Utility District No. 1 and the southeasterly R.O.W. of Capital of Texas Highway with a curve to the right having a arc of 56.44 feet along a chord of N 31° 34' 50" E for a distance of 56.44 feet to a 1/2 inch iron rod found;

THENCE, leaving said Capital of Texas Highway and with the lines of the conveyance to the Davenport Municipal Utility District No. 1 the following 12 courses and distances;

- S 84° 04' 14" E, for a distance of 41.48 feet;
- S 58° 00' 31" E, for a distance of 48.19 feet;
- S 26° 09' 42" E, for a distance of 300.79 feet;
- S 34° 21' 53" E, for a distance of 143.69 feet;
- S 78° 34' 25" E, for a distance of 57.38 feet;
- N 74° 24' 38" E, for a distance of 251.53 feet;
- N 35° 47' 38" E, for a distance of 27.39 feet;
- N 35° 35' 17" W, for a distance of 31.02 feet;
- N 71° 33' 34" W, for a distance of 60.88 feet;
- N 77° 52' 01" W, for a distance of 108.29 feet;
- N 52° 36' 08" W, for a distance of 157.89 feet;
- N 41° 26' 39" W, for a distance of 122.05 feet to a 1/2 inch iron rod found at an angle point at said conveyance to the Davenport Municipal Utility District No. 1;

THENCE, leaving the outlines of said conveyance to the Davenport Municipal Utility District No. 1, N 38° 32' 30" E, for a distance of 15.24 feet to a point;

THENCE, N 34° 18' 34" W, for a distance of 57.99 feet to a point;

THENCE, S 29° 38' 35" W, for a distance of 32.70 feet to a point in the outline of the conveyance to the Davenport Municipal Utility District No. 1;

THENCE, with said line N 51° 25' 00" W, for a distance of 15.18 feet to an angle point;

THENCE, leaving the outlines of said conveyance to the Davenport Municipal Utility District No. 1, N 29° 38' 35" E, for a distance 40.40 feet;

THENCE, N 34° 18' 34" W, for a distance of 76.82 feet to 1/2 inch iron rebar set;

THENCE, N 28° 34' 00" W, for a distance of 34.00 feet to 1/2 inch iron rebar set for the northwest corner of herein described conveyance;

THENCE, N 61° 25' 54" E, for a distance of 19.01 feet;

THENCE, S 74° 34' 31" E, for a distance of 19.84 feet to a point on the outside of a 52 foot diameter water tower;

THENCE, with a curve to the left with the face of said water tower along a curve to the left having a arc of 22.13 feet a chord S 08° 57' 13" E, for a distance of 21.46 feet;

THENCE, S 61° 25' 54" W, for a distance of 6.55 feet 1/2 inch iron rebar set;

THENCE, S 34° 18' 34" E, for a distance of 143.57 feet;

THENCE, N 38° 32' 30" E, for a distance of 15.24 feet to a point on the outlines of said conveyance to the Davenport Municipal Utility District No. 1;

THENCE, with the lines of said conveyance to the Davenport Municipal Utility District No. 1 the following 12 courses and distances;

S 41° 26' 39" E, for a distance of 126.04 feet;

S 52° 36' 08" E, for a distance of 141.79 feet;

S 77° 52' 01" E, for a distance of 99.83 feet;

S 71° 33' 34" E, for a distance of 79.86 feet;

S 35° 35' 17" E, for a distance of 83.16 feet;

S 35° 47' 38" W, for a distance of 80.83 feet;

S 74° 24' 31" W, for a distance of 281.06 feet;

N 78° 34' 25" W, for a distance of 89.70 feet;

N 34° 21' 53" W, for a distance of 167.59 feet;

N 26° 09' 42" W, for a distance of 290.11 feet;

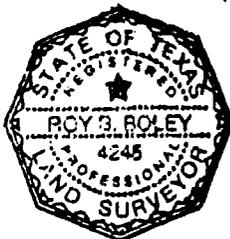
N 58° 00' 31" W, for a distance of 21.43 feet;

N 86° 04' 14" W, for a distance of 55.18 feet  
to the POINT OF BEGINNING of herein described  
conveyance and containing 1.754 acres of land,  
more or less.

AS SURVEYED BY:  
RALPH HARRIS SURVEYOR INC.  
1406 HETHER  
AUSTIN, TEXAS 78704

*Roy B. Boley*

ROY B. BOLEY  
R.P.L.S. NO. 4245  
AUGUST 8, 1994  
PB:B:6:22950





## EXHIBIT C

To the Site Lease Agreement dated 1-25-95  
between Davenport Ranch Municipal Utility District # 1, as Landlord,  
and ACC/McCaw Cellular of Fresno, as Tenant

### Environmental Laws

As used in this Lease, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, pertaining to the protection of human health and/or the environment including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, *et seq.*, the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 1101, *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601, *et seq.*, the Oil Pollution Control Act, 33 U.S.C. §§ 2701, *et seq.*, and Texas Laws, or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto. This definition includes all federal, state or local land use laws dealing with environmental sensitivity, including but not limited to laws regarding wetlands, steep slopes, aquifers, critical or sensitive areas, shorelines, fish and wildlife habitat, or historical or archeological significance.

As used in this Lease, "Hazardous Substance" means any hazardous or toxic substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; any and all material waste or substance defined as hazardous pursuant to any federal, state or local laws or regulations or order; and any substance which is or becomes regulated by any federal, state or local governmental authority; any oil, petroleum products and their byproducts.