



November 12, 2018

Mr. Paul Riester  
Erie County Water Authority

RE: Upstate Cellular Network d/b/a Verizon Wireless – Facility Modifications – 12 Pleasant View Road (VZW Depew site)– Erie County Water Authority Water Tank

Dear Mr. Riester,

This letter is in reference to the Lease Agreement between Erie County Water Authority (“Landlord” or “Owner”) and Upstate Cellular Network d/b/a Verizon Wireless (“Tenant”) dated December 1, 1996 in which Tenant leases a certain portion of the property at the above referenced address (“the Premises”).

Pursuant to our Lease Agreement consent is required for any alterations, additions and/or improvements to our installations.

As you are aware, Verizon Wireless (“VZW”) is proposing modify its existing facility on ECWA’s water tank at 12 Pleasant View Road in the Town of Depew. For this modification, VZW will remove the 15 existing antennas and replace them with 9 new antennas of a similar size. VZW will also replace three existing remote radio heads and add three new remote radio head units to be mounted near the antennas. VZW will also replace two (2) junction boxes. The improvements are not expected to impact the water tank in terms of use, access or maintenance of the facility during or post-construction. Please see attached plan showing these improvements.

Please consent to these modifications by signing below. I will let you know directly if any changes to the design occur between now and the time of the installation.

Thank you,

*Lisa Maas-Vangellow*

Lisa Maas-Vangellow  
Consultant for Verizon Wireless  
585-703-2803  
lisa@airosmithdevelopment.com

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**Consent**  
**Erie County Water Authority**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

## Jacqueline Mattina

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**From:** Scott A. Aiple  
**Sent:** Thursday, November 29, 2018 7:40 AM  
**To:** Jacqueline Mattina  
**Cc:** saiple@roadrunner.com  
**Subject:** RE: Verizon Wireless - minor mods - PLEASANTVIEW  
**Attachments:** Depew AWS3 - Scott Aiple approval email.pdf; Depew\_AWS3consentletter\_20181112.docx; Depew\_AWS3FinalCD's\_20170823.pdf; Depew\_AWS3PassingSA\_20161013.pdf

Jackie,

In response to your voicemail...

as far as I am concerned from a **technical** and **site logistics** standpoint, all concerns regarding these proposed modifications have been addressed.

Regards,

Scott A. Aiple  
Electrical Engineer  
Erie County Water Authority  
3030 Union Rd.  
Buffalo, NY 14227  
716-685-8225

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**From:** Lisa Maas-Vangellow <lisa@airosmithdevelopment.com>  
**Sent:** Tuesday, November 13, 2018 12:36 PM  
**To:** Scott A. Aiple <saiple@ecwa.org>; Jacqueline Mattina <jmattina@ecwa.org>  
**Subject:** Re: Verizon Wireless - minor mods - PLEASANTVIEW

Hi Scott,

If you look at the CDs in General Notes #4 it refers to the structural from 2016. That is the correct document.

Who will be signing this consent on behalf of ECWA?

Thank you!

**Lisa Maas-Vangellow**  
*Site Acquisition Specialist* | Airosmith Development  
12 Esternay Lane | Pittsford | New York | 14534

EXTRACT FROM THE MINUTES OF THE MEETING OF  
THE ERIE COUNTY WATER AUTHORITY  
October 31, 1996

At a regular meeting of the Erie County Water Authority held in the office, 350 Ellicott Square Building, Buffalo, New York, on the 31st day of October, 1996, a quorum being present, the following resolution was adopted:

WHEREAS, Upstate Cellular Network, a New York Partnership desires to lease space on the Erie County Water Authority's water tank known as Pleasantview Tank on Transit Road in the Town of Lancaster, New York; and

WHEREAS, Mark Fuzak, Deputy Associate Attorney has negotiated a lease agreement with Upstate Cellular Network, a New York Partnership for a term of five (5) years; and

WHEREAS, Upstate Cellular Network, a New York Partnership will pay the Erie County Water Authority the sum of fifteen hundred dollars (\$1,500.00) per month; and

WHEREAS, Mark Fuzak, Deputy Associate Attorney, Wes Dust, Executive Engineer and Robert Mendez, Executive Director recommend acceptance of said lease agreement by the Authority;

**NOW, THEREFORE, BE IT RESOLVED:**

That the Authority enters into a lease agreement with Upstate Cellular Network, a New York Partnership for the leasing of space on the Authority's Pleasantview Tank under the terms and conditions set forth in said lease agreement; and be it further

**RESOLVED:** That the Chairman be and he hereby is authorized to execute said lease agreement on behalf of the Authority; and be it further

**RESOLVED:** That the Secretary be and he hereby is authorized to forward an executed copy of said Lease Agreement together with a certified copy of this resolution to Upstate Cellular Network, a New York Partnership.

A motion was made by Mr. Hasiotis seconded by Mr. Lichtenthal and carried to adopt the foregoing resolution.

## LEASE

THIS AGREEMENT, made as of this 5<sup>th</sup> day of Dec., 1996, by and between ERIE COUNTY WATER AUTHORITY, with an address of 350 Ellicott Square Building, Buffalo, New York, known as ("Landlord"), and UPSTATE CELLULAR NETWORK, A NEW YORK PARTNERSHIP, with an address of 1050 Pittsford-Victor Road, Pittsford, New York 14534, known as ("Tenant").

### SECTION 1 PREMISES

1.1 Landlord hereby leases to Tenant and Tenant hereby takes from Landlord, for the term and upon the terms, covenants and conditions set forth in this Lease, the premises (the "Premises") described in Exhibit "A" which is located on a water tank (known as the "Pleasantview Tank") located on a parcel of land with a street address of 12 Pleasantview Drive, Lancaster, New York 14086, Tax Map No. 093.09, and legal descriptions annexed as Exhibit "A" ("Property") together with (a) a non-exclusive easement onto the Premises for 24-hour per day access for installation and maintenance of equipment deemed necessary by Tenant for all utility service to the Premises and Tenant's installations, upon reasonable notice to the Landlord; and (b) the right of ingress and egress onto the Property to enter the Premises under the supervision of the Landlord. Tenant does not obtain the right to obtain a key to the Property and/or Premises. All entry onto the Premises or Property will require prior reasonable notice to the Landlord.

1.2 Tenant may at its expense install any improvements in or on the Premises as it deems necessary or desirable for the operation of a cellular transmission system subject to the prior written approval of the Landlord of all such improvements.

1.3 Anything in Section 1.2 of the Lease to the contrary notwithstanding, it is agreed that Tenant may install in or on the Premises, at no cost to Landlord, the equipment, building, shelter and/or cabinet housing electrical and other telecommunications equipment for the provision of cellular telephone and any other telecommunications services, together with such other ancillary and supporting structures as Tenant deems necessary or desirable for the operation of cellular telephone and other telecommunications purposes all as listed in the site plan, Exhibit "B", attached hereto, which equipment shall be subject to Landlord's approval, which shall not be unreasonably withheld or delayed.

1.4 The procurement of all necessary licenses and permits for the erection, construction, maintenance and operation of Tenant's installations and any other certificates or permits which may be required are the obligation of Tenant and all fees and expenses in connection therewith shall be paid by Tenant, provided that Landlord shall cooperate with Tenant in procuring them. In the construction of all improvements upon the Premises, Tenant will comply with all laws, ordinances and regulations of all governments and bureaus concerned with said construction.

## SECTION 2 TERM

2.1 The initial term("Initial Term") of this Lease shall be five (5) years from the date hereof. It will be automatically renewed three (3) additional five (5) year terms ("Renewal Terms") unless Tenant gives Landlord 30 days notice of its intention to terminate this Lease at the end of the Initial Term or any Renewal Term. (Tenant may terminate this Lease at any time within the first twelve (12) months of the initial term by giving at least thirty (30) days notice thereof to Landlord.)

## SECTION 3 RENT, TAXES

3.1 Tenant covenants and agrees to pay to Landlord annual rental for the Premises in the sum of \$18,000 payable in equal monthly installments in advance in the amount of \$1,500 on the first day of each month during the term of this Lease. Tenant agrees to pay a late charge of 1.5 percent per month on any unpaid sums after the due date.

3.2 The Rent for each new five-year Renewal Term shall be equal to the Rent payable in the last year of the preceding Term or Renewal Term, increased by twenty-five (25%) percent.

3.3 Landlord will pay when due all real property taxes attributable to the Property. Tenant will be responsible for payment of any personal and/or real property taxes assessed directly upon the installation and use of Tenant's installations on the Premises. Tenant will pay to Landlord; as additional rent, any increase in personal and/or real property taxes levied against the Property which are directly attributable to Tenant's use of the Premises, upon delivery of reasonable proof of such increase to Tenant by Landlord. Tenant and/or Landlord shall have the right to challenge any taxes levied on the Property or the Premises due to Tenant's installations and the parties shall fully cooperate with each other in such challenge.

## SECTION 4 CO-LOCATION

4.1 Tenant will solve interference problems with other telecommunication systems existing at the property as of this date.

4.2 Landlord may enter into lease agreements with additional tenants (hereinafter referred to as "subsequent tenants") for the execution, construction, maintenance and operation of installations and other telecommunication systems.

4.3 Tenant shall comply with all reasonable requests of the Landlord to allow the Tenant and any subsequent tenants to utilize the Landlord's premises and ensure that the Tenant and subsequent tenant(s) will not interfere, hinder or otherwise prohibit the ability of the Tenant and subsequent tenant(s) to operate their installations on the premises.

4.4 Tenant agrees to act in good faith in order to ensure all issues raised by the Landlord and Tenant with respect to the co-location of the Tenant and any subsequent tenant(s) on the premises will be resolved in a manner which will ensure the Landlord's right to lease the premises to any subsequent tenant(s).

4.5 In the event of a signal interruption or interference between The Landlord, Tenant and Subsequent Tenant(s), the Subsequent Tenant(s) will attempt to resolve the signal interruption or interference. If the Landlord, Tenant and Subsequent Tenant(s) are unable to resolve the signal interruption or interference, the Subsequent Tenant will retain a disinterested communication consultant, at its own expense, who is mutually agreeable to the Landlord, Tenant and Subsequent Tenant(s) to assess the position of the Landlord, Tenant and Subsequent Tenant(s) as to the signal interruption or interference. Landlord, Tenant and Subsequent Tenant(s) agree to be bound by and to subsequently comply with the decision of the agreed upon communication consultant.

4.6 Tenant transmits its radio signals at a licensed frequency of 800-900 MHZ. Landlord shall not permit subsequent tenants, subtenants, licensees or other users of the Property ("Subsequent Users") to install, maintain or operate any structure or equipment on the property which interferes with the Tenant's transmissions. Prior to entering into a lease, sublease or license agreement with any subsequent user, Landlord shall cause such subsequent user to give written notice to Tenant specifying the nature of its proposed structure or equipment, which notice shall include, among other things, the desired location and transmission frequency of such proposed structure or equipment.

## SECTION 5 SUBLEASE

5.1 Tenant shall not sublease space or assign its rights under the Lease for the premises without the prior written consent of the Landlord.

5.2 Anything in Section 5.1 of the Lease to the contrary notwithstanding, it is agreed that Tenant shall have the right, without Landlord's consent, to assign its rights under the Lease to entities with a partnership interest in Tenant, to subsidiaries or affiliates of entities with a partnership interest in Tenant, to an entity which succeeds to all or substantially all of the assets or business of Tenant, or to the successor(s) to Tenant's certificates and licenses issued by the Federal Communications Commission and the New York State Public Service Commission.

## SECTION 6 INSURANCE

6.1 Tenant shall carry, at its own expense, comprehensive general liability insurance in an amount no less than \$3,000,000 combined single limit covering personal injury and property damage for the benefit of both Landlord and Tenant. Tenant shall name Landlord as an additional insured on such policies.

6.2 Tenant shall maintain at its expense policies insuring against loss or damage to Tenant's installations by reason of fire or other casualty.

6.3 All insurance required of Tenant by this Lease may be provided under Tenant's blanket policies from time to time in effect.

6.4 Tenant shall provide Landlord on the first day of each anniversary year of the Lease the certificate of insurance and insurance policy identified in subdivision 6.1 of this Lease. Such certificate shall contain an endorsement by the insurance company agreeing to give Landlord at least fifteen (15) days written notice before canceling the coverage for any reason.

## SECTION 7 REPAIRS, ALTERATIONS AND TITLE TO IMPROVEMENTS

7.1 Tenant may make any alterations, additions and improvements to Tenant's installations necessary to conduct its business thereon subject to the prior written approval of the Landlord of all such alterations, additions and improvements. Tenant shall take good care of the Premises and shall make all necessary repairs to Tenant's installations. Approval of the Landlord is not to be unreasonably withheld or delayed.

7.2 Tenant's installations will remain, at all times, Tenant's property, whether or not Tenant's Installation would be deemed fixtures under local law, and upon termination of this Lease Tenant shall remove same pursuant to Section 16. Tenant shall maintain its installations in first class condition.

## SECTION 8 MECHANIC'S LIENS

8.1 Tenant shall indemnify and save Landlord harmless from and against all loss, liability, costs, attorneys' fees, damages or interest charges as a result of any mechanic's lien or any other lien filed against the Premises as a result of any act or omission or as a result of any repairs, improvements, alterations or additions made by Tenant, its agents or employees.

SECTION 9  
INDEMNIFICATION

9.1 Tenant and Landlord shall each indemnify and hold the other harmless from and against any and all claims for damages to persons and property arising out of or resulting from the negligence of the other party, its agents, invites, and employees.

SECTION 10  
COMPLIANCE WITH LAWS

10.1 Tenant shall comply with all valid requirements of any duly constituted public authority, or with the requirements of any Federal, State, County or local law or ordinance applicable to the use and occupancy of the Premises and any repairs or work performed on the Premises by Tenant, and Tenant agrees to indemnify the Landlord and save Landlord harmless from and against any penalty, damage or charge imposed for any violation by Tenant and its successors, assigns, agents and employees.

10.2 Landlord may join in or consent to any and all reasonable applications and petitions to any governmental or other public agency that Tenant may, from time to time, make in connection with the Premises, provided only that Tenant shall pay all costs incurred in connection therewith.

SECTION 11  
DEFAULT

11.1 If any one or more of the following events (herein sometimes called "Events of Default") shall happen:

- (a) If default shall be made in the payment of any rent payable under this Lease and such default shall continue for a period of 15 days after written notice from Landlord to Tenant specifying the items in default; or
- (b) If default shall be made by Tenant in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease other than those referred to in Section 11.1(a) for a period of 30 days after written notice from Landlord to Tenant specifying the items in default, or if, in the case of a default of a covenant which cannot with due diligence be cured within said 30 day period, Tenant fails to commence within said 30 day period to cure such default and to diligently and complete such cure within a reasonable period of time; or
- (c) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent.



Then and in any such event, Landlord at any time hereafter may give written notice to Tenant specifying such event of default or events of default and stating that this Lease shall expire and terminate 10 days after the giving of such notice. Upon the date specified in such notice this Lease shall expire and terminate; provided, however, Tenant shall remain liable for all sums due hereunder to Landlord until the Premises are relet to any third party at the same term with rent and taxes pursuant to Sections 2 and 3 at which time Tenant's liability hereunder shall cease; provided that Tenant shall remain liable for all sums due and accruing prior to the date of such reletting and shall also remain liable for any difference in rent and taxes over the terms pursuant to Sections 2 and 3 of this Lease provided, however, that Tenant shall remain liable for all sums due hereunder to Landlord until the Premises are relet to any third party at the same term with rent and taxes pursuant to Section 3 of this Lease at which time Tenant's liability hereunder shall cease; and provided further that Tenant shall remain liable for all sums due and accruing prior to the date of such reletting and shall also remain liable for any difference in rent and taxes over the term pursuant to Section 3 of this Lease; and provided further that Tenant's liability hereunder shall cease on the termination date of the initial term or the current renewal term, as the case may be.

## SECTION 12 UTILITIES

12.1 Tenant will promptly pay all charges for electricity or any other utilities used by Tenant on the Premises. Tenant may have meters or submeters installed at the Premises for Tenant's utility use, and the cost of such meters and their repair will be paid for by Tenant. Tenant may install or improve existing utility service(s) to its installation and may install an electrical grounding system.

## SECTION 13 CONDEMNATION/CASUALTY

13.1 If any governmental, public body or other condemning authority takes, or if Landlord transfers in lieu of such taking, all or part of the Property or if the Property is damaged by any casualty, thereby making it physically or financially unfeasible for the Premises to be used in the manner intended by the Lease, either party shall have the right to terminate this lease effective as of the date of the taking by the condemning party or such casualty loss and the rental shall be prorated appropriately. If only a portion of the Property is taken, then the Lease shall continue but rental payments provided under this Lease shall abate proportionately to the portion of the Premises taken and Landlord shall make all necessary repairs and alterations to restore the portion of the Property and Premises remaining to as near their former condition as circumstances will permit (at a cost not to exceed Landlord's proceeds from said condemnation, transfer or casualty loss).

**SECTION 14**  
**SUBORDINATION**

14.1 Tenant agrees that this Lease shall be subject and subordinate to any mortgages now or hereafter placed upon the Property and to all modifications thereto, provided that Tenant's possession of and access to the Premises shall not be disturbed so long as Tenant continues to perform its duties and obligations under this Lease, and Tenant's obligation to perform such duties and obligations shall not be in any way increased or its rights diminished by the provisions of this paragraph. Under any and all, circumstances, Tenant's possession of the Premises shall not be disturbed so long as Tenant shall continue to perform its duties and obligations under this Lease. Landlord agrees to cooperate in securing written non-disturbance agreements from all existing or future mortgagees as requested by Tenant.

**SECTION 15**  
**NON-ADVERTISING**

15.1 Tenant agrees it will not advertise in any manner on the Premises and Landlord agrees it will not enter into any leasing agreements for the Premises which provide any subsequent tenants with a right to advertise on the Premises.

**SECTION 16**  
**TERMINATION**

16.1 In the event of termination of this Lease for any reason, Tenant shall remove Tenant's Installations within ninety (90) days of the date of termination.

16.2 Upon removal of its equipment, Tenant shall place the Premises in the condition it was prior to the effective date of this Lease, ordinary wear and tear excepted.

**SECTION 17**  
**SURRENDER OF PREMISES**

17.1 Tenant shall on the last day of the Term or Renewal Term hereof, or upon any earlier termination of this Lease, or upon re-entry by Landlord upon the Premises, surrender and deliver up the Premises into the possession and use of Landlord free and clear of all liens and encumbrances other than those, if any, created by Landlord.

**SECTION 18**  
**INVALIDITY OF PARTICULAR PROVISIONS**

18.1 If any term of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

**SECTION 19**  
**NOTICES**

19.1 All notices, demands and requests required under this Lease shall be in writing. All such notices, demands and requests shall be deemed to have been properly given if sent by certified mail, return receipt requested, or a nationally recognized overnight courier service (post office box not acceptable) as follows:

If to Landlord:

Erie County Water Authority  
Attn.: Legal Department  
350 Ellicott Square Building  
295 Main Street  
Buffalo, New York 14203-2494

If to Tenant:

Upstate Cellular Network  
Attn.: Property Manager  
1050 Pittsford-Victor Road  
Pittsford, New York 14534

or to such other persons and addresses as Landlord and Tenant may from time to time designate by written notice addressed to one another. The effective date of such notice shall be the postmark date or the date delivered to the courier service, as the case may be.

**SECTION 20**  
**QUIET ENJOYMENT**

20.1 Tenant, upon paying the rent herein provided and observing and keeping all covenants and conditions of this Lease on its part to be kept, shall quietly have and enjoy the premises during the initial term and all renewal terms of this Lease without hindrance or molestation by anyone claiming by or through Landlord.

SECTION 21  
MISCELLANEOUS PROVISIONS

21.1 The captions of this Lease are for convenience and reference and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

21.2 This Lease shall be construed and enforced in accordance with the laws of the State of New York.

21.3 Upon the execution and delivery hereof, this Lease shall constitute the entire agreement between Landlord and Tenant for the Premises. This Lease cannot be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

21.4 The covenants and agreements herein contained shall bind and inure to the benefit of Landlord and Tenant, their respective successors and assigns, except as otherwise provided herein.

21.5 Tenant agrees at any time and from time to time, upon not less than 20 days prior notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the commencement date.

21.6 Landlord agrees at any time and from time to time, upon not less than 20 days prior notice by Tenant, to execute, acknowledge and deliver to Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications, that the same is in full force and effect as modified and stating the modifications), and the commencement date.

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

IN WITNESS WHEREOF, the Parties have executed this Lease the date first above written.

Landlord:

ERIE COUNTY WATER AUTHORITY

Dated: 12/5/96

BY: 

Title: Chairman

Tax No. 16-6000337

Tenant:

UPSTATE CELLULAR NETWORK

Dated: \_\_\_\_\_

BY:  \_\_\_\_\_



Title: \_\_\_\_\_

APPROVED AS  
TO FCM ONLY  
  
11/11/96  
Date  
NHD&D

Landlord:

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss.:

On this 5<sup>th</sup> day of December, 1996, before me personally came Mark G. Patton, to me known and known to me to be the Chairman of the ERIE COUNTY WATER AUTHORITY, who, being by me duly sworn, did depose and say that he is the Chairman of the ERIE COUNTY WATER AUTHORITY, the body described in and which executed the foregoing contract; that he knows the seal of said Authority; that the seal affixed to said contract was such seal; that by virtue of authority conferred upon him he subscribed his name to the foregoing agreement and that he executed the same as Chairman for the purposes therein mentioned.

PATRICIA GRAFFEO # 4357526  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires October 16, 1997

Patricia Graffeo  
Notary Public

Tenant:

STATE OF NEW YORK )  
COUNTY OF Monroe ) ss.:

On this 12<sup>th</sup> day of November, 1996, before me personally came Robert O. Bailey, to me known to be the person who executed the foregoing instrument and who being duly sworn by me, did depose and say that he is the Chief Technology Officer of UPSTATE CELLULAR NETWORK, and that (s)he executed the foregoing instrument in the firm name of UPSTATE CELLULAR NETWORK; and that (s)he had the authority to sign the same, and (s)he acknowledged to me that (s)he executed the same as the act and deed of said firm for the uses and purposes therein mentioned.

Barbara A. Ehmann  
Notary Public

BARBARA A. EHMANN  
Notary Public, State of New York  
Reg. No. 01EH4797703  
Qualified in Monroe County  
Commission Expires Dec. 31, 1996