

CITY COUNCIL MEETING

6:00 pm

Tuesday, September 20, 2005

I. PRELIMINARY ACTIVITIES

- A. Pledge of Allegiance
- B. [Agenda Request](#) - Billboard Permit by Reagan Outdoor Advertising
- C. [Arts Council Update](#) - Harvest Moon Hurrah

II. STAFF REPORTS

- A. Seth Perrins - Administration
 - 1. Employee and Volunteer Background Checks*
 - 2. Farmer's Market*
- B. Junior Baker - Legal
 - 1. **Ordinance 10-05** - An Ordinance Repealing and Re-Enacting Title 8, Chapter 20 Concerning Abatement of Weeds, Garbage and Refuse (Tabled from September 6, 2005)
 - 2. [VoiceStream Wireless Option and Lease Agreement](#)
- C. Emil Pierson - Planning
 - 1. Economic Development*

III. OTHER BUSINESS

- A. [Appeal of Revocation of Macey's Alcohol License](#)
- B. Council Report on Assignments

IV. EXECUTIVE SESSION IF NEEDED - TO BE ANNOUNCED IN MOTION

() indicates support information, if any, will follow at the Council meeting.*

The public is invited to participate in all Spanish Fork City Council Meetings located at 40 South Main St. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 798-5000.

RINEHART SIMONSEN & FETZER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

3 TRIAD CENTER, SUITE 175

345 WEST NORTH TEMPLE STREET

SALT LAKE CITY, UTAH 84180

TELEPHONE (801) 328-0266

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WWW.RSF-LAW.COM

GREGORY M. SIMONSEN, EXT. 102
gms@rsf-law.com

August 25, 2005

Spanish Fork City
40 South Main Street
Spanish Fork, UT 84660

Dear Members of the City Council:

INTRODUCTION

I represent Reagan Outdoor Advertising (hereafter "ROA") in filing an appeal to a staff land use decision. This appeal is made pursuant to Section 15.1.04.050 of the Spanish Fork City Code. Pursuant to Section 15.1.04.060 of the Spanish Fork Code it is my understanding that the Council constitutes the Appeal Authority for purposes of land use appeals. It is my further understanding that the City of Spanish Fork initially granted ROA two permits to construct billboards at approximately Highway 6 and 3409 East in Spanish Fork. Subsequently ROA was verbally notified that the City had made a mistake and was rescinding the issued permits. ROA has yet to receive word of this decision in writing. By this letter and attachments ROA appeals the decision to rescind or revoke the permit.

TIMING OF THE APPEAL

Section 15.1.04.050 B. of the City Code states that appeals must be filed within 15 days of a "final decision" by the City. It is our understanding that the decision to rescind the sign permit was made by staff rather than the City Council. Under Section 15.1.04.020 of the City Code a "final decision" by staff is a decision made in writing. Presumably a written "final decision" would also set forth in at least basic terms the grounds for the decision. ROA has never received a "final decision" and to the best of our knowledge no "final decision" has ever been prepared. After waiting for a reasonable period to receive the final decision, ROA has asked that I prepare this appeal, even though no final decision has been rendered.

GROUND FOR APPEAL

ROA appeals because its application fully complies with Section 15.3.24.020 of the Spanish Fork code. Section 10-9a-509 (1)(a) of the Utah Code states that "an

applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use ordinance in effect when a complete application is submitted and all fees have been paid....” ROA contends that it fully complied with all City ordinances and its rights to the sign vested at application. The City apparently agreed as evidenced by the issuance of a permit.

Because ROA has not received a written final decision it does not presently fully understand the grounds for the revocation of the permit. Accordingly, it is premature and impossible to respond to the revocation. At such time as a final decision is received outlining the grounds for revocation ROA will further respond, and reserves the right to further respond, to the grounds given.

GRAMA REQUEST

In connection with this appeal ROA requests that Spanish Fork City make available for inspection and copying all documents that have been exchanged between the City and ROA in reference to this matter. If the City contends that there was a final written decision in the matter we request a copy of the decision. If there are other documents relied upon by the City in making the decision to revoke the sign permits we request these documents. Please send the documents to the attention of Gregory M. Simonsen at the address stated at the top of this stationary.

GOVERNMENTAL IMMUNITY CLAIM

We hope that this matter will be resolved without resort to the courts. However, if Spanish Fork makes no final decision, or if we obtain no relief on appeal, we will have to resort to the Court and assert a taking of our property. As you know, every day that a permit is improperly delayed constitutes a taking of ROA’s vested property rights. These rights are commercially valuable and failure to timely issue a permit results in an economically quantifiable claim. Accordingly, pursuant to the requirements of Section 63-30(d)-401 of the Utah Code we hereby give notice of a claim for a taking of property.

The facts are as previously stated in this letter. On June 14, 2005 ROA submitted two applications for an off premise sign to Spanish Fork City. Under the City Zoning Ordinance, ROA is entitled to issuance of sign permits for construction of commercially valuable signs on the property indicated on the attached applications. Spanish Fork City initially issued a permit but then without explanation or issuing a final decision informed ROA that it was rescinding the permits. Spanish Fork City’s effort to rescind previously issued sign permits constitutes a taking of property under Article 1 Section 22 of the Constitution of the State of Utah and potentially under other Federal and State law prohibiting the taking of property without compensation.

Spanish Fork
August 25, 2005
Page 3

The damages will be for either a temporary or permanent taking of the right to place an off premise sign on the property for the duration of time that the City fails to issue a permit. Precise damages cannot now be calculated but will include the reasonable advertising rental value of the proposed signs less prorated costs and overhead. The claims asserted herein are not asserted against any governmental employee individually.

Very truly yours,

RINEHART SIMONSEN & FETZER

A handwritten signature in black ink, appearing to read 'G. M. Simonsen', with a long horizontal flourish extending to the right.

Gregory M. Simonsen
Attorney at Law

GMS/bg
Enclosure



Rinehart Simonsen & Fetzer
Attn: Gregory M. Simonsen
3 Triad Center, Suite 175
345 West North Temple Street
Salt Lake City, UT 84180

RE: Notice of Appeal dated August 25, 2005

Dear Mr. Simonsen:

I am in receipt of your request for an appeal concerning the revocation of the Reagan billboard permit. No written decision was given because this was not a land use decision. Spanish Fork regulates billboards under Title 5, Business Regulations. Therefore, no written decision was necessary. Nonetheless, your request to appear before the city council is acknowledged. This has been scheduled before the council on Tuesday, September 20, 2005 at 6:30 p.m. Since this was not a land use decision, this is not an appeal to the Appeal Authority as set forth in the Land Use Title of the municipal code, but is an agenda request. Enclosed is a refund of your \$100.00 filing fee for a land use appeal.

Reagan representatives misinterpreted the ordinance when first applying for the same. The ordinance, as quoted below, refers both to Highway 89 and milepost markers. UDOT changed the milepost markers on SR6, unbeknownst to the city. Reagan failed to notify the city of those changes, as well. When it was discovered that the milepost markers had been changed, the city revoked the permits, relying on the intent of the City Council to allow billboards only from the junction of Highway 89 and SR6 for one mile southeasterly along SR6. Spanish Fork Municipal Code §5.36.060 reads as follows:

Title 5.36.060 Billboards

Billboards are permitted in the following locations and subject to the following restrictions:

1. Billboards are permitted:
 - b. Along Highway 6 from mile post number 177 (Highway 89) to mile post number 178 (heading south) these billboards must be at least 750 feet from any other billboard on the same side of the highway and located in an industrial zone.
9. Utah Department of Transportation must approve the billboard location prior to City approval.

I hope this clarifies the events as they took place.

Your letter also requested records under GRAMA. I have reviewed the documents enclosed with your letter and find you have all the records in the City's possession as of the date of your letter. However, the City has received two documents since the date of your letter. They are enclosed herewith.

Sincerely,

A handwritten signature in black ink that reads "Emil Pierson". The signature is written in a cursive style with a long horizontal line extending to the right.

Emil Pierson, City Planner



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

Spanish Fork City
Planning & Zoning
P.O. Box 358
Spanish Fork, Utah 84660

June 26, 2005

To whom this may concern:

The Utah Department of Transportation has on statewide bases, change all of the old existing milepost / reference post markers along all of the state highway systems to reflect a new accurate mile spacing. This will be a better and more accurate way to locate areas along the state highway system. These changes may come over night and you may not be aware of these changes until you need to reference something along a state highway. Highway with the most traffic and or on the Federal system will be changed first and all secondary highways will be changed, as time will allows.

For example: Highway Six and Power House Road junction.

The old mile marker was 166.35 with an off set of 1.280.

Now the new mile marker is 177.516.

If you need to find the new milepost marker along any state highway you may find it on our wed site www.UDOT.Utah.Gov

Then go to the following links:

[Home](#) > [Projects and Studies](#) > [Projects Under Construction](#) > [Exit Sign Project \(search\)](#)

[Home](#) > [Inside UDOT](#) > [Internal Groups and Divisions](#) > [Planning and Programminq](#) > [Highway Reference Information](#)

Or

Exit Sign Project

www.udot.utah.gov/mileposts

<http://168.178.120.60/bluebook/>

If you have any further questions concerning this matter please call UDOT Region Permits Office at 801-227-8017

Thank you

Terry E Stowell
UDOT R-3 Permits Officer I

Spanish Fork Associates, LLC

1564 E. 8640 So.
Sandy, UT 84093

August 29, 2005

Mr. Emil Pierson
Spanish Fork City Planner
40 So. Main
Spanish Fork, UT 84660

Re: Leases at Spanish Fork Associate, LLC property 3600 E. Highway 6

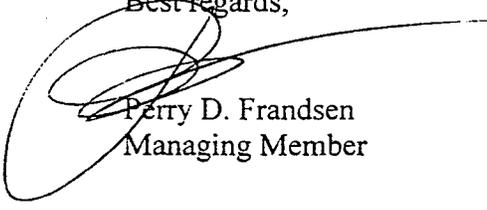
Dear Emil:

Spanish Fork Associates, LLC currently has active leases with Sprint Spectrum for the existing cell phone tower at the north boundary of its property, a pasture lease with Virgil Neves (caretaker tenant) and a recently signed lease with Wasatch Wind, LLC of Heber, Utah for the eventual construction and development of wind turbines at the above-referenced property. There are currently no billboards or billboard leases at this site.

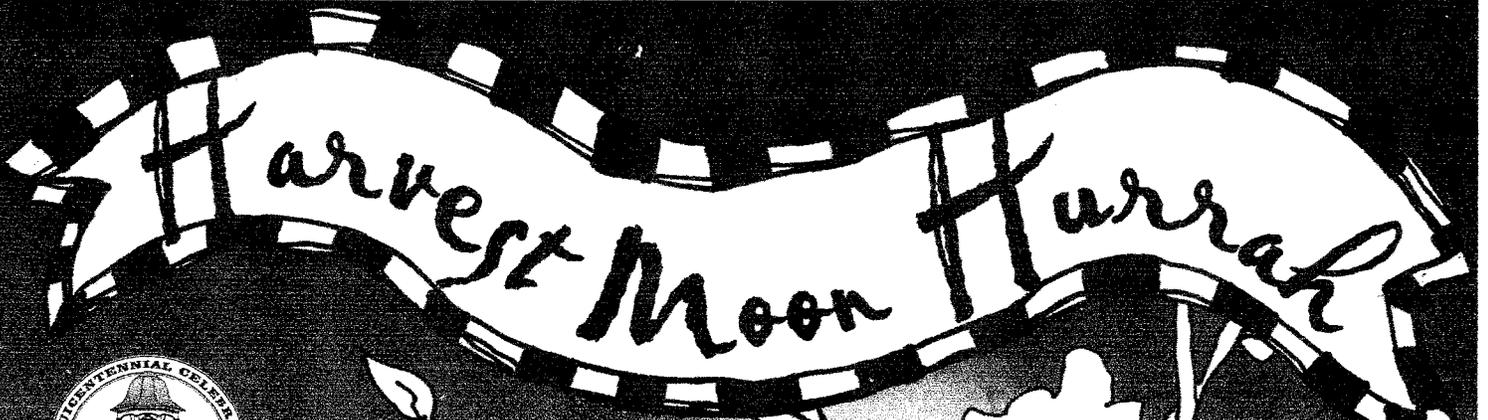
We look forward to the development of a wind farm at this site together with mixed industrial uses according to the I-1 zoning established at this site.

Please contact me at the above address if you need additional information.

Best regards,



Perry D. Frandsen
Managing Member



A PARTY FOR THE WHOLE CITY!

Saturday, October 8, 4:00 pm to Midnight
at the Library Park (Center & Main)

- Children's Games, Pony Rides, Hay Rides
 - Dutch Oven Dinner, plus Soup and Scones (with honey butter of course!)
 - Live Entertainment at the Pavilion
 - BYU Game and Late Night Movie on a Huge Screen
 - Hot Chocolate, Popcorn, Donuts, and Candy
 - Great Prizes Given Away Throughout the Evening
- AND MUCH MORE!**

WATCH FOR MORE DETAILS!

DON'T MISS THE BIGGEST PARTY OF THE YEAR AND BEST OF ALL... IT'S FREE!

A Sesquicentennial Event
ORGANIZED AND SPONSORED BY THE ARTS COUNCIL



OPTION AND LEASE AGREEMENT

This Lease Agreement (Agreement), dated as of the date below, is entered into by **Spanish Fork City**, a Municipal Corporation of the State of Utah with a Tax# of 876000284, having its principal office at 40 South Main Street, Spanish Fork, UT 84660. (Landlord) and **VoiceStream PCS II Corporation**, a Delaware corporation (Tenant).

BACKGROUND

Landlord owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located in Spanish Fork City, Utah (Collectively "Property"). The property being further identified on the legal description of the Property attached hereto as Exhibit A. Tenant desires to use a portion of the Property in connection with its federally licensed communications business.

AGREEMENT

Therefore, the Parties agree as follows:

1. **OPTION TO LEASE** (a) Landlord hereby grants to Tenant an option (the Option) to lease a portion of the Property measuring approximately 40' by 40', or approximately 1600 square feet, as described on attached Exhibit B (collectively the "Premises"), together with unrestricted access for Tenant's use from the nearest public right-of-way along the Property.

(b) During the Option period and any extension thereof, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Property, to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate in Tenant's sole discretion for its use of the Premises and include without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively referred to as necessary in Tenant's sole discretion to

determine the physical condition of the Property, the environmental history of the Property Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted use) all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account to any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection.

(c) In consideration of Landlord granting Tenant the Option, Tenant hereby agrees to pay Landlord the sum of three hundred dollars (\$300.00) upon execution of this Agreement. The Option will be for an initial term of one (1) year (the Option Term).

(d) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to the Tenant subject to the following terms and conditions.

2. PERMITTED USE. Tenant may use the Premises for the following: (i) transmission and reception of communications signals; (ii) to construct, install, operate, maintain, repair, replace, protect, and secure its communication fixtures and related equipment, cables, accessories, and improvements (collectively, the Communication Facility), including the right to install and maintain antennas on the designated pole(s), so long as the pole and antenna are "stealth" facilities, and are co-locatable, (iii) construction of an equipment shelter, fencing and any other accessories necessary to the successful and secure operation of the Communication Facility; and (iv) any activities related to the foregoing. Landlord's execution of this Agreement will signify Landlord's approval of Exhibits A and B. Tenant has the right (i) to install and operate transmission cables from the equipment shelter to the antennas, electric lines from the main feed to the equipment shelter, and communication lines from the main entry point to the equipment shelter and (ii) to erect, construct or make Property improvements, alterations, or additions appropriate for Tenant's use (Tenant Changes). Tenant Changes include the right to construct and maintain a fence around the Premises or undertake any other appropriate means to restrict and secure access to the Premises. Transmission cables, electric lines, fences, or other improvements, attachments, or related equipment shall not interfere with the use as an electric

substation, detention basin, or park. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord, with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Use of Landlord's property as an electrical substation, detention basin, or park will not be deemed as interference. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

3. **INSTALLATIONS.** 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 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.

4. **TERMS.** (a) The initial lease term will be five (5) years (Initial Term), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fifth annual anniversary of the Commencement Date occurred.

(b) This Agreement will automatically renew for five (5) additional five (5) year Terms (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 ninety (90) days prior to the expiration of the existing term.

(c) If Tenant remains in possession of the Premises after the termination or expiration 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).

6. RENT. (a) Commencing on the date the Tenant commences construction (the Commencement Date), Tenant will pay the Landlord a monthly rental payment of \$930.00 plus any applicable tax, to Landlord, at the address set forth above, on or before the 5th day of each calendar month in advance, or to such other person, firm, or place as Landlord may, from time to time, designate in writing at least thirty (30) days in advance of any due date,

(b) Beginning with year two (2) of the Initial Term, and each year thereafter, including throughout any option terms exercised, the monthly rent will be increased by four percent (4%) over the previous year's rent.

7. APPROVALS. (a) Landlord agrees that Tenant's ability to use the Premises is contingent upon its suitability for Tenant's intended use from both an economic and technical engineering basis and Tenant's ability to obtain 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 referred to Governmental Approvals). Landlord specifically authorizes Tenant to prepare, execute and file all necessary or appropriate applications to obtain Governmental Approvals for its use under this Agreement and to reasonably cooperate with the same.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy title insurance company of its choice and to have the Property surveyed by a surveyor of choice.

(c) Tenant may also obtain, At Tenant's sole cost and expense, soil boring, percolation ,engineering procedures, environmental investigation or other test or reports (Test) 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.

8. **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 on sixty (60) days prior written notice, if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels 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 and thereafter intended by Tenant; or if the Premises become unsuitable for Tenant's operation due to governmental regulations; or if Tenant determines, in its sole discretion, that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Tenant on sixty (60) days prior written notice, if Tenant determines, in its sole discretion that Tenant's use of the Premises (as the same may have been modified from time to time) is no longer consistent with the optimal operation of Tenant's communications network based upon either technical or economic considerations;

(d) by Tenant on sixty (60) days prior written notice, if Tenant determines that interference by or to Tenant's use of the Premises cannot be resolved to Tenant's satisfaction;

(e) by Tenant immediately upon notice, if destruction or damage to the Premises or the taking hereof (by partial condemnation or otherwise) is sufficient, in Tenant's reasonable judgment, to adversely affect Tenant's use of the Premises; or

(f) by Tenant immediately upon notice, if Tenant determines, in its sole discretion, due to the title results, survey results or Tests, that the condition of the Premises is unsatisfactory or Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action or intervention or third-party liability. If this Agreement in

terminated for any reason outlined in this paragraph, any prepaid rent will be refunded on a pro-rata basis.

9. INSURANCE. (a) Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" insurance for its property's replacement costs (ii) commercial general liability insurance with a minimum limit of liability of \$1,000,000 combined single limit for bodily injury or death/property damage arising out of anyone occurrence; and (iii) Workers' Compensation Insurance as required by law

(b) Tenant will name the Landlord as an additional insured under its commercial general liability policy. Tenant will require its insurance company to give at least thirty (30) days prior written notice of termination or cancellation of the policy to the additional insured, except for termination or cancellation for non-payment of premium, which notice will be ten (10) days.

(c) Notwithstanding anything in this Agreement, with respect to all loss, damage, or destruction to the insured party's property (including rental value and businesses interruption) occurring during the term of this Agreement, Landlord and Tenant hereby releases and waives all claims (except for willful misconduct and negligence) against the other party, and each of the other party's employees, agents, officers, and directors.

10. INTERFERENCE. (a) Tenant warrants that its use of the Premises will not interfere with existing third parties on the Premises as long as the current user(s) operate and continue to operate within their 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 use of Landlord's Property described as Exhibit "A", if such use may in any way adversely affect or interfere with Tenant's Communication Facility. Landlord will notify Tenant prior to granting any third party the right to install and operate communications equipment on Landlord's Property. Nothing contained herein will restrict Tenant or its successors and assigns from installing and modifying its/their communication equipment.

(c) After tenant obtains all governmental approvals, Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees, or agents to use, any portion of the

Property identified on exhibit "A" in any way which interferes with the operations of Tenant or the right of Tenant under this Agreement, provided that use of the adjacent property as a public park, storm water detention basin, and electrical substation shall not be deemed to be interference. Landlord will cause such interference to cease upon not more than twenty-four (24) hours notice 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 in law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate the Agreement upon notice to Landlord. The Tenant understands the Landlord's use of the property includes a city public park storm water detention basin, and electrical substation. Tenant agrees that such uses do not constitute interference under this Agreement

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

(b) Landlord agrees to indemnify, defend, and hold Tenant harmless from and against any and all direct injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from the actions or failure to act of Landlord or its employees or agents, for the breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents, or independent contractors.

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

(b) Landlord represents and warrants that: Landlord (i) solely owns the Property as a legal lot in fee simple, or controls the Property by lease or License, unencumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, agreements of record or not of record, which would adversely affect Tenant's use and enjoyment of the Premises under this Agreement; (ii) 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; (iii) its execution and performance of this Agreement will not violate any Laws, ordinances, covenants, or the provision of any mortgage, lease, or other agreement binding on the Landlord; and (iv) if the Property is or becomes encumbered by a deed to secure a debt, mortgage, or other security interest, Landlord will use best efforts to provide promptly to Tenant a Subordination, Non-Disturbance and Adornment Agreement.

13. ENVIRONMENTAL. (a) Landlord represents, warrants and agrees that: (i) the Property and its uses and operations complies, and will comply, with all local, state and federal statutes or regulations, or ordinances pertaining to the environmental or natural resources (Environmental Laws); (ii) the property has not been used or allowed to be used by Landlord or, to the best of Landlord's knowledge, by any previous owner, to emit through ground, water or air, refine, manufacture, generate, produce, store, contain, handle, transfer, process, treat, transport, or dispose of hazardous substances or hazardous wastes, products or pollutants, including without limitation asbestos, oil, petroleum products and their by-products, (collectively called Hazardous substances) as defined and regulated under any Environmental Laws, except that Polychlorinated Biphenyls may have been stored in the past in electric transformers in the adjacent electrical substation ; (iii) the Property has never been the subject of any federal or state Hazardous Substance related list; (iv) the Property has never required closure or clean-up of Hazardous Substances; and (v) no asbestos, or other Hazardous Substance or underground or above ground storage tanks exist or have existed or will exist on the Property, except as disclosed herein. Landlord warrants and

represents that it will be solely liable for the clean-up and removal of Hazardous Substance and any related activities, including but not limited to the restoration of the Property related to Hazardous Substance now and in the future existing on the Property except to the extent generated by Tenant. Landlord will defend, indemnify and hold Tenant harmless from and against any and all direct liabilities, damages, losses, costs, assessments, penalties, fines, expenses and fees, including reasonable attorney's fees, consultant fees and expert witness fees, related to Landlord's breach of any of the above representations and warranties. Representations and warranties of this paragraph are based upon the knowledge of the City Engineer.

(b) Tenant represents, warrants, and agrees to conduct its activities on the Premises in compliance with all applicable Environmental Laws. Tenant will not use, generate, release, manufacture, refine, produce, store, or dispose of any Hazardous Substance on, under or about the leased Premises, except for the use of sealed batteries for emergency back-up, any fire suppression system, and small quantities of cleaning product ordinarily used by commercial businesses. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all direct liabilities, damages, losses, costs, assessments, penalties, fines, expenses fees, including reasonable attorney's fees, that Landlord may suffer due to the existence or discovery of Hazardous Substances on the Property, or released into the environment that are directly caused by Tenant's use of the Premises.

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

14. ACCESS. Landlord will be permitted access to the Premises: (i) for emergencies without prior notice to Tenant (Tenant will be notified as soon thereafter as reasonably practicable); and (ii) with reasonable prior notice to Tenant to make necessary repairs; in all

cases provided that Tenant's equipment, technology, and proprietary interests remain secure and the Communication Facility's operation is not adversely affected. At all times throughout the term of this Agreement, and at no additional charge to Tenant, Landlord will provide, as further set forth in Exhibit B, Tenant and its employees, agents and subcontractors, with twenty-four, seven day 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. In the event any public utility is unable to use the access or easement provided to Tenant, then the Landlord hereby agrees to grant an additional access or easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

15. REMOVAL/RESTORATION. All portions of the Communication Facility brought into the Property by Tenant will be and remain 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 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. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove all such improvements. Footings, foundations, and concrete will be removed to a minimum depth of one foot below grade. 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, or to the conditions of the surrounding ground at the time of termination, whichever is the more improved condition. 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

16. MAINTENANCE; UTILITIES. (a) Tenant will, at Tenant's expense, 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 tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be solely responsible for and promptly pay all utility charges for electricity, telephone service, or any other utility used or consumed by Tenant on the Premises. 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. In the event Tenant cannot secure its own metered electricity supply, Tenant will have the right, as its own cost and expense, to sub-meter from the Landlord. Tenant will pay on a monthly basis the current local utility company rate for sub-metered electricity, after the meter is read by the Landlord and billed to 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.

17. 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 of such failure to pay from Landlord; 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.

(b) The following will be deemed a default by Landlord and a breach of this Agreement. Landlord's failure to perform any term or condition 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.

18. ASSIGNMENT/SUBLEASE. (a) Landlord may assign this Agreement provided said assignee will assume, recognize, and also become responsible to Tenant for, the performance of all of the terms and conditions to be performed by Landlord under this Agreement.

(b) Tenant may assign or sublet all or any part of this Agreement, and all or any rights, liabilities, and obligations hereunder, to (i) any person or business entity which is a parent, subsidiary of Tenant; (ii) any person or business entity that controls or is controlled by or under common control with Tenant; (iii) any person or business entity that is merged or consolidated with Tenant or purchased a majority or controlling interest in the ownership or assets of Tenant; or (iv) any person or business entity which is licensed by the FCC to operate a wireless communication business. Upon notification to Landlord by Tenant of any such action, Tenant will be relieved of all future performance, liabilities, and obligations under this Agreement to the extent of such assignment or sublease. Tenant may not otherwise assign or sublet this Agreement without Landlord's consent. 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 mortgages or holders of security interests, including their successors or assigns (collectively Mortgagees), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure a default as Tenant or to remove any property of Tenant or Mortgagees located on the Premises, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in paragraph 17 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but

shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Premises as provided in paragraph 17 of this Lease.

19. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified mail, return receipt requested, or by a recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused, or returned undelivered. Notice will be addressed to the parties at the addresses set forth below :

If to Landlord: Spanish Fork City
Attn: David Oyler
40 South Main Street
Spanish Fork, Ut 84660

If to Tenant: VoiceStream PCS II Corporation
Attn: PCS Leasing Administrator
12920 SE 38th
Bellevue, W A 98006

Either party hereto may change the place for the giving of notice to it by written notice to the other as provided herein.

20. 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 giving ten (10) days prior written notice to the other party hereto.

21. TAXES. Tenant will pay all personal property taxes assessed on, or any portion of such taxes attributable to the Communication Facility. Tenant, upon presentation of sufficient and proper documentation will pay, within thirty (30) days, any increase in real property taxes levied against the Property (excluding additional taxes that relate to the period prior to the Commencement Date, i.e., rollback taxes) which is directly attributable to Tenant's use of the Property, provided Tenant will be entitled to appeal any such increase payable by it. Landlord agrees that it will cooperate with an appeal of such taxes and will promptly pay when due real estate taxes levied against the Property.

22. 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 be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid rent, and business relocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent.

23. CASUALTY. Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight hours of the casualty. If any part of the Communication Facility or Property is damaged by any casualty so as to render the Premises unsuitable, in Tenant's sole determination, the 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.

24. BROKER FEES. Tenant and Landlord each acknowledges and represents to the other that no broker or other person was used by it in connection with this transaction. If any claims, actions or proceedings are brought against either party (Indemnitee) by reason of any broker, finder, or other person claiming to have dealt with the other party (Indemnitor) in connection with this transaction and/or the Premises, then the Indemnitor hereby agrees to indemnify, hold harmless, and defend the Indemnitee from and against all liabilities arising from such claims, and all reasonable costs and expenses incurred in connection therewith (including, without limitation, reasonable legal fees and disbursements). The provisions of this Article will survive the termination of this Agreement

25. MISCELLANEOUS. (a) Amendment; Waiver. This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of

Landlord and Tenant. No provision may be waived except in writing signed by the party waiving said right.

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

(e) Governing Law. This Agreement will be governed by the laws of the state of Utah.

(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 duplicate, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this 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.

(g) Estoppel. Either party will, at any time upon fifteen (15) days prior written notice from 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 the 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 encumbrancer of the Premises. Failure to deliver such a statement within such time will be conclusive upon 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) No Option. This submission of this Agreement for examination or consideration does not constitute a reservation of or option for the Premises. This Agreement will become effective as an Agreement only upon the legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

DATED this ____ day of September, 2005.

SPANISH FORK CITY by:

DALE R. BARNEY, Mayor

Attest:

KENT R. CLARK, Recorder

VOICESTREAM PCS II CORPORATION by:

WAYNE LEUCK, Area Director Engineering
(Mountain West)



1850 W. 2100 S.
SLC, Utah 84119

Tel: (801) 973-4400
Fax: (801) 978-8972

August 30, 2005

Sent Via US Mail

Kent R. Clark
City Recorder
Spanish Fork City
40 South Main Street
Spanish Fork, Utah 84660

Re: Notice of Appeal Letter

Dear Mr. Clark:

Please accept this letter as Macey's written request for an appeal of your "Order of Revocation" dated August 29, 2005. Said order revoked the permit of Macey's grocery store to sell alcoholic beverages for off premises consumption for a period of six months commencing on October 1, 2005 and continuing through March 31, 2006 (a copy of the order has been attached for your convenience). This notice is given pursuant to Spanish Fork Municipal Code 5.12.060(A) and the \$150.00 filing fee is enclosed.

Please advise when a date and time has been set for the appeals hearing before the Spanish Fork City Council.

Respectfully submitted this 30th day of August, 2005.

MACEY'S, INC.


David M. Davis
Legal Counsel

MAILING CERTIFICATE

I hereby certify that on the 30 day of August, 2005, I caused to be mailed, postage prepaid a true and correct copy of the foregoing to the following:

Kent R. Clark
City Recorder
40 South Main Street
Spanish Fork, Utah 84660


Sharon Nelson

Cc: Dave Wirthlin, VP Finance
Blaine Butterworth, Regional Director

ORDER OF REVOCATION

A hearing to consider the revocation of the permit authorizing Macey's grocery store to sell alcohol beverages for off premise consumption came before Kent R. Clark, the hearing officer, on Wednesday the 24th day of August, 2005 at 11:30 a.m. Present were Kent R. Clark, hearing officer; Clair White, minute taker; S. Junior Baker, city attorney; Matt Johnson, police officer; David Davis, counsel for Macey's; and Bill Summers, manager of the Spanish Fork Macey's.

FINDINGS

1. Officer Johnson indicated that two different Macey's clerks had sold alcoholic beverages to underage individuals on May 19 and July 28, 2005. The underage individuals were working as undercover agents for the Utah County Health Department, Division of Substance Abuse.
2. Macey's does not deny the sale of alcohol to minors as indicated by Officer Johnson.
3. Macey's offered a number of mitigating factors, including the following:
 - A. Macey's provides training for all employees. This includes requirements concerning alcohol and tobacco sales. Specific laws and requirements of each jurisdiction are also reviewed.
 - B. The clerk that sold on May 19th received initial training when he was hired as a bagger, received additional, more extensive training, when he was promoted to checker, and was also trained by Utah County through the EASY program.

- C. The clerk who sold on July 28th received extensive training which she was hired as a checker and was also trained by Utah County through the EASY program.
- D. Macey's has also installed software into their registers which will warn a checker if the person is underage.
- E. Macey's has reviewed surveillance tapes of each of these instances. In both cases, the clerk followed protocol in making a visual exam and each asked for identification.
- F. During the May 19th incident, the clerk transposed the birth date and entered 1968 rather than 1986 into the register. Software approved the sale. Since this seems to be inadvertent and not intentional, Macey's suspended the clerk for one week without pay and demoted him.
- G. During the July 28th incident, the clerk entered the correct birth date into the register twice and received an unauthorized notice each time. She then made a decision and entered the birth year as 1982 rather than the actual 1986. Since this appeared to be a conscious decision, Macey's terminated this employee.

CONCLUSIONS

1. Macey's has taken commendable efforts to train its employees.
2. Any large employer can only control its employees to a certain extent.
3. Spanish Fork City Municipal Code §5.12.060(C) states:

The hearing examiner, or City Council, shall follow this criteria when holding revocation hearings:

C. The permit holder shall have the permit revoked for a period of

six months if the violation is the second violation within two years of the first violation and shall be subject to a civil penalty in the amount of \$250.00.

ORDER

Despite the best efforts of Macey's, the Ordinance requires a six month revocation. However, the "subject to" language relating to the fine is interpreted to be an amount not exceeding \$250.00. Accordingly, it is hereby ordered that Macey's permit to sell alcoholic beverages for off premise consumption be revoked for six months commencing October 1, 2005 and continuing through March 31, 2006. Given the efforts taken by Macey's and the severity of the six month revocation, no fine is imposed.

An appeal to the Spanish Fork City Council may be made by filing a written request for an appeal to Kent R. Clark, City Recorder, 40 South Main Street Spanish Fork, Utah 84660, together with a filing fee in the amount of \$150.00, payable to Spanish Fork City. The filing of appeal must be filed within 10 days of the date hereof.

DATED this 29th day of August, 2005.


KENT R. CLARK, City Recorder

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, postage prepaid, to Spanish Fork Macey's % Bill Summers 187 East 100 North Spanish Fork City, Utah 84660, and David Davis 9075 Sandy Parkway Sandy, Utah 84070, this 29th day of August, 2005, 1998.


Secretary