

RESOLUTION NO. 93-216

A RESOLUTION OF THE DELTA CITY COUNCIL OF THE CITY OF DELTA, UTAH APPROVING AN AMENDMENT TO AIRPORT GROUND STATION SITE LEASE AGREEMENT BETWEEN DELTA CITY AND GTE AIRFONE, INC.

The City Council of the City of Delta, Utah, referred to in this resolution as the "City Council", hereby recites the following as the basis for adopting this resolution:

RECITALS

A. The parties hereto entered into a lease agreement entitled AIRPORT GROUND STATION SITE LEASE AGREEMENT (hereinafter referred to as "lease agreement") dated effective September 1, 1990.

B. Pursuant to paragraph twenty two (22) of said lease agreement, the parties hereto now desire to amend the description of the premises heretofore demised to include additional space for the construction, installation, and operation of a transmission tower and telecommunications equipment.

C. The parties hereto further desire to amend certain provisions contained in said lease agreement to set forth the parties respective rights and obligations pertaining to an extension of the ground space for tenants use in conjunction with its current operations.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Delta, Utah:

1. Resolution Approving Contract. The contract attached hereto between the City of Delta, a municipal corporation and political subdivision of the State of Utah and GTE AIRFONE, INC., a corporation organized under the laws of the State of Delaware, which contract amends the original lease agreement between DELTA CITY AND GTE AIRFONE, INC., is hereby approved; the Mayor is hereby authorized and directed to execute the contract for and on behalf of the City; and the City Recorder is authorized and directed to attest such signature and countersign said contract.

2. Effective Date. This resolution shall become effective on adoption.

3. Severability. In the event that any provisions of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such binding of invalidity shall not affect the remaining portion of this resolution.

PASSED AND ADOPTED this 12TH day of April, 1993.

Attest: *Dorothy Jeffery*  
DOROTHY JEFFERY  
City Recorder

*Don Dafoe*  
DON DAFOE  
Mayor

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## AMENDMENT TO AIRPORT GROUND STATION SITE LEASE AGREEMENT

THIS AMENDMENT TO AIRPORT GROUND STATION SITE LEASE AGREEMENT (hereinafter referred to as "Amendment") is being made and entered into in duplicate, effective as of the \_\_\_\_ - \_\_\_\_ day of April, 1993 by and between the **CITY OF DELTA**, a municipal and political subdivision of the State of Utah of 76 North 200 West, Delta, Utah 84624, hereinafter referred to as "Landlord" and **GTE AIRPHONE, INC.**, a corporation organized under the laws of the State of Delaware, with offices at 2809 Butterfield Road, Oakbrook, Illinois, 60522 hereinafter referred to as "Tenant".

Landlord and Tenant shall be referred to jointly herein as "the parties".

### WITNESSETH:

A. The parties hereto entered into a lease agreement entitled Airport Ground Station Site Lease Agreement (hereinafter referred to as "lease agreement") dated effective September 1, 1990. The demised property set forth in said lease is more fully described in Exhibit "A" attached hereto for reference.

B. Pursuant to paragraph twenty two (22) of said lease agreement, the parties hereto now desire to amend the description of the premises heretofore demised to include additional space for the construction, installation, and operation of a transmission tower and telecommunications equipment.

C. The parties hereto further desire to amend certain provisions contained in said lease agreement to set forth the parties respective rights and obligations pertaining to an extension of the ground space for tenants use in conjunction with its current operations.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants contained in this amendment and for the consideration expressed herein, amend said lease agreement as follows:

1. Premises. The description of the demised premises contained in paragraph number one (1) of the lease agreement

as Exhibit "A", shall be amended to describe the premises as follows:

Parcel 1. Beginning at a point N. 63° 28'

35" W. 3879.90 ft. from the E 1/4 Cor. of Sec. 34, T. 16 S., R. 6 W., S.L.B. & M., thence N. 44° 35' 17" W. 15.0 ft.; thence N. 45° 24' 43" E. 12.0 ft.; thence S. 44° 35' 17" E. 15.0 ft.; thence S. 45° 24' 43" W. 12.0 ft. to the point of beginning.

Parcel 2. Beginning at a point N. 63° 28'

35" W. 3879.90 ft. from the E 1/4 Cor. of Sec. 34, T. 16 S., R. 6 W., S.L.B. & M.; thence S. 44° 35' 17" E. 39.00 ft.; thence N 45° 24' 43" E. 18.00 ft.; thence N. 44° 35' 17" W. 39.00 ft.; thence S. 45° 24' 43" W. 18.00 ft to beginning.

2. Purpose and use of site. The use of the demised premises contained in paragraph number three (3) of the lease agreement shall include the following language:

Landlord hereby grants permission to Tenant to occupy the leased premises to install, construct, and operate a transmission tower, and telecommunications equipment. Such equipment shall include, but not be limited to, up to two (2) equipment buildings and an emergency fuel powered generator on the leased premises at a location suitable for tenants needs. Said buildings will house additional equipment necessary for Tenants communications operations and the emergency generator will be used at Tenants option, but in most cases only in the event of a power failure.

3. Term. The initial term of the lease contained in paragraph four (4) of the lease agreement shall be extended to August 31, 1995. Such lease shall be extended for an additional five (5) year period commencing September 1, 1995 and terminating August 31, 2000, unless either party gives six (6) months written notice of intent to terminate the lease at the end of the initial five (5) year term or unless both parties otherwise agree to terminate the lease on a mutually acceptable date.

4. Rent. Tenant agrees to pay Landlord an additional ONE HUNDRED FIFTY (\$150.00) DOLLARS per month as consideration for the additional space leased by Tenant under this

amendment; such additional compensation shall be paid beginning May 1, 1993.

The annual rental payable under paragraph six (6) of the said lease agreement shall be amended to read in its entirety as follows:

Rent: During the initial five year term of this lease agreement, as amended, Tenant shall pay as rental to Landlord, at the address designated in paragraph sixteen (16) below in advance on the first day of each month, the following amounts:

a. From May 1, 1993 to August 31, 1993 Tenant shall pay Landlord FIVE HUNDRED THIRTY FIVE DOLLARS AND EIGHTY EIGHT CENTS (\$535.88) per month for said four month period.

b. From September 1, 1993 to August 31, 1994 Tenant shall pay Landlord the annual sum of SIX THOUSAND SEVEN HUNDRED FIFTY TWO DOLLARS AND EIGHT CENTS (\$6,752.08) payable in equal monthly installments of FIVE HUNDRED SIXTY TWO DOLLARS AND SIXTY SEVEN CENTS (\$562.67) each.

c. From September 1, 1994 to August 31, 1995 Tenant shall pay Landlord the annual sum of SEVEN THOUSAND EIGHTY NINE DOLLARS AND SIXTY NINE CENTS (\$7089.69) payable in equal monthly installments of FIVE HUNDRED NINETY DOLLARS AND EIGHT ONE CENTS (\$590.81) each.

d. Prior to the five year renewal period and any subsequent periodic tendencies, rental fees shall be determined through negotiation between Landlord and Tenant. Unless otherwise established by the parties hereto, the rent during the five (5) year renewal period shall be the greater of either:

(1) A FIVE (5) PERCENT increase of the annual rental rate then provided hereby, and increasing in a like amount of 5% per annum during said five (5) year extension.

(2) An amount determined by multiplying the base rental rate then in effect, by the increase in the Consumer Price Index as published by the U.S. Department of Commerce between 1995 and the year of any renewal period under this lease agreement.

It is understood between the parties hereto that Tenant will eventually remove its equipment from its present location and abandon a portion of the demised premises described in paragraph one (1) of this amendment. At such time as Tenant abandons such portion of the demised premises, Tenant shall be entitled to a reduction in the rental payment set forth above in an amount hereafter agreed upon between the parties. Provided, in no event shall Tenants rental payments to Landlord be less than the amount otherwise due and owing under the terms of the original lease agreement, as amended, and any extensions or renewals thereof, together with such annual increases provided thereby.

5. Conditions of Lease. Paragraph 21 G(2) of the lease agreement shall be amended to read in its entirety as follows:

G. Tenants Installation, Operation and Maintenance of Communications Equipment. Tenant covenants and agrees that Tenant's communications equipment, its installation, operation and maintenance will:

(2) Not interfere with the operation of Landlord's radio equipment or the radio equipment of other Tenants currently on said tower. In the event there is interference by Tenant, Landlord shall notify Tenant in writing. Thereafter, Tenant shall promptly take all steps necessary to correct and eliminate said interference within thirty (30) days from notification by Landlord. If Tenant is unable to eliminate such interference caused by it within said thirty (30) day period, Tenant agrees to remove its antennas from Landlord's property and this agreement shall terminate.

6. Ratification of Lease Agreement. Landlord hereby adopts, ratifies, and confirms the lease agreement as it is hereby amended, and demises to Tenant all of the land described above and referred to, subject to and under the terms and conditions of the lease agreement as amended.

7. Binding Effect. The provisions of this amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

8. Original Agreement. Except as expressly modified by this amendment, all terms of the lease agreement dated September 1, 1990 shall remain in full force and effect, unaltered and unchanged by this amendment.

IN WITNESS WHEREOF, the parties have executed this agreement this 12<sup>TH</sup> day of April, 1993, said Agreement

being effective as of \_\_\_\_\_, 1993.

**LANDLORD:**

City of Delta, Utah

By: Don Dafeo  
DON DAFOE, Mayor

ATTEST: Dorothy Jeffery  
DOROTHY JEFFERY

Countersigned

By: Dorothy Jeffery  
DOROTHY JEFFERY  
City Recorder

STATE OF UTAH

COUNTY OF MILLARD

On this \_\_\_\_\_ day of April, 1993, personally appeared before me DON DEFOE and DOROTHY JEFFERY who, being first duly sworn, did each say that they are the Mayor and City Recorder, respectively, of the City of Delta, a municipal corporation of the State of Utah and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of the Delta City Council dated \_\_\_\_\_ and the said DON DAFOE and DOROTHY JEFFERY duly acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
Notary Public

**TENANT:**

GTE AIRPHONE, INC.

By: \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF UTAH

COUNTY OF MILLARD

On this \_\_\_\_\_ day of April, 1993, personally appeared before me \_\_\_\_\_ who, upon oath proved to me to be the authorized agent of the GTE AIRPHONE, INC., a Delaware corporation, who acknowledged to me that he/she signed the foregoing instrument as the authorized agent and the said \_\_\_\_\_ acknowledged to me that the said corporation executed the same.

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