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June 28, 2001

MICHELE C. FARQUHAR  
PARTNER  
(202) 637-5663  
MCFARQUHAR@HHLAW.COM

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

By Hand Delivery

**EX PARTE OR LATE FILED**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Western Wireless Corporation Petition for Designation as an Eligible  
Telecommunications Carrier for the Pine Ridge Reservation in the State of  
South Dakota  
Federal-State Joint Board on Universal Service  
CC Docket No. 96-45**

**Submission of *Ex Parte* Presentation**

Dear Ms. Salas:

On behalf of Western Wireless Corporation ("Western Wireless"), I hereby submit for the record in the above-referenced proceeding the attached copy of the *Tate Woglaka Service Agreement Between Oglala Sioux Tribe and Western Wireless Corporation*. Certain proprietary information has been redacted from the document.

This document was presented to Ms. Sue Steinman, Associate General Counsel for Administrative Law, on June 26, 2001 during Western Wireless' meeting with Ms. Steiman. A notification discussing that presentation has been submitted under separate cover.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, one original and one copy of this letter (both with attachments) are being filed with your office. In addition, I am sending one copy of this notice to Ms. Steiman. Please contact me with any additional questions.

Respectfully submitted,



Michele C. Farquhar  
Counsel for Western Wireless Corporation

cc: Ms. Sue Steiman

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**TATE WOGLAKA SERVICE  
AGREEMENT**

**BETWEEN**

**OGLALA SIOUX TRIBE**

**AND**

**WESTERN WIRELESS CORPORATION**

# TATE WOGLAKA SERVICE AGREEMENT

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## TATE WOGLAKA SERVICE AGREEMENT

This TATE WOGLAKA SERVICE AGREEMENT (the "Agreement") is made and entered into as of August 21, 2000, by and between WWC LICENSE LLC, a Delaware limited liability company ("Western Wireless"), and OGLALA SIOUX TRIBE, a federally recognized Indian tribe ("Oglala Sioux Tribe"). Western Wireless and OGLALA SIOUX TRIBE are sometimes referred to individually as a "Party" and collectively as the "Parties".

### **BASIS FOR THIS AGREEMENT**

OGLALA SIOUX TRIBE is the sovereign political entity that governs that certain real property located in Shannon, Jackson, and Bennett Counties, South Dakota, commonly referred to as and within the original exterior boundaries of the Pine Ridge Reservation as more specifically described in the Constitution and Bylaws of the OGLALA SIOUX TRIBE on Exhibit A (the "Reservation").

Western Wireless is a national cellular telecommunication service provider.

Western Wireless and OGLALA SIOUX TRIBE seek to provide telecommunications services on the Reservation in accordance with this Agreement.

Western Wireless and OGLALA SIOUX TRIBE wish to provide in this Agreement for: (i) an identification of the telecommunications infrastructure requirements; (ii) the telecommunications services to be offered; (iii) the rates for the telecommunication services; (iv) the rights and responsibilities of Western Wireless and OGLALA SIOUX TRIBE; and (v) the allocation of Oglala Sioux Tribes and sharing of revenue.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Western Wireless and OGLALA SIOUX TRIBE agree as follows:

#### **1. DEFINITIONS.**

**"Approval Date"** shall mean the date upon which (i) the FCC approves Western Wireless as an ETC under the Universal Service Fund and (ii) Western Wireless has received all other Governmental Agency approvals required to provide the Universal Services.

**"Approved Site"** shall mean the Site approved by the Parties.

**"Basic Services"** shall mean those services identified in Paragraph 2(b).

**"BIA"** shall mean the Bureau of Indian Affairs.

**"Cellular Telecommunications Infrastructure"** shall consist of the Infrastructure Improvements, and all cellular radio transmitters and receivers,

network switching, transport between cell sites and switching facilities, and other components necessary to provide a high-quality, reliable telecommunications service.

"CPE" shall mean the wireless local loop customer premise equipment to be provided by Western Wireless.

"Customer" shall mean any person located on the Reservation who becomes a Universal Service customer of Western Wireless.

"Customer Monthly Rate" shall mean the Customer monthly rate for basic services established by the Parties pursuant to this Agreement and collected from the customer.

"Enhanced Services" shall mean voicemail, call forwarding, call waiting, conference calling, and other services not falling within the definition of Basic Services.

"ETC" shall mean an eligible telecommunications carrier under the Telecommunications Act.

"FCC" shall mean the Federal Communications Commission.

"Governmental Agency" means any government, any court, and any agency, authority, body, bureau, department, or instrumentality of any government, including, without limitation, the OGLALA SIOUX TRIBE.

"Infrastructure Improvements" shall consist of cellular radio transmitters and receivers, network switching, transport between cell sites and switching facilities, and other components necessary to provide a high-quality, reliable telecommunications service.

"Long Distance Service" shall mean the long distance or toll service provided by Western Wireless for both intrastate and interstate services.

"Low Income Consumers" shall mean Customers who meet financial requirements established in 47 C.F.R. Section 54.400, and/or financial requirements established by the OGLALA SIOUX TRIBE that meet FCC rules.

"On-Site Equipment" shall mean the CPE devices and other equipment installed at the Customer's location.

"Other Agreements" shall mean this Agreement, all the Site Leases and any other agreements or other instruments given to evidence the performance of any or all of the obligations in this Agreement as the foregoing may be amended, modified, extended, or renewed from time to time.

"Site" shall mean the real property on the Reservation upon which Western Wireless will locate antenna and other facilities required pursuant to the Infrastructure Improvements.

"Site Lease" shall mean that certain Site Lease(s) substantially in the form as attached as Exhibit B.

"Telecommunications Act" shall mean the Communications Act of 1934, as amended, 47 U.S.C. Section 151, et seq.

"Telecommunications Services Plan" shall mean a landline equivalent wireless local loop service offered by Western Wireless on its Cellular Telecommunications Infrastructure or other telecommunications facilities.

"Universal Services" shall mean the telecommunication service provided by Western Wireless in accordance with the Universal Service Fund and this Agreement.

"Universal Service Fund" shall mean the Universal Service Fund established by the FCC or other Governmental Agency.

## 2. DESCRIPTION OF SERVICES.

(A) Telecommunication Services. Western Wireless shall serve the telecommunication needs of the Reservation through its Telecommunications Services Plan. Western Wireless shall provide, at a minimum, the Universal Services required of ETCs pursuant to the Telecommunications Act. In addition, Western Wireless shall provide other services and functionalities important to the OGLALA SIOUX TRIBE, such as an expanded local calling area, Long Distance Service, prepaid services, and the Enhanced Services.

(B) Basic Services. As part of the Universal Service Plan, the following basic services shall be included in the Customer Monthly Rate:

- (i) Voice-grade access to the national public switched telephone network;
- (ii) Unlimited local calling within the Reservation;
- (iii) A local calling area that includes all calls to current telephone prefixes on the Reservation, plus all prefixes in Martin, South Dakota (Western Wireless will consider recommendations by the OGLALA SIOUX TRIBE to further expand the local calling area to include areas that fall within existing local calling areas or additional areas requested by customers);
- (iv) Single party services;

- (v) Access to emergency service, including 911;
- (vi) Access to directory service, Long Distance Service, operator service, and customer support;
- (vii) White pages and directory listing, to the extent available; and
- (viii) Toll limitation for qualifying low-income consumers.

(C) 24-Hour Service. Western Wireless shall offer all Customers 24-hour customer service by dialing "611" or designated customer support number. The Parties shall establish a process for reporting service problems from the Western Wireless call centers to a point of contact on the Reservation as part of the Universal Service Plan.

### 3. UNIVERSAL SERVICE FUND.

(A) Application for Universal Service Funds. Western Wireless shall act with reasonable due diligence to obtain ETC approval for the Universal Service Fund and all other regulatory approvals required to provide the Universal Services.

(B) Cooperation by OGLALA SIOUX TRIBE. OGLALA SIOUX TRIBE agrees to cooperate with Western Wireless in obtaining ETC approval for the Universal Service Funds and other required regulatory approvals and agrees, upon request, to attend meetings at the FCC and other Governmental Agencies, prepare written correspondence with Governmental Agencies and to execute such applications and other documents as Western Wireless may reasonably request in connection with obtaining the approvals.

(C) Condition Precedent to Western Wireless's Obligations. Western Wireless' responsibilities and obligations under this Agreement shall be expressly conditioned upon its eligibility determination by the FCC for Universal Service Funds to provide affordable telecommunications service on the Reservation, and such Universal Service Funds shall be in an amount which makes the Universal Services economically feasible as determined by Western Wireless, with the advice and timely assistance of OGLALA SIOUX TRIBE. If ETC approval is not obtained within two (2) years from the date of this Agreement, then this Agreement may be terminated by Western Wireless upon written notice to OGLALA SIOUX TRIBE. Upon termination, Western Wireless and OGLALA SIOUX TRIBE shall have no further liability or obligations under this Agreement.

(D) Mediation Clause. An independent third party mediator shall be retained by agreement of the Parties, which shall share the costs, if a jurisdictional dispute arises. The Mediator's decision shall be final and binding on both Parties.

#### 4. TELECOMMUNICATION SERVICES PLAN.

(A) Development of Telecommunications Services Plan. Western Wireless will develop a Telecommunication Services Plan for the entire Reservation with the advice and assistance of the OGLALA SIOUX TRIBE. Such Telecommunications Services Plan to be substantially in accordance with the Universal Service Proposal attached as Exhibit C, with such modifications thereto as shall be recommended by OGLALA SIOUX TRIBE from time to time. Each Party shall bear the internal costs incurred by such Party in connection with such planning activities.

(B) Right of Access. Following the date of this Agreement, Western Wireless, its agents, employees, consultants and professional advisers, contractors, and subcontractors may, with appropriate notice, come upon the Reservation and shall be granted rights of ingress and egress to all Approved Sites for the purpose of inspecting, testing, and surveying the Reservation and planning the development and construction of the Infrastructure Improvements.

(C) Infrastructure Planning. Following the Approval Date, Western Wireless shall proceed to prepare schematic design plans for the Infrastructure Improvements consistent with the Telecommunications Services Plan, such plan to be completed concurrently with the work described in Paragraph 6. The design plans for the Infrastructure Improvements, as modified and supplemented from time to time with the approval of both Parties, are referred to in this Agreement as the "Infrastructure Schematic Plans". All costs incurred pursuant to this Paragraph 4(c) shall be paid 100% by Western Wireless. Such costs include, without limitation, all building permit fees, license fees, engineering fees, labor and materials costs, and all other hard and soft costs of construction incurred in connection with construction of the Infrastructure Improvements.

(D) Site Development. OGLALA SIOUX TRIBE shall assist Western Wireless in identifying and securing Site locations for antenna facilities, towers and other equipment on land held by the OGLALA SIOUX TRIBE. Such Site locations shall be in accordance with the Universal Services Plan.

(E) Role of OGLALA SIOUX TRIBE. Western Wireless and OGLALA SIOUX TRIBE shall hold annual meetings in May of each year of this Agreement to review the role of OGLALA SIOUX TRIBE in the provisioning of universal service and to evaluate options for increasing OGLALA SIOUX TRIBE's role in the provisioning of telecommunications service to include an ownership interest in a telecommunications system used to provide service on the Reservation.

#### 5. RATES, PAYMENT AND ALLOCATION OF REVENUES.

(A) Rates. The OGLALA SIOUX TRIBE shall establish an affordable Customer Monthly Rate for the Basic Services offered on the Reservation as part of the Telecommunications Services Plan. Until such time as there are greater

than [redacted] Customers, the Customer Monthly Rate shall be between [redacted] and [redacted] provided however, that the Parties will agree on and provide for further reductions in the Customer Monthly Rate for Low Income Consumers. To the extent the OGLALA SIOUX TRIBE would like to establish a Customer Monthly Rate outside of the rate range identified above. Western Wireless must approve of the rate established. In addition to the Customer Monthly Rate, Western Wireless shall provide Long Distance Services at the [redacted]. After six months, and every six months thereafter, Western Wireless will reevaluate the rate for Long Distance Service and make any changes to such rate based upon the recommendations of OGLALA SIOUX TRIBE, market conditions, and the overall business on the reservation. Customers with credit limitations as determined by Western Wireless, will be required to provide Western Wireless with a deposit equal to no more than two months of service or will be provided the opportunity to obtain prepaid, long distance cards for Long Distance Services at a cost to be determined by Western Wireless. Also international calling will be made available by Western Wireless, upon customer request, pending Customer credit approval at the then competitive rates as determined by Western Wireless. The Enhanced Services shall be available at the initial following rates subject to change by Western Wireless in its sole discretion:

- (i) Voice Mail [redacted]
- (ii) Call Forwarding [redacted]
- (iii) Call Waiting [redacted]
- (iv) Three-party Conference Calling [redacted]

Western Wireless will not increase or decrease the rates for Basic Services without the approval and consent of the OGLALA SIOUX TRIBE or its designated individual. There will be no changes to Western Wireless's rates for Long Distance Service and/or Enhanced Service without first providing OGLALA SIOUX TRIBE and Customers with thirty (30) day written notice.

(B) Equipment Rental. All CPEs necessary for the Universal Service Plan shall be provided by Western Wireless to the OGLALA SIOUX TRIBE for installation by the OGLALA SIOUX TRIBE at the Customer locations. Western Wireless shall charge the Customer [redacted] for each CPE installed or charge the Customer a one-time purchase price of [redacted]. Installation of the CPEs shall be done by the OGLALA SIOUX TRIBE by trained employees of the OGLALA SIOUX TRIBE pursuant to Paragraph 9. Customer shall be responsible to furnish all other equipment, including, without limitation, their own telephone and other telephone devices.

(C) Payment. Western Wireless shall be responsible for generating and mailing a monthly bill for all local, long distance and other charges associated with the Universal Service Plan to Customers on the Reservation.

(D) Allocation of Revenues.

(i) Revenues to be paid by Western Wireless to the OGLALA SIOUX TRIBE at the end of each fiscal quarter:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

(ii) Revenues to be retained by Western Wireless:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

(iii) To the extent third parties require the use of the antenna towers on the Reservation used by Western Wireless, the Parties shall evaluate such use from a technical, operational, and financial standpoint and agree on such use, and the terms and conditions of such use, prior to any third party using the antenna tower.

(E) Taxes. In addition to all other Customer charges and expenses specified in this Agreement, all taxes and assessments which are assessed by any Governmental Agency shall be charged directly to Customer's in their monthly bills.

## **6. SITE DEVELOPMENT.**

(A) Site Development. Following the Approval Date, Western Wireless shall proceed diligently and in good faith, to do the following:

(i) Prepare a Site Lease for each Site required pursuant to the Infrastructure Schematic Plans;

(ii) Prepare reasonably detailed Site plans and specifications for construction, as modified and supplemented from time to time;

(iii) Obtain all necessary governmental permits and other approvals which will permit construction of the Site; and

(iv) Construct the Site in accordance with governmental regulations, the Site Lease and the Site plans and specifications.

(B) Site Lease.

(i) Within fifteen (15) days following the date that Western Wireless has completed the work described in Subparagraphs 6(A)(i) and 6 (A)(ii) and has provided OGLALA SIOUX TRIBE with evidence of the completion of such items, OGLALA SIOUX TRIBE shall execute the Site Lease for the Approved Site to Western Wireless.

(ii) OGLALA SIOUX TRIBE shall expend all reasonable efforts to obtain approval of the Site Lease from all Governmental Agencies within sixty (60) days of execution by OGLALA SIOUX TRIBE.

(iii) OGLALA SIOUX TRIBE, at its expense, shall have obtained any consents that may be reasonably necessary or appropriate from the parties whose land is burdened by the Site Lease or corresponding access easement granted pursuant to the Site Lease for the benefit of Western Wireless and the Approved Site.

(C) Payment of Site Development Costs and Expenses. The costs and expenses incurred by Western Wireless pursuant to this Paragraph 6 (except for the costs associated with Subparagraph 6(B)(iii)), including all planning and design costs, permit fees, financing, and the hard and soft costs incurred in developing and constructing each Approved Site shall be the sole responsibility of Western Wireless.

## **7. TRAINING OF OGLALA SIOUX TRIBE PERSONNEL.**

Following the Approval Date, Western Wireless shall prepare a Training Program for OGLALA SIOUX TRIBE's review and approval. The Training Program shall include, but not be limited to, an introduction to the On-Site Equipment, network

## **6. SITE DEVELOPMENT.**

(A) **Site Development.** Following the Approval Date, Western Wireless shall proceed diligently and in good faith, to do the following:

- (i) Prepare a Site Lease for each Site required pursuant to the Infrastructure Schematic Plans;
- (ii) Prepare reasonably detailed Site plans and specifications for construction, as modified and supplemented from time to time;
- (iii) Obtain all necessary governmental permits and other approvals which will permit construction of the Site; and
- (iv) Construct the Site in accordance with governmental regulations, the Site Lease and the Site plans and specifications.

### **(B) Site Lease.**

(i) Within fifteen (15) days following the date that Western Wireless has completed the work described in Subparagraphs 6(a)(i) and 6 (a)(ii) and has provided OGLALA SIOUX TRIBE with evidence of the completion of such items, OGLALA SIOUX TRIBE shall execute the Site Lease for the Approved Site to Western Wireless.

(ii) OGLALA SIOUX TRIBE shall expend all reasonable efforts to obtain approval of the Site Lease from all Governmental Agencies within sixty (60) days of execution by OGLALA SIOUX TRIBE.

(iii) OGLALA SIOUX TRIBE, at its expense, shall have obtained any consents that may be reasonably necessary or appropriate from the parties whose land is burdened by the Site Lease or corresponding access easement granted pursuant to the Site Lease for the benefit of Western Wireless and the Approved Site.

(C) **Payment of Site Development Costs and Expenses.** The costs and expenses incurred by Western Wireless pursuant to this Paragraph 6 (except for the costs associated with Subparagraph 6(b)(iii)), including all planning and design costs, permit fees, financing, and the hard and soft costs incurred in developing and constructing each Approved Site shall be the sole responsibility of Western Wireless.

## **7. TRAINING OF OGLALA SIOUX TRIBE PERSONNEL.**

Following the Approval Date, Western Wireless shall prepare a Training Program for OGLALA SIOUX TRIBE's review and approval. The Training Program shall include, but not be limited to, an introduction to the On-Site Equipment, network

familiarization, installation guidelines, physical equipment requirements and antenna installation. Tribal members shall receive preference in all hiring decisions, in accordance with Tribal Employment Rights Ordinance and other Tribal laws.

#### **8. NETWORK MAINTENANCE.**

Western Wireless shall be responsible for all maintenance of the Cellular Telecommunications Infrastructure. At Western Wireless's sole cost and expense, Western Wireless shall provide maintenance, technical support and system monitoring 24 hours a day, 7 days a week.

#### **9. ON-SITE INSTALLATION AND MAINTENANCE.**

(A) Installation. The installation of all On-Site Equipment necessary for the Universal Service Plan will be performed by persons designated by and employed by OGLALA SIOUX TRIBE. All necessary training of OGLALA SIOUX TRIBE employees will be conducted by Western Wireless.

(B) Maintenance. OGLALA SIOUX TRIBE will be responsible for diagnosing any service problems with the On-Site Equipment. Western Wireless will provide OGLALA SIOUX TRIBE with an initial supply of 6 spare On-Site Equipment devices for maintenance purposes. Western Wireless will collect and repair all defective On-Site Equipment devices. Broken On-Site Equipment devices found to be damaged by misuse or abuse, excluding normal wear and tear, will result in the Customer being charged a [REDACTED] less depreciation of the equipment [REDACTED]. OGLALA SIOUX TRIBE will set their own prices for customer service calls and will retain all money collected from such visits.

(C) On-Site Equipment Returns. Upon Western Wireless's written request, OGLALA SIOUX TRIBE shall repossess all On-Site Equipment at the Customer's location specified by Western Wireless. If the On-Site Equipment is not returned in operational form within thirty (30) days of such request, unless the matter is referred to tribal court and the 30 day period is extended, then [REDACTED] [REDACTED] for each missing or dysfunctional On-Site Equipment device shall be deducted from OGLALA SIOUX TRIBE's revenues.

#### **10. JURISDICTION OF OGLALA SIOUX TRIBE TO AUTHORIZE THE TELECOMMUNICATION SERVICES PLAN.**

(A) Regulatory Authorization. See Exhibit D.

(B) Permits, Licenses, and Regulation Requirements. See Exhibit D.

(C) Regulatory Impact. The regulations, permits, licenses, and any other obligations or requirements imposed on Western Wireless by the Oglala Sioux Tribe shall not have a material impact on Western Wireless and its ability to conduct business on the reservation.

## **11. OBLIGATIONS AND RESPONSIBILITIES OF WESTERN WIRELESS.**

(A) Technology Development. Western Wireless shall update and install new cellular technological advances as they are developed and become economically feasible. The Parties shall work together to continue to improve the Telecommunications Services and shall evaluate the potential of all new technologies to meet Customer needs.

(B) Costs and Expenses. Western Wireless shall pay for all wholesale Long Distance Service costs and all other expenses specifically designated to be paid by Western Wireless throughout this Agreement.

(C) UGLALA SIOUX TRIBE's Responsibility for Faulty Service. shall not be responsible to pay and UGLALA SIOUX TRIBE shall not be entitled to receive reimbursement or compensation for any services, including, without limitation, installation and maintenance services, if such services or expenses are required due to the fault of UGLALA SIOUX TRIBE or its agents or employees, or due to UGLALA SIOUX TRIBE's failure to perform in accordance with the terms of this Agreement and all applicable laws.

## **12. OBLIGATIONS AND RESPONSIBILITIES OF UGLALA SIOUX TRIBE.**

(A) Governmental Agency Approvals. UGLALA SIOUX TRIBE shall use their best effort to obtain all Governmental Agency approvals requested to provide the Telecommunications Services, to build and operate the Site Leases, and all other services specified in this Agreement.

(B) Marketing. UGLALA SIOUX TRIBE shall identify potential Telecommunications Services users located on the Reservation and shall aggressively market the Telecommunications Services on the Reservation to all potential users.

(C) Costs and Expenses. OGLALA SIOUX TRIBE shall be responsible for all expenses associated with the OGLALA SIOUX TRIBE's employees employed to satisfy the OGLALA SIOUX TRIBE requirements under this Agreement, and all other expenses under this Agreement which are not specifically designated to be paid for by Western Wireless.

### **13. REPRESENTATIONS AND WARRANTIES.**

(A) OGLALA SIOUX TRIBE. OGLALA SIOUX TRIBE represents and warrants to Western Wireless that the following statements set forth in Paragraph 13(a) are true, correct and complete as of the date hereof and will be true, correct and complete as of the Approval Date.

(i) Existence and Authorization. OGLALA SIOUX TRIBE is a federally recognized Indian tribe pursuant to federal law. OGLALA SIOUX TRIBE has the requisite power and authority to execute, deliver, and perform this Agreement and the Other Agreements. The execution, delivery, and performance by OGLALA SIOUX TRIBE of this Agreement and the Other Agreements have been duly authorized by and all requisite action by or on behalf of OGLALA SIOUX TRIBE and will not conflict with, or result in a violation of or a default under, the constitution of OGLALA SIOUX TRIBE or any other agreement or obligation of OGLALA SIOUX TRIBE. A true and correct copy of Resolution No. 00-87, which was duly adopted by the OGLALA SIOUX TRIBE's Tribal Council on August 21, 2000, and pursuant to which the OGLALA SIOUX TRIBE has approved this Agreement, the Other Agreements and the limited waiver of sovereign immunity set forth herein, is attached hereto as **Exhibit E**.

(ii) No Approvals. Except as set forth in this Agreement, no approval, authorization, bond, consent, certificate, franchise, license, permit, registration, qualification, or other action or grant by or filing with any Person is required in connection with the execution, delivery, or performance by OGLALA SIOUX TRIBE of this Agreement and the Other Agreements.

(iii) No Conflicts. The execution, delivery, and performance by OGLALA SIOUX TRIBE of this Agreement and the Other Agreements will not conflict with, or result in a violation of or a default under any applicable law, ordinance, regulation, or rule (federal, state, local, or tribal); any judgment, order, or decree of any arbitrator, other private adjudicator, or Governmental Agency to which OGLALA SIOUX TRIBE is a party or by which OGLALA SIOUX TRIBE or any of the assets or property of OGLALA SIOUX TRIBE is bound, or any agreement, document, or instrument to which OGLALA SIOUX TRIBE is a party or by which OGLALA SIOUX TRIBE or any of the assets or property of OGLALA SIOUX TRIBE is bound.

(iv) **Execution and Delivery and Binding Nature of this Agreement and the Other Agreements.** This Agreement and the Other Agreements have been duly executed and delivered. This Agreement and the Other Agreements are legal, valid, and binding obligations of OGLALA SIOUX TRIBE, enforceable in accordance with their terms against OGLALA SIOUX TRIBE, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization, or similar laws and by equitable principles or general application.

(v) **Legal Proceedings; Hearings, Inquiries, and Investigations.** Except as disclosed to Western Wireless in writing prior to the date of this Agreement, (i) no legal proceeding is pending or, to the best knowledge of OGLALA SIOUX TRIBE, threatened before any arbitrator, other private adjudicator, or Governmental Agency to which OGLALA SIOUX TRIBE is a party or by which OGLALA SIOUX TRIBE or any assets or property of OGLALA SIOUX TRIBE may be bound or affected that if resolved adversely to OGLALA SIOUX TRIBE could result in a material adverse change in the business, operations or financial affairs of OGLALA SIOUX TRIBE, and to the best knowledge of OGLALA SIOUX TRIBE, there exist no facts that would form any basis for any of the foregoing, and (ii) no hearing, inquiry, or investigation relating to OGLALA SIOUX TRIBE or any assets or property of OGLALA SIOUX TRIBE is pending or, to the best knowledge of OGLALA SIOUX TRIBE, threatened by any Governmental Agency.

(B) **Western Wireless.** Western Wireless represents and warrants to OGLALA SIOUX TRIBE that the following statements set forth in this Paragraph 13(B) are true, correct and complete as of the date hereof and will be true, correct and complete as of the Approval Date.

(i) **Organization and Powers.** Western Wireless is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and is qualified to transact business in the State of South Dakota. Western Wireless has all requisite power and authority to carry on its businesses now conducted and as proposed to be conducted, and to enter into and perform this Agreement and the Other Agreements. The execution, delivery and performance of this Agreement and the Other Agreements by Western Wireless are within Western Wireless's powers and have been duly authorized by all necessary action by Western Wireless.

(ii) **Good Standing.** Western Wireless has made all filings and is in good standing in each jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a materially adverse

effect on the business, operations, assets or condition (financial or otherwise) of Western Wireless.

(iii) **No Conflict.** The execution, delivery and performance of this Agreement and the Other Agreements by Western Wireless will not violate (i) Western Wireless's Articles of Organization and Operating Agreement; or (ii) any legal requirement affecting Western Wireless or any of its properties; or (iii) any agreement to which Western Wireless is bound or to which it is a party and will not result in or require the creation (except as provided in or contemplated by this Agreement) of any lien upon any of such properties.

#### 14. CUSTOMER ACCEPTANCE AND DISCONTINUATION OF SERVICES.

(A) **Customer Acceptance.** All Customer requests for service will be reviewed and approved by Western Wireless subject to the terms and conditions of service. Unless a Customer passes Western Wireless's credit approval requirements or provides a deposit in the amount not to exceed two months service, Long Distance Service will be restricted by Western Wireless. Prepaid calling cards shall be made available by Western Wireless and other companies for Long Distance Service. Upon credit approval or the payment of a deposit, Customer will be able to subscribe to the Long Distance Services offered to the Customer. In lieu of any individual obtaining credit approval, OGLALA SIOUX TRIBE may provide a line of credit for consideration by Western Wireless to provide Long Distance Service to individuals that do not meet credit requirements.

(B) **Bad Debt Collection and Disconnecting Customers.** Western Wireless shall be responsible for collecting all outstanding past due Customer payments. The Parties shall establish appropriate opportunities for Customers to make payment on the Reservation, especially for Low Income Customers. Western Wireless shall determine when past due Customers will have their service suspended and ultimately disconnected. Western Wireless shall provide OGLALA SIOUX TRIBE with a list of past due accounts on a monthly basis, with the expectation that OGLALA SIOUX TRIBE will assist in collecting past due amounts in order to pay for OGLALA SIOUX TRIBE's revenue pursuant to Paragraph 5(D)(i).

#### 15. TERM OF AGREEMENT.

(A) **Term** The initial term of this Agreement shall be [REDACTED] [REDACTED] (the "Commencement Date"); and [REDACTED]  
[REDACTED]

(B) **Extension of Term.** Western Wireless shall have the right to extend this Agreement [REDACTED] ("Renewal Term"). Each

Renewal Term shall be on the same terms and conditions as set forth herein unless the Parties agree on other terms and conditions to govern the Renewal Term.

(C) Automatic Extension. This Agreement shall automatically renew for each successive Renewal Term unless Western Wireless shall notify OGLALA SIOUX TRIBE, in writing, of Western Wireless's intention not to renew this Agreement, at least 60 days prior to the expiration of the term or any Renewal Term.

(D) Termination. Should the other Party fail substantially to perform in accordance with the terms of this Agreement through no fault of the Party initiating the termination, and if after written notice and a thirty (30) calendar day cure period, the default is not cured, this Agreement may then be terminated by the non-defaulting Party upon not less than an additional thirty (30) days' written notice.

#### 16. DESIGN PRODUCTS, INSURANCE AND INDEMNITY.

(A) Design Products. The Parties agree that Western Wireless' preparation of all drawings, specifications, models, renderings, notes, supporting data, designs, reports, calculations, inventions (whether or not patentable), and other elements and documents relating to the Infrastructure Improvements and any and all services rendered in the performance of this Agreement and any and all intellectual property rights related to the foregoing (hereinafter collectively referred to as the "Design Products") represent service work done by Western Wireless and that the ownership of and intellectual property rights in any and all such Design Products vests in Western Wireless. For use in connection with this Agreement, Western Wireless agrees to and does hereby grant and transfer to OGLALA SIOUX TRIBE a non-exclusive, royalty-free license to use the Design Products for the sole purpose of performing OGLALA SIOUX TRIBE's obligations under this Agreement. The Oglala Sioux Tribe reserves the rights to any and all intellectual property rights developed by the Oglala Sioux Tribe.

(B) Insurance Requirements. During the entire term of this Agreement and for any extension to this Agreement, The Parties shall maintain at their own expense, insurance coverage as follows:

(i) Comprehensive General Liability Insurance, including coverage of motor vehicle liability and contractual liability assumed under this Agreement, affording protection of not less than \$2,000,000 per occurrence, combined single limit for bodily injury and property damage, insuring the other Party, and any requested Affiliates against damages because of, or on account of, bodily injuries to or the death of any person or destruction of, or damage to, the property of any person, occurring, on or about the Site, the Customer's property, or due in any way to the use, occupancy, maintenance or operation of the Cellular Telecommunications Infrastructure, or related facilities.

(ii) The Parties shall furnish the other Party certificates evidencing that all required insurance has been obtained and is in full force and effect, the other Party and any Affiliates are additional insured's there under and stating that the other Party shall receive 30 days' notice prior to modification or cancellation of the insurance. It shall be the obligation of the Parties to furnish all required insurance certificates without notice or demand by the other Party and to immediately furnish new certificates whenever policy renewals or any other insurance change occurs.

(iii) The foregoing insurance does not release the Parties from any responsibilities or liabilities under this Agreement or any Other Agreement. Such insurance shall be available for insured losses accruing to Western Wireless under the indemnity provision of this Agreement and any Other Agreement.

(iv) All insurance policies required by this Agreement shall be obtained from companies duly authorized to issue such policies in the State of South Dakota, having Best's ratings of A and acceptable to the Parties.

(v) **Indemnity.** Each Party agrees to indemnify, defend and hold the other Party and its Affiliates (as defined herein), and any and all of their respective officers, board members, successors, assigns, directors, agents, representatives and employees (hereinafter collectively, the "Indemnified Parties") harmless for, from and against any and all claims, actions, costs, demands, suits, damages, losses, expenses and liabilities (including, but not limited to, reasonable attorneys' fees), arising out of any negligent act or omissions or willful misconduct of, or breach of this Agreement by, the indemnitor or by its employees, agents, and contractors.

## 17. DISPUTE RESOLUTION, CHOICE OF LAW AND JURISDICTION.

(A) **Sovereign Immunity.** Nothing in this Agreement shall be deemed to be a waiver of the OGLALA SIOUX TRIBE's sovereign immunity from suit, except that the OGLALA SIOUX TRIBE hereby provides a limited waiver of sovereign immunity and consents to be sued should an action be commenced to determine and enforce the obligations of the Parties under this Agreement or the Other Agreements, and provided further that the OGLALA SIOUX TRIBE's consent to suit is only as to arbitration and court action initiated consistent with this Agreement and the Other Agreements. OGLALA SIOUX TRIBE agrees not to take any action that would result in the revocation or modification of the limited waiver granted by this Paragraph 17.

(B) **Arbitration.** The Parties agree that all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Agreement, the Other Agreements or otherwise in connection therewith, including, without limitation, contract disputes and tort claims, shall be resolved

by binding arbitration pursuant to the Commercial Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding held pursuant to this arbitration provision shall be conducted in the city nearest OGLALA SIOUX TRIBE's address having an AAA regional office, or at any other place selected by mutual agreement of the Parties. This arbitration provision shall not limit the right of either Party during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies (collectively, the "Ancillary Remedies"), judicial or otherwise, for the purposes of realizing upon, preserving, protecting, foreclosing upon or proceeding under forcible entry and detainer for possession of, any real or personal property, and any such action shall not be deemed an election of remedies. Such Ancillary Remedies include, without limitation, obtaining injunctive relief or a temporary restraining order, obtaining a writ of attachment or imposition of a receivership, or exercising any rights relating to personal property, including exercising the right of set-off or taking or disposing of such property, with or without judicial process pursuant to the Uniform Commercial Code. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a Party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of any action for these purposes. Service of process may be made by any means authorized by applicable law and arbitration rules. OGLALA SIOUX TRIBE acknowledges that the Tribal President, Tribal Vice-President and Tribal Secretary are persons authorized to receive service of process and that the address of OGLALA SIOUX TRIBE set forth in this Agreement is the authorized address for mailing when service of process is by mail. OGLALA SIOUX TRIBE further waives and agrees not to assert any doctrine requiring exhaustion of tribal court remedies prior to proceeding with arbitration, self-help remedies, foreclosure, and provisional and Ancillary Remedies pursuant to this Agreement and the other Agreements.

(C) Entry and Review of Award. Judgment shall be entered on any award made by the arbitrator(s) by the OGLALA SIOUX TRIBE's Tribal Court. Review of the award shall be as provided in the Federal Arbitration Act. To the extent such courts may have jurisdiction over matters arising from this Agreement, the OGLALA SIOUX TRIBE hereby consents and agrees that the United States District Court, District of South Dakota and all other federal courts to which its decisions can be appealed (collectively, "Federal Court") shall have concurrent jurisdiction with respect to the entry and review of arbitration awards and other matters as provided for herein. Without limiting the generality of the foregoing, the OGLALA SIOUX TRIBE expressly authorizes any governmental or other agency authorities who have the right and duty under applicable law to take any and all action awarded in any arbitration proceeding or by the OGLALA SIOUX TRIBE's Tribal Court or Federal Court, including without limitation, entry upon the land and any premises owned or controlled by the OGLALA SIOUX TRIBE to give effect to any arbitration award. The OGLALA SIOUX TRIBE also acknowledges that once entered in Tribal Court and/or Federal Court, judgments may also be transferred to and enforced through other courts as

necessary to enforce the Party's rights against the judgment Party's properties and assets.

## 18. CONFIDENTIALITY

(A) Information. In connection with Western Wireless's services, either Party may disclose information to the other Party, in writing or verbally, certain business, technical or marketing information, data, analyses, computer programs, compilations, documents, drawings or other information and work product which one Party considers confidential and proprietary (hereinafter collectively, the "Information"). Unless either Party expressly indicates otherwise, all Information will be presumed to be confidential and proprietary, and will be so treated by the other Party.

(B) Confidentiality. With respect to Information under this Agreement, both Parties shall hold the Information in confidence; use the Information only for the purpose of rendering the services, restrict redisclosure of the Information solely to those employees, consultants, contractors, subcontractors, sub-subcontractors and agents of either Party with a need to know for the provision of the services and not disclose it to any other persons; and advise employees, consultants, contractors, subcontractors, sub-subcontractors and agents of their confidentiality obligation with respect to the Information and obtain their agreement to comply with the provisions of this Agreement before disclosing any Information.

(C) Other Agreements. Neither Party shall not divulge information concerning this Agreement to anyone (including, without limitation, information in applications for permits, variances or other forms of governmental consents or regulatory acknowledgments) without the other Party's prior written consent. To the extent that the Parties desire to divulge confidential information outside of the scope of this Agreement, the Parties shall enter into separate confidentiality agreements, as necessary.

(D) Violation. A violation of any of the provisions of this Paragraph 18 by either Party is a material breach of this Agreement, and shall entitle the other Party to seek both equitable and legal remedies.

## 19. OWNERSHIP OF CELLULAR TELECOMMUNICATIONS INFRASTRUCTURE

OGLALA SIOUX TRIBE acknowledges and agrees (i) that Western Wireless retains all ownership of the Cellular Telecommunications Infrastructure which provides the Telecommunications Services on the Reservation; (ii) Cellular Telecommunications Infrastructure is a part of a larger cellular network which is used by Western Wireless's mobile cellular customers and will continue to be used by all Western Wireless's mobile cellular customers; (iii) Western Wireless retains all rights to all revenues generated by the Sites and Western Wireless's

mobile cellular customers on the Reservation; and (iv) retains all rights to all licenses granted by the FCC and other Government Agencies.

## 20. MISCELLANEOUS PROVISIONS.

(A) Approvals. Whenever this Agreement requires the approval of a Party, unless the provision states that such approval may be given or withheld in a Party's sole and absolute discretion, the approval of the Party shall not be unreasonably withheld or delayed, and if a Party does not disapprove in writing a particular matter within forty-five (45) days of receipt of a written request for approval, stating with particularity the reasons for the disapproval, then the matter shall be deemed to have been approved by such Party. Upon termination of this Agreement, the Parties shall negotiate the transfer of Western Wireless assets to OGLALA SIOUX TRIBE or negotiate Western Wireless's continued operation of equipment on the Reservation.

(B) Attorneys' Fees. If any action is brought by a party to this Agreement in respect to its rights under this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs as determined by the court or arbitration.

(C) Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver. Any party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other Parties from the performance of any of their other obligations under this Agreement.

(D) Construction. This Agreement will be construed according to OGLALA SIOUX TRIBE and federal laws, or in the absence of such laws, the laws of the State shall be used as guidance, without giving effect to conflict of laws principles. References in this Agreement to "Paragraphs" or "Exhibits" are to the Paragraphs in and Exhibits to this Agreement, unless otherwise noted.

(E) Notices. Notices will be in writing and will be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, by facsimile transmission, or by express delivery service, freight prepaid. Notices will be delivered or addressed to the parties at the addresses or facsimile numbers set forth below such Party's signature on the signature page(s) of this Agreement or such other address or number as a Party may designate in writing. The date notice is deemed to have been given, received and become effective will be (a) the date on which the notice is delivered, if notice is given by personal delivery, (b) the date of actual receipt, if the notice is sent through the United States mail or by express delivery service, or (c) if notice is sent by facsimile transmission, on the date of transmission, if the transmission is commenced prior to 4:00 o'clock p.m. (local time at the place of receipt) and

continuously transmitted thereafter until complete, otherwise on the day following the date of transmission.

To Oglala Sioux Tribe: OGLALA SIOUX TRIBE  
Tribal President  
P.O. Box 669  
Pine Ridge, South Dakota 57770

With a copy to: OGLALA SIOUX TRIBE  
Economic Development Office  
P.O. Box 669  
Pine Ridge, SD 57770

To Western Wireless: WWC LICENSE LLC  
Attn: Regulatory Department  
3650 131<sup>st</sup> Avenue, SE  
Bellevue, Washington 98006

With a copy to: WWC LICENSE LLC  
Attn: Legal Department  
3650 131<sup>st</sup> Avenue, SE  
Bellevue, Washington 98006

(F) Further Documentation. Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

(G) Time Periods.

(i) Except as otherwise expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (local South Dakota time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

(ii) If a Party is delayed or hindered in or prevented from the performance of any act required hereunder by reason of acts of God, fire or other casualty, unusual weather conditions, inability to procure materials, failure of power, riots, insurrection, war, strikes or other labor disputes, OGLALA SIOUX TRIBAL emergency, general economic conditions, governmental rules or regulations, or other reason of a like nature not the fault of the party delayed in performing work or doing acts

required under the terms of this Agreement, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay. The provisions of this Paragraph will not operate to excuse any party from the prompt payment of any amounts due under this Agreement.

(H) Defaults. If a Party (a "Defaulting Party") fails to perform any of its obligations or breaches any of its covenants contained in this Agreement and, unless another time limit is elsewhere in this Agreement specifically provided, the default continues for a period of 30 days after written demand for performance is given by the other Party (the "Non-Defaulting Party"), or, if the default is of such a character as to require more than 30 days to cure and the Defaulting Party shall fail to use reasonable diligence in curing such default, then, and in any of such events, the Non-Defaulting Party may, in addition to any other remedies provided in this Agreement, at law or in equity (including the right to sue for damages, an injunction or specific performance) cure such defaults on behalf of the Defaulting Party and, in connection therewith, do all work and make all payments deemed necessary or appropriate by the Non-Defaulting Party, including payment of costs (including attorneys' fees) and charges in connection with any legal action which may have been commenced or threatened, and all sums so expended by the Non-Defaulting Party shall be paid by the Defaulting Party on demand, together with interest from the date of the expenditure until paid at a rate equal to ten (10%) percentage points.

(I) Headings and Counterparts. The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

(J) Assignment by Western Wireless. Subject to OGLALA SIOUX TRIBE's approval, which shall not be unreasonably withheld or delayed, Western Wireless may assign this Agreement upon written notice to OGLALA SIOUX TRIBE, to any person controlling, controlled by, or under common control with Western Wireless, or any person or entity that, after first receiving all necessary regulatory agency approvals, acquires Western Wireless's radio communications business and assumes all obligations of Western Wireless under this Agreement. Upon such assignment, Western Wireless shall be relieved of all liabilities and obligations hereunder and assignee shall assume all liabilities and obligations hereunder. OGLALA SIOUX TRIBE shall look solely to the assignee for performance under this Agreement and all obligations hereunder unless OGLALA SIOUX TRIBE reasonably determines that the assignee is not of equal or substantially similar credit worthiness. Western Wireless may otherwise assign this Agreement upon written approval of OGLALA SIOUX TRIBE, which approval shall not be unreasonably withheld or delayed.

(K) Time is of the Essence. Time is of the essence of this Agreement.

(L) Entire Agreement. This Agreement, which includes the following Exhibits;

- Exhibit A Description of Reservation Boundaries
- Exhibit B Site Lease Form
- Exhibit C Universal Services Proposal
- Exhibit D Jurisdiction of OGLALA SIOUX TRIBE To Authorize The Tate Woglaka Service Agreement
- Exhibit E OGLALA SIOUX TRIBAL Resolution

constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by each of the Parties.

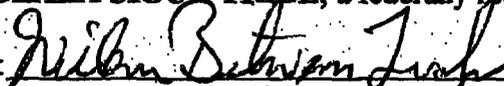
**WESTERN WIRELESS:**

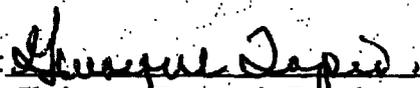
**WWC LICENSE LLC**, a Delaware limited liability company

By:   
Its: Vice President

**OGLALA SIOUX TRIBE:**

**OGLALA SIOUX TRIBE**, a federally recognized Indian Nation

By:   
Its: Vice-President, Oglala Sioux Tribe

By:   
Its: Chairman, Economic Development Committee

## Exhibit A

### **Description of Reservation Boundaries**

The Pine Ridge Indian Reservation is located on the Nebraska border in the southwestern part of South Dakota. West of the reservation are the Black Hills, the sacred "He Sapa" to the Lakota Dakota tribes.

The geographic characteristics of the Pine Ridge Indian Reservation are best described as predominately rolling prairie, covered with buffalo grass, interlaced by creeks lined mostly with cottonwood trees and chalky clay buttes with an abundance of Ponderosa Pine on the slopes. The northwest portion of the reservation contains the most dramatic landscapes, consisting of stark formations of the Badlands ("Mako Sica"). The White River and its tributaries flow from the northwest and form the northern boundary of the reservation.

The attitudes of the reservation range from 2,100 feet to 3,500 feet above sea level. The weather attributes range from 25 degrees below zero in the winter months to 110 degrees in the summer months with the average yearly precipitation being 16.37 inches.

The reservation is approximately 50 miles wide, north to south, and approximately 90 miles long, east to west. Established by Congress in 1889, the original boundaries contained an area of 2,786,539 acres, covering 4,198 square miles. Presently the reservation contains 1,728,870 acres.

All tribal lands and much of the lands owned by individual members are held in "trust" by the Federal government under the responsibility of the Bureau of Indian Affairs (BIA). Trust Lands are managed by the BIA which has hindered development and use by the Indian owners themselves and often encourages exploitation of the lands at the expense of the landowners by lessors, both Indian and non-Indian.

The Oglala Sioux Tribe, the Bureau of Indian Affairs and a collective effort among Tribal Offices such as the Census Department, Social Services Program and the Education Programs reveal the following data as of November 29, 1996.

The Reservation is considered to be the poorest area in the United States. The major employers on the reservation are public sector: Bureau of Indian Affairs, Indian health Service, Tribal Government, Tribal Contract Schools, Cedar Pass Lodge, Tribal Businesses and others. The three major private sector employers are all service industries. There are no local manufacturing operations of any significant size employing Indian people.

**Exhibit B**  
**Site Lease Form**

Market: South Dakota, Pine Ridge Reservation  
Site Number: \_\_\_\_\_  
Site Name: \_\_\_\_\_

## SITE LEASE

THIS SITE LEASE (this "Lease") is effective this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, between OGLALA SIOUX TRIBE, a federally recognized Indian tribe ("Landlord"), and WWC License LLC, a Delaware limited liability company ("Tenant").

### 1. Premises.

(a) Subject to the following terms and conditions, Landlord leases to Tenant a certain portion of the real property (the "Property") described in attached Exhibit A, sufficient for placement of Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in attached Exhibit B (collectively referred to hereinafter as the "Premises").

(b) The Premises, located on the Pine Ridge Reservation at \_\_\_\_\_ as described in Exhibit A.

### 2. Term. \_\_\_\_\_

3. Permitted Use. The Premises may be used by Tenant for, among other things, the transmission and reception of radio communication signals and for the construction, maintenance, repair or replacement of related facilities, towers, antennas, equipment or buildings and related activities. Landlord shall obtain, at Landlord's expense, all Governmental Approvals (defined below), including, without limitation, zoning variances and conditional use permits. Western may (prior to or after the Commencement Date) obtain a title report, perform environmental and other surveys, soil tests, and other engineering procedures on, under and over the Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations and Governmental Approvals. Landlord and Tenant agree to reasonably cooperate with each other, where required, to perform such procedures or obtain Governmental Approvals. If necessary, Tenant has the right to immediately terminate this Lease if Tenant notifies Landlord of unacceptable results of any title report, Governmental Approvals, environmental survey or soil tests prior to Tenant's installation of the Antenna Facilities (defined below) on the Premises. The term "Governmental Approvals" shall mean the approval of any arbitrator, other private adjudicator, court, government or governmental authority (federal, state, local or foreign).

4. Rent.

(a) Tenant shall pay Landlord, as Rent, [REDACTED] [REDACTED] "Rent" for each of the cell site locations. Rent shall be payable in advance beginning on the Commencement Date for the remainder of the month in which the Commencement Date falls and for the following month, and thereafter Rent will be payable monthly in advance on the fifth day of each month for the following month to Oglala Sioux Tribe at Landlord's address specified in Section 12 below. For the purpose of this Lease, all references to "month" shall be deemed to refer to a calendar month. If the Commencement Date does not fall on the fifth day of the month, then Rent for the period from the Commencement Date to the last day of the following month shall be prorated based on the actual number of days from the Commencement Date to the last day of the following month.

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

5. Renewal.

(a) Tenant shall have the right to extend this Lease for [REDACTED] [REDACTED] ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein.

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

(c) If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease, except the length of the term and Rent, which shall continue at the same monthly rate as was in effect for the last month of the immediately preceding term.

6. Interference. Subject to Tenant's right to use the Premises as set forth in Section 3, Tenant shall not otherwise use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord, with rights to 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 Tenant's use of the Premises or the operations of Tenant. 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, (i) to bring a court action to enjoin such interference or (ii) to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property, equipment and facilities necessary to operate communications systems, including without limitation the personal property, equipment and radio transmitting and receiving antennas, and towers and bases, an electronic equipment shelter, and related cables and utility lines (collectively the "Antenna Facilities"). The Antenna Facilities shall be initially configured generally as set forth in Exhibit C. Tenant shall have the right to replace or upgrade the Antenna Facilities at any time during the term of this Lease and any Renewal Term. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon termination of this Lease and any Renewal Term.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Premises in commercially reasonable condition and repair during the term of this Lease, normal wear and tear excepted. Upon termination of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Landlord hereby grants an easement to permanently place any utilities on, or to bring utilities across, the Property in order to serve the Premises and the Antenna Facilities. Tenant shall, wherever practicable, install separate meters for utilities used on the Property. In the event separate meters are not installed, Tenant shall pay the periodic charges for all utilities attributable to Tenant's use. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant and Tenant's agents, employees or contractors, an easement ("Easement") for ingress, egress, and access (including access for the purposes described in Section 3) to the Premises adequate to install and maintain utilities, which include, but are not limited to the installation of overhead and underground power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the term of this Lease or any Renewal Term. Upon prior written notice to Tenant, provided Tenant's Antenna Facilities remain fully functional and continue to transmit at full power, Landlord shall have the right, at Landlord's sole expense, to relocate the Easement, provided such new location shall not materially interfere with Tenant's operations. Any Easement provided hereunder shall have the same term as this Lease and any Renewal Term.

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

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

(a) upon thirty (30) days written notice by Landlord for failure to cure a material default for payment of amounts due under this Lease within that thirty (30) day period;

(b) upon thirty (30) days written notice by either party if the other party defaults and fails to cure or commence curing such default within that thirty (30) day period, or such longer period as may be required to diligently complete a cure commenced within that thirty (30) day period;

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

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

(e) immediately upon written notice if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction;

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

9. **Taxes.** Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities by the State of South Dakota. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property. In the event that Landlord fails to pay said taxes, then Tenant shall have the right but not the obligation to pay said taxes and deduct them from Rent amounts due under this Lease.

10. Insurance and Subrogation.

(a) Tenant will provide Commercial General Liability Insurance in an aggregate amount of \$1,000,000 and name Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

11. Hold Harmless. Tenant agrees to hold Landlord harmless from claims arising from the installation, use, maintenance, repair or removal of the Antenna Facilities, except for claims arising from the negligence or intentional act or omission of Landlord, its employees, agents or contractors.

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

If to Tenant, to:

WWC License, LLC  
Attn: Legal (Leasing) Dept.  
3650 131<sup>st</sup> Ave., SE  
Bellevue, Washington 98006  
Phone: (425) 586-8700  
Fax: (425) 586-8118

With a copy to:

WWC License, LLC  
Attn: Regulatory Department  
3650 131<sup>st</sup> Ave., S.E.  
Bellevue, Washington 98006  
Phone: (425) 586-8700  
Fax: (425) 586-8118

If to Landlord to:

Oglala Sioux Tribe  
Attn: Economic Development Office  
P.O. Box 669  
Pine Ridge, South Dakota 57770  
Phone: (605)867-5771  
Fax: (605)867-1471

13. Quiet Enjoyment, Title and Authority.

(a) Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) Landlord has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance

of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.

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

#### 14. Environmental Laws.

(a) Tenant represents, warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws. Landlord represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable Environmental Laws and that the Property is free of Hazardous Substance as of the date of this Lease.

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

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

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

(e) The indemnifications in this section specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

#### 15. Assignment and Subleasing.

(a) Tenant may assign this Lease upon written notice to Landlord. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord, only if such sublease is subject to the provisions of this Lease.

(b) 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 mortgagees, deed of trust beneficiaries, or holders of security interests, including their successors or assigns, (hereinafter collectively referred to as "Mortgagees" and individually as "Mortgagee"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagee located on the Premises, except that the cure period for any Mortgagee shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 8 of this Lease. All such notices to Mortgagee shall be sent to Mortgagee at the address specified by Tenant upon entering into a financing agreement. Failure by Landlord to give Mortgagee such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagee to cure any default and to remove any property of Tenant or Mortgagee located on the Premises, as provided in Section 17 of this Lease.

16. Successors and Assigns. This Lease and any easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

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

18. Jurisdiction, Choice of Law and Dispute Resolution. The provisions governing Jurisdiction, Choice of Law and Dispute Resolution in the Tate Woglaka Service Agreement between Oglala Sioux Tribe and Western Wireless Corporation, dated August 21, 2000, shall be incorporated herein and shall Jurisdiction, choice of Law, and Dispute Resolution under this Lease.

19. Miscellaneous.

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

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

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

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

(e) Each party agrees to cooperate with the other in executing any documents necessary to protect its rights or use of the Premises.

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

(g) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties intend that the provisions of this Lease be enforced to the fullest extent permitted by applicable law. Accordingly, the parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

(h) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(i) The submission of this document for examination does not constitute an offer to lease or a reservation of or option for the Premises and shall become effective only upon execution by both Tenant and Landlord.

(j) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(k) The parties understand and acknowledge that Exhibit A (the legal description of the Property), Exhibit B (the Premises location within the Property) may be attached to this Lease in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and/or B, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Tenant with such final, more complete exhibit(s).

EXECUTED as of the date, or later of the dates, set forth in the respective acknowledgments of the parties hereto.

LANDLORD: OGLALA SIOUX TRIBE, a federally recognized Indian tribe

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

Its: \_\_\_\_\_

FID/SS#: \_\_\_\_\_

TENANT: WWC License LLC,  
a Delaware limited liability company

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

Gene DeJordy

Its: Vice-President

**EXHIBIT A**

**Legal Description**

To the Site Lease dated \_\_\_\_\_, 200\_, ("Commencement Date") between Oglala Sioux Tribe, a federally recognized Indian tribe, as Landlord, and WWC License, LLC, a Delaware limited liability company, as Tenant.

**The Property is legally described as follows:**

**EXHIBIT B**

**Premises Location Within the Property**

To the Site Lease dated \_\_\_\_\_, 200\_, ("Commencement Date") between Oglala Sioux Tribe, a federally recognized Indian tribe, as Landlord, and WWC License, LLC, a Delaware limited liability company, as Tenant.

**The location of the Premises (including easements) within the Property is more particularly described and depicted as follows:**

Exhibit C  
**Universal Service Proposal**

Exhibit D

**JURISDICTION OF OGLALA SIOUX TRIBE TO  
AUTHORIZE THE TATE WOGLAKA SERVICE  
AGREEMENT**

Regulatory Authorization

**Section 1-101. Findings**

The Oglala Sioux Tribe, a Federally recognized Indian tribe, through the elected Oglala Sioux Tribal Council, acting pursuant to its inherent sovereign governmental authority and the enumerated powers under the Constitution and Bylaws of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation finds that –

**(1) Inherent Tribal Sovereign Power to Regulate Utilities**

The power to regulate is an inherent and essential part of the authority of any reservation tribal government. This power is, therefore, an aspect of the retained sovereignty of the Oglala Sioux Tribe except where it has been limited or withdrawn by Federal law. The Oglala Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and Bylaws of the Oglala Sioux tribe of the Pine Ridge Indian Reservation of South Dakota, Article 4, Section 1(f), (g), (m) and (t), approved on January 15, 1936 and amended December 24, 1969 and December 3, 1985 and July 11, 1997.

Permits, Licenses, and Regulation Requirements

The permitting, licensing and regulation are governed by the Oglala Sioux Tribal Utilities Commission pursuant to the ordinances, rules and regulations duly adopted by the Oglala Sioux Tribal Council.

**Exhibit E**

**Oglala Sioux Tribal Resolution**

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL  
OF THE OGLALA SIOUX TRIBE  
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBE TO APPROVE THE TATE WOGLAKA CONTRACT WITH WESTERN WIRELESS CORPORATION THAT WILL ESTABLISH A RESIDENTIAL WIRELESS TELECOMMUNICATIONS SYSTEM TO PROVIDE WIRELESS TELEPHONE COMMUNICATIONS CAPABILITY FOR THE ENTIRE PINE RIDGE INDIAN RESERVATION.

WHEREAS, the Oglala Sioux Tribe, was organized under an amended Constitution and By-Laws, approved January 15, 1936, and amended on December 24, 1969, December 3, 1985 and July 11, 1997, for the purpose of serving the members of the Tribe, and

WHEREAS, the Oglala Sioux Tribe has recognized that more than 50% of the residents of the Pine Ridge Indian Reservation have either no telephone service or are unable to afford telephone service, and

WHEREAS, the Western Wireless Corporation has recognized the sovereign powers of the Oglala Sioux Tribe that regulate services on the Pine Ridge Indian Reservation, and

WHEREAS, this project will provide the Pine Ridge Indian Reservation with 100% telephone penetration rate capability, and will provide for the subsequent phases of development and maintenance, promote public safety and provide for maximum service delivery to the residents of the Pine Ridge Indian Reservation, and

WHEREAS, the Economic and Business Development Committee of the Oglala Sioux Tribe has reviewed, approved and hereby recommends to the Oglala Sioux Tribal Council that this contract is in the best interest of the Tribe, and

WHEREAS, expeditious action by Tribal Officials is of extreme importance, now

THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribal Council, does hereby authorize that Acting Tribal President to sign the Tate Woglaka Contract with Western Wireless Corporation, and

RESOLUTION NO. 00-87

Page Two

BE IT FURTHER RESOLVED, that the Oglala Sioux Tribal Council does hereby authorize a limited waiver of Sovereign Immunity, specific to this agreement and limited to the terms and conditions of this agreement, and

BE IT FURTHER RESOLVED, that the Oglala Sioux Tribal Council directs all Tribal Committees and Agencies to act expeditiously in coordinating all efforts with the Oglala Sioux Tribe Economic Development Office to establish this residential wireless telecommunications system.

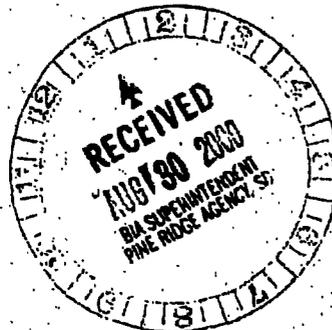
C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Recording Secretary of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe, hereby certify that this resolution was adopted by the vote of: 8 for; 6 against; 0 abstain; 0 not voting, during a REGULAR SESSION held on this 21ST day of AUGUST, 2000.

*Jocelyn Gibbons*  
\_\_\_\_\_  
JOCELYN GIBBONS  
Recording Secretary  
Oglala Sioux Tribe

A-T-T-E-S-T:

*Wilbur Between Lodges*  
\_\_\_\_\_  
WILBUR BETWEEN LODGES  
Vice-President  
Oglala Sioux Tribe



Addendum 1