

**SECOND AMENDMENT TO ROOFTOP LEASE WITH OPTION  
AND ADDENDUM [Additional Terms]  
C2003-144B**

**THIS SECOND AMENDMENT TO THE ROOFTOP LEASE WITH OPTION AND ADDENDUM TO ROOFTOP LEASE WITH OPTION** (“Second Amendment”) is between the **City of Tempe**, an Arizona municipal corporation (hereinafter referred to as “Landlord”) and **T-Mobile West LLC**, a Delaware limited liability company, formerly known as T-Mobile West Corporation with its principal office located at 2625 S. Plaza Drive, Suite 400, Tempe, AZ 85282 (“Tenant”).

**WITNESSETH:**

**WHEREAS**, Landlord and VoiceStream PCS III Corporation (“VoiceStream”), predecessor-in-interest to Tenant, executed and entered into a certain Rooftop Lease With Option, which incorporated additional terms as set forth in the Addendum To Rooftop Lease With Option (hereinafter collectively referred to as the “Lease”), effective July 17, 2003, allowing the Tenant to use a portion of the building located at 525 S. Mill Ave. in Tempe, Arizona for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities; and

**WHEREAS**, Tenant is the successor in interest to VoiceStream’s interest in and to the Lease; and

**WHEREAS**, the Lease was subsequently amended by the First Amendment to Rooftop Lease With Option and Addendum dated February 24, 2011 (the “First Amendment”). The Lease as amended by the First Amendment is hereinafter referred to as the “Amended Lease”; and

**WHEREAS**, Tenant wishes to replace existing cellular equipment with new Long Term Evolution Technology (LTE) consisting of (3) 4G-LTE Radio Head (FRIG), (3) System Modules (FRIE) and (3) Fiber Junction Boxes (COVP) on additional space within the Property; and

**WHEREAS**, Landlord and Tenant desire to amend certain provisions of the Lease to include the consent to replace the antennas, add the equipment, and right to lease additional space on the Property for such purposes; and

**NOW, THEREFORE**, in consideration of the mutual covenants and promises and other consideration set forth in this Second Amendment, Landlord and Tenant hereby agree as follows:

Site Number: PH 40250 C  
Site Name: 525 Building  
Market: Phoenix

Second Amendment to Rooftop Lease C2003-144B

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1. Landlord hereby consents to the replacement of the antennas with the new antennas depicted on Exhibit 1, subject to receiving the appropriate governmental approvals through Landlord's Planning and Building Safety departments.
2. The following subsection (d) is hereby added to the end of Section 1. Option to Lease:

(d) For the consideration given through the Second Amendment to this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord an additional, seven (7) square feet of space on the Property for the placement of one (1) COVP, one (1) FRIE and one (1) FRIG as parapet mounted equipment. Two (2) COVP, two (2) FRIE and two (2) FRIG shall be located behind existing screened sectors. See Exhibit 1.

3. **The following sentence is hereby added at the end of Section 2. Term:**

The word "Term" refers to both the Initial Term and Renewal Term (as defined below).

4. **Section 3. Permitted Use shall be amended by deleting the existing language (as amended by the Addendum) and substituting the following language in its place:**

Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance and repair of related support facilities (such as antennas, microwave dishes, equipment shelters and/or cabinets) but only for the provision of what is commonly known as cellular telephone service (whether or not technically referred to as Personal Communications Service, or some other term) by the use of "personal wireless services facilities" (as such phrase is defined in § 704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c)(7)(C)(2), hereinafter "1996 Act Section 704") and not for any other purpose. Tenant shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) as required for Tenant's operation, use, maintenance, construction and/or installation of the Antenna Facilities and Tenant improvements at the Premises.

5. **Section 4. Rent will be amended by adding the following sentence as follows:**

Beginning on the first day of the second Renewal Term (August 25, 2013) and

continuing through the last day of the second Renewal Term (August 24, 2018), the base rent will increase to \$ 2,500.00 per month (plus all applicable taxes). Thereafter the Rent will continue to increase as per Section 5 of the Amended Lease.

**The following language is hereby added at the end of Section 4. Rent:**

Invoices for any rent due shall be sent to:

T-Mobile West LLC  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn.: Lease Compliance  
Site No.: PH40250C

Checks for rent shall be sent to:

City of Tempe  
Contract Administrator for C2003-144B  
Public Works Dept. – Engineering Division  
Garden Level  
31 E. 5<sup>th</sup> St.  
Tempe, AZ 85281

**6. The following language is hereby added at the end of Section 6.**

**Interference:**

Tenant acknowledges that the 525 Building is currently in use and will continue to be in use during the Term. If Landlord requires access to the roof of the 525 Building for its operations or to perform maintenance or repair work and, pursuant to applicable law, Tenant would be required to temporarily cease or modify its operations for Landlord's completion of such activities in order to protect the health, safety and welfare of workers or other persons, then Tenant shall temporarily cease or modify its operations and reasonably cooperate with Landlord so that it may perform such work. In such event, Landlord shall use diligent efforts to timely complete such work as to minimize the amount of time that Tenant is unable to operate its equipment from the roof of the 525 Building. During any period in which Tenant is not able to operate its Antenna Facilities as a result of the foregoing, Landlord will use good faith, diligent efforts to provide Tenant with an alternative space within the Property for placement and operation of temporary Antenna Facilities.

In addition, Tenant shall install and maintain its antennas, cables, and cable trays in a manner which does not damage the roof of the 525 Building or any portion of it. Tenant shall repair any damages to the 525 Building to the extent caused by its use of and operations from the Premises; provided, however, Tenant shall have

no obligation to repair damages caused by normal wear and tear.

Reference is made to that certain TMO MAT RF Compliance Report dated May 16, 2013 prepared by EBI Consulting as EBI Project No. 62135748 (the "EBI Report"). Tenant shall provide signage at the Premises as required by applicable law and as recommended in the EBI Report.

7. **A portion of Section 7. Improvements; Utilities; Access is hereby amended as follows:**

The words "tower and base" shall be deleted from subsection (a).

**The following language is hereby added to the end of subsection (a):**

Any replacement or enhancement of the Antenna Facilities shall not alter the physical and aesthetic design without Landlord's consent, which shall not be unreasonably withheld or delayed. If any lien is filed against the Premises or Property as a result of acts or omissions of Tenant or Tenant's employees, agents or contractors, Tenant shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Landlord within thirty (30) days after Tenant receives written notice that the lien has been filed.

**The following sentence is hereby added to subsection (c) of Section 7. Improvements; Utilities; Access:**

Notwithstanding any other provision of this Amended Lease, Tenant's obligation to pay Rent hereunder shall continue until Tenant has complied with this subsection (c).

**The following language is hereby added as subsection (h) of Section 7. Improvements; Utilities; Access:**

Any contractor Tenant hires to perform construction on the Property shall be a licensed, bonded contractor with a current, valid license with the City of Tempe.

**The following language is hereby added as subsection (i) of Section 7. Improvements; Utilities; Access:**

Tenant shall, prior to commencing any construction on the Property, post a performance bond in form and with a surety company reasonably acceptable to Landlord, assuring that the improvements will be constructed without the attachment of any construction liens, which bond shall expire after the completion of the lien filing period. Following completion of construction, but no later than August 1, 2013, Tenant shall provide Landlord with a bond from a surety company reasonably acceptable to Landlord in an amount reasonably deemed necessary to

assure that the funds will be available at the termination of the Lease Term for the removal of the electronic equipment, Antenna facilities, and all other Tenant improvements. The amount of the bond will be no less than Ten Thousand Dollars (\$10,000.00).

8. **Section 10. Insurance and Subrogation is hereby amended as follows:**

**The first sentence shall be amended to be consistent with Section 10.4 added by the First Amendment by replacing “One Million and no/100 Dollars (\$1,000,000.00)” with “Ten Million and no/100 Dollars (\$10,000,000.00)” so the sentence will read as follows:**

Tenant will provide Commercial General Liability Insurance in an aggregate amount of Ten Million and no/100 Dollars (\$10,000,000.00).

9. **The following language is hereby added at the end of Section 11. Hold Harmless:**

Notwithstanding the preceding, Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant’s construction, maintenance, repair, use, operation, condition or dismantling of the electronic equipment, Antenna facilities or Premises, and Tenant hereby agrees to defend, indemnify and hold harmless the Landlord from and against any claim asserted or liability imposed upon the Landlord to the extent any such injury or damage is caused by the negligent or willful misconduct of Tenant or its employees, agents or contractors.

10. **For Section 12. Notices,**

Notices shall be sent to the addresses listed below.

PCS Lease Administrator  
T-Mobile USA Inc.  
12920 SE 38<sup>th</sup> St.  
Bellevue, WA 98006  
Attn: Lease Compliance  
Site No: PH40250C

11. **The following language is hereby added at the end of Section 17. Waiver of Landlord’s Lien:**

Should Tenant fail to remove its electronic equipment and/or Antenna facilities as required by this Lease then, after sixty (60) days’ of Tenant’s and its mortgagee’s receipt of written notice and continued failure to

remove such equipment, the waiver of lien rights is void; provided, no such notice to Tenant's mortgagee will be required unless Tenant has previously provided Landlord, in writing, the name of such mortgagee and its notice address.

**12. Section 18. Miscellaneous is hereby amended as follows:**

**The following language is hereby added as subsection (f):**

(f) No provision of this Lease will be deemed waived by either Party unless expressly waived in writing signed by the waiving Party. No waiver shall be implied by delay or any other act of omission of either Party. No waiver by either Part of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

**A new subsection (l) shall be added as follows:**

Landlord hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Premises.

**13. Changes to Section 19. Treatment in Bankruptcy.** This Section was added by the First Amendment, but it needs to be renumbered to become Section 20 since there was already a Section 19 (Force Majeure) that was added to the original Lease by the Addendum. Accordingly, Section 19. Treatment in Bankruptcy as added by the First Amendment is hereby renumbered to become Section 20.

14. Except as expressly amended by specific provisions of this Second Amendment, the original Lease, the Addendum and the First Amendment and the parties' respective rights and obligations related to the original Lease, the Addendum and the First Amendment to it are not affected by this Amendment.

15. Except as amended herein, all terms, conditions, provisions, covenants and agreements contained in the Amended Lease are hereby ratified and confirmed in their entirety. The terms used herein and not otherwise defined in this Second Amendment shall have the same meaning as set forth in the Amended Lease.

16. The Second Amendment Effective Date shall be 30 days from the date the City Council has approved the ordinance authorizing the Mayor to sign the Second Amendment. Landlord shall provide Tenant with written notice of such approval within three (3) business days of such approval.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on this \_\_\_\_\_ day of August, 2013.

LANDLORD: City of Tempe, an Arizona municipal corporation

By: \_\_\_\_\_  
Printed Name: Mark W. Mitchell  
Its: Mayor

ATTEST: \_\_\_\_\_  
Brigitta M. Kuiper, City Clerk

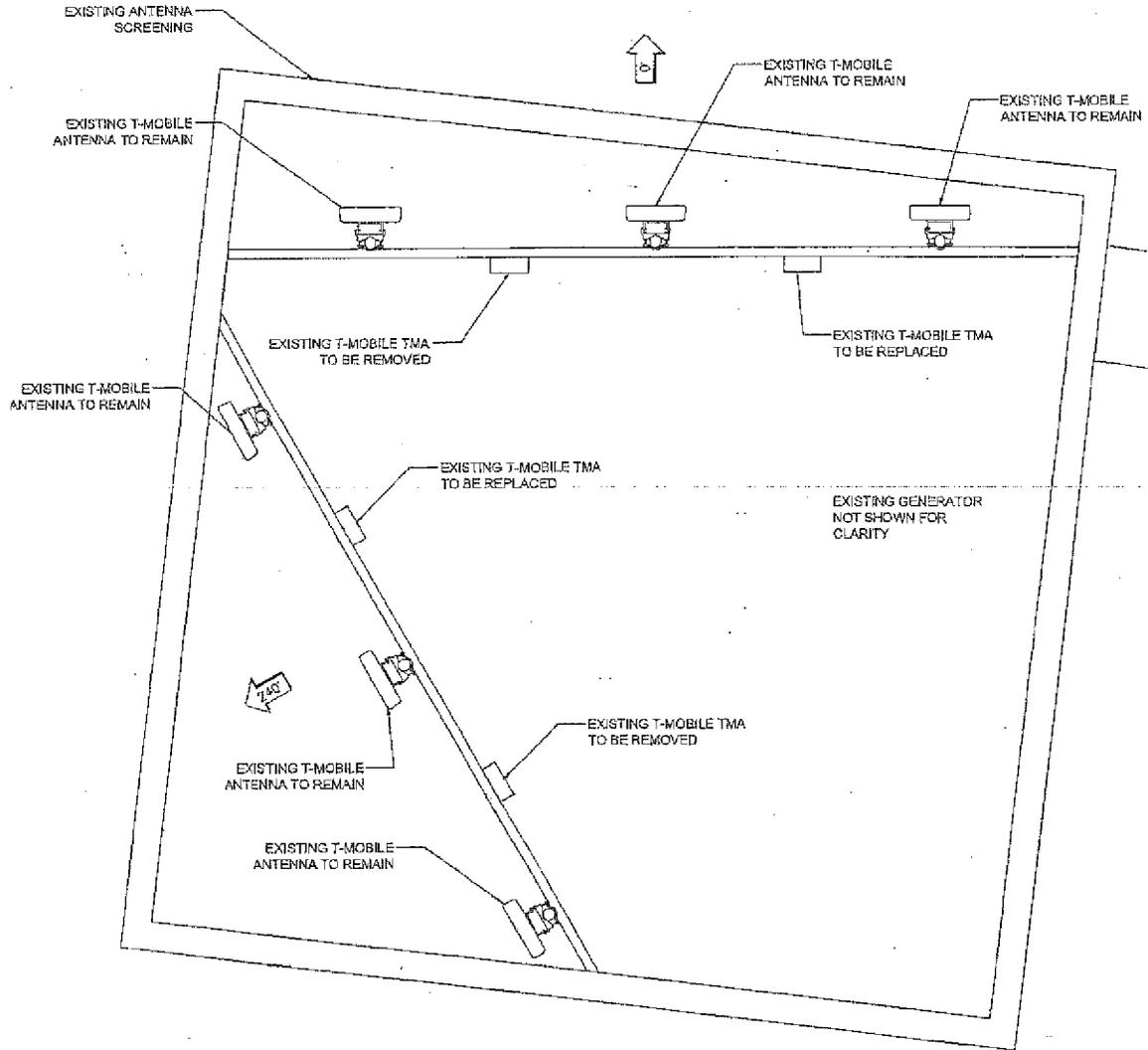
APPROVED AS TO FORM: \_\_\_\_\_  
Judith R. Baumann, City Attorney

TENANT: T-Mobile West LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: Danny Bazerman  
Its: Regional Director, Southwest  
Date: Engineering & Operations  
7/28/13

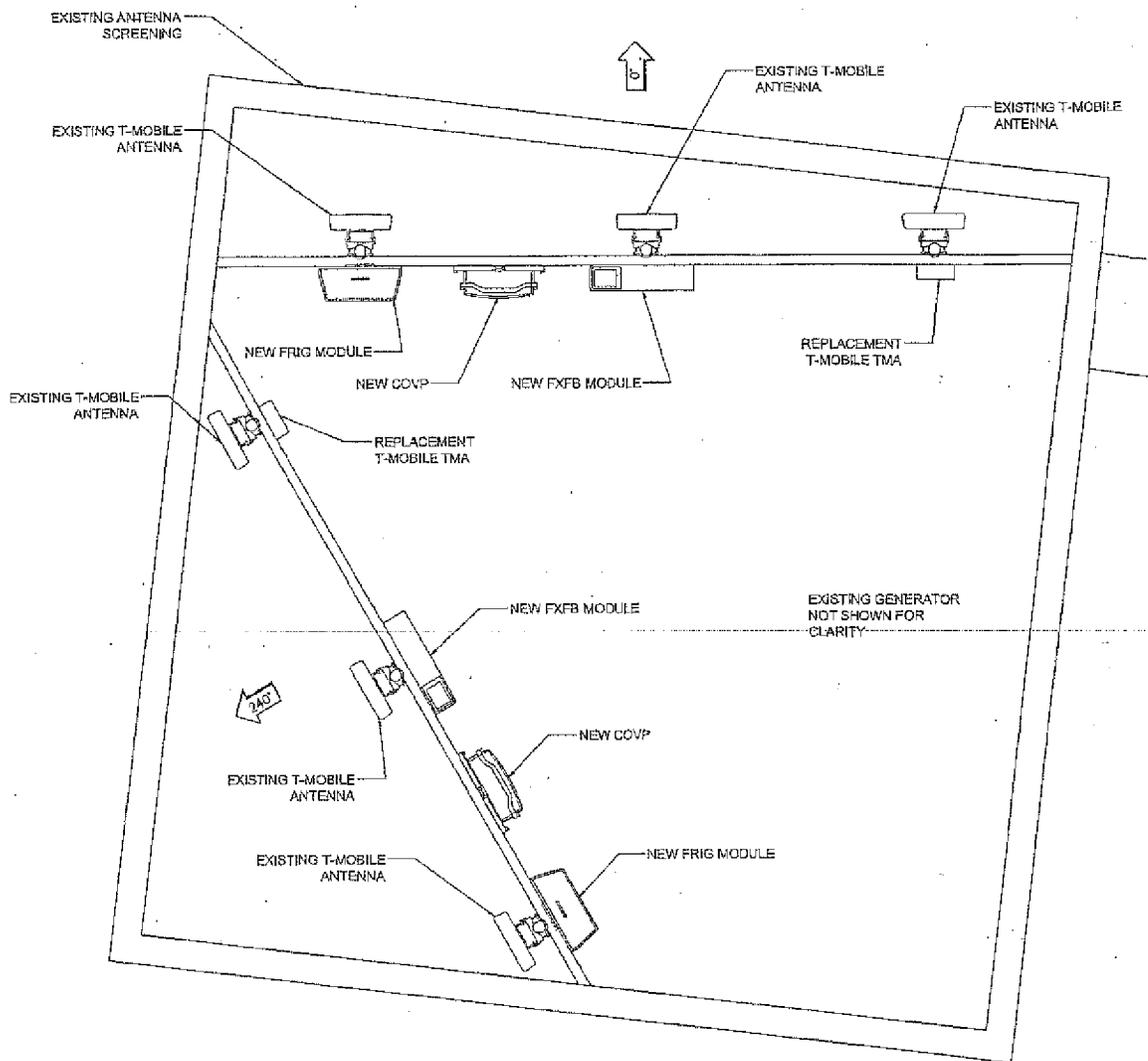
APPROVED AS TO FORM: \_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: Monica Stoboda  
Its: Corporate Counsel

EXHIBIT "1  
SHEET 1 OF 4"



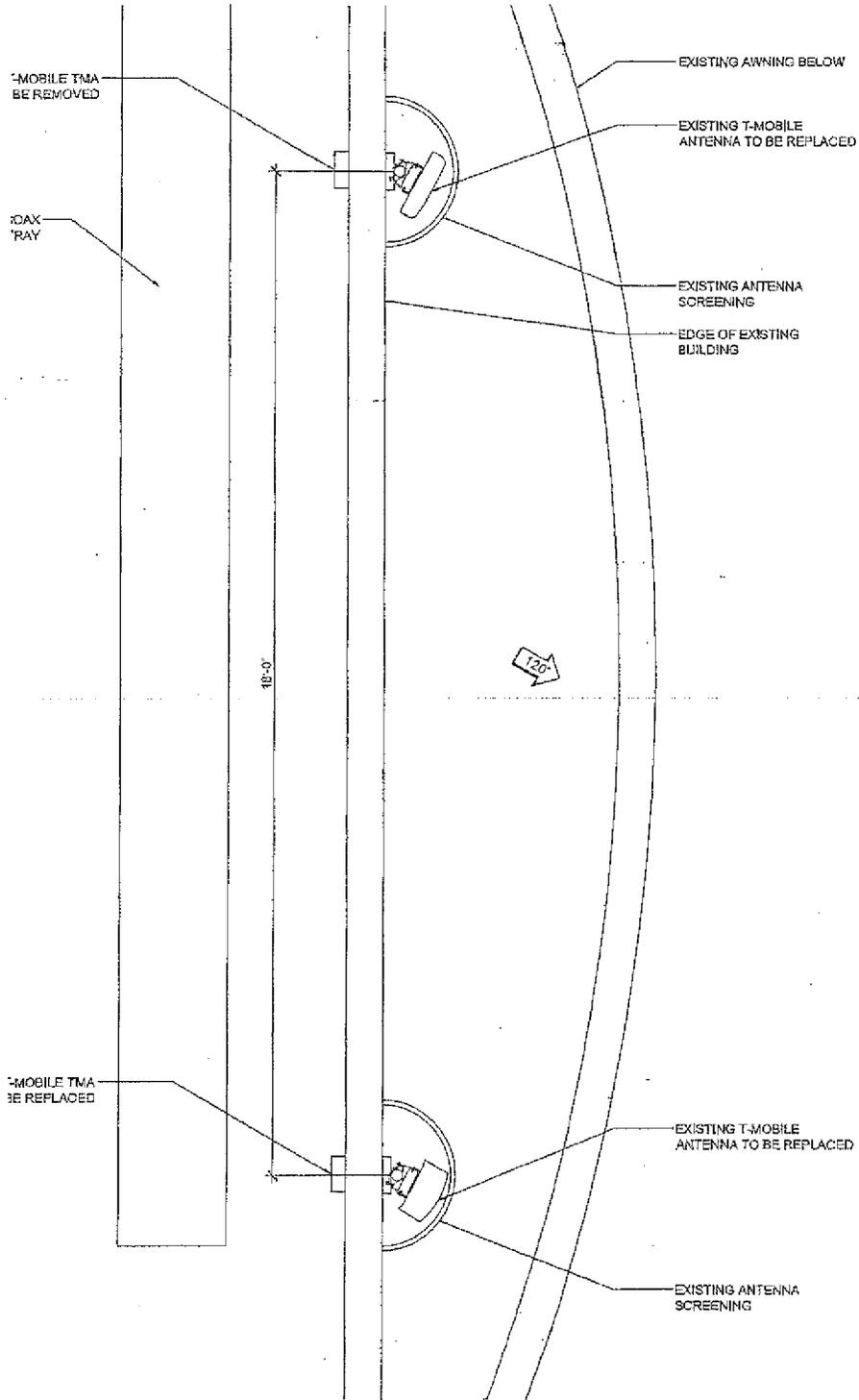
EXISTING ANTENNA LAYOUT (ALPHA & GAMMA)

EXHIBIT '1  
SHEET 2 OF 4"



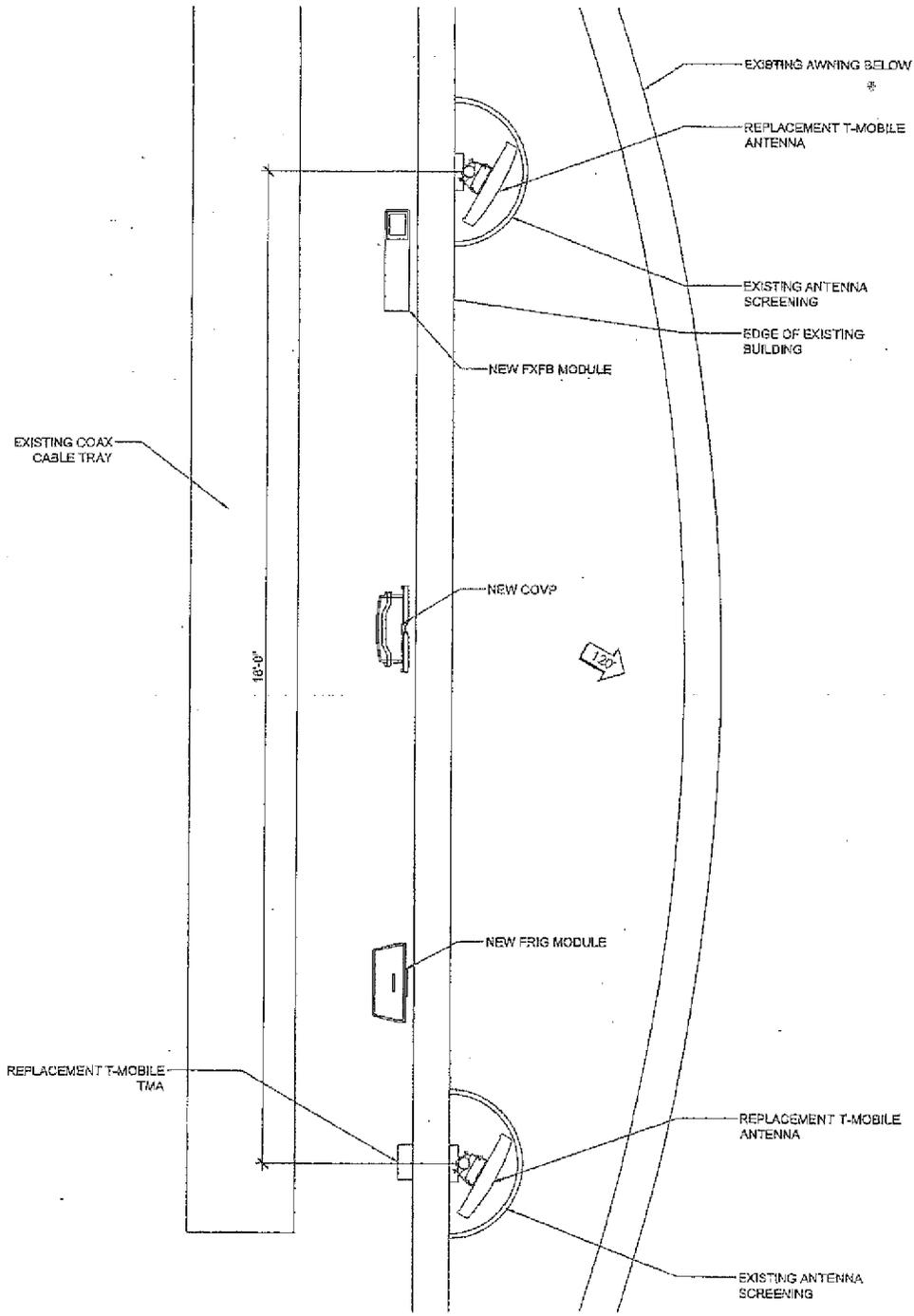
NEW ANTENNA LAYOUT (ALPHA & GAMMA)

EXHIBIT "1  
SHEET 3 OF 4"



EXISTING ANTENNA LAYOUT (BETA)

EXHIBIT "1  
SHEET 4 OF 4"



NEW ANTENNA LAYOUT (BETA)