



FLOYD COUNTY BOARD OF EDUCATION
Anna Whitaker Shepherd, Superintendent
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Linda C. Gearheart, Board Chair - District 1
William Newsome, Jr., Vice-Chair - District 3
Dr. Chandra Varia, Member- District 2
Keith Smallwood, Member - District 4
Steve Slone, Member - District 5

Consent Agenda Item (Action Item):

Consider/Approve lease agreement with Appalachian Wireless for tower space usage.

Applicable State or Regulations:

BOE 06.2 AP.12 Use of communication Devices on Buses

BOE 01.11 General Powers and Duties of the Board

Fiscal/Budgetary Impact:

As consideration for the rights granted herein, Lessee shall pay to Lessor Rent in the amount of \$325.00 per month (the “Rent”). Rent shall be paid in advance, due on the first day of each month. Prorated Rent for the first month shall be due within five (5) days of the Effective Date. The Rent shall be increased annually by one percent (1%) on the first day of the month in which the anniversary of the Effective Date falls. The term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years (the “Initial Term”).

History/Background:

The current tower that houses our “repeater” system (that drives the overall communication radios in our buses) is being discontinued by Inter-Mountain Cable. It will need to be moved to an Appalachian Wireless tower located in Martin KY. The purpose of these radios in buses is to provide instant communication with the base units (located in the bus garage) in case of an accident, mechanical problems or a misplaced child.

Recommended Action:

Approve as written.

Contact Person(s):

Wes Halbert, Transportation
606-285-9443

W/A
Principal

Wes Halbert
Director

Anna Whitaker Shepherd
Superintendent

Date: 1/13/2023

ANTENNA SITE LEASE AGREEMENT

THIS ANTENNA SITE LEASE AGREEMENT (the "**Agreement**") is made, entered into, and effective this ___ day of _____, 2023 (the "**Effective Date**"), by and between East Kentucky Network, LLC d/b/a Appalachian Wireless ("**Lessor**"), a Kentucky limited liability company, with an address of 101 Technology Trail, Ivel, Kentucky 41642, and Floyd County Board of Education ("**Lessee**"), with an address of 183 N Arnold Ave., Prestonsburg, KY 41653.

Lessor and Lessee hereby agree as follows:

1. **PREMISES.** Lessor owns or controls a communications facility located at 173 Cracker Bottom Road, Martin, KY 41649, commonly known as the Martin Site, and hereinafter referred to as the "**Premises**". The tower on the Premises is FCC Tower Registration Number 1256036 (the "**Tower**").

2. **GRANT OF LICENSE; PERMITTED EQUIPMENT.** Lessor hereby grants unto Lessee the right to install the equipment listed in **Exhibit A**, attached hereto and made a part herein, at the Tower heights specified therein (the "**Permitted Equipment**"). Lessee is not permitted to install any other equipment nor to move the Permitted Equipment without the prior written consent of Lessor, which if allowed may also result in an increase in the rental rate. Lessor also grants unto Lessee a nonexclusive easement for ingress and egress to and from the Premises on the same access road used by Lessor and ground space on the Premises as described in Exhibit A for a cabinet at a location to be mutually agreed upon by Lessor and Lessee.

3. **RENT.** As consideration for the rights granted herein, Lessee shall pay to Lessor rent in the amount of \$325.00 per month (the "**Rent**"). Rent shall be paid in advance, due on the first day of each month. Prorated Rent for the first month shall be due within five (5) days of the Effective Date. The Rent shall be increased annually by one percent (1%) on the first day of the month in which the anniversary of the Effective Date falls.

4. **TERM.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years (the "**Initial Term**"). Thereafter, this Agreement shall automatically renew for up to seven (7) additional terms of five (5) years each (each one a "**Renewal Term**") unless Lessee provides to Lessor written notice of its election not to renew within sixty (60) days of expiration of the then-existing Term. If Lessee is permitted to hold over at the conclusion of the final Renewal Term, it shall create a month-to-month tenancy subject to all of the terms and provisions of this Agreement, and during such month-to-month tenancy, either party may terminate this Agreement on thirty (30) days written notice for any reason without liability to the other party for such termination.

5. **ACCESS.** Lessee shall have the right to enter the Premises at all times for the construction and maintenance of Lessee's Permitted Equipment and actions related thereto, subject to any reasonable policies and procedures communicated by Lessor to Lessee.

6. **UTILITIES.** Lessee shall be solely responsible for its own utility connections, costs, and expenses, including but not limited to back-up electric power.

7. **TAXES.** Lessor shall be responsible for payment of all taxes levied upon the lands, improvements and other property of Lessor, except that Lessee shall be responsible for any increase in real property taxes that results from Lessee's operations or improvements on the Premises. Lessee shall be responsible for all taxes levied upon Lessee's equipment, other tangible property and leasehold improvements on the Premises.

8. **CONDITION OF PREMISES; TITLE.** Lessee represents and warrants that Lessee has had the opportunity to make any and all inspections and evaluations it deems necessary and that Lessee has concluded, in Lessee's own judgment and discretion and without reliance on any statement or representation of Lessor, that the Premises are adequate and appropriate for Lessee's intended uses **AS IS**, without warranty of any kind from Lessor. Lessee shall be solely responsible for Lessee's Permitted Equipment and any other property of Lessee on or about the Premises, including but not limited to any damage or casualty.

Lessee acknowledges and agrees that Lessee has had the opportunity to examine the title to the Premises, that Lessee is relying upon its own examination of the title and not on any representations of the Lessor, and that Lessor has made no warranties concerning the title to the Premises. To the best of Lessor's actual knowledge, Lessor states that Lessor has the authority to make and perform this Agreement.

9. **COMPLIANCE WITH LAWS.** Lessee warrants and represents that it will comply with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or other laws while conducting any activities relating to the Premises or this Agreement. Lessee shall perform all repairs and maintenance necessary or appropriate to keep the Lessee's facilities on or about the Premises or located on any appurtenant rights-of-way or access to the Premises in good and tenantable condition.

10. **APPROVALS.** Prior to the initial installation of the Permitted Equipment or any material modification thereof, Lessee shall submit its construction and installation plans and list of contractors and/or subcontractors to Lessor in writing for Lessor's approval. Lessee shall be responsible for grounding all external and internal wiring and cabling installed by Lessee and must obtain prior written approval of such grounding plans from Lessor. Any requirement in this agreement that Lessee obtain the prior written consent or approval of Lessor is for the sole and exclusive benefit of Lessor, is not for the benefit of the Lessee or any third-party, shall not be relied upon for any purpose by Lessee or any third-party, and is not intended to and shall not create any duty, obligation, or liability on the part of the Lessor.

11. **INTERFERENCE.** Lessee shall, at its own expense, maintain any equipment or items on or attached to the Premises in safe condition, in good repair, and in a manner suitable to Lessor so as not to conflict or interfere with the use of Lessor or any other permitted user(s). In the event Lessee's equipment causes such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference upon receipt of written notification of the interference.

12. **INDEMNITY.** Lessee agrees to indemnify, defend and hold harmless Lessor and Lessor's officers, owners, managers, members, directors, employees, agents, representatives,

lessors, and all other affiliated persons and entities (the "Indemnified Parties") from and against any and all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities (including reasonable attorneys' fees and court costs) arising from or relating to, directly or indirectly, the installation, use, presence, maintenance, repair or removal of the Permitted Equipment or any activities relating thereto, this Agreement, or Lessee's breach of any provision of this Agreement. Lessee's duty to fully indemnify, defend, and hold harmless the Indemnified Parties shall apply regardless of whether the subject claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities were caused in whole or in part by any negligent or other tortious conduct on the part of the Indemnified Parties. This Paragraph shall survive the termination of the Agreement.

13. **INSURANCE.** Lessee shall procure and maintain at its sole cost and expense insurance policies in respective amounts not less than those set forth in this Paragraph.

Commercial General Liability Insurance	\$1,000,000.00 per occurrence and in the aggregate
Workers' Compensation Insurance	Statutory Limits
Employer's Liability Insurance	\$1,000,000.00
Automobile Liability Insurance	\$1,000,000.00 per accident
Excess Liability Insurance	\$2,000,000.00 per occurrence and in the aggregate.
	* Any combination of primary and excess may be used to meet required total limits.

Lessee shall instruct Lessee's insurer or insurance agent to submit Certificates of Insurance to Lessor demonstrating: (a.) the existence of insurance with the minimum limits set forth above; (b.) that the Indemnified Parties are named as additional insureds on all such policies except for the Workers' Compensation policy; (c.) that Lessor is a certificate holder and will receive notice of any material changes made on the policies; (d.) that the insurance will not be cancelled without thirty (30) days advance written notice to Lessor; (e.) that the policies are endorsed to provide for waiver of subrogation against the Indemnified Parties; and (f.) that the insurance procured by Lessee hereunder shall be primary and noncontributory to any other insurance that may be available to the Indemnified Parties. It is the sole responsibility of the Lessee to make sure that all insurance and all required Certificates of Insurance on record with Lessor are complete and current. Lessee's contractors and/or subcontractors shall be required to meet the same minimum insurance requirements as Lessee and to direct their insurer or insurance agent to submit Certificates of Insurance to Lessor satisfying all of the requirements set forth in this paragraph.

14. **LIMITATION OF LIABILITY.** Except for the indemnity obligations set forth in this Agreement, Lessee and Lessor each waives any claims that each may have against the other with respect to consequential, incidental, or punitive damages, including but not limited to alleged lost profits, however caused, based on any theory of liability.

15. **DEFAULT AND TERMINATION.** The following shall be deemed a default under this Agreement: (a) non-payment of Rent by Lessee if such Rent remains unpaid for more

than ten (10) days after receipt of written notice from Lessor of such failure to pay; (b) either party becoming bankrupt, insolvent, or filing a voluntary petition in bankruptcy, having an involuntary petition in bankruptcy filed against such party which cannot be dismissed by such party within sixty (60) days of the date of the filing of the involuntary petition, filing for reorganization or arranging for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of said party's assets, or said party making an assignment for such purposes for the benefit of creditors; or (c) a material breach of this Agreement by either party that remains uncured twenty (20) days after receipt of written notice from the other party specifying the breach. In the event of a default, this Agreement may be terminated by written notice of immediate termination from the non-defaulting party after expiration of the cure periods set forth above.

16. **ASSIGNMENT.** Lessee may not assign, sublease, or otherwise transfer this Agreement or any of Lessee's rights and obligations hereunder without the prior written consent of Lessor.

17. **NOTICES.** All notices, requests, and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Lessee:

Floyd County Board of Education
183 N. Arnold Ave.
Prestonsburg, KY 41653

If to Lessor:

East Kentucky Network, LLC d/b/a Appalachian Wireless
Attn: Regulatory Compliance Department
101 Technology Trail
Ivel, Kentucky 41642
(606) 477-2355
compliance@ekn.com

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

18. **GOVERNING LAW.** This Agreement will be governed by the laws of the Commonwealth of Kentucky, without regard to principles of conflicts of law. The Parties further agree that the courts of the Commonwealth of Kentucky shall have exclusive jurisdiction to resolve any disputes that may arise between the Parties relating directly or indirectly to this Agreement or the transactions contemplated hereunder.

19. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and supersedes all prior offers, negotiations, discussions, understandings, and agreements

with respect to the subject matters hereof. This Agreement may not be amended, modified or revised unless done in writing and signed by both Lessor and Lessee. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed as a waiver and will not affect the right of either party to enforce such provision thereafter.

IN WITNESS WHEREOF, the parties execute this Agreement on the date(s) indicated below.

LESSEE:
FLOYD COUNTY BOARD OF EDUCATION

By: _____
Its: _____
Date: _____

STATE OF _____:
COUNTY OF _____:

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing document was this day produced, acknowledged, subscribed, and sworn to before me in the County and State aforesaid and signed by _____, in his capacity as the _____ of _____, this __ day of _____, 2023.

Notary Public
Commission No.: _____

My Commission Expires: _____.

[Continued on Next Page]

LESSOR:
EAST KENTUCKY NETWORK, LLC
D/B/A APPALACHIAN WIRELESS

By: _____
Its: _____
Date: _____

STATE OF _____:
COUNTY OF _____:

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing document was this day produced, acknowledged, subscribed, and sworn to before me in the County and State aforesaid and signed by _____, in his capacity as the _____ of East Kentucky Network, LLC d/b/a Appalachian Wireless, this ____ day of _____, 2023.

Notary Public
Commission No.: _____

My Commission Expires: _____.

This instrument was prepared by:

Krystal Branham, Attorney
101 Technology Trail
Ivel, KY 41642

EXHIBIT A

185' Centerline

- (1) Commander Technologies 460-470 MHz 10dB Fiberglass Omni Antenna
- (1) Side Mount
- (1) 7/8" Cable

Ground Space

4'x 4' for Cabinet