

21038

C 90-31529

COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE ("Assignment") dated this 3rd day of July, 1990, by and among TATE COMMUNICATIONS, INC., a Florida corporation with its principal office at 3301 South Expressway 83, Harlingen, Texas 78551 ("Assignor"), to AT&T COMMERCIAL FINANCE CORPORATION, a Delaware corporation, with an address at P.O. Box 468417, Atlanta, Georgia 30346 ("Assignee").

W I T N E S S E T H T H A T:

FOR VALUE RECEIVED, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Assignor, the Assignor hereby grants, transfers, conveys and assigns to the Assignee, its successors and assigns, all of the right, title and interest of the Assignor, as lessee, in and to that certain lease more particularly described in Exhibit A attached hereto and made a part hereof, covering the Premises therein described (the "Premises") leased by Roosevelt Holdings, Inc. as lessor (the "Landlord"), together with any modifications, extensions or renewals thereof, and all benefits accruing to the Assignor thereunder (said lease, together with all such modifications, extensions, renewals and benefits being hereinafter referred to as the "Lease" , for the purpose of securing payment and/or performance under (a) a certain Loan Agreement dated June 21, 1989, as amended by a Third Amendment to Loan Agreement dated

July 3, 1990 and as may be further amended from time to time between the Assignor and the Assignee as assignee of and successor-in-interest to PacifiCorp Credit, Inc. ("PCI") (the "Loan Agreement"); (b) the following promissory notes: (i) \$3,250,000 Secured Promissory Note, \$300,000 Secured Promissory Note, \$375,000 Secured Time Note and a \$93,750 Secured Accrued Interest Note all dated June 21, 1989 and issued by the Assignor to PCI and subsequently assigned to Assignee, and (ii) \$1,070,000 Secured Term Note, \$630,000 Secured Time Note and \$189,000 Secured Grid Note all dated of even date herewith and issued by the Assignor to the Assignee (collectively all of the foregoing notes referred to as the "Notes"); (c) the Hazardous Material Indemnification Agreements referred to in the Loan Agreement; and (d) those other instruments securing and/or evidencing the indebtedness of the Assignor to the Assignee (all of the foregoing indebtedness, liabilities and obligations being hereinafter collectively referred to as the "Obligations").

IN CONNECTION WITH THE FOREGOING ASSIGNMENT, THE PARTIES
HERE TO AGREE THAT:

1. The foregoing assignment shall constitute an absolute and present assignment of the Lease, subject, however, to the condition that the Assignee hereby grants the Assignor a license to utilize the Premises which shall continue in force until there shall exist or occur an "Event of Default" as defined under the Loan Agreement and/or under the Notes.

Notwithstanding anything contained herein to the contrary this assignment shall not relieve the Assignor of any of its

obligations under the Lease nor impose such obligations upon the Assignee unless the Assignee takes affirmative action to enforce its rights hereunder.

2. Upon payment in full of all of the Obligations secured hereby, this Assignment shall be void and of no effect and if recorded a release will be filed.

3. The Assignee may, in its sole discretion, record or cause to be recorded the Lease and/or this Agreement, or a memorandum of lease and/or memorandum of this Agreement.

4. The Assignor will: fulfill or perform each and every condition and covenant of the Lease by Assignor to be fulfilled or performed, give prompt notice to the Assignee of any notice of default by the Assignor under the Lease received by the Assignor together with a complete copy of any such notice; not terminate the term of the Lease or accept a surrender thereof unless required to do so by the terms of the Lease; and not waive or release the Landlord from any obligations or conditions by the Landlord to be performed under the Lease.

5. The Assignor hereby further grants to the Assignee the right, upon or at any time or times after the occurrence or existence of a default under the Lease to cure any such default(s) under the Lease, if the Assignee so elects. The exercise of any rights under this Paragraph by the Assignee shall not cure or waive any "Event of Default" by the Assignor under the Loan Agreement or the Notes, or invalidate any act done pursuant hereto, but shall be cumulative of all other rights and remedies.

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6. At the Assignor's sole cost and expense, the Assignor will appear in and defend any action growing out of or in any manner connected with the Lease or the obligations or liabilities of the Landlord, Assignor or any guarantor thereunder.

7. Should the Assignor fail to make any payment or to do any act as herein provided, then the Assignee, but without obligation herein, may, upon five (5) days' notice to the Assignor, make or do the same, including, specifically, without limiting its general powers, appearing in and defending any action purporting to affect the security hereof or the rights or powers of the Assignee and performing any obligation of the Assignor contained in the Lease, and in exercising any such powers, paying necessary costs and expenses, employing counsel and incurring and paying court costs, reasonable attorneys' fees and expenses; and the Assignor will pay immediately upon demand all sums expended by the Assignee under the authority hereof, together with interest thereon at the highest rate provided in the Loan Agreement, and the same shall be added to the Obligations of the Assignor under the Loan Agreement and shall be secured thereby and hereby.

8. Upon the occurrence of an Event of Default under the Loan Agreement or the Notes, and the passing of any applicable grace period, the Assignee, at its option, without notice, and without regard to the adequacy of security for the Obligations hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be

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appointed by a court, may: enter upon, take possession of, and operate the Premises; make, enforce and modify the Lease; and do any acts which the Assignee deems proper to protect the security hereof until all Obligations secured hereby are paid in full.

The entering upon and taking possession of the Premises shall not cure or waive any "Event of Default" under the Loan Agreement or the Notes.

9. The Assignee shall not be obligated to perform or discharge any obligation under the Lease, or under or by reason of this Assignment, and the Assignor hereby agrees to indemnify the Assignee from and against and hold it harmless from any and all liability, loss or damage which it may or might incur under the Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms of the Lease; should the Assignee incur any such liability, loss or damage under the Lease or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, together with interest thereon at the highest rate provided in the Loan Agreement, shall be secured hereby and by the Loan Agreement and the Assignor shall reimburse the Assignee therefor immediately upon demand.

10. This Assignment shall inure to the benefit of the successors and assigns of the Assignee and shall bind the Assignor's successors and assigns.

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11. All notices, requests, demands and other communications Provided for hereunder shall be in writing (including telegraphic communication) and mailed or telegraphed or delivered to the applicable party at the addresses indicated below.

If to the Assignee:

AT&T Commercial Finance Corporation
P.O. Box 468417
Atlanta, Georgia 30346
Attention: Stephen J. Turpin,
Vice President, Media Finance Group

with a copy to:

AT&T Commercial Finance Corporation
44 Whippany Road
Morristown, New Jersey 07960
Attn: Chief Counsel

and to:

Andrew J. Chlebus, Esquire
Edwards & Angell
2700 Hospital Trust Tower
Providence, Rhode Island 02903

If to the Assignor:

Tate Communications, Inc.
3301 South Expressway 83
Harlingen, Texas 78550
Attention: Harvey J. Tate, President

with a copy to:

E. Colby Cameron, Esquire
Cameron & Mittleman
56 Exchange Terrace
Providence, Rhode Island 02903

or, as to each party, at such other address as shall be designated by such parties in a written notice to the other party complying as to delivery with the terms of this Section.

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All such notices, requests, demands and other communication shall be deemed given upon the earlier to occur of (a) the third day following deposit thereof in the United States mail or deposit thereof with the telegraph company as aforesaid, or (b) receipt by the party to whom such notice is directed.

12. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the parties hereto shall agree in writing.

13. This Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska.

IN WITNESS WHEREOF, the undersigned have duly executed this Assignment as of the day and year first above written.

TATE COMMUNICATIONS, INC.

By: [Signature]

Title: President

AT&T COMMERCIAL FINANCE CORPORATION

By: [Signature]

Title: V.P. Sales

STATE OF Rhode Island
COUNTY OF Providence

The foregoing instrument was acknowledged before me this 3rd day of July 1990 by Harvey J. Tate, President of TATE COMMUNICATIONS, INC., a Florida corporation, on behalf of said corporation.

[Signature]
Notary Public

My Commission Expires [Date]

Seal:



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STATE OF *Rhode Island*
COUNTY OF *Providence*

The foregoing instrument was acknowledged before me
this *3rd* day of July 1990 by *Stephen J. Jepsen*, *the President* of AT&T
COMMERCIAL FINANCE CORPORATION, a Delaware corporation, on
behalf of the corporation.

Arthur M. Zuckerman
Notary Public
My Commission Expires

Seal:



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EXHIBIT A

Lease Agreement dated March 13, 1989 by and between Roosevelt Holdings, Inc. as lessor and Marathon Communications, Inc. ("Marathon") as lessee, as assigned by Marathon to Tate Communications, Inc. with respect to space atop a radio broadcasting tower, more specifically designated on Exhibit A-1, located on the roof of the Terminal Building, 10th and "O" Streets, Lincoln, Nebraska which is located on real estate described as Lots A, B, C, G and H of County Clerk's Subdivision of Lots 1, 2, 3, 4, 5 and 6, Block 54, Original Plat of Lincoln, Lancaster County, Nebraska.

BLOCK
NO
CC-1-6-B-54
CH
SF
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LANCASTER COUNTY, NEB.

Dan Galt
REGISTER OF DEEDS

1990 JUL 11 AM 11:41

ENTERED ON
NUMBER 241 INDEX
FILED FOR RECORD AS:

\$45.50

INST. NO. 90- 21038

NT (nd)