

Co-Location Lease Agreement

THIS CO-LOCATION LEASE AGREEMENT ("Agreement"), made this 26th day of August, 2008, by and between the Town of Carrboro, a N.C. municipal corporation having an address at 301 W. Main Street, Carrboro, North Carolina 27510 (hereinafter referred to as the "Lessor" or "Town") and SprintCom, Inc. a Kansas Corporation qualified to do business in North Carolina, having an address of 6391 Sprint Parkway, Overland Park, Kansas (hereinafter referred to as the "Lessee").

1. USE: Lessor, subject to the terms and conditions hereof, grants to Lessee the exclusive and non-revocable license (except as provided herein) to *continue* to maintain and operate the radio communications equipment and equipment housings described in Exhibit 1 attached hereto and incorporated herein by reference (hereinafter referred to as the "Equipment") on and around the base of the telecommunications tower (hereinafter referred to as the "Tower") at 301 W. Main (Town Hall in Carrboro). Lessee's use shall be at Lessee's sole risk and expense.

2. TERM: This Agreement shall commence **June 19, 2008** ("Commencement Date") and shall be for a period of **five (5) years** (hereinafter referred to as the "Initial Term") with **one (1) additional automatic renewal period of five (5) years** ("Renewal Term"). The Renewal Term shall commence **automatically** without further action on the part of the Lessor or Lessee **unless Lessee terminates this Agreement at the expiration of the Initial Term by giving Lessor not less than ninety (90) days written notice** of its intention to terminate this Agreement at the end of the Initial Term. Unless Lessee is in default under this Agreement, Lessee may have up to thirty (30) days after the termination of this Agreement within which to remove its Equipment and Building from Tower and Site. If Lessee Equipment or Building remains on Tower or Site after the termination date, then this Agreement shall remain in effect as to all obligations of Lessee except the payment of the Base Fee until the earlier of removal of all Equipment and Building or thirty (30) days from termination date.

3. LICENSE FEE:

(a) During the "Initial Term", the Lessee shall pay to Lessor a lease payment in the sum of thirty-nine thousand dollars **(\$39,000) per annum** (hereinafter sometimes referred to as the "Base Fee") which shall be paid in a single, annual installment on or around the anniversary of the Commencement Date of the lease. The Base Fee set forth above is exclusive of charges for the furnishing of any utilities such as, but not limited to, electricity, gas, water, sewer or telephone, which are the responsibility of Lessee.

If this lease agreement is finalized after any payment for 2008-2009 has been made, a second payment making up any difference between the amount paid and \$39,000 shall be due as soon as this new co-location lease agreement is signed by all parties.

All payments shall be made directly to:

Town of Carrboro Finance Department
301 W. Main St.
Carrboro, NC 27510

(b) The lease payment for any renewal term shall be adjusted upwards by 15%; making each annual payment in any renewal term will be \$44,850.

(c) Lessee shall *continue* to have a separate electric meter to measure Lessee's electric consumption and Lessee shall pay directly to the public utility company for any electricity used by Lessee's Equipment at this location.

4. **OPERATION OF EQUIPMENT:**

(a) Lessee, its officers, agents and employees shall comply with and operate its Equipment during the term hereof in compliance with all laws, statutes, ordinances, rules and regulations, as amended or enacted from time to time, imposed by any local, state, or federal authority having jurisdiction with respect thereto including, without limitation, the rules and regulations of the Federal Communications Commission (hereinafter referred to as the "FCC"), the Federal Aviation Administration (hereinafter referred to as the "FAA"), and the Environmental Protection Agency ("EPA"). Lessee shall comply with all applicable Occupational Safety and Health Act ("OSHA") laws, regulations and requirements, and shall assure that its officers, employees and agents, including all contractors of Lessee, comply with all OSHA regulations. Prior to installation of Equipment, or making any modifications or changes to its Equipment, Lessee shall comply with the following:

(i) Lessee shall submit all plans for Lessor's approval; and

(ii) Prior to commencement of any work, Lessee shall obtain required approvals of all federal, state and local agencies. Lessee shall promptly deliver to Lessor written proof of compliance with all applicable federal, state and local laws, rules and regulations in connection with any installations, changes or modifications of Equipment; and

(iii) Prior to commencement of any installation work except for the exchange, maintenance and repair of like-for-like replacement equipment and/or work and/or for upgrades that the Lessor agrees in writing are minor, Lessee shall provide to Lessor certified engineering studies which provide that tower loading and stress specifications will not be exceeded or cause inter-modulation problems, and that such equipment will be and remain in compliance with all applicable

local, state and federal government laws, regulations and requirements, including but not limited to zoning, FAA and FCC specifications; and

(iv) All of Lessee's Equipment shall be clearly marked to show Lessee's name, address, telephone number and the name of the person to contact in case of emergency, FCC call sign, frequency(s) and location. All coaxial cable shall be identified in the same manner at the bottom and at the top of each transmission line. All such information shown shall be updated as necessary to keep it current.

(b) In all matters where Lessor's approval is required - and Lessor should determine in its reasonable discretion that a possibility of a threat of interference or other disruption with the business of the Lessor or other existing Lessees exists - Lessor shall have the absolute right to withhold consent.

(c) Lessee hereby agrees that all power lines installed by Lessee shall be located as directed by Lessor.

(d) In the event that Lessee requires telephone service, Lessee, at its sole cost and expense, shall obtain such telephone service. Any work performed in connection with the telephone service shall comply with the provisions of subparagraph (a) hereof. Lessee hereby agrees that any telephone lines installed by Lessee shall be located as directed by Lessor.

(e) In the event a zoning variance, special use permit or other similar governmental approval is required in connection with the installation or any proposed modification of Lessee's Equipment or Building, Lessee shall be solely responsible for obtaining the appropriate approval.

(f) All plans and specifications for any significant (which, after proper notification, Lessor does not agree are "minor") modifications to the Lessee's Equipment or leased spaces, as shown on Exhibit 1 of the original lease agreement OR in the lease amendment finalized in July of 2006, shall be submitted to the Lessor for review and approval by the Lessor or engineers and/or consultants selected by Lessor. Lessee shall reimburse Lessor for Lessor's reasonable expenses incurred in connection with such review and approval. All work performed at this Tower or Site in connection with the installation and modification of Lessee's Equipment shall be performed by contractors licensed by the State of North Carolina, selected by Lessee and at Lessee's expense.

(g) Lessor acknowledges that if Lessee does not receive any of the approvals, consents or access described above, or any such approvals, consents, or access described are subsequently withdrawn or terminated without fault of Lessee and which Lessee determines are necessary for the initial installation of its Equipment or Building, Lessee may terminate this Agreement by giving Lessor thirty (30) days' prior written notice thereof.

5. EQUIPMENT:

(a) The installation and operation of Lessee's Equipment shall not interfere electrically, or in any other manner whatsoever, with Lessor or any other party or tenant presently maintaining radio communications systems and other equipment on the Tower or at the Site. Except as otherwise provided in subparagraph (b) below, it is expressly understood and agreed that if the installation or operation of Lessee's Equipment shall interfere with other, previously installed radio communications systems or equipment at any time, Lessee shall upon request (verbal or otherwise), immediately suspend its operations until such interference is eliminated. Lessee shall bear all costs of taking the necessary steps to eliminate the interference if Lessee and its equipment is the cause of said interference. If it is determined that such interference cannot be eliminated, then Lessee shall, at Lessor's request, remove Lessee's Equipment that is causing the interference at Lessee's cost and expense.

Lessor acknowledges and agrees that the foregoing obligation of Lessee to correct interference problems or remove its Equipment shall apply only to interference with the equipment of the Town and any other Lessee at the Site as of the date of this Agreement. If interference problems occur with Lessee and the equipment of any other Lessee occupying the Site after the date hereof, it shall be the obligation of said subsequent Lessee to adjust its equipment or operations to remedy the interference or remove its equipment. Lessee shall not be required to modify its Equipment or adjust its operations to correct interference problems resulting solely from a subsequent Lessee at the Site. The Lessee will be primarily responsible for enforcing its rights against other Lessees with appropriate assistance from Lessor.

(b) During the term of this Agreement and subject to the provisions hereof, Lessor agrees that Lessee or its agents all have free access to the Tower and to Lessee's portion of the Site at all times for purposes of operating, inspecting, maintaining, removing, repairing and replacing Lessee's Equipment.

(c) Lessee understands and agrees that Lessor may perform, or cause to be performed corrective maintenance and preventive maintenance to the Tower or Site when required. If maintenance would cause interruption to the operation of Lessee's equipment, Lessor will give Lessee 30 day's written notice, and Lessee shall make adjustments as needed including removal of Lessee's equipment from the Tower on a temporary basis. In the event of emergency repairs to the Site or Tower, Lessee's operations may be interrupted without prior notice.

6. MAINTENANCE AND REMOVAL OF EQUIPMENT:

(a) Lessee, at its own cost and expense, shall be responsible for maintenance of its Equipment and the Site in good condition and repair and in accordance with all

applicable laws, rules and regulations and this Agreement. All maintenance work shall be performed by contractors licensed by the State of North Carolina. Additionally, Lessee shall pay a proportionate share of expenses for Tower maintenance and repair, and shall bear all costs of moving its Building or Equipment as necessary to effect such maintenance or repair. In the event Lessor uses its own work for maintenance or repair, Lessee shall pay a proportionate share of the reasonable value of such repairs or maintenance performed by Lessor's work force. Lessee's share shall be determined by dividing the total cost of the repair or maintenance, or the reasonable value thereof, by the total number of Lessees, including Lessor, using Tower. The sum of that division shall be Lessee's share. Lessee's share shall be due thirty (30) days after a detailed statement showing maintenance or repair procedures and their cost, or the reasonable value thereof, is provided by Lessor to Lessee. Notwithstanding the foregoing or any other provision in this agreement, Lessor shall have the right to replace the Tower at any time during the term of this Agreement. The Lessor will give the Lessee as much advance notice as possible of the replacement, but in no case less than 90 days written notice. Lessee will be allowed to occupy the replacement tower under the terms of this Agreement. Further, Lessor will allow Lessee to use temporary mobile facilities at the Site until the replacement is completed, provided it does not interfere with the construction process and further provided that all Town ordinances, such as the Zoning Ordinance, are complied with fully.

(b) Upon the expiration or earlier termination of this Agreement and upon the payment of the License Fee and all other sums due Lessor on such expiration or termination date, Lessee shall remove all Lessee's Equipment and Building. Such removal of Lessee's shall be performed by a contractor licensed by the State of North Carolina in a workmanlike manner, without any interference, damage or destruction to any other equipment, structures or operations at the Site or to any other equipment or buildings of other Lessee's thereon. Any and all interference or damage caused to the Tower, Site or equipment of other Lessees by such removal shall be immediately repaired or eliminated by Lessee. If Lessee fails to make such repairs at Lessee's sole cost and expense within thirty (30) days after the occurrence of such damage, injury or interference, or if Lessee fails to remove all of Lessee's Equipment and Building within thirty (30) days of the termination of this Agreement, Lessor may perform, or cause to be performed, all necessary removal or repairs at Lessee's cost and expense and such sum shall be immediately due upon the rendering of an invoice as an additional fee hereunder.

7. MISCELLANEOUS REQUIREMENTS:

(a) All permitted improvements made to the Site by Lessee will be subject to the Town's normal regulatory requirements.

(b) Immediately upon completion of the improvements, Lessee shall restore any area disturbed by improvements to a condition equal to or better than the original condition.

(c) All equipment of the Lessor must operate so as to comply fully with the Noise Control Ordinance of the Town of Carrboro, as amended from time to time.

(d) Lessee shall not commit, or cause to be committed, any waste on the Premises, or any nuisance by its agents, employees, contractors, representatives, or invitees.

8. **LIABILITY AND INDEMNITY:** Lessee shall indemnify and hold Lessor harmless from and against any and all losses, costs, liabilities, claims, damages, lawsuits, judgments, and demands whatsoever, including costs of investigation (including reasonable legal fees) in connection with the bodily injury or death of any person, damage to or destruction of any property, the violation of any law or the damage to the environment, which may arise out of or be caused by any act or omission of Lessee, its agents, employees, invitees or contractors (hereafter jointly "Lessee or Agents"), or which may arise out of or be caused by the maintenance, presence, use, installation or removal of any Equipment or Building or other property owned or operated by Lessee or Agents; except, to the maximum extent allowed by law, for the gross negligence or willful misconduct of Lessor, its agents, employees, invitee or contractors. Lessor shall be liable for any damage to any of the lessee's equipment located on the Tower or the ground, or that of others using Lessor's property as of the date of the execution of this License Agreement, arising out of or in connection with Lessor's installation of equipment, maintenance, use or occupancy of the Tower and Licensed Premises and caused by the negligence or willful or intentional misconduct of its agents or employees. Lessee hereby assumes the risk of the inability to operate as a result of any accidental power failure or other power failure not caused by Town OR turning off of power which is necessary to preserve the public health, safety, and welfare. at the Tower or Site or any failure of Lessee or Lessee's Equipment for any reason whatsoever and agrees to indemnify and hold Lessor harmless from all damages and costs of defending any claim or suit for damages or any kind including business loss and interruption, consequential damages (and attorneys' fees) asserted against Lessor by reason of such failure.

9. **DAMAGE OR DESTRUCTION OF THE SITE:** In the event the Tower, Site or any part thereof is damaged or destroyed by the elements or by any other cause, Lessor may elect to repair, rebuild, or restore the Tower or Site or any part thereof, to the same condition as it was immediately prior to such casualty. In such event, the payments required herein shall cease, as of the date of such casualty until the Tower or Site is restored to a usable condition for Lessee's operation. Alternatively, Lessor may choose not to repair, restore or rebuild the Tower or Site. In either case, Lessor shall send to Lessee a notice of intent to restore or cancellation of this Agreement within thirty (30) days of such casualty ("Casualty Notice"). If Lessor fails to give Lessee Casualty Notice within such 30-day period, or if Lessor fails to repair the Tower or Site in full within ninety (90) days after the date of the **Casualty Notice, Lessee may terminate** this Agreement by giving written notice thereof to Lessor within five (5) days of the expiration of such 30-day or 90-day period, as the case may be. If this Agreement is thus

terminated, the payments required herein shall terminate as of the date of such casualty. Lessor shall not be responsible or liable to Lessee for any loss, damage or expense that may be occasioned by, through or in connection with, any acts or omissions of other lessees or tenants occupying the Tower or Site, or for any structural or power failure or by the destruction of or damage to the Tower or Site.

10. INSURANCE:

(a) Lessee shall keep in full force and effect during the Initial Term and any Renewal Term, and if applicable, for all time after termination date if Equipment or Building remain on Tower or Site, a comprehensive general liability insurance policy, including blanket contractual and completed operations coverage with limits of liability of at least \$1,000,000.00 in respect to bodily injury, including death, arising from any one occurrence, and \$1,000,000.00 in respect of damage to property arising from any one occurrence. Said insurance policy shall be endorsed to include Lessor as an additional insured and shall provide that any such insurer shall use all reasonable efforts to provide Lessor at least thirty (30) days prior written notice of any cancellation or material change in such insurance policy. Lessee shall, within one month of the effective date of this agreement, furnish to Lessor a certificate of insurance confirming that the insurance coverage as specified herein is in full force and effect.

(b) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for Lessee, or the failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve Lessee from any obligations under this Agreement.

11. END OF AGREEMENT – EQUIPMENT AND BUILDING: Lessor agrees that no part of the Equipment, Building or improvements constructed, erected or placed by Lessee on the Tower or Site shall be considered as being affixed to or a part of the Tower or Site and further agrees that all Equipment, Building and improvements of every kind and nature constructed, erected or placed by Lessee on the Tower or Site shall be and remain the property of Lessee. The Building and Equipment shall be removed by Lessee at Lessee's expense upon the termination of this Agreement.

12. NOTICES: All written notices required to be given hereunder shall be given in certified or registered mail at the respective addresses of the parties set forth herein or at such other address as may be designated in writing by either party. Notice given by mail shall be deemed given three days after the date of mailing thereof as follows:

Lessee's address for notice purposes is:

Lessee: Sprint Property Services
Site ID: RA03XC066
Mailstop KSOPHT0101-Z2650

6391 Sprint Parkway
Overland Park, Kansas 66251-2650

with a copy to: Sprint Law Department
Attn: Sprint PCS Real Estate Attorney
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, Kansas 66251-2020

Lessor's address is Town of Carrboro, 301 W. Main Street, Carrboro, North Carolina, 27510. All communication should be sent "Attn: Town Manager".

13. **DEFAULT AND REMEDIES:** In the event of Lessee's default hereunder, including but not limited to (i) the failure of payment of License Fees, additional fees or other payments set forth herein when due, and Lessee's failure to cure same within ten (10) days after date of written notice of such failure from Lessor; (ii) failure to comply with any condition or provision hereof, and Lessee's failure to cure same within thirty (30) days after date of written notice of such failure from Lessor; (iii) abandonment of the Equipment or that portion of the Tower or Site upon which the Equipment was installed; (iv) the filing of any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to Lessee; or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Lessee or its debts; or (v) the making by Lessee of an assignment or any other arrangement for the general benefit of creditors under any state statute, **Lessor shall be entitled at Lessor's option to terminate this Agreement or seek any remedies available at law and to remove all of Lessee's Equipment, Building improvements and other personal property located at the Tower or Site at Lessee's cost and expense.** In the event that Lessor should, as a result of Lessee's default, incur any costs or expenses on behalf of Lessee or in connection with Lessee's obligations hereunder, such sums shall be immediately due to Lessor, as an additional fee hereunder upon rendering of an invoice to Lessee.

14. **REGULATIONS AND MODIFICATION:** This Agreement is made subject to all local, state of North Carolina and federal laws, rules and regulations now or hereafter in force, and shall not be modified, extended or terminated (other than as set forth herein) except by an instrument duly signed by Lessor and Lessee. Waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of such provision, or of a breach of any other provision of this Agreement.

15. **ASSIGNMENT:** This **Agreement may be sold, assigned or transferred at any time by lessee to lessee's parent company or any affiliate or subsidiary of lessee or its parent company, to any successor entity with or into which lessee is sold, merged or**

consolidated. Otherwise, this Agreement may not be sold, assigned or transferred without the written consent of the lessor, such consent not to be unreasonably withheld.

However, no assignment shall confer any rights under this agreement unless and until the assignee agrees in writing to assume all the obligations of the Lessee under this agreement.

16. BINDING ON SUCCESSORS: Subject to paragraph 16, this Agreement shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

17. GOVERNING LAW: The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of North Carolina. Venue for any action shall be Orange County.

18. ENTIRE AGREEMENT: All of the representations and obligations of the parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party, unless in writing and signed by the parties.

19. HEADINGS: The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of such sections or subsections.

20. SURVIVAL AND SEVERABILITY: Those Sections of this Lease that which by their nature would reasonably be expected to continue after the termination of this Lease shall survive the termination of this Lease If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of the Lease or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

21 (a) Lessor represents and warrants to the best of its knowledge that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Lessor's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Lessor and Lessee agree to hold harmless and indemnify the other and agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Property. Environmental specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or

any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 Environmental will survive the expiration or termination of this Agreement.

(b) In the event Lessee becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Lessee's sole determination, renders the condition of the Premises or Property unsuitable for Lessee's use, or if Lessee believes that the leasing or continued leasing of the Premises would expose Lessee to undue risks of government action, intervention or third-party liability, Lessee will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Lessor.

22. **WAIVER OF LESSOR'S LIENS.** Lessor waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Lessor consents to Lessee's right to remove all or any portion of the Communication Facility from time to time in Lessee's sole discretion and without Lessor's consent.

23. **FURTHER ASSURANCES:** Each of the parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm this Agreement or any other agreement contained herein the manner contemplated hereby.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties have executed this License Agreement on the day and year first above written and Lessee hereby warrants and represents that its respective signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

LESSOR:

TOWN OF CARRBORO

by: Steven E. Stewart
Steven E. Stewart, Town Manager

LESSEE:

SPRINTCOM/INC.

by: Jon L. Geisel Aug 18, 2008
Jon L. Geisel, Supervisor
Contract Negotiations

ATTEST:

Sarah C. Williamson
Sarah Williamson, Town Clerk



NORTH CAROLINA
ORANGE COUNTY

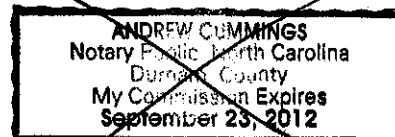
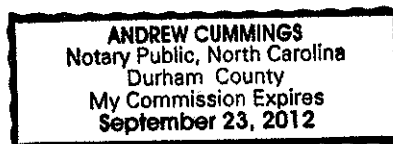
Witness:

Donna L. Price-Shepherd
(print name and position beneath)
Donna L. Price-Shepherd, R.E. Mgr. II

I, ANDREW CUMMINGS, a Notary Public for the County and State aforesaid, do hereby certify that SARAH WILLIAMSON personally appeared before me this day and acknowledged that she is Town Clerk for the Town of Carrboro, and that by authority duly given, the foregoing agreement was signed in its name by its town manager, sealed with its corporate seal and attested by her as its Town Clerk. Witness my hand and official seal, this 26th day of AUGUST, 2008.

[OFFICIAL SEAL]

Andrew Cummings
Notary Public

My commission expires: 9/23/2012

AC

KANSAS
JOHNSON COUNTY

I, Renet A Mitchell, a Notary Public of the County and state aforesaid, do hereby certify that Jon L. Geisel personally came before me this day and acknowledged that he is the Supervisor of Contract Negotiations for SprintCom, Inc. and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by

Jon L Geisel, Supervisor Contract Negotiations (state name and position), sealed with its corporate seal and attested by herself/himself in his/her role.

WITNESS my hand and notarial seal, this 18th day of August, 2008.

[OFFICIAL SEAL]



Renet A Mitchell
Notary Public

My commission expires: 11.01.09

EXHIBIT 1

Equipment:

(2) 4812 ET frames (Motorola)
4 voice carriers
1 EV/DO carrier

7.8 Mechanical Specifications for SC™ 4812ET

RF Cabinet Physical Dimensions

Height 1730 mm (66 in)
Width 1425 mm (56 in)
Depth 915 mm (30 in)
Depth w/o heat exchanger/door 711 mm (28 in)