RESOLUTION 2013-15

Agenda Item

TO: Mayor and City Council

FROM: Mark S. Gaugh, City Manager

DATE: April 15, 2013

RE: Spectra Communications Resolution

Issues

The attached resolution authorizes a Public Ways Use Permit to be issued to Spectra Communications Group. The City desires to allow other utilities in City-owned rights-of-way, and the City must be able to manage its rights-of-ways and recover a reasonable rent for its usage. There are currently disagreements about the City's rights, which are challenged by Spectra Communications. While those disagreements will be resolved in another forum, we are proposing a reservation of rights on those disputed issues, while maintaining the requirements of our ordinance in permit issuance.

We are hopeful that this arrangement will be approved by Spectra, and will benefit both parties, while the areas of disagreement are being addressed.

Recommendation

Staff recommends that the Council approve the resolution to allow Spectra Communications a Public Ways Use Permit while maintaining the requested reservation of rights.

Resolution 2013-15

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PUBLIC WAYS USE PERMIT AGREEMENT WITH SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYLINK

WHEREAS, Missouri law authorizes the City to regulate and manage the use and construction in the public rights-of-way and to provide consent to others to use the public rights-of-way; and

WHEREAS, Spectra Communications Group, LLC, d/b/a CenturyLink ("CenturyLink") has sought consent from the City to use the public rights-of-way to install and maintain communications facilities, and submitted an application dated October 26, 2012; and

WHEREAS, there is currently a dispute between the City and CenturyLink relating to gross receipts license taxes and linear-foot User Fees owed to the City for which the City and CenturyLink desire to reserve their respective rights relating to this dispute for resolution in another forum and such mutual reservation of rights is set forth in Exhibit A of the attached Public Ways Use Permit Agreement; and

WHEREAS, there is currently another dispute between the City and CenturyLink relating to the City's authority to require users of the public rights-of-way to execute a Public Ways Use Permit Agreement before the City can issue construction permits for work in the public rights-of-way which has resulted in CenturyLink to date refusing to execute a Public Ways Use Permit Agreement which would authorize CenturyLink to be issued construction permits for certain work in the public rights-of-way under Chapter 10.5, Article III of the City Code; and

WHEREAS, city staff proposed an agreement draft that allowed CenturyLink to reserve its rights as to tax disputes and as to unpaid linear foot fees prior to the agreement, but to date, CenturyLink has never provided to the City substantive comments or revisions to a proposed Public Ways Use Permit Agreement that City staff and counsel provided to CenturyLink on November 2, 2012 upon CenturyLink's request and such proposed Public Ways Use Permit Agreement is substantially similar to rights-of-way agreements that other CenturyLink-affiliated companies have executed with other Missouri cities and under which these companies are currently operating in such cities; and

WHEREAS, CenturyLink has by an email communication requested a review or appeal to the Council relating to the dispute and City staff is awaiting information necessary to clarify what is specifically requested for determination and to schedule and act on such specific formal appeal before the Council, if applicable; and

WHEREAS, in the interim, the City Council continues to desire to have CenturyLink obtain an agreement to use the rights-of-way required by City Code to install new infrastructure to provide additional broadband services in the City and to practically resolve the dispute between CenturyLink and the City by approving a Public Ways Use Permit Agreement which upon execution by CenturyLink will be provide sufficient authority for construction permits to be issued under Chapter 10.5, Article III of the City Code to CenturyLink; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMERON, MISSOURI as follows:

Section 1: The findings set forth above are hereby incorporated as through fully set forth in this Section.

Section 2: The Mayor and/or City Manager are hereby authorized to execute an agreement with CenturyLink substantially in the form as attached hereto and incorporated herein as Exhibit 1 by the City. City staff is also authorized to communicate directly with any affected company to determine if an agreement with such other company would facilitate the construction consistent with City Code, if CenturyLink continues to refuse to comply with City Code.

Section 3: Nothing in this approval shall prevent the City Council from taking further or additional action of CenturyLink hereinafter provides the requested information or submits proposed revisions to the agreement for consideration; nor shall anything in this Resolution be construed to constitute a final action, hearing or review on any appeal or review as may separately be sought by CenturyLink which shall be governed and acted upon in accordance with applicable law.

Section 4: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

Passed and approved by the City Council on this 15th day of April 2013.

_____
Mayor Dennis M. Clark

ATTEST:

_____
City Clerk/Finance Clerk

EXHIBIT 1

PUBLIC WAYS USE PERMIT AGREEMENT BETWEEN SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYLINK AND THE CITY OF CAMERON

PUBLIC WAYS USE PERMIT AGREEMENT FOR COMMUNICATIONS FACILITIES

THIS PUBLIC WAYS USE PERMIT AGREEMENT FOR COMMUNICATIONS FACILITIES ("Agreement") is made and entered into as of the "Effective Date" (as defined in Section 11.1) by and between, Spectra Communications Group, LLC, a Delaware limited liability company ("Licensee") authorized to do business in Missouri, and the City of Cameron, Missouri, a municipality of the State of Missouri ("City"). Licensee and City may sometimes be referred to in this Agreement individually as a "party" or collectively as the "parties."

RECITALS:

WHEREAS, Licensee has requested consent from City authorizing the use of City Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

WHEREAS, Missouri law provides conditions relating to the City's consent to, and authorizes the City regulation of the use and occupancy of Rights-of-Way for placement of communications Facilities; and

WHEREAS, City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

WHEREAS, City and Licensee desire to enter into this Agreement to establish the terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions of the "ROW Code" (as defined in Section 1.2).

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Agreement, the capitalized terms shall have the definitions as set forth in the Code of Ordinances of the City, Chapter 10.5, Article III as amended ("ROW Code"). For purposes of this Agreement, the following additional capitalized terms shall have the definitions set forth in this Section 1.2. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. **"Communications Service" -** The transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet service," as such terms are now or may in the future be defined under federal law, and including all

instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo., unless the Licensee has obtained a franchise from the City to provide video services with the City. The term "Communications Service" does not include the rental of conduit or physical facilities.

1.3 Agreement Subject to Provisions of ROW Code. This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a part of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City as an ROW User, and to be subject to the enforcement by the City as provided therein and in this Agreement as a material term herein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, and nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Agreement Non-Exclusive. This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.

2.2 Nature of Rights Granted by this Agreement. This Agreement shall not convey title to Licensee, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way for the purposes and for the period stated in and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City or a third party.

2.3 Grant. Subject to the terms and conditions of this Agreement, the ROW Code and the conditions set forth on Exhibit A attached to and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, through and along the City's Right-of-Way and utility easements for the purposes of **providing local switched telephone service, telephone service by voice over internet protocol (VOIP), long distance services, and Internet access service, enhanced information services, security services, energy related services, and other Communications Services**. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including the City, the Federal Communications Commission or the Missouri Public Service Commission, subject to Licensee's right to timely challenge in good faith the requirements of any such permit, license certification, grant, registration or any other authorization. In the event that the use of the rights-of-way is

proposed to change or to provide services other than as described, and Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

This Agreement does not provide Licensee the right to install antennae or antennae support structures in the rights-of-way, nor provide services not authorized herein.

2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate. Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent the same are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same, and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by a specific permit granted by the City.

2.5 No Interference. Licensee shall construct and maintain its Facilities so as not to materially interfere with other users of the Rights-of-Way. Except as may otherwise be provided, Licensee shall provide reasonable notice to all City residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and any standard specifications, drawings, and procedures adopted by the City.

2.6 Notification, Joint Installation and Collocation Requirements. Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such written policy or direction as may be established by the City. Licensee shall further make its installed facilities available to other Licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at § 47 U.S.C. 224.

2.7 Licensee Responsible for Costs. Licensee shall be responsible for all reasonable, actual and documented costs incurred by the City that are directly associated with Licensee's installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized and City's books and records related to these costs shall be made available upon request to Licensee. Licensee shall be responsible for its own costs incurred in removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM AND COMPENSATION

3.1 Term. This Agreement shall be effective for a term of five (5) years from the Effective Date ("Term"), subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

3.2 **Compensation.** The Licensee agrees to pay User Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Code. Unless otherwise established by the City's Governing Body, Licensee shall pay to the City as monthly compensation the monthly User Fee of **fifteen cents ($0.15) per linear foot up to a maximum monthly charge of four thousand dollars ($4,000.00);** provided, Licensee shall be entitled to a credit pursuant to Section 10.5-207 and this Agreement to the User Fee due hereunder equal to the payment(s) made to and received by the City from Licensee for the same time period for the gross receipts tax on Licensee's communications services; provided, however, in no case shall such credit exceed the User Fee due under this subsection and may not be carried forward or back to any other time period. Licensee agrees that it currently has and will have in excess of 5.05 miles of linear feet in the City's rights-of-way and therefore Licensee is subject to the maximum User Fee and shall submit with execution of this Agreement payment of $4,000 for User Fees for April 2013 and each month of the Agreement thereafter as provided above. Licensee's credit to the monthly User Fee as authorized above shall be calculated based upon gross receipt taxes paid and attributable to gross receipts received for the same month in which the User Fee is attributable. Each monthly User Fee credit may then be applied to Licensee's corresponding month's gross receipts tax paid at the following annual tax payment due and made by Licensee, or as may otherwise be agreed in advance by the City and Licensee in writing. Any credit or deduction from taxes paid annually shall be expressly shown on the tax statement to the City accompanying the payment.

3.3 **Use Fee Not a Tax.** The User Fees and other compensation required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Code and herein. Licensee acknowledges that the Use Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

SECTION 4. TAXES

4.1 Licensee agrees to pay all applicable taxes including license taxes, business taxes and other applicable taxes of the City and failure to pay such taxes shall be considered a material breach of this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Right-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance subject to any limitations of applicable state or federal law.

SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

5.1 **Transfer of Agreement**. Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Licensee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities**. Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE.

6.1 In case of failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the City's Code of Ordinances, the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code of Ordinances or as may otherwise exist at law. All remedies described in this section are cumulative and in addition to any other rights and remedies to which a party may be entitled at law, in equity or under this Agreement.

SECTION 7. GENERAL CONDITIONS

7.1 **Compliance With Laws.** In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including all laws, ordinances, regulations and policies relating to construction, bonding, insurance, and use of public property.

7.2.1 **Insurance.** In addition to the requirements of § 10.5-234 of the ROW Code, except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least $2,700,000.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this

Section, or not renewed without 30 days advance written notice of such event being given to the City.

7.2.2 The insurance requirements set forth in Section 7.2.1 shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempt from such requirements pursuant to 67.1830(6)(a), and has on file with the City Clerk an affidavit certifying that Licensee has $25,000,000.00 in assets and is therefore otherwise exempt.

7.3 <u>Enforcement; Attorneys' Fees</u>. The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees in the event that Licensee is determined judicially to have violated the terms of this Agreement.

7.3 <u>Relationship of the Parties</u>. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 <u>Relocation or Removal of Facilities</u>.

7.4.1 In addition to the requirements of § 10.5-229 of the ROW Code, the City may, in its exercise of the public interest, require that Licensee, at Licensee's sole cost and expense, relocate or reinstall any of Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of facilities to be relocated and a reasonable time to relocate such facilities. Licensee shall forthwith remove or relocate such facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City.

7.4.2 Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit, and within a reasonable period as may be established by the City, temporarily raise, lower, or relocate its Facilities as may be reasonably necessary for the permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least 14 days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within 7 days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder make payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages.

7.5 <u>No Cause of Action Against the City.</u> The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of the City to enter into this Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of this Agreement that it has not been induced to enter into this Agreement upon any understanding, or

promise, whether given verbally or in writing by or on behalf of any party, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement. Nothing herein shall be deemed to waive the City's sovereign immunity.

SECTION 8. INDEMNIFICATION

8.1 Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) **and hold harmless** the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, maintaining, repairing, restoring or removing facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend and hold harmless obligations set forth in this Section shall survive for a period of five (5) years from the date of expiration or termination of this Agreement.

SECTION 9. NOTICE

9.1 Any notice, demand, consent, approval, request or other communication required or permitted to be given to either party under of with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

Randy Leach
322 N. Chestnut St.
Cameron, MO 64429

If Notice to City:	With Copy to:
City of Cameron	Cunningham, Vogel & Rost, P.C.

Attn: City Manager	333 S. Kirkwood Road
205 North Main Street	Suite 300
Cameron, MO 64429	St. Louis, MO 63122

9.2 If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal or inability to deliver. Either party may change its address for notice by giving notice of address change to the other party in the manner for giving notice prescribed in Section 9.1.

SECTION 10. MISCELLANEOUS

10.1 This Agreement and all Exhibits constitute the entire Agreement between the parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

10.2 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

10.3 No term or condition of this Agreement will be deemed to have been waived by a party unless the waiver is made in writing and is signed by the party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

10.4 The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

10.5 This Agreement is for the benefit of the parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

SECTION 11. EFFECTIVE DATE AND ACCEPTANCE.

11.1 This Agreement shall be effective on the date that this Agreement is last signed by both parties ("Effective Date"). The parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily and have full authority to sign this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF CAMERON, MISSOURI	SPECTRA COMMUNICATIONS GROUP, LLC
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

ATTEST:

_____
_____, City Clerk

(CORPORATE SEAL)

STATE OF _____)
) ss.
COUNTY OF _____)

The forgoing instrument was acknowledged before me this _____, 20__, by _____, _____, on behalf of the limited liability company. This person is personally known to me or has produced _____ as identification.

_____
(Signature of Notary taking Acknowledgment)

Notary Public, State of _____

My Commission Expires: _____

EXHIBIT A

The following special conditions shall be a condition of this Agreement and shall supersede any provision in this Agreement to the contrary:

1. Licensee acknowledges and agrees that pursuant to its obligation to pay all applicable taxes it shall pay the City's license tax as a provider of telephone services, and shall remit to the City such tax on gross receipts as required by City Ordinance 2878 or as may be amended, regardless of technology used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.

2. Licensee and City acknowledge that the parties have a dispute between them regarding the amount of gross receipts taxes due and payment of Linear Foot User Fees that are not finally resolved by this Agreement. Accordingly, nothing in this Agreement shall be deemed to waive the rights of Licensee or City to assert claims, interest, penalties, or defenses as to any taxes due, or to any Users Fees due or asserted, provided that this reservation of rights shall terminate upon final resolution of *City of Aurora, et al. v Spectra Communications Group LLC, et al.*, Case No. 12SL-CC02896 (St. Louis County Cir. Ct.). Nothing in this reservation shall be construed to allow the parties to disregard or dishonor any other provision of this Agreement unless expressly authorized herein or required by a final judgment of a court of competent jurisdiction.