RESOLUTION 2015-12

Agenda Item

TO: Mayor and City Council

FROM: Mark S. Gaugh, City Manager

DATE: May 4, 2015

RE: Resolution

Issues

The attached Resolution clarifies and confirms a previous Resolution, stating the City's rights to terminate pole agreements, and other agreements. Part of the intent is to eliminate the false defense of CenturyLink where they want to evade their obligations under the ordinance and state law. The language in the Resolution is self-explanatory.

Recommendation

Staff recommends that the Council approve the Resolution, clarifying and confirming Resolution 2013-33.

Resolution 2015-12

A RESOLUTION FOR THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI CLARIFYING AND AFFIRMING RESOLUTION 2013-33

WHEREAS, the City of Cameron (the "City") entered into a Pole Attachment Agreement with General Telephone Company of Missouri dated April 22, 1959, and as thereby amended ("Pole Agreement"); and

WHEREAS, the City enacted Resolution 2013-33, "AN RESOLUTION FOR THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI TERMINATING POLE ATTACHMENT AGREEMENTS BETWEEN THE CITY AND GENERAL TELEPHONE COMPANY OF MISSOURI AND ITS SUCCESSORS AND ASSIGNS" on October 21, 2013, terminating the Pole Agreement; and

WHEREAS, Spectra Communications Group, LLC d/b/a CenturyLink has refused to obtain a pole attachment agreement and has asserted that the City Council was misinformed in connection with its enactment of Resolution 2013-33, including that "Spectra Communications Group, LLC d/b/a CenturyLink ("CenturyLink") is currently using the City's poles without a pole attachment agreement with the City"; and

WHEREAS, the City desires to restate and reaffirm Resolution 2013-33 and also eliminate any spurious legal or factual argument purporting to question the unequivocal intent of the City Council to require a newly adopted agreement authorizing any pole attachment, irrespective of any desire of CenturyLink to rely on a 1959 agreement with General Telephone Company of Missouri, and irrespective of whether CenturyLink or any other person agrees that such agreement was abandoned, or expired, or applied to CenturyLink;

WHEREAS, it is the unquestionable right and desire of the City to require a new agreement and terminate prior agreements consistent with their terms, whether such agreements are expired or not, or applicable or not to any current users, or abandoned or not and to eliminate any false defenses such as asserted by CenturyLink to evade its obligations under the ordinance and as delineated by state law to obtain an agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES MISSOURI, AS FOLLOWS:

Section 1: The City hereby affirms the termination of the Pole Agreement pursuant to Article X of the 1959 Agreement and clarifies that such termination is and continues to be effective and intended wholly irrespective of whether such agreement is or was disputed to apply to CenturyLink, or abandoned or expired, as such assertions are irrelevant to the City's right and desire to terminate such aged or obsolete agreements that do not meet the City's determination of its current needs and requirements to protect the public and the City's resources. Nothing herein shall be deemed to accept any disputed factual or legal assertions of CenturyLink seeking to

justify its violation of City ordinance, and this Resolution hereby reconfirms termination of the Pole Agreement irrespective of such assertions.

Section 2: 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 4th day of May 2015.

_____
Mayor Dennis M. Clark

ATTEST:

_____
City Clerk/Finance Clerk