AGENDA ITEM

TO: Mayor and City Council

FROM: David Watson, City Manager

DATE: August 12, 2010

RE: **Ordinance approving settlement agreement with T-Mobile**

The City is part of an ongoing independent negotiation group of 25 cities through MML relating to telephone tax litigation against various telephone companies. Similar to the previous settlements with wireless carriers, we have now reached a settlement with T-Mobile for nonpayment of taxes on certain revenue of T-Mobile. The back tax payment to the City is estimated to be $49,699.22.

In addition to the class action settlement agreement terms, T-Mobile signed a separate binding unilateral agreement ("BUA") with the City (as part of our group of 25 cities) that (1) accepts the City's claim without the possibility of rejection provided the City submit the attached approval ordinance, (2) payment of an additional $7,500.00 to the City in cost reimbursements above the settlement amount owed, (3) a commitment that T-Mobile has already reviewed the City's ordinance and will not assert exclusions or exemptions, (4) a commitment to future tax payments without assertion of exclusions or exemptions, and (5) a commitment to initiate a "meet and confer" meeting and provide a "final estimate" of the amounts the City will receive.

Although the final payment is subject to adjustment, given the separate promises to our group of cities and the unexpected revenue this generates for the City, we recommend approval of this settlement with T-Mobile. Pursuant to the terms of the settlement agreement and BUA, the City needs to pass the Settlement Ordinance and send the fully approved Ordinance to T-Mobile no later than September 14, 2010.

RECOMMENDATION:
Staff recommends that Council adopt the attached Ordinance as a reasonable collection settlement of taxes owed to the City. We ask that three reading be held because of deadlines beyond your next scheduled Council meeting of September 20, 2010.

Bill 2010-45 **Ordinance**

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT AND BINDING UNILATERAL AGREEMENT WITH T-MOBILE RELATING TO PAYMENT OF BUSINESS LICENSE TAXES

WHEREAS, T-Mobile USA, Inc., T-Mobile Central LLC (as successor-by-merger to Voicestream Kansas City, Inc.), Voicestream PCS II Corporation and VS Washington Corporation (collectively, "T-Mobile"), have entered into, subject to final court approval, a Settlement Agreement (hereinafter "Settlement Agreement," and also on file with the City Clerk) in *City of University City, Missouri, et al., v. AT&T Wireless Services, Inc., et al*., Cause No. 01-CC-004454, pending in the Circuit Court of St. Louis County, Missouri ("Class Action Suit"); and

WHEREAS, T-Mobile provides wireless telephone service within the City subject to the City's business license tax ordinances; and

WHEREAS, T-Mobile has further executed a Binding Unilateral Agreement dated as of June 24, 2010 (attached hereto and incorporated herein) making certain commitments in addition to those contained in the Settlement Agreement in consideration relating to settlement of the Class Action Suit, of which the City would be considered a Class Member; and

WHEREAS, the City desires to accept the Settlement Agreement as a mutually binding and enforceable Agreement by acceptance of all terms and conditions thereof, and to further accept the commitments made by T-Mobile in the Binding Unilateral Agreement as part of such approval and as relied upon by the City and accept the Settlement Payment and Exhibit G Payment, as applicable, in such final amount as to be established by the terms of the Settlement Agreement and Binding Unilateral Agreement, provided that such acceptance preserves and shall not be deemed to waive any rights as an interested party in participation in any court determinations finalizing such Settlement Agreement or Settlement Payment and Exhibit G Payment amounts;

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

Section 1. In continued reliance on the Binding Unilateral Agreement, and in accepting the promises and commitments made by T-Mobile thereunder, the City does hereby approve and accept all terms and conditions of the Settlement Agreement as a mutually enforceable and binding Agreement between T-Mobile and the City, subject only to final court approval in the Class Action Suit. Pursuant to the Settlement Agreement and Binding Unilateral Agreement, Settlement Payments and Exhibit G Payments, as applicable and as required thereunder, and all inquiries regarding the City's Business License Tax shall be directed to the City through its authorized representative:

Barbara J. O'Connor, City Clerk
City of Cameron
205 North Main Street
Cameron, MO 64429
(816) 632-2177

Section 2. The City Clerk shall forward a copy of this Ordinance to:

T-Mobile Settlement Claims Administrator
Attn: Robert V. Mitchell
PO Box 545
Minneapolis, MN 55440-0545

The City Clerk and other designated officials are hereby authorized to take such other actions as may be necessary to implement and effect the purposes of this Ordinance.

Section 3. This Ordinance approves a settlement as to claims by or relating to a single taxpayer and nothing in this Ordinance shall be deemed to amend or implement any tax applicable to any taxpayer.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Read two times, passed and approved this 16th day of August 2010.

_____
Mayor Dennis Clark

ATTEST:

_____
City Clerk

BINDING UNILATERAL AGREEMENT

This Binding Unilateral Agreement ("Agreement") is made by T-Mobile USA, Inc., T-Mobile Central LLC (as successor-by-merger to Voicestream Kansas City, Inc.), Voicestream PCS II Corporation and VS Washington Corporation (collectively, "T-Mobile"). Capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed thereto in the below-referenced Settlement Agreement.

WHEREAS, T-Mobile has entered into, or agreed to enter into, subject to court approval, a class action Settlement Agreement (the "Settlement Agreement") in *City of University City, Missouri, et al. v. AT&T Wireless Services, Inc., et al.*, No. 01-CC-004454, pending in the Circuit Court of the County of St. Louis, Missouri; and

WHEREAS, Cunningham, Vogel & Rost, P.C. ("CVR") is City Attorney or special legal counsel for the Municipalities listed on Exhibit A (collectively the "CVR Cities" and each a "CVR City") relating to the Action; and

WHEREAS, the CVR Cities have incurred attorney fees, as well as other costs and expenses, in responding to tax protest litigation, settlement proposals, representation relating to the Action, and in taking other measures relating thereto;

NOW THEREFORE, T-Mobile hereby makes the following representations, warranties, and covenants on behalf of T-Mobile, with the intention that the CVR Cities and their legal counsel may rely upon such representations, warranties, and covenants as set forth herein and that such representations, warranties, and covenants, shall constitute a binding and enforceable contract to induce the actions of the CVR Cities and their counsel:

1. Membership in Settlement Class. T-Mobile agrees that each CVR City that does not opt out of the Settlement Class will be in the Settlement Class.

2. Deemed submission of valid Claim Form. Based on T-Mobile's previously completed review of each CVR City's Business License Tax ordinance, T-Mobile agrees that each CVR City shall be deemed to have complied with Section IV.F of the Settlement Agreement, and shall therefore be deemed for all purposes of the Settlement Agreement to have submitted a valid Claim Form to T-Mobile for all purposes of the Settlement Agreement, if such CVR City furnishes the Administrator, postmarked on or before the deadline provided in the Settlement Agreement for the submission of Claim Forms, with:

a. a copy of an ordinance adopted by such CVR City accepting all terms and provisions of the Settlement Agreement as a mutually binding and enforceable agreement between such CVR City and T-Mobile in accordance with applicable Missouri and local law, or, if the Municipality chooses to effect its acceptance of all terms and conditions of the Settlement Agreement by another accepted, legally binding method, copies of an acknowledgment that the Municipality agrees to be bound by the terms of the Settlement Agreement if approved by the Court, which acknowledgment shall describe the method used to accept the Settlement Agreement and shall be accompanied by an opinion of counsel, addressed to T-Mobile, that the Settlement Agreement, if approved by the Court, is a binding obligation of the Municipality;

b. the name and address to which the Settlement Payment and Exhibit G Payment should be made and mailed to the CVR City; and

c. the name, address, and telephone number of the CVR City's duly authorized representative(s), to whom all inquiries regarding the CVR City's Business License Tax may be directed.

Such items shall be sent by the CVR City to

T-Mobile Settlement Claims Administrator
Attn: Robert V. Mitchell
PO Box 545
Minneapolis, MN 55440-0545

3. Entitlement to the Settlement Payment and Exhibit G Payment. Upon the deemed submission of a Claim Form by a CVR City as provided in paragraph 2 of this Agreement, T-Mobile agrees that it shall be deemed to have accepted such form as valid for all purposes of the Settlement Agreement, and the CVR City shall be entitled to the Settlement Payment and Exhibit G Payment as set forth with respect to such CVR City in Exhibit E and Exhibit G to the Settlement Agreement, including the release of Protested Tax or disbursement of Escrowed Tax, if any, to such CVR City and the payment of the Settlement Payment by the Administrator and the payment of the Exhibit G Payment by T-Mobile to such CVR City, which such Settlement Payment and Exhibit G Payment shall be paid to such CVR City at the times provided in the Settlement Agreement. Such CVR City shall also be entitled to the payment of future Business License Taxes as set forth in Section II.A.4 of the Settlement Agreement and as represented in Paragraph 4 herein. T-Mobile hereby represents and agrees that the version of Exhibit E and Exhibit G attached to this Agreement shall be deemed to constitute Exhibit E and Exhibit G for purposes of the Settlement Agreement and of this Agreement with respect to the CVR Cities.

4. Representation and agreement with respect to Business License Taxes. Based on T-Mobile's previously completed review of each CVR City's Business License Tax ordinance, T-Mobile agrees that no exclusions contained in any such ordinance apply to the computation of Business License Taxes payable by T-Mobile. Accordingly, (i) for each CVR City, T-Mobile represents that the tax amount on Exhibit E and Exhibit G was computed without regard to any exclusion provided in the Business License Tax ordinance of such city, meaning that no such

exclusion was asserted or applied by T-Mobile in computing any such tax amount and (ii) T-Mobile further agrees that, with respect to future Business License Taxes that T-Mobile is obligated to pay to a CVR City pursuant to Section II.A.4 of the Settlement Agreement, T-Mobile will pay such taxes without applying, or claiming application of, any exclusion that exists in the Business License Tax ordinance of such city as of the date of this Agreement, unless instructed by the city to apply such exclusion.

5. Cost payment. T-Mobile shall pay the sum of Seven Thousand Five Hundred Dollars ($7,500.00) to each CVR City that complies with the terms of Paragraph 2 above, in partial compensation for the efforts and attorney fees expenses incurred by such CVR City in connection with responding to settlement proposals and other measures related to the Action and settlement thereof. This amount shall be in addition to any amount owed pursuant to the Settlement Agreement and shall not be considered to be part of the compensation or attorneys fees paid as part of the class settlement under the Settlement Agreement. This payment shall be made to each such CVR City at the time of payment by the Administrator of the Settlement Payment and Exhibit G Payment as established in the Settlement Agreement.

6. Inapplicability of Agreement. This Agreement shall not apply to any CVR City that either files a formal objection or opts out of the Settlement Class, or files a claim in any form pursuant to the Settlement Agreement seeking payment of the Settlement Payment and Exhibit G Payment in an amount greater than shown for such city on Exhibit E and Exhibit G of the Settlement Agreement.

7. No MFN effect. T-Mobile agrees that nothing in this Agreement shall be considered in evaluating compliance with any most favored nation clause within the Settlement Agreement.

8. Termination of Agreement. This Agreement shall remain outstanding and shall not be revoked with respect to any CVR City unless (i) the termination of the Settlement Agreement occurs by its terms or upon disapproval thereof by the Court; or (ii) the Court rejects this Agreement or the Court refuses or expresses an intention to refuse to grant either preliminary or final approval to the Settlement Agreement in its current form due in any way to the existence of this Agreement, in either or both of which cases T-Mobile shall have the right unilaterally to revoke this Agreement and proceed with the Settlement Agreement on its existing terms. All payment and other obligations of T-Mobile pursuant to this Agreement are subject to Court approval of the Settlement Agreement. T-Mobile warrants that the CVR Cities and their legal counsel may rely on this Agreement in taking future actions and foregoing objections to the Settlement Agreement or foregoing opting out of the Settlement Class and other immediate reliance, and as such T-Mobile agrees that this Agreement shall therefore be binding and enforceable from and after the date hereof and subject to the conditions hereof.

9. Miscellaneous. The undersigned represents that it is fully authorized to make this Agreement on behalf of T-Mobile. Construction and interpretation of this Agreement shall be determined in accordance with the laws of the State of Missouri, irrespective of the State of Missouri's choice of law principles. Paragraph captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

IN WITNESS WHEREOF, T-Mobile has executed this Agreement on this 24th day of June, 2010.

T-Mobile

By: S Cornett

Name: Skip Cornett

Title: Vice President

SUBSCRIBED AND SWORN TO BEFORE ME THIS

24th day of June 2010

Stephanie M Phillips

Notary Public

My commission expires 6/29/12

STEPHANIE M. PHILLIPS
COMMISSION EXPIRES
NOTARY
PUBLIC
06-29-12
STATE OF WASHINGTON

EXHIBIT A

1. Adrian
2. Aurora
3. Buckner
4. Butler
5. Cameron
6. Cape Girardeau
7. Green Park
8. Harrisonville
9. Joplin
10. Lee's Summit
11. Liberty
12. Malden
13. Monett
14. Neosho
15. Oak Grove
16. Oakland
17. Overland
18. Pacific
19. Platte City
20. Raytown
21. St. Joseph
22. Warson Woods
23. Webb City
24. Webster Groves
25. Wentzville
26. Woodson Terrace

Missouri Jurisdictions	Group	Rate	Exhibit E -- Settlement through 1-17-2008					
			Not Antenna Tax	Antenna Tax	BLT paid w/o protest or escrow (to 12/31/07)	Escrowed or perfected protest funds (to 12/31/07)	Protested or escrowed funds (to 12/31/07) to go to city (incl int)	"Settlement Payment" (Administrator to pay)
Adrian	A	7%			-		-	18,420.75
Aurora	B	6%			-		-	1,957.52
Buckner	A	0%	$50.00		-		-	150.00
Butler	A	5%			-		-	14,052.89
Cameron	B	5%			-		-	49,699.22
Cape Girardeau	A	5% up to $27,500.00			-		-	49,600.42
Green Park	A	5%			24,568.20		-	-
Harrisonville	A	5%			-		-	100,453.09
Joplin	A	6%^	^Minimum $10,000 See § 30-148		-		-	110,431.48
Lee's Summit	B	7%			-		-	570,275.77
Liberty	B	6%			-		-	184,258.35
Malden	B	7%			-		-	143.81
Monett	A	5%			18.00		-	2,291.33
Neosho	B	5%			-		-	1,199.02
Oak Grove	A	5%			-		-	152,581.92
Oakland	A	4%		$7,500 per antenna	-		-	3,414.81
Overland	A	6%		$2,000 per antenna array	-		-	120,204.73
Pacific	A	8%			-		-	26,994.17
Platte City	A	5%			-		-	44,270.11
Raytown	A	7%			-		-	376,974.56
Saint Joseph	A	7%			-	640,998.01	500,946.84	*
Warson Woods	A	9%		$1,000 per antenna	-		-	9,480.08
Webb City	B	5%			-		-	6,482.36
Webster Groves	B	7%			-		-	80,427.57
Wentzville	A	5%			53,684.19		-	22,719.84
Woodson Terrace	B	5%		$1,000 per antenna	-		-	10,289.42

* Pursuant to Section IV.A.4 of the Settlement Agreement, $159,520 currently held in the St. Joseph Escrow Account (plus interest on such amount from April 1, 2010) will be disbursed to the Administrator, and T-Mobile will cause the remaining balance in the St. Joseph Escrow Account, but not less than $1,030,026.73 as of April 1, 2010, plus interest on such amount from April 1, 2010, plus Future Tax Payments from and after April 1, 2010, to be disbursed to St. Joseph, subject only to Section IV.A.8 of the Settlement Agreement.

Exhibit G	
Municipality	Shortfall 1-18-08 through 12-31-09
Buckner ($50/an)	100.00
Oak Grove	123,544.10