

ORDINANCE NUMBER 47

To enact Ordinance 47 of 2003 of the City of Arcadia, Missouri; to approve an agreement relative to the authorization to use and occupy the public road, highways, streets, alleys, sidewalks, and public way or places in the City of Arcadia for the purpose of constructing, maintaining, and operating structures and facilities used in or incidental to the provision of the telephone and telecommunications services to the public therein; and to provide for related matters.

BE IT ORDAINED by the Mayor and the Board of Aldermen of the City of Arcadia, Missouri.

Ordinance 47 of 2003 of the Code of Ordinances of the City of Arcadia, Missouri, is herein enacted to read as follows:

The Board of Aldermen of the City of Arcadia hereby approve and ratify the following agreement for the provision of telephone and telecommunications services in such municipality.

AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Arcadia, a municipal corporation organized and existing under the laws of the State of Missouri (the "Municipality") and Spectra Communications Group, LLC, a limited liability company organized under the laws of the State of Delaware ("The Company"), doing and authorized to do a general telephone and telecommunications business in the State of Missouri and in the Municipality.

WITNESSETH

WHEREAS, an agreement exists between the Municipality and the Company with respect to the Company's use of the public roads, highways, streets, alleys, sidewalks, and public way or places of the Municipality for the operation of the Company's business; WHEREAS, it is to the mutual advantage of the Municipality and the Company that the Company operate in the Municipality, and in furtherance thereof that the Company be permitted to maintain its facilities in the public roads, highways, streets, alleys, sidewalks, and public way or places of the Municipality under conditions mutually agreed upon by the Municipality and the Company.

NOW THEREFORE, in consideration of these premises and the following mutual covenants the Municipality and the Company do hereby agree as follows;

SECTION I
COMPANY'S RIGHT OF USE

(a) Pursuant to the terms of this Agreement, the Municipality acknowledges that the Company is authorized to use and occupy the public roads, highways, streets, alleys, sidewalks, and public way or places of the Municipality for the purpose of constructing, maintaining and operating its poles, wires, conduits, cables, anchors, towers, transmission lines, manholes, piers, abutments, and telecommunications services to the public.

(b) The Company's right to use and occupy said public roads, highways, streets, alleys, sidewalks, and public way or places of the Municipality shall not be exclusive, and the Municipality reserves the right to grant a similar use of said public roads, highways, streets, alleys, sidewalks, and public way or places of the Municipality to any person or other legal entity at any time during the period of this Agreement, provided that if local access line telephone service {as defined in Section 2 (b)} is either offered or provided within all or any portion of the corporate limits of the Municipality by any person, or other legal entity other than the Company, such person, or other legal entity enters into a similar agreement with the Municipality a Franchise Fee {as defined in Section 2 (b) not less than the percentage required of the Company under Section 2 (a)}.

SECTION 2
CONSIDERATION

(a) In consideration for the Company's rights set forth in Section I, the Company hereby agrees to pay the Municipality a Franchise Fee of five (5%) of the approved tariff rate for local access line telephone service provided by the Company within the corporate limits of the Municipality and such charge shall be billed by the Company to the subscribers receiving access line telephone service within the corporate limits of the Municipality.

(b) For purposes of this Agreement, the term "Franchise Fee" is defined to mean and include only those charges resulting from the Company's provision of local access line telephone services to residences and businesses, based on approved tariff rates established from time to time by the Missouri Public Service Commission, unless otherwise agreed to in writing by both parties. This term shall not include long distance charges or subscriber line charges (state and federal toll access charges).

(c) The payments contemplated by this Section are to be made in quarterly installments and paid not later sixty (60) days after the end of each calendar quarter.

(d) The terms of this Agreement shall apply to newly annexed areas of the Municipality within a reasonable period, as mutually agreed upon by the Municipality and the Company, after notice of such annexation has been transmitted to the Company by the Municipality.

(e) The Company shall maintain and shall make available for audit by the Municipality upon reasonable notice, all necessary accounts and records reflecting the amounts of and basis for computation of all Franchise Fees collected for local access lines telephone service within the corporate limits of the Municipality.

(f) The payments contemplated by this Section are deemed to be the sole and exclusive consideration for the Company's rights set forth in Section I; and the Municipality hereby agrees that, for the period during which this Agreement is in effect, the Municipality will not pass any law or ordinance, or otherwise seek to impose, levy, or collect from the Company any other amount or service (including any telephone or telecommunications service that may heretofore have been provided by the Company to the Municipality without charge) for the rights set forth in Section I. This subsection (g) shall not affect the Company's liability to pay any general taxes, fees or licenses legally imposed for the general maintenance of the Municipality.

(g) In the event the Company contracts with any town or municipality in the renewal of its franchise agreements to pay a franchise fee more than five (5%) within the said City for residential and commercial purposes, the company will within a reasonable time increase the franchise fee paid to the City by an amount which will equal the difference between the stipulated five (5%) and the said higher amount paid to any other City or Municipality.

SECTION 3 INDEMNIFICATION, INSURANCE AND REIMBURSEMENT

(a) The Company hereby agrees to protect, indemnify and hold the Municipality harmless from any and all claims for damages to persons or property arising from or resulting from the Company's exercise of any of the rights set forth in Section I; however, that the Company shall not be liable to the Municipality for any damages caused by the negligence of the Municipality, its officers, agents, contractors, or employees.

(b) The Company further agrees either to

- (1) Maintain a policy of public liability insurance in an amount not less One Million Dollars (\$1,000,000.00), or
- (2) Provide the Municipality with proof of self insurance in an amount not less than One Million Dollars (\$1,000,000.00).

(c) The Municipality hereby agrees to reimburse the Company for the cost of repairing any and all damages to the Company's structures or facilities caused by negligence of the Municipality, its officers, agents, contractors or employees.

(d) The provisions of this Section are not intended to create liability for the benefit of third parties but are solely for the benefit of the Municipality and the Company.

SECTION 4

COMPLIANCE WITH ORDINANCES

Except as herein agreed, the Company shall at all times during the life of this Agreement be in subject to all lawful exercises of the police power of the Municipality, and to such reasonable and lawful regulation as the Municipality shall hereafter by ordinance or resolution provide.

SECTION 5

CONDITIONS ON USE AND OCCUPANCY

None of the Company's structures or facilities shall at any time interfere with the use, repair, maintenance, or damage of the public roads, highways, streets, alleys, sidewalks, and public way or places of the Municipality. Except in the case of any emergency, the Company shall, in advance of any construction or repairs, comply with all applicable laws and ordinances of the Municipality relative to permits regarding such construction or repair. The Company shall be responsible for all reasonable and comparable repair or replacement costs incurred by the Municipality as a result of any damage to the public roads, highways, streets, alleys, sidewalks, and public way or places of the Municipality caused by the construction, maintenance or repair work of the Company, its officers, agents, contractors or employees.

SECTION 6

MAINTENANCE

The Company shall at all times maintain its structures and facilities in good condition and shall comply with all reasonably safety requirements in the operation thereof.

SECTION 7

CONSTRUCTION AND EFFECTIVE DATES

(a) This agreement is entered into and is to be construed under and in accordance with the laws of the State of Missouri.

(b) This Agreement is entered into under the authority and pursuant to the provisions of, as amended, and all other applicable law; and the Municipality hereby covenants that its council has passed all necessary ordinances or resolutions, in accordance with the terms of its charter and all applicable provisions of Missouri law, authorizing the undersigned Mayor to execute this Agreement on behalf of the Municipality and by doing so bind the Municipality to all of the terms and conditions of this Agreement.

(c) The Municipality and the Company understand, acknowledge and agree that the payments contemplated by Section 2 are to be considered payments received by a municipality from a public utility with the meaning of Missouri R.S., as amended, and that in accordance therewith, such payments are subject to the charge-back provisions contained therein.

(d) The Municipality and the Company hereby agree that this Agreement shall be in effect for a term of ten (10) years beginning on November 01, 2003 and ending on November 01, 2013

IN WITNESS of all which the parties hereto have caused these presents to be executed in duplicate in the respective days and dates set forth below.

THUS DONE AND SIGNED on this 13th day of October, 2003 in the Municipality of City of Arcadia, Missouri.

ATTEST:

Mary Johnson
CLERK

Roy Carr
MAYOR

(SEAL)