

CITY OF HIGH POINT

AGENDA ITEM



Title: Spectrum Southeast LLC Nonexclusive Installation and Service Agreement – Cable Services – Oak Hollow Campground

From: Lee Tillery –Parks and Recreation Director

Meeting Date: August 17, 2020

Public Hearing: N/A

Advertising Date: N/A

Advertised By: N/A

Attachments: Spectrum Southeast LLC Bulk Video Service Addendum

PURPOSE: To establish a long term cable contract for Oak Hollow Campground which will ensure services for the next ten years, build upon our current infrastructure and limit rate increase over the period of the contract.

BACKGROUND: Oak Hollow Campground provides a number of amenities which assist in recruiting visitors to our City and Oak Hollow Park. Our cable service and infrastructure currently serves 84 different camp sites and provides 60 channel service for our visitors. Our current contract with Spectrum Southeast has expired. The new proposed 10 year contract would scale the yearly rate and does not allow for rate increases to exceed 5% each year. The savings in Years 1 and 2 will net just over \$7,000 compared to the current bulk rate we are paying. The infrastructure for the system already exists and additional improvements will be made by Spectrum.

BUDGET IMPACT: Funds for these services are currently included in the Parks and Recreation - Special Facilities operating budget in for Parks and Recreation. These funds are planned for and budgeted each year. The maximum cost of the contract over the ten year span is \$193,945.68.

RECOMMENDATION / ACTION REQUESTED: Parks and Recreation staff recommends approval of the Nonexclusive Installation and Bulk Service Agreement 10 year contract between Spectrum Southeast LLC and the City of High Point effective September 1, 2020.

BULK VIDEO SERVICE ADDENDUM

Qam to Qam (Q2Q)

The Nonexclusive Installation and Service Agreement (the “Agreement”) with an Effective Date of September 1, 2020 by and between City of High Point (“Owner”) and Spectrum Southeast, LLC (“Operator”) made with respect to the 84 multiple dwelling units known as:

Complex name: Oak Hollow Campground
Address: 3415 N Centennial St.
City, State, Zip High Point, NC 27265
Units: 84
Phone: (336) 883-3492

(the “Premises”), is hereby amended by the terms of this Bulk Video Service Addendum (“Addendum”) and is otherwise confirmed in all respects, provided that the event of any conflict between the terms of the Agreement and those of this Addendum, the terms of this Addendum shall control. This Addendum will replace and supersede any and all prior Bulk Video Service Addendums or agreements. Owner shall sign and deliver this Addendum to Operator no later than thirty (30) days from the Effective Date and Operator shall countersign this Addendum no later than sixty (60) days from the Effective Date. If Owner fails to sign this Addendum within this time period the Addendum shall be deemed null and void. Unless otherwise specified herein, all capitalized terms shall have the same meaning as set forth in the Agreement.

1. Bulk Video Service Qam to Qam (“Q2Q”). Operator and Owner agree to activate and provide the following service(s) to one (1) existing outlet in each residential unit of the Premises (“Bulk Video Service”):

“Spectrum TV[®] (QQ)” excluding CPE not specifically stated herein. Operator may change the CPE selection stated herein in its sole discretion.

2. Limited Service Offering. “Spectrum TV[®] (QQ)” service is limited to 60 channels of Video Service as defined below. These channels are listed in Exhibit A. Operator is precluded from offering any additional Bulk Video Services or features. Owner has selected the following Bulk Video Service:

“Spectrum TV[®] (QQ)” 60 Channel Q2Q service

3. Equipment Housing. Owner at its sole cost, must provide Operator with a suitable demarcation point and interior location which is climate controlled to house Q2Q equipment with all the necessary space, environmental friendly and power requirements. Suitable environmental conditions for this equipment is 32 -85 Degrees. Owner will be responsible for repair and/or replacement costs related to damage caused to Q2Q equipment from non-suitable environmental conditions. Equipment must remain protected against extreme temperatures and moisture at all times by Owner.

4. Prior Bulk Addendum(s). This Addendum replaces any and all prior Bulk Video Service Addendums, understanding and writings.

5. Survey of Installation Feasibility. The installation and use of Q2Q service is subject to a detailed site survey. If the construction estimate or design is not feasible or is greater than standard installation costs totaling no more than \$2,500.00, then Operator reserves the right to cancel this Addendum without liability to the Owner or liability to Operator.

6. No Resale. Owner shall not resell the Bulk Video Service or CPE in whole or in part or impose any incremental fee for the Bulk Video Service or CPE. Operator agrees that Owner charging a Bulk Billing fee to its Residents is not a violation of this section.

7. Bulk Video Service Monthly Fee. Operator shall bill and Owner shall pay a monthly fee in advance for the selected "Spectrum TV[®] (QQ)" service ("Bulk Billing Fee") based on the following calculation:

Month 1-3, the Bulk Billing Fee = \$1.68 X 84 Units regardless of whether such Units are occupied or not.

Months 4-6, the Bulk Billing Fee = \$4.20 X 84 Units, regardless of whether such Units are occupied or not.

Months 7-9, the Bulk Billing Fee = \$8.40 X 84 Units, regardless of whether such Units are occupied or not.

Months 10-12, the Bulk Billing Fee = \$12.60 X 84 Units, regardless of whether such Units are occupied or not.

Month 13 and for the remainder of the Term, the Bulk Billing Fee = \$16.80 X 84 Units, regardless of whether such Units are occupied or not.

Bulk Billing Fee = \$16.80 per unit rate x 84 units at the Premises*

Total monthly Bulk Billing Fee = \$1411.20

*Total number of units at the Premises whether occupied or not: currently 84 units

The Bulk Billing Fee excludes all applicable sales taxes, franchise fees, FCC regulatory fees, government license fees, copyright fees, any public educational and government ("PEG") access fees, retransmission consent fees or costs, surcharges or rate increases imposed by programmers, any taxes, fees or assessments of general applicability imposed or assessed by any governmental entity or other fees which Operator may lawfully pass through to subscribers.

If Operator's Video programming costs increase by either (i) twenty-five percent (25%) or greater during any twelve (12) month period starting on the Effective Date, or (ii) fifty percent (50%) or greater cumulatively during any thirty-six (36) month period starting on the Effective Date, then with written notice to Owner, which notice may not be given by Operator before three years from the Effective Date, Owner and Operator shall have ninety (90) days to renegotiate new Bulk Billing Fees and rate increases for the remainder of the Term. If Operator and Owner cannot reach an agreement as to rates then Operator shall provide six (6) months written notice of termination of the Bulk Addendum.

As part of this Bulk Video Service Addendum, Owner will provide a list of accurate addresses for each unit served as attached in Exhibit B.

Operator shall have the right to increase the Bulk Billing Fee by up to five percent (5%) each year beginning in January of the calendar year immediately after the execution of this Addendum unless this Addendum is executed by the parties in November or December, in which case Operator shall not exercise such increase right until January of the following calendar year. Such increases may be cumulative if not taken in the previous year(s).

Operator, at its sole discretion, shall also have the right to increase or decrease the total number of units billed each year to match the actual number of units, common areas or other sites being served or to be served at the Premises. Nothing herein shall require Operator to expend funds to increase or decrease the number of units served but the parties may agree to expend funds for such purpose upon mutually acceptable terms and conditions. Upon request and in the event an annual increase in the total number of units or sites served will exceed twenty percent (20%), Operator shall provide documentation to Owner of the basis for such increase. Such increases may be cumulative if not taken in the previous year(s).

Owner's failure to pay the Bulk Billing Fee or CPE rental fees, if any, in full by the balance due date of the month shall be a material breach of this Addendum and Operator shall, in addition to any other remedies available to it, have the right at its sole option to (i) suspend the Bulk Video Services and/or any other services Operator may be providing to the Premises upon thirty (30) days' prior written notice and/or (ii) terminate this Addendum upon thirty (30) days prior written notice, in which event Owner shall be liable for immediate payment of its remaining Bulk Billing Fees and CPE rental fees through the expiration of the term hereof as if this Addendum had not been terminated. In addition, and without limitation, Operator shall be entitled to solicit and offer to the residents of the Premises ("Residents") any of its services (including without limitation those comprising the Bulk Video Services) on an individual subscription basis for the remainder of the Agreement Term without interference or objection from Owner, in which event Owner hereby ratifies and confirms all of Operator's rights under the Agreement.

Owner will be responsible to allow Operator to remove any all Q2Q equipment at expiration or Owner will be in breach of this Addendum and Owner will be responsible for the full reimbursement cost for unreturned equipment within ten (10) days of expiration or breach of the Addendum by Owner. The cost of the unreturned equipment will be \$18,000 for sixty (60) channel units, less any equipment fees paid under Section 3. In addition to unreturned equipment reimbursement, Owner will be responsible for reimbursing Operator for all construction and or installation costs related to the installation of the Q2Q Equipment.

Late fees will be charged to Owner in accordance with Operator's then current policies. Owner accepts sole responsibility for Bulk Billing Fees and any other fees due hereunder for the term of this Addendum and any renewal or extension thereof.

9. Bulk Term. This Addendum will remain in force for an initial term of 10.0 years commencing on September 1, 2020 and terminating on August 31, 2030 ("Initial Term"). At the end of the Initial Term, or any successive term, this Addendum shall automatically renew for successive terms of one (1) year each unless either party gives written notice of its

intent not to renew to the other party at least ninety (90) days before the expiration of the then-current term. In the event Owner terminates this Addendum as provided herein, Owner shall provide Operator at the time of termination a then-current Resident roster, including addresses that Operator can use to support its efforts to convert Residents to individually billed subscribers. In addition, if requested by Operator, Owner shall send or otherwise distribute to all Residents an Operator-supplied letter that informs each Resident of his/her new service options resulting from Owner's termination of this Addendum.

10. Termination. If the Bulk Video Service arrangement set forth in this Addendum is terminated for any reason whatsoever, Operator may offer and provide any of the services comprising the Bulk Video Service to Residents on an individual subscription basis under the Agreement. The termination or expiration of this Addendum, for whatever reason, shall have no effect on the Agreement Term or any terms and conditions thereof.

11. Acceptance. This Addendum shall be binding upon Operator only after acceptance by an authorized officer of Operator as evidenced exclusively by said officer's signature.

12. Programming and Technology Modifications. Operator reserves the right, from time to time in its sole discretion and without Owner's consent, to change, delete, retier or preempt portions of the Bulk Video Service or any service provided by Operator and to adopt and implement new, improved, additional, modified or enhanced technology, features, services or capabilities at any time during the term of this Addendum.

13. Warranties. Owner warrants that (i) it holds all rights and has full authority to execute this Addendum and to grant the rights herein granted; (ii) this Addendum shall constitute a binding obligation of Owner; and (iii) there are no prior or existing agreements, nor will there be any such agreements during the Term, with Residents or third parties that would be breached or violated by the execution of this Addendum or by Operator's providing its services to the Premises.

14. No Third Party Beneficiaries. The parties agree that the terms of this Agreement and the parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each party under this Agreement only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective parties hereto.

15. Confidentiality. The parties will hold the terms and conditions of this Addendum in confidence, and will not reveal the same to any person or entity except (i) with the written consent of the other party; (ii) to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); (iii) as part of either party's standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; (iv) to the limited extent necessary to disclose the terms of the agreement to a prospective purchaser of the interests and rights under this Addendum who has a bona fide interest in acquiring such rights and obligations through assumption hereof and is subject to the terms of a nondisclosure and confidentiality agreement with terms at least as

restrictive as those set forth herein; or (v) in order to enforce its rights pursuant to this Addendum. All parties shall be directed to abide by the confidentiality provisions of this Addendum. If any unauthorized disclosure is made by Owner and/or any agent or representative thereof, the Operator shall have the option of pursuing any legal remedies available to it at law or in equity and/or terminating this Addendum and/or the Agreement.

IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions contained herein on the date indicated below.

OPERATOR

Spectrum Southeast, LLC

By: Charter Communications, Inc., its Manager

By: _____

Printed Name: R. Lynn Dodson

Title: VP, Spectrum Community Solutions

Date: _____

OWNER

City of High Point

By: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit A

60 channel Q2Q “Spectrum TV® (QQ)”
www.spectrum.com

Exhibit B

Address List of Units served under this Addendum