



City of Grand Island

Tuesday, July 27, 2010

Council Session

Item G15

#2010-198 - Approving Consent to Assignment of Pole Attachment Agreement from Galaxy Cable to Zito Midwest, LLC

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Dale Shotkoski, City Attorney

Meeting: July 27, 2010

Subject: Consent to Assignment – Galaxy Cable to Zito Midwest, LLC

Item #'s: G-15

Presenter(s): Gary R. Mader, Utilities Director

Background

Galaxy Cable, Inc., has an existing pole attachment agreement with the City of Grand Island to attach cable to poles owned by the City. Galaxy is in the process of selling their system assets to Zito Midwest, LLC. The sale should be complete by August 31, 2010. Zito and Galaxy are requesting the City's consent to transfer the pole attachment agreement from Galaxy to Zito.

Discussion

The Pole Attachment Agreement specifies all of the conditions required by the City and the amount to be paid for each attachment (\$4.00 per pole per year).

The sale and resulting transfer is common to the industry. The Utilities Department has no objections to the sale and subsequent transfer. The Legal Department has reviewed and approved the language.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Consent to Assignment to transfer the Agreement for joint use poles from Galaxy Cable, Inc., to Zito Midwest, LLC.

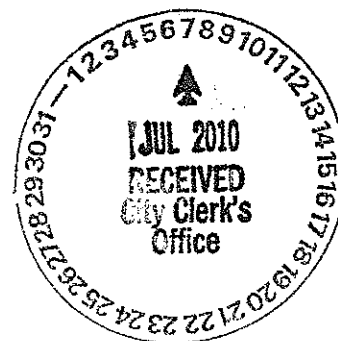
Sample Motion

Move to approve the Consent to Assignment to transfer the Agreement for joint use poles from Galaxy Cable, Inc., to Zito Midwest, LLC.



July 1, 2010

Bak



**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

City of Grand Island
City Clerk
PO Box 1968
Grand Island, NE 68802

Dear Sirs:

Galaxy Cable Inc. d/b/a Galaxy Cablevision, successor in interest to Galaxy Telecom, L.P., ("Galaxy") has entered into an agreement to sell our cable television properties and related assets to Zito Midwest LLC, a Delaware limited liability company, and Zito Midwest Holding, LLC, a Delaware limited liability company (individually and/or collectively, "Zito"). We anticipate completion of this sale on or about August 31, 2010.

Zito Media is a telecommunications company that provides cable television, high-speed internet, and digital voice services to customers in Pennsylvania, Kentucky, North Carolina, Ohio, West Virginia and Virginia.

Galaxy is currently a party to an agreement (the "Agreement") with the City of Grand Island for joint use of poles in the Nebraska communities of: Grand Island and Hall County. Pursuant to the terms of the Agreement, Galaxy is hereby requesting your consent to assignment of the Agreement to Zito. Once the sale is consummated, Zito will notify you of the effective date of the sale. Please execute the enclosed consent form which acknowledges and approves the assignment, and return the form to my attention at: P. O. Box 573, Barlow, KY 42024. If the City of Grand Island has specific requirements to accomplish the transfer, please let us know.

Your contact at Zito will be Colin Higgin, Zito Media L.P., 106 Steerbrook Road, Coudersport, PA 16915, telephone 814-260-9588.

Thank you for your cooperation. If you have any questions or comments regarding the sale or assignment, please feel free to contact Briley Smith of Galaxy at (270) 335-3881.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Martin".

Larry Martin
President

Enclosure

cc: Colin Higgin, Zito

*cc: Legal
UH:mes*

7-8-10

CONSENT TO ASSIGNMENT

WHEREAS, Galaxy Cable Inc., d/b/a Galaxy Cablevision, ("Assignor") and the City of Grand Island are parties to an agreement dated 8/1/1989, ("Agreement"), for joint use of poles located in Grand Island(Hall County), Nebraska; and

WHEREAS, Assignor desires to sell and transfer its cable television systems and assets thereto, including its rights under the Agreement, to Zito Midwest LLC, a Delaware limited liability company ("Assignee"), with offices at 106 Steerbrook Road, Coudersport, PA 16915; and

WHEREAS, the Agreement requires the consent of the City of Grand Island prior to any transfer by Assignor being effective;

NOW, THEREFORE, the undersigned hereby consents to Assignor providing Assignee with a copy of the Agreement, and, as of the sale date, hereby (i) approves the assignment by Assignor to Assignee of all rights and privileges, together with all duties and obligations of Assignor under the Agreement, and (ii) upon the transfer herein, hereby releases Assignor from any and all duties and obligations under the Agreement which arise from and after the effective time of the closing of such transfer; and

FURTHER, the undersigned hereby consents (i) to the collateral assignment of, or grant of a security interest in, the Agreement to Assignee's lenders to secure indebtedness or other obligations which may be incurred by Assignee in connection with its purchase of Assignor's assets; and (ii) to the exercise by such lenders of their rights as secured parties in and to the Agreement in the event of a default by Assignee in the payment of its indebtedness or the performance of its obligations secured by such security interest; provided, however, that nothing contained herein shall constitute a waiver of any rights of the undersigned to approve any subsequent transfer or assignment of the Agreement; and

FURTHER, the undersigned confirms that (i) the Agreement is validly existing and remains in full force and effect; and (ii) there are no defaults under the Agreement, or events which, with the passage of time or the giving of notice, or both, would constitute events of default thereunder; and

FURTHER, the undersigned acknowledges that Assignee will have the right on written notice to the undersigned, but without the necessity of obtaining the further consent of the undersigned, to assign and transfer its interest in the Agreement to any person or entity which is affiliated with Assignee by virtue of direct, indirect and/or common control or ownership; and

FURTHER, the undersigned understands that Assignee will promptly notify the undersigned of the consummation of the sale and assignment referenced above.

Dated this ____ day of _____, 2010.

City of Grand Island
PO Box 1968
Grand Island, NE 68802

By: _____
Name: _____
Title: _____

RESOLUTION 2010-198

WHEREAS, Galaxy Cable, Inc. has an existing pole attachment agreement with the City of Grand Island to attach cable to poles owned by the City; and

WHEREAS, Galaxy is in the process of selling their system assets to Zito Midwest, LLC;
and

WHEREAS, Galaxy and Zito Midwest, LLC are requesting the City's consent to transfer the pole attachment agreement from Galaxy to Zito; and

WHEREAS, the Legal Department has reviewed and approved the language and the Utilities Department has no objection to the subsequent transfer.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Consent to Assignment to transfer the Agreement for joint use poles from Galaxy Cable, In., to Zito Midwest, LLC, is hereby approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 27, 2010.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
July 22, 2010	☐ City Attorney