MEMORANDUM

Agenda Item No. 13(A)(1)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 15, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution authorizing the County Mayor to sign the attached settlement agreement between Sprint-Spectrum, LLP, the City of Miami and Miami-Dade County to resolve the lawsuit that arose as a result of the County's audit of Sprint's payment of public service utility tax payments

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The accompanying resolution was prepared and placed on the agenda by the County Attorney's Office.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: November 15, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving the Settlement Agreement Between Sprint Spectrum L.P., the City of Miami, and Miami-Dade County Concerning the County's Audit of Sprint's Payment of Public Service Utility Taxes

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Recommendation

It is recommended that the Board of County Commissioners approve the attached resolution that settles the lawsuit between Sprint Spectrum L.P. (Sprint), the City of Miami (City), and Miami-Dade County (County) concerning the County's audit of Sprint's payment of Public Service Utility Taxes.

Scope

This item will settle the dispute between Sprint, the City, and the County for Sprint's underpayment of Public Service Utility Taxes. Public Service Utility Taxes are levied by the County in the unincorporated area and by other cities in their respective jurisdictions.

Fiscal Impact

This settlement authorizes the County to keep the $1,665,314 already paid by Sprint and to receive another $194,000 from Sprint in full satisfaction of claims arising out of the County's audit dated April 12, 2001.

Background

The County's Audit and Management Services Department (AMS) audited Sprint's payments to the County of public service taxes on reoccurring telecommunications services for the period from January 1997 through November 2000. The audit revealed that Sprint underpaid Miami-Dade County by an estimated $2,052,933.

In response to the audit, Sprint filed a lawsuit against the City and the County. In its complaint against Miami-Dade County, Sprint disputed the amount of the underpayment to the County; in its complaint against the City, Sprint alleged that any underpayment to the County was due to overpayments to the City.

While filing the lawsuit to protect its position, Sprint undertook two good faith actions. First, it updated its geo-coding system to allocate accurately its accounts between the City and the County. Second, based upon its updated geo-coding, Sprint subtracted funds due to the City and used those funds to pay the County. It is also notable that Sprint voluntarily paid the County $1,665,314 of the amount it estimated was owed.

This, along with the $194,000, will result in the County receiving $1,859,314 to settle this claim, which is a favorable resolution as the method used by the County to make its $2,052,933 estimate, although reasonable and professional, is subject to dispute because it was based on limited information. A forensic account-by-account reconstruction to determine the exact amount of the underpayment was not undertaken because the records do not exist and the cost would be prohibitive. Nonetheless, AMS should be commended for the rigor and accuracy of the estimate under these constraints.

Further, the County was not in a position to pursue penalties and interest for several reasons, including the fact that Sprint did not fail to pay the taxes, it merely paid the taxes to the wrong entity. Florida statutes do not allow assessment of penalties unless there is evidence of fraud, which the audit did not disclose. Also, while this case has been pending for ten years, as previously mentioned, Sprint in good faith remitted to the County monthly payments from October 2001 to October 2008 totaling $1,665,314.

Finally, this case has little precedential value for communications companies like Sprint because the Legislature has changed this particular tax on telecommunications services from the Public Service Tax to a local communications tax which is levied on communications, satellite television, and cable television. In doing so, the Legislature removed the County's authority to audit such taxes, although past County audits have regularly revealed underpayments.

In summary, it is recommended that the Board approve this settlement because (1) Sprint worked in good faith to correct its geo-coding system to prevent this problem in the future; (2) out of County's initial claim for $2,052,933 in taxes, Sprint will pay a total of $1,859,314 (includes $1,665,314 already paid and an additional $194,000 to be paid when this settlement is finalized) which reflects a fair resolution given the limitations in determining the actual amount; and (3) this case has little precedential value as the Legislature has removed County's authority to audit the communications tax.

Attachments

Edward Marx

Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 15, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)
11-15-11

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO SIGN THE ATTACHED SETTLEMENT AGREEMENT BETWEEN SPRINT-SPECTRUM, LLP, THE CITY OF MIAMI, AND MIAMI-DADE COUNTY TO RESOLVE THE LAWSUIT THAT AROSE AS A RESULT OF THE COUNTY'S AUDIT OF SPRINT'S PAYMENTS OF PUBLIC SERVICE UTILITY TAX PAYMENTS

WHEREAS, Miami-Dade County audited Sprint-Spectrum, LLP's payments to Miami-Dade County of public service taxes on re-occurring telecommunications services for the period January 1997 through November 2000 and determined that Sprint underpaid Miami-Dade County by an estimated $2,052,933; and

WHEREAS, in response to the audit, Sprint filed a lawsuit against the City of Miami and Miami-Dade County disputing the amount of the audit findings and claiming that any underpayment to the County reflected an overpayment to the City; and

WHEREAS, this Board wishes to resolve this dispute as outlined in the attached settlement agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Mayor or Mayor's designee is authorized and directed to sign the attached settlement agreement between Sprint-Spectrum, LLP, the City of Miami, and Miami-Dade County in materially the form attached.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

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Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of November, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. TWL

Thomas W. Logue

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SETTLEMENT AGREEMENT AND MUTUAL RELEASES

1. MIAMI-DADE COUNTY (hereinafter "County"), for and in consideration of the total sum of ONE HUNDRED AND NINTY-FOUR THOUSAND DOLLARS ($194,000.00) received from SPRINT-SPECTRUM L.P. d/b/a SPRINT PCS (hereinafter "Sprint"), and other consideration set forth below, the sufficiency of which is hereby acknowledged;

2. SPRINT-SPECTRUM L.P. d/b/a SPRINT PCS (hereinafter "Sprint"), for and in consideration of the total sum of NINETY-SEVEN THOUSAND DOLLARS ($97,000.00) received from CITY OF MIAMI (hereinafter "City"), the sufficiency of which is hereby acknowledged;

3. CITY OF MIAMI, for and in consideration of mutual promises and releases;

4. All three of these parties hereby remise, release, acquit, satisfy, and forever discharge each other, of and from all liability for taxes, penalties, interests, costs or any other claim whatsoever, arising from (a) Miami-Dade County's Assessment and Notice of Decision to Sprint dated October 3, 2001 for Public Service Taxes; (b) Miami-Dade County's Audit of Sprint for the audit period October 1, 1997 through September 30, 2000, which was the subject of a proposed assessment dated April 12, 2001; (c) any claims by the City against Sprint or the County for offsets taken against Public Service Tax payments, and (d) and any and all liability arising out of the disputes involved or raised in the pleadings in the case of SPRINT-SPECTRUM L.P. d/b/a SPRINT PCS v. CITY OF MIAMI, and MIAMI-DADE COUNTY, Case No. 01-28782 CA 11, Eleventh Judicial Circuit, Miami Dade County, State of Florida, and CITY OF MIAMI v. SPRINT-SPECTRUM, L.P. d/b/a SPRINT PCS, Case No. 2004-20914-CA-01 (11), Eleventh Judicial Circuit, Miami-Dade County, State of Florida. This satisfaction and discharge shall cover all audits and claims for, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, arising out of these matters. In this regard, Sprint and the City waive any claim for any funds previously paid by Sprint to Miami-Dade County relating to items 4 (a), (b), (c) and (d), above.

5. Sprint, the County and the City release each other including any and all persons, natural or corporate, responsible for the acts set forth in the lawsuit(s) referred to above and for any liability regarding those acts.

6. It is further understood that this settlement is the compromise of a disputed claim, and that the payments are not to be construed as an admission of liability on the part of Sprint, the County or the City, by whom liability is expressly denied.

7. Sprint, the County and the City agree to voluntarily dismiss with prejudice the above-referenced claims between these parties with each party to bear its own costs and fees in the above-referenced action.

8. Sprint and the City will tender payments of the above referenced settlement amounts in the form of checks made payable to the above referenced parties in the amounts

stated above, within thirty (30) days of execution of this agreement by the last party and transmittal to all counsel.

SPRINT-SPECTRUM L.P. d/b/a
SPRINT PCS

By: _____

Print Name: Mark Beshears

Title: Vice President - State & Local Tax

STATE OF KANSAS

COUNTY OF Johnson

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared _____ Mark Beshears to me know to be the person described in or who has produced the following identification Vice President - State & Local Tax and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 26 day of September, 2011.

_____
(Signature)

Jill D Street
(Printed Name)

03/04/2014
(Commission Expiration Date)

JILL D. STREET
NOTARY
PUBLIC
STATE OF KANSAS

(AFFIX NOTARIAL SEAL)

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IN WITNESS WHEREOF, the CITY OF MIAMI has caused these presents to be executed in its name and its official seal to be hereunto affixed, by its proper officers thereunto duly authorized, this 3rd day of October, 2011.

CITY OF MIAMI, a municipal corporation
of the State of Florida

By: _____
Johnny Martinez
City Manager

Attest:

_____
Priscilla A. Thompson, City Clerk 10-3-11

Approved as to form and correctness:

_____
Julie O. Bru, City Attorney

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MIAMI-DADE COUNTY

By: _____

Print Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared _____ _____ to me know to be the person described in or who has produced the following identification _____, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2011.

_____
(Signature)

_____
(Printed Name)

_____
(Commission Expiration Date)

(AFFIX NOTARIAL SEAL)

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