



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.8.

8/8/2023

Subject:

Approval of Settlement with Spectrum Sunshine State, LLC (formerly Bright House Networks, LLC) in Brevard County v. Karl G. Owens, et. al, Case Number 05-2018-CA-019771

Fiscal Impact:

None

Dept/Office:

County Attorney's Office

Requested Action:

Request the Board approve the attached settlement with Spectrum Sunshine State, LLC.

Summary Explanation and Background:

In October 2017, LTM of Florida Holdings, LLC appeared before the Board claiming a strip of land (Central Boulevard aka Miller Cove Road) was a public road. Brevard County staff indicated that based on county records, the strip of land was never accepted as a public road. On December 19, 2017, the Board authorized the County Attorney's office to file a declaratory judgment action to allow a judge to resolve the matter.

The County filed suit on March 23, 2018 against 29 Defendants (including LTM of Florida Holdings, LLC) asking the court to determine that Miller Cove Road is not a public road, but a private road that has never been accepted by the County or the Town of Palm Shores. In addition, the court was asked to determine whether or not the strip of land is in the jurisdiction of the Town of Palm Shores. On February 16, 2019, the Board authorized the Chair to execute a Settlement Agreement with the Town of Palm Shores, LTM of Florida Holdings, several utility companies, and a few of the other defendants that conditionally resolved the situation going forward in Brevard County's favor. The lawsuit was temporarily abated to allow LTM of Florida Holdings, LLC time to meet the conditions set out in the settlement agreement. After three extensions, the settlement lapsed on July 1, 2021. The litigation is ongoing.

Bright House Networks, LLC is named as a defendant in the case because it has above ground fiber optic cable wiring attached to four Florida Power & Light utility poles along Miller Cove Road. Bright House Networks, LLC has changed its name to Spectrum Sunshine State, LLC. Spectrum Sunshine State, LLC has agreed to accept any judgment imposed by the court upon Florida Power & Light in return for a voluntary dismissal of the Company from the litigation. The County Attorney's Office recommends acceptance of this settlement.

Clerk to the Board Instructions:

Return signed copy to County Attorney.



August 9, 2023

M E M O R A N D U M

TO: Morris Richardson, County Attorney

RE: Item F.8., Settlement with Spectrum Sunshine State, LLC (formerly Bright House Networks, LLC) in Brevard County v. Karl G. Owens, et al – Case Number 05-2018-CA-019771

The Board of County Commissioners, in regular session on August 8, 2023, approved the Settlement with Spectrum Sunshine State, LLC (formerly Bright House Networks, LLC) in Brevard County v. Karl G. Owens, et al – Case Number 05-2018-CA-019771. Enclosed is the fully-executed Settlement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell", is written over the typed name.

Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

cc: Contracts Administration

Prepared by and return to:
 Brevard County Attorney's Office
 2725 Judge Fran Jamieson Way, A204, Viera, Florida 32940
 Regarding Overhead Fiber Optic Cable
 Central Boulevard, PLAT BOOK 3, PAGE 37

SETTLEMENT AND COVENANT

THIS SETTLEMENT AND COVENANT, made this ____ day of _____, 2023, is entered into between the following Parties: SPECTRUM SUNSHINE STATE, LLC, a limited liability company, whose address is 12405 Powerscourt Drive, St. Louis, Missouri 63131, hereinafter SPECTRUM, and Brevard County, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940, hereinafter the COUNTY.

RECITALS

WHEREAS, on March 23, 2018, the COUNTY filed a civil court action in the 18th Judicial Circuit with the Title of: Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, Plaintiff versus Karl G. Owens, et al., Defendants; and

WHEREAS, the purpose of the lawsuit is to determine the County's rights and responsibilities with regard to a certain right of way, called Central Boulevard (also known as Miller Cove Road) as said right of way is shown on the plat recorded in Plat Book 3 page 37, to the extent that right of way has not been vacated or re-platted; and

WHEREAS, Brevard County named Bright House Networks, LLC, a foreign limited liability company under the management of Charter Communications, Inc. as a Defendant; and

WHEREAS, Bright House Networks, LLC, changed its name with the Florida Division of Corporations on January 2, 2020 to Spectrum Sunshine State, LLC, a Delaware limited liability company; and

WHEREAS, the Parties desire to reach a settlement of all matters.

THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree to the following settlement terms:

1. Recitals. The Recitals above are true and correct and incorporated into this Settlement by this reference.
2. Property. SPECTRUM is the fee simple owner of certain above ground fiber optic cable wiring (tangible personal property) that is attached to four wood Florida Power & Light Utility poles installed south of Central Boulevard, as further described in Exhibit "A."
3. Binding Judgment. SPECTRUM hereby agrees to be bound by the final judgment rendered by the 18th Judicial Circuit in Case Number 05-2018-CA-019771-XXXX-XX in the same manner that Defendant Florida, Power & Light is bound, notwithstanding that the Parties agree that each Party shall be responsible for their own attorney's fees and costs in Case Number 05-2018-CA-019771-XXXX-XX. SPECTRUM further hereby agrees that this settlement shall be binding on its successor and assigns to the property described in paragraph 2 and Exhibit "A", and hereby agrees to require any successor or assign to abide by it.

4. **Public Records.** The Parties agree that upon execution of this Settlement, the COUNTY shall record this Settlement in the public records of Brevard County, Florida and that said settlement touches and concerns the land and property described in paragraph 2 and Exhibit A, and further that the Parties hereby covenant for this settlement to run with the land.
5. **Voluntary Dismissal.** In return, COUNTY agrees to voluntarily dismiss the SPECTRUM from Case Number 05-2018-CA-019771-XXXX-XX effective upon the recording of this settlement in the public records.
6. **Governing Law and Venue.** This Settlement shall be construed in accordance with and governed by the laws of the State of Florida. In the event of any legal proceedings arising from or related to this Settlement, the venue shall be in a court of competent jurisdiction in and for Brevard County, Florida; each party shall bear its own attorney's fees and the PARTIES AGREE TO WAIVE ANY RIGHT TO JURY TRIAL AND THAT ANY TRIAL SHALL BE NON-JURY.
7. **Authority, Entirety and Modifications.** Each Party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that Party to the obligations stated herein. Both Parties have had the opportunity to consult with legal counsel and to participate in the drafting of this Settlement. Consequently, this Settlement shall not be more strictly or more harshly construed against either Party as drafter. This Settlement may not be changed or modified except by written instrument executed by all Parties. Exhibit "A" is attached and incorporated by this reference.
8. **Severability.** In the event that any portion of this Settlement is found to be invalid, it shall be deemed severed and the remainder of this Settlement shall remain in full force and effect as if the severed portion did not exist.
9. **Liability.** In signing this settlement, COUNTY does not waive any aspect of its sovereign immunity beyond the protections of and limitations on damages as set forth in section 768.28, Florida Statutes. Nothing in this Settlement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(Signature Page Follows)

IN WITNESS WHEREOF, SPECTRUM has caused this Settlement to be executed, by and through their duly authorized representative, the day and year first above written.

Signed, sealed and delivered in the presence of:

SPECTRUM SUNSHINE STATE, LLC (FORMERLY BRIGHT HOUSE NETWORKS, LLC)

By: Charter Communications, Inc., its Manager

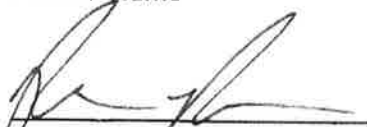


Rodger Kutemeier
Rodger Kutemeier
Area Vice President

Rebecca Glueck

Witness Signature
Rebecca Glueck

Printed Name



Witness Signature
David Payne

Printed Name

(Corporate Seal)

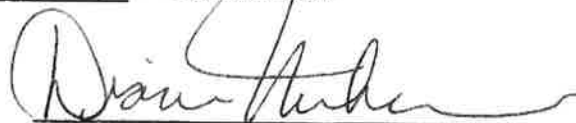
STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this 24 day of JULY, 2023, by RODGER KUTEMEIER, on behalf of said company who is ☐ personally known or ☐ produced _____ as identification.

[Notary Seal]



Diane Niehaus
Notary Public
State of Florida
Comm# HH144551
Expires 9/10/2025



Notary Public

DIANE NIEHAUS
Name typed, printed or stamped

My Commission Expires: 9/10/2025

(Signature Page Follows)

IN WITNESS WHEREOF, the COUNTY has caused this Settlement to be executed, by and through their duly authorized representative, the day and year first above written.

Kimberly Powell
Witness Signature
Kimberly Powell
Printed Name

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rita Pritchett
Rita Pritchett, Chair

S. McDaniel
Witness Signature
Samantha McDaniel
Printed Name

As approved by the Board on AUG 08 2023

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 8th day of August, 2023, by Rita Pritchett, on behalf of said company, who is ☒ personally known or ☐ produced _____ as identification.

[Notary Seal]



Helen Seaman
Notary Public
Helen Seaman
Name typed, printed or stamped
My Commission Expires: 6-5-27

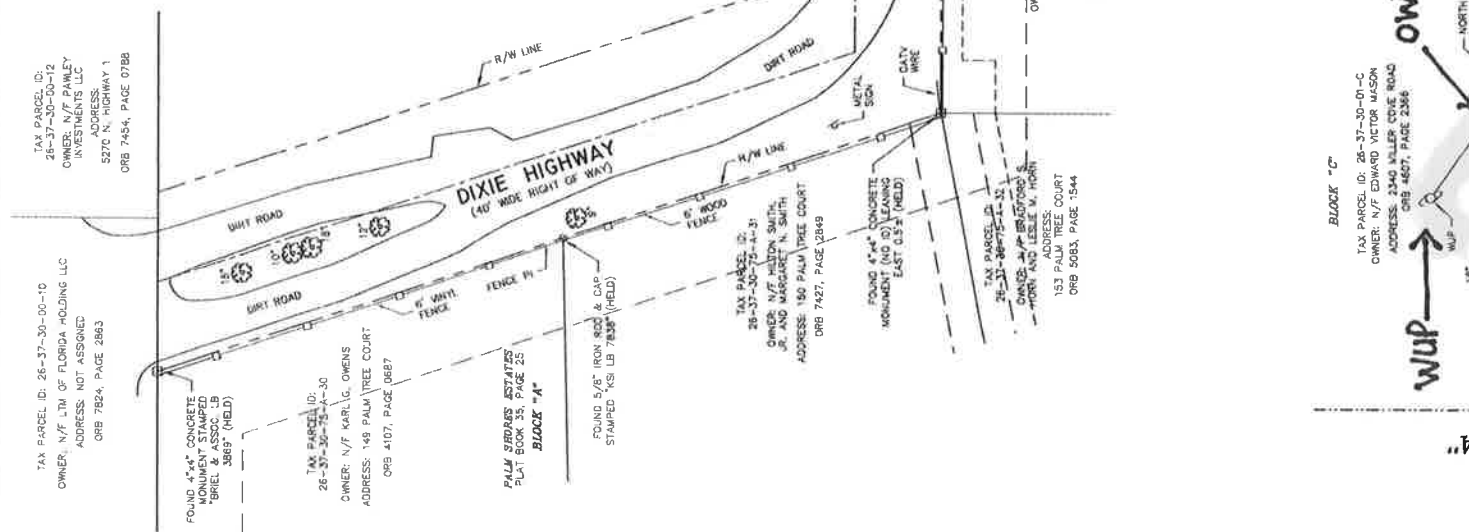
RIGHT OF WAY AND
TOPOGRAPHIC SURVEY
CENTRAL BOULEVARD
ALSO KNOWN AS MILLER COVE ROAD

SECTION 30, TOWNSHIP 26
SOUTH, RANGE 37 EAST,
TOWN OF PALM SHORES,
BREVARD COUNTY, FLORIDA

SHEET 2 OF 2



LEGEND	
	TOP OF BANK
	OVERHEAD WIRE
	RIGHT OF WAY
	LOT/PARCEL LINE
	SECTION LINE
	VACATED ROAD R/W
	VACATED ROAD CENTERLINE
	R/W PER PLAT
	DRAINAGE EASEMENT LINE
	SBT/C R/W EASEMENT LINE
	DIRT ROAD
	CONCRETE
	ASPHALT PAVEMENT
	SWALE
	STORM PIPE



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