



# CITY COUNCIL AGENDA STATEMENT



January 28, 2020

File ID: 20-0008

## **TITLE**

- A. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING A MASTER LICENSE AGREEMENT WITH VERIZON WIRELESS (VAW) LLC FOR SMALL WIRELESS FACILITIES WITHIN THE CITY'S RIGHT-OF-WAY
- B. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING A MASTER LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS RCS, LLC (AT&T) FOR SMALL WIRELESS FACILITIES WITHIN THE CITY'S RIGHT-OF-WAY

## **RECOMMENDED ACTION**

Council adopt the resolutions.

## **SUMMARY**

The growth in personal wireless services coupled with consumers' needs for more data capacity and faster speeds have created an increased demand for new wireless antennas and equipment. Existing 3 and 4 Generation (G) wireless technology was primarily deployed using macro cell sites installed on large cell towers. These macro sites allow for a greater coverage area, but have limited capacity. Increased usage of cellular data functions has subsequently increased the demand for greater capacity on cellular networks. To provide higher bandwidth signals and extend coverage for more users, the next phase of cellular technology, 5G, will use a small cell concept. These small cell deployments are significantly smaller than the previously built macro cell sites and have a more limited range by serving only users within the immediate proximity. As a result, the telecommunications industry is planning for a far greater density of small cell sites.

Wireless service providers are proposing to install small cell equipment in outdoor applications on City-owned poles and City-owned streetlights located in City Right-of-Way to provide faster data coverage and capacity for mobile phones and other cellular devices. To facilitate the installation of this technology, City staff have prepared a Master License Agreement for the deployment of Small Cell facilities.

## **ENVIRONMENTAL REVIEW**

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA

Guidelines, the activity is not subject to CEQA. Although environmental review is not required at this time, once the scope of potential project(s) has been defined, environmental review will be required for each project and the appropriate environmental determination will be made. Notwithstanding the foregoing, it has also been determined that the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

#### **BOARD/COMMISSION/COMMITTEE RECOMMENDATION**

Not applicable.

#### **DISCUSSION**

Wireless telecommunications facilities are regulated by federal, state and local laws. Over the last few decades, legislation at the federal and state levels have been proposed and implemented to strip municipalities of their local zoning and permitting authority regarding the regulation of telecommunications facilities. A brief overview of the most notable acts and their implications is provided below.

##### **Telecommunications Act**

Federal law significantly limits the City's ability to regulate telecommunication facilities. Under the Telecommunications Act of 1996, a city cannot prohibit the provision of wireless service or unreasonably discriminate among wireless service providers. Also, under federal law, the city may not regulate the placement, construction or modification of wireless communications facilities based on radio frequency emissions, so long as the facilities comply with the FCC regulations concerning such emissions. Despite federal limitations, cities historically have retained the ability to regulate the aesthetic of wireless facilities, including factors such as height and property line setbacks. However, federal law developments continue to erode that ability thereby reducing local control.

##### **The Spectrum Act**

In 2012, Congress enacted the Middle-Class Tax Relief and Job Creation Act (The Spectrum Act of 2012). The Spectrum Act was intended to facilitate the telecommunication industry's rapid deployment of 3G and 4G wireless infrastructure by requiring local governments to approve any application that sought to modify an existing wireless telecommunication facility that does not "substantially change" the existing facility. The Spectrum Act itself contains no specific definitions, but in 2015, the FCC promulgated regulations containing definitions, processing requirements, timelines and remedies for applications that seek to modify an existing wireless telecommunication facility in accordance with the Spectrum Act. These FCC rules are binding on local governments. Most significantly for cities, the federal regulations established very short permit processing timelines, referred to as "shot clocks," of 60, 90 and 150 days depending on the type of facility. If these time limits are not met, the city can face legal challenges from the telecom that in turn encourage swift overviews of applications rather than thorough reviews.

## **September 26, 2018 FCC Ruling**

On September 26, 2018, the FCC issued a ruling designed to further promote the expeditious deployment of small cell sites in the public ROW. This ruling was initially scheduled to take effect on January 14, 2019; however, that deadline was extended to April 15, 2019. The FCC ruling applies to all small wireless facilities defined as follows: Small wireless facility . . . is a facility that meets each of the following conditions:

1. The structure on which antenna facilities are mounted—
  - a. Is 50 feet or less in height, or
  - b. Is no more than 10 percent taller than other adjacent structures, or
  - c. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
2. Each antenna (excluding associated antenna equipment) is no more than three (3) cubic feet in volume; and
3. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
4. The facility does not require antenna structure registration under part 17 of this chapter;
5. The facility is not located on Tribal lands; and
6. The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in federal law.

The FCC ruling established the following new standards for small wireless facilities:

- *Broad interpretation of local prohibitions:* The FCC order attempts to further limit the city's ability to adopt a regulation that "materially limits or inhibits the ability of wireless carriers."
- *Cost-based fees:* The FCC ruled that cities are limited to charging fees that are no greater than a "reasonable approximation" of their costs for processing applications and for managing deployments in the right of way (ROW). The FCC established a presumptively lawful, nationwide fee schedule for small cell applications as follows:
  - \$500 for a single up-front application that includes up to five (5) small wireless facilities, with an additional \$100 for each small wireless facility beyond five, or \$1,000 for non-recurring fees for a new pole to support one or more small wireless facilities;
  - \$270 per small wireless facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to city-owned poles in the ROW.
- *Aesthetic regulations:* These are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments and (3) published in advance.
- *Underground requirements:* The FCC ruled that a requirement that all wireless facilities be deployed underground would amount to an effective prohibition and is thus not permitted.
- *Quid Pro Quo "in kind service":* The FCC discouraged situations where the city makes clear it will approve a deployment only on condition that the provider supply an "in-kind" service or public benefit, such as installing a communications network dedicated to city's exclusive use.
- *Batched applications:* Cities cannot prohibit batched applications (e.g., multiple streetlights). It is expected that the City will receive dozens of pole attachment requests in a single application.

In addition, the FCC ruling established a new set of even more restrictive “shot clocks” applicable only to small wireless facilities. These shot clocks are:

- Sixty (60) days for small cell wireless facility attachments to existing poles or structures; and
- Ninety (90) days for small cell wireless facilities on new poles or structures.

### **Impacts on Municipalities**

The FCC’s interest to make access quick and easy for telecom companies has limited municipalities’ ability to exercise control over local policies unique to their community. The impacts of 5G regarding diverse local governments are disheartening in most cases, as many cities are disappointed that they are unable to set their own rules related to the placement of telecom equipment on publicly owned infrastructure. One critical concern is that the FCC’s ruling overlooks community decision-making and substantially impedes cities’ ability to ensure their public safety and well-being. It is not the issue of utilizing 5G, but the approach of placing a one-size-fits-all policy on diverse local governments that is unreasonable.

### **Master License Agreement**

The proposed MLA for wireless facilities on City poles in the ROW allows the carriers and third party providers to install small cell wireless facilities on property owned and/or controlled by the City and to operate within the scope of the MLA for a period of ten (10) years from the issuance of Pole License Agreement (PLA). All the applicant’s construction, installation, maintenance and removal costs of the small cell facilities will be at their sole responsibility and cost.

The applicants are required to comply with all local, state and federal applicable laws. Each PLA under an MLA shall be administratively approved for each site and contain specific conditions that must be satisfied and maintained in order to use the wireless facility. The PLA will be submitted to the Engineering Department and circulated to all other appropriate departments. If the applicant causes any damage to the public ROW or City property, they are required to repair it promptly at their sole cost. The applicant will not be allowed to activate their site until the City signs off on final construction and the applicant obtains all necessary regulatory approvals. The MLA and the PLA provide for a number of risk mitigation measures for the City including: indemnity, insurance requirements, limitation on remedies available to the applicant in the event of a City breach, and reservation of the City’s emergency and police powers.

### **Impacts on City Property**

The installation will vary depending on the particular location and technology deployed. As mentioned, all installations will be required to receive all applicable permits and carriers will work closely with Development Services and Engineering to ensure that they do not interfere with City operations or facility maintenance. The installations will require maintenance and administration on a limited basis. All proposed facilities are required to secure all necessary land use, building and engineering permits.

### **Annual License Fee**

The telecommunication providers will be compensating the City for use of each site by paying an annual license fee to the City General Fund for each pole attachment installed. The annual license fee is \$270 dollars per pole, in accordance with the FCC order. The annual fee increases by 3% a year.

Staff will also work with carriers to implement basic facility improvements or enhancements at each site to help them complement the facilities' function when the construction and demolition or site programming warrant it. For example, it is common for light standards to be replaced or upgraded when antennae are added. These improvements would be in addition to the license payments.

### **Administrative Fees**

The MLA requires payment of two (2) administrative fees by applicants: a Master License Preparation Fee and a Pole License Processing Fee. Both fees reflect full cost recovery of the estimated reasonable cost of providing the associated service. The cost of service associated with preparing a Master License Agreement is estimated to total \$8,000 per agreement. The cost of processing a Pole License Agreement (PLA) is estimated to total \$1,000 per pole, which is higher than the FCC order, but has been agreed to by the providers to reimburse staff costs incurred with the review and approval of the PLA.

Over the last two years, there have been 78 deployments of small cell equipment on city facilities and additional applications continue to be reviewed by the Engineering Department.

### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.). Staff is not independently aware and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The resolution supports the Economic Vitality Goal as the use of safe and secure access to data can help promote an environment for residents and businesses to prosper in. The goals of Strong and Secure Neighborhoods and Connected Community are also linked to this resolution as it will ensure the future installation of this technology will maintain acceptable aesthetics within the City's streetscape.

### **CURRENT-YEAR FISCAL IMPACT**

The City's General Fund will receive the revenue from the annual license fee of \$270 per pole which will increase 3% per annum. Administrative fees are subject to full cost recovery.

### **ONGOING FISCAL IMPACT**

As positive ongoing fiscal impact, the City's General Fund will receive the revenue from the annual license fee of \$270 per pole which will increase 3% per annum. Administrative fees are subject to full cost recovery.

## **ATTACHMENTS**

1. Master License Agreements (Verizon and AT&T)

*Staff Contact: Miranda Evans, Economic Development Department*