



CITY OF NAPA

ATTACHMENT 3

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Staff Reports

File #: 1939-2019, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Julie B. Lucido, Public Works Director

Prepared By: Don Schmidt, Associate Civil Engineer

TITLE:

Accommodation Agreement for Verizon Wireless Communications Small Cell Technology Equipment

RECOMMENDED ACTION:

Authorize the City Manager to execute an Accommodation Agreement with GTE Mobilnet of California Limited Partnership, dba Verizon Wireless, for a pilot program to install small cell wireless communication equipment at 32 locations within the City's street right-of-way and setting parameters for the approval of future small cell applications, and determine that the actions authorized by this item are exempt from CEQA.

DISCUSSION:

Executive Summary:

As summarized in previous Council meetings (most notably the meeting of May 15, 2018, Item 14.A), GTE Mobilnet of California Limited Partnership, dba Verizon Wireless ("Verizon") has the legal right to install small cell antennas and related wireless communication equipment within the City's street right-of-way. Verizon first submitted applications to the City for the small cell installations in July 2017 and a master agreement with Verizon for installation of small cells on City facilities (light poles) was approved by City Council in December 2017. Community members began raising concerns in April 2018.

To date, Verizon has submitted applications for installation of small cell facilities at 53 sites. All applications are for the installation of equipment supporting 4G technology. No applications have been submitted for 5G technology. Although the City approved permits for installations at three sites, Verizon has not started installation of any small cell facilities. On December 5, 2018, Verizon sent the City a letter claiming that 22 of its 53 applications are deemed approved pursuant to California state law due to the City's failure to timely approve or deny those applications. Since that time staff has been negotiating terms of an Accommodation Agreement with Verizon that will:

- delay the approval of sites that have been identified as specific concerns to the community, until after installation and testing of a pilot project;
- approve a pilot project for installations at 32 sites (which is the minimum scale Verizon asserts is needed for an operational system);
- require testing of facilities at the 32 sites in the pilot project to ensure compliance with federal

- standards for radiofrequency; and
- prohibit Verizon from submitting additional applications for small cell installations until the earlier to occur of (i) all 32 sites have been constructed, inspected and documented to be in compliance with FCC RF exposure regulations; (ii) substantially all of the 32 sites (and in any case no less than 26) have been constructed, inspected and documented to be in compliance with FCC RF exposure regulations, which in any case shall not occur prior to August 15, 2020; or (iii) January 1, 2021, provided that whichever sites have been or are then currently under construction are inspected and documented to be in compliance with FCC RF exposure regulations.

Background:

In accordance with state and federal law, Verizon has the right to install small cell antennas and related wireless communication equipment within the City street right-of-way. These laws require the City to process applications for small cell installations promptly and limit the City's authority to regulate small cell facilities.

In general, the City has the authority to regulate the placement, construction, and modification of small cell facilities within City right-of-way based on considerations of public safety and aesthetics; however: (1) the City is preempted from regulating facilities on the basis of environmental effects of radio frequency (RF) emissions that comply with federal regulations established by the Federal Communications Commission (FCC), (2) the City cannot unreasonably discriminate among providers of functionally equivalent services, and (3) the City regulation cannot expressly prohibit or have the effect of prohibiting the provision of personal wireless services.

Recently, the FCC also preempted local authority to deny wireless facilities based on an applicant's failure to demonstrate a need to fill a coverage or capacity gap in its service. Although local public agencies may regulate aesthetics, those regulations must be reasonable (i.e., "technically feasible"), no more burdensome than those applied to similarly situated applicants, objective and published in advance. The FCC also requires final action (including license negotiations and appeals if applicable) to be completed within 60 or 90 days from the time an application is submitted whether the application is complete or incomplete.

The City's current administrative process for considering requests to install small cell facilities is addressed through applications for an Encroachment Permit ("EP"). As part of the EP process, the City evaluates the scope of the proposed small cell equipment (e.g., poles, wires, conduits, etc.) and the proposed location within the public right-of-way. Considerations such as safety (e.g., sight distance, height above ground, etc.), size and shape of elements, access within the public right-of-way, impact of the facility on the City's ability to use the public right-of-way, and aesthetics are used to evaluate proposed small cell installation locations. As noted above, the City is prohibited from making decisions either directly or indirectly on the environmental effects of RF emissions assuming the provider is in compliance with FCC rules.

In addition to an EP, if the equipment is proposed to be installed on City facilities, such as streetlights, the provider must enter into a master license agreement with the City. The master license agreement sets forth basic terms and conditions on which the provider may install, operate and maintain its equipment on City facilities but does not authorize the installation of specific equipment on a specific

site. Rather, prior to installing equipment on a specific City facility, the provider must enter into a site supplement license to define the exact location, the type of equipment to be installed, and authorize the installation at the specified location.

In July 2017, Verizon first submitted applications to the City of Napa for the installation of small cell wireless communication equipment within the City's right-of-way. On December 19, 2017, the City Council approved a master license agreement with GTE Mobilnet of California Limited Partnership, dba Verizon Wireless (Verizon), to install small cell equipment on City streetlights to expand the Verizon wireless network.

On March 29, 2018, Verizon held an open house meeting and invited all property owners and tenants within 150-feet of the small cell sites in the locations they were proposed to be in at that time. The following month at the April 17, 2018 City Council Meeting, 12 people spoke during public comment expressing their concerns regarding proposed small cell installations. In response, the Mayor requested staff to return to Council with information regarding the process and status for the City's review of small cell applications.

At the May 15, 2018 City Council Meeting, staff presented a summary of the small cell technology, the legal framework that disallows cities from prohibiting small cell networks and installations, and examples of equipment to be installed on and adjacent to existing and new streetlights and wooden utility poles. Community members were invited to contact Public Works with concerns related to the proposed Verizon sites and staff was asked to work with the community.

A well-attended community meeting was held at the Senior Center on August 22, 2018. The meeting was attended by City staff, Verizon representatives, Mayor Techel, and Vice Mayor Sedgley. Similar to concerns previously expressed, the attendees voiced concerns primarily about perceived health risks from RF waves and potential reductions in property values associated with the small cell antennas.

Discussion:

To date, Verizon has submitted applications for installation of small cell facilities at 53 sites within the City right-of-way, including installations on City streetlights, wooden poles owned by PG&E and other utility providers and on new poles ("monopoles"). While the City has approved encroachment permits for small cell installations at three sites (one City streetlight, one wood pole, and one monopole), the parties have not executed a site supplemental license agreement for the City streetlight location, and Verizon has not started installation of any small cell facilities.

On December 5, 2018, Verizon sent the City a letter claiming that 22 of its 53 EP applications for small cell facilities are deemed approved due to the City's failure to timely act under applicable state and federal laws. Following delivery of the deemed approved letter, Verizon representatives were responsive to City staff's requests for Verizon to delay enforcing its legal rights for any deemed approved facilities, and the parties executed a tolling agreement in order to allow time to negotiate how Verizon's facilities could be installed in a manner that minimizes adverse impacts on the community. The parties have extended the tolling agreement several times over the last year. The agreement is currently set to expire on October 29, 2019.

While the tolling agreement has been in effect, Staff has continued to negotiate with Verizon

regarding its 53 applications to reduce impacts to the community by relocating certain sites and improving the design of the proposed facilities. To that end, Staff and Verizon have negotiated a draft Accommodation Agreement, which would approve a pilot program for small cell installations at 32 sites, which is the minimum scale Verizon asserts is needed for an operational system at this time. The Agreement would require Verizon to test the facilities at the 32 sites in the pilot program to ensure compliance with FCC RF standards and delay the approval of the remaining 27 sites, including 11 sites that have been identified as specific concerns to the community, until after installation and testing of the pilot program sites. In addition, Verizon would not be able to submit new applications or receive approval of the remaining 27 applications until the earlier to occur of (i) all 32 sites have been constructed, inspected and documented to be in compliance with FCC RF exposure regulations; (ii) substantially all of the 32 sites (and in any case no less than 26) have been constructed, inspected and documented to be in compliance with FCC RF exposure regulations, which in any case shall not occur prior to August 15, 2020; or (iii) January 1, 2021, provided that whichever sites have been or are then currently under construction are inspected and documented to be in compliance with FCC RF exposure regulations.

Under the proposed Accommodation Agreement, the City and Verizon would waive their respective rights to seek judicial review of Verizon's deemed approved letter.

Verizon held an open house style meeting on September 24, 2019 to provide information to the public about the pilot program, small cell telecommunication equipment, and answer questions from the community. Notice was provided to all property owners and tenants within 300-feet of the 32 proposed small cell sites. Verizon reported that they provided door hangers advertising the meeting for approximately 1300 residences and were able to speak to 169 people during their door to door contacts. The City posted the meeting information in the City newsletter, on the City Facebook page, and through Next Door.

Approximately 30 to 40 people were in attendance. The questions and concerns received during and after the meeting were primarily related to RF limits, concerns over health impacts, and if the proposed project included 4G or 5G technology. As noted above, it is important to emphasize that federal law preempts the City from regulating RF impacts that comply with FCC Regulations; however, Verizon has agreed to demonstrate planned compliance prior to construction based on the maximum output power possible with the approved equipment and test its facilities during the pilot period to demonstrate compliance with FCC Regulations. Comments related to concerns over visual impacts and antenna site selection were also raised. From 2018 through September 27, 2019, 114 written comments have been received by the City by 78 people. Attached is an FCC fact sheet regarding RF safety and a fact sheet developed that captures questions that have been asked during outreach (Attachment 2).

Staff recommends approving the Accommodation Agreement because it documents a process by which Verizon will focus its initial installation of facilities in a manner that is the least disruptive to City residents, and Verizon will test its initial installation to demonstrate compliance with FCC Regulations. Rather than potentially litigate the failure to approve or deny the applications, Verizon has worked closely with staff to reduce the total number of sites in this deployment and use technically feasible alternative locations and support structures when possible.

In parallel to the negotiations with Verizon, City staff with the assistance of legal and engineering consultants with expertise in small wireless communication facilities developed small cell design

guidelines. The guidelines have been signed by the Public Works Director and are required for the design and construction of all future applications submitted by Verizon and other carriers. The design guidelines include standards for aesthetics and size, set requirements for clearances and placement, and require compliance with FCC standards. The guidelines also require carriers to evaluate placement in industrial and commercial zones and demonstrate network needs cannot be met within those areas prior to proposing small cells in residential areas. The guidelines also require a carrier to file a new application if the carrier plans to modify the equipment and RF frequencies (i.e. changing from 4G to 5G technology). The City has received applications from one other carrier at this time.

While the current laws severely limit any local control regarding small cell technology being installed within City right-of-way, Napa and other cities have supported legislative and judicial changes. Last year, the League of California Cities, along with a broad coalition of cities, local governments and utility companies from across the country, joined in a legal challenge to the FCC regulations that limit the authority of cities and states to regulate small cell sites. On July 25, 2019, City Council acted to support legislation introduced by Congresswoman Anna Eshoo, H.R. 530 - Accelerating Broadband Development by Empowering Local Communities Act of 2019 to overturn restrictive regulations regarding small cell wireless facilities issued by FCC, which ignored the input of hundreds of local governments. The outcome of these types of challenges would not result in the ability for local governments to prohibit small cell telecommunication equipment in the right-of-way but would increase the local control in permitting.

FINANCIAL IMPACTS:

Approval of the Accommodation Agreement does not impact the General Fund. Under the previously approved master license agreement, in exchange for use of various City-owned infrastructure for the installation of small cell equipment, Verizon would pay the City an annual fee of \$100 for each location which would be adjusted annually at a rate of 2% per year. If agreed to by both parties, Verizon could pay the City in a form of a credit for wireless services.

CEQA:

City staff recommends that the City Council determine that the Recommended Action is exempt from CEQA pursuant to CEQA Guidelines Section 15303, which exempts construction and location of limited numbers of new, small facilities or structures and installation of small new equipment and facilities in small structures.

DOCUMENTS ATTACHED:

ATCH 1 - Accommodation Agreement
ATCH 2 - Fact Sheets (Frequently Asked Questions and FCC Safety FAQs)
ATCH 3 - Map of Proposed Pilot Project Locations (32)
ATCH 4 - Map of Applications Received (53)
ATCH 5 - Fiber Connection Map

NOTIFICATION:

None.