



REPORT TO COUNCIL

City of Sacramento

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Staff Report
August 19, 2008

Honorable Mayor and
Members of the City Council

**Title: Agreement: Termination of City Agreement with Sacramento Metro
Connect, LLC for Citywide Wireless Broadband Network**

Location/Council District: Citywide

Recommendation: Adopt a resolution authorizing City Manager to issue a notice of default to Sacramento Metro Connect, LLC terminating Agreement Nos. 2007-0630, 2007-0631, 2007-1125, and 2007-1126 between the City and Sacramento Metro Connect, LLC for the design, deployment and operation of a citywide wireless broadband network.

Contact: Dean Peckham, Economic Development Senior Project Manager, 808-7063
Steve Ferguson, Chief Information Officer, 808-8600
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Presenters: Dean Peckham & Steve Ferguson

Department: Economic Development & Information Technology

Division: Citywide

Organization No: 4453 & 1311

Description/Analysis:

Issue: On June 21, 2007 the City and Sacramento Metro Connect, LLC ("SMC") entered into: 1) City Agreement No. 2007-0630 for the design, deployment and operation of a citywide wireless broadband network by SMC ("Wireless Network Agreement"); and 2) City Agreement No. 2007-0631 for providing wireless broadband network services to City offices and employees ("Anchor Tenancy Agreement").

The Wireless Network Agreement contemplated that SMC have access to certain city-owned buildings, infrastructure and streetlight poles to install its equipment and operate the wireless network. To support deployment of the wireless network, the City and SMC subsequently entered into: 1) City

Agreement No. 2007-1125 granting SMC non-exclusive rights to attach its equipment on designated city-owned buildings, structures and streetlight poles ("Revocable Permit"); and 2) City Agreement No. 2007-1126 granting SMC a license to use city-owned excess dark fibers to support the wireless broadband network ("Fiber License") on October 23, 2007.

Since approval of the above agreements, staff has been working with representatives of SMC to address issues associated with the deployment of a citywide wireless network. Pursuant to the Wireless Network Agreement, SMC was to begin commencement of the installation work for the initial deployment phase within the Central City District no later than ninety 90 calendar days after execution of the Wireless Network Agreement. Staff has continued to work with SMC to explore alternatives to facilitate deployment of the network. Unfortunately, SMC has not had success due to its inability to secure funding.

SMC has failed to perform the terms of the Wireless Network Agreement. SMC has not submitted a detailed plan for a citywide deployment as required by the Wireless Network Agreement. To date, SMC has not initiated any installation work. Under the Wireless Network Agreement, the failure by SMC to timely comply with the deployment plan constitutes cause for termination of the agreement and revocation of any permits related to the wireless network. The City can exercise its right to terminate by providing SMC with a notice of default. SMC has forty-five (45) calendar days after the notice of default to cure the breach. Termination of the Wireless Network Agreement will also terminate the Anchor Tenancy Agreement, the Revocable Permit, and the Fiber License.

On August 3, 2008 a letter was sent to SMC informing them of the August 19, 2008 Council meeting and the recommendation to terminate the Wireless Network Agreement.

Policy Considerations: Since the City entered into these agreements with SMC for the deployment of a citywide wireless network, numerous municipal (public/private) wireless networks that were deployed have ceased operations due to the inability by the wireless network operator to develop a business model which provides a sufficient revenue stream. The selected wireless operator has either ceased construction and/or backed out of agreements asking the local government or another third party to assume management and build-out of the network. Simultaneously, the marketplace, including Sacramento, has seen the explosion of wireless network hotspots deployed in café's, hotels, restaurants, office buildings, airports, libraries and other public meeting places.

While the Wireless Network Agreement and the subsequent agreements were consistent with the City of Sacramento Strategic Plan goals to expand economic development throughout the City, subsequent changes in the wi-fi marketplace indicate that the City was expedient in its decision not to commit financial resources to the project. There are numerous examples across the nation of cities who have committed financial resources for purposes of community-wide wi-fi and are now faced with the issue of maintaining or removing these

networks.

Staff recommends that Council direct staff to send the 45-day notice of termination to SMC for its failure to comply with the terms of the Wireless Network Agreement. In the meantime, staff will monitor the marketplace and issues related to wi-fi development and digital inclusion within the next twelve (12) months and report back to Council on its findings and any recommendations.

Environmental Considerations:

California Environmental Quality Act (CEQA): The current proposal involves the termination of city agreements. The proposed action is not a 'project' in accordance with Section 15378 of the California Environmental Quality Act Guidelines. The proposal does not have a potential for resulting in either direct or indirect physical changes in the environment. Therefore, as determined by the City's Environmental Services Planning Manager, no environmental review is necessary.

Sustainability Considerations: This report does not address any sustainability issues.

Rationale for Recommendation: City staff has worked diligently with SMC to support deployment of the wireless network project. However, SMC has been unable to perform its obligations under the Wireless Network Agreement. Further, SMC has not provided the City with any level of assurance to date that it has the financial capital to perform its obligations under the agreements and that SMC can or will comply with the business terms of the agreement (Attachment 2). SMC's former business partners, Intel, IBM and SeaKay, are also no longer involved in the project.

Financial Considerations: No additional funding is requested. SMC was to pay for all costs incurred for the design, installation, support and operation of the network. The City's obligation to pay for wireless services under the Anchor Tenancy Agreement was contingent upon SMC deploying a citywide wireless network. The Revocable Permit provided for payment of an annual streetlight pole attachment fee of \$36.00 per pole by SMC to the City to be used for digital inclusion. The Fiber License provided for annual payments by SMC of \$0.055 per linear foot of licensed dark fiber strand to cover City's ongoing fiber maintenance administration.

Emerging Small Business Development (ESBD): The proposed termination of agreements does not involve the issuance of contracts and therefore, ESBD considerations are not applicable.

Respectfully Submitted by: Dean J. Peckham
Dean Peckham
Senior Project Manager

Respectfully Submitted by: Steve R. Ferguson
Steve Ferguson, Chief Information Officer

Respectfully Submitted by: Thanh Vo
for Thanh Vo, IT Project Manager

Approved by: David Spaur
David Spaur, Economic Development Director

Recommendation Approved:

Ray Kerridge
Ray Kerridge
City Manager

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BACKGROUND**Attachment 1****Summary of events leading to recommendation for termination of agreements:**

1. June 21, 2007 – Wireless Network Agreement and Anchor Tenancy Agreement approved.
2. August 21, 2007 – per the Wireless Network Agreement, SMC to submit plans and specifications for installation and deployment of citywide wireless network within 60 days of agreement execution.
3. September 21, 2007 – per the Wireless Network Agreement, SMC to begin construction of network within the city central district phase within 90 days of agreement execution.
4. October 23, 2007 – Revocable Permit and Fiber License agreements approved.
5. October, 2007 through July, 2008 - Between October 2007 and July 2008 staff briefed the Council Ad Hoc Committee about the evolution of the SMC business model and progress towards digital inclusion goals. Ad Hoc directed staff to continue to pursue negotiations with SMC towards deployment of a citywide wireless network.
6. July 22, 2008 – Wi Fi Ad Hoc Committee recommends that staff make a presentation to the full Council regarding SMC's failure to comply with terms of the Wireless Network Agreement.
7. August 3, 2008 – Letter sent to SMC, LLC informing them of August 19, 2008 Council meeting and intent to issue notice of default on agreement.

In the past three years, since Council initially directed staff to investigate the deployment of a citywide wireless communications network, many of the large and small cities that entered into agreements with various wi-fi providers have ceased their deployment of public wireless networks.

Most notably, Earthlink entered into agreements to build and/or buildout networks in Philadelphia, PA; Corpus Christi, TX; Pasadena, and Anaheim. In the case of Corpus Christi, Earthlink completed construction of a network that was initiated by the City, with an agreement to pay Earthlink \$5.4 million. Earthlink asked the City to forego the final payment of \$1.6 million. Earthlink will give the City \$800,000 of equipment but the City will now have to assume annual maintenance costs of \$50,000. The network will remain open for City usage (public safety, meter reading, etc.) but will not be available to the general public. Similarly in Philadelphia, Earthlink is asking the city to buy back the network system.

MetroFi, a wifi developer known for developing free networks in communities, ceased construction in Santa Clara, Concord, and Milpitas, CA; Aurora and Naperville, IL and discontinued services in Portland, OR.

One of the original SMC partners, Azulstar began deployment in Rio Rancho, NM; Winston-Salem, NC; and Grand Haven, MI (corporate headquarters). Rio Rancho has terminated its contract with Azulstar for nonperformance and failure to post a bond. Azulstar has also backed out of the wi-fi project in Winston-Salem and Silicon Valley.

In all of these cases, the selected wi-fi provider has ceased construction and/or backed out of agreements, asking that the local government or an unnamed third party assume management and buildout of the network. As a nascent technology, the municipal wireless market has gone through some very rapid and extreme changes and continues to evolve.

The only case examples staff has been able to identify which have been successful in deploying a wireless network involve the communities of Oklahoma City, OK and Riverside, CA. In these communities the wi-fi networks were developed specifically for public safety and municipal services such as code enforcement, building permit services and wireless meter reading. In the case of Oklahoma City, the City originally issued a RFP for a public/private network and received no proposals; hence the determination by Oklahoma City to develop the network only for the benefit of city employees and services. The Riverside network is a partnership with AT&T to provide public safety services.

While Council directed staff to negotiate with SMC, an alternative technology, wi-max, which requires fewer antennae, has been touted and deployment initiated in some markets, including the California Central Valley. Within the past year, Clearwire began the entitlement application process to begin deployment in Sacramento. This project has been suspended while Clearwire completes its merger with Sprint Wireless. It is anticipated that this merger will open the market to wi max broadband coverage via handheld devices such as the I-Phone, Blackberry, etc.

2007 RFP Business Terms

Attachment 2

A. Coverage

- a. Initial deployment downtown (Sacramento River on the west to 16th St on the east, H St on the North to R St on the South)
- b. Citywide within 2 years of approval (guaranteed coverage for 95% of the area on the exterior of buildings and 90% coverage through 1 wall on the 1st and 2nd floors.
- c. Taller and denser buildings will require property owner to purchase compatible "Customer Premise Equipment"
- d. Proposer developed deployment schedule that is economically and ethnically balanced between diverse neighborhoods and Council Districts

B. Service Requirements

- a. Citywide free basic service at 300Kbps or greater
- b. No time or login limits for free service
- c. Subscriptions for higher speed service (subscription rates to be determined by Proposer)

C. Advertising

- a. Proposer may elect sell advertising at the "free service" level to support such service. Proposer may propose alternatives to advertising supported free service.

D. Contract Terms

- a. Initial 5 year contract with two, 5-year renewal options

E. System Technology Requirements

- a. Basic technology requirements – Industry standard equipment that meets all appropriate FCC regulations
- b. Proposer to upgrade network as technology changes, including WiMAX deployment at no cost to the City
- c. City will lease city owned dark fiber where available to the Proposer for network backhaul use

F. Permitting

- a. City shall amend zoning ordinance to allow for a single permit application for citywide deployment
- b. City shall waive local permit and encroachment fees
- c. Proposer will meet city's requirements for an aesthetically pleasing design. The City's guidelines will be available to Proposers during the RFP process

G. Electricity

- a. Developer shall pay all cost of electricity at the City's rate for electricity usage based upon average per unit usage rates

H. Deployment

- a. City buildings, other facilities and light poles will be available to the Developer for deployment. The following qualifications apply:
 - i. 95% of City streetlights are gang-switched lights (no power present in the light arm when light is off).
 - ii. Many of the City's streetlights are ornamental and/or too short for deployment. In some cases there are neighborhoods that have no streetlights. The developer will be responsible for identifying a deployment strategy in these areas.

I. City Use of the System

- a. City will be entitled to use the system for its own business needs free of charge for the term of the agreement. Terms of use include:
 - i. On a priority basis at 1Mbps or greater
 - ii. On a separate and dedicated SSID
 - iii. The city is willing to consider proposals where the City could become an "anchor tenant" to support its use of the system. The Proposer may offer multiple "anchor tenant" scenarios for the City to select from.

J. Digital Inclusion

- a. If the Proposer elects to use advertising to support the free service (see #3 above), then 7% or greater of gross advertising revenue to fund or support qualifying 501(c)(3) nonprofit organization. The Proposer may offer alternative approaches to funding Digital Inclusion, for example:

Proposer may either create or partner with qualifying 501(c)(3) to provide the following funded by the 7% of gross advertising revenue or another alternative

- i. Subsidize accounts for low income residents
- ii. Purchase computers
- iii. Create additional free access points in schools, libraries, community centers, etc.
- iv. Provide technical services to qualified households.

Highlights from the Wireless Master Agreement (2007-0650):

- SMC will design, furnish, install and operate the wireless broadband network in Sacramento at their cost
- SMC provides a technology upgrade and refreshes program as a key safeguard against eventual technology obsolescence via its Technology Refresh Lease Program at their cost
- Deployment of the network will be economically and ethnically balanced between diverse neighborhoods and Council Districts that cover the entire City within two (2) years of start of the initial phase of deployment
- A basic free access for everyone at 1Mbps with no time limit and no credit card required to register for the free service
- Affordable internet services to subscribers/businesses starting from \$15/mo
- Hourly/daily/weekly access for transient professionals and visitors
- Open access to Internet Service Providers (ISP) based on a wholesale model
- Impressive connection speeds (1Mbps – 3Mbps) and state of the art security
- Digital Opportunity efforts will not single out specific constituencies, but rather will enable digitally underserved constituencies to participate viably and productively in the greater progress of the entire Sacramento community
- Addressing knowledge sharing in key areas around digitally underserved community priorities via focus groups and related research
- Inclusion of existing providers of community service, ensuring value added partnerships rather than competition for resources
- Promoting Digital Opportunity through neighborhood portals, local schools, and community centers, enabling local content creation, and providing Community-focused training and “Loan to Own” equipment purchase programs
- A Digital Inclusion Advisory Board will be appointed by the City Council to oversee digital opportunity investment, fundraising, program implementation, provision and evaluation
- SMC will allocate 7% of gross revenue on a monthly basis from advertising on the free service to “Digital Opportunity and Economic Development Efforts”
- SMC agrees to the following compensations for use of City-owned assets during the term and any renewal term of this Agreement:
 - SMC will allocate \$36.00 annually per pole used in the network to community reinvestment efforts toward City’s Digital Inclusion Program
 - SMC will allocate funds to subsidize Customer Premise Equipment acquisition for up to 200 “Community Organizations” within a low cost loan to own programs
 - SMC will discuss and confirm with the Digital Inclusion Advisory Board to allocate funds to support access to Assistive Technology solutions to include, more specifically, broadband access solutions for low income families, senior residents and business owners over the age of 65 in the City of Sacramento

RESOLUTION NO.

Adopted by the Sacramento City Council

Termination of City Agreement with SMC, LLC for Citywide Wireless Broadband Network

BACKGROUND

- A. On June 21, 2007, the City and Sacramento Metro Connect, LLC ("SMC") entered into: 1) City Agreement No. 2007-0630 for the design, deployment and operation of a citywide wireless broadband network by SMC ("Wireless Network Agreement"); and 2) City Agreement No. 2007-0631 for providing wireless network broadband services to City offices and employees ("Anchor Tenancy Agreement").
- B. The Wireless Network Agreement contemplated that SMC have access to certain city-owned buildings, infrastructure and streetlight poles to install its equipment and operate the wireless network. To support deployment of the wireless network, the City and SMC entered into: 1) City Agreement No. 2007-1125 granting SMC non-exclusive rights to attach its equipment on designated city-owned buildings, structures and streetlight poles ("Revocable Permit"); and 2) City Agreement No. 2007-1126 granting SMC a license to use city-owned excess dark fibers to support the wireless broadband network ("Fiber License") on October 23, 2007.
- C. Since approval of the above agreements, staff has been working with representatives of SMC to address issues associated with the deployment of a citywide wireless network. Pursuant to the Wireless Network Agreement, SMC was to begin commencement of the installation work for the initial deployment phase within the Central City District no later than ninety 90 calendar days after execution of the Wireless Network Agreement. Staff has continued to work with SMC to explore alternatives to facilitate deployment of the network. Unfortunately, SMC has not had success due to its inability to secure funding.
- D. Since approval of the agreements with SMC, numerous municipal (public/private) wireless networks that were deployed have ceased operations due to the inability by the wireless network operator to develop a business model which provides a sufficient revenue stream. The selected wireless operator has either ceased construction and/or backed out of agreements asking the local government or another third party to assume management and build-out of the network. Simultaneously, the wi-fi marketplace, including Sacramento, has seen the explosion of wireless network hotspots deployed in café's, hotels, restaurants, office buildings, airports, libraries and other public meeting places.

- E. SMC has failed to submit a detailed plan for a citywide deployment as required by the Wireless Network Agreement. In addition, SMC has failed to commence any construction work for the deployment of the wireless network. The failure by SMC to timely comply with the deployment plan specified in Wireless Network Agreement constitutes a default and is cause for termination of the Wireless Network Agreement and revocation of any permits related to the deployment of the wireless network. The City can exercise its right to terminate by providing SMC with a notice of default. SMC has forty-five (45) calendar days after the notice of termination to cure any default.

- F. The term for the Anchor Tenancy Agreement, Revocable Permit, and Fiber License runs concurrently with the Wireless Network Agreement. Accordingly, termination of the Wireless Network Agreement will also result in termination of these agreements.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager is authorized to issue a notice of default to Sacramento Metro Connect, LLC terminating Agreement Nos. 2007-0630, 2007-0631, 2007-1125, and 2007-1126 between the City and Sacramento Metro Connect, LLC for the design, deployment and operation of a citywide wireless broadband network.