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Staff Report for a Discussion Concerning Small Cell Installations on City-Owned Street Lights and Utility Poles

SUMMARY AND RECOMMENDATIONS

Small cell antenna installations allow wireless infrastructure and wireless service providers to install cellular equipment on City-owned street lights and similar City-owned utility poles. A recent Federal Communications Commission (FCC) Order established rules that may impact how local government can regulate these installations. Despite the FCC Order, City staff have been actively negotiating Master License Agreements with telecommunication companies who wish to begin equipment deployments in San Leandro.

BACKGROUND

Mobile device usage has grown rapidly in recent years, requiring more bandwidth and placing heavy demand on existing network infrastructure. As a result, mobile service providers are beginning to supplement their current 4G networks with small cellular base stations (“small cells”) to increase bandwidth and capacity on their networks. A small cell is similar to a mobile hot spot in that it covers a small area with high-density usage to provide better mobile phone service.

These 4G small cells, and the evolution to 5G wireless technology, depend on closely spaced antennas for which street lights and similar municipal vertical assets are ideal for cost effective installations. This infrastructure is being built out in two ways.: Either wireless infrastructure companies build and maintain a “neutral” small cell network infrastructure that they in turn can lease through partnership agreements to wireless service providers.; Or wireless service providers choose to build, maintain, and operate their own small cell infrastructure.

Analysis

Under existing federal and state law, local municipalities retain certain authority to regulate wireless telecommunications facilities in the public right-of-way. This includes the authority to regulate the aesthetic qualities of the facilities and the appropriateness of the size and location of equipment within each neighborhood. The authority also grants the City the right to charge fees associated with these installations.

On September 26, 2018, the FCC adopted new regulations intended to preempt certain local authority over small cell deployments. The order is scheduled to take effect 90-days after publication in the Federal Register. A complete copy of the FCC Report and Order is available at the following web address:

<https://docs.fcc.gov/public/attachments/DOC-353962A1.pdf>

In a CitiesSpeak article published on September 7, 2018, the National League of Cities (NLC), which formally opposed the FCC Order, offered thoughts and comments regarding the implication to municipalities if the Order is approved. An excerpt from the article states the following:

“The [FCC] proposal would result in huge revenue losses for local governments from small cell lease agreements, new unfunded mandates and a loss of local control over issues like undergrounding, negotiations for public benefits and the ability to fully control the appearance of city streets.”

A complete copy of the NLC article is available at the following web address:

<https://citiesspeak.org/2018/09/07/fcc-proposes-preemption-fee-cap-for-local-small-cell->

A summary of the FCC Order prepared by Next Century Cities, a nonprofit advocacy group of which the City of San Leandro is a member, is also included for review.

In line with this local approach, the NLC and National Association of Telecommunications Officers and Advisors recently published a Model Code for Municipalities. The Model Code could be adopted by City Ordinance to uniformly govern all small cell installations. This one-size-fits-all approach may not be attractive to telecommunication companies given their individual needs and capabilities, but would provide uniformity in reviewing applications submitted for permits. At present, small cell installations would only be governed by the City’s Encroachment regulations defined in Chapter 5-1 of the San Leandro Municipal Code. The Model Code is attached for the Committee’s reference.

Another option is available to the City. Because staff has been negotiating Master License Agreements (MLA’s) with individual telecommunication companies for several months now, those companies have expressed a willingness to execute said MLA’s in order to gain certainty from the City on the regulations that will govern equipment deployments in the long term. The companies would therefore voluntarily enter into MLA’s if the terms allowed sufficient certainty that their capital investment would be recouped.

Whether the City ultimately decides to adopt a City Ordinance, enter into individual MLA’s, or some combination of the two, the following are several issues the Committee should consider:

- The FCC order significantly diminishes local decision making, but does not eliminate it.
- The City cannot say no to **deny** all small cell antennas within specific neighborhoods or other areas of their communities. However, the City can say no to **deny** a specific placement as long as there is a reasonable alternative.
- Application fees (\$500 for initial application covering five sites) and annual right-of-way fees (\$270 per small cell per year) are listed in the FCC order as 'safe-harbor' amounts. Staying at or below these fee amounts will shield the City from court challenges. Telecommunications companies can voluntarily pay more by entering into MLA's in order to gain long-term certainty in the fees. The City should, however, be prepared to show how any fees collected correlate with the cost of managing the permitting and right-of-way.
- Cities that are prepared by proactively putting in place policies and procedures will be able to retain some local control, especially with respect to aesthetic issues. If these requirements are in place in advance, a city is less likely to experience push back and the city's position will be more defensible if challenged in court.
- The FCC order includes 'shot clock' deadlines for application processing, typically 60 days for a small cell mounted on a street light. The deadlines may be difficult to meet, but there is no 'deemed granted' provision in the order. Batch permitting may be particularly problematic for the City as the scope of such requests can overwhelm current staff. If staff works in good faith, keeps the carrier updated, and are still unable to meet the deadline, it is likely the carrier will not pursue a legal remedy. If instead they take the City to court, the staff's due diligence and proactive efforts will work in the City's favor.

The new FCC Order has recently been challenged in federal court by the City of Portland, Oregon, and legal experts believe more court challenges may follow. The outcome of these challenges is uncertain, but an injunction delaying the effective date of the Order is quite possible, thus providing incentive for telecommunication companies to re-engage in good faith negotiations with the City.

In conclusion, staff believes that there is still value in moving forward with MLA's with interested telecommunications companies in spite of the uncertainty created by the FCC order. Staff requests feedback from the Committee in terms of next steps and future consideration by the full City Council.

Current Agency Policies

- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation.
- Maintain and enhance San Leandro's infrastructure.

Previous Council Actions

- At the September 17, 2018 City Council meeting, the Council discussed the proposed agreements and voted to send the items back to Facilities and Transportation Committee.

Committee Review and Actions

- Prior informational presentation at the March 1, 2017 Facilities and Transportation Committee meeting.

Applicable General Plan Policies

- Policy CSF-4.1 Telecommunications. Collaborate with telecommunication service providers, the business community, and investors to foster access to emerging information and communication technology.

Attachments to Staff Report

- FCC Fact Sheet dated September 5, 2018.
- Model Code for Municipalities by the National League of Cities and National Association of Telecommunications Officers and Advisors, August 2018.
- Next Century Cities Summary of Proposed FCC Small Cell Order
- City of Portland, Oregon, lawsuit against the FCC

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