



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.g

Title:

Recommendation to Terminate Pole Attachment Agreement with Wide Open West LLC (WOW)

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The City has an existing pole attachment agreement with Wide Open West (WOW) for the purpose of communicating with the six Verizon mini-cell antennas. The City received notice that Verizon has negotiated with WOW to acquire those pole attachment rights from WOW.

Staff and the City Attorney developed a new pole attachment agreement with Verizon to effectively transfer the agreement. With approval of the new agreement with Verizon, the agreement with WOW can be terminated. The attached agreement was crafted by the City Attorney and WOW Attorney.

Attachments *(please list):*

* Pole Attachment Termination Agreement

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Pole Attachment Termination Agreement with Wide Open West LLC.

TERMINATION AGREEMENT

This TERMINATION AGREEMENT (this “Agreement”) is made as of _____, 2017, by and among The City of St. Charles, a municipal corporation of the State of Illinois (the “City”), WideOpenWest Illinois, LLC, a Delaware limited liability company (“WOW Illinois”), and Sigecom, LLC, an Indiana limited liability company (“Sigecom” and together with WOW Illinois, “WOW”), and shall be effective as of, and subject to the occurrence of, the Closing (as defined below).

WHEREAS, the City, WOW Illinois and Sigecom are parties to that certain Joint Use Pole Attachment Agreement, dated as of February 2, 2015 (the “Agreement”);

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of August 1, 2017 (the “APA”), by and between WideOpenWest, Inc., a Delaware corporation (“WOW Inc.”), and MCImetro Access Transmission Services Corp., a Delaware corporation (“Verizon”), Verizon agreed to acquire certain assets, and to assume certain liabilities, from WOW Inc. that are related to its fiber network in the area of Chicago, Illinois (the “Transaction”);

WHEREAS, WOW Inc. is a parent company of each of WOW Illinois and Sigecom;

WHEREAS, at the closing of the transactions contemplated by the APA (the “Closing”), WOW agreed to assign to Verizon, and Verizon agreed to assume from WOW, all of WOW’s rights and obligations arising on or after the Closing under the Agreement (the “Assignment”);

WHEREAS, the City has proposed, and WOW Inc. and Verizon have agreed, that (a) Verizon shall enter into a new pole attachment agreement with the City, which agreement will provide Verizon with the rights contemplated by the Assignment, and (b) the Agreement be terminated, in each case, effective as of, and subject to the occurrence of, the Closing; and

WHEREAS, the City has consented to the transfer of WOW’s rights to Verizon and agreed that WOW shall have no further obligations arising at or after the Closing under the Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Termination of the Agreement. The parties hereto agree to terminate the Agreement in its entirety and agree that the Agreement shall no longer be of any force or effect and that all rights and obligations thereunder shall cease upon the occurrence of the Closing; provided, nothing herein shall relieve the parties hereto of any of their respective obligations under the Agreement arising prior to the Closing.
2. Acknowledgements. As of the date hereof, each of the City and WOW acknowledge and agree that (i) there are no outstanding and unpaid rental fees pursuant to Section 9 of the Agreement, and (ii) neither the Assignment nor the consummation of the Transaction shall be deemed to constitute a breach or entitle the City to any payments or compensation under the Agreement.

3. Miscellaneous.

- (a) *Successors.* This Agreement and all the obligations and benefits hereunder shall inure to the successors and assigns of the parties hereto.
- (b) *Amendment and Waiver.* The provisions of this Agreement may be amended and waived only with the prior written consent of the parties hereto.
- (c) *Severability.* Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.
- (d) *Governing Law.* ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY AND INTERPRETATION OF THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF ILLINOIS OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF ILLINOIS.
- (e) *Counterparts.* This Agreement may be executed in counterparts, each of which may contain the signature of only one party, but each such counterpart will be deemed an original and all such counterparts taken together will constitute one and the same Agreement.
- (f) *No Strict Construction.* The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- (g) *Miscellaneous.* Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

* * * *

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement as of the day and year first above written.

Witness:

THE CITY OF ST. CHARLES

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness:

WIDEOPENWEST ILLINOIS, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness:

SIGECOM, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____