



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 5/5/2020

DEPARTMENT: Legal

STAFF CONTACT: Ron Shaver/Daniel Yoza

SUBJECT: Report on a proposed ordinance making certain amendments to the contract franchise with ExteNet Systems, Inc. (Ordinance 12-07) and proposed amendments to the Master License Agreement with ExteNet Systems, Inc.

ITEM DESCRIPTION: Report on a proposed ordinance making certain amendments to the contract franchise with ExteNet Systems, Inc. (Ordinance 12-07) and proposed amendments to the Master License Agreement with ExteNet Systems, Inc.

SUMMARY:

In 2012, the City granted ExteNet Systems, Inc. ("ExteNet") a contract franchise by adoption of Ordinance No. 12-07 ([Attachment A](#)). The franchise allows ExteNet to use the City's right-of-way to construct and install its facilities for the purpose of providing telecommunication services in Olathe. In 2014 the City agreed to a Master License Agreement ("MLA") with ExteNet ([Attachment B](#)) which defined how Extenet would seek permission and pay for the right to use City facilities. Similar Franchises and MLAs with ExteNet are being used in Lenexa, Overland Park and Leawood. The City of Olathe has also used this structure of agreement with other similar companies, such as Unite Private Networks and Mobilitie. The main purpose of these agreements is to protect the public right-of-way, and to ensure that fair and uniform fees are charged to all similarly situated providers.

On September 27, 2018 the FCC released Declaratory Ruling and Third Report and Order, 18-133. This ruling included language that provided that annual fees of \$270 or less per attachment are presumed reasonable under federal telecommunications law. The existing MLA with ExteNet provides for an annual fee of \$540. Verizon Wireless began attaching facilities to City streetlights after the FCC ruling, and is currently paying annual fees of \$270. Federal law requires cities to treat telecommunications providers in non-discriminatory manner. Therefore, staff recommends that the most prudent course of action is to assess the \$270 annual fee going forward.

Since the proposed ordinance ([Attachment C](#)) and revised MLA ([Attachment D](#)) needed to be amended for the aforementioned reasons, staff also worked with Extenet to make general updates reflective of changes in State law, evolving technological terms, and changes in the Olathe Municipal Code. In addition, Extenet has restructured as ExteNet Asset Entity, LLC. The Ordinance and MLA both acknowledge this and bind the correct entity to the City.

FINANCIAL IMPACT: The City will receive compensation for any facilities located in the City's right-of-way in accordance with the MLA and the franchise.

ACTION NEEDED:

Accept the report. Unless directed otherwise, Staff will prepare the ordinance amending the contract

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franchise and the amended Master License Agreement for Attachments to City Facilities for formal approval at the May 19, 2020 meeting.

ATTACHMENT(S):

Attachment A - Ordinance No. 12-07

Attachment B - Extenet Master License Agreement

Attachment C - Ordinance No. 20-XX ExteNet Franchise Amendment

Attachment D - Amendment to ExteNet MLA