

DATE ISSUED: August 28, 2002 REPORT NO. 02-189

ATTENTION: Honorable Mayor and City Council  
Docket of September 3, 2002

SUBJECT: Street Light Pole License Agreement With Ricochet Networks, Inc.

REFERENCE: Manager=s Report No. 99-84, dated April 28, 1999  
Manager’s Report No. 01-022, dated February 7, 2001

SUMMARY

Issue - Should the City Council approve a License Agreement with Ricochet Networks, Inc. for the exclusive use of City-owned street light pole radios and the nonexclusive use of City street light poles for existing and new radio locations.

Manager's Recommendation - Approve the License Agreement.

Other Recommendations - None.

Fiscal Impact - Revenues from the Agreement are estimated to be \$500,000 annually following the initial service distribution of the system. All revenue will be deposited to the General Fund. Additional compensation valued up to \$1.1 million annually will flow to the City in the form of no cost wireless broadband services.

BACKGROUND

On May 4, 1999, the City Council passed Ordinance Number 291555, granting the ability of San Jose-based Metricom, Inc. to utilize space on City-owned light poles for the placement of wireless radio receivers used for the company=s wireless broadband network. Under the Agreement with the City, Metricom installed approximately 1,700 low-power, shoe-box sized units installed on approximately one out of every sixty City street light poles as well as four Wired Access Points (WAPs) on City facilities. Under the Agreement, the City received a license fee equivalent to 5% of Metricom’s total gross revenues for operations in the public right-of-way. In addition, the City received an annual fee of \$60.00 for each City light pole utilized by Metricom for the placement of its radio receivers. On February 7, 2001, an amended

and restated License Agreement was approved by Council to address minor changes in Metricom's business plan.

Metricom invested over \$1.3 billion in developing the Ricochet high speed (128 kbps) broadband technology and had networks deployed in 21 major U.S. cities with 51,000 subscribers. However, on July 2, 2001, Metricom filed for Chapter 11 bankruptcy protection and subsequently abandoned its Agreement with the City as well as all radios and WAP equipment located on City light poles and facilities. Under the bankruptcy proceedings, intellectual property necessary to operate Metricom's equipment, was purchased by Ricochet Networks, Inc. for \$8.25 million. During the bankruptcy proceedings, the City was granted the ownership rights to the radios and WAP equipment located on City facilities.

Ricochet Networks subsequently approached the City seeking to reactivate the now inactive Metricom system to provide wireless broadband services. Ricochet seeks the ability to lease the City-owned street light pole radios and WAP sites and utilize City light poles to provide service.

#### DISCUSSION

As the owner of the intellectual property rights for the original Metricom system, Ricochet Networks is the sole provider that maintains the ability to reactivate this equipment. Without the intellectual property component, the usefulness of the original Metricom system to the City would be non-existent and the existing light pole radios would most likely be eventually removed at City expense.

Ricochet Networks, Inc. is a subsidiary of Aerie Networks, a privately held broadband services company based in Denver, Colorado. Aerie Networks is led by a management team with experience in designing, building, operating, and marketing broadband networks, and specific experience in building and marketing Ricochet service. Ricochet will initiate service in Denver shortly and is targeting San Diego and the San Jose area for activation in early Fall, 2002. Ricochet's local operating partner is NetHere a San Diego-based Internet services provider.

The proposed License Agreement between the City and Ricochet Networks is similar to the agreement the City originally maintained with Metricom, Inc. for use of City light poles. The differentiating element is the need for Ricochet Networks to also lease the now City-owned light pole radios and WAP sites that were originally installed by Metricom. Under the proposed License Agreement, Ricochet Networks would receive the exclusive rights to lease the City-owned light pole radio unit/WAP hardware equipment and maintain the nonexclusive rights for use of City light poles to provide wireless data services. Ricochet Networks would also receive the ability to install additional light pole radios as needed which would remain under the ownership of Ricochet Networks.

#### FISCAL IMPACT

As compensation for the use of City equipment and facility placement in the City rights-of-way, Ricochet Networks will pay a License Fee of 5% of total gross revenues. Ricochet Networks will also immediately provide the City 1,500 no cost wireless broadband service subscriptions

and 500 free wireless modems. The number of no cost subscriptions increases to 3,000 within the first five years of the Agreement. Additional service subscriptions and modems are also available to the City at a discounted rate. The term of the proposed Agreement is 10 years.

On a compensation comparison basis, the proposed License Agreement with Ricochet Networks is over double the value of the original Metricom Agreement. Estimates from Ricochet indicate that the total cash revenues received by the City under this proposed License Agreement will be approximately \$500,000 annually as service becomes more fully distributed during the first five years of operation. The additional compensation value to the City of the no cost wireless data service will be \$1.1 million annually once/if all of the 3,000 no cost subscriptions are utilized. This broadband technology will be used to supplement the existing City-owned wireless data (MDT) system and the commercially procured Cellular Digit Packet Data (CDPD) Service.

The proposed License Agreement is consistent with the objectives of Council Policy 900-13 pertaining to the promotion of new telecommunications technologies and for obtaining just compensation for the use of City property and the public rights-of-way. Because Ricochet only utilizes a small portion of the City's total number of light poles, there appears to be no significant barriers to competitive entrants providing similar services within the City.

ALTERNATIVE

Do not approve the License Agreement with Ricochet Networks, Inc.

Respectfully submitted,

---

Richard E. Wilken  
Director, Information Technology  
& Communications

---

Approved: Rey Arellano  
Deputy City Manager &  
Chief Information Officer

WILKEN/MSJ

Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

ATTACHMENT License Agreement with Ricochet Networks, Inc.