

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

3/30/04

SUBJECT: Agreement with Hiawatha Broadband Communications

PREPARED BY: Walt Lorber, Director of Operations *WLP*

ITEM DESCRIPTION:

In mid-2003, Hiawatha Broadband Communications (HBC), a Minnesota communications provider located in Winona, approached RPU staff to determine if there would be interest in exploring the emerging technology of broadband communications over the power lines (BPL). Staff expressed interest in exploring the technology and the two parties conducted preliminary research to gain familiarity with the current state of BPL applications; and, based on the apparent success of several ongoing BPL initiatives, determined that BPL's potential of supporting the multiple goals of the parties warranted a field trial to test the technology. Each party budgeted \$50,000 in 2004 to conduct the test(s).

The attached agreement addresses the interests and risks of each party and acknowledges that the field tests do not obligate either party to pursue commercial deployment of BPL. With a successful technical trial, the parties propose to conduct a market trial of greater scope. If the cost of a market trial would exceed the 2004 budget appropriation, staff would seek the appropriate approvals before proceeding.

The results of the BPL testing will be presented to the Board for consideration of further involvement with BPL and/or HBC.

UTILITY BOARD ACTION REQUESTED:

The Board is requested to approve the agreement with Hiawatha Broadband Communications for "Use of Power Line Carrier for Broadband Telecommunications" and authorize the Mayor and City Clerk to execute the agreement.

Larry Koshin

General Manager

3/25/04

Date

ROCHESTER PUBLIC UTILITIES

AGREEMENT
Use of Power Line Carrier for Broadband Telecommunications

THIS AGREEMENT is made this ____ day of _____, 2004, by and between the CITY OF ROCHESTER, MINNESOTA, a Minnesota municipal corporation, acting through its Rochester Public Utility Board ("City") and HIAWATHA BROADBAND COMMUNICATIONS, INC., a Minnesota corporation ("HBC").

WHEREAS, the City owns, operates and manages an electric public utility system for the City under the name of Rochester Public Utilities ("RPU"); and,

WHEREAS, HBC is involved in the broadband telecommunications industry; and,

WHEREAS, HBC contacted the City and expressed an interest in using the City's electric utility's power line for the delivery of broadband telecommunications ("BPL") using power line carrier technology to customers in Rochester; and,

WHEREAS, as a result of HBC's expression of interest, the City and HBC have completed initial research on the potential of using power line carrier for the delivery of broadband telecommunications. The research consisted of literature search, attendance at a BPL workshop, a visit to a BPL test site and a commissioned analysis of BPL technology and market potential in Rochester; and,

WHEREAS, the City's involvement in the initial research does not reflect any City interest in delivering broadband telecommunications services as one of the City's public utility or as a City enterprise. Instead, the City is interested in the BPL concept for three reasons: First, the City seeks to use power line carrier technology to improve its operation of its electrical utility facilities through the use of a reliable, economical and efficient two-way communications system directly with each customer's premise; Second, the City seeks to use power line carrier technology to manage as efficiently as possible the use and delivery of energy; Third, the City wants to use its existing utility facilities to their fullest capacity so as to provide its customers with the most efficient and economical energy possible; and,

WHEREAS, both parties believe it is in each party's best interest to pursue the BPL concept at this time although the parties have different interests at stake.

NOW, THEREFORE, in consideration of the mutual benefits to the parties set forth herein, and other good and valuable consideration, the adequacy of which is hereby acknowledged, City and HBC agree as follows:

1. The parties will engage in a field test consisting of two parts: a technical trial and a market trial. During the technical trial, the BPL hardware will be installed on a mutually selected RPU electric circuit with connections to 10-20 volunteer customers for a three-month evaluation of service quality. The target implementation date is July 1, 2004. During the market trial, the technical trial will be extended to up to 100 customers for a three-month evaluation of service value. The target implementation date is October 1, 2004.
2. The parties agree to contribute equally to the costs of the above-described field test, including the costs for equipment purchases, installation and maintenance and costs for consulting services to design the trials, specify the equipment, evaluate proposals, establish performance measures and analyze performance data.
3. The parties will collect and analyze the following performance data:
 - A. Power line equipment functionality and reliability;
 - B. Power system impacts;
 - C. Telecommunications reliability for program delivery;
 - D. Telecommunications reliability for utility applications;
 - E. Stray BPL signal interference;
 - F. Customer satisfaction with service access; and
 - G. Customer satisfaction with service content;
4. The City and HBC will share equally the total costs for the field test and analysis, estimated to be about \$100,000.
5. The City, acting through RPU, will purchase and install the needed BPL equipment. HBC will purchase and install equipment necessary for the injection of program content and will provide other field assistance as requested by RPU. Each party will document its field labor, which will be charged at \$35 per hour. RPU will invoice HBC for its pro rata share of equipment and labor provided by RPU, and will credit HBC for a pro rata share of equipment and labor provided by HBC.
6. HBC's cost to deliver program content and the City's cost to test utility communications will be borne by the respective party that incurs the cost.
7. Administrative support provided for this field test and analysis will be provided through a project team comprised of equal representation from the City and HBC. Each party will pay for its own administrative labor cost.

8. The continued joint investigation and study of BPL technology, as outlined in this Agreement, does not obligate either party to the continued investigation of, study of or involvement in this concept. Furthermore, no party is obligated or expected to continue any continuing, ongoing relationship with the other party.
9. Either party may terminate this Agreement and end its relationship with the other party by giving a 30-day written notice to the other party. Those costs incurred by either party, which this Agreement requires to be shared between the parties, will be allocated equally between the parties through the end of the 30-day notice period. Upon termination of this Agreement as provided by this paragraph, any procured equipment and materials will be offered for sale. The non-terminating party will have the initial ability to purchase the equipment and materials.
10. The City and HBC will share the information obtained from the field test and subsequent analysis. This information will become the joint intellectual property of both parties. This information will not be disclosed to any third party except as mutually agreed to by the parties, as the City deems necessary to adequately prepare any subsequent request for proposals or public bids, or as required by applicable federal or state law. Neither party will seek to license, register or otherwise take action to protect its intellectual property rights arising out of this Agreement and the efforts either party has undertaken to date without the written approval and participation of the other party.
11. Upon completion of the field test and the resulting analysis, the purchased field equipment will be:
 - A. Salvaged or sold with the resulting revenue shared equally between the parties;
 - B. Purchased by one of the parties; or
 - C. Kept in place to support an ongoing relationship between the parties.
12. HBC specifically acknowledges that, as a public entity, the City is unable at this time to make any commitment that it will pursue any BPL endeavors with HBC. It is possible that, as a result of any subsequent request for proposals or public bidding process, the City will pursue its BPL endeavors with another telecommunications provider.
13. Neither party may assign this Agreement without the written consent of the other party.

14. This Agreement constitutes the complete agreement between the parties relative to this issue and supersedes any prior oral or written agreements between the parties regarding the subject matter herein. There are no understandings, representations or agreements, oral or written, not specified herein. By the signatures of its authorized representatives below, the parties acknowledge that they have read this Agreement, understand its terms and agree to be bound thereby.

IN WITNESS WHEREOF, the parties set their hands and seals as of the date and year first above written.

CITY OF ROCHESTER

By _____
Its Mayor

Attest: _____
Its City Clerk

By _____
Its General Manager

Approved as to Form and
Execution:

Rochester City Attorney

HIAWATHA BROADBAND
COMMUNICATIONS

By _____

By _____

STATE OF MINNESOTA)
) SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this _____day of _____, 2004, by Ardell F. Brede and Judy K. Scherr, the Mayor and City Clerk, respectively, of the City of Rochester, a Minnesota municipal corporation on behalf of the corporation.

Notary Public

(Seal of the City of Rochester)

STATE OF MINNESOTA)
) SS
COUNTY OF WINONA)

The foregoing instrument was acknowledged before me this _____day of _____, 2004, by _____ and _____, personally known to me to be officers of the said corporation and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed on behalf of the corporation.

Notary Public



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Board approves a contract agreement with Hiawatha Broadband Communications and that the Mayor and the City Clerk are authorized to execute the agreement for

Use of Power Line Carrier for Broadband Telecommunications

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 30th day of March 2004.

President

Secretary