

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

July 23, 2024

FROM

LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department

SUBJECT

Contracts with Charter Communications Operating, LLC, Lumen Technologies, Inc., and Frontier California, Inc. for Countywide Telecommunication Services

RECOMMENDATION(S)

1. Approve **Contract No. 24-676** with Charter Communications Operating, LLC on behalf of Spectrum Enterprise, including non-standard terms, for countywide telecommunication services, in an amount not-to-exceed \$480,000, retroactive for the period of July 9, 2024 through June 30, 2029.
2. Approve **Contract No. 24-677** with Lumen Technologies, Inc., including non-standard terms, for countywide telecommunication services, in an amount not-to-exceed \$2,940,000, retroactive for the period of July 1, 2024 through June 30, 2029.
3. Approve **Contract No. 24-678** with Frontier Communications, including non-standard terms, for countywide telecommunication services, in an amount not-to-exceed \$14,640,000, retroactive for the period July 1, 2024 through June 30, 2029.
4. Authorize the Chief Information Officer or Assistant Chief Information Officer to sign future documents to confirm or implement the contracted telecommunication services, related to Recommendation Nos. 1, 2, and 3, so long as such documents do not exceed the amounts of \$480,000, \$2,940,000, and \$14,640,000 respectively, or change the duration of the contracts as authorized in Recommendation Nos. 1, 2, and 3.

(Presenter: Lynn Fyhrlund, Chief Information Officer, 388-5501)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Innovation and Technology Department (ITD) operating costs are recovered via service rates approved annually by the Board of Supervisors (Board). The costs for telecommunication services are determined by actual usage and will not exceed the total of \$18,060,000, as identified in the Recommendations above. Sufficient appropriation is included in the ITD Telecommunication Services and Computer Operations 2024-25 budgets for telecommunication services and will be included in future recommended budgets. County departments are required to ensure there is adequate appropriation within their respective annual departmental budgets for the cost of telecommunication services for the five-year term.

BACKGROUND INFORMATION

Contracts with Charter Communications Operating, LLC, Lumen Technologies, Inc., and Frontier California, Inc. for Countywide Telecommunication Services
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ITD operates and maintains the County's Wide Area Network (WAN), an integrated electronic telecommunication network that provides Countywide data, voice, and video communications. It enables County departments to communicate with one another and offers secure and reliable access to the County's managed information technology systems. The WAN allows the geographically dispersed County departments to share data, run applications, participate in video conferencing, communicate via email, and access the Internet all of which assist County departments in serving the public. Historically, the WAN was solely a data communications network, and the County had a separate voice network. With technology advancements, voice traffic is now converging with the data network and is transmitted through the WAN.

Telecommunication service providers allow the County to provide telecommunication and WAN connectivity to County departments and non-County public entities. Current contracts for countywide telecommunication and WAN services will expire on June 30, 2024 for Lumen and Frontier and July 8, 2024 for Spectrum. ITD released Request for Qualifications (RFQ) No. ISD124-TCS-5350 on April 8, 2024, to identify vendors that have the necessary qualifications to provide robust data and voice communication services to the County. Frontier, Spectrum, and Lumen were selected as qualified contractors as they have the necessary qualifications and service area coverage to provide countywide telecommunication services.

The Spectrum Enterprise Service Agreement (Spectrum SA) is Spectrum's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard terms. While the parties negotiated certain contract terms to County standards, Spectrum would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Spectrum may assign the Spectrum SA without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Spectrum could assign the Spectrum SA to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the Spectrum SA.
2. Spectrum's maximum liability to County is limited to the amount paid or payable by the County in the 6 months immediately preceding the event that gives rise to the claim.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Spectrum SA amount leaving the County financially liable for the excess.
3. County's right to bring legal claims is limited to one year after the claim arises.
 - The County standard contract does not include a limit on the time to bring action.
 - Potential Impact: Limiting the County's ability to bring suit to one-year amounts to a waiver of the statute of limitations for claims and shortens the period of time in which the County may file a lawsuit under the Spectrum SA. Spectrum's right to bring claims is not similarly limited, so Spectrum may bring claims any time within the statute of limitations.

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The Lumen Master Service Agreement (Lumen MSA) is Lumen's standard state, local and education government agencies contract, which includes terms that differ from the standard County contract and omits certain County standard terms. While the parties negotiated certain contract terms to County standards, Lumen would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Lumen will have no liability for personal injury, death, or loss of property related to emergency calling.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Lumen MSA amount leaving the County financially liable for the excess.
2. Payment terms are Net 45 with late payment interest of 1.5% monthly.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 45 days may result in a material breach of the Agreement, which could allow Lumen to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5%, which could exceed the Lumen MSA amount.

The Frontier Services Agreement (Frontier SA) is Frontier's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard terms. While the parties negotiated certain contract terms to County standards, Frontier would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Frontier's maximum liability to County is limited to the amount paid for the service or equipment in the prior 12 months, excluding claims arising from Frontier's indemnity obligations, gross negligence, or willful misconduct.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Frontier SA amount leaving the County financially liable for the excess.
2. There is no termination for convenience without penalty. If the County cancels any service or equipment prior to installation or delivery, the County must pay a cancellation charge equal to the non-recurring charges and one (1) month of the monthly recurring charges for the service, plus Frontier's total costs and expenditures in connection with establishing the service, including but equipment restocking fees.
 - The County standard contract gives the County the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
 - Potential Impact: Upon any termination by either party regardless of cause, the County is required to pay cancellation charges, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

On June 11, 2019 (Item No. 34), the Board approved Contract No.19-393 with Lumen, formerly CenturyLink Communications, LLC, in an amount not to exceed \$2,000,000, and Contract No.

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19-394 with Frontier, in an amount not to exceed \$12,200,000, for countywide telecommunication services for the period of July 1, 2019 through June 30, 2024.

On July 9, 2019 (Item No. 19), the Board approved Contract No. 19-478 with Charter Communications Operating, LLC on behalf of Spectrum, in an amount not to exceed \$400,000, for countywide telecommunication services for the period of July 9, 2019 through July 8, 2024.

On August 25, 2020 (Item No. 27), the Board approved Amendment No. 1 to Contract No. 19-393 with Lumen, formerly CenturyLink Communications, LLC, increasing the total amount not-to-exceed by \$450,000 for a total not-to-exceed amount of \$2,450,000, with no change to the contract term.

ITD recommends approval of the contracts with Spectrum, Lumen, and Frontier to ensure that countywide telecommunication services continue effective retroactively July 1 and July 9, 2024, through June 30, 2029. ITD is presenting the agreements with Charter and Lumen retroactively as ITD was still negotiating terms with the vendors and was able to meet the June Board item deadline. Approval of Recommendations No. 4 and No. 5 will allow the Chief Information Officer or Assistant Chief Information Officer to approve amendments to the contracts, thereby reducing potential delays to the County for telecommunication services.

PROCUREMENT

On April 8, 2024, ITD issued RFQ No. ISD124-TCS-5350 to identify vendors to provide Countywide telecommunication services for a five-year period beginning on July 1 and July 9, 2024 through June 30, 2029. ITD received proposals from five vendors. An evaluation committee determined that Spectrum, Lumen, Frontier, and AT&T Corp. (AT&T), are best qualified to meet the telecommunication service needs of the County. The contractors were selected based on their service areas, qualifications, and the ability to provide the required telecommunication and WAN services to meet the County needs.

Although AT&T qualified for RFQ No. ISD124-TCS-5350, the existing California Network and Telecommunications (CalNet) NextGen Contract No. 21-654 with AT&T, as approved by the Board on September 14, 2021 (Item No. 24), will continue to be utilized for telecommunication services, effective through June 30, 2025.

CalNet is a centrally managed formal procurement program for an array of telecommunication services. Public agencies, as defined in Government Code Section 11541, are allowed to order services and products under current CalNet NextGen contracts.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on June 7, 2024; Purchasing (Christina Reddix, Buyer III, 387-2060) on June 5, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on June 10, 2024; Finance (Elias Duenas, Administrative Analyst, 387-4052) on June 10, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on June 10, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 23, 2024



cc: IT - Thomas w/agrees
Contractor - c/o IT w/agree
File - w/agree
CCM 07/29/2024