



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Ed Shikada

SUBJECT: AT&T PROJECT LIGHTSPEED
UPDATE

DATE: November 2, 2006

Approved

Date

11/2/06

RECOMMENDATION

- a) Accept report on recent State actions establishing a statewide franchising system for video services and implications on AT&T's encroachment permit applications for its Project Lightspeed.
- b) Restate the City's willingness to expedite encroachment permits for Project Lightspeed infrastructure upon AT&T's acknowledgement that it will obtain a franchise prior to offering video services.

OUTCOME

This report provides an opportunity for Council discussion of the newly established statewide system for the regulation of video services including cable television services.

BACKGROUND

The City Council has discussed AT&T's Project Lightspeed on several occasions since December 2005. Most recently, on June 27, 2006, the City Council rejected a proposal by AT&T to enter into a "Public Benefits Agreement" to construct and operate a video programming system, at the same time restating its willingness to expedite franchise negotiations with AT&T, and that any encroachment permits for the installation of video infrastructure will be conditioned on AT&T's acknowledging the requirement of an agreement with the City prior to offering video services. The Council further directed staff to review this position upon completion of the 2006 legislative session.

On September 29, 2006, Governor Schwarzenegger signed Assembly Bill 2987 - the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA establishes a statewide franchising system for video services, and designates the California Public Utilities Commission (CPUC) as the sole agency responsible for the issuance of video franchises. This new franchising system replaces the current system of cable television franchises negotiated and issued by municipalities. It should be noted that the City of San José, along with the League of California Cities, opposed AB 2987.

In addition to designating CPUC as the issuing agency for state video service franchises, DIVCA establishes a number of key provisions, generally described below:

- Franchise Fees - Cities will receive franchise fees equal to 5% of gross revenues, including advertising revenue;
- Public, Educational and Government (PEG) channels - Cities will receive up to 1% for PEG programming;
- Right-of-way management - Cities retain authority to regulate their rights-of-way for the placement of utility facilities such as poles, wires and cabinets;
- Build-out Requirements - Franchisees are prohibited from denying access to their services by any group based on income. Construction timeframe requirements vary by the type of infrastructure being used; AT&T's proposed "Fiber To The Node" system requires service to 35% of households within three years and 50% of households within five years.
- Customer Service Standards - Standards are defined by current state cable regulations and are enforced by cities. Cities may not add standards, but may establish reasonable penalties for service breaches.

Pursuant to DIVCA, the CPUC has issued for public review its proposed rules and processes for the issuance of state video franchises, and published a schedule which involves several rounds of public comments leading to Commission consideration on December 14, 2006. According to this schedule, franchise applications could be accepted on January 2, 2007 with the first state video franchise granted on February 14, 2007 if deemed complete by the Commission.

Related federal legislation is still pending. The Senate bill, renamed in June to House Resolution 5252 (H.R. 5252), creates a national franchise that is locally administered. The House of Representatives version passed in June in a form that is strongly opposed by the League of California Cities (LOCC), the National League of Cities and other local government organizations. Among the issues of concern to the LOCC are the following:

- **Access for All Consumers.** The bill lacks build-out requirements that will ensure that 21st century telecommunications service will be available to all consumers.
- **Opt-outs for Bundled Services.** The bill allows video service providers who bundle their service with satellite services to opt out of the franchise negotiation process, thereby avoiding the obligation to compensate communities for and safe and responsible use of public rights-of-way.

It is not clear that this bill will come up in the full Senate for a vote this year. A hold has been placed on the Senate committee-approved bill based on the issue of net neutrality, concern that the bill could affect consumers' access to certain parts of the Internet. It is not clear how this issue will be addressed.

ANALYSIS

In light of the new statewide franchising framework, several issues previously raised in City Council discussions are no longer subject to negotiation by the City. These include term (length) of an agreement to install and operate a video system, franchise fees, and PEG support. As a result, the primary remaining issue of local authority is right-of-way management, specifically the placement of large utility cabinets, and transition of current cable franchises to the new statewide framework.

Utility Cabinets

Full, Citywide deployment of Project Lightspeed will require the installation of roughly 800 utility cabinets throughout the city. These cabinets, known as "VRAD" or "52B" cabinets, measure 63 inches tall and approximately 35 cubic feet in volume. VRAD cabinets must be placed in close proximity to existing AT&T cabinets already installed throughout the city. AT&T has not specifically identified which of their 1,300 existing cabinets in San José will require a proximate VRAD cabinet. Location-specific information is required for Planning, Building and Code Enforcement staff to conduct environmental review of the project and its impacts to historic, cultural, biological and other environmental resources.

AT&T began submitting encroachment permit applications for review on August 20, 2006. The City agreed to do an administrative review of the applications for utility cabinet site location, orientation and appropriate placement. To date the City has reviewed 86 applications and have found the locations of 46 cabinets to be acceptable (free of conflicts with traffic, pedestrian, and existing utility needs), subject to minor revisions and property owner feedback. Five locations were found to be in other jurisdictions and 35 locations are currently being evaluated. The City previously offered to issue permits that would allow AT&T to upgrade their system on the condition that they must obtain a franchise before offering video services. As AT&T has been unwilling to accept this condition, City staff is not issuing permits for VRAD cabinet installation at this time.

At the City's request, AT&T provided an analysis of the feasibility of placing Project Lightspeed equipment underground rather than in aboveground cabinets. AT&T cites a number of reasons why it is not practical, primarily due to a heavy financial burden. Technology exists to place the equipment underground; however, the sensitive electronic components require significant ventilation that requires an aboveground hatch that is about half the height of a VRAD cabinet. Underground vaults are also significantly larger than the aboveground equipment, and although less conspicuous, occupies a significant volume of underground space that competes with other utilities

such as sewer, water and gas lines. City staff recommends that underground placement only be required when a suitable aboveground location is not available.

Staff has also requested a communications plan to detail how AT&T will communicate with, and receive input from adjacent property owners regarding cabinet placement. In response, AT&T has submitted a "Resident Notification Plan," limited to providing written notification to property owners adjacent to proposed cabinet locations. City staff has proposed a more interactive process where property owners have an opportunity for input to the placement and visual screening of VRAD cabinets. City staff has reviewed the plan submitted by AT&T and has responded with comments on the structure, timing and message of the proposed communications with residents and businesses.

Effect of Legislation on the Current Provider

Under DIVCA, Comcast would be considered an Incumbent Cable Operator operating with a local franchise that has expired or will expire by January 2, 2008. An Incumbent Cable Operator in this circumstance is allowed to apply for a state franchise that would be effective January 2, 2008. DIVCA also provides that if the City receives a notice that a state franchise holder will begin providing service in San José, the City can require Comcast to obtain a state franchise. Therefore, if AT&T obtains a state franchise to operate in San José and provides the City the required notice, the City could require Comcast to also obtain a state franchise. The provisions of the state franchise are more beneficial to the City from a revenue and PEG support standpoint than the current expired franchise but fall far short of the PEG benefits the City has sought in its attempts to obtain a renewal franchise with Comcast.

POLICY ALTERNATIVES

This report provides an update of the current status of state and federal legislation and negotiations with AT&T. City staff is not recommending a change in policy, nor an additional alternatives analysis beyond what has previously been approved by the City Council.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a

Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

Although the above criteria do not apply to this item, the policy framework and status of negotiations with AT&T for the deployment of Project Lightspeed has been discussed by the City Council on January 24, 2006, March 14, 2006, a study session on May 11, 2006, and on June 27, 2006. AT&T and Comcast have participated throughout, and interested stakeholders have been given the opportunity to provide input to the City Council's deliberations.

COORDINATION

This memorandum has been coordinated with the Departments of Public Works, Planning, Building, and Code Enforcement, and Information Technology, the City Attorney's Office and the Office of Intergovernmental Relations.

CEQA

Not a Project.



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