COUNCIL AGENDA: 12-13-05
ITEM: 3.12

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Katy Allen
John D. Bjurman
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SUBJECT: SEE BELOW

DATE: 12-07-05

Approved

Date 12/08/05

SUBJECT: PRESENT INFORMATION REGARDING FRANCHISE REQUIREMENTS FOR SBC'S PERMIT REQUEST TO INSTALL FACILITIES TO SUPPORT INTERNET PROTOCAL TELEVISION (IPTV) SERVICES (PROJECT LIGHTSPEED)

BACKGROUND

SBC has been meeting with San José José and several other cities in Northern California to upgrade and extend their current infrastructure to enable them to provide new and enhanced services. Key to this project is the introduction of a new service that they would like to deliver to customers beginning in mid-2006. This service, called Internet Protocol Television, or IPTV, will bring television to residential customers through DSL phone connections. SBC has termed the effort to provide these new broad-ranging services as Project Lightspeed.

The new network infrastructure will be capable of delivering a new generation of integrated IP-based digital TV, super-high-speed broadband, voice over IP, and wireless bundles of products and services over a single network connection to residential and small business customers.

Many industry analysts are predicting the growth of this market to be explosive. Multimedia research group Inc speculated in 2004 that; "Worldwide IP video services are expected to more than quadruple, from under 2 million subscribers to over 8 million users in 2006 - just 2 years." SBC intends to invest between $4-6 billion to deploy this technology to 18 million homes in 13 states by the end of 2007.

In San José, SBC has begun requesting right of way encroachment permits in order to extend their fiber optic system and install new service cabinets within neighborhoods. The Department of Public Works has responded that permits to enable the delivery of video services will not be issued until SBC has entered into a franchise agreement with the City. Below is a discussion of why a franchise agreement is required.

ANALYSIS

SBC has met with City staff to explain Project Lightspeed, give background for their encroachment permits that they have requested, and to explain their position related to a requirement of a franchise agreement. SBC has stated that their infrastructure project enhances their current telecommunication services, and that the inclusion of IPTV in their service package does not make them a cable service provider, as defined in the Municipal Code, Federal or State law. SBC has given staff a paper entitled, "SBC California IP Video Position Summary," in which they state that, although they are not subject to local franchising authority, they will:

- Pay the City a fee up to 5% of gross revenues from subscription fees generated from the IPTV service
- Carry the City's noncommercial public, education and government (PEG) programming made available and delivered by City to SBC
- Retransmit emergency alerts

City staff, as well as all of the cities that SBC has approached with Project Lightspeed, agree that SBC is subject to local franchising authority by providing video service; a basic disagreement with SBC's position. Attached is the most recent letter from the Department of Public Works to SBC stating the City's position related to a franchise agreement requirement, and SBC's response.

Local franchise agreements are not required of telecommunications companies to provide telecommunication services. State law--California Public Utilities Code section 7901--gives SBC the right to install "telephone lines" throughout the state, however State law--California Government Code section 53066--authorizes cities to require a local cable franchise to construct a cable system in a city. Project Lightspeed delivers video services, which is within the definition of a cable system. A franchise agreement is appropriate and required, similar to that of the City's current cable service provider. Also, as this proposed SBC service would compete with cable TV service, it is equitable for them to be regulated similarly through requirements of a franchise agreement.

The City currently has franchise agreements with several publicly regulated utilities, such as PG&E, San José Water Company, and Comcast. Franchise agreements grant a utility the right to use public streets for conveyance of their system, in exchange for fees and other local governmental benefits and controls. The Municipal Code requires that companies providing video services with facilities within the public right-of-way obtain a franchise agreement. Companies providing telecommunication services, such as SBC, have not been required to enter into local franchise agreements because their services have been regulated by Federal and State law through the Public Utility Code.

A franchise agreement offers the City more control in the following areas:

LEVEL PLAYING FIELD FOR COMPETING VIDEO PROVIDERS

In order for there to be a level playing field for video service providers, a franchise agreement would incorporate similar provisions and regulations related to fees, Public Educational and Governmental (PEG) Contributions, consumer protection, and equal access coverage throughout the City.

CITYWIDE SERVICE AVAILABILITY

Currently, SBC is not proposing to deliver IPTV service options to all residential areas of the City. Cable franchise agreements typically require a cable provider to serve the entire city. This requirement is intended to prevent the cable company from only serving the parts of the city they find most profitable which can result in the denial of service to less affluent areas or areas that are more rural or commercial in nature.

FRANCHISE FEES

A franchise agreement would provide for the payment of fees to the City, similar to that of cable television service providers. SBC's informal offer to pay the City 5% of subscription fees generated from the IPTV service would not be expected to be equivalent to the current franchise fee paid by the City's current cable operator.

PUBLIC, EDUCATIONAL AND GOVERNMENTAL CONTRIBUTIONS

A franchise agreement would provide for a contribution of funds and services, which includes dedicated channels for public, educational, and governmental purposes.

CUSTOMER SERVICE

Customer service provided to a community can be monitored and controlled through a franchise agreement.

ABOVE GROUND CABINETS

SBC is proposing to install new cabinets to house their new facilities, each of which can be roughly 5' tall x 3.5' wide x 2' deep. There will be many of these large cabinets necessary to serve their intended neighborhoods, as each cabinet will only serve approximately 362 residential units. The cabinets proposed to be installed by SBC meet the current municipal code size requirements to be allowed in the right of way, however with the amount of cabinets necessary to deliver Project Lightspeed, there are visual impacts that would likely be an issue within neighborhoods.

Other Cities

SBC has proposed bringing Project Lightspeed into other California and Texas communities. The City of Walnut Creek City Council recently denied an appeal by SBC of an encroachment permit, citing that SBC may proceed with a franchise agreement only. This topic is being discussed with the California League of Cities, and currently no City has allowed SBC to proceed without a franchise agreement.

There is a nationwide discussion occurring on this topic, led by the Federal Communications Commission (FCC) issuance of a Notice of Proposed Rulemaking. The FCC is soliciting comments regarding whether local franchising authorities, such as the City, should continue to require cable franchises or whether the developing franchise agreements slows or hinders competition from entering the market.

OUTCOME

Staff will present to Council information regarding SBC's Project Lightspeed, and the franchise agreement requirements to extend their facilities.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

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