



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Ed Shikada
Katy Allen

SUBJECT: SEE BELOW

DATE: 03-03-06

Approved

Date 3/4/06

SUBJECT STATUS REPORT ON DISCUSSIONS WITH AT&T (SBC) REGARDING
PROJECT LIGHTSPEED

RECOMMENDATION

It is recommended that the City Council accept this status report.

BACKGROUND

Pacific Bell Telephone Company, dba AT&T California (formerly SBC California), has communicated its desire to deploy "Project Lightspeed" in the City of San José, as part of a \$4 billion, system-wide effort to deliver Internet Protocol (IP)-based television service by the end of 2007. This IP-based platform would deliver integrated digital TV, high-speed broadband and Voice-over-IP telephone services to residential and small business customers. A presentation of AT&T's Project Lightspeed was given to the City Council at its meeting on January 24, 2006. At that time, Council requested that staff report back with a status report on the ongoing negotiations with AT&T, as well as information regarding previous discussions and reports to Council on utility cabinet placement issues.

With regard to utility cabinet placement issues, attached is a summary of the 1990's effort by Pacific Bell to install cabinets and infrastructure in support of their initiative to provide fiber-optic based television services. Also provided is a summary of a 2002 report regarding traffic signal cabinets in the downtown core. A discussion of cabinet placement for AT&T's Project Lightspeed is included below, as one of the priority issues related to the project.

ANALYSIS

Staff has met with AT&T on several occasions to continue negotiations towards bringing Project Lightspeed to San José. The following sections outline the proposals set forth by AT&T, and corresponding City staff responses, within the context of policy priorities discussed with the City Council on January 24, 2006:

1. Revenue protection
2. Maintaining a level playing field among competing services and flexibility for future technologies
3. Support for Public, Educational and Government (PEG) programming
4. Broad service rollout, ultimately citywide
5. Customer service standards
6. Utility cabinet size and placement

1. Revenue protection

AT&T Proposal: AT&T will pay City 5% of subscriber revenue, equal to the current Comcast franchise, on its IP-enabled video service product. AT&T will not agree to extend such compensation to include direct to home satellite subscriptions or non-video revenues.

Staff Response: This fee calculation methodology is consistent with the current franchise holder. However, the exclusion of satellite subscriptions conflicts with the characterization of their service offering as technology neutral, as described under "Broad service rollout," below.

2. Maintaining a level playing field among competing services and flexibility for future technologies

AT&T Proposal: AT&T will negotiate specific business points embodied in the current cable franchise, as long as within the framework of a non-franchise agreement.

Staff Response: While believing that the City has the authority to require a franchise, staff is willing to take to the City Council for consideration an interim agreement providing for AT&T to establish and operate its proposed video service offering, consistent with terms and conditions that the current cable provider is operating under. To accommodate AT&T's desire, staff is willing to present an interim agreement that is not called a franchise.

AT&T Proposal: Term of the agreement should be three years, or less if superseded by federal or state legislation.

Staff Response: The City would prefer a term of at least 5 years but will discuss a shorter term. The basic term should to be cut short upon occurrence of either of the following two events:

- The City reaches a renewal agreement with its current cable provider. Upon this occurrence, if the parties are unable to agree on new terms consistent with the renewal agreement after a period of negotiations, the interim agreement will be reformed to reflect terms of the renewal agreement.
- There is a change in law where the franchise issue is resolved. After a period of negotiations, the interim agreement will either be terminated or reformed consistent with the applicable law. The requirement for AT&T to discontinue service if no agreement is reached must be effective.

The term of the interim agreement would only be extended if there were not a change in law resolving the franchise issue.

3. Support for Public, Educational, and Government (PEG) programming

AT&T Proposal: AT&T will pay City a per-subscriber fee equivalent to the current cable franchise possibly prorated to the size of the subscriber base.

Staff Response: AT&T must be responsible for capital and operating expenses for transmission of public programming onto the AT&T system, plus PEG support at least equivalent to the current franchise holder.

AT&T Proposal: AT&T may provide a grant equivalent, in lieu of providing basic service to schools and public buildings.

Staff Response: The City will consider this approach.

4. Broad service rollout, ultimately Citywide

AT&T Proposal: AT&T will commit to offering video services on a technology neutral basis, by means of a combination of its own IP-enabled video services product provided over land lines and direct to home satellite services (or alternative technologies), to the extent technically and economically feasible within its existing telephone service footprint. AT&T will not commit to any requirements for buildout of its land line-based network upgrades or offer of its own IP-enabled video services product within the City on any specified schedule. AT&T will commit, where and when it does offer its own IP-enabled video services product, to offer those services on a non-discriminatory basis with regard to the lower income or minority status of residents.

Staff Response: The City seeks clarity of AT&T's planned rollout by time frame, sequence, geographic, and/or demographic measures.

5. Customer service standards

AT&T Proposal: AT&T will adhere to California Government Code Section 53088 requirements for customer service standards, with the exception of local authority to add requirements.

Staff Response: The City will consider this approach.

6. Utility cabinet size and placement

AT&T Proposal: AT&T notes that proposed cabinets comply with current City size limits and cannot feasibly be made smaller nor placed underground.

Staff Response: Staff notes that current City requirements on the placement of utility cabinets do not address the cumulative impact of several hundred cabinets, therefore seeks to negotiate locations.

AT&T Proposal: AT&T acknowledges only the City's authority under California Government Code Section 7901 pertaining to placement of infrastructure by telecommunications companies.

Staff Response: AT&T must adhere to communications and approval processes previously established for Pacific Bell, and Comcast, with respect to individual locations.

Furthermore, regarding utility placement, AT&T representatives have stated that most of the planned construction activity will involve the placement of utility cabinets throughout their service area in order to convert a fiber-optics based signal to a copper wire based system. In general, AT&T's Project Lightspeed will use existing conduit and overhead lines and will not be as disruptive to neighborhoods as was the recently completed Comcast Cable upgrade project. However, the installation of more cabinets in the public right-of-way will pose a challenge for AT&T and City staff in terms of identifying suitable locations and minimizing the clustering effect of multiple cabinets in close proximity to each other.

Staff pays particular attention to the placement of utility structures and cabinets in neighborhoods in order to proactively anticipate citizen concerns. Depending on the complexity of the project, staff will perform a site visit to verify the proposed location to assess proximity to

street landscape, trees, city facilities and residences, to ensure that cabinets are placed in suitable locations. Staff will also evaluate potential impacts to traffic sight lines and neighborhood walkability, while balancing utility company operation and service objectives.

Staff will require AT&T to utilize the same Communications Plan that was used by Comcast for its recent Cable upgrade project. This Communications Plan is an outreach effort to inform the community throughout all stages of construction, and includes a neighborhood notification process for utility cabinet placement. This was essentially the same Communications Plan developed for the Pacific Bell broadband system installed in the mid 1990's.

The utility cabinets proposed for AT&T's Project Lightspeed are well within the City's maximum allowable size criteria. Staff will review all proposed cabinet locations for conformance to City standards and requirements, and will work proactively with SBC, as it has with all other utility companies, to find the best location for utility cabinets while considering safety and neighborhood and citizen concerns.

NEXT STEPS

As of the last meeting between AT&T and staff, AT&T is expected to respond to the issues raised. Negotiations will continue based on their response and further direction from the City Council. AT&T staff is also evaluating their willingness to resubmit encroachment permit applications that do not include cabinet installations.



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Deputy City Manager



KATY ALLEN
Director
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ATTACHMENT

Utility Cabinet Placement

Cabinets for Pacific Bell Fiber Optic Based Television Services

In 1993, Prior to its merger with SBC Communications Inc., Pacific Bell approached the City with a proposal to install a fiber-optic based broadband system to provide television services throughout San Jose. Pacific Bell proposed the installation of around 600 "node" cabinets along with several thousand smaller, amplifier cabinets and several hundred miles of conduit and trenching in City streets. The City began issuing permits for construction on a limited basis in 1994, then revoked all permits and ceased construction in June, 1995 as heat and noise issues arose around the backup generators contained in the node cabinets.

In August, 1995, the City entered into a "Test City" agreement with Pacific Bell for the limited installation of three prototype node cabinets and a small network of conduit and cable in order to test the effectiveness of the system and to gauge community and neighborhood responses to the installation of the network. The node cabinets were approximately 93 cubic feet in volume and measured approximately five feet high, six feet wide and three feet deep. The agreement required that the cabinets be painted a neutral, earth-toned color and be screened with fencing or vegetation where feasible. Additionally, written consent was required from any adjacent property owner prior to the installation of a node cabinet.

In September, 1995, the City Manager approved a comprehensive communications plan submitted by Pacific Bell which stipulated how and when residents would be notified of construction activities and cabinet placement on or adjacent to their property.

In October, 1995, the City approved an amendment to the "Test City" agreement which allowed the installation of smaller amplifier cabinets necessary to support the prototype network and system. Pacific Bell was again required to notify property owners affected by the installation of these cabinets and to address their concerns prior to installation.

It was at this time when the City began developing ordinances to regulate the placement of aboveground utility structures on public and private property. Among the concerns raised by the installation of the Pacific Bell node cabinets were issues such as vehicular and pedestrian safety, noise and exhaust temperatures from the back-up generators, graffiti abatement and the visual impacts of placing a large utility cabinet adjacent to residential properties.

A second amendment was approved by City Council in January, 1996, extending the term of the "Test City" agreement and allowing for the installation of an additional 92 node cabinets and 1,250 amplifier cabinets. Pacific Bell agreed to abide by whatever siting criteria the City developed as part of its regulatory authority.

In June of 1996, Pacific Bell was granted an interim franchise agreement that allowed them to build their broadband system throughout San Jose. Pacific Bell complied with all elements of this agreement.

Also in June of 1996, the City Council adopted Ordinance 25099 creating Municipal Code Section 15.50 that regulates the placement of aboveground utility cabinets in the public right-of-way. Cabinets must be less than 110 cubic feet in volume and less than 66 inches in height and are to be located adjacent to non-residential properties to the extent possible, or at the rear or side yards of residential properties, preferably along major streets. Pedestrian movement and vehicular sight-lines are also considered in the placement of cabinets. Cabinets are also subject to heat, noise, visual screening and anti-graffiti requirements.

The Zoning Code (S.J.M.C. Section 20.100.1200) was also later amended to include an administrative permit process for locating utility structures on private property. This required a signed consent form from the property owner receiving the structure as well as evidence of an appropriate easement.

Traffic Signal Cabinet Report

In 2002, City staff responded to a Council referral regarding the placement of above-ground utility cabinets in the downtown core. An analysis revealed that the majority of the cabinets downtown were owned by the City or VTA and were used to manage traffic and light-rail signals. A memorandum, dated April, 11, 2002 addressed design standards for City-owned traffic signal controller cabinets in the core area, and how to incorporate them into the streetscape elements derived from the San Jose Redevelopment Agency's Downtown Streetscape Master Plan, balancing aesthetics and workability with signal maintenance and operations.

The information presented in the 2002 Traffic Signal Cabinets memoranda are not specifically applicable to the AT&T Lightspeed issue because the vast majority of the cabinets will be placed in neighborhood areas, away from the downtown. Also, whereas traffic signal controller cabinets are required at each signalized intersection, AT&T cabinets serve up to 400 households and will likely be spaced farther apart than downtown traffic signal cabinets.

AT&T representatives have stated that most of the planned construction activity will involve the placement of utility cabinets throughout their service area in order to convert a fiber-optics based signal to copper wire based system. In general, AT&T's Project Lightspeed will use existing conduit and overhead lines and will not be as disruptive to neighborhoods as was the recently completed Comcast Cable Upgrade project. However, the installation of more cabinets in the public right-of-way will pose a challenge for AT&T and City staff in terms of identifying suitable locations and minimizing the clustering effect of multiple cabinets in close proximity to each other.