



SUPPLEMENTAL

COUNCIL AGENDA: 05-02-06
ITEM: 3.4

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Betsy Shotwell
Ed Shikada

**SUBJECT: STATE LEGISLATION RELATED
TO AT&T PROJECT LIGHTSPEED**

DATE: April 28, 2006

Approved

Date

4/28/06

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

A staff memorandum dated April 19, 2006, was forwarded to Council concerning AT&T Project Lightspeed Policy Options and pending State legislation, AB 2987 (Nunez, Levine) which would create a new state-wide franchise for cable and video providers. On April 24, AB 2987 passed the Assembly Utilities and Commerce Committee and is scheduled to be heard next in the Assembly Appropriations Committee. Staff wishes to bring the most timely information on the status of AB 2987 to Council for review and recommendation for a City position on the bill.

RECOMMENDATION

Adoption of a resolution opposing AB 2987 (Nunez, Levine), The Digital Infrastructure and Video Competition Act of 2006.

OUTCOME

Council direction on telecommunications legislation pending in the State legislature will direct the City's advocacy efforts in Sacramento to pursue outcomes in the best interest of the City.

BACKGROUND

As referenced in the staff memo of April 19, AB 2987 (Nunez, Levine) was introduced and recently amended which, if passed, would create a new state-wide franchise for cable and video providers. On behalf of cities, the League of California Cities (LOCC) has been meeting with the Speaker's staff to seek amendments to the bill based on LOCC's opposition to the bill in its current form.

ANALYSIS

The following analysis details key points in AB 2987 as compared to the City of San José's telecommunication legislative policy priorities passed by the Council in January 2006:

- **Maintain the City's Authority in Franchise Agreement Negotiations:** To maximize consumer benefit it is important for local governments to maintain the ability to work with providers through franchise agreements to ensure the provision of key services, including public, education and government programming channels, and that local emergency alerts and institutional networks are tailored to meet specific local needs.

AB 2987 would authorize the Department of Corporations to grant a "state-issued authorization" to provide cable service or video service. Local agencies would be prohibited from requiring any holder of a state-issued authorization to obtain a local franchise or impose "any fee or requirement . . . except as expressly provided" in the bill. (53058.3(a).)

Currently many local cable franchises require cable companies to help fund and carry channels, which provide educational programming, coverage of local government meetings and important public safety information. These are known as PEG channels. AB 2987 would limit funding and require local governments to bear the costs of acquiring facilities and equipment necessary to deliver the channel signals to the telephone companies' regional video hub sites. San José, as part of its franchise renewal process, conducted an extensive "Cable Related Needs and Interests" study. The minimal PEG benefits provided by AB2987 do not come close to providing the level of support needed to address these identified needs and interests. San José has expended a great deal of time, expense and effort negotiating with its current cable provider to assure that its renewal franchise would address these needs and interests in a manner that can be required by current law. AB2987 will totally preempt and nullify those efforts.

San José has also identified the need to establish an institutional network (INET) providing voice video, and data connections among public buildings throughout the City. Unlike many cities that have an established INET, San José requested and has negotiated with Comcast to establish an INET as a part of the franchise renewal but has not finalized an agreement. Absent an existing franchise providing an INET, AB 2987 would require that the City fund INET costs out of a video provider's PEG contributions, thus reducing funds available for PEG programming.

Emergency notification is also an issue, as AB 2987 would not require new video providers to broadcast emergency management alerts. This could hinder the City's ability to communicate with the public in an emergency.

Local cable franchises (including San José's) require the cable company to provide their programs and channels to public schools, libraries and other government buildings free of charge. AB 2987 would preempt these requirements, eliminating a vital tool to help educate our children.

April 28, 2006

Re: STATE LEGISLATION RELATED TO AT&T PROJECT LIGHTSPEED

Page 3

Customer service has historically been a common problem with cable and telephone service. Currently most local cable franchises (including San José's) establish consumer protection standards that can be enforced locally. AB 2987 would preempt these standards and local enforcement, leaving subscribers on their own to deal with many potential abuses. The consumer protection standards that will remain in place will only be enforceable by the State Department of Corporations in Sacramento which has no expertise in this area.

- **Ensuring Service Availability to All Consumers**—Any state and federal telecommunications overhaul policy needs to: address “digital divide” concerns by preventing “redlining” that picks higher income neighborhoods for service, while excluding less-profitable, lower income neighborhoods; and specify “build-out” requirements for providers.

Currently most local cable franchises (including San José's) require cable companies to serve all residents without regard to income and establish firm deadlines and penalties for accomplishing this objective. AB 2987 preempts these service requirements, allowing AT&T to proceed with its plans to provide its new services primarily to “higher value” customers. AB 2987 minimally and deceptively addresses this concern by requiring the full area be served, but that service can be provided by direct-to-home satellite service already available throughout California. There is a very real concern that AT&T will build out its new facilities in a manner that bypasses the very neighborhoods that are already underserved by broadband services.

- **Supporting the City's Ability to Regulate Use of Public Rights-of-Way**—The City is an important and proven steward of the public rights-of-way, and the City is pivotal to: (1) helping to prevent public safety issues resulting from overcrowding and improper use; (2) ensuring local emergency (911) services are provided; (3) addressing customer service and local business concerns related to misuse of public rights-of-way. Local governments should retain this authority in any state and federal telecommunications reform legislation

Local cable franchise agreements typically include extensive terms governing the design of the system, location of facilities and the time and manner in which construction may occur. AT&T plans to install, among other facilities, “52-B” boxes within the public right-of-way, which are 5 feet tall and 3.5 feet wide. For San José, this could result in several hundred of these boxes within the right of way in residential neighborhoods. A local franchise would preserve the appropriate use of the City's right of way and mitigate the safety and aesthetics concerns with respect to the placement of these facilities. AB 2987 not only limits our ability to control the use of the right of way but appears to prevent the City from charging its normal cost recovery fees for the issuance of permits for work in the right of way and the inspection of that work.

HONORABLE MAYOR AND CITY COUNCIL

April 28, 2006

Re: STATE LEGISLATION RELATED TO AT&T PROJECT LIGHTSPEED

Page 4

Support and Opposition for AB 2987: Support includes AT&T California, California Chamber of Commerce, Communications Workers of America, Intel, Microsoft Corporation, and Verizon. Opposition includes the California Cable & Telecommunications Association, California Common Cause, California State Association of Counties (CSAC), League of California Cities, individual cities and counties, Comcast, and The Utility Reform Network (TURN).

Status: AB 2987 passed the Assembly Utilities and Commerce Committee April 24 by a vote of 10-0, and will be heard next in the Assembly Appropriations Committee.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City's Legislative Representative in Sacramento.



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