



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 14, 2006

ITEM NUMBER: **IX - 3**

SUBJECT: UPDATE ON STATUS OF NEW TELECOMMUNICATIONS LEGISLATION ALLOWING FOR VIDEO SERVICES

DATE: NOVEMBER 9, 2006

FROM: CITY ATTORNEY'S OFFICE
ADMINISTRATIVE SERVICES DEPARTMENT, ADMINISTRATIVE DIVISION
PUBLIC SERVICES DEPARTMENT, ADMINISTRATIVE DIVISION

PRESENTATION BY: WILLIAM J. MORRIS, DIRECTOR OF PUBLIC SERVICES

FOR FURTHER INFORMATION CONTACT: WILLIAM J. MORRIS AT (714) 754-5343

RECOMMENDATION:

Provide input to staff on proposed Conditions of Approval as shown on Attachment 1 for any requested permit in the public right-of-way that includes an above-ground cabinet greater than 25 cubic feet in volume or other equipment that would be considered part of a network capable of providing video services to subscribers. This information will be conveyed to all utility companies, including AT&T California.

BACKGROUND:

As Council is aware, the State of California has recently passed legislation (AB 2987) that will allow telecommunications companies, under certain conditions, to provide video services to households throughout the state. Up until the time of this legislation, the right to allow video services has been under the jurisdiction of the cities and counties, and this permission was normally carried out through a franchise agreement. The City of Costa Mesa currently has a franchise agreement with Time Warner Cable, Inc., to provide video services to the residents and businesses within the City. Cities all over California are struggling to determine how to address the impacts of AB 2987, particularly prior to its actual effective date.

AT&T California has recently submitted several plans and requests to install new equipment and to upgrade existing equipment. This includes new fiber optic cabling as well as new above-ground boxes in parkway areas. Company representatives have been pressuring staff to issue these permits as soon as possible, indicating that these improvements are necessary to maintain their existing plant and to upgrade service to the customers. However, staff is continuing to educate themselves on what is actually being proposed in the permits. Staff does not want to violate any existing state law or City code by issuing a permit for services that are not allowed at time of issuance. Also of concern to staff at this time is the inability to obtain from AT&T any information on their ultimate plans- i.e., how many new cabinets are ultimately planned to be installed in the City, and at what specific locations. Staff was first told by SBC representatives

that the large cabinets are necessary only for the provision of video services; subsequently, AT&T representatives have stated that the cabinets are necessary for both video and upgraded telephone and internet services.

ANALYSIS:

Although the new legislation does not become effective until January 1, 2007, it appears to staff that the recently received permit requests from AT&T are in anticipation of being able to provide video services to customers in the City. While staff acknowledges their right to provide this service once they actually receive a state or local franchise, there are several concerns with these current permit requests. One concern is based on information provided by AT&T to City staff in a letter dated November 17, 2005, which detailed the type of equipment required to provide video services to the public (Attachment 2). Staff responded to that letter on December 16, 2005 (Attachment 3), followed by a number of meetings and many telephone conversations with AT&T representatives over the next six to eight months. Another relates to the need to comply with currently effective state law which we believe requires AT&T to obtain a local franchise before it may take steps to "commence the construction" of a cable television system in the City. Finally, and perhaps most importantly, staff is concerned that issuing any permits to AT&T will constitute a "franchise" under the new law.

It should be noted that staff has issued a number of permits recently for AT&T to replace existing underground conductors with fiber optic lines at various locations throughout the City, as this has been conveyed to staff as a telecommunications facility upgrade. Staff understands that these fiber optic lines are also needed in order to ultimately offer video services, if elected to do so by the telecommunications companies. However, several of the recent permit applications have requested installation of significant above-ground structures/equipment in the City as well. These new above-ground facilities would be located in the existing parkways, including cabinets in the order of 21 inches wide by 44 inches long by 63 inches high. It is also understood by staff that these large cabinets are required in order to ultimately provide video service, if the telecommunications companies elect to do so in the City.

Based on this information, staff believes that a number of issues must still be addressed before permits can be issued, as follows:

1. If the requested installations are approved at this time, and based on information previously provided to staff, the telecommunications company could potentially have the ability to market video services prior to the effective date of the mentioned state legislation. City Staff has requested a letter from AT&T management clarifying that this would not occur until legally allowed. AT&T has declined to provide such confirmation.
2. Based on staff's interpretation of the new legislation, numerous conditions must be met at the State Public Utilities Commission level before any video services may be offered by telecommunications companies within local jurisdictions, unless a local franchise is provided. City staff has not yet received any of the appropriate documentation from the telecommunications companies in this regard. Nor has staff received a proposed local franchise agreement from AT&T which meets the requirements of the City's Telecommunications/Cable Ordinance.

3. The City's current ordinance on providing video services (CMMC Title 19-Franchises), must be updated to conform to the new state legislation once it becomes effective. This update is currently in process by the City Attorney's office.
4. The proposed above-ground cabinets are approximately 33 cubic feet in size (1.7' x 3.6' x 5.3'). By comparison, the largest traffic signal controller cabinet owned and maintained by the City is approximately 32 cubic feet in volume (2.2' x 3.2' x 4.6'). Staff has requested that these cabinets, and/or the equipment they are designed to house, be placed underground in order to maintain the aesthetics of the neighborhood, and to more easily satisfy the requirements of the Americans with Disabilities Act (ADA) for walkway/parkway clearances. This would also be consistent with our General Plan policy to have new utility equipment undergrounded to the maximum extent possible. We have requested from AT&T documentation to support any claim that undergrounding the equipment is technologically impossible or infeasible, but nothing has yet been provided. At present, the issue appears to be a financial one, rather than a technological one, although AT&T has stated that undergrounding significantly reduces the reliability of the system. Also, staff spends many hours weekly removing graffiti from existing, smaller cabinets in the City that are owned by the utility companies and by the City (signal cabinets and irrigation controllers). As can be seen from the proposed permit conditions of Attachment 1, staff recommends approval of the above-ground cabinets only if certain conditions are met, assuming undergrounding is technologically infeasible. For Council's information, the clean up of graffiti from stainless steel surfaces is much easier, and the result is much cleaner, than from painted surfaces.
5. If the above ground cabinets are installed, and due to their size, staff believes that notification of the proposed installation(s) should be sent to the surrounding area where they are to be located. This process would be similar to other public projects where staff believes the improvements may alter the appearance or functioning of the area. Staff also believes that AT&T should provide a comprehensive plan showing all locations where the boxes and related equipment are intended to be installed, at least in the initial one to two year program plan, to ensure compliance with CEQA and ensure that piecemeal approval of one project does not occur and that all appropriate mitigation measures are taken.

Based on the above information, and due to the fact that the telecommunications companies have not identified how many above-ground cabinets may ultimately be needed in the City¹, staff requests that any permits issued in this regard include conditions as shown in Attachment 1. In this way, the City will be able to effectively adhere to, and enforce, the new state legislation provisions as contained in AB 2987. These conditions will provide some measure of mitigation to the new facilities that are being proposed at this time.

ALTERNATIVES CONSIDERED:

One alternative is to direct staff to issue the requested permits without any conditions other than the standard ones for work within the public right-of-way.

¹ Staff has informally been told that 30-35 cabinets would be placed in Costa Mesa, and initially, staff was informed that this would serve approximately 28,000 households. There has no information about the number or location of additional cabinets which would be placed thereafter. Staff has been advised that approximately 200 cabinets are being installed in Corona and approximately 48 are being installed (only on arterials) in the City of Fullerton. 3

The Council may also require that the proposed underground cabinets be placed underground unless shown to be technically (not financially) unfeasible to do so through an independent study or research document.

A third alternative is to allow above-ground cabinets 25 cubic feet in size and larger to be installed within the parkways on arterial streets, but require the equipment to be undergrounded if they are adjacent to, or within a residential area.

Another alternative is that the Council may permit the cabinets to be placed above ground even if the restrictions are financial rather than technological in nature.

FISCAL REVIEW:

The proposed construction would not impact the City financially. However, the City may be required to expend extra maintenance hours/supplies in the future on an ongoing basis to assure that graffiti is removed as quickly as possible from any new above-ground structures located within the public right-of-way. Assuming that AT&T obtains a state issued franchise after they become available, they would be required to pay the required five percent (5%) state franchise fee. At this time, staff is unable to estimate what additional revenue, if any, may be realized from the new state legislation. In the absence of an agreement, and in view of AT&T's prior refusal to acknowledge the requirement for a franchise prior to offering video services, the City will receive no franchise revenue from the installations sought presently by AT&T.

LEGAL REVIEW:

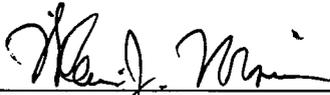
The City Attorney has reviewed the requirements of AB 2987, and has included a summary of some its requirements, as well as some of the key requirements for telecommunications companies that wish to provide video services within the City, and a more detailed legal analysis in a separate, confidential memorandum. The City Attorney is also preparing modifications to the existing Costa Mesa Municipal Code for future consideration by City Council. These changes would bring the City code into conformance with AB2987 once the legislation goes into effect.

CONCLUSION:

The City has recently received several requests from a telecommunications company to install new facilities and upgrade existing facilities in several areas. Prior information received by staff indicate that these new/upgraded facilities will allow delivery of video services to customers ahead of the requirements required in AB 2987 being satisfied. Also, significantly large, new pieces of equipment are proposed to be installed in the public right-of-way under these permits. Staff is presenting these requests to Council, and requesting input on the conditions, if any, to be imposed on the permits.



KIMBERLY HALL BARLOW
City Attorney



WILLIAM J. MORRIS
Public Services Director

DISTRIBUTION:

City Manager
Assistant City Manager
Steve Mandoki, Administrative Services Director
Anna Tellez, Telecommunications Manager
Ernesto Munoz, City Engineer
Dane Bora, Video Production Coordinator

ATTACHMENTS:

1. Permit Conditions of Approval-Proposed
2. Letter from AT&T Presenting "Project Lightspeed"
Video Information
3. City Response Letter to AT&T on "Project
Lightspeed"

Telecommunications Legislation Report

11/9/06

10:00 a.m.

Conditions for the installation of above-ground cabinets larger than 25 cubic feet in volume;

Prior to issuance of any individual encroachment permit for equipment which may be part of a project or program, in order to ensure that any required CEQA analysis is completed, the applicant shall submit a complete plan identifying the total number of utility cabinets expected to be installed as part of the entire project in the City in the reasonably foreseeable future, providing precise plans and specifications for all hardware to be installed, showing all locations where hardware is proposed to be installed, and any and all proposed mitigation measures. The City will then assess what environmental review, if any, is required for the project. Once environmental review is completed, the following conditions shall apply:

- 1. Underground the proposed cabinet and obtain all applicable Building permits (i.e. electrical permit for the SCE meter installation). This condition may be waived by the City Engineer if it can be demonstrated by the applicant that it is not practical to underground the proposed cabinet.
- 2. If the City Engineer is satisfied that it is not practical to comply with condition #1 and the proposed equipment must be installed above ground, then the utility cabinet shall be constructed of stainless steel. All Americans with Disabilities Act (ADA) requirements must be met in the parkway.
- 3. If there is no applicable stainless steel utility cabinet available on the market, only a painted cabinet, then the outside of the cabinet must be clad in stainless steel (plates). All ADA requirements must be met in the parkway.
- 4. If the cabinet cannot be clad in stainless steel, then the utility company must submit a signed agreement to the city, for execution by the city, which provides for removal of any graffiti/stickers/markings on the cabinet within 24 hours of notification by the City. An alternative to this requirement would be to submit a signed agreement that would reimburse the City for all actual and overhead costs expended in removing graffiti, stickers, etc., from any cabinets installed as a part of this permit. All ADA requirements must be met in the parkway. (Note: if the cabinet is not maintained within the agreed upon length of time, the owner may be required to remove the cabinet.(initial _____)
Contact Name: _____ Phone: _____ Address: _____
Email: _____
- 5. The electrical service equipment shall be mounted on the side of any above ground utility cabinet. No separate pedestal shall be allowed for electrical service. Obtain applicable Building permits (typical for all conditions).

For items 2, 3 & 4 (above), the applicant is required to notify the owner(s) of all parcels within a 500 foot radius from the proposed utility equipment location as described below and allow two weeks after the mail-out is post-marked before submitting a written request to the City Engineer to commence construction. Any comments received from this mailing will be reviewed by the City Engineer and by the Costa Mesa Planning Division. No work shall be allowed until the City Engineer issues a written approval to commence construction. The City reserves the right to deny the requested Encroachment Permit, based on a review of input received by the public, if it is determined that proper mitigation of any significant impacts is not achieved.

PUBLIC NOTIFICATION REQUIREMENTS

- 1. Radius Map: This map shall show the proposed utility cabinet location and all properties within a 500-foot radius. Assessor parcel numbers must be shown on all affected properties.
- 2. Mailing Labels: Submit one photocopy of the mailing label list and public notice letter for approval before mailing. A mailing label is required for every property that is within the 500-foot radius (either wholly or partially). The mailing label must contain the assessor parcel number above the name of the owner and applicable address. Property owner names and addresses shall be obtained from the latest available County of Orange assessment rolls.
- 3. Certification Letter: The person who prepared the radius map and mailing labels shall write and sign a letter certifying that the information is true and accurate.

This encroachment permit shall not constitute a franchise under local, state or federal law. No video services may be provided by the permit holder anywhere in the City unless and until either a city issued franchise or state issued franchise has been secured by applicant in full compliance with local, state and/or federal law.

REMOVAL REQUIREMENTS

The applicant hereby agrees to remove the cabinet and any associated equipment from the public right-of-way and restore the City's property to the satisfaction of the City Engineer at the applicants sole cost within 60 days of written notification from the City's Director of Public Services if the City determines that a violation of any Federal, State, or local laws have been violated as a result of this permit.

Applicant: Signature: _____ Title: _____
Print name: _____ Address: _____



SBC California
1265 Van Buren Street
Room 180
Anaheim, CA 92807

Thursday, November 17, 2005

Mr. Ernesto Munoz
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA. 92628-1200

Re: Project Lightspeed

Dear Mr. Munoz:

In October 2004, SBC California's parent company, SBC Communications Inc. announced its plans to upgrade its communications network by extending fiber further into the neighborhoods. This marks the next in a successive series of upgrades to our network, the most recent of which was our "Project Pronto" through which we placed fiber out into our distribution network to expand the speeds and reach of our DSL services, which created video streaming capabilities in connection with our high speed internet access service. The Lightspeed network upgrade will allow SBC California to provide additional services, including super high-speed data, IP Video and IP voice services along with higher speed internet access service. It will enable digital transmissions that use the common language of the Internet – Internet protocol or "IP" – as the universal platform for all services.

Through the Project Lightspeed initiative, SBC California will extend the existing fiber in its network closer to customers' homes by adding fiber from the remote terminals that were placed during "Project Pronto" to the "serving area interface." (The serving

area interface is an intermediate point between a remote terminal and the customer's premises, generally within 2,500 to 5,000 feet of the customer's premises that the serving area interface serves.) SBC California plans to start constructing Project Lightspeed in Costa Mesa beginning in December 2005.

Project Lightspeed also will involve the construction of cabinets in neighborhoods (called "52B" cabinets) used to provide the transmissions, including voice service. Over the course of the next year, we will be placing thirty 52B cabinets in Costa Mesa. A spec sheet of the 52B is attached to this letter.

Using these upgraded facilities, SBC intends to offer customers in your city a broad new suite of integrated, advanced services powered by the Internet. First, the new fiber optic facilities will enable SBC to offer Voice Over Internet Protocol ("VOIP") services. The VOIP services will allow SBC customers to use existing telephones to make and receive telephone calls. The IP format signals will then be sent over the existing copper wires to the serving area interface, then over fiber optic cables from the serving area interface to the remote terminal, and ultimately to the central offices. While VOIP service uses a different technology and protocol than traditional service, the VOIP service to be provided by SBC still involves communication by telephone.

Project Lightspeed will also provide customers with an unprecedented ability to manipulate and share data and messages over various IP-based devices, and will facilitate enhanced security and quality of service guarantees. For example, customers will have the option of having their voicemail, email and faxes delivered to one electronic mailbox

and will be able to access those messages from an IP-enabled device and review them in either a voice or text format. Customers will be able to ensure that certain calls get special priority and are managed and routed directly, while others are not. They will be able to integrate their wireless and fixed services, as well as their e-mail and personal data assistant devices, as long as all the services are built on and can access the IP platform.

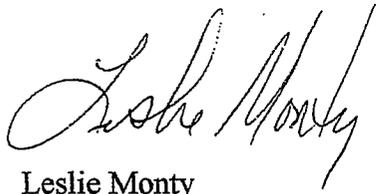
Another key feature of SBC's new IP enabled services will be an advanced video offering. The new video offering will also be IP-based and packetized and will be fully integrated with SBC's other advanced services. This IP offering will be transmitted over the new fiber optic cables, the same cables that also will be used to provide voice service. SBC's IP Video service will provide subscribers with an enormous range of content. Cable companies rely on traditional, point to multipoint distribution technology in offering video program channels. In contrast, SBC's Video service is designed for "switched, point-to point" communications between individual subscribers and the network. Most important, SBC's offering allows for a two-way dialogue between the subscriber and SBC and, as a result, will be vastly more interactive than one-way legacy cable services.

In addition to the new products and rich features that will become available through Project Lightspeed, our network enhancements will also provide faster broadband Internet access than currently available.

As requested, I have provided photos of the existing cabinets at the thirty locations as well as the list detailing the locations and cross-streets. Please review and

provide comments and let me know if you have any questions or would like additional information about Project Lightspeed. Your prompt response is appreciated

Sincerely,

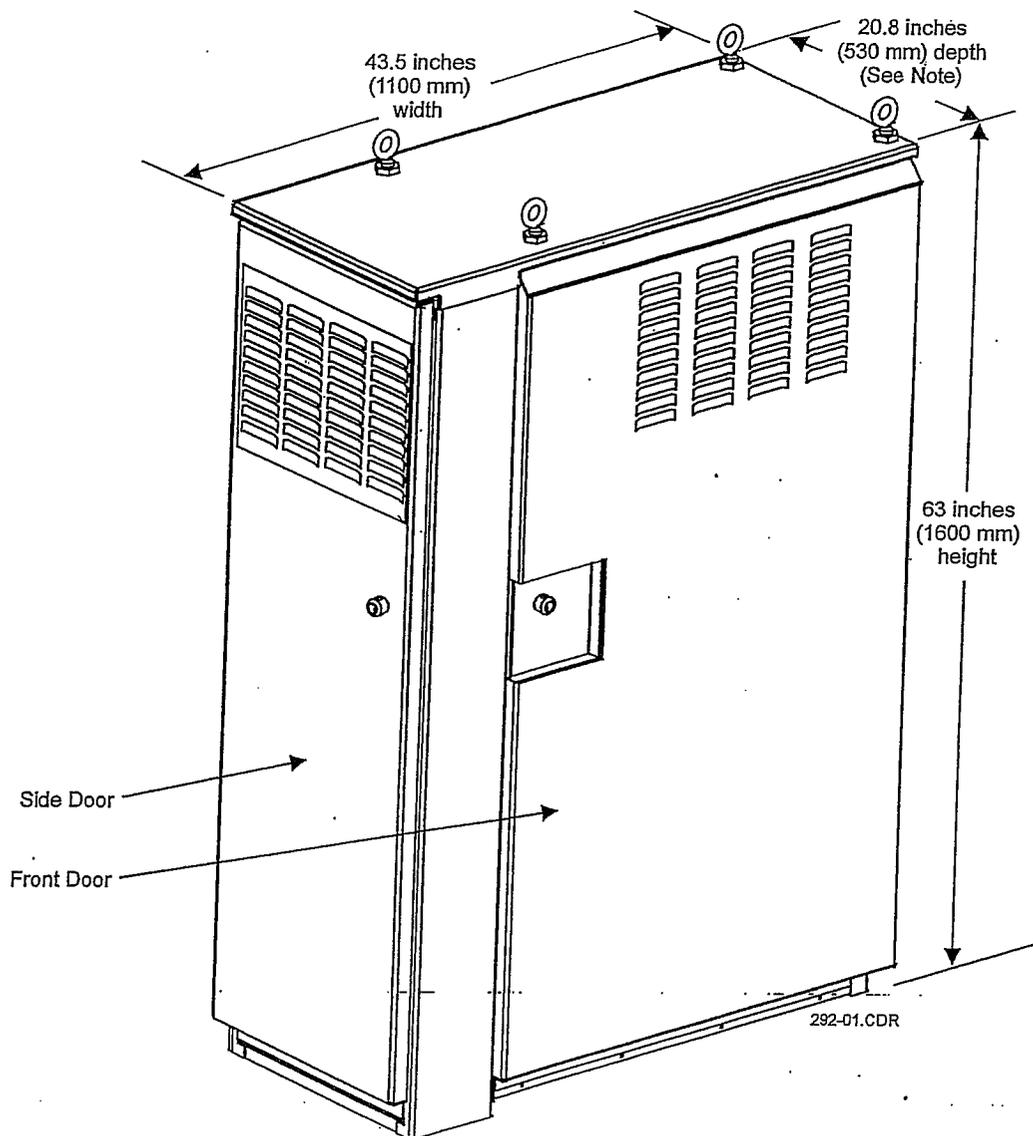
A handwritten signature in cursive script that reads "Leslie Monty". The signature is written in black ink and is positioned above the typed name.

Leslie Monty
Governmental Liaison
SBC California

LSC-52B and LSC-52E Outdoor Electronics Cabinets

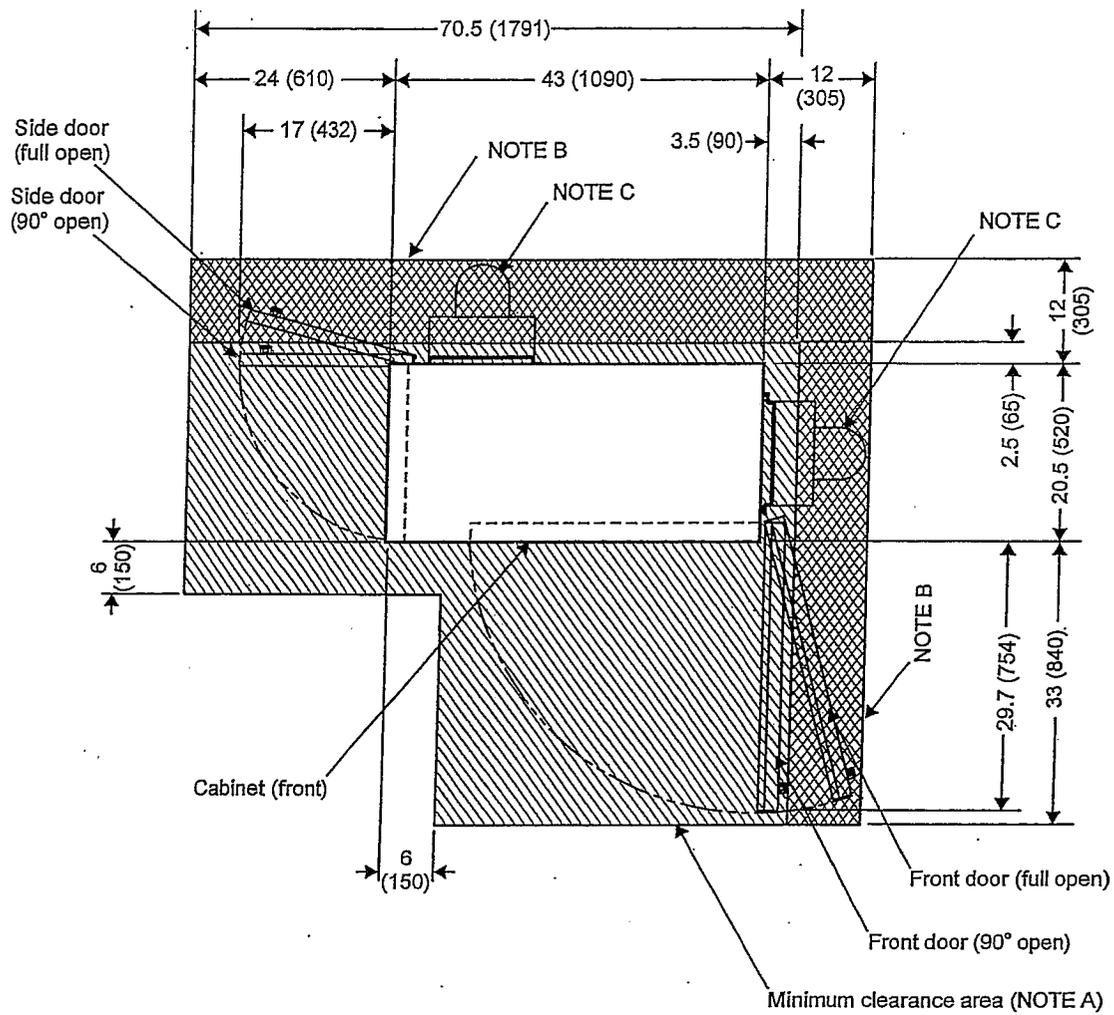
Dimensions

The overall dimensions of the 52B and 52E cabinets are shown in Figures 1 and 2.



NOTE: 20.8 inches (530 mm) depth with heat exchanger and
20.5 inches (520 mm) without heat exchanger

Figure 1. 52B Cabinet Dimensions (shown with heat exchanger)



- NOTES: A. Ensure the minimum clearance area is unobstructed. This area must be kept clear to ensure that all installation and maintenance procedures can be performed properly.
- B. If the cabinet is not equipped with a heat exchanger this additional area must be kept clear to ensure adequate cooling.
- C. If an electric meter is installed on the cabinet, additional clearance is required. Refer to electric company requirements and all applicable codes.

292-06.CDR

Figure 3. 52B. Cabinet Clearance Requirements

	A	B	C
1	ADDRESS	CITY	CROSS STREET LOCATIONS
2	1829 orange av	COSTA MESA	Magnolia/Orange
3	sd 1896 orange av	COSTA MESA	19th st/Orange av
4	f 280 e 20th	COSTA MESA	Santa Ana/20th st
5	opp 2044 orange av	COSTA MESA	20th/Orange av
6	f 215 23d	COSTA MESA	23rd/Orange av
7	sd 2404 orange av	COSTA MESA	Santa Isabel/Orange
8	315 santa isabel av	COSTA MESA	Santa Ana/Snta Isabel
9	sd 232 monte vista	COSTA MESA	Fairway/Orange
10	1801 santa ana av	COSTA MESA	18th st/in public right-
11	1872 santa ana av	COSTA MESA	Flower/Santa Ana
12	f 1778 santa ana av	COSTA MESA	Rochester/Santa Ana
13	1798 tustin av	COSTA MESA	18th/Tustin
14	1815 tustin av	COSTA MESA	18th/Tustin
15	1652 orange av	COSTA MESA	16th Pl/Orange
16	f 200 e 16th	COSTA MESA	Orange/16th st
17	sd 546 riverside av	COSTA MESA	Riverside/Clay(Npt Bch
18	sd 1871 park av	COSTA MESA	19th/Park Av
19	sd 1946 harbor bl	COSTA MESA	Bernard St/Harbor
20	sd 1951 harbor bl	COSTA MESA	Bernard St/Harbor
21	sd 523 hamilton	COSTA MESA	Harbor/Hamilton
22	sd 2200 Harbor Bl	COSTA MESA	Harbor/Wilson
23	sd 1799 kenwood pl	COSTA MESA	18th st/Kenwood Pl
24	f 797 scott pl	COSTA MESA	Placentia/Scott Pl
25	f 792 victoria	COSTA MESA	Placentia/Victoria
26	1110 victoria	COSTA MESA	Canyon Dr/Victoria
27	1810 monrovia av	COSTA MESA	18th/Monrovia
28	987 w 18th	COSTA MESA	18th/Monrovia
29	opp 2160 college av	COSTA MESA	Victoria/College Av
30	f 1885 anaheim av	COSTA MESA	Anaeim/Plumer
31	sd 628-x w 19th	COSTA MESA	Anaheim/19th st
32			
33	TOTAL = 30		

SBC CALIFORNIA IP VIDEO POSITION SUMMARY

This summary is provided for your reference, and provides additional information about SBC California's position on policy matters relating to the IP Video product we plan to launch along with voice and broadband services using network enhancements currently underway as part of Project Lightspeed.

Our telephone lines and the services provided on those lines, including IP enabled voice, Internet access and video services, are not subject to local franchising authority. It is our position, however, that all video providers should address key concerns of local governments consistent with the public interest.

SBC California will:

- Pay the City a fee up to 5% of gross revenues from subscription fees collected from each subscriber to SBC California's IP-enabled Video Services product delivered over the IP network in the City's rights of way. The fee does not apply to non-video revenues.. The fee will be identified and passed through on any subscriber bill by SBC California, and all such fees collected will be forwarded to the City quarterly.
- Carry City's noncommercial public, education and government (PEG) programming made available and delivered by City to SBC California in a format consistent with its IP enabled communications network.
- Retransmit emergency alerts on SBC California's IP-enabled Video Services consistent with federal standards and in the event the City declares a public safety emergency.

We hope this addresses your questions. We are happy to discuss this matter further with you and other members of your staff.

REC'D 12/15/05

Pat



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

FROM THE DEPARTMENT OF PUBLIC SERVICES/ENGINEERING DIVISION

December 16, 2005

Mr. Albert C. Henderson
 Area Manager, External Affairs
 SBC California
 1442 Edinger Avenue
 Tustin, CA 92780-6264

Subject: Project Lightspeed

Dear Mr. Henderson:

I wanted to take this opportunity to thank you for taking the time to meet with City staff to provide additional information on the subject project.

The City of Costa Mesa wants to reiterate its commitment to the delivery of any new technology that results in a direct benefit to its residents. As you are aware, several issues were raised yesterday at our meeting which require further clarification in order for the City to continue processing SBC's request for deployment of project Lightspeed in Costa Mesa.

Among the items discussed for which SBC is to provide additional information are: legal briefings on SBC's ability to provide the proposed services under FCC rules; an agreement for City consideration; a response to the City's request to underground all new equipment in the public right-of-way; and provide stainless steel cabinets in those cases where an underground cabinet is not possible due to technical constraints (please provide information on any technical constraints). In the case where underground cabinets cannot be provided, it will be requested that new cabinets incorporate any power meter and associated hardware inside the new aboveground cabinets.

City staff will work expeditiously to process SBC's request once the additional information is provided. If the information is submitted to the City in a timely manner, and all City questions are addressed, staff will prepare an agenda item which can tentatively be presented to the City Council as early as February 2006.

We look forward to hearing from you soon in our continued cooperation with SBC's service delivery to our community. Please feel free to call me if I may be of any assistance.

Sincerely,


 Ernesto Munoz, P.E.
 City Engineer

c
 Leslie Monty, Governmental Liaison, SBC
 Lori Ortenstone, Senior Counsel, SBC
 Allan Roeder, City Manager
 William J. Morris, Director of Public Services
 Kimberly Hall Barlow, City Attorney
 Steve Mandoki, Director of Administrative Svs.
 Anna Tellez, Telecommunications Manager
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