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CITY OF COSTA MESA
BY _____

November 14, 2006

IX-3

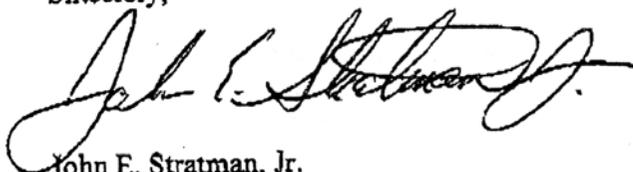
Ms. Julie Folcik
City Clerk
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA. 92628

Dear Ms. Folcik:

On behalf of our client, AT&T California, I respectfully request that the following documents be shared with the members of the City Council.

These documents coincide with **Agenda Item IX 3** on the November 14, 2006, Council Meeting Agenda.

Sincerely,



John E. Stratman, Jr.
Vice President

- cc: Allan Mansoor, Mayor
- Eric Beaver, Mayor Pro Tem
- Katrina Foley, Council Member
- Linda Dixon, Council Member
- Gary Monahan, Council Member
- Allan Roeder, City Manager
- Kim Barlow, City Attorney

Attachments

(11)

RESPONSE TO CITY OF COSTA MESA NOVEMBER 9, 2006 STAFF REPORT

- *Noting that AB 2987 does not become effective until January 1, 2007, the staff report states that "currently effective state law . . . 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.'"*

AT&T is not constructing a cable television system in the City. AT&T is upgrading its existing copper/fiber network in order to provide the next generation of telecommunications services to its customers including super high speed data services, and IP-enabled voice and video services. As explained in the letter from Al Henderson dated _____ attached to the Staff Report, Project Lightspeed is simply the latest in a series of network upgrades by AT&T.

The City does not have the authority to condition the approval of AT&T's permits on obtaining a franchise from the City because the permits at issue in the Staff Report involve the placement of telephone lines in the City's public rights of way. As a telephone corporation, AT&T California has the right under Public Utilities Code § 7901 to access the public rights of way throughout the state to install its facilities. Because Section 7901 grants franchise rights directly from the state, the City cannot compel a telephone corporation to obtain a municipal franchise to use the streets for its lines and equipment even though video communications may be delivered over those lines at some point in the future.

The Report notes that 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. The permits are for construction of facilities, however, not for the provision of services.

As AT&T intends to apply for a state franchise under AB 2987 for the provision of video services in Costa Mesa, however, we are certainly willing to discuss an appropriate reservation of rights or other agreement with the City that would allow AT&T to go forward with its construction plans and protect the City's interests as well.

- *The Staff Report states 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.*

As shown on the specifications attached to the Staff Report, the encroachment permits request permission for the installation of cabinets and concrete pads that are only 46" x 81" (roughly the same size as the City's traffic control boxes which are located near every intersection that has a traffic control light).

The cabinets required under the Lightspeed initiative are being placed on an installation-by-installation basis at different times and in different places. As such, each installation should be considered on an individual basis, and each installation qualifies for a categorical exemption from CEQA review. Specifically, new construction or conversion of small structures, including such things as "[w]ater main, sewage, electrical, gas and other utility extensions" are exempt from CEQA. [CEQA Guidelines § 15303(d).] Many of the examples of structures given in § 15303 as being exempt from CEQA are far larger than the installations involved here. In addition, minor land alterations are also exempt from CEQA. [CEQA Guidelines § 15304.]

While the CEQA Guidelines include an exception to the categorical exemptions when "the cumulative impact of successive projects of the same type in the same place, over time is significant" (CEQA Guidelines 15300.2(b)), that exception (to the exemption) is not applicable here. The "visual impacts" of the cabinets, as minor as they are, are entirely confined to the immediate vicinity of each structure. AT&T has submitted applications for three permits at specific locations, and these locations are not "in the same place," but are located in different places throughout the City. That is necessarily the case, because these cabinets are "paired" with existing SAI cabinets that are already installed throughout the City. Their "impact" is entirely limited to the specific area in which they are sited, and their visual impacts, minor to begin with, cannot "cumulate" in any sense under CEQA. Thus, even when considered collectively, all of the cabinets that might eventually be sited under the Lightspeed initiative, could not pose the possibility of creating significant cumulative impacts that would subject them to this exception to the categorical exemptions.

Some cities have questioned whether the reference to CEQA in AB 2987 suggests some heightened, or different, review for the new lightspeed nodes than other utility boxes, including traffic control boxes. It does not. As the Assembly concurrence statement on August 30 states, "[AB 2987] [p]rovides that the local government shall control the time, place, and manner in which video service providers access the public right-of-way under the same terms and conditions as they control the telephone companies' access to the right-of-way today and that existing laws regarding the permitting process and compliance with the California Environmental Quality Act (CEQA) shall remain unchanged, except that the local government shall be the lead agency for CEQA purposes."

- *Undergrounding*

The City does not have the authority to require AT&T to place the Lightspeed cabinets underground. The rights conferred on telephone companies to access and use the public rights of way by Section 7901 limit the exercise of local discretion to the protection of the public's ability to use the public rights of way and do not encompass such unrelated issues as aesthetics or visual impacts. Regardless, there are also technical and financial reasons why Lightspeed cabinets cannot be placed underground.