



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.

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.

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ATTACHMENTS:

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

TelecommunicationsLegislation Report

11/9/06

11:00 a.m.