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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
Implementation of Section 621(a)(1))
Of the Cable Communications Policy)
Act of 1984 as amended by the Cable)
Television Consumer Protection and)
Competition Act of 1992)

MB Docket No. 05-311

REPLY COMMENTS OF THE CITY OF WALNUT CREEK, CA

These Reply Comments are filed by the City of Walnut Creek, California, in support of the reply comments filed by the National League of Cities and the National Association of Telecommunications Officers and Advisors ("NATOA"). The undersigned is also a member of the Board of Directors of the California and Nevada Chapter of NATOA ("SCAN NATOA, Inc.") and the author of a book on telecommunications and cable franchising, "Telecommunications" (Solano Press 2002). However, these comments do not necessarily reflect the views of SCAN NATOA, Inc.

The comments submitted by the telephone industry in general, and AT&T in particular, demonstrate the lack of any factual basis for the claim that the local franchising process serves as a barrier to entry into the cable market. AT&T is only able to cite two examples of "unreasonable" behavior by local agencies (the cities of Walnut Creek and Lodi, CA) it has directly encountered, and as discussed below, AT&T completely misrepresents those situations to the Commission. The only other alleged examples it cites are situations involving other providers in cities that it is unable to even name because it is relying on other sources, such as newspaper articles. Some or all of these examples may be pure fiction that should be disregarded by the Commission.

Despite this lack of any factual basis for Commission action, AT&T nevertheless goes on to call for the Commission to essentially set specific franchise terms and compel local agencies to issue franchises to telephone companies based on those terms. The terms they call for wouldn't simply preempt unreasonable terms; instead, the terms would be set far below what incumbent cable operators have routinely agreed to and profitably operate under. We continue to believe that the Commission does not have any authority to preempt unreasonable franchise terms, as Congress has expressly given that exclusive authority to the courts. However, AT&T's request moves from the sublime to the ridiculous, asking the Commission to not simply preempt unreasonable franchise terms, but to completely eviscerate local control over the franchising process despite Congress' clear placement of such control with local agencies. For the reasons discussed in more detail below, we urge the Commission not to take any action.

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List A B C D E

AT&T HAS NOT ENCOUNTERED ANY UNREASONABLE BEHAVIOR BY LOCAL FRANCHISING AUTHORITIES

The City of Walnut Creek and the thousands of other local agencies represented in this proceeding wholeheartedly welcome the prospect of competition offered by the telephone companies and are ready to work hard to facilitate the rapid deployment of facilities in local streets. We also believe that competition can best thrive when companies compete on a level playing field. In balancing these interests, we have offered AT&T immediate entry into the market subject to complying with essentially the same terms that the other cable companies readily comply with. However, AT&T has refused. Let's all be honest about what is happening here. AT&T doesn't really have a problem with speed to entry, or with unreasonable franchise terms. AT&T simply doesn't want to bear the expense of complying with plain vanilla franchise terms that other cable companies, including competitive providers, have been complying with for decades.

In its Comments, AT&T doesn't suggest that Walnut Creek has unreasonably refused to issue a franchise or has required any unreasonable franchise terms. Instead, AT&T objects to the mere fact that Walnut Creek issued an encroachment permit subject to a condition that it obtain a cable or OVS franchise prior to providing video programming services. Obviously if AT&T's video programming service is a "cable service", it is required by the Cable Act to obtain a franchise, so the franchise requirement per se is not "unreasonable". If AT&T's video programming service is not a "cable service", then the franchise requirement is outside the scope of this proceeding, which relates only to unreasonable refusals to issue cable franchises.

In any event, AT&T argues that it ultimately sued the City after five months of unsuccessful "negotiations" with the City. While we hate to belabor the Commission with the details of these "negotiations", we think it is instructive of what is really happening throughout the country, as opposed to the fiction being spun by the telephone companies. The City initially imposed the condition requiring a franchise in June of 2005 (after catching AT&T knowingly and illegally performing work within City streets without a permit). AT&T sent a letter to the City on June 28, 2005, objecting to the condition. On July 26, 2005, I sent a letter to AT&T with a draft franchise agreement that was essentially identical to a recent franchise agreement between the City and another competitive cable provider, Seren Innovations. (See Exhibit 1.) I offered to immediately bring it to the City Council for approval. On July 27, 2005, I met with AT&T representatives, including Assistant General Counsel Richard Parr. Mr. Parr said in no uncertain terms that AT&T would not execute my proposed agreement. However, Mr. Parr indicated that AT&T had developed an "MOU" setting forth franchise-like terms that they would provide to me. On July 28, 2005, I sent an e-mail to Mr. Parr confirming that he would be sending me the MOU. Mr. Parr responded by saying that they would provide the MOU "shortly". On August 18, 2005, I sent another e-mail to Mr. Parr stating that I was looking forward to receiving the MOU. He replied the same day, again saying he would send me the MOU "shortly". (See e-mails attached as Exhibit 2.) After not receiving the MOU, on September 12, 2005, I sent Mr. Parr a letter checking on the status of the MOU. (See Exhibit 3.) On September 19, 2005, I received a

response from Mr. Parr stating that they “do not believe any constructive purpose will be served by presenting a MOU for discussion.” (See Exhibit 4.)

Despite AT&T’s apparent decision not to negotiate, the City nevertheless continued its efforts to negotiate. On October 17, 2005, I sent an e-mail to Mr. Parr, attaching a proposed franchise agreement that was only two pages with terms that were much more abbreviated and less burdensome than the existing Seren franchise agreement. (See Exhibit 5.) On October 21, 2005, I e-mailed to Mr. Parr another two-page agreement, this time removing any reference to the term “franchise agreement” in response to AT&T’s concerns. (See Exhibit 6.) On October 26, 2005, Mr. Parr responded by sending a letter outlining terms that AT&T was willing to agree to. (See Exhibit 7.) On November 3, 2005, I responded saying that the proposal represents a good starting point and suggesting that we continue to negotiate based either on the draft agreement I had previously sent or a new form if AT&T would prefer. (See Exhibit 8.) On November 10, 2005, Mr. Parr sent me a draft agreement. (See Exhibit 9.) On December 12, 2005, I e-mailed to Mr. Parr some proposed revisions. (See Exhibit 10.) Mr. Parr called me several days later to discuss a few issues and said he would provide a written counter-offer the week after Christmas. However, three months later I still have not received anything from AT&T. We never reached impasse on any issues because AT&T refused to negotiate long enough to see if we could reach agreement. Instead, AT&T apparently decided it was uninterested in negotiating at all.

Walnut Creek’s experience makes it very clear that AT&T isn’t truly concerned about speed to market or “unreasonable” franchise terms; AT&T simply doesn’t want to enter into local franchise agreements on any terms, regardless of how quickly they are approved.

**AT&T IS REQUESTING THAT THE COMMISSION VIOLATE
FEDERAL LAW UNDER THE GUISE OF PREEMPTING
UNREASONABLE DENIALS OF FRANCHISES**

Not only does AT&T fail to provide any factual basis for the Commission to act, it requests that the Commission adopt regulations that are so contrary to the Cable Act as to be almost laughable. For example, AT&T suggests that the Commission set a uniform national franchise fee. However, the Cable Act already sets a uniform national franchise fee of 5% of gross revenues. 47 U.S.C. section 542(b). The courts have made it clear that this simple formula means what it says, and that gross revenues means gross, without deduction. *City of Dallas v. FCC*, 188 F.3d 893 (5th Cir. 1997). The FCC has no authority to limit what Congress has explicitly granted.

The Cable Act also clearly defines what types of payments and costs fall within the 5% limit on franchise fees. 47 U.S.C. section 542(g). The Commission has no authority to expand or change the definition adopted by Congress.

AT&T also argues that the Commission should adopt regulations prohibiting local agencies from requiring the construction of institutional networks as a condition of

granting a cable franchise. However, federal law clearly authorizes such a requirement. In its request for proposals for a new or renewed franchise, a franchising authority "may establish requirements for facilities and equipment..." 47 U.S.C. §544(b)(1). The legislative history of this section states, "Facility and equipment requirements may include requirements which relate to . . . system configuration and capacity, including institutional and subscriber networks . . ." "House Committee on Energy and Commerce, Report on Cable Franchise Policy and Communications Act of 1984, H.R. Rep. No. 98-934 at 68 (1984), reprinted in 1984 U.S.C.C.A.N. 4655. The 1996 Act also recognized the authority of a franchising authority to require I-Nets by adding a section stating, "Except as otherwise permitted by section 611 and 612, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, **other than institutional networks**, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise." 47 U.S.C. §541(b)(3)(D) (emphasis added). Again, the Commission has no authority to overrule the clear authority provided by the Cable Act to require institutional networks.

AT&T also argues that a requirement that AT&T provide space for PEG studios either in its headend facilities or other facilities would be per se unreasonable. However, federal law clearly authorizes franchising authorities to establish such requirements. In its request for proposals for a new or renewed franchise, a franchising authority may establish requirements for facilities and equipment, including facilities and equipment for PEG uses. 47 U.S.C. sections 541(a)(4)(B), 544(b). These facilities and equipment may include such things as "studios and production facilities, vans and cameras for PEG use." 1984 House Committee Report at 45, 68. Certainly if AT&T does not have a headend or comparable facility within the territory of a franchising authority, it cannot provide studio space within that facility. In such a circumstance, if the franchising authority establishes a requirement for a PEG studio, AT&T can propose alternative ways to provide a studio. However, the best way of satisfying a particular communities needs for a studio must necessarily be determined based on local circumstances, not with a one-size-fits-all federal rule. In any event, the Commission has no authority to overrule the clear authority provided by the Cable Act for franchising authorities to establish requirements for PEG facilities.

AT&T argues that the Commission should preempt any regulation that subjects the upgrading of existing telephone networks to video franchise regulations. In this argument, AT&T is clearly attempting to expand the scope of this proceeding well beyond issues of unreasonable denials of cable franchises. AT&T is simply attempting to create a toehold so that it can make its argument to local agencies that they cannot franchise IP-enabled video services. However, this larger issue is already being considered by the Commission in its IP-Enabled Services proceeding and should be left to that proceeding.

AT&T also argues that a requirement that AT&T track compliance with customer service standards on a "city-specific" basis is per se unreasonable because AT&T's call centers operate on a region wide basis. However, many automated call answering systems can easily be programmed to keep track of calls on a city-specific basis by

sorting calls by area code and prefix. Indeed, several years ago NATOA members were given a tour of Comcast's call center in Nashville, where staff indicated that their system is programmed to do this and can be programmed to manipulate call data in just about any way imaginable.

Perhaps most outrageous is AT&T's suggestion that the Commission should adopt a short-form application process under which the Commission would effectively establish the terms of local franchises. This completely turns the federal and local roles established by the Cable Act on its head. In adopting the Cable Act, Congress sought to preserve the existing system whereby local agencies played the primary role in franchising in recognizing that local agencies were best able to identify community needs. The entire structure of the Cable Act is based upon the idea that local agencies will identify local needs and tailor franchise requirements to meet those needs. The Cable Act "merely codified and restricted local governments' independently existing authority to impose franchise requirements." *City of Dallas v. FCC*, 165 F.3d 341 (5th Cir. 1999); see *National Cable Television Ass'n v. FCC*, 33 F.3d 66, 69 (D.C. Cir. 1994) (noting that one of the purposes of the 1984 Cable act was to "preserve[] the local franchising system"); *Time Warner Entertainment Co. v. FCC*, 93 F.3d 957, 972 (D.C. Cir 1996 ("Prior to the passage of the 1984 Cable Act, and thus, in the absence of federal permission, many franchise agreements provided for [public, educational and governmental access] channels. . . . Congress thus merely recognized and endorsed the preexisting practice . . ."). The House Report on H.R. 4103, the terms of which were later incorporated into S. 66 to become the 1984 Cable Act, stated as follows:

Primarily, cable television has been regulated at the local government level through the franchise process. . . . H.R. 4103 establishes a national policy that clarifies the current system of local, state, and Federal regulation of cable television. This policy continues reliance on the local franchising process as the primary means of cable television regulation, while defining and limiting the authority that a franchising authority may exercise through the franchise process. H.R. Rep. No. 98-934, at 19 (1984).

A short-form application process requiring franchising authorities to approve franchises with terms established by the Commission would clearly be beyond the authority of the Commission as well as completely contrary to the Congressional mandate that franchising be a local process.

AT&T's arguments are simply a transparent attempt to establish Commission rules that are contrary to the Cable Act for the purpose of increasing its profit margins, not to address unreasonable denials of franchises. If the Commission were to take any action at all, it should rule that requiring AT&T to meet the same terms as the incumbent cable company is per se reasonable. This would have the effect of encouraging the rapid deployment of new technology throughout the nation by ending the ridiculous delays that are being caused by AT&T's deferment of Project Lightspeed while it attempts to gain a competitive advantage through hoped-for loopholes that it is asking the Commission to create.

CONCLUSION

As discussed above, the telephone industry has been unable to demonstrate that local agencies have created any barriers to their entry into the cable market. In fact, communities across the nation have encouraged AT&T to quickly build and offer competition by offering to quickly approve franchises on the same terms as the incumbent cable operators. In any event, the Commission has no authority to issue the regulations requested by AT&T that are directly contrary to the Cable Act.

Respectfully submitted,



Paul M. Valle-Riestra
Senior Assistant City Attorney
City of Walnut Creek

Cc: National League of Cities
NATOA
John Norton
Andrew Long
League of California Cities



July 26, 2005



Lori L. Ortenstone
Senior Counsel
SBC West Legal Department
101 W. Broadway Suite 1300
San Diego, CA 92101-8214

Re: Encroachment Permit for Project Lightspeed

Dear Ms. Ortenstone:

Thank you for your letter dated June 28, 2005, regarding the condition relating to a franchise that was included in an encroachment permit issued to SBC as part of Project Lightspeed. We certainly understand that the issue of franchise requirements is a significant issue for SBC and we look forward to meeting with you to discuss this issue. I thought it would be helpful to state our position on this issue and clarify what occurred regarding the encroachment permit condition.

As you know, federal law requires telephone companies to obtain a local cable franchise "to the extent that a common carrier is providing video programming to its subscribers in any manner other than" over an open video system (which also requires a local franchise), or over a radio system, or as a common carrier subject to the requirements of Title II (47 U.S.C. section 571). Project Lightspeed facilities are being designed to deliver video programming; indeed, extensive information directly from SBC indicates that this is the primary reason that Project Lightspeed is being deployed. (See e.g. the various press releases on SBC's website and SBC's "Investor Update" on Project Lightspeed dated November 11, 2004.) While we recognize that some testing of SBC's video technology is still on-going, it appears that the testing is in its final stages and that SBC plans to deploy its video product by the end of the year. In other words, video programming is not just some possible future additional service that could be a part of Project Lightspeed; it is a concrete, central element of Project Lightspeed. It is quite clear that the video programming will not be carried on a common carrier basis (either in whole or, as with an OVS system, in part) and will not be delivered via radio. Accordingly, federal law is quite clear that it constitutes a cable service subject to local franchising.

The discussion in your letter regarding the City's issuance of encroachment permits is not accurate. Don Murphy, the City's Construction Coordinator who is in

charge of issuing encroachment permits, initially met with Loren Irwin and Paul Wolfson of SBC regarding Project Lightspeed on April 13, 2005, to discuss permitting for Project Lightspeed. On April 19, 2005, Mr. Murphy met again with Mr. Irwin and Mr. Wolfson at which time they submitted the first phase of SBC's plans for review. Mr. Murphy discussed some of the likely permit conditions and stated that there would be additional conditions that were being developed. On April 22, 2005, Mr. Murphy met with the SBC representatives to discuss encroachment permit requirements in general, reemphasizing the requirement that SBC obtain an encroachment permit whenever it obstructs the public right-of-way. On May 3, 2005, Mr. Murphy again met with the SBC representatives to provide comments on the first submittal relating to Project Lightspeed. At this meeting, Mr. Murphy specifically stated that one of the conditions of approval would relate to the requirement that SBC obtain a franchise. He also made it clear that an encroachment permit would be required, as always, prior to obstructing the public right-of-way. Despite this fact, on June 7, 2005, a city inspector caught an SBC crew performing work within the public right-of-way (including the closure of a sidewalk) without an encroachment permit. The SBC crew told the inspector that the work was a part of Project Lightspeed. Mr. Irwin then called Mr. Murphy, indicated that SBC was doing some splicing work, and asked if they could continue provided they came in and obtained a permit. Mr. Murphy asked if the work was related to Project Lightspeed. Mr. Irwin indicated that it was. Mr. Murphy told him that it would be okay to do the work if they obtained a permit, but specifically repeated that it would be subject to a condition requiring that SBC obtain a franchise as previously discussed.

The encroachment permit that was issued authorized work until July 8, 2005. We don't know when the work was actually completed. However, SBC was fully aware of the permit condition prior to performing the work, and the work has now been completed. Accordingly, SBC has accepted the benefits of the permit and cannot legally refuse to comply with its terms. It would also appear that SBC's appeal of the permit is not timely. Nevertheless, we are willing to discuss having the City Council consider the appeal despite this fact.

I understand from my conversations with Steve Welch and other SBC representatives that a primary concern with getting local cable franchises is the perception that it will take a long time to obtain such franchises, thus reducing SBC's speed to market. Please find attached a draft franchise agreement which is essentially identical to the most recent cable franchise granted by the City to Seren Innovations. Nothing in this agreement is set in stone, and all provisions are negotiable. If this agreement is acceptable to SBC, I will immediately place it on the City Council agenda and fully expect that it will be quickly approved. If SBC has proposed changes, I will clear my calendar to create plenty of time so that we can craft a mutually acceptable franchise agreement quickly. Please let me know as soon as possible so that we can ensure that there are no delays in getting SBC's IP video service to market.

I look forward to discussing these issues further with you at our meeting that is

scheduled for July 27, 2005. Please let me know if you have any questions. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul M. Valle-Riestra". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul M. Valle-Riestra

Senior Assistant City Attorney

Cc: Dan Richardson
Rachel Lenci
Don Murphy
Diana J. Graves



From: Paul Valle-Riestra
To: internet:im4372@sbc.com; internet:im3985@camail.sbc.com; LESLIE, W. MARK (SBCSI); PARR, RICHARD M (Legal)
Date: 8/19/05 9:30AM
Subject: RE: Walnut Creek Encroachment Permits

It sounds like we have some misunderstandings, so I'll try to clarify.

At our initial meeting with Richard, Mark and Barbara, I understood SBC to suggest that it could initially construct not only fiber, but also the equipment cabinets for Lightspeed, and that even after installing initial equipment in the cabinet it wouldn't be physically possible to deliver video (as opposed to voice and data) until additional equipment and cards had been installed. My last e-mail stated in part that it didn't sound like this was the case. It is now my understanding from talking with Mark that I had misunderstood what SBC was saying, and in fact SBC was only saying that no video (or other Lightspeed services) can be delivered until the new cabinets are installed, but that the cabinet equipment is fully integrated (i.e. there is no additional equipment that is video-only).

It was also my understanding from our initial meeting that SBC was suggesting that the IPTV product was at a very early stage of development and had a very unclear future, and that as a result it would be premature to discuss cable franchising issues. I stated at the meeting my understanding that the IPTV product development was quite far along in the development process, that while tests continued the basic specifications for the IPTV product were in place, that IPTV was the primary element driving Lightspeed from a financial point of view as evidenced by SBC's pitch to Wall Street, that indeed it would be foolish for SBC to begin constructing the system if it's plans for IPTV were not largely developed, and that there is no reason not to discuss the cable franchising issue right now. My last message to Richard was also in part to reinforce my understanding based on our subsequent meeting and further press reports. Mark subsequently suggested that IPTV has some risks and that some analysts have argued in the press that SBC won't be able to make a profit from IPTV. I will grant you that there is financial risk, but that doesn't alter the fact that the IPTV plan is fairly concrete and that it is not premature to discuss cable franchising.

As we've discussed, the City wants to be reasonable and has agreed not to include the franchising condition on permits for work that is unrelated to Lightspeed. The City is also willing, on a case-by-case basis, not to include the condition when work is needed primarily to provide services on the existing network but which will incidentally benefit Project Lightspeed. However, the City will continue to include the condition when the work is primarily Lightspeed work, e.g. construction of the new fiber laterals to the nodes. We are not willing to simply defer the issue until the cabinets are constructed for a number of reasons. Cable franchise agreements typically include issues relating to the construction of the network, e.g. the provision of Institutional Networks and provisions for the delivery of community access programming to an insertion point in the system. Allowing construction now without consideration of those issues creates the possibility that SBC would have to go back and dig up the same streets again. We also feel an obligation to treat competitors in a neutral matter. Comcast recently made a similar argument that they should be allowed to upgrade their system now and work out a new cable franchise later. When we objected, they sued us. When the court sided with the City, they settled and entered into an agreement with the City. It would have all the appearances that we are treating SBC more favorably, and I have no doubt Comcast would loudly protest, if we were to take a different position with SBC and simply allow construction of a cable-like system while deferring the franchising issue.

There is no reason we can't work out the franchising issue now in an expeditious manner. As I've said before, we're willing to be flexible, including calling the agreement something other than a franchise, making it much shorter than a typical franchise and negotiating very quickly. I don't mean this as a criticism at all in that I realize vacations have taken up time and that this all has to be run through San Antonio, but it's been 3 1/2 weeks since we met and we still haven't received a proposal. If SBC's concern is truly speed, let's get it done. On the other hand, if SBC's true intention is to try to avoid financial burdens such as franchise fees (or comparable compensation if you don't like that term) or community access channels and funding, these issues aren't going to be any easier to deal with later, so let's try to resolve them now.

I hope this clears up some of the issues. Please note that I don't have Barbara Leslie's e-mail address, so please forward this to her. I'm happy to meet any time, and I look forward to receiving your draft MOU.
Thank you.

Paul

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>>> "PARR, RICHARD M (Legal)" <rp3639@sbc.com> 08/18/05 04:09PM >>>
Paul,

Thanks for your note. I'm glad the meeting with Ian and Laurie was useful. We will have a draft MOU for you to review shortly. I do believe there is a misunderstanding at the point of equipment being completely integrated. The permitted work we are doing now that we are identifying to the City as "Lightspeed" is fiber build and line conditioning only. There are no electronics supporting video going in, and this fiber build is not integrated with video electronics, and will not presently carry video programming. Our hope was to delay the point at which we must deal with the impact of the condition on the permits until we are actually ready to install the electronics in the cabinets that will be necessary to support the video programming. We are willing to agree to provide the same type of identification for these cabinets and the associated electronics as both "Lightspeed" and specifically as "video", just as we are identifying the permitted work to build fiber or do maintenance work to condition existing lines as "Lightspeed". We'd very much appreciate the opportunity to talk to you and members of City staff to clarify this point. Please let me know if you are willing to schedule a follow-up call on this subject.

Best regards,

Richard Parr

-----Original Message-----

From: Paul Valle-Riestra [mailto:VALLE-RIESTRA@ci.walnut-creek.ca.us]
Sent: Thursday, August 18, 2005 1:54 PM
To: PARR, RICHARD M (Legal); LESLIE, W. MARK (SBCSI)
Cc: Dan Richardson; Rachel Lenci; Donald Murphy
Subject: RE: Walnut Creek Encroachment Permits

Richard and Mark,

Thanks for arranging the meeting with Ian McNeill and Laurie Miller, who

we met with on Monday. Ian indicated that there will not be any additional video-only hardware that will be added to the system at the *end of the project, i.e. all of the equipment is completely integrated*, so there wouldn't be the opportunity to wait until a late stage in the construction process to address the video franchising issue. Ian also indicated that while field trials are continuing in Texas, all is going well and it's clear what is going to be installed. Obviously you have the inside scoop on what's happening, but I've pasted below an article that makes it very clear that SBC's IPTV plans have been finalized, so it wouldn't be accurate to characterize them as speculative. In any event, I look forward to receiving your draft MOU. Thanks. Jer. As I've said before, we're willing

SBC Picks IP-TV Settops

Posted on Thursday, August 18 2005 @ 11:11:44 PDT by samc

<<http://www.sdots.com/wireless>>

<http://dailywireless.org/modules.php?name=News&file=article&sid=4575&src>

=rss10

<http://dailywireless.org/modules.php?name=News&new_topic=2>

SBC has picked

<<http://www.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=2177>

2> IP-TV settops from Scientific-Atlanta

<<http://www.scientificatlanta.com/>> and Motorola

<<http://www.motorola.com/>> for the telco's planned IP-TV system

<http://www.lightreading.com/document.asp?doc_id=79215&WT.svl=wire1_1> .

Financial terms of the two contracts were not disclosed

<<http://sanantonio.bizjournals.com/sanantonio/stories/2005/08/15/daily27>

.html> .

The fiber-to-the-node initiative will catapult SBC into a 13-state market for voice, video and data services and is the world's largest IP-TV rollout.

Within three years, about 18 million SBC households will have access to this network <<http://www.sbc.com/gen/press-room?pid=6540>> . The

contracts give equal market opportunity to both vendors and continue through the end of 2008. SBC's settops will run Microsoft IP-TV software

<http://www.microsoft.com/tv/content/Solutions/IPTV/mstv_IPTV_Overview.m

spx> and allow users a variety of interactive functions like video recording and video on demand. Alcatel is primary supplier for Project Lightspeed infrastructure in a \$1.7 billion deal

<<http://www.alcatel.com/tripleplay/sbc.ihtml>> .

Project Lightspeed

<<http://www.americasnetwork.com/americasnetwork/article/articleDetail.is>

p?id=160512> is the SBC initiative to expand its fiber-optics network deeper into neighborhoods to deliver SBC U-verse TV

<<http://www.sbc.com/gen/press-room?pid=6540>> , voice and high-speed Internet access services.

SBC & Verizon Plan Different Fiber Strategies

<<http://www.dailywireless.org/modules.php?name=News&file=article&sid=417>

9>

SBC's Project Lightspeed is preparing a triple-play launch

<<http://www.americasnetwork.com/americasnetwork/article/articleDetail.js>

p?id=160512> . They're using VDSL-2

<<http://www.dailywireless.org/modules.php?name=News&file=article&sid=417>

9> , to reach the overwhelming majority of their homes. They deliver fiber to the node, but twisted pair copper to the home. SBC will use Alcatel gear for the fiber backbone. It consists of IP routers, the 7750

<<http://www.alcatel.com/products/productssummary.jhtml?relativePath=/x/op>

gproduct/a7750sr.jhtml> , the Ethernet switches, the 7450

<<http://www.alcatel.com/products/productssummary.jhtml?repositoryID=/com/>

en/appxml/opgproduct/alcatel7450ethernetserviceswitchtcm228112421635.jhtml> , the remote DSLAM, the 7330

<<http://www.alcatel.com/products/productssummary.jhtml?repositoryID=/com/>

en/appxml/opgproduct/alcatel7330fibertothetodetcm228117061635.jhtml> .

Microsoft's IPTV solution <<http://www.microsoft.com/tv/default.msp>> will be used for the settop box.

Verizon's FiOS

<<http://www22.verizon.com/FiosForHome/channels/Fios/HighSpeedInternetFor>

Home.asp?promotion_code=&variant=> (Fiber Internet Service

<http://www22.verizon.com/fiosforhome/channels/fios/root/faq.asp#fios_q1

>) does not use DSL. It brings fiber directly to the home. For in-home distribution it uses twisted pair (for voice) and coax (for video). FiOS TV <http://www.microsoft.com/tv/content/Press/Verizon_FiOS_05.msp> uses digital cable boxes rather than IP-TV. Fios Internet Service <<http://www22.verizon.com/fiosforhome/channels/fios/root/package.asp>> requires CAT5 or higher grade wiring. It will deliver 5 Mbps (\$39/mo) to 30 Mbps (\$199/mo). When installing Fios, Verizon tears out your twisted pair to eliminate all access to competitive landline providers.

"This is a major technology milestone for IPTV," said Lea Ann Champion, senior executive vice president, SBC IP Operations and Services. "A number of different technology components have come together to ensure the set-top boxes can efficiently support the features and functionality we plan to deliver to our customers."

TelcoTV costs are going to be enormous.

* SBC hopes to get 18 million IPTV subscribers by 2008

<<http://english.eastday.com/eastday/englishedition/business/userobject1a>

i772309.html> . SBC is investing \$4 billion in Project Lightspeed, their fiber to the node solution. In some cases they'll take the fiber directly to the premises, but mostly SBC plans to use VDSL2 chips to

deliver some 20 Mbps over twisted pair copper to the home. Getting VDSL-2

<<http://www.dailywireless.org/modules.php?name=News&file=article&sid=417>

9> to deliver two different HDTV channels (plus voice and data) over twisted pair is the tricky bit.

* Verizon's FiOS

<<http://www22.verizon.com/FiosForHome/channels/Fios/HighSpeedInternetFor>

Home.asp?promotion_code=&variant=> hopes fiber will pass three million homes by the end of 2005, 7 million by 2006 and 15 million by the end of 2008. That's about half of their 1/3rd of the country target - for \$15-20 billion <<http://www.broadbandreports.com/shownews/65298>> .

Scientific-Atlanta will also supply IP video equipment for an IP video operations center (VOC)

<<http://www.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=2163>

3> , two national IP video super hub offices (SHO) and 41 IP video hub offices (VHO). SBC companies will use the facilities and equipment to deliver IP-based video entertainment services to customers within the Project Lightspeed footprint.

The VOC is a "command center" that will monitor the availability and quality of all of the content traveling through SBC's network. The SHOs receive, process, and encode video and TV programming from satellite feeds into IP packets. This content is then sent to the VHOs (typically one per major metropolitan area), via SBC's national IP-based network.

In the VHOs are servers that have the electronic intelligence necessary to deliver IP video-on-demand, over-the-air TV programming, interactive applications, and more. The VHOs will also acquire and encode local video content.

Instead of using a traditional broadcast video system, in which all content is continuously sent to every customer's home, SBC companies will use a switched IP video distribution system. In the switched IP video network, only the content the customer requests is sent, freeing up bandwidth to be used for other applications.

MPEG-4 Compression

Use Scenario	Resolution & Frame Rate	Example Data Rates
Mobile Content	176x144, 10-24 fps	50-60 Kbps
Internet/Standard Definition	640x480, 24 fps	1-2 Mbps
High Definition	1280x720, 24p	5-6 Mbps
Full High Definition	1920x1080, 24p	7-8 Mbps

Some industry observers think SBC's bet on VDSL2 and IP-TV is risky; the technology is new and fraught with development headaches. But Verizon's FiOS plan of delivering fiber directly to the home is also a gamble - and costs considerably more

HDTV will require about 9Mbps per stream. PVRs will require two HDTV channels; one to watch and one to record. Whether SBC can successfully deliver the 20 Mhz speed over the "last mile" is one question. The other question is whether telcos can succeed in the "triple play". Some doubt it.

Consider, for example, the Multichannel Video Distribution & Data Service

<http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=6

3> (MVDDS), which goes on the FCC's auction block late this year. The terrestrial licenses will use the same spectrum as satellite broadcasters DirecTV and EchoStar (500 Mhz on the 12 GHz band). MVDDS avoids satellite interference by beaming their terrestrial transmitters South. Subs must point their antennas North, away from potential satellite interference. MVDDS licensees will provide one-way video programming and high-speed data. Two-way services may be provided by using other spectrum for the return or upstream path.

<http://www.mds.fr/products_all/products_1.htm> MVDDS results in TV & Internet services with <http://www.mds.fr/products_all/products_1.htm> :

- * Up to 2000 Digital MPEG2 Channels.
- * Up to 6 Gb/s Wireless Internet / Intranet Access Capacity
- * More than 100 km Radius Range with a 4 watt transmitter.
- * Very low cost ...

Take that, Verizon and SBC. Thanks for the settop, though.

Paul M. Valle-Riestra
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>>> "PARR, RICHARD M (Legal)" <rp3639@sbc.com> 08/04/05 03:41PM >>>
Paul, thanks. I am interested, and already had it. Very much appreciate you passing it on. Richard

-----Original Message-----

From: Paul Valle-Riestra [<mailto:VALLE-RIESTRA@ci.walnut-creek.ca.us>]
Sent: Thursday, August 04, 2005 3:24 PM
To: PARR, RICHARD M (Legal); LESLIE, W. MARK (SBCSI)
Cc: Dan Richardson; Donald Murphy
Subject: RE: Walnut Creek Encroachment Permits

Richard,

In case you didn't see it, I thought you might be interested in NCTA's memo regarding why SBC's IPTV service is subject to cable franchise requirements.

Paul

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>>> "PARR, RICHARD M (Legal)" <rp3639@sbc.com> 08/02/05 03:27PM >>>
Paul,

Thanks for your thoughtful response. We disagree, but I understand the points you are making. While I appreciate your comments, I wouldn't go so far as to say I've set forth SBC's legal position, other than the punch line which is that our current construction and maintenance is within Section 7901. I provided you the citation because it appeared you were referencing Title VI and were not aware of the exceptions. We certainly can discuss the network topology and product design of our video product in connection with an agreement tailored specifically to our video product offering. Our immediate focus, however, is on our existing network and legacy services, and work on those network facilities, that are clearly not "cable" and clearly are within provisions of Cal. Pub. Util. C. Section 7901. Like you, from what I gather from your note here, I'd rather not quibble and am in the process of preparing a model MOU for your review and our further discussion. I look forward to continuing our discussion with a view to a resolution that addresses all these considerations.

Regards,

Richard

-----Original Message-----

From: Paul Valle-Riestra [<mailto:VALLE-RIESTRA@ci.walnut-creek.ca.us>]
Sent: Tuesday, August 02, 2005 11:22 AM
To: PARR, RICHARD M (Legal); LESLIE, W. MARK (SBCSI)
Cc: Dan Richardson; Donald Murphy
Subject: RE: Walnut Creek Encroachment Permits

Richard,

Thank you again for setting forth SBC's legal position. With all due respect, SBC's video programming product doesn't even come close to falling within the exception you mention. As you indicate, there is an exception to the definition of cable service in situations where a

company in providing solely "interactive on-demand services." As you further indicate, "interactive on-demand services" is defined in part under federal law as "a service providing video programming to subscribers over switched networks". However, SBC's video programming product will be provided using Internet Protocol, not on a switched basis. As you know, IP is the antithesis of a switched network; in fact the genius of IP is that it avoids the capacity inefficiencies of a switched network. Indeed, there is great irony in your argument in that SBC has argued on many occasions (without citing any legal authority) that the fact that its video product will be delivered using IP makes it exempt from cable franchising.

In addition, interactive on-demand services explicitly "does not include services providing video programming pre-scheduled by the programming provider." While I recognize that SBC's video product will include a great deal of on-demand video, it will also include access to traditional broadcast and cable channels that are pre-scheduled by the programming provider.

I certainly recognize that there will likely be modifications in some of the details of SBC's video product prior to deployment. However, it is very clear from information provided by SBC to investors and the press that the video programming will be delivered via IP, not via a switched network, and that the video programming will include broadcast and cable channels that are pre-scheduled by the programming provider.

As we discussed, I think it makes sense for both SBC and the City to quickly put together some type of agreement relating to the provision of SBC's video product. Waiting until SBC is ready to actually provide its video product before negotiating an agreement would run the risk that deployment of the service would be delayed, which is something that the City very much would like to avoid. We are completely open to innovative types of agreements, as long as essential City interests are preserved (e.g. compensation for use of the public right-of-way, community access channels and funding, institutional network issues, consumer protection and management of the right-of-way). I am willing to devote large portions of my time over a short time period in order to work out the issues and avoid the long process that negotiating agreements can entail in some cities. I am not hung up on the semantics of what we would call the agreement or any of its particular provisions. The sooner we get started, the sooner we can get this issue behind us.

The City Council many years ago adopted policies encouraging the deployment of telecommunications infrastructure and promoting competition. The City is very interested in seeing Project Lightspeed deployed in Walnut Creek and new services being made available to our citizens, provided City interests are protected. I look forward to continuing to work with you to make this happen expeditiously. In particular I look forward to receiving the proposed MOU that you mentioned as well as having Barbara Leslie set up a meeting with us to explain the upcoming construction. Thank you.

Paul

Paul M. Valle-Riestra
Senior Assistant City Attorney

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>>> "PARR, RICHARD M (Legal)" <rp3639@sbc.com> 07/28/05 05:31PM >>>
Paul,

Thank you for communicating with us regarding this development. We very much appreciate the time you and Dan devoted to discussing this matter with us. We are working on responding to each of the items we discussed, and will do so shortly. In the interim, may we clarify that the condition attached to the Encroachment Permit issued for work to restore service to our residential customer that we discussed yesterday is withdrawn, as to that permit?

The code section I referenced, other than Cal. Pub. Util. C. Section 7901, is 47 U. S. C. 522(7) expressly excluding from the definition of "cable system" "a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act except...to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services." As you know, there are additional definitions. 47 U. S. C. 522(12) provides "The term 'interactive on-demand services' means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming pre-scheduled by the programming provider." Present plans envision that our video product will be within the exception.

I look forward to continuing to work with you on this issue.

Richard M. Parr
General Attorney and Assistant General Counsel
SBC West
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San Ramon, CA 94583
925-823-3115
rp3639@camail.sbc.com

-----Original Message-----

From: Paul Valle-Riestra [<mailto:VALLE-RIESTRA@ci.walnut-creek.ca.us>]
Sent: Thursday, July 28, 2005 3:14 PM
To: PARR, RICHARD M (Legal); LESLIE, W. MARK (SBCSI)
Cc: Dan Richardson; Donald Murphy
Subject: Walnut Creek Encroachment Permits

Gentlement,

Thank you for meeting with Dan Richardson and myself yesterday to discuss Project Lightspeed.

I talked to Don Murphy and he is agreeable to issuing non-Lightspeed permits without the franchise condition. However, there may be situations where it appears to him that the work does or could relate to Project Lightspeed, in which case he will include the franchise condition (pending our efforts to work something out). While we don't *believe that SBC crews would intentionally deceive us, there have been* times when they themselves haven't known whether particular work is related to Project Lightspeed.

I look forward to receipt of (1) the code section that you indicated exempts SBC from cable franchising requirements and (2) the draft MOU that might form a basis of an agreement relating to Project Lightspeed.

I don't have Barbara Leslie's e-mail, so haven't copied her on this e-mail, but we also look forward to hearing from her regarding a meeting to discuss the planned construction relating to Project Lightspeed. Thank you.

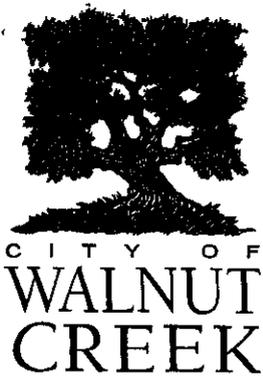
Paul

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CC: Dan Richardson; Donald Murphy; Rachel Lenci



September 12, 2005



Richard M. Parr
General Attorney & Assistant General Counsel
SBC West
2600 Camino Ramon
Suite 4CS100
San Ramon, CA 94583

Re: Project Lightspeed

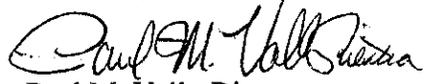
Dear Richard:

I'm just checking in to see the status of the MOU that you are preparing relating to Project Lightspeed. When we first met on July 27, 2005, you indicated that you would be preparing a draft MOU that would address SBC's proposed IPTV service. As I've said previously, while we believe that federal law requires that you obtain a franchise prior to constructing infrastructure related to the IPTV service, we're willing to be flexible, including possibly entering into an agreement that is called something other than a "franchise and not calling IPTV "cable", provided that the City's substantive interests are met. On August 2, 2005, you sent me an e-mail indicating that you are still preparing the MOU. On August 18, 2005, you sent me another e-mail indicating that you would provide the draft MOU shortly. However, to date I have not received the draft MOU.

I don't want to seem like a pest, but I'm sensitive to the time issue given that SBC has repeatedly stated that it's concern with undergoing a local franchising process are the possible delays it will cause to market entry. I've been trying to expedite resolution of this issue to ensure that there is no delay to market entry, yet there doesn't seem to be any sense of urgency by SBC. I'm aware that any MOU needs to be reviewed at the highest levels, so I certainly don't mean to suggest that there has been any delay by you personally. As we've discussed, we haven't scheduled SBC's appeal to the City Council pending our attempt to resolve the issues informally, and I think we've been able to resolve some of the most immediate issues regarding the issuance of some permits without the condition that's in dispute.

In any event, please let me know when we might expect to receive the draft MOU. If SBC has instead decided that it is actually concerned about the substantive requirements rather than the speed to market issues and therefore doesn't intend to provide a draft MOU, I'd appreciate knowing that as well. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul M. Valle-Riestra". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul M. Valle-Riestra
Senior Assistant City Attorney

Cc: W. Mark Leslie

