

CITY OF OAKLAND  
COUNCIL AGENDA REPORT

To: Finance & Management Committee  
From: Councilmember Ignacio De La Fuente  
Date: Tuesday, January 9, 2007  
Recommendation: RECEIVE (1) AN INFORMATIONAL REPORT FROM THE OFFICE OF THE CITY ADMINISTRATOR ON THE STATUS OF IMPLEMENTING STATE ASSEMBLY BILL 2987 WHICH AMENDED STATE LAW RELATING TO CABLE AND VIDEO SERVICE AND, TO ENCOURAGE A MORE COMPETITIVE MARKET FOR TELECOMMUNICATIONS PRODUCTS IN THE CITY OF OAKLAND, APPROVE (2) A RESOLUTION DIRECTING THE CITY ADMINISTRATOR TO NEGOTIATE FOR THE CITY COUNCIL'S REVIEW AND APPROVAL AN INTERIM AGREEMENT WITH AT&T CALIFORNIA ("AT&T") THAT WOULD (i) AUTHORIZE AT&T TO IMMEDIATELY OFFER INTERNET PROTOCOL-ENHANCED TELEVISION (ALSO KNOWN AS "IP TV") FROM EQUIPMENT AND SYSTEMS THAT ARE ALREADY INSTALLED IN THE CITY AND (ii) PROVIDE FOR THE CITY TO COLLECT FROM AT&T ALL REVENUES PERMITTED BY LAW INCLUDING, BUT NOT LIMITED TO, ASSEMBLY BILL 2987

---

**SUMMARY OF RESOLUTION**

1. This report addresses the attached Resolution to encourage a more competitive market for telecommunications products in the City of Oakland by directing the City Administrator to negotiate (for the City Council's review and approval) an interim agreement with AT&T California ("AT&T") that would authorize AT&T to immediately offer internet protocol-enhanced television (a.k.a. "IP TV") to Oakland residents. This agreement, if ultimately approved by the City Council, would authorize AT&T to provide these telecommunication services only through equipment and systems already installed in the City. In addition to encouraging a more competitive market, the agreement would enable the City to collect revenues from AT&T.
2. The City Administrator's Office is providing a separate "Informational Report" on the status of implementing State Assembly Bill 2987 which amended State Law relating to cable and video service.
3. In addition, per the request of a City Councilmember, the City Attorney's Office is planning to provide a "confidential memo" to the City Councilmembers on any legal issues the City Attorney believes might arise from such an agreement.

## **BACKGROUND**

Currently, residents receive enhanced television services through a cable TV company or through providers of personal satellite “dishes.” AT&T has stated that it is capable of immediately offering internet protocol-enhanced television (also known as “IP TV”) to the residents of Oakland. (IP TV is essentially television programs received through a fiber-optic “telephone” line, rather than through a traditional cable, dish, or antenna.) Providing another service to the citizens of Oakland should encourage a more competitive market for telecommunications products which could lower the cost to residents who subscribe to such services.

## **FISCAL IMPACT**

This Resolution would have no immediate fiscal impact because it simply directs the City Administrator to return to the City Council with an agreement negotiated with AT&T for the City Council’s review and potential approval.

If the Council ultimately approves an Agreement, it is likely that it would increase revenues to the City. Although current cable TV or satellite dish customers might simply switch to AT&T (resulting in no net increase in revenues), residents who currently do not subscribe to any television service might sign up with a provider based on increased competition and marketing. The City would then collect fees based on the revenues received by the providers.

## **ENVIRONMENTAL IMPACT**

There is no direct impact to the natural environment because the Agreement would affect only equipment and systems already installed in the City.

## **ACTION REQUESTED OF THE CITY COUNCIL**

Adopt the attached Resolution to encourage a more competitive market for telecommunications products in the City of Oakland by directing the City Administrator to negotiate (for the City Council’s review and approval) an interim agreement with AT&T California (“AT&T”) that would

- (i) authorize AT&T to immediately offer internet protocol-enhanced television (a.k.a. “IP TV”) from equipment and systems already installed in the City and
- (ii) provide for the City to collect from AT&T all revenues permitted by law including, but not limited to, Assembly Bill 2987.

Thank you for your consideration.

Respectfully submitted,

*City Councilmember Ignacio De La Fuente*

Prepared by:  
Alex Pedersen, Chief of Staff for the  
President of the City Council

Attachments: A draft interim agreement (a.k.a. "Gap Agreement") proposed by AT&T and provided to the City Administrator's Office in November 2006. (Note: This attached draft interim agreement is merely a proposal by AT&T; the City is not agreeing to any of their proposed language at this point. The purpose of the Resolution is to direct the City Administrator to negotiate with AT&T an agreement that must be reviewed by the City Council and that would be in the best interests of the citizens of Oakland.)

# DRAFT

November \_\_, 2006

[addressee, address, etc]

Re: Agreement Regarding Provision of IP Video Services By AT&T California

Dear [name]:

This memorializes the agreement ("Agreement") between Pacific Bell Telephone Company, a California corporation doing business as "AT&T California" ("AT&T") and the City of Oakland ("City") concerning the provision of Internet Protocol ("IP") enabled Video Service (IP Video Service) by AT&T to City residents over AT&T's communications network facilities in City's public rights of way.

In light of the passage of Assembly Bill 2987 ("AB2987") by the California Legislature on August 31, 2006, the City and AT&T want to bring the benefits of AT&T IP Video Service product and video services competition to City residents as soon as possible. Accordingly, AT&T and the City agree that they will voluntarily comply with the following provisions of AB2987 (together with those portions of Sec. 3, § 5830 that define terms in the following provisions) until AT&T files and receives a state franchise under 2987 to serve the City:

- Sec. 3, §5860 (concerning the franchise fee);
- Sec. 3, §5870 (concerning Public, Educational, and Governmental channels);
- Sec. 3, §5880 (concerning Emergency Alert System requirements);
- Sec. 3, §5885 (concerning construction and the encroachment permit process);
- Sec. 3, §5900 (concerning customer service and protection), except subsection (k) (concerning renewal of state-issued franchise);
- Sec. 4, §107.7(a)-(e) (to be codified in the Revenue & Taxation Code).

For the avoidance of any doubt, the provisions cited above are intended to apply in the same manner as they would apply if AT&T had already received a state franchise pursuant to the terms of AB2987, and any provisions cited above that apply on a statewide basis shall be interpreted under this agreement as applying on a statewide basis. City and AT&T California agree that the foregoing provisions shall govern the delivery of IP Video Services by AT&T California to City residents and City shall not impose any additional or different requirements.

The City and AT&T agree that AT&T shall not be required to provision any Public, Educational, and Government (PEG) channels over AT&T's network before August 30, 2007.

# DRAFT

This Agreement shall begin as of the date that it is executed by both parties ("Execution Date"), and shall expire as soon as AT&T receives a state franchise under the terms of AB 2987 to provide video services to City residents; however, in the event that AT&T has not received such a franchise as of one year from the Execution Date, this Agreement shall terminate as of that date. To the extent necessary, this document constitutes the authorization for AT&T to provide video services in the City pursuant to AB2987, Sec. 3, §§ 5840 and 5830(f). Once AT&T receives a state-issued franchise pursuant to the terms of AB2987 to provide video services to Saratoga residents, this authorization shall immediately terminate and the terms of the state-issued franchise shall govern the delivery of AT&T California's IP Video Services to City residents.

AT&T intends to apply for a state franchise pursuant to the terms of AB 2987 as soon as reasonably practicable. In the event that AT&T has not received a state-issued franchise pursuant to the terms of AB2987 90 days prior to the date the Agreement would terminate, AT&T and the City agree to meet and confer in good faith concerning the franchise requirement issue, and, to the extent reasonably necessary, negotiate in good faith the terms and conditions of a local video franchise agreement. If AT&T has not been granted a required franchise to provide video services in the City as of the date this Agreement would terminate as set forth in the previous paragraph, either from the City or any other authorizing entity, then these terms and conditions will continue until terminated by either party by providing written notice of termination to the other party. The foregoing notwithstanding, AT&T California reserves the right to discontinue providing IP Video Service in City and terminate this Agreement upon 30 days prior written notice to City.

This constitutes the full and complete agreement between the City and AT&T concerning these matters, and supersedes all prior agreements, understandings, representations, or offers.

## CITY OF OAKLAND

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PACIFIC BELL TELEPHONE COMPANY d/b/a  
AT&T CALIFORNIA**

# DRAFT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

OFFICE OF THE CLERK  
2006 OCT 20 PM 4:17

Approved as to Form and Legality

*Stephen C. R. Jackson*  
City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER IGNACIO DE LA FUENTE

**A RESOLUTION** DIRECTING THE CITY ADMINISTRATOR TO NEGOTIATE FOR THE CITY COUNCIL'S REVIEW AND APPROVAL AN INTERIM AGREEMENT WITH AT&T CALIFORNIA ("AT&T") THAT WOULD (i) AUTHORIZE AT&T TO IMMEDIATELY OFFER INTERNET PROTOCOL-ENHANCED TELEVISION (ALSO KNOWN AS "IP TV") FROM EQUIPMENT AND SYSTEMS THAT ARE ALREADY INSTALLED IN THE CITY AND (ii) PROVIDE FOR THE CITY TO COLLECTED FROM AT&T ALL REVENUES PERMITTED BY LAW INCLUDING, BUT NOT LIMITED TO, ASSEMBLY BILL 2987

**WHEREAS**, the California Legislature and Governor enacted on September 30, 2006 "The Digital Infrastructure and Video Competition Act of 2006" (AB 2987) which went into effect on January 1, 2007; and

**WHEREAS**, prior to the effective date of AB 2987, local jurisdictions were the only entities permitted to negotiate "franchise agreements" with companies that provide television services to local residents; and

**WHEREAS**, on June 20, 2006, the City Council approved Resolution #79993 stating its opposition to AB 2987; and

**WHEREAS**, notwithstanding the City Council's original opposition to the state law when it was proposed, the City Council is seeking an update on the status of implementing this new law; and

**WHEREAS**, according to the State Legislative Counsel's Digest, this new state law establishes "a procedure for the issuance of state franchises for the provision of video service ...that would be administered by the Public Utilities Commission. The commission would be the sole franchising authority for state franchises to provide video services;" and

**WHEREAS**, AT&T has stated that it is capable of offering internet protocol-enhanced television (also known as "IP TV") to the residents of Oakland before the California Public Utilities Commission finalizes its statewide franchise with AT&T; and

**WHEREAS**, AT&T has already finalized interim agreements (also known as "Gap Agreements") with other local jurisdictions in California to provide IP TV to their residents; and

**WHEREAS**, an interim agreement may encourage a more competitive market for telecommunications products in the City of Oakland by enabling multiple companies to provide services to our residents; and

**WHEREAS**, an interim agreement may enable the City to collect revenues from AT&T; and

**WHEREAS**, AT&T provided a draft of a proposed interim agreement to our City Administrator's Office for consideration in November 2006; and

**WHEREAS**, the City Council would like to consider for approval an agreement that would be negotiated by the City Administrator with AT&T in the best interests of the citizens of Oakland; now, therefore, be it

**RESOLVED**, that the City Council hereby directs the City Administrator to negotiate for the Council's review and approval an interim agreement with AT&T that would (i) authorize AT&T to immediately offer internet protocol-enhanced television (also known as "IP TV") from equipment and systems that are already installed in the city and (ii) provide for the City to collect from AT&T all revenues permitted by law including, but not limited to, Assembly Bill 2987; and be it further

**RESOLVED**, the City Administrator will bring said agreement to the City Council for review no later than January 31, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_,

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, REID, QUAN, AND DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

**ATTEST:** \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California