

# Agenda Report

DATE: August 13, 2001

TO: CITY COUNCIL

FROM: CITY MANAGER

SUBJECT: EXECUTION OF AN OPEN VIDEO SYSTEM FRANCHISE AGREEMENT  
BETWEEN THE CITY AND ALTRIO COMMUNICATIONS, INC.

## RECOMMENDATION:

It is recommended that the City Council:

- 1) Conduct a public hearing to gather public input on the proposed open video system franchise agreement between the City and Altrio Communications, Inc. and to identify impacts of the franchise, as required by California Government Code Section 53066.3; and
- 2) Hold first reading of the ordinance authorizing execution of the open video system franchise agreement.

## SUMMARY:

Altrio Communications, Inc. (Altrio) applied for an open video system franchise in December, 2000. Altrio plans to provide video services to Pasadena residents in competition with the existing cable television operator, under the terms of the proposed franchise agreement. The company also plans to offer a full range of telephone and Internet access services locally. Negotiations between Altrio and the City have resulted in an agreement that meets the needs identified during a community needs assessment, provides a variety of protections to the City, and matches the public, educational, and government (PEG) access requirements of the incumbent cable television operator. The ten-year agreement requires Altrio to build and operate an open video system serving all residential areas of the city.

The City Charter requires that the Council conduct a public hearing prior to issuance of all franchise agreements. California Government Code Section 53066.3 also requires that franchise authorities conduct a public hearing to identify the impacts of new cable television franchises. In staff's review of the

various types of impacts delineated in the Government Code, no unreasonable adverse impacts were identified. The Government Code further requires that the area served and PEG access obligations of new franchisees match those of the existing cable television operator. The proposed Altrio franchise meets both of these requirements.

BACKGROUND:

Altrio Communications, Inc. (Altrio) filed an open video system application with the City on December 6, 2000. Altrio plans to provide video services to Pasadena residents in competition with the existing cable television operator, under the terms of the proposed franchise agreement. The company also plans to offer a full range of telephone and Internet access services locally.

The City's franchising of open video system providers is governed by Title 18 of the Municipal Code. Under Title 18, OVS agreements take essentially the same form as a cable TV franchise. Set forth below is an overview of the franchise process, major deal points of the proposed franchise agreement, outreach for the public hearing, and information regarding State Government Code Section 53066.3 governing franchising of competitive cable TV providers and related findings.

*Franchise Process*

The franchise process included a variety of activities, including: evaluation of Altrio's financial, technical, and legal qualifications to operate an open video system; two public hearings to identify public needs that should be addressed in a competitive franchise agreement; assessment of subscriber, city, educational, and public access needs; review and prioritization of issues by the City Council; determination of the value of Charter Communications' franchise obligations; and negotiations with Altrio. These activities have taken place over the past eight months, as described below.

Evaluation of Altrio's qualifications	December, 2000 – May, 2001
Public hearings	February 26, 2000 April 2, 2001
Community needs assessment	December, 2000 – May, 2001
Draft franchise agreement developed	March – May, 2001
Franchise negotiations	June – July, 2001
Adoption of resolution declaring the City's intent to enter into a franchise with Altrio	July 23, 2001

### *Major Deal Points*

Staff has negotiated an open video system franchise agreement with Altrio based on needs identified during the community needs assessment process, prioritization of those needs by the City Council, and the goal of creating parity in PEG access obligations with the incumbent cable television provider's franchise. The agreement includes the following key provisions:

- Service to all residential areas of Pasadena.
- Monthly franchise fee payments of five percent of gross revenues.
- Ten-year term, with an option for a five-year extension of the franchise if Altrio completes construction of its system in the first five years.
- Discounts for low-income subscribers – Altrio will provide a 10% discount for subscribers meeting the City's low-income criteria. The City will also waive the 9.4% utility users tax for those customers.
- Regular review of Altrio's progress in building its system.
- Minimizing the number of Altrio's above ground pedestals; maintenance and inspection standards for any facilities that must be installed above ground.
- Security in the form of cash and a bond for performance of Altrio's construction obligations.
- Requirements to match the public, educational, and governmental access obligations of the Charter Communications cable TV franchise including:
  - Duplication of services and connectivity requirements such as provision of video service in public buildings and live cablecasting connections
  - Cash payments
- Interconnection with current PEG access programming, and the same placement of PEG access channels as on the Charter channel line-up.

Other areas covered by the franchise agreement include:

- Conditions on Altrio's use of the public right-of-way
- Technical standards for operation of Altrio's open video system
- Liability insurance and indemnification
- Identification of conditions of default
- Penalties associated with Altrio's failure to perform according to the franchise terms

### *The Public Hearing and Related Outreach*

On July 23, 2001, the City Council adopted a resolution declaring the City's intention to enter into an open video system franchise with Altrio. The resolution also established 8:00 p.m., Monday, August 13, 2001 as the time for a public hearing on the granting of the franchise, as required by the City Charter. This public hearing will also constitute the public hearing required under Section 53066.3 of the California Government Code.

The resolution setting the public hearing date was published in both the Pasadena Star News and Pasadena Journal on August 2, 2001 and on August 9, 2001. A press release was sent to those newspapers, as well as the Pasadena Weekly, the Los Angeles Times, the City News Service, and Neighborhood Connections. The press release also was available on the City's website. A flyer announcing the public hearing was mailed to all field representatives, neighborhood associations, chairpersons of City commissions, the Pasadena Unified School District, Pasadena City College, the Chamber of Commerce, and community and religious organizations. Flyers were also available at the City's public counters. Finally, notice of the hearing appeared on the KPAS and PCAC bulletin boards.

Copies of the proposed franchise agreement were placed in the main library and at each branch library and were available for review or photocopying at the City Clerk's Office.

### *California Level Playing Field Statute*

In 1989, the California legislature enacted what is referred to as the California level playing field statute, Section 53066.3 of the Government Code. This statute places requirements on local franchising authorities considering grants of additional cable TV franchises, including a review of the impacts of additional cable TV franchises, duplication of PEG access requirements, and wiring of the same geographic area as the existing cable TV provider. Under these circumstances, Altrio's voluntary compliance with Section 53066.3 is deemed to serve the best interests of the parties and the general public.

### *Impacts of Additional Franchises*

A primary requirement of the statute is that additional cable television franchises be granted only after a public hearing is held to consider a number of factors. Each of the factors and a summary of the related staff findings are presented below.

1. Whether there will be significant positive or negative impacts on the community being served.

The overall impact of Altrio's presence in Pasadena should be positive. City residents will have choice in video service, Internet access, and local telephone service providers. The company's video service will offer a large number of analog and digital channels, local PEG access programming, and video-on-demand. Altrio plans to offer a full range of telephone services and broadband Internet access.

2. Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area.

Similarly, the economic impact of having an additional provider of video services locally should be positive. The Consumer Federation of America has found that video service rates are an average of 20 percent lower in communities where there is competition. Additional availability of broadband Internet access should also have local economic benefits.

Staff finds that Altrio's presence in Pasadena should not have an unreasonable adverse aesthetic impact. The majority of Altrio's system will be placed overhead, on existing utility poles, eliminating the need to trench in those areas. Overhead installations will be coordinated with the Southern California Joint Pole Committee, and the City's Water & Power Department. Where utilities have already been placed underground, Altrio will install its system underground in close coordination with the Public Works and Transportation Department to minimize disruptions and adverse impacts to city streets, avoid construction on moratorium streets, and coordinate with city undergrounding and street resurfacing projects. Further, through the franchise agreement, Altrio has committed to: minimize the number of above-ground equipment housings in City parkways; work with the City and residents to coordinate siting, choice of equipment housing materials, and landscaping for those pedestals that must be installed above-ground; and provide routine maintenance, emergency repairs, and graffiti removal as required.

3. Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code.

Staff has not identified any unreasonable disruptions or inconvenience to existing cable TV users, nor any adverse effects in the areas noted above. Altrio will comply with all relevant state and municipal regulations regarding use of utility poles, public easements and public rights-of-way, including State General Administrative Order 95, which governs attachments to utility poles and is the toughest regulation of its kind in the nation. Altrio also has applied for membership in the Southern California Joint Pole Committee, which governs purchase and lease of space on jointly-owned utility poles, including many of those in Pasadena.

4. Whether the franchise applicant has the technical and financial ability to perform.

Allrio's executive management team and senior managers have broad experience and substantial expertise in the telecommunications industry. The company's three principals previously held similar executive positions at Intermedia Partners, a cable television operator that provided services to over 750,000 customers in eleven states. They also are the former principals of Media Connections Group, a telecommunications consulting firm that designed and provided project management support for a number of municipal fiber networks. Many of the firm's senior managers came to Allrio from major cable TV companies and related firms as well.

In its review of Allrio's financial status and business plan, staff determined that Allrio has the financial ability to build a system in Pasadena and provide service locally. Allrio started with equity investment, rather than the debt financing on which many startups rely. The firm's equity investors include major investment houses such as Frontenac Company, Bessemer Trust, Salomon Smith Barney Capital Partners, Bank of America Capital Partners, and Grove Street Advisors (CalPERS). Unlike some new telecommunications service providers, Allrio has focused its business plan on one geographic area, the Los Angeles market. Its initial deployment is further focused on the San Gabriel Valley. Finally, Allrio has the necessary capital to build its system in Pasadena. The firm anticipates that it can complete construction in Pasadena with its current level of capitalization and projected subscriber revenues. However, to meet its broader regional goals, Allrio plans to pursue additional equity investment and debt financing.

5. Whether there is any impact on the franchising authority's interest in having universal cable service.

Allrio will provide service to all residential areas of the city, thereby having a positive impact on the City's desire to provide all residents a choice of video service providers.

6. Whether other societal interests generally considered by franchising authorities will be met.

The proposed franchise agreement with Allrio meets a number of such interests typically addressed in franchise agreements. These include funding for PEG access and community connectivity needs, provision of cable TV service to city, school district, and community facilities, two-way connections for live broadcasts from community venues, and carriage of PEG access channels.

7. Whether the operation of an additional cable television system in the community is economically feasible.

Staff finds that operation of an additional system in Pasadena is economically feasible. The city has over 54,000 households, of which roughly 43 percent are current cable TV subscribers.

8. Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant.

The proposed franchise agreement includes a number of significant provisions, described above under "Major Deal Points", that the City has determined are relevant to Altrio's construction and operation of its open video system.

#### Duplication of PEG Access Requirements

In drafting and negotiating the proposed franchise agreement, staff has created a level playing field, determining the value of PEG access benefits provided under the Charter Communications franchise and requiring Altrio to match those benefits. In many cases, the two franchise agreements contain the same provisions, including those requiring free video service for city, school district, and community facilities, allocation of free advertising time, broadband training opportunities, and live cablecasting capabilities.

To match Charter Communications' PEG access cash grants and value of its local production studio, staff calculated Charter Communications' per subscriber obligation and has applied the same obligation to Altrio. As Altrio builds its system and gains subscribers, it will make payments to the City to meet these obligations.

#### Service to the Same Geographic Area

Finally, the proposed franchise also meets the level playing field statute's requirement that a new operator wire and serve the same geographic area as an existing cable TV operator. Like Charter Communications, Altrio plans to serve all residential areas of the city.

#### FISCAL IMPACT:

The proposed franchise agreement will generate several types of revenue for the City, including cash payments and in-kind benefits for municipal, educational, public access, and community organization needs, and franchise fee and utility users tax revenues. Altrio will provide \$883,500 in cash payments for PEG access and community connectivity, consisting of a \$100,000 upfront cash payment and annual contributions of \$0.64 per subscriber per month, totaling \$783,500 over the term of the franchise.

Altrio's in-kind services over the ten-year term of the proposed franchise are valued at approximately \$1,875,000. These services include: installation of two-

way connections for live broadcast at 23 community sites; installation and monthly video service for 90 community sites; broadband training opportunities; and advertising spots on Altrio's channel line-up.

The franchise fee and utility users tax revenues generated by this agreement will depend on how fast Altrio builds its system and gains customers. Altrio will likely draw customers from residents who don't have cable TV service and from current Charter Communications' subscribers. The City will realize a net increase in franchise fee and utility users tax revenues over what Charter Communications currently remits from those residents who are not current Charter Communications customers. Telecommunications industry analysts indicate that there is typically 10 to 15 percent growth in the video programming market when a new provider enters that market. As such, staff estimates that overall franchise fee and utility users tax revenue related to video programming will increase by 10 to 15 percent over the next decade. Based on conservative assumptions about how the number of Altrio's subscribers grows over time, staff estimates that franchise fee revenues will grow between \$192,000 and \$287,000. Similarly, utility users tax revenues for video services will likely grow between \$360,000 and \$541,000.

Altrio's system construction will also generate excavation permit fees and pole attachment fees. Altrio plans to offer local telephone service as well, which will generate additional utility users tax revenue. Phone service is regulated by the State Public Utilities Commission, and is not governed by the City's open video system franchise agreement with Altrio.

Respectfully submitted,



CYNTHIA J. KURTZ  
City Manager

Prepared by:



Lori B. Sordoval  
IT Planning & Project Manager

Approved by:



John R. Pratt  
Chief Information Technology Officer





# Ordinance Fact Sheet

DATE: August 13, 2001

TO: CITY COUNCIL  
FROM: CITY MANAGER  
SUBJECT: ORDINANCE OF THE CITY OF PASADENA AUTHORIZING THE EXECUTION OF A FRANCHISE AGREEMENT BETWEEN THE CITY AND ALTRIO COMMUNICATIONS, INC. TO CONSTRUCT AND OPERATE AN OPEN VIDEO SYSTEM.

TITLE OF PROPOSED ORDINANCE:

An Uncodified Ordinance of the City of Pasadena Authorizing the Execution of a Franchise Agreement Between the City and Altrio Communications, Inc. to Construct and to Operate an Open Video System.

BACKGROUND:

Altrio Communications, Inc. has applied for a franchise that authorizes the construction, operation, and maintenance of an open video system within the City of Pasadena.

Negotiations between Altrio Communications, Inc. and the City began in June, 2001. An agreement has been negotiated entitled "An Agreement between the City of Pasadena and Altrio Communications, Inc. Granting Nonexclusive Rights to Construct and Operate an Open Video System in the City of Pasadena and Setting Forth Terms and Conditions Relating to the Exercise of Those Rights." This agreement is attached.

PURPOSE OF ORDINANCE:

The purpose of the ordinance is to authorize execution of a non-exclusive agreement with Altrio Communications, Inc. for construction, operation, and maintenance of an open video system in Pasadena.

MEETING OF 08/13/2001

AGENDA ITEM NO. 6-B. 8:00 P.M.

REASON WHY LEGISLATION IS NEEDED:

Section 1104 of the City Charter requires all franchises to be granted by ordinance of the City Council. Section 1101 requires an affirmative vote of no fewer than six Councilmembers to approve any grant of franchise.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

This ordinance will affect the City of Pasadena and Altrio Communications, Inc.. The Pasadena Unified School District, Pasadena City College, Pasadena Community Access Corporation, and community organizations are also beneficiaries of the public and educational access and community connectivity provisions of the franchise agreement.

Departments responsible for implementing the franchise agreement include: the City Manager's Office, Information Technology Services Division; the Public Works and Transportation Department; and the Finance Department.

FISCAL IMPACT:

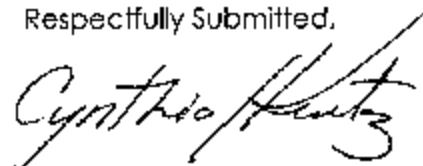
The proposed franchise agreement will generate several types of revenue for the City, including grants and in-kind benefits for municipal, educational, public access, and community organization needs, and franchise fee and utility users tax revenues. Altrio will provide grants for PEG access and community connectivity, including a \$100,000 upfront grant and annual contributions of \$0.64 per subscriber per month, totaling \$783,500 over the term of the franchise, for a total of \$883,500.

Altrio's in-kind services over the ten-year term of the proposed franchise are valued at \$1,875,000. These services include: installation of two-way connections for live broadcast at 23 community sites; installation and monthly video service for 90 community sites; broadband training opportunities; and advertising spots on Altrio's channel line-up.

The franchise fee and utility users tax revenues generated by this agreement will depend on how fast Altrio builds its system and gains customers. Altrio will likely draw customers from residents who don't have cable TV service and from current Charter Communications' subscribers. The City will realize a net increase in franchise fee and utility users tax revenues over what Charter Communications currently remits only from those residents who are not current Charter Communications customers. Telecommunications industry analysts indicate that there is typically 10 to 15 percent growth in the video programming market when a new provider enters that market. As such, staff estimates that overall franchise fee and utility users tax revenue related to video programming will increase by 10 to 15 percent over the next decade. Based on conservative assumptions about how the number of Altrio's subscribers grows over time, staff estimates that franchise fee revenues will grow between \$192,000 and \$287,000. Similarly, utility users tax revenues for video services will likely grow between \$360,000 and \$541,000.

Altrio's system construction will also generate excavation permit fees and pole attachment fees. Altrio also plans to offer local telephone service, which will generate additional utility users tax revenue. Phone service is regulated by the State Public Utilities Commission, and will not be covered by the City's open video system franchise agreement with Altrio.

Respectfully Submitted,



CYNTHIA J. KURTZ  
City Manager

  
for MICHELE BEAL BAGNERIS  
City Attorney

Prepared by:



Lori B. Sandoval  
IT Planning & Project Manager

Approved by:



John R. Pratt  
Chief Information Technology Officer

ORDINANCE NO. \_\_\_\_\_

AN UNCODIFIED ORDINANCE OF THE CITY OF  
PASADENA AUTHORIZING THE EXECUTION OF A  
FRANCHISE AGREEMENT BETWEEN THE CITY AND  
ALTRIO COMMUNICATIONS, INC. TO CONSTRUCT  
AND TO OPERATE AN OPEN VIDEO SYSTEM

THE PEOPLE OF THE CITY OF PASADENA ORDAIN AS FOLLOWS:

Section 1. This uncodified ordinance is adopted in consideration of the following facts and circumstances:

A. Altrio Communications, Inc., a Delaware corporation ("Franchisee"), has applied for a franchise ("Franchise") that authorizes the construction, operation, and maintenance of an open video system within the City of Pasadena ("Franchise Authority").

B. Negotiations between the Franchise Authority and the Franchisee commenced in June 2001. An agreement has been negotiated entitled "An Agreement between the City of Pasadena and Altrio Communications, Inc., Granting Nonexclusive Rights to Construct and to Operate an Open Video System in the City of Pasadena and Setting Forth Terms and Conditions Relating to the Exercise of Those Rights" ("Franchise Agreement").

C. The Franchise Authority has reviewed the present and future cable-related needs of the community and its residents, the Franchisee's ability to carry out its obligations under the Franchise Agreement, and the Franchisee's financial, legal, and technical qualifications to hold and to operate an open video system, and has determined that the public interest would be served by authorizing the execution of the Franchise Agreement. This determination is based upon the findings set forth below that are made by the Franchise Authority following a noticed public hearing that was held on August 13, 2001, in accordance with the provisions of California Government Code Section 53066.3:

1. Franchisee proposes to construct and to operate an advanced open video system network that will be capable of providing various "bundled"

applicable provisions of state and federal law. A copy of the Franchise Agreement in the form presented to this meeting is directed to be retained in the office of the City Clerk for the purpose of public inspection.

Section 1. That certain Franchise Agreement in the form presented to this meeting is approved, and the City Manager is authorized to execute that agreement on behalf of the Franchise Authority following its execution by the Franchisee.

Section 2. The City Clerk is directed to transmit a certified copy of this ordinance to: Chief Executive Officer, Altrio Communications, Inc., 2702 Media Center Drive Los Angeles, California 90065.

Section 3. The City Clerk is directed to certify to the passage and adoption of this ordinance and to cause it to be published or posted as required by law.

Section 4. This ordinance will become effective upon the expiration of 30 days from its publication.

Signed and approved this \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Bill Bogaard  
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held the \_\_\_\_ day of \_\_\_\_\_, 2001, by the following vote:

Ayes:

Noes:

Absent:

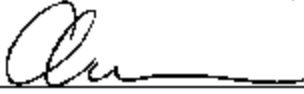
Abstain:

Published:

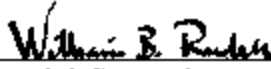
\_\_\_\_\_  
Jane L. Rodriguez  
City Clerk

[Signatures Continue.]

APPROVED AS TO FORM:



Asst. City Attorney



Special Counsel