

Agenda Report

DATE: October 4, 2004

TO: CITY COUNCIL
FROM: CITY MANAGER
SUBJECT: HEARING TO DETERMINE VARIOUS DEFAULTS BY ALTRIO COMMUNICATIONS, INC. IN THE PERFORMANCE OF ITS OPEN VIDEO SYSTEM FRANCHISE AGREEMENT WITH THE CITY OF PASADENA

RECOMMENDATION

It is recommended that the City Council:

- 1) Conduct a public hearing to determine if Altrio Communications has defaulted in the performance of obligations under its open video system franchise with the City;
- 2) Adopt a Statement of Finding of Facts and Conclusions regarding Altrio Communications' defaults; and
- 3) Direct staff to assess the cash security deposit provided under Subsection 2.5(b) of the Franchise Agreement in the sum of \$10,000 and the construction-related cash security deposit and performance bond provided under Subsection 2.5(a) of the Franchise Agreement in the sum of \$150,000.

EXECUTIVE SUMMARY

Under the terms of the Open Video System franchise agreement between the City and Altrio Communications Inc. (Altrio), if Altrio fails to perform its franchise obligations, the City must notify Altrio in writing of the need to correct its defaults. The City and Altrio are to meet to discuss defaults identified by the City, and determine what Altrio will do to remedy the defaults and when action will be taken. If Altrio continues to fail to perform its obligations for more than 10 days following the deadline for correction, the City must hold a hearing before the City Council prior to imposing any penalties.

The franchise requires that the City Manager provide Altrio written notice of the hearing, including the grounds for the proposed action, not less than 10 days before the hearing.

The public hearing process must provide Altrio with a fair opportunity for full participation in the hearing, including the right to introduce evidence, to require the production of evidence, to question and to cross-examine witnesses, and to obtain a transcript of the proceeding at Altrio's expense. The franchise requires the City Council to hear Altrio, and any other interested parties in the matter, and determine, at that or at any continued hearing, an appropriate course of action for enforcement of the Agreement. The City Council decision must be documented in writing and must include findings of fact and conclusions. A copy of the decision must be sent to Altrio. The franchise dictates that the City Council's decision will be final but will not prejudice Altrio's right to pursue any remedies provided by state or federal law.

BACKGROUND

Franchise Defaults

Staff has identified defaults by Altrio of its franchise obligations in two primary areas: payment of franchise fees and payment of pole attachment fees. The City has notified Altrio of these defaults, but the company has failed to remedy the defaults to date. The City's Information Technology Planning & Project Manager is competent to testify to these defaults, described below.

The City notified Altrio in writing on September 20, 2004 of the public hearing scheduled for October 4, 2004. The notification letter (Attachment A) was delivered to all known principals and agents of Altrio, and the equity owners of Altrio Communications, LLC, which is represented to be the sole owner of Altrio.

Delinquent Franchise Fees -- Altrio is required under the franchise agreement to pay the City a fee of five percent of its gross annual revenues as compensation for the rights granted by the Agreement and in consideration for the City's authorization to use its streets and public ways for the construction, operation, and maintenance of Altrio's open video system.

Beginning with fees due for the month of September 2003 and continuing thereafter, Altrio has failed to pay the City the required franchise fees. Based on an audit conducted by the City in February 2004, Altrio collected the following franchise fees from its Pasadena customers, but failed to remit the monies to the City.

Month	Franchise Fees Owed
September 2003	\$5,525
October 2003	\$5,444
November 2003	\$5,585
December 2003	<u>\$5,594</u>
Total	\$22,148

In addition to the amounts identified in the audit, staff estimates that franchise fees in the sum of \$15,470 are owed by Altrio to the City on its gross revenues received during the period commencing January 1, 2004, and ending on March 25, 2004 (Altrio sold its assets to Champion Broadband on March 26, 2004). (Altrio also owes the City approximately \$66,100 in past due utility users taxes, which are not a direct franchise obligation.)

As required by the franchise, the City's Director of Finance notified Altrio's agent, Argus Management Corporation, of Altrio's default by letter dated February 9, 2004. The letter demanded that Altrio correct the default on or before the close of business on February 19, 2004. By letter dated February 26, 2004, Mr. Peter Sullivan, on behalf of Altrio's agent, Argus Management Corporation, advised the City's Finance Director as follows:

"As I indicated to you on or about February 9th, the company has been accruing all franchise fees and utility taxes owing to the City of Pasadena. Further, the company anticipates paying the monies due to the city upon the closing of the transaction involving the sale of the company's operations. The company realizes that this places a burden on the city, but respectfully requests your leniency due to the financial circumstances surrounding the company."

Notwithstanding the representations made by Altrio's agent, Argus Management Corporation, no payments of the franchise fees have been made by or on behalf of Altrio, and Altrio remains in default.

Delinquent Pole Attachment Fees -- The Altrio franchise agreement obligates the company to comply with the City's procedures, ordinances, regulations, and pole attachment agreements that apply to construction of the open video system. Most of Altrio's system construction in Pasadena has consisted of attachment of overhead cables to existing utility poles in residential areas. These poles are a mixture of poles jointly owned by utilities through the Southern California Joint Pole Committee (in which the Water & Power Department has an ownership interest), poles solely owned by the City's Water and Power Department, and poles solely owned by other utilities. Altrio has failed to pay fees due for attachment of its facilities to poles in which the City's Water & Power Department has an ownership interest.

Pole attachment procedures require that Altrio prepare and submit documentation regarding each location in which the company attached to a City- or jointly-owned pole. This documentation typically serves as the basis for assessment of pole attachment fees. Altrio has failed to prepare this documentation. Consequently, the City must rely upon estimates made by the Water and Power Department, and the company that the department engages to manage its pole attachment records, with regard to the total number of poles used in the course of construction of Altrio's open video system and the total amount of applicable fees. It is estimated that Altrio made 5,691 attachments to City poles and jointly-owned poles in which the City has an ownership interest (this pole count has been updated since the letter in Attachment A was sent to Altrio). The average fee applicable to each attachment is \$125, plus an administrative fee of \$52 per pole. Staff estimates that Altrio owes the Water and Power Department a total of \$1,007,301 for the pole attachments made by Altrio. Included within this estimate is the sum of \$50,385.50, which is based upon an accounting prepared by Cable Engineering Services, the firm retained by the City's Water and Power Department to manage its joint pole documentation. This accounting confirms that Altrio attached its facilities to 492

poles, with regard to which Altrio submitted the required documentation. The City invoiced Altrio the sum of \$50,385.50 for these 492 pole attachments between June 2002 and June 2004, but no payment was ever received. The City, through its pole attachment records management vendor, also presented an invoice to Altrio for all estimated pole attachment fees on January 29, 2004. The City received no response from Altrio.

At a meeting held on February 25, 2004, with Mr. Peter Sullivan of Argus Management Corporation, acting as agent for Altrio, Mr. Sullivan informed the City's Information Technology Planning & Project Manager that he was aware of Altrio's pole attachment fee obligations. Mr. Sullivan requested that the City provide a contact to help Altrio identify any means of expediting the pole attachment documentation and invoicing process. In a letter dated February 26, 2004, Mr. Sullivan referenced the February 25 meeting and stated as follows:

"In response to your tabling of certain open issues regarding undergrounding and pole attachments, the company is examining its limited financial resources to see what it can do in the immediate timeframe. Please provide my name and contact information to your colleagues as well as the name of Doug Landaker at 323-908-1363. As indicated during the meeting, the company recognizes that these items need to be addressed."

Notwithstanding the representations made by Altrio's agent, Argus Management Corporation, no documentation relating to pole attachments beyond the 492 referenced above has been submitted by Altrio, thereby precluding the subsequent issuance by the City of separate invoices for each of those pole attachments.

Securities Under the Franchise Agreement

The Altrio franchise agreement requires two types of securities to guarantee Altrio's performance of certain franchise obligations. The first type of security required is a cash security deposit in the sum for \$10,000 to guarantee Altrio's performance of its contractual obligations, excluding those obligations relating to construction. Altrio submitted the required cash security to the City in April 2002. In accordance with the franchise agreement, this security deposit is available to the City to satisfy Altrio's non-construction obligations that remain unpaid after all applicable notice and hearing requirements have been satisfied.

The franchise also requires that Altrio provide a construction-related security deposit in the sum of \$150,000, of which \$50,000 is required to be in cash. The remaining \$100,000 security is required to be in the form of a performance bond. The cash portion of the security deposit was paid to the City in October 2001. Altrio also provided the \$100,000 performance bond to the City in October 2001. The bond term was subsequently renewed through October 2004. The combined \$150,000 security is available to the City to secure and satisfy all claims, penalties, payments, costs, damages, or taxes due the City that relate to construction, operation, or maintenance of the open video system.

These securities are available to the City to meet a portion of the obligations identified in this report. Access to the securities requires findings by the City Council that Altrio has failed to perform requirements under the franchise, and direction to staff to assess the cash security and draw on the performance bond.

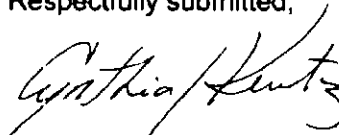
A Statement of Findings of Fact and Conclusions is attached as Attachment B.

The recommended action to find Altrio in default of its franchise obligations is without prejudice to the City's rights under the franchise agreement to pursue any other remedies including, without limitation, the termination or revocation of the Altrio franchise.

FISCAL IMPACT

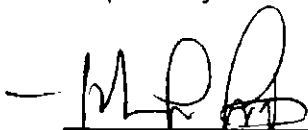
The recommended actions will allow the City to recover \$160,000 of Altrio's estimated \$1,044,919 in past due franchise obligations.

Respectfully submitted,



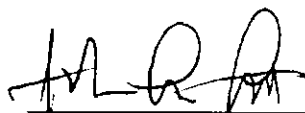
CYNTHIA J. KURTZ
City Manager

Prepared by:



Lori B. Sandoval
IT Planning & Project Manager

Reviewed by:



John R. Pratt
Chief Information Technology Officer

Approved by:



M. Goldstone
Director of Finance

ATTACHMENT A



IRW RICHARDS | WATSON | GERSHON
LLP ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3141
Telephone 213.626.8484, Facsimile 213.626.0075

William B. Rudell
wrudell@irwglaw.com

September 20, 2004

Altrio Communications, Inc.
2702 Media Center Drive
Los Angeles, California 90065
Attn: Chief Executive Officer

Re: Notice of Hearing by the Pasadena City Council

Gentlemen:

This notice is given on behalf of the Pasadena City Manager to Altrio Communications, Inc. in accordance with the provisions of that certain Open Video System Agreement dated October 9, 2001, that was executed by the City of Pasadena, as Grantor ("City") and by Altrio Communications, Inc., as Grantee ("Altrio").

I. Delinquent Franchise Fees

Subsection 2.2(a) of the Open Video System Agreement ("Agreement") provides for the payment by Altrio of a fee of five percent (5%) of its gross annual revenue as compensation for the rights granted by the Agreement and in consideration for Grantor's authorization to use its streets and public ways for the construction, operation, and maintenance of Altrio's open video system. Under Subsection 2.2(c) of the Agreement, the fee specified in Subsection 2.2(a) must be computed and paid by Altrio to the City's Finance Department not later than 45 days after the end of each month.

Commencing with the month of September 2003, and continuing thereafter, Altrio has defaulted on its contractual obligations to pay to the City the fees required under Subsection 2.2(a) in the manner specified in Subsection 2.2(c).

In accordance with Subsection 11.1(a) of the Agreement, the City's Director of Finance, by letter dated February 9, 2004, advised Altrio's agent, Argus Management Corporation, of Altrio's default and made demand on Altrio to correct the default on or before the close of business on February 19, 2004. By letter dated February 26, 2004, Mr. Peter Sullivan, on behalf of Altrio's agent, Argus Management Corporation, advised the City's Finance Director as follows:

"As I indicated to you on or about February 9th, the company has been accruing all franchise fees and utility taxes owing to the City of Pasadena. Further, the company anticipates paying the monies due to

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the city upon the closing of the transaction involving the sale of the company's operations. The company realizes that this places a burden on the city, but respectfully requests your leniency due to the financial circumstances surrounding the company."

Notwithstanding the representations made by Altrio's agent, Argus Management Corporation, no payments of the franchise fees have been made by or on behalf of Altrio, and the default is of a continuing nature.

During the month of February 2004, Communications Support Group, Inc. ("CSG") was engaged by the City to conduct an audit of Altrio. Among the audit findings of CSG were the following:

1. That during the month of September 2003, Altrio had gross revenues in the sum of \$110,498.15, and that franchise fees in the sum of \$5,524.91 are owed to the City on those gross revenues, exclusive of any applicable interest charges, penalties, or liquidated damages. Payment of those franchise fees was due 45 days after September 30, 2003, which date was November 14, 2003.
2. That during the month of October 2003, Altrio had gross revenues in the sum of \$108,887.66, and that franchise fees in the sum \$5,444.38 are owed to the City on those gross revenues, exclusive of any applicable interest charges, penalties, or liquidated damages. Payment of these franchise fees was due 45 days after October 31, 2003, which date was December 15, 2003.
3. That during the month of November 2003, Altrio had gross revenues in the sum of \$111,693.27, and that franchise fees in the sum of \$5,584.66 are owed to the City on those gross revenues, exclusive of any applicable interest charges, penalties, or liquidated damages. Payment of these franchise fees was due 45 days after November 30, 2003, which date was January 14, 2004.
4. That during the month of December 2003, Altrio had gross revenues in the sum of \$109,887.29, and that franchise fees in the sum of \$5,594.36 are owed to the City on those gross revenues, exclusive of any applicable interest charges, penalties, or liquidated damages. Payment of these franchise fees was due 45 days after December 31, 2003, which date was February 14, 2004.

In addition to the audit findings of CSG set forth above in subsections (1) through (4), the City has estimated that franchise fees in the sum of \$15,469.38 are owed by Altrio to the City on its gross revenues received during the period commencing January 1, 2004, and ending on March 25, 2004.

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Subsection 2.5(b) of the Agreement requires that Altrio provide to the City a cash security deposit in the sum for \$10,000 to guarantee Altrio's performance of its contractual obligations, excluding those obligations relating to construction. In accordance with Subsections 2.5(c)(1) and (2) of the Agreement, this security deposit is available to the City to satisfy obligations of Altrio that remain unpaid after all applicable notice and hearing requirements have been satisfied.

II. Construction - Related Defaults: Delinquent Pole Attachment Fees and Undergrounding Costs

Several provisions of the Agreement obligate Altrio to comply with the City's procedures, ordinances, and regulations that apply to construction of the open video system, including those relating to pole attachments. For example, Subsection 1.9, titled "Scope of the Agreement," provides in relevant part as follows:

"(a) Subject to Grantee's compliance with Grantor's permit procedures applicable to construction, encroachments, excavations, and pole attachments, Grantee is authorized and obligated to construct, reconstruct, operate, and maintain its open video system within the public streets and rights-of-way." [Emphasis added.]

Additionally, Subsection 7.2, titled "Construction Components and Techniques," provides as follows:

"Construction components and techniques must comply with the terms of this Agreement and all applicable statutes, ordinances, regulations, and pole attachment agreements that relate to the management and use of the public rights-of-way." [Emphasis added.]

Commencing with Altrio's construction of its open video system in the City of Pasadena, and continuing thereafter, Altrio has defaulted on its contractual obligations to pay to the City's Water and Power Department the fees and administrative charges that are due and owing for the attachment of Altrio's facilities to poles that are owned jointly by the City and by other utility service providers. It was the obligation of Altrio to prepare and to submit the documentation for each of the poles to which Altrio's facilities were attached, and this obligation has also been breached. Consequently, the City must rely upon estimates made by the Water and Power Department, and the company that the department engages to manage its pole attachment records, with regard to the total number of poles used in the course of construction of Altrio's open video system within the franchise service area and the total amount of applicable fees. It is estimated that 5069 attachments to City poles have been made by Altrio, and that the average fee applicable to each attachment is

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\$125, plus an administrative fee of \$52 per pole. Thus, a total of \$897,213 is now estimated to be due and owing by Altrio to the City's Water and Power Department for the pole attachments that have been made by Altrio. Included within this estimate is the sum of \$50,385.50, which is based upon an accounting prepared by Cable Engineering Services, a firm retained by the City's Water and Power Department to manage its joint pole documentation. This accounting confirms that Altrio attached its facilities to 492 poles, with regard to which Altrio submitted the required documentation. The City subsequently invoiced Altrio the sum of \$50,385.50 for these 492 pole attachments, but no payment was ever received.

At a meeting held on February 25, 2004, with Mr. Peter Sullivan of Argus Management Corporation, acting as agent for Altrio, Mr. Sullivan informed the City's Information Technology Planning and Project Manager that he was aware of Altrio's pole attachment fee obligations. Mr. Sullivan was informed at that meeting of Altrio's undergrounding obligations. Mr. Sullivan requested that the City provide a contact to help Altrio identify any means of expediting the pole attachment documentation and invoicing process. In a letter dated February 26, 2004, Mr. Sullivan referenced the February 25 meeting and stated as follows:

"In response to your tabling of certain open issues regarding undergrounding and pole attachments, the company is examining its limited financial resources to see what it can do in the immediate timeframe. Please provide my name and contact information to your colleagues as well as the name of Doug Landaker at 323-908-1363. As indicated during the meeting, the company recognizes that these items need to be addressed."

Notwithstanding the representations made by Altrio's agent, Argus Management Corporation, no documentation relating to pole attachments beyond the 492 referenced above has been submitted by Altrio, thereby precluding the subsequent issuance by the City of separate invoices for each of those pole attachments.

Subsection 7.10 of the Agreement, titled "Undergrounding of Cable," provides as follows:

"Cables must be installed underground at Grantee's cost where all existing utilities are already underground or all new utilities are being installed underground in the area in accordance with the Grantor's adopted undergrounding policy. Previously installed aerial cable will be installed underground at Grantee's pro rata cost in concert with other utilities as those other utilities convert from aerial to underground construction."

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The City has contracted with Henkels & McCoy, Inc. to underground Altrio's infrastructure in the Avenue 64 and the La Loma Road underground districts. This project commenced on or about July 9, 2004. Altrio's pro rata share of these two undergrounding projects was \$532,340, and Altrio was obligated to execute separate contracts with Henkels & McCoy, Inc. for each of these projects. Altrio has defaulted in its contractual obligations relating to the undergrounding of its cables, and the City has been forced to advance the construction costs that Altrio had agreed to assume. Altrio will be invoiced by the City when the contractor, Henkels & McCoy, Inc., requests payment from the City.

Subsection 2.5(a) of the Agreement, titled "Security for Grantee's Performance of Construction Obligations," requires that Altrio provide a security deposit in the sum of \$150,000, of which \$50,000 is required to be in cash. This cash portion of the security deposit was paid to the City on August 1, 2001, and was deposited into a special account. In accordance with Subsection 2.5(c)(1) of the Agreement, the security deposit referenced in Subsection 2.5(a) "will be available to [City] to secure and to satisfy all claims, penalties, fines, payments, costs, damages, or taxes due [City] from [Altrio] that arise by reason of the construction, operation, or maintenance of the open video system, as may be applicable."

III. Notice of Hearing

Notice is hereby given that on Monday, October 4, 2004, at 8:00 p.m., a hearing has been scheduled at the Pasadena Senior Center, Multi-Purpose Room, located at 85 East Holly Street, Pasadena, California. At this hearing, the following determinations may be made by the City Council:

(1) To assess the security deposit provided under Subsection 2.5(b) of the Agreement in the sum of \$10,000, which sum represents a portion of the franchise fees that are due and owing by Altrio to the City for the months of September and October 2003. Any such assessment of this security deposit will be without prejudice to the right of the City to recover from Altrio the balance due on franchise fees for the month of October 2003 (\$969.29), and all unpaid franchise fees for the months of November 2003 through March 25, 2004, plus all applicable interest charges, penalties, and liquidated damages that are authorized by the Agreement.

(2) To assess the security deposit provided under Subsection 2.5(a) of the Agreement in the sum of \$150,000, which sum represents a portion of pole attachment fees and administrative costs that are due and owing to the City in connection with Altrio's construction of its open video system, and a portion of the costs of undergrounding Altrio's cable. Any such assessment of this

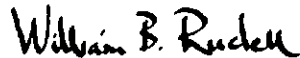
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security deposit will be without prejudice to the right of the City to recover from Altrio any balance due the City on the pole attachment fees and administrative costs, or any balance due on the costs of undergrounding Altrio's cable.

At this hearing, Altrio's representatives will be provided an opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to question and to cross-examine witnesses, and to obtain a transcript of the hearing at Altrio's expense. Please inform the undersigned of Altrio's intent to attend this hearing within seven days after receipt of this notice.

In an effort to ensure that the principals and agents of Altrio, and the equity owners of Altrio Communications, LLC, which is represented to be the sole owner of Altrio, are fully advised of the proposed proceedings in this matter, copies of this notice are being sent to the individuals and entities that are identified on the attached "Service List."

Very truly yours,



William B. Rudell
Special Counsel

Attachment(s)

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Service List

Frontenac Company
135 S. La Salle Street
Suite 3800
Chicago, IL 60603

Bessemer Holdings
630 Fifth Avenue
New York, NY 10111

Bank of America Capital Investors
SBIC II, L.P.
c/o Bank of America
231 S. LaSalle Street
Chicago, IL 60697

RBC Equity Investments, Inc.
c/o Royal Bank Equity Investors, Inc.
One Liberty Plaza
New York, NY 10006-1404

Soros Fund Management – Domestic
Investments, LLC
888 Seventh Avenue
Suite 3300
New York, NY 10106

Salomon Smith Barney Capital
Partners, LLP
388 Greenwich Street
New York, NY 10013

Grove Street Advisors, LLC
20 William Street, Suite 230
Wellesley, MA 02481

Mr. David J. Large
26175 Pierce Road
Los Gatos, CA 95033

Mr. Edward G. Liebst, Jr.
305 Collingwood Street
San Francisco, CA 94114

Stephen R. Ross, Esq.
Agent for Service of Process
Altrio Communications, Inc.
c/o 3015 Fernwood Avenue
Los Angeles, CA 90039

Mr. David Rozzelle
381 Elmwood Drive
Pasadena, CA 91105

Mr. Peter Sullivan
Argus Management Corporation
1 Grafton Common, Suite 23
Grafton, Massachusetts 01519

Courtesy copy to:
Champion Broadband California, LLC
380 Perry Street, Suite 230
Castle Rock, Colorado 80104
Attn: Mr. David Haverkate

1 **PROOF OF SERVICE**

2 I, Susan Y. Cribbs declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is Richards, Watson & Gershon, 355 South
5 Grand Avenue, 40th Floor, Los Angeles, California 90071. On September 20, 2004, I served the
6 within document:

7 Letter addressed to Altrio Communications, Inc. regarding Notice of Hearing by
8 the Pasadena City Council

9 by causing facsimile transmission of the document(s) listed above from (213) 626-
10 0078 to the person(s) and facsimile number(s) set forth below on this date before
11 5:00 P.M. This transmission was reported as complete and without error. A copy
12 of the transmission report(s), which was properly issued by the transmitting
13 facsimile machine, is attached. Service by facsimile has been made pursuant to a
14 prior written agreement between the parties.

15 by placing the document(s) listed above in a sealed envelope with postage thereon
16 fully prepaid, in the United States mail at Los Angeles, California addressed as set
17 forth below. I am readily familiar with the firm's practice for collection and
18 processing correspondence for mailing with the United States Postal Service.
19 Under that practice, it would be deposited with the U.S. Postal Service on that
20 same day with postage thereon fully prepaid in the ordinary course of business. I
21 am aware that on motion of the party served, service is presumed invalid if postal
22 cancellation date or postage meter date is more than one day after date of deposit
23 for mailing contained in this affidavit.

24 by placing the document(s) listed above in a sealed envelope and affixing a pre-
25 paid air bill, and causing the envelope to be delivered to a n agent for delivery, or
26 deposited in a box or other facility regularly maintained by , in an envelope or
27 package designated by the express service carrier, with delivery fees paid or
28 provided for, addressed to the person(s) at the address(es) set forth below.

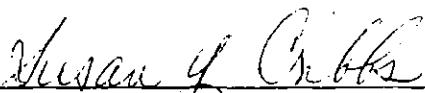
by personally delivering the document(s) listed above to the person(s) at the
address(es) set forth below.

by causing personal delivery by First Legal Support Services, 1511 West Beverly
Boulevard, Los Angeles, California 90026 of the document(s) listed above to the
person(s) at the address(es) set forth below.

22 See Attached Service List

23 I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct.

25 Executed on September 20, 2004.

26 
27 _____
28 Susan Y. Cribbs

SERVICE LIST

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Frontenac Company
135 S. La Salle Street
Suite 3800
Chicago, IL 60603

Bessemer Holdings
630 Fifth Avenue
New York, NY 10111

Bank of America Capital Investors
SBIC II, L.P.
c/o Bank of America
231 S. LaSalle Street
Chicago, IL 60697

RBC Equity Investments, Inc.
c/o Royal Bank Equity Investors, Inc.
One Liberty Plaza
New York, NY 10006-1404

Soros Fund Management - Domestic
Investments, LLC
888 Seventh Avenue
Suite 3300
New York, NY 10106

Salomon Smith Barney Capital Partners, LLP
388 Greenwich Street
New York, NY 10013

Grove Street Advisors, LLC
20 William Street, Suite 230
Wellesley, MA 02481

Mr. David J. Large
26175 Pierce Road
Los Gatos, CA 95033

Mr. Edward G. Liebst, Jr.
305 Collingwood Street
San Francisco, CA 94114

Stephen R. Ross, Esq.
Agent for Service of Process
Altrio Communications, Inc.
c/o 3015 Fernwood Avenue
Los Angeles, CA 90039

Mr. David Rozzelle
381 Elmwood Drive
Pasadena, CA 91105

Mr. Peter Sullivan
Argus Management Corporation
1 Grafton Common, Suite 23
Grafton, Massachusetts 01519

Courtesy copy to:

Champion Broadband California, LLC
380 Perry Street, Suite 230
Castle Rock, Colorado 80104
Attn: Mr. David Haverkate

ATTACHMENT B

Statement of Finding of Facts and Conclusions Regarding Altrio Communications Franchise Defaults

Findings of Facts

1. Altrio Communications has defaulted in its franchise obligation to pay the City franchise fees for the period beginning September 1, 2003, and ending March 25, 2004. This obligation is estimated at \$37,618.
2. Altrio Communications has defaulted in its franchise obligation to comply with the procedures, ordinances, regulations, and pole attachment agreements that relate to construction of the company's open video system. This obligation includes documentation of and payment for attachment to poles in which the City has an ownership interest. Altrio's unpaid pole attachment fees are estimated as of October 4, 2004 at \$1,007,301.
3. Altrio Communications has defaulted in its franchise obligation to participate in undergrounding of utilities in the Avenue 64 and La Loma Road underground districts. Altrio's pro rata share of these undergrounding projects is \$532,340 for the period ending October 4, 2004.

Conclusions

1. The facts being so determined, the City Council concludes that Altrio Communications is in default of the obligations described above. City staff is directed to take all appropriate actions to assess Altrio Communications' cash and performance bond securities.
2. This action, based on these defaults, is without prejudice to the City's rights under the franchise agreement to pursue any other remedies including, without limitation, termination or revocation of the franchise.