

Agenda Report

TO: CITY COUNCIL

DATE: JUNE 16, 2008

FROM: CITY MANAGER

SUBJECT: AT&T PROJECT U-VERSE (also known as Project Lightspeed)

RECOMMENDATION

This report is being provided for information only.

BACKGROUND

At the June 2, 2008 Council Meeting, AT&T made a presentation to the City Council, but did not present information regarding the proposed locations, appearance, or community outreach efforts that AT&T would undertake when bringing its Project U-Verse to Pasadena. As a result, the Council requested that Staff return to provide the missing details. As stated in the June 2nd report, AT&T announced Project U-verse, which provides an upgrade to its existing network by providing Pasadena residents with cutting-edge digital television, internet and telephone service. This upgrade requires the placement of new above-ground cabinets in the public right-of-way both in commercial and residential areas.

In 2005, AT&T submitted its initial plan to implement Project U-Verse and staff began the process of review. During this time, all telecommunication companies wishing to offer video services were required to enter into a City Franchise Agreement in accordance with the City's Municipal Code. The City began negotiations regarding a Franchise Agreement with AT&T, which would have provided the City with control measures to regulate construction in the public right-of-way. However, at about that same time, the State legislature passed the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), which took away the City's ability to negotiate a Franchise Agreement. As a result, the City is bound by State law and must allow the holder of a state franchise under DIVCA (such as AT&T) to install, construct, and maintain a network within public rights-of-way under the same time, place, and manner as the provisions governing telephone corporations under applicable state and federal law, including, but not limited to, the provisions of Public Utilities Code Section 7901.1. As currently interpreted by the courts, that Section strictly limits a city's ability to regulate only where the network boxes may interfere with the public safety or use of the road or highway.

Nonetheless, the City acted within the rights allowed to it by the Public Utilities Commission, and required that Project U-Verse undergo environmental review pursuant to the California Environmental Quality Act. After several delays, cause in primary part by AT&T's withdrawal of Project U-Verse from the City in response to the City's request for discussions regarding measures to reduce the impact of the network boxes on the City's residential neighborhoods.

The City has completed its evaluation of the environmental impacts of the project and has issued a categorical exemption. In the face of a threat of litigation by AT&T, and since the City cannot regulate placement of these cabinets, staff developed a list of approved project conditions (see Attachment A), to which AT&T has represented a willingness to comply. If the City does not now move forward with Project U-Verse as conditioned, AT&T has stated that it stands ready to immediately sue the City and seek damages.

Listed below are key specific project conditions related to the installation of Project U-Verse in residential areas:

PROJECT CONDITIONS

Prior to submittal of permit request, staff from Public Works, Pasadena Water and Power, and AT&T will review proposed cabinet locations on a site-by-site basis, to determine the most feasible location for cabinet placement. U-Verse cabinets will be placed up to 350 feet between existing Serving Area Interface (SAI) cabinets. This is a key condition because, when AT&T first approached the City in 2005, the U-Verse cabinets could only extend approximately 150 feet from the existing SAI cabinets. The priority of cabinet location will be to the adjacent side of a residential property. There shall be no more than one cabinet Placement in front of any one residence, another key condition.

AT&T has also agreed to a public outreach program for affected property owners. After staff has approved site location, AT&T must notify the abutting property owner of the site location by written correspondence approved by the Department of Public Works. The letter shall include a "frequently asked questions and answers" sheet and must mail via USPS with Delivery Confirmation. If the abutting property owner has additional questions and concerns regarding site location, Public Works and AT&T staff will meet with the abutting property owner to discuss concerns and answer questions.

Prior to issuance of any encroachment permit, AT&T shall distribute door tags approved by the Department of Public Works no later than 48 hours prior to cabinet installation to properties adjacent and within a sight line of the installation location. Door tags must inform residents of start date, hours of construction and a projected completion date of cabinet installation.

AT&T shall restore the parkway to its original condition prior to cabinet installation. At the discretion and approval of the Department of Public Works, AT&T shall landscape the area surrounding the cabinet. Landscape shall be of a sufficient height and density to soften the visibility of the cabinets from the public right-of-way. AT&T is not required to maintain the landscaping.

COMMUNITY OUTREACH

A full communications plan has been developed to educate the community about the installation of cabinets in the public right of way in association with AT&T's launch of U-Verse. The plan will be implemented in conjunction with the permit process.

The communications plan includes:

- A community meeting in each council district, with full publicity to announce each meeting;
- Printed materials with answers to frequently asked questions, photos of the proposed cabinets, and other information for distribution at the meetings;
- A televised program on KPAS using the community meetings as a model, with the program offered via streaming video as well as;
- Articles in *Pasadena In Focus* and other newsletters; and
- Information on the city website, including answers to frequently asked questions and a link to the streaming video.

AT&T staff will be expected to be in attendance at each of the district meetings to answer audience questions as necessary. At the City's discretion, AT&T may be required to provide additional public outreach.

U-VERSE CABINET MODEL

The primary cabinet for installation shall be Model 248C (see Attachments B and B1). It is important to note that, in 2005 when AT&T first sought permits for Project U-Verse, the cabinet initially proposed for installation was Model 52B, which was much larger in size (see Attachment C).

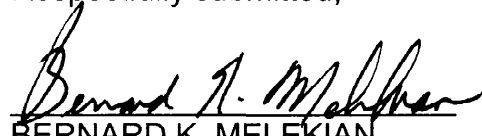
U-VERSE PROPOSED LOCATIONS

The proposed plan for Project U-Verse consist of approximately 250 site locations, which are based on the location of existing above-ground cross-connect boxes or Serving Area Interface (SAI) cabinets (see Attachment D). AT&T has represented to the City that it intends to place Project U-Verse cabinets at only about 165 locations in the City.

FISCAL IMPACT

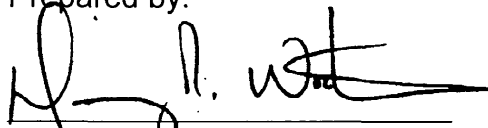
AT&T will be obligated under state video franchising law to pay the City a franchise fee of five percent of its gross revenues from video services provided in Pasadena. AT&T will also pay the City a PEG (public, educational, and government) access fee of one percent of its gross video revenues to support PEG activities locally. In addition, AT&T will collect and remit a 9.4 percent utility user tax from its video customers. The amount of revenue generated from these fees and taxes cannot be estimated at this time, as they will depend on how fast AT&T takes on new customers that aren't already paying these fees via another provider. AT&T will also pay all permit fees associated with construction in the public right-of-way per the City's General Fee Schedule.

Respectfully submitted,



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