

December 6, 2006

Mr. David Knapp
City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

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

Dear Mr. Knapp:

This letter memorializes the agreement between Pacific Bell Telephone Company, a California corporation doing business as "AT&T California" ("AT&T") and the City of Cupertino ("City") concerning the provision of Internet Protocol 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 (the "Agreement").

In light of the passage of Assembly Bill 2987 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 AB2987 to serve the City (parenthetical descriptions are provided for reference only, and are not binding on either party):

- Sec. 3, §5860 (concerning the franchise fee);
- Sec. 3, §5870 (concerning Public, Educational, and Governmental ("PEG") channels);
- Sec. 3, §5880 (concerning Emergency Alert System requirements);
- Sec. 3, §5885 (concerning construction and the encroachment permit process);
- Sec. 3, §5890 (concerning nondiscrimination)
- Sec. 3, §5900 (concerning customer service and protection), except subsection (k) (concerning renewal of state franchise);
- Sec. 4, §107.7(a)-(e) (to be codified in the Revenue & Taxation Code).

For the purposes of interpretation of this Agreement, 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.

To cover any additional costs City may incur as a result of early implementation of the provisions of AB 2987, AT&T will pay the City upon execution of this Agreement a one-time, lump-sum payment in the amount of twenty-five thousand dollars (\$25,000.00).

The City and AT&T agree that AT&T shall not be required to provision any PEG channels over AT&T's network before August 31, 2007.

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 received a state franchise under AB2987 to provide services to City residents; however, this Agreement will terminate in the event that AT&T has not received such a franchise as of three years from the Execution 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). In the event that AT&T receives a franchise pursuant to the terms of AB2987 to provide video services to City residents, this authorization shall immediately terminate and the terms of the 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 franchise pursuant to the terms of AB2987 90 days prior to the date this 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, to 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, either from the City or any other authorizing entity, then these terms and conditions will continue until terminated by either 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.

In the event that any person files a claim against the City in state or federal court arising out of the fact that the City entered into this Agreement, challenging the lawfulness of this Agreement and/or seeking to modify the obligations under an existing cable franchise on the basis that the City entered into this Agreement, the Company shall cooperate with the City to provide information that may assist the City in responding to such claim. At the City's request, the Company will intervene in any such action and participate in the defense of any claim. In such event, the Company shall assume, at its expense, the sole defense of the claim

through counsel selected by the Company and shall keep the City fully informed as to the progress of such defense. Upon reasonable request by the Company and at the Company's expense, the City shall cooperate with Company in the defense of the claim. At its option and expense, the City may retain or use separate counsel to represent it, including in-house counsel. However, the Company shall maintain control of the defense and resolution or settlement of the claim, except that if the settlement of a claim would adversely affect the City, the Company may settle the claim as to the City only with its consent, which consent shall not be unreasonably withheld or delayed.

Notwithstanding the above, this Agreement does not release the Company from any and all obligations required by the City as a condition to the issuance of an encroachment permit over and upon City streets.

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 CUPERTINO

By: David W Knapp

Name: DAVID W KNAPP

Title: City Manager

Date: 12.6.06

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

By: Stuvia Samano

Name: STUVIA SAMANO

Title: VICE PRESIDENT, EXTERNAL AFFAIRS-BAY AREA

Date: 12/12/06