

PUBLIC BENEFITS AGREEMENT

THIS PUBLIC BENEFITS AGREEMENT ("Agreement") dated November 11, 2006, ("Effective Date") is made by and between Pacific Bell Telephone Company, a California corporation doing business as AT&T California ("AT&T California") and The City of Santa Clarita, a municipal corporation ("City"). AT&T California and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

A. AT&T California is an established provider of telecommunications services operating under a state franchise, and intends to provide enhanced broadband services including IP-enabled video services and programming to City residents over its network facilities; and,

B. AT&T California asserts that in California the franchise it has from the state pursuant to Section 7901 of the Public Utilities Code encompasses the network enhancements that AT&T California contemplates within the City and that AT&T California may offer broadband services, including IP-enabled video services and programming, within City without legal requirement for a franchise or license from City; and,

C. AT&T California believes there is no legal authority by which it or its new broadband services to be provided over its network may be subject to a local franchise; and,

D. AT&T California believes that, by offering IP-enabled video services and programming, over its existing and enhanced network in City, AT&T California is not a "Cable Operator" as defined in Title VI of the Communications Act of 1934, as amended ("Title VI"), and, correspondingly, AT&T California believes there that the network facilities and services to be offered by AT&T California over such network facilities constitute a "Cable System" or "Cable Service" under Title VI; and,

E. AT&T California believes that use by AT&T California of its network to provide IP-enabled video services and programming, among other services, does not constitute construction of a "community antenna television system" as set forth in Section 53066 *et seq.* of the California Government Code; and,

F. While the City does not agree with all of the assertions and other statement of AT&T California as set forth in the foregoing recitals, City acknowledges that the state of the law is unsettled with regard to the applicability of local franchising and permit requirements to AT&T California's proposed IP-enables Video Services.

G. The Parties, without determining whether the system or services that AT&T California will use in City to provide IP-enabled services are subject to Title VI or are

subject to Section 53066, have entered into the Public Benefits Agreement which the Parties, in good faith, intend to be binding as a matter of contract between them and believe is in accord with such obligations as might be imposed by Title VI and the state law of California, if and to the extent such are applicable; and,

H. Both Parties agree that the deployment of the IP Based Network and the provision of IP-enabled Video Services should not be delayed by possible litigation to establish the scope of Section 7901 or the application of the City's franchise ordinance to IP-enabled Video Services; and,

I. City and AT&T California further agree that litigation to resolve this issue would be complex and protracted, and that it is in the best interests of both Parties and the residents of City to reach a compromise of each other's positions and claims.

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, City and AT&T California agree as follows.

1. Term. The term of this Agreement shall be three years from the Effective Date of this Agreement. The term may be extended upon mutual agreement of the Parties.

(a) The parties agree to consult in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either City or Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either party, within thirty (30) days of receipt of the ruling, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months from the date of receipt of the notice or such earlier period as the parties mutually may agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.

(b) Either party may request the other party to negotiate a modification to this Agreement that shall take effect immediately after the twenty-fourth (24th) month of the term of this Agreement if at any time any action by a court, agency, commission, legislative body, or other authority of competent jurisdiction repeals, modifies or clarifies state or federal law with respect to the rights, duties, privileges, exemptions, immunities and or authority of either City or AT&T California as it existed on the Effective Date, 2006, in whole or in part, relative to the provisions of the IP-enabled Video Services product as the product is defined by AT&T, which is the subject of this Agreement. If either party requests modification to the Agreement as provided in this paragraph, and the parties are unable to reach a mutually satisfactory modification within ninety (90) days of

the commencement of such efforts, either party may terminate the Agreement effective in or after the twenty-fourth (24th) month of the term of this agreement on the provision of thirty (30) days' written notice. The Parties understand and agree that AB2987, which becomes effective on January 1, 2007 does not constitute a change of law for purposes of this section.

2. Encroachment in City Right of Way.

(a) To the extent not already permitted by AT&T California's existing state franchise for telecommunications services, City hereby grants AT&T California permission to encroach under and along the public right-of-way for the purpose of installation, construction, maintenance, operation and upgrading of its IP Network facilities, subject to the terms and conditions set forth in this Agreement.

(b) All work and entry upon, over, under, or along the public rights-of-way shall be performed under the supervision of AT&T California and its contractors in a good and skillful manner and shall comply with all reasonable and legally applicable standards imposed by the City from time to time. AT&T California shall comply with all applicable: (i) laws and requirements of the State of California, the Federal Communications Commission, and any other federal or state agency or authority of competent jurisdiction; (ii) local laws, rules, regulations, and lawful orders or other directives of the City issued pursuant to the lawful police powers of the City; and (iii) rules, regulations, and other directives of the City, provided that any such rules, regulations, orders or directives shall be consistent with provisions hereof and with state and federal laws and regulation. Any and all damage to the rights-of-way resulting from the activities of AT&T California shall be repaired by AT&T California at no expense to City, and to the reasonable satisfaction of City. The excavation of the public rights-of-way by AT&T California shall be monitored by AT&T California for any lateral movement. AT&T California agrees to repair, at its sole cost and expense, any damage (including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support) to City streets, walks, gutters, or utility lines and systems, underground utility lines and systems, or sewer systems and sewer lines that results from the excavation, shoring, underpinning, or any other works performed by AT&T California in connection with the IP Network facilities to the reasonable satisfaction of the City as determined by the City Public Works Director.

(c) The permission granted hereunder shall not in any event constitute an easement on or an encumbrance against the public rights-of-way. No right, title or interest in the public rights-of-way, or any part thereof, shall vest or accrue in AT&T California by reason of this Agreement or the issuance of an encroachment permit or exercise of the privilege given thereby.

(d) Any installation or repair work related to the IP Network facilities requiring excavation in the public right-of-way shall be performed under an Excavation/Construction Permit issued by City's Public Works Department. Such excavation shall be at the sole cost and expense of AT&T California.

(e) Within a reasonable time of AT&T California's receipt of written notice from City to relocate any of its IP Network facilities, AT&T California shall, at its own expense, protect, support, temporarily disconnect, relocate in or remove from the public right-of-way any property of AT&T California when lawfully required by City for City's use of the public right of way for a proper governmental purpose, including, but not limited to, traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, or installation of sewers.

(f) AT&T California acknowledges that it is presently a member of "Underground Service Alert of Southern California" and agrees to maintain and keep current its membership in said organization throughout the term of this Agreement.

(g) Subject to AT&T California's service restoration or other emergency work requirements, AT&T California will make a reasonable good faith effort to remove graffiti from its facilities located in the City's public rights of way within 24 hours of notification from City, or as soon thereafter as practically possible.

3. Compensation to City. During the term of this Agreement, AT&T California shall remit to City a fee not to exceed 5% of the gross revenues from subscription fees collected from each subscriber to AT&T California's IP-enabled Video Services product delivered over the IP enabled communications network in the City's rights of way; such product to be defined by AT&T California when it is offered to the public. The fee does not apply to non-video revenues or the non-video revenues of a bundled product containing IP video and non-video offerings. The fee will be identified and passed through on any subscriber bill by AT&T California, and all such fees collected will be forwarded to City quarterly on the last of each quarter after collection.

4. Public, Educational and Governmental Programming. Within 90 days of a request for service after its IP-enabled Video Service becomes available in the City of Santa Clarita, AT&T California shall carry or provide access for City's noncommercial, public, education and government (PEG) programming available through the use of AT&T California's IP-enabled Video Service product. The City may be required to support a change or addition to current City technology or practices now in use for its PEG programming or other PEG programming protocol to make it compatible with AT&T California's IP enabled video technology.

(a) During the term of the Agreement, AT&T will provide quarterly, within 30 days after the close of the quarter, its pro rata share of the City's PEG production studio costs through a per subscriber per month fee. The amount of the fee (estimated by the City to be \$.50 per subscriber per month) shall be based on the verifiable annual costs of running the public access facility in Santa Clarita known as SCTV Channel 20 and the number of cable subscribers in the City. AT&T shall have the right to charge its subscribers for this fee.

(b) If during the term of the Agreement, the City or a non-profit organization assumes operational and financial responsibility for the public access facility (production studio), AT&T California will pay its pro rata share of the costs incurred by

the City and/or the non-profit organization in assuming such responsibility in an amount not to exceed \$150,000; provided, however, that the City imposes the same or equivalent requirement on its cable services providers(s).

(c) Within 30 days of the Effective Date of this Agreement, AT&T California shall give the City a one time up front capital grant in the amount of \$30,000 to be used by the City to cover the costs of converting its existing PEG content into a form that can be placed on the internet and uploaded onto AT&T's system at two locations – at the existing public access facility and at the Community College in City. At its election, AT&T may pass the grant amount onto its subscribers.

(d) The City's PEG programming shall be offered over channels with the same channel number designated for them by the incumbent cable television franchisee on a non-exclusive basis to the extent such designation is technically feasible and operationally compatible with AT&T California's IP enabled Video Services Product.

5. Emergency Message. After AT&T California begins providing IP Video Service, it will rebroadcast emergency messages in some format on any IP Video Service channel which provides such message in the event of a declared public safety emergency.

6. Customer Service. AT&T California will comply with customer service requirements consistent with 47 C.F.R. 76.309(c).

7. Rights and Obligations of City. During the term of this Agreement City will not attempt to nor subject the provision of AT&T California's IP-enabled Video Services over the IP Network to regulation under its cable television franchise ordinance or similar ordinance. In addition:

(a) City agrees to subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of AT&T California's existing telecommunications infrastructure.

(b) City agrees not to block, restrict, or limit the construction and installation of the IP Network.

(c) City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the IP Network in a timely and prompt manner.

8. Service Area. Within a reasonable time after execution of this Agreement and subject to technical and economic feasibility, AT&T California will offer video services through technology of its choosing, including direct to home satellite services, throughout its service territory within the City.

9. Reimbursement of Legal Costs. At City's request and upon invoice from the City, AT&T California shall reimburse the City up to \$10,000 in costs incurred by the City in negotiating this Agreement.

10. Services to Public Facilities. Subject to technical feasibility, AT&T California will provide, during the term of this Agreement, free video services to public facilities in City as follows: one tier 1 service per building and only in areas where AT&T California is providing IP-enabled Video Services.

11. Indemnification.

(a) AT&T California agrees to indemnify, defend, and hold harmless City, its officers, agents, and employees, from and against any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by AT&T California's negligent construction, operation, or maintenance of its IP Network, provided that City shall give AT&T California written notice of its obligation to indemnify City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, AT&T California shall not indemnify City for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any person or entity other than AT&T California in connection with PEG programming.

(b) With respect to AT&T California's indemnity obligations set forth above, AT&T California shall provide the defense of any claims brought against City by selecting counsel of AT&T California's choice to defend the claim, subject to the consent of City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent City from cooperating with AT&T California and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that AT&T California shall not have the right to settle or compromise any claim or action against the City without City's consent, but if AT&T California believes that a settlement or compromise offer should be accepted, and the City disagrees, then AT&T California's indemnity obligation to the City shall not exceed the monetary value of such settlement or compromise offer.

(c) City shall hold AT&T California harmless and shall be responsible for damages, liability or claims resulting from the negligence or willful misconduct of City.

(d) City shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by City for which City is legally responsible, subject to any and all defenses and limitations of liability provided by law. AT&T California shall not be required to indemnify City for acts of City which constitute willful misconduct or negligence on the part of City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

12. Breach of Agreement. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within 60 days.

13. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and use of a mediator when such discussions have failed.

14. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered to either party personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City: City of Santa Clarita
23920 Valencia Blvd.
Santa Clarita, CA 91355

Attn: Kevin Tonoian

With a copy to: Carl K. Newton, City Attorney
Burke, Williams and Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071

If to AT&T California: AT&T California
525 Market Street, Room 1901
San Francisco, CA 94101

Attn: Ken McNeely, Vice President

15. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

16. Assignment. AT&T California may not assign or transfer this Agreement or any interest therein, except to any affiliate of AT&T California, without the prior consent of City.

17. Entire Agreement. This Agreement constitutes the entire agreement between City and AT&T California with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and AT&T regarding the subject matter hereof.

18. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

19. Defined Terms. For the purposes of this Agreement, the following words, terms, phrases, and their derivations have the meanings set forth below. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number:

(a) “Affiliate” – means any firm or corporation which controls, is controlled by, or is under common control with AT&T California.

(b) “Gross Revenues” – means any and all income, compensation, fees, and other consideration received directly or indirectly by franchisee and its affiliates, arising from or attributable to AT&T California’s IP-enabled Video product delivered over the IP Network in the City’s rights of way, including, but not limited to the following sources:

1. Installation fees, disconnect and reconnect fees;
2. Basic subscriber receipts;
3. Enhanced service receipts, including, but not limited to, income derived from per program or per channel charges.
4. Advertising receipts derived from the operation of AT&T California’s IP Network to provide IP-enabled Video Services within the City. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts AT&T California may make to advertisers) shall not be netted against advertising revenue included in gross revenue. The allocation shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
5. Lease receipts.

“Gross revenues” does not apply to non-video revenues or the non-video revenues of a bundled product containing video and non-video offerings.”

(c) “IP-enabled Video Service” – means a switched, two-way, point-to-point service providing video programming to residential consumers, similar to that programming defined in 47 U.S.C. § 522(20), and which is delivered to subscribers within the City over facilities located in City’s public rights of way using internet protocol transmission technology, but does not include satellite delivered programming.

(d) “IP Network” – means that part of any facilities and equipment located in City’s public rights of way used for the delivery of IP-enabled Video Service to subscribers within the City.

(e) “Non-Video Service” – means any service delivered or provided by AT&T California, including to commercial customers, by any method and whether or

not by the use in whole or in part of City's public rights of way, which is not video programming and which may or may not be subject to regulation by the California Public Utilities Commission or the Federal Communications Commission.

20. Miscellaneous.

(a) AT&T California and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

(b) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

(c) AT&T California and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

(d) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

21. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

22. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of November 11, 2006, ("Effective date").

AT&T CALIFORNIA

By: _____

Name: _____

Title: _____

CITY

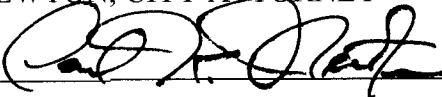
By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

CARL K. NEWTON, CITY ATTORNEY

By:  _____

Date: 11 / 17 / 06