

DATE: January 17, 2006 City of Palo Alto Council Agenda Item 8

SUBJECT: Request for Council Direction on Legal, Financial, Operational, and Other Issues Regarding Issuance of a Fiber to the Home Request for Proposals

CMR: Attached are 111:06 and 398:05

**OFFICE OF THE CITY COUNCIL
CITY OF PALO ALTO**

M E M O R A N D U M

TO: City Council

FROM: Vice Mayor Kishimoto and Councilmember Beecham

DATE: January 17, 2006

SUBJECT: Issuance of an RFP soliciting proposals for the development, construction and operation of a City-wide ultra-high speed bandwidth system.

RECOMMENDATION

We recommend that the Council adopt the following motion.

MOTION: Council directs staff to issue a Request for Proposal for the construction and operation of an ultra-high speed bandwidth system. Primary goals for this system are:

- Capability of providing minimum bandwidth of 100 megabits per second symmetric service to the customer;
- Provision of at least data, video and telephony services; and
- City ownership of the physical system.

The RFP shall request information from the responders on the following parameters:

- Proposed financial and other contributions required from the City. City contributions may include assigning, with operational and other limitations, use and control of the City's dark fiber ring and the City's existing trial network;
- Assessment of financial risk to the city;
- Proposed schedule to achieve the City's primary goals;
- Proposed technologies to achieve the City's primary goals;
- Proposed ultimate ownership of the system's physical infrastructure;
- Will the proposed system be an "open" system, i.e. with all qualified service providers having equal access to the system? If not, what types or timeframes of limited access are proposed?
- Proposed roles of the City versus roles of the responder.

SUPPLEMENTAL DISCUSSION

Financial risk: The Council wishes to minimize its financial exposure for the development, construction and operation of a City-wide ultra-high speed bandwidth system. However, the Council recognizes the need to contribute or guarantee financial or other assets to the project to achieve the primary goals. Responses to this RFP should include City financial risk mitigations such as “off-ramps” at increments of \$5 million of City risk. The financial risks assumed by the responder should also be detailed regarding quantity and timing.

Schedule: The City understands the system rollout may not be simultaneous throughout the City. Responders may propose a variety of schedule phasing to minimize risk. Such phasing may be based on geographic or demographic considerations to maximize early revenue versus capital expenditures. Responders may propose other phasing they feel appropriate.

Technologies: Among existing technologies, optical fiber appears most certain of providing the City’s bandwidth goal of 100 Mbps symmetric service. However, the City’s goal is performance-based, not technology-based. Responders may propose other technologies in conjunction with or in place of optical fiber. The responder should be able to demonstrate the ultimate capacity of the proposed system.

Wireless: Wireless internet access is becoming widely available, most often at or along specific sites (such as along Palo Alto’s University Avenue). City-wide deployments are also possible. Wireless internet access has a typical asymmetric bandwidth of about 1 Mbps maximum download (1% the City’s goal in this RFP). As such, wireless internet access by itself does not presently achieve the goals of this RFP. The Council supports pursuit of city-wide wireless service, but not as a substitute for the City’s goal of 100 Mbps symmetric service.

Ownership: The City desires to own the system’s physical infrastructure. The City understands that the timeframe and limitations of such ownership may be dependent on the City’s financial contributions to the project. Responder should clarify the relationship between City investment/risk and City ownership.

THE ABOVE MOTION WAS MADE BY COUNCILMEMBER BEECHAM AND
SECONDED BY COUNCILMEMBER BARTON



CHAIRING AGENDA ITEM 8, VICE MAYOR YORIKO KISHIMOTO:

First, I would like to ask our seconder to speak, and then that will be followed by Councilmember Cordell.



COUNCILMEMBER JOHN BARTON; (“Yes” vote):

Thank you very much. First of all, I want to just make sure I wasn’t stepping on the Vice Mayor’s toes by seconding this. I know you were running the meeting and particularly it’s harder to second motions when you’re running the meeting, but I appreciate the Colleagues’ Memo and am in agreement with it.

There are a couple of things I just want to touch on that I think are important.

One, I think the ownership is important and I am pleased to see that here. ...I spent a significant amount of time getting up to speed, so to speak, on this item over the past several months. One of the analogies that has been most valuable to me is the notion of this as a highway system. The City owns our roads, and then I can drive on them or Federal Express can drive on them or DHL can drive on them. There is a series of competitions that come as a result of the City owning that and allowing anybody to use it.

The challenge, I think, to some of the other models, particularly ones where the City owns portions of it and then private entities own other portions of it, is that you see a “gate”. In my world, in the architectural world, you physically see a gate at that point and that controls who comes and goes. I don’t think that is in the best interests here.

Lastly, I think there is an important larger piece here. I think it is time for Palo Alto to step forward and reclaim its mantle of leadership on these kinds of issues. This is an excellent way to go about this. To look to an RFP, find out what people are able to provide and ask good questions when those opportunities come forward.

I think it is time to act on this particular one, not only because I think it is something that is appropriate for *who* we are and *where* we are, but I also think it is appropriate for the kinds of things we talked about for our *budget* just a few minutes ago.

Owning a business in Palo Alto, providing a service to the Chamber of Commerce, I know that this kind of entity, this kind of infrastructure, will provide tremendous advantages to the City of Palo Alto in attracting and, perhaps most importantly, retaining businesses in Palo Alto.

I think it is time to move forward. I am thrilled by the Colleagues’ Memo and I look forward to voting “Yes” on this.



COUNCILMEMBER LADORIS CORDELL; (“No” vote):

I am not opposed to Fiber to the Home. However, I am not supportive of this motion tonight. I am opposed to it because I believe now is not the time to go forward on this matter.

Let me tell you why, and I hope to persuade my colleagues to my way of thinking on this.

First of all, I want you to look around this chamber tonight. You know that Palo Altans are very concerned and active in City government. There is very limited public interest in this issue. That's one concern.

I believe there is limited interest in this because there is much greater public concern about more pressing issues. I believe this is about priorities and setting priorities for this City. I don't believe that fiber optics should be a priority, at least as high up, that would mean going forward on this motion.

Attached to the CMR tonight, and I assume everyone has read it, is a discussion about the potential financial liability, the risks, and the potential, and actually, I believe very real legal liabilities we face when we go forward on something like this. I just stress we can not be, as trustees of this City, cavalier about the possibilities, the potential of financial and legal liabilities which are, in fact, serious and could be staggering in terms of the amount of money that might be needed to be expended in dealing with litigation and in dealing with the risks.

Wireless is an option. No, it is not the Cadillac, it is not the Mercedes. But I will tell you that wireless in Mountain View has gotten Mountain View favorable attention and publicity. There is no reason why we could not move forward on wireless.

It is not the Cadillac. Because, right now, we need the Cadillac of libraries; we need the Cadillac of a Public Safety building. Those are where I believe our priorities ought to be right now.

It is not that I am not in favor of new technology. I am just so concerned right now that we, as this Council, get our priorities straight. I truly do not believe this is the time to go forward to have staff spend its time working on this matter. So I will oppose this motion.



COUNCILMEMBER PETER DREKMEIER; ("Yes" vote):

I would like to thank staff for putting together this report and also Vice Mayor Kishimoto and Councilmember Beecham for putting together the memo. I think this is a great model of how to do business here, to come in with a good recommendation we can work off of. I appreciate that.

I also appreciate all the input from the public through emails and speaking tonight. I have learned a lot from all of you, whether you support FTTH or not.

I shared some concerns with Norman Carroll about the possible disruption to the roads. I was going to suggest, maybe in this memo we include - how do we minimize those impacts? But the information that Mr. Dellabeauguardie gave to us suggests that maybe that's not as big an issue as I thought.

I also understand the concerns that Councilmember Cordell has. If there was a way we could get information on just how used this technology would be, I think that would be very helpful, but I don't see that happening right now.

I do tend to support this motion, in part because I've seen how technology has changed. I got one of the first Macintosh computers and put in a floppy disc and had to bring it out, there was no hard drive, and after about a minute of doing "the floppy disc shuffle", was able to do a little bit of word processing.

With email, I started off with dial-up and eventually moved up to DSL and can't understand how I ever did the dial-up in the first place. I think the technology is really going to necessitate much larger bandwidth than wireless.

So I do intend to support this.

I did want to raise concern about one thing that I read in the staff report on page 6, item number 11, about half-way down, it says, "a system providing VoIP would, however, be subject to federal and state law requirements relating to 911 and e911 capability, and to the federal Communications Assistance for Law Enforcement Act, which would require the system to be designed to be capable of eavesdropping and tapping on request of federal, state or local law enforcement authorities." I have concerns about that, especially in light of all the news about our government spying on people domestically. My guess is, there probably not a lot we can do about that right now, but I did want to raise a concern about that.



COUNCILMEMBER LARRY KLEIN; ("Yes" vote):

Some of the concerns expressed, I think, go to the idea that there is no demand for this technology, that it is not needed, not wanted.

Having read what seems to be hundreds of emails on this subject, I was struck by trying to recall where I'd heard this before. I, thus, went on Google and got my answer in about five seconds. So I'm going to give you two quotes.

The first one is from Thomas Watson, Chairman of IBM, 1943: *"I think there is a world market for maybe five computers."*

The second, and this one is more my era because I can remember back when the Home Brew Computer Club, a group of hobbyists, was active in this area. They now have become legendary but they were regarded as "hobbyists", a word we've heard in this debate, as well.

My next quote is from Ken Olson, Chairman of the Board and founder of Digital Equipment Corporation, which at one time was one of our larger computer manufacturers. In 1977, Mr. Olson said, *"There is no reason anybody would want a computer in their home."*

This was probably true in 1977. Nobody wanted it, and if we were having a debate back then, people would probably have said, "Why should we ever get involved with that? There is not going to be any demand for it."

That's not to say Fiber to the Home is going to be a success, because certainly there have been technologies that have not been successful economically.

But one of the real joys to me in campaigning this year has been studying up on this issue. I believe there is a significant chance that it will be successful.

I think it was fortuitous tonight that we coupled the discussion of this item with our financial future because it seems to me that our prime financial advantage is that we have terrific intellectual capital in our community. We are regarded as a real leader in technology in the world. It would be a real shame if we didn't proceed in maintaining that. It would be, I think, awful if we fell behind all those other places that are moving on this.

So I really salute Councilmember Beecham and Vice Mayor Kishimoto for not just staying with this issue and writing a memorandum, but writing a superb memorandum, I think, a really good job to frame the issue and get it before us in a way we can handle it.

So I certainly intend to support it.

When the time comes, I have four or five questions about precise wording. We are getting down to the level of word-smithing. Since I know Bern is going to be responding, let me just throw them out, then we can have a discussion on them.

1. I would prefer we say, in the section at the top, what things we want, that we want an open system rather than just asking the RFP responders to give their thoughts on it.
2. I am a little confused about our position about our ownership of the physical infrastructure. Because, at the top, the motion says that's one of the

conditions, but later on, we sort of question that, I think, in a couple of different places.

3. I would like us to add a direction to the staff that we shall seek out our adjacent communities to see if they would be interested in partnering with us on this.
4. I would also like us to direct staff to consult with potential significant commercial customers of such a system. By significant commercial customers, the first one that comes to my mind is the Palo Alto Medical Foundation that I would see as a potential large user. I think their input, indeed, developing them as an ally for such a system would be helpful. And other companies' (input) would also be useful. I am distinguishing very sharply between somebody who is a customer like Palo Alto Medical Foundation rather than an H-P, which might also be a supplier. I am looking solely for big commercial consumers.

Those are my four thoughts.

I was struck also by the gentleman who referred to "latency", whether we ought to put latency in there as part of our standards.



COUNCILMEMBER BERN BEECHAM; (Voted "Yes"):

On the questions, certainly including comments on latency, I don't know what an appropriate standard is, but to include something on that is appropriate.

I think Herb (Borock) mentioned coming back to the Council for our comments. My assumption is, that will happen in any case, so I think that's there.

On open systems, it clearly is my preference for that. A lot of what's in the proposal offers a lot of flexibility. As we've worked on this over the past six years beginning in 1999, because that's when I started working on it, there are trade-offs on everything you do. The reason that the incumbents (AT&T/SBC and Comcast) have closed systems is because they make more money that way. If there is a necessity, an economic necessity, to have a partially closed system to pay for it, I'm willing to consider that. That's kind of how this is written. I certainly am happy to clarify, though, that our preference is an open system.

On ownership, it's the same thing. We do want to own it. There may be constraints in finding a system where our risk is low enough that we are willing to do it and the trade-off may be that we have limited ownership. Again, it may be that somebody comes in and says, "Yes, you can build it, your risk is just put up \$5 million and that's all you

need, but we have some element of control of it.” Let’s talk about it. Let’s find out how that works.

On adjacent communities, I would at this point probably not go there. We have our own utilities; we have our own enterprise funds within our city limits. It is far easier for us to talk about doing this here without having to go to anybody else’s territory, to begin negotiating with other city governments. Certainly, if someone comes in and they say, “Let’s do it for you, and whiz bang, we’ll go up and down the Peninsula,” that’s great. But at this point, I would not favor going to other cities and, in any major sense, put this on hold as we find out if they are interested in joining us.

Consulting with major customers, as in, those who transmit the data, I think is what you are talking about, to get them to be allies, I think that’s fine. But, at this point, I wouldn’t do that in a sense that would delay the RFP going out. If we go and chat with the Medical Foundation or major users in the Research Park or anybody else who may be here and say, “What’s your interest in joining?” And I’ve heard through the community that there are real estate interests, so to speak, who would like to see this use be made available to their properties. If they are willing to come in and help fund this, I think that would be great.

I see those as kind of secondary discussions, not the primary discussion of going out with the RFP at this point.

Does that respond to your questions reasonably? You may not agree, but at least it’s responsive to them? OK

Going further, there was also comment about one of our colleagues, Mayor Kleinberg, not participating. Let me speak in defense of that for the moment.

We always ask our Mayor, we should ask our Mayor, for advice, what we do. Whether or not we participate is a decision, a decision made by the Councilmember. It is not made by our staff. It is not made by the City Attorney’s Office. We individually are responsible for making the correct decision. If we err, the City does not defend that error, we defend ourselves. So I will never second guess any colleague who says, “You know, I just need to be cautious here, and I will not participate.” That is an obligation each of us has, to make a decision on our own, and I respect her decision.

We have not talked tonight much about the need; a little bit, but not much. Over the past six or seven years, there has been a lot of talk about the need. We have had many more people in these chambers, both here as well as at UAC meetings talking about the need.

Let me just give two simple anecdotes that have come up recently for me.

One is, in talking to some of the people who have been in the trial, one of the ladies who lost her Fiber to the Home service, hates having to drop back to the service provided by Comcast. I’m not saying Comcast is bad service, but I’m saying the (degradation) from

the service she had with Fiber to the Home, (FTTH) is night and day above what is available in this community otherwise. She's not here tonight, but I've heard from her husband that he gets banged on about this, so to speak.

The second example is one of the young families in our neighborhood. They are a multi-continent family with in-laws on one side in England and in-laws on the other side in the Pacific. The young fellow works for Sony. I think he's got great equipment. He was talking about how great it is when they show their baby when they talk to their parents in one continent or the other, to be able to do it with pictures. The ability to do that truly real time with great video would be a blessing to that family. It's a small thing, but it's the kind of thing that makes our lives richer and it's the kind of thing they would love to have more of.

So there are reasons out there for doing this. We have gotten far beyond the point of talking about it in this community as we work through...what is our next step?

This is our next step.

We are not tonight talking about the rationales for it, but the rationales in my mind are there. And I'm happy to go forward.

VICE MAYOR YORIKO KISHIMOTO:

Her question directed to Councilmember Beecham, "Do you want to make any changes to your motion?"

COUNCILMEMBER BERN BEECHAM:

The clarifications, and I think the staff has been nodding, is to include latency, the RFP will come back to us before it goes out, let's include the clarification, and I won't do that as this point, about open systems and ownership, as it stands on its own.

I see the City Manager also has his hand up.



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CITY MANAGER FRANK BENEST:

Before the Council takes a vote, just two quick items. Staff is ready, assuming this motion passes, we are ready to proceed as outlined in the motion. We're ready to do that. Just two comments I have.

1. This will take a significant amount of staff time and attention, as I mentioned, so the Council has to put that in the calculus, particularly as you look at priorities at your Council Retreat. So I just want to put this on the table. We don't know exactly how much, but it is going to be a significant priority, which is fine, just so we all recognize what that is.
2. Assuming you do not have six votes for this motion, there is a problem coming back with a budget amendment ordinance, which requires six votes, to allocate funds in this fiscal year for any consultant services or what have you in terms of developing, or at least helping us put together the RFP. The other option you have is staff doing some of the preliminary work we can do and then including the allocation in next year's budget, which requires five votes.

His aside to the City Attorney, "Is that correct?"

So we are just clear about what that takes.

COUNCILMEMBER BERN BEECHAM:

Just a quick comment, if I could, on that. I think I and, I think, others may be aware of the five votes versus six votes, budget versus BAO's. That is some limitation in the short term.

Also, a comment. Often in these motions we talk about scheduling when staff should come back with that. Because it is an issue, because it is resource intensive, and there will be trade-offs, there is nothing right now either specifying or asking for you to tell us tonight when you could come back. That is for the discussion of the Council yet.

VICE MAYOR YORIKO KISHIMOTO; (Voted “Yes”):

I am going to make just a couple of final comments before we go to a vote.

I think everybody knows I’ve been a long-time supporter of this concept.

I think back to the explosion of innovation and economic prosperity which came to the Valley with the advent of the World Wide Web.

I see, right now, a lot of innovation continuing to happen around the world. It is true that the United States is beginning to fall behind. So, when Councilmember Cordell mentions priorities; part of this is a timeliness issue, that we do need to remain competitive.

Finally, this fits in with our vision of sustainable development. This addresses issues of economic development. I really do think it is our #1 development tool for both our businesses and also our residents. It allows us to have a sound economic base without necessarily having a negative impact on the environment. That’s the type of development I would like to see Palo Alto continuing to pursue.

With that, I will call for a vote. Before we go to that, there is a call for amendments.

COUNCILMAN LARRY KLEIN:

Consistent with my earlier remarks, I would move an amendment to direct staff to keep adjacent communities informed of our progress on the RFP, with the idea that they might want to join us at a later date.

Secondly, for Council to consult with significant potential customers of the system to get their input which may be desirable, staff to do that in their discretion, but to do some of it.

Clear enough? I am deliberately being ambiguous, but I do want staff to talk to potential customers so we can get their input and support.

VICE MAYOR YORIKO KISHIMOTO:

Would this be friendly amendments, if the maker and seconder accept?

COUNCILMEMBER BERN BEECHAM:

In terms of talking to our neighboring cities, I’m willing myself, and if you are willing to go, or other Councilmembers to go and sit down and talk to their staff and

Councilmembers, I am willing to do that. I'd just as soon not put that on staff at this point.

In terms of talking to major customers, if the staff is willing to go to talk to...I'm not sure which two would be best, the Medical Foundation and one other, I'm willing to incorporate that in my motion.

COUNCILMEMBER LARRY KLEIN:

I'll accept that, both parts.

COUNCILMEMBER JOHN BARTON:

I accept.

VICE MAYOR YORIKO KISHIMOTO:

OK, the friendly amendment is accepted. Now, are we ready to vote on the motion (as amended)?

(Vote taken.)

The motion does pass (5-1) with Councilmembers Beecham, Drekmeier, Kishimoto, Klein, and Barton voting "aye"; and Councilmember Cordell dissenting.