

August 17, 2016

Mayor Steve Adler
Austin City Council Members
City of Austin
301 W. Second Street
Austin, TX 78701

Re: Recommendation for Council Action, Purchasing Authority for Pole Replacement Funds (Item No. 61163, Agenda 65)

Dear Mayor and Council Members:

Time Warner Cable Texas LLC (hereinafter referred to as “Charter”) respectfully submits this letter to express its concern with the referenced Recommendation for Council Action, and to request the Council delay action on this Item until Charter and other affected stakeholders be given further details regarding the implementation of Austin Energy’s (“AE’s”) proposal and the opportunity to provide comment to the Council regarding its potential impact. The recommended action here appears to carry a considerable risk that the City, AE – and the citizens of Austin – could be paying for pole replacements, and additional pole capacity, a cost that Google Fiber, or other attaching parties (including, at times, Charter) should be incurring if such capacity is solely to accommodate their new attachments. The approval of AE’s proposal, without further clarification, could run afoul of the City’s and AE’s obligations to treat all providers of communications services in a competitively neutral and non-discriminatory fashion.

Charter also has serious concerns that AE’s proposal incorporates elements of the “One Touch” process, a controversial and contested construction procedure that Google Fiber advocates here in Austin, across Texas and nationally. While “One Touch” is not strictly defined, the general hallmarks of the process are that one attaching entity (the party seeking to make a new attachment) is authorized to complete make ready work traditionally reserved for Utilities, and to transfer or rearrange the facilities of another attaching entity without their explicit consent and often without adequate notice. While we will not detail our many misgivings with One Touch here, the adoption of a practice in which one attacher is authorized to move the facilities of other attachers (often its competitors) without proper notice, consent and specific project-by-project and pole-by-pole coordination raises significant concerns.¹ Charter thus believes that the Council’s endorsement of AE’s proposal in its current form may have the appearance of carrying the City’s stamp of approval of the One Touch process.

The Council Should Confirm the Bases for the Request and Impose Safeguards

¹ The recommendation to the City Council lists a benefit of the proposal that “[a] single contractor completing the work increases efficiencies, facilitates system reliability, ensures public safety, and reduces environmental and customer impact.” While Charter supports an efficient process for necessary pole replacements, we object to any process that gives one attaching entity authorization to select a contractor and manage the process and/or transfer the attachments of a competing provider.

With respect to the proposed \$6 million set-aside for pole replacements, Charter certainly has no quarrel with the well-established practice that if poles need to be replaced because they are rotted or otherwise structurally unsound (or because additional space is needed for AE's own electric lines and equipment) that they should be replaced at AE's cost. Indeed, we share the City's and AE's ongoing concern for plant integrity and worker and public safety: an important part of that is ensuring that the poles are strong, and the facilities on them are installed safely.

We are concerned, however, that some (or possibly even all) of the \$6 million requested could be used to pay for pole replacements made to accommodate an additional attacher when such costs should be properly borne by the additional attacher, whether Google Fiber or another party. In other words, if any portion of the funds at issue here is used to pay for the replacement of an existing pole with a taller pole to accommodate a new Google Fiber (or other attacher) attachment, then the City – and AE – would be engaging in unlawful discrimination under Texas law. This, obviously, is not only a concern for Charter and other communications competitors providing service in the City of Austin, but to other stakeholders within the City, including City taxpayers and AE ratepayers.

To be clear, Charter requests that AE's proposal regarding reimbursement of pole replacement costs conforms with long standing industry practice that the utility is responsible for pole replacement costs for rotted or otherwise structurally unsound poles, while an attaching party is responsible for costs necessary to accommodate their attachments, such as installation of a taller pole. In the event a pole requires replacement at AE's expense, *and additional capacity is required to accommodate a new attacher*, then the attaching entity should be responsible for the incremental costs of the taller pole. However, if a taller pole is *not* necessary to accommodate the new attacher, but AE elects to increase the pole height for its own service needs, AE should be responsible for such costs.

Charter believes that it not only is appropriate, but necessary, to ask about the bases for the Council's action and to carefully examine AE's proposal.

In particular how many (or what percentage of) AE poles need to be replaced that are AE's responsibility? Is this consistent with the experience of other pole owners within the City (namely, AT&T)? Is the Council, City staff and AE staff certain that no new poles will be paid for from these funds that are not being replaced to accommodate a new entrant, including Google Fiber? What mechanisms are in place to ensure that this does not happen? Will there be periodic reporting and accounting of pole replacement costs made to the Council or City staff?

Without additional details regarding (i) the bases of the Council Recommendation, and (ii) specific mechanisms and measures that are in place to ensure that neither the City nor AE is unlawfully discriminating in favor of some attachers including Google Fiber and against Charter and others, Charter objects to the recommendation.

The Council Should Avoid References to One Touch Practices In Its Recommendation

With respect to the Council's apparent approval of One Touch contained in the Council Recommendation Charter suggests that all direct or indirect references to, or descriptions of One Touch – specifically, paragraphs 3, 4 and 5 (including bullet points) be deleted. Even assuming the necessity of

the underlying funding request, and the presence of accounting and other safeguards to ensure their proper implementation, the descriptions contained in these paragraphs, at a minimum, create the appearance of special treatment in favor of Google and place both the City and AE in peril of violating their clear-cut obligations of non-discriminatory treatment. On an even more practical level, the language in these paragraphs simply is unnecessary to complete the request sought in the Council Recommendation.

Conclusion

For these reasons, Charter respectfully requests that (a) the Council delay consideration of AE's Proposal until Charter and other affected stakeholders be given the opportunity to request additional information regarding the proposal and provide comment on its potential impact; and, (b) the Council eliminate any direct or indirect reference to the One Touch process, as this highly technical and controversial process should be addressed by the stakeholders and AE cooperatively.

Thank you in advance for your consideration of these matters. We look forward to addressing any questions or concerns that the Council may have with respect to the items raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Serna". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ed Serna
Director, Government Affairs
Charter Communications, Inc.

