

MEMORANDUM OF LAW

DATE: April 28, 1986

TO: Martin Breslauer, Assistant Property Director
FROM: John W. Witt City Attorney
SUBJECT: Corporate transfer of Cox Cable franchise

Cox Cable San Diego's executive vice president for community relations, Eugene Yee, in an April 8 letter to you, says:

We intend to transfer the franchise of Cox Cable San Diego, Inc. to New Cox Cable San Diego, Inc. This is necessary as part of a Corporate streamlining wherein currently Cox Cable San Diego, Inc. is a subsidiary of Cox Cable Communications, Inc., which in turn is a subsidiary of Cox Communications, Inc. We would propose to transfer the franchise from Cox Cable San Diego, Inc. to New Cox Cable San Diego, Inc. which would be a subsidiary of Cox Communications, Inc. (Deleting the intermediate subsidiary of Cox Cable Communications, Inc.). There are no managerial, financial, technical, or other changes involved. There is no percentage ownership change involved. Because of this, we feel that no consent of the Council is required for the transfer. As we discussed, would you please check with John Witt to see if he agrees with this interpretation. Emphasis added.

Your informal April 11 memo asks, "Would you please review and advise me if this requires Council action as it appears?" It is my conclusion that the proposed transfer requires consent of the City Council.

Cox Cable's present franchise, Ordinance No. 12543 (N.S.), adopted January 2, 1979, provides:

. . . The Franchise cannot in any event be sold, transferred, leased, assigned, or

disposed of as a whole, or in part, either by forced sales, merger, consolidation, by operation of law, or otherwise, without prior consent of City expressed by ordinance,

-- Ord.No. 12543 (N.S.).

Sec. 8, .(c)

Ferris, Lloyd and Casey, in their comprehensive three-volume set, *Cable Television Law*, New York, 1985 (Matthew Bender), say, "As a general rule, a franchise may be assigned by the holder to another company, unless forbidden by statute or by the franchise grant itself." Ferris, Lloyd & Casey, *Cable Television Law*, p. 13-99, citing McQuillin, *Law of Municipal Corporations*, Sec. 34.46. The question, then, is whether the franchise language I have quoted forbids the restructuring that Cox proposes unless the Council approves.

Essentially, the Cox proposal would result in a new corporate owner of the franchise grant. Corporations are persons for legal purposes. *Dearborn v. Grand Lodge*, 138 Cal. 658, 663, 72 P.154 (1903); *Acco Contractors, Inc. v. McNamara & Peepe Lumber Co.*, 63 Cal.App.3d 292, 295-296, 133 Cal.Rptr. 717 (1976). Although two corporations are jointly owned, they remain two distinct persons unless "observance of the separate corporate entities would be unjust or inequitable . . . and there is such a unity of interest and ownership that the individuality of the corporations as . . . distinct entities has ceased." *U.S. v. Dean Van Lines, Inc.*, 531 F.2d 289, 291 (5th Cir., 1976), citing California law. Here there is no contention that creation of two corporations, Cox Cable San Diego (the old franchise owner) and New Cox Cable San Diego (the new owner) is for unjust or inequitable purposes, nor has anyone complained that their unity of ownership destroys their individuality.

Therefore, the new owner, New Cox Cable San Diego, must apply for consent to the transfer of the franchise. The consent must be by ordinance. Please initiate the appropriate Form 1472 for Council action.

JOHN W. WITT, City Attorney

JWW:c:490.2(x043.2)

cc Eugene Yee

ML-86-51