

MEMORANDUM OF LAW

DATE: September 24, 1992

TO: Ed Ryan, City Auditor and Comptroller

FROM: City Attorney

SUBJECT: Franchise Fee Computation; Cox Cable; Courtesy
Service Category

In June, 1992, your office conducted an audit of Cox Cable San Diego Inc. ("Cox") to determine if the franchise fees paid by Cox complied with the provisions of the Franchise held by it. The audit period was from January 1, 1989, to December 31, 1991.

As outlined on a memorandum to us dated June 11, 1992, your audit imputed gross receipts of \$1,313,145.00 to Cox which were not reported by the company. According to your computations, this resulted in an underpayment of franchise fees in the amount of \$39,394.00. The imputed gross receipts were calculated by your staff because Cox has a company policy of providing free service to its employees, the employees of other cable companies, apartment house managers and as consideration for certain private rights-of-way utilized by the company for its lines.

In a meeting held in the undersigned's office, a company representative conceded the payment of franchise fees for the apartment house managers and the grantors of private rights-of-way, but contended that Cox received no consideration for the free service to its employees or the employees of other cable companies.

You have asked for our views on the matter. We disagree with Cox's contention. Our reasoning follows.

ANALYSIS

Section 4, DEFINITIONS, of the Franchise in question (Ordinance #O-12543, dated January 2, 1979) provides, in pertinent part:

(k) "Total Gross Receipts" shall mean any and all compensation and other consideration collected or received or in any manner gained or derived by Grantee from the operation of its Cable Television System. Total gross receipts shall not

include (a) uncollectible amounts; (b) refunds or rebates made by Grantee; (c) revenues received as a direct reimbursement of Grantee's expense in the operation of any access channels; (d) sales, ad valorem, or other types of "add on" taxes, levies or fees calculated by gross receipts or gross revenues which Grantee might have to pay or collect for Federal, State or local government (exclusive of franchise fees provided for herein); (e) revenues received for advertising on Grantee's local origination channel, to the extent of Grantee's direct costs of operation of Grantee's local origination channel; and (f)

non-operating revenues such as interest income or gain from sale of an asset.

(Emphasis supplied.)

Consideration is deemed to be anything "of some value." Estate of Freeman, 238 Cal.App.2d 486, 489 (1965). "Of value" means "any value whatever, even that of a peppercorn, a tomtit, or one dollar in hand." Id.

Cox Cable is supplying their employees with free cable services. In return for this additional compensation, Cox Cable is receiving continuous and productive services from their employees. Added benefits such as these "make employees more content and happier in their jobs . . . and are considered of advantage to both the employer and the employees." Chinn v. China Nat. Aviation Corp., 138 Cal.App.2d 98, 100 (1955). This improved work environment and morale is clearly "of value" to Cox Cable. Furthermore, bonuses are "not a gratuity or gift, but an offer . . . in order to procure efficient and faithful service" from their employees. Id.

Free cable service also appears to be part of a benefits package which serves as compensation to the employees of Cox Cable for their continued and loyal employment. Presumably, if Cox Cable charged its employees the cable services, it would have to pay its employees correspondingly more in salaries.

In addition, Cox Cable is supplying free cable service to Southwestern Cable employees who live in Cox Cable's territory. The benefit to Cox Cable is that in return, Southwestern Cable provides free cable service to Cox Cable employees in Southwestern Cable's territory.

By supplying free cable to Southwestern Cable employees, there is a direct benefit to Cox Cable. The benefit is the reciprocity on behalf of Southwestern Cable in supplying free cable to Cox Cable employees. This reciprocity enables each company to honor their promise of free cable as an additional benefit to their employees in return for their employees' services and loyalty to the company.

CONCLUSION

Since Cox Cable directly benefits from providing their employees with free cable services by receiving continuous and faithful services from their employees, Cox Cable is receiving something "of value," i.e., consideration. This additional compensation in the form of free cable services should be imputed in the company's total gross receipts. Therefore, the City should receive its percentage of the fair market value of such services.

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By

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