

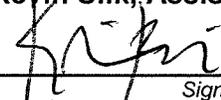
STAFF REPORT
COUNCIL MEETING DATE:
November 28, 2011

ITEM FOR COUNCIL CONSIDERATION:

Adoption of Resolution No. 5351 consenting to the transfer of the City's cable franchise from CoxCom, LLC to Cox Communications California, LLC.

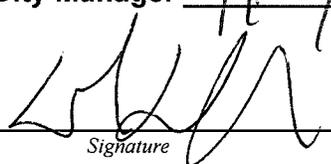
Report prepared by: **Kevin Silk, Assist to the City Manager**

Department: **City Manager**


Signature

Reviewed by:

City Manager


Signature

Admin. Services Dir.


Signature

STAFF RECOMMENDATION:

Action Item ; Non-Action Item

Adopt Resolution No. 5351, consenting to the transfer of the City's cable franchise from CoxCom, LLC to Cox Communications California, LLC.

Motion: I move to adopt Resolution No. 5351 as read by title only.

I. BACKGROUND:

In correspondence dated August 30, 2011 from Mr. Sam Attisha, Cox Vice President, Business Development & External Affairs, Cox is pursuing a transfer of their current cable franchise with the City of Carpinteria. Specifically, CoxCom, LLC ("Cox")—the City's current cable television franchisee—has proposed to transfer its Carpinteria cable franchise to Cox Communications California, LLC ("California LLC"), which was recently established by Cox as a wholly-owned subsidiary of Cox.

According to Mr. Art Yoon, Director, Government Affairs / Cox Communications-California, the primary reason the transfer is being pursued by Cox is to reduce their tax liability.

The proposed transfer of the City's cable franchise is subject to various provisions of the City's Municipal Code related to Cable Systems and Open Video Systems. Per the City's code, the transfer requires submittal of an application by Cox and the City's approval of the application.

Based on correspondence and materials submitted by Cox, it is City staff's opinion that Cox has submitted a sufficient application for review and approval.

Application.

Staff considers the correspondence and related materials submitted by Cox (dated August 30, 2011 and October 25, 2011) meet the requirements of a transfer application. This includes FCC form 394, confidential audited 2010 Annual Financial Supplement for its parent company, Assignment and Assumption of Franchises and FCC Licenses, Bill of Sale and Assignment of Assets, etc.

Determination by City.

- 1) The proposed transaction is a pro forma restructuring and it appears will have no impact on daily operations or the financial, legal, or technical qualifications of the franchisee (per the Description of Transaction, submitted by Cox, Exhibit I.I.2. (a))
- 2) The new franchisee (California LLC) will comply with all obligations of the Franchise Documents past, present and future and will be subject to additional obligations as outlined in the attached Resolution.
- 3) Based on the materials submitted there are no non-compliance issues to be resolved.
- 4) It is anticipated that the transfer will not adversely affect subscribers, the public, or the City's interest.

Based on the information submitted by Cox, the proposed franchisee, California LLC is considered to be a qualified applicant.

II. FINANCIAL CONSIDERATIONS:

The transfer will not affect the financial terms of the City's franchise agreement with CoxCom, LLC which expires in October 8, 2018.

III. LEGAL ISSUES:

The City Attorney has reviewed the staff report, corresponding resolution, and also received the materials submitted by CoxCom, Inc.

IV. ALTERNATIVE OPTION:

Authorize the Mayor to execute a revised resolution.

V. PRINCIPAL PARTIES EXPECTED AT MEETING:

Sarah Clark, Manager Public Affairs, Cox Com, LLC

VI. ATTACHMENTS:

Resolution No. 5351

RESOLUTION NO. 5351

**A RESOLUTION OF THE CITY OF CARPINTERIA CITY COUNCIL
CONSENTING TO THE TRANSFER
OF THE CABLE TELEVISION FRANCHISE
FROM COXCOM, LLC. TO
COX COMMUNICATIONS CALIFORNIA, LLC**

WHEREAS, the provision of cable television service in the City of Carpinteria ("City") is governed by Title 5, Chapter 5.70 of the Carpinteria Municipal Code ("Cable Ordinance") as it may have been amended from time to time; and

WHEREAS, CoxCom, LLC. ("Cox") is the current holder of a franchise ("Franchise") to provide cable television service in the City pursuant to Ordinance No.595 (the "Franchise Ordinance"), to construct, operate and maintain the cable television system ("System") in the City, and additionally, Cox and the City are parties to a Memorandum of Understanding regarding the Early Transition of PEG Channels from Analog to Digital format ("MOU") (collectively, the "Franchise Documents"); and

WHEREAS, Cox Communications California, LLC (California LLC") is a wholly owned subsidiary of Cox; and

WHEREAS, pursuant to a transaction ("Proposed Transaction") described in the Assignment and Assumption of Franchises and FCC Licenses and a Bill of Sale and Assignment of Assets dated August 30, 2011 (collectively the "Agreements") between Cox and California LLC, California LLC will acquire all of Cox's assets in the State of California, including the Franchise; and

WHEREAS, if consummated, the Proposed Transaction will result in a transfer of the Franchise Documents from Cox to California LLC (the "Transfer"); and

WHEREAS, Section 5.70.060 of the Cable Ordinance provides that prior approval of the City is required for any transaction which will result in a transfer of the Franchise; and

WHEREAS, Cox and California LLC have filed FCC Form 394 (the "Transfer Application") pursuant to the Communications Act of 1934, as amended, and FCC regulations, and have requested that the City consent to and approve the Transfer Application and the Transfer of the Franchise from Cox to California LLC; and

WHEREAS, pursuant to Federal law, the City is required to act on the Transfer Application within 120 days of the City's receipt of a complete and accurate Transfer Application; and

WHEREAS, the deadline for the City to act on the Transfer Application is December 29, 2011; and

WHEREAS, Cox has made representations and commitments to the City regarding Cox's and California LLC's compliance with the Franchise Documents in correspondence dated August 30, 2011 and October 25, 2011, on file with the City Clerk ("Additional Correspondence"), which representations and commitments are incorporated in this Resolution; and

WHEREAS, California LLC has agreed that it will be subject to, and has committed to comply with all of the terms, conditions, duties, and obligations, past, present, continuing and future as embodied in the Franchise Documents; and

WHEREAS, the City has reviewed the Transfer Application and examined the financial responsibility, technical expertise and legal qualifications of California LLC in accordance with applicable laws and the Franchise Documents; and

WHEREAS, based on such review and examination, and in reliance upon the representations, documents, and information provided by Cox and California LLC in connection with the Transfer Application and supplemental information thereto, the City is willing to grant its consent to the Transfer, subject to the willingness of California LLC and Cox to accept and agree to terms and conditions which the City determines to be necessary to protect the public interest.

NOW, THEREFORE, it is hereby resolved by the City Council of the City of Carpinteria, California, as follows:

Section 1. The Transfer Application and the Transfer of the Franchise from Cox to California LLC are hereby approved, subject to the following conditions:

A. The City Council incorporates all of the recitals set forth above as though set forth in full.

B. Upon the closing of the Proposed Transaction, California, LLC hereby agrees (i) to be bound by and fully comply with all the commitments, duties, and obligations, past, present, continuing and future, embodied in the Franchise Documents to the maximum extent authorized by law, (ii) that the Proposed Transaction will have no effect on these obligations and (iii) to assume and be responsible for all the obligations and liabilities to the City under the Franchise Documents through the date of consummation of the Transfer, regardless of whether those obligations or liabilities arose before or after the date of this Resolution.

C. The City adopts this resolution based on CoxCom, LLC's representations and commitments to the City as outlined in the Additional Correspondence

D. Cox and California LLC agree that neither the Proposed Transaction nor the City's approval of the Transfer Application shall in any respect (i) relieve the California LLC or any of its successors in interest of responsibility for past acts or omissions, known or unknown, and (ii) have any bearing whatsoever on the rights of the City to ensure compliance under the Franchise Documents, and Cox and California LLC agree that they shall raise no claim to the contrary.

E. The Proposed Transaction must be consummated on or before January 30, 2012 and on terms that do not materially and adversely affect the City and that are not in any material respect different from those described in the Transfer Application and other related materials provided to the City.

Section 2. If the foregoing conditions are satisfied, the Transfer Application and the Transfer of the Franchise shall be deemed approved in accordance with applicable law. If the aforementioned conditions are not satisfied, the Transfer Application and Transfer from Cox to California LLC shall be deemed timely denied under applicable law.

Section 3. The City Manager is authorized to sign any needed Transfer Agreement.

PASSED, APPROVED AND ADOPTED this 28th day of November, 2011, by the following called vote:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

Mayor, City of Carpinteria

ATTEST:

City Clerk, City of Carpinteria

I hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 28th day of November, 2011.

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

City Attorney