



JAMES K. HAHN
CITY ATTORNEY

Office of the City Attorney
Los Angeles, California

EXECUTIVE OFFICE
1800 CITY HALL EAST
LOS ANGELES 90012
(213) 485-5408

CRIMINAL BRANCH
(213) 485-5470

CIVIL BRANCH
(213) 485-6370

TELECOPIER:
(213) 680-3634

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REPORT RE:

ACCESS CORPORATION
CONVENORS' REPORT DATED JULY 2, 1992

Administrative Services Committee
Room 380, City Hall
Los Angeles, CA 90012

Honorable Committee Members:

At your meeting of October 8, 1992 you asked our office to review and comment on the Access Corporation Convenors' Report ("Convenors' Report") dated July 2, 1992. We have reviewed the Convenors' Report and have the following comments regarding legal issues which are raised by the proposals in the report.

DISCUSSION

On October 19, 1990, the City Council adopted a report from this committee ("Committee Report") regarding the creation of a cable television City Wide access corporation ("Access Corporation"). By that action, the Council approved the creation of a five member committee of access convenors ("Convenors") to develop the framework for the creation of an access corporation.

Since the Council action, the Convenors have spent considerable time and efforts on this endeavor and have now completed their task. Their recommendations are contained in the Convenors' Report to the City Council dated July 2, 1992. They were guided by a workplan developed primarily by the Department of Telecommunications with assistance from staff of several other City departments.

From the inception of educational access and public access requirements (referred to collectively as "public access") in the City's initial cable television franchises granted in the late 1970's and early 1980's, our office has steadfastly cautioned against excessive City entanglement in the management and control

of the access channels and in their programming. The kinds and degrees of involvement by the City as proposed in the Convernor's Report can in our view, create such entanglement and give rise to the types of legal problems which should be avoided by the City.

FINANCIAL PROPOSALS

The Convenors' Report proposes a substantial financial commitment by the City from franchise fees and other unspecified sources. It proposes a budget of \$2 million for three years of operation. The franchise agreements require a certain minimum level of specified services, equipment and facilities. [See Sec. 6.23(A)(2).] The franchise agreements also specify certain access corporation activities such as publicity, fundraising, outreach and other support services [See Sec. 6.23(A)(3)] and certain training programs (See Sec. 6.24(A)(4).] The Convenors' Report recommends an effort that exceeds the franchise requirements in the above referenced sections and that the City pay the additional costs. It does not include any reference or recommendation for fundraising as required by the franchise agreements. [See Sec. 6.23(A)(2).] The sole source of income appears to be from the City. Aside from the significance of such a financial commitment, such involvement by the City could constitute such an entanglement with the Access Corporation that it could give rise to City liability for actions of that corporation. With that degree of entanglement, actions by the Access Corporation or the city to influence program content (by endorsing the programming aired and/or denying financial support) likewise could give rise to City liability.

EDITORIAL CONTROL

The franchise agreements require the access channels to be scheduled, managed and operated on a first come, first serve, non discriminatory basis. [See Sections 6.23(A)(1), 6.23(C) and Section 1.36.] Moreover, Section 6.20.04 prohibits the Access Corporation from exercising any program censorship or other control of content except that permitted by law (e.g. obscenity). Contrary to the requirements in the franchise agreements, the Convenors' Report proposes that the Access Corporation act as more than managers of the access channel traffic. It proposes that they act as editors and producers as well. [See Convenor's Report, Governance and Policy Section, page 2, Access Corporation Bylaws, Article II, Section 2.1 and Section 2.2.] If the Access Corporation exercises control over program content, those refused permission to air programs or whose programs are edited may have a cause of action against the Access Corporation. Depending on the type and degree of its entanglement with the Access Corporation,

the City could also face liability for such actions by the Access Corporation.

CONTRACT ISSUES

As mentioned above, the cable franchisees are required to provide access channels and various equipment and facilities for public access users pursuant to each franchise agreement. The Convenors' Report recommends certain items of equipment and facilities in excess of those required in each franchise agreement. Such requests cannot be unilaterally imposed on the franchisees. If the City decided to support such requests, it would have to provide them itself or renegotiate the franchise agreements. Supporting the additional requests through renegotiation would probably mean the City would have to make additional concessions to franchisees. As an alternative to renegotiation, the City might seek to convince the cable franchisee's to unilaterally comply with additional requirements. [See Section 6.23(B)]. However, if the City payed for the additional requirements, renegotiated or expended efforts to obtain voluntary compliance, those actions could also be viewed as additional entanglements that could give rise to liability by the city for the Access Corporation actions.

INSURANCE AND INDEMNIFICATION

The Convenors' Report and the proposed bylaws only mention insurance and indemnification for the Board of Directors, Officers and employees of the Access Corporation. The franchise agreements require that such insurance be provided and that the Access Corporation indemnify and defend the City and hold it harmless against all claims or lawsuits which include the City or any of its elected officials, officers and employees. [See Sections 6.23A(8)(9).] Moreover, the Access Corporation should be directed to include the City as a named insured in its liability insurance policies. However, depending on the circumstances of a given situation and the type of insurance available, such measures although helpful may not prove completely adequate.

C O N C L U S I O N

It is our understanding that, the intent of the Council's action was to create an independent Access Corporation that is at arm's length from the City. Otherwise the City could become unnecessarily entangled in potential Access Corporation liability. The kinds and degrees of involvement proposed in the Convernors' Report can create a legal entanglement with the Access Corporation

Administrative Services Committee
November 23, 1992
Page 4.

which can impose on the City monetary liability as set for above. Accordingly, we recommend that the city proceed with great caution as this matter is considered.

Very truly yours,

JAMES K. HAHN, City Attorney

By 

EDWARD J. PEREZ
Assistant City Attorney

a:hernandez.ltr