CITY OF NORMAN, OK

STAFF REPORT

MEETING DATE: 10/24/2023

REQUESTER: Kathryn Walker, City Attorney

PRESENTER: Heather Poole, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-75 A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND COXCOM, L.L.C., FORMERLY KNOWN AS COXCOM, INC. FOR A NON EXCLUSIVE AGREEMENT TO PROVIDE CABLE SERVICES AND CABLE SYSTEM IN THE CITY OF NORMAN

BACKGROUND:

CoxCom has agreed to an agreement between the City and CoxCom, LLC regarding maintaining and extending their cable service into the City of Norman. CoxCom would not replace Norman's other cable franchises, but instead would be competing with them under this agreement. This agreement would allow access to the public rights-of-way for cable services.

DISCUSSION:

Under Oklahoma law, cable television providers are required to negotiate access to public rights of way on a city-by-city basis. This is done through agreements with cable television providers.

CoxCom will be providing a cable television service under 11 O.S. §22-107.1, and the City can require adequate assurance that they will provide adequate public, education, and government ("PEG") access channel capacity. Furthermore, the City's agreement with CoxCom would be forbidden from containing terms more favorable or less burdensome than our franchise agreement with other cable providers, which include BluePeak (Clarity) and DirecTV (AT& T).

A 2006 Federal Communications Commission (the "FCC") Order (FCC 06-180) dealing with the implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 (codified at 47 U.S.C. §541(a)(1)) stated that a franchising authority may award one or more franchises in its jurisdiction, but must not refuse to grant an additional competitive franchise unreasonably. The Order identified five areas that the FCC feels that local franchising authorities (municipalities) use to unreasonably prevent a competitive franchise from entering the market. Those areas are: (1) time for franchise negotiations, (2) build-out requirements, (3) franchise fees, (4) PEG network requirements, and (5) regulation of mixed-use networks. Without elaborating on the many details of this Order, the tone of the FCC continues to be very pro-competition and critical of municipalities whose actions may potentially stifle competition in the cable television market.

Under the terms of the agreement, CoxCom commits to paying the City of Norman a fee equal to 5% of the gross revenues of CoxCom and its affiliates collected from each subscriber to their cable services product. This fee is identical to what the other cable services in Norman currently pay as a franchise fee.

In this Agreement, CoxCom further agrees to provide four “streams” or “channels” of educational and governmental programming as long as the format is compatible with CoxCom’s technology. The term of the agreement is five (5) years, with the potential for renewal, modification, and/or extension of the agreement.

<u>RECOMMENDATION</u>:

Approval of the attached contract will protect the City’s right of way fee and public access interests for the term of the contract. The framework of this agreement provides for the City, by agreement, the same PEG access and the same 5% fee in lieu of franchise fees to the City of Norman as are now provided under the current cable franchise agreements, as well as the same five (5) year term.