

Study Session

December 6, 2022

BluePeak/Clarity Video Services
Agreement

BluePeak's Request

- BluePeak requests a franchise agreement similar to those implemented in other cities.
- Norman's other cable television agreements have "favored nation" clauses.
- Cox, AT&T (assigned to Direct TV) and OEC want a level playing field.

Franchise v. Agreement

- State statute requires Franchise agreements for utilities be voted on by residents
 - - usually for longer terms than licensing/right of way agreements
 - non-exclusive except for utilities granted regional coverage by statute

Video/broadband agreements

- no public election required
- Allows license for access to rights of way for purpose of providing cable services for video programming and internet
- Also non-exclusive

Video Services

- video programming, including cable services, provided through wireline facilities located at least in part in the public rights-of-way without regard to the delivery technology, including Internet protocol technology.
- Title 11 Okla. Stat. Sec. 22-107.1

Video Services

- Does not include video programming provided by mobile service provider.
- Does not include access to content, information, electronic mail, messaging or other services offered over internet.

Regulatory Landscape of Cable Television Law

- Overlap of federal, state and local law.
 - Federal Communications Commission (FCC)
 - Oklahoma law (Constitution and Statutes)
 - Local law (Ordinances)

Federal Communications Commission (FCC)

- Communications Act of 1934, as amended. (Most recently amended by the Telecommunications Act of 1996)

Historically provided broad guidelines and regulations for cable television service, with an emphasis on local regulatory control.

State regulation

- Oklahoma Constitution

- Article XVIII, § 5(a)

- Prevents a municipality from granting a franchise without the approval of a majority of the qualified electors residing within the municipality.

City Operations

City will provide a license to provide streaming services and other programming

Provide permits for installation of cable/fiber and other infrastructure

Provide similar terms for all such providers in City

Oklahoma law encourages competition

- 11 O.S. § 22-107.1
 - (B). No municipality shall grant any overlapping certificate, license, permit or franchise for cable television service within its jurisdiction on terms or conditions *more favorable or less burdensome* than those in any existing certificate, license, permit or franchise within such municipality.

Increased cable television competition

- Satellite television providers
 - Direct TV
 - Dish Network
 - EchoStar
- AT&T (Direct TV)
- Cox
- OEC

Shifting regulatory landscape

- Recent FCC Orders and Opinions indicate trend toward increased competition, and decreased local regulation:
 - 10/31/2007 Order banned exclusivity clauses in apartment complexes.
 - 12/20/2006 Order prevents municipalities from unreasonably refusing to award competitive franchises.

2002 Oklahoma Attorney General Opinion encourages competition

- 2002 AG 21
 - Federal law (the Communications Act of 1934) prohibits a municipality from unreasonably refusing to grant a competitive franchise.
 - The Oklahoma Constitution (Art. XVIII, § 5(a)) requires a municipality to deny a franchise if the voters disapprove the franchise for any reason.
- Art. XVIII, § 5(a) is preempted by the federal law.

2002 U.S. District Court
for Northern District of Oklahoma opinion

- Oklahoma Constitution is preempted by federal law to the extent it conditions the renewal of a cable franchise upon a vote of the electors of a municipality.

2006 Oklahoma Attorney General Opinion

- Oklahoma Constitution, Art. IX, § 2 grants telephone companies statewide authority to construct and operate lines to provide their services.
- Telephone companies are not required to obtain municipal franchise agreements prior to using telephone lines to provide television service.

Effect of regulatory changes

- Local regulatory control de-emphasized.
- Federal law controls.
- Competition encouraged.

AT&T Agreement

- 5-year contract / 5% fee.
- “Capacity” for 6 PEG channels.
- No production of City meetings.
- No public access channel.
- No reporting requirements.

Cox Contract

- 5-year contract / 5% fee.
- Provide 4 PEG channels.
- No Cox production of City meetings, events.
- City responsible for infrastructure to provide programming for public channel.

BluePeak

Offers to provide access channels comparable to other agreements (OU, NPS and City all have both channels and one subscription to BluePeak programming)

Same percentage (5%) of profits as other agreements with same definition of gross profits

Agrees to not limit access to services within its service area and to charge the same rates to all subscribers

?