City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: K-1718-118

File ID:	K-1718-118	**Type:**	Contract	**Status:**	Consent Item
Version:	1	**Reference:**	Item 20	**In Control:**	City Council
Department:	Legal Department	**Cost:**		**File Created:**	04/10/2018
File Name:	Coxcom Contract			**Final Action:**	

Title: CONTRACT K-1718-118: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA AND COXCOM, L.L.C., FOR THE PROVISION OF CABLE TELEVISION SERVICES AND THE PAYMENT OF A FRANCHISE FEE TO THE CITY FOR A PERIOD OF FIVE YEARS.

Notes: ACTION NEEDED: Motion to approve or reject Contract K-1718-118 with CoxCom, L.L.C., for a period of five years and, if approved, authorize the execution thereof.

ACTION TAKEN:___________________________________

Agenda Date: 04/24/2018

Agenda Number: 20

Attachments: K-1718-118 Cox Contract

Project Manager: Kathryn Walker, Assistant City Attorney

Entered by: kathryn.walker@normanok.gov

Effective Date:

History of Legislative File

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File K-1718-118

Body

BACKGROUND: In 2007, Cox Communications, Inc. ("Cox") contacted the City of Norman to discuss the City of Norman's cable television franchise. Cox initiated this contact based upon the City of Norman's approval of a five (5) year agreement with AT&T, and based upon the fact that Cox's television franchise was set to expire on December 4, 2008.

The 2007 contract (K-0708-136) was for a term of five (5) years and was renewed in 2013 (K-1213-176) for another five (5) year term. Recently, staff and Cox began discussions about the renewal of the 2013 contract. The contract before Council in this item, K-1718-118, if for a new five (5) year term, effective on April 9, 2018, when the prior contact ends.

DESCRIPTION: Contract K-1718-118 is essentially identical to the 2013 contract. The Contract before Council contains the same terms as the AT&T contract (K-1718-13) approved by Council in July 2017. Cox will continue to pay a fee equal to five percent (5%) of applicable gross revenues to the City. Cox will also continue to provide channels for non-commercial educational and governmental programming. The term of the new contract is five (5) years, effective on April 9, 2018. Franchise revenues from cable companies are recorded into the General Fund, Basic Cable account (010-0000-318.10-25).

From a renewal process perspective, these cable contracts have been approved by Council action based on federal law. Although there is an Oklahoma Constitutional provision that seems to indicate approval of a franchise requires the approval of a majority of qualified electors, this provision was pre-empted under federal law.

The United States Congress has the authority to preempt State law under the Supremacy Clause of the United States Constitution, Article VI, cl. 2. Laws of the federal government are “the supreme law of the land, ‘anything in the Constitution or laws of any state to the contrary notwithstanding.’” *State ex rel. Miller v. Huser,* 184 P. 113, 114 (Okla. 1919). A State law is invalid under the preemption doctrine to the extent that it conflicts with federal statute or when it “stands as an obstacle to the accomplishment and execution of the full purpose of Congress.” *Wilson v. Harlow*, 860 P. 2d 793, 799 (Okla. 1993).

In a 2002 opinion of the Oklahoma Attorney General’s Office, the Attorney General held that, the federal Cable Communications Act expressly preempts State laws concerning cable television, to the extent they are inconsistent with federal law, 47 U. S. C. § 556(c). 02-21 Op. Okla. Att'y Gen. (May 13, 2002). Section 541(a)(1) of the Cable Communications Act prohibits a franchising authority from unreasonably refusing to grant a competitive franchise whereas Article XVIII, §5(a) of the Oklahoma Constitution requires a franchising authority to deny a franchise if the voters disapprove the franchise for any reason. Because there is a conflict between federal and state law, the opinion of the Oklahoma Attorney General is that the applicable Oklahoma Constitutional provision is preempted by federal law.

The City of Broken Arrow challenged the Opinion of the Oklahoma Attorney General and required voter approval for the renewal of a cable franchise agreement with Cox. *Cox Communications Cent. II, Inc. v. City of Broken Arrow*, Okla. 02-CV-741-PJ, (N.D. Okla. 2003). The United States District Court for the Northern District held the Oklahoma Constitutional provisions were in conflict with the provisions and stated purpose of the Cable Communications Act, and therefore the Oklahoma Constitution was preempted by federal law. *Id.* at ¶3.

The Oklahoma Attorney General Opinion and the ruling from the United States District Court for the Northern District led the City to conclude in 2007 that the Oklahoma Constitutional provisions requiring voter approval of cable franchises were pre-empted by federal law, and voter approval could no longer be required to grant a cable franchise. That opinion remains unchanged.

RECOMMENDATION: Based on the information set out above, that the cox franchise be approved for an additional five years (5) and in all other respects is identical to the terms offered prior agreements and with AT&T, Staff recommends approval of Contract K-1718-118.