

Executive Summary

Cox Communications has served the residents of Omaha for more than 30 years. With this renewal request, Cox is seeking to serve the City for another decade. Federal law allows the City to consider four factors when deciding whether to grant or deny Cox's request. Without question, Cox meets the first three factors. The sole issue for the City Council is whether Cox's proposal to invest its own funds to enhance PEG access programming is reasonable to meet the City's future needs or whether the City will require Cox's customers to pay millions of dollars to fund a service only a very few watch.

Cox's History in Omaha.

The City of Omaha granted Cox Communications its first franchise in 1980. In 1991, the City granted Cox's first request for renewal. This is the second time Cox has requested that the City renew the company's authority to construct, operate, and maintain its cable system and to continue providing service to Omaha residents. Cox is seeking a renewal for a 10-year term.

Over the past three decades, Cox has invested billions in its network, its employees, and the City of Omaha. Cox is now one of Omaha's major employers with more than 1,000 employees and an annual payroll of nearly \$26,000,000. In 2010, it paid \$1,750,000 in City taxes as well as \$5,000,000 in franchise fees.

A comparison of Cox's service offerings in 1980 and what it offers subscribers today demonstrates Cox's deep commitment to bringing Omaha residents the most advanced cable services available:

- In 1980, Cox offered 40 total channels. Cox now offers more than 300 channels.
- In 1980, Cox had no high definition ("HD") channels. Cox now offers 69 HD channels, with more on the horizon.
- In 1982, Cox first introduced interactive services. Cox subscribers now have access to one of the most advanced interactive programming guides on the market.
- In 2004, Cox began offering programming using its "OnDemand" service. Cox subscribers now use the service every day to watch a variety of programs whenever they find it convenient.
- In 2006, Cox first offered digital video recorder ("DVR") service and in 2007 added high-definition DVR service. Cox subscribers can now record and watch their favorite programs whenever it suits their schedules.
- Since 1980, Cox has invested more than \$1 billion to upgrade its system. Omaha citizens enjoy one of the finest and most advanced cable systems in the country.

In short, Cox's commitment to Omaha is beyond question.

The Factors for Renewal

Federal law allows the City to consider the following four factors in connection with Cox's request for renewal:

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.¹

Cox undeniably satisfies the first three factors and Cox is confident that its renewal proposal will meet or exceed Omaha's future cable-related needs and interests just as Cox has met or exceeded those needs and interests over the past 30 years.

Factor A: The City raised no franchise compliance issues in the RFRP and, to the best of Cox's knowledge, over the past 30 years the City never has notified Cox that it failed to comply with a material term of its Franchise Agreement or with any applicable law. Even if a notice of non-compliance was issued at some point over the past 20 years, no issues remain unresolved. Cox, therefore, has indisputably complied with the existing franchise and applicable law.

Factor B: The City surveyed Cox's customers to determine satisfaction levels on the matters listed in federal law. On a scale of 1 to 5, with 5 being "Best," the City's survey found that 80.3% of customers ranked Cox's "quality of picture and sound" as 4 or 5, 65.6% ranked "the helpfulness of telephone customer representatives" as 4 or 5, 70.8% ranked "quickly restoring cable service when it goes out" as 4 or 5, and 72.5% ranked Cox's bills as "accurate and easy to understand" as 4 or 5. As the City's Subscriber Survey summarized, "Cox cable subscribers in Omaha appear to be reasonably satisfied" with the quality of Cox's service. The quality of Cox's service, therefore, obviously has been reasonable in light of the community's needs.

Factor C: Given Cox's 30-year track record of exceptional investment in Omaha, excellent customer service, and accurate, timely franchise fee payments, Cox has demonstrated the "financial, legal and technical ability" to continue operating a cable system and providing cable service to Omaha residents as set forth in Cox's renewal proposal.

¹ See 47 U.S.C., § 546.

Factor D: Cox’s proposal to meet Omaha’s future cable-related needs and interests is really quite simple: Continue investing in the cable system to keep pace with technology, safely maintain the cable system to meet or exceed applicable regulations, and continue to expand cable service offerings to provide the services our customers demand. Those goals should be, and are, uncontroversial.

The only major issue of disagreement between the City and Cox has been whether Cox’s proposal to fund *PEG access programming* is “reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.” Cox believes its proposal, which would enhance existing PEG access programming capabilities *without costing customers anything* is not only reasonable, but accurately reflects the demonstrated “needs and interests” of Cox’s subscribers, as explained further below.

Cox’s PEG Access Proposal

The Limits of Federal Law

To understand Cox’s proposal to enhance PEG access programming in Omaha without increasing costs to subscribers, one must understand the limitations imposed by federal law on franchising authority requirements for funding PEG access facilities and operations. Understanding these limits will help put the recommendations contained in the City’s December 2009 *Cable Related Community Needs Assessment* (“Assessment Report”) and the results of the subscriber surveys the City and Cox conducted into context.² Within the framework allowed by the law, Cox’s proposal emerges as more than reasonable, particularly when the costs of funding the City’s alternative proposal is taken into account.

As explained in greater detail in the *Legal Memorandum* Cox is providing in this submission, federal law allows the City to impose a franchise fee of up to 5% of Cox’s gross revenues from the operation of the cable system to provide cable service in the City. In addition, the City may require Cox to incur “*capital costs . . . for public, educational, or governmental access facilities.*” Federal law, however, prohibits the City from requiring Cox to pay PEG *operating expenses* for those facilities in addition to a 5% franchise fee.³

The law’s distinction between *capital costs*, such as those incurred for “bricks-and-mortar” facilities, durable equipment used for long periods, and other long-term costs, and *operating expenses*, such as staff salaries, utility costs, maintenance costs, *etc.*, has been clearly established in the law. Thus, when reviewing the recommendations made in the Assessment Report, one must keep in mind that Cox may only be required to incur the *capital costs* for PEG access facilities in addition to a 5% franchise fee – the *operating expenses* for those facilities will be borne by the City or a third party.

² The survey conducted by Cox is attached to this response as Exhibit 3.

³ See 47 U.S.C. § 542 (emphasis added).

The Assessment Report: Millions in New Costs

The Assessment Report identified millions of dollars of *capital* “needs” – buildings, studios, equipment, *etc.* – but ignored the millions of dollars in associated *operating* “needs” that would be required to staff the new buildings, operate the new studios, maintain the new equipment, and generally support the new PEG access infrastructure envisioned in the Assessment Report. There is nothing in the Assessment Report that indicates how the *operating expenses* would be paid if the Report’s recommendations were adopted, though the Assessment Report does cite existing programmers’ concerns that no funding is available to support an expansion of their operations.⁴

The City’s consultant estimated the *capital costs* of meeting all the recommendations in the Assessment Report would be **\$3,203,851**, based primarily on the cost of various new equipment specified in the Report. Cox’s analysis of the Assessment Report, however, revealed an additional **\$2,340,000** in unaccounted-for capital costs, such as new buildings and other facilities that the City’s consultants identified in the Report, but whose costs they failed to calculate. Thus, the total *capital cost* to meet all the recommendations in the Assessment Report would be **\$6,032,851** in today’s dollars.

New PEG Access Tax Unpopular

Federal law allows Cox to recover the additional PEG access capital costs as a line item on subscriber bills. If Cox were to recover these capital costs in its subscriber rates over the proposed ten-year term of the franchise pursuant to the FCC’s rate rules, which include a federally regulated rate of return, a \$0.79 tax on each and every subscriber for each and every month of the ten-year term would be required to fund those costs.

Such a fee would be enormously unpopular with Cox’s customers. As both the City and Cox surveys demonstrate, the PEG access channels (channels 17, 18, 22, and 109) have low viewership levels. Between 65% (City survey) and 78% (Cox) subscribers have “never” watched Channels 17 and 18. Approximately 80% of subscribers have “never” watched Channel 22, and more than 80% have never watched Channel 109. Of those who do watch the channels, most watch “rarely” or at best, infrequently.

Both surveys asked subscribers about funding PEG access channels, but they did so in distinctly different ways. The City’s survey avoided the question of an additional fee to fund PEG access; Cox’s did not.

The City’s survey asked:

How much of your current monthly cable bill do you think should be used to create local community programming about organizations, individuals, events, schools and local governments? Four dollars, three dollars, two dollars, one dollar nothing or some other amount?

⁴ For instance, Dr. Robert Franklin, Director of UNO TV is quoted on page 6 as saying he cannot add faculty or staff positions because “there is no money for additional salaries and benefits.”

Subscribers responded with various amounts, but the largest response – 20.3% – was “nothing.” The City’s question notably does not ask whether subscribers were willing to fund the existing PEG access channels or whether they were willing to pay an *additional fee* to fund PEG access. It only asked how much of a subscriber’s *existing* bill should be dedicated to specific programming content, and then provided suggested amounts. Such responses cannot support a conclusion that the Omaha community has any need or interest in providing additional funding to the existing *PEG access channels* because programs about “organizations, individuals, events, schools and local governments” can be found on other channels as well.

Cox, on the other hand, did ask subscribers whether they would be willing to pay an additional fee to fund PEG access programming. Cox’s survey asked:

Would you be willing to pay an additional charge on your monthly bill in order to have more channels to cover local government and local education?

Only 2% of subscribers responded “Yes.” Cox followed up with a question that measured the strength of support or opposition to an additional fee for supporting PEG Access⁵:

The City of Omaha is proposing adding a fee to all Cox cable TV bills that would be used to support additional TV programming covering local government, educational programming, and community access. This fee would be 25 cents per month, but could go as high as one dollar per month in future years. What is your opinion of this fee being added to your cable TV bill? Would you say you are:

Strongly in favor:	1%
Somewhat in favor:	4%
Neutral	14%
Somewhat opposed	17%
Strongly opposed	62%

The City’s survey cannot support an argument that there is a “need or interest” in more PEG access funding, whether through a new fee or otherwise, for PEG access channels. Cox’s survey demonstrates unequivocally that Cox’s subscribers will object to such a fee.

Operating Expenses: Twice as Much

But the \$6 million in recommended *capital costs* are only the beginning. Based on an analysis of the Assessment Report, we estimate that over the life of the franchise, the *operating expenses* would be more than double the capital costs – around **\$13,000,000**. For instance, the Assessment Report recommends adding at least 20 new paid staff at the various PEG access organizations – including four new City of Omaha employees. Beyond new labor costs, the Assessment Report envisions a new PEG access infrastructure of new buildings, studios, and other facilities, each of which will require maintenance, utilities, security, and the myriad other costs that come with operating such facilities.

⁵ The numbers in the question were based on the discussions within the informal negotiations with the City at the time the survey was taken.

Although nothing in the Assessment Report indicates how the operating expenses would be paid, federal law requires the costs to be borne by the City. Cox is unaware of any fund or budget from which those expenses, more than \$1,000,000 per year, would come. As a fundamental issue, requiring Cox to fund the construction of a new PEG access infrastructure without the City providing the funding to operate the new facilities can only be characterized as imprudent at best. Subscribers already object to a new fee for capital improvements – imagine how loud those objections would be if the improvements were unusable as a practical matter due to an absence of operational funding.

Cox's Solution: New Capabilities, No New PEG Tax

Cox proposes a different solution, one that will enhance the existing PEG access infrastructure to allow improved programming options, but will not increase subscriber bills. Cox's proposal will invest about **\$1.65 million** in PEG access programming in Omaha over the next 10 years, will enhance the capabilities of the access programmers and, in particular, the public access studio, and will burden neither subscribers nor the City with additional costs. Cox's proposal provides both a *capital* investment in PEG access facilities and *operating* support. Cox believes building on the existing infrastructure makes more sense, both financially and practically, than reinventing PEG access by committing to spend millions of dollars that neither subscribers, nor the City, are willing to provide.

Cox proposes to provide the following support for PEG access programming in Omaha:

- Four channels of PEG access programming. The programmers on the channel will be determined by the City or its designee.
- \$150,000 for a PEG capital grant for the purchase or improvement of PEG access facilities and equipment.
- Approximately \$200,000 worth of improvements to the public access studio located at 11505 W. Dodge Road. The improvements will include sound-proofing to allow both studio spaces to be used simultaneously, and a new connection to allow live call-in shows to be aired from the studio. This is a significant investment in a facility used, on average, by 24 people each month.
- Staffing resources valued at \$1.3 million over the 10-year franchise term.

Cox will agree to provide these resources without designating the capital costs as a line-item on customer bills, despite its right to do so under federal law. Cox, moreover, will agree to provide PEG operational support without deducting those expenses from Cox's franchise fee payment, which it also may do under federal law. Because it will absorb these expenses and *not* pass them through to customers or the City, the City will receive a considerably larger proportion of Cox's gross revenues than it could otherwise require under federal law, and the City will not have to explain a new PEG tax to the voters.

Cox's proposal will enhance the PEG access capabilities in Omaha and is commensurate with the interests subscribers have expressed in PEG access programming, with the value

subscribers place on PEG access programming, and with the cost subscribers are willing to pay for the programming.

Complimentary Services

In addition to the PEG access enhancements, Cox will provide the City with courtesy cable outlets and basic cable service at all public schools and City-owned and occupied buildings reachable by a standard cable drop. The value of this service is \$150,000 per year, or an additional \$1.5 million over the franchise term.

When compared to other service providers in the City, Cox’s proposal provides more benefits by far:

Provider	Franchise Fee %	Franchise Fee Payment/Year	Complimentary Service
Cox	5%	~\$5,000,000	~\$150,000
OPPD	0%	\$0	\$0
MUD	2%	???	\$0
CenturyLink	5%	???	???
DirecTV	\$0	\$0	\$0
Dish Network	\$	\$0	\$0

30 Years of History – A Bright Future Together

Cox is proud of its three decades in Omaha – proud of the network we have built, the services we provide, and the jobs we have brought to Omaha residents. As described in detail above and in the remainder of its response to the City’s RFRP, Cox more than satisfies all the factors relevant to the City’s evaluation of Cox’s franchise renewal proposal.

We regret that our request to continue serving Omaha residents for another decade appears to hinge on a service that the vast majority of our subscribers do not watch and do not wish to support financially. Cox has offered a way to enhance and improve the existing PEG access programming capabilities in the City without burdening our subscribers with a new tax or the City with increased operating costs. Cox submits that any denial of its renewal proposal based on Cox’s resistance to the imposition of millions of dollars in costs on our customers for PEG access channels and facilities, which will have no operational support from the City, would be unreasonable and would do a disservice to our subscribers and your residents.

Please review the full response, as well as the attachments. We trust the City Council will conclude that renewing Cox’s franchise for another 10 years based on the benefits described in this response is in the best interests of the City and its residents, and therefore is the wisest course.