RESOLUTION NO. 11484

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THE DOCUMENT FILED WITH THE CITY CLERK OF THE CITY OF SCOTTSDALE ENTITLED "AMENDMENTS TO VARIOUS PROVISIONS OF CHAPTER 7 OF THE SCOTTSDALE REVISED CODE REGARDING CABLE TELEVISION" AND ADOPTING A UNIFORM VIDEO SERVICES LICENSE AGREEMENT AND STANDARD FORM OF AFFIDAVIT AND APPLICATION THEREFORE.

WHEREAS, the City desires to make changes to the Cable Television provisions found in Chapter 7 of the Scottsdale City Code; and

WHEREAS, Arizona Revised Statutes, Title 9, Chapter 13 requires the City to adopt a Uniform Video Services License and a standard form of an application and affidavit therefore; and

WHEREAS, State law permits cities to declare documents to be public records and adopt ordinances by reference;

WHEREAS, the City Council is amending various provisions of Chapter 7 of the Scottsdale Revised Code to address cable television and video services regulation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Those certain documents entitled "Amendments to Various Provisions of Chapter 7 of the Scottsdale Revised Code Regarding Cable Television" attached as Exhibit "A", a paper and electronic copy of which is on file in the office of the City Clerk are, by this Resolution, declared to be a public record, and these copies are ordered to remain on file with the City Clerk.

Section 2. The Mayor and City Council hereby adopt the Uniform Video Services License Agreement attached as Exhibit "B" as the standard license to be issued by the City to qualified providers of cable television or video services.

Section 3. The Mayor and City Council hereby adopt the application and affidavit attached as Exhibit "C" as the standard form to be filed by providers of cable television or video services desiring a Uniform Video Services License issued by the City.
PASSED AND ADOPTED by the Council of the City of Scottsdale this 26\textsuperscript{th} day of June, 2019.

CITY OF SCOTTSDALE, an Arizona municipal corporation

W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Bruce Washburn, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney
"Amendments to Various Provisions of Chapter 7 of the Scottsdale Revised Code Regarding Cable Television"

Chapter 7 - CABLE TELEVISION

Footnotes:

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Cross reference— Utility poles and wires, § 47-141 et seq.
State Law reference— Authority of city to regulate cable television, A.R.S. § 9-505 et seq.

ARTICLE I. - IN GENERAL

Sec. 7-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Basic service means any service tier which includes the retransmission of local television broadcast signals.

Cable television system or cable communication system or CATV system means any nonbroadcast facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one (1) or more television broadcast stations; provided, however, that such definition shall not include any such facility that serves only subscribers in one (1) or more multiple-unit dwellings under common ownership, control, or management and does not use city rights-of-way. As used in this Chapter, cable television system shall be deemed to include Video Services as defined in A.R.S. § 9-1401.

CAPA means the communication and public affairs division of the city.

CATV facility means any network of cable, optical, electrical, or electronic equipment, including cable television systems, used for the purpose of transmitting telecommunications signals.

Company means any grantee of rights under this chapter awarding a license, or the successor, transferee, or assignee of such grantee.

Connection means the attachment of the drop to the first radio or television set of the subscriber.

Converter means an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver.

Dedication means those dedications and easements for public roadway and public utilities and other rights-of-way maintained for the benefit of the public and controlled by the city, the terms, conditions, or limitations of which are not inconsistent with the erection, construction, or maintenance of a cable communication system, its structures, or equipment.

Director means the Planning and Development Services Director, CAPA director, or the director's designee, as may be appropriate.

Drop means the coaxial cable that connects the facility to the nearest feeder cable of the cable network.

Easement means all public rights-of-way and public utility easements.

FCC means the Federal Communications Commission and any legally appointed, designated, or elected agent or successor.
Gross revenues means all revenue derived directly or indirectly by the licensee, its affiliates, subsidiaries, parent, and any person in which the licensee has a financial interest, from providing cable television services within the city, including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the licensee herein imposed directly upon any subscriber or user by the state or local or other governmental unit and collected by the licensee on behalf of the governmental unit.

Installation means the connection of the system from feeder cable to subscribers' terminals.

License means the nonexclusive right and authority to construct, maintain, and operate a cable television system through use of the public streets, public utility easements, other public rights-of-way, or public places in the city.

License agreement means the agreement executed by the city and licensee evidencing the grant of the license by the city.

Licensee means any grantee of rights under this chapter awarding a license; or the successor, transferee, or assignee of such grantee.

Monitoring means observing a communications signal carried on a CATV system, or the absence of such a signal, by any person without regard to whether such observation is by visual or electronic means. Monitoring does not include system-wide sweeps of the CATV system for purposes of verifying the integrity of the system, controlling return path transmissions, or billing for additional services.

Prime rate means the then current prime rate published and used by the Valley National Bank of Arizona.

Street means the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive, or easement now or hereafter held by the city, the county, or the state for the purpose of public travel or public utilities and shall include easements or rights-of-way as shall be now held or hereafter held by entities cited above.

Subscriber means a recipient of cable television service.

User means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

(Ord. No. 1757, § 2, 8-19-85; Ord. No. 2276, § 1, 2-20-90)

Sec. 7-2. - Purpose.

This chapter is established to create comprehensive cable television regulations to govern the licensing and operation of cable television systems within the city.

(Ord. No. 1757, § 1, 8-19-85)

Sec. 7-3. - Right of city to amend chapter.

The city expressly reserves the right to amend any section or part of this chapter so as to require additional or greater standards of construction, operation, maintenance, or otherwise on the part of a licensee for any reason determined to be desirable or necessary by the city council, including but not limited to new developments in the state of the technology of the cable communications industry and changes in federal or state laws, rules, or regulations.

(Ord. No. 1757, § 48, 8-19-85)

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Sec. 7-4. - Penalties.

Where this chapter provides alternative penalties or remedies they shall be cumulative and the imposition of one (1) penalty or remedy shall not prevent the imposition of any other penalty or remedy. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor.

(Ord. No. 1757, § 50, 8-19-85)


Sec. 7-5. - Reserved.

Sec. 7-6. - Administration.

The communications and public affairs Planning & Development Services division Department of the city ("CAPA\&D") shall have the following powers and duties in the administration of this chapter:

(1) Administer fully on a daily basis, under the authority of the city manager, the provisions of this chapter and all license agreements.

(2) Act as the representative of the city in all matters pertaining to the implementation of the provisions of this chapter and all license agreements.

(3) Resolve disputes or disagreements relating to a licensee's obligations under the license between subscribers, users, potential subscribers and users, and the licensee, but only in the event that such parties are unable first to resolve their dispute.

(4) Review and audit reports and other documents submitted to the city as required by this chapter or other law, so as to ensure that the necessary reports are completed and fulfilled pursuant to the terms of this chapter.

(5) Assure that all records, rules, and charges pertinent to the cable communications system in the city are made available for inspection at reasonable hours upon reasonable notice.

(6) Confer with the licensee and advise and supervise the interconnection and compatibility of the licensee's system with other cable and communications systems.

(7) Interpret and enforce the provisions of this chapter and all license agreements.

(8) Coordinate all cable license and license renewal proceedings and advise the city manager and council on same.

(9) Advise the city manager and the council on matters which may constitute grounds for revocation of a license agreement in accordance with this chapter.

(10) Advise the city manager and the council regarding proposed transfers of a cable communications system.

(11) Issue regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing, or use of a system as necessary.

(12) Require from a licensee such timely information and reports as may be deemed necessary to effectuate the provisions of this chapter or a license agreement.

(13) Perform any other duties assigned under the provisions of this chapter or other legislation hereafter enacted by the council or such other duties as the city manager may direct.
Sec. 7-7. - Public notice.

Minimum public notice of any public meeting relating to a CATV license or licensee shall be by publication once in a local newspaper of general circulation at least five (5) days prior to the meeting, and by announcement on at least two (2) local origination channels or the channels as specified in the license of a licensee’s CATV system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days prior to the meeting. Such announcement shall be made on the two (2) channels of highest use on which such announcement is feasible. In an emergency, CAPA shall give such public notice as is reasonable and practical. Reserved.

Sec. 7-8. - Purchase of CATV system by city.

(a) Right to purchase. In the event a licensee forfeits or the city terminates its license pursuant to provisions of this chapter, or at the normal expiration of the license term (preceded by at least one (1) year’s notice), the city shall have the right, directly or as an intermediary, to purchase the licensed CATV system.

(b) Purchase upon termination of the license. If a license is terminated for cause prior to the date of expiration, the city may purchase the CATV system for an equitable price pursuant to section 627(b) of the Cable Communications Policy Act of 1984 as amended.

(c) Purchase upon expiration of a license. In the event the city decides not to renew a license, the city shall have the right to purchase the system for its fair market value considering, among other factors, the replacement cost and the going concern value of the system. In this section:

   (1) Replacement cost means the cost of building a new system, using the latest technology and current costs, minus an allowance for the age and condition of the present system.

   (2) Going concern value means the benefits that attach to the business as a result of its location in the city, licensee’s reputation among license subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of old subscribers or acquisition of new subscribers; except no value shall be assigned to either the license itself or any increase in value arising out of any expectation of cable system revenues beyond the expiration date of the license.

(d) Waiver of relocation costs. The acceptance of a license by a licensee expressly waives its rights, if any, to any relocation costs that might otherwise be provided by law.

(e) Transfer to city. Upon exercise of this option and the payment of the purchase price by the city and its service of official notice of such action upon a licensee, the licensee shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the CATV system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth above, and the licensee shall execute such warranty deeds for other instruments of conveyance to the city as shall be necessary for this purpose.

(f) Arbitration of value and costs. In the event the city and a licensee cannot agree upon the value of the CATV system, either may give notice of a demand to the other for arbitration. Arbitration shall commence and proceed according to law except as follows:

   (1) The parties shall, within fifteen (15) days, appoint one (1) arbitrator each of whom is experienced and knowledgeable in the valuation of utility property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.
(2) Within thirty (30) days after appointment of all arbitrators, and upon ten (10) days' written notice to the parties, the board of arbitrators shall commence a hearing on the issue of valuation.

(3) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate, and deliberations shall be open to the public and at such times and places as stated in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the city attorney.

(4) At the close of the hearings, and within thirty (30) days, the board of arbitrators shall prepare findings and the decision agreed upon by a majority of the board which shall be filed with the city and served by certified mail upon the licensee. Unless the parties extend by mutual agreement the time within which the board of arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew should the board fail to reach a decision within thirty (30) days of the close of hearings.

(5) The decision of the board shall be final and binding upon the parties.

(6) Either party may seek judicial relief as provided in Arizona Revised Statutes title 12, chapter 9, article 1 [A.R.S. § 12-1501 et seq.].

(7) The cost of arbitration shall be borne equally unless the board of arbitrators finds the offer of the city or the demand of the licensee was unreasonable, in which case costs may be apportioned so that less or none of the costs may be borne by one (1) party.

(8) The time periods specified herein may be modified upon the mutual consent of the parties.

(Ord. No. 1757, § 43, 8-19-85)

Sec. 7-9. - Compliance with state and federal laws.

(a) Notwithstanding any other provisions of this chapter or the license to the contrary, a licensee shall at all times comply with all laws and regulations of the state and federal governments or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require a licensee to perform any service, or shall permit a licensee to perform any service, or shall prohibit a licensee from performing any service in conflict with the terms of this license or of any law or regulation of the city, then as soon as possible following knowledge thereof the licensee shall notify the city of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city and of this chapter and the license agreement.

(b) If the city determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the city shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter. Where substantial and material provisions of any license agreement are invalidated by subsequent action of the state or federal government, the city and the licensee shall renegotiate the terms of the license agreement to carry out its intent as much as possible.

(Ord. No. 1757, § 44, 8-19-85)

Sec. 7-10. - Landlord-tenant relations.

(a) Interference with cable service prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable television service, cable installation, or maintenance from a cable television company regulated by the lawfully operating under a valid and existing cable television license issued by the city; provided, however, that the council may establish necessary rules and standards it deems appropriate to protect the property rights of landlords and tenants.
(b) **Gratuities and payments to permit service prohibited.** Neither the owner of any multiple-unit residential dwelling nor his agent or representatives shall ask, demand, or receive any payment, service, or gratuity in any form as a condition for permitting or cooperating with the installation of cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

(c) **Penalties and charges to tenants for service prohibited.** Neither the owner of any multiple-unit residential dwelling or his agent or representative shall penalize, charge, or surcharge a tenant or resident or cause or threaten to cause any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a company operating under a valid and existing cable communication license issued by the city.

(d) **Reselling service prohibited.** No person shall resell, without the express written consent of both the licensee and the city, any cable service, program, or signal transmitted by a cable television company operating under a license issued by the city.

(e) **Protection of property permitted.** Nothing in this section shall prohibit a person from requiring that cable television system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance, and value of premises or the convenience and safety of persons or property.

(f) **Risks assumed by licensee.** Nothing in this chapter shall prohibit a person from requiring a cable television company from agreeing to indemnify the owner, or his agents or representatives, for damages or from liability for damages caused by the installation, operation, maintenance, or removal of cable television facilities.

(Ord. No. 1757, § 45, 8-19-85; Ord. No. 2276, § 5, 2-20-90)

**Sec. 7-11. - Tampering and fraudulent connections or sales.**

No person, whether or not a subscriber to a cable system, may intentionally or knowingly remove or damage or cause to be damaged any wire, cable, conduit, equipment, or apparatus of the licensee, or commit any act with intent to cause such removal or damage, or to tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of the licensee with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to the licensee, or to obtain cable television or other communications service or sell, rent, lend, offer, or advertise for sale, rental, or use any instrument, apparatus, or device or plans, specifications, or instructions for making or assembling the same to connect to the licensee's system with intent to cheat or defraud the licensee of any lawful charge to which it is entitled.

(Ord. No. 1757, § 46, 8-19-85)

**Sec. 7-12. - Competitive advantage prohibited.**

No licensee, nor any controlling stockholder of a licensee, shall directly or indirectly within the city use the position as cable licensee to gain a competitive advantage in the business of selling, leasing, renting, servicing, or repairing radios or television sets or other receivers or parts thereof which make use of standard broadcast entertainment signals, provided that nothing herein shall prevent a licensee from making modifications to the tuner input circuit of the subscriber's television receivers and the fine tuning of the customer's operating controls only, to ensure proper operation under conditions of cable connection at the time of installation or in response to subscriber complaints, or from the selling, servicing, or repairing of receivers and other equipment belonging to other CATV system operators for use in the conduct of their businesses.

(Ord. No. 1757, § 47, 8-19-85)
Sec. 7-13. - Licensee rules and regulations.

A licensee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the licensee to exercise its rights and perform its obligations under the license, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions hereof, the license agreement or applicable city, state, and federal laws, rules, and regulations.

(Ord. No. 1757, § 28, 8-19-85)

Sec. 7-14. - Availability of books and records.

A licensee shall fully cooperate in making available at reasonable times and the city shall have the right to inspect the books, records, financial records, maps, plans, and other like materials of the licensee applicable to the CATV system, at any time during normal business hours; cable television operations authorized pursuant to a license shall be provided simultaneously to CAPAP&D.

(Ord. No. 1757, § 31, 8-19-85; Ord. No. 2276, § 6, 2-20-90)

Sec. 7-15. - Other petitions and applications.

Copies of all petitions, applications, communications, and reports submitted by a licensee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to a license, shall be provided simultaneously to CAPA.

Reserved.

(Ord. No. 1757, § 32, 8-19-85; Ord. No. 2276, § 7, 2-20-90)

Sec. 7-16. - Reports.

(a) No later than March 31 of each year, a licensee shall submit a written report to the city, in a form directed by CAPA, which shall include:

1. A summary of the previous year's activities in development of this system, including but not limited to services begun or dropped, and subscribers gained or lost.

2. A financial statement, including a statement of income, a balance sheet, and a statement of sources and applications of funds, covering all years since the beginning of the license.

3. A current statement of cost of construction by component category.

4. A projected income statement, balance sheet, statement of sources and applications of funds, and statements of construction for the next two (2) years.

5. A reconciliation between previously projected estimates and actual results.

6. A summary of complaints, identifying the number and nature of complaints and their disposition.

7. A list of officers and members of the board of the licensee and the parent corporations.

8. A list of all limited partners and all stockholders holding one (1) percent or more of the voting stock of the licensee and any parent corporation.
(b) CAPA shall specify the form and details of all reports. If directed by the CAPA or the council, and annual report shall be presented at a public hearing at which the licensee shall summarize the contents of the report and members of the general public may comment thereon.

(c) A licensee shall prepare and furnish to the city, at the times and in the form prescribed by the city, such reports with respect to its operation, affairs, transactions, or property as may be reasonably necessary or appropriate to the performance of any of the functions of the city. Repealed.

(Ord. No. 1757, § 33, 8-19-85; Ord. No. 2276, § 8, 2-20-90)

Sec. 7-17. - Performance evaluation sessions.

(a) The city and a licensee shall hold scheduled-performance evaluation sessions within six (6) months of the completion of system construction to the initial service area (as defined by the licensee in its proposal to the city), and as requested by the council, but no more than once every three (3) years other than for cause. All such evaluation sessions shall be open to the public.

(b) Special evaluation sessions may be held at any time during the term of a license at the request of the council or the licensee.

(c) All evaluation sessions shall be open to the public. The licensee shall give public notice as required by this chapter of all evaluation sessions.

(d) Topics to be discussed at any scheduled or special evaluation session may include, but will not be limited to: service rate structures; license fee, penalties; free or discounted services; application of new technologies; systems performance, services provided; programming offered; customer complaints; privacy, amendment to this chapter; judicial and FCC rulings; line extension policies; and licensee or city rules.

(e) Members of the general public may add topics by requesting of the city that such topics be added to the agenda of its meeting.

(f) During a review and evaluation by the city, the licensee shall fully cooperate with the city and shall provide such information and documents as the city may need to reasonably perform the review.

(g) If at any time during its review the city determines that reasonable evidence exists of inadequate CATV system performance, it may require the licensee to perform tests and analyses directed toward such suspected inadequacies. The licensee shall fully cooperate with the city in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

(1) The nature of the complaint or problem which precipitated the special tests.

(2) What system component was tested.

(3) The equipment used and procedures employed in testing.

(4) The method, if any, in which such complaint or problem was resolved.

(5) Any other information pertinent to the tests and analyses which may be required.

(h) The city may require that tests be supervised, at the licensee's expense, by a professional engineer not on the permanent staff of the licensee. The engineer should sign all records of special tests and forward to the city such records with a report interpreting the results of the tests and recommending actions to be taken. Reserved.

(Ord. No. 1757, § 36, 8-19-85; Ord. No. 2276, § 9, 2-20-90)

Sec. 7-18. - Rates and charges.
(a) A licensee shall at all times have on file with CAPA a copy of its current schedule of charges which specifies the rates for all services and all additional charges, e.g., for installation, and includes all terms and conditions of service.

(b) Before rates or charges can be increased, a licensee shall file a revised schedule of charges with CAPA and notify all subscribers in writing at least thirty (30) days in advance. Those rates that are subject to regulation by the city shall not be increased except as provided for in this section; provided, however, rates subject to regulation may be increased without prior city approval by an amount not to exceed five (5) percent annually pursuant to section 623(E) of the Cable Communications Policy Act of 1984 as amended.

(c) The licensee may request a rate change at any time after the commencement of service provided that not more than one (1) request may be made by the licensee in any twelve-month period.

(d) The rate change procedure is as follows:

(1) Requests for a rate or service charge change shall be made to CAPA.

(2) Such requests shall contain written and documented justifications for the rate or service charge change, including but not limited to the following financial reports, reflective of the city CATV system only:
   b. Income statement.
   c. Cash flow statement.
   d. Statement of sources and application of funds.
   e. Detailed supporting schedules of expenses, income, assets, and other items as may be required.
   f. Statement of current and projected subscribers and market penetration.

(3) A licensee's accounting records applicable to the city CATV system shall be available for inspection by the city at all reasonable times. All documentation should specify in detail how costs which are common to both regulated and unregulated services have been allocated.

(4) The city shall have access to all records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the city CATV operation.

(5) All documents listed above and any others that the city may reasonably request shall be certified as accurate by an officer of the licensee and include sufficient detail and/or footnotes as may be necessary to permit the city to accurately determine the financial condition of the CATV system.

(6) Such request, along with the proposed rate schedule or service charge increases, shall be filed in triplicate with CAPA, one (1) copy of which shall remain on file at CAPA for public inspection.

(7) All rate or service charge proposals shall be submitted at least one hundred and twenty (120) days before the requested implementation date.

(e) Council procedures shall be as follows:

(1) The council shall have the authority to review the following rates, fees, and charges:
   a. Rates for the provision of basic service to subscribers, whether residential or commercial.
   b. Rates for the initial connection, and installation, of one (1) set of equipment necessary for the subscriber's receipt of basic service.
   c. Any other rates as may be permitted under FCC rules, or permitted by law.

(2) The council may refer any rate or service charge increase petitions to a hearing officer for investigation and evaluation. At council's sole discretion, the hearing officer ("hearing office") may be the director, another member of the city staff, or any other person deemed by the council to be qualified to perform in this capacity. Should the council make such referral, the hearing officer shall:

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a. Immediately investigate the proposed rate or service charge change.

b. Hold at least one (1) advertised public hearing, within sixty (60) days of receiving the rate or service charge change petition, at which time all persons desiring to be heard, including the licensee, shall be heard on any matter, including but not limited to the performance of the licensee, the licensee's services, and the proposed new rates.

c. Thirty (30) days after the final public hearing the hearing officer shall recommend either approval, modification, or disapproval of the requested change.

d. Such recommendation and evaluation made pursuant to the above section by the hearing officer shall be immediately transmitted to the council through the city manager.

e. The council may schedule and advertise a public hearing after receipt of the hearing officer's recommendations and thereafter either approve, modify, or disapprove the requested rate or service charge increase.

f. The council's determination after the hearing officer's recommendation shall be final.

(3) If the council desires to inquire into the rate or service charge change without referral to a hearing officer, it shall:

a. Immediately investigate the proposed change for not longer than sixty (60) days and include within that time at least one (1) advertised public hearing, as would a hearing officer pursuant to subsection (4)(2)b., above.

b. Within thirty (30) days of the final public hearing, the council may either approve, modify, or disapprove the requested rate or service charge change.

(4) If the council fails to render a written decision either accepting, rejecting, modifying, or deferring the licensee's petition within one hundred twenty (120) days of the licensee's petition, the licensee shall thereafter be entitled to put its proposed new rates into effect on a provisional basis, provided that it shall keep a full and accurate accounting of all income resulting from the provisional rates and shall be obliged for a period of ninety (90) days thereafter to refund the amount by which the provisional rates exceed the rates ultimately established by the council. Upon request by the council, the licensee shall provide a bond or other reasonable surety to insure that possible refunds due under this subsection shall be promptly made.

(5) If no final decision on the licensee's petition has been rendered by the council within two hundred ten (210) days of the licensee's petition for a rate increase, the licensee's petition shall be deemed approved.

(6) The council or hearing officer, as applicable, may consider the following factors in approving, modifying, or disapproving a request for a rate change or a recommendation as to a request for a rate change:

a. The ability of the licensee to render system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule.

b. The revenues and profits derived from the system services.

c. The efficiency of the licensee.

d. The quality of the CATV system service.

e. The original cost of the system, less depreciation.

f. A fair rate of return with respect to the cost of borrowing and the rates of return on investments having risks similar to those of cable television.

g. The extent to which the licensee has adhered to the terms of this chapter and its license agreement.

h. The fairness to city residents, subscribers, and users.

i. Capital expenditures by the licensee in providing updated technology and service to subscribers.
j. Such other factors as the council or the hearing officer, as applicable, may deem relevant.

k. No valuation shall be placed upon the license or the licensee’s goodwill. These items shall not be amortized as an expense, nor shall a return be paid by them. Further, consideration shall not be given to any rate increase application based, in whole or in part, upon increased cable communications system value due to any type of transfer or sale.

l. No liquidated-damage payments or the loss of revenues resulting from the imposition of any liquidated-damages authorized pursuant to conditions of this chapter shall be allowed by the council or considered by the hearing officer, as applicable, when considering a request for a rate increase.

(7) In making any rate decision, the city council shall enter a formal statement with a summary explanation of the decision.

(f) No licensee shall refuse to continue service or in fact limit or discontinue such service in the event a rate increase is denied by the council.

(g) Nothing in this chapter shall grant the city the authority to regulate any rate when such regulation is specifically prohibited or preempted by federal or state law or regulation. Reserved.

(Ord. No. 1757, §§ 37, 38, 8-19-85; Ord. No. 2276, § 10, 2-20-90)

Secs. 7-19—7-30. - Reserved.

ARTICLE II. - CATV LICENSE

Sec. 7-31. - Required; nonexclusive; other licenses.

(a) No CATV system shall be allowed to occupy or use the streets of the city, or be allowed to operate, without a CATV license. Any CATV license issued by the city shall be nonexclusive, and the city specifically reserves the right to grant, at any time, such additional licenses for cable television systems as the city deems appropriate.

(b) Licenses granted by the city pursuant to the provisions of this chapter are limited to allowing a licensee to occupy or use the streets of the city only for the purpose of constructing and maintaining a CATV system and providing cable television services. The provision of additional telecommunications or other services by a CATV licensee shall be subject to any and all state and federal laws, city ordinances, rules and regulations relating to the provision of such additional services.

(c) Beginning on July 1, 2019, new licenses shall be issued in the form of a Uniform Video Service License as adopted by Resolution of the City Council in accordance with A.R.S. § 9-1401 et seq.

(Ord. No. 1757, § 3, 8-19-85; Ord. No. 3007, § 1, 3-31-97)


Sec. 7-32. - Application.

(a) Beginning on July 1, 2019, an application for a new license shall be in the form of an application and affidavit as adopted by Resolution of the City Council in accordance with A.R.S. § 9-1414. The application and affidavit shall be filed with the City Clerk. Application for a CATV license may be made either in response to a request for proposals issued by the city, or by direct application to the city, in compliance with the provisions of this chapter.

(b) A request for proposals shall be made by the city in accordance with standard city procedures for notification of invitation to bid as specified in the charter, including publication once a week for two

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(2) consecutive weeks in a local newspaper of general circulation, with the first publication at least thirty (30) days before applications are due to the city.

(c) The issuance of a CATV license by the city, whether in response to a request for proposals or by direct application, shall be conditioned on the applicant's compliance with the provisions of this chapter and the other requirements of law.

(d) An application for a CATV license shall be for the entire territorial limits of the city or for a portion of the city, which shall be not less than three hundred twenty (320) acres, in a single parcel or one (1) or more contiguous parcels, under the ownership or legal control of a single person or entity. A license issued for less than the entire territorial limits of the city may include such additional area as may be reasonably necessary to make connections to the facilities necessary to provide services to the licensed area, but shall not entitle the licensee to provide services outside of the service area specified in the license. One (1) or more licenses may be granted to provide cable service within the same area.

(e) All persons desiring to secure a license to provide cable television service within the city shall be required to timely file with the city manager an application for license. Application shall be on a form prescribed by the city and shall contain all of the following:

(1) A statement of the applicant's financial condition and qualifications.

(2) A statement of the applicant's technical qualifications meeting all FCC requirements.

(3) A sworn statement in acceptable form that, if the applicant's application is approved and a license is issued to it by the city council, the applicant will comply with:
   a. All requirements of this chapter.
   b. Such other conditions and requirements as are contained in the license agreement.
   c. All lawful directives of the city.
   d. All requests by the city for information in connection with the applicant's application.

(4) A statement of ownership of the applicant, including:
   a. The form of legal organization of the applicant.
   b. Whether or not the entity is qualified or intends to qualify to do business in the state.
   c. The names, and residence and business addresses of all persons owning, or having a right to acquire in the future, any interest, equity, or otherwise, in excess of one (1) percent of the applicant or his affiliate. As used herein, "affiliate" includes any person who, directly or indirectly, controls, is controlled by, or is under common control with, an applicant.
   d. Whether or not the applicant or his affiliates has any ownership interest in any news media, including newspapers, magazines, radio, or television broadcast stations and, if so, the nature and extent of such ownership and the location of such entities.

(5) A general plan for CATV construction or service which shall, among other things, indicate where and in what sequence the applicant proposes to construct facilities and provide service, and proposed timetables for such construction and service in accordance with section 7-68.

(6) A statement by the applicant demonstrating how the award of the requested license would meet the needs and interests of the city and its residents.

(f) Each application for a license under this chapter shall be accompanied by a filing fee in the amount of five thousand dollars ($5,000.00). The fee shall be used to partially or wholly defray the costs of the licensing process, including the review of such applications, and shall be nonrefundable.

(g) In addition, if the total receipts from all such application fees are less than the costs of the licensing process, including the review of the applications, payment of all such costs by the successful applicant shall be a condition precedent to the award of the license to the successful applicant; provided, however, that the successful applicant shall not be responsible for payments in excess of
an amount as specified in the request for proposals. Such costs shall include, without limitation, all costs, including applicable staff time, incurred by the city in its study of cable television, selection of a consultant, preparation of this chapter, preparation of proposal documents, evaluation of all applications, examination of applicants’ qualifications, and preparation of the license agreement.

(b) The city shall give full consideration to each application. In the course of its review, it shall seek to determine whether the applicant can and will conform to this chapter, and it shall conduct at least one (1) advertised public hearing. The council shall consider, in passing upon the license application, the following factors, together with such other factors as the city may deem relevant, including any specified in the request for proposals:

1. The financial status, qualifications, and capacity of the applicant and evidence of its commitment to the use of its financial capacity to provide excellent local programming and service.

2. The technical, legal, character, and financial qualifications of the applicant, as may be shown by operations in other cities or by other means, and evidence of its commitment to the use of such capacity to provide excellent local services.

3. The apparent need or lack of need for CATV service or additional CATV service in the city.

4. The performance of any existing licensees and whether or not such other licensees are providing excellent service.

5. Whether any part of the city is not receiving service or is not going to receive service in the near future.

6. The apparent capacity or incapacity of the applicant to conform to this chapter.

7. The adequacy of the applicant’s proposed general plan.

8. All other items contained in the application.

(Ord. No. 1757, § 4, 8-19-85; Ord. No. 3007, § 2, 3-31-97)

**State Law reference**—License applications, A.R.S. § 9-507.

Sec. 7-33. - Agreement and incorporation of application.

(a) If a license is granted, the license shall incorporate therein the application, as the same has been approved or modified by the council. The license agreement shall require the licensee to conform to the general plan included in the application in all construction and service, may have such other binding provisions and regulations in addition to those imposed by this chapter, and may authorize service in all or in some part or parts of the city.

(b) The licensee agrees to provide in a timely manner all services, consistent with its license, to provide cable television service within the confines of the city. In the event of a conflict between the application and the provisions of this chapter or the license, that provision shall prevail which, in the opinion of the city, provides the greatest benefit to the city and subscribers.

(Ord. No. 1757, § 5, 8-19-85)

Sec. 7-34. - Reserved.

Sec. 7-35. - Duration and acceptance.
A license and the rights, privileges, and authority granted shall take effect and be in force from and after final passage by the city council thereof upon the issuance of a Uniform License, as provided by law, and shall continue in force and effect for a term of fifteen (15) years or other term as specified in the license, provided that within fourteen (14) days after the date of final passage of the license the licensee shall file with CAPA its unconditional acceptance of the license and promise to comply with and abide by all of its provisions, terms, and conditions. Such acceptance and promise shall be in writing, and approved by the city, duly executed and sworn to, by, or on behalf of the licensee before a notary public or other officer authorized by law to administer oaths.

(Ord. No. 1757, § 7, 8-19-85; Ord. No. 2276, § 11, 2-20-90)

Sec. 7-36. - Fees.

(a) For the reason that the streets of the city to be used by a licensee in the operation of its system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and that the grant to a licensee to use the streets is a valuable property right without which the licensee would be required to invest substantial capital in right-of-way costs and acquisitions, the licensee shall pay to the city an amount as specified in the license but not more than five (5) percent of the licensee's annual gross revenue from all sources attributable to the operations of the licensee within the confines of the license area. In the event that the five (5) percent limitation on license fees imposed by the terms of the Cable Communications Policy Act of 1984 is raised, by an act of Congress or the Federal Communications Commission, the city shall have the right to raise the percentage charged under this section, at its discretion, up to the amount of the limit, upon giving the licensee ninety (90) days notice, after the effective date of the action.

(b) This payment shall be in addition to any other tax or payment owed to the city or other taxing jurisdiction by the licensee.

(c) A license fee shall be assessed quarterly: January 1—March 31; April 1—June 30; July 1—September 30; October 1—December 31. A licensee shall file a complete and accurate verified statement of all gross revenues within the city during the period for which said payment is made. Said payment shall be made to the city treasurer not later than thirty (30) days after the expiration of each quarter-year.

(d) Except as limited by state law, the city shall have the right to inspect a licensee’s income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within one thousand ninety-five (1,095) days following the close of each of the licensee’s fiscal years. Any additional amount due the city as a result of the audit shall be paid within thirty (30) days following written notice to the licensee by the city, which notice shall include a copy of the audit report. If the audit discloses underpayment greater than five (5) percent of the amount paid to the city under the terms of this section, the licensee shall be responsible for the cost of such audit.

(e) In the event that any license payment or recomputed amount, cost, or penalty is not made on or before the applicable dates herefore specified, interest shall be charged daily from such date at an annual rate two (2) percentage points above the then applicable prime rate.

(Ord. No. 1757, § 29, 8-19-85; Ord. No. 2442, § 3, 4-6-92)

State Law reference—Authority to impose fee, A.R.S. § 9-506.

Sec. 7-37. - License subject to police powers.

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(a) In accepting a license, the licensee acknowledges that its rights thereunder are subject to the police power of the city to adopt and enforce general ordinances necessary for the health, safety, and welfare of the public, and it agrees to comply with all applicable state laws and ordinances enacted by the city pursuant to such power.

(b) Any conflict between the provisions of this chapter or the license and any other present or future exercise of the city's police powers shall be resolved in favor of the latter, except that any such exercise, that is not of general application in the jurisdiction or applies exclusively to licensee or CATV systems which contain provisions inconsistent with this chapter or the license, shall prevail only if upon such exercise the city finds that an emergency exists constituting danger to health, safety, property, or general welfare or such exercise is mandated by law.

(c) Licensee's use of the rights of the way of the City shall be subject to any applicable right of way management provisions set forth in Chapter 47 of this Code and all construction and installation of facilities therein shall be in conformance with any construction standards promulgated by the Maricopa Association of Governments and City of Scottsdale supplements thereto and any other provisions set forth in the City's Design Standards and Policies Manual.

(Ord. No. 1757, § 9, 8-19-85)

Sec. 7-38. - Use of licensee's facilities.

The city shall have the right, during the life of a license, to install and maintain, free of charge, upon the poles of a licensee any wire and pole fixtures that do not unreasonably interfere with the CATV operations of the licensee.

(Ord. No. 1757, § 10, 8-19-85)

Sec. 7-39. - Additional costs.

Costs to be borne by a licensee shall include, but shall not be limited to, all costs of publication of notices prior to any public meeting provided for pursuant to this chapter or the license to be issued hereunder, and the costs of preparation of all books, records, financial records, maps, plans, and other like materials in accordance with the provisions and requirements of this chapter.

(Ord. No. 1757, § 11, 8-19-85)

Sec. 7-40. - Notices, etc.

All notices from a licensee to the city pursuant to the license shall be sent to CAPA&P&D, ATTN: Director. A licensee shall maintain with the city, throughout the term of the license, an address in the city for service of notices by mail. If required in the request for proposals, a licensee shall maintain an office in the city and a telephone number in the city for the conduct of matters related to this chapter or the license during normal business hours.

(Ord. No. 1757, § 12, 8-19-85; Ord. No. 2276, § 12, 2-20-90)

Sec. 7-41. - Letter of credit.

(a) Within ten (10) days after formal award of a license, a licensee shall deposit with the city a letter of credit from a financial institution approved by the city in the amount of twenty-five thousand dollars ($25,000.00) or such other amount as may be specified in the license, which letter of credit may not
be revoked except in accordance with subsection (f) hereof. The form and content of such letter of
credit shall be approved by the city attorney. The letter of credit shall be used to ensure the faithful
performance by a licensee of all provisions of the license, compliance with all orders, permits, and
directions of any agency, commission, board, department, division, or office of the city having
jurisdiction over its acts or defaults under this license, and the payment by the company of any
claims, liens, and taxes due the city or other municipalities which arise by reason of the construction,
operation, or maintenance of the system.

(b) The letter of credit shall be maintained by a licensee at the amount specified in the license during
the entire term of the license, even if amounts have to be withdrawn pursuant to subsection (a) or (d)
of this section, except that the dollar amount may change in accordance with subsection (g) of this
section.

(c) Whenever the city shall receive payment of any amount against the letter of credit, the licensee shall
pay to, or deposit with, the financial institution with which it maintains the letter of credit, an amount
sufficient to replenish the letter of credit to its full value of the amount as specified in the license
within ten (10) days after the licensee has been tendered delivery, by certified mail, return receipt
requested, of the request for payment. CAPAB&D shall be furnished with written proof of
replenishment not later than twenty-four (24) hours after it is accomplished.

(d) If a licensee fails to pay to the city any compensation within the time fixed herein, or fails after ten
(10) days' notice to pay to the city any taxes due and unpaid, or fails to repay the city within ten (10)
days, any damages, costs, or expenses which the city is compelled to pay by reason of any act or
default of the licensee in connection with the license, or fails after three (3) days' notice of such
failure by the licensee to comply with any provision of this license which the city reasonably
determines can be remedied by demand on the letter of credit, the city may immediately request
payment of the amount thereof, with interest thereon at the rate of one (1) percent per month, from
the letter of credit. Upon such request for payment, the city shall notify the licensee of the amount
and date thereof.

(e) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of
the city, whether reserved by a license or authorized by law, and no action, proceeding, or exercise
of a right with respect to such letter of credit shall affect any other right the city may have.

(f) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the
intention not to renew stated by the surety until thirty (30) days after receipt by the Office of
Communications and Public Affairs, Planning & Development Services, City of Scottsdale, Arizona, by
certified mail, of a written notice of such intention to cancel or not to renew."

(g) The amount of the letter of credit shall annually increase or decrease in the same percentage as
any increase or decrease in the Consumer Price Index for the Los Angeles-Long Beach Metropolitan
Areas as compiled by the United States Department of Labor, Bureau of Labor Statistics, utilizing the
Consumer Price Index for calendar year 1985 as the base period.

(Ord. No. 1757, § 15, 8-19-85; Ord. No. 2276, § 13, 2-20-90)

Sec. 7-42. - Performance bond.

(a) Within thirty (30) days after the award of a license, the licensee shall file with the city a performance
and payment bond in the amount of five hundred thousand dollars ($500,000.00), or such other
amount as may be specified in the license, in favor of the city. This bond shall be approved by the
city attorney and shall be maintained throughout the license term but may be reduced or terminated
earlier as the city may determine.

(b) In the event a licensee fails to comply with any law, ordinance, or regulation governing the license,
or fails to well and truly observe, fulfill, and perform each term and condition of the license, including
the licensee's proposal which is incorporated herein by reference, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the licensee, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in section 7-41.

(c) The city may, upon completion of any construction and payment of all construction obligations of the initial service area satisfactory to the city, reduce the requirement of the licensee to maintain the bond.

(d) The bond shall be subject to the approval of the city attorney and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by surety until sixty (60) days after receipt by the Office of Communications and Public Affairs Planning & Development Services, City of Scottsdale, Arizona, by certified mail, return receipt requested, of a written notice of intent to cancel or not to renew."

(e) The rights reserved by the city with respect to the bonds herein are in addition to all other rights and remedies the city may have under the license or any other law or body of law.

(Ord. No. 1757, § 16, 8-19-85; Ord. No. 2276, § 14, 2-20-90)

Sec. 7-43. - Liability insurance, etc.

(a) A licensee shall maintain, and by its acceptance of the license specifically agrees that it will maintain, throughout the term of the license, comprehensive general liability insurance, including contractual coverage insuring the city and the licensee in the minimum amount of five million dollars ($5,000,000.00), or such other amount as may be specified in the license, combined single limit. Such figure may be increased at the request of the city to compensate for inflation or exposure to loss.

(b) Any insurance policy obtained by a licensee in compliance with this section shall include the city as an additional insured, shall be primary, and must be approved by the city and the city attorney, and such insurance policy, together with written evidence of payment of required premiums, shall be filed and maintained with CAPAPD during the term of the license, and may be changed from time to time to reflect changing liability limits. A licensee shall immediately advise the city of any litigation that may develop that would affect this insurance or reduce the amount of coverage.

(c) Neither the provisions of this section nor any damages recovered by the city hereunder shall be construed to limit the liability of a licensee under any license issued hereunder or for damages.

(d) All insurance policies maintained pursuant to the license shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be canceled by the insurance carrier, nor the intention not to renew be stated by the insurance carrier, until thirty (30) days after receipt by the Office of Communications and Public Affairs, City of Scottsdale, Arizona, by certified mail, of a written notice of such intention to cancel or not to renew."

(Ord. No. 1757, § 17, 8-19-85; Ord. No. 2276, § 15, 2-20-90)

Sec. 7-44. - Indemnification.

(a) A licensee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the city, its officers and employees, from any and all claims (including claims alleging the negligence of the city, its officers and employees), suits, actions, liability, and judgments for damages (including but not

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limited to expenses for legal fees and disbursements and liabilities assumed by the city in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of a licensee, its servants, agents, consultants, contractors, subcontractors, or employees, or to which the licensee's negligence shall in any way contribute, including without limitation any actions taken by any contractor, journeyman, consultant, or any other person employed by the licensee to place, remove, maintain, repair, or relocate any of the licensee's facilities on public or private ways or easements as well as in or on public or private buildings or structures.

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, or the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or of any other right of any person (excluding claims arising out of or relating to city programming).

(3) Arising out of a licensee's failure to comply with the provisions of any federal, state, or local statute, ordinance, or regulation applicable to the licensee in its business hereunder.

(b) The foregoing indemnity is conditioned upon the following:

(1) The city shall give a licensee prompt notice of the making of any claim or the commencement of any action, suit, or other proceeding covered by the provisions of this section.

(2) Nothing herein shall be deemed to prevent the city from cooperating with a licensee and participating in the defense of any litigation by its own counsel at its sole cost and expense.

(3) No recovery by the city or any sum by reason of the letter of credit required in section 7-41 hereof shall be any limitation upon the liability of a licensee to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the licensee under the terms of this section.

(Ord. No. 1757, § 18, 8-19-85; Ord. No. 2276, § 16, 2-20-90)

Sec. 7-45. - Liquidated damages.

(a) By execution of its license agreement, a licensee shall agree that failure to comply with certain provisions of this chapter and the license agreement will result in damage to the city, and that it will be impracticable to determine the actual amount of such damage. Therefore, the licensee and the city will negotiate an amount of liquidated damages to be chargeable by the city against the letter of credit in each instance. The license agreement will specify the amount of liquidated damages to apply to the following:

(1) The failure to complete system construction or provide service in accordance with section 7-68, unless the city specifically approves by motion or resolution a delay caused by the occurrence of conditions beyond the licensee's control.

(2) The failure to submit any report, data, documents, reports, maps, charts, and information in a timely manner as required by this chapter.

(3) The failure to test, analyze, and report on the performance of the system following a request pursuant to section 7-41.

(4) The failure to pay the license fee when due pursuant to section 7-68.

(5) The failure to comply with the operational standards following a resolution or ordinance of the council directing the licensee to make improvements pursuant to section 7-71.

(6) The failure to close an encroachment permit by the date agreed upon by the city and a licensee.

(7) The failure to make licensee's books and records available as required by section 7-14.
(8) The failure to meet any operational standard for a full ninety (90) days following a resolution or ordinance of the council directing the licensee to make improvements pursuant to section 7-71. The licensee may be required by the city to reduce all basic subscriber fees by twenty-five (25) percent until all operational standards are met.

(9) The failure to remedy any other violation of this chapter or the license agreement within fifteen (15) days of receipt of notice of each violation.

(b) Any liquidated damages imposed by a license may be reduced by the city if it finds that the failure of the licensee resulted from conditions beyond the licensee's control. The licensee shall bear the burden of proof in establishing the existence of such conditions.

(c) The liquidated damages provided in a license shall annually increase or decrease in the same percentage as any increase or decrease in the Consumer Price Index for the Los Angeles-Long Beach Metropolitan Area, as compiled by the United States Department of Labor, Bureau of Labor Statistics, utilizing the Consumer Price Index for calendar year 1986 as the base period.

(d) The city shall not allow a licensee to include any liquidated damage payments or the loss of revenues resulting from the imposition of any liquidated damages authorized pursuant to the conditions of this chapter when considering a request for a rate increase.

(Ord. No. 1757, § 39, 8-19-85; Ord. No. 2276, § 17, 2-20-90)

Sec. 7-46. - Renewal.

(a) A license may be extended in accordance with the provisions of A.R.S. § 9-1420. renewed by the city upon application of the licensee pursuant to the procedure established in subsection (b) of this section, and in accordance with the then applicable state, federal, and local law.

(b) A licensee desiring renewal of its license shall so notify the city no later than thirty-six (36) months prior to the expiration of the license and formally request the commencement of proceedings to determine if a renewed license shall be granted. Upon receipt of such a request the city shall establish a date by which the licensee is to file its renewal Application and the information to be provided therein. Following the filing of this renewal application, the city shall commence proceedings, consistent with the requirements of section 626 of the Cable Communications Policy Act of 1994, as amended, to determine whether a renewal shall be granted. A public proceeding, involving prior public notice and opportunity for all interested parties to comment, will be for the purpose of determining whether the licensee should be granted a renewed license, considering:

(1) Whether the licensee has substantially complied with the material terms of the existing franchise and applicable law;

(2) The quality of the licensee's service in light of community needs;

(3) The financial, legal, and technical ability of the licensee to provide the proposed facilities and services; and

(4) Whether the licensee's proposal is reasonable to meet the future cable-related community needs and interests.

Based on the record of this proceeding the council will issue a written decision granting or denying the renewal application. The city may make a grant of the renewal application subject to the payment of a fee in an amount adequate to reimburse the city for its cost in the renewal process.

(Ord. No. 1757, § 8, 8-19-85)

Sec. 7-47. - Transfer.

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(a) Except as provided by applicable law, a license issued pursuant to this chapter shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, or otherwise, or mortgaged or hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person without the prior written consent of the city, and then only under such conditions as may be required by the city.

(b) The proposed purchaser, transferee, or assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of this chapter and must sign the license agreement.

(c) A licensee shall promptly notify CAPAP&D of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the licensee. For purposes of this section, "control" of the license is defined as any ownership interest in the license, referred to in subsection (a) of this section, of greater than then (10) percent. CAPAP&D shall be notified in writing within thirty (30) days of the acquisition or accumulation by any person or group of persons of ten (10) percent of the ownership interests or control of a licensee. Every change, transfer, or acquisition of control of a licensee shall be made subject to the approval of the city council. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into all qualifications of the prospective controlling party, and the licensee shall assist the city in any such inquiry.

(d) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of a license prior to substantial completion of construction of the proposed system.

(e) If the city council takes no action on any transfer of any ownership interest within thirty (30) days of receipt of the written notice of the transfer required by subsection (c) of this section, the council is deemed to have approved the transfer. The city may inform the licensee in writing that it needs additional time before the proposed transfer can be approved or denied.

(Ord. No. 1757, § 30, 8-19-85; Ord. No. 2276, § 18, 2-20-90)

Sec. 7-48. - Foreclosure on system; termination of leases.

Upon the foreclosure or other judicial sales of all or a substantial part of the CATV system, or upon the termination of any lease covering all or a substantial part of the CATV system, or upon the occasion of additional terminating events, the licensee shall notify the city of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the licensee has taken place, and the provisions of this chapter governing the consent of the city to such change in control of the licensee shall apply.

(Ord. No. 1757, § 41, 8-19-85)

Sec. 7-49. - Receivership.

The city shall have the right to cancel a license one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the licensee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of the one hundred twenty (120) days or unless:

1. Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this chapter and remedied all defaults thereunder; and

2. Within the one hundred twenty (120) days, the receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such

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receiver or trustee assumes and agrees to be bound by each and every provision of this chapter
and the license granted to the licensee.

(Ord. No. 1757, § 42, 8-19-85)

Sec. 7-50. - Forfeiture and termination.

(a) In addition to all other rights and powers retained by the city, under this chapter or otherwise, the
council reserves the right to forfeit and terminate a license and all rights and privileges of the
licensee hereunder in the event of a substantial breach of its terms and conditions. A substantial
breach by the licensee shall include, but shall not be limited to, the following:

(1) Violation of any material provision of this chapter or the license agreement or any material rule,
order, regulation, or determination of the city made pursuant to the license.

(2) Attempt to evade any material provision of the license or practice of any fraud or deceit upon
the cable television system customers and subscribers or upon the city.

(3) Failure to begin or complete system construction or system extension.

(4) Failure to provide the services promised in the licensee's application as incorporated herein by
section 7-33.

(5) Failure to restore service after forty-eight (48) consecutive hours of interrupted service, except
when approval of such interruption is obtained from the city.

(6) Material misrepresentation of fact in the application for or during negotiation relating to the
license.

(7) Failure to inform the city of a transfer of interest or to comply with the city council's directive
concerning any transfer of interest as provided in section 7-47.

(b) None of the foregoing shall constitute a major breach if a violation occurs which is without fault of a
licensee or occurs as a result of circumstances beyond a licensee's control. A licensee shall not be
excused by more economic hardship nor by nonfeasance or malfeasance of its directors, officers, or
employees. A licensee shall bear the burden of proof in establishing the existence of such
conditions.

(c) The city may make a written demand by certified mail that a licensee comply with any such
provision, rule, order or determination under or pursuant to the license. If the violation by the licensee
continues for a period of thirty (30) days following such demand without written proof that the
corrective action has been taken or is being actively and expeditiously pursued, the city may
consider the issue of terminating the CATV system license; provided that the city shall cause to be
served upon the licensee, at least twenty (20) days prior to the date the city is to consider the issue
of termination, a written notice of intent to request such termination and the time and place of the
meeting. Public notice of the meeting shall be given.

(d) Prior to the meeting, the director shall provide the council with a report of the director's findings on
the issue and a recommendation for disposition. The city council shall hear and consider the issue
and shall hear any person interested therein—and determine in its discretion whether or not any
violation by the licensee has occurred.

(e) Should the council determine that the violation by the licensee was the fault of the licensee and
within its control, the council may be resolution, declare that the license of the licensee shall be
forfeited and terminated unless there is compliance within such period as the council may fix. Such
period shall not be less than sixty (60) days, provided that no opportunity for compliance need be
granted for fraud or misrepresentation.

(f) The issue of forfeiture and termination shall automatically be placed upon the council agenda at the
expiration of the time set for compliance. The council then may terminate the license forthwith upon
finding that the licensee has failed to achieve compliance or may further extend the period, at its discretion.

(Ord. No. 1757, § 40, 8-19-85; Ord. No. 2276, § 19, 2-20-90)

**State Law reference—** Authority to terminate license, A.R.S. § 9-508.

Sec. 7-51. - Removal of system upon expiration.

At the expiration of the term for which a license is granted, or upon its termination as provided herein, the licensee shall forthwith, upon notice by the city, remove at its own expense all designated portions of the CATV system from all streets and public property within the city and shall restore the streets and public property to their former condition. If the licensee fails to do so, the city may perform the work at the licensee's expense.

(Ord. No. 1757, § 34, 8-19-85)

Secs. 7-52—7-65. - Reserved.

**ARTICLE III. - SYSTEM EXTENSION, OPERATION AND MAINTENANCE**

Sec. 7-66. - Rights of individuals, subscribers, and users.

(a) A licensee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, rational origin, age, sex, or level of income. A licensee shall comply at all times with all other applicable federal, state, and local laws and regulations.

(b) A licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, state statutes, and local regulations, and as the same may be amended from time to time.

(c) A licensee shall comply with the subscriber privacy requirements of section 631 of the Cable Communications Policy Act of 1984 as amended.

(d) The licensee, or any of its agents or employees, shall not sell, or otherwise make available to any party:

(1) Lists of the names and addresses of subscribers.

(2) Any list which identifies the viewing habits of individual subscribers where those subscribers are identified by name, address, or other techniques which would allow identification of an individual or household.

This section does not prohibit the licensee from providing composite ratings of subscriber viewing to any party.

(e) The city shall not prohibit or limit any program or class or type of program or otherwise censor the communications or signals by a licensee or other parties over the cable communications system, other than programs on the designated government access channel or channels, and shall not promulgate any regulation or condition which would interfere with the right of free expression by means of cable television.

**State Law reference—** Similar provisions, A.R.S. § 9-510.

(f) A licensee shall not prohibit or limit any program or class or type of program presented over any channel made available for public access, educational access, government access, local origination, Resolution No. 11484

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or leased access purposes, except for programs originated or produced by the licensee and except when required by any applicable law, rule, or regulation.

(g) A licensee shall establish and conform to the following rules regarding refunds to subscribers and users:

(1) All normal equipment and service installations must be made within seven (7) business days of the date the order is placed. In the event that the licensee fails to provide such service or equipment within the required time period, the licensee shall within five (5) days thereafter refund any deposit or charge which has been made. Nothing in this section shall be construed to relieve a licensee of any responsibility it may have under any separately executed contracts or agreements with subscribers or users. Nothing in this section shall be construed as limiting a licensee's liability for liquidated damages which may be imposed under this chapter or the license agreement for the violation or breach of any provisions thereof. Nothing in this section shall be construed to limit a licensee's liability for damages because of its failure to provide the service for which the deposit or charge was made.

(2) In the event that a subscriber terminates basic service during the first twelve (12) months of service because of the failure of a licensee to render the service in accordance with the requirements set forth in this chapter, or in the license agreement, as determined by CAPAP&D, the licensee shall refund to such subscriber an amount equal to the initial installation or reconnection charge paid by the subscriber.

(3) In the event that such subscriber has made any additional advance payment, the amount so advanced shall be refunded to such subscriber by the licensee. Nothing in this paragraph shall be construed to relieve a licensee of any liability established under any other provisions of this chapter or the license agreement.

(h) There shall be no charge for a disconnection of any installation or outlet. Disconnection or downgrading of service, as applicable, shall be accomplished by the licensee as soon as practicable. In the event of disconnection, all cable communications equipment shall be removed by the licensee, within a reasonable time from a subscriber's property at the subscriber's request, such time not to exceed thirty (30) days from the date of the request. Disconnecting subscribers are entitled to either of the following, the determination of which shall be at the discretion of the licensee: complete removal of wires and all cable-related equipment from private property and restoration of exterior wall damage; or that wiring is left undisturbed in place, provided that the operator can disable the drop in the public right-of-way to forestall diversion of service. If any subscriber fails to pay a properly due monthly subscriber's fee, or any other properly due fee or charge, the licensee may disconnect the subscriber's service outlet; provided, however, that such disconnection shall not be effectuated until thirty (30) days after the due date of the monthly subscriber fee or other proper charge and shall include ten (10) days' written notice, to the subscriber in question, of the intent to disconnect. After disconnection, upon payment in full of all proper fees or charges, including the payment of the reconnection charge, if any, the licensee shall promptly reinstate the service.

(i) Where the license provides for leased or commercial use, the licensee shall provide usage of the system on a leased-access basis as requested by both full-time and part-time users and potential users at reasonable rates and in a nondiscriminatory manner. Such access shall be for video, audio, and data services and shall be provided as long as the necessary video, audio, or data channels are available and shall be in accordance with all applicable federal law.

(Ord. No. 1757, § 19, 8-19-85; Ord. No. 2276, § 20, 2-20-90; Ord. No. 2442, § 1, 4-6-92)

Sec. 7-67. - Service availability and record request.

A licensee shall provide cable television service throughout the entire license area pursuant to the provisions of this chapter and the license agreement and shall keep a record for at least one (1) year of all requests for service received by the licensee. This record shall be available for public inspection at the local office of the licensee during regular office hours.
Sec. 7-68. - CATV system construction.

(a) A licensee shall, in its application, designate by map its initial service area and provide a proposed schedule of construction as appropriate. The timetable for any construction, as agreed upon by the licensee and the city, shall be specified in the license agreement. Any delay beyond the terms of this timetable as specified in the license agreement will be considered a violation of this chapter for which the provisions of either section 7-45 or section 7-50 shall apply, as determined by the city; provided, however, that the licensee may not be considered in violation of this chapter if delays in meeting the construction timetable are due solely to a lack of timely processing of the licensee’s pole attachment applications, or if delays are caused by other factors which the city deems relevant, provided that the licensee is in no way responsible for such delays. The licensee shall bear the burden of proof in establishing such excuses for delays.

(b) A licensee shall be required to extend its system pursuant to the following requirements:

(1) The licensee must extend and make cable television service available as specified in the license agreement.

(2) The licensee shall prevent unnecessary damage to streets, right-of-way, and property by installing cable television cables underground in new subdivisions at the same time and in the same trench as other communications, electric, and other permanent services to structures. Installation of underground cable shall take place in all new subdivisions of five (5) or more dwelling units within the city. Such cable need not be connected to the existing cable system, or activated until the new subdivision meets the criteria established for line extension. The licensee shall negotiate with the telephone company and utility companies to enter into a joint trench agreement which will allow the licensee to share trench space in new subdivisions. The licensee shall install cable in a timely manner in cooperation with other utilities, the phone company, and the developer.

(c) In areas not meeting the requirements for mandatory extension of service as specified in a license, the licensee shall provide, upon the request of one (1) or more potential subscribers desiring service, an estimate of the costs required to extend service to the subscribers. The licensee shall extend service upon the agreement of the potential subscribers to reimburse the licensee for the cost. The licensee may require advance payment or assurance of payment satisfactory to the licensee. In the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension, and shall be nonrefundable.

Sec. 7-69. - Construction and technical standards.

(a) General. The following general provisions are applicable:

(1) A licensee shall place all cable and appurtenances "out of sight" to the maximum extent possible. "Out of sight" cable shall be either direct-buried or placed in an underground conduit system. Service vaults shall be flush to grade. Where the placement of some facilities and appurtenances below or flush to grade is not feasible, such facilities and appurtenances may be placed above ground, but only if they are located so as to be as unobtrusive as technically possible consistent with the design of the cable system. Such aboveground facilities shall be screened as may be directed by the city.

(2) In general, a licensee shall place all cable distribution plants below ground in those sections of the city where electric and telephone cables are below ground. In those sections of the city where the electric and telephone utilities maintain overhead distribution facilities, the poles supporting such facilities may be utilized by the licensee to the extent authorized by the utilities.
Where such aerial construction is used, the licensee need not comply with the street boring requirement of section 7-70, subsection (b) providing the aerial crossings so established do not create conditions that are unsightly in the opinion of the city. Electric utility transmission poles shall not be used by the licensee for aerial distribution except in those specific locations where the licensee has received permission to use such poles from the city, with the further consent of the utility involved, after proving to the satisfaction of the city that no reasonable alternate route exists or alternative type of construction is feasible.

(b) Compliance with construction and technical standards. The following provisions are also applicable:

(1) A licensee shall construct, install, operate, and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed standards submitted by a licensee in its application, which standards are incorporated by reference herein. In addition, each licensee shall provide the city, upon request, with a written report of the results of the licensee’s annual proof-of-performance tests conducted pursuant to FCC standards and requirements within five (5) days of completion of such reports. If the FCC eliminates its technical standards and the requirement for proof-of-performance tests, the city may impose substitutes or enforce existing license agreements containing such technical standards and proof-of-performance testing for the deleted requirements.

(c) Construction and maintenance specifications. The following provisions are also applicable:

(1) A licensee shall construct, install, and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee’s employees, the employees of the utilities, and all property shall be a primary objective whenever or wherever the licensee operates in the license area or in other areas where the licensee may locate equipment.

(2) All cables and wires will be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(3) A licensee shall be solely and completely responsible for the actions taken by any contractor, subcontractor, journeyman, consultant, or any other person employed to place, remove, maintain, repair, or relocate any of the licensee’s facilities on public or private ways or easements as well as in or on public or private buildings or structures. The licensee shall give at least twenty-four (24) hours’ prior written notice, to any public or private property owner whose property is affected, of its intent to place underground facilities by posting such notice on said property. Failure of the licensee to cause the prompt completion of such work, including restoration of property to its former condition, shall be deemed a violation of this chapter subjecting the licensee to the liquidated damages provided in section 7-46.

(4) A licensee shall at all times comply with the current editions of the following publications as well as any subsequent editions or addenda:

(5) A licensee shall comply with all of the following which may be applicable to its operations in the license area, as well as any additions or changes thereto:
   a. Laws, rules, regulations, and all recognized standards issued by the state.
   b. Laws, rules and regulations issued by the county.
   c. Ordinances of the city.
   d. FCC rules and regulations.
   e. Any other applicable federal, state, county, or city regulations.
(6) In the event of conflicts in any of the above, the most restrictive as determined by the city shall apply to a licensee's operations in the license area.

(7) A licensee shall have available at all hours personnel capable of responding to emergency conditions requiring immediate repair to any facilities owned by the state, county, city, or the gas, electric, and telephone utilities, as well as pipeline companies or similar industries. A licensee shall respond to location requests for location of its underground lines and facilities within forty-eight (48) hours. A licensee shall comply with Arizona Revised Statutes, title 40, chapter 2, article 6.3, Arizona Revised Statutes section 40-360.21 et seq., relating to underground utilities.

(8) Any antenna structure used in the cable communication system shall comply with construction, marking, and lighting of antenna structures as required by the United States Department of Transportation.

(9) All working facilities, conditions, and procedures used during construction, installation, and maintenance of the CATV system shall comply with the standards of the occupational safety and health administration.

(10) RF leakage shall be checked at reception locations for emergency radio services to prove that no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed or existing aeronautical navigation radio sites to prove that no interference to airborne navigational reception in the normal flight patterns is present. Any applicable FCC rules and regulations shall govern.

(11) A licensee shall install and maintain equipment capable to providing standby power for headend, transportation, and trunk amplifiers for a period as specified in the license.

(12) In all areas of the city where the cables, wires, and other like facilities of public utilities are relocated from aerial to underground, the licensee shall place its cables, wires, or other like facilities underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the city or applicable state law, or in the event that the telephone company decides to underground its facilities on a voluntary basis, unless the city grants an exception.

(d) **Electrical protection.** The following provisions also are applicable:

(1) To ensure the safety of the general public, as well as the licensee's workmen and the workmen of the utilities, and to protect property, adequate electrical protection is essential to the safe operation of the cable system.

(2) A licensee shall at all times place such bonds as are required by the *National Electrical Safety Code*. In addition, with the concurrence of the electric and telephone utilities, such additional bonds shall be placed so as to conform to their existing or future bonding practices. This requirement shall apply to all aerial, underground, and direct-buried cable.

(3) A licensee shall ground all service entrance cables and all service drops in accordance with the *National Electrical Code*, article 820. Driven ground rods or pipes, which are last-choice grounding devices, will be allowed only when there is no other option. If it becomes necessary to use a driven ground rod or pipe, it must be electrically connected to both the telephone and electric grounding electrodes, if present, by a No. 6 copper bond wire or equivalent.

(Ord. No. 1757, § 23, 8-19-85)

Sec. 7-70. - Use of streets and ways.

(a) **Interference with persons and improvements.** A licensee's system, wires and appurtenances shall be located, erected, and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the city or state may deem proper to make, or
unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements, or public property.

(b) Minimum interference with public ways. All transmission and distribution structures, lines, and equipment erected by the licensee within the city shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys, or other public ways and places. A licensee shall not install any aerial cable which, in the opinion of the city, obstructs in whole or in part the view of traffic signals. All street crossings requiring underground construction shall be bored unless waiver of this requirement is made by the city.

(c) Restoration of streets. Whenever a licensee shall disturb the surface of any street, alley, public highway, street maintenance easement, or ground for any purpose mentioned herein, the licensee shall restore the same to the satisfaction of the city, and when any opening is made by the licensee in any hard-surface pavement in any street, alley, street maintenance easement, or public highway, the licensee shall promptly and properly refill the opening and restore the pavement. The city may refill and/or repave in case of neglect by the licensee. The cost thereof, including the cost of inspection and supervision, shall be paid by the licensee. All excavations made by a licensee in the streets, alleys, street maintenance easement, and public highways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations, and ordinances of the city as now or hereafter provided.

(d) Erection, removal, and common use of poles. The following provisions are applicable:

1. No poles or other wire-holding structures shall be erected by a licensee without prior approval by the city with regard to location, height, types, and any other pertinent aspects. However, no location of any pole or wire-holding structure of the licensee shall be a vested interest, and such poles or structures shall be removed or modified by the licensee at its own expense whenever the city determines that the public convenience would be enhanced thereby.

2. Where poles or other wire-holding structures already existing for use in serving the city are available for use by a licensee, but it does not make arrangements for such use, the city may require the licensee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the licensee are just and reasonable.

3. Where the city, or a public utility serving the city, desires to make use of the poles or other wire-holding structures of a licensee, but agreement thereto with the licensee cannot be reached, the city may require the licensee to permit such use for such consideration and upon such terms as the city shall determine to be just and reasonable, if the city determines that the use would enhance the public convenience and would not unduly interfere with the licensee's operations.

(e) Restoration of street rights. Nothing in a license shall be construed to prevent the city from constructing sewers, grading, paving, repairing, and/or altering any street, easement, drainage channel, alley, or public highway, or laying down, repairing, or removing water or sewer mains or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure, or prevent the free use and operation of the poles, wires, conduits, conductors, pipes, or appurtenances of the licensee. If any property of a licensee herein shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair, or removal of a sewer or water main, the improvement, all such poles, wires, conduits, or other appliances and facilities, shall be removed or replaced in such manner as shall be directed by the city so that the same shall not interfere with the said public work of the city, and such removal or replacement shall be at the expense of the licensee herein.

(f) Cooperation with building movers. A licensee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of wires shall be paid by the person requesting the same, and the licensee shall have the authority to require such payment in
advance. The licensee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(g) **Tree trimming.** A licensee shall not remove any tree or trim any portion, either above, at, or below ground level, of any tree within any public place without the prior consent of the city. Regardless of who performs the work requested by the licensee, the licensee shall be responsible and shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

(h) **Easements.** A licensee shall be responsible for securing all necessary easements over, under, and through private property.

(i) **Maps, records, and inspection.** The city shall have the right to inspect and examine, at any reasonable time and upon reasonable notice, the property owned or used, in part or in whole, by a licensee. A licensee shall keep accurate maps and records of all of its facilities and make available such maps and records as requested by the city pursuant to the provisions of section 7-14.

(j) **Street vacation.** In the event that any street, alley, public highway, or portion thereof used by a licensee shall be vacated by the city, or the use thereof discontinued by the licensee, during the term of the license, the licensee shall forthwith remove the licensee's facilities therefrom unless a public utility easement remains or the licensee is specifically permitted to continue in place, and upon the removal of its facilities the licensee shall restore, repair, or reconstruct the street area where such removal has occurred and place the street area where such removal has occurred in such condition as may be required by the city. In the event of failure, neglect, or refusal of the licensee, after thirty (30) days' notice by the city, to repair, improve, or maintain such street portion, the city may do such work or cause it to be done, and the cost thereof as found and declared by the city shall be paid by the licensee.

(k) **Use of public streets and ways.** For the purpose of operating and maintaining a cable television system in the city, a licensee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the city such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable television system. Prior to construction or alteration, however, the licensee shall in each case file plans with the city, and, where required, receive written approval in the form of a permit before proceeding. In the case of emergency repairs, the licensee may obtain verbal approval for the repair from the appropriate city personnel; however, in all cases the licensee must later file plans and obtain a permit. Wherever the facilities or related construction activity of a licensee create a serious hazard to public safety or welfare the licensee shall take all necessary actions to immediately abate the hazard. If the licensee cannot contact the city immediately, the licensee shall proceed to abate the hazard immediately and shall notify the city, file plans, obtain a permit, and make any city-required changes as soon as possible.

(l) **Title to public streets and ways.** The city expressly does not warrant title or right of possession or use to the public streets and ways within the city used by a licensee, but will give to the licensee a license to occupy and use such public streets and ways within the city for any CATV purpose.

(m) **City codes in effect.** A licensee shall be subject to general ordinance provisions now in effect or hereafter adopted. Nothing in this chapter or a license shall be deemed to waive the requirement of the various codes and ordinances of the city regarding permits, fees to be paid, or manner of construction.

(Ord. No. 1757, § 24, 8-19-85)

Sec. 7-71. - Operational standards.

(a) A licensee shall put, keep, and maintain all parts of the system in good condition throughout the entire license period.
(b) Upon the reasonable request for service by any person located within the license territory, the
licensee shall, within thirty (30) days, furnish the requested service to such person within terms of the
line extension policy. A request for service shall be unreasonable for the purpose of this subsection if
no trunk line installation capable of servicing that person's block has as yet been installed.

(c) A licensee shall render efficient service, make repairs promptly, and interrupt service only for good
cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded
by notice and shall occur during the periods of minimum system use.

(d) A licensee shall not allow its cable or other operations to interfere with television reception of
persons not served by the licensee, nor shall the system interfere with, obstruct, or hinder in any
manner the operation of the various utilities serving the residents within the confines of the city.

(e) A licensee shall continue, through the term of the license, to maintain the technical standards and
quality of service set forth in this chapter and the license. Should CAPAPD find that the licensee
has failed to maintain these technical standards and quality of service, and should it specifically
e numerate improvements to be made, the licensee shall make such improvements. Failure to make
such improvements within ninety (90) days of such resolution will constitute a breach of a condition
for which the remedies of sections 7-45 and 7-50 are applicable.

(Ord. No. 1757, § 25, 8-19-85; Ord. No. 2276, § 22, 2-20-90)

Sec. 7-72. - Continuity of service mandatory.

(a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other
obligations to the licensee are honored. In the event that a licensee elects to overbuild, rebuild,
modify, or sell the system, or the city gives notice of intent to terminate or fails to renew a license, the
licensee shall act so as to ensure that all subscribers receive continuous, uninterrupted service
regardless of the circumstances. If the licensee fails to provide such service, the city retains the right
to provide such service, and the licensee shall reimburse the city for all costs incurred in providing
such service, as long as the licensee receives the system revenues.

(b) In the event of a change of licensee, or in the event a new operator acquires a system, the licensee
shall cooperate with the city and the new licensee or operator in maintaining continuity of service to
all subscribers. During such period the licensee shall be entitled to revenues for any period during
which it operates the system-and shall be entitled to reasonable costs for its services when it no
longer operates the system.

(c) In the event a licensee fails to operate the system for seven (7) consecutive days without prior
approval of the city or without just cause, the city may, at its option, operate the system or designate
an operator until such time as the licensee restores service under conditions acceptable to the city or
a permanent operator is selected. If the city is required to fulfill this obligation for the licensee, the
licensee shall reimburse the city for all reasonable costs or damages in excess of revenues from the
system received by the city that are the result of the licensee's failure to perform.

(Ord. No. 1757, § 26, 8-19-85)

Sec. 7-73. - Complaint and service procedure.

(a) CAPAPD has the primary responsibility, for the continuing administration of the license and
implementation of complaint procedures.

(b) During the term of its license, and any renewal thereof, a licensee shall:

1. Maintain a customer service office within the city that is capable of accepting payments,
adjusting bills, responding to repair, installation, or other service calls.
(2) Operate the customer service office to provide services to customers and the public at least from 8:00 a.m. to 6:00 p.m. on weekdays, and a minimum of four (4) hours between 9:00 a.m. and 5:00 p.m. on Saturdays.

(3) Provide a local toll-free telephone service, on a seven-day week, twenty-four-hour a day basis staffed by operators capable of handling any problems or any questions about service problems and providing subscriber information.

(4) Comply with the following standards in respect to telephone responsiveness, under normal operating conditions:
   a. Telephones must be answered by a customer service representative ("CSR"), during normal business hours, within thirty (30) seconds, ninety (90) percent of the time. Subscribers calling should reach a CSR within two (2) minutes in all cases.
   b. Telephone calls to a licensee shall not exceed a ten (10) percent abandonment rate (callers that give up on hold, or receive busy signals).
   c. Callers should encounter a busy signal less than three (3) percent of the time calls are placed.

(5) Make every attempt to respond to customer complaints the same day the customer calls in, but in no case later than the next working day. Most repairs and system testing will be done at a time of day which will least affect the subscriber’s television viewing habits.

(6) Maintain a maintenance service log which will indicate the nature of each service complaint, and the time and date thereof. This log shall be made available for periodic inspection by the city.

(c) All repair or service requests must be acknowledged within twenty-four (24) hours. A licensee shall respond to subscriber complaints which involve total loss of or otherwise unwatchable pictures on one (1) or more channels or loss of other services with a service call on the same day. If service restoration is not accomplished the same calendar day in which it is received, it shall be completed within twenty-four (24) hours of the time of the complaint. The licensee shall respond to other customer complaints, including complaints about technical quality, with a service call within one (1) working day after the complaint is received. The licensee shall have twenty-four (24) hours per day repair service available for system outages or other major problems or for any situation that presents a safety hazard to the public. Response time for any of these problems will be immediate. In those cases where service is not restored within twenty-four (24) hours, the reasons for the delay shall be fully documented in the complaint log (maintenance service log).

(d) Subscribers shall be provided a predesignated block of time (not to exceed four (4) hours) for the service call. If, at that time, an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time which is convenient for the customer.

(e) Subscribers experiencing a service outage, including a loss or a material degradation of sound and picture of the entire service, or of premium services, or service interruption on an intermittent basis, shall be credited with one (1) day’s service for each cumulative twelve-hour outage within a single day. A request pursuant to this subsection may be made by telephone and need not be in writing. The licensee may, at its discretion, require that unsubstantiated requests for rebate be documented by the subscriber in writing.

(f) When a number of similar complaints have been made, or where other evidence exists which, in the judgment of the city, casts doubt on the reliability or quality of the cable service, the city shall have the right and authority to require that the licensee test, analyze, and report on the performance of the system. The licensee shall fully cooperate with the city in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

(1) The nature of the complaint or problem which precipitated the special tests.

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(2) What system component was tested.

(3) The equipment used and procedures employed in testing.

(4) The method, if any, by which such complaint or problem was resolved.

(5) Any other information pertinent to the tests and analyses which may be required.

(g) The city may require that tests be supervised, at the licensee's expense, by a professional engineer not on the permanent staff of the licensee. The engineer shall sign all records of special tests and forward to the city such records with a report interpreting the results of the tests and recommending actions to be taken.

(h) The city's right under this section shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the city has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

(i) As subscribers are connected or reconnected to the system, a licensee shall provide each subscriber a handbook containing information necessary to fully inform a subscriber of the distinctions between standard and custom installation, consumer rights pursuant to the ordinance and license, and other sources of additional information. The licensee shall also provide the following information, in written form, which shall be either mailed or delivered to each subscriber:

(1) The licensee's rebate policy procedures and information required for requesting a rebate.

(2) All equipment and services available and the rates/charges for each, disconnect policies, procedures for handling billing disputes, and availability of parental lockout devices. The licensee shall also include the title, address, and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

(3) Information concerning the city office responsible for the administration of the license, including but not limited to the address and telephone number of the office. All information contained in the subscriber handbook shall be subject to the review and approval of CAPAPD.

When information required by this subsection to be provided is changed, the licensee shall provide subscribers with a written notice of such change, which shall be mailed or delivered to each subscriber.

(j) Each subscriber bill must itemize each category of service, or other fees, and clearly state the charge for each. Each bill shall clearly state: the due date for payment; the amount of any late payment fees; and a telephone number for billing inquiries.

(k) Subscribers are to be notified of rate changes or channel changes at least thirty (30) days in advance of the change. The city shall be notified of such changes at least forty-five (45) days in advance. When the licensee receives actual notice of a channel change less than forty-five (45) days prior to the change, the licensee shall give notice of the change to both subscribers and the city as soon as possible after actual notice is received.

(l) The city retains an enforceable right under this chapter to measure the overall quality of cable service offerings and to compel a licensee to offer improved services whenever the city finds services have deteriorated to a level below that specified in the license or by the licensee in its application for a license.

(Ord. No. 1757, § 27, 8-19-85; Ord. No. 2276, § 23, 2-20-90; Ord. No. 2442, § 2, 4-6-92)

Sec. 7-74. - Interconnection of facilities.

(a) A licensee shall be required to the extent economically feasible, within the opinion of the city, to interconnect its system with other CATV facilities in the city or in the Phoenix metropolitan area. Such interconnection shall be made within the time limit established by the city. The interconnection
shall, at the city's discretion, be accomplished according to the method and technical standards, if any, determined by the city and generally accepted in industry practices.

(b) A licensee shall use all reasonable diligence in negotiating with operators of other broadband systems and governmental authorities in arranging for such interconnection. A licensee may be excused from any requirements under this subsection upon a demonstration that the operator of the CATV facility to be interconnected or the licensing authorities in other jurisdictions refuse to reach a reasonable agreement regarding such interconnection. The licensee shall bear the proof of such a demonstration.

(Ord. No. 1757, § 35, 8-19-85)
UNIFORM VIDEO SERVICE LICENSE AGREEMENT

City of Scottsdale Contract No: ____________

This Uniform Video Service License Agreement ("License") is made on ____________ ("Effective Date") by and between the City of Scottsdale, an Arizona municipal corporation ("Licensor") and ____________, a ____________________________ ("Licensee"). Licensor and Licensee may be individually referred to as "Party" and collectively referred to as "Parties".

RECITALS

WHEREAS, Licensee has filed a completed application and affidavit under Arizona Revised Statutes ("A.R.S."), Title 9, Chapter 13, (" Licensing Statute"), for Licensor to issue a Uniform Video Service License to Licensee; and

WHEREAS, Licensee is authorized under the laws of the State of Arizona to provide Cable Service.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein and the mutual covenants set forth herein, the Parties agree as follows:

1. Definitions. Capitalized terms that are not defined in this License have the same meaning prescribed in the Licensing Statute, including A.R.S. Section 9-1401.

2. Licensee Information. The following appear on Exhibit A attached hereto and are incorporated herein by this reference:

2.1 The name of Licensee, its type of entity and its jurisdiction of formation.
2.2 The address and telephone number of Licensee’s principal place of business.
2.3 The names, titles and addresses of Licensee’s principal executive officers or general partners.
2.4 The names, titles, telephone and fax numbers and email addresses of any persons authorized to represent Licensee before Licensor.

3. Grant of License. Under the Licensing Statute, Licensor hereby issues to Licensee, and Licensee hereby accepts from Licensor, a nonexclusive Uniform Video Service License.

3.1 The Service Area in which this License authorizes Licensee to provide Video Service in the area described on Exhibit B attached hereto and incorporated herein by this reference.
3.2 Licensor grants Licensee authority in the delivery of Video Service to use and occupy, and to construct and operate a Video Service Network in, Highways in the Service Area in compliance with the Licensing Statute and this License.
3.3 Licensee may operate and maintain facilities installed in the Highways in the Service Area to provide services pursuant to and subject to all the following: A.R.S. Section 9-584 and A.R.S. Title 9, Chapter 5, Article 8.

4. Licensee Compliance with Law. Licensee must comply with and be subject to:

4.1 All valid and enforceable federal and state laws.
4.2 All generally applicable, nondiscriminatory Local Laws including, but not limited to, Scottsdale Revised Code, Chapters 7 and 47, construction standards promulgated by the Maricopa Association of Governments and City of Scottsdale supplements thereto and any other provisions set forth in the City of Scottsdale Design Standards and Policies Manual.
4.3 All public, education and government programming requirements of the Licensing Statute.
4.4 All customer service rules of the Federal Communications Commission under 47 Code of Federal Regulations Section 76.309(c) applicable to Cable Operators.
4.5 All consumer privacy requirements of 47 United States Code Section 551 applicable to Cable Operators.

5. **Commencement of Video Service: Revocation.** If Licensee is an incumbent cable operator, Licensee may begin to provide Video Services under this License on the Effective Date. If Licensee is not an incumbent cable operator, Licensee may provide video service to at least one subscriber within each service area authorized by this License not later than twenty-four months after the Effective Date. Failure of a non-incumbent cable operator to provide video service to at least one subscriber within each service area as set forth above will result in revocation of this License unless the Licensee establishes to the satisfaction of Licensor that such failure was for reasons beyond the Licensee’s control as provided in the License.

6. **License Fees.** Licensee must pay the License Fees required under the Licensing Statute and all other lawful fees, taxes, and charges imposed by Licensor. The initial rate of the License Fee will be five percent of Gross Revenue.

7. **Federal Filing Requirement.** Licensee must file in a timely manner with the Federal Communications Commission all forms required by that agency before Licensee offers Video Service in the Service Area, including the forms required by 47 Code of Federal Regulations Section 76.1801.

8. **Term.** This License expires ten (10) years from the Effective Date.

9. **Compliance with Law.** Licensor and Licensee agree that they are subject to and must comply with the Licensing Statute. This License is subject to A.R.S. Section 38-511.

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**Licensor**

City of Scottsdale, an Arizona municipal corporation

By: _________________________________
Mayor

ATTEST:

_________________________________
City Clerk

APPROVED AS TO FORM:

_________________________________
City Attorney

STATE OF ____________________________ )
) ss.
County of ____________________________

The foregoing instrument was acknowledged before me this ______ day of __________, 20__, by __________________, the _______ of ____________, a ____________, on behalf of Licensee. (Seal)

Notary Public

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Resolution No. 11484
Exhibit B
Page 2 of 4
EXHIBIT A

I. Licensee:

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<td>Applicant's Name:</td>
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<td>Principal Place of Business</td>
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<td>Phone:</td>
<td>Address:</td>
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<td>State:</td>
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<td>Type of Entity:</td>
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II. Licensee's principal executive officers or general partners:

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III. Person(s) authorized to represent Licensee before Local Government:

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APPLICATION AND AFFIDAVIT FOR UNIFORM VIDEO SERVICE LICENSE
(Pursuant to Title 9, chapter 13, Arizona Revised Statutes)

Local Government: City of Scottsdale

I. Applicant:

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<td>Phone:</td>
<td>Address:</td>
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<td>State:</td>
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<td>Jurisdiction of Formation:</td>
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IV. Check one pursuant to Arizona Revised Statutes Section 9-1411(C)(4):

- [ ] Applicant is an Incumbent Cable Operator as provided in Arizona Revised Statutes, Section 9-1401(13).
- [x] Applicant is not an Incumbent Cable Operator. The date on which the Applicant expects to provide Video Services in the Service Area identified below under Section 9-1411(C)(5) is:

  Date: 

Resolution No. 11484
Exhibit C
Page 1 of 3
V. For All Applications:

A. Applicant will timely file with the Federal Communications Commission all forms required by that agency before Applicant offers Video Service in the Service Area, including the forms required by 47 Code of Federal Regulations Section 76.1801.

B. The term of the uniform video service license shall be (not to exceed ten years):

<table>
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<th>Years</th>
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C. Applicant agrees to pay all lawful fees and charges imposed by Local Government as provided in Arizona Revised Statutes, Section 9-1414(B)(4).

D. Applicant agrees to notify Local Government in writing of changes to the above information within thirty days after the change occurs as provided in Arizona Revised Statutes, Section 9-1414(B)(2).

E. Provide an exact description of the Service Area as set forth in Arizona Revised Statutes, Section 9-1411(C)(5), as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.

Select one:

The Service Area consists of all the territory within the Boundaries of Local Government:

The Service Area consists of all the territory within the area described on attached Exhibit A.

**Applicant Verification**

I certify that the information contained in this application for a video service license in the City of Scottsdale is true and correct. I further affirm that I am authorized by [NAME OF APPLICANT] to file this application on behalf of applicant and to bind the applicant with respect to the representations made in Section V, Paragraphs A through D of this application. A copy of the authorization is attached to this application.

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Resolution No. 11484
Exhibit C
Page 2 of 3

Application & Affidavit for Uniform Video Service License
Local Government Receipt

The foregoing Application and Affidavit for Uniform Video Service License was received by Local Government this ____ day of __________, 202_; at __________.

City of Scottsdale, an Arizona municipal corporation ("Local Government")

By

Print Name

Title

Address

City, State, Zip

Phone

Fax

Email

Resolution No. 11484
Exhibit C
Page 3 of 3