

Chapter 16

CABLE COMMUNICATION SYSTEMS

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State law reference(s): Municipal regulation of cable television, A.R.S. § 9-501 et seq.

Article 16-1 Definitions

For the purposes of this chapter, the following words shall have the meanings given herein:

“Access channel” shall mean one or more channels designated for public, educational, or governmental (“PEG”) use without charge by the licensee for such use.

“Access facilities” shall mean the facilities and equipment for the use of access channels.

“Affiliate” shall mean any person who owns or controls, is owned by or controlled by, or is under common ownership or control with a licensee.

“Applicant” shall mean a person who applies for a license to provide cable service in the city.

“Application” shall refer to the offer by a qualified applicant to furnish and provide a cable system and cable services to residents, businesses, industries, and institutions within the city in accordance with the city’s specifications.

“Basic service” shall mean any service tier which includes the retransmission of local television broadcast signals. Each such tier shall include all access channels, as defined in Section 611 of the Cable Act. A license shall set forth minimum broad categories of programming to be included in basic service.

“Cable Act” shall mean Title VI of the Communications Act of 1934, as amended.

“Cable services” or “cable service” shall be defined as (A) the one-way transmission to subscribers of (1) video programming or (2) other programming service; and (B) subscriber interaction, if any, which is required for the selection or use of such programming or other programming service.

“Cable system” shall mean facilities located in the city consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the city, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Communications Act of 1934, as amended; or (E) any facility of an

electric utility used solely for operating its electric utility systems. Any reference to licensee's cable system refers to the cable system as a whole or any part thereof.

"Change of service" shall mean all requests by subscribers for modifications to their cable service, including without limitation additions or deletions of premium services, additional outlets, remote controls and FM service. Such term shall not include initial installation of basic service, total disconnection of basic service or service calls.

"Channel scrambling" shall mean to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner. Channel scrambling must meet all applicable federal, state or local regulations or requirements.

"City" shall mean the city of Litchfield Park, a municipal corporation of the state of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

"Community channel" shall mean a channel designated for matters of community interest to city residents, and operated by a licensee in lieu of providing a public access channel and related facilities or funding.

"Completion of construction" or "complete system construction" shall mean "satisfactorily complete" and "fully activated." In each instance, these terms shall mean that, for aerial construction, strand has been put up and all necessary cable has been lashed, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored to the city's satisfaction and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed, that power supplies have been installed, that construction of the headends or hubs has been completed and all necessary processing equipment has been installed; and

that any and all other construction necessary for the cable system to be ready to deliver cable service to subscribers has been completed with no unresolved violations of this chapter or the license. Final balancing shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire cable system will be activated and final balanced when completed. Construction of any segment or of the entire cable system will not be considered complete until final balance has been conducted on such segment (or in the case of the entire cable system, until final balancing and proof of performance tests have been conducted on all segments). The term "completion of construction" does not include marketing and installation of subscriber service.

"Connection" shall mean, with regard to connections to public buildings, including schools, the installation of fiber optic or coaxial cable or other system-related facility through the outer wall of the building leaving adequate excess facility to permit further connection to other facilities, plant or cable within the building, as set forth in the license.

"Council" shall mean the city council of the city of Litchfield Park.

"Educational access channel" shall mean any channel or bandwidth on a cable system set aside by a licensee for educational use.

"FCC" means the Federal Communications Commission or any successor.

"Governmental access channel" shall mean any channel or bandwidth on a cable system set aside by a licensee for governmental use.

"Gross revenues" shall be the basis for computing the license fee under this chapter and shall mean any and all cash, credits, property or other consideration of any kind or nature in any way derived and received from the operation of a licensee's cable system to provide cable services within the license area received

directly or indirectly by a licensee, its affiliates, or any person in which a licensee has a financial interest, including the studios and other facilities associated therewith. "Gross revenues" include, by way of illustration and not limitation, monthly fees charged subscribers for any basic, optional, premium, per-channel, or per-program cable service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees and any other fees from lease or license of the cable system for cable services; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the cable system; revenues from converter rentals or sales; studio rental, production equipment rental, and associated personnel fees; advertising revenues; barter; revenues from program guides; and revenues from home shopping services and bank-at-home channels; and (to the extent permitted by applicable law) revenues from Internet services provided using the cable system to the extent they are cable services. "Gross revenues" shall include an allocated portion of any revenue derived by the licensee or its affiliates pursuant to any regional, national or international compensation arrangement for any service or activity derived from the operation of the cable system to provide cable services in the license area, such as advertising. Such an allocation shall be based on the number of subscribers in the license area divided by the total number of subscribers relevant to such regional or national arrangements. When a licensee (or an affiliate) holds other cable television licenses in Maricopa County and receives and allocates gross revenues from advertising revenues not covered by the preceding sentence, leased channel fees, and studio and production equipment rental (and associated personnel fees), gross revenues derived from these sources shall be allocated based on the number of subscribers of licensee (or an affiliate) in the city divided by the total number of

subscribers of licensee (or an affiliate) in Maricopa County, less those in any jurisdiction in which a licensee (or its affiliate) does not allocate its gross revenues derived from these sources. "Gross revenues" shall not include any bad debt; provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected. "Gross revenues" shall not include actual converter deposits that are returned to subscribers, actual amounts refunded to subscribers by a licensee, money received by a licensee (or any of its affiliates) as payment for cooperative advertising, or receipts of any sales or use taxes, or any other taxes which are imposed upon subscribers by any taxing authority and which the licensee is required to collect from a subscriber on behalf of said taxing authority. The license fee is not such a tax. "Gross revenues" shall not include cash, credit, property or other consideration of any kind or nature received by a licensee's affiliates when such affiliate has all the following characteristics: the affiliate is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records), and a separate mission; makes payments to licensee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than licensee in the same industry as licensee; and was established for valid business purposes and not with the intent and purpose of circumventing payment of license fees on gross revenues. This definition shall be interpreted to include all revenues that may be subject to a license fee consistent with federal law.

"Initial activation of cable service" shall mean all proposed cable services and cable system capabilities of the particular segment, group of segments, or entire cable system as provided for in the license are available, fully constructed, and activated for use.

“Interconnect” or “interconnection of facilities” shall mean connection of one or more channels of a licensee’s system with other cable systems by direct cable, microwave link, satellite or other appropriate methods.

“License” shall mean any authorization granted under this chapter in terms of a privilege, permit, license or otherwise to construct, operate and maintain a cable system in the city. Any such authorization, in whatever term granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city in accordance with Chapter 8A related to the city’s transaction privilege tax.

“License area” shall mean the current incorporated boundaries of the city and any future annexed area, unless the terms of a license provide otherwise.

“Licensee” means the person granted a license for construction, operation, maintenance, or reconstruction of a cable system.

“Licensor” means the city as represented by the council or manager, or their designee.

“Manager” shall mean the city manager or the city manager’s designee.

“Multiple dwelling units” or “MDU” means any multi-unit residential building(s) such as apartments or condominiums under common ownership containing more than four units.

“Normal business hours” means hours that subscribers may reasonably conduct business with a licensee, including regular daytime hours and some evening hours at least one night per week and/or some weekend hours.

“Normal operating conditions” means those service conditions within the control of the licensee. Those conditions not within the control of the licensee include, but are not limited to, natural disasters, civil disturbances, labor strikes, utility company power outages, telephone network outages, and severe or unusual weather conditions, and the failure of governments including but not limited to the city to issue permits in a timely fashion; provided,

that permit applications have been submitted and pursued in a timely manner. Those conditions ordinarily within the control of the licensee include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

“Origination point(s)” means those locations designated in the license where access channel programming signals are delivered to a licensee for modulating and distribution to subscribers over the cable system, or where specified in the license, for encoding.

“Outage” shall exist whenever licensee receives three subscriber complaints within any sixty-minute period of a “service interruption” within the same quarter section.

“Person” shall mean an individual, partnership, association, joint stock company, organization, corporation or any lawful successor thereto or transferee thereof.

“Quarterly” shall mean the four quarters of the calendar year, consisting of January through March, April through June, July through September, and October through December.

“School” shall mean all public schools, public colleges and public universities; and all charter/private schools with a minimum of thirty students between the ages of one through eighteen years.

“Service call” shall result when service problems occur relating to: (A) any “no picture” complaint, (B) a degraded sound or picture on one or more channels, (C) property damage by licensee’s employees or authorized contractors, or (D) in-house cable equipment problems.

“Service complaint” shall mean any complaint regarding: (A) compliance with the existing license; or (B) the quality of the operator’s service, including but not limited to signal quality and billing practices; or (C) timeliness of service, and which complaint, if

true, would or may constitute a violation of this chapter. A service complaint does not include any complaints made regarding access channel programming controlled by the city, programming offered, rates charged, build-out plans consistent with the existing license, or business decisions that lie within the sole discretion of licensee.

“Service interruption” shall exist when a subscriber loses the signal on all channels.

“Standard drop” shall mean a cable connection which requires no more than a two-hundred-twenty-five-foot drop measured from the nearest reasonable point of connection to a subscriber’s home or place of business to the nearest existing technically feasible point of connection to the cable system; involves only one outlet and standard materials; and does not involve a wall fish. In addition, a “standard drop” shall exclude custom installation work, including specific subscriber-requested work that requires non-standard inventory or cable routing requiring construction methods exceeding reasonable underground or aerial work.

The license may contain a different definition of “standard drop” or standard connection as may be necessary because of different technology or architecture.

“Street” shall mean a street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive which is owned by a public entity in fee simple or as to which a public easement has been dedicated for street purposes, and with respect to which, and to the extent that, the city has a right to grant the use of the surface of, and space above and below, in connection with a license for a cable system, or other compatible uses.

“Subscriber” shall mean any person receiving for any purpose the cable services of a licensee’s cable system.

“Two-way communication” shall mean the transmission of cable television signals from subscriber or institutional locations or other

points throughout the cable system back to the cable system’s control center as well as transmission of signals from the control center to such locations. A license may authorize switching at a level other than the control center.

“User” shall mean a person using a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

The terms “will be available,” “will be equipped,” “will use,” “will be designed,” “will perform,” “will be utilized,” “will permit,” “will allow,” “will be activated,” “will be initially connected,” “will be capable,” “will provide,” “will include,” “will employ,” “will be established,” “will be able,” “will be implemented,” “will be delivered,” “will utilize,” and other similar uses of terms of a licensee’s proposal denoting the activation of cable service, shall be interpreted to mean delivery or accomplishment at a date no later than the initial activation of cable service (as defined in this article) unless otherwise expressly and clearly stated or qualified in the licensee’s proposal to mean a more specific or different time. (Ord. 04-95 § 1)

Article 16-2 Reserved

Article 16-3 Reserved

Article 16-4 Reserved

Article 16-5 License Required

A non-exclusive license to construct, operate and maintain a cable system within all or any portion of the city is required of anyone desiring to provide cable service in the city. (Ord. 04-95 § 1)

Article 16-6 Failure to Have License, Violation

A. It is unlawful for any person to establish, operate or to carry on the business of dis-

tributing any television signals or radio signals by means of a cable system in the city unless a license therefor has first been obtained pursuant to this chapter, and unless such license is in full force and effect.

B. It is unlawful for any person to construct, install or maintain within any street in the city, or within any other public property of the city, or within any privately owned area within the city which has not yet become a street but is designated or delineated as a proposed street on any preliminary subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable system, unless a license authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this article, and unless such license is in full force and effect.

C. It is unlawful for any person to make any unauthorized connections, whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed cable system within the city for the purpose of enabling himself or herself or others to receive any television signal, radio signal, picture, program, sound or any other signals transmitted on the cable system, without the permission of a licensee.

D. It shall be unlawful for any person, without the consent of a licensee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sounds or any other signals transmitted on the cable system.

E. Any person violating any part of this article shall be guilty of a Class 1 misdemeanor.

F. Any person violating any part of this article shall also be subject to any fees required in this chapter as though they were a licensee. (Ord. 04-95 § 1)

Article 16-7 Authorization to Engage in Business

Any license granted shall authorize the licensee to engage in the business of operating and providing a cable system in the city, and for that purpose to erect, install, solicit, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the cable system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the city. Notwithstanding the foregoing, all wires, cable, conductors, ducts, conduits and similar facilities shall be placed underground unless such facilities are attached to existing utility or telephone poles and the poles are used primarily for utility or telephone purpose. (Ord. 04-95 § 1)

Article 16-8 Limitations of License

A. Any license granted under this chapter shall be nonexclusive.

B. Any privilege claimed under any license by the licensee in any street shall be subordinate to any lawful occupancy or use thereof by the city and shall be subordinate to any prior easements, prior licenses to use the rights-of-way, and any other private property rights that may be superior to the license issued.

C. Any right or power in, or duty imposed upon, any officer, employee, department, or board of the city shall be subject to transfer by the city to any other officer, employee, department, or board of the city.

D. A licensee shall be subject to all existing requirements of the city's rules, regulations and specifications or hereafter enacted or

established pursuant to the city's police powers and taxing authority, and shall comply with all applicable existing state and federal laws and regulations or hereafter enacted or established. There is hereby reserved to the city the power to amend any article of this chapter so as to require additional or greater standards of construction, operation, maintenance or otherwise pursuant to the city's lawful police powers or as provided in the license.

E. Any license granted shall not relieve the licensee of any obligation involved in obtaining pole space from any department of the city, utility company, or from others lawfully maintaining poles in streets.

F. Any license granted does not relieve licensee of compliance with city code provisions governing construction, work, or use of the streets and rights-of-way. There is hereby preserved to the city the power to amend any section of the Litchfield Park city code related to construction in streets and public rights-of-way pursuant to its police powers. (Ord. 04-95 § 1)

Article 16-9 Acquisition by City; Termination

A. In accordance with Section 627 of the Cable Act, if a renewal of a license held by a licensee is denied and the city acquires ownership of the cable system, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the license itself. If a license held by a licensee is revoked for cause and the city acquires ownership of the cable system or effects a transfer of ownership of the cable system to another person, such matters as the harm to the community resulting from the licensee's breach of the license may be considered in determining the fair market value.

B. Upon the termination of a license and the rights granted thereunder, whether by expiration or forfeiture, the council may direct and

require the licensee as provided in Article 16-48 to remove its wires, cables, fixtures and accessories and appurtenances from the streets. If directed, the city shall make a claim on the letter of credit as prescribed in Article 16-78. Removal by licensee of its wires, cable, fixtures and accessories and appurtenances from the streets shall not be required where such wires, cables, fixtures and accessories and appurtenances are in use for the provision of services other than cable services as to which no license from the city is required, or as to which any license that is required has been obtained. (Ord. 04-95 § 1)

State law reference(s): Fair market value to be paid, A.R.S. § 9-509.

Article 16-10 Rights Reserved to the City

A. The city reserves its rights to acquire the property of the licensee, by purchase, at fair market value, which shall not include any amount for the license itself or for any of the rights or privileges granted. The city reserves the right to exercise its power of eminent domain under the Arizona Constitution and laws of the state.

B. Neither the granting of any license nor the enactment of any provision in this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the city, now existing or hereafter granted.

C. The city's right to acquire the property of the licensee shall not require the licensee to convey such property that is in use for the provision of services other than cable services as to which no license from the city is required, or as to which any license that is required had been obtained. If the cable system is operated by the owner for both telecommunications and cable services purposes, the city must have separate authority outside of this chapter to acquire those facilities used for telecommunications purposes. (Ord. 04-95 § 1)

Article 16-11 License Applications

Each application for a license to construct, operate or maintain any cable system in the city shall be filed with the city clerk and in a form prescribed by the city. An application shall require, but shall not be limited to, the following information:

A. The name, address, and telephone number of the applicant.

B. A detailed statement of the corporation or business entity organization of the applicant, including, but not limited to, the following:

1. The names, residence and business addresses of all officers, directors, and associates of the applicant;

2. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part or owned in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby.

C. A detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year next preceding the date of the application hereunder, and a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed cable system in the city, or a statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to

construct and operate the proposed cable system in this city.

D. A detailed financial plan (pro forma) describing for each year of the license, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements and a sources and uses of funds statement. All information is to be presented in the format approved by the city.

E. A statement identifying, by place and date, any other cable system license(s) awarded to the applicant, its parent or subsidiary; the status of said license(s) with respect to completion thereof; the total cost of completion of such licensed cable system(s); and the amount of applicant's and its parent's or subsidiary's resources committed thereto.

F. A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

1. A proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be serviced;

2. A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and cable service charges;

3. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant;

4. A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber;

5. A copy of any agreement between the applicant and the telecommunications provider and/or electric utilities providing for the use of any facilities of the utility including but not limited to poles, lines or conduits.

G. Proposal for providing access channels, facilities and related considerations. Applicants are strongly encouraged to investigate the needs and desires of potential users and to offer such facilities as are technologically and economically feasible.

H. A license shall include a description of proposed cable system design and a description of the initial programming and cable services to be offered, a description of facilities for local programming, and facilities to be offered to various community institutions.

I. Any other details, statements, information or references, pertinent to the subject matter of such application, which shall be required or requested by the city council, or by any other provision of law. (Ord. 04-95 § 1)

State law reference(s): License applications, A.R.S. § 9-507.

Article 16-12 Application Fees

A. Amount. Each applicant for a license must submit a filing fee in the amount of ten thousand dollars by cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the manager made payable to the city. Of such amount up to five thousand dollars is refundable; provided, that such funds are not necessary for costs incurred by the city related to the negotiation, preparation and/or grant of a license.

B. Deposit and Use. All fees received will be deposited to an account of the city and will serve to recover expenses incurred by the city in the preparation and granting of licenses and regulation of licenses pursuant to this chapter.

C. Additional Fee. An applicant shall reimburse all additional expenses, including, but not limited to, any and all administrative, engineering, publication, or legal costs and consultants' expenses incurred in connection with the processing, evaluation and preparation of documents relating to the application. The city shall document all such expenses by

invoice. If expenses exceed the total amount of filing fees collected from the applicant(s), the applicant shall pay to the city the excess amount within thirty days of demand of the city. All unpaid amounts at the end of thirty days shall accrue interest at the rate of one and one-half percent per month. (Ord. 04-95 § 1)

Article 16-13 Selection of Licensee

A. Compliance with City Requirements. A person submitting an application to operate a cable system shall provide all information set forth in Article 16-11 or otherwise required by this chapter and all other information requested in the city's request for applications. Each application shall be responsive to the questions soliciting the information, and shall completely, accurately and materially supply all of the information so solicited. Any misrepresentation, failure, neglect or refusal to provide any of such information may, at the option of the city, render an application invalid. This requested information must be complete and verified as true by the applicant.

B. Property of City. All applications received by the city from an applicant shall become the sole property of the city.

C. Referral to Manager. Upon receipt of any application for license, the manager shall prepare or cause to be prepared a report, including recommendations respecting such application, to be presented to the city council at a public hearing on the application. The city will evaluate all applications submitted within one hundred eighty days of receipt of the application.

D. Investigations. The city may make such investigations as it deems necessary to determine the ability of the applicant to perform under the license, and the applicant shall furnish to the city all such information as the city may request.

E. Public Hearing. Within one hundred eighty days after receiving an application, a

public hearing shall be held to consider the application and receive public comments.

F. Consideration. In making any determination regarding the application for a license, the city may consider any and all factors relevant to interests of the community in cable television including, but not limited to, the quality of the cable services proposed, areas to be served, rates to subscriber, benefit to the city, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this chapter, and to abide by all policy conditions, license limitations and requirements, and all other matters deemed pertinent by the city for satisfying the community needs and for safeguarding the interests of the city and the public.

G. Determination. Following the public hearing, the council may direct staff to conduct further negotiations with an applicant, or set further public hearings. Within one hundred eighty days following the first public hearing on an application for a license, the council shall make one of the following determinations:

1. That such application be denied, which determination shall be final and conclusive; or
2. That such license be granted with the terms and conditions approved by council.

H. Approval or Denial Based on Public Record. It is the intention of the city to approve or deny a license solely on the basis of the public record.

I. City Council Decisions Shall Be Final. Any decision of the council approving or denying a license shall be final. (Ord. 04-95 § 1)

State law reference(s): Similar provisions, A.R.S. § 9-507.

Article 16-14 Term of License

The term of any license shall not exceed fifteen years. A license may be renewed by the city pursuant to the procedure established in Article 16-19 and in accordance with the then applicable law. (Ord. 04-95 § 1)

Article 16-15 Reserved

Article 16-16 Reserved

Article 16-17 Reserved

Article 16-18 Reserved

Article 16-19 Renewal

License renewal applications and procedures shall be as set forth in the Cable Act. A license renewal application fee shall be paid at the time of submittal of the application in the amounts set forth in Article 16-12 for application fees. (Ord. 04-95 § 1)

Article 16-20 Transfers and Assignments

A. A license shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged 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 prior written consent of the city, which consent shall not be unreasonably withheld. The transfer of the license to an affiliate of licensee does not require prior approval of the city so long as: (1) the sale or transfer of the existing or newly created equity interest in the licensee does not result, directly or indirectly, in a transfer of control of the licensee; and (2) the transferee already holds an ownership interest in the licensee of twenty-five percent or more. A transfer of control shall be deemed to occur when the legal or practical ability to exert actual working control over the affairs of the licensee transfers to a person other than the licensee, either directly or indirectly, whether by con-

tractual agreement, majority ownership interest, any lesser ownership interest or in any other manner. Consent of the city shall not be required for a transfer in trust, mortgage, or other hypothecation in whole or in part to secure an indebtedness. The proposed transferee must show the transfer will not cause any increased risks of nonperformance of the license or any loss to the city of its bargained for consideration in the license. The transferee must assume all obligations of the license and provide new insurance and performance bonds.

B. Except for a transfer to an affiliate of licensee, no change, transfer, or acquisition of control of the licensee shall occur without prior written consent of the city, which consent shall not be unreasonably withheld. The licensee shall promptly notify the city of any actual or proposed change in, or transfer to, or acquisition by any other party of, control of the licensee. The word “control” as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised.

C. A rebuttable presumption that transfer of control has occurred shall arise upon the acquisition or accumulation by any person or affiliated group (other than an affiliate of licensee) of more than twenty-five percent of the voting interest of the licensee or of the person exercising management authority over the licensee.

D. Except in the case of an assignment of the license to an affiliate of licensee, upon written notification by the licensee to the city of a proposed assignment of the license, or transfer of control or ownership of the licensee company, the manager shall issue his written notice fixing and setting forth the day, hour and place certain when and where any persons having any interest therein may appear and be heard. The clerk shall cause such notice to be published in a newspaper of general circulation within the city. The clerk also shall cause

a copy of such notice to be mailed to the licensee at least ten days prior to the date specified for the hearing. At the time set for such hearing, or at any adjournment thereof, the manager shall proceed to hear the matter. Following the close of such hearing, the manager shall prepare and file with the council his report of the hearing, his findings, and an opinion containing his recommendations and the reasons therefor. If, after the expiration of ten days following receipt of the manager’s report and opinion, the council shall find that the assignment of the license or transfer of control or ownership of the licensee company will not be detrimental or injurious to the best interests and welfare of the subscribers and users, and of the city, then the council by resolution shall consent to the assignment of the license or transfer of control or ownership of the licensee company. Such resolution shall thereupon become and shall be a part of any license granted under this chapter and affected thereby.

E. The consent or approval of the council to any transfer of a license shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the license.

F. Fees. Each applicant for a transfer or assignment must furnish with its request a non-refundable filing fee in the amount of two thousand five hundred dollars payable in cash, certified or cashier’s check, wire transfer, or in any other manner acceptable to the manager made payable to the city. No application for a transfer or assignment of license shall be considered without receipt of said fee. The licensee shall be responsible for reimbursing the city’s full reasonable costs in excess of the application fee in investigating the qualifications of the transferee under the Cable Act as part of acting on the licensee’s request for a transfer or assignment of a license.

G. The city shall act on any request for approval of a sale or transfer within one hundred twenty days of the request if the request contains or is accompanied by the information required by the FCC and this chapter.

H. In no event shall a transfer of ownership be approved without the successor-in-interest becoming a signatory to the license.

I. As long as a grant, rent or lease does not amount to a transfer as defined in this article and is made in the ordinary course of business with prior notice to the city, a licensee in the normal course of providing cable services may grant, rent, or lease use of its cable system to other persons. Any such use shall be restricted to and consistent with (1) such uses as the licensee is authorized in this chapter and the license, (2) other telecommunications services which have received a license from city, or (3) other telecommunications services for which no license is required by the city. Any such use shall be in compliance with applicable federal and state law. Any such grants, lease or rent by the licensee shall not, however, thereby relieve its use of the streets and public ways, and any such grant, rent or lease shall require that such other person comply with the appropriate provisions of this chapter and the license as such use warrants. The grant, lease or rent shall expressly provide for the authority of the city under applicable law to regulate the use provided by the grant, lease or rent (including but not limited to the authority to protect the public welfare, safety and health) and to enforce compliance with any applicable standards established by this chapter or the license. (Ord. 04-95 § 1)

Article 16-21 Reserved

Article 16-22 Reserved

Article 16-23 Reserved

Article 16-24 Effect of Award of License

A. Ordinance Binding. Upon award of license pursuant to this chapter, a licensee shall be bound by all the terms and conditions contained in this chapter.

B. Incorporation by reference of application for a license. A licensee shall provide all of the cable service specifically set forth in its application to provide cable services within the license area, and by its acceptance of the license, the licensee specifically agrees that its application is hereby incorporated by reference and made a part of the license. In the event of a conflict between the license and the application, the provisions of the license shall apply. Failure to provide services as promised in licensee’s application or agreed to in its license may be deemed a breach of this chapter, to which the provisions of Article 16-78 shall apply. (Ord. 04-95 § 1)

Article 16-25 Payment of License Fee

A. In consideration that the streets used by the licensee in the operation of its cable system within the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and that the grant to the licensee for the use of said streets is a valuable property right without which the licensee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the city will incur costs in regulating and administering the license, the licensee shall pay to the city an amount no more than five percent of licensee’s gross annual revenues (the “license fee”).

B. Should federal or state laws or regulations be amended in the future to allow the city to receive a greater fee than the fee set forth in subsection (A) of this article, then the city shall have the right to increase the fee to the extent specified in the license, or meet with licensee to modify the license.

C. The payment of the license fee by the licensee to the city shall be made quarterly by

delivery of the same to the manager on or before the twentieth day of the month following the quarter end, and becomes delinquent on the last business day of that month. If such payment is not made by the next to the last business day of the following month, the city will impose interest at a rate of one and one-half percent per month commencing from the date payment should have been made, unless the payment is subject to a bona fide dispute, and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. In addition to interest which may be assessed under this subsection, if licensee fails to pay any license fee, licensee shall be subject to the following civil penalties:

1. A licensee who fails to pay the license fee or any portion thereof within the time prescribed shall pay a penalty of ten percent of the unpaid fee each month, unless the licensee shows that the failure is due to reasonable cause and not due to willful neglect.

2. A licensee who fails or refuses to pay a license fee or any portion thereof after notice and demand by the city shall pay a penalty of twenty-five percent of the unpaid fee, unless licensee shows that the failure is due to reasonable cause and not due to willful neglect.

3. If the cause of failure to pay the licensee fee or any portion thereof is determined by the city to be due to civil fraud or evasion of the license fee, the licensee shall pay a penalty of fifty percent of the amount of deficiency.

D. The city shall have the right to inspect the licensee's cable service 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 thirty-six months following the close of each of the licensee's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty days following written notice to the licensee by the city, said notice shall include a copy of

the audit report; provided, however, that licensee shall not be required to pay such deficiency until thirty days after completion of the administrative review process if licensee commences such process pursuant to Article 16-79(A)(3). If there is a deficiency in the payment of license fees to the city of ten percent or more, the city may assess the cost of the audit to the licensee.

E. The cost to licensee of any city right-of-way construction permit and development review fees which the city imposes under city code requirements on licensee's construction permit activities in or on the city streets shall be included in the license fee. (Ord. 04-96 § 1; Ord. 04-95 § 1)

Article 16-26 Use of Telephone Facilities

If a licensee uses a telephone company's cable system distribution channels furnished to the licensee pursuant to tariff or contract on file with a regulatory body having jurisdiction and licensee makes no use of the streets independent of such telephone company furnished facilities, licensee remains fully bound by the terms of its license and this chapter. (Ord. 04-95 § 1)

Article 16-27 Required Services and Facilities

A. A licensee shall maintain the broad categories of video programming or other services set forth in its license. Where there has been a substantial failure to maintain the broad categories of video programming or other services as set forth in the license, the city may, following due notice and public hearing as provided in Articles 16-79 and 16-80, direct the licensee to comply with its obligations in this regard. Written notice of such hearing shall be provided to the licensee and to the public at least thirty days prior to such hearing.

B. A license may require a licensee to provide channel capacity to the city for community, educational, and governmental

programming on terms and conditions specified in the license.

C. Licensee shall provide high definition television to its subscribers as such broadcasting becomes available from the broadcasting stations on the channels, consistent with and as required by the regulations of the FCC. (Ord. 04-95 § 1)

Article 16-28 Subscriber Services; Rates

A. Initial Rates. A licensee shall establish and notify the city of initial rates for its cable services prior to commencement of services.

B. Authority to Regulate Rates. To the extent permitted, the city may regulate the rates for cable service in accordance with federal and state law.

C. Notice of Rates. Notice of rates shall be given in accordance with Article 16-58. (Ord. 04-95 § 1)

Article 16-29 Government Access Channel

If provided in the license, licensee shall provide channel capacity for a minimum of one government access channel dedicated for city use. The management and operation of the government access channel shall be the responsibility of the city. (Ord. 04-95 § 1)

Article 16-30 Educational Access Channels

If provided in the license, licensee shall provide channel capacity for a minimum of one educational access channel dedicated for use by all schools in the city (as defined in this chapter), Arizona State University, and the Maricopa County Community Colleges. The management and operation of the educational access channels shall be the responsibility of the city. (Ord. 04-95 § 1)

Article 16-31 General Provisions Concerning Access

A. The provisions of this article shall apply to all access channels.

B. Technical Design of Access Channels and Responsibilities.

1. In general, the city or its designees (other than licensee) is responsible for:

a. Delivering channel signals to the licensee at origination points and processing the signals so that they can be carried on the cable system; and receiving signals from licensees at all connection points to public buildings and origination points;

b. Controlling the routing of signals from the origination points to the appropriate channels; and

c. Providing and maintaining the studios and equipment used to produce programming.

2. In general, licensee is responsible for:

a. Transmitting access channel signals from the origination point and/or other cities/origination points for access programming to all connection points to public buildings and origination points identified in the license, and to subscribers without material degradation, and maintaining all the facilities required to do so;

b. Purchasing and installing a router and for selecting and placing signals received from origination points onto the appropriate access channels on the subscriber network. Owner or its designee(s) (other than licensee) shall be responsible for controlling and maintaining the router.

c. Upon request of the city or its designee(s) (other than licensee), will provide technical assistance or diagnostic services to determine whether or not a problem with access signals is the result of matters for which licensee is responsible, and if so licensee will take prompt corrective actions.

3. If licensee modifies its cable system in a manner that has the effect of requiring modification of access facilities and equipment or

public safety channel facilities and equipment in order to deliver signals, licensee will bear the cost of the new interface equipment, such as a digital encoder to deliver to licensee a signal compatible with the modified cable system. If, for example, licensee requires digital signals, licensee will bear the costs to provide digital signals.

C. The licensee shall not take any actions that would discourage or prevent maximum utilization of all access channels provided, and shall cooperate with the city and managers of access channels to ensure that subscribers are aware of the channels, can access them easily, and, to the extent that a licensee (or some entity acting on a licensee's behalf) is involved in publishing licensee's channel schedules, that the access channels are similarly published.

D. Public Building Connections. Upon request of the city and consistent with the joint trench requirements of subsection (E) of this article, the licensee shall provide, without charge, at a minimum, one activated standard drop to all of the following present and future public buildings, as designated by the city from time to time:

1. All schools (as that term is defined in this chapter);
2. Public colleges and universities;
3. City fire stations and police stations;
4. All public libraries, including branches;
5. City community center, recreation facilities and such other facilities used for municipal purposes as may be designated in the license.

If provided in the license, the licensee shall provide basic service free of charge to those facilities specified above. A license may further specify the particular conditions under which the connections will be provided.

E. Joint Trench Requirements. The city and schools shall notify licensee in writing at least thirty days prior to opening trenches for

use by utilities to serve public buildings. If such notice is given and subject to the construction or rebuild schedule and line extension policy, licensee shall install cable facilities in order to provide the connection to the public building without charge for trenching. If no notice is given, the city or school, as the case may be, shall pay the reasonable cost of such trenching.

F. Access Interconnections.

1. Subject to the limitations of applicable federal and state law, licensee shall interconnect access channels with any or all other cable systems in the city or in other Phoenix metropolitan municipalities, owned by licensee or an affiliate or other cable operator as provided in the license, at no cost to the city or the other municipality.

2. The city or its designated access provider shall have the right to control and schedule the operation of all interconnected access channels. In addition, the city shall have the right to use, at its sole discretion and at no cost to the city, any access channels to be provided under a license agreement for access interconnection.

3. Licensee shall take all necessary technical steps to ensure that technically adequate signal quality and routing/switching systems are initially and continuously provided for all access interconnections between local jurisdictions. The cost for any equipment, operation or maintenance dedicated to such access interconnections shall be shared on pro rata basis or as mutually agreed upon among all participating jurisdictions, and paid to licensee.

4. A licensee may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon petition by the licensee to the city. The city shall grant said request, if it finds that a licensee negotiated in good faith and failed to obtain an approval from another cable sys-

tem(s), governmental entity or educational institution for the proposed interconnection.

G. Access Channel Capital Costs. As provided for in the license, the city may require licensee to provide grants, funding, training, services, or any other kind of support reasonably necessary to meet the community needs of the city for the access channels.

A licensee shall, to the extent consistent with federal law, make capital expenditures in support of access channels and related facilities and equipment as provided in the license. If there is more than one licensee providing cable service in the city, the city will use its best efforts to assure that the licensee's capital expenditures for access channels, facilities and equipment are reasonably equivalent as provided in the license. To the extent licensee's rates for cable services are subject to regulation, and to the extent consistent with applicable law, licensee shall have the right to treat such capital expenditures as external costs in support of access channels in setting regulated rates for cable services.

H. Access Channels on Basic Service Tier. All access channels provided to subscribers shall be included, without limitation, as a part of each and every cable service tier which provides basic service.

I. Change in Technology. In the event a licensee makes any change in the cable system and related equipment and facilities or in licensee's signal delivery technology, licensee shall ensure that city analog signals are converted by licensee and the signal quality or transmission of access services or programming remains substantially the same.

J. Technical Quality. Licensee shall maintain all access channels and interconnections at the same level of technical quality and reliability required by this chapter and any license agreement and all other applicable laws, rules and regulations for residential subscriber channels subject to the technical quality or reliability of the signal received from the

source. Licensee shall provide routine maintenance and shall repair and replace all transmission equipment including channel modulators, associated cable and equipment, required to carry signal quality to and from licensee's facilities for the access channels; provided, however, licensee shall have no duty to provide, maintain, repair or replace equipment for which the city is responsible under subsection (B)(1) of this section.

K. Access Cooperation. The city and licensee may agree to designate any other jurisdiction which has entered into an agreement with the licensee or an affiliate of the licensee to receive any access benefit due the city hereunder, or to share in the use of access services, facilities, equipment or channel operations hereunder. The purpose of this subsection shall be to allow cooperation in the use of access channels, facilities and equipment.

L. Indemnification by Access Programming Producers and Users. All local producers and users of any of the access facilities or channels shall agree in writing to hold harmless the licensee, the city, and any responsible educational institution, from any and all liability or other injury (including the reasonable cost of defending claims or litigations) arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the licensee, city, or responsible educational institution; and for any other injury or damage in law or equity, which claims result from the use of an access facility or channel. (Ord. 04-95 § 1)

Article 16-32 Reserved**Article 16-33 Time Is of the Essence**

For any license or contract entered into pursuant to this chapter, time shall be deemed of the essence and any failure of the licensee to perform within the time allotted, or within a reasonable time if a period is not specified, shall be sufficient grounds for the city to invoke liquidated damages or revocation of a license in accordance with Articles 16-78 and 16-81. (Ord. 04-95 § 1)

Article 16-34 Acceptance and Effective Date of License

A. No license granted pursuant to the provisions of this chapter shall become effective unless and until all insurance, letter of credit and bond requirements are met, all of such provisions being hereby declared to be conditions precedent to the effectiveness of any such license granted hereunder. If any of such provisions are not done and completed in the time and manner required, the license shall be null and void.

B. Within twenty days after the date of awarding any license, or within such extended period of time as the council in its discretion may authorize, the licensee shall file with the clerk its written acceptance of the license, in a form satisfactory to the city attorney, together with the construction bond and insurance policies required by this chapter, and its agreement to be bound by and to comply with and to do everything which is required of the licensee by the provisions of this chapter and the applicable license. Such acceptance shall be acknowledged by the licensee before a notary public, and shall, in form and content, be satisfactory to and approved by the city attorney. (Ord. 04-96 § 1; Ord. 04-95 § 1)

Article 16-35 Reserved**Article 16-36 Permits, Installations and Service**

Within one hundred eighty days after acceptance of any license, the licensee shall proceed with due diligence to apply for necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable systems, or their associated microwave transmission facilities. (Ord. 04-95 § 1)

Article 16-37 Cable System Construction Map and Schedule

A. Within one hundred eighty days after acceptance of any license, licensee shall submit a specific construction plan or reconstruction plan, as applicable, which shall be incorporated as an exhibit in the license. The plan shall include an overall plant mileage schedule of any construction or reconstruction effort and a time schedule of said work and system design criteria.

B. Within ninety days after obtaining necessary permits, licenses, and authorizations, licensee shall commence construction and installation of the cable system or any reconstruction of the cable system.

1. Licensee shall comply with the time schedule for construction required in subsection (A) of this section; provided, however, the city issues permits in a timely manner.

2. Installation and operation of the new or any rebuilt cable system by licensee shall proceed on a nondiscriminatory basis, without regard for subscriber affluence or other discriminatory factors.

3. Immediately following commencement of construction and installation of the cable system under a license, licensee shall diligently proceed to deliver cable services, as described in the license.

C. Failure on the part of the licensee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein shall be grounds for liquidated damages and/or termination of such license pursuant to Articles 16-78 and 16-81; provided, however, that the council in its discretion may extend the time for the commencement and completion of construction and installation for additional periods if any of the conditions set forth in Article 16-92 exist. (Ord. 04-95 § 1)

Article 16-38 Line Extension

A. Residential Service. After completion of construction in an area pursuant to a construction schedule, a licensee shall make cable services available to dwelling units within the city and shall extend its cable system as follows:

1. Each unit in a multiple dwelling unit (MDU) shall be counted as a dwelling unit in determining residential density where a mutually acceptable agreement granting licensee reasonable access to the MDU has been executed by the owner of the property and delivered to the licensee. Licensee shall not be required to make service available to residents of a MDU where the owner of the property has not granted licensee such reasonable access to the property.

2. When requested by a resident in the city, licensee shall, at licensee's sole expense, extend the cable system to any single-family residence or dwelling within the city; provided, that the residence or dwelling is located within two hundred twenty-five feet of the nearest technically feasible point of connection on the cable system. Such extension(s) shall include cutting in one or more taps and extending cable as necessary.

3. A license may provide for different line extension requirements from that required in subsection (A)(2) of this article so long as

such requirements are not less restrictive and provide similar benefits.

4. To prevent unnecessary disruption and damage to streets, rights-of-way, and other property, the installation of underground cable shall be accomplished in new subdivisions that meet the requirements of subsection (A)(2) of this article at the same time, and in the same trench, as other communications, electric and other permanent services to structures, unless to do so would be economically infeasible. Except as federal law may grant them other rights, developers of new residential buildings or mobile homes within a new or undeveloped subdivision, new residential units within new multiple-occupancy residential developments, and new commercial and industrial buildings and structures shall treat cable television facilities as they treat other communication facilities, utilities and other underground facilities, in regards to availability and cost of trenching for undergroundings.

5. Absent a showing by licensee to the manager of circumstances beyond licensee's reasonable control, an extension of service pursuant to subsections (A)(2) of this article or this subsection shall be accomplished within one hundred twenty days of the developer's or resident's request.

6. Licensee shall not be required to install the cable system or conduit in the joint trench of a new subdivision or to provide cable service to residents of the subdivision when the developer or homeowner's association of the subdivision has entered into an agreement in which another party has agreed to provide cable television or other comparable video services to all residents of the subdivision and in which the subscribers' fees for such services are paid to the provider from collection of homeowner's association fees. However, upon termination of such agreement, the line extension required by this article shall apply.

B. Commercial Service. After completion of construction in an area pursuant to a con-

struction schedule, a licensee shall make cable services available to commercial establishments as follows, except licensee shall not be required to make service available to commercial establishments where the owner of the property has not granted licensee reasonable access to the property:

1. When requested by the owner of a commercial establishment; provided, that no plant extension and nothing more than a standard drop is required to make cable services available; or provided, that the building is located within two hundred twenty five feet of the nearest technically feasible point of connection on the cable system.

2. Absent a showing by licensee to the manager of unusual circumstances, including without limitation street crossings, an extension of service shall be accomplished within one hundred twenty days of owner's execution of any necessary easement documents and capital contribution agreements.

C. Service Drops.

1. Licensee shall make service available to any single-family residence or any commercial establishment within the city at applicable standard connection charge if the connection requires a standard drop.

2. If making service available requires more than a standard drop, licensee shall not be required to make such service available unless the person requesting service pays to licensee (a) the standard connection charge and (b) an amount equal to the reasonable actual labor and material costs incurred by licensee for the additional facilities and work.

3. Licensee may offer bulk billing service, but shall not require a bulk billing agreement as a condition of providing service.

4. Absent a showing by licensee to the manager of unusual circumstances, including without limitation street crossings, (a) any standard drop to a single-family residence or dwelling shall be accomplished within seven business days after an order has been placed,

and (b) any drop that is not a standard drop shall be accomplished within a reasonable time under the circumstances. Line extensions shall be done as provided in subsection (A) of this section.

5. Absent a showing by licensee to the manager of unusual circumstances, including without limitation street crossings, (a) any standard drop to a commercial establishment shall be accomplished within ten days after the owner of such commercial establishment executes any necessary easement documents and capital contribution agreements, and (b) any commercial drop that is not a standard drop shall be accomplished within a reasonable time under the circumstances.

D. If a licensee elects to extend cable service to a customer in a licensed area which does not meet the standard drop requirements of this article, the licensee shall not refuse to extend service to any other customer in the same area solely on the grounds that service to the first customer did not meet the standard drop requirements.

E. The line extension requirements set forth in this article shall not apply to any area covered by a construction phase described in the construction schedule until the construction phase for that area has been completed.

F. Discrimination Prohibited. No person, firm or corporation in the existing cable service area of the licensee shall be arbitrarily refused cable services; provided, however, that the licensee shall not be required to provide cable services to any subscriber who does not pay the applicable line extension connection fee and/or cable service charge(s).

G. Annexed Territory. Newly annexed territory shall be subject to the terms of this chapter and this article. (Ord. 04-95 § 1)

Article 16-39 Placement of Transmission Facilities

Except as provided in the license, facilities shall be placed in accordance with Chapter 7 of the Litchfield Park city code. (Ord. 04-95 § 1)

Article 16-40 Construction and Technical Standards

A. Compliance with Construction and Technical Standards.

1. As provided in the license, licensee shall construct, install, operate and maintain its system in a manner and at all times consistent with (a) all laws, this chapter, construction standards of the city, the Federal Communications Commission (FCC) Rules and Regulations, Part 76 Subpart K (Technical Standards), as amended from time to time, and (b) detailed standards submitted by licensee as part of its application, which standards are to be incorporated by reference in a license.

2. When there have been multiple, similar complaints by subscribers, or when there exists other evidence which suggests that licensee is not in substantial compliance with the technical standards, or the cable system is not operating in accordance with this chapter or the license, the manager shall have the right and authority to compel licensee to test, analyze and report on the performance of the cable system under the supervision of the manager. Such report shall be delivered to the manager no later than thirty days after the manager requests such test(s) in writing and shall include the following information: the nature of the complaints that precipitated the test(s), which cable system component(s) was/were tested, the equipment used and procedure(s) employed in such testing, the result(s) of such test(s) and the manner in which such complaints were resolved. If such report indicates licensee is in partial compliance with the technical standards, but there exists evidence suggesting that licensee is nonetheless not in substantial compliance, the manager may

require that the test(s) be repeated within thirty days of the delivery of such report, under the supervision of a professional engineer not on the permanent staff of licensee. Such engineer shall sign all records of such repeated test(s) and shall forward to the manager (a) such records, (b) a report interpreting the results, and (c) recommended corrective actions, if any. The fees of such engineer shall be paid by (a) licensee, if the repeated test(s) show(s) licensee is not in substantial compliance with the technical standards of this chapter, or (b) the city, if the repeated test(s) show(s) licensee is in substantial compliance with said standards.

B. Additional Specifications. Construction, installation and maintenance of a cable system shall be performed in an orderly and professional manner. All cables and wires shall be installed, where possible, parallel with and in a manner similar to the installation of electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with all applicable codes. Each cable system shall include equipment capable of providing standby power as specified in the license. The equipment shall be so constructed as to automatically revert to the standby mode when the electrical utility power returns. The system shall incorporate safeguards necessary to prevent injury to technicians resulting from licensee's standby power sources. Licensee shall at all time comply with applicable sections of:

1. National Electrical Safety Code (ANSI)C2;

2. National Electrical Code (National Bureau of Fire Underwriters);

3. The Uniform Building Code as may be adopted and amended by the city, together with applicable portions of all other uniform codes, as may be adopted and amended by the city, promulgated by the International Conference of Building Officials;

4. City zoning code and subdivision regulations, all as from time to time amended and revised, and all other applicable rules and regulations now in effect or hereinafter adopted by the city;

5. The Maricopa Association of Governments Uniform Standard Specifications for Public Works Construction including the latest city supplement thereto.

C. Emergency Service. The licensee shall design and construct the system to provide for a restricted audio override of the audio portion of all channels during emergencies consistent with FCC regulations. Emergency or standby power sources will be installed at the main electronic control center and appropriate locations so as to minimize loss of signal. Key cable routings shall also be equipped with a standby power source as set forth in the license. In case of any declared emergency or disaster, consistent with FCC regulations, the cable system shall, upon request of the mayor or manager, make available immediately its facilities to the city for emergency use during the emergency or disaster period. A “declared emergency or disaster” as used in this article means such event that has been proclaimed by the mayor, the governor, or other competent authority. In any event, the cable system shall not endanger or interfere with the safety of persons or property in the license area or other areas where the licensee may have equipment located. (Ord. 04-95 § 1)

Article 16-41 Utility Locating System

A licensee shall be required to be a participant in the regional one call utility locating system (Blue Stake). Licensee shall use paint that dissolves within three weeks. In the event licensee’s utility markings paint remains visible after three weeks, licensee shall remove such markings. If the licensee fails to remove such markings after notice and a reasonable time for cure, the city may cause the markings to be removed and invoice the licensee for the

removal costs, which costs shall be promptly paid. (Ord. 04-95 § 1)

Article 16-42 Resident Notification of Construction Activity Required

The licensee shall provide reasonable advance notice to all affected residents prior to system construction or upgrade crews entering the right-of-way or easement in front of or on their property; provided, that the licensee shall not be required to provide such notice in emergencies. (Ord. 04-95 § 1)

Article 16-43 Reserved

Article 16-44 Reserved

Article 16-45 Reserved

Article 16-46 Location of Property of Licensee

A. Any poles, wires, cable lines, conduits or other properties of a licensee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the public works director acting in the exercise of his reasonable discretion consistent with the city’s regulations. The director’s decision shall accommodate reasonable technical requirements of the facilities.

B. Except as permitted by the city, a licensee shall not install or erect any facility or apparatus in or on any privately owned area within the city which is intended to become a public street, whether or not designated or delineated as a proposed public street on any preliminary subdivision approved by the city.

C. Notwithstanding any other provision in this chapter or any license granted pursuant thereto, all cable system lines of a licensee in any public street, shall be located underground in accordance with Section 7-10-2 and at such depths and locations as shall be approved by

the public works director. This requirement shall not apply to existing above-ground facilities.

D. Except as provided in the license, upon the undergrounding of other utility lines or shared overhead facilities, licensee shall concurrently (or earlier) place its facilities underground, at its own expense, at depths and locations approved by the public works director.

E. All new underground wires or cable of licensee placed after the effective date of the ordinance codified in this chapter shall be placed in conduits except for service drop lines.

F. The licensee or its authorized contractors will obtain permits, prior to any physical work being performed in the city's rights-of-way or on city-owned property. All work will be done in accordance with the city's technical and permitting specifications and in accordance with Article 7-14 of the Litchfield Park City Code, as it exists now or may be amended in the future. (Ord. 04-95 § 1)

Article 16-47 Emergency Work

The city reserves the right to move any portion of the licensee's equipment and facilities as may be required in any emergency as determined by the city without liability for interruption of cable service. However, prior to taking any actions pursuant to this article, the city shall provide, if feasible, reasonable notice to licensee of the emergency to allow licensee the opportunity to protect or repair licensee's facilities involved in the emergency. (Ord. 04-95 § 1)

Article 16-48 Removal and Abandonment of Property of Licensee

The following provisions shall not apply to facilities used in the provision of services other than cable services as to which no cable license is required:

A. If the use of substantial part of the cable system is discontinued for any reason for a continuous period of twelve months, or if such cable system or property has been installed in any street or public place without complying with the requirements of the licensee's license or this chapter, or the license has been terminated, canceled or has expired without renewal, the licensee shall promptly, upon being given ten days' written notice from the public works director, remove from the streets or public places all such property and poles of such cable system other than any underground cable or any other underground property which the manager may permit to be abandoned in place. Upon such removal, the licensee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the manager.

B. Any property of the licensee remaining in place one hundred eighty days after the termination or expiration of the license shall be at the option of the city considered permanently abandoned. The city may extend such time.

C. Any property of the licensee permitted to be abandoned in place shall be abandoned in such a manner as the public works director shall prescribe. Upon permanent abandonment of the property of the licensee in place, the property shall become that of the city, and the licensee shall submit to the city an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property.

D. At the city's discretion, any property of the licensee not permitted by the city to be abandoned in place may be removed by the city at licensee's expense. (Ord. 04-95 § 1)

Article 16-49 Temporary Removal of Wire for Building Improvements

The licensee, on the request of any person, firm or corporation holding a building moving

permit issued by the city, shall 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 to the licensee by the person, firm or corporation 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 hours' advance notice to arrange for such temporary wire changes. (Ord. 04-95 § 1)

Article 16-50 Changes Required by Public Improvements

The licensee shall from time to time, at its own expense, protect, support, temporarily dislocate, temporarily or permanently, as may be required, remove or relocate, without expense to the city any facilities installed, used or maintained under the license, if and when made necessary by any lawful change of grade, alignment, or width of any street by the city, or made necessary by any other public improvement or alteration in, under, on, upon or about any street, when such public improvement or alteration is at the instance of the city, when such improvement or alteration is for a governmental or proprietary function, or made necessary by traffic conditions, public safety, street vacation or any other public project or purpose of the city, and when the licensee has substantially the same obligations with respect to the cost thereof as all other users of the public rights-of-way. (Ord. 04-95 § 1)

Article 16-51 Methods and Materials of Street Construction

The city shall have the right to specify the methods and materials of street construction or reconstruction, together with the horizontal and vertical location of any underground facility proposed by licensee within any public property or right-of-way. The city shall also have the right to limit the work of the licensee to assure a minimum of inconvenience to the

traveling public and to impose traffic control requirements, as specified in the city's subdivision regulations and Article 7-14. Licensee will be required to obtain permits from the city, allowing licensee to work in the public rights-of-way pursuant to Article 7-14. (Ord. 04-95 § 1)

Article 16-52 Failure to Perform Street Work

If a licensee causes damage to pavement, sidewalks, driveways, landscaping or other property, the licensee or the authorized agent shall, at its own expense and in a manner approved by the city, replace and restore such places in accordance with the requirements of Article 7-14. (Ord. 04-95 § 1)

Article 16-53 Reserved

Article 16-54 Reserved

Article 16-55 Reserved

Article 16-56 Telephone Communications Service

A licensee shall provide efficient customer service to subscribers over the telephone and, at a minimum, meet the standards set forth below:

A. Licensee shall have a publicly listed, local or toll-free telephone number, for the purpose of receiving inquiries regarding new service or terminating service, disconnection or reconnection of service during or after vacation, handling converters, paying bills, receiving complaints, scheduling service calls or repairs, making changes in type of programming, and providing information to subscribers on a twenty-four hours a day, seven days a week basis.

B. Trained licensee representatives will be available to respond to subscriber telephone inquiries twenty-four hours a day, seven days a week.

C. Under normal operating conditions, the time taken for a live licensee representative to answer the telephone and speak directly with a subscriber, including wait time, shall not exceed thirty seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty seconds. These standards shall be met no less than ninety percent of the time under normal operating conditions, measured on a quarterly basis. No caller should be left on hold more than sixty seconds without being informed of the status of the call.

D. Under normal operating conditions, the subscribers will receive a busy signal less than three percent of the time.

E. Licensee shall provide reasonable methodology to measure compliance with the telephone answering standards. (Ord. 04-95 § 1)

Article 16-57 Subscriber Service Standards

A. Each licensee shall at all times meet or exceed Federal Customer Service Standards and the subscriber service standards for subscribers set forth in this chapter and in its license. If there is a conflict among standards, the stricter standard shall prevail, unless preempted by federal law.

B. Upon termination of cable services to any subscriber, a licensee shall promptly remove its converter equipment from the premises of such subscriber upon the subscriber's request.

C. Licensee shall render efficient cable services, make repairs promptly, and interrupt cable services only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during periods of minimum cable system use.

D. Licensee shall not knowingly allow its cable or other operations to interfere with television reception of persons not serviced by licensee, nor shall the cable system interfere

with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the city.

E. A licensee shall continue, through the term of the license, to maintain the technical, operational, and maintenance standards and quality of cable service set forth in this chapter and as specified in the license.

F. Under normal operating conditions, each of the following four standards for subscribers will be met no less than ninety-five percent of the time measured on a quarterly basis:

1. Standard drops will be installed within seven business days after an order has been placed.

2. Except for conditions beyond the control of the licensee, the licensee must take actions to correct its service problems the next business day after notification of the service problem and will begin working on service interruptions promptly and in no event later than twenty-four hours after the interruption becomes known.

3. The "appointment window" for installations, service calls, and other installation activities will be either a specific time or, at a maximum, a four-hour time block during normal business hours. (The licensee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the subscriber.)

4. If a licensee representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the licensee will attempt to contact the subscriber. The appointment will be rescheduled, as necessary, at a time convenient for the subscriber.

G. Licensee shall respond immediately to any outage. It shall be deemed a violation if licensee exceeds a four-hour average response time to outages during any consecutive three-month period.

H. Licensee shall respond and resolve all complaints within a reasonable time. (Ord. 04-95 § 1)

Article 16-58 Subscriber and City Notification

A. The licensee shall provide written information in easy-to-understand language on each of the following areas prior to or at the time of installation of service, at least annually to all subscribers and the city, and at any time upon request:

1. Products and services offered;
2. Prices and options for programming services and conditions of subscription to programming and other services;
3. Installation and service maintenance policies;
4. Instructions on how to use the cable service;
5. Information on a parental control feature that will permit a subscriber to lock out any objectionable programming from the cable services entering his or her home;
6. Channel positions of programming carried on the system; and
7. Billing and complaint procedures, including the address and telephone number of the local business office and of the city's designated office for handling cable television matters.

B. Subscribers and the city will be notified of any changes in rates, programming, services or channel positions as soon as possible in writing. Notice must be given to the city and subscribers a minimum of thirty days in advance of such changes if the change is within the control of the licensee, unless the city concurs that notice is not necessary. In addition, the licensee shall notify the city and subscribers thirty days in advance of any significant changes in the other information required by subsection (A) of this section. (Ord. 04-95 § 1)

Article 16-59 Billing Practices; Information and Procedures

A. Bills to subscribers will be clear, concise and understandable. Bills to subscribers must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills to subscribers will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

B. Licensee shall bill all subscribers to its cable system in a uniform manner, regardless of subscriber's level of service. A licensee may offer bulk billing service, but shall not require bulk billing service as a condition of providing service. In no case shall any subscriber be billed for services in excess of thirty days prior to receipt of such service. Payment shall be due no sooner than the fifteenth day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the first day of the billing period. No late fee shall be charged until seven days after service for which the bill has been issued has been rendered.

C. In case of a billing dispute, the licensee must respond to a written complaint from a subscriber within thirty days. The licensee shall follow a written internal appeal or dispute resolution procedure for resolution of billing disputes. A current copy of the procedures shall be provided to the city clerk and shall be kept on file in the city clerk's office.

D. Any subscriber shall be entitled, upon request, oral or written, to licensee, to a refund equal to one day's service for each subscriber's service interruption: (1) for each continuous twenty-four-hour period or (2) a period of two or more hours of any four days within a monthly billing period.

E. Refunds and credits shall be issued promptly, as follows:

1. Payment deposits shall be refunded after twelve months of satisfactory customer payments.

2. Billing refunds and credits shall be issued no later than the next billing cycle following correction of the error or thirty days following the determination that a refund or credit is warranted, whichever is earlier.

3. Equipment deposits shall be refunded within seven days after the equipment supplied by licensee is returned to the licensee.

4. Service credits will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted. (Ord. 04-95 § 1)

Article 16-60 Subscriber Solicitation Procedures

A. All personnel, agents and representatives of the licensee, including subcontractors, shall wear a cable uniform or clearly display a photo-identification badge when acting on behalf of the licensee in the city.

B. The licensee shall afford each subscriber of the cable system with a three-day right of rescission for ordering installation of cable service from the cable system; provided, that such right of rescission shall end upon initiation of physical installation of cable system equipment on such subscriber's premises. (Ord. 04-95 § 1)

Article 16-61 Disconnection and Termination of Cable Services

Licensee shall only disconnect or terminate a subscriber's cable service for good and just cause. In no event shall licensee disconnect said cable service for nonpayment without the prior written notification to the affected subscriber at least seven days prior to such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than thirty days after a subscriber's failure to pay a bill due. Where the

licensee has improperly discontinued cable system service to any such subscriber, it shall provide free reconnection to the cable system to such subscriber. (Ord. 04-95 § 1)

Article 16-62 Protection of Subscriber Privacy

A. Licensee shall at all times comply with the Cable Act provisions related to protection of subscriber privacy as set forth in 47 U.S.C. Section 551 as may be amended from time to time.

B. A subscriber shall be provided, free of charge, access to all personally identifiable information regarding that subscriber which is collected and maintained by a licensee. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by licensee. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

C. Nothing in this chapter shall be construed to prohibit the city from enacting or enforcing additional laws consistent with this article for the protection of subscriber privacy. (Ord. 04-95 § 1)

Article 16-63 Reserved

Article 16-64 Reserved

Article 16-65 Reserved

Article 16-66 Reserved

Article 16-67 Reserved

Article 16-68 Reserved

Article 16-69 Reserved

Article 16-70 Reserved

Article 16-71 Reserved

Article 16-72 Reserved**Article 16-73 Reserved****Article 16-74 Reports**

A. Annual Reports. Within ninety days after the close of the licensee's fiscal year, the licensee shall submit a written annual report, in a form approved by the city including, but not limited to, the following information:

1. A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the cable system including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service.

2. A summary of cable system revenues subject to the license fee provided for under Article 16-25.

3. Full financial statements for the previous year, including income statement, balance sheet, cash flow statement, and appropriate explanatory footnotes, for the licensee or any parent company. Financial statements for the licensee or any parent company shall be audited by an independent CPA, and all other statements shall be certified by an officer of the licensee to be an accurate reflection of licensee's books and records. In the event any audited financial report has not been published by the date due under this article, then the audited financial report shall be deemed presented on time if presented within thirty days after publication. Upon request by the city, the licensee shall also provide an oral briefing to the city manager of its financial condition. This will include revenues, operating expenses and capital expenditures for the previous year.

B. Optional Reports. Upon request of the city, licensee shall provide within a reasonable time, any of the following reports:

1. A current statement of costs of construction of the cable system, if needed in connection with rate regulation.

2. A projected income statement and statement of projected costs of construction of the cable system for the next two years, in connection with rate regulation. To protect the proprietary nature of such information, the city may review these reports at the local business office of the licensee.

3. A list of the licensee's officers, members of its board of directors, and other principals of the licensee.

4. A list of stockholders or other equity investors holding five percent or more of the voting interest in the licensee and its parent, subsidiary and affiliated corporations and other entities, if any.

5. Licensee's annual and other periodic public reports and those of its parent, subsidiary and affiliated corporations and other entities, as is reasonably appropriate.

6. A report showing the results of an opinion survey identifying satisfaction or dissatisfaction among subscribers with cable services offered by the licensee. The survey shall be in a format approved by the city and may be in a form that can be transmitted to subscribers with one or more bills for service.

7. Information or reports, as needed, to establish licensee's compliance with the various standards and other provisions of this chapter and the license.

C. Plant Survey Report. Upon request of the city, the licensee shall submit to the city an annual plant survey report which shall be a complete survey of the licensee's plant and a full report thereon. Such report shall be in sufficient detail to enable the city to ascertain that the service requirements and technical standards of the FCC and/or the license are achieved and maintained. If the city has reason to believe that portions or all of the system do not meet either the FCC technical standards, or those incorporated into the license agreement, at the city's request, but no more often than once per three years, the licensee and the city shall agree upon the appointment of a qualified

independent engineer to evaluate and verify the technical performance of the cable system. The cost of such evaluation shall be borne equally by the licensee and the city.

D. Copies of Federal and State Reports. Upon request of the city, licensee shall submit to the city copies of all pleadings, applications, reports, communications and documents of any kind, submitted by the licensee to the Federal Communications Commission, as well as copies of all decisions, correspondence and actions by any federal, state and local courts, regulatory agencies and other government bodies relating to its cable television operations within the license area. The licensee shall submit such documents to the city simultaneously with its submission to such courts, agencies and bodies; and within five days after their receipt from such courts, agencies and bodies. The licensee hereby waives any right to claim confidential, privileged or proprietary rights to such documents unless such confidential rights are determined to be confidential by law or by the practices of federal or state agencies. Such confidential data exempt from public disclosure shall be retained in confidence by the city and its authorized agents and shall not be made available for public inspection.

E. Service Complaint Reports. Licensee shall make a monthly report to the city identifying the general nature and number of all service complaints, and summarizing the timeliness of licensee's response and the disposition of such complaints in a form approved by the city. Licensee is free to provide any supplemental information it wishes to the city.

F. Inspection of Facilities. The licensee shall allow the city to make inspections of any of the licensee's facilities and equipment at any time upon reasonable notice, or, in case of emergency, upon demand without prior notice, to allow the city to verify the accuracy of any submitted report.

G. Inspection of Business Office and Files. At the licensee's area office the licensee shall keep complete books and records. Subject to confidentiality restrictions required by federal or state law or Article 16-62, the city shall have the right to inspect at any time during normal business hours all books, records, construction maps and plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the licensee which relate to the operation of the cable system. Upon request of the city, licensee shall in advance redact any confidential information prior to review by the city.

H. Public Inspection. All reports submitted by licensee to the city are subject to public disclosure, and shall be available for public inspection at a designated city office during normal business hours.

I. Failure to Report. The refusal, failure, or neglect of the licensee to file any of the reports required, or provide such other reports as the city reasonably may request, shall be deemed a breach of the license, and shall subject the licensee to all remedies, legal or equitable, available to the city under the license or otherwise.

J. False Statements. Any materially false or misleading statement or representation made knowingly by the licensee in any report required under the license shall be deemed a material breach of the license and shall subject the licensee to all remedies, legal or equitable, available to the city under the license or otherwise.

K. Cost of Reports. All reports and records of licensee required to be provided by licensee under this or any other article shall be furnished at the sole expense of the licensee. (Ord. 04-95 § 1)

Article 16-75 Inspection of Property and Records

A. At all reasonable times, the licensee shall permit any duly authorized representative of the city to examine all property of the licensee, together with any appurtenant property of the licensee situated within or without the city, and to examine and transcribe any and all maps and other records kept or maintained by the licensee or under its control which relate to license compliance and deal with the operations, affairs, transactions or property of the licensee, subject to confidentiality restrictions required by federal or state law or Article 16-62.

B. The licensee shall at all times make and keep full and complete design maps showing the exact location of all cable system equipment installed or in use in public rights-of-way and other places in the city and make them available to the city for inspection and review upon request at the office where licensee maintains such records. (Ord. 04-95 § 1)

Article 16-76 Protection of City Against Liability

A. Indemnification.

1. Licensee shall fully indemnify, defend and hold harmless the city, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities and judgments for damages, including, but not limited to, expenses for legal fees, whether suit be brought or not, and disbursements and liabilities incurred or assumed by city in connection with:

a. Damage to persons or property, in any way arising out of or through the acts or omissions of licensee, its servants, officials, agents, attorneys, representatives or employees;

b. Requests for relief arising out of any licensee action or inaction which results in a claim for invasion of right of privacy for defa-

mation of any person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or of any other right of any person, firm or corporation;

c. Any and all claims arising out of licensee's failure to comply with the provisions of this chapter or a license or any federal, state or local law or regulation applicable to licensee or the cable system;

d. Any and all disputes arising out of a claim by any party other than the city or licensee wherein damages or other relief is sought (i) as a result of the city's cable system licensing of licensee or (ii) as a result of the renewal or non-renewal of licensee's cable system license.

2. If a lawsuit covered by the provisions of subsection (A)(1) of this article be brought against the city, either independently or jointly with a licensee, or with any other person or municipality, the licensee, upon notice given by the city, shall defend the city at the cost of the licensee. If final judgment is obtained against the city, either independently or jointly with licensee or any other defendants, the licensee shall indemnify the city and pay such judgment with all costs and attorneys fees and satisfy and discharge the same. The city shall cooperate with the licensee and reserves the right to participate in the defense of any litigation.

3. A licensee shall bring no claim or demand any right to a refund of license fees paid to the city as a percentage of gross revenues derived from services that are later determined to be telecommunications services rather than cable services.

4. The city is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives and/or employees.

5. A licensee shall make no settlement in any matter identified above without the city's

written consent, which shall not be unreasonably withheld. Failure to inform the city of settlement shall constitute a breach of the license and the city may seek any redress available to it against the licensee whether set forth in this chapter or under any other municipal, state or federal laws.

6. All rights of the city, pursuant to indemnification, insurance, letter of credit or performance bond(s), as provided for by this chapter, are in addition to all other rights the city may have under this chapter or any other chapter, rule, regulation or law.

7. The city's exercise of or failure to exercise all rights pursuant to any article of this chapter shall not affect in any way the right of the city subsequently to exercise any such rights or any other right of the city under this chapter or any other chapter, rule, regulation or law.

8. It is the purpose of this article to provide maximum indemnification to the city under the terms and conditions expressed and, if there is a dispute, this article shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the city by the licensee.

9. The provisions of this article shall not be dependent or conditioned upon the validity of this chapter or the validity of any of the procedures or agreements involved in the award or renewal of a license, but shall be and remain a binding right and obligation of the city and a licensee even if part or all of this chapter, or the grant or renewal of a license, is declared null and void in a legal or administrative proceeding. It shall be expressly stated in a license, that it is the intent of the licensee and city, upon the effective date of the license, that the provisions of this article survive any such declaration and shall be a binding obligation of and inure to the benefit of the licensee and city and their respective successors and assigns, if any.

B. Comprehensive Liability Insurance.

1. Upon acceptance of a license, the licensee shall file with the city clerk and shall thereafter during the entire term of such license maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies which shall insure licensee and provide primary coverage for the city, its officers, boards, commissions, agents and employees, against liability for loss or liability for personal injury, death, property damage (both automobile and non-automobile caused), or other damages. Such policy or policies shall include, but are not limited to, insurance against damages from unfair competition, copyright infringement (common law or statutory) and a failure of licensee to secure consents, occasioned by any activity or operation of licensee under such license, and regardless of any claimed or actual activities of the city, its officers, boards, commissions, agents and employees other than gross negligence or willful misconduct. The manager, in any license granted, may waive the requirement for insurance from one or more perils mentioned in the last preceding sentence upon a finding that such insurance cannot be procured or cannot be procured at a reasonable cost, and in connection therewith may reduce the otherwise required limits on coverage hereafter set forth. Such policy or policies shall be issued by a company approved by the manager and shall be in a form approved by the city attorney, with minimum combined single limits of liability coverage in the amount of three million dollars. The policy or policies shall name the city, its officers, boards, commissions, agents and employees as additional insured and contain a provision that a written notice of any cancellation, modification or reduction in coverage of said policy shall be delivered to the clerk thirty days in advance of the effective date thereof. No license granted under this chapter shall be effective unless and until certificates of insurance evidencing coverage

required above are delivered to the clerk. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this subsection.

2. The council may require increases in the amount or types of coverage no more frequently than every three years, based on increases in the CPI, so as to ensure full protection of the city and the public. The licensee shall have six months from the date of notification from the manager to comply with any increase.

3. A licensee may self-insure the above-described policy coverages if such licensee or its parent is of sufficient financial standing to reasonably provide such insurance. A licensee that elects to self-insure shall file with the city a certificate of insurance as specified by the city. (Ord. 04-95 § 1)

Article 16-77 Construction Bonds

A. Within thirty days after the award or renewal of a license, a licensee shall obtain and maintain throughout the period of system construction, at its cost and expense, and file with the clerk, a corporate surety bond issued by a company authorized to do business in the state of Arizona, and found acceptable by the city attorney, in an amount established in a license agreement solely for the purpose of guaranteeing the timely construction and/or reconstruction of the cable system and the safeguarding of private property during construction and/or reconstruction. The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the city, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the city resulting from the failure of a licensee to satisfactorily complete construction and/or reconstruction of its cable system throughout the license area pursuant to the terms and conditions of this chapter and such licensee's license.

B. Any extension of the prescribed construction or reconstruction time limit must be authorized by the city. The construction bond shall be available throughout any such extension period.

C. The construction bond shall be terminated only after the council finds that a licensee has satisfactorily completed initial construction and activation or reconstruction of its cable system pursuant to the terms and conditions of this chapter and such licensee's license.

D. The rights reserved to the city with respect to the construction bond are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such construction bond shall affect any other rights the city may have.

E. The construction bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the city, by registered mail, of written notice of such intent to cancel or not to renew.

(Ord. 04-95 § 1)

Article 16-78 Liquidated Damages

A. Each license granted by the city shall state that a licensee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the license will result in damage to the city, and that it is and will be impracticable to determine the actual amount of such damage caused by delay or nonperformance; the license shall include provisions for liquidated damages to be paid by the licensee, in amounts to be negotiated and set forth in the license and

chargeable to the letter of credit for the following defaults:

1. Failure to complete system construction or reconstruction in accordance with the schedule in the license unless the council specifically approves the delay by motion or resolution;
2. Failure to provide a cable connection within the time(s) set forth in Article 16-38;
3. Failure to properly restore the public right-of-way or to correct related violations of specifications, code, or standards after having been notified by the city to correct such defects;
4. Failure to test, analyze and report on the performance of the cable system following a written request pursuant to Article 16-40(A)(2);
5. Failure to provide in a continuing manner the type of services proposed in the accepted application for license or in the final license unless the council specifically approves modification of a licensee's obligation;
6. Failure to cure any violation of Article 16-57, following notice and an opportunity to cure pursuant to the provisions of that article; and
7. Any other action or non-action by the licensee, as agreed upon between the city and licensee, and set forth in the license.

B. If the manager concludes that a licensee is in fact liable for liquidated damages pursuant to the license, he shall issue to licensee by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the nature of the violation and the amount of the proposed assessment or the licensee shall, within thirty days of receipt of such notice:

1. Respond to the city in writing, contesting the city's assertion of violation and providing such information or documentation as may be necessary to support licensee's position; or

2. Cure any such violation (and provide written evidence of the same), or, if, in the city's sole discretion, such violation cannot be cured within such thirty-day period, take reasonable steps to cure said violation as soon as practicable and diligently continue such efforts until said violation is cured. Licensee shall report to the city, in writing, at thirty-day intervals as to licensee's efforts, indicating the steps taken by licensee to cure said violation and reporting licensee's progress until such violation is cured.

C. If licensee contests the city's assertion of violation or fails to respond to the city's notice of intent to assess liquidated damages, within fifteen days the city shall schedule a hearing in accordance with the procedures set forth in Article 16-79. (Ord. 04-95 § 1)

Article 16-79 Administrative Hearing

A. Within fifteen days of:

1. Receipt of licensee's notice of contest pursuant to Article 16-78(B)(1);
2. Expiration of the response time referred to in Articles 16-57(G) or 16-78(C); or
3. Notice from licensee that it contests an audit determination of license fees under Article 16-25(D);

an administrative hearing shall be scheduled by the manager. This shall be a public hearing, and licensee shall be afforded an opportunity to be heard and to present relevant information. Within fifteen days after the conclusion of such hearing, the manager shall issue a determination. In that determination the manager may:

- a. Find that licensee is not in violation of the terms of the license;
- b. Find that the licensee is in violation, but that such violation was with just cause and waive any liquidated damages that might otherwise be imposed;
- c. Find that licensee is in violation of the terms of the license, take corrective action,

make written demand of licensee for the amount owed by licensee as a result thereof, and if not paid by licensee within thirty days following the date of such notice, pursue all remedies available, subject to licensee's right to appeal the manager's decision;

d. Find that licensee is in violation of the terms of the license and impose liquidated damages; and

4. In the case of a material violation recommend that the council terminate the license; provided, that the council may take action on any such recommendation only after a public hearing as set forth in Article 16-80.

B. If the manager determines that licensee has committed a violation, the determination shall be accompanied by a detailed statement of reasons for the determination, including findings of fact.

C. The decision of the manager shall become final unless licensee requests a public hearing before the council within fifteen days of its receipt of the statement of reasons and findings of fact by the manager. (Ord. 04-95 § 1)

Article 16-80 Hearing by Council

A. If a public hearing before the council is requested by licensee or is held pursuant to Article 16-79, it shall be on the record as supplemented by the licensee and other relevant information. It shall convene within thirty days of the request therefor. The council may designate three of its members to act as a hearing subcommittee in the matter and to present written findings of fact and conclusions of law to the entire council. The council's decision, which shall include findings of fact, shall be made not later than forty-five calendar days after the conclusion of the hearing. In that decision, the council may:

1. Find that licensee is not in violation of the terms of the license;
2. Find that licensee is in violation but that such violation was with just cause and

waive any liquidated damages or penalty that may otherwise be imposed;

3. Find that licensee is in violation of the terms of the license, take corrective action, make written demand of licensee for the amount owed by licensee as a result thereof, and if not paid within thirty days following the date of such notice, foreclose on all or any appropriate part of the letter of credit provided pursuant to Article 16-78 to pay the cost thereof;

4. Find that licensee is in violation of the terms of the license and impose liquidated damages; and

5. In the case of a substantial violation of the license within the meaning of Article 16-81, declare the licensee in violation and revoke the license. (Ord. 04-95 § 1)

Article 16-81 Revocation

A. In addition to all other rights and powers retained by the council under this chapter or otherwise, the council shall have the right to revoke the license and all rights and privileges of the licensee thereunder upon a recurring or protracted substantial breach of the license terms and conditions, or this chapter, which substantially affects the provision or quality of cable services, the ability of the city to effectively regulate the licensee, or the city's collection of all fees and charges. The power of revocation shall not be used if the breach is a result of force majeure. The breaches appearing on the list set forth below in this article shall be considered substantial breaches. The list is not exhaustive:

1. Failure to complete system construction or reconstruction in accordance with a license;
2. Failure to provide cable service within the time(s) specified for line extensions;
3. Each failure to properly restore streets or to correct related violations of specifications, code, ordinance or standards;

4. Each failure to comply with subscriber service standards;
5. Failure to comply with operational, maintenance or technical standards;
6. Failure to provide on a continuing basis the broad categories of programming specified in a license;
7. Failure to provide the access channel requirements specified in a license;
8. An unauthorized partial or total transfer of a license;
9. Failure to commence construction as required in a license;
10. Failure to cure any other violation of a license after notice and opportunity to cure;
11. Any other material action or non-action of a licensee regarding a requirement of a license.

B. Before proceeding with a revocation hearing, the manager shall make a written demand that the licensee comply. If a violation by the licensee continues for a period beyond that set forth in the written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the manager may hold an administrative hearing in accordance with Article 16-79 or may recommend that the council act directly. The council may revoke the license as provided in this article. (Ord. 04-95 § 1)

State law reference(s): Termination of license, A.R.S. § 9-508.

Article 16-82 Reserved

Article 16-83 Reserved

Article 16-84 Reserved

Article 16-85 Reserved

Article 16-86 Reserved

Article 16-87 Reserved

Article 16-88 Continuity of Service Mandatory

A. It shall be the right of all subscribers to continue receiving cable service insofar as their financial and other obligations to a licensee are honored.

B. If the license terminates, the licensee shall cooperate with the city to ensure continuity of cable service to all subscribers for a period not to exceed ninety days. Said period may be extended by mutual agreement between the city and licensee. During such period, licensee shall be entitled to the revenues for any period during which it operates the cable system.

C. If licensee fails to operate the cable system for ninety-six consecutive hours without prior approval of the city or without just cause, the city may, at its option, operate the cable system or designate an operator until such time as licensee restores cable services under conditions acceptable to the city or a new permanent operator is selected. If the city is required to fulfill this obligation for a licensee, the licensee shall reimburse the city for all reasonable costs or damages that are the result of the licensee's failure to perform. (Ord. 04-95 § 1)

Article 16-89 Failure of City to Enforce a License; No Waiver of the Terms Thereof

A licensee shall not be excused from complying with any of the terms and conditions of a license or this chapter by any failure of the city upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. (Ord. 04-95 § 1)

Article 16-90 License Subject to Other Laws

The license is subject to and shall be governed by all applicable provisions of federal,

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

In the event of deregulation by the FCC, conformance to current FCC Rules or Regulations, as specified in this chapter may continue to be required by the city. (Ord. 04-95 § 1)

Article 16-91 Miscellaneous Provisions

A. When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the office of the clerk.

B. Neither licensee nor any of its officers or employees shall receive referral fees or gratuities from any television or radio sales or repair business.

C. All notices which the city may give to a licensee or which a licensee may give to the city shall be given in writing and may be given by first class mail, postage prepaid, addressed to licensee's most recent address on file with the city, and addressed to the city. Such notices, when sent by mail, shall be deemed given one day after deposit in the U.S. Mail. (Ord. 04-95 § 1)

Article 16-92 Force Majeure

With respect to any provision of this chapter or any license granted pursuant thereto, the violation or noncompliance with which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanc-

tion upon a licensee, such violation or non-compliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by licensee and is beyond its reasonable control. (Ord. 04-95 § 1)

Article 16-93 Severability

If any article, subsection, sentence, clause or phrase of this chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The council hereby declares that they would have passed this chapter and each article, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the licensee or any license granted hereunder. (Ord. 04-95 § 1)

Article 16-94 Violation; Penalty

Any person found guilty of violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed six months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described. (Ord. 04-96 § 4; Ord. 04-95 § 4)