

ORDINANCE G-6034

AN ORDINANCE AMENDING CHAPTER 5 OF THE PHOENIX CITY CODE BY REPEALING THE EXISTING CHAPTER 5 IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 5.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX, as follows:

SECTION 1. That Chapter 5 of the Phoenix City Code be repealed in its entirety and replaced with the following:

Chapter 5 CABLE TELEVISION LICENSES

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ARTICLE I. ADMINISTRATIVE

5-1 Title.

This chapter will be known and may be cited as the "Cable Television License Ordinance."

5-2 Purpose.

The purpose of this chapter is to:

- A. Provide for the regulation and control of the cable television systems by the City of Phoenix in the public interest.
- B. Provide the terms and conditions of cable television licenses granted by the City of Phoenix.
- C. Provide a procedure for the granting of nonexclusive licenses for providing cable and video services in the City of Phoenix.
- D. Regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of cable systems in, upon, along, across, above, over or under or in any manner connected with the public right of way within the City of Phoenix.
- E. Provide for the payment of license fees and other valuable consideration to the City.
- F. Provide conditions under which licensed cable systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, and the general public of the City.
- G. Provide remedies and prescribe penalties and liquidated damages for any violation of this chapter.

ARTICLE II. DEFINITIONS

5-3 Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given below. When consistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. Words not defined in this chapter will have the meanings given them by the Cable Act and by the Federal Communications Commission.

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

Basic service tier means a separately available tier to which subscription is required for access to any other tier of service, and will, at a minimum, consist of the following:

- (a) All signals carried as required by sections 614 and 615 of the Cable Act.
- (b) Any public, educational, and governmental access programming required by the City to be provided to subscribers.
- (c) Any signal of any television broadcast station that is provided by the licensee to any subscriber, except a signal that is secondarily transmitted by a satellite carrier beyond the local service area of such station.

Cable Act means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as they may be amended from time to time.

Cable service means the transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service. Cable service may also include services that, in the sole discretion of the City Council, provide similar video programming services without regard to the delivery technology.

Cable system (sometimes referred to as "cable television system") means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable services that includes video programming and that is provided to multiple subscribers within the City, but 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 only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless the facility or facilities uses any public right-of-way; (c) a facility of a common carrier that is subject, in whole or in part, to 47 United States Code sections 201 through 276, except that the facility is considered a cable television system, other than for purposes of 47 United States Code section 541(c), to the extent the facility is used in the transmission of video programming directly to subscribers, unless the extent of the

use is solely to provide interactive on-demand services; or (d) any facility of an electric utility used solely for operating its electric utility systems. A reference to a licensee's cable system refers to all or part of the cable system.

City means the City of Phoenix, a municipal corporation of the State of Arizona, and all of the territory within its present and future corporate boundaries.

City Council means the Council of the City of Phoenix.

City Manager means the City Manager of the City of Phoenix or the City Manager's designee.

Educational channel or educational access channel means channel capacity or any portion of the capacity of any channel designated for educational use.

Existing cable television system means a cable television system in operation on April 1, 1974, a cable television system under construction on April 1, 1974, or a cable television system which had received authorization for construction on April 1, 1974.

FCC means the Federal Communications Commission, or a designated representative.

Fiscal year means any consecutive twelve-month period as set forth in the license.

Government channel or government access channel means channel capacity or any portion of the capacity of any channel designated for governmental use.

Gross revenues means "Gross revenues" as defined in A.R.S. 9-505, except as may be modified in the license.

Initial license means a license sought by, or granted to, a person or entity that does not hold a license in Phoenix.

Leased channel or leased access channel means any channel available for lease and programming by persons or entities unaffiliated with the licensee.

License means the non-exclusive authorization granted by the City to construct, operate and maintain a cable system within all or part of the City and to occupy or use the streets within the City.

License fees means the fees the licensee pays the City under section 5-20.

Licensee means the person or entity to which a license is granted to construct, operate, maintain, or reconstruct a cable system.

Normal business hours means those hours during which most similar businesses in the City are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week or some weekend hours.

Normal operating conditions means service conditions that are within the control of the licensee. Conditions that are not within the control of the licensee include natural disasters, civil disturbances, utility company power outages, telephone network outages, and severe or unusual weather conditions. Conditions that are ordinarily within the control of the licensee include special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Other programming service means information that a licensee makes available to all subscribers generally.

Premium programming, pay-cable or pay-television means the delivery to subscribers, over the cable system, of a cable service for a fee or charge, on a per-program or per-channel basis.

Public access channel means channel capacity or any portion of the capacity of any channel designated for public use.

Renewal license means a license sought by, or granted to, a licensee already providing cable services in the City.

Resident means any person residing in the City as otherwise defined by applicable law.

School means any educational institution including primary and secondary schools, colleges and universities.

Section means any section, subsection, or provision of this chapter.

Service interruption means the loss of picture or sound on one or more channels or the significant deterioration of signal or sound.

Streets and public ways means the surface of and the space above and below any public street, sidewalk, right-of-way, alley, right-of-way easement, or other public way of any type within the City.

Subscriber or customer means any person, firm, corporation, or other entity that subscribes to, for any purpose, a cable service provided by the licensee by means of or in connection with the cable system. For the purposes of Section 5-27, "subscriber" includes those requesting a cable service provided by the licensee.

Two-way communication means the transmission of telecommunication signals from subscriber locations or other points throughout the cable system back to the cable system's control center and the transmission of telecommunication signals from the

control center to subscriber locations. The license may authorize switching at a level other than the control center.

Video programming means programming provided by or generally considered comparable to programming provided by a television broadcast station.

Year means a full calendar year.

ARTICLE III. LICENSE DURATION, RENEWAL AND TRANSFER

5-4 License.

- A. The license may include additional provisions to protect the public welfare, safety and health and comply with the standards established by this chapter.
- B. The city council may grant a waiver or modification to any terms and conditions required under this chapter if the waiver or modification (1) is in the best interest of the City, and (2) does not unfairly discriminate among licensees. Nothing in the license may waive the requirements of the various codes, ordinances and regulations of the City regarding permits, fees to be paid or manner of construction.
- C. If there is a conflict between the requirements of this chapter and the requirements of the Cable Act, the Cable Act will control to the extent the Cable Act preempts local requirements.

5-5 Use of streets and public ways.

- A. Any license granted pursuant to the provisions of this chapter authorizes the licensee to engage in the business of operating and maintaining a cable system in the City, and for that purpose the licensee may erect, install, construct, repair, replace, reconstruct, and retain, in, on, over, under, upon, across and along the streets and public ways within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable system.
- B. For its cable system in the ordinary course of business, a licensee may lease, rent or license facilities such as wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment from a third party; provided, however, that neither a licensee nor the third party will be relieved of any regulation or obligation as to its use of those facilities in the streets and public ways. Any lease, rent or license from a third party of its facilities in the streets and public ways that is not in the ordinary course of business will be subject to the approval of the City and on the City's reasonable terms and conditions. The City Manager may establish rules and procedures to provide for the review and approval of requests for approval for lease, rent or license from third parties.

- C. Prior to construction or alteration, the licensee must file plans with the Street Transportation Department and any other department designated by the City, and must, where required, receive written approval in the form of a permit before proceeding.
- D. In the case of emergency repairs, the licensee may obtain verbal approval for the repair from the appropriate Street Transportation Department personnel. However, in those cases the licensee must later file plans and obtain a permit. Wherever the facilities or related construction activity of the licensee create a serious hazard to public safety or welfare, the licensee must take all necessary actions to immediately abate the hazard. If the licensee cannot contact the City immediately, the licensee must proceed to abate the hazard immediately and must notify the City, file plans, obtain a permit and make any required changes as soon as possible.

5-6 Term.

The term of the license may not exceed fifteen years.

5-7 License non-exclusive.

All licenses are non-exclusive. The City specifically reserves the right to grant additional licenses for a cable system.

5-8 License nontransferable.

- A. A transfer is any transaction in which (1) an ownership or other interest in a licensee, its cable system, or any person that is an operator of the cable system is transferred from one person or group of persons to another person or group of persons so that control of a licensee is transferred; or (2) the rights or obligations of a licensee under a license are transferred or assigned to another person or group of persons. Control for these purposes means working control, in whatever manner exercised. For example, the addition, deletion, or other change of any general partner of a licensee, any person who owns or controls a licensee, or a cable operator of a cable system would be a change of control.
- B. No transfer may occur without prior approval of the City. The City will act upon any request for approval of a sale or transfer within 120 days of the request if the request contains or is accompanied by the information that is required by applicable FCC regulations and by this chapter.
- C. An application for a transfer must provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the proposed transferee, and on the potential impact of the transfer on subscriber rates and service. At a minimum, the information required

under applicable federal law must be provided with respect to the proposed transfer. The City may require additional information related to its determination in subsection D regarding the proposed transfer.

- D. In deciding whether to grant, deny, or grant subject to conditions an application for a transfer of a license, the City will consider, as appropriate, the following: the legal, financial, including the purchase price of the cable system, technical and other qualifications of the proposed transferee to operate the cable system; whether the licensee is in compliance with its license and this chapter and, if not, the proposed transferee's commitment to cure the noncompliance; whether operation by the proposed transferee affects competition in the delivery of cable service in the City including whether the proposed transferee owns or controls any other cable system in the City; and whether operation by the proposed transferee or approval of the transfer would affect subscribers, the City's interest under this chapter, the license, or other applicable law, and whether the future cable related needs and interests of the community as provided in the license would be satisfied at a reasonable cost.
- E. No application for a transfer of a license will be granted unless the proposed transferee agrees in writing that it will abide by and accept all terms of this chapter and the license, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous licensee under this chapter and the license for all purposes, including renewal.
- F. Approval by the City of a transfer of a license does not constitute a waiver or release of any of the rights of the City under this chapter or the license, whether arising before or after the date of the transfer.
- G. Notwithstanding the foregoing, prior consent will not be required for one transfer to any company which is owned or controlled or under common control and with the same direct parent as the licensee, and which is intended after the transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent, provided that, no such transfer will be valid unless the licensee and the proposed transferee submit a statement describing the nature of the transfer, effect of the transfer on the direct and indirect ownership and control of the cable system, and a binding agreement and warranty to the City stating that:
 - 1. The proposed transferee has read, accepts and agrees to be bound by the license and this chapter;
 - 2. The proposed transferee assumes all obligations, liabilities and responsibility under the license and this chapter for the acts and omissions of the licensee known and unknown, for all purposes, including renewal, and agrees that the transfer will not permit it to take any position or exercise any right that the licensee could not have exercised; and

3. The transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the system operator.
- H. Notwithstanding the foregoing, pledges in trust or mortgages of the assets of the system to secure the construction, operation or repair of the cable system may be made without the City's prior consent; except that no such arrangement may be made which would in any respect prevent the licensee or any successor from complying with the license and this chapter and any other applicable laws and regulations, nor may any such arrangement permit a third party to succeed to the interest of licensee, or to own or control the cable system without the prior consent of the City.
- I. A non-rebuttable presumption that transfer of control has occurred will arise upon the acquisition or accumulation by any person, or group of persons who did not previously hold a controlling interest, of more than fifty percent of the voting interest of the licensee or of the person exercising management authority over the licensee. A change in the general partner, managing partner or managing corporation is a change of control.
- J. Subject to the exceptions in section 617 of the Cable Act, no licensee may sell or otherwise transfer ownership in a cable system within a thirty-six month period following the licensee's acquisition or initial construction of the system.
- K. To the extent permitted by the Cable Act, the licensee is authorized to lease channels or provide leased access channels as provided in section 612 of the Cable Act for commercial use by persons unaffiliated with the licensee.

5-9—5-11 Reserved.

5-12 Expiration.

Upon expiration of the initial term of the license, the City will have the right, as further provided, to:

- A. Renew or extend the license subject to applicable provisions of federal law;
- B. Deny license renewal subject to applicable provisions of federal law;
- C. Purchase the system for fair market value as provided in section 5-14

5-13 Renewal or extension.

- A. A license may be renewed by filing an application and following the process provided by federal law.

- B. If a licensee fails to seek renewal as provided in subsection A, then the licensee will comply with the provisions of article XII, Application Process, if the licensee wants to continue operating a cable system within the City.
- C. Notwithstanding subsections A and B, except as prohibited by federal law, any lawful action to revoke a licensee's license for cause may not be forestalled by the subsequent initiation or pendency of renewal proceedings or the filing of a license application.

5-14 Purchase of cable system.

- A. If the license is revoked or not renewed the City may purchase the cable television system at a price not to exceed its fair market value as defined in this section.
- B. If the City elects to purchase the cable system upon expiration or termination of the license, the current licensee will sell the cable system to the City. The price for that sale will be the fair market value of the cable system.
- C. If a renewal of a license is denied and the City acquires ownership of the cable system or effects a transfer of ownership of a cable system to another person, 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.
- D. If a license 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, that acquisition or transfer will 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.

5-15 Continuity of service mandatory.

- A. All subscribers have the right to continue receiving cable services, during the term of the license as long as their financial and other obligations to the licensee are honored.
- B. On termination of the license, the licensee must cooperate with the City to ensure continuity of cable services to all subscribers for a period not to exceed thirty days. That period may be extended by agreement between the City and licensee. During the extended period that it operates the cable system, the licensee will be entitled to the related revenue.
- C. If the licensee fails to operate the cable system for ninety-six consecutive hours without prior approval of the City or without cause, the City may, at its option, operate the cable system or designate an operator until such time as the licensee restores cable services to the standards required by its license or a new

permanent operator is selected. If the City fulfills this obligation for a licensee, the licensee will reimburse the City for all reasonable costs or damages that are the result of the licensee's failure to perform.

5-16 Reserved.

5-17 Right of inspection of construction.

The City will have the right to inspect all construction or installation work subject to the provisions of the license and to make any tests it finds necessary to ensure compliance with this chapter, the license and other pertinent provisions of law.

5-18 Right of intervention.

The City will have the right to intervene in any suit or proceeding involving the license where the licensee is a party, and the licensee will not oppose that intervention.

5-19 Indemnification.

- A. The licensee will fully indemnify, defend and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, and employees against all costs, damages, expenses, claims, suits, actions, liabilities and judgments for damages, including but not limited to, expenses for legal fees, whether or not suit is brought, and related disbursements and liabilities incurred or assumed by the City for:
1. Damage to persons or property, in any way arising out of or through the acts or omissions of the licensee, its officials, agents, attorneys, representatives or employees;
 2. Requests for relief arising out of licensee's action or inaction that result in a claim for invasion of the right of privacy; for defamation 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;
 3. Any 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 the licensee or the cable system;
 4. Any disputes arising out of a claim by any party other than City or the licensee where damages or other relief is sought:
 - a. As a result of the City's cable system licensing of licensee; or

- b. As a result of the renewal or nonrenewal of licensee's cable system license.
- B. If a lawsuit covered by the provisions of subsection A is brought against the City, either independently or jointly with the licensee, or with any other person or municipality, the Licensee, upon notice given by City, must defend the City at the cost of the licensee. If final judgment is obtained against the City, either independently or jointly with the licensee or any other defendants, the licensee will indemnify City and pay, satisfy and discharge the judgment with all costs.
- C. City will cooperate with the licensee and reserves the right to participate in the defense of any litigation.
- D. The provisions of this chapter may not be read to impose any liabilities on the City not imposed by other law, or to waive any immunities the City may have under federal or State law.
- E. A licensee may not settle any matter identified above without the City's written consent, which will not be unreasonably withheld. Failure to inform the City of settlement will constitute a breach of the license and the City may seek any redress available to it.
- F. All rights of the City, pursuant to indemnification, insurance, security fund, or faithful performance bonds, 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.
- G. The City's exercise of, or failure to exercise, any rights will not affect the right of City subsequently to exercise those or any other rights of the City.
- H. It is the purpose of this section to provide maximum indemnification to the City. The intention is to provide, to the greatest extent permitted by law, for the indemnification of the City by the licensee.
- I. The provisions of this section survive any finding that any other part of the license or this chapter is invalid.

5-20 License fees.

- A. The licensee will pay to the City the maximum license fee permitted by law.
- B. The license fee will be paid each calendar quarter to the City Treasurer on or before the twentieth day of the month after the end of the quarter, with a ten-day grace period. If the payment is not made by the last day of the grace period, the City will impose interest at a rate of one and one-half percent per month commencing on the first payment due date and continuing until the payment is

made. Fractions of a month will constitute a full month for the purpose of computing interest.

- C. The City has the right to inspect the licensee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter. Any additional amount due to the City as a result of the audit will be paid with applicable interest within thirty days following written notice to the licensee that includes a copy of the audit report by the City. If the audit result shows that the licensee has underpaid license fees by more than one percent of amounts due for the period audited, then the licensee must, within thirty days of a request to do so by the City, reimburse the City for the full cost of the audit. The City Manager will attempt to coordinate any audit with any privilege license tax audits and administrative appeals that the City may be performing under other City Code provisions at the same time. If within thirty days of the notice, the licensee protests any additional license fees, then those additional amounts will not be due until final resolution by the City as provided in this chapter. Upon resolution, the licensee must pay interest on any amount determined to be due at the rate of one and one-half percent per month commencing on the date payment should have been made (i.e., within thirty days of the original assessment) and continuing until payment is made. If the licensee pays an additional license fee as a result of an audit under protest and, upon exhaustion of all appeals, that additional license fee is determined to have been overpaid, then the City will refund that license fee overpayment plus interest at the rate of one and one-half percent per month from the date of the overpayment to the date of refund by City.
- D. Each license fee payment must be accompanied by a brief report showing the basis for the computation and any other relevant facts that may be required by the City.
- E. Acceptance of any payment may not be construed as an accord that the amount paid is in fact the correct amount, nor may it be construed as a release of any claim the City may have for further or additional sums payable.
- F. For a new license for a portion of the City, the licensee will pay the City a minimum license fee of fifteen thousand dollars per year. When the licensee begins full system construction, this minimum fee will increase to thirty thousand dollars per year. These payments are to be considered advances of payments due in later years and will be credited in future years to those license fees that exceed fifty thousand dollars in a year.
- G. If the license is terminated, revoked, or forfeited prior to the regular expiration date, the licensee will immediately submit to the City a detailed financial statement showing the gross revenues of the licensee for the time elapsed since the last period for which the licensee has paid City the required license fee, and the licensee will pay City, not later than thirty days following the termination, the appropriate amount due for that final license period.

- H. If a license has a provision that includes the cost of right-of-way construction permits in the license fee, the City will be under no obligation to provide plans review or field inspection for that the licensee should the City's administrative and inspection expenses exceed the amount of license fees paid to date by the licensee.
- I. For the purpose of proper administration of this chapter and to prevent evasion of license fees imposed by this chapter, it will be presumed that all gross revenues are subject to the license fee until the contrary is established by the licensee.

5-21 Abandonment; right to require removal of property.

- A. If the use of a substantial part of the cable system is discontinued for any reason for a continuous period of twelve months, or if the cable system or property has been installed in any street or public place without complying with the requirements of the license or this chapter, or the license has been terminated, canceled or has expired without renewal, the licensee will promptly, upon being given ten days' notice, remove from the streets or public places all of the property and poles of the cable system. However, the City may permit any underground cable or any other underground property to be abandoned in place. After the licensee removes its property, it must promptly restore the street or other area from which the property was removed to a condition satisfactory to the City.
- B. Any property of the licensee remaining in place without the consent of the City one hundred eighty days after the termination or expiration of the license will be, at the option of the City, considered permanently abandoned. The City may extend that time.
- C. Any property of the licensee permitted to be abandoned in place must be abandoned in a manner suitable to the City. Upon permanent abandonment in place, the property will, at the City's option, become property of the City, and the licensee will submit to the City an instrument in writing, to be approved by the City Attorney, transferring licensee's interest in the property to the City.

5-22 Costs of publication of license.

The licensee will pay the cost of publication of any required notices.

5-23 Reserved

ARTICLE IV. SYSTEM OPERATION AND MAINTENANCE

5-24 Inspection of records.

The licensee must maintain an office within the City where pertinent licensee records will be available. The City has the right to inspect at any time during normal business hours, all books, records, maps, plans, income records, service complaint logs, performance test results and other like materials of the licensee that relate to the licensee's obligations under its license.

The records and any additional information that may be required by the City will be furnished by the licensee to the City upon request, and at the licensee's own cost and expense. Access to the records may not be denied by the licensee on the basis that the records contain proprietary information.

5-25 Communications with regulatory agencies.

Copies of all petitions, applications, communications, and reports submitted by the licensee to all federal or State regulatory commission or agency having jurisdiction over any matters affecting the cable system or licensee's operations in the City will be made available upon request to the City, provided however, the licensee will without request, provide all documents required by law to be submitted to the City. Copies of responses from the regulatory agencies to the licensee will likewise be available upon request to the City, provided however, the licensee will without request, provide all documents required by law to be submitted to the City. The licensee will provide City with copies of any petition, applications or communications submitted or filed by the licensee for bankruptcy or receivership of the licensee, and documents related to licensee's declaration of bankruptcy, assignment, receivership or trusteeship.

5-26 Reports.

- A. No later than April 30 of each year or one hundred twenty days after the close of the licensee's fiscal year, the licensee will present a written report to the City, certified as being correct by an officer of the company and that includes:
1. 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 will be audited by an independent CPA, and all other statements must be certified by an officer of the licensee to be an accurate reflection of licensee's books and records. If any audited financial report has not been published by the date due under this section, then the audited financial report will be deemed presented on time if presented within thirty days after publication. Upon request by City, the licensee will also provide an oral briefing to the City Manager of its financial condition, including revenues, operating expenses and capital expenditures for the previous year.

2. The following information specific to the City:
 - a. Gross revenues from each source attributable to operations within the City;
 - b. A summary of the previous year's major operations that shows each license area separately, including the total number of subscribers for each category of service, the number of homes passed, miles of cable plant, other significant system facilities or equipment added or deleted, any services added or dropped, and any significant technological changes occurring in the system;
 - c. A summary of complaints received and their disposition; and
 - d. Projected plans for the future.
- B. No later than April 30 of each year, the licensee will provide a written report of any performance tests performed for the cable system. The City may establish a performance testing process if there are no FCC standards.
- C. The licensee will prepare and provide to the City, at the times and in the form prescribed, additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to review the performance of the licensee under its license. Upon request, the licensee will make available to City at licensee's offices, complete design maps of the cable or video services system. Upon request the licensee shall furnish the City with a copy of any agreements relating to the license between the licensee and any utility that provide for the use of any facility of the utility.
- D. At specified intervals and in a mapping format compatible with the current City electronic mapping format, the licensee will provide the City up-to-date route maps of a suitable scale showing all transmitting and receiving pickup locations, the fiber and coaxial plant, and coaxial amplifiers and pedestal locations.
- E. Misrepresentation, material variances between the actual facts and the reports, or significant tardiness in complying with this section will be grounds for the City's use of appropriate remedies under this chapter.

5-27 Customer service standards.

- A. Each licensee will at all times satisfy federal customer service standards, the customer services standards in this chapter and in its license agreement. In the event of a conflict among standards, the strictest standard will prevail. The City Council may waive the customer services standards in this chapter if specified in the written license.

- B. The licensee will maintain a publicly listed, toll-free telephone access line available to its subscribers twenty-four hours a day, seven days a week, and operated to receive subscriber complaints, requests for repairs, service calls or billing adjustment.
- C. A written log will be maintained listing all subscriber complaints. A complaint is any complaint by a subscriber to the City that they did not receive the service the subscriber requested consistent with the license. The log must include the name and telephone number, if given, of the subscriber making the complaint and the disposition of the complaint. The record must be maintained for three years. In addition, the licensee will report specific complaint categories that the licensee tracks as a reasonable measure of customer service response standards as required by the license.
- D. The licensee will provide efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Interruptions, if practicable, must be preceded by notice and occur during periods of minimum use of the cable system. The licensee must maintain a written log of all major service interruptions and keep the record for three years.
- E. The licensee will maintain a repair force of technicians capable of responding to subscriber complaints or requests for service. Unless FCC rules provide otherwise, the subscriber may not be charged for this service except where the licensee's equipment has been damaged by the subscriber or as provided in the license for fees and charges.
- F. The licensee will ensure that all subscribers, programmers, and members of the general public have recourse to a satisfactory hearing of any complaints. The licensee will provide each subscriber with a description of the process for submitting a complaint and that specifies:
 - 1. The telephone number and the address of the licensee that the subscriber can utilize to make a complaint.
 - 2. That a dissatisfied subscriber should exhaust its remedy with the licensee before submitting a complaint to the City.
 - 3. The address and title of the official in the City designated to review complaints.
- G. Upon request by the City the licensee will submit a detailed description of any complaint whether written or verbal and the action taken by the licensee. Additional customer service standards determined necessary to respond to general customer service needs may be adopted by the City Council.

5-27.1 Construction notification.

The City may establish requirements for notification of adjacent residents prior to construction. Failure to comply with those requirements may result in appropriate actions by the City.

5-28 Safety.

- A. The licensee will, at all times, employ the standard of care appropriate to the risks involved and will install and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to employees of the licensee.
- B. The licensee will install and maintain its wires, cables, fixtures, and other equipment in compliance with the City's Electrical Code, City regulations and other applicable codes, so that they will not interfere with any property of the City or any public utility.
- C. All lines, equipment, and connections in, over, under, and upon the streets and public ways and private property in the City must be maintained in a safe and suitable condition, and in good order and repair. Special attention must be paid to placing guy wires and anchors before the placement of cable.

5-29 Liability insurance.

- A. During the term of the license, the licensee must file with the City and continuously maintain for the benefit of the City, the public and the licensee a commercial general liability insurance policy, written on an occurrence basis, that covers losses related to the licensee's cable system and appurtenances. The insurance must cover claims that result from any act, omission or negligence of the licensee or its officers, agents, representatives, and employees during all times that the licensee will be operating the cable system. The minimum types of coverage and limits of liability coverage are:

Commercial General Liability – Occurrence Form

Policy must include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

- B. The City has no responsibility for insurance coverage. The insurance requirements above are minimum requirements and in no way limit the indemnity covenants in the license. The City in no way warrants that the minimum limits above are sufficient to protect the licensee from liabilities that might arise out of

any activities under the license. The licensee is free to purchase additional insurance as it may determine necessary. The licensee must furnish the City with a certificate of insurance. The certificate must be issued by an insurance company authorized to transact business in the State of Arizona, or on the list of authorized insurers maintained by the Arizona Department of Insurance. The licensee must provide an updated certificate of insurance to the City prior to each expiration date.

- C. The licensee must also provide catastrophe umbrella insurance coverage in the minimum amount of three million dollars in excess of two million dollars underlying coverage.
- D. The City, its officers, agents and employees must be named as an additional insured on the licensee's policy except worker's compensation and employers liability and this must be indicated on the certificate of insurance issued to the City. The licensee's coverage will be primary for any losses arising out of activities related to the license.
- E. The licensee's policy must specifically provide full coverage for explosion, collapse and underground incidents.
- F. For each required insurance policy, the licensee must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason.
- G. All deductible amounts under liability insurance coverage must be approved by the City.
- H. The City may, during the term of a license and no more frequently than every three years, modify the liability insurance limits based on price inflation. The licensees will have six months from the date of notice from the City to comply with any increase.
- I. A licensee may self-insure if the licensee or its parent has sufficient financial resources to reasonably self-insure. A licensee that elects to self-insure must demonstrate to the City that it has a financially sound self-insurance program.

5-30 Performance bond.

The licensee must provide the City with an initial performance bond in the amount of \$50,000, payable to the City, conditioned on the licensee observing, fulfilling and performing every term and condition of the license.

At such time as the licensee begins incidental construction on the system, the Street Transportation Director may increase the required level of performance bond to a level commensurate with cable system construction in the right-of-way.

Upon initiation of major system construction, the amount of bond will increase to at least \$300,000 as determined by the Street Transportation Director based on the level of construction in the right-of-way.

One year after completion of major construction, the amount of bond will be reduced to \$200,000 for the remaining period of the license.

5-31 Security fund.

- A. Within thirty days after the effective date of an initial license or renewal license, the licensee will deposit \$40,000 into a suitable interest-bearing account established by the City, as security for compliance with the provisions of the license. The City will have the full power of withdrawal of funds from the account except that all interest accrued will be payable to the licensee on demand. No withdrawals may be made from the security fund account without the prior written approval of the City Manager.
- B. Within thirty days after notice to the licensee of a withdrawal by the City from the security fund, the licensee must deposit sufficient money to restore the security fund to the original amount.
- C. If the licensee fails, within ten days of a notice of intent to withdraw from the security fund, to pay to the City any amount that the City claims is due from, or to comply with any provision of the license that the City reasonably determines can be remedied by an expenditure of the security fund, then the City may withdraw that amount, with interest and any penalties, from the security fund. The City will notify the licensee of any withdrawals.
- D. The licensee will be entitled to the return of any portion of the security fund that remains at the expiration or termination of the license after the City withdraws any amount due from the licensee. Any funds that the City erroneously or wrongfully withdraws shall be returned to the licensee, with interest of one and one-half percent per month from the date of withdrawal, within thirty business days after a final determination that the withdrawal was in error or wrongful.

ARTICLE V. DESIGN AND CONSTRUCTION PROVISIONS

5-32 Standards for construction.

The cable television system must be constructed in accordance with FCC requirements the provisions of this chapter, and the license. If FCC requirements are terminated and this chapter or the license provides no corresponding requirements, then the FCC regulations will remain in effect for licensees until the City approves the termination or adopts substitute requirements.

5-33 License area.

The City may issue a license for any portion, or all, of the City.

5-34 Facilities.

The licensee will provide facilities as required by the license. Those facilities will remain the property of the licensee, whether used for local origination or public, educational or governmental use.

5-35 Interconnection.

- A. Subject to applicable federal and State law, the licensee will provide interconnection capability as specified in the license and as required herein.
- B. Subject to applicable federal and State law, the City may require interconnection between any of the licenses issued by the City. Interconnection may be required for the purpose of providing services specified in the license on a City-wide basis or providing the capability for institutional communications throughout the City.
- C. Subject to applicable federal and State law, when interconnection is required, the cost will be borne by all licensees to be interconnected.
- D. Except as provided in the license, the licensee will interconnect access channels of the cable system with any other cable systems in adjacent areas outside the City, upon the directive of the City. Interconnection of cable systems may be done by any appropriate method.
- E. Upon receiving the directive of the City to interconnect such other cable systems, a licensee will immediately initiate negotiations with the other affected cable systems for all costs to be shared fairly among cable systems for both construction and operation of the interconnection.
- F. 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 may grant that request, if it finds that a licensee negotiated in good faith and failed to obtain an approval from another cable system of the proposed interconnection.

5-36 System construction schedule.

- A. For any construction or improvements required under the license, the license will establish minimum construction deadlines.
- B. The license will contain a construction schedule designating the amount of construction required each year during the construction period in increments of

no more than six months. This construction schedule will be the principal criterion to be used in the City's determination of whether the licensee is meeting the construction requirements. The licensee must submit modifications of the construction schedule to the City and these modifications will be deemed to be approved by the City and included in the schedule unless the licensee is notified by the City in writing within thirty days of receipt of the modification that the modification is disapproved. The modifications of the construction schedule may not be discriminatory, result in an overall delay in the construction period, or result in an isolation of an area from service in violation of the line extension policy set forth in the license.

- C. The licensee will report on construction progress on a monthly basis, after construction begins, and provide this information to the City, showing specifically whether the construction schedule is being met and the reasons for any delay. The written report must state the number of feet of strand in place, the number of feet of cable installed overhead and underground as well as the number of dwellings passed by that cable, the number of amplifiers installed, the approximate number of homes which can be served directly by the energized cable, the approximate number of homes which have been offered service, the approximate number of subscribers, as of the last day of the month, and map showing areas with cable installed, areas with cable energized and areas to be installed or energized within the next month. The report must be submitted to the City by the first working day after the ninth day of the following month. The City may determine the format to be used by the licensee in completing this report. For construction which involves rebuilding, the City may change the reporting period to a quarterly basis and what information is to be included in the written report.
- D. The licensee must schedule its construction activities to coordinate with the City's construction activities on the streets, so as to avoid unnecessary inconvenience to the public.

5-37 Provision of service.

- A. Consistent with the line extension policy in the license, the licensee will make service available for installation upon the request of to any subscriber, potential subscriber or property owner or the City within the service area, no later than one hundred twenty days from the date of request.
- B. Once a licensee has made service available to installation, the licensee must provide service to the potential subscriber within the time periods specified in the license.

5-38 Undergrounding of cable.

- A. Cables must be installed underground where all existing utilities are already underground. Previously installed aerial cable shall be undergrounded in concert with utilities when their facilities are undergrounded. The licensee may install cables on existing or replacement utility poles or in existing conduit where permission is granted by owner of the utility pole or conduit. No additional poles or longer poles will be permitted in the streets or public ways for any cable runs of this license. If the licensee installs cable on existing poles as provided herein, the licensee must bury its cable if such poles are removed and not replaced in kind. If the licensee makes use of existing conduit of an entity not then regulated by the City, by license or franchise, the licensee will be subject to the provisions of this license in the use of such conduit in the streets and public ways.
- B. To prevent unnecessary disruption and damage to streets, rights-of-way, and other property the installation of cable system must be accomplished in new subdivisions at the same time, and in the same trench as other communications, electric and other permanent services to structures. 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 will treat cable television facilities as they treat other communication facilities, utilities and other underground facilities, in regards to availability and cost of trenching for undergrounding.

5-39 Special additional underground service permit.

If a residence is already served by cable television service, the licensee will obtain a special additional underground service permit to construct underground facilities. The special additional underground service permit will be required in addition to all other permits required. The City Manager or his designee may adopt regulations providing for the procedural requirements for issuing such permits.

5-40 Construction standards and codes.

- A. In addition to meeting all requirements of local electrical and building codes specified in this chapter, the licensee must comply with specifically established standards and requirements for construction of the system specified in the license.
- B. Construction, installation and maintenance of a cable system will be performed in an orderly and professional manner. All cables and wires must be installed, where possible, parallel with and in a manner similar to the installation of electric and telephone lines. Multiple cable configurations must be arranged in parallel and bundled with due respect for engineering considerations. Underground installations must be in conformance with all applicable codes.

- C. Each cable television system must include equipment capable of providing standby power as specified in the license. The equipment must be so constructed as to automatically revert to the standby mode when the electrical utility power returns. The system must incorporate safeguards necessary to prevent injury to cable service technicians resulting from licensee's standby power sources.

- D. The licensee will at all times comply with applicable sections of:
 - 1. National Electrical Safety Code (ANSI) C2-1990;
 - 2. National Electrical Code (National Bureau of Fire Underwriters);
 - 3. The City Building Code;
 - 4. City 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. City of Phoenix supplement to the Maricopa Association of Government Uniform Standard Specifications for Public Works Construction.

- E. The cable system must 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.

5-41 Preconstruction tests.

Before beginning the actual installation, components will be tested thoroughly to assure that the components individually and in aggregate provide high signal quality and are dependable. The license must specify the tests and procedures to be utilized in meeting this requirement.

5-42 Technical and performance standards.

- A. In addition to the system tests required by the FCC, the licensee must perform tests of the cable system as set forth in the license to comply with the goals and standards specified herein. The tests will be performed periodically, to assure the City that standards are being met.

- B. To the extent applicable, the licensee must comply with the FCC Technical Standards for Class 1 channels (part 76, subpart K of the FCC rules and regulations). The license will set forth detailed objectives, standards and requirements for operating a cable system. The City reserves the right to specify in the license additional standards in a manner consistent with federal law. Each

licensee shall demonstrate to the City whether the cable system does meet or exceed FCC technical standards for each channel.

- C. The licensee will construct, install, operate and maintain its system in a manner such that it operates at all times consistent with all laws, this chapter, construction standards of the City, FCC rules and regulations, part 76, subpart K, as amended, which establish minimum technical standards relating to the cable system's technical operations and signal quality, and any detailed standards submitted by the licensee as part of its application or renewal proposal, which standards are to be incorporated by reference in the license. In addition, the licensee must provide the City, upon request, the opportunity to observe the conduct of and a written report of the results of licensee's annual proof of performance tests. In addition, the City may at any time conduct independent measurements of the system by the use of City personnel or use of contract services. If inaccurate proof of performance reports is shown to have been the result of licensee's willful neglect, the licensee must pay the costs reasonably incurred by the City in obtaining such independent verification of technical compliance with all standards.
- D. *System reliability.* The license will specify system reliability standards. The license will specify methods for achieving this standard. A repeated or lengthy failure by the licensee to achieve this standard, will subject the licensee to liquidated damages or other remedies under this chapter.
- E. *System maintainability.* The licensee must achieve a "mean-time-to-repair" objective for system malfunction in addition to the requirements set forth in section 5-27. The license must specify the mean-time-to-repair objective in hours and the method for achieving this objective. A repeated or lengthy failure by the licensee to achieve this objective will subject the licensee to liquidated damages or other remedies under this chapter.

5-43 Use of cable system during an emergency.

- A. The licensee will design and construct the system to provide for a restricted audio override of the audio portion of all channels during emergencies unless prohibited by Federal 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 must also be equipped with a standby power source. In case of any declared emergency or disaster, the cable system will, upon request of the Mayor or City 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 section means such event that has been proclaimed by the Mayor, the Governor or other competent authority.
- B. If licensee's cable system passes any emergency command centers of State and local government within the City, the licensee will make the cable system

available to such centers so that emergency audio and visual communications to the public are possible from those centers as specified in the license.

- C. During declared emergencies or disasters, the licensee must make its local origination and other necessary equipment at the emergency command centers available to facilitate video communications from those centers.

5-44 Damage to cable system during an emergency.

Subject to the applicable Phoenix City Charter, City Code and Arizona State statutes, the City has the right, because of a public emergency, to sever, disrupt, dig up or otherwise destroy facilities of the licensee, without any prior notice if such action is deemed reasonably necessary by the City Manager, Director of the Fire Department, Director of the Police Department, Street Transportation Director, Public Works Director, or Water Services Director. A public emergency is any condition that, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the City, caused by any natural or manmade disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, or hazardous material spills. The licensee will be responsible for repair of its facilities damaged pursuant to any such action taken by the City.

5-45 Restoration of streets.

Whenever the licensee disturbs the surface or subsurface of any street or public way or adjoining public property or the public improvement, the licensee will promptly, at its own expense, restore, repair or replace the same to the satisfaction of the City (subject to the City's customary practice of review upon request of the licensee). If such restoration, repair or replacement of the surface, subsurface or any structure is not completed in a reasonable time or such restoration, repair or replacement does not meet the City's satisfaction, the City may perform the necessary restoration, repair or replacement, either through use of its own forces or through a hired contractor, and the cost thereof, including the cost of inspection and supervision, shall be paid by the licensee within thirty days after receipt of the City's invoice. All excavations made by the licensee in the streets and public ways shall be properly safeguarded for the prevention of accidents. The work must be done in strict compliance with the rules, regulations and ordinances of the City.

5-46 Use of streets and public ways.

- A. The cable system to be constructed, installed, operated and maintained under a license must be located or relocated as to interfere as little as possible with traffic or other authorized uses over, under or through said streets and public ways. Those phases of construction relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of cable system must comply with applicable City regulation. The licensee must keep accurate installation records of the location of all facilities in the streets and public ways and furnish

them to the City upon request. The licensee will cooperate with the City to furnish such information in an electronic mapping format compatible with the current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the streets and public ways, the licensee will provide the City with installation records in an electronic format compatible with the current City electronic mapping format showing the location of the underground and above-ground facilities.

- B. If, during the design process for public improvements the City discovers a potential conflict with proposed construction, the licensee will either: (1) locate and, if necessary, expose its facilities in conflict or (2) use a pothole service under contract with the City to locate or expose its facilities. The licensee shall reimburse the City for the cost resulting from number (2) above. The City will make every reasonable effort to design projects pursuant to this subsection so as to avoid relocation expense to the licensee. The licensee agrees to furnish the location information in a timely manner, but in no case longer than forty-five days.
- C. The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any streets and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the rights-of-way of the City limits.
- D. When the City uses its prior and superior right to the streets and public ways, the licensee must move its property located in the streets and public ways, at its own cost, to such a location as the City directs. Notwithstanding the foregoing, if the public purpose project is paid for totally or in part by non-public funds, then the licensee's costs of moving its property will be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total project's costs.
- E. If, during the course of a project, the City determines licensee's facilities are in conflict, the following shall apply:
 - 1. Prior to City notice to proceed to contractor, the licensee must, within a reasonable time, but in no event exceeding six months, remove or relocate the conflicting facility. This time period begins running upon receipt by the licensee of written notice from the City. However, if both the City and the licensee agree, the timeframe may be extended based on the requirements of the project.
 - 2. Subsequent to City notice to proceed to contractor, the City and the licensee will immediately begin the coordination necessary to remove or relocate the facility. Actual construction of such removal or relocation is to begin no later than seventy-two hours, if practicable, after written notification from the City of the conflict.

- F. The licensee agrees to obtain a permit as required by the license prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its cable system. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when the licensee is required to make repairs, in compliance with federal and/or State laws, that are of an emergency nature. The licensee will notify the City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification.
- G. The City will not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the streets or public ways under authority of a City permit or license which must be relocated, are already located in the streets or public ways and the conflict between the licensee's potential facilities and existing facilities can only be resolved expeditiously as determined by the City by the movement of the existing City or permittee facilities.
- H. If licensee's relocation effort so delays construction of a public project causing the City to be liable for delay damages, the licensee must reimburse the City for those damages attributable to the delay created by the licensee. If the licensee disputes the amount of damages attributable to the licensee, the matter will be referred to the administrative hearing procedure provided in this chapter. If damages are assessed by the City after final decision by the City, the licensee must pay the City within thirty days. Late charges of five percent and interest charges of one and one-half percent per month will be added for late payment.
- I. The installation, use and maintenance of the licensee's cable system within the streets and public ways must be in such a manner as not to interfere with the City's placement, construction, use and maintenance of its streets and public ways, street lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by the City.
- J. The licensee agrees not to install, maintain or use any of its cable system in such a manner as to damage or interfere with any existing facilities of another utility located within the streets and public ways of the City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation, that has a prior rights interest in the streets and public ways.
- K. The licensee must obtain permits from the City for all construction and relocation in the streets and public ways. Further, the licensee will reimburse the City for pavement damage as specified in the license. Reimbursement for pothole services and pavement damage is separate, and in addition to, any license fees included in the license. The licensee, at the time of or prior to submitting construction plans, must provide the City with a description of the type of service

to be provided by the licensee in sufficient detail for the City to determine compliance with this license.

- L. The entire cost of relocation will be borne by the City if the licensee is required by the City to relocate facilities which are located in private easements or rights-of-way obtained by the licensee prior to the dedication of the public street or easement from which the facilities must be relocated. These prior rights of the licensee would also be unaffected by any subsequent relocation. "Prior rights" as used in this subsection means property rights obtained by the licensee prior to the dedication of the streets or public ways from which the facilities are requested by the City to be relocated.

5-47 Trimming of trees.

Any trimming of trees by the licensee in the streets and public ways must comply with applicable City regulation.

5-48 Vacated street.

If any street or public way used by the licensee is vacated by the City, or the use of a street or public way is discontinued by the licensee during the term of the license, the licensee must remove its facilities from such street or public way unless a public utility easement remains or the licensee is specifically permitted to continue in place.

5-49 Temporary removal of cable to move large objects.

Upon reasonable notice, the licensee must temporarily move its wires, cables, poles or other facilities placed over the streets or public ways to accommodate movement of large objects, vehicle, building or other structure over the streets or public ways. Unless the request is made by the City for public purposes, the person requesting the temporary relocation will reimburse the relocation expenses incurred by the licensee.

ARTICLE VI. SYSTEM SERVICES

5-50 Local origination channel.

The licensee will operate the studios on a high-quality, professional basis for the purpose of providing video programming responsive to local needs and interests. The emphasis for the local origination channel will be on providing local programming that is unavailable to viewers on broadcast television channels. Programming priority on this channel shall be given to local cultural and sporting events; local political, social and economic issues of interest; and local entertainment.

5-51 Government access channel.

The licensee will provide the channels for the use of the City and other government agencies located within the City, at no charge to the City as specified in the license. As specified in the license, the licensee will provide advice, technical expertise and facilities and equipment to aid in the utilization of the channels, and other support as specified in the license.

5-52 Educational access channel.

The licensee will provide channel capacity for educational use at no charge to users as specified in the license. As specified in the license, the licensee will provide advice, technical expertise, facilities and equipment to aid in the utilization of such channels, and other support as specified in the license.

5-53—5-59 Reserved.

ARTICLE VII. LICENSE ADMINISTRATION AND ENFORCEMENT

5-60 Intent.

It is the intent of the City to provide for the day-to-day administration and enforcement of the provisions of any license granted by the City by delegating such responsibility to the City Manager. This delegation will be effective upon the granting of a license.

5-61 Revocation of license.

A. In addition to all other rights and powers retained by the City under this chapter or otherwise, any license issued hereunder may, pursuant to this section be revoked, altered, or suspended by the City, except as may be prohibited by federal law. Such revocation, alteration or suspension may occur in the event of a breach of the license terms and conditions, or this chapter, which materially affects the provision or quality of cable services, the ability of the City to effectively regulate the licensee, or the City's collection of fees or charges. The list set forth below in this section shall be considered material breaches. The list is not exhaustive:

1. Willful, false or misleading statements to the City;
2. Failure to file and maintain the faithful performance bond, security fund or insurance coverage or to pay license fees as required under this chapter;
3. Repeated failure, as determined by the City, to maintain signal quality under the standards prescribed by this chapter and the license;

4. Any sale, lease, assignment, or transfer of control of its license without prior written consent of the City;
 5. Violation of material terms of this chapter or material terms of a license issued pursuant to this chapter;
 6. Any instance in which all or part of licensee's facilities are sold under an instrument to secure a debt and are not redeemed by the licensee within thirty days from said sale;
 7. Fraud or deceit by the licensee, or attempt thereof in its conduct or relations under or pursuant to the license;
 8. Failure to meet any conditions established in a license or failure to perform as required in areas designated as grounds for revocation in the license;
 9. Willful or grossly negligent repeated violations of this chapter, the license, or representations made in the application process, or any rule, order or regulation of the City;
 10. Recurrent failure after notice by the City, to provide service to any part of the licensee service area, subject to the line extension policy.
- B. Upon determination by the City Manager that one or more of the above grounds or other grounds for revocation, alteration or suspension of the license exist, the City Manager will notify the licensee of that determination, state the major causes and reasons supporting the determination, and make a written demand that the licensee comply and shall state the potential remedies for noncompliance. 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 as approved by the City has been taken or is being actively and expeditiously pursued, the City may revoke, alter or suspend the license as provided in this chapter.
- C. Upon revocation of a license, the City may declare a forfeiture, whereupon all rights of the holders of the license will immediately be divested without a further act upon the part of the City, and the licensee must, at the option of the City, remove its structures or property from the streets and public ways and restore them to such condition as the City may require as provided in section 5-21. Upon failure to do so, the City may perform the work and collect the cost thereof from the licensee.

5-62 Remedies for delay in construction and liquidated damages.

- A. The City may, at its sole option, apply the following in connection with delays in system construction after sending to the licensee its notice of intent to:

1. Reduce the duration of the license on a month-for-month basis for each month of delay within the licensee's control exceeding three months. Such reduction in term cannot accumulate beyond a total of two years.
 2. Forfeiture of performance bonds.
- B. Each license granted by the City must state that the licensee agrees that failure to comply with any requirements in this chapter and the license will result in damage to the City, and it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance. The license must include provisions for liquidated damages to be paid by the licensee in amounts set forth in the license and chargeable to the security fund for the following concerns:
1. Failure to complete system construction or reconstruction in accordance with this chapter and/or the license, unless the City Council specifically approves the delay by motion or resolution;
 2. Failure to provide a cable connection within the time(s) set forth in any line extension policy;
 3. Failure to properly restore the public right-of-way or to correct related violations of specifications, code, or standards after having been notified to correct such defects;
 4. Failure to comply with customer service standards as required by the license;
 5. Failure to test, analyze and report on the performance of the cable system as required by the license;
 6. Failure to provide in a continuing manner the type of services proposed in the renewal proposal, or license, unless the City Council specifically approves modification of licensee's obligation;
 7. Any other action or non-action by the licensee, as agreed upon between the City and the licensee, and set forth in the license.
- C. If the City Manager concludes that a licensee is in fact liable for liquidated damages pursuant to this section, and that the particular event, occurrence or failure of the licensee which is the basis for the conclusion was not the basis for a prior assessment of liquidated damages, the City will issue to the licensee by certified mail a notice of intention to assess liquidated damages. The notice will set forth the nature or the violation and the amount of the proposed assessment. The licensee must, 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, in the event that, by the nature of the violation, such violation cannot be cured within such thirty-day period, take reasonable steps to cure the violation and diligently continue such efforts until the violation is cured. The licensee will report to the City, in writing, at thirty-day intervals as to licensee's efforts, indicating the steps taken by the licensee to cure said violation and reporting licensee's progress until such violation is cured.
- D. If the licensee timely contests the City's assertion of violation and intention to assess liquidated damages, the City will within fifteen days schedule a hearing in accordance with the procedures set forth in section 5-64 to determine whether there is a violation and whether liquidated damages may be assessed against the licensee.
- E. If the licensee does not contest in writing the City's assertion of violation or cure or begin curing of such violation within thirty days of receipt of such notice, the City Manager's decision and the amount of the proposed assessment of liquidated damages becomes final and the City may exercise all remedies provided in the license to collect such liquidated damages.

5-63 City Manager's responsibility.

The City Manager may:

- A. Initiate proceeding for revocation, alteration or suspension of the license as established in section 5-61 of this ordinance.
- B. Administer and enforce the provisions of the license(s).
- C. Coordinate the government access channel.
- D. Provide coordination and technical programming and operational support to City departments.
- E. Establish procedures and standards for operations and services, use of dedicated channels, and sharing of public facilities.
- F. Plan expansion and growth of City cable services in conjunction with the licensee.
- G. Analyze the possibility of integrating cable communications with other City, State or regional telecommunications networks.

- H. Formulate and recommend long range telecommunications policy for the City.
- I. Contract with established facilities for the provision of programming and technical support, where deemed appropriate.
- J. Adopt regulations as may be required to enforce the provisions of this chapter.
- K. Perform any other activities associated with cable television.

5-64 License administration and enforcement.

- A. The City Manager has the authority to determine the licensee's compliance with the terms and provisions of the license, and exercise any or all of the remedies for noncompliance.
- B. The licensee may request an administrative hearing on an initial decision of the City Manager on matters of license administration delegated to the City Manager, if the licensee requests in writing such a hearing within ten days of the City Manager's notification to the licensee of the noncompliance. However, the licensee will have thirty days following written notice to the licensee by the City pursuant to subsection 5-20.D of any additional amount of license fee due the City as a result of an audit to protest and request an administrative hearing pursuant to the provisions set forth in section 5-64.1, which subsection is the exclusive procedure to protest an audited additional license fee amount.
- C. Within fifteen days of receipt of the request from the licensee submitted pursuant to subsection (b), the City Manager will schedule a public administrative hearing. The licensee may present evidence and to cross examine witnesses. Within fifteen days after the conclusion of the hearing, the City Manager must issue a determination. In that determination the City Manager may find:
 - 1. That the licensee is not in violation of the terms of the license;
 - 2. That the licensee is in violation, but that such violation was with just cause and waive any liquidated damages that might otherwise be imposed;
 - 3. That the licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the security deposit provided pursuant to section 5-31;
 - 4. That the licensee is in violation of the terms of the license and impose liquidated damages;

5. In case of a material violation of the license within the meaning of section 5-61, that the licensee is in material violation and revoke, alter or suspend the license;
 6. That the licensee is in violation of the system construction and shorten the term pursuant to section 5-62.
- D. If the City Manager determines that the licensee has committed a violation, the determination must be accompanied by a detailed statement of reasons for the determination, including findings of fact.
- E. The decision of the City Manager becomes final unless the licensee requests a public hearing before the City Council within fifteen days of its receipt of the statement of reasons and findings of fact by the City Manager.

5-64.1 License fee amount protests—Administrative hearing.

- A. If within thirty days after receipt of written notice to the licensee by the City that an additional amount of license fee is payable, the licensee petitions the City Manager in writing setting forth the reasons why the additional amount is not payable and requesting a hearing, the City Manager will appoint a hearing officer qualified to hear petitions for hearing under chapter 14 of the Phoenix City Code.
- B. If a petition for hearing or redetermination of the ruling of the hearing officer is not made within the time periods specified herein, the licensee will be deemed to have waived and abandoned the right to question the additional amount of license fee determined to be due, and any license fee and interest determined to be due will be final and due and payable.
- C. The licensee and the City must make written disclosure required below as fully as then possible within sixty days of licensee's filing its petition and no later than twenty days before the hearing:
1. The name and address of each person whom the disclosing party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert.
 2. The existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use at the hearing.
- D. The licensee may amend its petition at any time before the licensee rests its case at the hearing or such time as the hearing officer allows for submitting of

amendments in cases of a redetermination without a hearing. The hearing officer may require that amendments be in writing and, in that case, must provide a reasonable period of time to file the amendment. The hearing officer must provide a reasonable period of time for the City Manager to review and respond to the petition and to any written amendments.

- E. Hearings will be conducted by a hearing officer and will be continuous until the hearing officer closes the record. The licensee may be heard in person or by its authorized representative at such hearing. Hearings will be conducted informally as to the order of proceeding and presentation of evidence. The hearing officer will admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the hearing officer must be made solely upon substantial and reliable evidence. All expenses incurred in the hearing will be paid by the party incurring the same.
- F. Redeterminations upon a "petition for redetermination" will follow the same conditions, except that no oral hearing will be held.
- G. In either case, the hearing officer must issue his ruling not later than forty-five days after the close of the record by the hearing officer.
- H. The decision made by the hearing officer upon administrative review by hearing or redetermination will become final thirty days after the licensee receives notice by the City Manager of the amount payable recalculated, if necessary, to conform to the hearing officer's decision, unless the licensee files an action for judicial determination of the amount due or the City files an action for judicial review in the manner provided in subsection J.
- I. Any license fee due must be paid within thirty days after such notice either unconditionally or under protest as part of an appeal procedure for judicial review.
- J. The licensee may bring an action against the City in the Superior Court located in Maricopa County for judicial determination of the amount due. The City may seek judicial review of all or any part of a hearing officer's decision by initiating an action in the Superior Court located in Maricopa County. An action for judicial determination of the amount due or for judicial review may not be commenced more than thirty days after the licensee receives notice of the amount payable recalculated, if necessary, to conform to the hearing officer's decision. Failure by either party to bring the action within thirty days will constitute a waiver of the right to bring said action, except that if one party initiates an action in the

appropriate court, the other party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

- K. The court may consider only those grounds and issues set forth in the petition filed under this section or amendments allowed by the hearing officer during the review process and prior to the issuance of his ruling. Subject to the limitation in this subsection, the appeal will be considered de novo.
- I. If the petition alleges that the additional amount of license fees payable based on gross income of an affiliate, subsidiary, parent or any person, firm or corporation in which the licensee has a financial interest or which has a financial interest in the licensee is not payable then the following procedure will apply at such hearing to such portions of the petition.
 - 1. The City will have the burden of establishing a prima facie case for any of the following elements which is the basis for its claim that an additional amount of license fees is payable: that the affiliate, subsidiary, parent, or such other person, firm or corporation is not a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records), and a separate mission; that it makes payments to the licensee which do not meet market standards for the services and industries involved; that it was not established for valid business purposes or it was established with the intent and purpose of circumventing payment of license fees on gross revenues; or that such cash, credit, property of any kind or nature, or other consideration is cable operator's gross revenues derived from operation of the cable system under the Cable Act.
 - 2. After the City establishes a prima facie case for any of the above elements, the licensee will have the burden of going forward and introducing sufficient evidence on that element to create a genuine issue of material fact. If the licensee does not do so, the City will prevail on that element. If the licensee does create a genuine issue of material fact on that element, then the burden will shift and the City will have the burden of proving that element by a preponderance of the evidence.
 - 3. The licensee must provide to City within thirty days of filing its petition, the following information:
 - a. Specific categories of information to be identified by the City by administrative rules regarding the elements in subsection I.1;
 - b. The name and address of each person whom the licensee expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the

name and address of the custodian of copies of any reports prepared by the expert;

- c. The existence, location, custodian, and general description of any tangible evidence or relevant documents that the licensee plans to use at the hearing.
4. The City must provide the licensee within thirty days of receipt of licensee's information identified above, the following information:
 - a. The name and address of each person whom City expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert.
 - b. The existence, location, custodian, and general description of any tangible evidence or relevant documents that the City plans to use at the hearing.

5-65 Hearing by City Council.

- A. If a public hearing before the City Council is requested by the licensee pursuant to section 5-64, it will be on the record of the proceeding before the City Manager and it will convene within thirty days of the request. The City Council's decision, which must include findings of fact, must be made not later than forty-five calendar days after the conclusion of the hearing. In that decision, the City Council may:
 1. Find that the licensee is not in violation of the terms of the license;
 2. Find that the 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 the licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the security fund provided pursuant to section 5-31 to pay the cost thereof;
 4. Find that the licensee is in violation of the terms of the license and impose liquidated damages in an amount no larger than imposed by the City Manager;

5. In the case of a material violation of the license within the meaning of section 5-61, declare the licensee in violation and, to the extent the City Manager so acted, revoke, alter or suspend the license;
 6. Find that the licensee is in violation of the system construction and to the extent the City Manager so acted shorten the term pursuant to section 5-62.
 7. Find that the licensee is in violation of the terms of the license and exercise such remedies as provided by the license for such violation.
- B. The City Council may delegate to a subcommittee of the City Council or an administrative hearing officer selected by the City Council the holding of a public hearing as required herein, provided however that the findings of fact and any decision of such subcommittee or administrative hearing officer will be submitted as a recommendation to the City Council for final action.

5-66 Changes in technology.

- A. The licensee will implement reasonable ongoing technological and service developments in its construction, operation and maintenance of the cable system as developments become economically and competitively feasible.
- B. At intervals specified in the license, the City may convene a technological and service review of the cable system with the licensee. The purposes of the reviews are to consider the merits of including in the cable system new technological and service developments to more effectively, efficiently and economically serve the public and to enable the City Manager to report to the City Council on the licensee's compliance with this section.

5-67—5-69 Reserved.

ARTICLE VIII. RIGHTS OF INDIVIDUALS PROTECTED

5-70 Discriminatory practices prohibited.

The licensee will not deny service, deny access, discriminate in hiring, compensation, or promotion, discriminate in purchasing or ownership, or otherwise discriminate against subscribers, programmers, employees, vendors, investors, the general public or any other person, on the basis of race, color, religion, national origin, sex, age or disability. The licensee will take appropriate action to adhere to the equal employment opportunity and affirmative action requirements of the federal government, as expressed in section 76.13(a)(8) and 76.311 of chapter 1 of title 47 of the Code of Federal Regulations. The licensee must comply at all times with all other applicable federal, State and City laws, and all executive and administrative orders relating to nondiscrimination. The licensee must submit reports on its actions and success in affirmative action as required by the City.

5-71 Permission of property owner required.

A license granted hereunder does not convey the right to install any cable, line, amplifier, converter, or other piece of equipment by the licensee on private property.

5-72—5-77 Reserved.

ARTICLE IX. VIOLATIONS

5-78 Theft of service.

It is unlawful for any person or entity to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, to any part of a licensed cable system within the City, for the purpose of enabling himself or herself or others to receive any video, audio, digital or other signals or information, without payment to the licensee.

5-79 Tampering with system.

It is unlawful for any person or entity, without the consent of the licensee, to knowingly tamper with, remove, or injure any cable, wire or other component used in connection with a licensed cable system within the City.

5-80 Existing systems.

- A. From and after the effective date of this chapter it is unlawful for any person to establish, operate, construct or expand a cable system, unless a license has been obtained pursuant to the provisions of this chapter, and unless the license is in full force and effect.
- B. A license issued by the Board of Supervisors of the County will be deemed in compliance with the terms of this chapter for the balance of the term fixed in the County license. The City will succeed to the rights of the County under the license at the time of annexation. Upon the expiration of the term of a license issued by the County in an annexed area, the licensee must comply with the terms of this chapter. If the license issued by the County in an annexed area does not have a term, the license will expire at such time as set by the City Council.
- C. Nothing in this section precludes the City from amending a County license in an annexed area or a license issued by the City to a licensee to bring such license into conformance with the applicable rules and regulations of the FCC.

- D. Except as provided in Section 5-82, the terms and conditions in this chapter in effect at the time a license is issued will continue to apply to the licenses until the license is renewed or terminated.

5-81 Reserved.

ARTICLE X. INTERPRETATION OF ORDINANCE

5-82 Compliance with laws.

The licensee will be subject to all applicable requirements of the City ordinances, resolutions, rules, and regulations heretofore or hereafter adopted or established by the City pursuant to its governmental powers, police powers and taxing authority during the entire term of the license.

5-83 Captions.

The captions to articles and sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions will not affect the meaning or interpretation of this chapter.

5-84 No recourse against the City.

The licensee will have no recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision or requirement of the license or because of the enforcement of the license or because of defects in this chapter or license issuance hereunder.

5-85 Non-enforcement by the City.

The licensee will not be relieved of its obligation to comply with any of the provisions of this chapter or a license by reason of any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

5-86 Rights reserved to the City.

- A. There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any ordinance or the Charter of the City.
- B. There is hereby reserved to the City the power to amend any section 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.

- C. Subsequent change to state of federal law:
 - 1. If any State or federal law or regulation conflicts with the terms of its license or any law or regulation of the City, then as soon as possible following knowledge of such conflict, the licensee or the City must notify the other party of the conflict believed to exist between such State or federal law or regulation and the laws or regulations of the City.
 - 2. If the City determines that a material provision of this chapter is affected by any subsequent action of the State or federal government, the City may modify the license to the extent necessary to carry out the full intent and purposes of this chapter.
- D. Neither the granting of any license nor any provision hereof will constitute a waiver or bar to the exercise of any governmental right or power of the City.

5-87, 5-88 Reserved.

ARTICLE XI. THE LICENSE

5-89 The license—Issuance and acceptances.

- A. The license granted by the City will be evidenced by a license that the City Council by separate ordinance will authorize the City Manager to execute and issue to the licensee subject to the conditions of this chapter and granting ordinance.
- B. No license granted pursuant to the provisions of this chapter will become effective until all provisions required in this section are completed, all of such provisions being hereby declared to be conditions precedent to the effectiveness of any such license granted hereunder. In the event any of such provisions are not completed in the time and manner required, the license will be null and void.
- C. Within twenty days after the effective date of the ordinance awarding any license, or within such extended period of time as the City Council in its discretion may authorize, the licensee will submit to the City its written acceptance of the license, in form satisfactory to the City Attorney, together with the security fund, faithful performance bond and insurance policies or certificates required by this chapter and its license, and its acknowledgment that it will be bound by and comply with everything which is required of the licensee by the provisions of this chapter and the applicable license. Such acceptance will be acknowledged by the licensee and approved by the City Attorney.

ARTICLE XII. APPLICATION PROCESS

5-90 Purpose of this article.

The purpose of this article is to provide for the control of the application process for cable licenses and to specify the form and requirements for submitting an application to the City.

5-91 Application for initial license.

Each application for an initial license to construct, operate or maintain any cable system in the City must file with the office of the City Clerk and on forms prescribed by the City. The forms will require, at a minimum, 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 and to whatever extent required by the City:
 - 1. The names and business addresses of all officers, and directors of the applicant;
 - 2. The names and business addresses of all officers, persons and entities having a one percent or larger share of the ownership of the applicant and the respective ownership share of each such person or entity;
 - 3. The names, addresses of any parent or subsidiary of the applicant and all licenses owned or controlled by the parent or subsidiary.
 - 4. 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 City 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;

5. A detailed financial plan (pro forma) describing for each year of the initial 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 required by the City; and
 6. 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 partner's or subsidiary's resources committed to the completion thereof.
- C. A detailed description of the proposed plan of operation of the applicant that must include the following:
1. A detailed map indicating all areas proposed to be served, and 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 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; and
 5. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm or corporation which materially relate or pertain to or depend upon the application and the granting of the license;
- D. A copy of any agreement covering the license area, if existing, between the applicant and the local telephone and/or electric utilities, providing for the use of any facilities of the utility including but not limited to poles, lines or conduits; and
- E. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the City, or by any other provision of law.

5-92 Application fees for initial license.

- A. Notwithstanding any other requirement of this chapter, each applicant for an initial license must furnish with its proposal a nonrefundable filing fee in the amount of \$10,000 by certified or cashier's check made payable to the City of Phoenix. No proposal for an initial license shall be considered without receipt of said check.
- B. All checks 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 initial licenses and regulation of licenses pursuant to this chapter.
- C. Any licensee under an initial license, upon acceptance of such initial license, 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 initial license. The City shall document all such expenses by invoice. If expenses exceed the total amount of filing fees collected from the applicant(s), the licensee shall pay to the City the excess amount within sixty days of written demand by the City.

5-93 Selection of licensee under an initial license.

- A. The granting or denial of a cable license is a legislative function invested exclusively in the discretion of the City Council.
- B. Upon the request of the City Council expressed by resolution, the City Manager shall solicit applications for a cable license by advertisement requesting the submission of applications. Such notice for applications shall be published at least once in an official newspaper.
- C. The City may determine and fix any date upon or after which the same shall be received by the City, or the date before which such applications shall be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such applications. The terms and conditions for application shall be described in a document called "Request for Proposals."
- D. The City upon receipt of an unsolicited application for an initial license may by advertising or other means solicit and call for competing applications pursuant to subsection C or may, in its sole discretion, reject such application as untimely.

- E. Any person, firm or corporation submitting a proposal for an initial license to operate a cable system in response to the City's request for proposals shall provide all information required by this chapter and all other information requested by City's request for proposals or otherwise required by the City. Each proposal 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 a proposal invalid. The requested information must be complete and verified as true by the applicant.
- F. All proposals received by the City from an applicant shall become the sole property of the City.
- G. Before submitting a proposal, each applicant shall be solely responsible for and must:
 - 1. Examine all regulatory chapters and the request for proposals documents thoroughly;
 - 2. Be familiar with local conditions which may in any manner affect performance under the license, including, but in no event limited to, community and institutional telecommunication needs, relevant demographics, topographies, pole attachment policies of appropriate utility authorities, undergrounding, and subscriber desires;
 - 3. Be familiar with all applicable federal, State and local laws, chapters, rules and regulations affecting performance under the license; and
 - 4. Carefully correlate all observations with the requirements of this chapter and the request for proposals documents.
- H. Upon receipt of any application for an initial license, the City shall prepare or cause to be prepared a report, including recommendations respecting such application, and cause the same to be completed and filed with the City Council. The City will evaluate all proposals that are submitted. All applicants that have met the City's qualifications in the request for proposals and have submitted proposals on the required forms will be offered the opportunity to make a formal presentation to the City Council in support of their applications.
- I. 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 and data for this purpose as the City may request.

- J. The City reserves the right to waive all formalities where the best interest of the City may be served, and may, if it so desires, request new or additional proposals.
- K. If, upon receiving the City Manager's report, the City Council shall determine to further consider the applications, it shall pass a resolution setting a public hearing for the consideration of applications.
- L. Notice of such hearing shall be published in accordance with the requirements of State law. At the public hearing each applicant and its proposal may be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

5-94 Consideration of applicants.

- A. In evaluating an application for a license, the City will consider, among other things, the following factors:
 - 1. The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing license for the City.
 - 2. Whether the quality of the applicant's service under an existing license in the City, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served.
 - 3. Whether the applicant has the financial, technical, and legal qualification to provide cable service.
 - 4. Whether the application satisfies any minimum requirements established by the City and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.
 - 5. Whether the applicant will provide adequate public, education, and governmental access channel capacity, facilities, and financial support.
 - 6. Whether issuance of a license is warranted in the public interest, considering the immediate and future effect on the streets and public ways and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the streets and public ways; the effect of granting a license on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.

7. Whether the applicant or an affiliate of the applicant owns or controls any other cable system in the City, or whether grant of the application may eliminate or reduce competition in the delivery of cable service in the City.

B. If the City finds that it is in the public interest to issue a license, considering the factors set forth above, and subject to the applicant's entry into an appropriate license, it will issue a license. If the City denies a license, it will issue a written decision explaining why the license was denied. The City may reject any application that is incomplete or fails to respond to a request for proposals or other information requested by the City. This chapter does not grant any applicant or existing licensee standing to challenge the issuance of a license to another.

5-95 Award of license based on public record.

The City will award any initial license based solely on the public record. To this end, communication with the City Council by those wishing to submit proposals for an initial license should be limited to public sessions. Requests for information should be directed to the office of the City Manager.

5-96—5-99 Reserved.

PASSED by the Council of the City of Phoenix this 27th day of May, 2015.

Greg Stanton
MAYOR

ATTEST:

Cris Meyer City Clerk

APPROVED AS TO FORM:

Patricia Boland Acting City Attorney

REVIEWED BY:

Ed Zuercher City Manager

PL:tml:1184279v1:(CM#72) (Item #28) – 5/27/15