

AMENDMENT TO GOODYEAR CITY CODE, CHAPTER 17  
~~CABLE COMMUNICATIONS~~ Video Services

CHAPTER 17:

~~Cable Communications~~ Video Services

Article

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## ARTICLE 17-1

### General

#### Section

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#### 17-1-1 INTENT.

~~The city finds that the development of cable television and communications systems has substantial benefit and impact upon the residents, businesses, industries and institutions within the city. Because of the complex and rapidly changing technology associated with cable television, the city further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters, and any license issued pursuant to this chapter shall be deemed to include this finding as an integral part.~~

The purposes of this chapter are to comply with the requirements of Arizona Revised Statutes and federal law and to set forth regulations for the application by video service providers for uniform video services licenses for the provision of video services and other authorized services in the city to provide for issuance of uniform video services licenses in accordance with law, to provide for imposition of non-discriminatory license fees, and to otherwise carry out the mandates of Arizona Revised Statutes Title 9, Chapter 13 and federal law. It is the intent of this chapter that all rights and obligations set forth in Arizona Revised Statutes Title 9, Chapter 13 are preserved and shall apply, irrespective of whether specifically set forth in this chapter.

#### 17-1-2 SHORT TITLE.

This chapter shall be known and may be cited as the Goodyear ~~Cable Code~~ Video Services Code.

#### 17-1-3 DEFINITIONS.

The definitions set forth in A.R.S. Section 9-1401 shall apply to this chapter.

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The word SHALL is mandatory and the word MAY is permissive. Words not defined shall be given their common and ordinary meaning.~~

~~ACCESS CHANNEL. A channel dedicated in whole or in part for local noncommercial programming which is not originated by a cable company, provided that such local programming shall not include:~~

~~(1) The retransmission of local television broadcast signals; or~~

~~(2) Programming produced by persons unaffiliated with the cable company under the provisions of Section 612 of the Cable Act.~~

~~APPLICANT. The person or entity applying for a license from the city.~~

~~APPLICATION. The form required by the city to be submitted by an applicant for an initial license.~~

~~BASIC SERVICE. Any service tier which includes the retransmission of local television broadcast signals as defined in 47 U.S.C. 521 through 559, as amended from time to time. Each basic service tier shall include all access channels, as defined in Section 611 of the Cable Act, as it may be amended from time to time.~~

~~CABLE ACT. The Cable Communications Policy Act of 1984, being 47 U.S.C. 521 et seq. as amended from time to time.~~

~~CABLE SERVICES. The one way transmission to subscribers of video programming and other programming services, together with subscriber interaction, if any, which is required for the selection of such programming and programming services that the licensee makes available to all subscribers generally. A licensee may accomplish subscriber interaction through two way communication.~~

~~CABLE SYSTEM. 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 which includes video programming and which is provided to multiple subscribers within the city (as hereinafter defined), but such term does not include:~~

- ~~(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;~~
- ~~(2) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses or crosses over any public right of way;~~
- ~~(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, being 47 U.S.C. 521 et seq. except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or~~
- ~~(4) Any facility of an electric utility used solely for operating its electric utility systems.~~

~~CHANGE OF SERVICE. All requests by existing subscribers for modifications to their cable service, including without limitation additions or deletions of premium services, additional outlets, remote controls and FM service. Such term shall not include initial installation of basic cable service, total disconnection of basic cable service or service calls.~~

~~CITY. The city, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.~~

~~CITY COUNCIL. The present governing body of the city or any future Council constituting the legislative body of the city.~~

~~COMPLETION OF CONSTRUCTION or COMPLETE SYSTEM CONSTRUCTION shall mean SATISFACTORILY COMPLETE and FULLY ACTIVATE. In each instance, these terms shall mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed, or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed; that power supplies have been installed; that construction of the headends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the cable system to be ready to deliver cable service to subscribers has been completed. Final balancing shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire cable system will be activated and final balanced when completed. Construction of any segment or of the entire cable system will not be considered complete until final balance has been conducted on such segment (or in the case of the entire cable system, until final balancing and proof of performance tests have been conducted on all segments of the cable system) and any problems found during testing have been corrected. The term completion of construction does not include marketing and installation of subscriber service.~~

~~FEEDER or DISTRIBUTION PLANT. Those cables, active and passive components, that extend from the trunk specified local distribution connection points to the subscriber tap device.~~

~~GROSS REVENUES. All cash, credits, property of any kind or nature or other consideration received as if on a cash basis directly or indirectly by a licensee, its affiliates, subsidiaries or parent and any person, firm or corporation in which a licensee has a financial interest or which has a financial interest in a licensee, arising from or attributable to the licensee's operation of its cable system within the city, including, but not limited to:~~

~~(1) Revenue from all charges for cable services provided to subscribers;~~

~~(2) Revenue from all charges for the insertion of commercial advertising upon the cable system subject to the provisions in subsection (7) below;~~

~~(3) Revenue from all charges for the leased use of studios;~~

~~(4) Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a subscriber to receive cable services;~~

~~(5) Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional users;~~

~~(6) Revenue or value received by a licensee (or any of its affiliates, subsidiaries or parent) through advertising, except cooperative advertising;~~

~~(7) (a) And any other income derived from the cable system. Gross revenues shall not include taxes collected by licensee on behalf of any governmental authority; any increase in the value of any stock, security or asset; the value of complimentary service provided to licensee's employees and as required by this chapter or any license; and dividends or other distributions made in respect of any stock or securities.~~

~~(b) When a licensee (or an affiliate, subsidiary or parent) holds one or more other cable television licenses in Maricopa County, then gross revenues shall include the following percentage of revenues derived from joint local regional advertising or production of video programming within all Maricopa County license areas shall be allocated pro rata to the city based on the ratio of the number of subscribers of licensee in the city to the total numbers of subscribers of licensee (or an affiliate, subsidiary or parent) in all the jurisdictions in Maricopa County in which licensee (or an affiliate, subsidiary or parent) holds a cable license.~~

~~(c) Notwithstanding the foregoing, GROSS REVENUES shall include cash, credit, property of any kind or nature or other consideration received by a licensee's affiliates, subsidiaries, parent or any person, firm or corporation in which a licensee has a financial interest or which has a financial interest in a licensee only:~~

~~1. When they would be gross revenues if the licensee received them directly; and~~

~~2. When and to the extent the person or entity which receives the gross revenues is entitled to receive them because of a transaction with the licensee which was not made at arms length and which is not commercially reasonable. The licensee shall notify the city when a third party is providing services over the cable system.~~

~~INITIAL ACTIVATION OF CABLE SERVICE. With respect to a particular segment (as defined in any license issued hereunder), or with respect to a group of segments or the entire cable system, as the case may be, that all proposed cable services and cable system capabilities as stated in the license are available or in place, construction has been completed (see above definition of construction) and the completed segment or segments in question or the entire cable system, as the case may be, have been activated.~~

~~INITIAL LICENSE. A license sought by, or granted to, a person who does not hold a license.~~

~~LICENSE. Any authorization granted under this chapter in terms of a privilege, permit, license or otherwise to construct, operate and maintain a cable system in the city, including initial licenses and renewal licenses (as hereinafter defined). Any such authorization, in whatever term granted, shall be nonexclusive and shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city.~~

~~LICENSEE. The person, firm or corporation to whom or which a license is granted by the City Council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation.~~

~~LOCAL ORIGINATION PROGRAMMING. Video programming locally produced by a licensee anywhere in Maricopa County, Arizona.~~

~~MINIMUM CHANNEL CAPACITY. Activated capacity of 330 megahertz or 43 channels upon initial activation of cable service.~~

~~OUTAGE. Exists whenever licensee's cable system experiences three subscriber complaints within any 60 minute period of no picture within the same quarter section.~~

~~PERSON. An individual, partnership, corporation, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.~~

~~PROPERTY OF LICENSEE. All property owned, installed or used by a licensee in the conduct of a cable system business in the city under the authority of a license granted pursuant to this chapter.~~

~~PROPOSAL. A submission by a qualified cable company setting forth in writing a detailed statement or statements defining the cable services to be provided to residents, businesses, industries and institutions within the city and the manner and policies pursuant to which said services will be provided, the fees for such services and the fee to be paid the city for a license.~~

~~RENEWAL LICENSE. A license sought by, or granted to, a cable company already providing cable services in the city.~~

~~SERVICE CALL. Results when service problems are reported to the licensee relating to:~~

- ~~(1) Any no picture complaint;~~
- ~~(2) A signal failing to meet FCC standards on one or more channels;~~
- ~~(3) Property damage by licensee's employees or authorized contractors; or~~
- ~~(4) Problems associated with in house cable equipment owned by licensee.~~

~~STANDARD DROP. A cable connection which requires no more than a 150 foot drop measured from the nearest point of a subscriber's home or place of business to the nearest active tap on the cable system and involves only one outlet and standard materials and does not involve a wall fish. In addition, a STANDARD DROP shall exclude custom installation work, including specific subscriber requested work that requires non standard inventory or cable routing requiring construction methods exceeding reasonable underground or aerial work.~~

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

~~SUBSCRIBER. Any person or entity receiving for any purpose the cable service of a licensee's cable system.~~

~~TRUNK or MAIN LINE PLANT. A transportation cable, active and passive components, connecting the headend or hub (the origin of signal) with specified local distribution connection points.~~

~~USER. A party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.~~

#### **17-1-4 POLICE POWERS.**

~~Nothing in this chapter or in any agreement awarding a license in accordance herewith shall be construed as an abrogation by the city of any of its lawful police powers.~~

## ARTICLE 17-2

### Application, ~~Grant, Transfers~~ Authority, Limitations, Duties of Video Service Providers

#### Section

17-2-1	<del>Contents of application and proposal for initial license</del> <u>Application, Issuance and Obligations upon Expiration</u>
17-2-2	<del>Application fees for initial license</del> <u>Authority Granted</u>
17-2-3	<del>Selection of licensee for an initial license</del> <u>Limitations of License</u>
17-2-4	<del>Procedure for license renewal</del> <u>Revocation for Non-Use of Uniform Video Service License</u>
17-2-5	<del>Grant of license</del> <u>Reports</u>
17-2-6	<del>Transfers and assignments</del> <u>Bundling of Services</u>
17-2-7	<u>Notice of Change of Information</u>
17-2-8	<u>Police Power</u>

#### ~~17-2-1-CONTENTS OF APPLICATION AND PROPOSAL FOR INITIAL LICENSE~~ APPLICATION, ISSUANCE, AND OBLIGATIONS UPON EXPIRATION.

~~(A) Content. Each application for an initial license to construct, operate or maintain any cable system in the city shall be filed with the office of the City Clerk and shall be on forms prescribed by the city and contain a request for such information as required by the City Manager or his or her designee. The forms shall require, but shall not be limited to, the following information:~~

~~(1) The name, address and telephone number of the applicant;~~

~~(2) 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:~~

~~(a) The names, residence and business addresses of all officers, directors and associates of the applicant;~~

~~(b) The names, residence and business addresses of all officers, persons and entities having a 1% or larger share of the ownership of the applicant and the respective ownership share of each such person or entity;~~

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

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

~~(e) 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 source and use of funds statement. All information is to be presented in the format required by the city; and~~

~~(f) A statement identifying, by place and date, any other cable system license awarded to the applicant, its parent or subsidiary; the status of said license with respect to completion thereof; the total cost of completion~~

~~of such licensed cable system; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.~~

~~(3) A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:~~

~~(a) 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;~~

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

~~(c) A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant;~~

~~(d) A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber; and~~

~~(e) 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.~~

~~(4) A copy of any agreement covering the license area, if existing between the applicant and the local telephone or electric utilities providing for the use of any facilities of the utility, including, but not limited to poles, lines or conduits; and~~

~~(5) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the City Council or by any other provision of law.~~

~~(B) Proposal. The filing of the application shall be accompanied by a proposal of the said applicant.~~

~~(Prior Code, § 17-2-1)~~

A. This section shall not apply to incumbent cable operators who have elected to continue to operate within a service area as defined in its existing local license with the City. The requirements of this section shall apply to video services licenses granted on or after January 1, 2020.

B. Prior to the commencement of any construction or expansion of a video service network or the provision of any video service, a video service provider shall file with the City Clerk an application and an affidavit in a form provided by the City Clerk. The application shall be in the form of application approved by the council and shall include all

information and not more than the information required by the application form and Arizona Revised Statutes Section 9-1414.

C. The application shall be accompanied by an affidavit in the form approved by the council signed by one of the principal executive officers or general partners of the applicant that the information set forth in the application are true and accurate.

D. The application and affidavit shall be submitted to the City Clerk, who shall forward the application and affidavit to the Legal Services Department for review.

E. If the Legal Services Department determines that the application and affidavit are incomplete or otherwise deficient under Arizona Revised Statute Section 9-1414, written notice shall be given to the applicant not later than fifteen days after the date of filing of the application and affidavit. The written notice shall:

1. Explain the incompleteness or deficiency in detail.
2. Specify the information or other items that are necessary for proper completion of the application and affidavit.

F. A uniform video services license shall be issued within thirty days from the date a complete application was filed with the City Clerk. The term of a uniform video services license shall not exceed ten years.

G. If written notice of an incomplete or deficient application and affidavit is not given within fifteen days after the date of filing, or if the uniform video services license is not issued within thirty days from the date a complete application has been submitted, the agreement shall be deemed complete and issued to the applicant in the form submitted.

H. No fees shall be charged for filing or processing an application, affidavit, notice or other document related to the issuance of the uniform video services licenses.

I. Amendments to a uniform video services license to add service areas shall be processed in the same manner as the original uniform video services license.

J. The term of a uniform video services license may be extended by the holder of a video service provider filing with the City Clerk a notice to extend the term for a specified period not to exceed ten years. The notice shall be filed at least one month before the end of the term of the uniform video services license.

K. Any use of or attachment by a video service provider to a utility or other pole owned by the city must first be approved in a separate contract with the city at the sole discretion of the city. If, pursuant to such contract, the city requires the video service provider to locate facilities in ducts or conduits or on poles owned by the city, the city shall not require the video service provider to pay for the installation in the ducts or conduits or on the poles.

L. If a video services provider submits an application, the city shall issue to a video service provider or its affiliate a permit to attach allowed Wi-Fi radio equipment to the video service network in the highways. The permit shall allow installation, operation and maintenance of allowed Wi-Fi radio equipment. The city may require that all of the allowed Wi-Fi radio equipment at a single location fit within a fifteen-inch cube and be contained entirely within a



ground-mounted pedestal or be connected directly to and mounted at the same height as one of the video service provider's aerial horizontal conductors. This subsection does not do any of the following:

1. Prohibit the City from requiring a video service provider to place underground aerial facilities to which allowed Wi-Fi equipment is attached.
2. Prohibit the imposition of a tax, rent, fee or charge on revenue from services provided through allowed Wi-Fi radio equipment.
3. Affect the authority of the [city/town] to manage its highways or to exercise its police powers, including review and approval of an application before issuing a permit.
4. Affect the [city's/town's] authority to deny, limit, restrict or determine the terms and conditions for the use of or attachment to the utility poles or attachments to other poles of the [city/town] by a video service provider.

M. A video service provider may terminate a uniform video service license by filing a written notice of termination with the City Clerk. Such notice shall be filed at least ninety days before termination of service. The notice shall also be sent to all subscribers within the affected service area at least ninety days prior to termination of service.

#### **17-2-2 APPLICATION FEES FOR INITIAL LICENSE. AUTHORITY GRANTED.**

~~(A) Amount. Notwithstanding any other requirement of this chapter, each applicant for an initial license must furnish with its application a nonrefundable filing fee in the amount of \$10,000 by certified or cashier's check made payable to the city. No application for an initial license shall be considered without receipt of said check.~~

~~(B) Deposit and use. All checks received will be deposited to the general account of the city and will first be used to recover expenses incurred by the city in the preparation and granting of the initial license, including a reasonable allocation of cost for the city's in house staff.~~

~~(C) Additional fee. 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 licensee. The city shall document all such expenses by invoice. In the event that expenses exceed the total amount of filing fees collected from the applicant, the licensee shall pay to the city the excess amount within 60 days of demand of the city.~~

A. A uniform video services license granted by the City shall authorize the video service provider to:

1. Provide video service in the City in the service area designated in the application and affidavit during the term of the uniform video services license.
2. Construct and operate a video service network in the highways in each service area, in compliance with the uniform video services license and City laws.
3. Operate and maintain facilities installed in the highways in the service area pursuant to A.R.S. Section 9-1442(H) and (J), subsection I and J, Wi-Fi radio equipment on cable systems, A.R.S. Section 9-584 [microcell equipment] and A.R.S., Chapter 5, Article 8 [small wireless facilities] which are necessary for the operation of the video service network.

#### **17-2-3 SELECTION OF LICENSEE FOR AN INITIAL LICENSE. LIMITATIONS OF LICENSE.**

~~(A) Solicitation of applications and proposals. The city may, by advertisement or any other means, solicit and call for applications and proposals for cable system licenses and may determine and fix any date upon or after which the same shall be received by the city or the date before which the same must 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 and proposals. The terms and conditions for application shall be described in a document called request for applications and proposals.~~

~~(B) Unsolicited proposals. The city upon receipt of an unsolicited application and proposal for an initial license may by advertising or other means solicit and call for competing applications and proposals pursuant to subsection (A) of~~

~~this section, or may, in its sole discretion, accept the application and proposal or reject such application and proposal as being untimely.~~

~~(C) Compliance with city requirements. Any person, firm or corporation submitting an application and proposal for an initial license to operate a cable system in response to the city's request for applications and proposals shall provide all information required by this chapter and all other information requested by the city's request for applications and proposals or otherwise required by the city. Each application and 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 an application or proposal invalid. The requested information must be complete and verified as true by the applicant.~~

~~(D) Property of city. All applications and proposals for an initial license received by the city from an applicant shall become the sole property of the city.~~

~~(E) Applicant responsibility. Before submitting an application and 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 applications and proposals documents.~~

~~(F) Referral to City Manager. Upon receipt of any application and proposal for an initial license, the City Council shall refer the same to the City Manager, who shall prepare or cause to be prepared a report, including recommendations respecting such application and proposal, and cause the same to be completed and filed with the City Council. The city will evaluate all applications and proposals that are submitted. All applicants that have met the city's qualifications in the request for applications and proposals and have submitted them on the required forms will be offered the opportunity to make a formal presentation to the City Council in support of their applications and proposals.~~

~~(G) Investigations. The city may make such investigations as it deems necessary to determine the ability of the applicant to perform under the license, and the applicant shall furnish to the city all such information and data for this purpose as the city may request.~~

~~(H) Rejection. The city may reject any and all applications or proposals from whatever source and whenever received, and the city also 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 applications and proposals.~~

~~(I) Public comment. If, upon receiving the City Manager's report, the City Council shall determine to further consider the applications and proposals, it shall set a public hearing for consideration of the applications and proposals when any persons having any interest therein may file written comments or objections to any application or proposal and appear before the City Council and be heard and direct the City Clerk to publish a notice of the public hearing in the manner and time established by the City Council.~~

~~(J) Consideration. In making any determination hereunder as to any application for an initial license, the city may consider any and all factors relevant to significant interests of the community in cable television, including, but not limited to, the quality of the cable services proposed, areas to be served, rates to subscribers, income to the city, experience, character, background and financial responsibility of any applicant and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical~~

requirements, to meet all requirements set forth in this chapter and to abide by all policy conditions, license limitations and requirements and all other matters deemed pertinent by the city for safeguarding the interests of the city and the public.

~~(K) Determination. At the time set for the hearing on applications and proposals for initial licenses, or at any adjournment thereof, the City Council shall proceed to hear all comments. Thereafter, the City Council shall make one of the following determinations:~~

~~(1) That such application and proposal be denied, which determination shall be final and conclusive; or~~

~~(2) That an initial license be granted and the terms and conditions thereof. No provision of this chapter shall be deemed or construed so as to require the granting of an initial license.~~

~~(L) Additional information. The City Council or its designee may at any time demand and applicant shall provide such supplementary, additional or other information as the city may deem reasonably necessary to determine whether the requested license should be granted.~~

~~(M) Awards based on public record. It is the intention of the city to award any initial license solely on the basis of the public record. To this end, communication with the Mayor and 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.~~

~~(N) City Council decisions shall be final. Any decision of the City Council concerning awarding of an initial license, pursuant to this chapter, shall be final.~~

A. Any uniform video services license granted under this chapter shall be nonexclusive.

B. Any privilege claimed under any uniform video services license by the video service provider in any highway shall be subordinate to any lawful occupancy or use thereof by the City and shall be subordinate to any prior easements, prior licenses to use the highways, and any other private property rights that may be superior to the uniform video services license issued.

C. A video service provider shall be subject to all existing requirements of the City's rules, regulations and specifications or hereafter enacted or established pursuant to the City's police powers and taxing authority, and shall comply with all applicable existing state and federal laws and regulations or hereafter enacted or established.

E. Any uniform video services license granted shall not relieve the video service provider of any obligation involved in obtaining pole space from any department of the City, utility company, or from others lawfully maintaining poles in highway.

F. A video service provider shall agree to comply with all generally applicable nondiscriminatory ordinances, including but not limited to street or highway use, mapping, insurance, performance bonds, security fund, indemnification or similar requirements that apply to the use and occupation of any highway. There is hereby preserved to the City the power to amend any section of the City Code related to construction in highways pursuant to its police powers.

#### **~~17-2-4 PROCEDURE FOR LICENSE RENEWAL.~~**

~~(A) Unless otherwise preempted by federal law, the license renewal procedure set forth in this section shall be followed.~~

~~(B) License renewal procedures shall comply with the following provisions and follow Section 626 of the Cable Communications Act of 1992, as amended from time to time.~~

~~(1) During the six month period which begins with the thirty sixth month before the license expiration, the city may, on its own initiative, and shall at the request of the licensee, commence proceedings which afford the public appropriate notice and participation for the purpose of:~~

~~(a) Identifying the future cable related community needs and interests; and~~

~~(b) Reviewing the performance of the licensee under the license during the then current license term.~~

~~(2) Upon completion of a proceeding under subsection (B)(1) of this section, the licensee seeking renewal of a license may, on its own initiative or at the request of the city, submit a proposal for renewal. If not then in violation of any federal law or regulation, the proposal shall be accompanied by a certified or cashier's check payable to the city in the nonrefundable amount of \$5,000 to be deposited by city in its general account and first applied by the city to recover its costs and expenses, including reasonable in house staff time, incurred by the city in the administration, evaluation and processing of the proposal.~~

~~(a) Subject to Section 624 of the Cable Act, such proposal shall contain such material as the city may require, including proposals for an upgrade of the cable system.~~

~~(b) The city may establish a date by which such proposal shall be submitted.~~

~~(3) Upon submittal by the licensee of a proposal to the city for the renewal of the license, the city shall provide prompt public notice of such proposal and, during the four month period which begins on the completion of any proceedings under subsection (1) of this subsection, renew the license or issue a preliminary assessment that the license should not be renewed and, at the request of the licensee or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with this subsection to consider whether:~~

~~(a) The licensee has substantially complied with the material terms of the existing license and with applicable law;~~

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

~~(c) The licensee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the licensee's proposal; and~~

~~(d) The licensee's proposal is reasonable to meet the future cable related community needs and interests, taking into account the cost of meeting such needs and interests. In any proceeding under this section, the licensee shall be afforded adequate notice, and the licensee and the city or its designee shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (1) of this subsection), to require the production of evidence and to question witnesses. At the written request of either the city or licensee, the proceedings shall be recorded or taken by a reporter at the sole cost of the party making such request, and a transcript of the proceeding shall be made available to the person requesting such transcript at the cost of such person. At the completion of a proceeding under this section, the city shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the licensee. Such decision shall state the reasons therefor.~~

~~(4) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subsections (3)(a) through (d), pursuant to the record of the proceeding under this section. The city may not base a denial of renewal solely on a failure to substantially comply with the material terms of the license under subsection (3)(a) or on events considered under subsection (3)(b) unless the city has provided the licensee with notice and the opportunity to cure, or in any case in which it is documented that the city has waived its right to object, or has effectively acquiesced.~~

~~(5) Any licensee whose proposal for renewal has been denied by a final decision of the city made pursuant to this section, or has been adversely affected by a failure of the city to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of Sections 626 and 635 of the Cable Act.~~

~~(6) Notwithstanding the provisions of this subsection, the licensee may submit a proposal for the renewal of the license pursuant to this section at any time, and the city may, after affording the public adequate notice and~~

~~opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to subsection (1) have commenced). The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsection (2) of this subsection.~~

#### **~~17-2-5 GRANT OF LICENSE.~~**

~~(A) Authority to grant license. The city may grant one or more nonexclusive, revocable licenses for the city.~~

~~(B) Grant.~~

~~(1) In the event that the city grants a nonexclusive, revocable license to construct, operate, maintain, expand and reconstruct a cable system or a renewal of an existing license, the license shall constitute both a right and an obligation to provide the services of a cable system as required by the provisions of this chapter and the license. The license shall include those provisions of the applicant's proposal that are finally negotiated and accepted by the city and licensee. Any license granted under the terms and conditions of this chapter shall be consistent with federal laws and regulations and state laws and regulations. In the event of conflict between the terms and conditions of the license and the terms and conditions on which the city can grant a license, the federal and state general law or statutory requirements or both shall, without exception, control to the extent any such federal or state laws or regulations are deemed to preempt the conditions of the license.~~

~~(2) Any license granted is subject to all provisions of this chapter in effect at the time the license is granted. In the event of a conflict between the terms of the license and other codes and ordinances of the city, the license shall control. However, nothing in the license shall be deemed to waive the requirements of the other codes and ordinances of the city regarding permits, fees to be paid or manner of construction.~~

~~(3) To the extent permitted and not preempted by applicable federal and state law, a license under this chapter shall grant to the licensee the right and privilege to operate and use its cable system to provide telecommunications services other than cable services (such as two-way communication), and the city may exercise all such authority as it may have under applicable law to regulate such telecommunications services, including, but not limited to, the authority to regulate such telecommunications services to protect the public welfare, safety and health and to comply with the standards established by this chapter. To the extent applicable law does not permit the city to grant such a license nor prohibit a licensee from using the cable system to provide such telecommunications services without a license from the city, this chapter shall not limit a licensee's authority to provide such telecommunications services, subject to all the authority of the city to regulate such telecommunication services (and the facilities through which they are provided) to protect the public welfare, safety and health.~~

~~(C) License required. No cable system shall be allowed to occupy, use or cross any street in the city or be allowed to operate without a license issued in accordance with the provisions of this chapter.~~

~~(D) Establishment of license requirements. The city may establish appropriate requirements for initial licenses or renewal licenses and may modify these requirements from time to time to reflect changing conditions and the state of the art in the cable industry, consistent with federal law. However, such requirements shall not be retroactive to licenses then in effect, except as set forth in § 17-2-4.~~

~~(E) Duration. Unless sooner terminated as hereinafter provided in this chapter, the term of any license and all rights, privileges, obligations and restrictions pertaining thereto shall be as established in the license but shall not exceed the maximum length permitted under law.~~

~~(F) License nonexclusive. Any license granted shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional licenses as it deems appropriate.~~

~~(G) Rights to purchase. The city may reserve in the license a right of first refusal or the right to purchase a licensee's cable system in and under terms agreed upon by the licensee and the city. Such rights shall arise only in the event of revocation or failure to renew a license.~~

(H) License applications. Applicants for a license shall submit to the city written applications utilizing the standardized format provided by the city, at the time and place designated by the city for accepting applications, and including the application fees designated by the city.

**(I) Grant procedure.**

(1) All applications for a new license, when filed, shall be available for public inspection at places designated by the city. No later than 120 days after the final date for filing applications, one or more public hearings shall be held on the applications. The city may grant one or more licenses or may decline to grant any license.

(2) All applications for a renewal license, submitted by a licensee pursuant to § 17-2-4, shall be available for public inspection at places designated by the city. Upon submittal of a renewal proposal, the city shall determine in a manner consistent with applicable federal law whether such proposal should be accepted. Such determination shall be based solely on whether:

(a) Licensee has substantially complied with the material terms of the existing license and with applicable law;

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

(c) Licensee has the financial, legal, administrative and technical ability to provide the services, facilities and equipment as set forth in the proposal; and

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

(J) Other terms. A license may contain other terms and conditions not inconsistent with this chapter and applicable federal and state law.

**17-2-6 TRANSFERS AND ASSIGNMENTS.**

(A) (1) A license shall not be sold, assigned, transferred, pledged, mortgaged or hypothecated in whole or in part, nor shall substantially all of the assets of the cable system of the licensee be leased or sublet in any manner unless mandated by federal law or regulation or shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person, except an affiliate or subsidiary of licensee, without prior written consent of the city, which consent shall not be unreasonably withheld.

(2) Such consent shall not be required for a transfer in trust, mortgage or other hypothecation in whole or in part to secure an indebtedness; provided, however, in the event of a sale or transfer of the license by reason of a default on any such indebtedness and whether or not assets of the licensee or stock of the licensee are sold to be transferred to any person, including the creditor of licensee, consent as required hereunder shall be first obtained. Such consent shall not be unreasonably withheld.

(3) The licensee and proposed assignee must submit a completed Federal Communications Commission (FCC) Form 394, together with all exhibits, to the city for consent to the assignment or transfer of the license. Such submission shall demonstrate that the assignment or transfer will not cause any increased risks of nonperformance of the license or any loss to the city of its bargained for consideration in the license by detailing facts sufficient to show that the assignee's technical ability, financial capability, legal qualifications and general character qualifications are sufficient to permit transferee to operate and the assignee must agree to comply with all provisions of the license. The city shall have 120 days from the date of such submission to act upon such transfer request. If the city fails to act upon such transfer request within such 120 days, such request shall be deemed granted unless the city and the licensee agree in writing to an extension of time.

(B) Except for a transfer to an affiliate or subsidiary of licensee, no change, transfer or acquisition of control of the licensee shall occur without prior written consent of the city, which consent shall not be unreasonably withheld. The licensee shall promptly notify the city of any actual or proposed change in, transfer to or acquisition by any other party



~~of control of the license. The word control as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised.~~

~~(C) A non rebuttable presumption that transfer of control has occurred shall arise upon the acquisition or accumulation by any person, or group of persons, of 50% or more of the voting interest of the licensee or of the person exercising management authority over the licensee.~~

~~(D) (1) Except in the case of an assignment of the license to an affiliate or subsidiary of licensee, upon submission of FCC Form 394, together with all exhibits, by the licensee to the city requesting consent to a proposed assignment of the license, or transfer of control of ownership of the licensee company, the Council shall promptly direct the City Manager to issue, and the City Manager shall promptly issue, his or her written notice fixing and setting forth the day, hour and place certain when and where any persons having any interest therein may appear and be heard. The City Clerk shall cause such notice to be published in a newspaper of general circulation within the city. The City Clerk also shall cause a copy of such notice to be mailed to the licensee at least ten days prior to the date specified for the hearing. At the time set for such hearing, or at any adjournment thereof, the City Manager shall proceed to hear the matter. Following the close of such hearing, the City Manager shall prepare and file with the Council his or her report of the hearing, his or her findings and an opinion containing his or her recommendations and the reasons therefor.~~

~~(2) If after the expiration of ten days, following receipt of the City Manager's report and opinion, the Council shall find that the assignment of the license or transfer of control or ownership of the licensee company will not be detrimental or injurious to the best interests and welfare of the subscribers and users and of the city, then the Council by resolution, or by ordinance, if the licensee is a corporation, shall consent to the assignment of the license or transfer of control or ownership of the licensee company. Such resolution or ordinance shall thereupon become and shall be a part of any license granted under this chapter and affected thereby. The city shall have 120 days from the date of its submission of FCC Form 394 to act on licensee's transfer or assignment request, unless the city and licensee agree in writing to an extension of time.~~

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

~~(F) In the absence of extraordinary circumstances, and except as provided by federal law, the City Council will not approve any transfer or assignment of a license within three years of the acquisition or initial construction of the cable system by licensee.~~

~~(G) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the license. However, the transferring licensee shall not be released from any liabilities for acts or omissions or violations of its license which have occurred prior to the city issuing the new license to the transferee.~~

~~(H) The transferee of a license or any person or other entity gaining control of the licensee as defined in this section shall cure any licensee's defaults under the license or this chapter in accordance with a schedule approved by the city, provided the city gives written notice of their known defaults to the transferee prior to the city's approval of such transfer.~~

~~(I) If not then in violation of any federal law or regulation, the entity or person requesting the city's consent to a transfer or assignment, such request for consent shall be accompanied by a cashier's check or certified check payable to the city in a nonrefundable amount of \$3,000, to be deposited by the city in its general account and first applied by the city to recover its costs and expenses, including reasonable in house staff time, incurred by the city in the administration, evaluation and processing the request for such consent.~~

#### **17-2-4 REVOCATION FOR NON-USE OF UNIFORM VIDEO SERVICE LICENSE**

A video service provider shall provide video service to at least one subscriber within each service area authorized by a uniform video service license within twenty-four months after the date the uniform video service license is issued. If the video service provider fails to comply with this section, the City may revoke the uniform video service license.

#### **17-2-5 REPORTS**

A video service provider shall file all reports required by and in compliance with A.R.S. Section 9-1432. The reports

shall be filed with the City Clerk. All such reports shall be confidential unless the video service provider has consented in writing to the disclosure.

#### **17-2-6 BUNDLING OF SERVICES**

Except as otherwise provided by federal law, if a video service provider offers video service bundled with other services that are not video service for a single discounted price, all of the following apply:

1. The method that the video service provider uses to determine gross revenue subject to license fees by allocating the single discounted price among the bundle of video service and non-video services shall be reasonable and supported by the video service provider's books and records.
2. For the purpose of meeting the video service provider's burden of proof, the City shall accept as reasonable, for purposes of meeting the video service provider's burden of proof, an allocation based on an objective and verifiable method using the books and records that the video service provider kept in the regular course of business for other purposes, including nontax purposes.
3. A video service provider may not use bundled offerings as a means to evade paying license fees.

#### **17-2-7 NOTICE OF CHANGE OF INFORMATION**

If any information required by this chapter changes, the video service provider shall notify the City in writing within thirty days of such change.

#### **17-2-8 POLICE POWER**

Nothing in this chapter or in any agreement awarding a license in accordance herewith shall be construed as an abrogation by the city of any of its lawful police powers.



## ARTICLE 17-3

### Streets and Construction

#### Section

- 17-3-1 Authority for use of streets
- 17-3-2 Conditions on street occupancy
- 17-3-3 Approval of construction by city; inspection
- 17-3-4 Construction standards
- 17-3-5 Undergrounding
- 17-3-6 Relocation
- ~~17-3-7 Completion~~
- 17-3-~~8~~7 -Removal

#### 17-3-1 AUTHORITY FOR USE OF STREETS.

(A) For the purposes of operating and maintaining a ~~cable system~~video services network in the city, licensee may erect, install, construct, repair, replace, reconstruct and retain in, on, under, upon, across and along the streets within the city such lines, 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~~video services network, provided that all applicable permits are applied for and granted, all fees paid and all other city codes and ordinances are otherwise complied with.

(B) Licensee shall construct and maintain a ~~cable system~~video services network so as not to unreasonably interfere with other uses of streets. Licensee shall make use of existing facilities available to licensee. Licensee shall use reasonable efforts to individually notify all property owners affected by proposed construction prior to the commencement of that work.

(C) Notwithstanding the grant to use streets as provided in this section, no street shall be used by licensee if the city, in its absolute discretion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created, dedicated or presently used.

#### 17-3-2 CONDITIONS ON STREET OCCUPANCY.

(A) All transmission and distribution structures, lines and equipment erected by the licensee within the city shall be so located as not to interfere with the ordinary use by the city or public of streets, landscaping, alleys and other public ways and places or to interfere with the rights and reasonable convenience of property owners who abut any of the said streets, alleys or other public ways and places.

(B) In case of disturbance of any street, sidewalk, alley, public way, paved area or landscaped area, the licensee shall promptly, at its own cost and expense and in a manner approved by the City Engineer, replace and restore such street, sidewalk, alley, public way, paved area or landscaped area in compliance with city standards. If licensee fails to comply with city standards, any such failure shall be corrected within ten business days of written notification to licensee at licensee's sole cost and expense. If licensee is not able to correct such failure or damage in ten days, then licensee must notify the City Manager or his or her designee of delay and provide a schedule for repairs or replacement acceptable to the City Manager. If a schedule as referred to in this section is not acceptable to the city, the city may, at its option, correct such disturbance or damage and upon demand by the city, licensee shall promptly pay the city the costs and expenses incurred by the city in the correction or repair of such damage.

#### 17-3-3 APPROVAL OF CONSTRUCTION BY CITY; INSPECTION.

A licensee shall at all times fully comply with all city requirements regarding work within the city's rights of way. As required by the city, all construction of any kind within the city's rights of way must have prior approval by the Public Works Director. Such approval shall not be unreasonably withheld, and action shall be taken on any request for approval within three business days of the receipt of an acceptable request. Licensee shall be able to make emergency repairs where and if required by the city code. The city has the right to inspect the construction, operation and maintenance of the cable system by the licensee to insure compliance with this chapter.

#### **17-3-4 CONSTRUCTION STANDARDS.**

(A) Licensee shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); federal, state and local regulations; and codes and ordinances of the city, including all applicable laws, regulations and codes involving environmental or pollution concerns.

(B) The cable system shall not endanger or interfere with the safety of persons or property within the city or other areas where the licensee may have equipment located.

(C) During construction of the cable system all working facilities, conditions and procedures used shall comply with the standards of the Occupational Safety and Health Administration.

(D) Construction, installation and maintenance of the cable system shall be performed in close coordination with public and private utilities serving the city in an orderly and workmanlike manner, following generally accepted construction procedures and practices and working through existing committees and organizations.

(E) All cable and wires shall be installed, where possible, parallel with electric and telephone lines and multiple cable configuration shall be arranged in parallel and bundled with due respect for engineering consideration.

#### **17-3-5 UNDERGROUNDING.**

Except when permitted under this chapter and when reasonably required to fill small gaps in existing permitted aerial utility systems when approved by the City Manager or his or her designee, a licensee shall not erect any pole on or along any street or public way of the city. Except as prohibited in this chapter, nothing in this section shall be construed to prohibit the use of existing poles, provided that use agreements are entered into between a licensee and the owners of said poles.

(A) The undergrounding of cables is required under the following conditions when either have or do occur:

- (1) Cables shall be installed underground where all existing utilities are already underground;
- (2) Previously installed aerial cable shall be undergrounded in concert with utilities when they are undergrounded; and
- (3) When previously installed aerial utilities are undergrounded.

(B) To prevent unnecessary damage to streets, right of way and property, the installation of cable service cables underground shall be accomplished in new subdivisions at the same time and in the same trench as other communications, electric and other permanent services to structures.

#### **17-3-6 RELOCATION.**

If during the term of a license, the city elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain or otherwise alter any city facility, whether above ground or underground cable, wire conduit, pipe, line, pole, wire holding structure, structure or other city facility utilized for the provision of utility or other such services or transportation of drainage, sewage or other liquids, the licensee shall, unless otherwise provided in this chapter, at its sole expense, remove or relocate, as necessary, its wires, cable, underground conduits, manholes and any other facilities which it has installed. A licensee shall take action to remove or relocate its facilities at such time as directed by the city or entity whose facilities are affected. Advance written notice shall be mailed to the licensee advising the licensee of the date removal or relocation is to be undertaken.

#### **17-3-7 COMPLETION.**

(A) A final order of completion for a new licensee shall be issued by the City Council when:

- ~~(1) The construction of the cable system has been completed and certified by the licensee to be in compliance with the construction standards and the design and other requirements of this chapter and of any applicable laws, ordinances or regulations, and the restoration or repair of any street or public improvement approved by the Public Works Director as being in compliance with applicable laws, ordinances, rules and regulations;~~
- ~~(2) Cable services have been made available, if applicable, per the line extension policy in § 17-6-1;~~

~~(3) Any and all studio facilities, equipment, channels and other services, resources or benefits required for public, educational and governmental access purposes pursuant to the provisions of this chapter have been completed and made available;~~

~~(4) Complete and accurate as built plans shall be available for inspection by the city; and~~

~~(5) A notice of completion has been filed by the licensee.~~

~~(B) For purposes of this chapter, cable service shall be deemed to be made available when cable services are offered on a non-discriminatory basis for immediate provision to prospective subscribers, if applicable, per the line extension policy in § 17-6-1.~~

~~(C) The licensee must be able to offer to install operable cable services to all dwelling units in the city no later than 24 months after the Council grants a new license, if applicable, per the line extension policy in § 17-6-1.~~

~~(D) The provisions of this section shall apply only to construction of a new cable system pursuant to an initial license or to system wide reconstruction of an existing cable system. In no other circumstances shall a final order of completion be required by the city, provided that all other applicable city regulations and codes have been complied with.~~

### **17-3-87 REMOVAL.**

(A) Upon expiration or termination of a license, if the license is not renewed, and if no one purchases the cable system, the licensee may remove any underground cable, if the cable may be removed without trenching.

(B) A licensee shall file written notice of its intention to remove ~~underground cable~~ video services network with the City Clerk not later than 30 calendar days following the date of expiration or termination. The notice shall inform the city of licensee's intention to remove its cable and shall provide a schedule for the removal.

(C) The schedule filed pursuant to subsection (B) of this section shall be subject to the approval of the City Engineer.

(D) Removal of cable by the licensee shall be completed not later than 12 months following the date of expiration or termination.

(E) If notice is not filed pursuant to subsection (B) of this section, the ~~underground cable~~ network shall be deemed abandoned.

(F) If the licensee does remove ~~cable~~ network, all underground ~~cable~~ equipment which is not removed pursuant to subsection (D) of this section shall be deemed abandoned.

(G) Upon expiration or termination of the license, if the license is not renewed and if no one purchases the ~~cable system~~ video services network, the licensee, at its sole expense, shall, unless relieved of the obligation by the city, remove from the streets and all public rights of way, alleyways and other public property, all above ground elements of the ~~cable system~~ video services network located thereon and also all underground elements of the cable system if requested in writing by the city upon direction of the City Council. All removal required under this subsection shall be completed within 12 months following the termination or expiration of the license. The city may require, and licensee shall furnish, a corporate surety bond in an amount as mutually agreed upon in the license, from and by an entity acceptable to the City ~~Council~~ to assure performance of licensee's obligations under this subsection. In the event the licensee fails to specify an amount for such bond, the bond shall be of sufficient amount to cover the reasonable costs of removal agreed hereunder.

(H) The licensee shall apply for and obtain such encroachment permits, licenses, authorization or other approvals and pay such fees and deposits or such security as required by applicable ordinances of the city, shall conduct and complete the work of removal in compliance with all such applicable ordinances and shall restore the streets and other public ways or property to as nearly as possible the same condition they were in before the work of removal commenced.

## ARTICLE 17-4

### ~~System~~Video Services Network Theft or Tampering

#### Section

~~17-4-1~~ — General capability

~~17-4-2~~ — System reliability

~~17-4-3~~ — Upgrade requirements

~~17-4-4~~ — Public, educational and governmental access

~~17-4-5~~ — Public drops

~~17-4-6~~1 Theft of service

~~17-4-7~~2 Tampering with system

#### **~~17-4-1 GENERAL CAPABILITY.~~**

~~Each cable system shall, at a minimum:~~

~~(A) Relay to subscriber those broadcast signals required by the Federal Communications Commission (FCC);~~

~~(B) Distribute in color all television signals which it receives in color;~~

~~(C) If required by the FCC, make available to subscribers, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception; and~~

~~(D) Have the minimum channel capacity as set forth in this chapter.~~

#### **~~17-4-2 SYSTEM RELIABILITY.~~**

~~(A) Standby power. Each cable communications system shall include equipment capable of providing standby powering for headend, microwave hubs and key trunk amplifiers for approximately two hours. The equipment shall be so constructed as to automatically revert to the standby mode when the utility power returns. The cable system shall incorporate safeguards necessary to prevent injury to linemen resulting from a standby generator powering a dead utility line.~~

~~(B) System reliability. A desirable objective to be achieved in the maintenance and operation of the cable system is that the cable system meet the standards therefor set by the FCC regulation or greater.~~

~~(C) Omitted standards. In the event FCC regulations do not prescribe standards as herein contemplated, licensor may include any omitted standards for the maintenance and operation of the cable system as agreed in the license or any amendment thereto which will be required if no FCC regulations then require any standards.~~

#### **~~17-4-3 UPGRADE REQUIREMENTS.~~**

~~The license may provide that a licensee shall upgrade the cable system as specified in the license.~~

#### **~~17-4-4 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.~~**

~~(A) The following topics shall be discussed and resolved unless otherwise provided for in this chapter during the application process for an initial license or the renewal of a license.~~

~~(1) City Hall programming. Whether the cable system shall include the capability to televise and distribute to subscribers events occurring live at the City Hall with a signal quality similar to that of other major channels distributed by the licensee.~~

~~(2) Community service channels. Whether the system shall include the provision of community service or access channels, including one channel for government usage and one channel for public access/local origination.~~

~~(3) Facilities and management. Whether licensee shall provide access to studio facilities, production equipment, technical assistance and other facilities and equipment to enable the city and its residents to fully utilize the cable system as not only an entertainment medium.~~

~~(4) Use available. If use of facilities for public, educational and governmental access is made available, whether a licensee shall:~~

~~(a) Allow all persons and entities desiring to cablecast public, educational or governmental access programming to produce programming upon and electronically interface directly with the cable system of licensee so as to effectively cablecast the public, educational or governmental access programming; or, in the alternative,~~

~~(b) Establish such reasonable rules and procedures for the utilization of such public, educational or governmental access programming.~~

~~(B) One channel shall be provided by licensee without any additional costs for exclusive use by public schools, colleges and universities.~~

~~(Prior Code, § 17-4-4)~~

#### **17-4-5 PUBLIC DROPS.**

~~To the extent specified in the license, a licensee shall provide free basic subscriber services and one standard drop without cost to municipal and educational facilities.~~

~~(Prior Code, § 17-4-5)~~

#### **17-4-~~6~~<sup>1</sup> THEFT OF SERVICE.**

It shall be a misdemeanor for any person or entity to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, to any part of a licensed ~~cable television system~~ [video services network](#) within the city for the purpose of enabling receipt of video, audio, digital or other signals or information, without payment to licensee; a violation of this section shall subject any such person to a fine of up to \$1,000 for any such violation. Each day a violation occurs shall constitute a separate offense under this section.

#### **17-4-~~7~~<sup>2</sup> TAMPERING WITH SYSTEM.**

It shall be a misdemeanor for any person or entity, without the consent of licensee, to willfully tamper with, remove, damage or destroy any ~~cable or~~ [video service network](#) equipment used in connection with a ~~cable system~~ [network](#) within the city; a violation of this section shall subject any person to a fine of up to \$1,000 for any such violation. Each day a violation occurs shall constitute a separate offense under this section.

## ARTICLE 17-5

### ~~Financial~~ Fees and Charges; In-Kind Goods or Services

#### Section

17-5-1 License fee on Gross Revenue; Transaction Privilege Taxes

17-5-2 ~~Rates~~ Public, Educational Or Governmental Access Programming

#### **17-5-1 LICENSE FEE ON GROSS REVENUE; TRANSACTION PRIVILEGE TAXES.**

~~(A) For the reason that the streets and other public rights of way which are used by the licensee in the operation of its cable system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers and that the grant to the licensee to the use of said streets is a valuable property right without which the licensee would be required to invest substantial capital in right of way costs and acquisitions, and because the city will incur costs in regulating and administering the license, the licensee shall pay to the city an amount no less than 5% of licensee's gross revenues (the license fee) in a 12-month period. The purpose of the license fee is to provide full compensation to the city for licensee's use of the streets and public ways and for the city's costs of regulation of licensee. Licensee shall not be required to pay construction or engineering permit fees or similar charges.~~

~~(B) Should federal regulations be amended in the future to allow the city to receive a greater fee than the fee set forth in subsection (A) of this section, then, in that event, the city shall have the right to increase the fee as specified in the license.~~

~~(C) The payment of the license fee by the licensee to the city shall be made quarterly by delivery of the same to the City Manager or his or her designee on or before the twentieth day of the following month with a ten-day grace period. If such payment is not made by the next to the last business day of the following month, the city may impose interest at a rate of 1.5% per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. In addition to interest which may be assessed under this subsection, if licensee fails to pay any license fee, before the end of such grace period, licensee shall be subject to the following civil penalties:~~

~~(1) A licensee who fails to pay the license fee or any portion thereof within the time prescribed shall pay a penalty of 10% of the unpaid fee each month. This penalty does not apply to amounts determined to be due under subsection (D) of this section.~~

~~(2) Licensee who fails or refuses to pay a license fee or any portion thereof after notice and demand by the city shall pay a penalty of 25% of the unpaid fee. This penalty does not apply to amounts determined to be due under subsection (D) of this section.~~

~~(3) If the cause of failure to pay the licensee fee or any portion thereof is determined by the city to be due to civil fraud or evasion of the license fee, the licensee shall pay a penalty the greater of:~~

~~(a) \$500 for each month or part thereof during which such deficiency continues; or~~

~~(b) 50% of the amount of deficiency. Nothing contained herein shall be deemed a waiver of the city's claim for attorneys fees, special damages or punitive damages in the event such fraud or evasion is found to exist.~~

~~(D) The city shall have 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; provided, however, that such audit shall take place within 36 months following the close of each of the licensee's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within 30 days following written notice to the licensee by the city, the notice shall include a copy of the audit report and shall bear interest or penalties on the unpaid balance from the date each such amount should have been paid until payment thereof in the amount specified in the license, together with a 1.5% charge on a monthly basis on the amount by which underpayment is found to be more than 5% of the amount due for any such payment until paid.~~

~~(E) If licensee pays an additional license fee as a result of such audit under protest, and upon exhaustion of all appeals, such additional fee is determined to have been overpaid, then the city shall refund such licensee fee overpayment plus interest at the rate set forth in the license from the date of payment to the date of refund by the city.~~

~~(Prior Code, § 17-5-1)~~

A. A video service provider shall pay to the City a license fee as a percentage of gross revenues for the use of the highways to provide video service within its service area. The license fee shall be established by resolution of the City council and shall be imposed equally and uniformly on video service providers and holdover cable operators.

1. The license fee shall be paid quarterly on or before the twentieth day of the month following the quarter end, and becomes delinquent on the last business day of that month. If such payment is not made by the next to the last business day of the following month, the City will impose a rate of interest for both underpayments and overpayments in the amount of the federal short-term rate determined pursuant to 26 United States Code section 6621(b), plus three percentage points per month commencing from the date payment should have been made, unless the payment is subject to a bona fide dispute, and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest.

2. The license fee shall be imposed equally and uniformly on all video service providers and holdover cable operators.

B. The total of the rates of the license fee, and the transaction privilege taxes imposed and in-kind contributions described in FCC Rule 19-80, Section 76-42 (unless agreed to in a separate agreement) shall not exceed a rate of five percent.

C. The payment of the license fee by the licensee to the City shall be made by delivery of the same to the City Finance Department on or before the twentieth day of the month following the quarter end, and becomes delinquent on the last business day of that month.

#### **17-5-2 ~~RATES~~PUBLIC, EDUCATIONAL OR GOVERNMENTAL ACCESS PROGRAMMING.**

~~(A) The licensee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, [LM1], religion, national origin, sex or marital status.~~

~~(B) The city may regulate the rates for cable services in accordance with such procedure and policies as may be adopted by the City Council not inconsistent or contrary to federal and state law or regulations.~~

A. Video service providers shall provide channel capacity to transmit programming over which the video service provider exercises no editorial control except as authorized by 47 United States Code § 531I. The channel capacity shall be limited to one of the following:

1. Not more than two channels of public, educational or governmental access programming in the basic service tier of the video service network and not more than two channels of noncommercial governmental programming, at least one of which may be programmed by the federal government, in the digital programming tier of the video service network.

2. Not more than two lines of access programming with each line of programming carried on up to two standard definition channels and two switched digital high-definition channels.

B. None of the annual fair market value of any channel capacity provided pursuant to Paragraph A above may be offset against the license fee.

C. A video service provider may require that channels regularly display an unobtrusive logo or other suitable identifier of the video service provider, if the City requires channel capacity pursuant to this section.

D. A video service provider shall pay all capital costs related to the facilities and equipment of the video service network, including facilities and equipment for signal carriage, processing, reformatting and interconnection for all of the following: (i) to connect the video service network or cable system, as it may be relocated from time to time, to

transmit programming to and from existing locations of public, educational or governmental access facilities and to allow monitoring of access programming at the facilities, and (ii) to transmit public, educational and governmental access channels to subscribers with the same prevailing quality, functionality and identification as other channels. Costs other than capital costs incurred by the video service provider are subject to FCC Rule 19-80, Section 76-42.

E. All video service providers and incumbent cable operators shall provide at no initial or recurring charge the basic service tier of video service to one outlet and one receiving device at each building occupied by the City that is not more than two hundred feet from the nearest technically and commercially feasible point of connection on the video service network. The City shall designate the buildings in writing to the video service provider. Costs incurred by the video service provider or incumbent cable operator are subject to FCC Rule 19-80, Section 76-42.



## ARTICLE 17-6

### Service

#### Section

- ~~17-6-1 — Extension of service~~
- ~~17-6-2 — Discrimination prohibited~~
- ~~17-6-3 — Local business office requirement~~
- ~~17-6-4 — Efficient telephone communications services~~
- ~~17-6-5 — Service standards~~
- ~~17-6-6 — Response to subscriber complaints about service~~
- ~~17-6-7 — Subscriber's right upon failure of service~~
- ~~17-6-8 — Subscriber solicitation procedures~~
- ~~17-6-9 — A/B switch~~
- ~~17-6-10 — City and subscriber notification required~~

#### **17-6-1 EXTENSION OF SERVICE.**

~~Cable services are to be made available to all units within the city for the following types of services, in accordance with this section: residential service; commercial service; and service drops for single family residential units, commercial units and multiple dwelling unit.~~

##### ~~(A) Residential service.~~

~~(1) When requested by a resident or developer in the city, licensee shall, at licensee's sole expense, extend cable services to any single family residence or dwelling within the city, provided that such extension involves existing density of 40 homes per mile as measured in linear trench or aerial strand footage from the nearest technically feasible point on the system. Such extension shall include cutting in one or more taps and extending feeder cable and, when necessary, trunk cable.~~

~~(2) When a resident or developer in the city requests an extension of service to an area that does not meet the minimum 40 homes per mile density as described in subsection (1) above, licensee shall be required to comply with such request only if the resident or developer agrees to pay to the licensee in advance an amount equal to all incremental costs incurred. The incremental costs to be paid shall be licensee's costs (reasonable labor and materials) of extending the cable system consistently with licensee's overall system design to the resident or developer from the nearest technically feasible point on the system. The costs shall include cutting in one or more taps and extending trunk and feeder cable excluding cutting in one or more taps. In the case of extension to a developer, the extension shall be made to the nearest technically feasible point of connection to the development; licensee shall then extend the cable system within the development at no cost.~~

~~(3) Regardless of whether licensee is requested to extend service, licensee shall install conduit in open trenches used by electric power and telephone companies in new single family subdivisions at the same time as such other utilities are installed in the event the owner or developer of the property to be served by the trench notifies licensee in writing that utilities will be placed in the trench and such notice is given to licensee at least 72 hours prior to the placing of the first utilities in the trench.~~

~~(4) Extension of service pursuant to this section shall be accomplished within 150 days of the developer or resident's request unless such time is extended by the City Manager or his or her designee upon a finding that such extension cannot be accomplished because of non-availability of materials, strikes, acts of God, war or insurrection or other like reasons beyond the control of licensee.~~

~~(B) Commercial service. Licensee shall make cable services available to commercial establishments in the manner provided for in the license as granted by the city but which said license shall include at least the following, except that licensee shall not be required to make service available to commercial establishments where the owner of the property has not granted licensee reasonable access to the property:~~

~~(1) When requested by the owner of a commercial establishment within the city, licensee shall extend cable services to any such owner's commercial establishment, provided that no plant extension and nothing more than a standard drop is required to make such cable services available;~~

~~(2) When the owner of a commercial establishment within the city requests an extension of service that does not meet the criteria described in this subsection, licensee shall be required to comply with such request only if such owner pays to licensee an amount equal to the reasonable actual labor and material costs incurred by licensee over and above the cost of a standard drop in making cable services available to such owner's commercial establishment;~~

~~(3) Reasonable access to the commercial property shall be granted to the licensee;~~

~~(4) Absent a showing by licensee to the City Manager or designee of unusual circumstances, including without limitation, street crossings, an extension of service pursuant to this subsection shall be accomplished within 150 days of the owner's request unless the time is extended by the City Manager or his or her designee upon a finding that such extension cannot be accomplished because of non-availability of materials, strikes, acts of God, war or insurrection or other like reasons beyond the control of licensee.~~

~~(C) Service drops.~~

~~(1) Single family residential dwelling units (RDU's).~~

~~(a) Licensee shall make service available to any single family residence or dwelling within the city at the standard connection charge if the connection requires a standard drop.~~

~~(b) If making service available requires more than a standard drop, licensee shall not be required to make such service available unless the person or entity requesting such service pays to licensee:~~

~~1. The standard connection charge; and~~

~~2. An amount equal to the reasonable actual labor and material costs incurred by licensee for the additional facilities and work.~~

~~(c) Absent a showing by licensee to the City Manager or designee of unusual circumstances, including, without limitation, street crossings:~~

~~1. Any standard drop to a single family residence or dwelling shall be accomplished within ten days of the request for service; and~~

~~2. Any drop that is not a standard drop shall be accomplished within 20 days of such request.~~

~~(2) Commercial/industrial. Licensee shall make service available to any commercial establishment within the city at the standard connection charge if the connection requires a standard drop upon the following conditions:~~

~~(a) If making service available requires more than a standard drop, licensee shall not be required to make such service available unless the person or entity requesting such service pays to licensee:~~

~~1. The standard connection charge; and~~

~~2. An amount equal to the reasonable actual labor and material costs incurred by licensee for the additional facilities and work.~~

~~(b) Any standard drop to a commercial establishment shall be accomplished within 20 days after the owner of such commercial establishment executes any necessary easement documents and capital contribution agreements and any commercial drop that is not a standard drop shall be accomplished within 30 days of the owner's execution of such documents and agreements; provided, however, such period of time for accomplishment may be extended by the City Manager or his or her designee upon a finding that such~~

~~extension cannot be accomplished because of non-availability of materials, strikes, acts of God, war or insurrection or other like reasons beyond the control of licensee.~~

~~(3) Service to multiple dwelling unit (MDU) projects. Licensee shall make cable service available to multiple dwelling units in the manner provided in the license as granted by the city, provided such license shall provide at least the following: when an agreement granting licensee, among other provisions, reasonable access to the property, has been negotiated between licensee and the MDU project owners or agents:~~

~~(a) Licensee shall make service available to any multi dwelling unit complex within the city at the standard connection charge if the connection requires a standard drop;~~

~~(b) If making service available requires more than a standard drop, licensee shall not be required to make such service available unless the person or entity requesting such service pays to licensee:~~

~~1. The standard connection charge; and~~

~~2. An amount equal to the reasonable actual labor and material costs incurred by licensee for the additional facilities and work.~~

~~(c) Absent a showing by licensee to the City Manager or designee of unusual circumstances, including without limitation, line extensions or street crossings:~~

~~1. Any standard drop in a multiple dwelling unit or dwelling shall be accomplished within ten days of the request for service; and~~

~~2. Any drop that is not a standard drop shall be accomplished within 20 days of such request.~~

~~(d) Licensee may offer bulk billing service but shall not require a bulk billing agreement as a condition of providing service, if the person or entity requesting service pays to licensee the applicable amount(s) set forth in subsections (1) or (3) of this subsection.~~

~~(Prior Code, § 17-6-1)~~

#### **~~17-6-2 DISCRIMINATION PROHIBITED.~~**

~~Except as provided in the license, no person, firm or corporation in the city of the license shall be arbitrarily refused cable services by licensee; provided, however, that the licensee shall not be required to provide cable services to any subscriber who does not pay the applicable line extension connection fee or cable service charge as provided in the license.~~

~~(Prior Code, § 17-6-2)~~

#### **~~17-6-3 LOCAL BUSINESS OFFICE REQUIREMENT.~~**

~~A licensee shall maintain a business office for the purpose of receiving inquiries regarding new service, handling converters, paying bills and receiving complaints within 15 miles of the City Hall or such lesser distance as may be provided in the license.~~

~~(Prior Code, § 17-6-3)~~

#### **~~17-6-4 EFFICIENT TELEPHONE COMMUNICATIONS SERVICES.~~**

~~A licensee shall render efficient telephone communication service and, at a minimum, meet the standards set forth below.~~

~~(A) A licensee shall have a publicly listed, local or toll free telephone number, in accordance with this section and receive complaints and requests for repairs, service calls, billing inquiries and other subscriber information on a 24 hour per day, seven day a week basis.~~

~~(B) The specific telephone standards which shall be met by licensee shall be equal to or exceed FCC standards as amended by the FCC from time to time.~~

#### **~~17-6-5 SERVICE STANDARDS.~~**

~~(A) A licensee shall put, keep and maintain all parts of its cable system in good, operational condition throughout the entire license period.~~

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

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

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

~~(E) A licensee shall continue, through the term of the license, to maintain the technical, operational and maintenance standards and quality of cable service set forth in this chapter and as specified in the license. If the licensee fails to maintain these standards and quality of cable service, the city may direct the improvements to be made.~~

~~(F) In the event any licensee should violate any provision of this section, the city shall promptly give such licensee written notice of the violation. The licensee shall, within 30 days of receipt of such written notice from the city:~~

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

~~(2) Cure such violation (and provide written notice of the same to the city); or, in the event that the nature of the violation is such that it cannot be cured within 30 days, take reasonable steps to cure such violation and diligently continue such efforts until such violation is cured.~~

~~(G) In the event that a licensee contests the city's assertion of violation, fails to respond to the city's notice of violation or fails to take reasonable steps to cure a violation which cannot be cured within 30 days, the city may proceed with hearings in accordance with § 17-10-2.~~

~~(H) The license may contain such other service standards as may be deemed appropriate by the City Council and set forth in the license.~~

#### **~~17-6-6 RESPONSE TO SUBSCRIBER COMPLAINTS ABOUT SERVICE.~~**

~~(A) Licensee shall ensure that there are stand by technicians on call at all times after normal business hours capable of reasonable response to service complaints and, where reasonable, the prompt curing of service complaints.~~

~~(B) Whenever it has been determined that an outage exists, licensee shall respond within the time specified in the license, but it shall not be deemed a violation of the license if licensee responds within the time specified in applicable FCC regulations, as may be amended from time to time, or in a lesser time.~~

~~(C) Licensee shall respond to all service calls within the times provided for in the license. It shall not be deemed a violation of the license if licensee does not exceed the time permitted for response by any applicable FCC regulations.~~

~~(D) Licensee shall schedule all installation, change of service and service calls with subscribers to the extent reasonably practicable. The scheduling shall, at a minimum, be in time frames of visitation of no more than four hours. If the appointment cannot be kept, the licensee shall attempt to notify the subscriber.~~

~~(E) Absent a showing by licensee to the City Manager of unusual circumstances, any change of service shall be accomplished within the time specified in the license or within the time specified in any applicable FCC regulation, as amended from time to time, such failure shall be deemed a violation of the license.~~

#### **~~17-6-7 SUBSCRIBER'S RIGHT UPON FAILURE OF SERVICE.~~**

~~(A) Any subscriber shall be entitled, upon request, to a refund equal to one day's service for each loss of service:~~

~~(1) For a continuous 24 hour period; or~~

~~(2) For a period of two or more hours on each of any four days within a monthly billing period. Each such service loss shall commence upon licensee's oral or written receipt of notice of such loss of service.~~

~~(B) Licensee shall maintain service call records on the time of call, nature of service call and any corrective action taken. These service call records shall be made available to the City Manager, or a designee, upon request, subject to applicable federal, state and local law. A summary of service calls shall be prepared by the licensee and submitted in a form approved by the city and the licensee to the City Manager, or a designee, upon request.~~

~~(C) The licensee shall notify subscribers at the time of initial subscription to the cable system of the procedure for reporting and resolving inquiries.~~

#### **~~17-6-8 SUBSCRIBER SOLICITATION PROCEDURES.~~**

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

~~(B) Licensee shall provide all prospective subscribers with complete, clear and concise written information, prior to or at the time of installation of cable services, concerning all services and rates by licensee. Such sales materials shall clearly and conspicuously disclose the price and other information concerning licensee's lowest cost service tier. Such information shall include, but not be limited to, the following:~~

~~(1) All service rates, deposits, if applicable, installation costs, additional television set charges, service upgrade or downgrade charges, relocation of cable outlet charges and any other charges for ancillary cable services;~~

~~(2) Information concerning billing and collection procedures, procedures for ordering changes in or termination of services and all refund policies;~~

~~(3) Information concerning the utilization of video cassette recorders (hereinafter VCR's) with cable services, if requested;~~

~~(4) A parental control feature that will permit a subscriber to lock out any objectionable programming from the cable services entering his or her home; and~~

~~(5) Complete written information concerning licensee's privacy policies, pursuant to federal law.~~

~~(C) A licensee shall promptly inform all affected subscribers and the City Manager or designee of any changes in the information set forth in § 17-6-7 and this section.~~

#### **~~17-6-9 A/B SWITCH.~~**

~~If required by any then existing current federal law, the licensee shall make available to subscribers the optional installation of a cable/antenna (A/B) switch.~~

#### **~~17-6-10 CITY AND SUBSCRIBER NOTIFICATION REQUIRED.~~**

~~The licensee shall provide all subscribers with 30 days' advanced written notice and the city with 37 days' advanced notice of any planned changes in rates, programming or services. The licensor and licensee may agree to a waiver of this notification procedure if deemed in the public interest.~~

## **ARTICLE 17-7**

### **Billing Practices, Information and Procedures**

#### Section

~~17-7-1—Notification of billing and collection procedures~~

~~17-7-2—Right of rescission~~

~~17-7-3—Billing procedures~~

~~17-7-4—Disconnection and termination of cable services~~

#### **~~17-7-1 NOTIFICATION OF BILLING AND COLLECTION PROCEDURES.~~**

~~Upon solicitation of service and prior to the consummation of any agreement for installation of service, a licensee shall inform all prospective subscribers of information respecting billing and collection procedures, procedures for ordering changes in or termination of services, refund and credit policies. Such information shall be provided to subscribers in easy to understand language.~~

~~(Prior Code, § 17-7-1)~~

#### **~~17-7-2 RIGHT OF RESCISSION.~~**

~~The licensee shall afford each subscriber of the cable system with a three day right of rescission for ordering the service of the cable system, provided that such right of rescission shall end upon initiation of physical installation of cable system equipment on such subscriber's premises.~~

~~(Prior Code, § 17-7-2)~~

#### **~~17-7-3 BILLING PROCEDURES.~~**

~~Billing procedures shall be as follows.~~

~~(A) Licensee shall bill all subscribers to its cable system in a uniform, non-discriminatory manner, regardless of subscriber's level of service. In no case shall any subscriber be required to pay for services in excess of 30 days prior to receipt of such service. Payment shall be due no sooner than the twentieth day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the fifth day of the billing period.~~

~~(B) Licensee shall provide all subscribers with an itemized monthly bill that contains, at a minimum, the following information:~~

- ~~(1) A list of each service or package received for that billing period;~~
- ~~(2) The rate or charge for each service or package received;~~
- ~~(3) The period of time over which said services are billed;~~
- ~~(4) The total charges due for the monthly period, separate from any previous balance due; and~~
- ~~(5) A specific date by which payment is required before a late charge is imposed.~~

~~(C) Late charges, if applied, shall in no case exceed amounts allowed by applicable law and shall in no case be imposed until the 30 day billing period has elapsed.~~

~~(Prior Code, § 17-7-3)~~

#### **~~17-7-4 DISCONNECTION AND TERMINATION OF CABLE SERVICES.~~**

~~Licensee shall only disconnect or terminate a subscriber's cable for good and just cause. In no event shall licensee disconnect said cable service for nonpayment without the prior written notification to the affected subscriber at least seven days prior to such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than 30 days after a subscriber's failure to pay a bill due. Where the licensee has improperly~~

~~discontinued cable system service to any such subscriber, it shall provide free reconnection to the cable system to such subscriber.~~

~~(Prior Code, § 17-7-4)~~

## ARTICLE 17-8

### Rights of Individuals

#### Section

~~17-8-1—Prohibition against denial of service and equal employment opportunity~~

~~17-8-2—Protection of subscriber privacy~~

~~17-8-3—Permitted disclosure~~

~~17-8-4—Subscriber access~~

~~17-8-5—Distribution of information~~

~~17-8-6—Remedy for act of licensee~~

~~17-8-7—Governmental entity entitlement to personally identifiable information~~

#### **~~17-8-1 PROHIBITION AGAINST DENIAL OF SERVICE AND EQUAL EMPLOYMENT OPPORTUNITY.~~**

~~(A) A licensee shall not deny cable service, deny access or otherwise discriminate against subscribers, users or general citizens on the basis of race, color, religion, national origin, sex, age or disability. A licensee shall comply at all times with all other applicable federal, state and local laws and regulations, and as amended from time to time, relating to nondiscrimination.~~

~~(B) A licensee shall strictly adhere to applicable equal employment opportunity requirements of federal, state and local regulations and as amended from time to time.~~

~~(Prior Code, § 17-8-1)~~

#### **~~17-8-2 PROTECTION OF SUBSCRIBER PRIVACY.~~**

~~(A) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a licensee shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of:~~

~~(1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;~~

~~(2) The nature, frequency and purpose of any disclosure which may be made of such information, including any identification of the types of persons to whom the disclosure may be made;~~

~~(3) The period during which such information will be maintained by the licensee;~~

~~(4) The times and place at which the subscriber may have access to such information; and~~

~~(5) The limitations provided by this section with respect to the collection and disclosure of information by a licensee and the right of the subscriber under this chapter to enforce such limitations.~~

~~(B) For purposes of this article, the term PERSONALLY IDENTIFIABLE INFORMATION does not include any record aggregate data which does not identify particular persons.~~

~~(C) Except as provided in this article, a licensee shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.~~

~~(D) A licensee may use the cable system to collect information in order to:~~

~~(1) Obtain information necessary to render a cable service or other service provided by the licensee to the subscriber; or~~

~~(2) Detect unauthorized reception of cable communications.~~

~~(E) Except as provided in this article, a licensee shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.~~



(Prior Code, § 17-8-2)

### **17-8-3 PERMITTED DISCLOSURE.**

A licensee may disclose the information acquired by licensee as permitted under this article, if the disclosure is:

(A) Necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the licensee to the subscriber;

(B) Subject to the provisions of this article, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or

(C) A disclosure of the names and addresses of subscribers to any cable service or other service, if:

(1) The licensee has provided the subscriber the opportunity to prohibit or limit such disclosure; and

(2) The disclosure does not reveal, directly or indirectly, the extent of any viewing or other use by the subscriber of a cable service or other service provided by the licensee, or the nature of any transaction made by the subscriber over the cable system of the licensee.

(Prior Code, § 17-8-3)

### **17-8-4 SUBSCRIBER ACCESS.**

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

(Prior Code, § 17-8-4)

### **17-8-5 DISTRIBUTION OF INFORMATION.**

A licensee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under this chapter or pursuant to a court order or state law.

(Prior Code, § 17-8-5)

### **17-8-6 REMEDY FOR ACT OF LICENSEE.**

Any person aggrieved by any act of a licensee in violation of this article may bring a civil action in a court of general jurisdiction, as provided in Section 631 of the Cable Act. Nothing in this chapter shall be construed to prohibit the city from enacting or enforcing additional laws consistent with this section for the protection of subscriber privacy.

(Prior Code, § 17-8-6)

### **17-8-7 GOVERNMENTAL ENTITY ENTITLEMENT TO PERSONALLY IDENTIFIABLE INFORMATION.**

A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order:

(A) Such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in a criminal activity and that the information sought would be material evidence in the case; and

(B) The subject of the information is afforded the opportunity to appear and contest such entity's claim.

(Prior Code, § 17-8-7)

## ARTICLE 17-9

### Security for Performance

#### Section

#### 17-9-1—Performance bond/irrevocable letter of credit or assurances

#### **17-9-1 PERFORMANCE BOND/IRREVOCABLE LETTER OF CREDIT OR ASSURANCES.**

(A) Each applicant for an initial license shall file with its application and maintain in full effect at all times thereafter until the filing of a final order of completion pursuant to § 17-3-7 a corporate surety bond issued by a surety licensed by the State of Arizona and approved by the City Manager or an irrevocable letter of credit or other assurance approved by the City Council in an amount equal to the greater of:

(1) The licensee's reasonable estimate of the total cost of construction of the cable system within the city; or

(2) The product of the number of miles of plant, to the nearest one-tenth of a mile, in the city multiplied by the current prevailing costs for installation or construction thereof for each mile or portion thereof of proposed cable as shown on the maps required by this chapter to be on file with the city.

(B) Upon the issuance of a final order of completion pursuant to this chapter, the amount of the aforesaid corporate surety bond, irrevocable letter of credit or other assurance shall be reduced to \$10,000 and maintained at such an amount at all times thereafter during the term of the license.

(C) This article and replacements thereof shall be effective for the entire term of the license and renewal thereof and conditioned that in the event the licensee shall fail to comply with any one or more of the provisions of the license, then there shall be recoverable jointly and severally from the principal and surety of such bond or letter of credit or other assurance by the city any damages, delinquent license fees, penalties, compensation and costs of repairing or completing the cable system and cost of removal or abandonment of property and repair of streets and other public improvements, up to the full amount of the bond or letter of credit; said condition to be a continuing obligation for the duration of the license and thereafter until licensee has satisfied all of its obligations which may have arisen from the acceptance of the license or from the exercise of any privileges thereunder. The surety bond or letter of credit shall provide that the obligations of the surety or letter of credit shall not cease for any reason until 30 days after receipt by the city of written notice of cancellation, or intent not to renew, and shall contain the following endorsement:

This letter of credit (bond) may not be canceled or allowed to lapse until thirty days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the letter of credit of its intent to cancel or not to renew.

(D) Neither the provisions of this article, nor the terms of any bond or letter of credit accepted by the city, nor the recovery of any damages under the bond or letter of credit, shall be construed to excuse faithful performance by the licensee or to limit the liability of the licensee for damages.

(E) In the event of the lapse of the bond or other assurance provided for in this section without the prior replacement thereof is not cured by licensee within five business days after such lapse, such lapse shall be deemed a material default in the obligations of licensee.

(Prior Code, § 17-9-1)

## ARTICLE 17-~~106~~

### Violations by Licensee

#### Section

17-~~106~~-1 ~~Notice of violation and required response of licensee~~ Unlawful Acts; Violation

#### 17-~~106~~-1 UNLAWFUL ACTS; VIOLATION

A. It is unlawful for a video service provider to establish, operate or to carry on the business of video service in the City without first having been issued and continuing to hold a local license issued pursuant to this chapter.

B. It is unlawful for any video service provider to construct, operate or maintain a video service network within the boundaries of the City without first having been issued and continuing to hold a local license issued by the City pursuant to this chapter.

#### ~~17-10-1 NOTICE OF VIOLATION AND REQUIRED RESPONSE OF LICENSEE.~~

~~(A) Except as may be provided in the license, in the event licensee should violate any provision of the license, the city shall promptly give the licensee written notice of the violation. The licensee shall, within 30 days of receipt of written notice from the city:~~

~~(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 30 day period, to take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. Licensee shall report to the city, in writing, at 30 day intervals as to licensee's efforts, indicating the steps taken by licensee to cure said violation and reporting licensee's progress until such violation is cured.~~

~~(B) In the event that licensee contests the city's assertion of violation or fails to respond to the city's notice of violation within 15 days, the city shall convene hearings in strict accordance with the procedures set forth in § 17-10-2.~~

~~(Prior Code, § 17-10-1)~~

#### ~~17-10-2 ADMINISTRATIVE HEARING.~~

~~(A) Within 15 days of receipt of notice of contest pursuant to § 17-10-1(B), or expiration of the response time referred to in § 17-10-1(A), an administrative hearing must be scheduled by the City Manager and conducted by the City Manager within 30 days, unless licensee, in its sole discretion, waives such administrative hearing in writing whereupon a hearing before the City Council, as provided for in subsection (D) of this section, shall be held. This shall be a public hearing which shall be posted and published in accordance with the meeting laws of Arizona, and licensee shall be afforded an opportunity to be heard and to present evidence, but without the formal rules of evidence applying. Within 30 days after the conclusion of such hearing, the City Manager shall issue a determination. In that determination the City Manager may:~~

~~(1) Find that 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 penalty that might otherwise be imposed;~~

~~(3) Find that licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the surety provided pursuant to § 17-9-1 to pay the cost thereof;~~

~~(4) Except when licensee pays liquidated damages under § 17-11-1, find that licensee is in violation of the terms of the license and impose a penalty of up to \$100 per day for each day the violation continues following the cure date as set forth in § 17-10-1;~~

~~(5) In the case of a material violation recommend that the City Council declare the licensee in violation and terminate the license, provided that the City Council may take action on any such recommendation only after a public hearing as set forth in subsection (D) of this section.~~

~~(B) If the City Manager determines that licensee has committed a violation, the determination shall be accomplished by a detailed statement of reasons for the determination, including findings of fact.~~

~~(C) The City Manager's decision shall become final unless licensee requests a public hearing before the City Council within 30 days of its receipt of the City Manager's statement of reasons and findings of fact.~~

~~(D) If a public hearing before the City Council is requested in writing by licensee or is held pursuant to any provision of this chapter, it shall be de novo and it shall initially convene within 30 days, or such other period of time as specified in the Cable Act or regulation of the FCC in furtherance of such act, of the written request therefor. All witnesses shall be sworn and shall be subject to cross examination; however, formal rules of evidence shall not apply. The City Council's decision, which shall include findings of fact and conclusions, shall be made not later than 45 calendar days after the conclusion of the hearing. In that decision, the City Council may:~~

~~(1) Find that licensee is not in violation of the terms of the license;~~

~~(2) Find that licensee is in violation but that such violation was with just cause and waive any penalty or part thereof that may otherwise be imposed;~~

~~(3) Find that licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the surety provided pursuant to § 17-9-1 to pay the cost thereof;~~

~~(4) Except when licensee pays liquidated damages as provided in subsection (5) below, find that licensee is in violation of the terms of the license and impose a penalty of up to \$100 per day for each day the violation continues following the cure date as set forth in § 17-10-1;~~

~~(5) For those instances specified in § 17-11-1(A) find that the licensee is in violation and impose penalties in such amounts and from the applicable dates as set forth in the license; or~~

~~(6) In the case of a material violation of the license declare the licensee in violation and terminate the license. The fact that a penalty is imposed for a violation of this chapter shall not prohibit a termination of a license in addition to any such fine or in lieu thereof whenever the violation is a material violation of the license.~~

## ARTICLE 17-11

### Remedies

#### Section

#### **17-11-1—Remedies for customer service violations**

#### **17-11-2—Alternative remedies**

#### **17-11-3—Nonenforcement**

#### **17-11-1 REMEDIES FOR CUSTOMER SERVICE VIOLATIONS.**

The licensee understands and agrees that failure to comply with any time and performance requirements in this chapter will result in damage to the city and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the parties hereby agree to the liquidated damages specified below. The following amounts per day or part thereof may be chargeable to the letter of credit for the following concerns:

(A) Failure to comply with the time limitations set forth in § 17-6-1(A) or (B) may subject licensee to penalties for each day of violation as provided in this subsection. Penalties may accrue at the rate of up to \$50 per day from the first day of violation until the earlier of the date the violation is cured or the date that the licensee receives the City Manager's written notice of the violation; provided that, notwithstanding the foregoing, no more than 14 days of penalties shall accrue prior to the receipt of the City Manager's written notice of violation by licensee. From and after the date that licensee receives the City Manager's written notice of violation, penalties may accrue at the rate of up to \$100 per day from the date that licensee received written notice of the violation until the violation is cured. Penalties may be imposed only by affirmative action of the City Manager and shall not automatically accrue in the absence of such affirmative action by the City Manager. Notwithstanding anything in this section to the contrary, no penalties shall accrue or be payable by licensee if the violation is cured prior to the receipt by licensee of the City Manager's written notice of violation.

(B) Failure to comply with the average response times as set forth in § 17-6-6 may subject the licensee to penalties for each month of violation as provided in this subsection. If the City Manager determines that licensee has not complied with the average response time, the City Manager shall notify licensee of the violation, whereupon licensee shall have until the end of the following calendar month to cure such violation. If the violation is not so cured, penalties may be imposed. The penalty shall be \$500 for the first month after the 30 day period of § 17-6-5(F) and (G) if the violation is not cured. The penalty shall be \$1,000 for the next month and escalate \$1,000 each month thereafter until the violation is cured. The penalty is payable on the fifth day of each following month as the penalty accrues. Penalties may be imposed only by affirmative action of the City Manager and shall not automatically accrue in the absence of such affirmative action by the City Manager. Notwithstanding anything in this section to the contrary, no penalties shall accrue or be payable by licensee for any period in excess of 60 days prior to the date of the City Manager's notice of noncompliance. Failure to complete system construction or reconstruction in accordance with the cable license of this chapter, unless the City Council specifically approves the delay by motion or resolution, \$500 per day.

(C) A licensee shall not be relieved of any obligation to comply with any of the provisions of the license or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the city or its officers, agents or employees to enforce prompt compliance.

(D) Each failure to properly restore the public right of way or to correct related violations of specifications, code, ordinance or standards within seven working days of having been notified by the city to correct such defects, \$200 per day.

(E) Each failure to test, analyze and report on the performance of the system following a written request, \$200 per day.

(F) Any other material action or non action by the licensee, as agreed upon by the city and licensee, such agreement shall not be unreasonably withheld by either party, \$50 per day.

(G) In the event that licensee contests the City Manager's assertion of violation, the city shall convene hearings in accordance with the procedures set forth in § 17-10-2.

(Prior Code, § 17-11-1) (Am. Ord. 95-520, passed 1-24-1995)

**~~17-11-2 ALTERNATIVE REMEDIES.~~**

~~No provisions of this chapter shall be deemed to bar the right of the city or the licensee to seek or obtain judicial relief otherwise available to it. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the city or the licensee to recover monetary damages or judicial enforcement of the licensee's or the city's obligations by means of specific performance, injunctive relief or mandate or any other judicial remedy at law or in equity.~~

(Prior Code, § 17-11-2)

**~~17-11-3 NONENFORCEMENT.~~**

~~A licensee shall not be relieved of any obligation to comply with any of the provisions of the license or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the city or its officers, agents or employees to enforce prompt compliance.~~

## ARTICLE 17-~~127~~

### Insurance, Liability and Indemnity

#### Section

17-~~127~~-1 Policies to be filed with city

17-~~127~~-2 Indemnification by licensee

#### **17-~~127~~-1 POLICIES TO BE FILED WITH CITY.**

(A) Upon the execution of a license, a licensee shall file with the city, and maintain in full force and effect throughout the term of the license, and any renewal thereof, insurance policies issued by an insurer, duly authorized and licensed to conduct business in the State of Arizona, reasonably acceptable to the City Manager, insuring with respect to the installation, construction, operation and maintenance of the cable communication system, comprehensive general and automobile liability coverage, including, but not limited to:

- (1) Blanket contractual liability;
- (2) Completed operations liability;
- (3) Broad form property damage endorsement, including, but not limited to, coverage for explosion, collapse and underground incidents; and
- (4) Automobile non ownership liability.

(B) This insurance shall include coverage which meets or exceeds the following 1992 standard minimum amounts (which minimums may be increased by the city from time to time to compensate for inflation or exposure to loss):

- (1) For bodily injury, including death, in the amount of \$1,000,000 combined single limit;
- (2) For property damage in the minimum amount of \$500,000;
- (3) Comprehensive automobile liability for bodily injury of \$1,000,000 combined single limit;
- (4) Excess umbrella liability in the amount of \$4,000,000 in excess of underlying coverage; and
- (5) Worker's compensation coverage as required by the laws, rules and regulations of the State of Arizona.

(C) Any insurance policy obtained by licensee in compliance with this section shall include the city as an additional insured, shall be primary and must be approved by the City Risk Manager and City Attorney, which approval shall not be unreasonably withheld. Such insurance policy shall be filed and maintained with the city during the term of the license and may be changed from time to time to reflect changing liability limits. Licensee shall immediately advise the city of any litigation that may develop that would affect this insurance or reduce the amount of coverage. Any insurance or ~~self insured~~self-insured coverage carried by the city shall be excess coverage and not contributory insurance to that provided by a licensee.

(D) Neither the provisions of this section, nor any damages recovered by the city thereunder, shall be construed to limit the liability of licensee to the city for damages.

(E) All insurance policies shall contain the following endorsement:

This insurance policy may not be canceled by the insurance carrier, nor may the insurance carrier fail to renew this policy until thirty days after receipt by the city of the insurance carrier's written notice of its intention.

(F) Licensee may ~~self insure~~self-insure the above described policy coverage if licensee or its parent are of sufficient financial standing acceptable to the City Manager to reasonably provide such insurance. A licensee that elects to ~~self insure~~self-insure shall file with the city a certificate of insurance as specified by the city.

**17-~~127~~-2 INDEMNIFICATION BY LICENSEE.**

(A) Each licensee shall, at its sole expense, fully indemnify, defend and hold harmless the city, and in their capacity as such, the officers, agents and employees thereof, for, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise and for the city's reasonable attorney fees incurred in connection therewith:

(1) For actual or alleged injury to persons or property, including loss of use of property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the licensee or its officers, agents, employees or contractors;

(2) Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, defamation of any person, firm or corporation or the violation or infringement of any copyright, trademark, trade name, service mark or patent attributable to the acts or omissions of licensee or its officers, agents, employees or contractors; and

(3) Arising out of or alleged to arise out of licensee's failure to comply with the provisions of any statute, regulation or chapter of the United States, State of Arizona or any local agency applicable to the licensee in its business.

(B) Nothing herein shall be deemed to prevent the city from participating in the defense of any litigation by its own counsel at the city's sole expense. Such participation shall not under any circumstances relieve the licensee from its duty of defense against liability or of paying any judgment entered against such party; provided, however, that licensee shall have no obligation or liability for paying any settlement made by the city without first consulting with licensee on the terms and conditions of the settlement. The licensee shall promptly undertake the defense, at its own expense, of any matter for which this indemnity is established upon written request of the city.



## ARTICLE 17-~~138~~

### Miscellaneous

#### Section

- ~~17-138-1~~ ~~Communications with regulatory agencies~~Non-Enforcement
- ~~17-13-2~~ ~~License amendments~~
- ~~17-13-38-2~~ City's right to include additional provisions in a license
- ~~17-13-48-3~~ ~~Savings clause~~City Boundaries
- ~~17-8-4~~ Transfers

#### ~~17-138-1~~ **COMMUNICATIONS WITH REGULATORY AGENCIES**NON-ENFORCEMENT.

~~(A) Upon request, there shall be provided to the city copies of any communications and reports submitted by a licensee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a cable system or services provided through such a system.~~

~~(B) Licensee shall provide the city with regular written and verbal reports, as reasonably requested by the city, to establish licensee's compliance with the various standards and other provisions of this chapter~~

A licensee shall not be relieved of any obligation to comply with any of the provisions of the license or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the city or its officers, agents or employees to enforce prompt compliance.

#### ~~17-13-2~~ **LICENSE AMENDMENTS.**

~~A license may reserve and provide for a mechanism that will cause licensee and licensor to meet and confer for the purpose of amending this chapter or the license on mutually acceptable terms.~~

#### ~~17-13-38-2~~ **CITY'S RIGHT TO INCLUDE ADDITIONAL PROVISIONS IN A LICENSE.**

The city shall have the right and power to provide for additional terms and conditions in any license it may issue which the city finds reasonably necessary in the exercise of its lawful police powers so long as such terms and conditions are not inconsistent with this chapter.

#### ~~17-13-48-3~~ **SAVINGS CLAUSE. CITY BOUNDARIES**

~~Any license issued or any cable system operating under any license issued prior to the effective date of this chapter shall continue to be subject to and operate under the provisions of this chapter as it existed prior to the effective date of this chapter; provided, however, any renewal of any such license which was issued prior to such date and the operations of any cable system operator holding such a renewed license shall be subject to all of the terms and provisions of this chapter as they may exist upon the renewal of any such license.~~

A. The City shall notify in a timely manner each video service provider with a uniform video services license in the City of changes to the boundaries of the City.

B. Audits, including audits of bundled services, of a video services provider's books and records shall be conducted in compliance with A.R.S. Section 9-1445.

#### 17-8-4 TRANSFERS

A. Except as otherwise provided by law or federal regulation, a uniform video service license is fully transferable to any person whether the transfer arises through merger, sale, assignment, restructuring, change of control or other type of transaction. A transfer does not include an assignment of a uniform video service license for the purpose of securing indebtedness. A transfer may include less than all service areas associated with a uniform video service license.

B. The video service provider shall file with the City Clerk written notice of the transfer of the uniform video service license.

C. On the filing of notice under this subsection the transferee becomes the holder of the uniform video service license.

#### 17-8-5 ENFORCEMENT

A. Enforcement of this chapter shall be in compliance with A.R.S. Section 9-1451

B. A uniform video services license is subject to and shall be governed by all applicable provisions of federal, state and local law. Notwithstanding any other provisions of the uniform video services license to the contrary, the uniform video services license shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulations shall require the licensee to perform any service, or shall permit the licensee to perform any service, or shall prohibit the licensee from performing any service, in conflict with the terms of the license or this chapter, then as soon as possible following knowledge thereof, the licensee shall notify the City Attorney of the point of conflict believed to exist between such regulation or law and this chapter or the license.