

**ORDINANCE NO. P-15**  
**ADOPTED February 9, 1982**  
**REVISED December 12, 1988**

**MARICOPA COUNTY ORDINANCE NO. 15**  
**CABLE COMMUNICATIONS**

**SECTION 1: SHORT TITLE**

This Ordinance shall be known as the Maricopa County Cable Communications Ordinance.

**SECTION 2: PURPOSE**

The purpose of this Ordinance is to provide for the regulation and control of cable television systems operating within the unincorporated areas of Maricopa County, Arizona, by the County of Maricopa in public interest, to authorize the County of Maricopa to grant one or more non-exclusive licenses for the operation of cable television systems, to provide for the use of streets by such systems and compensation for that use, and to require that the provisions of this Ordinance be applicable to all licenses granted by the County. It is the further purpose and intent of this Ordinance to facilitate the provision of high quality cable television service to the citizens of the County while minimizing disruptions of the public domain for system installation and maintenance.

**SECTION 3: DEFINITIONS**

For the purpose of this subtitle the following words and their derivations have the meanings defined below. Words not defined are given the meaning in Section 602 of the Cable Act, 47 U.S.C. Subsection 522, and, if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must" or "shall" are mandatory and the word "may" is permissive.

1. "Access Channel" means any channel set aside for public use, educational use, or governmental use without a charge by the licensee for channel usage.
2. "Application" means a proposal to construct and/or operate a cable system within the County, transfer a franchise, renew a franchise, or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.
3. "Board" means the Board of Supervisors of the County.
4. "Cable Communications Director" means that County employee designated by the County Manager as the primary staff person

responsible for day-to-day administration oversight and enforcement of cable licenses and other cable related matters.

5. "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Subsection 521 et seq.
6. "Cable System" or "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the County. Such term does not include (1) a facility that serves only to retransmit the television signals or one (1) or more television broadcast stations; (2) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public right-of-way; (3) a facility of a common carrier that is subject, in whole or in part, to the provision of Title II of the Communications Act of 1934, 47 U.S.C. Subsection 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.
7. "Complaint" is a subscriber problem relating to license standards for customer service which is unresolved due to circumstances within licensee's control.
8. "Control of a Licensee or Applicant" means the legal or practical ability to direct the affairs of the licensee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest. In the case of a limited partnership, a change in limited partner interests shall not constitute a change in control where the limited partners have no power to participate in the management of the partnership.
9. "County" means the County of Maricopa, a political subdivision of the State of Arizona, and its agencies, commissions, boards, departments, divisions and offices. As used herein in a geographic context, the term refers to unincorporated parts of the County unless specified to the contrary.
10. "County Manager" shall mean the chief executive officer of the County or authorized representative or designee.
11. "FCC" means the Federal Communications Commission or successor agency.
12. "Gross Annual Revenues" or "Gross Revenues" means all revenues derived by a licensee from the operation of its cable system within unincorporated areas of the County, including but, not limited to, revenues derived from cable service, home shopping channels, institutional services, rental or lease of equipment, installation fees or ancillary services. This sum shall not include any taxes on services collected by the licensee on behalf of a government.
13. "Leased Channel" or Leased Access Channel means any channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C.

Subsection 532, for commercial use by persons unaffiliated with the licensee.

14. "License" means the right granted by the County to a licensee to construct, maintain and operate a cable system over, on, or under streets, roads and all other public ways, easements and rights-of-way within all or specified areas of the County. The term does not include any license or permit that may be required by this Ordinance or other laws, ordinances or regulations of the County for the privilege of transacting and carrying on a business within the County or for disturbing the surface of any street or public thoroughfare.
15. "License Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the County and a licensee that sets forth the terms and conditions under which the license will be exercised.
16. "Outage" means an equipment or facility failure that results in a total loss of signal on all cable channels affecting eleven (11) or more subscribers in a contiguous area.
17. "Overbuild" means a cable system constructed to serve subscribers served by an existing cable system, including those parts of an existing system that will be constructed within six (6) months pursuant to plans filed with the County.
18. "Pass-through license" means a license granted by the County for the construction within the streets and public rights-of-way of the County of a cable system which will not serve any residents or businesses of unincorporated areas of the County.
19. "Person" means any natural person or organization, including corporations, associations, syndicates, partnerships, trusts and/or any other legal entity.
20. "Resident" means any person residing in the County as otherwise defined by applicable law.
21. "School" means any non-profit educational institution including primary and secondary schools, colleges and universities.
22. "Service Area" means the geographically defined part of the County lying outside the boundaries of any incorporated city or town for which the Board has granted a license for the provision of cable service.
23. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, or easement now or hereafter held by the County or the State of Arizona for the purpose of public travel or public utilities.
24. "Subscriber" means any person legally receiving cable service from a licensed cable system.
25. "System malfunction" means an equipment or facility failure that results in the loss of a viewable signal on one or more channels. A malfunction is major if it affects eleven (11) or more subscribers.

26. “Transfer of an interest” in a license means the sale or transfer, directly or indirectly, of an existing or newly created equity interest in the licensee that does not result in a transfer of control of the licensee.
27. “Transfer of a license” means any transaction in which (1) an ownership or other interest in a licensee is transferred from one person or group of persons to another person or group of persons so that control of the licensee is transferred, or (2) the rights held by the licensee under a license agreement are transferred or assigned to another person or group of persons.
28. “Two-Way Capability” means the incorporation in a cable system of all appropriate design and engineering characteristics so that two-way transmission, including addressability, over the system can be implemented with a minimum of expense.
29. “User” means a person utilizing cable system facilities for the purpose of production and/or transmission of video, voice or data signals, as contrasted with receipt of service in a subscriber capacity.

#### **SECTION 4: AUTHORITY TO GRANT LICENSE, LICNSE REQUIRED; LICENSE NON – EXCLUSIVE**

- A. By Arizona Revised Statutes Section 9-506, the Board is empowered to issue non-exclusive licenses to install, construct, operate and maintain cable systems in public streets or public land within the unincorporated areas of the County and to regulate those cable operations.
- B. No provisions of this Ordinance shall be deemed or construed to require the granting of a license.
- C. No person shall construct, install, or maintain a cable system within any street in the County, or within any other public property of the County, or within any public utility easement within the County, or within any privately owned area within the County which is designated or delineated as a proposed street or other public area on any tentative subdivision map approved by the County, unless a license agreement authorizing such use of said streets or property is in full force and effect.
- D. Any license issued by the Board shall be non-exclusive, and the Board specifically reserves the right to grant, at any time, such additional licenses for cable systems as the Board deems appropriate.

#### **SECTION 5: APPLICATION FOR LICENSE**

- A. An application for an initial license shall be submitted on forms furnished by the Cable Communications Director. The County may make revisions to application forms from time to time as found necessary and require that other applications be submitted on application forms. Applications not required to be submitted on forms shall contain the information required by this Ordinance. An applicant shall at all times provide information relevant

to the application as requested by the County, whether or not specifically required by an application form or this Ordinance.

- B. All applications shall be filed with the Cable Communications Director. Applications for an initial license may be submitted on an unsolicited basis or in response to a request for applications. Applications submitted pursuant to a request for applications may be returned as nonresponsive if they do not comply with all requirements of the request. The County reserves the right to issue a request for applications in response to an unsolicited application, in which case the unsolicited applicant shall be given an opportunity to amend its application to comply with any additional requirements of the request.
- C. Applications for consent to transfer a license or an interest in a license must conform to the requirements of section 7. Applications for renewal must conform to the requirements of section 9.
- D. An application for modification of a license agreement must include, at minimum, the following information:
  - 1. The specific modification requested;
  - 2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved;
  - 3. A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. Subsection 545, and, if so, a demonstration that the requested modification meets the legal standards of 47 U.S.C. subsection 545; and
  - 4. Any other information necessary for the County to make a determination.
- E. To be acceptable for filing an application must be submitted with any required filing fee, be properly executed on the forms prescribed by the County, and contain the information required by any required application form, this Ordinance, and meet the requirements of any applicable request for applications.
- F. Non-refundable filing fees in the following amounts are required:
  - 1. For an initial license or renewal other than a pass-through license: \$3,000.
  - 2. For an initial pass-through license or renewal: \$1,500.
  - 3. For consent to transfer a license other than a pass-through license: \$2,000.
  - 4. For consent to transfer a pass-through license: \$1,000.
  - 5. For modification of a license pursuant to 47 U.S.C. Subsection 545: \$2,000.

In addition to the filing fee, the County may recover any out – of – pocket costs it incurs in considering the application in excess of the amount of the filing fee not to exceed \$2,000.00
- G. All applications received that are acceptable for filing shall be placed in a public file in the Office of the Cable Communications Director. Except for applications for consent to transfer an interest in a license, the County

shall publish notice of each application in a newspaper of general circulation within the proposed service area once a week for two (2) consecutive weeks. The notice shall define the proposed service area, indicate where the application may be viewed, and the due date for the submission of written comments. The notice shall also indicate that a public hearing on the application will be later scheduled.

- H. The County shall schedule at least one public hearing to consider each application except for applications for consent to the transfer of an interest in a license. Notice of such hearing shall be published and held in accordance with the provisions of Arizona Revised Statutes Section 9-507. During the public hearing, which shall be held in the proposed service or construction area, the applicant's proposal shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.
- I. Following such hearing, the Cable Communications Director shall prepare a report making recommendations concerning each application, which report may incorporate the results of an evaluation by an independent consultant, and submit said report to the Board.
- J. The Board shall give full consideration to each application. In passing upon an application for an initial license, the following factors, together with such other factors as the Board may deem relevant to the interests of the County and the public, shall be considered as appropriate:
  - 1. The financial qualifications of the applicant and its ability to construct and operate the facilities proposed.
  - 2. The need for and quality of the service proposed, including rates to subscribers should rates be regulated.
  - 3. The technical, legal, and character qualifications of the applicant.
  - 4. Technical and performance adequacy of the proposed system design, plant and equipment.
  - 5. Where an applicant proposes to overbuild an existing cable system, the economic feasibility of multiple cable operators, the impact on the existing licensee, including whether the operations or service of the existing cable licensee will be interfered with or disrupted, and whether any adverse consequences to the public interest will result if the application is granted.
  - 6. All other factors which affect the public interest.
- K. Thereafter, the Board shall make a determination whether to approve or disapprove each application.

## **SECTION 6: LICENSE AGREEMENTS**

- A. If an application is approved, the County and the applicant shall negotiate a license agreement which shall incorporate all essential terms of the proposal as specified in the application, any conditions imposed by the Board in its grant of the application, and the requirements of this Ordinance. The license agreement shall include a statement of the

applicant's acceptance of the license and promise to comply with and abide by all of its provisions, terms and conditions. If the County and the grantee fail to agree on the terms of a license agreement within 120 days of the date that the Board's action granting the license, the license shall expire without further action by the County. This time limit may be extended by the County for good cause.

- B. The license and rights, privileges, and authority granted shall take effect and be in force from the date of final approval by the Board of the license agreement which shall have been executed by a duly authorized representative of the grantee. Such effectiveness shall be conditioned upon the grantee's supplying proof of the insurance, performance bond and letter of credit as required in this Ordinance and the license agreement.
- C. A license agreement shall have the following characteristics:
  - 1. It authorizes use of the public rights-of-way for installing cables, wires, lines, and other facilities to operate a cable system, but does not expressly or implicitly authorize the licensee to provide service to, or install cables, wires, lines, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements or rights-of-way pursuant to 47 U.S.C. Subsection 541(a)(2)), or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners.
  - 2. It is subject to the paramount right of use of the public rights-of-way by the County and the public for public purposes. The County reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.
  - 3. It is nonexclusive, and will not expressly or implicitly preclude the issuance of other licenses to operate cable systems within the County.
  - 4. It conveys no property right to the licensee or right to renewal other than as may be required by state or federal law.
  - 5. It constitutes a contract between the licensee and the County once it is approved by the Board and executed by both parties. A licensee contractually commits itself to comply with the terms, conditions and provisions of the license agreement and with all applicable laws, ordinances, codes, rules, regulations, and orders.
  - 6. The term of the license agreement shall not exceed fifteen (15) years commencing on its effective date.
  - 7. A licensee shall have no recourse whatsoever against the County, its officers, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of this Ordinance or license agreement executed pursuant thereto.
  - 8. A licensee shall be subject to all laws, rules, and regulations of the State of Arizona and the United States Government.
- D. Any of the provisions of this Ordinance may be amended by the Board at any time. This Ordinance and such amended provisions shall be

applicable to all existing license agreements; provided, however, that this Ordinance and such amended provisions shall not be applicable to and existing agreement where it would contravene a contractual right of the licensee under the license agreement, nor pose additional contractual burdens on the licensee.

- E. All notices and communications from a licensee to the County pursuant to this Ordinance or a license agreement shall be sent to the Cable Communications Director unless the licensee is otherwise directed.
- F. The County may issue a pass-through license which authorizes the licensee to utilize public streets for the installation of cable and ancillary equipment but does not provide for the provision of cable service within unincorporated areas of the County.

## **SECTION 7: TRANSFERS**

- A. A transfer of a license must not occur without prior approval of the County. No transfer of a license will be approved by the County where the initial construction as specified in the license agreement has not been completed unless the County finds that the transfer is necessary and in the best interests of the County and its residents.
- B. An application to transfer a license must provide information on the proposed transaction and the transferee to that the County can assess the qualifications of the transferee. If the transferee plans any significant changes in services, facilities or operations, the details must be disclosed. The following information shall be supplied relative to the transferee:
  - (1) Name and address of the transferee and identification of its ownership and control, including: the names and addresses of the ten (10) largest holders of an ownership interest in the transferee and all officers and directors of the transferee;
  - (2) An indication of whether the transferee, or any officer or director or other principal thereof, has been adjudged bankrupt, had a cable license or franchise revoked, or been found guilty by any court or administrative agency of a violation of a security or antitrust law, or a felony, or any crime involving moral turpitude; and, if so, identification of all such persons and a full explanation of the circumstances;
  - (3) A demonstration of the transferee's technical, legal and financial ability to construct and operate the cable facility, including identification of key personnel; and
  - (4) A description of the transferee's prior experience in cable operations and identification of communities in which the transferee and/or affiliated entities has a cable license or franchise or an interest therein, including the identification of any litigation involving such entities and their licensing or franchising authorities.
- C. When a transfer of an interest of five percent (5%) or more held by a single person or entity is to occur, the County shall be notified by the

licensee at least thirty (30) days in advance of the transaction, unless the licensee or its parent has no control over said transaction (in which circumstances the County shall be notified as soon as reasonably practicable). The notice shall contain a description of the transaction and the identity of the interest transferred, the transferor and the transferee.

- D. A public hearing may be held by the Board on an application to transfer a license. In making a determination on whether to grant an application to transfer a license, the Board will consider, as appropriate, the legal, financial, technical and character qualifications of the transferee to operate the system and whether operation by the transferee would adversely affect the cable services to subscribers or otherwise be contrary to the public interest. The Board shall approve or disapprove the application, and, in cases in which the approved transferee is less qualified than the transferor, it may subject its approval to reasonable conditions necessary and appropriate to protect the public interest.
- E. Approval by the County of a transfer of a license does not constitute a waiver or release of any of the rights by the County under this Ordinance or the license agreement. The transferee will be required to execute an agreement accepting the obligations of the license agreement.

#### **SECTION 8: REVOCATION OF A LICENSE**

- A. If a license is in material violation of this Ordinance or in default of the terms of its license agreement, the County may make written demand by certified mail that the licensee come into compliance with said requirements within a reasonable period of time. If the licensee is unwilling or unable to do so within the time specified, the County Manger may recommend the revocation, alteration or suspension of the license to the Board, specifying the reasons for such revocations.
- B. A copy of any such recommendations shall be served by certified mail upon the licensee, and the licensee shall be given at least fourteen (14) days notice prior to the date of a public hearing before the Board to consider revocation, alteration or suspension of a license and the licensee will be given an opportunity to present evidence and make argument at such public hearing.
- C. The Board shall consider the recommendations received, the response of the licensee, and hear any other persons interested therein, and shall determine whether or not the licensee is in violation or default of its obligation and, if so, whether such failure was with just cause.
- D. If the Board finds that the failure by the licensee was with just cause, the Board shall direct the licensee to comply within such time and manner and upon such terms and conditions as are reasonable.
- E. If the Board determines that the licensee's failure was without just cause, the Board may declare the license revoked, altered or suspended. The Board may provide a specified period of time for the licensee to come into compliance before the revocation takes effect.

- F. A license may be revoked, altered or suspended by the County on the following grounds, among others, and taking into account any ameliorating circumstances:
1. For willful, false or misleading statements in, or material omissions from, any application, report or negotiations concerning a license.
  2. For failure to file and maintain the bonds, letters of credit, security fund, or insurance, failure to pay license fees or assessed property taxes.
  3. For repeated material failure to maintain service quality under the standards prescribed.
  4. For transfer of a license without prior consent of the County.
  5. For violation of material terms of this Ordinance or a license agreement.
  6. For the licensee's practice of any fraud or deceit in its conduct under the license.
  7. For failure to substantially perform as required under the license agreement.
  8. For failure to restore service after forty-eight (48) consecutive hours after notice to the licensee of interrupted service to the entire system, except when such interruption is beyond the control of the licensee.
- G. Upon revocation of a license, the Board may require the licensee or its surety to remove its structures or property from the streets and/or restore the streets to such condition as the County may require except that underground cable not in conduits may be abandoned in place. The revocation of a license shall in no way affect any of the rights of the County to pursue other remedies under the license agreement or this Ordinance.
- H. The County shall have the right to revoke the license one hundred and twenty (120) days after the appointment of a receiver or trustee, by a court of competent jurisdiction, to take over and conduct the business of the licensee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
1. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the license and remedied all defaults thereunder; and
  2. Such receiver or trustee, within said one hundred and twenty (120) days, shall have applied for and been granted by the County authority for the transfer pursuant to the procedures specified herein and executed a license agreement, duly approved by the court having jurisdiction and approved by the Board, whereby such receiver or trustee assumes and agrees to comply with the terms of the license agreement.

## SECTION 9: LICENSE RENEWAL

- A. If a license decides to initiate a formal license renewal process in accordance with Section 626(a) –(g) of the Cable Act, 47 U.S.C. Subsection 546 (a)-(g), it must notify the County within 30-36 months of the license expiration date. Upon such notification, or at the County’s own initiative, the County must commence the following process:
1. The County must review and evaluate the future cable-related community needs and interests and the licensee’s past performance. The review and evaluation process must include opportunity for public comment.
  2. Immediately upon completion of the review and evaluation process, the County must notify the licensee that it may file a renewal application. The notice must specify the information to be included in the renewal application and the deadline for filing the application, which must be no earlier than thirty (30) calendar days following the date of the notice. If the licensee does not submit a renewal application by the specified date, it will be deemed not to be seeking renewal of its license.
  3. Upon receipt of the renewal application, the County must hold one or more public hearings or implement other procedures under which comments from the public on the application may be received.
  4. Following such public hearings or other procedures, the Cable Communications Director shall recommend to the Board that it either:
    - a. Agree to renew the license, subject to the negotiation of a license agreement satisfactory to the County and the licensee, or
    - b. Issue a preliminary assessment that the license should not be renewed.
  5. The Board’s action under subsection 4 above must be taken within four months of the date of the renewal application notice to the licensee required in subsection 2 above.
- B. In considering a renewal application, the County must consider whether:
1. The cable operator has substantially complied with the material terms of the existing license and with applicable law;
  2. The quality of the cable operator’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 system) has been reasonable in light of community needs;
  3. The cable operator has the financial, legal and technical ability to provide the services, facilities, and equipment set forth in its proposal; and

4. The cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- C. If a preliminary assessment is made that a license should not be renewed, at the request of the license or on its own initiative, the County must commence an administrative proceeding in accordance with Section 626© of the Cable Act, 47 U.S.C. Subsection 546©. An administrative hearing shall be initiated pursuant to a hearing order issued by the County which proceeding shall be conducted consistent with the requirements of 47 U.S.C. Subsection 546 ©. The hearing officer must issue a recommended decision consistent with the requirements of 47 U.S.C. Subsection 546 ©. Parties to the hearing and the public shall have thirty (30) calendar days after issuance of the final date for receipt of comments, the County Manager shall recommend to the Board whether to grant or deny an application.
  - D. The provisions of subsections A-C above notwithstanding, a licensee may submit an application for renewal of license in accordance with 47 U.S.C. Subsection 546 (h). The application shall be submitted on forms provided by the Cable Communications Director and/or contain information as specifically requested by the County. To be acceptable, such an application must be accompanied by the appropriate filing fee. The licensee shall provide additional information as may be requested by the County during the pendency of the application. The County shall hold one or more public hearings or implement other procedures under which comments on the proposal from the public may be received. Following such public hearings or other procedures, the County Manager shall recommend to the Board whether the license should be renewed and the terms and conditions of any recommended renewal.
  - E. The renewal of a license does not become effective until any renewal fees have been paid by the licensee and a new license agreement has been approved by the Board and executed by the parties. The County must notify the licensee of the amount of any renewal fees and its method of calculation at the time the renewed license agreement is approved by the Board. The renewal fees are to cover the County's costs of the renewal process.
  - F. If renewal of a license is denied, the County may require the former licensee to remove its facilities and equipment from streets and public property except for underground cables not in conduits which may be abandoned in place. If the former licensee fails to do so within a reasonable period of time, the County may have the removal done at the former licensee's and /or surety's expense.

## **SECTION 10: CONTINUITY OF SERVICE**

- A. In the event of a termination or transfer of a license for whatever reason, the licensee must do everything in its power to ensure that all County

subscribers receive continuous, uninterrupted service regardless of the circumstances, not to exceed 90 days following the date of termination or transfer. Revenues accrued during that period of time shall be received by the operator. During such period, the cable system shall be operated under terms and conditions consistent with the most recent license agreement or under such other terms and conditions as the county and the licensee may agree.

- B. In the event of a change of licensee, or in the event a new operator acquires the system, a licensee shall cooperate with the County and the new licensee or operator in maintaining continuity of service to all County subscribers.
- C. In the event a licensee terminates service to the entire system within the County or fails to operate the entire system for forty-eight (48) consecutive hours without prior approval of the Cable Communications Director or without just cause, the County may, with Board approval, designate an interim operator until such time as the licensee restores service under conditions acceptable to the County or a permanent operator is selected. If the County designates an interim operator, all system revenues collected for the period of such operation shall accrue to the interim operator, and the licensee or its surety shall reimburse the interim operator and/or County for all reasonable costs or damages in excess of revenues from the system.
- D. A licensee or interim operator shall not willfully make any material, administrative or operational change that would tend to: (1) degrade the quality of service, (2) decrease revenues, or (3) materially increase expenses, without the express written permission of the County during the periods of interim operation described in this section.

## **SECTION 11: RECORDS**

- A. Upon request, a licensee, except for a pass-through licensee, shall provide reasonable information to the County relevant to the County's regulation of the cable system's operation. Said information shall be open to the County for inspection during normal business hours. Access to supplementary records relevant to the cable system which are kept at other locations shall be promptly provided by the licensee upon County request. The County will respect the confidentiality of all information not routinely made public.
- B. All licensees shall maintain up-to-date route maps showing the location of trunk and distribution lines. A copy of all such maps shall be made available to the County free of charge upon its request.

## **SECTION 12: RIGHT OF INSPECTION OF CONSTRUCTION; RIGHT TO HALT CONSTRUCTION**

- A. The County shall have the right to inspect all construction and installation work performed subject to the provisions of the license agreement and to make such tests as it shall find necessary to ensure compliance therewith and other pertinent provisions of law.
- B. The County shall have the right to halt all, or any portion of, construction should a material breach of this Ordinance or provision of a license agreement occur, or if the County determines that the public safety would be endangered by continued construction.

### **SECTION 13: OTHER FILINGS**

Copies of all petitions, applications, communications and reports submitted by a licensee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency, other than the Internal Revenue Service or the Arizona Department of Revenue, having jurisdiction over any matters affecting cable operations authorized pursuant to the Maricopa County license, shall be provided to the County if requested by the County. A copy of any agreement between a licensee and any public utility providing for the use of any facilities of the public utility by the licensed cable system, including, but not limited to poles, lines, or conduits, shall also be provided free of charge to the County if requested.

### **SECTION 14: RIGHT OF INTERVENTION**

The County shall have the right of intervention in any suit or proceeding involving the Maricopa County license, and the licensee shall not oppose such intervention by the County.

### **SECTION 15: LETTER OF CREDIT**

- A. With the execution of a license agreement, a licensee, other than a pass-through licensee, shall provide to the County a letter of credit from a financial institution licensed to do business in Arizona an amount not to exceed twenty-five thousand dollars (\$25,000). A pass-through licensee shall provide a letter of credit may not be revoked except upon thirty (300) days notice to the County in accordance with subsection F hereof. The form and content of such letter of credit shall be approved by the County Attorney. The letter of credit shall be used to ensure the faithful performance by the licensee of all provisions of the license agreement, compliance with all orders, permits and directions of the County under this Ordinance and the license agreement and the payment by the licensee of any claims, liens and taxes due the County which arise by reason of the construction, operation or maintenance of the cable system.
- B. The letter of credit shall be maintained at the specified amount by the licensee during the entire term of the license.
- C. Whenever the County shall draw any amount against the letter of credit, the licensee shall arrange to replenish the letter of credit to its full amount

within ten (10) days after the licensee has been notified by the County of the amount withdrawn from the letter of credit. The County shall be furnished with written proof of replenishment promptly upon its accomplishment.

- D. If a licensee fails to pay to the County: (1) any compensation within the time fixed by this Ordinance or the license agreement; (2) any taxes due; or (3) any damages, costs or expenses which the County incurs by reason of any act or default of the licensee; or if the licensee fails to comply with any provision of the license agreement which failure the County determines can be remedied or partially cured by demand on the letter of credit, the County may, following ten (10) days notice to the licensee, withdraw from the letter of credit the amount so claimed by the county if within such period the licensee has not remedied the matter. Simultaneously with such withdrawal the County shall notify the licensee of the amount and the date of withdrawal.
- E. The rights reserved to the County with respect to the letter of credit are in addition to all other rights it may have under this Ordinance and the license agreement or otherwise pursuant to law.
- F. The letter of credit shall contain the following endorsement:

“This letter of credit may not be canceled or allowed to lapse until thirty (30) days after receipt by the County, 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.”
- G. In the event the letter of credit is insufficient to pay the County for any compensation, damages, penalties, costs or expenses owed it pursuant to this Ordinance or the license agreement, the licensee’s performance bond may be drawn upon by the County for any amount due the County over and above the amount of the letter of credit.
- H. Upon the termination, expiration, or revocation of a license, the County may withdraw from the letter of credit any monetary sums due it from the former licensee. After all of the former licensee’s monetary obligations to the County have been satisfied, the County shall notify the former licensee that the letter of credit may be cancelled.

## **SECTION 16: PERFORMANCE BOND**

- A. Prior to any cable construction or other work in the public right-of-way, a licensee shall establish in the County’s favor a performance bond in an amount specified in the license agreement or other authorization as necessary to ensure the faithful performance of the licensee, but not to exceed Five Hundred Thousand Dollars (\$500,000).
- B. In the event a licensee fails to comply with any law, ordinance or regulation governing the license, or fails to fulfill and perform each material term and condition of the license agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any

damages of loss suffered by the County as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the licensee, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The County may also recover against the bond any amount recoverable against the letter of credit pursuant to Section 15 where such amount exceeds that available under the letter of credit.

- C. The license agreement may specify that upon completion of construction and payment of all construction obligations of the cable system to the satisfaction of the County may eliminate the bond or reduce its amount. However, the County may subsequently require an increase in the bond amount for any subsequent construction or other work in the public right-of-way. In any event, the total amount of the bond shall not exceed the amount specified in Paragraph A of this section.
- D. The bond shall be subject to the approval of the County Attorney and shall contain the following endorsement:
  - “This bond may not be canceled, or allowed to lapse, until sixty (60) days after the receipt by the County, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.”
- E. The rights reserved by the County with respect to the bonds required are in addition to all other rights and remedies the County may have under this Ordinance, the license agreement license or any other law.

## **SECTION 17: INSURANCE AND LIABILITY**

- A. Upon the execution of a license agreement, a licensee shall file with the County, and maintain in full force and effect throughout the term of the license agreement, insurance policies issued by an insurer duly authorized and licensed to conduct business in the State of Arizona, insuring with respect to the installation, construction, operation and maintenance of the cable 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. The County expressly reserves the right to modify any insurance and liability requirements when it deems such action necessary to protect the public interest and welfare.
- B. This insurance shall include coverage which meets or exceeds the following minimum amounts; which minimums may be increased by the County 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.
  5. Worker's compensation coverage as required by the laws, rules and regulations of the State of Arizona.
- C. Any insurance policy obtained by the licensee in compliance with this section shall include the County as an additional insured, shall be primary, and must be approved by the County Risk Management Director and the County Attorney. Such insurance policy shall be filed and maintained with the County during the term of the license, and may be changed from time to time to reflect changing liability limits. A licensee shall immediately advise the County of any litigation that may develop that would affect this insurance or reduce the amount of coverage. Any insurance or self-insured coverage carried by the County shall be in excess coverage and not contributory insurance to that provided by a license.
- D. Neither the provisions of this section nor any damages recovered by the County thereunder shall be construed to limit the liability of a licensee to the County for damages.
- E. All insurance policies shall contain the following endorsement:  
"This insurance policy may not be canceled by the insurance carrier, nor the intention not to renew be stated by the insurance carrier, until thirty (30) days after receipt by the County by certified mail, return receipt requested, of a written notice of such intention to cancel or not to renew."
- F. The licensee shall be solely responsible for all premiums due and payable with respect to the insurance coverage required herein.
- G. All deductible amounts applicable to liability insurance coverage must be approved by the County.
- H. Licensee may self insure the above-described policy coverages if licensee or its parent are of sufficient financial standing to reasonably provide such insurance. A licensee that elects to self-insure shall file with the County a Certificate of Insurance as specified by the County.

## **SECTION 18: INDEMNIFICATION**

- A. Except for any liability which may accrue to the County with regard to its programming on any governmental access channel, a licensee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the County and its officials and employees from any and all claims (including claims alleging negligence), suits, actions, liability and judgements for damages (including, but not limited to, expenses for legal fees and disbursement and liabilities assumed by the County in connection therewith) relative to the operation of the licensee's cable system.

- B. If the County is a party to litigation, a licensee shall not make or enter into any compromise or settlement of any claim, demand, cause of action, suit or other proceeding arising under these indemnity provisions without first obtaining the written consent of the County.

## **SECTION 19: FAITHFUL PERFORMANCE**

Neither the provisions of this section, nor any letter of credit under Section 15, nor any damages recovered by the County, shall be construed to excuse faithful performance by the licensee of the terms of this Ordinance or its license agreement.

## **SECTION 20: LICENSE FEES**

- A. In consideration of the fact that the streets and public rights-of-way of the County will be used by a licensee in the operation of its cable system within the boundaries of the County and said streets and public rights-of-way are valuable public properties acquired and maintained by the County at great expense to its taxpayers, and in consideration of the costs incurred by the County in regulating and administering each cable license, the licensee shall pay to the County the following amounts:
  - 1. For licenses other than pass-through licenses, as specified in the license agreement, up to five percent (5%) of the licensee's gross annual revenue from all sources attributable to the operations of the licensee within the license area.
  - 2. For pass-through licensees, \$1.00 per linear foot of cable within the County on an annual basis, with a \$250 minimum. This figure is subject to adjustment by the County from time to time based on the percent change in the National Consumer Price Index, or successor indicator, compared to the level of that index on July 1988.
- B. The payment required pursuant to this section shall be in addition to any other tax or payment owed to the County pursuant to any other applicable ordinance, regulation or law of the County, the State of Arizona or other jurisdiction.
- C. The fees for pass-through licensee shall be due and payable as specified in the license agreement. Other license fees shall be due and payable quarterly on the 30<sup>th</sup> Day following each quarter: January 1-March 31; April 1-June 30; July 1-September 30; October 1-December 31.
  - 1. A license fee not received in full by the County within thirty (30) days of its due date shall be deemed delinquent and subject to a late fee. The late fee for delinquent payment shall be five percent (5%) of the amount overdue plus interest at the rate of one and one-half percent (1-1/2%) per month.
  - 2. Where the license fee is based on gross revenues, the licensee shall file, with each license fee payment, a statement of the gross revenues for the period on which the fees are based. Such a licensee must file within three (3) months of the end of its fiscal

year a statement of gross revenues for the preceding year, which is either audited or certified as accurate by an officer of the licensee. Any payment of license fees to adjust for a shortfall in the quarterly payments for the preceding year must be made no later than the filing date for the audited annual statement of gross revenues. Adjustments for any overpayment will be credited to subsequent quarterly payments. Interest and late charges (as specified above) will not be imposed for any payment necessary as a result of the yearly adjustment if the payment to correct for a shortfall does not exceed ten percent (10%) of the total payment made during the year. In the event such payment exceeds ten percent (10%) of the total payments made during the year, the licensee will be liable for interest and late charges for the entire amount due.

3. Where fees are based on footage, the fee payment shall be accompanied by the total footage count within the County at the end of the preceding period.
- D. The County shall have the right, upon reasonable prior notice, to inspect or audit during normal business hours a licensee's records showing the gross revenues or cable footage and other relevant underlying data and information. Upon examination of such information, the County has the right to recompute any and all amounts paid under a license. Any additional amounts due the County as a result of an audit shall be paid by the licensee within thirty (30) days following written notice to the licensee by the County, which notice shall include a copy of the inspection or audit report. In the event that an inspection or audit results in additional monies owed the County in excess of five percent (5%) of the total paid, the licensee shall bear the cost of the audit, and late charges and interest will be charged on the additional amount due.
- E. No acceptance by the County of any payment shall be construed as an accord that the amount paid is in fact the correct amount nor shall such acceptance of payment be construed as a release of any claim the County may have for additional sums payable.

## **SECTION 21: LICENSEE RULES AND REGULATIONS**

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

## **SECTION 22: SUBSCRIBER RATES**

- A. This section applies to all licenses except pass-through licensees.
- B. Each licensee shall develop a schedule of charges which shall specify standard rates, fees and charges for all cable services provided, including installation and reconnection charges, any standard rates for large institutions, motels, multiple family dwelling units or any other type of subscriber. The initial schedule of rates to be utilized by a licensee shall be as shown in the licensee's application for a license. A licensee shall develop a disconnection policy which shall comply with the requirements of this Ordinance. Such policy shall be uniform and nondiscriminatory.
- C. Two (2) copies of the aforesaid schedules and policies and any subsequent amendments or revisions shall be filed with the County and remain a public record therein. Any special rates which vary from those in the standard rate schedules shall be provided to the County upon request. A licensee shall file with the County in informational notice of any increase in its rates or charges at least thirty (30) days prior to the effective date of such change and shall give subscribers 30 days notice prior to any rate increases.
- D. The County expressly reserves the right to regulate a licensee's rates and charges to the extent permitted by law at any time it deems it to be desirable or in the public interest. If the County decides to exercise any such authority it may have, it shall develop regulation which shall govern the procedure pursuant to which a licensee may seek authority for rate increases.

## **SECTION 23: RIGHTS OF INDIVIDUALS, SUBSCRIBERS AND USERS**

- A. This section applies to all licensees except pass-through licensees.
- B. A license shall not deny service, access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, natural origin, age or sex. A licensee shall comply at all times with all other applicable federal, state statutes and local laws and regulations.
- C. A licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, state statutes and local regulations, and as the same may amended from time to time.
- D. A licensee shall at all times comply with the subscriber privacy provisions of Section 631 of the Cable Act, 47 U.S.C. Subsection 551.
- E. No equipment shall be installed by the licensee for subscriber service without first securing a service request from the owner or resident of any private property involved.
- F. A licensee shall not originate or knowingly permit subliminal transmission at any time for any purpose whatsoever.
- G. A licensee shall establish and conform to the following policy regarding refunds to subscribers and users:
  - 1. If the licensee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the licensee shall

- provide such service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund such deposit or charge within five (5) days thereafter upon request of the subscriber. The subscriber must be advised of this right of refund at the time the order is placed.
2. If any subscriber or user terminates any monthly service during the first twelve (12) months of said service because of the failure of the licensee to render satisfactory service in terms of signal quality in accordance with the standards set forth in the license agreement, the licensee shall refund, on a pro-rata basis, to such subscriber or user an amount equal to the installation or reconnection charges paid by the subscriber or user for the period of unsatisfactory service. In the event that said subscriber or user has made an annual or other payment in advance, the appropriate pro-rata portion of said payment shall be refunded by the licensee.
- H. The following requirements shall apply to disconnection:
1. There shall be no charge for disconnection of any installation or outlet unless such charge was disclosed at the time the subscriber ordered service. All cable communications equipment shall be removed within a reasonable time from a subscriber's property at the subscriber's request, such time not to exceed thirty (30) days from the date of the request.
  2. If any subscriber fails to pay a properly due monthly subscriber's fee or other charge, the licensee may disconnect the subscriber's service outlet; provided, however, that such disconnection shall not be effected until thirty (30) days after the due date of the charges and shall include a prior written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper fees or charges, including the payment of any reconnection charge, the licensee shall promptly reinstate the service.
- I. A licensee shall provide leased access channels as required under section 612 of the Cable Act, 47 U.S.C. Subsection 532. In the event that said federal provisions should cease to apply, the County reserves the right to promulgate other leased access requirements which shall apply, not to exceed those requirements specified in Section 612 of the Cable Act.

## **SECTION 24: PUBLIC NOTICE**

Minimum public notice of any public meeting relating to a license or licensee shall be by publication, at the licensee's expense, once in a local newspaper of general circulation at least five (5) days prior to the meeting and by announcement on each public access channel on the licensee's system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days prior to the meeting. Where the meeting is to be held on an emergency basis, the County shall give such public notice as is reasonable and practical. Notice to a licensee or others who have requested notice shall be by

envelope addressed to the last address on file with the County with proper postage and placed in the U.S. mail.

## **SECTION 25: SERVICE AVAILABILITY AND RECORD REQUEST**

A licensee, other than a pass-through licensee, shall provide cable service throughout the entire licensed service area pursuant to the provisions of this Ordinance and the license agreement and shall keep a record for at least one (1) year of all requests for new service received and denied by the licensee, within the licensee's service area. This record shall be available for County inspection at the local office of the licensee during regular office hours.

## **SECTION 26: CABLE SYSTEM CONSTRUCTION TIMETABLE**

- A. A cable system shall be constructed in accordance with the provisions of the license agreement.
- B. It is the policy of the County to require construction of a cable system designed to serve subscribers in an area licensed by the County as rapidly and expeditiously as possible. The licensee shall immediately upon execution of the license agreement diligently pursue and obtain all necessary permits from the appropriate governmental agencies, utility companies, and others as necessary to comply with the provisions of this Ordinance and other federal, state and county laws, codes and resolutions. However, no construction shall begin until the notification requirements set forth in Section 29 are satisfied.
- C. A cable system, except for a pass-through system, shall be constructed pursuant to a construction timetable specified in the license agreement.
- D. Any delay beyond the terms of the timetable specified in the license agreement will be considered a violation of the terms of this Ordinance and the license agreement. Unless the licensee can establish that the delay was due to factors beyond its control, the licensee may be considered in default of the license agreement and the County may take whatever action it is entitled to under this Ordinance and the license agreement.
- E. The licensee shall not be considered in default of the applicable construction schedule if the County approves a modification of the schedule change in advance. In submitting a request for a construction schedule modification, the licensee must explain the reasons for the delay. The delay may be disapproved by the County if it is not reasonably justified, would have unreasonably discriminatory results, or would unduly delay service to an area. Such a modification request shall be considered granted unless the licensee is notified by the County to the contrary in writing within thirty (30) days of the date on which the request was filed.
- F. The County may require a licensee to report on construction progress and provide information showing specifically whether the construction schedule is being met and the reasons for any delay. The Cable

Communications Director shall determine the format to be used for the report and the frequency of reporting.

- G. Where appropriate and reasonable, a licensee shall schedule construction activities to coordinate with any County construction on streets so as to avoid unnecessary inconvenience to the public.

## **SECTION 27: LINE EXTENSION**

- A. Unless the license agreement provides otherwise, a licensee shall be required to extend its cable system pursuant to the following requirements.
1. Upon reasonable request for service by any person located within the service area, the licensee shall, within sixty (60) days, furnish the requested service to such person, unless prevented from providing said service due to factors outside licensee's control, such as permit restrictions, private easement considerations, etc. If such service has not been implemented within ninety (90) days of said request, the County may impose liquidated damages for each day thereafter.
  2. The licensee must extend and make cable television service available to every unserved dwelling unit within any area reaching the minimum density of at least thirty (30) dwelling units per aerial cable mile, or fifty (50) dwelling units per underground cable mile, except that the licensee shall be modified by the County for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable if licensee's compliance with said requirement would create a significant adverse impact on the capital costs of licensee's Maricopa County cable system.
  3. The licensee shall prevent unnecessary damage to streets, rights-of-way and property by installing cables or conduits underground in new subdivisions at the same time and in the same trench as telephone, electric or similar services are installed. Given reasonable notice, the licensee shall install underground cable or conduit in all new subdivisions of five or more dwelling units within the service area at the same time and in the same trench as telephone, electric or similar services are installed. Cable need not be installed and/or activated until the new subdivision meets the criteria established for line extensions.
  4. The licensee must extend and make cable television service available to any isolated resident requesting connection within the licensee's authorized service area at the standard connection charge if the connection to the isolated resident would require no more than a one hundred and fifty (150) foot aerial or underground drop line.
  5. With respect to requests for connection requiring an aerial or underground drop line in excess of one hundred and fifty (150) feet, the licensee must extend service to such residents at a one time charge not to exceed the actual installation costs incurred by the licensee for the distance exceeding one hundred and fifty (150) feet.

## **SECTION 28: CONSTRUCTION AND TECHNICAL STANDARDS**

- A. The following general requirements, which are not to be interpreted as imposing standards in excess of FCC imposed limits, apply to all licensees:
1. In those areas and portions of the service area where the transmission and distribution facilities of the telephone company and the electric company are underground or later placed underground, the licensee shall likewise install its transmission facilities underground.
  2. In areas where facilities do not have to be underground, a licensee shall not erect any new poles along any street or public way of the County except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems and only then with the approval of the County.
  3. Except in areas where aerial cable is allowed, a licensee shall place all cable and appurtenances underground to the maximum extent possible. In the event existing technology precludes the placing of some appurtenances underground, such as power supplies, amplifiers, and line extenders, they may be placed above ground, but only if they are located so as to be as unobtrusive as possible. Licensee shall endeavor, wherever feasible, to place all above ground appurtenances on lot lines.
- B. The following construction and technical standards apply to all licensees except pass-through licensees:
1. Any cable system constructed within the County must meet or exceed technical standards consistent with this Ordinance, the license agreement, the licensee's application, and the FCC's recommended technical standards. All video channels in a system must be capable of delivering National Television Systems Committee (NTSC) color and monochrome standards signals and designed to provide picture quality of TASO grad 2 or better and superior reliability. All television signals transmitted on a cable system must include any closed captioning information for the hearing impaired. Antennas, supporting structures, and outside plant used in the system must be designed to comply with the recommendations of the Electronics Industries Association and applicable federal and local regulations on tower structures and outside plant.
  2. The licensee must perform at its expense any proof of performance tests designed to demonstrate compliance with the requirements of this Ordinance, the license agreement, and FCC requirements. The franchisee must provide the proof of performance test results promptly to the County.
  3. The County may require periodic proof of performance tests to be performed at the expense of the licensee. The licensee must provide the test results promptly to the County.

4. The licensee must advise the County when a proof of performance test is scheduled to that the County may have an observer present.
  5. A franchisee must not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another licensee, or individual or master antennas used for receiving television or other broadcast signals.
- C. The following construction and maintenance specifications apply to all licensees:
1. The licensee shall construct, install and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee's employees, the employees of the utilities and all property shall be a primary objective.
  2. All cables are to be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled to the maximum extent possible.
  3. The licensee shall be solely and completely responsible for the actions taken by any contractor or other agent employed to construct or install the licensee's facilities on streets or easements as well as on public or private property.
  4. The licensee shall give prior written notice, as set forth in Section 29, of its intent to place underground facilities. Failure to provide such notice may subject a licensee to liquidated damages pursuant to Section 41 or other reinforcement sanctions.
  5. A licensee shall at all times comply with the:
    - a. National Electric Safety Code (National Bureau of Standards); and
    - b. National Electric Code (National Bureau of Fire Underwriters).
  6. In addition, the licensee shall comply with all other County, state and federal laws and regulations which may be applicable to its operations.
  7. A licensee shall have available at all hours personnel capable of responding to emergency conditions requiring immediate repair to any facilities owned by the state, county, city, or the gas, electric, and telephone utilities, as well as pipeline companies or similar industries. The licensee shall respond to normal requests for location of its facilities within forty-eight (48) hours. The licensee shall be a member of the Blue Stake Center, or comply with State Underground Law, for its service area.
  8. Any antenna structure used in the cable communication system shall comply with construction, marking and lighting of antenna structures as required by the Federal Aviation Administration.
  9. All working facilities, conditions and procedures used during construction, installation, operation and maintenance of the cable

system shall comply with the standards of the Occupational Safety and Health Administration.

10. All installations shall comply with FCC rules and regulations relative to signal leakage and other technical requirements. Measure shall be taken to insure that any electromagnetic radiation causes no harmful effects to any persons.

## **SECTION 29: USE OF STREETS AND WAYS**

- A. A licensee must utilize, with the owner's permission, existing poles, conduits or such other facilities whenever possible. Underground street, sidewalk and driveway crossings not using existing conduits shall be bored unless specific County approval is received. Copies of agreements for use of poles, conduits or other facilities must be filed with the County upon County request. A licensee may install its own poles only when approved by the County and then subject to whatever reasonable terms and conditions the County require.
- B. All transmission lines, equipment and structures must be installed and located to cause minimum interference with the rights and reasonable convenience of the public and property owners. The County may from time-to-time issue such reasonable rules and regulations concerning the installation and maintenance of the cable system installed in the public rights-of-ways as may be consistent with this Ordinance and state and federal law.
- C. Suitable safety devices and practices as required by County, state and federal laws, ordinances, regulations and permits must be used during construction, maintenance and repair of a cable system.
- D. A licensee must remove, replace or modify at its own expense the installation of any of its facilities within any public right-of-way when required to do so by the County to allow it to change, maintain, repair, improve or eliminate a public thoroughfare. Nothing in this section shall prevent license from seeking and obtaining reimbursement from sources other than the County.
- E. On streets and roads where electrical and telephone utility wiring are located underground, either at the time of initial construction or subsequently, the cable must also be located underground at the licensee's expense. Between a street or road and a subscriber's residence, the cable must be located underground if both electrical or telephone utility wiring are located underground. If either electric or telephone utility wiring are aerial, a licensee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost over aerial installation.
- F. A licensee must obtain any required permits before doing any excavation or causing disturbance to public thoroughfares or private property as a result of its construction or operations and must restore to their former condition such private property and public thoroughfares, the latter in a

manner consistent with all applicable rules, regulations, resolutions or other County requirements relative to construction, repair or maintenance of facilities in the public right-of-way. If such restoration is not satisfactorily performed within a reasonable time, the County may, after prior notice to the licensee, cause the repairs to be made at the expense of the licensee. The County may inspect on-going construction and require a licensee to halt construction where it finds the construction to be in non-compliance with the requirements of this Ordinance, the license agreement, or a permit or to create a public hazard.

- G. Simultaneously with the filing of construction plans with the County for a permit or otherwise, a licensee shall file a copy of the plans with all public utilities in the construction area as determined by the Blue Stake Center or separately to the Blue Stake Center.
- H. Prior to the commencement of underground construction a licensee must have complied with the following requirements:
  - 1. Have received a permit from the County for construction on public property or rights-of-way;
  - 2. Have received clearance from utilities in the area of construction; and
  - 3. Where construction will be on private property or in public rights-of-way adjoining private property, have provided no less than seven (7) days prior written notice by mail or hand delivery to all such property occupants. The notice shall identify the name and the address of the licensee and provide a local or toll-free telephone number that the affected person may call for more information or to lodge a complaint.
- I. A licensee may trim trees within public rights-of-way at its own expense as necessary to protect its wires and facilities, subject to approval by the County and any direction that may be provided by the County. Trees on private property may be trimmed with the consent of the property owner.
- J. At the request of any person holding a valid building moving permit and upon sufficient notice, the licensee must temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than 72 hours advance notice. The direct expense of such temporary changes, including standby time, must be paid by the permit holder and the licensee may require payment in advance.

### **SECTION 30: CUSTOMER SERVICE AND COMPLAINT PROCEDURES**

- A. The requirements of this section are applicable to all licensees except pass-through licensees. A licensee must maintain a business office open during normal business hours with a listed local or toll-free telephone number and employ a sufficient number of telephone lines to allow reasonable access by subscribers and members of the public. Unless a waiver is granted by the Cable Communications Director, said office shall be located in the County. When the business office is closed, and

answering machine or service capable of receiving service complaints and inquiries must be employed.

- B. A licensee must have available at all times personnel, equipment and procedures capable of locating and correcting major system malfunctions. System outages and major system malfunctions must be corrected without delay. Corrective action for all other service problems must be initiated as provided for in the license agreement.
- C. A cable system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, equipment, channels, studios and other services to all residents, businesses, public agencies or other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use. A licensee shall not discriminate in terms of rates, terms of service, or extension of service on the basis of age, race, creed, color, religion, national origin, sex or marital status. Nor shall a licensee fail to extend service to any part of the County within its licensed service area on the basis of the income of the residents.
- D. A licensee shall establish procedures for the investigation and resolution of all complaints, including, but not limited to, those regarding the quality of service and equipment malfunction. A copy of such procedures shall be provided to the County upon request.
- E. A licensee must provide each subscriber at the time cable service is installed written instructions for placing a service call, filing a complaint, or requesting an adjustment. The name, address, and telephone number of the County office responsible for supervision of cable operations shall be listed. Each subscriber must also be provided with a schedule of the subscriber's rates and charges, a copy of the service contract, delinquent subscriber disconnect and reconnect procedures, and a description of any other of the licensee's applicable policies in connection with its subscribers.
- F. A licensee may interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after prior notice to subscribers and the County of the anticipated service interruption. Provided, however, no prior subscriber or County notice shall be required for the performance of system maintenance work requiring a maximum of one (1) hour duration during the hour of six (6) a.m. until twelve (12) midnight or four (4) hours duration during the hours of twelve (12) midnight until six (6) a.m.
- G. A licensee must maintain a complete record of service complaints received and action taken. These records must be open to the County for inspection during normal business hours. A summary of such records must be submitted to the County upon its request. Such records must be retained for not less than one (1) year.
- H. Upon termination of service to a subscriber and at the subscriber's request, a licensee must promptly remove all its facilities and equipment from the subscriber's premises. Where removal is impractical, such as

with buried cable or internal wiring, facilities and equipment may be disconnected and abandoned rather than removed.

## **SECTION 31: SYTEM SERICES AND FACILITIES**

- A. The following minimum requirements for facilities and services apply to all licenses except pass-through licenses. The County may require that a licensee exceed these minimum requirements.
  - 1. A cable system must have a minimum capacity of fifty four (54) video channels available for immediate or potential use. Two-way capability shall be designed into the system. Upon request, this minimum channel capacity requirement shall be modified by the County for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable to comply with said requirement. A licensee shall have the burden of demonstrating, by clear and convincing evidence, that compliance with the minimum channel capacity would be commercially impracticable for its Maricopa County cable system.
  - 2. A cable system must provide leased access channels as required by federal law.
  - 3. Standard installation and basic service to public buildings may be required without charge as set forth in the license agreement.
  - 4. A licensee must design its system to allow the County to interrupt the audio portion of the cable service in an emergency to deliver information to subscribers.
  - 5. A licensee must provide standby power for the headend so as to be able to operate some channels during a power outage for a minimum of six (6) hours.
- B. The County may waive minimum requirements for licenses where the applicant demonstrates that such waiver is in the public interest.
- C. The following requirements apply to access channels:
  - 1. Applications for a license shall include proposals for the provision of public, educational and governmental access channels sufficient to meet community needs during the term of the license as determined by the County. A licensee or applicant shall specify what grants, if any, it is willing to make for studio equipment and facilities to be used for local program production by all cable access users. Applicants are encouraged to include proposals for local origination programming by the licensee.
  - 2. All access channel operations must conform to the following minimum requirements:
    - a. Access channels shall be carried on the licensee's lowest priced service offering.
    - b. The licensee shall have no control over the content of the programming carried on access channels. The County may require a licensee, or select a non-profit corporation or other

entity, to manage the access program and to establish reasonable rules for the use of access channels consistent with the requirements of this Ordinance, the license agreement and the intended purpose of such channels.

- c. The use of any public access channel and/or studio(s) shall be made available to any County resident on a first come, first served nondiscriminatory basis, subject to rules and regulation specified in the license.
  - d. The use of any educational access channel shall be made available free of charge to schools and other qualified educational institutions for the transmission of local educational programming.
  - e. The use of any local governmental access channels shall be made available free of charge to the county for the transmission of government related programming.
  - f. The licensee shall submit to the County on an annual basis a plan for publicizing access programs and access use.
3. At the request of a licensee the County shall promulgate rules under which channel capacity dedicated to access use may be used by the licensee when it is not being used for access purposes.

## **SECTION 32: INTERCONNECTION OF FACILITIES**

- A. A licensee other than a pass-through license shall interconnect its cable system with any or all other systems located in the County upon the request of the County, where economically and technically feasible.
- B. Upon receiving the request of the County to interconnect, a licensee shall immediately initiate negotiations with the other affected system or systems in order that technical details be resolved and that costs may be shared on an equitable basis.

## **SECTION 33: PERFORMANCE EVALUATION**

- A. The County may schedule a performance evaluation session of any licensee at any time upon at least thirty (30) days notice to the affected licensee. Such sessions may not be held more often than at one year intervals.
- B. All evaluation sessions shall be open to the public and announced in advance in a newspaper of general circulation, identifying the topics to be discussed and the date, time and location of each session. If the system has local origination capability, the licensee shall notify its subscribers of all evaluation sessions by announcement on at least one (1) basic channel of its system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.
- C. Members of the general public may suggest that the County add additional topics to the agenda.

- D. During the review and evaluation by the County, the licensee shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform the review.

#### **SECTION 34: RULES AND REGULATIONS**

- A. In addition to the inherent powers of the County to regulate and control licenses, and those powers expressly reserved by the County or agreed to and provided for herein, the right and power is hereby reserved by the County to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers.
- B. The County may also adopt appropriate lawful regulations at the request of the licensee or the general public upon application to the County.

#### **SECTION 35: POLICE POWERS AND INTERPRETATION**

- A. In accepting a license, the licensee must acknowledge that its rights under the license agreement are subject to the police power of the County to adopt and enforce general resolutions necessary for the health, safety and welfare of the public, and it must agree to comply with all applicable state laws and resolutions enacted by the County pursuant to such power.
- B. The provisions of this Ordinance will apply to a license agreement as if fully set forth in the license agreement, provided, however, that to the extent there is a conflict between the terms of the Ordinance and the license agreement, subject to the provisions of Section 6D and Section 43, the terms of the Ordinance will control, unless the license agreement specifically waives or modifies a requirement of the Ordinance.
- C. The provisions of a license agreement will be liberally construed in order to effectuate its purposes and objectives consistent with this Ordinance and the public interest.
- D. A license agreement will be governed by and construed in accordance with the laws of the State of Arizona.

#### **SECTION 36: RESERVATION OF USE OF CERTAIN LICENSEE FACILITIES**

The County shall have the right, during the term of the license, to install and maintain upon the poles of the licensee any wire and pole fixtures that do not unreasonably interfere with the cable operations of the licensee. The County shall pay the licensee reasonable compensation for such use unless the license agreement provides that such use shall be without charge.

#### **SECTION 37: REPORTS**

- A. This section applies to all licensees except pass-through licensees. No later than sixty (60) days after the end of its fiscal year, a licensee shall

submit a written report to the County, in a form which may be directed by the County, which may include:

1. A summary of the previous year's activities in development of its cable system, including, but not limited to, services begun or dropped, subscribers gained or lost.
  2. A summary of Complaints, identifying the number and nature of complaints and their disposition. For the purposes of this provision, copies of the required "complaint" records as reflecting all such incidents will suffice.
  3. The licensee shall prepare and furnish to the County, upon request by the County, such additional reports and information with respect to its operations, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the licensee in connection with its license or any of the functions of the County.
- B. The reports required pursuant to this section shall be available for public inspection. Provided, however, upon written request of licensee and approval by the County Attorney, information of a proprietary nature submitted to the County pursuant to this Ordinance or the license agreement will not be made available for public inspection. A licensee will defend, at its own expense, any request for information under the Public Records Act that the licensee does not want the County to release.

### **SECTION 38: REMOVAL OF CABLE SYSTEM; ABANDONMENT OF PROPERTY**

- A. At the expiration of the term for which a license is granted, or upon its termination as provided herein, the former licensee shall, upon notice by the County, remove, in an expeditious manner, at its own expense, all designated portions of the cable system from all streets and public or private property within the County (except for underground cables not in conduits which may be abandoned in place), and shall restore said streets and public or private property to their former condition. If the former licensee fails to do so, the County may perform the work at the former licensee's expense.
- B. The Board may, upon written application therefor by the former licensee, approve the abandonment of any property in place and under such terms and conditions as the Board may prescribe.
- C. Any property of the licensee remaining in place one (1) year after the cancellation, termination or expiration of the license shall be considered permanently abandoned, unless such time is extended by the Board.
- D. Once cable facilities are abandoned by a former licensee, whether with or without County approval, such former licensee shall have no further claim or rights with respect to such property, but unapproved abandonment shall not relieve the former licensee of responsibility for removal of the facilities.

## **SECTION 39: COMPLIANCE WITH STATE AND FEDERAL LAWS**

- A. Notwithstanding any other provisions of this Ordinance to the contrary, the licensee shall at all times comply with all laws and regulations of the state and federal governments or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the licensee to be in conflict with the terms of a license agreement, this Ordinance or of any law or regulation of the County, the licensee shall use its best efforts to promptly notify the County of the point of conflict believed to exist.
- B. If the County determines that a material provision of this Ordinance is affected by any subsequent action of the state or federal government, the County shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Ordinance.

## **SECTION 40: TECHNOLOGICAL CHANGE**

There is hereby reserved to the County the power to amend any section of this Ordinance so as to require additional or greater standards of construction, operation, maintenance or otherwise, on the part of the licensee to reflect technical and economic changes occurring during the license term, and to enable the County and the licensee to take advantage of new developments in the cable television industry so as to more effectively, efficiently and economically serve the public. This provision, however, shall not be used by the County to unilaterally abrogate its contractual commitments.

## **SECTION 41: LIQUIDATED DAMAGES**

- A. All license agreements executed subsequent to the adoption of this Ordinance shall contain liquidated damage provisions, in amounts as mutually agreed upon between the County and the licensee, for the licensee's failure to comply with various requirements of this Ordinance and the license agreement in amounts not to exceed those specified below:
  - 1. For failure to substantially complete system construction or line extensions as required, unless the County specifically approves a delay caused by the occurrence of conditions beyond the licensee's control, the licensee shall pay Five Hundred Dollars (\$500) per day for each day, or part thereof, the deficiency continues.
  - 2. For material failure to provide data, documents, reports and information in a timely manner as required, the licensee shall pay One Hundred Dollars (\$100) per day, or part thereof, that each violation occurs or continues.
  - 3. For material failure to test, analyze and report on the performance of the system following a request from the County to do so, the

- licensee shall pay One Hundred Dollars (\$100) per day for each day, or part thereof, that such noncompliance continues.
4. For failure to substantially comply with the material provisions of Section 28, the licensee shall pay One Thousand Dollars (\$1,000) per day for each day, or part thereof, that the violation continues.
  5. For substantial failure to remedy any other violation of the Ordinance or the license agreement within fifteen (15) days of receipt of notice of each violation, the licensee shall pay Three Hundred Dollars (\$300) per day for each day, or part thereof, that the violation continues.
  6. For failure to substantially comply with reasonable orders of the County, the licensee shall pay Fifty Dollars (\$50) per day for each day, or part thereof, that noncompliance continues.
- B. Liquidated damages will not be imposed by the County if it finds that the failure of the licensee resulted from conditions beyond the licensee's control. Liquidated damages may be reduced or eliminated by the County if it find that the failure of the licensee resulted from excusable neglect. The licensee shall bear the burden of proof in establishing the existence of such conditions.
- C. Prior to assessing any of the liquidated damages set forth in this section, the licensor shall give licensee thirty (30) days written notice of its intention to assess such damages. In said notice(s), the licensor shall set forth, at a minimum, the following:
- (i) the amount to be assessed;
  - (ii) the factual basis for such assessment; and
  - (iii) the specific license provision alleged to have been violated.
- Following receipt of the notice set forth in this section, licensee shall have a thirty (30) day period during which time licensee and the County shall make reasonable efforts to resolve the dispute in question. Collection of liquidated damages by the County for any breach shall constitute the County's exclusive remedy for the period for which liquidated damages were collected.
- D. The imposition and collection of liquidated damages shall not prevent the County from pursuing other remedies for violations of this Ordinance or the license agreement.

## **SECTION 42: ADMINISTRATION**

- A. The Cable Communications Director, under the supervision of the County Manager, shall have the responsibility for the day-to-day administration of cable communication operations within the County as governed by this Ordinance and the applicable license agreements. The Cable Communications Director shall be empowered to take all administrative actions on behalf of the County except for those actions specified herein which are reserved to the Board or another County office or officer. The Cable Communications Director shall keep the Board and the County

Manager apprised of developments in cable and provide the Board assistance, advice and recommendations as appropriate.

- B. The Board has the sole authority to: grant licenses, authorize the execution of license agreements, modify license agreements, renew licenses, revoke licenses, and authorize the transfer of licenses. Where this Ordinance or a license agreement specifies that a certain action will be taken by the Board or other named County entity, that action is reserved to the named entity.
- C. All filings and reports required of licensees or applicants pursuant to this Ordinance or a license agreement shall be made with the Cable Communications Director unless otherwise specified.

#### **SECTION 43: APPLICABILITY**

This Ordinance as amended shall be applicable to all cable licenses issued by the County, whether or not such licenses were issued prior to the effective date of this Ordinance as amended. However, this Ordinance shall not act to unilaterally abrogate contractual commitments of the County as contained in any license agreement.

#### **SECTION 44: FORCE MAJEURE**

- A. Whenever this Ordinance or a license agreement requires a licensee to complete a task or undertaking within a specified time period, the licensee shall adopt all reasonable measures to avoid any delay. Whenever delay occurs, the licensee shall notify the County promptly in writing and describe the nature of the delay, the reason therefor, and its expected duration.
- B. No penalties or other sanctions will be imposed for delay caused by circumstances beyond the control of the licensee. The licensee has the burden of demonstrating, by clear and convincing evidence, that the delay was caused by one or more of the following material circumstances:
  - 1. Acts of God, fire, natural disasters, riots, wars, unavoidable and unforeseen labor strikes, adverse weather conditions, unforeseeable inability to obtain necessary permits, licenses and certifications, and emergency conditions requiring work stoppage;
  - 2. Any delay caused from the public review and comment process as provided in the Ordinance or license agreement; or
  - 3. Any other cause beyond the control of the licensee; provided, however, that increases in the cost of performance, changes in economic circumstances, except as provided by the Cable Act, or malperformance of the licensee's employees or agents shall not excuse delayed performance, nor affect the applicability of the controlling provisions under this Ordinance or the license agreement.

## **SECTION 45: ORDINANCE EFFECTIVE UPON FINAL PASSAGE**

It being necessary for the preservation of the peace, health and safety of Maricopa County that this ordinance become immediately effective, an emergency is hereby declared to exist, and this Ordinance shall be effective immediately upon its passage and adoption. Upon such effective date it shall supercede the Cable Television

**ADOPTED February 9, 1982**

**REVISED December 12, 1988**