

Chapter 5.12
CABLE TELEVISION

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5.12.010 Definitions. For the purpose of this chapter, unless the context otherwise requires:

A. "Applicant" means any person that applies for a license.

B. "Basic Subscriber services" includes, but is not limited to, the following:

1. The redistribution of all broadcast signals provided for in this chapter;
2. The distribution of the public, educational and local government access channel signals;
3. The distribution of the local origination channel signals;
4. The distribution of such other cablecast channel signals as are required by the FCC; and
5. The installation, reconnection and additional connections, and transfer fees of Subscriber service outlets.

C. "Cable television system" or "cable system" or "CATV" means a system of antennas, cables, amplifiers, towers, microwave links, wave guides, laser beams, satellites, or any other conductors, converters, equipment or facilities, designed and constructed or used for the purpose of:

1. Collection and amplifying local and distant broadcast television or radio signals and redistributing them;
2. Distributing original cablecast programming not received through television broadcast signals;
3. Distributing television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;
4. Receiving and distributing all other signals: digital, voice and audio-visual.

D. "Channel" means a band of frequencies, in the electromagnetic spectrum, which is capable of carrying either one video signal, several audio signals, numerous digital signals, or some combination of such signals.

E. "Chief administrative officer" means city manager or his designee.

F. "Council" means the city Council of the City of Cottonwood, Arizona, or such representative person or entity as may be designated initially or at some future date to act on cable television matters.

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

H. "Gross Subscriber revenues" means any and all compensation and other consideration received directly or indirectly, in payments or lump sum, by the Licensee from Subscribers in providing basic Subscriber services.

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

J. "Licensee" means the person granted a license by the Council and the lawful successor, transferee or assignee of the person.

K. "Normal Operating Conditions" shall mean those service conditions which are within the control of the Licensee. Those conditions which are not within the control of the Licensee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather conditions. Those conditions which are within the control of Licensee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular or seasonal demand periods, changes in the billing cycle, changes in channel lineups that are within Licensee's control, and repairs, maintenance or upgrades of the Cable System.

L. "Person" means any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of

every kind, clubs, businesses, common law trust, societies, and/or any other legal entity.

M. "Property of Licensee" means all property owned, installed, or used within the city by a Licensee in the conduct of a cable television system business.

N. "Street" means the surface, the air space above the surface and the area below the surface of any public street, other public right-of-way or public place, including utility easements.

O. "Subscriber" means any person receiving for any purpose any service of the Licensee's cable television system including, but not limited to, the conventional cable television system service or redistribution of television broadcast, radio signals, Licensee's original cablecasting and the local government, education and public access channels; and other services, such as leasing of channels, data and facsimile distribution, pay television and police, fire and similar public service communication.

P. "Total gross receipts" means any and all compensation and other consideration collected or received or in any manner gained or derived by Licensee from the operation of its cable system within the corporate limits of the city and such corporate limits as now exist or may be established hereafter.

Q. In the event the meaning of any word or phrase not defined in this chapter is uncertain, the definitions contained in FCC rules and regulations shall apply. (Prior code §8-4-1)

5.12.020 License--Granting authority. A nonexclusive license to install, construct, operate and maintain a cable television system on streets, other public rights-of-way, or public places within the city may be granted by the Council. No provision of this chapter may be deemed or construed to require the granting of a license. (Prior code §8-4-2)

5.12.030 License--Limitation. No privilege or exemption shall be granted or conferred by any license pursuant to this chapter except those specifically provided in this chapter.

A. Any privilege granted under any such license to use any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

B. A grant of a license under this chapter does not relieve Licensee of the obligation to:

1. obtain permits, licenses and other approvals from the city, or other units of government, which are required for the construction, reconstruction, repair or maintenance of the cable system;

2. comply with generally applicable provisions of the City Code, such as provisions relating to zoning and land use, pavement cuts, subdivision and project improvements, curb cut permits, building permits, and the like.

C. Any such license shall be a privilege to be held in personal trust by the original Licensee. Such license cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the Council expressed by resolution, and then only under such conditions as may therein be prescribed. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale, or similar document, a duly executed copy of which shall be filed in the office of the city clerk within thirty days after such transfer or assignment. The proposed assignee must show financial responsibility to the satisfaction of the Council and must agree to comply with all provisions of this chapter. If the Licensee is a publicly held corporation and merges or consolidates with another or other publicly held corporation, the consent of the Council shall not be required.

D. In the event that Licensee is a corporation, prior approval of the Council, expressed by ordinance, shall be required where there is an actual

change in control or where ownership of more than fifty percent of the voting stock of Licensee is acquired by a person or group of persons acting in concert, singly or collectively. Any such acquisition occurring without prior approval of the Council shall constitute a failure to comply with Section 5.12.040. This subsection shall not apply to a publicly held corporation.

E. A grant of a license under this chapter shall not be construed to limit the authority of the city to impose a tax, fee, or other assessment of any kind of general applicability on any person or entity. Licensee shall pay all fees necessary to obtain all applicable Federal, state, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its cable system. The Licensee shall be subject to any tax or fee now imposed or hereafter imposed by the city on all businesses of the same or similar class.

F. The Licensee's service policies shall show no preferential or discriminatory practices and shall be on file with the city clerk.

G. Time shall be of the essence of any such license granted under this chapter. The Licensee shall not be relieved of his obligations to comply promptly with any of the provisions of this chapter by failure of the city to enforce prompt compliance.

H. The Licensee shall have no recourse whatsoever against the city for the loss, cost, expense or damage arising out of any provision or requirement of this chapter or of any license issued under this chapter or because of its enforcement.

I. The Licensee shall be subject to all requirements of the city laws, rules, regulations and specifications heretofore or hereafter enacted or established. (Prior code §8-4-3)

J. The city may remove or damage portions of the cable system in the case of fire, disaster, or other emergencies, as determined by the city. In such event, neither the city nor any agent, contractor or employee thereof shall be

liable to the Licensee or its Subscribers, customers or third parties for any damages caused to them or the cable system, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down, or relocating any part of the cable system. Where possible, prior notice shall be given to the Licensee. In any event, notice of such action shall be given to the Licensee after such removal or damage.

K. No grant of a license under this chapter shall limit any right the city may have to acquire by eminent domain any property of the Licensee.

L. No grant of a license under this chapter nor language in Section 635A of the Federal Communications Act of 1934, as amended, shall be construed as creating or authorizing liability of any kind by the city or any official, member, employee, attorney or agent of such entity, under any law, for any action or failure to act relating to cable services, the cable system, the cable television business or the granting of a cable license.

M. Cancellation for Conflict of Interest - To the extent that a granting of a license to a Licensee under this Article of the City Code shall be considered a contract between the Licensee and the City, A.R.S. §38-511 shall apply regarding the cancellation of contracts for conflicts of interest.

5.12.040 License - Application. A. Each application for a license to construct, operate or maintain any cable television system in this city shall be filed with the city clerk and shall contain, at a minimum, the following:

1. An application fee, in any amount determined by the Council, shall accompany each application. The application fee shall be in the form of cash, certified or cashier's check, or money order, to pay the cost of studying, investigating, publishing and otherwise processing such application and which shall be in consideration thereof and not returnable or refundable in whole or in part.

2. The name, address and telephone number of the applicant. If the applicant is a partnership, the main address of each partner shall also be set

forth. If the applicant is a corporation, the application shall also state the names and addresses of its directors, main officers, major stockholders (controlling more than five percent of the ownership of the applicant) and associates, and the names and addresses of parent and subsidiary companies.

3. A statement setting forth in its entirety any and all agreements and understandings, whether formal or informal, written, oral or implied, existing or proposed to exist between the applicant and any person who proposes to have an ownership interest with respect to the proposed license or to the proposed cable television operation. If a license is granted to a person acting as a representative of another person and such information is not disclosed in the original application, such license shall be deemed void and of no force and effect whatsoever

4. Financial Statements, as may be determined by the Council, prepared by a certified public accountant, or person otherwise satisfactory to the Council, showing applicant's financial status and his financial ability to complete the construction and installation of the proposed cable system.

5. A map satisfactory to the Council indicating the proposed service area of the incorporated city that will be served with cable television. The Licensee's service area shall be approved by the Council and shall be described in the licensing ordinance/resolution. The map shall separately and clearly delineate any areas which will be served under normal licensing provisions and under the line extension policy, as well as area which will not be served, if any. Once this map is approved by the Council, the Licensee shall publish this map in a newspaper serving the city. The Licensee shall clearly explain the conditions under which areas will be serviced by the line extension policy as well as the reasons why any excluded area will not be serviced with a cable system at that time.

6. A proposed line extension policy, approved by the Council, attached and made a part of the licensing ordinance/resolution, stating the terms, conditions and fees under which cable services will be provided.

7. A proposed time schedule, satisfactory to the Council, attached and made a part of the licensing ordinance/resolution, for the installation of all equipment necessary to become operational throughout the entire area to be serviced. The proposed time schedule shall meet the minimum FCC construction requirements.

8. A statement or schedule to be approved by the Council, setting forth the classifications of rates and charges to be made against Subscribers and all rates and charges as to each of the classifications, including programming, equipment rental, program guides, installation, disconnection, service charges, late fees, and any other fees to be charged if the license is granted.

9. A statement or schedule setting forth the current number of channels and all the television or radio stations and other communication services initially proposed to be received, distributed, relayed or otherwise conveyed over the cable system.

10. A statement satisfactory to the Council describing the cable system and specifying the type and capacity of the cable system proposed to be constructed, installed, maintained or operated by the applicant and the proposed location of the cable system. The applicant shall also include a policy statement describing the cable system updating procedures to be used in keeping with technological advances.

11. A detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields.

12. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the Council, or by any provision of any other enactment of the city.

B. Prior to the issuance of a license, the city shall provide for the holding of a public hearing within the proposed service area, following reasonable notice to the public, at which every application and its proposals shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and of such hearing to be published in a newspaper of general circulation in the proposed service area once a week for two consecutive weeks. The first publication shall be not less than fourteen days before the day of such hearing. If there is no such newspaper in the proposed service area, then notice shall be posted in a conspicuous place in the City Hall, if applicable, or other suitable location determined by the respective city for a period of not less than fourteen days before the day of such hearing.

C. In making any determination under this chapter as to any application, the Council may give due consideration to the quality of the service proposed, rates to Subscriber, experience, character, background and financial responsibility of any applicant and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements and to abide by policy conditions, license limitations and requirements, and any other considerations deemed pertinent by the Council for safeguarding the interest of the city and the public. The Council, in its discretion, shall determine the award of any license on the basis of such considerations and without competitive bidding. (Prior code §8-4-4)

5.12.050 License--Acceptance. A. No license shall become effective for any purpose unless written acceptance thereof shall have been received by the chief administrative officer. Written acceptance, which shall be in the form and substance approved by the city attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this chapter or otherwise specified as provided in this chapter.

B. The written acceptance shall be received by the chief administrative officer not later than 12:01 p.m. of the thirtieth (30th) day next following the effective date of granting of such license. If the thirtieth (30th) day should fall on a Saturday, Sunday, or state or Federal holiday or other non-business day for the city, then the next business day shall be counted as the thirtieth (30th) day.

C. In default of the receiving of such written acceptance as required in this chapter, the Licensee shall be deemed to have rejected and repudiated the license. Thereafter, the written acceptance of the Licensee shall not be accepted by the chief administrative officer. The Licensee shall have no rights, remedies or redress in the premises, unless and until the Council, by resolution, shall determine that such acceptance be acknowledged as received and accepted, and then upon such terms and conditions as the Council may impose.

D. Neither the granting of any license nor any of the provisions contained in this chapter shall be construed to prevent the city from granting any license to any other person. (Prior code §8-4-5)

5.12.060 System--Construction. A. Permits and Licenses. Within thirty days after acceptance of any license, the Licensee shall proceed with diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or associated microwave transmission facilities.

B. Copies to City. Copies of all petitions, applications and reports, submitted by the Licensee to the Federal Communications Commission, in respect to any matters affecting the Licensee's cable television operations under the license, shall also be submitted simultaneously to the chief administrative

officer. A copy of any agreement covering the licensed area between the applicant and any public utility providing for the use of any facilities of the public utility, including but not limited to poles, lines or conduits, shall be submitted to the chief administrative officer.

C. Time for Commencement of Construction. Within ninety days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, Licensee shall commence construction and installation of the cable television system. The construction and installation of the cable system shall be in accordance with the timetable set forth in the terms of the license.

D. Extension of Time. By resolution, the Council, in its discretion, may extend the time for the construction, installation and operation in the event the Licensee, acting in good faith, experiences delays by reason of circumstances beyond the Licensee's control.

E. Extension of Service. The Licensee shall extend its cable service to all newly annexed territory contiguous to the service area within one year. If the annexed area includes an area that cannot be reasonably or economically installed with a cable system, within one year, the Licensee shall provide a construction timetable that is acceptable to the city.

F. Performance Standards. The Licensee shall construct, operate, maintain and reconstruct, if applicable, the cable system in accordance with the technical performance standards of the FCC.

G. Construction Standards. The Licensee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of public or private property by any person. In the event of such interference, the chief administrative officer may require the removal of the Licensee's lines, cables and appurtenances from the property in question.

H. Safety.

1. All lines, equipment and connections in, over, under and upon the streets and public ways in the city, wherever situated or located, shall at all times be maintained in a safe and suitable condition, and in good order and repair.

2. While construction activities are in progress on any portion of the streets or public ways, Licensee shall maintain reasonable barriers, lights at night and other warnings to the users of the streets or public property or rights of way in compliance with applicable government regulations requiring and pertaining to such barriers or as reasonably requested by the chief administrative officer.

3. For all work in the streets or public ways which may disturb the normal flow of vehicular or pedestrian traffic, Licensee shall employ roadway closure or partial closure practices, as delineated in the State of Arizona Manual of Uniform Traffic Control Devices or comparable manual and in the standards established by the chief administrative officer and shall submit an alternate traffic routing plan.

I. Repair of Streets and Public Ways.

1. Licensee shall restore at its sole cost and expense, within ten (10) working days, or such additional time as specified by the chief administrative officer, in accordance with the City Code and standards established by the city, any portion of the streets or public property or rights of way that are in any way disturbed by the construction, operation, maintenance or repair of the cable system to as good a condition than existed previously. In addition, Licensee shall at its sole cost and expense restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of Licensee or by its acts or omissions, to the same condition as such property was in immediately prior to the disturbance, damage or injury. In the event that Licensee and its contractors and subcontractors fail to make such repair within the time specified by the city, the city shall be entitled to make

repairs or have such repairs made and Licensee shall pay the costs of the city for such repair.

2. Licensee shall not erect, install, construct, repair, replace or maintain its cable system in such a fashion as to unduly burden the present or future use of the streets or public property or rights of way. If the city in its reasonable judgment determines that any portion of the cable system is an undue burden, Licensee at its expense shall modify its cable system or take such other actions as the city may determine is in the public interest to remove or alleviate the burden, and Licensee shall do so within the reasonable time period established by the city.

3. Licensee shall, at its own cost and expense, protect, support, disconnect, relocate or remove from the streets or public property or rights of way any portion of the cable system when reasonably required to do so by the city due to street or other public excavation, construction, repair, grading or regrading; traffic conditions; the installation of sewers, drains, water pipes, power or signal lines, trackways or tracks; city owned facilities; the vacation, construction or relocation of streets or any other type of structure; or other improvements by the city or another public agency or any other type of public improvement which the city reasonably deems necessary for the public health, safety or welfare. The city may temporarily disconnect, remove or relocate any of Licensee's facilities which have not been disconnected, removed or relocated within a reasonable period of time after a request from the city and Licensee shall reimburse the city for its entire expense. Neither the city nor any agent, contractor or employee thereof shall be liable to Licensee, its Subscribers, customers or third parties for any damages caused to them or the cable system due to any activities described in the preceding two sentences unless less than ordinary care was used.

4. Upon the failure, refusal or neglect of Licensee to cause any work or other act required by law or hereunder to be properly completed in, on, over or

under any street or other public place, within any time prescribed therefore, or upon notice given, when no time is prescribed, the chief administrative officer may cause such work or other activity completed in whole or in part to the satisfaction of the chief administrative officer, and upon so doing shall submit to Licensee an itemized statement of the cost thereof. The Licensee shall, within thirty days after receipt of such statement, pay to the city the entire amount thereof.

5. Except in emergencies or for restoration of service, no construction, installation or other work activities shall be initiated when weather conditions prohibit proper restoration of disturbed areas in a timely manner. The chief administrative officer may waive the preceding requirement on a case-by-case basis, with conditions appropriate to the circumstances.

J. Aerial/Pole Construction and Installation

1. Erection of Poles Prohibited. The Licensee shall not erect, for any reason, any pole on or along any street or public way of the city except as may be reasonably required or necessary to fill gaps in the existing aerial utility systems, and only with the approval of the chief administrative officer. Nothing in this provision shall be construed to prohibit the use of existing poles, provided, that satisfactory use agreements are entered into between the Licensee and the owners of the poles.

2. Licensee shall identify aerial portions of its cable system and drops installed (such as by color code, stamping, engraving, tags, stickers, or other appropriate method selected by Licensee) so as to allow emergency personnel to distinguish Licensee's cables from that of other cable operators, utilities, and service providers in the city.

3. To the extent technically and commercially feasible, Licensee shall place all new cable and appurtenances out of sight by placing them underground. To the extent it does not place its appurtenances out of sight, Licensee shall locate such appurtenances above ground in such a manner as to

be as unobtrusive as reasonably possible consistent with the design of the cable system. Licensee may request a determination by the city, on a case by case basis, whether the above ground placement of an appurtenance is unobtrusive, and the city may require reasonable actions on the part of Licensee, including screening, painting, landscaping or other camouflaging, to make the appurtenance unobtrusive.

a. If the city finds any of Licensee's above ground appurtenances are in such condition that they are no longer unobtrusively placed and maintained, including any pedestals or cabinets which are not in their appropriate or upright position, Licensee shall confer with the city and promptly correct such problem within five business days of receiving notice from the city of such problem.

K. Underground Construction and Installation

1. Licensee's cable, wires and other equipment shall be placed underground wherever existing utilities are underground. If the city in the future so requires, for all or any portion of the city, that the utilities in such area place their lines underground, then Licensee shall in a reasonable period of time set by the city place its existing and its future cable, wires, or other equipment in such area underground without charge, expense or liability therefore to the city. If the City, in its discretion, chooses to participate in the cost to underground existing utilities, the financial participation by the City shall be proportionally equitable to all utilities involved in the project.

2. Direct buried underground portions of the cable system shall have (i) a conducting wire placed in the ground at least several inches above the cable system (if such cable is non-conductive), (ii) at least several inches above that a continuous colored tape with Licensee's name and a toll-free phone number and a statement to the effect that there is buried cable beneath, and (iii) stakes or other appropriate above-ground markers with Licensee's name and a toll-free number indicating that there is buried cable below.

3. Whenever Licensee must place the cable system or other facilities beneath the traveled or paved portion of the streets or public ways, unless otherwise approved in advance by the chief administrative officer, Licensee shall do so by boring (directional or otherwise) and not by excavation of a trench. Boring (directional or otherwise) shall be done wherever possible so that the excavations necessary are not in the paved portion of the streets or public ways.

4. Licensee shall coordinate its construction of the cable system, reconstruction or maintenance of the cable system, and all other work in the streets and public ways with the city's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively "Street Resurfacing"). Licensee shall meet with the chief administrative officer at least twice per year to this end. The Chief Administrative Officer will provide Licensee with the City's schedule for street construction and rebuilding.

a. The goals of such coordination shall be to require Licensee to conduct all work in the streets and public ways in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by the city, and to prevent a street or public way from being disturbed by Licensee for a period of five (5) years after Street Construction and for a period of eighteen (18) months after Street Resurfacing.

b. Licensee shall be subject to the provisions of Section 12.06. Regulating and Permitting Work in Public Rights-of-Way, of the City Municipal Code.

L. Common Trench. Utilities and cable television shall make every effort to utilize a common trench for undergrounding. Where a developer provides a trench for undergrounding in a new development, the developer must allow the Licensee to utilize this trench under essentially the same conditions as are extended to other trench users. (Prior code §8-4-6)

M. Licensee shall be subject to and comply with all applicable and controlling local, state and Federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future. In constructing, reconstructing, maintaining and operating the cable system, Licensee shall act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials of good and durable quality. Licensee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition); the National Electric Code (latest edition); the Bellcore Code of Pole Line Construction; all rules, standards, practices, procedures and the like of the FCC and National Cable Television Association; and legal requirements of utilities whose poles and conduits it uses. If a conflict exists between any code, standards, practices, or procedures, the more stringent code, standard, practice or procedure will apply.

N. The cable system shall be erected and maintained by Licensee so as to cause the minimum interference with the use of the streets and public ways and with the rights or reasonable convenience of property owners.

O. City shall have the right to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of the license, the City Code, or other pertinent provisions of law.

5.12.070 System--Operation and Maintenance

A. Free Service.

1. Any Licensee shall provide all Subscriber services and a tie-in connection otherwise known as a "tap" or "drop" without cost or charge to each of the following facilities, if such facility is situated within one hundred and fifty (150) feet of the cable distribution system:

a. Public and private grammar, middle or high schools licensed by the state, community colleges, and universities within the city;

b. Fire and police stations and other buildings owned or controlled by the city used for public, non-residential purposes.

2. Licensee shall provide without charge to the city an emergency alert system ("Emergency Alert System") consisting of the following:

a. An all channel alert system so as to allow audio announcements and video text crawls by the city on all Subscriber channels. The audio announcements shall automatically override (i.e. -- blank) all programming otherwise being provided on such channels and the video text crawl shall be superimposed on existing programming. The city may use either the audio announcement or the video text crawl, at its option. The city's use of such system shall be in accordance with the City Code and policies for same, as from time to time in effect; and

b. An emergency alert system ("EAS System") or successor to that system complying with all requirements imposed from time to time by the FCC including without limitation the requirement currently set forth in the FCC regulations that cable systems transmit a visual EAS message on at least one channel and that cable systems also provide video interruption and audio EAS message on all channels with the video further stating which channel is carrying the visual message. Licensee shall transmit on the EAS System Federal, state and local EAS messages. If requested by the city, Licensee shall, in accordance with FCC or other applicable regulations, cooperate with the city on the use and operation by the city of the EAS System.

c. The city acknowledges that there is possibly only one Emergency Alert System for Licensee's cable system serving multiple municipalities such that (a) only one such municipality may use the Emergency Alert System at a time, and (b) an announcement/video text crawl from one municipality will be seen and heard by Subscribers in all municipalities served by the cable system.

3. Except as provided in this chapter, Licensee shall not provide free or discounted service to elected or appointed officials of the city or to city employees, agents or officers. The term "free or discounted service" shall mean any service on terms and conditions other than those available to residents of the city generally.

B. System Maps and Layout. The Licensee shall provide the city, at no cost to the city, up-to-date route maps of a suitable scale showing all transmitting and receiving pickup locations and the location of all underground amplifiers and all trunk and distribution "feeder" lines. Such updated maps shall be supplied to the city when significant changes occur. Additional current maps shall be provided to the city, at no cost to the city, upon reasonable request.

C. Right to Inspect Books and Records. The chief administrative officer shall have the right to inspect at any time upon reasonable prior notice during normal business hours all books, records, files, maps, plans, and other like materials of the Licensee which relate to its compliance with its Franchise Agreement. Records shall include, but shall not be limited to, records required to be kept by the Licensee pursuant to the rules and regulations of the FCC, and financial information underlying the Licensee's calculation of the license fee to be paid to the city. Notwithstanding anything to the contrary set forth herein, Licensee is not required to disclose personally identifiable Subscriber information without the Subscriber's consent in violation of Section 631 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. Section 551, regarding the protection of Subscriber privacy. Access to the aforementioned books, records, files, maps, plans, and other like materials shall not be denied by the Licensee on the basis that the records contain "proprietary" information. To the extent permitted by law, the city agrees to treat on a confidential basis any information disclosed by Licensee to it under this chapter. In so according confidential treatment, disclosure of Licensee's information by the city shall be

limited to only those of the city's employees, representatives and agents that have a need to know, and that are in a confidential relationship with the city.

D. Reports.

1. Annual reports. The Licensee, upon request by the City, shall submit annual reports not later than ninety (90) days after the Licensee's fiscal year to the chief administrative officer, which shall include, but shall not be limited to, services begun or dropped, number of Subscribers gained or lost, service area increased and financial statements.

2. FCC reports. Licensee shall provide the city copies of its FCC annual cumulative signal leakage report (currently FCC Form 320, or subsequent report with comparable information), the twice yearly FCC signal quality proof of performance reports, and copies of any technical reports which Licensee files with the FCC.

3. Waiver Filings. Concurrent with any filing by Licensee for any waivers, exceptions or declaratory rulings or other rulings with the same effect from the FCC or any other Federal or state regulatory agency which may affect the city or its residents, Licensee shall provide the city with copies of such filings.

4. Other Filings. Upon reasonable request, Licensee shall provide the city or its attorneys with copies of (a) all documents which Licensee sends to the FCC or the state utilities or commerce commission (or similar successor agencies having jurisdiction over Licensee), (b) all records required by Licensee to be maintained under Section 76 of the FCC regulations (47 C.F.R. Part 76) or successor sections, and (c) all pleadings submitted by Licensee in any lawsuit regarding the validity of statutes or regulations, whether Federal or state, (d) all pleadings submitted by Licensee in any lawsuit with program suppliers regarding programming provided in the city, and (e) all pleadings from judicial proceedings, to which Licensee is a party, involving disputes with

other counties, cities, towns, townships, villages or other units of local government in Arizona.

E. Maintenance and Complaints.

1. The Licensee shall put, keep and maintain all parts of the cable television system in good condition throughout the entire period of the license. The cable television system shall be regularly upgraded so as to comply with the state of the art in terms of both the physical system and cable television services being offered, to the extent economically feasible.

2. Throughout the term of the license, Licensee shall operate the cable system and provide cable services twenty-four (24) hours per day, seven (7) days per week.

a. Licensee shall voluntarily interrupt the provision of cable services only with good cause, for the shortest time possible. "Service Interruption" means the loss of picture or sound on one or more cable channels, affecting one or more Subscribers. The preceding sentences shall not apply to interruptions in service in emergency situations; as required by the FCC; and between 1:00 AM and 5:00 AM for routine testing, maintenance and repair any night except Friday, Saturday, or Sunday, or the night preceding a holiday.

i. Excluding conditions beyond the Licensee's control, Licensee shall begin working on a service interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known to the Licensee.

ii. Licensee shall be deemed to have begun work under the provisions of this section when a technician begins work on the problem in question.

b. The chief administrative officer shall be notified in advance of all scheduled outages involving the cable system and all service interruptions within the Licensee's control.

c. In the event of a cable system upgrade, Licensee shall both minimize any interruptions in service caused by the upgrade, and shall meet

with the city in advance to advise the city of the nature, geographic extent and duration of any interruptions and obtain and where possible respond to the city's comments on same.

d. Upon request, Licensee shall credit Subscribers on a pro rata basis for services not received during a service interruption lasting more than twelve hours.

3. Licensee shall keep and maintain a proper and adequate inventory of maintenance and repair parts for the cable system. Licensee shall maintain or otherwise have available a work force of skilled technicians for cable system repair and maintenance capable of responding to Subscriber complaints or requests for service within a reasonable time of the complaint or request. No charge shall be made to the Subscriber for this service.

4. The Licensee shall maintain an office in the city, or vicinity, which shall be open during all usual business hours with a local telephone number listed in directories of the telephone company serving the city or vicinity and be so operated that complaints and requests for repairs and adjustments can be received at any time, day or night, seven days a week. Licensee shall also provide the chief administrative officer with a twenty-four (24) hour emergency telephone number at which a named responsible adult representative of the Licensee (not voice mail or a recording) can be accessed in the event of an emergency.

5. Service Standards.

a. Customer Service Standards. Licensee shall at all times comply with the more stringent of the provisions of the customer service and consumer protection provisions of this chapter, the license agreement, or those from time to time adopted by Licensee or the FCC. Licensee shall also comply with the National Cable Television Association's On-Time Customer Service Guarantee. The guarantee "promises on-time service calls or the customer receives \$20.00, and on-time installation calls or the customer receives a free installation."

b. Telephone Service Standards. Trained Licensee representatives shall be available to respond to Subscriber telephone inquiries twenty-four (24) hours per day, seven (7) days per week.

c. Installation/Service Call Standards. Installations and service calls shall be available at minimum 8 AM to 5 PM Monday through Friday, plus weekends and evenings to meet the needs of residents of the city. Licensee shall at the Subscriber's option either schedule the Subscriber to be the first call of the day or last call of the day on a first come, first served basis; schedule the appointment for a date certain on a "call to meet" basis (for example, where as the service technician finishes his/her prior task, the technician calls the Subscriber and arranges to meet the Subscriber shortly thereafter); or establish an appointment window of no more than four (4) hours with the Subscriber (or adult representative of the Subscriber), or another appointment window mutually agreed upon between the Subscriber and the Licensee.

i. Licensee shall respond to the request for service in accordance with the option selected by the Subscriber.

ii. Licensee shall not cancel an appointment with a Subscriber after 5 PM on the business day prior to the scheduled appointment.

iii. If Licensee's technician is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber shall promptly be contacted. The appointment shall be rescheduled, as necessary, at a time certain which is convenient for the Subscriber.

iv. In the event access to the Subscriber's premises is not made available to Licensee's technician when the technician arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that the Licensee be contacted again to establish a new appointment window.

v. Notwithstanding the foregoing, if Licensee's technician or service representative telephones the Subscriber during or prior to the appointment window and is advised that the technician will not be given access to the Subscriber's premises during the appointment window, then the technician shall not be obliged to travel to the Subscriber's premises or to leave the written notification referred to above, and the burden shall again be upon the Subscriber (or adult representative of the Subscriber) to contact the Licensee to arrange for a new appointment.

vi. Except as otherwise provided above, Licensee shall be deemed to have responded to a service or installation request under the provisions of this section when a technician begins work on the request or is advised by telephone no access will be given.

6. The Licensee shall maintain a written record, such as a service record or log, listing date of customer complaints, identifying the Subscriber and describing the nature of the complaint, and when and what action was taken by the Licensee in response thereto. The record shall be kept at Licensee's local office and shall be available for inspection during regular business hours, without further notice or demand by the chief administrative officer.

7. The Licensee shall provide each Subscriber with a statement that delineates the process for submitting a complaint and that specifies:

a. The telephone number and the address of the Licensee that the Subscriber can utilize to make a complaint;

b. A statement indicating that a dissatisfied Subscriber should exhaust its remedy with the Licensee before submitting a complaint to the chief administrative officer;

c. The address of the chief administrative officer's office that the Subscriber can utilize to make a written complaint.

8. The Licensee shall file in writing with the chief administrative officer, upon his request, a detailed description of any complaint and the manner in

which it has been met, including the time required to make any necessary repairs or adjustments.

9. Upon request by the chief administrative officer, the Licensee shall make a demonstration satisfactory to the chief administrative officer that a signal is being delivered to any designated area. (Prior code §8-4-7)

10. Complaints Referred by the City. If the city refers a cable services complaint from a Subscriber to the Licensee for resolution, then within five (5) business days of Licensee's receipt of such referral it shall investigate (including attempting to contact the Subscriber) and respond to the city in writing within five (5) additional days as to the status of the referral.

F. All field employees and service personnel of Licensee or its contractors or subcontractors shall wear on their clothing a clearly visible identification card bearing their name and photograph. Licensee shall account for all identification cards at all times. In addition, such service personnel of Licensee shall wear uniforms and outer gear with Licensee's name and logo clearly visible at all times on the front. Every service vehicle of Licensee, its contractors or subcontractors shall be clearly identified as such to the public: Licensee vehicles shall have Licensee's logo and telephone number plainly visible; those of contractors and subcontractors working for Licensee shall have the contractor's/subcontractor's name and telephone number plus markings (such as a magnetic door sign) indicating they are under contract to Licensee and Licensee's telephone number.

5.12.080 Subscriber Rates and Consumer Rights. A. All rates or charge increases that must be submitted to the FCC or any other regulatory agency for approval shall be also submitted to the City for consideration and comment throughout such regulatory process. The City shall be provided written notice of any request for an increase at the time that the request is filed with the FCC or other such regulatory agency.

B. The City shall hold a public hearing within thirty (30) days of written notice from licensee on such rate increases in order to hear public comment. Notice of the public hearing shall be published in a newspaper of general circulation at least ten (10) days prior to the hearing. The City shall take such public comment, or lack of comment, into account in issuing any City comments to the regulatory agency that is reviewing the rate or charge increase request by a licensee. Any rate or charge increase that is approved by the FCC or any other regulatory agency required to approve such increases shall be automatically deemed approved by the City as well.

C. Licensee shall not engage in the practice of "negative option" marketing, and shall not charge a Subscriber for any service which the Subscriber has not affirmatively requested.

D. Bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates, credits, and late charges. Licensee shall be allowed to charge late fees and collection fees as per A.R.S. § 44-1366.

E. In the case of a billing dispute, Licensee shall respond in writing to a written complaint from a Subscriber within thirty (30) days.

F. Credits for cable services shall be issued no later than the Subscriber's next billing cycle following a determination that a credit is warranted.

G. Licensee's rates and charges for its cable services shall be uniform throughout the city, except for temporary promotions, bulk rate arrangements and as otherwise allowed by Federal law.

5.12.090 License Fees. A. Any Licensee shall pay to the city during the life of such license, a percentage of the gross Subscriber revenues as determined by the Council, but in no case will the amount set by the Council

be greater than three percent. In the event that the city may receive a license fee based on total gross revenues from all sources, or any sources thereof, to be added to the gross Subscriber revenues and become the basis for computing this fee, such basis may be utilized in this section after review and discussion with Licensee.

B. Payments due the city under this provision shall be computed and paid annually. Each payment shall be due and payable no later than the first day of March of each year. Each payment shall be accompanied by a brief report showing the basis for the computation.

C. No acceptance 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 city may have for further or additional sums payable under the provisions of this section. All amounts paid shall be subject to audit and recomputation by the city for a period of three (3) years. All records reasonably necessary for such an audit shall be made available by the Licensee at a location in the city. Any additional amount due to the city shall be paid within thirty (30) days of the city submitting an invoice and documentation for such sum. If such sum shall exceed three percent (3%) of the total license fee which the audit determines should have been paid for any calendar year, the Licensee shall also pay the city's cost of auditing that calendar year. Notwithstanding the above, if Licensee's auditor disagrees with the city's determination that the additional amount due exceeds three percent (3%), the city's auditor and Licensee's auditor shall choose a neutral auditor who shall make a determination which is final and binding on both parties as to whether the three percent (3%) amount was exceeded. (Ord. 61 §1, 1977: Prior code §8-4-9)

5.12.100 Performance bond. Any Licensee shall file with the city clerk and shall thereafter, annually, during the entire term of such license, maintain in full force and effect a corporate surety bond or other adequate

surety agreement in a company and in such amount as shall have been approved by the Council. The bond or agreement shall be so conditioned that in the event that Licensee shall fail to comply with one or more of the provisions of this chapter, or of the license, there shall be recoverable jointly and severally from the principal and surety any damages or loss, or costs suffered or incurred by the city as a result thereof, including attorney's fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost or removal or abandonment of any action or proceeding, and including the full amount of any compensation, indemnification, cost or removal or abandonment of any property or other cost which may be in default, up to the full principal amount of such bond. The condition shall be a continuing obligation during the entire term of such license and any renewal thereof and thereafter until Licensee shall have satisfied in full any and all obligations to the city which arise out of or pertain to the license. Neither the provisions of this section nor any bond accepted by the city pursuant to this chapter, nor any damages recovered by the city thereunder, shall be construed to excuse faithful performance by the Licensee, or limit the liability of the Licensee under any license issued pursuant to this chapter or for damages either to the full amount of the bond, or otherwise. (Prior code §8-4-10)

5.12.110 Liability and indemnification. A. Indemnification. Any Licensee under this chapter shall, at its sole cost and expense, indemnify, defend and hold harmless the city and all associated, affiliated, allied and subsidiary entities of the city, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (the city and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against:

1. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable

fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Licensee, its personnel, employees, agents, contractors, or subcontractors, resulting in economic harm, personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, reconstruction, installation, operation, maintenance or condition of the cable system or other property of the Licensee (including those arising from any matter contained in or resulting from the transmission of signals over the cable system but excluding any programming provided by the Indemnitees which is transmitted over the cable system), the provision of cable services or other services or Licensee's failure to comply with any Federal, state or local statute, law, code, ordinance or regulation.

2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Licensee, its contractors or subcontractors, for the installation, construction, reconstruction, operation or maintenance of the cable system or provision of cable services, and, upon the written request of the city, Licensee shall cause such claim or lien covering the city's property to be discharged or bonded within thirty (30) days following such request.

3. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may

be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by Licensee for violations of the common law or any laws, statutes, or regulations of the State of Arizona or the United States, including those of the Federal Securities and Exchange Commission, whether by Company or otherwise.

4. Licensee's obligation to indemnify Indemnitees under any license agreement shall extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees; however, in such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees.

B. Assumption of Risk. Licensee undertakes and assumes for its officers, agents, contractors and subcontractors and employees (collectively "Licensee" for the purpose of this section), all risk of dangerous conditions, if any, on or about any City-owned or controlled property, the streets and public ways, and Licensee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitee's gross negligence) arising out of Licensee's installation, operation, maintenance or condition of the cable system or other property or Licensee's failure to comply with any Federal, state or local statute, law, code, ordinance or regulation.

C. Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Licensee shall, upon notice from any of the Indemnitees, at Licensee's sole cost and expense, resist and defend the same with legal counsel selected by Licensee and consented to by the city, such consent not to be unreasonably withheld; provided, however, that Licensee shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not

admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of the Licensee.

D. Notice, Cooperation and Expenses. The Indemnitees shall give Licensee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the Indemnitees, after notice and consultation with the Licensee, from cooperating with the Licensee and participating in the defense of any litigation by their own counsel. Licensee shall pay all expenses incurred by the Indemnitees in defending themselves with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by their counsel and the actual expenses of the Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the Indemnitees in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided the Indemnitees by Licensee.

E. Insurance. Licensee shall, concurrently with the filing of an acceptance of award of any license granted, furnish to the city and file with the city clerk and at all times during the existence of any license granted under this chapter, maintain in full force and effect, a general comprehensive liability insurance policy, in a company approved by the chief administrative officer and a form satisfactory to the city attorney, protecting the city, its officers, boards, commissions, agents and employees against liability for loss or damage for bodily injury, death and property damage resulting from the installation, development, maintenance or expansion of the cable system. The Council, in the licensing ordinance/resolution, shall set the insurance amount to be maintained by the Licensee. The city shall be named on such policy as a

coinsured, or added thereon by endorsement as a named insured. A certificate of the insurance required herein as well as a copy of the policy shall be filed with the city clerk. The certificate shall provide that if the policy be cancelled by the insurance company or the Licensee during the term of the license, ten days written notice prior to the effective date of such cancellation shall be given to the chief administrative officer. (Prior code §8-4-10)

F. Independent Contractor Relationship. The relationship of the Licensee to the city shall be an independent contractual relationship, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or to either party's agents or employees as a result of the performance of any license agreement, unless expressly stated in the license agreement.

5.12.120 Security Fund. A. Within ten days after being granted a license, any Licensee shall deposit with the city, and maintain on deposit through the term of the license, a security fund, in the amount set by the Council, in the licensing ordinance/resolution, as security of the faithful performance by the Licensee of all the provisions of this chapter, and any license. Any and all interest earned through investment of this security fund will become a part of the security fund to be used for the purposes set forth in this chapter. Licensee shall pay any claims, liens, and taxes due the city which arise by reason of the construction, operation or maintenance of the cable system.

B. Within twenty (20) days after notice to the Licensee that any amount has been withdrawn from the security fund deposited pursuant to subsection A of this section, the Licensee shall restore such security fund to the original amount.

C. If the Licensee fails to pay to the city any compensation due under its License within the time fixed in this chapter; or fails, after ten days' notice to pay the city any taxes due and unpaid; or fails to repay to the city, within such ten days, any damages, costs or expenses which the city shall be compelled to pay by reason of any act or default of the Licensee in connection with its license; or fails, after three days' notice of such failure by the chief administrative officer, to comply with any provision of any license which the chief administrative officer reasonably determines can be remedied by an expenditure from the security fund, the city may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the chief administrative officer shall notify the Licensee of the amount and date thereof.

D. The security fund deposited pursuant to this section and any interest earned on the fund shall become the property of the city in the event that any license is cancelled by reason of the default of the Licensee. The Licensee, however, shall be entitled to the return of such security fund and any interest earned on the fund, or portion thereof, as remains on deposit with the city ninety days after the expiration of the term of any license, provided that there is then no outstanding default on the part of the Licensee.

E. The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the city may have. (Prior code §8-4-12)

5.12.130 License--Duration. The term of any license shall not exceed fifteen years commencing on the effective date of any license issued and shall be so stated in the licensing ordinance/resolution. (Prior code §8-4-13)

5.12.140 License--Termination. A. Any license granted may be terminated prior to its date of expiration by the Council in the event that the Council shall have found that:

1. The Licensee failed to substantially comply with any material provision of this chapter.

2. The Licensee has, by act or omission, violated any substantial and material term or condition of any license issued.

3. The Licensee has failed to comply with any material rule or regulation of the Council or chief administrative officer validly adopted pursuant to this chapter.

4. The Licensee has failed to comply with any material and applicable rule, regulation or order of the FCC.

5. Upon the request of the Licensee and upon the approval of the Council.

6. If Licensee files a voluntary petition in bankruptcy; is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. 301); files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of Licensee, or any of Licensee's property and/or a license under this chapter and/or of any and all of the revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay Licensee's debts generally as they become due.

B. The chief administrative officer may make written demand that the Licensee do or comply with any such requirement, limitations, term, condition, rule or regulation. If the failure, neglect or refusal of the Licensee continues for a period of thirty days following such written demand without reasonable

justification, the chief administrative officer may place his request for termination of the license upon the next regular Council meeting agenda. The chief administrative officer shall cause to be served upon such Licensee, at least ten days prior to the date of such Council meeting, a written notice of his intent to request such termination, and the time and place of the meeting, notice of which shall be published by the city clerk, at least once ten days before such meeting in a newspaper of general circulation with the city.

C. The Council shall consider the request of the chief administrative officer and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the Licensee was with just cause.

D. If such failure, refusal or neglect by the Licensee was with just cause, the Council shall direct the Licensee to comply within such time and manner and upon such terms and conditions as are reasonable.

E. If the Council shall determine such failure, refusal or neglect by the Licensee was without just cause, then the Council may, by resolution, declare that the license of such Licensee shall be terminated and forfeited unless there be compliance by the Licensee within such period as the Council may fix. (Prior code §8-4-14)

F. The city shall retain any portion of the license fee and other fees or payments paid to it, or which are due and payable to it on a pro rata basis for the year, to the date of the forfeiture and termination.

5.12.150 License--Renewal--Continuity of service. A. Renewal. Upon expiration of the initial term of any license granted under this chapter, any license may be renewed by the Council upon application of the Licensee. Each application for a renewal of any license shall be accompanied by an application fee in an amount determined by the Council. The term of the renewal shall be in accordance with the existing rules of the FCC. If no rules exist, the Council shall decide the term of the renewal. Renewal considerations

shall include, but not be limited to, the reports prepared throughout the life of the license, the cable system's technical performance, the development of cable services, the cost of all services to the Subscribers, the ability of the Licensee to service the entire area of the city or service area designated by the Council, and cooperation exhibited by a Licensee with the city and its residents throughout the license period. Nothing in this chapter shall be construed to require such renewal.

B. Additional Proposals. In the event that the Council and the Licensee are unable to reach an accord on the renewal of any license, the Council may elect to invite additional proposals for the operation of one or more cable television systems. Such cable system or cable systems may either replace the existing cable system, or be an addition to the cable system operated by the then current Licensee.

C. City Purchase of System. In the event of expiration of the initial term, or of termination for any cause of any license, the city shall have the right of first refusal of purchase of the cable television system at a price not to exceed its then fair market value. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, the book value, the replacement cost, cash flow and other factors may be considered including "going concern" value of the cable business of Licensee. However, under no circumstances shall any valuation be made for any right or privilege granted by any license.

D. Sale of System Mandatory. In the event that the city elects to purchase the cable system, or the license is awarded to a new Licensee upon expiration or termination of the term of any license, the current Licensee shall sell the cable system to the city or to the new Licensee, whichever is applicable. The price for such sale shall be the fair market value of the cable system, as defined in this chapter.

E. Continuity of Service Mandatory. It shall be the continuing right of all Subscribers to receive all available services during the term of the license insofar as their financial and other obligations to the Licensee are honored by them. In the event of expiration of the initial term of the license, regardless of whether it is intended that the license be renewed or not, or in the event of termination for cause of any license, the Licensee shall continue all services to Subscribers and shall fulfill all of the obligations required by the license and this chapter until twelve midnight of the day of such expiration or final termination. Should Licensee cease providing service, it shall take all such reasonable actions as are necessary to provide an orderly transition of service to a new provider. (Prior code §8-4-15)

5.12.160 Property--Removal--Abandonment. A. The Licensee shall, at its expense, protect, support, temporarily disconnect, relocate or remove any property of the Licensee when required by the chief administrative officer by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks or any other types of structure or improvements by public agencies. Nothing required in this chapter shall be deemed a taking of the property of Licensee, and Licensee shall not be entitled to a surcharge by reason of anything required in this chapter.

B. In the event that:

1. The use of any part of the cable system of Licensee is discontinued for any reason for a continuous period of thirty days, without prior written notice to and approved by the city; or

2. Any part of such system has been installed in any street or other area without complying with the requirements of this chapter; or

3. This license shall be terminated, or shall expire; then the license shall promptly, upon being given ten days' notice by the chief administrative officer,

except for underground installations, remove from the streets or public places, at the expense of the Licensee and at no expense to the city, all such property and poles of such system other than any which the Council may permit to be abandoned in place. In the event of such removal, the Licensee shall properly restore the street or other area from which such property has been removed to such condition as the chief administrative officer shall approve.

C. The Council may, upon written application therefore by Licensee, approve the abandonment of any such property in place by Licensee and under such terms and conditions as the Council may prescribe. Upon abandonment of any such property of the Licensee in place, the property shall become that of the city and the Licensee shall submit to the chief administrative officer an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property.

D. Any property of the Licensee remaining in place one hundred eighty days after the cancellation, termination or expiration of the license shall be considered permanently abandoned. The Council may extend such time not to exceed an additional thirty days. (Prior code §8-4-16)

5.12.170 Rights of Individual to be Protected. A. Discriminatory Practices Prohibited.

1. The Licensee shall adhere to the equal employment opportunity requirements of the FCC. The Licensee shall comply at all times with all other applicable federal, state and city laws and all executive and administrative orders, relating to nondiscrimination.

2. Licensee shall not deny service, deny access, or otherwise discriminate on the availability or rates, terms or conditions of cable services provided to actual or potential Subscribers on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, location within the city, difficulty in constructing drops, status with regard to public assistance, income level, or other demographics. Licensee shall comply at all

times with all applicable Federal, state and local laws and regulations relating to nondiscrimination.

B. Privacy and Monitoring. Licensee shall not tap or monitor, or arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or Subscriber facility for any purpose, without the written authorization of the affected Subscriber. Such authorization shall be revocable at any time by the Subscriber without penalty by delivering a written notice of revocation to the Licensee; provided, however, that the Licensee may conduct cable system-wide or individually addressed "sweeps" solely for the purpose of verifying cable system integrity, checking for illegal taps or billing.

C. Subscriber Information. Licensee shall not record or retain any information as to the programming actually watched by a Subscriber, other than accounting records. Licensee shall destroy all Subscriber information of a personally-identifiable nature after a reasonable period of time except as authorized not to do so by the affected Subscriber or required to do so by process of law. Licensee shall not sell or otherwise provide to other persons, without the specific written authorization of the Subscriber involved, or otherwise make available to any person or entity, lists of some or all of the names or addresses of Subscribers.

5.12.180 Renegotiation Sessions. A. Scheduled Renegotiation Sessions. The Licensee and the city shall hold scheduled renegotiation sessions every three years from the effective date of any license. The topics of discussion may include anything but the term of the license. All such renegotiation sessions shall be open to the public and announced in a newspaper of general circulation at least ten days prior to each renegotiation session.

B. Special Renegotiation Sessions. Special renegotiation sessions may be held at any time during the term of any license provided that both the

Licensee and the city shall mutually agree on the time, the place and the topics to be renegotiated. All such renegotiation sessions shall be open to the public and announced in a newspaper of general circulation at least ten days prior to each special renegotiation session. (Prior code §8-4-18)

5.12.190 Unlawful acts designated. A. From and after the effective date of this code, it shall be unlawful for any person to establish or operate a cable television system, as defined in A.R.S. Section 9-505, unless a license therefore has first been obtained pursuant to the provisions of this chapter, and unless such license is in full force and effect.

B. It is unlawful for any person to make any unauthorized connection whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed cable system within the city for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to the owner of the cable system.

C. It is unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable wires or equipment used for distribution of television signals, radio signals, pictures, programs or sounds. (Prior code §8-4-19)

5.12.200 Amendments. There is reserved to the city the authority to amend any section of this chapter 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 city 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. Such additional or greater standards may be imposed by the city if not prohibited by the Federal Communications Commission and only if they materially improve the quality of the service to the Subscriber. (Prior code §8-4-20)

5.12.210 Compliance with FCC rules. Any of the provisions or terms of this chapter shall be amended by the Council and made consistent with any new or amended rule or regulation of the FCC if such new or amended rule or regulation of the FCC renders such provisions or terms prohibited or inconsistent. (Prior code §8-4-21)