

ORDINANCE NO. 98-101

COUNTY OF YUMA, ARIZONA

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AN ORDINANCE OF THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF YUMA, ARIZONA, REPLACING IN ITS ENTIRETY ANY AND ALL ORDINANCES, RESOLUTIONS, CONTRACTS, AGREEMENTS, AND UNDERSTANDINGS, WRITTEN OR ORAL, WHICH PROVIDED FOR THE ISSUANCE OF ANY LICENSE BY SAID COUNTY TO ANY CABLE TELEVISION SERVICE PROVIDER OR ANY PREDECESSOR IN INTEREST FOR CARRYING ON THE BUSINESS OF A COMMUNITY CABLE TELEVISION SYSTEM IN SAID COUNTY; AND ADOPTING THE Yuma County Communications Regulatory Code WHICH REVISES THE PROCEDURES AND REQUIREMENTS RELATING TO CABLE LICENSES TO REFLECT CHANGES IN APPLICABLE LAW AND TO BETTER ENSURE THAT USE OF PUBLIC RIGHTS-OF-WAY BY CABLE SYSTEMS SERVES THE PUBLIC INTEREST.

Be it ordained by the County Board of Supervisors of the County of Yuma as follows:

1. General Provisions.

Title: This Ordinance shall be known and may be cited as the "Yuma County Communications Regulatory Code."

Purpose: The County of Yuma finds that the development of cable television systems has the potential of having a great benefit to and positive impact on the people of Yuma County. Cable technology is rapidly changing, and cable is expected to play an essential role as part of the County's basic infrastructure. Cable television systems extensively make use of scarce and valuable Public Rights-of-Way, in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide services to the public such as utility companies. The grant of a License has the effect of giving the holder extensive economic benefits and given the characteristics of cable television (as described, for example in the 1992 Cable Act) creates a need to protect the public trust. Because of this, the County finds that public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in the County or such Persons as the County so designates to protect the public and to ensure that any License granted is operated in the public interest. In light of the foregoing, the following goals, among others, underlie the provisions set forth in this Ordinance:

(a) Cable should be available to as many County residents as possible.

(b) A Cable System should be capable of accommodating both the present and reasonably foreseeable future cable-related needs of the community.

(c) A Cable System should be constructed and maintained during a License term so that changes in technology may be integrated into existing system facilities.

(d) A Cable System should be responsive to the needs and interests of the local community.

(e) A Cable System should be designed and constructed so that it may conveniently and economically be used by public institutions as a telecommunications and information highway for pursuing public purposes.

The County intends that all provisions set forth in this Ordinance be construed to serve the public interest and the foregoing public purposes, and that any License issued pursuant to this Ordinance be construed to include the foregoing findings and public purposes as integral parts thereof.

2. Definitions and Word Usage.

For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, Chapter 5, Subchapter V-A, 47 U.S.C. ' ' 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

(a) *Access Channel*: Any channel or bandwidth on a Cable System set aside by a Licensee for public, educational, or governmental use.

(b) *Affiliate*: Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Licensee.

(c) *Basic Service*: Any Service Tier that includes the retransmission of local television broadcast signals.

(d) *Cable Act*: The Cable Communications Policy Act of 1984, 47 U.S.C. ' ' 521 et seq., as amended from time to time.

(e) *Cable Service*: (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(f) *Cable System or System*: A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within the County, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way(3) a facility of a common carrier which is subject, in

whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the exten6

t of such use is solely to provide interactive on-demand services;

(4) an open video system that complies with section 653 of Title 47, USC; Or (5) any facilities of any electric utility used solely for operating its electric utility systems.

(g) *County:* The County of Yuma, Arizona, and any agency, department, or designated agent thereof.

(h) *Educational Access Channel:* Any channel or bandwidth on a Cable System set aside by a Licensee for educational use.

(i) *FCC:* The Federal Communications Commission, its designee, or any successor governmental entity thereto.

(j) *Governmental Access Channel:* Any channel or bandwidth on a Cable System set aside by a Licensee for government use.

(k) *Gross Revenues:* Any and all cash, credits, property or other consideration of any kind or nature in any way derived from the operation of a Licensee's Cable System to provide cable service received directly or indirectly by a Licensee, its Affiliates, or any Person in which a Licensee has a financial interest, or by any other entity that is a cable operator of a System, including the studios and other facilities, if any, associated therewith. Gross

Revenues include, but are not limited to, monthly fees charged Subscribers for any basic, optional, premium, per-channel, or per-program service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the System; revenues from converter rentals or Sales; studio rental, production equipment rental, and associated personnel fees; advertising revenues; barter; revenues from program guides; and revenues from home shopping services. Gross Revenues shall be the basis for computing the License fee under this Ordinance. Gross Revenues shall not include actual converter deposits that are paid by and returned to Subscribers, actual refunds of amounts paid by and refunds to Subscribers by a Licensee, actual uncollected Subscriber debts (not to exceed 3% of total subscriber revenues in any calendar year), or receipts from any sales or use taxes, or any other taxes which are imposed upon Subscriber by any taxing authority and which the Licensee is required to collect from a Subscriber on behalf of said taxing authority. A License fee is

not such a tax. This definition shall be interpreted to include all revenues that may be subject to a License fee consistent with federal law.

(l) *License:* The non-exclusive authorization granted in accordance with this Ordinance to construct, operate, and maintain a Cable System along the Public Rights-of-Way within the County for a fee. Any such authorization, in whatever form granted, shall not mean or include any license or permit or grant of use or easement required for the privilege of transacting and carrying on a business within the County as required by the ordinances and laws of the County, or for attaching devices to poles or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along Public Rights-of-Way pursuant to ' 40-283, Arizona Revised Statutes, as amended, or other applicable law.

(m) *License Agreement:* A contract entered into in accordance with the provisions of this Ordinance between the County and a Licensee that sets forth, subject to this Ordinance, the terms and conditions under which a License will be exercised.

(n) *License Area:* The area of the County that a Licensee is authorized to serve by its License Agreement.

(o) *Licensee*: The natural Person(s), partnership(s), domestic or foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which have been granted a cable License by the County pursuant to this Ordinance.

(p) *Person*: An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof.

(q) *Public Access Channel*: Any channel or bandwidth on a Cable System set aside by a Licensee for use by the general public, including groups and individuals, and which is available for such use on a non-discriminatory basis.

(r) *Public Rights-of-Way*: The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the County now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein, or in any License Agreement, to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit its use for such

purposes, and a Licensee shall be deemed to gain only those rights to use as are properly in the County and as the County may have the undisputed right and power to give.

(s) *Sale*: Any sale, exchange, or barter transaction.

(t) *Service Tier*: A package of two or more Cable Services for which a separate charge is made by the Licensee.

(u) *Subscriber*: Any Person who legally receives a service provided over a Cable System, whether or not a fee is paid for such service.

(v) *Transfer*: Any transaction in which (1) an ownership or other interest in a Licensee, its Cable System, or any Person that is a cable operator of the Cable System is transferred from one Person or group of Persons to another Person or group of Persons so that control of a Licensee is transferred; or (2) the rights or obligations held by a Licensee under a License Agreement are transferred or assigned to another Person or group of Persons. Control for these purposes means working control, in whatever manner exercised. By way of illustration and not limitation, the addition, deletion, or other change of any general partner of a Licensee, any person who owns or controls a Licensee, or a cable operator of a Cable System is such a change of control.

(w) *User*: A Person or organization utilizing a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

3. Grant of License.

(a) *Grant of License*: The County may grant one or more cable Licenses, and each such License shall be awarded in accordance with and subject to the provisions of this Ordinance. This Ordinance shall be amended from time to time, and in no event shall this Ordinance be considered a contract between the County and a Licensee such that the County would be prohibited from amending any provision hereof. A License may contain provisions regarding the effect of amendments to this Ordinance on that Licensee.

(b) *License Required*: No Person other than the County may construct or operate a Cable System without a License granted by the County unless otherwise authorized by law, and no Person may be granted a License without having entered into a License Agreement with the County pursuant to this Ordinance.

* * *

(c) *License Characteristics:*

(1) A License authorizes use of Public Rights-of-Way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System within a License Area, but does not expressly or implicitly authorize a Licensee to provide service to, or install a Cable System on private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. ' 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners or to be exempted from the requirements of ' 40-283, Arizona Revised Statutes, as amended.

(2) The term of a License may not exceed ten years.

(3) A License is non-exclusive and will not explicitly or implicitly preclude the issuance of or requirement to obtain other Licenses to operate Cable Systems within the County; affect the County's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or for other purposes as it determines appropriate except as otherwise expressly agreed by the County in any License Agreement; or affect the County's right to itself construct, operate, or maintain a Cable System, with or without a License.

(4) Once a License Agreement has been accepted and executed by the County and a Licensee, such License Agreement shall constitute a contract between the Licensee and the County, and the terms, conditions, and provisions of such License Agreement, subject to the Ordinance and all other duly enacted and applicable laws, shall define the rights and obligations of the Licensee and the County relating to the License.

(5) All privileges prescribed by a License shall be subordinate to any prior lawful occupancy of the Public Rights of Way and to compliance with the provisions of ' 40-283, Arizona Revised Statutes, as amended, and the County reserves the right to reasonably designate where a Licensee's facilities are to be placed within the Public Rights-of-Way.

(6) A License shall be a privilege that is in the public trust and personal to the original Licensee. No Transfer of a License shall occur without the prior consent of the County and unless application is made by the Licensee and County approval obtained, pursuant to this Ordinance and the License Agreement.

(7) *Exclusive Contracts Prohibited:* No Licensee shall enter into an exclusive contract for the provision of Cable Service with any Person, or demand the exclusive right to serve a Person or location as a condition of extending or providing service. Nothing in this section prevents a Licensee and a Person from agreeing to an exclusive contract for provision of service, provided that:

(A) the Licensee offers to extend and provide service on a non-exclusive basis;

(B) that offer provides a realistic alternative to provision of service on an exclusive basis; and

(C) the exclusive contract is otherwise consistent with applicable state or federal law.

(d) *Licensee Subject to Other Laws:*

(1) Except where rights are expressly waived by a License Agreement, they are reserved, whether expressly enumerated or not. Neither the granting of any License nor any provision hereof shall constitute a waiver or bar to the exercise of any right or power of the County, now existing or hereafter granted. A License shall comply with all applicable federal, state and local laws and regulations as they become effective and a License granted pursuant to this Ordinance shall not be interpreted to relieve a Licensee of its obligation to comply with such federal, state or local laws, including the County's lawful exercise of its police powers. However, the express provisions of an Agreement constitutes a valid and enforceable contract between the parties and neither party may take any unilateral action which materially changes the explicit performance promised in an agreement except unilateral County action pursuant to its police powers to protect

public health and safety. Although the rights under a License Agreement shall be subject to the Cable Ordinance, the Cable Ordinance is not a contract with the Licensee.

(2) By entering into a License, a Licensee does not waive any right to challenge the validity of any such other laws.

(3) No course of dealing between a Licensee and the County, or any delay on the part of the County in exercising any rights hereunder, shall operate as a waiver of any such rights of the County or acquiescence in the actions of a Licensee in contravention of rights except to the extent expressly waived by the County or expressly provided for in a License Agreement.

(e) *License Subject to Cable Ordinance:*

This Ordinance is not a contract. A License Agreement is a contract. Notwithstanding any provision to the contrary in this cable Ordinance, the License is subject to and shall be governed by

all terms, conditions and provisions of this Cable Ordinance as this Cable Ordinance is in effect as of the date of this License, and by amendments thereto, subject to the following:

(1) A Licensee shall be bound by subsequent amendments to this Cable Ordinance if such amendments are made (i) in accordance with a federal or state authorization; (ii) by an exercise of the County's police power but a Licensee shall retain its right to challenge any such exercise of the County's police power as an unconstitutional impairment of a Licensee's contractual rights as set forth in a License; (iii) by any exercise by the County of any other power unless such exercise unduly discriminates against Licensee and is an unconstitutional impairment of Licensee's contractual rights as set forth in this License; or (iv) by lawful exercise of the County's taxing authority.

(2) Except as to matters that are governed solely by federal law or regulation, a License Agreement will be governed by and construed in accordance with the laws of the State of Arizona.

(f) *Operation of a Cable System Without a License:* Any Person who occupies Public Rights-of-Way for the purpose of operating or constructing a Cable System and who does not hold a valid License from the County shall be subject to all provisions of this Ordinance, as if the term "Licensee" applied to them, including but not limited to its provisions regarding construction

and technical standards and License fees except to the extent the application of particular provisions is prohibited by law. In its discretion, the County at any time may require such Person to enter into a License Agreement within thirty (30) days of receipt of a written notice by the County that a License Agreement is required; require such Person to remove its property and restore the area to a condition satisfactory to the County within such time period; remove the property itself and restore the area to a satisfactory condition and charge the Person the costs therefore; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a License be created unless it is issued by action of the County and subject to a License Agreement.

(g) *Right of Condemnation Reserved:* Nothing in this Ordinance or any License Agreement shall limit any right the County may have to acquire any property of Licensee.

(h) *Acts at Licensee's Expense:* Any act that a Licensee is or may be required to perform under this Ordinance, a License Agreement, or applicable law shall be performed at the Licensee's expense, unless expressly provided to the contrary in this Ordinance, the License Agreement, or applicable law (e.g., FCC rate regulations regarding pass-throughs).

4 Applications for Grant, Renewal, or Modification of Licenses.

(a) *Written Application:*

(1) A written application shall be filed with the County for (A) grant of an initial License; (B) renewal of a License under 47 U.S.C. ' 546(a)-(g), or the applicant may request renewal under 47 U.S.C. ' 546(h); or (C) modification of a License Agreement pursuant to this Ordinance or a License Agreement. An applicant shall demonstrate in its application compliance with all requirements of this Ordinance and all applicable laws.

(2) To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The application must be accompanied by the required application filing fee as set forth in Section 4(f), conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of the applicant with respect to the application.

(3) All applications accepted for filing shall be made available by the County for public inspection.

(b) *Application for Grant of a License, Other Than a Cable Act Renewal License:*

(1) A Person may apply for a License by submitting a request for issuance of a Request for Proposals ("RFP") and requesting an evaluation of its application pursuant to Section 4(b)(4). Upon receipt of a request for an RFP, the County shall commence a proceeding to identify the future cable-related needs and interests of the community and, upon completion of that proceeding, shall promptly issue an RFP and proposed License Agreement, which shall be mailed to the Person requesting its issuance and made available to any other interested party. The applicant shall respond within the time directed by the County, providing the information and material set forth in Section 4(d). The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant as if set forth and required herein. The County or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

(2) Notwithstanding the provisions of Section 4(b)(1), a Person may apply for an initial License by submitting an unsolicited application containing the information required in Section 4(d) and requesting an evaluation of that application pursuant to Section 4(b)(3). Prior to evaluating that application,

the County may conduct such investigations as are necessary to determine whether the application satisfies the standards set forth in Section 4(b)(3) and may seek additional applications.

(3) In evaluating an application for a License, the County shall consider, among other things, the following factors:

(A) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable License for the County.

(B) Whether the quality of the applicant's service under an existing License in the County, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served.

(C) Whether the applicant has the financial, technical, and legal qualifications to perform.

(D) Whether the application satisfies any minimum requirements established by the County and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

(E) Whether, to the extent not considered as part of Section 4(b)(3)(D), the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support.

(F) Whether issuance of a License is warranted in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be used by the Cable System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way; the effect of granting a License on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.

(G) Whether the applicant or an Affiliate of the applicant owns or controls any other Cable System in the County, or whether grant of the application may eliminate or reduce competition in the delivery of Cable Service in the County.

(4) If the County finds that it is in the public interest to issue a License considering the factors set forth above, and subject to the applicant's entry into an appropriate License Agreement, it shall issue a License. If the County denies a License, it will issue a written decision explaining why the License was denied. Prior to deciding whether or not to issue a License, the County may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The County also may grant or deny a request for a License based on its review of an application

without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This Ordinance is not intended and shall not be interpreted to grant any applicant or existing Licensee standing to challenge the issuance of a License to another.

(c) *Application for Grant of a Cable Act Renewal License:* Applications for renewal under the Cable Act shall be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. ' 546. If neither a Licensee nor the County activates in a timely manner or can activate the renewal process set forth in 47 U.S.C. ' 546(a)-(g) (including, for example, if the provisions are repealed), and except as to applications submitted pursuant to 47 U.S.C. ' 546(h), the provisions of Section 4(b) shall apply and a renewal request shall be treated the same as any other request for a License. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act:

(1) If the provisions of 47 U.S.C. ' 546(a)-(g) are properly invoked, the County shall issue an RFP after conducting a proceeding to review the applicant's past performance and to identify future cable-related community needs and interests. The County Administrator, or the Administrator's designee, shall establish deadlines and procedures for responding to the RFP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information.

Following receipt of the application responding to that RFP (and such additional information as may be provided in response to requests), the County will determine that the License should be renewed, or make a preliminary assessment that the License should not be renewed. This determination shall be in accordance with the time limits established by the Cable Act. The preliminary determination shall be made by Resolution. If the County determines that the License should not be renewed, and the applicant that submitted the renewal application notifies the County, either in its RFP response or within ten (10) working days of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then the County shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. If the County decides preliminarily to grant renewal, it shall prepare a final License Agreement that incorporates, as appropriate, the commitments made by the applicant in the renewal application. If the applicant accepts the License Agreement, and the final agreement is ratified by the County, the License shall be renewed. If the License Agreement is not so accepted and ratified within the time limits established by 47 U.S.C. ' 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative

proceeding commenced if the applicant that submitted the renewal application requests it within ten (10) days of the expiration of the time limit established by 47 U.S.C. ' 546(c)(1).

(2) If an administrative hearing is commenced pursuant to 47 U.S.C. ' 546(c), the applicant's renewal application shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:

(A) The County Board of Supervisors shall, by Resolution, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The County Board of Supervisors may appoint itself as hearing officer.

(B) The hearing officer shall establish a schedule for proceeding which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary discovery and interrogatory responses will not provide it an adequate opportunity to require the production of evidence necessary to present its case. The hearing officer shall have the authority to require the production of evidence as the interests of justice may require, including to require the production of evidence by the applicant that submitted the renewal application and any entity that owns or controls or is owned or controlled by such applicant directly or indirectly. The hearing officer may

issue protective orders, but shall not prohibit discovery on the ground that evidence sought is proprietary or involves business secrets. Any order may be enforced by a court of competent jurisdiction or by imposing appropriate sanctions in the administrative hearing.

(C) The hearing officer may conduct a pre-hearing conference and establish appropriate pre-hearing orders. Intervention by non-parties is not authorized except to the extent permitted by the Cable Act.

(D) The hearing officer shall require the County and the applicant to submit prepared testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, and the County shall present evidence second.

(E) Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. ' 546(a) shall for purposes of the administrative hearing be regarded no differently than any other evidence. The County and the applicant must be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced in these proceedings or sought to be introduced by the other party. Both shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to 47 U.S.C. ' 546(a).

(F) Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the County is entitled to consider in determining whether renewal ought to be granted. Based on the record of the hearing, the hearing officer shall then prepare written findings with respect to those matters, and submit those findings to the County Board of Supervisors and to the parties (unless the hearing officer is the County Board of Supervisors, in which case the written findings shall constitute the final decision of the County).

(G) If the hearing officer is not the County Board of Supervisors, the parties shall have thirty (30) days from the date the findings are submitted to the County Board of Supervisors to file exceptions to those findings. The County Board of Supervisors shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act and based on the record of such proceeding. A copy of the final decision of the County Board of Supervisors shall be provided to the applicant.

(H) The proceeding shall be conducted with due speed.

(I) In conducting the proceedings, and except as inconsistent with the foregoing, the hearing officer will follow the Arizona Administrative Procedures Act, A.R.S. ' ' 41-1061 through 41-1066, or the successor statutes thereto. The hearing officer may request that the County Board of Supervisors adopt additional procedures and requirements as necessary in the interest of justice.

(3) This Section does not prohibit any Licensee from submitting an informal renewal application pursuant to 47 U.S.C. ' 546(h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. ' 546(h).

(4) The provisions of this Ordinance shall be read and applied so that they are consistent with Section 626 of the Cable Act, 47 U.S.C. ' 546.

(d) *Contents of Applications:* An RFP for the grant of a License, including for a renewal License under 47 U.S.C. ' 546(b), shall require, and any application submitted (other than an application submitted pursuant to 47 U.S.C. ' 546(h)) shall contain, at a minimum, the following information. If Licensee properly activates renewal procedures set forth in 47 USC ' 546 (a)-(g), then this provision shall be read to require production of the information specified below to the extent consistent with 47 USC ' 546 (a)-(g).

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including: all Persons with five (5) percent or more ownership interest in the applicant and its Affiliates; the Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System, including but not limited to a demonstration that the applicant meets the following criteria:

(A) The applicant must not have submitted an application for an initial License under subsection (b) or an application for renewal under subsection (c)(1)-(2) above, which was finally denied pursuant to the procedures set forth in those sections on the ground that the applicant failed to propose a System meeting the cable-related needs and interests of the community, or as to which any challenges to such final licensing decision were finally resolved adversely to the applicant, within three (3) years preceding the submission of the application.

(B) The applicant must not have had any cable television License validly revoked by any licensing authority or any appeal finally resolved adverse to the applicant's interests within three (3) years preceding the submission of the application.

(C) The applicant must have the necessary authority under Arizona law to operate a Cable System.

(D) The applicant shall not be issued a License if it may not hold the License as a matter of federal law. An applicant must have, or show that it is qualified to obtain, the necessary federal licenses or waivers required to operate the System proposed.

(E) The applicant shall not be issued a License if, at any time during the ten (10) years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the County and the Subscribers of the Cable System, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

(F) The applicant shall not be issued a License if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

(G) The applicant shall not be issued a License if an elected official of the County holds a controlling interest in the applicant or an Affiliate of the applicant.

Notwithstanding the foregoing, the County shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a License under Section 4(d)(3)(B) or (E), by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of Cable Systems.

(4) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the Cable System proposed.

(5) A description of the applicant's prior experience in Cable System ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable License or any interest therein, provided that, an applicant that holds a Cable License for the County and is seeking renewal of that License need only provide this information for other communities where its License was scheduled to expire in the two (2) calendar years prior to and after its application was submitted.

(6) Identification of the area of the County to be served by the proposed Cable System, including a description of the proposed License Area's boundaries.

(7) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

(8) Where applicable, a description of the construction of the proposed System, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

(9) The proposed or existing rate structure, including projected charges for each Service Tier, installation, converters, and other equipment or services.

(10) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the County, and how the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests.

(11) Pro forma financial projections for the proposed License term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(12) If the applicant proposes to provide Cable Service to an area already served by an existing cable Licensee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area that would encompass the overbuild, and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System.

(13) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

(14) Information that the County may request of the applicant that is relevant to the County's consideration of the application.

(15) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

(e) *Application for Modification of a License:* An application for modification of a License Agreement shall 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 financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

(3) A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. ' 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. ' 545;

(4) Any other information that the applicant believes is necessary for the County to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

(f) *Filing Fees:* To be acceptable for filing, an application submitted after the effective date of this Ordinance may be accompanied by a filing fee in the following amount to cover costs incidental to the awarding or enforcement of the License, as appropriate:

- (1) For an initial License:
 - (A) A request for issuance of an RFP: \$ 5,000
 - (B) A response to an RFP or an unsolicited application: \$25,000
- (2) For modification of a License Agreement: \$15,000

(g) *Public Hearings:* An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a License, the County shall provide for the holding of a public hearing within the proposed License Area, following reasonable notice to the public, at which every applicant and its applications 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 place of such hearing to be published in a newspaper of general circulation in the proposed License Area once a week for two consecutive weeks. The first publication shall be not less than fourteen (14) days before the day of the hearing.

5 Construction Provisions.

(a) *System Construction Schedule:* Every License Agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System.

(b) *Construction Standards:* Each License Agreement shall require the Licensee to comply with the construction standards set forth herein.

(1) The construction, operation, maintenance, and repair of a Cable System shall be performed in accordance with high industry standards and all applicable sections of the Occupational Safety and Health Act of 1970, as amended, the National Electrical Safety Code, the National Electric Code, other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes, in accordance with Section 3(D)(1).

(2) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners.

(3) All installation of electronic equipment shall be of a permanent nature, using durable components.

(4) Without limiting the foregoing, antennae and their supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(5) Without limiting the foregoing, all of a Licensee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements the County shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(6) All safety practices required by law shall be used during construction, maintenance, and repair of a Cable System. A Licensee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(7) A Licensee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the County of their use of any Public Rights-of-Way.

(8) Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a System shall be promptly repaired by the Licensee.

(9) A Licensee shall, by a time specified by the County, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County by reason of traffic conditions; public safety; Public Right-of-Way construction; Public Right-of-Way maintenance or repair (including resurfacing or widening); change of Public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned

communications system, public work or improvement or any government-owned utility; Public-Right-of-Way vacation; or for any other purpose where the convenience of the County would be served thereby; provided, however, that the Licensee shall, in all such cases, have the privilege of abandoning any property in place.

(10) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, a Licensee shall, remove, relay or relocate its facilities as follows. In the event that a Licensee has an agreement with any such other Person, such removal, relaying or relocation shall be in accordance with procedures as may be provided in the Licensee's agreement with such other Person. In the event that Licensee does not have an agreement with such other Person or to the extent that a Licensee's agreement with such other Person does not specify procedures, cost responsibility or allocation for such removal, relaying or relocation, such removal, relaying or relocation shall be made within thirty (30) days after written notice and at the expense of such other Person unless otherwise provided for in state or federal law.

(11) In the event of an emergency, or where a Cable System creates or is contributing to an imminent danger to health, safety, or property, the County may remove, relay, or relocate that Cable System without prior notice.

(12) A Licensee shall, on the request of any Person holding a permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings, other structure or equipment. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Licensee shall have the authority to require such payment in advance, except in the case where the requesting Person is the County, in which case no such payment shall be required. The Licensee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(13) A Licensee shall have the authority to trim trees that overhang a Public Right-of-Way of the County so as to prevent the branches of such trees from coming in contact with the wires and cables of the Licensee. At the option of the County, such trimming may be done by it or under the supervision, direction, and expense of the Licensee.

(14) A Licensee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible and may not erect poles in Public Rights-of-Way without the express permission of the County. Copies of agreements for use of conduits or other facilities shall be filed with the County as required by a License Agreement or upon County request.

(15) In Public Rights-of-Way or other places where electrical and telephone utility wiring is located underground, either at the time of initial construction of a Cable System or at any time thereafter, a Licensee's Cable System shall also be located underground. Between a Public Right-of-Way and a Subscriber's residence, a Licensee's cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone utility wiring is aerial, a Licensee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost of such installation over and above the cost of aerial installation.

(16) The County shall have the right to install and maintain free of charge upon the poles owned by a Licensee any wire and pole fixtures that do not unreasonably interfere with the Cable System operations of the Licensee.

(17) Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a Cable System authorized under this Ordinance, a Licensee shall first submit to the County for approval a concise description of the work proposed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities.

A License may specify the procedure for submitting a plan for a construction, upgrade or rebuild of a Cable System. No erection or

installation of any tower, pole, underground conduit, or fixture or any rebuilding or upgrading of a Cable System shall be commenced by any Person until approval therefore has been received from the County or until the approval is deemed granted by operation of law or under any License Agreement.

(18) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances. Each Licensee shall be required to assume responsibility for the acts and omissions of its contractors and subcontractors in its License Agreement. Each contractor and subcontractor must perform work in compliance with all applicable provisions of law and a License Agreement, and the Licensee shall implement a quality control program to ensure that the work is so performed.

(c) *Publicizing Proposed Construction Work:* A Licensee shall publicize proposed construction work at least one (1) week prior to commencement of that work by causing written notice of such construction work to be delivered to the County and by notifying those Persons most likely to be affected by the work in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. In addition, before entering onto any Person's

property, a Licensee shall contact the property owner or (in the case of residential property) the resident at least two (2) days in advance. If a Licensee must enter premises, it must schedule an appointment at the convenience of the owner or resident.

(d) *Continuity of Service:* Each License Agreement shall ensure that Subscribers are able to receive continuous service from the Licensee, including in the event the License is revoked or terminates.

6 System Facilities, Equipment, and Services.

In addition to satisfying such requirements as may be established through the application process, every Cable System shall be subject to the following conditions, except as prohibited by federal law:

(a) *Provision of Service:* Unless standards are otherwise specified in a License Agreement, after Cable Service has been established by activating trunk distribution cable for an area specified in a License Agreement, a Licensee shall provide Cable Service to any household or commercial establishment requesting Cable Service within that area, including each multiple dwelling unit in that area, except for multiple dwelling units to which it cannot legally obtain access, or that are served by another provider. Service must be provided within time limits specified in applicable customer service standards.

(b) *Technical Standards:*

(1) Any Cable System within the County shall meet or exceed the technical standards set forth in 47 C.F.R. ' 76.601 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by the County in a manner consistent with federal law.

(2) A Licensee shall not design, install, or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the Cable System of another Licensee, or individual or master antennae used for receiving television or other broadcast signals.

(c) *Proof of Performance Tests:* As required by FCC rules, a Licensee shall perform proof of performance tests, designed to demonstrate compliance with FCC requirements. The Licensee shall provide the proof of performance test results to the County, if required by FCC rules.

7 Operation and Reporting Provisions.

(a) *Open Books and Records:* The County shall have the right to inspect and copy at any time during normal business hours at the County Cable System office or at such location as the County may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and discs or other storage media and other like material which are

relevant to compliance with the terms of this Ordinance or a License Agreement. The License Agreement shall specify the Licensee's responsibility for producing its records and those held by its Affiliates and others.

(b) *Reports Required:* A Licensee shall file reports with the County as the County may reasonably require in order to enforce its rights and the rights of the public under this Cable Ordinance or the License Agreement. Each License Agreement shall specify the minimum reports a Licensee must provide.

(c) *Records Required:* A Licensee shall maintain such records as the County may reasonably require in order to enforce its rights and the rights of the public under this Cable Ordinance or the License Agreement. Each License Agreement shall specify the minimum records a Licensee must maintain.

(d) *Performance Evaluation:*

(1) The County may, at its discretion, hold scheduled performance evaluation sessions for a Licensee. All such evaluation sessions shall be open to the public.

(2) All evaluation sessions shall be announced in a newspaper of general circulation.

(3) Topics that may be discussed at any scheduled or special evaluation session may include, but are not limited to, system performance and construction, Licensee compliance with this Ordinance and a License Agreement, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, if applicable, License fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(4) During the review and evaluation by the County, a Licensee shall fully cooperate with the County and shall provide such information and documents relevant to compliance with the License.

(e) *Retention of Records; Relation to Privacy Rights:* Each Licensee shall take all steps required, if any, to ensure that it is able to provide the County all information which must be provided or may be requested under this Ordinance or a License Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require a Licensee to violate 47 U.S.C. ' 551. Each Licensee shall be responsible for blacking out any data that federal law prevents it from providing to the County. Records shall be kept for at least five (5) years.

8 Consumer Protection Provisions. Each License Agreement shall specify the customer service standards that a Licensee must meet or exceed, but additional or different standards may be adopted by the County and if the adoption and standards are consistent with federal law, a Licensee must comply with those standards. Each Licensee must at least satisfy any applicable state or federal customer service standards, as if the same were fully set forth herein.

9 Rate Regulation.

(a) *Generally:* The County may regulate Licensee's rates and charges but must exercise its rights in accordance with federal law as amended from time to time.

(b) *Authority to Adopt Regulations:* All rates that are subject to regulation by the County must be reasonable. The County may adopt such regulations, procedures, and standards as it deems necessary to implement rate regulation and may regulate rates by amendment to the Cable Ordinance, by a separate resolution or ordinance, by amendment to this Agreement, or in any other lawful manner, provided it does so in a manner consistent with federal law. This section shall not repeal any existing ordinances, regulations, procedures, or standards previously adopted in accordance with such federal law.

10 License Fee.

(a) *Finding:* The County finds that Public Rights-of-Way of the County to be used by a Licensee for the operation of a Cable System are valuable public property acquired and maintained by the County at expense to the taxpayers. The County further finds that the grant of a License to use Public Rights-of-Way is a valuable property right without which a Licensee would be required to invest substantial capital.

(b) *Payment to County:*

(1) A Licensee shall pay the County a License fee in an amount as set by the County of up to five (5) percent of its Gross Revenues, or the maximum amount permitted under state and federal law. Every License Agreement shall specify the percentage a Licensee is initially required to pay as a percentage of gross revenues, but if the maximum amount permitted under state and federal law increases, the Licensee shall, simultaneously with the effective date of any change in any law or, if later, the effective date of any regulation required to implement the law, increase the License fee to the maximum allowed by that law, provided that, a License Agreement may specify the maximum amount that the County can require the Licensee to pay as a License fee if the maximum amount permitted increases, or state or federal law does not specify a maximum amount; in which case the License Agreement provisions shall control. If no such limiting provision is contained in a License and Federal and state limits on License fees are removed, the County may specify the amount that it will collect by Ordinance and, in that event, the Licensee shall begin paying the increased fee from the effective date of the Ordinance.

(c) *Not a Tax or in Lieu of Any Other Tax or Fee:*

(A) Payment of the License fee shall not be considered in the nature of a tax.

(1) The License fee is in addition to all other payments that a Licensee may be required to pay under any federal, state, or local law and to any other tax, fee, except to the extent that such fees, taxes, or assessments must be treated as a License fee under Section 622 of the Cable Act, 47 U.S.C. ' 542. The License fee is in addition to any other fee or assessment imposed by utilities or cable operators for use of their services, facilities, or equipment,

(d) *Payments:*

(1) The License shall specify the time and manner of payment, and unless otherwise specified, payment shall be made monthly no later than thirty (30) days following the end of each month. An annual statement of actual Gross Revenues shall be furnished to the County by an independent, certified public accountant. The Licensee shall provide an annual complete audit statement for each calendar year within ninety (90) days from the end of that calendar year.

(2) If the difference between Licensee's estimated payments for a calendar year and the actual amount owed is equal to 10% or more of the estimated payments made for that calendar year, Licensee shall pay interest at prime plus 1.5% and penalties equivalent to IRS penalties.

(3) In the event any License fee payment or recomputation amount is not made on or before the date specified

herein, the Licensee shall pay additional compensation and interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the County's primary depository bank during the period such unpaid amount is owed.

(e) *Audit:*

(1) Each License shall provide for clear audit rights and for coverage of audit expenses where the audit discloses underpayments in excess of \$5,000.

(2) A Licensee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the County to determine the cost of assets of the Licensee which are used in providing services within the County and to determine Gross Revenues.

11 Insurance; Surety; Indemnification.

(a) *Insurance Required:* A Licensee shall maintain, and by its acceptance of a License specifically agrees that it will maintain, throughout the entire length of the License period, at least the following liability insurance coverage insuring the County and the Licensee: worker's compensation and employer liability insurance to meet all requirements of Arizona law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Licensee's business in the County. The License Agreement shall specify the minimum amounts a Licensee must maintain, based upon the risks to the County and to the public at the time the License is issued.

(b) *Review of Insurance Requirements:* The County may review the amounts specified in the License Agreement no more than once a year and may require reasonable adjustments to them consistent with the public interest. The License Agreement may provide limits upon such increases as necessary and appropriate. The License Agreement shall specify the procedures to be followed in the event that the Licensee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount.

(c) *Qualifications of Sureties:* All insurance policies shall be with sureties qualified to do business in the State of Arizona, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the County.

(d) *Policies Available for Review:* All insurance policies shall be available for review upon request by the County, and a Licensee shall keep on file with the County certificates of insurance.

(e) *Additional Insureds; Prior Notice of Policy Cancellation:* All general liability insurance policies shall name the County, its officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the County. A Licensee shall not cancel any required insurance policy without submission of proof that the Licensee has obtained alternative insurance satisfactory to the County which complies with this Ordinance.

(f) *Failure Constitutes Material Violation:* Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of a License.

(g) *Indemnification:*

Each License Agreement shall contain an indemnity clause that requires a Licensee, at its sole cost and expense, to defend and hold harmless the County against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, operation or use of a Licensee's Cable System, so that the County is fully and adequately protected against the same.

(h) *No Limit of Liability:* Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of a Licensee for damages under any License issued hereunder.

12. Performance Guarantees and Remedies.

(a) *Security Fund:*

(3 The License Agreement shall provide that, prior to the License becoming effective, the Licensee shall post to a bank account a cash security deposit to be used as a security fund to ensure the Licensee's faithful performance of and compliance with all provisions of this Ordinance and the License Agreement. The amount of the security fund shall be specified in the License Agreement.

(2) In lieu of a cash security fund, a Licensee may file and maintain with the County an irrevocable letter of credit with

an acceptable surety in the amount specified in the preceding paragraph to serve the same purposes as set forth therein. In any case where a Licensee chooses to post an irrevocable letter of credit, a License Agreement shall specify procedures for drawing upon that Letter of Credit as are appropriate to reasonably protect the County's interests.

(b) *Performance Bond:*

(4 Every License Agreement shall provide that, prior to any Cable System construction, upgrade, or other work in the Public Rights 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 Licensee's faithful performance of the construction, upgrade, or other work. The amount of such performance bond shall be equal to ten (10) percent of the total cost of the work, but shall not exceed Two Hundred Thousand Dollars (\$200,000). The License Agreement shall specify the terms of the bond and such procedures for drawing upon that bond as are appropriate to reasonably protect the County's interests.

(c) *Failure Constitutes Material Violation:* Failure to maintain the required security fund, letter of credit, or performance bond shall constitute a material violation of a License.

(d) *Remedies:* In addition to any other remedies available at law or equity, the County may apply any one or a combination of the following remedies in the event a Licensee violates this Ordinance or its License:

(5 Revoke the License or shorten the term pursuant to the procedures specified in this Ordinance or any License Agreement.

(6 In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

(7 Apply any remedy provided for in a License Agreement, including enforcement provisions, if any.

(e0 *Shortening, Revocation, or Termination of License:*

(1 The County shall have the right to shorten the term of a License to a term not less than thirty-six (36) months from the date of the action shortening the License term, or to revoke the License, for a Licensee's material failure to construct, operate, or maintain the Cable System as required by this Ordinance or a License Agreement, for defrauding or attempting to defraud the County or Subscribers, if the Licensee is declared bankrupt, or for any other material violation of this Ordinance or material breach

of a License Agreement. Each License Agreement shall specify that the following procedures shall be followed prior to revoking or shortening the License except in cases where the Licensee is adjudged bankrupt, which shall be governed by Section 12(e)(2):

(A To invoke the provisions of this Section, the County shall give the Licensee written notice of the default in its performance. If within sixty (60) calendar days following such written notice from the County to the Licensee, the Licensee has not taken corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the County, the County may give written notice to the Licensee of its intent to shorten the term of or revoke the License, stating its reasons; provided that no opportunity to cure shall be provided where the Licensee has defrauded or attempted to defraud the County or its Subscribers, or in the event the Licensee is declared bankrupt. Each License shall provide that, in the case of a fraud or attempted fraud, the License may be revoked after the hearing required under Section 12(e)(1)(B).

(B Prior to shortening the term of or revoking a License, the County shall hold a public hearing, on thirty (30) calendar days' notice, at which time the Licensee and the public shall be given an opportunity to be heard. Following the public hearing, the County may determine whether to shorten the License term or to revoke the License based on the information presented at

the hearing, and other information of record. If the County determines to shorten a License term or revoke a License, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Licensee.

(2 Any License may, at the option of the County following a public hearing, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Licensee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

(i Such assignment, receivership, or trusteeship has been vacated; or

(ii Such assignee, receiver, or trustee has fully complied with the terms and conditions of this Ordinance and a License Agreement and has executed an agreement, approved by a court of competent jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Ordinance and a License Agreement, and such other conditions as may be established or as are required under Section 13 of this Ordinance.

(iii In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Licensee, the County may revoke the License, following a public hearing before the County, by serving notice on the Licensee and the successful bidder at the sale, in which event the License and all rights and privileges of the License will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

I. The County has approved the Transfer of the License to the successful bidder; and

II. The successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the License Agreement and this Ordinance, and such other conditions as may be established or as are required pursuant to Section 13 of this Ordinance.

(3 The County may provide for different or additional procedures from those specified in a License Agreement, so long as such additional or different methods provide the Licensee an adequate opportunity to cure and to be heard.

(4 In addition to its rights under Section 12(e)(1)(2) and (3), the County may terminate the License if the Licensee abandons the Cable System, or willfully refuses to provide service to the County or any part of the County in accordance with this License.

(5 If the County revokes or terminates the License, it shall have the following additional rights:

(A The County may require the Licensee to remove its facilities and equipment at the Licensee's expense. If the Licensee fails to do so within a reasonable period of time, the County may have the removal done at the Licensee's and/or surety's expense.

(B In the event of revocation, the County, by resolution, may acquire ownership of the Cable System at an equitable price, as that term is defined in the Cable Act.

(C If a Cable System is abandoned by the Licensee or the Licensee willfully refuses to provide service to the County or any material portion of the County in accordance with the License, the ownership of all portions of the Cable System in Public Rights-of-Way shall revert to the County and the County may sell, assign, or Transfer all or part of the assets of the System.

(D In the case of any other termination of the License, or upon its expiration, the County may, by resolution, acquire ownership of and operate a Cable System, at fair market value, with no value assigned to the License itself.

(6 Notwithstanding any other provision of this Ordinance, where the County has issued a License specifically conditioned in the License Agreement on the completion of construction, System upgrade, or other specific obligations by a

specified date, failure of the Licensee to complete such construction or upgrade, or to comply with such other specific obligations as required, will result in the automatic forfeiture of the License where it is so provided in the License Agreement without further action by the County, unless the County, at its discretion and for good cause demonstrated by the Licensee, grants an extension of time.

(f) *Remedies Cumulative:* All remedies under this Ordinance and the License Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a Licensee of its obligations to comply with its License. Remedies may be used singly or in combination; in addition, the County may exercise any rights it has at law or equity. Except that, the County is not entitled to recover damages for the same injury under two separate sections where to do so would result in a double recovery.

(g) *Relation to Insurance and Indemnity Requirements:* Recovery by the County of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise does not limit a Licensee's duty to indemnify the County

in any way; nor shall such recovery relieve a Licensee of its obligations under a License, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have.

13. Transfers.

(a) *County Approval Required:* No Transfer shall occur without prior approval of the County.

(b6) *Application:* An application for a Transfer shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee. At a minimum, the information required under federal law and in Section 4(d)(1)-(4), (9)-(11), (13), and (15) of this Ordinance shall be provided with respect to the proposed transferee.

(c) *Determination by County:* In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a License, the County, except as prohibited by federal law, shall consider the legal, financial, and technical qualifications of the transferee to operate the System; whether the incumbent cable operator is in compliance with its License Agreement and this Ordinance and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other Cable System in the County,

or whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the County; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the County's interest under this Ordinance, the License Agreement, or other applicable law, or make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost.

(d) *Transferee's Agreement:* No application for a Transfer of a License shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Ordinance and the License Agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Licensee under this Ordinance and the License Agreement for all purposes, including renewal.

(e) *Approval Does Not Constitute Waiver:* Approval by the County of a Transfer of a License does not constitute a waiver or release of any of the rights of the County under this Ordinance or a License Agreement, whether arising before or after the date of the Transfer.

(f) *Processing Fee:* As a condition of considering a Transfer, the County may impose a fee on the transferee to cover its estimated out-of-pocket expenses in considering the application for Transfer of a License. Any amount collected in excess of the estimated amount shall be returned to the transferee.

14. Rights of Individuals Protected.

(a) *Discriminatory Practices Prohibited:*

(7) A Licensee shall not deny service, deny access, or otherwise discriminate against Subscribers, programmers, or residents of the County on the basis of race, color, religion, national origin, sex, or age.

(8) A Licensee shall not discriminate among Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Licensee require a Person to waive such rights as a condition of taking service.

(9) A Licensee shall not deny access or levy different rates and charges on any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

(10) Except as otherwise provided by Federal law, a Licensee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Licensee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the County; and a Licensee may offer discounts for the elderly, the handicapped, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A Licensee shall comply at all times with all applicable federal, state, and County laws, and all executive and administrative orders relating to non-discrimination.

(b) *Equal Employment Opportunity:* A Licensee shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. A Licensee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities.

(c) *Subscriber Privacy:*

A Licensee shall at all times protect the privacy of all Subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. ' 551. A Licensee shall not condition Subscriber service on the Subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the Subscriber's explicit consent.

15. Miscellaneous Provisions.

(a) *Force Majeure:* A Licensee shall not be deemed in default with provisions of its License where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes or events beyond the Licensee's control, or not reasonably foreseeable, and a License shall not be revoked or a Licensee penalized for such noncompliance, provided that the Licensee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its License without unduly endangering the health, safety, and integrity of the Licensee's employees or property, or the health, safety, and integrity of the public, Public Rights-of- Way, public property, or private property.

(b) *Connections to System; Use of Antennae:*

(11 Subject to applicable law, Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment, and a Licensee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Licensee's System.

(12 Subject to applicable law, a Licensee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes.

(c) *Calculation of Time:* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

(d) *Severability:* If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had

been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County.

(e) *Captions:* The captions and headings of this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Ordinance.

PASSED AND ADOPTED this 2nd day of NOVEMBER, 1998,
by the Yuma County Board of Supervisors.

Kathryn A "Casey" Prochaska
Chairman

ATTEST:

Wally Hill
County Clerk

APPROVED AS TO FORM:

David S. Ellsworth
County Attorney

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