

**ORDINANCE NO. 1696-719**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING CHAPTER 4.5 OF THE AVONDALE CITY CODE BY AMENDING SECTION 4.5-1 PERTAINING TO DEFINITIONS; AND AMENDING SECTION 4.5-2 PERTAINING TO PROCEDURES FOR GRANTING, RENEWING, TRANSFERRING AND ACQUIRING BY CITY OF CABLE TELEVISION LICENSES; AND AMENDING SECTION 4.5-3 PERTAINING TO INITIAL AND RENEWAL LICENSE REQUIREMENTS; AND AMENDING SECTION 4.5-5 PERTAINING TO REGULATIONS PERTAINING TO USE OF CITY STREETS AND PUBLIC RIGHT-OF-WAY; AND AMENDING SECTION 4.5-7 PERTAINING TO ADMINISTRATION AND ENFORCEMENT PROVISIONS; AND PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

**WHEREAS**, Arizona Senate Bill 1140, passed into law in 2018, declared Video Service Provider licensing a matter of statewide concern and requires local authorities to adopt the new Arizona Uniform Video Service License Agreement, Uniform Video Service License Application and Affidavit before July 1, 2019; and

**WHEREAS**, the City Council desires to adopt the new Arizona Uniform Video Service License Agreement, Uniform Video Service License Application and Affidavit before July 1, 2019 to ensure that the city complies with State law.

**BE IT ORDAINED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. Chapter 4.5 of the Avondale City Code is amended by amending Section 4.5-1 pertaining to Definitions and which shall read as follows:

4.5-1. - Definitions.

For a video services license granted on or after January 1, 2020, the words, terms, abbreviations, and their derivations shall have the same meaning ascribed in A.R.S. § 9-1401, as amended. Video services licenses granted on or after January 1, 2020 shall also be subject to the words, terms, abbreviations, and their derivations in Section 4.5-1, as amended, that are not inconsistent or conflict with those set forth in A.R.S. § 9-1401. For a cable license granted on or before December 31, 2019, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context

clearly indicates a different meaning, another division of this chapter provides a different meaning, or an existing license/franchise or use agreement has specific definitions approved as part of its terms:

*Access channel* shall mean a channel dedicated in whole or in part for local non-commercial programming which is not originated by a cable licensee; provided that such access programming shall not include (i) the retransmission of local television broadcast signals or (ii) programming produced by persons unaffiliated with the cable licensee under the provisions of Section 612 of the Cable Act.

*Affiliate* means any person who owns or controls, is owned by or controlled by, or is under common ownership or control with licensee.

*Applicant* means a person, as defined in this section, who submits a proposal to provide cable service to the City.

*Basic service* shall mean the tier that includes the retransmission of local television broadcast signals.

*Cable Act* means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and including the Telecommunication Act of 1996, as the same may be amended from time to time.

*Cable license* means that ordinance or resolution which contains the right, authority or grant, given by the City enabling a person to construct, operate and maintain a cable system.

*Cable service* means the transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

*Cable system* means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. Cable system does not include:

- (1) A facility that serves fewer than fifty (50) subscribers.
- (2) A facility that serves subscribers without using any public street, road or alley.
- (3) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations.
- (4) A facility of a common carrier that is subject, in whole or in part, to 47 United States Code Sections 201 through 276, except that the facility is considered a cable system, other than for purposes of 47 United States Code Section 541(c), to the extent the facility is used in the transmission of video programming directly to subscribers, unless the extent of the use is solely to provide interactive on-demand services.
- (5) An open video system that complies with 47 United States Code Section 573.
- (6) A facility of an electric utility that is used solely for operating its electric utility system.

*City* shall mean the City of Chandler, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or

reincorporated form.

*City building* means a building that is both (a) occupied by the City or owned by the City and (b) used for municipal purposes.

*City Council* shall mean the present governing body of the City or any future Council constituting the legislative body of the City.

*City Manager* shall mean the City Manager of the City of Chandler or the City Manager's designee.

*Commercial mobile radio services* means two-way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 United States Code Section 157.

*Completion of construction* or *complete construction* shall mean "satisfactorily complete" and "fully activate." In each instance, these terms shall mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed, that power supplies have been installed, that construction of the head ends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the cable system to be ready to deliver cable service to subscribers has been completed. Final balancing shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire cable system will be activated and final balanced when completed.

Construction of any segment or of the entire cable system will not be considered complete until final balance has been conducted on such segment (or in the case of the entire cable system, until final balancing and proof of performance tests have been conducted on all segments of corrected.) The term "completion of construction" does not include marketing and installation of subscriber service.

*Days* shall mean calendar days, unless otherwise specified.

*Department* means that Department, Division or City employee to whom responsibility for the administration of this chapter has been delegated by the City Manager. Generally the Department will be the designated City Engineer or the Director of the Development Services Department and persons seeking permits pursuant to this chapter may obtain necessary forms and information from the permit counter in the Development Services Department.

*Downtown* means the land area bounded by Chandler Boulevard on the north, Frye Road on the south, Dakota Street on the west and the Union Pacific railroad tracks on the east.

*Downtown business* means a commercial establishment in the downtown.

*Encroach* or *encroachment* includes, but is not limited to, the performance of any of the following acts:

(1) Excavating, filling or disturbing the surface.

(2) Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, news stand, mailbox, pipe, conduit, wire or other structure on,

over or under the surface of any public place, highway or watercourse.

(3) Planting any tree, shrub, grass or other growing thing.

(4) Placing or leaving any rubbish, brush, earth or other material of any nature whatsoever.

(5) Constructing, placing, maintaining on, over or under the surface of any public place, right-of-way, street, pathway, sidewalk, driveway, curb, gutter, paving or other surface or subsurface drainage structure or facility, any pipe, conduit, wire, cable or telecommunication facility.

(6) Traveling by any vehicle or combination of vehicles or object of dimension, weight or other characteristic prohibited by law without a permit.

(7) Lighting or building a fire.

(8) Constructing, placing, planting or maintaining any structure, embankment, excavation or other objects adjacent to a right-of-way or watercourse which causes or will cause an encroachment.

(9) The application of paint or other marking materials to any pavement or curb.

(10) Providing valet parking, including without limitation the establishment of a valet parking station and/or a valet parking zone or the storing of downtown business patrons' vehicles.

*Encroachment permit* means that document submitted to/and issued by the City in relation to specific in City right-of-way related to Chapter 46 activity.

*Facilities* means the plant, equipment, and property, including but not limited to boxes, poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under highways.

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

*Fiber optic license* means a license related to interstate services and other communication facilities that are excluded from the definition of "telecommunications" in Division IV of this chapter.

*Franchise* shall mean the same as defined under Article XIII of the Arizona Constitution.

*Gross revenues* means all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half (1.5) percent annually, that is received directly or indirectly by the cable licensee or its affiliates, or any person in which the cable licensee has a financial interest or that has a financial interest in the cable licensee and that is derived from the cable licensee's operation of its cable system to provide cable service in the City. Gross revenues include all revenue from charges for cable service to subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a subscriber to receive cable service, and any other receipts from subscribers derived from operating the cable system to provide cable service, including receipts from forfeited deposits, sale or rental of equipment to provide cable service, late charges, interest and sale of program guides. Gross revenues also include all income the cable licensee receives from the lease of its facilities located in the streets and public ways, unless services that the lessee provides over the

leased facilities are subject to a transaction privilege tax of the licensing authority. Gross revenues do not include revenues from commercial advertising on the cable system, the use or lease of studio facilities of the cable system, the use or lease of leased access channels or bandwidth, the production of video programming by the cable licensee, the sale, exchange, use or cablecast of any programming by the cable licensee in the City, sales to the licensee's subscribers by programmers of home shopping services, reimbursements paid by programmers for launch fees or marketing expense, license fees, taxes or other fees or charges that the licensee collects and pays to any governmental authority, any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities.

*Highway* means a street and public way as defined below.

*Intergovernmental contract* means the joint exercise of powers authorized by Arizona Revised Statutes, Title 11, Chapter 7, Article 3.

*Initial activation of cable service* shall mean with respect to a particular segment (as defined in any cable license issued hereunder), or with respect to a group of segments or the entire cable system, as the case may be, that, all proposed cable services and cable system capabilities as stated in the cable license are available and/or in place, construction has been completed and the completed segment or segments in question or the entire cable system, as the case may be, have been activated.

*Initial license* shall mean a cable license sought by, or granted to, a person who does not hold a license. Such person is an "initial licensee."

*Licensee* means the person granted a cable license, a fiber optics license and/or a telecommunications license.

*Licensing authority* means the City of Chandler.

*Licensing requirements* means the cable television licensing requirements in Division V of this chapter.

*Licensors* means the City of Chandler as represented by the City Council, City Manager or their designee acting within the scope of this authority.

*Multiple dwelling units* or "MDU" means any adjacent building(s) such as apartments under common ownership containing more than four (4) dwelling units used as living quarters.

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

*Outage* shall exist whenever licensee's cable system experiences three (3) Subscriber complaints within any sixty-minute period of "no picture" within the same quarter (¼) section.

*Permittee* means the person granted an encroachment permit pursuant to Chapter 46.

*Person* includes any individual, partnership, association, corporation, legal entity or organization of any kind. Whenever used in any clause prescribing a penalty, the term "person" as applied to partnerships or associations includes partners or members thereof, and if applied to corporations, the officers thereof. "Person" shall not include a municipal corporation unless otherwise indicated.

*Public highway* or *highway* means the surface of and the space above and below of any

public road, sidewalk, street and alley.

*Public place* shall mean any property owned, maintained or controlled by the City.

*Right-of-way* means the same as streets and public ways as defined below.

*Service call* shall result when service problems occur relating to: (i) any "no picture" complaint, (ii) a degraded signal or picture on one (1) or more channels, (iii) property damage by licensee's employees or authorized contractors, or (iv) in-house cable equipment problems.

*Service interruption* means the loss of picture or sound on one (1) or more cable channels or the significant deterioration of signal or sound.

*Standard drop* means a cable connection that requires no more than a two hundred-foot drop measured from the nearest point of a subscriber's home or place of business to the nearest existing technically feasible point on the cable system from which an individual subscriber can be connected to the cable system. A standard drop involves only one (1) outlet and standard materials. A standard drop does not include the following (the cost of which may be assessed directly to the subscriber): (a) a wall fish; (b) custom installation work, including specific subscriber-requested work that requires non-standard materials or cable routing that requires construction methods exceeding reasonable underground or aerial work; or (c) the cost of any equipment or construction modifications necessary to provide an adequate signal over the standard drop to the subscriber's residence.

*Streets and public ways* means the surface of and the space above and below any public street, sidewalk, right-of-way, alley, easement, or other public way of any type whatsoever, now or hereafter existing as such within the City.

*Subscriber* shall mean any person receiving for any purpose the cable television service of a licensee's cable system

*Subscriber complaint* means any written or oral complaint by a subscriber to the City that the subscriber did not receive the cable service that the subscriber requested consistent with the requirements of this license.

*Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services or cable services.

*Telecommunications provider* means a telecommunications corporation who constructs, installs, operates and maintains telecommunications facilities in the City.

*Telecommunications corporation* means any public service corporation to the extent that it provides telecommunications services in the state.

*Telecommunications services* means the offering of telecommunications for a fee directly to the public or to such users as to be effectively available directly to the public, regardless of the facilities used.

*Two-way communication* shall mean the transmission of telecommunication signals from subscriber locations or other points throughout the cable system back to the cable system's control center as well as transmission of signals from the control center to subscriber locations. A cable license may authorize switching at a level other than the control center.

*User* shall mean a party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

*Valet parking* means the service of parking motorized vehicles for patrons of a downtown business.

*Valet parking station* means the temporary, removable structure located near the valet parking zone as required by Division VIII of Chapter 46 of the City Code.

*Valet parking zone* means the area of the right-of-way where patrons of a downtown business served by valet parking may disembark from their vehicles.

*Video programming* means programming that is provided by, or generally comparable to programming provided by, a broadcast television station.

SECTION 3. Chapter 4.5 of the Avondale City Code is amended by amending Section 4.5-2 pertaining to Procedures for granting, renewing, transferring, and acquiring by the city of cable television licenses and which shall read as follows:

4.5-2 - Procedures for granting, renewing, transferring, and acquiring by city of cable television licenses.

(a) License to operate; required. A non-exclusive license to construct, operate and maintain a cable system within all or any portion of the city is required of anyone desiring to provide cable service in the city. A license may be granted by the city council to any person, whether operating under an existing license or not, who offers to furnish and provide such cable system under and pursuant to the terms and provisions of this chapter.

(1) The provisions set forth in this Chapter apply to all Cable licenses granted on or before December 31, 2019.

(2) For Video Service Licenses granted on or after January 1, 2020, the following provisions apply and are made part of the Uniform Video Services License granted by the city:

- a. Provisions of Chapter 4.5 of the Avondale city code, that are not inconsistent or conflict with those set forth in Title 9, Chapter 13 of the Arizona Revised Statutes; and
- b. Standard terms and conditions applicable to all licenses, franchises and encroachment permits; and
- c. Any special conditions set forth in this Chapter.

(b) Failure to have license, violation.

(1) From and after the effective date of this chapter, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons, in this city any television signals or radio signals by means of a cable system unless a license therefor has first been obtained pursuant to the provisions of this chapter and unless such license is in full force and effect.

(2) From and after the effective date of this chapter, it shall be unlawful for any

person to construct, install, or maintain within any public way in the city, or within any other public property of the city, or within any privately-owned area within the city that has not yet become a public way but is designated or delineated as a proposed public way on any preliminary subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable system, unless a license authorizing such use of such public way or property or area has first been obtained pursuant to the provisions of this chapter, and unless such license is in full force and effect.

(3) It shall be unlawful for any person to make any unauthorized connections, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a licensed cable system within this city for the purpose of enabling himself or herself or others to receive any television signal, radio signal, picture, program, sound or any other signals transmitted on the cable system, without the permission of the licensee.

(4) It shall be unlawful for any person, without the consent of the licensee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sounds or any other signals transmitted on the cable system.

(5) Any person violating any part of this subsection 4.5-2(b) shall be guilty of a class one misdemeanor.

(6) Any person violating any part of this subsection 4.5-2 shall also be subject to any fees required in this chapter as though such violator were a licensee.

(c) Authorization to engage in business. Any license granted pursuant to the provisions of this chapter shall authorize and permit the licensee to engage in the business of operating and providing a cable system in the city, and for that purpose to erect, install, solicit, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public way, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the cable system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the city.

(d) Limitations of license.

(1) Any license granted under this chapter shall be nonexclusive.

(2) Any privilege claimed under any license by the licensee in any public way or other public property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the city or any other governmental entity, and shall be subordinate to any prior easements therein; provided, however, that nothing shall extinguish or otherwise interfere with property rights established independently of any license issued pursuant to this chapter.

(3) Any right or power in, or duty imposed upon, any officer, employee, department or board of the city shall be subject to transfer by the city to any other officer, employee, department or board of the city.

(4) A licensee shall be subject to all requirements of city's rules, regulations and specifications heretofore or hereafter enacted or established and shall comply with all applicable state and federal laws and regulations heretofore enacted or established. There is



hereby reserved to the city the power to amend any section of this chapter so as to require additional or greater standards of construction, operation, maintenance or otherwise pursuant to the city's lawful police powers or as provided in the license.

(5) Any license granted shall not relieve the licensee of any obligation involved in obtaining pole space from any department of the city, utility company or from others lawfully maintaining poles in public ways.

(e) Acquisition by city.

(1) In accordance with Section 627 of the Cable Act, if a renewal of a license held by a licensee is denied and the city acquires ownership of the cable system or effects a transfer of ownership of a cable system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the license itself. The fair market value of the cable system shall be determined by an appraisal committee consisting of three (3) appraisers nationally recognized by training and experience as qualified to appraise the fair market value of a large, urban cable system. No appraiser shall have previously acted in any capacity for either the city or licensee. The appraisal committee shall function as an arbitration panel and shall conduct its appraisal process in Maricopa County, in accordance with the Center For Public Resources rules for non-administered arbitration of business disputes (the "rules"), supplemented by the following procedures which shall control to the extent they conflict with the rules:

a. Each party shall appoint an appraiser within thirty (30) days after the city sends notice initiating appraisal proceedings. The two (2) appraisers shall select a third appraiser within thirty (30) days after selection of the second appraiser. If the two (2) appraisers are unable to agree on the appointment of a third appraiser within such thirty-day period, either the city or the licensee may petition the presiding civil judge of the Maricopa County Superior Court, acting in his or her individual capacity, for the selection of a third appraiser.

b. Each party shall bear the cost of its own appraiser and one-half ( $\frac{1}{2}$ ) of the cost of appointing the third appraiser and of paying the third appraiser's fee, and of any reasonable expenses incurred by the appraisers in order to carry out the appraisal process.

c. Within thirty (30) days after selection of the third appraiser, the appraisers shall meet for the purpose of determining the manner in which the parties may present by evidence that may bear upon the appraisal. Within ninety (90) days after such meeting, the appraiser shall receive and consider such evidence and enter an award determining the fair market value of the cable system consistent with the requirements of this subsection 4.5-2(e). Such award shall be final and binding upon the parties, and judgment upon the award rendered may be entered by any court having jurisdiction thereof.

(2) If a license held by a licensee is revoked for cause and the city acquires ownership of the cable system or effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be at an equitable price. Under the term "equitable price," such matters as the harm to the community resulting from the licensee's breach of the license may be considered in determining the appropriate price. No payment shall be made by the city to the licensee that would include a value attributed to the license itself.

(3) Upon the termination of a license and the rights granted thereunder, whether by expiration or forfeiture, the city council may direct and require the licensee as provided in subsection 4.5-5(c) to remove its wires, cables, fixtures, and accessories and appurtenances from the public ways. If directed, the city shall make a claim on the letter of credit as prescribed in subsection 4.5-7(d).

(f) Rights reserved to the city.

(1) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to acquire the property of the licensee, by purchase, at fair market value, which shall not include any amount for the license itself or for any of the rights or privileges granted. Nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the city's right of eminent domain.

(2) There is hereby reserved to the city every right and power that is required to be herein reserved or provided by any provision of the City Charter or City Code, and a licensee shall comply with any action or requirements of the city in its exercise of such rights or power heretofore or hereafter enacted or established.

(3) Neither the granting of any license hereunder nor any of the provisions contained herein shall be construed to prevent the city from granting any identical, or similar, license to any other person, firm, or corporation, within the city.

(4) Neither the granting of any license nor the enactment of any provision in this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the city, now existing or hereafter granted.

(5) The city council may do all things that are necessary and convenient in the exercise of its jurisdiction under this chapter and may, through the city manager or through its own action, adjust, settle, compromise or otherwise resolve, pursuant to subsection 4.5-7(g) and (h), any controversy or charge arising from the operations of any licensee under this chapter.

(g) Initial license; applications.

(1) Each application for an initial license to construct, operate or maintain any cable system in the city shall be filed with the office of the city clerk in the form of a proposal for initial license as prescribed by the city. Said forms shall require, but shall not be limited to, the following information:

a. The name, address, and telephone number of the applicant;

b. A detailed statement of the corporation or business entity organization of the applicant, including but not limited to, the following and to whatever extent required by the city;

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

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

(iii) The names and addresses of any parent or subsidiary of the applicant, namely,

any other business entity owning or controlling applicant in whole or in part or owned in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby.

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

d. A detailed financial plan (pro forma) describing for each year of the initial license, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and a sources and uses of funds statement. All information is to be presented in the format approved by the city;

e. A statement identifying, by place and date, any other cable system license(s) awarded to the applicant, its parent or subsidiary; the status of said license(s) with respect to completion thereof; the total cost of completion of such licensed cable system(s); and the amount of applicant's and its parent's or subsidiary's resources committed thereto; and

f. A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

(i) A detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served;

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

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

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

(v) A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm, or corporation that materially relate or pertain to or depend upon the application and the granting of the initial license;

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

(vii) Any other details, statements, information or references pertinent to the subject matter of such application that are required or requested by the city council or by any other provision of law.

(h) Fees; application of initial license.

(1) Amount. Notwithstanding any other requirement of this chapter, each applicant for an initial license must furnish with its proposal a nonrefundable filing fee in the amount established by the council, by cash, certified or cashier's check, wire transfer or in any other manner acceptable to the city manager, made payable to the City of Avondale. No proposal for an initial license shall be considered without receipt of said fee.

(2) Deposit and use. All fees received will be deposited to an account of the city and will serve to recover expenses incurred by the city in the preparation and granting of initial licenses and regulation of licenses pursuant to this chapter.

(3) Additional fee. Any licensee under an initial license, upon acceptance of such initial license, shall reimburse all additional expenses, including, but not limited to, any and all administrative, engineering, publication or legal costs and consultants' expenses incurred in connection with the processing, evaluation and preparation of documents relating to the initial license. The city shall document all such expenses by invoice. If expenses exceed the total amount of filing fees collected from the applicant(s), the licensee shall pay to the city the excess amount within thirty days of demand of the city. All unpaid amounts at the end of thirty (30) days shall accrue interest at the rate of one and one-half (1½) percent per month.

(i) Selection of licensee; initial license.

(1) Solicitation of proposals. The city may, by advertisement or any other means, solicit and call for proposals for initial license, and may determine and fix any time period during which proposals will be received by the city and may make any other determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such proposals.

(2) Unsolicited proposals. The city, upon receipt of an unsolicited proposal for initial license may, by advertising or other means, solicit and call for competing proposals pursuant to subsection (1) above, or may, in its sole discretion, reject such proposal as untimely.

(3) Compliance with city requirements. A person, firm or corporation submitting a proposal for initial license to operate a cable system in response to the city's request for proposals shall provide all information required by this chapter and all other information requested by city's request for proposals or otherwise required by the city. Each proposal shall be responsive to the questions soliciting the information and shall completely, accurately and materially supply all of the information so solicited. Any misrepresentation, failure, neglect or refusal to provide any of such information may, at the option of the city, render a proposal invalid. This requested information must be complete and verified as true by the applicant.

(4) Property of city. All proposals received by the city from an applicant shall become the sole property of the city.

(5) Applicant responsibility. Before submitting a proposal, each applicant shall be solely responsible for and must (i) examine this chapter and the request for proposals documents thoroughly, (ii) be familiar with local conditions which may in any manner affect

performance under the license, including but in no event limited to, community and institutional telecommunication needs, relevant demographics, topographies, pole attachment policies of appropriate utility authorities, undergrounding, and subscriber desires, (iii) be familiar with all applicable federal, state and local laws, chapters, rules, and regulations affecting performance under the license and (iv) carefully correlate all observations with the requirements of this chapter and the request for proposals documents.

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

(7) Rejection. The city may reject any and all proposals from whatever source and whenever received. The city also reserves the right to waive all formalities where the best interest of the city may be served and may, if it so desires, request new or additional proposals.

(8) Public comment. If, upon receiving the city manager's report, the city council shall determine to further consider the proposals, the city clerk shall set at least one (1) public hearing for the consideration of proposals (i) fixing and setting forth a day, hour and place certain when and where any persons having any interest therein or who wish to file objections may file written comments or (ii) appear before the city council and be heard, and directing the city clerk to publish notice of such hearing at least once within ten (10) days of the passage thereof in the newspaper of general circulation within the city.

(9) Consideration. In making any determination hereunder as to any proposal for initial license, the city may consider any and all factors relevant to significant interests of the community in cable services including, but not limited to (i) the quality of the cable services proposed, (ii) areas to be served, (iii) rates to subscriber, (iv) income to the city, (v) experience, character, background and financial responsibility of any applicant and its management and owners, (vi) technical and performance quality of equipment, (vii) willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this chapter, and to abide by all policy conditions, license limitations and requirements (viii) and all other matters deemed pertinent by the city for safeguarding the interests of the city and the public.

(10) Determination. At the time set for the hearing on proposals for an initial license, or at any continuance thereof, the city council shall proceed to hear all comments. Thereafter, the city council shall make one of the following determinations:

a. That such proposal be denied, which determination shall be final and conclusive;  
or

b. That such proposal be accepted and that an initial license be granted in a form approved by the city council.

No provision of this chapter shall be deemed or construed so as to require the granting of an initial license.

(11) Additional information. The city may at any time demand, and applicant(s) shall provide, such supplementary, additional or other information as the city may deem reasonably necessary to determine whether the requested initial license should be granted.

(12) Awards based on public record. It is the intention of the city to award an initial

license solely on the basis of the public record. To this end, communication with the city council by those wishing to submit proposals for an initial license shall be limited to public sessions. Requests for information should be directed to the city manager.

(13) City council decisions shall be final. Any decision of the city council concerning award of an initial license pursuant to this chapter shall be final.

(j) Duration of license. The duration of the rights, privileges and authorizations granted in license pursuant to this chapter shall not exceed fifteen (15) years. A license may be renewed by the city pursuant to the procedure established in subsection 4.5-2(k) below and in accordance with the then applicable law.

(k) Renewal.

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

- a. Identifying the future cable-related community needs and interests; and
- b. Reviewing the performance of the licensee under the license during the then-current license term.

(2) Proposal.

a. Upon completion of a proceeding under subsection 4.5-2(k)(1) above, the licensee seeking a renewal license may, on its own initiative and shall at the request of the city, submit a proposal for renewal license.

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

c. The city may establish a date by which such proposal shall be submitted.

(3) Fees. Notwithstanding any other requirement of this chapter, each applicant for a license renewal must furnish with its proposal a nonrefundable filing fee in the amount established by the city council, by cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the city manager made payable to the city. No proposal for a license renewal shall be considered without receipt of said fee. The fee will be used for the purpose of covering the city's cost in consideration of a renewal license proposal. The fee shall be handled in the same manner as provided for an initial license fee in subsection 4.5-2(h) of this chapter and shall, upon granting of a renewal license, be a credit against licensee fees under this chapter.

(4) Renewal assessment.

a. Upon licensee's submittal of a renewal license proposal to the city, the city shall provide prompt public notice of such renewal license proposal and, during the four-month period that begins on the completion of any proceedings under subsection 4.5-2(k)(1) above (i) issue a renewal license or (ii) issue a preliminary assessment that the license should not be renewed and, at the request of the licensee or on its own initiative commence an administrative proceeding in accordance with subsection 4.5-2(k)(4)b. A preliminary determination that a license should not be renewed shall be in writing addressing whether;

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

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

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

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

b. A renewal license proposal shall be placed on a city council agenda for public comment in the manner set forth in subsection 4.5-2(i)(8) above. The licensee shall be afforded adequate notice and the licensee and the licensor shall be afforded fair opportunity for full participation including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection 4.5-2(k)(1)), require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

c. At the completion of a proceeding under subsection 4.5-2(k)(4)b. above, the city shall (i) issue a written decision granting or denying the renewal license proposal based upon the record of such proceeding and (ii) transmit a copy of such decision to the licensee. Such decision shall state the reasons therefor.

(5) Denial. Any denial of a renewal license proposal shall be based on one (1) or more adverse findings made with respect to the factors described in subsections 4.5-2(k)(4)a.(i) through (iv) above, pursuant to the record of the proceeding. The city may not base a denial of a renewal license on a failure to substantially comply with the material terms of the license under subsection 4.5-2(k)(4)a.(i) or on events considered under subsection 4.5-2(k)(4)a.(ii) unless the city has provided the licensee with notice and the opportunity to cure, or in any case in which it is documented that the city has waived its right to object or has effectively acquiesced.

(6) Appeal. Any licensee whose renewal license proposal has been denied by a final decision of the city made pursuant to subsection 4.5-2(k)(5) above, or has been adversely affected by a failure of the city to act in accordance with the procedural requirements of this subsection 4.5-2(k), may appeal such final decision or failure pursuant to the provisions of Sections 626 and 635 of the Cable Act.

(7) Informal process. Notwithstanding the provisions of subsections 4.5-2(k)(1) and 4.5-2(k)(5) above, the licensee may submit a renewal license proposal, together with the required fee, pursuant to this subsection 4.5-2(k)(7) at any time, and the city may, after affording the public adequate notice and opportunity for comment, grant or deny such renewal license proposal at any time (including after proceedings pursuant to this subsection 4.5-2(k) have commenced). The provisions of subsections 4.5-2(k)(1) and 4.5-2(k)(5) shall not apply to a decision to grant or deny a renewal license proposal under this subsection 4.5-2(k)(7). The denial of a renewal license pursuant to this subsection 4.5-2(k)(7) shall not affect action on a renewal license proposal that is submitted in accordance with subsections 4.5-2(k)(1) and 4.5-

2(k)(5).

(8) Renewal not to affect revocation. Notwithstanding the provisions of subsections 4.5-2(k)(1) through (7) above, any lawful action to revoke this license for cause shall not be negated by the subsequent initiation of renewal proceedings by the licensee under this subsection 4.5-2(k).

(l) Transfers and assignments.

(1) A license shall not be sold, assigned, or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person, except an affiliate of licensee, without prior written consent of the city, which consent shall not be unreasonably withheld. Such consent shall not be required for a transfer in trust, mortgage, or other hypothecation in whole or in part to secure an indebtedness. The proposed assignee must show that the transfer will not cause any increased risks of nonperformance of the license or any loss to the city of its bargained-for consideration in the license. The assignee's showings must, at a minimum, detail facts sufficient to show the assignee's technical ability, financial capability, legal qualifications, general character qualifications and such other qualifications as determined by the city. The assignee must agree to comply with all provisions of the license.

(2) No change, transfer, or acquisition of control of the licensee shall occur without prior written consent of the city, which consent shall not be unreasonably withheld. The licensee shall promptly notify the city of any actual or proposed change in, transfer to or acquisition by, any other party of control of the licensee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. The sale or transfer of the license to an affiliate of a licensee does not require prior approval of the city as long as (i) the sale or transfer of the existing or newly created equity interest in the licensee does not result, directly or indirectly, in a transfer of control of the licensee and (ii) the transferee already holds an ownership interest in the licensee of twenty-five (25) percent or more.

(3) A rebuttable presumption that transfer of control has occurred shall arise upon the acquisition or accumulation by any person, or group of persons (other than an affiliate of licensee), owning more than twenty-five (25) percent of the voting interest of the licensee or of the person exercising management authority over the licensee.

(4) Except in the case of an assignment of the license to an affiliate of licensee, upon written notification by the licensee to the city of a proposed assignment of the license, or transfer of control or ownership of the licensee company, the city manager shall issue a written notice fixing and setting forth the day, hour and place certain when and where the city council will hold a public hearing to consider the transfer and any persons having any interest therein may appear and be heard. The city clerk shall cause such notice to be published in a newspaper of general circulation within the city. The city clerk also shall cause a copy of such notice to be mailed to the licensee at least ten (10) days prior to the date specified for the hearing. At the time set for such hearing, or at any continuation thereof, the city council shall proceed to hear the matter. At such hearing, the city council shall determine whether the assignment of the license or transfer of control or ownership of the licensee company will be detrimental or injurious to the best interests and welfare of the subscribers and users or the city council. City



council consent to the assignment of the license or transfer of control or ownership of the licensee company shall be by resolution at a public meeting held subsequent to the public hearing thereon. Such resolution shall thereupon become and shall be a part of any license granted under this chapter and affected thereby.

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

(6) In the absence of extraordinary circumstances, the city council will not approve any transfer or assignment of a license within three (3) years after, and in no event prior to, substantial completion of construction of a proposed cable system.

(7) Notwithstanding any other requirement of this chapter, each applicant for a transfer or assignment must furnish with its request a nonrefundable filing fee in the amount established by the council, by cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the city manager made payable to the City of Avondale. No proposal for a transfer or assignment of license shall be considered without receipt of said fee. The fee will be used for the purpose of covering the city's cost in consideration of a transfer or assignment of license. The fee shall be handled in the same manner as provided for an initial license fee in subsection 4.2-5(h) of this chapter and shall, upon granting the assignment or transfer, be a credit against license fees under this chapter.

(8) The city may reserve in the license a right of first refusal to purchase a licensee's cable system.

(9) In no event shall a transfer of ownership be approved without the successor-in-interest becoming a signatory to the license.

(10) As long as a grant, rent, or lease does not amount to a transfer as defined in this subsection 4.2-5(i) and is made in the ordinary course of business with prior notice to the city, a licensee in the normal course of providing cable services or other telecommunication services may grant, rent, or lease use of its cable system to other persons. Any such use shall be restricted to and consistent with such uses as the licensee is authorized in this chapter and the license or under other applicable law. Any such use shall be in compliance with applicable federal and state law. Any such grants, lease, or rent by the licensee shall not, however, thereby relieve licensee of any requirement or obligation under its license as to its use of the public ways, and any such grant, rent, or lease shall require that such other person comply with the appropriate provisions of this chapter and the license as such use warrants. The grant, lease, or rent shall expressly provide for the authority of the city under applicable law to regulate the use provided by the grant, lease, or rent (including but not limited to the authority to protect the public welfare, safety and health) and to enforce compliance with any applicable standards established by this chapter or the license.

SECTION 6. Chapter 4.5 of the Avondale City Code is amended by amending Section 4.5-3 pertaining to Initial and renewal license requirements and which shall read as follows:

4.5-3 – Initial and renewal license requirements.

- (a) Effect of award of license.
  - (1) Binding effect. Upon award of an initial or a renewal license pursuant to this chapter, a licensee shall agree to be bound by all the terms and conditions contained in this chapter.
  - (2) Incorporation by reference of proposal for initial or renewal license. A licensee under an initial or renewal license also agrees to provide all of the cable services specifically set forth in its proposal, if provided, to provide cable services within the corporate limits of the city and by its acceptance of the initial or renewal license, the licensee specifically agrees that its proposal is hereby incorporated by reference and made a part of the initial or renewal license. If such proposal or the provisions of a license conflict with the provisions of this chapter, the provisions of this chapter shall prevail.
- (b) Payment of license fee.
  - (1) For the reasons that (i) the public ways that are used by the licensee in the operation of its cable system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, (ii) the grant to the licensee for the use of said public ways is a valuable property right without which the licensee would be required to invest substantial capital in right-of-way costs and acquisition and (iii) the city will incur costs in regulating and administering the license, the licensee shall pay to the city an amount no less than five (5) percent of licensee's gross revenues during the term of the license (the "license fee").
  - (2) Licensee agrees and acknowledges that the city is currently prohibited by federal law from changing a license fee greater than five (5) percent. Should federal regulations be amended in the future to allow the city to receive a fee greater than five (5) percent of licensee's gross revenues, the city shall have the right to increase the fee as specified in the license.
  - (3) The payment of the license fee by the licensee to the city shall be made quarterly by delivery of the same to the city manager on or before the thirtieth (30th) day following the end of such quarter. If such payment is not timely made, the city may impose interest at a rate of one and one-half (1½) percent per month commencing from the date payment should have been made and continuing until full payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. In addition to interest that may be assessed under this subsection 4.5-3(b)(3), if licensee fails to pay any license fee when due, licensee shall be subject to the following civil penalties:
    - a. A licensee who fails to pay the license fee or any portion thereof within the time prescribed shall pay a penalty of ten (10) percent of the unpaid fee each month.
    - b. A licensee who fails or refuses to pay a license fee or any portion thereof after notice and demand by the city shall pay an additional penalty of twenty-five (25) percent of the unpaid fee.

- c. If the cause of failure to pay the licensee fee or any portion thereof is determined by the city to be due to civil fraud or evasion of the license fee, the licensee shall pay an additional penalty of fifty (50) percent of the amount of deficiency.
- (4) The city shall have the right to (i) inspect the licensee's financial records and (ii) audit and recompute any amounts determined to be payable under this chapter; provided, however, that such audit of financial records from a specific licensee fiscal year shall take place within thirty-six (36) months following the close of that same licensee fiscal year. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the licensee by the city. Said notice shall include a copy of the audit report; provided, however, that licensee shall not be required to pay such deficiency until thirty (30) days after completion of the administrative review process if licensee commences such process pursuant to subsection 4.5-7(g)(1)c. If there is a deficiency in the payment of license fees to the city of ten (10) percent or more, the city may assess the cost of the audit to the licensee. Adjustments for any overpayment by licensee will be credited to subsequent license fee payments.
  - (5) The cost to licensee of any city right-of-way construction permit, inspection, zoning review, and other fees that the city imposes under City Code requirements on licensee's construction activities shall be included in the license fee.
- (c) Use of telephone facilities. If the licensee of any license granted hereunder uses a telephone company's cable system distribution channels furnished to the licensee pursuant to tariff or contract on file with a regulatory body having jurisdiction and said licensee makes no use of the public ways independent of such telephone-company-furnished facilities, said licensee remains fully bound by the terms of its license and this chapter.
- (d) Required services and facilities.
    - (1) A license shall include a description of (i) proposed cable system design, (ii) the initial programming and cable services to be offered, (iii) facilities proposed for local programming and (iv) facilities to be offered to various community institutions.
    - (2) A licensee shall maintain the mix, level and quality of programming within the broad categories of video programming or other services set forth in its license.
    - (3) A license shall include a provision for the licensee to provide channel capacity for community programming on terms and conditions specified in the license.
  - (e) Subscriber services; rates.
    - (1) Initial rates. A licensee under an initial or renewal license may establish initial rates for its cable services in accordance with the rates contained in such licensee's proposal for an initial or renewal license.
    - (2) Authority to regulate rates. To the extent permitted, the city may regulate the rates for cable service in accordance with federal and state law.

- (3) Notice of rates. Notice of rates shall be given in accordance with subsection 4.5-6(d) of this chapter.
- (f) Access and public safety channels.
  - (1) Channel capacity. The licensee shall provide channel capacity for a minimum of one public safety channel dedicated to the city fire and police departments, one government access channel dedicated to the city, and one education access channel dedicated to all schools within the city.
  - (2) Channel management. The operation of the public safety channel, the government access channel, and the education access channel shall be the responsibility of the city.
  - (3) Excess capacity. The licensee may be permitted to utilize unused access channel capacity under rules and procedures established by the city.
- (g) Area-wide interconnection of cable systems.
  - (1) Interconnection required. Subject to the limitations of applicable federal and state law, licensee shall interconnect government or educational access channels of the cable system with any or all other cable systems owned by a licensee or an affiliate as may be provided in the license.
  - (2) Cost. Subject to the limitation of applicable federal and state law, when such interconnection is required within the city limits, the cost shall be borne by all licensees to be interconnected. If licensees cannot establish a cost sharing formula for interconnection or cannot resolve technical issues, the city manager may establish a cost sharing formula and resolve technical issues and his decision shall be final and conclusive.
  - (3) Relief. A licensee may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon petition by the licensee to the city. The city shall grant said request if it finds that a licensee negotiated in good faith and failed to obtain an approval from another cable system(s), governmental entity or educational institution of the proposed interconnection.
- (h) Changes in cable technology.
  - (1) The city and licensee shall meet at least once every three (3) years or upon request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community and other factors impacting cable television. As a result of these discussions, this license may be modified by the city and the licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community or other factors impacting cable television.
  - (2) If any of the following conditions occur, and upon written request of either licensee or the city, the city manager and licensee agree to meet and discuss in good faith the terms of a mutually agreeable license amendment:

- a. Cable service similar to cable television service offered by licensee is provided by any entity using the public ways that is not subject to similar licensing requirements of the city.
  - b. Any other significant event occurs, including but not limited to changes of federal or state law or a final non-appealable order or judgment by a court of competent jurisdiction, which either licensee or the city believes may impact the current terms and conditions of the license.
- (3) The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the city council for proposed city council action within ninety (90) days of such written request to relieve the city or the licensee from any commercial impracticability that arises from the condition in question. This provision shall not require that the license be amended. However, it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.
- (i) Time is of the essence. For any license entered into pursuant to this chapter, time shall be deemed of the essence and any failure of the licensee to perform within the time allotted, or within a reasonable time if a period is not specified, shall be sufficient grounds for the city to invoke liquidated damages or revocation of a license in accordance with subsection 4.5-7(f) and (i) below.
  - (j) Acceptance and effective date of license.
- (1) No license granted pursuant to the provisions of this chapter shall become effective unless and until all provisions required in this section 4.5-3 and subsections 4.5-7(c), (d) and (e) below are done and completed, all of such provisions being hereby declared to be conditions precedent to the effectiveness of any such license granted hereunder. If any of such provisions are not done and completed in the time and manner required, the license shall be null and void.
- (2) Within twenty (20) days after approval by the city council of any license, or within such extended period of time as the city council in its discretion may authorize, the licensee shall file with the city clerk the fully executed license, in form satisfactory to the city managerattorney, together with the letter of credit, construction bond and insurance policies required by pursuant to subsection 4.5-7(c)(2), (d) and (e), respectively, and its license to be bound by and to comply with and to do everything that is required of the licensee by the provisions of this chapter and the applicable license. Such acceptance shall be acknowledged by the licensee before a notary public, and shall, in form and content, be satisfactory to and approved by the city managerattorney.

SECTION 7. Chapter 4.5 of the Avondale City Code is amended by amending Section 4.5-7 pertaining to Administration and enforcement provisions and which shall read as follows:

4.5-7 - Administration and enforcement provisions.

- (a) Reports.

- (1) Each year the licensee shall brief the offices of the city manager, no later than one hundred twenty (120) days after the end of the licensee's fiscal year. The briefing shall include a description of all major activities applicable to its operation during the preceding twelve-month period. At the briefing, licensee shall submit a written report that includes the following information, specific to the city: (i) number of homes passed, (ii) number of cable plant miles, (iii) number of subscribers for each type of cable service offered and (iv) the gross revenues from each source attributable to the operations of licensee from within the city. An officer of the licensee shall verify this report as being correct. There shall be submitted along with this report such other information reasonably related to license compliance as the city shall reasonably request.
- (2) Upon request, there shall be provided to the city copies of any communications and reports submitted by licensee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a cable system in the city.
- (3) Licensee shall provide the city with regular reports, as needed, to establish licensee's compliance with the various standards and other provisions of this chapter.
  - (b) Inspection of property and records.
    - (1) At all reasonable times, the licensee shall permit any duly authorized representative of the city to examine all property of the licensee, together with any appurtenant property of the licensee situated within or without the city, and to examine and transcribe any and all maps and other records kept or maintained by the licensee or under its control that relate to license compliance and deal with the operations, affairs, transactions, or property of the licensee.
    - (2) The licensee shall at all times make and keep full and complete plans and records showing the exact location of all cable system equipment installed for use in public ways and other places in the city and make them available to the city for review upon request.
    - (3) The licensee shall provide the city manager maps or sets of maps drawn to scale, showing the location of the licensee's underground and above ground facilities. Upon request, such maps or sets of maps shall be provided in an electronic format compatible with the current city electronic format.
  - (c) Protection of city against liability.
    - (1) Indemnification.
      - a. Licensee shall fully indemnify, defend, and hold harmless the city, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants, and employees from and against any and all costs, damages, expenses, claims, suits, actions, liabilities, and judgments for damages, including but not limited to, expenses for legal fees, whether suit be brought or not, and disbursements and liabilities incurred or assumed by city in connection with:

- (i) Damage to persons or property, in any way arising out of or through the acts or omissions of licensee, its servants, officials, agents, attorneys, representatives, or employees;
  - (ii) Requests for relief arising out of any licensee action or inaction which results in a claim for invasion of right of privacy, for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; or of any other right of any person, firm, or corporation;
  - (iii) Any and all claims arising out of licensee's failure to comply with the provisions of this chapter or a license or any federal, state or local law or regulation applicable to licensee or the cable system;
  - (iv) Any and all disputes arising out of a claim by any party other than city wherein damages or other relief is sought as a result of (a) the city's cable system licensing of licensee or (b) the renewal or non-renewal of licensee's cable system license.
- b. If a lawsuit covered by the provisions of subsection 4.5-7(c)(1) is brought against city, either independently or jointly with a licensee, or with any other person or municipality; the licensee, upon notice given by city, shall defend city at the cost of the licensee. If final judgment is obtained against city, either independently or jointly with licensee or any other defendants, the licensee shall indemnify city and pay such judgment with all costs and attorneys fees and satisfy and discharge the same.
- c. The city shall cooperate with the licensee and reserves the right to participate in the defense of any litigation.
- d. The city is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives, and/or employees.
- e. A licensee shall make no settlement in any matter identified above without the city's written consent, which shall not be unreasonably withheld. Failure to inform the city of settlement shall constitute a breach of the license and the city may seek any redress available to it against the licensee whether set forth in this chapter or under any other municipal, state or federal laws.
- f. All rights of the city, pursuant to indemnification, insurance, letter of credit, or performance bond(s), as provided for by this chapter, are in addition to all other rights the city may have under this chapter or any other code, rule, regulation or law.
- g. The city's exercise of or failure to exercise all rights pursuant to any section of this chapter shall not affect in any way the right of the city subsequently to exercise any such rights or any other right of city under this chapter or any other code, rule, regulation or law.
- h. It is the purpose of this section 4.5-7 to provide maximum indemnification to the city under the terms and conditions expressed and, if there is a dispute, this section 4.5-7 shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the city by the licensee.

- i The provisions of this section 4.5-7 shall not be dependent or conditioned upon the validity of this chapter or the validity of any of the procedures or agreements involved in the award or renewal of a license, but shall be and remain a binding right and obligation of the city and a licensee even if part or all of this chapter, or the grant or renewal of a license, is declared null and void in a legal or administrative proceeding. It shall be expressly stated in a license that it is the intent of the licensee and city, upon the effective date of the license, that the provisions of this section 4.5-7 survive any such declaration and shall be a binding obligation of and inure to the benefit of the licensee and city and their respective successors and assigns, if any.
- (2) Comprehensive liability insurance.
- a. Upon acceptance of a license, the licensee shall file with the city clerk and shall thereafter during the entire term of such license maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies, which shall insure licensee and provide primary coverage for the city, its officers, elected officials, boards, commissions, agents, and employees, against liability for loss or liability for personal injury, death, property damage (both automobile and non-automobile caused), or other damages. Such policy or policies shall include insurance against damages from unfair competition, copyright infringement (common law or statutory), and a failure of licensee to secure consents, occasioned by any activity or operation of licensee under such license, and regardless of any claimed or actual activities of city, its officers, boards, commissions, agents and employees. The city council, in any license granted, may waive the requirement for insurance from one or more perils mentioned in the last preceding sentence upon a finding that such insurance cannot be procured or cannot be procured at a reasonable cost, such reasonable cost to be determined by the city council in its sole discretion, and in connection there with may reduce the otherwise required limits on coverage hereafter set forth. Such policy or policies shall be issued by a company duly licensed by the State of Arizona with an AM Best, Inc. rating of B ++ 6 or above ~~and shall be in a form approved by the city attorney~~, with minimum combined single limits of liability coverage in the amount of three million dollars (\$3,000,000.00). The policy or policies shall name the city, its officers, elected officials, boards, commissions, agents, and employees as additional insured and contain a provision that a written notice of any cancellation, modification or reduction in coverage of said policy shall be delivered to the city clerk thirty (30) days in advance of the effective date thereof. No license granted under this chapter shall be effective unless and until each of the foregoing policies of insurance as required herein has been delivered to the city clerk. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this subsection.
  - b. The city council may require increases in the amount of types of coverage no more frequently than every three years so as to ensure full protection of the city and the public. Such increases shall be based upon the change in the



Consumer Price Index, Western Division, 1982-84=100 (the "Index" as published by the U.S. Department of Labor's Bureau of Labor Statistics or the most closely equivalent successor thereto in the event the Index is terminated or changed). The licensee shall have six (6) months from the date of notification from the city manager to comply with any increase.

- c. A licensee may self insure the above described policy coverages if such licensee or its parent is of sufficient financial standing to reasonably provide such insurance. A licensee that elects to self insure shall file with the city a certificate of insurance as specified by the city.
- (d) Letter of credit.
  - (1) Within thirty (30) days after the award or renewal of a license, a licensee shall deposit with the city an irrevocable letter of credit in an amount not to exceed twenty-five thousand dollars (\$25,000.00) issued by a federally insured commercial lending institution. The form and substance of said letter of credit shall be used to ensure licensee's (i) faithful performance of all provisions of this chapter and resulting license and (ii) compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the city having jurisdiction over its acts or defaults under a license and the payment by the licensee of any penalties, liquidated damages, claims, liens and taxes due to the city which arise by reason of the construction, operation, or maintenance of the cable system, including cost of removal or abandonment of any property of the licensee.
  - (2) The letter of credit may be drawn upon by the city by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the city manager (i) certifying that the licensee has been found to have failed to comply with its license or this chapter, (ii) stating the nature of noncompliance and (iii) stating the amount being drawn. Examples of the nature of the noncompliance for drawing upon the letter of credit include, but are not limited to, the following:
    - a. Licensee's failure to pay to the city any license fees or taxes after ten (10) days' written notice of delinquency.
    - b. Licensee's failure to pay to the city, after ten (10) days' written notice, after all judicial remedies have been exhausted, any amounts due and owing the city by reason of the indemnity provisions of subsection 4.5-7(c) above;
    - c. Licensee's failure to pay to the city any liquidated damages due and owing to the city pursuant to the license.
  - (3) The letter of credit shall be structured in such a manner so that if the city at any time draws upon the letter of credit, upon notice to the licensee by the issuing lending institution, licensee shall increase immediately the amount of available credit to the extent necessary to replenish that portion of the available credit exhausted by honoring the city's draft. The lending institution shall notify the city of the replenishment by licensee. The intent of this subsection is to make available to the city at all times a letter of credit in the amount of twenty-five thousand dollars (\$25,000.00).

- (4) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by a license or authorized by law, and no action proceeding against a letter of credit shall affect any other right the city may have.
- (e) Construction bond.
  - (1) Within thirty (30) days after the award or renewal of a license, a licensee shall obtain and maintain throughout the period of cable system construction, at its cost and expense, and file with the city clerk, a corporate surety bond issued by a company authorized to do business in the State of Arizona, ~~and found acceptable by the city attorney,~~ in an amount established in a license agreement solely for the purpose of guaranteeing the timely construction and/or reconstruction of the cable system and the safeguarding of private property during construction and/or reconstruction. The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the city, jointly and severally from the principal and surety, any and all damages, losses, or costs suffered by the city resulting from the failure of a licensee to satisfactorily complete construction and/or reconstruction of its cable system throughout the license area pursuant to the terms and conditions of this chapter and such licensee's license.
  - (2) City authorization is required for any extension of the prescribed construction or reconstruction time limit. The construction bond shall be available throughout any such extension period.
  - (3) The construction bond shall be terminated only after the city manager finds that a licensee has satisfactorily completed initial construction and activation or reconstruction of its cable system pursuant to the terms and conditions of this chapter and such licensee's license.
  - (4) The rights reserved to the city with respect to the construction bond 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 construction bond shall affect any other rights the city may have.
  - (5) The construction bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 60 days after receipt by the City, by registered mail, or written notice of such intent to cancel or not to renew.
- (f) Liquidated damages.
  - (1) Each license granted by the city shall state that a licensee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the license will result in damage to the city, and that it is and will be impracticable to determine the actual amount of such damage caused by delay or nonperformance; the license shall include provisions for liquidated damages to be paid by the licensee, in amounts set forth in the license and chargeable to the letter of credit for the following concerns:

- a. Failure to complete system construction or reconstruction in accordance with this chapter and/or the license, unless the city council specifically approves the delay by motion or resolution;
  - b. Failure to provide a cable connection within the time(s) set forth in subsection 4.5-4(c) above;
  - c. Failure to properly restore the public right-of-way or to correct related violations of specifications, code or standards after having been notified by the city to correct such defects;
  - d. Failure to comply with subscriber service standards of this chapter;
  - e. Failure to test, analyze and report on the performance of the cable system following a written request pursuant to subsection 4.5-4(e)(1);
  - f. Failure to provide in a continuing manner the type of services proposed in the accepted proposal for initial license or in the initial or renewal license unless the city council specifically approves modification of a licensee's obligation;
  - g. Failure to cure any violation of subsection 4.5-6(c), following notice and an opportunity to cure pursuant to the provisions of that subsection; and
  - h. Any other action or non-action by the licensee, regarding a requirement of a license to which none of the above apply, and set forth in the license.
- (2) If the city manager concludes that a licensee is in fact liable for liquidated damages pursuant to this subsection, he/she shall issue to licensee by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the nature of the violation and the amount of the proposed assessment. The licensee shall, within thirty (30) days of receipt of such notice:
- a. Respond to the city in writing, contesting the city's assertion of violation and providing such information or documentation as may be necessary to support licensee's position; or
  - b. Cure any such violation (and provide written evidence of the same), or, if, by the nature of the violation, such violation cannot be cured within such thirty-day period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. Licensee shall report to the city, in writing, at thirty-day intervals as to licensee's efforts, indicating the steps taken by licensee to cure said violation and reporting licensee's progress until such violation is cured.
- (3) If licensee contests the city's assertion of a violation, within 15 days of notice of such contest the city shall schedule a hearing in accordance with the procedures set forth in subsection 4.5-7(g) below.
- (g) Administrative hearing.
- (1) Within fifteen (15) days of:
- a. Receipt of notice of contest pursuant to 4.5-7(f)(2)a. above;

- b. Expiration of the response time referred to in subsections 4.5-6(c)(7) above or 4.5-7(g)(3) below; or
- c. Notice from licensee that it contests an audit determination of license fees under subsection 4.5-3(b)(4);

an administrative hearing shall be scheduled by the city manager. Licensee shall be afforded an opportunity to be heard and to present evidence. Within fifteen (15) days after the conclusion of such hearing, the city manager shall issue a determination. In that determination the city manager may:

- a. Find that licensee is not in violation of the terms of the license or this chapter;
  - b. Find that the licensee is in violation, but that such violation was with just cause and waive any liquidated damages that might otherwise be imposed;
  - c. Find that licensee is in violation of the terms of the license or this chapter, take corrective action and foreclose on all or any appropriate part of the letter of credit provided pursuant to subsection 4.5-7(d) above;
  - d. Find that licensee is in violation of the terms of the license or this chapter and impose liquidated damages; or
  - e. In the case of a material violation of its license or this chapter, recommend that the city council terminate the license, provided that the city council may take action on any such recommendation only after a public hearing as set forth in subsection 4.5-7(h) below.
- (2) If the city manager determines that licensee has committed a violation, the determination shall be accompanied by a detailed statement of reasons for the determination, including findings of fact.
- (3) The decision of the city manager shall become final unless licensee requests a public hearing before the city council within fifteen (15) days of its receipt of the statement of reasons and findings of fact by the city manager.
- (h) Hearing by city council. If a public hearing before the city council is requested by licensee or is held pursuant to subsections 4.5-7(g)(1)e. or 4.5-7(g)(3), it shall be de novo and it shall convene within thirty (30) days of the request therefor. The city council may designate three (3) of its members to act as a hearing subcommittee to collect all evidence in the matter and to present written findings of fact and conclusions of law to the entire city council. Formal rules of evidence shall not apply. The city council's decision, which shall include findings of fact, shall be made not later than forty-five (45) calendar days after the conclusion of the hearing. In that decision, the city council may:
- (1) Find that licensee is not in violation of the terms of the license or this chapter;
  - (2) Find that licensee is in violation but that such violation was with just cause and waive any liquidated damages or penalty that may otherwise be imposed;
  - (3) Find that licensee is in violation of the terms of the license or this chapter, take corrective action and foreclose on all of any appropriate part of the letter of credit provided pursuant to subsection 4.5-7(d) above to pay the cost thereof;

- (4) Find that licensee is in violation of the terms of the license or this chapter and impose liquidated damages; or
- (5) In the case of a material violation of the license or this chapter within the meaning of subsection 4.5-7(i) below, declare the licensee in violation and revoke the license.
  - (i) Revocation.
    - (1) In addition to all other rights and powers retained by the city council under this chapter or otherwise, the city council shall have the right to revoke the license and all rights and privileges of the licensee thereunder upon a material breach of the license terms and conditions or violation of this chapter, which substantially affects (i) the provision or quality of cable services, (ii) the city's ability to effectively regulate the licensee or (iii) the city's collection of all fees and charges. The power of revocation shall not be used if the breach is a result of force majeure. The breaches appearing on the list set forth below shall be considered material breaches. The list is not exhaustive:
      - a. Willful or grossly negligent repeated violations of this chapter, the license or the representations made in the proposal, or any rule, order, or regulation of the city made pursuant to this chapter;
      - b. An attempt to dispose of any of the facilities or property of the cable system authorized by the license to prevent city from acquiring it, as provided for herein;
      - c. Attempt to evade any material provision of the license or practice any fraud or deceit upon the city or its subscribers or customers;
      - d. Failure to begin or complete cable system construction, reconstruction, or cable system extension as provided under the license;
      - e. Failure to provide the types of categories of programming and cable services promised;
      - f. Recurrent failures to restore service on the entire or a substantial portion of the cable system after ninety-six (96) consecutive hours of interruption;
      - g. Recurrent service outages of the entire cable system or a substantial portion thereof which, in the aggregate, exceed ten (10) days in any thirty-day period;
      - h. Recurrent failures after notice by the city manager to provide service to any part of the licensee service area, consistent with subsection 4.5-4(c);
      - i. Unlawful acts or omissions by licensee or its servants, officials, agents, representatives or employees, which result in the city's refusal to award a license to any other person, partnership, corporation or other legal entity.
    - (2) Before proceeding with a revocation hearing, the city manager shall make a written demand that the licensee comply. If a violation by the licensee continues for a period beyond that set forth in the written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city council may revoke the license as provided in subsection 4.5-7(i).

- (j) Continuity of service mandatory.
  - (1) It shall be the right of all subscribers to continue receiving cable service insofar as their financial and other obligations to a licensee are honored.
  - (2) If the license terminates, the licensee shall cooperate with the city to ensure continuity of cable service to all subscribers for a period not to exceed ninety (90) days. Said period may be extended by mutual agreement between the City and licensee. During such period, licensee shall be entitled to the revenues for any period during which it operates the cable system.
  - (3) If licensee fails to operate the cable system for ninety-six (96) consecutive hours without prior approval of the city or without just cause, the city may, at its option, operate the cable system or designate an operator until such time as licensee restores cable services under conditions acceptable to the city or a new permanent operator is selected. If the city is required to fulfill this obligation for a licensee, the licensee shall reimburse the city for all reasonable costs or damages that are the result of the licensee's failure to perform.
- (k) Failure of city to enforce a license; no waiver of the terms thereof. A licensee shall not be excused from complying with any of the terms and conditions of a license or this chapter by any failure of the city upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
  - (l) Waivers.
    - (1) Any provision of this chapter may be waived, at the sole discretion of the city, by resolution of the city council.
    - (2) Licensee may submit a request for waiver to the city council at any time during the license term. Such request for waiver may, at the sole discretion of the city council, be set for public hearing and a decision shall be made within one hundred twenty (120) days following its submission.
    - (3) The city council may authorize the economic, technical or legal evaluation of such licensee's waiver request and the licensee shall be required to reimburse the city for all expenditures incurred by the city in connection with such evaluation. The city may require that licensee deposit with the city an amount estimated by the city to cover the city's expenditures incurred in connection with such evaluation.
    - (4) This subsection 4.5-7(l) is enacted solely for the convenience and benefit of the city and shall not be construed in such a manner as to create any right or entitlement for the licensee.
  - (m) Validity of license. Licensee shall acknowledge as a condition of acceptance of a license, that licensee was represented throughout the negotiations of any license award or renewal by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding the license.
  - (n) Miscellaneous provisions.
    - (1) When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the office of the city clerk.

- (2) Neither licensee nor any of its officers or employees shall receive referral fees or gratuities from any television or radio sales or repair business.
- (3) Unless otherwise provided for in this chapter, any notice or other communication required or permitted to be given under this chapter shall be in writing and shall be deemed to have been duly given if (i) delivered to the office of the city manager or the address indicated by licensee for such notices, as applicable, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the office of the city manager or the address indicated by licensee for such notices, as applicable, (iii) given to a recognized and reputable overnight delivery service, to the office of the city manager or the address indicated by licensee for such notices, as applicable or (iv) delivered by facsimile transmission to the office of the city manager or the facsimile number indicated by licensee for such notices, as applicable, or at such other address, and to the attention of such other person or officer, as the city or the licensee may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the receiving party, (ii) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.
- (o) Force majeure. With respect to any provision of this chapter or any license granted pursuant thereto, the violation or noncompliance with which could result in the imposition of a financial penalty, liquidated damages, forfeiture, or other sanction upon a licensee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by licensee and is beyond its reasonable control.

SECTION 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. This is an emergency measure and is necessary for the immediate preservation of the public property. Without immediate regulatory action to comply with the provisions of the newly enacted provisions of Title 9, Chapter 13 of the Arizona Revised Statutes requiring the city to adopt the new Arizona Uniform Video Service License Agreement, License Application and Affidavit, the city code could conflict with State law. If passed by an affirmative vote of at least six (6) members of City Council, this Ordinance shall be effective immediately.

SECTION 6. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, July 22, 2019.

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Kenneth N. Weise, Mayor

ATTEST:

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Marcella Carrillo, City

Clerk APPROVED AS

TO FORM:

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Michael S. Wawro, City Attorney