

ORDINANCE NO. 2017-14

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, AMENDING CHAPTERS 6 AND 19 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 6-1 AND RENUMBERING IT AS SECTION 19-1 PERTAINING TO DEFINITIONS; BY AMENDING RESERVED SECTION 6-2 AND RENUMBERING IT AS SECTION 19-2; BY RENUMBERING SECTIONS 6-3 THROUGH 6-4 AS RESERVED SECTIONS 19-3 THROUGH 19-4; BY AMENDING SECTION 6-5 AND RENUMBERING IT AS SECTION 19-5 PERTAINING TO LICENSE TO OPERATE; REQUIRED; BY AMENDING SECTION 6-6 AND RENUMBERING IT AS SECTION 19-6 PERTAINING TO FAILURE TO HAVE LICENSE; VIOLATION; BY RENUMBERING SECTION 6-7 AS SECTION 19-7 PERTAINING TO AUTHORIZATION TO ENGAGE IN BUSINESS; BY AMENDING SECTION 6-8 AND RENUMBERING IT AS SECTION 19-8 PERTAINING TO LIMITATIONS OF LICENSE; BY AMENDING SECTION 6-9 AND RENUMBERING IT AS SECTION 19-9 PERTAINING TO ACQUISITION BY CITY; BY AMENDING SECTION 6-10 AND RENUMBERING IT AS SECTION 19-10 PERTAINING TO RIGHTS RESERVED TO THE CITY; INITIAL LICENSE; BY AMENDING SECTION 6-11 AND RENUMBERING IT AS SECTION 19-11 PERTAINING TO INITIAL LICENSE; APPLICATIONS; BY AMENDING SECTION 6-12 AND RENUMBERING IT AS SECTION 19-12 PERTAINING TO FEES; APPLICATION OF INITIAL LICENSE; BY AMENDING SECTION 6-13 AND RENUMBERING IT AS SECTION 19-13 PERTAINING TO SELECTION OF LICENSEE; INITIAL LICENSE; BY AMENDING SECTION 6-14 AND RENUMBERING IT AS SECTION 19-14 PERTAINING TO DURATION OF LICENSE; BY AMENDING RESERVED SECTION 6-15 AND RENUMBERING IT AS SECTION 19-15; BY RENUMBERING SECTIONS 6-16 THROUGH 6-19 AS RESERVED SECTIONS 19-16 THROUGH 19-19; BY AMENDING SECTION 6-20 AND RENUMBERING IT AS SECTION 19-20 PERTAINING TO RENEWAL; BY AMENDING SECTION 6-21 AND RENUMBERING IT AS SECTION 19-21 PERTAINING TO TRANSFERS AND ASSIGNMENTS; BY RENUMBERING

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THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-1 and renumbering it as Section 19-1 pertaining to Definitions and which shall read as follows:

Sec. 619-1. Definitions Purpose and findings.

The purpose of this Chapter is to establish a policy governing the management of Public Highways for the provision of Cable Services to enable the City to:

(1) Issue Licenses and franchises to corporations who use the Public Highways to provide Cable Services on a competitively neutral and nondiscriminatory basis, except in cases where state law forbids establishment of a License or franchise requirement;

(2) Manage the Public Highways in order to minimize the impact and cost to Peoria citizens of the placement of Cable System within Public Highways;

(3) Manage the Public Highways so as to maximize their efficient use, thereby minimizing the foreclosure of future additional uses of such Rights-of-Way; and

(4) Minimize congestion, inconvenience, visual impact, and other adverse effects on the City's Public Highways.

Therefore, in this Chapter the City Council intends:

(1) To ensure that locally elected officials manage local Public Highways consistent with their fiduciary trust obligations;

(2) To ensure compliance with public health, safety and welfare measures for Public Highways;

(3) To encourage public-private partnerships to provide Cable Systems needed for the most cost-effective delivery of public services, including Schools, libraries, police and fire protection, as well as private services;

(4) To conserve the limited physical capacity of the Public Highways held in public trust by the City; and

(5) To assure that the City's current and ongoing costs of granting and regulating private access to and use of the Public Highways are fully paid by the persons seeking such access and causing such costs.

SECTION 2. Chapter 6 of the Peoria City Code (1992) is amended by amending Reserved Section 6-2 and renumbering it as Section 19-2 and which shall read

as follows:

Sec. ~~619-2. Reserved Definitions.~~

For the purposes of this Chapter, Cable Licensing requirements, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory - not merely directory. All references to days shall mean calendar days, unless otherwise specified.

(1) "Access Channel" shall mean one or more channels dedicated in whole or in part for local non-commercial programming which is not originated by a cable company; 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 company under the provisions of Section 612 of the Cable Act.

(2) "Affiliate" means any person who owns or controls, is owned by or controlled by, or is under common ownership or control with Licensee.

(3) "Applicant" means a person, as defined in this section, who submits a proposal to provide Cable Service to the City.

(42) "Basic Service" shall mean any service tier which includes the retransmission of local television broadcast signals. Each such tier shall include all Access Channels, as defined in Section 611 of the Cable Act.

(53) "Cable Act" shall mean the Cable Communications Policy Act of 1984, as amended.

(6) "Cable License" means that ordinance, resolution or agreement which contains the right, authority or grant, given by the City enabling an entity person to construct, operate and maintain a Cable System.

(74) "Cable Services" or "Cable Service" shall be defined as the transmission to and or from Subscribers of video programming and other programming services, together with Subscriber interaction, if any, which is required for the selection of such programming and programming services.

(85) "Cable System" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services which includes video programming and which is provided to multiple Subscribers within the City (as hereinafter defined), but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only Subscribers in one or more

multiple dwelling units (defined below) under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers; or (d) any facility of an electric utility used solely for operating its electric utility systems. Any reference to Licensee's Cable System refers to the Cable System as a whole or any part thereof.

(96) "*Change of Service*" shall mean all requests by existing Subscribers for modifications to their Cable Service, including without limitation additions or deletions of premium services, additional outlets, remote controls and FM service. Such term shall not include initial installation of Basic Cable Service, total disconnection of Basic Cable Service or Service Calls.

(107) "*City*" shall mean the City of Peoria, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

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

(129) "*City Manager*" shall mean the City Manager or the City Manager's designee.

(1340) "*Completion of Construction*" or "*Complete System Construction*" shall mean "satisfactorily complete" and "fully activate." In each instance, these terms shall mean that, for aerial construction, strand has been put up and all necessary cable has been lashed, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored to the City's satisfaction and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed, that power supplies have been installed, that construction of the headends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the Cable System to be ready to deliver Cable Service to Subscribers has been completed with no unresolved violations of this Chapter or the License. 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.

(14) "Days" shall mean calendar days, unless otherwise specified.

(15) "Department" means that City 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 City Engineer or the Director of the Development and Engineering Department. Anyone seeking permits pursuant to this Chapter may obtain the necessary forms and information from the permit counter in the Development and Engineering Department.

(16) "FCC" means the Federal Communications Commission, or a designated representative.

(172) "Gross Revenues" shall mean all cash, credits, property of any kind of nature, or other consideration, less related bad debts ~~not to exceed up to a maximum of one and one-half percent (1-1/2%) annually, that is received directly or indirectly by the cable operator, its Affiliates, subsidiaries, or parent or any person, firm or cooperation in which the cable operator has a financial interest or that has a financial interest in the cable operator and that is derived of such cash, credits and property, received directly or indirectly by a Licensee, its affiliates, subsidiaries, parent and any person, firm or corporation in which a Licensee has a financial interest or which has a financial interest in a Licensee, arising from or attributable to the Licensee's operation of its Cable System within the City, including, but not limited to:~~

- a. Revenue from all charges for services provided to Subscribers;
- b. Revenue from all charges for the insertion of commercial advertising upon the Cable System;
- c. Revenue from all charges for the leased use of studios;
- d. Revenue from all charges for the use of or lease of leased Access Channels or band width.
- e. Revenue from the production or transmission over the Cable System of video programming by Licensee including programming produced by its mobile facilities.
- f. Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a Subscriber to receive Cable Services;

g. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional Users.

h. And any other income derived from the Cable System.

i. "Gross Revenues" shall not include taxes collected by Licensee on behalf of any governmental authority; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary service provided to Licensee's employees and as required by this Chapter or any License; and dividends or other distributions made in respect of any stock or securities; value received by a Licensee (or any of its affiliates, subsidiaries or parent) through cooperative advertising.

j. "Gross Revenues" shall mean Gross Revenue as defined in A.R.S. § 9-505(6) as amended. ~~not include cash, credit, property of any kind or nature, or other consideration received by a licensee's affiliates, subsidiaries, parent, or any person, firm or corporation ("Affiliate") in which a licensee has a financial interest or which has financial interest in a Licensee for any sales of advertising on the Cable System, services to provide programming on the Cable System, production services, and/or telecommunication services which are Cable Services when such services are provided by an Affiliate, which has all the following characteristics: the Affiliate is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records), and a separate mission; it makes payments to Licensee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than Licensee in the same industry as Licensee; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of License Fees on Gross Revenues. Nothing contained in this exclusion from Gross Revenues shall be interpreted to exclude from Gross Revenues such cash, credit, property of any kind or nature or other consideration which would be considered the Licensee's Gross Revenues derived from the operation of the Cable System under the Cable Act. Except for Gross Revenue from such sales of advertising on the Cable System, services to provide programming on the Cable System, production services, or telecommunication services which are Cable Services received by such Affiliate, this paragraph shall not exclude from Gross Revenues any source of Gross Revenues which an existing Licensee itself is receiving at the time it is granted a License under this Chapter, as revised March 7, 1995. When a Licensee (or an Affiliate) holds one or more other cable television licenses in Maricopa County, Arizona and receives and allocates Gross Revenues from (b), (d) and (e), then Gross Revenues derived from~~

~~(b), (d), and (e), shall be allocated pro rata to the City based on the ratio of the number of Subscribers of Licensee (or an Affiliate), in the City to the number of Subscribers of Licensee (or an Affiliate) in all the jurisdictions in Maricopa County, Arizona, in which Licensee (or an Affiliate) holds a Cable License. If a Licensee does not allocate its Gross Revenues derived from (b), (d) and (e) from such other jurisdiction(s) then the number of Subscribers in such jurisdiction(s) shall not be included in the total number of Subscribers in all other jurisdictions.~~

(183) *"Initial Activation of Cable Service"* shall mean with respect to a particular segment (as defined in any License issued hereunder), or with respect to a group of segments or the entire Cable System, as the case may be, that, all proposed Cable Services and Cable System capabilities as stated in the License are available 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.

(194) *"Initial License"* shall mean a License sought by, or granted to, a person who does not hold a License.

(2015) *"License"* shall mean any authorization granted under this Chapter in terms of a privilege, permit, License or otherwise to construct, operate and maintain a Cable System in the City, and to provide non-cable communication services including Initial Licenses and Renewal Licenses (as defined herein). Any such authorization, in whatever term granted, shall not mean and include any License or permit required for the privilege of transacting and carrying on a business within the City in accordance with the City of Peoria Sales Tax Code or Chapter 11 of this Code.

(2146) *"Licensee"* means the person or entity to, which a License hereafter is granted for continuation, operation, maintenance, or reconstruction of a Cable System.

(2247) *"Licensor"* means the City of Peoria as represented by the City Council or City Manager, or their designee.

(2348) *"Multiple Dwelling Units" or "MDU"* means any adjacent building(s) such as apartments under common ownership containing more than four dwelling units used as living quarters.

(2449) *"Normal Business Hours"* means those hours during which most similar businesses in the City are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week or some weekend hours.

(2520) *"Normal Operating Conditions"* means those service conditions which are within the control of the Licensee. Those conditions which are not within

the control of the Licensee include, but are not limited to, natural disasters, civil disturbances, utility company power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Licensee include, but are not limited to, special promotions, pay-pay-view events, rate increase, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(2621) "*Outage*" shall exist whenever Licensee's Cable System experiences three (3) Subscriber complaints within any sixty (60) minute period of "no picture" within the same quarter (1/4) section.

(2722) "*Proposal*" or "*Application*" shall refer to a response by a qualified cable company in accordance with City specifications to provide Cable Services to residents, businesses, industries, and institutions within the City.

(28) "*Revocable Permit*" means that document issued by the City which authorizes (and such authorization may be rescinded) use of the City Right-of-Way as required in Chapter 23 of the City Code.

(2923) "*Renewal License*" shall mean a License sought by, or granted to, a person currently holding a valid License to provide Cable Services in the City.

(30) "*Right-of-Way*" or "*Public Highway*" means all roads, streets and alleys and all other dedicated public Rights-of-Way and public utility easements of the City.

(3124) "*School*" means public educational institutions including primary and secondary schools, colleges and universities.

(3225) "*Service Call*" shall result when service problems occur relating to: (i) any "no picture" complaint, (ii) a degraded signal or picture on one or more channels, (iii) property damage by Licensee's employees or authorized contractors, or (iv) in-house cable equipment problems.

(3326) "*Standard Drop*" shall mean a cable connection which requires no more than a 150-foot drop measured from the nearest point of a Subscriber's home or place of business to the nearest existing technically feasible point from which an individual Subscriber can be connected to the Cable System; involves only one outlet and standard materials; and does not involve a wall fish. In addition, a "Standard Drop" shall exclude custom installation work, including specific Subscriber requested work that requires non-standard inventory or cable routing requiring construction methods exceeding reasonable underground or aerial work.

(3427) "*Street*" or "*Public Street*" shall mean only a street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, Right-of-Way, or drive

which is owned by a public entity in fee or as to which a public easement has been dedicated for street purposes, and with respect to which, and to the extent that, City has a right to grant the use of the surface of, and space above and below in connection with a License for a Cable System, or other compatible uses.

(3528) "*Subscriber*" shall mean any person, firm, corporation or entity receiving for any purpose the Cable Service and non-Cable Service of a Licensee's Cable System.

(3629) "*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 License document may authorize switching at a level other than the control center.

(3730) "*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.

(3834) The terms "*will be available*," "*will be equipped*," "*will use*," "*will be designed*," "*will perform*," "*will be utilized*," "*will permit*," "*will allow*," "*will be activated*," "*will be initially connected*," "*will be capable*," "*will provide*," "*will include*," "*will employ*," "*will be established*," "*will be able*," "*will be implemented*," "*will be delivered*," "*will utilize*," and other similar uses of terms of a Licensee's Proposal denoting the activation of Cable Service, shall be interpreted to mean delivery or accomplishment at a date no later than the Initial Activation of Cable Service (as defined in this Section) unless otherwise expressly and clearly stated or qualified in the Licensee's Proposal to mean a more specific or different time.

SECTION 3. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-3 through 6-4 as Reserved Sections 19-3 through 19-4 and which shall read as follows:

Sec. 619-3. Reserved.

Sec. 619-4 Reserved.

SECTION 4. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-5 and renumbering it as Section 19-5 pertaining to License to operate; required and which shall read as follows:

Sec. 619-5. License to operate; required.

(a) No person shall construct, install, maintain or operate a Cable System within, along or under any Street and public way in the City, or any other

public property in the City, unless a Cable License has first been granted by the City Council pursuant to the provisions of these licensing requirements. Nothing in these licensing requirements shall be deemed to require the granting of any Cable License when in the opinion of the City it would not be in the public interest to do so.

(b) All provisions of these licensing requirements and any Cable License shall be binding upon the Licensee, its successors, lessees, or assignees.

(c) The granting of any Cable License pursuant to these licensing requirements shall be a privilege and shall not impart to the Licensee any right of property in any City rights-of-way or other City property.

(d) 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 television 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.

SECTION 5. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-6 and renumbering it as Section 19-6 pertaining to Failure to have License; violation and which shall read as follows:

Sec. ~~6~~19-6. Failure to have License; ~~violation~~.

(a) 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 therefore has first been obtained pursuant to the provisions of this Chapter, and unless such License is in full force and effect.

(b) From and after the effective date of this Article, it shall be unlawful for any person to construct, install or maintain within any Public Street in the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a Public Street but is designated or delineated as a proposed Public Street 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 Street or property or area has first been obtained pursuant to the provisions of this article, and unless such License is in full force and effect.

(c) 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.

(d) 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.

(e) Any person violating any part of Section 619-6 shall be guilty of a class one misdemeanor.

SECTION 6. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-7 as Section 19-7 pertaining to Authorization to engage in business and which shall read as follows:

Sec. 619-7. 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 Street, 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. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the License shall grant the right and privilege to the Licensee to provide non-cable communications services. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the City Council shall retain all authority to regulate non-cable telecommunication services to the extent necessary to protect the public interest and to ensure compliance with all provisions of this Chapter.

SECTION 7. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-8 and renumbering it as Section 19-8 pertaining to Limitations of License and which shall read as follows:

Sec. 619-8. Limitations of License.

(a) Any License granted under this Chapter shall be nonexclusive. The City specifically reserves the right to grant other Cable Licenses to any persons or to authorize itself to provide Cable Services without a Cable License at any time and in any area of the City if the City determines that it is in the public interest to do so.

(b) In addition to the limitations of this Chapter, a Cable License is subject to the limits established by A.R.S. § 9-506, et seq., and the

Communications Act of 1934, as amended, and the Cable Act, as amended, and all other applicable federal law or regulation and all applicable state law.

(c) Any privilege claimed under any License by the Licensee in any Public Street 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.

(d) 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.

(e) 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.

(f) 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 Streets.

(g) Any Cable License granted under these licensing requirements shall be deemed to be an executory contract under the provisions of 11 U.S.C. Section 365.

(h) The City shall not issue a Right-of-Way construction permit or other authorization for a provider to construct or install a Cable System in the City's Rights-of-Way unless the provider has first obtained the License or franchise required to occupy the City's Rights-of-Way under this Chapter.

SECTION 8. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-9 and renumbering it as Section 19-9 pertaining to Acquisition by City and which shall read as follows:

Sec. 619-9. Initial License: Application process.

(a) A person wanting to operate a Cable System in the City Rights-of-Way must apply for a Cable License prior to being issued permits.

(b) The City may hire outside experts as it deems necessary to assist in the review of a permit or a Cable License.

Each application for an Initial License to construct, operate or maintain any Cable System in the City shall be filed with the Office of the City Clerk and in the form of a Proposal for Initial License prescribed by the City. Said forms shall require, but shall not be limited to the following information:

- (1) the name, address, and telephone number of the Applicant;
- (2) a detailed statement of the corporation or business entity organization of the Applicant, including but not limited to, the following and to whatever extent required by the City;
- (3) the names, residence and business addresses of all officers, directors, and associates of the Applicant;
- (4) the names, residence and business addresses of all officers, persons and entities having a one percent (1%) or larger share of the ownership of the Applicant and the respective ownership share of each such person or entity;
- (5) 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;
- (6) 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;
- (7) 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; and
- (8) 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.

(9) a detailed description of the proposed plan of operation of the Applicant which shall include, but not be limited to, the following:

- a. a detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be serviced;
- b. a statement or schedule setting forth all proposed classifications of rates and charges to be made against Subscribers and all rates and charges as to each of said classifications, including installation charges and Cable Service charges;
- c. a detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the Applicant;
- d. a copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the Applicant and any Subscriber;
- e. a detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the Applicant and any person, firm or corporation which materially relate or pertain to or depend upon the Application and the granting of the Initial License;
- f. 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
- g. Any other details, statements, information or references, pertinent to the subject matter of such application which shall be required or requested by the City Council, or by any other provision of law.
- h. A description of proposed Cable System design and a description of the initial programming and Cable Services to be offered, a description of facilities proposed for local programming, and facilities to be offered to various community institutions.

SECTION 9. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-10 and renumbering it as Section 19-10 pertaining to Rights reserved to the City and which shall read as follows:

Sec. 619-10. Selection of Licensee; Initial License.

(a) ~~*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 date upon or after which the same shall be received by the City, or the date before which the same must be received, or the date after which the same shall not be received and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such Proposals. The terms and conditions for Proposals shall be described in a document called "Request for Proposals."

(b) *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 Paragraph (a), or may, in its sole discretion, reject such Proposal as untimely.

(c) *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.

(d) *Property of City.* All Proposals received by the City from an Applicant shall become the sole property of the City.

(e) *Applicant Responsibility.* Before submitting a Proposal, each Applicant shall be solely responsible for and must (1) examine all regulatory Chapters and the Request for Proposals documents thoroughly; (2) be familiar with local conditions which may in any manner affect performance under the License, including but in no event limited to, community and institutional telecommunication needs, relevant demographics, topographies, pole attachment policies of appropriate utility authorities, undergrounding, and Subscriber desires; (3) be familiar with all applicable federal, state and local laws, chapters, rules and regulations affecting performance under the License; and (4) carefully correlate all observations with the requirements of this Chapter and the Request for Proposals documents.

(f) *Referral to City Manager.* Upon receipt of any Proposal for Initial License, the City Manager shall prepare or cause to be prepared a report, including

recommendations respecting such Proposal, and cause the same to be completed and filed with the City. The City will evaluate all Proposals that are submitted. At the discretion of the City Council, an Applicant that has met the City's qualifications in the Request for Proposals and has submitted Proposals on the required forms will be offered the opportunity to make a formal presentation to the City Council in support of their Proposals.

(g) *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.

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

(i) *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 a public hearing for the consideration of Proposals; 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 and appear before the City Council and be heard, and directing the City Clerk to publish notice of such hearing at least once within ten days of the passage thereof in the newspaper of general circulation within the City.

(j) *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 television including, but not limited to the quality of the Cable Services proposed, areas to be served, rates to Subscriber, income to the City, experience, character, background, and financial responsibility of any Applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this Chapter, and to abide by all policy conditions, License limitations and requirements, and all other matters deemed pertinent by the City for safeguarding the interests of the City and the public.

(k) *Determination.* At the time set for the hearing on Proposals for an Initial License, or at any adjournment thereof, the City Council shall proceed to hear all comments. Thereafter, the City Council shall make one of the following determinations:

(1) that such Proposal be denied, which determination shall be final and conclusive; or

(2) that such Initial License be granted and the terms and conditions thereof. No provision of this Chapter shall be deemed or construed so as to require the granting of an Initial License.

(l) *Additional Information.* The City 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.

(m) *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 Office of the City Manager.

(n) *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.

(o) *Fees.* Notwithstanding any other requirement of this Chapter, each Applicant for a License must furnish with its Proposal a nonrefundable filing fee in the amount established by the Council in Chapter 26 of this Code, 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 Peoria. No Proposal for a 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 License Proposal.

SECTION 10. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-11 and renumbering it as Section 19-11 pertaining to Renewal and which shall read as follows:

Sec. 619-11. Renewal.

(a) *Proceedings.* During the six-month period which begins with the 36th 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 which afford the public appropriate notice and participation for the purpose of:

(1) Identifying the future cable-related community needs and interests;
and

(2) Reviewing the performance of the Licensee under the License during the then current License term.

(b) *Proposal.*

(1) Upon completion of a proceeding under Subsection (a) of this Section, the Licensee seeking a Renewal License may, on its own initiative or at the request of the City, submit a Proposal for Renewal License.

(2) 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.

(3) The City may establish a date by which such Proposal shall be submitted.

(c) *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 Council in Chapter 26 of this Code, 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 Peoria. 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 License Renewal Proposal. The fee shall be handled in the same manner as provided for an Initial License fee in ~~Section 6-12 of this Chapter~~ and shall, upon granting of a Renewal License, be a credit against Licensee Fees under this Chapter.

(d) *Renewal Assessment.*

(1) Upon submittal by the Licensee of a Proposal to the City for Renewal License, the City shall provide prompt notice of such Proposal for Renewal License and, during the four-month period which begins on the completion of any proceedings under Subsection (a), issue a Renewal License or, issue a preliminary assessment that the License should not be renewed and, at the request of the Licensee or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with Paragraph (d)(2) to consider whether -

a. The Licensee has substantially complied with the material terms of the existing License and with applicable law;

b. The quality of the Licensee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of Cable Services or other services provided over the Cable System, has been reasonable in light of community needs;

c. The Licensee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the Licensee's Proposal; and

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

SECTION 11. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-12 and renumbering it as Section 19-12 pertaining Administrative proceeding and which shall read as follows:

Sec. ~~619-12~~ Administrative proceeding.

(a) In any proceeding under Section 619-11, paragraph (d)(1) the Licensee shall be afforded adequate notice and the Licensee and the Licenser 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 (a)), require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(b) At the completion of a proceeding under this Subsection, the City shall issue a written decision granting or denying the Proposal For Renewal License based upon the record of such proceeding, and transmit a copy of such decision to the Licensee. Such decision shall state the reasons therefore.

(c) *Denial.* Any denial of a Proposal for Renewal License shall be based on one or more adverse findings made with respect to the factors described in Subparagraphs (a) through (d) of Subsection (d)(1), pursuant to the record of the proceeding under Subsection (d). 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 (d)(1)a. or on events considered under Subsection (d)(1)b. unless the City has provided the Licensee with notice and the opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or has effectively acquiesced.

(d) *Appeal.* Any Licensee whose Proposal for Renewal License has been denied by a final decision of the City made pursuant to this Section, or has been adversely affected by a failure of the City to act in accordance with the procedural requirements of this Section, may appeal such final decision or failure pursuant to the provisions of Sections 626 and 635 of the Cable Act.

(e) Notwithstanding the provisions of Subsections (a) and (f) of this Section, the Licensee may submit a Proposal for Renewal License, together with the required fee, pursuant to this subsection (g) at any time, and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such Proposal at any time (including after proceedings pursuant to this Section have commenced). The provisions of Subsections (a) through (f) of this Section shall not apply to a decision to grant or deny a Proposal under this Subsection (g). The denial of a Renewal License pursuant to this Subsection (g) shall not affect action on a Proposal for Renewal License that is submitted in accordance with Subsections (a) through (f) of this Section.

SECTION 12. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-13 and renumbering it as Section 19-13 pertaining to Selection of Licensee; Initial License and which shall read as follows:

Sec. 619-13 Transfers and assignments.

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

No transfer shall occur without prior approval of the City. The City shall act upon any request for approval of a sale or transfer within one hundred twenty (120) days after such request if such request contains or is accompanied by such information as is required by FCC regulations and by these licensing requirements.

An Application for a transfer shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the proposed transferee, and on the potential impact of the transfer on Subscriber rates and service. At a minimum, the information required under federal law shall be provided with respect to the proposed transfer. The City may require additional information related to its determination regarding the proposed transfer

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 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 and general character qualifications and such other qualifications as determined by the City and the assignee must agree to comply with all provisions of the License.

(b) Except for a transfer to an Affiliate of Licensee, no change, transfer, or acquisition of control of the Licensee shall occur without prior written consent of the City, which consent shall not be unreasonably withheld. The Licensee shall promptly notify the City of any actual or proposed change in, or 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.

(c) A non-rebuttable presumption that transfer of control has occurred shall arise upon the acquisition or accumulation by any person, or group of persons (other than an Affiliate of Licensee), of more than fifty percent (50%) of the voting interest of the Licensee or of the person exercising management authority over the Licensee.

(d) 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 his written notice fixing and setting forth the day, hour and place certain when and where any persons having any interest therein may appear and be heard. The City Clerk shall cause such notice to be published in a newspaper of general circulation within the City. The City Clerk also shall cause a copy of such notice to be mailed to the Licensee at least ten (10) days prior to the date specified for the hearing. At the time set for such hearing, or at any adjournment thereof, the City Manager shall proceed to hear the matter. Following the close of such hearing, the City Manager shall prepare and file with the Council his report of the hearing, his findings, and an opinion containing his recommendations and the reasons therefor. If after the expiration of ten (10) days following receipt of the City Manager's report and opinion, the Council shall find that the assignment of the License or transfer of control or ownership of the Licensee company will not be detrimental or injurious to the best interests and welfare of the Subscribers and Users, and of the City, then the Council by resolution shall consent to the assignment of the License or transfer of control or ownership of the Licensee company. Such resolution shall thereupon become and shall be a part of any License granted under this Chapter and affected thereby.

(e) The consent or approval of the City Council to any transfer of a License shall not constitute a waiver or release of the rights of the City in and to the Streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the License.

(f) In the absence of extraordinary circumstances, the City Council will not approve any transfer or assignment of a License within three years of and in no event prior to substantial Completion of Construction of a proposed Cable System.

(g) *Fees.* 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 in Chapter 26 of this Code, 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 Peoria. 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 Section 619-12 of this Chapter and shall, upon granting the assignment or transfer, be a credit against License Fees under this Chapter.

(h) The City may reserve in the License a right of first refusal to purchase a Licensee's Cable System.

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

(j) As long as a grant, rent or lease does not amount to a transfer as defined in this Section 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. 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 its use of the Streets and 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 13. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-14 and renumbering it as Section 19-14 pertaining to Duration of license and which shall read as follows:

Sec. 619-14. Acquisition by City.

(a) 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. If a License held by a Licensee is revoked or not renewed 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 a price not to exceed its fair market value as defined in this section ~~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.~~

(b) In the event that the City elects to purchase the Cable System upon expiration or termination of the term of any Cable License as provided herein, the current Licensee shall sell the Cable System to the City or its designee. The price for such sale shall be the fair market value of the Cable System, as defined in this section.

(c) In accordance with Section 627 of the Cable Act (as amended), if a renewal of a Cable License 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 Cable License itself.

(d) If a Cable 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 fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Cable License itself.

(e) No payment shall be made by the City to the Licensee that would include a value attributed to the License itself.

(f) The fair market value of the Cable System shall be determined as follows:

(1) The fair market value of the Cable System shall be determined by an appraisal committee consisting of three 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 ("CPR") 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:

(2) Each party shall appoint an appraiser within thirty (30) days after the City sends notice initiating appraisal proceedings. The two appraisers shall select a third appraiser within thirty (30) days after selection of the second appraiser. If the two appraisers are unable to agree on the appointment of a third appraiser within such thirty (30)-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.

(3) Each party shall bear the cost of its own appraiser and one-half (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.

(4) 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 which 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 Section 619-9. 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.

(g) 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 Section 619-52 to remove its wires, cables, fixtures and accessories and appurtenances from the Streets. If directed, the City shall make a claim on the letter of credit as prescribed in Section 619-83.

SECTION 14. Chapter 6 of the Peoria City Code (1992) is amended by amending Reserved Section 6-15 and renumbering it as Section 19-15 and which shall read as follows:

Sec. 619-15. ~~Reserved.~~ Rights reserved to the City.

(a) 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. And 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 at fair market value.

(b) There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any provision of the charter or 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.

(c) 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.

(d) 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.

(e) The City Council may do all things which 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 Sections 619-86 and 619-87, any controversy or charge arising from the operations of any Licensee under this Chapter.

SECTION 15. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-16 through 6-19 as Reserved Sections 19-16 through 19-19 and which shall read as follows:

Sec. 619-16. Reserved.

Sec. 619-17. Reserved.

Sec. 619-18. Reserved.

Sec. 619-19. Reserved.

SECTION 16. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-20 and renumbering it as Section 19-20 pertaining to Renewal and which shall read as follows:

Sec. 619-20. Fees; costs and payments; Application of Initial License.

(a) *Amount.* Notwithstanding any other requirement of this Chapter, each Applicant for an Initial License must furnish with its Proposal a nonrefundable application filing fee in the amount established by the council in Chapter 26 of this Code, 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 Peoria. No Proposal for an Initial License shall be considered without receipt of said fee. The application fee shall be in an amount necessary to recover all reasonably related costs incurred by the City to review and process the application, with the minimum amount of ten thousand dollars (\$10,000.00).

(b) *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.

(c) *Additional Fee.* Any Licensee under an Initial License, upon acceptance of such Initial License, shall reimburse all additional expenses, including, but not limited to, any and all administrative, engineering, publication, or legal costs and consultants' expenses incurred in connection with the processing, evaluation and preparation of documents relating to the Initial 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 (30) days of demand of the City. All unpaid amounts at the end of thirty days shall accrue interest at the rate of one and one-half percent (1½%) per month.

(d) For the reasons that the Public Street, road, alley, and other public

Rights-of-Way which are used by the Licensee in the operation of its Cable System within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the Cable Licensee for the use of said Streets and public ways is a valuable property right without which the Licensee would be required to invest substantial capital in Right-of-Way costs and acquisitions, and because the City will incur costs in regulating and administering the Cable License, the Licensee shall pay to the City an amount as allowed by statute pursuant to A.R.S. § 9-506 as amended, currently five percent (5%) of Licensee's Gross Revenues ("the License Fee").

(e) If a Cable Licensee offers Subscribers a price discount if they obtain a bundle of Cable Service and one (1) or more non-Cable Service goods or services, then beginning on the effective date of this License for the purpose of computing Gross Revenues, the discount shall be allocated either (1) consistent with the prices published in Licensee's marketing materials or rate card for separate Cable Service or one (1) or more non-Cable Services or (2) in proportion to the value of those Cable Services and non-Cable Service goods and services for which individual prices are not published. It is the intent of this subsection that a Licensee not bundle Cable Services with non-Cable Services in such a manner that the amount of Gross Revenues attributed to the Cable Services will unreasonably or significantly reduce the License fees payable under the License.

(f) A Licensee is entitled to offset against License fees due to the City as provided in Title 9 of Arizona Revised Statutes unless provided otherwise in the License Agreement.

(g) If Federal or State laws are amended to allow fee payments greater than those specified in Section 46-8.8(A) or to include internet, dial tone, or other services or activities on the Cable System, the fee payment shall thereafter include the charges allowed by Federal or State law.

(h) Licensee and the City are subject to the requirements of State law, including but not limited to A.R.S. § 9-506 as amended.

SECTION 17. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-21 and renumbering it as Section 19-21 pertaining to Transfers and assignments and which shall read as follows:

Sec. 619-21. Duration of License.

The duration of the rights, privileges and authorizations granted in an Initial or a Renewal License shall not exceed ten (10) ~~fifteen (15)~~ years. A License may be renewed by the City pursuant to the procedure established in this Code Section ~~6-20~~ and in accordance with the then applicable law.

SECTION 18. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-22 through 6-24 as Reserved Sections 19-22 through 19-24 and which shall read as follows:

Sec. 619-22. Reserved.

Sec. 619-23. Reserved.

Sec. 619-24. Reserved.

SECTION 19. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-25 and renumbering it as Section 19-25 pertaining to Effect of award of License and which shall read as follows:

Sec. 619-25. Effect of award of License.

(a) *Ordinance Binding.* 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 herein.

(b) *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 confines 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 and the provisions of this Chapter conflict with the applicable Initial or Renewal License, that provision which provides the greatest benefit to the City, in the opinion of the City Council, shall prevail provided that, the City, having chosen or accepted one of the conflicting provisions, may not thereafter elect to require compliance with a different alternative of the conflicting provisions. Failure to provide services as promised in Licensee's Proposal or agreed to in its License may be deemed a breach of this Chapter to which the provisions of Sections 619-84 and 619-85 of this Chapter shall apply.

SECTION 20. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-26 and renumbering it as Section 19-26 pertaining to Payment of License Fee and which shall read as follows:

Sec. 619-26. Payment of License Fee.

(a) For the reasons that the Streets and other public Rights-of-Way which are used by the Licensee in the operation of its Cable System within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the Licensee for the use of said Streets is a valuable property right without which the Licensee would be required to invest substantial capital in Right-of-Way costs and acquisitions, and because the City will incur costs in regulating and administering the License, the

Licensee shall pay to the City an amount no less than five percent (5%) of Licensee's Gross Revenues (the "License Fee").

(b) Should federal regulations be amended in the future to allow the City to receive a greater fee than the fee set forth in Paragraph (a) then, in that event, the City shall have the right to increase the fee as specified in the License.

(c) The payment of the License Fee by the Licensee to the City shall be made quarterly by delivery of the same to the City Manager on or before the 20th day of the following month, with a ten-day grace period. If such payment is not made by the next to the last business day of the following month, the City may impose interest at a rate of one and one-half percent (1½%) per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. In addition to interest which may be assessed under this Subsection, if Licensee fails to pay any License Fee, before the end of such grace period, Licensee shall be subject to the following civil penalties:

(1) A Licensee who fails to pay the License Fee or any portion thereof within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid fee each month, unless the Licensee shows that the failure is due to reasonable cause and not due to willful neglect.

(2) A Licensee who fails or refuses to pay a License Fee or any portion thereof after notice and demand by the City shall pay a penalty of twenty-five percent (25%) of the unpaid fee, unless Licensee shows that the failure is due to reasonable cause and not due to willful neglect.

(3) If the cause of failure to pay the Licensee fee or any portion thereof is determined by the City to be due to civil fraud or evasion of the License Fee, the Licensee shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(d) The City shall have the right to inspect the Licensee's income records and the right to audit and to recompute any amounts determined to be payable under this Chapter provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the Licensee's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within 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 Section 619-86(a)(3). If there is a deficiency in the payment of License Fees to the City of ten percent (10%) or more, the City may assess the cost of the audit to the Licensee.

(e) The cost to Licensee of any City plan review and Right-of-Way construction permit fees which City imposes under City code requirements on Licensee's construction permit activities on the City Streets shall be included in the License Fee.

(f) Under terms specified in the License, there shall be allowed as an offset against the License Fee due under this Section any amounts Licensee paid to the City during the prior quarter in privilege license (sales) taxes; provided, however, that there shall be no offset to the extent that Licensee made payments of privilege license (sales) taxes on any gross income (within the meaning of the privilege license [sales] tax ordinance) which is not included in Gross Revenues under this Chapter.

(g) In accordance with A.R.S. § 9-506(C) the City may require that a Licensee:

1. Bear reasonable costs that are associated with damage caused to Public Streets, roads and alleys by construction, maintenance and operation of its facilities in the Public Streets, roads and alleys and that are imposed on a competitively neutral and nondiscriminatory basis in relation to costs borne by corporations.

2. Pay fines, fees, charges or damages for breach of the terms and conditions of the License.

(h) Licensee will bear all costs of installing, constructing, operating or removing Cable System facilities for its system.

(i) In addition to the License fees specified in an agreement between the City and Licensee, Licensee will also compensate the owner of the property for any damages resulting from the installation, construction, operation, and/or removal of cable facilities.

(j) At the time License fees are due, Licensee will provide to the City an itemized report that includes the following information:

1. The amount of License fees due to the City.

2. A detailed report of all costs incurred by Licensee and the portion of such costs that are being offset in accordance with subsection (C).

3. The amount of License fees, if any, being paid to the City after accounting for any offset, and

4. A current revenue statement showing the Gross Revenues by the Licensee during the preceding quarter.

(k) In addition to interest that may be assessed, if Licensee fails to pay any License fee, before the end of such grace period, Licensee shall be subject to the following civil penalties:

1. A Licensee who fails to timely file a report for a License fee imposed by these licensing requirements shall pay a penalty of five (5) percent of the License fee for each month or fraction of a month elapsing between the delinquency date of the report and the date on which it is filed, unless the Licensee shows that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed twenty-five (25) percent of the License fee due.

2. A Licensee who fails to pay the License fee within the time imposed by these licensing requirements shall pay a penalty of ten (10) percent of the unpaid License fee, unless the Licensee shows that the failure to timely pay is due to reasonable cause and not due to willful neglect. If the Licensee is also subject to a penalty under paragraph (1) above for the same License fee period, the total penalties under paragraph (1) and this paragraph shall not exceed twenty-five (25) percent of the License fee due.

3. A Licensee who fails or refuses to file a report within thirty (30) days after having received a written notice and demand from the City shall pay a penalty of twenty-five (25) percent of the License fee, unless the Licensee shows that the failure is due to reasonable cause and not due to willful neglect or the City agrees to a longer time period.

4. If the cause of a License fee deficiency is determined by the City to be due to negligence, but without regard for intent to defraud, the Licensee shall pay a penalty of ten (10) percent of the amount of deficiency. If the Licensee is also subject to a penalty under paragraph (1) or (2) above for the same License fee period, the total penalties imposed under paragraph (1), paragraph (2) and this paragraph shall not exceed twenty-five (25) percent of the License fee due.

5. If the cause of a License fee deficiency is determined by the City to be due to civil fraud or evasion of the License fee, the Licensee shall pay a penalty of fifty (50) percent of the amount of deficiency.

(l) The City shall have the right to inspect the Licensee's income records to determine the accuracy of Licensee's License fees. Such audit shall take place within thirty-six (36) months following the close of each of the Licensee's fiscal years. Any underpayment by Licensee and additional amount due or overpayment by Licensee shall be paid within thirty (30) days after written notice to the Licensee by the City. Notice of underpayment and overpayment shall include a copy of the audit report.

SECTION 21. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-27 as Section 19-27 pertaining to Use of telephone facilities and which shall read as follows:

Sec. 619-27. Use of telephone facilities.

When and 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 Streets independent of such telephone company furnished facilities, said Licensee remains fully bound by the terms of its License and this Chapter.

SECTION 22. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-28 and renumbering it as Section 19-28 pertaining to Required services and facilities and which shall read as follows:

Sec. 619-28. Required services and facilities.

(a) A License shall include a description of proposed Cable System design and a description of the initial programming and Cable Services to be offered, a description of facilities proposed for local programming, and facilities to be offered to various community institutions.

(b) 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. Where there has been a substantial failure to maintain the mix, level or quality of services within the broad categories of video programming or other services as set forth in the Licensee's License, the City may, following due notice and public hearing as provided in Sections 619-86 and 619-87, direct the Licensee to comply with its obligations in this regard. Written notice of such hearing shall be provided to the Licensee and to the public at least thirty (30) days prior to such hearing.

(c) A License shall include a provision for the Licensee to provide channel capacity for community programming on terms and conditions specified in the License.

SECTION 23. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-29 and renumbering it as Section 19-29 pertaining to Subscriber services; rates and which shall read as follows:

Sec. 619-29. Subscriber services; rates.

(a) *Initial Rates.*

(1) A Licensee under an Initial or Renewal License shall establish initial rates for its Cable Services in accordance with the rates contained in such Licensee's Proposal for an Initial or Renewal License.

(b) *Authority to Regulate Rates.* To the extent permitted, the City may regulate the rates for Cable Service in accordance with federal and state law.

(c) *Notice of Rates.* Notice of rates shall be given in accordance with Section 619-63 of this Chapter.

SECTION 24. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-30 and renumbering it as Section 19-30 pertaining to Access and public safety channels and which shall read as follows:

Sec. 619-30. Access and public safety channels.

The City shall not directly or indirectly control the content of any of the programming on the Cable System except those channels dedicated to government access.

(a) *Channel Capacity.* As provided in the License the Licensee shall provide channel capacity for one (1) public safety channel dedicated to the City fire and police departments, two (2) governmental Access Channels dedicated to the City, and two (2) education Access Channels dedicated to all Schools within the City.

1. The value of any channel capacity provided pursuant to subsection (a), the costs and expenses incurred pursuant to paragraph 1 of this subsection and the value of Basic Service provided pursuant to paragraph 2 of this subsection may not be offset against the License fee levied or assessed under this section.

2. A Cable License may require the Licensee to incur costs and expenses to provide, maintain and operate facilities and equipment of the Cable System, including facilities and equipment for signal carriage, processing, reformatting and interconnection:

(i) To connect the Cable System, as it may be relocated from time to time, to transmit programming to and from existing locations of public, educational or governmental access facilities and to allow monitoring of access programming at the facilities.

(ii) To transmit public, educational and governmental Access Channels to Subscribers with the same prevailing quality, functionality and identification as other channels.

(iii) A Cable License may require the Licensee to provide Basic Service to City buildings at no charge to the City.

(b) *Channel Management.* The operation of the public safety channels, all government Access Channels and all education Access Channels shall be the responsibility of the City.

(c) *Additional Access Channels.* A Licensee shall, upon receipt of written notice from City, make an additional educational or government Access Channel available for the same purpose(s) within sixty (60) days when (provided, however, that nothing in this Subsection shall require Licensee to construct additional channel capacity to the Cable System for the sole purpose of providing additional Access Channel capacity):

(1) Any Access Channel is being programmed more than twelve hours per day, seven days a week with original or taped access programming with a maximum of four (4) replays (excluding digital text programming) for twelve (12) consecutive weeks.

(2) The average viewership requirement for any Access Channel is met. The average viewership requirement is met when an Access Channel has an average viewership in the City for the preceding six (6) months as measured for twelve hours per day (excluding periods of digital text programming), by a viewership methodology mutually agreeable to Licensor and Licensee, which is greater than the mean viewership in households per channel of the one-quarter (1/4) of all of Licensee's non-premium with the lowest viewership during said six months, and initially, mean viewership shall be measured in household rating points by a nationally recognized viewership polling company. Until Licensor and Licensee agree otherwise, that company shall be A.C. Nielsen. Once Licensee has installed and implemented the capability to determine channel-by-channel viewership over the Cable System itself, mean viewership shall thereafter be determined from the Licensee's records. Licensee shall notify Licensor in writing when it implements this capability, and Licensee shall permit Licensor to audit those viewership records for the purpose of determining Licensee's obligations under this Section.

(d) *Additional Public Safety Channel.* A Licensee shall, upon receipt of written notice from City, make one additional public safety available up to a total maximum of two (2) additional channels, for the same purpose(s) within sixty (60) days (provided, however, that nothing in this Subsection shall require Licensee to construct additional channel capacity to the Cable System for the sole purpose of providing additional public safety channel capacity) when the existing public safety

channel is being programmed more than twelve hours per day, Monday through Friday, (excluding digital text programming) for twelve (12) consecutive weeks.

(e) *Excess Capacity.* The Licensee may be permitted to utilize unused Access Channel capacity under rules and procedures established by the City.

SECTION 25. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-31 as Section 19-31 pertaining to Area wide interconnection of Cable Systems and which shall read as follows:

Sec. 619-31. Area wide interconnection of Cable Systems.

(a) *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 License or an Affiliate as provided in the License.

(b) *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.

(c) *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.

SECTION 26. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-32 as Section 19-32 pertaining to Changes in cable technology and which shall read as follows:

Sec. 619-32. Changes in cable technology.

(a) The licensor and Licensee shall meet at periods not exceeding 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.

(b) If any of the following conditions occur, and upon written request of either Licensee or Licensor, the City Manager and Licensee agree to meet and discuss in good faith the terms of a mutually agreeable License amendment:

(1) Cable Service similar to cable television service offered by Licensee is provided by any entity using the Streets and public ways, which is not subject to similar licensing requirements of the Licensor.

(2) The Cable Act is amended to allow Licensee to provide intrastate or interstate telecommunication and any regional Bell operating company to provide Cable Service.

(3) Any other significant event occurs, including but not limited to a final non-appealable order or judgment by a court of competent jurisdiction, which either Licensee or Licensor believes may impact the current terms and conditions of the License.

(c) 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 90 days of such written request, on how to amend the License to relieve Licensor or the Licensee from any commercial impracticability, which 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.

SECTION 27. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-33 and renumbering it as Section 19-33 pertaining to Time is of the essence and which shall read as follows:

Sec. 619-33. Time is of the essence.

For any License or contract 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 Sections 619-85 and 619-88.

SECTION 28. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-34 and renumbering it as Section 19-34 pertaining to Acceptance and effective date of License and which shall read as follows:

Sec. 619-34. Acceptance and effective date of License.

(a) No License granted pursuant to the provisions of this Chapter shall become effective unless and until all provisions required in this Section and Subsections 619-82(a) and 619-82(b) and Sections 619-83 and 619-84 hereof 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.

(b) Within twenty (20) days after the effective date of the ordinance awarding 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 its written acceptance of the License, in form satisfactory to the City Attorney, together with the letter of credit, construction bond and insurance policies required by Subsection 619-82(b) and Sections 619-83 and 619-84 hereof, respectively, and its License to be bound by and to comply with and to do everything which 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 Attorney.

SECTION 29. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-35 through 6-39 as Reserved Sections 19-35 through 19-39 and which shall read as follows:

Secs. 619-35. through ~~6-39~~. Reserved.

Sec. 619-36. Reserved.

Sec. 619-37. Reserved.

Sec. 619-38. Reserved.

Sec. 619-39. Reserved.

SECTION 30. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-40 as Section 19-40 pertaining to Permits, installations and service and which shall read as follows:

Sec. 619-40. Permits, installations and service.

Within sixty (60) days after acceptance of any Initial or Renewal License, the Licensee shall proceed with due diligence to apply for necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier Licenses, and any other permits, Licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of Cable Systems, or their associated microwave transmission facilities.

SECTION 31. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-41 and renumbering it as Section 19-41 pertaining to Cable System construction map and schedule and which shall read as follows:

Sec. 619-41. Cable System construction map and schedule.

(a) Within one hundred twenty (120) days after acceptance of any License, Licensee shall submit a specific construction plan or reconstruction plan, which shall be incorporated as an exhibit in the License. The plan shall include an overall plant mileage schedule of any construction or reconstruction effort and a time schedule of said work and system design criteria.

(b) Within ninety (90) days after obtaining necessary permits, Licenses, and authorizations, Licensee shall commence construction and installation of the Cable System.

(1) Licensee shall comply with the time schedule for construction required in Section 619-41(a).

(2) Installation and operation of the new or rebuilt Cable System by Licensee shall proceed on a nondiscriminatory basis, without regard for Subscriber affluence or other discriminatory factors.

(3) Immediately following commencement of construction and installation of the Cable System under an Initial or Renewal License, Licensee shall diligently proceed to deliver Cable Services, as described in the License.

(c) Failure on the part of the Licensee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for liquidated damages and/or termination of such License pursuant to Sections 619-85 and 619-88; provided, however, that the Council in its discretion may extend the time for the commencement and Completion of Construction and installation for additional periods if the Licensee acting in good faith experiences delays by reason of circumstances beyond its control.

SECTION 32. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-42 and renumbering it as Section 19-42 pertaining to Line extension and schedule and which shall read as follows:

Sec. 619-42. Line extension for Cable System; construction map and schedule.

(a) *Residential Service.* Licensee shall make Cable Services available to dwelling units within the City and shall extend its Cable System as contemplated under this Section as follows. Each unit in an MDU shall be counted as a dwelling unit in determining the residential density, provided a mutually acceptable agreement granting Licensee reasonable access to the MDU has been executed and delivered. Licensee shall not be required to make service available to residents of Multiple Dwelling Units where the owner of the property has not granted Licensee such reasonable access to the property.

(1) When requested by a resident or developer in the City, Licensee shall, at Licensee's sole expense, extend the Cable System to any single

family residence or dwelling within the City, provided that such extension involves density of twenty-five (25) existing homes per mile as measured in linear trench or aerial strand footage from the nearest technically feasible point of connection on the Cable System. Such extension(s) shall include cutting in one or more taps and extending cable as necessary.

(2) When a resident or developer in the City requests an extension of service to an area that does not meet the minimum density of twenty-five (25) existing homes per mile as measured in linear trench or aerial strand footage from the nearest technically feasible point of connection on the Cable System, Licensee shall be required to comply with such request only if the resident or developer agrees to pay to the Licensee an amount equal to all incremental costs incurred beyond those for an extension otherwise involving a density of twenty-five (25) existing homes per mile. The incremental costs to be paid shall be Licensee's costs (reasonable labor and materials) of extending the Cable System consistently with Licensee's overall system design to the residence, or to and throughout the development, from the nearest technically feasible point of connection on the Cable System. The costs shall include splicing in one or more taps and extending cable.

(3) Where there is a request by a developer for an extension to a development which does not meet the minimum density test in Subsection (2) and where, instead of proceeding under Subsection (2), the developer agrees to pay Licensee's full costs (reasonable labor and materials) of extending the Cable System from the nearest technically feasible point of connection on the Cable System to the nearest Street access to the development, Licensee shall then extend the Cable System within the development, at Licensee's sole cost, if it has a density of twenty (20) existing homes per mile, as measured in linear trench or aerial strand footage from the nearest Street access to the development to which the developer paid to have the Cable System extended.

(4) To prevent unnecessary disruption and damage to Streets, rights-of-way, and other property, the installation of Cable System shall be accomplished in new subdivisions at the same time, and in the same trench as other communications, electric and other permanent services to structures. Except as federal law may grant them other rights, developers of new residential buildings or mobile homes within a new or undeveloped subdivision, new residential units within new multiple occupancy residential developments, and new commercial and industrial buildings and structures shall treat cable television facilities as they treat other communication facilities, utilities and other underground facilities, in regards to availability and cost of trenching for undergroundings.

(5) Absent a showing by Licensee to the City Manager of circumstances beyond Licensee's reasonable control, an extension of service pursuant to

Subsections (1), (2), or (3) of this Section shall be accomplished within one hundred twenty (120) days of the developer or resident's request.

(b) *Commercial Service.* Licensee shall make Cable Services available to commercial establishments as follows except that Licensee shall not be required to make service available to commercial establishments where the owner of the property has not granted Licensee reasonable access to the property:

(1) When requested by the owner of a commercial establishment, provided that no plant extension and nothing more than a Standard Drop is required to make such Cable Services available.

(2) When the owner of a commercial or industrial establishment within the City requests an extension of service that does not meet a minimum 100 hook ups per cable plant mile, Licensee shall be required to comply with such request only if such owner pays to Licensee an amount equal to the reasonable actual labor and material costs incurred by Licensee over and above the cost of a Standard Drop in making Cable Services available to such owner's commercial establishment.

(3) Absent a showing by Licensee to the City Manager of unusual circumstances, including without limitation Street crossings, an extension of service pursuant to Subsection (2) shall be accomplished within one hundred twenty (120) days of owner's execution of any necessary easement documents and capital contribution agreements.

(c) *City building service.* If making service available to a City building requires no more than a Standard Drop, Licensee shall make service available without charge to City buildings.

(i) If making service available to a City building requires more than a Standard Drop, Licensee will not be required to make such service available unless the City entity requesting such service pays to Licensee an amount equal to the actual, reasonable labor and material costs incurred by Licensee for the additional facilities and work, less Licensee's cost for a Standard Drop.

(ii) Absent a showing by Licensee to the City Manager of unusual circumstances, which include without limitation Street crossings or plant extensions, any Standard Drop to any City buildings shall be accomplished within ten (10) days after the written request for service or, if later in the case of a City building not owned by the City, after owner's execution of any necessary easement documents.

(d)(e) Service Drops.

(1) Licensee shall make service available to any single family residence or any commercial establishment within the City at the standard connection charge if the connection requires a Standard Drop.

(2) If making service available requires more than a Standard Drop, Licensee shall not be required to make such service available unless the person or entity requesting such service pays to Licensee (i) the standard connection charge and (ii) an amount equal to the reasonable actual labor and material costs incurred by Licensee for the additional facilities and work.

(3) Licensee may offer bulk billing service, but shall not require a bulk billing agreement as a condition of providing service, if the person or entity requesting service pays to Licensee the applicable amount(s) set forth in Subsections (l) or (2) of this Section 619-42(d).

(4) Absent a showing by Licensee to the City Manager of unusual circumstances, including without limitation Street crossings, (i) any Standard Drop to a single family residence or dwelling shall be accomplished within ten (10) days of the request for service, and (ii) any drop that is not a Standard Drop shall be accomplished within twenty (20) days of such request. Line Extensions shall be done as provided in 619-42(a)(4).

(5) Absent a showing by Licensee to the City Manager of unusual circumstances, including without limitation Street crossings, (i) any Standard Drop to a commercial establishment shall be accomplished within ten (10) days after the owner of such commercial establishment executes any necessary easement documents and capital contribution agreements, and (ii) any commercial drop that is not a Standard Drop shall be accomplished within twenty (20) days of the owner's execution of such documents and agreements.

(e)(d) *Discrimination Prohibited.* No person, firm or corporation in the existing Cable Service area of the Licensee shall be arbitrarily refused Cable Services; provided, however, that the Licensee shall not be required to provide Cable Services to any Subscriber who does not pay the applicable line extension connection fee and/or Cable Service charge(s).

(f)(e) *Annexed Territory.* Newly annexed territory shall be subject to the terms of this Chapter and specifically this Section.

SECTION 33. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-43 and renumbering it as Section 19-43 pertaining to Placement of transmission facilities and which shall read as follows:

Sec. 619-43. Placement of transmission facilities.

Except as provided in the License, facilities shall be placed in accordance with Chapter 23 & 24(A) of the Peoria City Code (1992), the Peoria Zoning Code, and the Utility Guidelines for Working in the Right-of-Way.

SECTION 34. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-44 and renumbering it as Section 19-44 pertaining to Construction and technical standards and which shall read as follows:

Sec. 619-44. Construction and technical standards.

(a) *Compliance with Construction and Technical Standards.*

(1) As provided in the License, Licensee shall construct, install, operate and maintain its system in a manner such that it operates at all times consistent with (i) all laws, this Chapter, construction standards of the City, the Federal Communications Commission (FCC) Rules and Regulations, Part 76 Subpart K (Technical Standards), as amended from time to time, and (ii) detailed standards submitted by an Initial or Renewal Licensee as part of its Proposal, which standards are to be incorporated by reference in an Initial or Renewal License. In addition, the City may at any time conduct independent measurements of the system. If inaccurate proof of performance reports are shown to have been the result of Licensee's willful neglect, Licensee shall pay the costs reasonably incurred by the City in obtaining independent verification of technical compliance with all standards.

(2) When there have been multiple, similar complaints by Subscribers, or when there exists other evidence which suggests that Licensee is not in substantial compliance with the technical standards, the City Manager shall have the right and authority to compel Licensee to test, analyze and report on the performance of the Cable System under the supervision of the City Manager. Such report shall be delivered to the City Manager no later than thirty (30) days after the City Manager requests such test(s) in writing and shall include the following information: the nature of the complaints that precipitated the test(s), which Cable System component(s) was/were tested, the equipment used and procedure(s) employed in such testing, the result(s) of such test(s) and the manner in which such complaints were resolved. If such report indicates Licensee is in substantial compliance with the technical standards, but there exists evidence suggesting that Licensee is nonetheless not in substantial compliance, the City Manager may require that the test(s) be repeated within thirty (30) days of the delivery of such report, under the supervision of a professional engineer, not on the permanent staff of Licensee. Such engineer shall sign all records of such repeated test(s) and shall forward to the City Manager (i) such records, (ii) a report interpreting the results, and (iii) recommended corrective actions, if any. The fees of such engineer shall be paid by (i) Licensee, if the repeated test(s) show(s) Licensee is not in substantial compliance, with the technical standards of this Chapter, or (ii) the City, if the repeated test(s) show(s) Licensee is in substantial compliance with said standards.

(b) *Additional Specification.* Construction, installation and maintenance of a Cable System shall be performed in an orderly and professional manner. All cables and wires shall be installed, where possible, parallel with and in a manner similar to the installation of electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with all applicable codes. Each Cable System shall include equipment capable of providing stand-by power as specified in the License. The equipment shall be so constructed as to automatically revert to the stand-by mode when the electrical utility power returns. The system shall incorporate safeguards necessary to prevent injury to technicians resulting from Licensee's standby power sources. Licensee shall at all time comply with applicable sections of:

- (1) National Electrical Safety Code (ANSI)C2-1990;
- (2) National Electrical Code (National Bureau of Fire Underwriters);
- (3) The Uniform Building Code as may be adopted and amended by the City, together with applicable portions of all other Uniform Codes, as may be adopted and amended by the City, promulgated by the International Conference of Building Officials;
- (4) City Zoning Code and Subdivision Regulations, all as from time to time amended and revised, and all other applicable rules and regulations now in effect or hereinafter adopted by the City.
- (5) The current version of the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction including the latest City of Peoria supplement thereto.
- (6) The City of Peoria Utility Guidelines for Working in the Right-of-Way.

(c) When using City Right-of-Way and easements, Licensee shall ensure that the construction of the system and facilities does not impair the safety, functioning and appearance of the property, and the safety and convenience of other persons.

(d) The Licensee shall provide reasonable advance notice to all affected residents prior to system construction or upgrade crews entering the Right-of-Way in front of, or in the alley behind, a resident's property. If a resident is not available for personal contact, then a door hanger or other such printed notification will be left at the residence with contact information. Licensee shall not be required to provide such notice in emergencies or for normal system repair and maintenance work.

(e) Notwithstanding any other provision in these Licensing requirements or any Cable License granted pursuant hereto, all facilities of a

Licensee in any Street and public way or in any public or private easement, and Cable Service lines to Subscribers off the main lines, shall be located underground as per City Code and the City Utility Manual and at such depths and locations as shall be approved by the City Engineer.

(f) Except as provided in the License, upon the undergrounding of other utility lines or shared overhead facilities, Licensee shall concurrently (or earlier) place its facilities underground, at its own expense, at depths and locations approved by the City Engineer.

As required by the City Engineer or other appropriate departments, the Licensee or its authorized contractors will obtain permits, prior to any physical work being performed in the City's rights-of-way, or on City-owned property. All work will be done in accordance with the City's technical and permitting specifications, and in accordance to a timed schedule approved by the City.

To prevent unnecessary disruption and damage to Streets and public ways, rights-of-way, and other property, the installation of Cable System shall be accomplished in new subdivisions at the same time, and in the same trench as other communications, electric and other permanent services to structures. Except as federal law may grant them other rights, developers of new residential buildings or mobile homes within a new or undeveloped subdivision, new residential units within new multiple occupancy residential developments, and new commercial and industrial buildings and structures shall treat cable facilities as they treat other communication facilities, utilities and other underground facilities, in regards to availability and cost of trenching for under-groundings.

(g) *Emergency Service.* The Licensee shall design and construct the system to provide for a restricted audio override of the audio portion of all channels during emergencies consistent with FCC regulations. Emergency or stand-by power sources will be installed at the main electronic control center and appropriate locations so as to minimize loss of signal. Key cable routings shall also be equipped with a stand-by power source. In case of any declared emergency or disaster, the Cable System shall, upon request of the Mayor or City Manager, make available immediately its facilities to the City for emergency use during the emergency or disaster period. A declared emergency or disaster as used in this Section means such event that has been proclaimed by the Mayor, the Governor, or other competent authority. In any event, the Cable System shall not endanger or interfere with the safety of persons or property in the License area or other areas where the Licensee may have equipment located.

SECTION 35. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-45 as Section 19-45 pertaining to Utility locating system and which shall read as follows:

Sec. 619-45. Utility locating system.

A Licensee shall be required to be a participant in the region one call utility locating system (Blue Stake).

SECTION 36. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-46 and renumbering it as Section 19-46 pertaining to Resident notification of construction activity required and which shall read as follows:

Sec. 619-46. Resident notification and identification of construction activity and personnel required.

The Licensee shall provide reasonable advance notice to all affected residents prior to system construction or upgrade crews entering the Right-of-Way in front of their property; provided that the Licensee shall not be required to provide such notice in emergencies or for normal system repair and maintenance work.

All personnel and service vehicles of Licensee or its subcontractors contacting Subscribers or potential Subscribers outside the office of Licensee or performing any work within City Rights-of-Way must be clearly identified as associated with Licensee through visible uniform insignia, photo identification devices, or signs affixed to the vehicle.

SECTION 37. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-47 through 6-49 as Reserved Sections 19-47 through 19-49 and which shall read as follows:

Secs. 619-47. through 6-49. Reserved.

Sec. 619-48. Reserved.

Sec. 619-49. Reserved.

SECTION 38. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-50 and renumbering it as Section 19-50 pertaining to Location of property of Licensee and which shall read as follows:

Sec. 619-50. Location of property of Licensee.

(a) Any poles, wires, cable lines, conduits or other properties of a Licensee to be constructed or installed in Streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the City Manager acting in the exercise of his or her reasonable discretion consistent with the City's technical and permitting regulations.

(b) Except as provided by the City, a Licensee shall not install or erect any facility or apparatus in or on any privately owned area within the City which has

not yet become a Public Street, whether or not designated or delineated as a proposed Public Street on any preliminary subdivision approved by the City.

(c) Notwithstanding any other provision in this Chapter or any License granted pursuant thereto, all facilities of a Licensee in any Public Street or in any public or private easement, and Cable Service lines to Subscribers off the main lines, shall be located underground as per the City's Subdivision Regulations as may be amended from time to time and at such depths and locations as shall be approved by the City Manager.

(d) Except as provided in the License, upon the undergrounding of other utility lines or shared overhead facilities, Licensee shall concurrently (or earlier) place its facilities underground, at its own expense, at depths and locations approved by the City Manager.

(e) All new underground wires or cable of Licensee placed after the effective date of this Chapter shall be placed in conduits except for service drop lines.

~~(f)(a)~~ As required by the City Manager or other appropriate departments, the Licensee or its authorized contractors will obtain permits, prior to any physical work being performed in the City's rights-of-way, or on City-owned property. All work will be done in accordance with the City's technical and permitting specifications. A Licensee shall make maps of the applicable portion of the Cable System showing amplifier and power supply locations available for inspection and review at the office where Licensee maintains such records. The Licensee shall provide the City with up-to-date route maps of a suitable scale showing all transmitting and receiving pickup locations, cable route and pedestal locations.

(g) To prevent unnecessary disruption and damage to Streets, rights-of-way, and other property, the installation of Cable System shall be accomplished in new subdivisions at the same time, and in the same trench as other communications, electric and other permanent services to structures. Except as federal law may grant them other rights, developers of new residential buildings or mobile homes within a new or undeveloped subdivision, new residential units within new multiple occupancy residential developments, and new commercial and industrial buildings and structures shall treat cable facilities as they treat other communication facilities, utilities and other underground facilities, in regards to availability and cost of trenching for undergroundings.

SECTION 39. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-51 as Section 19-51 pertaining to Emergency work and which shall read as follows:

Sec. 619-51. Emergency work.

The City reserves the right to move any portion of the Licensee's equipment and facilities as may be required in any emergency as determined by the City

without liability for interruption of Cable Service. However, prior to taking any actions pursuant to this Section, the City shall provide, if feasible, reasonable notice to Licensee of the emergency to allow Licensee the opportunity to protect or repair Licensee's facilities involved in the emergency.

SECTION 40. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-52 as Section 19-52 pertaining to Removal and abandonment of property of Licensee and which shall read as follows:

Sec. 619-52. Removal and abandonment of property of Licensee.

(a) If the use of substantial part of the Cable System is discontinued for any reason for a continuous period of twelve (12) months, or if such Cable System or property has been installed in any Street or public place without complying with the requirements of the Licensee's License or this Chapter, or the License has been terminated, canceled or has expired without renewal, the Licensee shall promptly, upon being given ten (10) days notice from the City Manager, remove from the Streets or public places all such property and poles of such Cable System other than any underground cable or any other underground property which the City Manager may permit to be abandoned in place. Upon such removal, the Licensee shall promptly restore the Street or other area from which such property has been removed to a condition satisfactory to the City Manager.

(b) Any property of the Licensee remaining in place one hundred eighty (180) days after the termination or expiration of the License shall be at the option of the City considered permanently abandoned. The City may extend such time.

(c) Any property of the Licensee permitted to be abandoned in place shall be abandoned in such a manner as the City Manager shall prescribe. Upon permanent abandonment of the property of the Licensee in place, the property shall become that of the City, and the Licensee shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

SECTION 41. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-53 as Section 19-53 pertaining to Temporary removal of wire for building improvements and which shall read as follows:

Sec. 619-53. Temporary removal of wire for building improvements.

The Licensee, on the request of any person, firm or corporation holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid to the Licensee by the person, firm or corporation requesting the same, and the Licensee shall have the authority to require such payment in advance. The Licensee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

SECTION 42. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-54 as Section 19-54 pertaining to Changes required by public improvements and which shall read as follows:

Sec. 619-54. Changes required by public improvements.

The Licensee shall from time to time protect, support, temporarily dislocate, temporarily or permanently as may be required, remove or relocate, without expense to the City any facilities installed, used or maintained under the License, if and when made necessary by any lawful change of grade, alignment, or width of any Street, by the City or made necessary by any other public improvement or alteration in, under, on, upon or about any Street, when such public improvement or alteration is at the instance of the City, when such improvement or alteration is for a governmental or proprietary function, or made necessary by traffic conditions, public safety, Street vacation or any other public project or purpose of City, and when the Licensee has substantially the same obligations with respect to the cost thereof as all other users of the public Rights-of-Way.

SECTION 43. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-55 and renumbering it as Section 19-55 pertaining to Methods and materials of Street construction and which shall read as follows:

Sec. 619-55. Methods and materials of Street construction.

The City shall have the right to specify the methods and materials of Street construction or reconstruction, together with the horizontal and vertical location of any underground facility proposed by Licensee within any public property or Right-of-Way. The City shall also have the right to limit the work of the Licensee to assure a minimum of inconvenience to the traveling public and to impose traffic control requirements, as specified in the City's Subdivision Regulations and Chapter 24 of the Peoria City Code (1992). Licensee will be required to obtain permits from the City, allowing Licensee to work in the public Right-of-Way. Additionally, trimming of trees by the Licensee in the Streets and public ways shall be subject to such regulation as the City Manager or other authorized official may establish in order to protect the public health, safety and convenience.

SECTION 44. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-56 as Section 19-56 pertaining to Failure to perform Street work and which shall read as follows:

Sec. 619-56. Failure to perform Street work.

If a Licensee during construction, installation or repair of its facilities causes damage to pavement, sidewalks, driveways, landscaping or other property, the Licensee or the authorized agent shall, at it own expense and in a manner approved by the City, replace and restore such places to a condition satisfactory to the City Manager that existed before said work was commenced. The Licensee

shall further maintain all such restoration related to Licensee's activities, in the condition approved by the City for a minimum period of one year following such restoration. Upon failure of the Licensee to complete any work required by law, or by the provisions of this Chapter, or by its License, to be done in any Street, within ten (10) days following due notice and to the satisfaction of the City Manager, the City may, at its option, cause such work to be done and the Licensee shall pay to the City the cost thereof in the itemized amounts reported by the City Manager to the Licensee within fifteen (15) days after receipt of such itemized report. Or, at City's option, City may demand of Licensee the estimated cost of such work as estimated by the City Manager, and such shall be paid by Licensee to City within fifteen (15) days of such demand. Upon award of any contract or contracts therefor, Licensee shall pay to City, within fifteen (15) days of demand, any additional amount necessary to provide for cost of such work. Upon completion of such work, Licensee shall pay to City or City shall refund to Licensee such sums so that the total received and retained by City shall equal the cost to the City of such work. "Cost" as used herein shall include fifteen percent (15%) of other costs for the City's overhead, together with any interest charges incurred by City arising out of Licensee's late payment to City under this Section.

SECTION 45. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-57 through 6-59 as Reserved Sections 19-57 through 19-59 and which shall read as follows:

Sec. 619-57. Reserved.

Sec. 619-58. Reserved.

Sec. 619-59. Reserved.

SECTION 46. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-60 as Section 19-60 pertaining to Local business office requirements and which shall read as follows:

Sec. 619-60. Local business office requirements.

(a) The Licensee shall maintain a business office for the purpose of receiving inquiries regarding new service, handling converters, paying bills, and receiving complaints.

(b) Said office shall be conveniently located near or in the City and shall be open during all Normal Business Hours. "Near" for purposes of this Section shall mean within three (3) miles of the corporate limits of the City of Peoria.

SECTION 47. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-61 as Section 19-61 pertaining to Efficient telephone communications service and which shall read as follows:

Sec. 619-61. Efficient telephone communications service.

A Licensee shall render efficient telephone communication service and, at a minimum, meet the standards set forth below:

(a) Licensee shall have a publicly listed, local, or toll-free telephone number, in accordance with this Section, and receive complaints, and requests for repairs, Service Calls, billing inquiries and other Subscriber information on a twenty-four-hour-per-day, seven-day-a-week basis.

(b) Trained Licensee representatives will be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(c) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Licensee representative on the next business day.

(d) Under Normal Operating Conditions, telephone answer time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. No caller should be left on hold more than sixty (60) seconds without being informed of the status of the call.

(e) Under Normal Operating Conditions, the Subscribers will receive a busy signal less than three (3) percent of the time.

(f) Licensee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of compliance indicates a clear failure to comply.

SECTION 48. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-62 as Section 19-62 pertaining to Subscriber service standards and which shall read as follows:

Sec. 619-62. Subscriber service standards.

(a) Each Licensee shall at all times satisfy Federal Customer Service Standards and the Subscriber Service Standards set forth in this Chapter and in its License. If there is a conflict among standards, the stricter standard shall prevail, unless such standard has been preempted by Federal law.

(b) Upon termination of Cable Services to any Subscriber, a Licensee shall promptly remove its converter equipment from the premises of such Subscriber upon the Subscriber's request.

(c) Licensee shall render efficient Cable Services, make repairs promptly, and interrupt Cable Services only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during periods of minimum Cable System use.

(d) Licensee shall not knowingly allow its cable or other operations to interfere with television reception of persons not serviced by Licensee, nor shall the Cable System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the City.

(e) A Licensee shall continue, through the term of the License, to maintain the technical, operational, and maintenance standards and quality of Cable Service set forth in this Chapter and as specified in the License.

(f) Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) percent of the time measured on a quarterly basis:

(1) Standard Drops (including reconnects) will be installed within seven (7) days after an order has been placed.

(2) Excluding conditions beyond the control of the Licensee, the Licensee will begin working on "Service Interruptions" promptly and in no event later than 24 hours after the Interruption becomes known. The Licensee must begin actions to correct its service problems the next business day after notification of the service problem.

(3) The "Appointment Window" alternatives for Installations, Service Calls, and other installation activities will be either a specific time or, at a maximum, a four-hour time block during Normal Business Hours. (The Licensee may schedule Service Calls and other installation activities outside of Normal Business Hours for the express convenience of the Subscriber.)

(4) If a Licensee representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Licensee will attempt to contact the Subscriber. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

(g) In addition to the service interruption requirements set forth above, whenever it has been determined that an Outage exist, Licensee shall respond immediately. It shall be deemed a violation if Licensee exceeds a four-hour average response time to Outages during any consecutive three-month period.

SECTION 49. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-63 and renumbering it as Section 19-63 pertaining to Subscriber and City notification requirements and which shall read as follows:

Sec. 619-63. Subscriber and City notification requirements.

(a) The License shall provide written information in easy-to-understand language on each of the following areas prior to or at the time of installation of service, at least annually to all Subscribers and the City, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the Cable Service;
- (5) Information on a parental control feature that will permit a Subscriber to lock out any objectionable programming from the Cable Services entering his or her home.
- (6) Channel positions of programming carried on the system; and
- (7) Billing and complaint procedures, including the address and telephone number of the City's designated office for handling cable television matters.
- (8) The availability of a parental control device;
- (9) Licensee's practices and procedures for protecting against invasions of privacy;
- (10) The address and telephone number of Licensee's office to which complaints may be reported;
- (11) When applicable, Licensee's community unit identifier as specified by the FCC;
- (12) The manner in which the Licensee will provide notice of any rate or service changes; and;
- (13) Subscribers' rights to obtain refunds or credits from the Licensee and the steps that must be taken to obtain the refunds and credits.

(b) At any time a Subscriber's services are changed due to action by Licensee, Licensee shall send the following notice:

- (1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services. In order that Subscribers are fully apprised of the charges they may incur, Licensee shall note that advertised rates are subject to additional taxes and fees;

(3) Channel positions of programming carried on the system;

(4) Subscribers' rights to downgrade or to disconnect.

(c) Subscribers and the City will be notified of any changes in rates, programming, services or channel positions as soon as possible in writing. Notice must be given to the City and Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Licensee, unless the City concurs that notice is not necessary. In addition, the Licensee shall notify the City and Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(d) The City shall be notified of any change in rates, programming services, channel position or policy at least thirty (30) days in advance of such change by letter delivered to the administrator, except where such notification is impossible because the change is beyond the control of Licensee or any Affiliate, in which case the notice must be given as quickly as possible. As part of this notice, Licensee will tell the City how notice will be provided to Subscribers and provide a copy of the notice that will be given to Subscribers, or if the precise notice is not available, Licensee will provide the text of the notice.

(e) Notice to Subscribers must be reasonable.

(f) Notice of termination. Every notice of termination of service shall include all of the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) Current account balance;

(3) The date by which payment is required in order to avoid termination of service; and,

(4) The telephone number of a representative of Licensee who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

(g) Special notice procedures.

(1) At any time a person subscribes to any Cable Service, the person must be specifically informed whether there will be a charge to drop the Cable Service.

- (2) If there is any charge for terminating a promotional or free product or cable service, the charge must be disclosed in writing prior to connection of the service or provision of the product.

SECTION 50. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-64 and renumbering it as Section 19-64 pertaining to Billing practices; information and procedures and which shall read as follows:

Sec. 619-64. Billing practices; information and procedures.

(a) Bills will be clear, concise and understandable. Bills must fully itemized, with itemizations including, but not limited to, Basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. If, on bills, Licensee chooses to itemize as a separate line item License Fees and/or other governmentally imposed fees attributable to the total bill, such fees must be shown in accordance with any applicable law concerning Licensee's authority to itemize such fees.

(b) Refund checks or rebates will be issued promptly, but no later than either (i) the Subscriber's next billing cycle following resolution of the request or thirty (30) days whichever is earlier, or (ii) a return of the equipment supplied by the Cable Licensee if service is terminated. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

~~(c)(b)~~ Licensee shall bill all Subscribers to its Cable System in a uniform manner, regardless of Subscriber's level of service. In no case shall any Subscriber be billed for services in excess of 30 days prior to receipt of such service. Payment shall be due no sooner than the 15th day of each billing period, and due date shall be listed on each bill. Bills shall be mailed no later than the first day of the billing period.

~~(d)(e)~~ In case of a Subscriber dispute, the Licensee must respond to a written complaint from a Subscriber within thirty (30) days. The Licensee shall follow a written internal appeal procedure for resolution of Subscriber disputes. Any Subscriber who, in good faith, disputes all or part of any bill has the option of withholding the disputed amount without disconnection or imposition of late fees until Licensee has investigated the dispute and has made a determination that the amount is owed provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides written notification of the dispute to the Licensee in a timely manner and includes identifying information; and
- (3) The Subscriber cooperates in determining the appropriateness of

the charges in dispute.

~~(e)(d)~~ Refund checks will be issued promptly, but no later than either:

- (1) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (2) The return of the equipment supplied by the Licensee if service is terminated.

~~(f)(e)~~ Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

~~(g)(f)~~ Any Subscriber shall be entitled, upon request, oral or written, to Licensee to a refund equal to one day's service for each Subscriber's loss of service caused by Licensee: (1) for each continuous 24-hour period or (2) or a period of two or more hours of any four days within a monthly billing period.

~~(h)~~ Subscriber bills from Licensee shall include the name, address, and telephone number of the City's administrator. The administrator will provide the required information to Licensee on an annual basis by January 1, or as needed.

~~(i)~~ Licensee shall forward all regulatory billing inserts affecting rates, policies and procedures and copies of all other mailings to Subscribers required by law or License to the administrator no later than when they are provided to Subscribers. Copies of notices to Subscribers must be forwarded to the administrator to determine compliance pursuant to applicable law.

~~(j)~~ It is Licensee's obligation to pick up any equipment upon termination of any service if Licensee initially delivered the equipment to the Subscriber. Any charges imposed for pick-up of such equipment shall not exceed the charge for delivering the equipment, provided that the Subscriber honors the equipment pick-up appointment agreed to with the Licensee.

SECTION 51. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-65 and renumbering it as Section 19-65 pertaining to Subscriber solicitation procedures and which shall read as follows:

Sec. ~~6~~19-65. Subscriber solicitation procedures; complaints.

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

(b) The Licensee shall afford each Subscriber of the Cable System with a three day right of rescission for ordering installation of Cable Service from the Cable System provided that such right of rescission shall end upon initiation of physical installation of Cable System equipment on such Subscriber's premises.

(c) If a complaint to a Licensee cannot be resolved to a Subscriber's satisfaction, the City may consider individual cases brought to its attention and may seek that information necessary to investigate the dispute and to exercise any authority the City may have to resolve the dispute.

SECTION 52. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-66 and renumbering it as Section 19-66 pertaining to Disconnection and termination of Cable Services and which shall read as follows:

Sec. 619-66. Disconnection and termination of Cable Services.

(a) Licensee shall only disconnect or terminate a Subscriber's Cable Service for good and just cause. In no event shall Licensee disconnect said Cable Service for nonpayment without the prior written notification to the affected Subscriber at least seven (7) days prior to such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than thirty (30) days after a Subscriber's failure to pay a bill due. Where the Licensee has improperly discontinued Cable System service to any such Subscriber, it shall provide free reconnection to the Cable System to such Subscriber.

(b) Subject to provisions of the Cable License, Licensee shall furnish and maintain Cable Services to each person in the Cable License area who makes a request to receive any programming service and meet the requirements for extension of Cable Service under the Cable License. Nothing in this Chapter shall limit the right of Licensee to deny service to any household or individual which has a negative credit or service history with Licensee, which may include nonpayment of bills or theft or damage to Licensee's equipment, or who has threatened or assaulted employees of Licensee in the course of their employment, or for other good cause, which must be documented.

SECTION 53. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-67 as Section 19-67 pertaining to Rights of individuals and which shall read as follows:

Sec. 619-67. Rights of individuals.

(a) A Licensee shall not deny Cable Service, deny access, or otherwise discriminate against Subscribers, channel Users, or general citizens on the basis of race, color, religion, national origin, sex, age or disability. A Licensee shall comply at all times with all other applicable federal, state and local laws and regulations, and as amended from time to time, relating to nondiscrimination.

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

SECTION 54. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-68 as Section 19-68 pertaining to Protection of Subscriber privacy and which shall read as follows:

Sec. 619-68. Protection of Subscriber privacy.

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

- (1) The nature of personally identifiable information collected or to be collected with respect to the Subscriber and the nature of the use of such information;
- (2) The nature, frequency, and purpose of any disclosure which may be made of such information, including any identification of the types of persons to whom the disclosure may be made;
- (3) The period during which such information will be maintained by the Licensee;
- (4) The times and place at which the Subscriber may have access to such information in accordance with Subsection (a)(2) of this Section; and
- (5) The limitations provided by this Section with respect to the collection and disclosure of information by a Licensee and the right of the Subscriber under Subsections (i) and (j) to enforce such limitations.

(b) For purposes of this Section, the term "Personally Identifiable Information" does not include any record aggregate data which does not identify particular persons.

(c) Except as provided in Subsection (d) of this Section, a Licensee shall not use the Cable System to collect personally identifiable information concerning any Subscriber without the prior written or electronic consent to the Subscriber concerned.

(d) A Licensee may use the Cable System to collect such information in order to -

- (1) Obtain information necessary to render a Cable Service or other service provided by the Licensee to the Subscriber; or
- (2) Detect unauthorized reception of cable communications.

(e) Except as provided in Subsection (f) of this Section, a Licensee shall not disclose personally identifiable information concerning any Subscriber without the prior written or electronic consent of the Subscriber concerned.

(f) A Licensee may disclose such information if the disclosure is:

(1) Necessary to render, or conduct a legitimate business activity related to a Cable Service or other service provided by the Licensee to the Subscriber;

(2) Subject to Subsection (j), made pursuant to a court order authorizing such disclosure, if the Subscriber is notified of such order by the person to whom the order is directed; or;

(3) A disclosure of the names and addresses of Subscribers to any Cable Service or other service, if:

a. The Licensee has provided the Subscriber the opportunity to prohibit or limit such disclosure, and

b. The disclosure does not reveal, directly or indirectly, the -

i. Extent of any viewing or other use by the Subscriber of a Cable Service or other service provided by the Licensee, or

ii. The nature of any transaction made by the Subscriber over the Cable System of the Licensee.

(g) A Subscriber shall be provided, free of charge, access to all personally identifiable information regarding that Subscriber which is collected and maintained by a Licensee. Such information shall be made available to the Subscriber at reasonable times and at a convenient place designated by such Licensee. A cable Subscriber shall be provided reasonable opportunity to correct any error in such information.

(h) A Licensee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under Subsection (g) or pursuant to a court order.

(i) Any person aggrieved by any act of a Licensee in violation of this Section may bring a civil action in a court of general jurisdiction, as provided in Section 631 of the Cable Act.

(j) Nothing in this Chapter shall be construed to prohibit the City from enacting or enforcing additional laws consistent with this Section for the protection of Subscriber privacy.

(k) A governmental entity may obtain personally identifiable information only if, in the court proceeding relevant to such court order -

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

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

SECTION 55. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-69 through 6-79 as Reserved Sections 19-69 through 19-79 and which shall read as follows:

Secs. ~~619-69. through 6-75.~~ Reserved.

Sec. ~~619-70.~~ Reserved.

Sec. ~~619-71.~~ Reserved.

Sec. ~~619-72.~~ Reserved.

Sec. ~~619-73.~~ Reserved.

Sec. ~~619-74.~~ Reserved.

Sec. ~~619-75.~~ Reserved.

Sec. ~~619-76.~~ Reserved.

Sec. ~~619-77.~~ Reserved.

Sec. ~~619-78.~~ Reserved.

Sec. ~~619-79.~~ Reserved.

SECTION 56. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-80 as Section 19-80 pertaining to Reports and which shall read as follows:

Sec. ~~619-80.~~ Reports.

(a) 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 (12) month period. At the briefing, Licensee shall submit a written report that includes the following information, specific to the City: number of homes passed, number of cable plant miles, number of Subscribers for each type of Cable Service offered and the Gross Revenues from each source attributable to the operations of Licensee from within the City. This report shall be verified as being correct by an officer of the company. There shall be submitted along with this report such other information reasonably related to License compliance as the City shall reasonably request.

(b) 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.

(c) 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.

SECTION 57. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-81 and renumbering it as Section 19-81 pertaining to Inspection of property and records and which shall read as follows:

Sec. 619-81. Inspection of property and records.

(a) 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 which relate to License compliance and deal with the operations, affairs, transactions or property of the Licensee.

(b) The City may make any inspections (of work, etc.) deemed necessary in connection with permits issued under this Chapter. During the construction, the City will inspect all trenching, backfilling, Street or pavement cuts, and other work as deemed necessary by the Department.

(c) 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 or in use in Streets, public rights-of-way and other places in the City and make them available to the City for review upon request.

(d) 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.

(e) At intervals specified in the Cable License and in an electronic mapping format compatible with the current City electronic mapping format, the Licensee shall provide the City, up-to-date route maps of a suitable scale showing all transmitting and receiving pickup locations, cable route, and pedestal locations. Upon request, the Cable License may provide that each shall provide the other with route maps or sets of maps drawn to scale, showing the location of their respective underground and above ground facilities.

(f) Misrepresentation, material variances between the actual situation and the contents of the reports, and/or significant tardiness in complying with this section shall be grounds for the City's use of appropriate remedies under this Chapter.

SECTION 58. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-82 as Section 19-82 pertaining to Protection of City against liability and records and which shall read as follows:

Sec. 619-82. Protection of City against liability.

(a) *Indemnification.*

(1) Licensee shall fully indemnify, defend and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees 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:

a. 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;

b. 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;

c. 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;

- d. Any and all disputes arising out of a claim by any party other than City wherein damages or other relief is sought (i) as a result of the City's Cable System licensing of Licensee or (ii) as a result of the renewal or non-renewal of Licensee's Cable System License.
- (2) If a lawsuit covered by the provisions of Subsection (a)(l) be 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.
 - (3) City shall cooperate with the Licensee and reserves the right to participate in the defense of any litigation.
 - (4) 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.
 - (5) 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.
 - (6) All rights of 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 Chapter, rule, regulation or law.
 - (7) 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 Chapter, rule, regulation or law.
 - (8) It is the purpose of this Section to provide maximum indemnification to the City under the terms and conditions expressed and, if there is a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by the Licensee.
 - (9) The provisions of this Section 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 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.

- (b) *Comprehensive Liability Insurance.*
- (1) 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, 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, 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 approved by the City Manager 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). The policy or policies shall name the City, its officers, 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 in this Subsection 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.
- (2) The City Council may require increases in the amount of types of coverage no more frequently than every three (3) years, based on increases in the CPI, so as to ensure full protection of the City of

Peoria and the public. The Licensee shall have six (6) months from the date of notification from the City Manager to comply with any increase.

- (3) A Licensee may self-insure the above-described policy overages 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.

SECTION 59. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-83 and renumbering it as Section 19-83 pertaining to Letter of credit and which shall read as follows:

Sec. 619-83. Letter of credit.

(a) 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 TEN THOUSAND DOLLARS (\$10,000) issued by a federally insured commercial lending institution. The form and substance of said letter of credit shall be used to assure the faithful performance by a Licensee of all provisions of this and resulting License; and 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.

(b) 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 certifying that the Licensee has been found, pursuant to Subsection 619-86(c) or Section 619-87, to have failed to comply with, its License or License agreement, stating the nature of noncompliance, and 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:

- (1) failure of the Licensee to pay to the City any License Fees or taxes after ten (10) days written notice of delinquency.
- (2) failure of the Licensee 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 Section 619-82.
- (3) failure of the Licensee to pay to the City any liquidated damages due and owing to the City pursuant to the License.

(c) The City may require the Licensee to deposit a financial assurance equal to the cost of the work proposed in the application, as determined by the City Engineer. The financial assurance shall constitute a guarantee that the work will be performed in accordance with City specifications, standards, and guidelines.~~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 the honoring of 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 ten thousand dollars (\$10,000).~~

(d) 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.

SECTION 60. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-84 as Section 19-84 pertaining to Construction bond and which shall read as follows:

Sec. 619-84. Construction bond.

(a) Within thirty (30) days after the award or renewal of a License, a Licensee shall obtain and maintain throughout the period of 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.

(b) Any extension of the prescribed construction or reconstruction time limit must be authorized by the City. The construction bond shall be available throughout any such extension period.

(c) The construction bond shall be terminated only after the City Council 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.

(d) 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.

(e) 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 sixty (60) days after receipt by the City, by registered mail, or written notice of such intent to cancel or not to renew.

SECTION 61. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-85 as Section 19-85 pertaining to Liquidated Damages and which shall read as follows:

Sec. 619-85. Liquidated Damages.

(a) 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:

- (1) 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;
- (2) Failure to provide a cable connection within the time(s) set forth in this Chapter;
- (3) 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;
- (4) Failure to comply with Subscriber service standards of this Chapter;
- (5) Failure to test, analyze and report on the performance of the Cable System following a written request pursuant to this Chapter;
- (6) 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;
- (7) Failure to cure any violation of this Chapter, following notice and an opportunity to cure pursuant to the provisions of that Section; and

(8) Any other action or non-action by the Licensee, as agreed upon between the City and Licensee, and set forth in the License.

(b) If the City Manager concludes that a Licensee is in fact liable for liquidated damages pursuant to this Section, 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:

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

(2) Cure any such violation (and provide written evidence of the same), or, if, by the nature of the violation, such violation cannot be cured within such thirty (30) 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 (30) day intervals as to Licensee's efforts, indicating the steps taken by Licensee to cure said violation and reporting Licensee's progress until such violation is cured.

(c) If Licensee contests the City's assertion of violation or fails to respond to the City's notice of intent to assess liquidated damages, within fifteen (15) days the City shall schedule a hearing in accordance with the procedures set forth in Chapter.

SECTION 61. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-86 and renumbering it as Section 19-86 pertaining to Administrative hearing and which shall read as follows:

Sec. 619-86. Administrative hearing.

(a) Within fifteen (15) days of:

(1) Receipt of notice of contest pursuant to Section 619-85(b)(1),

(2) Expiration of the response time referred to in this Chapter, or

(3) Notice from Licensee that it contests an audit determination of License Fees under this Chapter,

an administrative hearing shall be scheduled by the City Manager. This shall be a public hearing, and Licensee shall be afforded full due process, including, without limitation, an opportunity to be heard, to present evidence and to cross examine witnesses. Within fifteen (15) days after the conclusion of such hearing, the City Manager shall issue a determination. In that determination the City Manager may:

- (4) Find that Licensee is not in violation of the terms of the License;
- (5) 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;
- (6) Find that Licensee is in violation of the terms of the License, take corrective action and foreclose on all or any appropriate part of the letter of credit provided pursuant to Section 619-83;
- (7) Find that Licensee is in violation of the terms of the License and impose liquidated damages; or
- (8) In the case of a material violation 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 Section 619-87.

(b) 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.

(c) 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.

SECTION 62. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-87 and renumbering it as Section 19-87 pertaining to Hearing by City Council and which shall read as follows:

Sec. 619-87. Hearing by City Council.

If a public hearing before the City Council is requested by Licensee or is held pursuant to Subsections 619-86(a)(5) or 619-86(c), it shall be de novo and it shall convene within thirty (30) days of the request therefor. The City Council may designate three 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. All witnesses shall be sworn and shall be subject to cross-examination; however, formal rules of evidence shall not apply. The City Council's decision, which shall include findings of fact, shall be made not later than forty-five (45) calendar days after the conclusion of the hearing. In that decision, the City Council may:

- (a) Find that Licensee is not in violation of the terms of the License;
- (b) Find that Licensee is in violation but that such violation was with just cause and waive any liquidated damages or penalty that may otherwise to imposed;

(c) Find that Licensee is in violation of the terms of the License, take corrective action and foreclose on all of any appropriate part of the letter of credit provided pursuant to Section 619-83 to pay the cost thereof;

(d) Find that Licensee is in violation of the terms of the License and impose liquidated damages; or

(e) In the case of a material violation of the License within the meaning of Section 619-88, declare the Licensee in violation and revoke the License.

SECTION 63. Chapter 6 of the Peoria City Code (1992) is amended by amending Section 6-88 and renumbering it as Section 19-88 pertaining to Revocation and which shall read as follows:

Sec. 619-88. Revocation.

(a) In addition to all other rights and powers retained by the City Council under this Chapter or otherwise, the Council shall have the right to revoke the License and all rights and privileges of the Licensee thereunder upon a recurring or protracted substantial breach of the License terms and conditions, or this Chapter, which substantially affects the provision or quality of Cable Services, the ability of the City of Peoria to effectively regulate the Licensee, or Peoria'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 in this Section shall be considered substantial breaches. The list is not exhaustive:

(1) Willful or grossly negligent repeated violations of this Chapter, the License, or the representations made in the Proposal process, or any rule, order or regulation of the City of Peoria made pursuant to this Chapter;

(2) An attempt to dispose of any of the facilities or property of the system authorized by the License to prevent City from acquiring it, as provided for herein;

(3) Attempt to evade any material provision of the License or practice any fraud or deceit upon the City or its Subscribers or customers;

(4) Failure to begin or complete Cable System construction, reconstruction or Cable System extension as provided under the License;

(5) Failure to provide the types of categories of programming and Cable Services promised;

(6) Recurrent failures to restore service on the entire or a substantial portion of the Cable System after ninety six (96) consecutive hours of interrupted service except Cable Services promised;

(7) Recurrent service Outages of the entire Cable System or a substantial portion thereof which, in the aggregate, exceed ten (10) days in any thirty (30) day period;

(8) Recurrent failures after notice by the City Manager to provide service to any part of the Licensee service area, consistent with Section 619-42;

(9) 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.

(b) 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 Section 619-88.

SECTION 64. Chapter 6 of the Peoria City Code (1992) is amended by amending Reserved Section 6-89 and renumbering it as Section 19-89 and which shall read as follows:

Secs. 619-89. Violations by non-licensed persons. through 6-94. Reserved.

(a) From and after the effective date of these licensing requirements, 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 Cable License therefore has first been obtained pursuant to the provisions of these licensing requirements, and unless such Cable License is in full force and effect.

(b) From and after the effective date of these licensing requirements, it shall be unlawful for any person to construct, install or maintain within any Street and public way in the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a Street and public way but is designated or delineated as a proposed Street and public way on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a Cable System, unless a Cable License authorizing such use of such Street and public way or property or area has first been obtained pursuant to the provisions of these licensing requirements, and unless such Cable License is in full force and effect.

(c) 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.

(d) 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.

(e) Any person violating any part of this Section 619-89 shall be guilty of a class one misdemeanor. Fines levied against individuals for theft of Cable Service are defined in the Federal Communications Act.

SECTION 65. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Sections 6-90 through 6-94 as Reserved Sections 19-90 through 19-94 and which shall read as follows:

Sec. 619-90. Reserved.

Sec. 619-91. Reserved.

Sec. 619-92. Reserved.

Sec. 619-93. Reserved.

Sec. 619-94. Reserved.

SECTION 66. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-95 as Section 19-95 pertaining to Continuity of service mandatory and which shall read as follows:

Sec. 619-95 Continuity of service mandatory.

(a) 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.

(b) 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.

(c) 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.

SECTION 67. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-96 as Section 19-96 pertaining to Failure of City to enforce a License; no waiver of the terms thereof and which shall read as follows:

Sec. 619-96. 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.

SECTION 68. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-97 as Section 19-97 pertaining to Waivers and which shall read as follows:

Sec. 619-97. Waivers.

(a) Any provision of this Chapter may be waived, at the sole discretion of the City, by resolution of the City Council.

(b) 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 and twenty (120) days following its submission.

(c) 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.

(d) This Section 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.

SECTION 69. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-98 as Section 19-98 pertaining to Validity of License and which shall read as follows:

Sec. 619-98. 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.

SECTION 70. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-99 as Section 19-99 pertaining to Miscellaneous provisions and which shall read as follows:

Sec. 619-99. Miscellaneous provisions.

(a) 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.

(b) Neither Licensee or any of its officers, or employees shall receive referral fees or gratuities from any television or radio sales or repair business.

(c) All notices which the City may give to a Licensee or which a Licensee may give to the City shall be given in writing and may be given by first class mail, postage prepaid addressed to Licensee's most recent address on file with the City, and addressed to City. Such notices, when sent by mail, shall be deemed given one day after deposit in the U.S. Mail.

SECTION 71. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-100 as Section 19-100 pertaining to Force Majeure and which shall read as follows:

Sec. 619-100. 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 reasonable foreseeable by Licensee and is beyond its reasonable control.

SECTION 72. Chapter 6 of the Peoria City Code (1992) is amended by renumbering Section 6-101 as Section 19-101 pertaining to Severability and which shall read as follows:

Sec. 619-101. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that they would have passed this Chapter and each section, subsection, sentence, clause, and phrase hereof,

irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of the Chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the Licensee or any License granted hereunder.

SECTION 73. The current sections of Chapter 19 of the Peoria City Code (1992) will be renumbered and/or amended by way of a separate ordinance to be submitted to the Mayor and City Council for approval.

SECTION 74. 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 75. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 4th day of April, 2017.

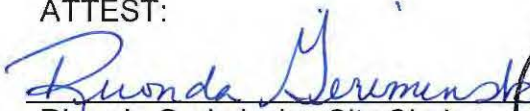


Cathy Carlat, Mayor

4/5/17

Date Signed

ATTEST:



Rhonda Geriminsky, City Clerk



APPROVED AS TO FORM:



Stephen J. Burg, City Attorney

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