CHAPTER 7

COMMUNITY ANTENNA TELEVISION SYSTEMS

SECTION: (1947)

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9-7-1: DEFINITIONS:
For the purposes of this Chapter, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein unless they are defined differently in a license, in which case for that license the definition set forth therein shall apply, or unless a license specifies that the definitions set forth herein in whole or in part do not apply to such license, in which case they do not apply to such license (in whole or in part, as the case may be). 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. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in the Federal Cable Communications Policy Act of 1984 and in the Federal Communications Commission (FCC) rules and regulations shall apply. (972,1947,4110)

APPLICANT: Any person that applies for a license. (972,1974)

APPLICATION: Licensee’s proposal and all additional representations to the City, both written and oral, the latter when electronically recorded. (1947)

CABLECASTING: Programming (exclusive of broadcast signals) and/or all other forms of information, whether audio, video, facsimile, data, or of any other form carried on a cable television system, whether originated by the cable operator or by any other party. (1947)
CABLE TELEVISION SYSTEM OR CABLE COMMUNICATION SYSTEM OR CATV OR SYSTEM: A system, under common ownership and control, of antennas, cables, fiber optics, wires, lines, towers, waveguides, or other conductors, converters, equipment, or transmission paths designed and constructed for the purpose of generating, producing, receiving, transmitting, amplifying, and distributing and controlling audio, video, and other forms of electronic or electrical signals. Said definition shall not include any facility that serves or will serve only subscribers in one or more multiple dwellings under common ownership, control, or management and which does not use City rights-of-way. (972,1947)

CHANNEL: Unless otherwise defined, a six (6) megahertz (MHz) frequency band which is capable of carrying either one (1) standard video signal or a combination of nonstandard signals. (972,1947)

CHIEF ADMINISTRATIVE OFFICER: The City Manager of the City of Mesa, Arizona, or his designee appointed to act on his behalf in cable television matters. (972,1947)

CITY: The City of Mesa, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form. (972,1947)

COUNCIL: The City Council of the City of Mesa, Arizona, or its designee appointed to act on its behalf in cable television matters. (972,1947)

CONVERTER: An electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver. (1947)

EDUCATIONAL ACCESS CHANNEL or EDUCATIONAL CHANNEL: Any channel where educational institutions are the sole programmers and exercise editorial control over the programming and other information transmitted over that channel. (1947)

EQUIPMENT, APPARATUS, AND APPURTENANCES: Any manholes, underground conduits, poles, cables, boxes, pedestals, wire fixtures, conductors, or other facilities necessary, essential, used, or useful to and operated by the cable television system. (1947)

FCC: The Federal Communications Commission, its designated representative, or its lawful successor. (972,1947)

GOVERNMENT ACCESS CHANNEL OR LOCAL GOVERNMENT ACCESS CHANNEL: Any channel where governmental institutions, bodies, or agencies are the sole programmers and exercise editorial control over the programming and other information transmitted over the channel. (1947)

GROSS SUBSCRIBER REVENUES: Any and all compensation and other consideration received directly or indirectly, in payments or lump sum, by the licensee from subscribers in providing subscriber services. (972,1947)
INSTALLATION: The connection of the system from activated feeder line(s) to subscribers’ terminals for the reception of cable service. (1947)

INSTITUTIONAL NETWORK, INSTITUTIONAL LOOP, OR I-NET: Video, audio, digital, videotext, data, and/or any other one-way or two-way transmission or reception services provided to institutional users on an individual, private-channel basis, not normally accessible to regular subscribers, but which may include signals among institutional users or to and/or from institutional users to regular subscribers. (1947)

INTERCONNECT or INTERCONNECTION OF FACILITIES: Connection of one (1) or more channels of licensee’s system with other cable systems by direct cable, microwave link, satellite, or other appropriate methods. (1947)

LEASED ACCESS CHANNEL: Any channel available for lease and programming by persons or entities other than and not affiliated with the licensee, including those portions of the other access channels not in use by their designated programmers, and over which channels the lessee(s) shall exercise editorial control. (1947)

LICENSE: The nonexclusive right and authority to construct, maintain, and operate a cable television system through use of the public streets, public utility easements, other public rights-of-way, or public places in the City. (972,1947)

LICENSEE: The person granted a license by the Council and the lawful successor, transferee, or assignee of said person. (972,1947)

LICENSOR: The City of Mesa as represented by the Council, City Manager, or their designee(s) acting within the scope of their authority. (1947)

LOCAL ORIGINATION CHANNEL: Any channel where the licensee is the programmer and provides video programs of local origination and interest and/or other cablecast signals to subscribers. (1947)

NONEXCLUSIVE: That more than one (1) license may be granted by the City at any time for any area of the City to any qualified applicant. (1947)

PERSON: Any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies, or any other legal entity. (972,1947)

PROPERTY OF LICENSEE: All property owned, installed, or used within the City by a licensee in the conduct of its cable television system business. (972,1947)

PROPOSAL: Licensee’s written response to the City’s request for proposals to provide cable communications services to the City. (1947)

PROGRAMMER: Any person or entity who or which produces or otherwise provides program material or information for transmission to subscribers by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, by means of the cable television system. (1947)
PUBLIC ACCESS CHANNEL, COMMUNITY ACCESS CHANNEL, OR COMMUNITY CHANNEL:
Any channel upon which any member of the public or any noncommercial organization may become a programmer on a first-come, first-served, nondiscriminatory basis. (1947)

RESIDENT: Any person residing in the specified license area of the City or as otherwise defined by applicable law. (1947)

SECTION: Any section, subsection, or provision of this Chapter. (1947)

STREET: The surface, the air space above the surface, and the area below the surface of any public street, other public right-of-way, or public place, including public utility easements. (972,1947)

SUBSCRIBER: Any person receiving for any purpose any service of the licensee’s cable television system including, but not limited to, the redistribution of broadcast television signals; radio signals; licensee’s original cablecasting; local government, education, and public access channels; and other services including, but not limited to, leased channels, data and facsimile distribution, pay or premium channels, and emergency or nonemergency public service communications. (972,1947)

TOTAL GROSS RECEIPTS OR TOTAL GROSS REVENUES: Any and all compensation and other consideration collected or received or in any manner gained or derived by licensee from the operation of its cable system within the corporate limits of the City as they now exist or as they may be established hereafter. (972,1947)

TWO-WAY CAPABILITY OR BI-DIRECTIONAL CAPABILITY: The technical capacity for the transmission of telecommunications signals of any type or form from subscriber locations or other points throughout the system back to the system’s control center or to other points on the system, as well as transmission of signals from the system’s control center or another point on the system to any and/or all subscriber locations. (1947)

UNDERGROUND: Cable and appurtenances are either directly buried or placed in an underground conduit system. (1947)

USER: A party utilizing a cable television system channel for purposes of production or transmission of material to subscriber, as contrasted with receipt thereof in a subscriber capacity. (1947)

9-7-2: AUTHORITY TO GRANT LICENSE:

(A) A nonexclusive license to install, construct, operate, and maintain a cable television system on streets, public utility easements, other public rights-of-way, or public places within the City may be granted by the Council pursuant to three (3) separate and distinct sources of authority. The first source of authority is that conveyed to the City by its Charter. The second source of authority is that conveyed by the State of Arizona pursuant to Arizona Revised Statutes 9-505 et seq as it presently exists and as it hereafter may be amended. The third source of authority is that found in common law pursuant to the City’s ownership of the fee simple title to the streets and alleys of the City as well as its legal interest in easements and licenses granted to it by property owners for the purposes of municipal use. (972,1947)

(B) No provision of this Chapter may be deemed or construed to require the granting of a license. (972,1947)
9-7-3: LICENSE REQUIRED:

(A) It shall be unlawful for any person to establish or operate within the corporate limits of the City a cable system as defined in this Chapter and in Section 9-505, Arizona Revised Statutes, unless a license therefor has first been obtained pursuant to the provisions of this Chapter and unless such license is in full force and effect. (972, 1947)

(B) Any cable system operating in an unincorporated area which is annexed by the City shall have sixty (60) days from the date the annexation is effective to apply for a license to operate in the City. Failure to do so will constitute a violation of this Chapter and shall be cause for termination of said system’s operation inside the corporate limits of Mesa by order of the Mesa City Council and following ten (10) days’ written notice to the cable system operator. (1947)

(C) Any cable system not currently operating in the City which desires to do so shall apply for a license pursuant to the provisions and requirements of this Chapter. (1947)

9-7-4: LICENSE APPLICATION PROCEDURE:

(A) Each application for a license to construct, operate, and/or maintain any cable television system in the City shall be filed with the City Manager’s office, shall be subject in whole or in part to Council approval, and shall contain, as a minimum, the following: (972, 1947)

1. The name and both the home and business addresses and telephone numbers of the applicant. If the applicant is a partnership, the main home and business addresses of each partner shall also be set forth. If the applicant is a corporation, the application shall also state the names and home and business addresses of its directors, officers, major stockholders (any person controlling more than five percent (5%) of the ownership of the applicant), and associates, and the names and business addresses of parent and subsidiary companies. (972, 1947)

2. A statement setting forth in its entirety any and all agreements and understandings, whether formal or informal, written, oral or implied, existing or proposed to exist, between the applicant and any person who proposes to have an ownership interest with respect to the proposed license or to the proposed cable television operation. If a license is granted to a person acting as a representative of another person and such information is not disclosed in the original application, such license shall be deemed void and of no force and effect whatsoever. (72, 1947)

3. Financial statements, as may be determined by the City, prepared by a certified public accountant or person otherwise satisfactory to the City, showing applicant’s financial status and financial ability to complete construction and installation of the proposed cable system. (972, 1947)

4. A map satisfactory to the City indicating the proposed initial area of the City that will be served with cable television. (972, 1947)

5. A general five- (5-) year plan for the proposed expansion of licensee’s cable service area within the City. (972, 1947)
6. A proposed time schedule for the installation of all equipment necessary to become operational throughout the initial area to be serviced. The proposed schedule shall meet minimum FCC construction requirements. (972,1947)

7. A statement or schedule setting forth the programming and other services to be offered initially and the rates and charges to be made against subscribers for them, including installation and service charges. (972,1947)

8. A statement or schedule setting forth the number of channels and all the television or radio stations and/or other communication services initially proposed to be received, distributed, relayed, or otherwise conveyed over the cable system. (972,1947)

9. A statement describing the cable system and specifying the type and capacity of the cable system proposed to be constructed, installed, maintained, or operated by the applicant and the proposed location of the cable system headend, microwave dishes, towers and antennas, access facilities, and local business offices. (972,1947)

10. A detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields. (972,1947)

11. Any other details, statements, information, or references pertinent to this application which shall be required or requested by the City or by any provision of any other enactment of the City. (972,1947)

(B) Prior to the issuance of a license, the City shall hold a public hearing, following reasonable notice to the public, at which every applicant and its proposals shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published not less than fourteen (14) days before the day of such hearing. (972,1947)

(C) In making any determination as to any application, the Council may give due consideration to the quality of the service proposed; experience, character, background, and financial responsibility of any applicant and its management and owners; technical and performance quality of equipment; willingness and ability to meet construction and physical requirements and to utilize technological advances to better its system; and any other considerations deemed pertinent by the Council for safeguarding the interest of the City and the public. The Council, in its discretion, shall determine the award of any license on the basis of such considerations and without competitive bidding. (972,1947)

9-7-5: ACCEPTANCE OF LICENSE:

(A) No license shall become effective for any purpose unless written acceptance thereof shall have been received by the City Manager. Written acceptance, which shall be addressed to the Council and shall be in a form and of a substance approved by the City Attorney, shall also be and operate as an acceptance of each and every term, condition, and/or limitation contained in this Chapter or otherwise specified as herein provided. (972,1947)
(B) Pending litigation against the licensee shall not excuse the licensee from the performance of its obligations under the license. Failure of the licensee to perform such obligations because of pending litigation may result in penalties, forfeiture, revocation, or liquidated damages pursuant to the provisions of the license. (1947)

(C) The written acceptance shall be received by the City Manager not later than one minute after twelve (12:01) P.M. of the thirtieth (30th) day next following the effective date of granting of such license. If written acceptance is not received within such time period, the licensee shall be deemed to have rejected the license, and thereafter the acceptance of the licensee shall not be received by the City Manager. The licensee shall have no rights, remedies, or redress unless and until the Council, by resolution, shall determine that such acceptance be received, and then upon such terms and conditions as the Council may impose. (972,1947)

(D) Neither the granting of any license nor any of the provisions contained herein shall be construed to prevent the City from granting any license to any other person. (972,1947)

9-7-6: DURATION OF LICENSE:

(A) The rights, obligations, privileges, and authority contained herein shall take effect upon acceptance of the license and final execution of a license agreement as provided for in Section 9-7-5 of this Chapter, provided licensee has obtained all necessary permits, licenses, and authorizations and has complied with all other applicable provisions of this Chapter to that date. (972,1947)

(B) Unless otherwise provided in a license, the term of any license granted under this Chapter shall be fifteen (15) years, commencing on the effective date as provided for in Subsection (A) of this Section. (972,1947,4110)

(C) Neither the granting of any license nor any of the provisions contained herein or in any other license shall be construed to prevent the City from granting any license to any other person. (1947)

9-7-7: LIMITATIONS OF LICENSE:

(A) No privilege or exemption shall be granted or conferred by any license pursuant to this Chapter except those specifically provided for herein. (972,1947)

(B) Any privilege granted under any such license to use any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property. (972,1947)

(C) Unless specifically provided otherwise in a license, any such license granted shall not relieve the licensee of complying with any rule or regulation of the City. (972,1947,4110)

(D) The provisions in this Subsection (D) of this Section shall apply to all licenses and licensees unless otherwise provided in a license. Any such license shall be a privilege granted only to the original licensee. Such license cannot be sold, transferred, leased, assigned, or disposed of, in whole or in part, either by forced or involuntary sale or by voluntary sale, merger, consolidation, or otherwise, excepting a transaction between a wholly owned subsidiary and its parent company, without prior consent of the Council expressed by resolution, and then only under such conditions as may therein be prescribed. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed in the office of the City Manager within thirty (30) days after such transfer or assignment. The proposed assignee must show financial responsibility to the satisfaction of the Council and must agree to comply with all provisions of this Chapter and meet, if the assignee acquires the entire cable television system, all of the qualifications that must be met by an original licensee; and provided further that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed fifty percent (50%) of the market value of the property used by the licensee in the conduct of the cable television system, prior consent of the Council shall be required for such encumbrance. (972,1947,4110)
(E) The provisions in this Subsection (E) of this Section shall apply to all licenses and licensees unless otherwise provided in a license. In the event that licensee is a corporation, prior approval of the Council, expressed by resolution, which shall not be unreasonably withheld, shall be required where there is change in control or where ownership of more than fifty percent (50%) of the voting stock of the licensee is acquired by a person or group of persons acting in concert, singly or collectively. Any such acquisition occurring without prior approval of the Council shall constitute a failure to comply with this Chapter. (972,1947,4110)

(F) Unless otherwise provided in a license, every licensee shall be subject to any tax or fee now or hereafter imposed by the City on all businesses of the same or similar class. (972,1947,4110)

(G) Unless otherwise provided in a license, every licensee’s service policies shall show no preferential or discriminatory practices and shall be on file with the City Manager. (972,1947,4110)

(H) Unless otherwise provided in a license, time shall be of the essence in complying with the requirements of any license granted hereunder. No licensee shall be relieved of its obligation to comply promptly with any of the provisions of this Chapter by failure of the City to enforce prompt compliance. (972,1947,4110)

(I) Unless specifically provided otherwise in a license, no licensee shall have recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Chapter or of any license issued hereunder or because of its proper enforcement. (972,1947,4110)

(J) Unless otherwise provided in a license, licensee shall be subject to all requirements of the law, rules, regulations, and specifications heretofore or hereafter enacted or established by the City. (972,1947,4110)

(K) Every licensee shall at all times comply with all laws and regulations of the State and Federal governments or any administrative agencies thereof with authority over it. If any such State or Federal law or regulation shall require a licensee to perform any service or shall permit a licensee to perform any service or shall prohibit a licensee from performing any service in conflict with the terms of its license under this Chapter or under any law or regulation of the City, then as soon as possible following knowledge thereof, such licensee shall notify the City of the point of conflict believed to exist. (1947)

(L) If the City determines that a material provision of a licensee’s license issued under this Chapter is affected by any subsequent action of the State or Federal government, the City shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Chapter and any licenses issued under it. (1947)

9-7-8: PERFORMANCE REVIEW AND LICENSE RENEGOTIATION SESSIONS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Performance review sessions between the City and each licensee under this Chapter shall be held within six (6) months of the effective date of each new license and once every twelve (12) months thereafter. (1947)

(B) Such sessions may be held at any other time during the term of a license at the request of the Council, the City Manager, or the licensee. (1947)
(C) The licensee and the City shall hold scheduled renegotiation sessions every three (3) years from the effective date of any license unless both the licensee and the City agree to a waiver of such renegotiation session. The topics of discussion may include anything but the term of the license. (972,1947)

Special renegotiation sessions may be held at any time during the term of any license, provided that both the licensee and the City shall mutually agree on the time, the place, and the topics to be renegotiated. (972,1947)

9-7-9: PERFORMANCE BOND OR CERTIFICATE OF DEPOSIT:

Unless otherwise provided in a license, every licensee shall file with the City Manager and shall thereafter, annually, during the entire term of such license, maintain in full force and effect a corporate surety bond or other adequate surety agreement in a company and in such amount as shall have been approved by the Council in the license. The bond or agreement shall be so conditioned that in the event that licensee shall fail to comply with one (1) or more of the provisions of this Chapter or of the license, there shall be recoverable jointly and severally from the principal and surety any damages or loss or costs suffered or incurred by the City as a result thereof, including attorneys’ fees and costs of any action or any action proceeding, and including the full amount of any compensation, indemnification, cost, or removal or abandonment of any property or other cost which may be in default, up to the full principal amount of such bond. Said condition shall be a continuing obligation during the entire term of such license and any renewal thereof and thereafter until the licensee shall have satisfied in full any and all obligations to the City which arise out of or pertain to said license. Neither the provisions of this Section nor any bond accepted by the City pursuant hereto nor any damages recovered by the City thereunder shall be construed to exercise faithful performance by the licensee or limit the liability of the licensee under any license issued pursuant to this Chapter or for damages either to the full amount of the bond or otherwise. (972,1220,1947,4110)

9-7-10: LICENSE FEE:

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall pay to the City during the life of such license, on a quarterly basis, a sum no less than five percent (5%) of the total gross revenues from all sources received from the operation of a cable system within the City. (972,1947)

(B) Payments due the City under this provision shall be computed quarterly for the quarters ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report showing the basis for the computation. (972,1947)

(C) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Section. All amounts paid shall be subject to audit and recomputation by the City. (972,1947)

9-7-11: EXTENSION OF SERVICE:(972)

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) When there is only one (1) active Citywide license in effect under this Chapter, that licensee shall comply with the service line extension requirements set forth in Subsection (B) below and that licensee is also subject to the petitioning provisions of Subsection (C) for areas not covered under Subsection (B). (2273)

When there is more than one active Citywide license in effect under this Chapter, that licensee shall comply with the service line extension requirements set forth in Subsection (B) below and that licensee is also subject to the petitioning provisions of Subsection (C). (2273)

Licensees who do not have a Citywide license shall comply with the provisions of Subsections (B) and (C) within their designated service area. (2273)

(B) When there is only one (1) active Citywide license that is in effect under this Chapter, that licensee shall provide cable television service to any resident(s), residence(s), or other person(s) or facility(ies) in areas containing not less than seventy-five (75) dwelling units per trench mile (underground construction) and/or not less than fifty (50) dwelling units per strand mile (aerial construction) and not currently served by any licensee within the corporate limits of the City as now established and as may be expanded or extended at any time hereafter. (2273)

1. For purposes of this Section, "provide cable television service" shall mean having all cable plants including trunk feeder and drop lines and other necessary electronics in place and activated. (1947, 2273)

2. When fifty percent (50%) of all dwelling units passed by the licensee’s cable system inside the corporate limits of the City subscribe to the licensee’s cable television service, that is, when the licensee’s penetration rate reaches fifty percent (50%), then the residential density requirement for service under Subsection (B) of this Section shall be forty (40) dwelling units per strand and/or trench mile, without regard for method of construction. (1947, 2273)

3. For purposes of this Section, "dwelling units" shall be defined as single-family residences and all multiple-family residences, with the exceptions that: (1947,2273)

(a) Multiple-family residences such as, but not limited to, condominiums, townhouses, apartments, and other multiple-unit dwellings, excluding duplexes, triplexes, and fourplexes, which shall be counted as single-family residences, shall be counted as one-half (1/2) a dwelling unit under this Section. (1947,2273)

(b) Mobile home parks and recreational vehicle parks which allow for rental space by a majority of their tenants/lessees for periods of less than six (6) months shall be excluded from this definition of dwelling units under this Section. (1947,2273)

(c) Multiple-unit dwellings served by satellite master antenna television (SMATV) shall be excluded from the definition of dwelling units in this Section. (1947,2273)

4. In the case of new development, a licensee, if refused access to an open or joint trench, or in the case of multiple-unit dwellings, to a construction site, in order to prewire those units for receipt of cable service, may exclude said development from consideration for the licensee’s cable service under this Section for a period of five (5) years. (1947,2273)

(a) For purposes of this Section, "new development" is defined as a development in which an open trench, and in the case of multiple-unit dwellings, in which access to the site, for prewiring is provided by the developer during the initial construction period. (1947,2273)

(b) Refusal by a developer or owner shall be demonstrated by the licensee. (1947,2273)
When there is more than one active Citywide license that is in effect under this Chapter or in areas not covered under Subsection (B) of this Section, for extension of service, residents may petition any licensee for service. Petitions for service may be filed as follows: (1947,2273)

1. If fifty-one percent (51%) of the persons residing in a specific area of the City not covered under Subsection (B) of this Section and not served by any licensee petition, in writing, one (1) or more licensees for service, the licensee(s) so petitioned must respond to the petitioners within sixty (60) days of receipt of said petitions, indicating that service can and will be provided and outlining procedures, fees, and timetables for receiving services or indicating that service cannot be provided and thoroughly documenting the reasons why it is not economically feasible to do so. (1947,2273)

2. If fifty-one percent (51%) of the subscribers in a specific area of the City containing not less than fifty (50) dwelling units per street mile and currently availing themselves of the services of a licensee petition, in writing, other licensees under this Chapter to provide service to them in the event that said subscribers allege and believe that service provided by their current cable operator is unacceptable to them, the licensee(s) so petitioned must respond to the petitioners within sixty (60) days of receipt of said petitions, indicating that service can and will be provided and outlining procedures, fees, and timetables for receiving service or indicating that service cannot be provided and thoroughly documenting the reasons why it is not economically feasible to do so. (1947,2273)

3. For purposes of this Section, "economically feasible" shall mean that the additional incremental revenues that may reasonably be generated by extending service to a specific area will equal or exceed the additional incremental costs incurred in furnishing service to that specific area in an amount sufficient to provide the licensee(s) with a reasonable Internal Rate of Return (IRR). (1947,2273)

4. Licensees must extend and make cable television service available at the standard connection charge to any resident(s) isolated from a standard residential area who requests connection, provided the isolated residence is passed by existing cable, if the connection to the isolated resident(s) would require no more than a standard one hundred fifty-foot (150') drop. (1947,2273)

Licensees must extend and make cable television service available to any isolated resident(s) requesting it, provided the isolated residence is passed by existing cable, even if the connection would require more than a one hundred fifty-foot (150') drop, at a charge not to exceed the actual installation costs incurred by the licensee for the distance exceeding one hundred fifty feet (150'). (1947,2273)

5. Licensee shall keep a record for at least three (3) years of all petitions and requests for service received pursuant to this Section. (1947,2273)

(D) Nothing herein shall be construed to prevent any Citywide licensee from serving more areas and residents of the City than is required by this Section. Conversely, if any licensee shall determine that the provisions under Subsection (B) of this Section under particular circumstances combine to work a severe economic hardship on him/her, the licensee shall have the right of appeal to the City Manager for a waiver of the performance required by that portion of said Subsection (B) of this Section. (1947,2273)

(E) A licensee intending to overbuild another licensee under this Section shall obtain all applicable permits from the City to do so and shall be obligated by this Section to notify, in writing, the licensee to be overbuilt no less than ten (10) days prior to the start of construction. (1947,2273)

(F) All licensees under this Chapter shall be required to provide, upon request, current and accurate maps showing the full extent of the licensee’s system both inside the corporate limits of the City and in other incorporated and unincorporated areas outside the City. (1947,2273)
9-7-12: SYSTEM CONSTRUCTION AND MAINTENANCE:

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) New licensees or licensees proceeding with reconstruction of an existing system under this Chapter shall establish and file with the City Manager a construction plan, including maps showing construction locations, and a timetable for buildout and activation of cable lines. (1947)

(B) After acceptance of a license in the City, any licensee shall proceed with diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or associated microwave transmission facilities. (972,1947)

(C) Copies of all petitions, applications, and reports submitted by the licensee to the Federal Communications Commission with respect to any matters affecting the licensee’s cable television operations under the license shall be available for inspection by the City Manager. A copy of any agreement covering the licensed area between the applicant and any public utility providing for the use of any facilities of the public utility, including but not limited to, poles, lines, or conduits, shall also be available for inspection by the City Manager. (972,1947)

(D) All lines, equipment, and connections in, over, under, and upon the streets and public ways in the City, wherever situated or located, shall at all times be maintained in a safe and suitable condition and in good order and repair. (972,1947)

(E) The licensee shall repair the streets and public ways. (972,1947)

1. Any and all streets and public ways which are disturbed or damaged during the construction, operation, maintenance, or reconstruction of the cable television system shall be promptly repaired by the licensee at its expense and to the satisfaction of the City Manager. (972,1947)

2. Upon the failure, refusal, or neglect of the licensee to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street or other public place within any time prescribed therefor or upon notice given when no time is prescribed, the City Manager may cause such work or other activity to be completed in whole or in part to his satisfaction and upon so doing, shall submit to the licensee an itemized statement of the cost thereof. The licensee shall, upon thirty (30) days after receipt of such statement, pay to the City the entire amount thereof. (972,1947)

(F) No licensee shall erect any pole on or along any street or public way of the City except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems, and only with the approval of the City Manager. Nothing in this provision shall be construed to prohibit the use of existing poles provided that satisfactory use agreements are entered into between the licensee and the owners of said poles. (972,1947)

(G) In those areas and portions of the City where the transmission or distribution facilities of the utility providing telephone service or those of the utility providing electric service are underground or hereafter may be placed underground, then the licensee shall likewise construct, operate, and maintain all of its transmission and distribution facilities or other means of transmitting signals underground. The City shall not be responsible for any costs incurred by the licensee in placing the licensee’s facilities underground. (972,1947)
(H) Every licensee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of the public or private property by any person. In the event of such interference, the City Manager may require the removal of licensee’s lines, cables, and appurtenances. (972,1947)

(I) Every licensee or its designated contractors or subcontractors, when constructing or installing cable equipment of any kind in public right-of-way and/or easements on private property, shall fully and completely restore any and all such property to its original condition. (1947)

9-7-13: COMMON TRENCH AND CABLE PROTECTION REQUIREMENTS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Cable television shall utilize common or joint trench with telephone and/or utilities for undergrounding where a developer provides a trench for undergrounding by negotiating a joint trench agreement with those entities. Where a developer provides a trench for undergrounding in a new development, the developer must allow any licensee to utilize this trench and provide backfill under the same conditions as are extended to other trench users. (972,1947)

(B) When a licensee will be affected thereby, such licensee’s representative shall be notified of and be present at subdivision reviews and other City meetings where location of cable and utilities are discussed prior to the start of particular construction projects. (1947)

(C) All licensees shall become members of the Blue Stake program and shall be notified at the same time and in the same manner as telephone and utility companies before developers/excavators break ground. (1947)

Developers, contractors, subcontractors, excavators, or others subsequently damaging or breaking cable which has been properly laid and marked shall be liable for its immediate repair or replacement. (1947)

(D) Any licensee shall be relieved of the responsibility to build out and/or activate cable in an area where properly laid and marked cable has been damaged or destroyed until such time as said cable is repaired or replaced by the responsible parties in accordance with original system specifications. (1947)

Subsection (D) of this Section shall not apply when damage or destruction is done by a licensee or its agents, contractors, or subcontractors or when damage or destruction is the result of negligence on the part of a licensee. (1947)

(E) Every licensee shall, upon request of the City, interconnect the public, educational, and government access channels in its system with any and/or all other cable systems licensed in the City and, when economically feasible, with any and/or all other cable systems licensed in adjoining or adjacent incorporated communities or unincorporated County areas. (1947)

1. Upon receiving an interconnect request, a licensee shall initiate and pursue with all reasonable diligence negotiations with other affected cable systems so that interconnection construction and operations costs may be shared equitably among all systems affected. (1947)

2. A licensee, upon receiving an interconnect request, must establish a timetable, approved by the City, for completion of said interconnect and must adhere to that schedule unless an extension or waiver is granted by the City. (1947)
9-7-14: TECHNICAL AND SAFETY STANDARDS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall construct, operate, maintain, and reconstruct the cable system in accordance with the most recent technical performance standards of the FCC; shall have no greater obligation to maintain or reconstruct than that imposed by the FCC but may voluntarily agree to exceed said standards as part of the license. (1947)

(B) Every licensee shall deliver signals to subscribers which are not degraded in appearance or sound as perceived by the human eye or ear from those signals which are available at the licensee’s receiving site. (972,1947)

Upon reasonable request by the City Manager, every licensee shall make a demonstration satisfactory to the City Manager that a signal is being delivered to any designated area which is of sufficient strength and quality to meet the standards set forth in the regulations of the FCC and in this Chapter. (1947)

(C) Every licensee shall place all cable and appurtenances underground to the maximum extent possible, in particular where utilities are located underground. Existing technology may preclude the placing of some appurtenances underground; any such appurtenances placed above ground shall be located so as to be as unobtrusive as possible, consistent with the design of the cable system. As new technology and economic feasibility allow, appurtenances associated with future lines shall be placed underground. Every licensee shall install cable underground in all areas where all existing utilities are underground. Underground cable shall also be installed in all new developments. Previously installed aerial cable shall be underground with adjacent utilities when they are placed underground. (1947)

(D) Every licensee shall construct, install, operate, and maintain its system at its own cost in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, a licensee shall provide the City Manager with a written report, including a layman’s interpretation of results, of the results of the licensee’s annual proof-of-performance tests conducted pursuant to FCC standards and requirements. The City Council may, at City cost, require that said performance tests be monitored and interpreted by a professional engineer not on the permanent staff of the licensee. (1947)

(E) Every licensee shall have the right and privilege of construction throughout the term of this license; however, should improvements in the technology cause FCC performance standards to become outdated or to exceed those of the licensee, then the licensee’s performance standards shall be updated, amended, or otherwise revised to reflect changed conditions and technology. Said updated, revised, or amended standards shall apply immediately to all construction begun after the effective date of said updates, amendments, or revisions. (972,1947)

(F) Every licensee shall construct, install, and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee’s employees, the employees of utilities, and all other property affected by the licensee’s construction shall be a primary objective whenever or wherever a licensee operates in the license area or in other areas where the licensee may locate equipment. (1974)
(G) Every licensee shall be solely and completely responsible for the actions taken by any contractor, journeyman, consultant, or any other person employed by the licensee to place, remove, maintain, repair, or relocate any of the licensee’s facilities on public or private rights-of-way or easements as well as in or on public or private buildings or structures. (1947)

(H) Every licensee shall have available at all hours of every day personnel to locate its underground and buried facilities as the result of emergency conditions requiring immediate repair to any facilities owned by the State, County, or City or the gas, electric, and telephone utilities as well as pipe line companies or similar industries. Every licensee shall respond to normal location requests as required by the Blue Stake program. (1947)

(I) All working facilities and conditions used during construction, installation, and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration. (1947)

(J) Every licensee shall maintain equipment capable of providing standby power for the headend for a minimum of three (3) hours. Every licensee shall install uninterrupted power sources capable of providing retention of data stored in the memories of the cable system’s various computer systems at the point of origination of transmission. (1947)

9-7-15: OPERATION OF SYSTEM:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall put, keep, and maintain all parts of the licensee’s system in good condition throughout the entire license period. (972, 1947)

(B) Every licensee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. (972,1947)

(C) No licensee shall allow its cable or other operations to unreasonably interfere with television reception of persons not served by the licensee, nor shall the system interfere with, obstruct, or hinder in any manner the operation of the various utilities serving the residents within the City. (1947)

(D) Every licensee shall continue, through the term of this license, to maintain the technical standards and quality of service set forth in this Chapter and in its license. Should the City find that the licensee has failed to maintain these technical standards and quality of service, the Council, by resolution, may specifically enumerate improvements to be made. Failure of a licensee to make such improvements within the time frame specified in such resolution shall constitute a violation of this Chapter for which damages may be assessed by the City. (1947)

9-7-16: ACCESS, SERVICE, AND REPORTING REQUIREMENTS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Every licensee shall provide such public, education, and government access and local origination services and such access equipment, facilities, and public training as are required by and enumerated in its license or in any subsequent amendments to that license. (972,1947)

(B) Every licensee shall provide the City, upon request and at no cost to the City, up-to-date as-built maps of a suitable scale showing all transmitting and receiving pickup locations and the location of all amplifiers and all trunk and distribution feeder lines. Additional current maps shall be provided to the City at no cost to the City upon request. (972,1947)

(C) Every licensee shall submit an annual report to the City Manager no later than ninety (90) days after the close of the licensee’s fiscal year. Said report shall be specific to Mesa and to the licensee’s operation of its system in Mesa, separate and apart from any corporate annual report compiled and provided by a licensee’s parent company, and shall include, but not be limited to: (972,1947)

1. A fully-audited and certified statement of revenues for the previous calendar or fiscal year, including gross revenues from all sources and gross subscriber revenues from each category of service. (972,1947)

2. A summary of the previous year’s activities including, but not limited to: services begun and/or dropped, subscribers gained and/or lost and year-end totals, service area at beginning and end of year (map and text), revenues collected, license fees paid to the City, plant miles constructed, plant miles activated, changes in local management and staff, rate structure and changes during the year, new services offered, programming changes, changes in service policies and/or procedures, and system technical changes. (972,1947)

3. A summary of complaints received, by type, and how they were handled. (972,1947)

(D) Every licensee shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property as may be reasonably necessary and appropriate for the evaluation of the licensee’s performance under this Chapter and its license. (1947)

(E) Every licensee shall maintain an office in the City or in an unincorporated area of Maricopa County immediately adjacent to the City limits which shall be open during all usual business hours with a local telephone number listed in directories of the telephone company serving the City and shall be so operated that requests for repairs and service adjustments can be received at any time day or night (twenty-four (24) hours a day), seven (7) days a week. (972,1947)

(F) Every licensee shall maintain adequate office and service personnel at its Mesa or Mesa-area location to properly answer telephones, service walk-in customers, and dispatch service and repair personnel in a timely manner to all portions of its Mesa service area. (1947)

9-7-17: SUBSCRIBER SERVICE REQUEST AND COMPLAINT PROCEDURE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Every licensee, when required by the City and to the extent required by the City, shall establish and maintain a subscriber service request and complaint procedure satisfactory to the City. For the purposes of this Section, "service request" shall mean an initial request by a subscriber for service related to the installation, operation, performance, and/or quality of a licensee’s cable television service as provided to the subscriber’s residence. "Complaint" shall mean a service request not resolved to the satisfaction of the subscriber on initial contact, requiring further action by the licensee. The service request and complaint procedure established by the licensee shall include, but not be limited to: (972,1947)

Maintenance of an accurate and complete written record listing, as a minimum, times and dates of customer service requests and complaints, identifying customers by name, address, and telephone number, describing the nature of the requests and/or complaints, and indicating when and what action was taken by licensee in response thereto. Said record shall be kept at the licensee’s local office and shall be available for inspection by the City Manager and the public during regular business hours. (972,1947)

(B) Every licensee shall provide each subscriber annually with a written statement describing in full the process for submitting a service request or complaint. (972,1947)

(C) Every licensee shall provide, in writing, upon request of the City Manager, a detailed description of any complaint and the manner in which it has been resolved. (972,1947)

9-7-18: GENERAL REQUIREMENTS AND REGULATION OF SERVICE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) The City shall not regulate subscriber rates and charges for services provided by a licensee. However, every licensee shall provide the City with a listing of all current subscriber rates and charges for services and an updated listing of these rates and charges on each occasion when these are changed in any way. (972,1947)

(B) Every licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, of the Federal Cable Communications Policy Act of 1984, and of all other applicable Federal, State, and local laws and executive and administrative orders relating to nondiscrimination. (972,1947)

(C) No cable, line, wire, amplifier, converter, or other piece of equipment owned by a licensee may be installed in a public or private easement or in the public right-of-way on public or private property without first notifying the occupants of the property and securing from the City or the owner of the private property involved, as the case may be, all necessary permits, authorizations, and permissions to do so. (972,1947)

(D) Neither a licensee nor any other person shall monitor or arrange for the monitoring of any cable, line, signal input device, or subscriber outlet or receiver for the purposes of determining viewing habits, except for such generalized monitoring as is necessary to insure accurate billing, prevention of theft of service, and maintenance of system integrity without first securing the written permission of the subscriber. (972,1947)

(E) No licensee shall sell or otherwise make available the lists of the names and addresses of its subscribers to any person not connected with the licensee’s system or the City without first securing the written permission of the subscriber. (972,1947)
1. Every licensee shall provide to each subscriber annually a separate written notice which clearly advises said subscribers of the personally identifiable information collected or to be collected by licensee as provided for in Section 631 of the Federal Communications Policy Act of 1984 and amendments thereto. (1947)

2. Every licensee shall conform to all other protection of subscriber privacy provisions of Section 631 of the Federal Cable Communications Policy Act of 1984 and amendments thereto. (1947)

(F) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, electronically, inductively, or otherwise, with any part of a licensed cable system within the City for the purpose of enabling himself/herself or others to receive any television or radio signals, pictures, programs, or sound without payment to the owner of said cable system. (972, 1947)

1. Every licensee, at the time of installation of service to any subscriber, shall have available and shall install all necessary parts and equipment to insure that said subscriber receives only the cable services contracted for and does not for any reason receive extra services not desired and/or not reflected in the subscriber’s agreement with the licensee. (1947)

2. It shall be unlawful for any person, without the consent of the cable system owner, to willfully tamper with, remove, injure, or destroy any cable wires or other equipment used for distribution of television and/or radio signals, pictures, programs, or sound. (972, 1947)

3. Any person who shall violate this Section (F) or its subparts may be prosecuted under all applicable local, State, and Federal laws including, but not limited to, those provisions found in Section 633 of the Cable Communications Policy Act of 1984, but shall specifically in the City be guilty of a misdemeanor and upon conviction thereof individuals shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period of time not to exceed six (6) months, or by both such fine and imprisonment, and firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000.00). Each day a violation continues shall be a separate offense, punishable as described. (1947, 2466, 4110)

(G) Every licensee shall wholly comply with Sections 612(h) and 639 of the Federal Communications Policy Act of 1984 related to the prohibition of obscene programming and shall not offer such programming on the Mesa system. (1947)

Every licensee shall provide, free of charge or by sale or lease, a lockbox device by which a subscriber can prohibit the viewing of a particular cable service during periods selected by that subscriber as provided for in Section 624(d)(2)(A) of the Cable Communications Policy Act of 1984. (1947)

(H) Every licensee shall provide to the City, in times of emergency, the right and the capability to override, by remote control, the audio of all channels simultaneously. Said override system shall be placed under City control and shall be activated from a location or locations as reasonably determined by the City Manager. (1947)

Additionally, every licensee, in consultation with the City, shall designate and make available the government access channel which can be used for emergency broadcasts of both audio and video. Every licensee shall, upon request, provide at no cost to the City the equipment and facilities necessary to do so. (1947)
9-7-19: LIABILITY AND INDEMNIFICATION:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall indemnify and hold harmless the City, its officers, boards, commissions, agents, and employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including, but not limited to, damages to City property and damages arising out of copyright infringements; damages arising out of any failure by licensee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the licensee’s cable television system; and libel judgments for programming), costs, or liabilities (including costs or liabilities of the City with respect to its employees) of every kind and nature whatsoever including, but not limited to, damages for injury or death or damage to person or property regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise of the enjoyment of any license hereunder by a licensee or the granting thereof by the City. (972,1947)

(B) Every licensee shall, at the sole risk and expense of the licensee, upon demand of the City, made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees and arising out of or pertaining to the exercise or the enjoyment of such license or the granting thereof by the City. (972,1947)

Every licensee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against the licensee, the City, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue with reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking, or other assurance required hereunder or otherwise; provided that neither a licensee nor the City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding without first obtaining the written consent of the other. (972,1947)

(C) Any licensee shall, concurrently with the filing of an acceptance of award of any license granted, furnish to the City and file with the City Manager, and at all times during the existence of any license granted hereunder maintain in full force and effect, a general comprehensive liability insurance policy in a company approved by the City Manager and a form satisfactory to the City Attorney, protecting the City, its officers, boards, commissions, agents, and employees against liability for loss or damage for bodily injury, death, and property damage resulting from the installation, development, maintenance, or expansion of the cable system. The Council, in the license, shall set the insurance amounts to be maintained by the licensee. The City shall be named on such policy as a coinsured or added thereon by endorsement as a named insured. A certificate of the insurance required herein, as well as a copy of the policy, shall be filed with the City Manager. The certificate shall provide that if the policy is cancelled by the insurance company or the licensee during the term of the license, ten (10) days’ written notice shall be given to the City Manager prior to the effective date of such cancellation. (972,1947)
9-7-20: TERMINATION OF LICENSE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Any license granted may be terminated prior to its date of expiration by the Council in the event that the Council finds that: (972,1947)

1. The licensee has failed to comply with any material provision of this Chapter. (972,1947)

2. The licensee has, by act or omission, violated any material term or condition of any license issued. (972,1947)

3. The licensee has failed to comply with any material rule or regulation of the Council or City Manager validly adopted pursuant to this Chapter. (972,1947)

4. The licensee has failed to comply with any rule, regulation, or order of the FCC or rule or regulation contained in the Cable Communications Policy Act of 1984 as now constituted or as it may hereafter be amended. (972,1947)

5. Upon the request of the licensee and upon the approval of the Council. (972,1947)

(B) The City Manager may make written demand that the licensee comply with any requirements, limitations, terms, conditions, rules, or regulations. If the failure, neglect, or refusal of the licensee continues for a period of thirty (30) days following such written demand, the City Manager may place his request for termination of the license upon the next regular Council meeting agenda. The City Manager shall cause to be served upon such licensee, at least ten (10) days prior to the date of such Council meeting, a written notice of his intent to request such termination and the time and place of the meeting, notice of which shall be published by the City at least ten (10) days before such meeting. (972,1947)

(C) The Council shall consider the request of the City Manager, shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal, or neglect by the licensee was with just cause. (972,1947)

(D) If such failure, refusal, or neglect by the licensee was with just cause, the Council shall direct the licensee to comply within such time and matter and upon such terms and conditions as are reasonable. (972,1947)

(E) If the Council shall determine such failure, refusal, or neglect by the licensee was without just cause, then the Council may, by resolution, declare that the license of such licensee shall be terminated and forfeited unless there be compliancy by the licensee within such period as the Council may fix. (972,1947)

9-7-21: OPTIONS UPON EXPIRATION OR TERMINATION OF LICENSE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Upon expiration of the initial term of any license granted hereunder, any license may be renewed by the Council upon application of the licensee. The terms of the renewal shall be in accordance with the existing rules of the FCC, as provided for under the Cable Communications Policy Act of 1984 and amendments thereto, and as determined by the Council. Renewal considerations shall include, but not be limited to, the City and the licensee reports prepared throughout the life of the license, the cable system’s technical performance, the development of cable services, the quality of all services to the subscribers, the demonstrated ability of the licensee to properly service the area of the City for which its license is granted, and the cooperation exhibited by the licensee with the City and its residents throughout the license period. Nothing herein shall be construed to require such renewal. (972,1947)

Each application for a renewal of any license shall be accompanied by an application fee in an amount determined by the Council. (972,1947)

(B) In the event that the Council and any licensee are unable to reach an accord on the renewal of any license, the Council may elect to invite additional proposals for the operation of one (1) or more cable television systems. Such cable system or cable systems may either replace an existing cable system or systems or be in addition to it/them. (972,1947)

(C) In the event of expiration of the initial term without renewal or of termination for any cause of any license, the City shall have the right of first refusal to purchase the affected cable television system or systems at a price not to exceed its/their then fair market value. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow, and other factors, may be considered. However, under no circumstances shall any valuation be made for any right or privilege granted to any license. (972,1947)

(D) In the event that the City elects to purchase the cable system or systems or the license is awarded to a new licensee upon expiration without renewal or termination of the term of any license, the current licensee shall sell the cable system to the City or to the new licensee, whichever is applicable. The price for such sale shall be the fair market value of the cable system, as defined above. (972,1947)

(E) It shall be the continuing right of all subscribers to receive all available services during the term of the license insofar as their financial and other obligations to the licensee are honored by them. In the event of expiration of the initial term of the license, regardless of whether it is intended that the license be renewed or not or in the event of termination for cause of any license, every licensee shall continue all services to subscribers and shall fulfill all of the obligations required by the license and this Chapter until twelve o’clock (12:00) midnight of the day of such expiration of final termination. (972,1947)

9-7-22: REMOVAL OR ABANDONMENT OF PROPERTY:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City Manager by reason of traffic conditions; public safety; street vacation; freeway or street construction; change or establishment of street grade; installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structure; or improvements by public agencies. Nothing required herein shall be deemed a taking of the property of a licensee, and the licensee shall be entitled to no surcharge by reason of anything required herein. (972,1947)
[B] Removal or abandonment shall apply in the event that: (972,1947)

1. The use of any part of the cable system of a licensee, excepting unactivated cable installed in joint trench, is discontinued for any reason for a continuous period of thirty (30) days without prior written notice to and approval of the City; or (972,1947)

2. Any part of such system has been installed in any street or other area without complying with the requirements thereof; or (972,1947)

3. This license shall be terminated or shall expire without renewal. Then the licensee shall promptly, upon request and ten (10) days’ written notice by the City Manager, remove from the streets or public places, at the expense of the licensee and at no expense to the City, all such property and poles of such system in place, other than any which the Council may permit to be abandoned. In the event of such removal, the licensee shall properly restore the street or other area from which such property has been removed to such condition as the City Manager shall approve. (972,1947)

[C] The Council may, upon written application by a licensee, approve the abandonment of any property in place by a licensee and under such terms and conditions as the Council may prescribe. Upon abandonment of any property of the licensee in place, the property shall become that of the City, and the licensee shall submit to the City Manager an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. (972,1947)

[D] Any property of the licensee remaining in place one hundred eighty (180) days after the cancellation, termination, or expiration of the license shall be considered permanently abandoned. The Council may extend such time not to exceed thirty (30) days. (972,1947)

9-7-23: AMENDMENTS:

Unless specifically provided otherwise in a license, there is hereby reserved to the City the right and authority to amend any section of this Chapter so as to require additional or greater standards of construction, operation, maintenance, or otherwise on the part of the licensee to reflect technical and economic changes occurring during the license term and to enable the City and the licensee to take advantage of new developments in the cable television industry so as to more effectively, efficiently, and economically serve the public. Such additional or greater standards may be imposed by the City if not prohibited by the FCC or the Cable Communications Policy Act of 1984 and amendments thereto. (972,1947,4110)

9-7-24: SEVERABILITY:

(A) If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. (1947)

(B) In the event any future law, rule, or regulation adopted by the Federal government makes it necessary or desirable to amend or change any of the terms or conditions of this Chapter or of any license issued hereunder, the City reserves the right to renegotiate the terms and conditions of this Chapter and/or such license(s). (972,1947)