

## **Title 20 CABLE SERVICE SYSTEMS** [11](#)

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**Editor's note**—Ord. No. 10-01, § I, adopted Jan. 7, 2010, repealed Title 20 and enacted a new Title 20 as set out herein. The former Title 20 pertained to similar subject matter. See also the Code Comparative Table and Disposition List.[\(Back\)](#)

### **Chapter 20.01 PURPOSE**

Sections:

[20.01.010 Purpose.](#)

#### **20.01.010 Purpose.**

The purpose of this title is to regulate the operation of cable television systems operating within the town to protect the public health, safety, general welfare, and to provide for the payment of fees and other valuable in-kind services to the town for the privilege of using the public rights-of-way and other public places.

(Ord. No. 10-01, § I, 1-7-10)

## Chapter 20.02 DEFINITIONS

Sections:

### [20.02.010 Definitions.](#)

#### **20.02.010 Definitions.**

In this title, unless the context requires otherwise, terms or words shall have the meaning as defined herein. words not defined herein or therein are given their meaning in Section 602 of the Cable Act, 47 U.S.C. § 522, and, if none, their common and ordinary meaning.

"Access channel" means one or more channels dedicated in whole or in part for local noncommercial programming which is set aside for educational and governmental use, without a charge by the licensee for channel.

"Basic cable service" or "basic service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable Act" means the Cable Act of 1934, the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended, the 1992 Cable Act, and the Telecommunications Act of 1996 ("1996 Act") as amended.

"Cable system" means a facility consisting of a set of open transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, 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-unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;
- C. Any facilities of any electric utility used solely for operating its electric utility systems. If any electric utility-based provider operates or maintains connection to this licensed system, that provider is not exempt from the provisions of this title and must either be licensed or the connection shall cease; and
- D. A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, Subsection 201 et seq., except that the facility will be considered a cable system to the extent that it is used in the transmission of video programming directly to subscribers.

"Cable communications service" means the two-way transmission of video or other programming service to subscribers and any subscriber interaction, if any, required for the selection or use of such video programming or other programming service delivered via the cable system as defined herein. "Cable service" shall be synonymous with this definition.

"Complaint" means a subscriber or citizen issue presented in formal written form to the licensee or to the town relating to any aspect of the licensee's performance under this title.

"Control of a licensee or applicant" shall mean majority voting control of the licensee, including, but not limited to, the legal ownership, possession or ability to direct the daily affairs of the licensee.

"Density per cable plant mile" means the number of dwelling units for residential service or commercial unit connections for commercial service per mile of licensee's cable system, measured on a

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linear-foot basis (in underground trench or aerial strand) from the nearest technically-feasible point of connection to the licensee's cable system to the structure or structures where cable service has been requested.

"Dwelling unit" means any separate and distinct structure or part thereof which exists in finished form and serves as a residence to one or more persons. Included in this definition, but not limited to this definition are: all single-family homes, each apartment or multi-family unit, each condominium unit, patio homes and similar-type structures.

"Educational institution" includes any public educational institution which is accredited by a nationally-recognized organization, including local primary and secondary schools, colleges and universities.

"Fair market value" means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at that time.

"FCC" means the Federal Communications Commission.

"Government agency" means any state, local, regional or special government agency with a physical presence within the Town of Youngtown.

"Gross revenues" means all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half percent annually, that is received directly or indirectly by the cable operator, its affiliates, subsidiaries or parent or any person, firm or corporation in which the cable operator has a financial interest or that has a financial interest in the cable operator and that is derived from the cable operator's operation of its cable system to provide cable service in the area of jurisdiction. Gross revenues include all revenue from charges for cable service to subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a subscriber to receive cable service, and any other receipts from subscribers derived from operating the cable system to provide cable service, including receipts from forfeited deposits, sale or rental of equipment to provide cable service, late charges, interest and sale of program guides. Gross revenues also include all income the cable operator receives from the lease of its facilities located in the public streets, roads and alleys, unless services that the lessee provides over the leased facilities are subject to a transaction privilege tax of the licensing authority. Gross revenues do not include revenues from commercial advertising on the cable system, the use or lease of studio facilities of the cable system, the use or lease of leased access channels or bandwidth, the production of video programming by the cable operator, the sale, exchange, use or cablecast of any programming by the cable operator in the area of jurisdiction, sales to the cable operator's subscribers by programmers of home shopping services, reimbursements paid by programmers for launch fees or marketing expense, license fees, taxes or other fees or charges that the cable operator collects and pays to any governmental authority, any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities.

"License" means the right granted by the town to construct, maintain and operate a cable system over, on, or under streets, roads and all other public ways, easements, public places and rights-of-way within all or specified areas of the town and as otherwise described within the license agreement. The term does not include any license or permit that may be required by this title or other laws, ordinances, or regulations of the town for the privilege of transacting and carrying on a business within the town or for disturbing the surface of any street or public thoroughfare.

"Licensee" means the person, firm or corporation to whom a license is granted under the terms of this title, and its successors, transferees or assignees subject to the control, ownership and transfer provisions contained in this title.

"License fee" is the fee based on the gross revenue derived from operating and use of public rights-of-way and for operating a cable system within the limits of the town.

"Normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator

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include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

"Public right-of-way" shall mean the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive, bridge, tunnel, park, waterway, easement, or right-of-way now or hereafter held by the town, or dedicated for use by the town, use by the general public, or use compatible with cable system operations.

"Person" means any individual, corporation, partnership, association, limited liability company, joint venture, or organization of any kind and the lawful trustee, successor, assignee, transferee, or personal representative thereof.

"Service call" shall result when service problems occur relating to a loss of or degraded signal or picture on one or more channels or services, or verifiable property damage by licensee employees or authorized contractors.

"Service interruption" means the loss of picture or sound on one or more cable channels.

"Signal" means any transmission of radio frequency energy or of optical information including below ground or suspended aerial cables.

"Standard drop" means that cable connection which requires no more than a one-hundred-twenty-five-foot drop measured from the nearest point of subscriber's home or place of business to the nearest active tap on the cable system, involving 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 nonstandard inventory or cable routing that requires construction methods exceeding reasonable underground or aerial work. A standard drop shall include cutting in one or more taps and extending cable as necessary.

"Subscriber" means any person, business or entity who legally receives any cable service provided by a cable system but does not include persons who receive not more than two channels of noncommercial closed-circuit video service which is not made available to the general public.

"Two-way capability" means the incorporation in a cable system of all appropriate design and engineering characteristics so that two-way transmission, including addressability, over the system can be implemented with a minimum of expense.

"User" means a person utilizing a cable system's facilities for purposes of transmission of material or information to subscribers or others.

(Ord. No. 10-01, § I, 1-7-10)

### **Chapter 20.3 ADMINISTRATION**

Sections:

[20.3.010 Town manager.](#)

[20.3.020 Actions by the town council.](#)

#### **20.3.010 Town manager.**

The town manager (or designee) has responsibility for the administration and enforcement of this title, including:

- A. Establishing procedures for the conduct of public hearings and other proceedings required by this title or the license agreement;

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- B. Conducting public hearings, including designating hearing officers;
- C. Coordinating management and operations of town government access channels; and
- D. Administering corrective remedies as described herein (if necessary) to meet the terms of this title or the license agreement.

(Ord. No. 10-01, § I, 1-7-10)

### **20.3.020 Actions by the town council.**

- A. The following actions are subject to approval by the council:
  - 1. Granting or renewing a license;
  - 2. Approving transfer of a license if approval is needed under chapter 20.30 transfers;
  - 3. Revoking a license; and
  - 4. Modifying a license agreement in a manner that substantially alters material provisions of the license.
- B. All other actions are subject to approval by town manager, the public works department director or other town official as designated in this title.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.04 AUTHORITY**

Sections:

[20.04.010 Authority.](#)

### **20.04.010 Authority.**

The town has authority to grant non-exclusive licenses to construct, operate and maintain cable systems in the public rights-of-way and other public places within the Town of Youngtown pursuant to A.R.S. § 9-505 and the Federal Cable Act.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.05 LICENSE REQUIRED**

Sections:

[20.05.010 License required.](#)

**20.05.010 License required.**

It is unlawful to construct, operate or maintain a cable system in the public rights-of-way and other public places within the town without a valid license issued under this title.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.06 APPLICATION FOR LICENSE**

Sections:

[20.06.010 Application for new license.](#)

[20.06.020 License fees.](#)

[20.06.030 Issuance of license.](#)

[20.06.040 Conditional approval.](#)

**20.06.010 Application for new license.**

- A. Each application for a license to construct, operate or maintain a cable system in the town shall be filed with the town clerk and shall include the following:
  - 1. The corporate name, address and telephone number of the applicant;
  - 2. The names and addresses of any affiliated, parent or subsidiary companies and their relationship to applicant;
  - 3. Financial statements, prepared by a certified public accountant, showing applicant's ability to complete construction and installation of the proposed cable system and/or continue operation of an existing system;
  - 4. A description of the cable system proposed to be constructed, installed, maintained or operated by applicant;
  - 5. Any other information required by town and relevant to issuance of a cable system license; and
  - 6. A license fee as provided in section 20.6.020, license fees.
- B. All applications filed with the town clerk remain the property of the town. Applications submitted may be returned as incomplete if they do not comply with all requirements of the town.

(Ord. No. 10-01, § I, 1-7-10)

**20.06.020 License fees.**

- A. Each application for new license, renewal, transfer or assignment, or modification of license to be granted under the authority of this title shall be accompanied by a fee in the amount specified below, by a certified or cashier's check made payable to the town. Fees in the following amounts are required:
  - 1. For a new license .....\$5,000.00
  - 2. For a renewal license .....5,000.00
  - 3. For consent to transfer or change of control, this license .....5,000.00

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4. For license modifications .....No charge
- B. If the applicant's application is not approved, such fee is nonrefundable. If the application is approved, the application fee will be refunded by offset of license fees to be paid to town.
- C. In consideration of the license granted, licensee shall pay the town five percent of the licensee's gross revenues as defined in this title. Licensee must pay the license fee due to the town for the preceding quarter within thirty (30) days of the end of that quarter. Monthly payments will be acceptable.
- D. If licensee provides its subscriber a price discount if the subscriber purchases a bundle of cable service and noncable services, and the licensee's marketing materials do not allocate the price of cable service included in the bundle, then the discount shall be allocated based on licensee's standard, nondiscounted rate for the services in the bundle. The following examples illustrate how the discount would be allocated:
  1. Assume a subscriber's charges for a given month for cable service alone would be forty dollars (\$40.00), for local telephone service alone thirty dollars (\$30.00), and for high-speed data service alone thirty dollars (\$30.00), for a total of one hundred dollars (\$100.00). If licensee offers the three services at a combined rate of eighty dollars (\$80.00) (i.e. the subscriber obtains a twenty-percent discount from the regular retail rates that would apply to the services if purchased separately), then the gross revenue from cable service would be deemed to be thirty-two dollars (\$32.00) forty dollars (\$40.00), less twenty (20) percent of forty dollars (\$40.00).
  2. Assume the same facts as the preceding example, except that the subscriber also purchases an upgrade to cable service (such as Home Box Office) at a fixed fee of fifteen dollars (\$15.00) a month that is not included in the bundled service offering the discount (i.e. the discount does not apply to this service), for a total of ninety-five dollars (\$95.00) (eighty dollars (\$80.00) for the bundle, plus fifteen dollars (\$15.00)). Gross revenue would be forty-seven dollars (\$47.00) (thirty-two dollars (\$32.00) as calculated in the prior example, plus the undiscounted fifteen dollars (\$15.00)).
  3. Nothing herein shall be construed to require licensee to offer any service at a price in conflict with a price for that service mandated by law or regulation.

(Ord. No. 10-01, § I, 1-7-10)

### **20.06.030 Issuance of license.**

- A. Upon receipt of any application for license, the town manager shall prepare a report, including recommendations concerning the application, to be presented to the town council at a public hearing. The town will evaluate all applications submitted within one hundred eighty (180) days of receipt of a complete application.
- B. Within one hundred eighty (180) days after receiving a complete application, a public hearing shall be held to consider the application and receive public comments. Factors to be considered may include, but are not limited to, the quality of cable services proposed, areas to be served, rates, benefit to the town, experience, background, and financial responsibility of the applicant, its management and owners, technical and performance quality of equipment, willingness to meet construction and physical requirements, to meet all requirements of this title, and to abide by all applicable laws, rules and regulations.
- C. Following the first public hearing on an application, the town council may direct staff to conduct further negotiations with an applicant, or set further public hearings. Within one hundred eighty (180) days after the first public hearing, the town council shall make a final decision that such application be denied, or that such license be granted with the terms and conditions approved by council. The decision shall be based on the public record, issued in writing and shall be final.

(Ord. No. 10-01, § I, 1-7-10)

**20.06.040 Conditional approval.**

No license granted shall become effective unless and until the license is officially accepted by licensee, and all insurance, letter of credit and bond requirements are submitted within twenty (20) days from town council approval of a license or such longer period of time approved by council.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.07 LICENSE SCOPE**

Sections:

[20.07.010. License scope.](#)

**20.07.010. License scope.**

- A. A license issued under this title authorizes licensee to construct, operate and maintain a cable system in the public rights-of-way for installing cables, fiber, wires, lines, and other facilities in order to provide cable services. A licensee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public rights-of-way in the town such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the system.
- B. A license does not authorize licensee to install cables, wires, lines, or any other equipment or facilities on private property without the owner's consent.
- C. Licensee is authorized to use, operate and provide similar facilities on or to properties rented, licensed 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 town; provided, however, that neither the licensee nor the third party shall be relieved of any regulation or obligations as to its use of such facilities in the streets, as required by local building or other code or ordinance.
- D. A license is subject to the paramount right of use of the public rights-of-way by the town and the public for public purposes consistent with applicable law.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.08 LICENSE TERM**

Sections:

[20.08.010 License term.](#)

**20.08.010 License term.**

The term of any license shall not exceed fifteen (15) years. A license may be renewed by the town pursuant to this title and the applicable law.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.09 TECHNICAL STANDARDS**

Sections:

[20.09.010 FCC standards.](#)

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[20.09.040 Testing for compliance with FCC standards.](#)

[20.09.050 Maintenance of the system in good working order.](#)

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**20.09.010 FCC standards.**

**20.09.020 Continuous 24-hour operation.**

**20.09.030 Scheduled testing.**

**20.09.040 Testing for compliance with FCC standards.**

**20.09.050 Maintenance of the system in good working order.**

**20.09.060 Technical specifications of cable system.**

**20.09.010 FCC standards.**

Licensee shall operate and maintain its cable system in compliance with all Federal Communications Commission ("FCC") requirements, including, but not limited to, those set forth in 47 C.F.R. part 76 or as amended. If federal law is subsequently amended or minimum technical specifications are no longer mandated by the FCC, the technical specifications in effect at the time of adoption of the license agreement shall govern. Should the FCC promulgate amended technical requirements which exceed the performance guidelines in effect at time of the adoption of the license agreement, licensee shall operate its system in compliance with such applicable FCC requirements. All maintenance performed on the cable

system by the licensee shall be in accordance with FCC regulations governing technical performance and operating standards, currently in effect or hereinafter amended.

(Ord. No. 10-01, § I, 1-7-10)

**20.09.020 Continuous 24-hour operation.**

The cable system shall operate continuously for twenty-four (24) hours daily without severe material degradation or malfunction of signal under normal operating conditions. The term "normal operating conditions" as used herein means those service conditions which are within the control of the licensee. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(Ord. No. 10-01, § I, 1-7-10)

**20.09.030 Scheduled testing.**

For any scheduled testing of the system which causes any substantial interruption to cable service, the licensee must make reasonable efforts to notify subscribers within ten (10) days prior to such testing and possible interruption. This notification includes, but is not limited to, notification by character generator on the cable system or neighborhood flyers in the areas to be tested. Insofar as feasible, licensee shall voluntarily interrupt the provision of cable service only with good cause and for the shortest time possible during periods of minimum cable system use.

(Ord. No. 10-01, § I, 1-7-10)

**20.09.040 Testing for compliance with FCC standards.**

Following construction of the cable system, tests shall be conducted on this system which shall meet FCC cable television system technical performance standards of 47 C.F.R. § 76.601 through and including § 76.630. On request of the town, the licensee shall provide copies of test results and documentation of any required repairs determined to be needed by the required tests.

(Ord. No. 10-01, § I, 1-7-10)

**20.09.050 Maintenance of the system in good working order.**

Licensee shall maintain all of the material properties, assets and equipment of the cable system, and all such items added in connection with any upgrade, in good repair and proper working order and condition throughout the term of its license.

(Ord. No. 10-01, § I, 1-7-10)

**20.09.060 Technical specifications of cable system.**

Licensee shall construct, install, operate and maintain its cable system at all times in compliance with the specifications and standards set forth in the license.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.10 CONSTRUCTION OF CABLE SYSTEM; USE OF PUBLIC RIGHTS-OF-WAY**

Sections:

[20.10.010 In general.](#)

[20.10.020 Construction bonds.](#)

[20.10.030 Construction plans.](#)

[20.10.040 Construction schedule.](#)

[20.10.050 Relocation.](#)

[20.10.060 Interference.](#)

[20.10.070 Safety.](#)

[20.10.080 Undergrounding.](#)

[20.10.090 Permits; damage.](#)

[20.10.100 Blue stake.](#)

[20.10.110 Tree trimming.](#)

[20.10.120 Temporary changes.](#)

[20.10.130 Colocation and joint trenching.](#)

[20.10.140 Pole attachments.](#)

### **20.10.010 In general.**

Licensee shall comply with the terms of all current and applicable and lawful zoning, building and other ordinances, regulations, codes, guidelines and laws controlling the location, construction of, or attachment to towers, poles, cables, amplifiers, conduits and other facilities owned, leased and otherwise used by licensee for the cable system. This includes requirements to obtain applicable permits. No construction will take place in public easements or public rights-of-way prior to any required permitting by and approval of Town of Youngtown Public Works Department, which shall not be unreasonably withheld or delayed. Licensee shall construct its cable system in compliance with the Town Code, chapter 12.04, construction within public rights-of-way, violation and relocation of facilities in public rights-of-way, as may be amended. In case of any conflict between chapter 12.04 and this license, the more stringent terms shall apply.

(Ord. No. 10-01, § I, 1-7-10)

### **20.10.020 Construction bonds.**

- A. Ongoing Construction. To ensure the licensee's performance of license obligations, licensee shall have in force at all times a performance and payment bond in favor of the town in an amount equal to the reasonable estimated cost of the project at least ten (10) days prior to the start of any construction. This bond shall be approved by the town attorney and town manager, and shall be maintained throughout the period of construction only, unless construction of the cable system is

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ongoing. If construction is ongoing throughout the term of this license, the performance bond shall be effective throughout the term of this license. The town reserves the right to approve the form of the performance bond.

- B. Interest. When the licensee furnishes a deposit or deposits money pursuant to this section, interest at the rate of five percent per annum shall be credited or paid to the licensee annually during the continuance of the deposit.
- C. Withdrawal. In the event the licensee fails to comply with any law, ordinance, or regulation governing the licensee, or fails to well and truly observe, fulfill and perform each term and condition of the license, there shall be recoverable, jointly and severally from the principal of the bond, any damages or loss suffered by the town as a result, plus a reasonable allowance for consultant and attorney's fees, including and up to the full amount of the bond. Town shall have the right to make a withdrawal without further notice to licensee, if licensee, after reasonable notice and opportunity to cure any default under this license, has failed to affect such cure.
- D. Release. Upon completion of construction and payment of all construction obligations of the full cable system satisfactory to the town, the town attorney may, with the approval of the town manager, eliminate or reduce the requirement of the licensee to maintain the said bond, considering performance history of the licensee and other factors.

(Ord. No. 10-01, § I, 1-7-10)

### **20.10.030 Construction plans.**

Prior to commencement of new construction or expansion of the system, the licensee shall provide the technical specifications, in adequate detail, to be utilized in the construction of the cable system. At such time that the licensee applies for a permit to construct a new portion of the system, the licensee shall submit to the town public works department a detailed site plan or map showing the proposed location of that portion of the system and the relationship of that portion of the system to all existing roadway systems, with sufficient information for Youngtown Public Works Department to issue the right-of-way permit, and to inspect the work being performed in the public easements and public rights-of-way. Upon completion, and at the town's request, the licensee shall file construction plans with the town in hard copy. If requested by the town, the licensee shall also file construction plans in electronic mapping format compatible with the town's current electronic mapping format, showing the location of all underground cable; provided, however licensee may request town to pay the actual reasonable costs of supplying the mapping in the town's current electronic mapping format.

(Ord. No. 10-01, § I, 1-7-10)

### **20.10.040 Construction schedule.**

The town may require licensee to report on construction progress and provide information showing how the construction schedule established in the license or construction permits is being met.

(Ord. No. 10-01, § I, 1-7-10)

### **20.10.050 Relocation.**

Licensee must remove, replace, or modify at its own expense any of its facilities in a public right-of-way when the town requires it to do so, to allow the town to change, maintain, repair or improve a public thoroughfare or perform other public improvements. Any privilege claimed under this license by the licensee in any street, alley, or public rights-of-way, shall be subordinate to any lawful occupancy of the streets, or other public property, or which in the future may interfere with the public safety or necessary

public improvements as determined necessary by the town. The town reserves every right and power to require the licensee to protect, support, temporarily disconnect or relocate in the same street, alley or public space, at the licensee's expense and after ninety (90) days' advance notice, by reason of traffic conditions, public safety, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water or sewer pipes, signal lines and any other type of structures or improvements by the town or other public agencies when acting in an official capacity. The licensee shall have the choice to either relocate or abandon the infrastructure in place.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.060 Interference.**

All transmission lines, equipment and structures, including poles, shall be installed and located to cause minimum interference with the rights and reasonable convenience of property owners.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.070 Safety.**

Suitable safety devices and practices as required by local, town, state and federal laws, regulations, and permits must be used during construction, maintenance, and repair of a cable system.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.080 Undergrounding.**

Licensee must put the cable underground at its expense on streets and roads where both electrical and telephone utility wiring are underground, and must move the cable underground after initial installation when electrical and telephone utility wiring are moved underground. The licensee must put the cable underground between a street or road and a subscriber's residence if both electrical and telephone utility wiring are underground. A licensee may install aerial cable on electric or telephone utility poles if licensee agrees to pay any reasonable additional costs for license permits for such aerial installation; provided, however the town reserves the right to require the licensee to underground facilities at licensee's own expense when the pole is taken down.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.090 Permits; damage.**

Licensee must obtain any required permits before starting construction work on public rights-of-way. Licensee shall not be required to pay any town permit fee or inspection fee for work in the public rights-of-way, unless state law is amended to allow the town to charge such fees in addition to the license fee. Licensee, at its own expense, shall promptly restore all public rights-of-way to their former or better condition after construction is completed within the area permitted. The town may, after prior written notice to the licensee, repair any damage done by the licensee at the licensee's expense if restoration is not satisfactorily performed within a reasonable time. Licensee shall bear all 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 that are imposed on a competitively neutral and nondiscriminatory basis in relation to costs borne by telecommunications corporations under A.R.S. § 9-582, subsection c.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.100 Blue stake.**

Licensee shall participate in the regional one-call utility locating system (blue stake).

(Ord. No. 10-01, § I, 1-7-10)

**20.10.110 Tree trimming.**

Subject to the supervision and direction of the town, licensee may trim trees within public rights-of-way at its own expense as necessary to protect its wires and facilities, and with national electrical safety code and other clearance requirements. A licensee may trim trees on private property with the consent of the property owner.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.120 Temporary changes.**

At the request of any person holding a valid building moving permit and upon sufficient notice, the licensee must temporarily raise, lower or cut its wires as necessary to facilitate a move. The direct expense of these temporary changes, including standby time, must be paid by the permit holder. The licensee may require payment in advance.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.130 Colocation and joint trenching.**

Licensee shall cooperate with the town and all other persons with authority from the town to occupy and use the public rights-of-way in the coordination of construction activities and joint-trenching projects, and shall provide the town with a proposed construction schedule in, around or that may affect the public rights-of-way. The town engineer shall coordinate all construction locations, activities, and schedules to minimize public inconvenience, disruption, or damage to the public rights-of-way of the town.

(Ord. No. 10-01, § I, 1-7-10)

**20.10.140 Pole attachments.**

Licensee may utilize, after obtaining the owner's permission and in accordance with a separate executed pole attachment agreement, existing poles, conduits or such other facilities whenever feasible, and may make its own facilities available for other licensees or other users of the streets on reasonable terms when feasible. Nothing in this section, however, shall be interpreted as to grant the right to use any existing easement or to utilize any poles, conduits, easements, or other facilities without the owner's permission. Underground streets, sidewalk and driveway crossings not using existing conduits shall be bored unless specific town approval is received the licensee may install its own poles only when approved by the town and then subject to whatever reasonable terms and conditions the town requires.

(Ord. No. 10-01, § I, 1-7-10)

## Chapter 20.11 LINE EXTENSIONS

Sections:

### [20.11.010 Line extensions.](#)

#### **20.11.010 Line extensions.**

- A. After completion of construction or any upgrade of the cable system required by a license, or at any time after issuance of a license if no construction or upgrade is required by the license, licensee shall extend its cable system in accordance with the provisions of this title.
- B. Upon request of an unserved dwelling unit or occupied unit, subject to the exceptions set forth in subsection C., licensee shall extend its cable system and provide cable service as follows:
  - 1. Standard Drops. If the unit is located within one hundred twenty-five (125) feet of the nearest feasible point of connection to any licensee's cable distribution system, including, but not limited to, trunk and feeder lines, and aerial lines, then, within ten (10) calendar days from the request, licensee shall complete a standard drop connection at the standard connection charge.
  - 2. Location Beyond Standard Drop. If the unit is located beyond a distance of one hundred twenty-five (125) feet of the nearest feasible point of connection to any of the licensee's cable distribution system, including, but not limited to, trunk and feeder lines, and aerial lines, then, within one hundred twenty (120) days from request, licensee shall complete a connection at the standard connection charge plus an amount equal to the reasonable actual labor and material costs incurred by licensee for the additional facilities and work required to extend the line beyond the standard drop.
- C. Exceptions: licensee shall not be required to comply with the line extension requirements set forth in subsections A. and B. where:
  - 1. Licensee is unable to obtain access to easements and rights-of-way which are reasonable under prevailing market conditions.
  - 2. Another cable system operator licensed under this title has already installed and is operating a cable system.
  - 3. The line extension is commercially impracticable, as reasonably determined by the town council.
  - 4. Additional time for the line extension is required due to unusual circumstances, including, without limitation, street crossings, in which case the time requirements are extended for such reasonable time as required under the circumstances. The town manager may require licensee to demonstrate an extension of time is required.
  - 5. The density per cable plant mile for residential service is less than forty (40) dwelling units per cable plant mile. For illustrative purposes, if one mile of cable plant is extended to pass by forty (40) dwelling units, density per cable plant mile is forty (40). If one-half mile of cable plant is extended to pass by twenty (20) dwelling or occupied units, the density is forty (40). If one-fourth mile of cable plant is extended to pass by ten (10) dwelling units or occupied units, the density is forty (40). If one-eighth mile of cable plant is extended to pass by five dwelling units or occupied units, the density is forty (40). Each unit of a multiple dwelling unit ("MDU") is counted as a dwelling unit in determining the density for residential service.
  - 6. Licensee has been unable to obtain a mutually acceptable agreement granting licensee reasonable access to the multiple dwelling unit, or the property owner has not granted licensee reasonable access to the property.

7. The density per cable plant mile for commercial service areas is less than one hundred (100) commercial unit connections ("hook-ups") per cable plant mile. For illustrative purposes, if one mile of cable plant includes one hundred (100) hook-ups, density per cable plant mile is one hundred (100). If one-half mile of cable plant includes fifty (50) hook-ups, density per cable plant mile is one hundred (100). If one-fourth mile of cable plant includes twenty-five (25) hook-ups, density per cable plant mile is one hundred (100).

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.12 SECURITY DEPOSIT OR LETTER OF CREDIT**

Sections:

[20.12.010 Amount.](#)

[20.12.020 Interest.](#)

[20.12.030 Withdrawal.](#)

[20.12.040 Automatic replenishment.](#)

[20.12.050 Return of deposit.](#)

[20.12.060 Rights.](#)

### **20.12.010 Amount.**

Licensee must post with the town a security deposit, irrevocable letter of credit or bond in an amount set forth in the license before the license is effective. The town must hold the security deposit as security for:

- A. Faithful performance of all applicable compensation provisions of law, this title and the license agreement; and
- B. Collection from the licensee for any claims, liens, taxes or compensation due to the town because of the operation or maintenance of the cable system, or costs or expenses that the town is compelled to pay by reason of any act or default of the licensee in connection with this title or its license.

(Ord. No. 10-01, § I, 1-7-10)

### **20.12.020 Interest.**

The town shall place any such security deposit in an interest bearing account such as those in which the town general funds are located. The interest will accrue to the benefit of the licensee but may not be withdrawn. All interest is added to and becomes part of the original security deposit during the term of the license.

(Ord. No. 10-01, § I, 1-7-10)

**20.12.030 Withdrawal.**

The town may immediately withdraw an appropriate amount, including interest and penalties, from the security deposit if:

- A. After ten (10) days' notice the licensee fails to pay to the town any fees or taxes due and unpaid, damages, or costs or expenses that the town is compelled to pay by reason of any act or default of the licensee in connection with this license, unless licensee contests the matter within the ten-day notice period; or
- B. After thirty (30) days' notice to the licensee, the licensee fails to comply with any provision of the license that the town reasonably determines can be remedied by an expenditure of the security deposit. The town must promptly notify the licensee of the amount and date of any withdrawal.

(Ord. No. 10-01, § I, 1-7-10)

**20.12.040 Automatic replenishment.**

The licensee shall replenish the security deposit unless licensee appropriately remedies the issue. If any amount is contested by the licensee, then there needs to be a resolution of that issue prior to replenishment. The parties shall agree to negotiate in good faith about any replenishment should the initial security fund be depleted by any amount.

(Ord. No. 10-01, § I, 1-7-10)

**20.12.050 Return of deposit.**

The town must return the security deposit to the licensee after termination or expiration of the license if there is no outstanding default or unpaid amounts owed to the town by the licensee.

(Ord. No. 10-01, § I, 1-7-10)

**20.12.060 Rights.**

The rights reserved to the town with respect to the security deposit are in addition to all other rights of the town under this title and the license agreement or other law. An action, proceeding, or exercise of a right with respect to the security deposit does not affect any other right the town may have.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.13 INSURANCE**

Sections:

[20.13.010 Insurance amounts.](#)

[20.13.020 Increases.](#)

[20.13.030 Self-insurance.](#)

**20.13.010 Insurance amounts.**

Upon acceptance of a license, the licensee shall file with the town 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 town, its officers, boards, commissions, agents and employees, against liability for loss or liability for personal injury, death, property damage (both automobile and nonautomobile caused), or other damages in such amounts as set forth in the license. Such policy or policies shall be issued by a company approved by the manager and shall be in a form approved by the town attorney, with minimum combined single limits of liability coverage in the amount of two million dollars (\$2,000,000.00). The policy or policies shall name the town, 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 clerk thirty (30) days in advance of the effective date thereof. No license granted under this title shall be effective unless and until certificates of insurance evidencing coverage required above are delivered to the clerk. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this section.

(Ord. No. 10-01, § I, 1-7-10)

**20.13.020 Increases.**

The council may require increases in the amount of types of coverage no more frequently than every five years, based on increases in the consumer price index ("CPI"), so as to ensure full protection of the town and the public. The licensee shall have six months from the date of notification from the manager to comply with any increase.

(Ord. No. 10-01, § I, 1-7-10)

**20.13.030 Self-insurance.**

A licensee may self-insure the above-described policy coverages if such licensee or its parent is of sufficient financial standing to reasonably provide such insurance. Any licensee that elects to self-insure shall file with the town a certificate of insurance as specified by the town.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.14 INDEMNIFICATION**

Sections:

[20.14.010 In general.](#)

[20.14.020 Indemnification.](#)

[20.14.030 Overbuild.](#)

**20.14.010 In general.**

Any licensee issued a license under this title shall indemnify the town as set forth in this title, and the indemnification provisions of this title survive any expiration or termination of a license.

(Ord. No. 10-01, § I, 1-7-10)

**20.14.020 Indemnification.**

- A. Licensee shall indemnify, hold harmless, and defend the town, its officials, boards, commissions, agents, and employees, against any claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system regardless of whether the act or omission complained of is authorized, allowed or prohibited by the license. This requirement includes claims arising out of copyright infringement or a failure by the licensee to secure consent from the owner, authorized distributor, or licensee of a program to be delivered by the cable system.
- B. To the fullest extent permitted by law, licensee shall defend, indemnify and hold harmless the Town of Youngtown, its agents, officers, officials and employees for and against all tort claims, damages, losses and expenses (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted either wholly or in part from the acts, errors, mistakes, omissions, work or services of the licensee, its agents, employees, contractors or subcontractors in the performance of its activities, and regardless of whether or not such claim, damages, loss or expenses are caused in part by the non-negligent actions of the Town of Youngtown. By law, the town and its employees may not be indemnified and held harmless in cases where the town or its employees cause willful damage or loss to a system, and may also be responsible for such claims, damages and losses, should they occur.
- C. Licensee has a contractual duty to defend, hold harmless and indemnify the Town of Youngtown, its agents, officers, officials and employees that shall arise in connection with any tort claims, damages, losses or expenses that are attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused either wholly or in part by licensee's acts, errors, mistakes, omissions, work or services in the performance of its activities, including any employee of the licensee or any other person for whose acts, errors, mistakes, omissions, work or services the licensee may be legally liable, and regardless of whether or not such claim, damages, losses or expenses are caused in part by the non-negligent or nonwillful actions of the Town of Youngtown.

(Ord. No. 10-01, § I, 1-7-10)

**20.14.030 Overbuild.**

In the event of an overbuild situation by a new provider of multiple channels of video programming, the town may require written agreements from the new provider to require the new provider to indemnify each licensee for any damage to facilities and services caused by construction or maintenance of the cable systems of the new providers.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.15 ACCESS CHANNELS**

Sections:

[20.15.010 Access channels.](#)

[20.15.020 Town responsibilities.](#)

[20.15.030 Capital grant or loan.](#)

**20.15.010 Access channels.**

- A. Town may require licensee at licensee's own expense to provide access channel capacity to transmit programming over which the licensee exercises no editorial control except as authorized by 47 U.S.C. § 531(e). The educational or governmental access programming shall be limited to not more than two channels of public, educational or governmental access programming in the basic service tier of the cable television system and not more than two channels of noncommercial governmental programming, at least one of which may be programmed by the federal government, in the digital programming tier of the cable television system. If channel capacity is required, the programming shall be specified in the license and the cable operator may require that the channels regularly display an unobtrusive logo or other suitable identifier of the cable operator as set forth in the license.
- B. Licensee at its own expense shall provide, maintain, and operate facilities and equipment of the cable television system, including facilities and equipment for signal carriage, processing, reformatting and interconnection:
  - 1. To connect the cable television system, as it may be relocated from time to time, to transmit programming to and from locations of public, educational or governmental access facilities designated in the license and to allow monitoring of access programming at the facilities; and
  - 2. To transmit public, educational and governmental access channels to subscribers with the same prevailing quality, functionality and identification as other channels.
- C. The value of any channel capacity provided pursuant to this section, and the costs and expenses incurred pursuant to this section may not be offset against the licensee fee levied or assessed under the license.

(Ord. No. 10-01, § I, 1-7-10)

**20.15.020 Town responsibilities.**

Town and/or the educational institution using an access channel shall be responsible for day-to-day operation of the access channels, and adopting reasonable rules governing use of the access channels.

(Ord. No. 10-01, § I, 1-7-10)

**20.15.030 Capital grant or loan.**

Licensee may provide a capital grant or loan for purchase of equipment and facilities for the access channel(s), subject to mutual agreement of the town and licensee.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.16 CONNECTION AND BASIC SERVICE TO PUBLIC BUILDINGS**

Sections:

[20.16.010 Standard drop to public buildings.](#)

[20.16.020 Basic service.](#)

**20.16.010 Standard drop to public buildings.**

Upon request of the town, licensee shall provide, without charge, a minimum of one activated standard drop to all present and future public buildings as designated by the town from time to time, including, but not limited to: public schools, colleges and universities; town fire stations and police stations; public libraries; town community center; and town recreational facilities.

(Ord. No. 10-01, § I, 1-7-10)

**20.16.020 Basic service.**

If requested by town at any time, licensee shall provide basic service free of charge to offices and facilities of the town. The value of any basic service provided by licensee shall not be offset against the license fee levied or assessed under the license.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.17 DISCRIMINATION PROHIBITED**

Sections:

[20.17.010. Discrimination prohibited.](#)

**20.17.010. Discrimination prohibited.**

- A. Licensee must have a uniform rate structure for its cable services throughout the license area to the extent required by the cable act and the FCC rules.
- B. Licensee must not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, religion, color, sex, sexual orientation, handicap, national origin, marital status, or geographic location, except for discounts for the elderly and handicapped.
- C. Licensee shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.
- D. Licensee shall provide all residential areas (and commercial and industrial areas where economically feasible) within the town with access to cable services, provided that all such permission as may be required from the owner of the property is reasonably available, subject to the requirements set forth in this license.
- E. For purposes of determining compliance with this title, licensee shall maintain and allow the town to inspect on request, a basic service area map to current customers illustrating current service areas within the town limits.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.18 CUSTOMER SERVICE REQUIREMENTS**

Sections:

[20.18.010 Telephone availability.](#)

[20.18.020 Customer service center.](#)

[20.18.030 Installations, outages, and service calls.](#)

[20.18.040 Communication between cable operators and cable subscribers.](#)

[20.18.050 Information to be provided to cable subscribers.](#)

[20.18.060 Notice to subscribers concerning rate and service changes.](#)

[20.18.070 Subscriber bill information and bill disputes.](#)

[20.18.080 Change in federal regulations.](#)

[20.18.090 Continuity of service mandatory.](#)

[20.18.100 Subscriber privacy.](#)

**20.18.010 Telephone availability.**

- A. Licensee shall maintain a local, toll-free or collect-call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven days a week. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours. 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 trained company representative on the next business day.
- B. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when 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. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply. Under normal operating conditions, the customer will receive a busy signal less than three percent of the time.

(Ord. No. 10-01, § I, 1-7-10)

**20.18.020 Customer service center.**

Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(Ord. No. 10-01, § I, 1-7-10)

**20.18.030 Installations, outages, and service calls.**

Under normal operating conditions, each of the following three standards will be met no less than nine-five (95) percent of the time, measured on a quarterly basis:

- A. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.
- B. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the

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interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

- C. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(Ord. No. 10-01, § I, 1-7-10)

### **20.18.040 Communication between cable operators and cable subscribers.**

- A. Refund checks will be issued promptly but no later than either: 1) the customer'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 cable operator if service is terminated.
- B. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(Ord. No. 10-01, § I, 1-7-10)

### **20.18.050 Information to be provided to cable subscribers.**

Licensee shall comply with all requirements set forth in 47 C.F.R. § 76.1602 as may be amended.

(Ord. No. 10-01, § I, 1-7-10)

### **20.18.060 Notice to subscribers concerning rate and service changes.**

License shall comply with all requirements set forth in 47 C.F.R. § 76.1603 as may be amended.

(Ord. No. 10-01, § I, 1-7-10)

### **20.18.070 Subscriber bill information and bill disputes.**

Bills must be clear, concise and understandable. Bills must be 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. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(Ord. No. 10-01, § I, 1-7-10)

**20.18.080 Change in federal regulations.**

In the event the FCC amends regulations related to customer service, found in 47 C.F.R. part 76, the town may require licensee to conform its customer service standards to amended FCC regulations.

(Ord. No. 10-01, § I, 1-7-10)

**20.18.090 Continuity of service mandatory.**

- A. It is the right of all subscribers to receive all available services from the licensee if their financial and other obligations to the licensee are satisfied.
- B. If this license is terminated, the licensee shall make good-faith efforts to ensure that all subscribers receive continuous, uninterrupted service until the termination is final, and then refund the remaining portion of the monthly service charge to the subscriber.
- C. If licensee discontinues service to its subscribers without town approval, the license may be terminated immediately.

(Ord. No. 10-01, § I, 1-7-10)

**20.18.100 Subscriber privacy.**

Licensee shall protect the privacy of all subscribers as provided for in the Federal Cable Act. Licensee shall not condition subscriber service on the subscriber's grant of permission to disclose information, which, cannot be disclosed without the subscriber's explicit consent under federal law.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.19 REPORTS AND RECORD KEEPING**

Sections:

[20.19.010 Records of written complaints.](#)

[20.19.020 Inspection.](#)

[20.19.030 Subscriber information.](#)

[20.19.040 Annual reports.](#)

**20.19.010 Records of written complaints.**

Licensee must maintain a complete record of formal written complaints received and action taken. These records must be open to the town for inspection during normal business hours, subject to applicable law, including privacy laws. Licensee must maintain complaint records for three years. In lieu of retaining all complaint records for the entire term of the license, licensee shall provide the town with a monthly or quarterly report summarizing the total number and nature of formal written complaints, including e-mail complaints, that describes the nature of the complaint, action taken, and final resolution.

(Ord. No. 10-01, § I, 1-7-10)

**20.19.020 Inspection.**

Licensee must maintain a complete set of books and records, relevant to its obligations under the license, available for inspection upon fourteen (14) calendar days' notice by the town during normal business hours.

(Ord. No. 10-01, § I, 1-7-10)

**20.19.030 Subscriber information.**

The town manager, as the authorized signatory, or designee, may request subscriber information from the licensee to the extent permitted under the Cable Act (47 U.S.C. § 551) and such information must be made available at licensee's office in the Phoenix metropolitan area for inspection and copying in any format as requested by the town under this title. Public access to such information or inspection or the town's ability to withhold such information is subject to Arizona Revised Statutes and other applicable law.

(Ord. No. 10-01, § I, 1-7-10)

**20.19.040 Annual reports.**

Unless this requirement is waived, in writing, in whole or in part by the town manager or town council, the licensee shall submit a written annual report to the town, or prepare a report available for viewing by the town manager or designee. Information in this section may be subject to open records laws, unless otherwise designated as confidential and not to be disclosed. Nondisclosure shall be based on the statutory threshold for public information and proprietary information, and shall be marked as such by the licensee. Licensee must file with the town a report which includes:

- A current revenue statement showing the gross revenues by the licensee during the preceding calendar year;
- The total number of current and new homes passed;
- The total number of current and new subscribers;
- Proposed growth areas;
- Service offerings by type and price, including all bundled and premium services;
- Responses to formal written complaints, malfunctions and service failures (the last three responses to formal complaints, malfunctions and service failures, are only required if more than ten (10) formal written complaints are received or if a response to a specific complaint is requested by the town);
- A current list of officers and members of the board of directors or similar controlling body of the licensee and any affiliates, reflecting any changes in ownership during the previous calendar quarter; a disclosure statement of all corporations, partnerships and/or other persons with more than a five percent ownership interest in the licensee, stating the nature of the ownership interests, reflecting any changes during the previous calendar year;
- Copy of current map showing areas of town serviced by licensee, clearly delineating streets and other boundaries of service;
- A current emergency contact and notification list including after-hour numbers for key staff;

- A summary update concerning emerging issues (such as legislative issues) affecting or involving services and service delivery as identified by the town; and
- Other information that the town may reasonably request.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.20 AUDITS**

Sections:

[20.20.010 Audits.](#)

### **20.20.010 Audits.**

The town shall have the right to inspect licensee's income records and the town and licensee shall each have the right to audit and to recompute any amounts determined to be payable under this license provided; however, that the audit shall take place within thirty-six (36) months following the close of the licensee's fiscal year for which the audit is desired. Any additional amount due to the town discovered in the audit plus accrued interest on the delinquent amount at the rate of one-half percent per month in lieu of liquidated damages shall be paid within thirty (30) days following written notice to the licensee by town, and said notice shall include a copy of the audit report; provided, however, if licensee within fifteen (15) days of receipt of the written notice requests a hearing on the audit results, the hearing process as set forth in section 20.24.020 (hearing available to licensee) of the Code will be followed and licensee's obligation to make payment is suspended pending a hearing and final decision.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.21 PERFORMANCE EVALUATIONS**

Sections:

[20.21.010 Performance evaluations.](#)

### **20.21.010 Performance evaluations.**

The town may hold a minimum of three formal performance evaluations in public hearing settings during the term of each license. The town manager may determine the times for the hearings and the issues that the licensee must address in the hearings. Nothing in this section shall prohibit the town manager from conducting other performance evaluations and audits in nonpublic hearing settings as deemed necessary.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.22 ENFORCEMENT OF CERTAIN CUSTOMER SERVICE STANDARDS**

Sections:

[20.22.010 Enforcement of certain customer service standards.](#)

**20.22.010 Enforcement of certain customer service standards.**

Town shall give licensee at least ninety (90) days' written notice of its intention to enforce customer service standards found in sections 20.18.050, information to be provided to cable subscribers, 20.18.060, notice to subscribers concerning rate and service changes, and 20.18.070, subscriber bill information and bill disputes.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.23 LIQUIDATED DAMAGES**

Sections:

[20.23.010 Amount.](#)

[20.23.020 Notice and opportunity to cure.](#)

**20.23.010 Amount.**

Any license issued by the town shall provide for liquidated damages for a failure by licensee to comply with the license. The amount(s) of liquidated damages shall be set forth in the license. Liquidated damages are in addition to any other remedy the town may pursue at law.

(Ord. No. 10-01, § I, 1-7-10)

**20.23.020 Notice and opportunity to cure.**

Prior to imposition of liquidated damages, the town manager shall give written notice to licensee of licensee's alleged failure to comply with the license, and may provide a reasonable opportunity to cure said violations if a cure has not already been effected. Within fifteen (15) days from receipt of said notice, licensee may request a hearing with the town manager. Within thirty (30) days of receipt of such request, the town manager or his designee shall conduct a hearing and render a written decision as to whether the violations were satisfactorily cured, if no cure can be effected, whether a reasonable alternative remedy was effected, and/or whether liquidated damages are appropriate. Within fifteen (15) days of receipt of such decision, licensee may appeal this decision to the town council which will conduct a hearing de novo. The decision may be appealed within thirty (30) days by any aggrieved party to the superior court. The record on appeal shall include written and oral presentations made by each party at the hearing and any other information considered at the hearing. The court in its judgment may award the prevailing party reasonable attorneys' fees, not to exceed twenty thousand dollars (\$20,000.00).

**Chapter 20.24 ENFORCEMENT OF LICENSE**

Sections:

[20.24.010 Notice of violation.](#)

[20.24.020 Default.](#)

[20.24.030 Hearing available to licensee.](#)

[20.24.040 Appeal of default.](#)

[20.24.050 Revocation.](#)

[20.24.060 Jurisdiction and venue.](#)

**20.24.010 Notice of violation.**

The town shall provide licensee with a detailed written notice of any license violation upon which it proposes to take action. The notice shall state that licensee has ten (10) business days following the date of the notice to: (1) demonstrate a violation does not exist or cure the alleged violation, or, (2) if the violation cannot reasonably be cured within ten (10) business days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the town of such plan of action.

(Ord. No. 10-01, § I, 1-7-10)

**20.24.020 Default.**

If licensee fails to disprove or correct the violation within ten (10) business days following the date of notice of violation or, in the case of a violation which cannot be corrected in ten (10) business days and licensee has failed to notify the town of the licensee's reasonable plan of corrective action and to correct the violation within the specified time frame, then the town may declare the licensee in default, which declaration must be in writing. In the event that the town declares licensee in default, the town shall have the right to institute legal proceedings to collect damages from the date of declaration of default, or to exercise any other rights and remedies afforded to the town in law or equity, provided, however, that the town may institute revocation proceedings against licensee only after declaration of default, pursuant to section 20.24.020, default, and only on the grounds set forth therein.

(Ord. No. 10-01, § I, 1-7-10)

**20.24.030 Hearing available to licensee.**

Within fifteen (15) days after receipt of a written declaration of default from the town, licensee may request, in writing, a hearing before the town council. Such hearing shall be held within thirty (30) days of the receipt of the request therefore and a decision rendered within ten (10) days after the conclusion of the hearing. Any decision shall be in writing and shall be based upon written findings of fact. The decision may be appealed within thirty (30) days by any aggrieved party to the superior court. Subject to the town police powers that may require immediate cessation of licensee operations to protect the public health, safety, welfare and property, licensee may continue to operate until there is a final, nonappealable decision to revoke.

(Ord. No. 10-01, § I, 1-7-10)

**20.24.040 Appeal of default.**

Licensee may appeal a declaration of default to a court of competent jurisdiction.

(Ord. No. 10-01, § I, 1-7-10)

**20.24.050 Revocation.**

Subject to federal, state and local law, the town may revoke the license for any material breach or repetitive breaches of the license. Prior to revocation, the town council will hold a public hearing on the issue of revocation, and then determine, by written resolution, whether or not to revoke the license based on the recommendations of the town manager, information presented at the public hearing, and other evidence in the record. Licensee shall be given notice and opportunity to appear at the hearing and present evidence. The decision may be appealed within thirty (30) days by any aggrieved party to the superior court. Subject to the town police powers that may require immediate cessation of licensee operations to protect the public health, safety, welfare and property, licensee may continue to operate until there is a final, nonappealable decision to revoke.

(Ord. No. 10-01, § I, 1-7-10)

**20.24.060 Jurisdiction and venue.**

Any legal action, whether in law or equity, commenced by either party to the license, shall be commenced in the Superior Court of the State of Arizona, Maricopa County.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.25 ADDITIONAL GROUNDS FOR REVOCATION OR TERMINATION OF LICENSE**

Sections:

[20.25.010 Bankruptcy.](#)

[20.25.020 Foreclosure.](#)

[20.25.030 Abandonment.](#)

[20.25.040 Due process.](#)

**20.25.010 Bankruptcy.**

The town may revoke this license one hundred twenty (120) days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the licensee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, to the extent consistent with federal bankruptcy law.

(Ord. No. 10-01, § I, 1-7-10)

**20.25.020 Foreclosure.**

In accordance with section 20.24.020, default, the town may revoke this license if there is a foreclosure or other judicial sale of any of the facilities, equipment or property of licensee, by serving

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notice on licensee and the successful bidder at the sale. This license and all rights and privileges of this license will be revoked thirty (30) days after the town serves notice under this section unless:

- A. The town has approved a transfer of the license; and by the terms and conditions of the license; or
- B. The successful bidder has agreed with the town to assume and be bound by the terms and conditions of the license.

(Ord. No. 10-01, § I, 1-7-10)

### **20.25.030 Abandonment.**

The town may revoke this license if licensee abandons, terminates, or fails to operate or maintain service to its subscribers for a period of one hundred eighty (180) days. In this case, the town may:

- A. Require the former licensee to remove its facilities and equipment at the licensee's or surety's expense, or at the expense of both, after determining that the cable system cannot be economically maintained and operated;
- B. Acquire ownership of the cable system, to the extent otherwise permitted by law, at fair market value on the recommendation of the town manager and with the approval of the council; and
- C. After a public hearing, sell, assign, or transfer all or part of the assets of the cable system abandoned by a licensee for the best price offer obtainable. However, the legal, character, financial, technical, and other qualifications of the purchaser must meet town approval.

(Ord. No. 10-01, § I, 1-7-10)

### **20.25.040 Due process.**

A license may be terminated under this title only after licensee is afforded notice and hearing as provided for in section 20.24.020, default.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.26 UNFORESEEN EVENTS AND FORCE MAJEURE**

Sections:

### [20.26.010 Unforeseen events and force majeure.](#)

#### **20.26.010 Unforeseen events and force majeure.**

- A. Licensee shall not be deemed in default of provisions of the license where performance was rendered impossible by acts of god, war, riots, civil disturbances, labor strikes, floods, or other circumstances beyond licensee's reasonable control or not reasonably foreseeable, and the license shall not be revoked or licensee penalized for such noncompliance, provided that licensee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the license without unduly endangering the health or safety of licensee's employees or the integrity of its property, or the health or safety of the public, or the integrity of rights-of-way, public property, or private property.

- B. With respect to any provision of the license or this title, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or any other sanction or enforcement procedure upon the licensee, such violation or noncompliance will be excused if such violation or noncompliance is the result of an event of force majeure. The licensee shall also be excused from performing any obligation to the extent such failure to perform is caused by a utility servicing or monitoring its utility poles, if any, to which the licensee's facilities are attached. Furthermore, the parties hereby agree that it is not the town's intention to subject the licensee to penalties, fines, forfeiture or revocation of this license or the ordinance for violations of the license or this title where the violation was a good faith error that resulted in no or minimal negative impact on subscribers.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.27 EFFECT OF TERMINATION OR EXPIRATION ON TELECOMMUNICATIONS SERVICES**

Sections:

[20.27.010 Effect of termination or expiration on telecommunications services.](#)

### **20.27.010 Effect of termination or expiration on telecommunications services.**

If licensee operates separate telecommunications services other than cable service over the cable system, upon expiration, termination or revocation of this license for any reason, licensee shall no longer provide cable service using the public rights-of-way or public easements in the town. Licensee shall have a one-hundred-eighty-day period thereafter to obtain from town such licenses, permits or other approvals or agreements as may be lawfully required for licensee to continue using the cable system facilities for other telecommunications services. After such period, any right for the cable system to be in public rights-of-way and public easements shall only be pursuant to such new licenses, permits or other approvals or agreements. Nothing herein shall be constructed to authorize licensee to utilize the cable system for anything other than cable services.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.28 CHANGES IN TECHNOLOGY AND DEVELOPMENT**

Sections:

[20.28.010 Changes in technology and development.](#)

### **20.28.010 Changes in technology and development.**

Both technology and the community are rapidly changing. As such, continuous modifications to the system may be required to incorporate new technology or improve services. The town or licensee may determine upon mutual agreement that a change in the terms of the license is required to meet the needs and interests of the community, that the system or license requirements should be updated, changed, or revised, or that additional services should be provided locally. Upon request of town or licensee, the parties shall meet and negotiate in good faith proposed changes necessary to meet the needs of the community. As such changes are acceptable to each party, an amendment to the license may occur.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.29 UNLAWFUL SOLICITATION OR GIFTS**

Sections:

[20.29.010 Unlawful solicitation or gifts.](#)

### **20.29.010 Unlawful solicitation or gifts.**

It is unlawful for any person to solicit, accept, or offer any gift, favor, loan, service, promise, employment, or anything of value to a town official or employee, or for a town official or employee to solicit or accept anything of value, for the purpose of influencing the grant, modification, renewal, transfer, or any other matter affecting a license or the administration or enforcement of this title. Licensee shall not offer gifts as defined herein to the town, its employees or assigns.

(Ord. No. 10-01, § I, 1-7-10)

## **Chapter 20.30 TRANSFERS**

Sections:

[20.30.010 In general.](#)

[20.30.020 Application.](#)

[20.30.030 Decision.](#)

### **20.30.010 In general.**

Licensee's right, title, or interest under this license may not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the licensee at the time the license is issued, without the prior consent of the town. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the licensee in the license or cable system in order to secure indebtedness.

(Ord. No. 10-01, § I, 1-7-10)

### **20.30.020 Application.**

An entity which seeks approval of a proposed transfer shall file an application for approval of that transfer no later than one hundred twenty (120) days prior to the proposed effective date of the transfer. The application shall be accompanied by a fee as set forth in [section] 20.06.020, license fees. In making a determination to approve or disprove the application, the town shall conduct an ascertainment process to consider the legal, financial and technical qualifications of the proposed transferee to operate the cable system in the same manner required by the town for a renewal or new license, and within the guidelines established in federal law.

(Ord. No. 10-01, § I, 1-7-10)

**20.30.030 Decision.**

The town shall have one hundred twenty (120) days following the submission of the application for transfer to render a decision. At the discretion of the town manager, the town shall conduct a public hearing (if necessary) and if the town does not render a decision within one hundred twenty (120) days, the transfer shall be deemed approved. Approval by the town of a transfer of the license does not constitute a waiver or release of any of the rights of the town under Town Code or the license agreement, unless otherwise provided by law.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.31 RENEWAL OF LICENSE**

Sections:

[20.31.010 Formal renewal.](#)

[20.31.020 Formal renewal process.](#)

[20.31.030 Informal renewal process.](#)

[20.31.040 Final decision.](#)

[20.31.050 Events after denial of renewal.](#)

[20.31.060 Appeal.](#)

**20.31.010 Formal renewal.**

If an existing licensee initiates a formal license renewal process under 47 U.S.C. § 546(a) through (g) of the Cable Act, the licensee must notify the town, at least thirty-six (36) months and no later than thirty (30) months before the license expiration date.

(Ord. No. 10-01, § I, 1-7-10)

**20.31.020 Formal renewal process.**

When the town receives a notice from the licensee, the town shall take the following actions:

- A. The town will not begin review of any renewal request unless all applications and fees have been paid. The future renewal of this license is not effective until the licensee has followed the renewal process including submittal of a completed application and the payment of the renewal fee. The town shall notify the licensee of the current amount of the renewal fee and current procedures for renewal.
- B. The town shall review and evaluate the future cable-related community needs and interests and the licensee's past performance. The review and evaluation shall include opportunity for public comment.
- C. On completion of the review and evaluation, the town shall notify the licensee that it may file a renewal application. The notice shall specify the information to be included in the renewal application and the deadline for filing the application. The filing deadline shall not be earlier than

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thirty (30) days after the date of the notice. If the licensee does not submit a renewal application by the specified date, the license may not be renewed under this section.

- D. The town shall hold one or more public hearings on the renewal application when the application is received or provide some other procedure for public comment on the application.
- E. After the public hearing or comment period, the town manager shall recommend to the council that it either:
  - 1. Renew the license, as written, subject to the existing terms of the license agreement satisfactory to the town and the licensee;
  - 2. Renew the license, subject to new or amended terms of the license agreement satisfactory to the town and the licensee; or
  - 3. Issue a preliminary decision that the license should not be renewed.
- F. Council action must be taken within four months of the date of the renewal application notice to the licensee.
- G. In considering a renewal application, the town must consider whether:
  - 1. The cable operator has substantially complied with the material terms of the existing license and with applicable law;
  - 2. The quality of the cable operator's service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs (but without regard to the mix or quality, of cable services or other services provided over the cable system);
  - 3. The cable operator has the financial, legal, and technical ability to provide the services, facilities, and equipment in its proposal; and
  - 4. The cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting the needs and interests.
- H. If a preliminary decision is made that the license should not be renewed, at the request of the licensee or on its own initiative, the town must commence an administrative proceeding under 47 U.S.C. § 546(c) of the Cable Act. Parties to the hearing and the public must have thirty (30) days after the recommended decision is issued to comment. The town manager must recommend that the council grant or deny an application within thirty (30) calendar days after the deadline for receipt of comments if the request requires that formal procedures are followed.

(Ord. No. 10-01, § I, 1-7-10)

### **20.31.030 Informal renewal process.**

If licensee does not utilize the formal renewal process under the Cable Act, licensee shall file an application for a license with the town pursuant to section 20.06.010 application for new license at any time pursuant to 47 U.S.C. § 546(h), but at least six months prior to expiration of the existing license. The town must hold one or more public hearings or provide some other procedure for public comment on the proposal. After the public hearing or comment period, the town manager must recommend that the council grant or deny the license renewal and the terms and conditions of any recommended renewal. A denial under this section shall not affect licensee's formal renewal rights under the Cable Act.

(Ord. No. 10-01, § I, 1-7-10)

**20.31.040 Final decision.**

- A. Regardless of formal or informal procedures, the council must hold a public hearing on all renewal applications. After the public hearing, the council must consider all of the evidence, either grant or deny the renewal application by written resolution, and give the findings of fact and reasons for its determination in the resolution.
- B. The council must hold a public hearing on the license agreement prior to final council action on the license.

(Ord. No. 10-01, § I, 1-7-10)

**20.31.050 Events after denial of renewal.**

- A. Subject to chapter 20.27, effect of termination or expiration on telecommunications services, if the town denies the renewal of license, the town may, on the recommendation of the town manager and with the approval of the council and the licensee, acquire ownership of the cable system or transfer operation of the system to another company. Any acquisition or transfer under this subsection must be at fair market value, determined on the basis of the cable system valued as a going concern.
- B. Subject to chapter 20.27, effect of termination or expiration on telecommunications services, if the town does not renew license, and to the extent consistent with applicable law, the town has the option of (a) purchasing the cable system if agreeable to licensee, (b) require the licensee or surety to remove the facilities and equipment at the licensee or surety's expense, or (c) begin condemnation proceedings and permit the facilities to remain until ownership has been determined or bond surety collected.
- C. If any or all of the components of the cable system in, on or above the town's rights-of-way are not removed within one year, the cable system will be considered abandoned and becomes the property of the town.
- D. Notwithstanding anything to the contrary in this license, town shall not require the removal, sale or other disposition of the cable system until any judicial or administrative appeal of the town's decision to revoke or not renew the license is final and nonappealable. Furthermore, if within thirty (30) days from said final decision licensee commences and continues to make good faith efforts to sell its cable system, licensee shall have a period of one year from said final decision to transfer or sell its cable system.

(Ord. No. 10-01, § I, 1-7-10)

**20.31.060 Appeal.**

The town council's decision to not renew may be appealed to the superior court. Subject to the town police powers that may require immediate cessation of licensee operations to protect the public health, safety, welfare and property, licensee may continue to operate until there is a final, nonappealable decision to not renew.

(Ord. No. 10-01, § I, 1-7-10)

**Chapter 20.32 SEVERABILITY**

Sections:

[20.32.010 Severability.](#)

**20.32.010 Severability.**

If any section, subsection, sentence, clause or phrase of this title 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 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.

(Ord. No. 10-01, § I, 1-7-10)