

CHAPTER 6 - CABLE COMMUNICATION SYSTEMS

Sec. 6-1. Definitions.¹

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

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

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

(3) “*Cable Act*” shall mean the Cable Communications Policy Act of 1984, as amended.

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

(5) “*Cable System*” shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services which includes video programming and which is provided to multiple Subscribers within the City (as hereinafter defined), but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only Subscribers in one or more multiple dwelling units (defined below) under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers; or (d) any facility of an electric utility used solely for operating its electric utility systems. Any reference to Licensee’s Cable System refers to the Cable System as a whole or any part thereof.

(6) “*Change of Service*” shall mean all requests by existing Subscribers for

¹State Law Reference(s). Cable Television--A.R.S. §9-505, et.seq.

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modifications to their Cable Service, including without limitation additions or deletions of premium services, additional outlets, remote controls and FM service. Such term shall not include initial installation of Basic Cable Service, total disconnection of Basic Cable Service or Service Calls.

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

(8) “*City Council*” shall mean the present governing body of the City or any future Council constituting the legislative body of the City.

(9) “*City Manager*” shall mean the City Manager or the City Manager’s designee.

(10) “*Completion of Construction*” or “*Complete system construction*” shall mean “satisfactorily complete” and “fully activate.” In each instance, these terms shall mean that, for aerial construction, strand has been put up and all necessary cable has been lashed, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored to the City’s satisfaction and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed, that power supplies have been installed, that construction of the headends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the Cable System to be ready to deliver Cable Service to Subscribers has been completed with no unresolved violations of this Chapter or the License. Final balancing shall have been conducted on each otherwise completed segment of the Cable System before direct marketing of that segment begins. It is expected that segments of less than the entire Cable System will be activated and final balanced when completed. Construction of any segment or of the entire Cable System will not be considered complete until final balance has been conducted on such segment (or in the case of the entire Cable System, until final balancing and proof of performance tests have been conducted on all segments of corrected.) The term “Completion of Construction” does not include marketing and installation of Subscriber service.

(11) “*FCC*” means the Federal Communications Commission, or a designated representative.

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

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- a. Revenue from all charges for services provided to Subscribers;
- b. Revenue from all charges for the insertion of commercial advertising upon the Cable System;
- c. Revenue from all charges for the leased use of studios;
- d. Revenue from all charges for the use of or lease of leased access channels or band width.
- e. Revenue from the production or transmission over the Cable System of video programming by Licensee including programming produced by its mobile facilities.
- f. Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a Subscriber to receive Cable Services;
- g. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional Users.
- h. And any other income derived from the Cable System.
- i. "Gross Revenues" shall not include taxes collected by Licensee on behalf of any governmental authority; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary service provided to Licensee's employees and as required by this Chapter or any License; and dividends or other distributions made in respect of any stock or securities; value received by a Licensee (or any of its affiliates, subsidiaries or parent) through cooperative advertising.
- j. "Gross Revenues" shall not include cash, credit, property of any kind or nature, or other consideration received by a licensee's affiliates, subsidiaries, parent, or any person, firm or corporation ("Affiliate") in which a licensee has a financial interest or which has financial interest in a Licensee for any sales of advertising on the Cable System, services to provide programming on the Cable System, production services, and/or telecommunication services which are Cable Services when such services are provided by an Affiliate, which has all the following characteristics: the Affiliate is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records), and a separate mission; it makes payments to Licensee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than Licensee in the same

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industry as Licensee; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of License Fees on Gross Revenues. Nothing contained in this exclusion from Gross Revenues shall be interpreted to exclude from Gross Revenues such cash, credit, property of any kind or nature or other consideration which would be considered the Licensee's Gross Revenues derived from the operation of the Cable System under the Cable Act. Except for Gross Revenue from such sales of advertising on the Cable System, services to provide programming on the Cable System, production services, or telecommunication services which are Cable Services received by such Affiliate, this paragraph shall not exclude from Gross Revenues any source of Gross Revenues which an existing Licensee itself is receiving at the time it is granted a License under this Chapter, as revised March 7, 1995. When a Licensee (or an Affiliate) holds one or more other cable television licenses in Maricopa County, Arizona and receives and allocates Gross Revenues from (b), (d) and (e), then Gross Revenues derived from (b), (d), and (e), shall be allocated pro rata to the City based on the ratio of the number of Subscribers of Licensee (or an Affiliate), in the City to the number of Subscribers of Licensee (or an Affiliate) in all the jurisdictions in Maricopa County, Arizona, in which Licensee (or an Affiliate) holds a cable license. If a Licensee does not allocate its Gross Revenues derived from (b), (d) and (e) from such other jurisdiction(s) then the number of Subscribers in such jurisdiction(s) shall not be included in the total number of Subscribers in all other jurisdictions.

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

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

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

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

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(17) “*Licensor*” means the City of Peoria as represented by the City Council or City Manager, or their designee.

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

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

(20) “*Normal Operating Conditions*” means those service conditions which are within the control of the Licensee. Those conditions which are not within the control of the Licensee include, but are not limited to, natural disasters, civil disturbances, utility company power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Licensee include, but are not limited to, special promotions, pay-pay-view events, rate increase, regular peak or seasonal demand periods, and maintenance or up grade of the Cable System.

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

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

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

(23) “*School*” means public educational institutions including primary and secondary schools, colleges and universities.

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

(25) “*Standard Drop*” shall mean a cable connection which requires no more than a 150-foot drop measured from the nearest point of a Subscriber’s home or place of business to the nearest existing technically feasible point from which an individual Subscriber can be connected to the Cable System; involves only one outlet and standard materials; and does not involve a wall fish. In addition, a “Standard Drop” shall exclude custom installation work, including specific

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Subscriber requested work that requires non-standard inventory or cable routing requiring construction methods exceeding reasonable underground or aerial work.

(26) “*Street*” or “*Public Street*” shall mean only a street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive which is owned by a public entity in fee or as to which a public easement has been dedicated for street purposes, and with respect to which, and to the extent that, City has a right to grant the use of the surface of, and space above and below in connection with a License for a Cable System, or other compatible uses.

(27) “*Subscriber*” shall mean any person, firm, corporation or entity receiving for any purpose the Cable Service and non-cable service of a Licensee’s Cable System.

(28) “*Two-way Communication*” shall mean the transmission of telecommunication signals from Subscriber locations or other points throughout the Cable System back to the Cable System’s control center as well as transmission of signals from the control center to Subscriber locations. A License document may authorize switching at a level other than the control center.

(29) “*User*” shall mean a party utilizing a Cable System channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt in a Subscriber capacity.

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

(Code 1977, § 9-7-1)

(Ord. No. 95-13, 3/7/95, Repealed)

(Ord. No. 95-13, 3/7/95, Enacted)

Cross reference(s) -- Definitions and rules of construction generally, § 1-2.