

CHAPTER 14 CABLE COMMUNICATIONS

(Ord 89-09)(Res 89-15/90-23)

ARTICLE 14-1 CABLE COMMUNICATIONS CODE

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Section 14-1-1 Title

This chapter shall be entitled the Town of Quartzsite Communications chapter.

Section 14-1-2 Purpose

It is the purpose of this chapter to:

- A. Authorize the town to grant non-exclusive licenses to operate a cable communications system in areas under its jurisdictions.
- B. Provide for the payment of certain fees and other considerations to the town.
- C. Promote the widespread availability of high quality cable communications service to residents of the town.

Section 14-1-3 Definitions

In this chapter unless the context otherwise requires:

- A. **“Basic service”** means all subscriber services provided by licensee covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made, or as specifically provided in the license agreement.

- B. **“Cablecasting”** means a non-broadcast signal that originates within the facilities of the cable communications system.
- C. **“Cable communications system”** means any facility that, in whole or in part, receives directly or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals together with such other signals as authorized by the Federal Communications Commission and the town by wire or cable to subscribing members of the public who pay for such service, but the term shall not include:
1. Any such system that serves only the residents of one or more apartment dwellings under common ownership and commercial establishments located on the premises of such apartment dwellings.
 2. Any such system the facilities of which do not use a public street, road, alley or easement.
- If there is a connection of any such exempt system to a licensed system such exemption shall cease.
- D. **“Channel”** means a six megahertz (MHz) frequency band capable of carrying one standard color video signal or a combination of non-standard signals.
- E. **“FCC”** or **“Federal Communications Commission”** means that agency as presently constituted by the Communications Act of 1934 as amended or any successor agency.
- F. **“License”** means the right and authority granted by this chapter to licensee to construct, maintain and operate a cable television system through use of the public streets, other public rights-of-ways or the public places in the town.
- G. **“License area”** means the area within the bounds of the Town of Quartzsite.
- H. **“Licensee”** means a person who executes a license agreement with the town, in accordance with this chapter for the non-exclusive privilege to erect, construct, operate, maintain or dismantle a cable communication system in the town.
- I. **“Person”** means any individual, corporation (whether for profit or non-profit), joint venture, partnership or any other business entity who holds or applies for a license from the town.
- J. **“Private channel”** means any channel which is available only to subscribers who are provided with a special tap, converter or terminal equipment to receive signals on that channel.

- K. **“Subscriber”** means any person or entity receiving cable services of licensee.
- L. **“Subscriber density”** means the number of business or residential units per mile of system. Business and residential units shall be counted when they are within 250 feet of any portion of the cable distribution system including trunk or feeder cable.
- M. **“Two-way capability”** means the ability to receive and transmit signals of any type from a subscriber terminal to other points in the system.

Section 14-1-4 Requirement for License

No person shall construct, install, maintain or operate a cable communication system within, along, over or under any street or other public property in the town, unless a license has first been granted pursuant to the provisions of this chapter.

Section 14-1-5 Application

- A. Any person desiring to construct, install, maintain or operate a cable communication system within the area under the jurisdiction of the town shall make an application to be licensed to serve this area. This application shall consist of executed application forms as prescribed and furnished by the town. Failure of any applicant to fully provide all information requested on the application forms will be sufficient cause for not considering the application. This application shall be filed with the town clerk.
- B. Any application filed with the town prior to the adoption of this chapter shall, upon payment of the application fee as required in Section 14-1-9, be considered a valid application.

Section 14-1-6 Standards for Granting or Denying License Applications

In making any determination as to an application, the Council shall give due consideration to the quality of the service proposed, the experience, character, background and financial responsibility of the applicant, willingness and ability to abide by the license limitations and requirements, and any other considerations deemed pertinent by the Council for safeguarding the interest of the town and the public.

Section 14-1-7 License Agreement

- A. Upon the granting of a license by the town, the licensee shall execute a license agreement within sixty days. The license agreement shall incorporate all terms and provisions of this chapter wherein a requirement is placed upon the licensee, either expressed or implied by this chapter. The licensee shall expressly and specifically agree to accept the terms of and be bound by the terms of this chapter and any amendments thereto. This agreement shall be binding upon the licensee, its successors, lessees or assignees.

- B. This license shall be non-exclusive and shall be for a period of fifteen years commencing upon the execution of this license agreement between the town and the licensee.
- C. Upon written notice by the licensee, not more than one year prior to the 14th anniversary of the effective date, and after the holding of a public hearing affording due process, the license may be renewed for a reasonable term, but not for more than fifteen years.

Section 14-1-8 General Requirements for Operating a Cable Communications System

A licensee shall conform to the following minimum standards relative to the construction, operation and maintenance of a cable communications system in the town. It is not the intent of this section to prevent any licensee from providing more than the required minimum to meet the standards listed below.

- A. System Capability. The cable communications systems shall be equipped to provide:
 - 1. Two-way capability.
 - 2. Emergency override of all channels during a declared emergency or disaster.
- B. Construction Method. All basic trunk lines, associated feeder lines and single drops shall be placed by aerial or underground methods similar to the electric and telephone utility lines in the same area. The licensee may, with consent of the owner, use the poles and other equipment of utilities serving the town. The cable communications system shall be installed and maintained in accordance with standard good engineering practices and shall conform when applicable with the “National Electrical Safety Code” and the “Federal Communications Rules and Regulations” as they apply. The licensee shall have all times up-to-date route maps showing trunk and distribution lines. Licensee shall make all such maps available for review by the appropriate town personnel.
- C. Service Schedule. No licensee shall be required to provide service to any site in his license area where such service is available from another licensee. A licensee need not provide service to an area having less density than thirty-five dwelling units per system cable mile.
- D. Removal of Licensee Property. In the event that licensee property has been installed in a street or other dedicated public right-of-way without complying with the requirements of this chapter, or the license has been terminated, revoked or expired, or the use of any licensee property is discontinued for any reason for a continuous period of twelve months, licensee shall at its sole expense on the demand of the town remove promptly from the street all licensee property other

than that which the town may permit to be abandoned in place. Upon such removal of licensee property, licensee shall promptly restore the street or other public places from which the licensee property was removed to a condition as near as possible to its prior condition. Licensee property no longer in service may be left in place with the approval of and in a manner prescribed by the town. Upon abandonment of said licensee's property in place, licensee shall deliver to the town an instrument transferring ownership of such abandoned licensee property to the town. Any cost arising from compliance with this provision shall be borne by the license.

- E. Local Office. Maintain an office within ten miles, accessible during all business hours and have a listed telephone and operate so that complaints and requests for repairs and adjustments may be received. Licensee shall maintain a written record listing date of customer complaints, identifying the subscriber, describing the nature of the complaint and when and what action has been taken by the licensee in response thereto; such record shall be kept at licensee's office and shall be available for inspection during regular business hours without further notice or demand of the town. The licensee shall notify each subscriber at the time of initial subscription to service of the procedure for reporting and resolving complaints.
- F. Service Provisions. Licensee shall:
1. Render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Repairs shall, at all times, be made within three business days. If new service is requested, said service shall be provided to the subscriber within three business days.
 2. Be able to demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered to the subscriber's terminal.
- G. Local Channel. Each system shall carry as part of the basic service local channels broadcast in its area as required and defined in current F.C.C. regulations. In this regard, those parts of 47 C.F.R. Part 76 relating to carriage of local channel signals as existing, or as may be amended, shall apply and are incorporated herein by reference. In the event the F.C.C. deletes the above referred requirement or ceases to exercise jurisdiction in this area, said requirement shall continue to apply to this chapter as they existed on the date immediately preceding such federal action.
- H. Interconnection. The system shall be designed and operated so as to facilitate interconnection to any or all other systems within La Paz County, the Town of Parker and the town. The cost of such interconnection links shall be shared equally by the connecting systems. Licensee shall interconnect such channels and at such time as the town may direct.

- I. Privacy-Monitoring. Licensee shall strictly observe and protect the rights of privacy and property rights of subscribers and users at all times. Individual subscriber preferences of any kinds, viewing habits, political, social or economic philosophies, beliefs, creeds, religions or names, addresses or telephone numbers shall not be revealed to any person, governments unit, police department or investigating agency unless upon the authority of a court of law or upon prior voluntary valid authorization of the subscriber. Such authorization shall not in any event be required as a condition of receiving service. Exclusive of signals useful only for the control or measurement of systems performance, licensees shall not permit the transmission of any signal, including “polling” or monitoring of channel selection from the subscribers premises without first obtaining written permission from the subscriber.
- J. Service to Public Buildings. Licensee shall make available, at a cost not to exceed direct cost (time and material), one service outlet to a conveniently accessible point in each public, private and parochial school, non-profit college or university, police station, fire station and town hall or other facility or building located within the license area and used for public purposes as may be designated by the town. There shall be a minimum monthly service charge at the above locations.
- K. Maintenance. The system shall be maintained in accordance with the highest accepted standards of the industry. Each system shall be maintained so as to comply with all applicable technical standards and regulations as promulgated by the F.C.C. in this regard, 47 C.F.R. Section 76.601 et seq (Subpart K) relating to technical standards (including but not limited to performance monitoring and measurements) as existing or as may be amended, shall apply in full and are incorporated herein by this reference. In the event the F.C.C. deletes the above referenced technical standards or ceases to exercise jurisdiction in this area of technical standards, said standards shall continue to apply to this chapter as they existed on the date immediately preceding such federal action.

Section 14-1-9 Fees, Deposits and Bonds

The following fees are required for each license granted under the authority of this chapter:

- A. Application Fee. Each application for a license to be granted under the authority of this chapter shall be accompanied by a non-refundable filing fee in the amount of \$1,250.00 by certified or cashier’s check made payable to the town.
- B. License Fee. Each licensee shall pay to the town an amount equal to 3% of licensee’s gross revenues from all sources attributable to the operations of the licensee pursuant to this chapter and the license agreement.
1. This payment shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year. Each

quarterly payment shall be due and payable no later than thirty days after the relevant computation date. Each payment shall be accompanied by a financial report showing in detail the gross revenues of the licensee related to that quarter.

2. Licensee fee shall be treated as a cost of operation and shall not be recovered as a chargeable cost to subscribers.

C. Performance Bond. Within thirty days after the execution of the license agreement, the licensee shall file with the town a performance bond for the benefit of the town in the amount of \$25,000.00. In the event that licensee fails to comply with any provision of this chapter or the license agreement, then there shall be recoverable jointly and severally from the principal and surety any and all damages or costs suffered by the town. These damages or costs shall include but not be limited to attorney's fees, cost of any action or proceeding and including the full amount of any compensation indemnification, cost of removal or abandonment of any property or other costs due and owing the town up to the full amount of such bond.

1. The bond shall be maintained in full as a continuing obligation during the entire term of the license agreement.
2. The bond shall be issued by a surety company authorized to do business in the State of Arizona and shall be in a form approved by the town attorney.

D. Security Fund. Within thirty days after written notification of the award of license by the town, the selected applicant shall deposit with the finance director of the town, and maintain on deposit throughout the term of the license agreement, a security fund in the sum of \$2,000.00 as security for the faithful performance by licensee of all provisions of this chapter and compliance with all orders, permits and directions of any department of the town.

1. Within fifteen days after written notice to licensee by the town that the town has withdrawn any amount from the security fund, licensee shall deposit or pay to the finance director a sum of money sufficient to restore such security fund to the original amount of two thousand dollars.
2. Failure to maintain the security fund as required shall constitute a violation of the provisions of this chapter.

Section 14-1-10 Termination; Revocation

A. Termination. The license shall terminate, upon the expiration of the term thereof, unless renewal is applied for, as provided in Section 14-1-7.

- B. Revocation. Sufficient cause for revocation shall exist when the licensee:
1. Fails to comply with any provision of this chapter or the license agreement.
 2. Makes willful or misleading statements in any application.
 3. Engages in the practice of any misrepresentation, fraud or deceit upon the town, its residents, subscribers or any other governmental entity or agency.
 4. Fails to abide by the privacy provision of this chapter.
 5. Fails to make timely payment of any monies due the town pursuant to this chapter.
 6. Fails to commence construction in the license area within six months and to commence basic service within eighteen months from the effective date of the license agreement.
- C. Appeal of Revocation. The town shall deliver to the licensee written notice of intent to revoke setting forth causes for revocation. A public hearing on this revocation shall be held by the Council no less than thirty days after issuance of said notice.
- D. System Disposal. In the event of termination or revocation of a license, the licensee involved shall offer to sell the cable system, at the fair market value, to a new licensee or applicant for a license. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow and other factors will be considered. Under no circumstances shall any valuation be made for any right or privilege granted by license. Should the licensee fail to negotiate a sale, as described above, the town may purchase the system at the fair market value for the purpose of leasing to a qualified operator until a buyer can be found.
- E. Continuity of Service. At the discretion of the town, licensee shall provide continuous service for the entire term of the license agreement to all subscribers and users in return for payment of the established rates, fees and charges. If licensee seeks to sell or transfer, or if the town revokes or fails to renew the license, licensee shall continue to operate the system as trustee for its successor in interest until an orderly and lawful change of operation is effected. This period of operation shall not exceed six months from the occurrence of any of the above events, and the town, in its discretion, may shorten said period.

Section 14-1-11 Change of Control

Licensee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release of more than 5% of the cumulative ownership of the system without prior written authorization from the town. For the purposes of this article, a merger or consolidation shall be deemed a transfer or assignment. Nothing in this article shall be deemed to prohibit a pledge or hypothecation or mortgage or similar instrument transferring conditional ownership of the system's assets to the lender or creditor in the ordinary course of business, unless such interests shall exceed 75% of the original cost or the fair market value, whichever is higher.

Section 14-1-12 Indemnity; Insurance

- A. The licensee shall, at its sole cost and expense, indemnify, hold harmless and defend the town, its officials, boards, commissions, agents and employees, by providing immediate defense with counsel approved by the town, against any and all claims, suits, causes of action, proceedings and judgments for damages arising out of construction, maintenance or operation of the cable communication system.
- B. The licensee, within thirty days after written notice of the granting of a license, shall provide the town with and maintain in full force throughout the term of the license agreement, insurance issued by a company duly authorized to do business in the State of Arizona, insuring with respect to the installation, construction, operation and maintenance of the system as follows:
1. Liability, comprehensive general and automobile liability coverage including, but not limited to, blanket contractual liability, completed operations liability, broad form property damage including but not limited to coverage for explosion, collapse, underground hazard and automobile non-ownership liability. This insurance shall be written in the following minimum amounts.
 - for bodily injury, including death: \$500,000.00 combined single limit.
 - property damage: \$500,000.00 combined single limit.
 - comprehensive automobile liability: bodily injury \$500,000.00 combined single limit.
 - Excess umbrella liability in the minimum amount of 5,000,000.00.
 2. Workers' compensation coverage as required by the laws and regulations of the State of Arizona.

3. All insurance policies required herein shall include the Town of Quartzsite as a named insured party.
4. Licensee shall be solely responsible for all premiums due and payable for insurance required herein.
5. All insurance policies required herein shall be in a form approved by the town attorney and shall include a sixty day notice of cancellation endorsement.

Section 14-1-13 Administration

- A. Inspection of Records. The town reserves the right during the term of the license agreement and during normal business hours and upon the giving of reasonable notice to examine, audit, review and obtain copies of licensee's contract, engineering plans, accounting, financial data and service records relating to the property and operations of the licensee and to all other records required to be kept pursuant to this chapter.
- B. Licensee Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the licensee for the conduct of its business shall be filed with the town.

Section 14-1-14 General Provisions

- A. Non-Discrimination. Licensee shall not deny service, access or otherwise discriminate against subscribers, users or residents of the town. Licensee shall comply at all times with all applicable federal, state and town laws, rules and regulations, executive and administrative orders relating to non-discrimination and equal employment opportunities and requirements.
- B. Laws and Codes. Licensee shall comply fully with all applicable local, county, state and federal laws, codes, ordinances, rules and regulations.
- C. Cumulative Rights and Remedies. All rights and remedies of the town in this chapter are cumulative and may be exercised singly or cumulatively at the discretion of the town.

Section 14-1-15 Rights Reserved to Town

Without limitation upon the rights which the town may otherwise have, the town does hereby expressly reserve the rights to amend any section or provision of this chapter for any reason determined to be desirable by the town including, but not limited to:

- A. New developments in the state of technology of cable communications systems.
- B. Any changes in federal or state laws, rules or regulations.