

THE CABLE TELEVISION CODE  
FOR THE TOWN OF  
CAREFREE, ARIZONA

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ORDINANCE NO. 2003-01

AN ORDINANCE OF THE COUNCIL OF THE TOWN OF CAREFREE, MARICOPA COUNTY, ARIZONA, ADOPTING A "CABLE TELEVISION CODE FOR THE TOWN OF CAREFREE, ARIZONA" BY REPEALING THE EXISTING "CABLE TELEVISION CODE FOR THE TOWN OF CAREFREE" AND BY ADOPTING ARTICLES 1-1 THROUGH 7-16 TO PROVIDE FOR THE REGULATION OF CABLE TELEVISION LICENSES AND PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE

SECTION 1. REPEAL. The Cable Television Code of the Town of Carefree made of public record in Resolution No. 87-01 and as amended pursuant to Ordinance No. 87-15, except the license created pursuant thereto and granted to Dickinson California-Arizona Associates, Ltd. (whose successor is CoxCom, Inc., a Delaware corporation), is hereby repealed, except as specified in Section 4.

SECTION 2. CODIFIED. Section 3 of this Ordinance is of a general and permanent nature and shall be codified in the code of the Town of Carefree. The remainder of this Ordinance shall not be codified.

SECTION 3. ADOPTION.

TOWN OF CAREFREE, ARIZONA

CABLE TELEVISION CODE

WHEREAS, the Town Council has determined it is in the best interest of, and consistent with, the convenience and necessity of the Town of Carefree to grant licenses to companies desiring to provide Cable Services within the confines of the Town of Carefree and on the terms and conditions hereinafter set forth, and as may be further described in each License agreement; and

WHEREAS, the Town Council identified the purpose of this Code to be as follows:

1. To provide a procedure for the granting and renewing of nonexclusive Licenses for providing Cable Services in the Town of Carefree.
2. To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair, and use of Cable Systems in, upon, along, across, above, over, or under or in any manner connected with the Streets, public ways, or public places within the jurisdiction of the Town of Carefree as now or in the future may exist.
3. To provide for the payment of certain License Fees and other valuable considerations to the Town that, among other purposes, may be used to pay for the use of public rights-of-way and to regulate the construction, reconstruction and operation, use and development of such a system within the Town; and

4. To provide conditions under which such Licensed system or systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, and the citizens and general public of the Town; and

5. To provide remedies and prescribe penalties and liquidated damages for any violation of this Code and the terms and conditions of Licenses granted pursuant thereto.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Carefree, Arizona, in order to establish a procedure for the granting of cable television Licenses and renewals thereof and to establish rules and regulations governing the operation of such systems, that the following provisions be adopted to read as follows:

## ARTICLE 1 DEFINITIONS

### 1-1 Definitions.

For the purposes of this Code, 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 and not merely directory. All references to days shall mean calendar days, unless otherwise specified. References to "this Code" are to this Cable Television Code.

(a) "*Access Channel*" shall mean one or more channels dedicated in whole or in part for local non-commercial programming that are 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.

(b) "*Affiliate*" shall mean any person who owns or controls, is owned by or controlled by, or is under common ownership or control with a Licensee.

(c) "*Applicant*" shall mean a person who applies for a license to provide Cable Service in the Town.

(d) "*Application*" shall refer to the offer by a qualified Applicant to furnish and provide a Cable System and Cable Services to residents, businesses, industries, and institutions within the Town in accordance with the Town's specifications.

(e) "*Basic Service*" shall mean any service tier that 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.

(f) "*Cable Act*" shall mean the Cable Communications Policy Act of 1984, as amended, including the Telecommunications Act of 1996 (the "1996 Act").

(g) *"Cable Services" or "Cable Service"* shall be defined as (A) the one-way transmission to Subscribers of video programming and other programming services and (B) Subscriber interaction, if any, that is required for the selection or use of such programming and programming services.

(h) *"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 that includes video programming and that is provided to multiple Subscribers within the Town (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 Subscribers without using any public right-of-way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title I 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, unless the extent of such use is solely to provide interactive on-demand services; (d) an open video system that complies with 47 U.S.C. § 653; or (e) 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. "Interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

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

(j) *"Completion of Construction" or "Complete System Construction"* shall mean "satisfactorily complete" and "fully activated." 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 Town'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 Code 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 the Cable System.) The term "Completion of Construction" does not include marketing and installation of Subscriber service.

(k) "*Education Access Channel*" shall mean any channel or band width on a Cable System set aside by a licensee for educational use.

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

(m) "*Government Access Channel*" shall mean any channel or band width on a Cable System set aside by a licensee for governmental use.

(n) "*Gross Revenues*" shall mean all cash, credits, property of any kind or 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 that has a financial interest in a Licensee, arising from or attributable to the Licensee's operation of its Cable System to provide Cable Services (as defined from time to time by applicable federal law) within the Town, including, but not limited to:

- (1) Revenue from all charges for services provided to Subscribers;
- (2) Revenue from all charges for the insertion of commercial advertising upon the Cable System;
- (3) Revenue from all charges for the leased use of studios;
- (4) Revenue from all charges for the use of or lease of leased access channels or band width.
- (5) Revenue from the production or transmission over the Cable System of video programming by Licensee including programming produced by its mobile facilities.
- (6) Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a Subscriber to receive Cable Services;
- (7) Revenue from the sale, exchange, use, or cablecast of any programming developed for community use or institutional Users; and
- (8) And any other income derived from the Cable System.

"Gross Revenues" shall not include taxes or fees (except the License Fee) collected by Licensee on behalf of any governmental authority; any increase in the value of stock, security or asset; 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 Code or any License; and dividends or other distributions made in respect of any stock or securities; or value received by a Licensee or any of its Affiliates through cooperative advertising.

"Gross Revenues" shall not include cash, credit, property of any kind or nature, or other consideration received by a Licensee's Affiliates or any person, firm or corporation ("Related Person") in which a Licensee has a financial interest or that 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 that are Cable Services when such services are provided by a Related Person, that has all the following characteristics: the Related Person 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 that meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than Licensee in the same industry as Licensee; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of License Fees on Gross Revenues. Nothing contained in this exclusion from Gross Revenues shall be interpreted to exclude from Gross Revenues such cash, credit, property of any kind or nature or other consideration that would be considered the Licensee's Gross Revenues derived from the operation of the Cable System to provide Cable Services 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 that are Cable Services received by such Related Person, this paragraph shall not exclude from Gross Revenues any source of Gross Revenues that an existing Licensee itself is receiving at the time it is granted a License under this Code, as adopted in Ordinance 00-##.

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 Town based on the ratio of the number of Subscribers of Licensee (or an Affiliate), in the Town 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.

(o) *"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.

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

(q) *"License"* shall mean any authorization granted under this Code in terms of a privilege, permit, license or otherwise to construct, operate, and maintain a Cable System in the Town, 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 Town in accordance with the Town of Carefree Sales Tax Code or the Carefree Town code.

(r) *"License Area"* shall mean the current incorporated boundaries of the Town and any future annexed area, unless the terms of a License provide otherwise.

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

(t) *"Licensor"* means the Town of Carefree as represented by the Town Council or Town Administrator, or their designee.

(u) *"Multiple Dwelling Units" or "MDU"* means any adjacent building(s) such as apartments under common ownership containing more than four (4) dwelling units used as living quarters.

(v) *"Normal Business Hours"* means those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

(w) *"Normal Operating Conditions"* means those service conditions that are within the control of the Licensee. Those conditions that 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 that are ordinarily within the control of the Licensee 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.

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

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

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

(aa) *"School"* means public educational institutions, including primary and secondary schools, colleges and universities, and charter schools that have one hundred fifty or more students between the ages of five and eighteen.

(bb) *"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.

(cc) "*Service Interruption*" shall exist when a Subscriber loses the signal on all channels.

(dd) "*Standard Drop*" shall mean a cable connection that requires no more than a 225-foot drop measured from the nearest point of a Subscriber's home or place of business to the nearest existing technically feasible point from which an individual Subscriber can be connected to the Cable System; involves only one outlet and standard materials; and does not involve a wall fish. In addition, a Standard Drop shall exclude custom installation work, including specific Subscriber requested work that requires non-standard inventory or cable routing requiring construction methods exceeding reasonable underground or aerial work.

(ee) "*Street*" or "*Public Street*" shall mean only a street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive that 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, Town 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.

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

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

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

(ii) "*Town Administrator*" shall mean the Town Administrator or the Town Administrator's designee.

(jj) "*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.

(kk) "*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.

(ll) 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 in 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 Article) unless otherwise expressly and clearly stated or qualified in the Licensee's Proposal to mean a more specific or different time.

ARTICLE 2 PROCEDURES FOR GRANTING, RENEWING, TRANSFERRING, AND  
ACQUIRING BY TOWN OF CABLE TELEVISION LICENSES

2-1 License to operate; required. A non-exclusive License to construct, operate, and maintain a Cable System within all or any portion of the Town is required of anyone desiring to provide Cable Service in the Town. A License may be granted by the Town Council to any person, whether operating under an existing License or not, who offers to furnish and provide such Cable Service under and pursuant to the terms and provisions of this Code.

2-2 Failure to have License, violation.

(a) From and after the effective date of this Code, it shall be unlawful for any person to establish, operate, or to carry on the business of distributing to any persons, in this Town any television signals or radio signals by means of a Cable System unless a License therefor has first been obtained pursuant to the provisions of this Code, and unless such License is in full force and effect.

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

(c) It shall be unlawful for any person to make any unauthorized connections, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a Licensed Cable System within this Town for the purpose of enabling himself or herself or others to receive any television signal, radio signal, picture, program, sound, or any other signals transmitted on the Cable System, without the permission of the Licensee.

(d) It shall be unlawful for any person, without the consent of the Licensee, to willfully tamper with, remove, or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs, sounds, or any other signals transmitted on the Cable System.

(e) Any person violating any part of Article 2-2 shall be guilty of a class one misdemeanor.

(f) Any person violating any part of this Article shall also be subject to any fees required in this Code as though it were a Licensee.

2-3 Authorization to engage in business. Any License granted pursuant to the provisions of this Code shall authorize and permit the Licensee to engage in the business of operating and providing a Cable System in the Town, and for that purpose to erect, install, solicit, construct, repair, replace, reconstruct, maintain, and retain in, on, over, under, upon, across, and along any Street, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable System; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms, or corporations, including but not limited to any public utility or other Licensee licensed or permitted to do business in the Town.

2-4 Limitations of License.

(a) Any License granted under this Code shall be nonexclusive.

(b) Any privilege claimed under any License by the Licensee in any Public Street or other public property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the Town or any other governmental entity, and shall be subordinate to any prior easements therein; provided, however, that nothing shall extinguish or otherwise interfere with property rights established independently of any License issued pursuant to this Code.

(c) Any right or power in, or duty imposed upon, any officer, employee, department, or board of the Town shall be subject to transfer by the Town to any other officer, employee, department, or board of the Town.

(d) A Licensee shall be subject to all requirements of Town's rules, regulations, and specifications heretofore or hereafter enacted or established, and shall comply with all applicable state and federal laws and regulations heretofore enacted or established. There is hereby reserved to the Town the power to amend any Article of this Code so as to require additional or greater standards of construction, operation, maintenance, or otherwise pursuant to the Town's lawful police powers or as provided in the License.

(e) Any License granted shall not relieve the Licensee of any obligation involved in obtaining pole space from any department of the Town, utility company, or from others lawfully maintaining poles in Streets.

2-5 Acquisition by Town.

(a) In accordance with Section 627 of the Cable Act, if a renewal of a License held by a Licensee is denied and the Town acquires ownership of the Cable System or effects a transfer of ownership of a Cable System to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the License itself.

If a License held by a Licensee is revoked for cause and the Town acquires ownership of the Cable System or effects a transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at an equitable price. Under the term "equitable price," such matters as the harm to the community resulting from the Licensee's breach of the License may be

considered in determining the appropriate price. No payment shall be made by the Town to the Licensee that would include a value attributed to the License itself.

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

(c) The fair market value of the Cable System shall be determined by an appraisal committee consisting of three appraisers nationally recognized by training and experience as qualified to appraise the fair market value of a large, urban Cable System. No appraiser shall have previously acted in any capacity for either the Town or Licensee. The appraisal committee shall function as an arbitration panel and shall conduct its appraisal process in Maricopa County, in accordance with the Center For Public Resources rules for non-administered arbitration of business disputes (the "Rules"), supplemented by the following procedures that shall control to the extent they conflict with the Rules:

(d) Each party shall appoint an appraiser within thirty days after the Town sends notice initiating appraisal proceedings. The two appraisers shall select a third appraiser within thirty days after selection of the second appraiser. If the two appraisers are unable to agree on the appointment of a third appraiser within such thirty-day period, either the Town or the Licensee may petition the presiding civil judge of the Maricopa County Superior Court, acting in his or her individual capacity, for the selection of a third appraiser.

(e) Each party shall bear the cost of its own appraiser and one-half of the cost of appointing the third appraiser and of paying the third appraiser's fee, and of any reasonable expenses incurred by the appraisers in order to carry out the appraisal process.

(f) Within thirty days after selection of the third appraiser, the appraisers shall meet for the purpose of determining the manner in which the parties may present by evidence that may bear upon the appraisal. Within ninety days after such meeting, the appraiser shall receive and consider such evidence and enter an award determining the fair market value of the Cable System consistent with the requirements of this Article 2-5. Such award shall be final and binding upon the parties, and judgment upon the award rendered may be entered by any court having jurisdiction thereof.

(g) Upon the termination of a License and the rights granted thereunder, whether by expiration or forfeiture, the Town Council may direct and require the Licensee as provided in Article 5-3 to remove its wires, cables, fixtures and accessories and appurtenances from the Streets. If directed, the Town shall make a claim on the letter of credit as prescribed in Article 7-4.

## 2-6 Rights reserved to the Town.

(a) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the Town to acquire the property of the Licensee, by purchase, at fair market value, which shall not include any amount for the License itself or for any of the rights or privileges granted. And nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the Town's right of eminent domain at fair market value.

(b) There is hereby reserved to the Town every right and power that is required to be herein reserved or provided by any provision of the charter or code, and a Licensee shall comply with any action or requirements of the Town in its exercise of such rights or power heretofore or hereafter enacted or established.

(c) Neither the granting of any License hereunder nor any of the provisions contained herein shall be construed to prevent the Town from granting any identical, or similar, License to any other person, firm, or corporation, within the Town.

(d) Neither the granting of any License nor the enactment of any provision in this Code shall constitute a waiver or bar to the exercise of any governmental right or power of the Town, now existing or hereafter granted.

(e) The Town Council may do all things that are necessary and convenient in the exercise of its jurisdiction under this Code and may, through the Town Administrator or through its own action, adjust, settle, compromise, or otherwise resolve, pursuant to Articles 7-7 and 7-8, any controversy or charge arising from the operations of any Licensee under this Code.

2-7 Initial License; applications.

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

- (1) the name, address, and telephone number of the applicant;
- (2) a detailed statement of the corporation or business entity organization of the applicant, including but not limited to, the following and to whatever extent required by the Town;
- (3) the names and residence and business addresses of all officers, directors, and associates of the Applicant;
- (4) the names and residence and business addresses of all officers, persons, and entities having a one percent or larger share of the ownership of the Applicant and the respective ownership share of each such person or entity;
- (5) the names and residence and business addresses of any parent or subsidiary of the Applicant, namely, any other business entity owning or controlling Applicant in whole or in part or owned in whole or in part by the Applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to Cable Systems owned or controlled by the Applicant, its parent and subsidiary and the areas served thereby;
- (6) a detailed and complete financial statement of the Applicant, certified by an independent certified public accountant, for the fiscal year next preceding the date of the

Application hereunder, and a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the Applicant and the Town Council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the Applicant to construct and operate the proposed Cable System in the Town, or a statement from an independent certified public accountant, certifying that the Applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed Cable System in this Town;

(7) a detailed financial plan (pro forma) describing for each year of the Initial License, projected number of Subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and a sources and uses of funds statement. All information is to be presented in the format approved by the Town; and

(8) a statement identifying, by place and date, any other Cable System license(s) awarded to the Applicant and its parent or subsidiary; the status of said license(s) with respect to completion thereof; the total cost of completion of such licensed Cable System(s); and the amount of Applicant's and its parent's or subsidiary's resources committed thereto.

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

a. a detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be serviced;

b. a statement or schedule setting forth all proposed classifications of rates and charges to be made against Subscribers and all rates and charges as to each of said classifications, including installation charges and Cable Service charges;

c. a detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the Applicant;

d. a copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the Applicant and any Subscriber;

e. a detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the Applicant and any person, firm, or corporation that materially relate or pertain to or depend upon the Application and the granting of the Initial License;

f. a copy of any agreement covering the License Area, if existing between the Applicant and the local telephone and/or electric utilities providing for the use of any facilities of the utility including but not limited to poles, lines, or conduits; and

g. any other details, statements, information, or references, pertinent to the subject matter of such Application that shall be required or requested by the Town Council or by any other provision of law.

#### 2-8 Fees; application of Initial License.

(a) *Amount.* Notwithstanding any other requirement of this Code, each Applicant for an Initial License must furnish with its Proposal a nonrefundable filing fee in the amount of \$10,000, by cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the Town Administrator made payable to the Town of Carefree. No Proposal for an Initial License shall be considered without receipt of said fee.

(b) *Deposit and Use.* All fees received will be deposited to an account of the Town and will serve to recover expenses incurred by the Town in the preparation and granting of Initial Licenses and regulation of Licenses pursuant to this Code.

(c) *Additional Fee.* Any Licensee under an Initial License, upon acceptance of such Initial License, shall reimburse all additional expenses, including, but not limited to, any and all administrative, engineering, publication, or legal costs and consultants' expenses incurred in connection with the processing, evaluation and preparation of documents relating to the Initial License. The Town shall document all such expenses by invoice. If expenses exceed the total amount of filing fees collected from the Applicant(s), the Licensee shall pay to the Town the excess amount within thirty days of demand by the Town. All unpaid amounts at the end of thirty days shall accrue interest at the rate of one and one-half percent per month.

#### 2-9 Selection of Licensee; Initial License.

(a) *Solicitation of Proposals.* The Town may, by advertisement or any other means, solicit and call for Proposals for Initial License, and may determine and fix any date upon or after which the same shall be received by the Town, or the date before which the same must be received, or the date after which the same shall not be received and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such Proposals. The terms and conditions for Proposals shall be described in a document called "Request for Proposals."

(b) *Unsolicited Proposals.* The Town upon receipt of an unsolicited Proposal for Initial License may by advertising or other means solicit and call for competing Proposals pursuant to Paragraph (a), or may, in its sole discretion, reject such Proposal as untimely.

(c) *Compliance with Town Requirements.* A person, firm, or corporation submitting a Proposal for Initial License to operate a Cable System in response to the Town's Request for Proposals shall provide all information required by this Code and all other information requested by Town's Request for Proposals or otherwise required by the Town. Each Proposal shall be responsive to the questions soliciting the information, and shall completely, accurately and materially supply all of the information so solicited. Any misrepresentation, failure, neglect, or refusal to provide any of such information may, at the option of the Town, render a Proposal invalid. This requested information must be complete and verified as true by the Applicant.



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

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

(f) *Referral to Town Administrator.* Upon receipt of any Proposal for Initial License, the Town Administrator shall prepare or cause to be prepared a report, including recommendations respecting such Proposal, and cause the same to be completed and filed with the Town. The Town will evaluate all Proposals that are submitted. At the discretion of the Town Council, an Applicant that has met the Town's qualifications in the Request for Proposals and has submitted Proposals on the required forms will be offered the opportunity to make a formal presentation to the Town Council in support of their Proposals.

(g) *Investigations.* The Town may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the Initial License, and the Applicant shall furnish to the Town all such information and data for this purpose as the Town may request.

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

(i) *Public Comment.* If, upon receiving the Town Administrator's report, the Town Council shall determine to further consider the Proposals, the Town Clerk shall set a public hearing for the consideration of Proposals; fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or who wish to file objections may file written comments and appear before the Town Council and be heard, and directing the Town Clerk to publish notice of such hearing at least once within ten (10) days of the passage thereof in the newspaper of general circulation within the Town.

(j) *Consideration.* In making any determination hereunder as to any Proposal for Initial License, the Town may consider any and all factors relevant to significant interests of the community in cable television including, but not limited to the quality of the Cable Services proposed, areas to be served, rates to Subscriber, income to the Town, experience, character, background, and financial responsibility of any Applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this Code, and to abide by all policy

conditions, License limitations and requirements, and all other matters deemed pertinent by the Town for safeguarding the interests of the Town and the public.

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

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

(2) that such Initial License be granted and the terms and conditions thereof.

No provision of this Code shall be deemed or construed so as to require the granting of an Initial License.

(l) *Additional Information.* The Town may at any time demand and Applicant(s) shall provide such supplementary, additional, or other information as the Town may deem reasonably necessary to determine whether the requested Initial License should be granted.

(m) *Awards based on Public Record.* It is the intention of the Town to award an Initial License solely on the basis of the public record. To this end, communication with the Town Council by those wishing to submit Proposals for an Initial License shall be limited to public sessions. Requests for information should be directed to the Office of the Town Administrator.

(n) *Town Council Decisions Shall be Final.* Any decision of the Town Council concerning award of an Initial License pursuant to this Code shall be final.

2-10 Duration of License. The duration of the rights, privileges, and authorizations granted in an Initial or a Renewal License shall not exceed fifteen years. A License may be renewed by the Town pursuant to the procedure established in Article 2-11 and in accordance with the then applicable law.

#### 2-11 Renewal.

(a) *Proceedings.* During the six-month period that begins with the thirty-sixth month before the expiration of an existing License, the Town may on its own initiative, and shall at the request of the Licensee, commence proceedings that afford the public appropriate notice and participation for the purpose of:

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

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

(b) *Proposal.*

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

(2) Subject to Section 624 of the Cable Act, such Proposal shall contain such material as the Town may require, including Proposals for an upgrade of the Cable System.

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

(c) *Fees.* Notwithstanding any other requirement of this Code, the Town may require each applicant for a License Renewal to furnish with its Proposal a nonrefundable filing fee in the amount of \$10,000, by cash, certified or cashier's check wire transfer, or in any other manner acceptable to the Town Administrator made payable to the Town of Carefree. No Proposal for an License Renewal shall be considered without receipt of said fee. The fee will be used for the purpose of covering the Town's cost in consideration of a License Renewal Proposal. The fee shall be handled in the same manner as provided for an Initial License fee in Article 2-8 of this Code and shall, upon granting of a Renewal License, be a credit against Licensee Fees under this Code.

(d) *Renewal Assessment.*

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

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

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

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

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

(2) In any proceeding under paragraph (d)(1) the Licensee shall be afforded adequate notice and the Licensee and the Licensor shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under Subarticle (a), require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(3) At the completion of a proceeding under this Subarticle, the Town shall issue a written decision granting or denying the Proposal for Renewal License based upon the record of such proceeding, and transmit a copy of such decision to the Licensee. Such decision shall state the reasons therefor.

(e) *Denial.* Any denial of a Proposal for Renewal License shall be based on one or more adverse findings made with respect to the factors described in Subparagraphs (a) through (d) of Subarticle (d)(1), pursuant to the record of the proceeding under Subarticle (d). The Town may not base a denial of a Renewal License on a failure to substantially comply with the material terms of the License under Subarticle (d)(1)a. or on events considered under Subarticle (d)(1)b. unless the Town has provided the Licensee with notice and the opportunity to cure, or in any case in which it is documented that the Town has waived its right to object, or has effectively acquiesced.

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

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

## 2-12 Transfers and assignments.

(a) A License shall not be sold, assigned, or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person, except an Affiliate of Licensee, without prior written consent of the Town, which consent shall not be unreasonably withheld.

Such consent shall not be required for a transfer in trust, mortgage, or other hypothecation in whole or in part to secure an indebtedness.

The proposed assignee must show the transfer will not cause any increased risks of nonperformance of the License or any loss to the Town of its bargained for consideration in the License. The assignee's showings must at a minimum detail facts sufficient to show the assignee's technical ability, financial capability, legal qualifications, and general character qualifications and such other qualifications as determined by the Town and the assignee must agree to comply with all provisions of the License.

(b) No change, transfer, or acquisition of control of the Licensee shall occur without prior written consent of the Town, which consent shall not be unreasonably withheld. The Licensee shall promptly notify the Town of any actual or proposed change in, or transfer to, or acquisition by any other party, of control of the Licensee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. The sale or transfer of the License to an Affiliate of a Licensee does not require prior approval of the Town as long as: (1) the sale or transfer of the existing or newly created equity interest in the Licensee does not result, directly or indirectly, in a transfer of control of the Licensee; and (2) the transferee already holds an ownership interest in the Licensee of twenty-five percent or more.

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

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

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

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

(g) Notwithstanding any other requirement of this Code, each applicant for a transfer or assignment must furnish with its request a nonrefundable filing fee in the amount established by the Council, by cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the Town Administrator made payable to the Town of Carefree. No Proposal for a transfer or assignment of a License shall be considered without receipt of said fee. The fee will be used for the purpose of covering the Town's cost in consideration of a transfer or assignment of a License. The fee shall be handled in the same manner as provided for an Initial License fee in Article 2-8 of this Code and shall, upon granting the assignment or transfer, be a credit against License Fees under this Code.

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

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

(j) As long as a grant, rent, or lease does not amount to a transfer as defined in this Article and is made in the ordinary course of business with prior notice to the Town, a Licensee in the normal course of providing Cable Services or other telecommunication services may grant, rent, or lease use of its Cable System to other persons. Any such use shall be restricted to and consistent with such uses as the Licensee is authorized in this Code and the License or under other applicable law. Any such use shall be in compliance with applicable federal and state law. Any such grants, lease, or rent by the Licensee shall not, however, thereby relieve Licensee of any requirement or obligation under its License as to its use of the Streets and public ways, and any such grant, rent, or lease shall require that such other person comply with the appropriate provisions of the Town code, this Code and the License as such use warrants. The grant, lease, or rent shall expressly provide for the authority of the Town under applicable law to regulate the use provided by the grant, lease, or rent (including but not limited to the authority to protect the public welfare, safety, and health) and to enforce compliance with any applicable standards established by this Code or the License.

### ARTICLE 3 INITIAL AND RENEWAL LICENSE REQUIREMENTS

#### 3-1 Effect of award of License.

(a) *Ordinance Binding.* Upon award of an Initial or a Renewal License pursuant to this Code, a Licensee shall agree to be bound by all the terms and conditions contained herein.

(b) *Incorporation by reference of Proposal for Initial or Renewal License.* A Licensee under an Initial or Renewal License also agrees to provide all of the Cable Services specifically set forth in its Proposal, if provided, to provide Cable Services within the License Area and by its acceptance of the Initial or Renewal License, the Licensee specifically agrees that its Proposal is hereby incorporated by reference and made a part of the Initial or Renewal

License. If such Proposal and the provisions of this Code conflict with the applicable Initial or Renewal License, that provision that provides the greatest benefit to the Town, in the opinion of the Town Council, shall prevail provided that, the Town, having chosen or accepted one of the conflicting provisions, may not thereafter elect to require compliance with a different alternative of the conflicting provisions. Failure to provide services as promised in Licensee's Proposal or agreed to in its License may be deemed a breach of this Code to which the provisions of Articles 7-5 and 7-6 of this Code shall apply.

### 3-2 Payment of License Fee.

(a) For the reasons that the Streets and other public rights-of-way that are used by the Licensee in the operation of its Cable System within the boundaries of the Town are valuable public properties acquired and maintained by the Town at great expense to its taxpayers, and that the grant to the Licensee for the use of said Streets is a valuable property right without which the Licensee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the Town will incur costs in regulating and administering the License, the Licensee shall pay to the Town an amount of five percent of Licensee's Gross Revenues (the "License Fee"). Upon a determination by the Town that it will change the License Fee that is then being paid to the Town, the Town shall give the Licensee written notice no fewer than ninety days before the date such change takes effect.

(b) The payment of the License Fee by the Licensee to the Town shall be made quarterly by delivery of the same to the Town Administrator on or before the twentieth day of the following month, with a ten-day grace period. If such payment is not made by the next to the last business day of the following month, the Town may impose interest at a rate of one and one-half percent per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest.

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

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

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

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

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

(e) The Town shall have the right to inspect the Licensee's income records and the right to audit and to recompute any amounts determined to be payable under this Code provided, however, that such audit shall take place within thirty-six months following the close of each of the Licensee's fiscal years. Any additional amount due to the Town as a result of the audit shall be paid within thirty days following written notice to the Licensee by the Town, said notice shall include a copy of the audit report; provided, however, that Licensee shall not be required to pay such deficiency until thirty days after completion of the administrative review process if Licensee commences such process pursuant to Article 7-7(a)(3). If there is a deficiency in the payment of License Fees to the Town of five percent or more, the Town may assess the cost of the audit to the Licensee. Adjustments for any overpayment by Licensee will be credited to subsequent License Fee payments.

(f) The cost to Licensee of any Town right-of-way construction permit, inspection, zoning review and other fees that the Town imposes under Town code requirements on Licensee's construction activities shall be included in the License Fee.

3-3 Use of telephone facilities. When and if the Licensee of any License granted hereunder uses a telephone company's Cable System distribution channels furnished to the Licensee pursuant to tariff or contract on file with a regulatory body having jurisdiction and said Licensee makes no use of the Streets independent of such telephone company furnished facilities, said Licensee remains fully bound by the terms of its License and this Code.

3-4 Required services and facilities.

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

(b) A Licensee shall maintain the mix, level, and quality of programming within the broad categories of video programming or other services set forth in its License. Where there has been a substantial failure to maintain the mix, level, or quality of services within the broad categories of video programming or other services as set forth in the Licensee's License, the Town may, following due notice and public hearing as provided in Articles 7-7 and 7-8, direct the Licensee to comply with its obligations in this regard. Written notice of such hearing shall be provided to the Licensee and to the public at least thirty days prior to such hearing.

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



3-5 Subscriber services; rates.

(a) *Initial Rates.*

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

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

(c) *Notice of Rates.* Notice of rates shall be given in accordance with Article 6-4 of this Code.

3-6 Access and public safety channels.

(a) *Channel Capacity.* As provided in the License the Licensee shall provide channel capacity, within one hundred twenty days of written request, for a minimum of one public safety channel dedicated to the Town fire and police departments, one Government Access Channel dedicated to the Town, and one Education Access Channel dedicated to all Schools within the Town.

(b) *Channel Management.* The operation of the public safety channel, the Government Access Channel, and the Education Access Channel shall be the responsibility of the Town.

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

3-7 Changes in cable technology.

(a) The Licensor and Licensee shall meet at periods not exceeding three years or upon request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community, and other factors impacting cable television. As a result of these discussions, this License may be modified by the Town and the Licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community, or other factors impacting cable television.

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

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

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

(c) The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the Town Council for proposed Town Council action within ninety days of such written request, on how to amend the License to relieve Licensor or the Licensee from any commercial impracticability, which arises from the condition in question. This provision shall not require that the License be amended, however it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.

3-8 Time is of the essence. For any License or contract entered into pursuant to this Code, time shall be deemed of the essence and any failure of the Licensee to perform within the time allotted, or within a reasonable time if a period is not specified, shall be sufficient grounds for the Town to invoke liquidated damages or revocation of a License in accordance with Articles 7-6 and 7-9.

3-9 Acceptance and effective date of License.

(a) No License granted pursuant to the provisions of this Code shall become effective unless and until all provisions required in this Article and Subarticles 7-3(a) and 7-3(b) and Articles 7-4 and 7-5 hereof are done and completed, all of such provisions being hereby declared to be conditions precedent to the effectiveness of any such License granted hereunder. If any of such provisions are not done and completed in the time and manner required, the License shall be null and void.

(b) Within twenty days after the effective date of the ordinance awarding any License, or within such extended period of time as the Town Council in its discretion may authorize, the Licensee shall file with the Town Clerk its written acceptance of the License, in form satisfactory to the Town Attorney, together with the letter of credit, construction bond, and insurance policies required by Subarticle 7-3(b) and Articles 7-4 and 7-5 hereof, respectively, and its License to be bound by and to comply with and to do everything that is required of the Licensee by the provisions of this Code and the applicable License. Such acceptance shall be acknowledged by the Licensee before a notary public, and shall, in form and content, be satisfactory to and approved by the Town Attorney.

ARTICLE 4 CONSTRUCTION REQUIREMENTS

4-1 Permits, installation and service. Within sixty days after acceptance of any Initial or Renewal License, the Licensee shall proceed with due diligence to apply for necessary permits and authorizations that are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of Cable Systems, or their associated microwave transmission facilities.

4-2 Cable system construction map and schedule. If construction or reconstruction of the Cable System is an obligation of a License, the Licensee shall comply with the following:

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

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

(c) Licensee shall comply with the time schedule for construction required in Article 4-2(a).

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

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

(f) Failure on the part of the Licensee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for liquidated damages and/or termination of such License pursuant to Articles 7-6 and 7-8 provided, however, that the Council in its discretion may extend the time for the commencement and Completion of Construction and installation for additional periods if the Licensee acting in good faith experiences delays by reason of circumstances beyond its control.

4-3 Line extension.

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

(1) When requested by a resident or developer in the Town, Licensee shall, at Licensee's sole expense, extend the Cable System to any single family residence or dwelling within the Town, provided that such extension involves density of twenty existing homes per mile as measured in linear trench or aerial strand footage from the nearest technically feasible point of connection on the Cable System. Such extension(s) shall include cutting in one or more taps and extending cable as necessary.

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

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

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

(5) Absent a showing by Licensee to the Town Administrator of circumstances beyond Licensee's reasonable control, an extension of service pursuant to Subarticles (1), (2), or (3) of this Article shall be accomplished within one hundred eighty days of the developer or resident's request.

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

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

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

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

(c) *Service Drops.*

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

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

(3) Licensee may offer bulk billing service, but shall not require a bulk billing agreement as a condition of providing service, if the person or entity requesting service pays to Licensee the applicable amount(s) set forth in Subarticles (1) or (2) of this Article 4-3(d).

(4) Absent a showing by Licensee to the Town Administrator of unusual circumstances, including without limitation Street crossings, (i) any Standard Drop to a single family residence or dwelling shall be accomplished within ten days of the request for service, and (ii) any drop that is not a Standard Drop shall be accomplished within twenty days of such request. Line Extensions shall be done as provided in 4-3(a)(4).

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

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

(e) *Annexed Territory.* Newly annexed territory shall be subject to the terms of this Code and specifically this Article; provided, however, that absent a showing by Licensee to the Town Administrator of circumstances beyond Licensee's reasonable control, an extension of service to newly annexed territory shall be accomplished within one hundred eighty days of the developer or resident's request.

4-4 Placement of transmission facilities. Except as provided in the License, facilities shall be placed in accordance with the Carefree Town code and the Carefree Zoning Code.

4-5 Construction and Technical Standards.

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

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

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

(b) *Additional Specification.* Construction, installation, and maintenance of a Cable System shall be performed in an orderly and professional manner. All cables and wires shall be

installed, where possible, parallel with and in a manner similar to the installation of electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with all applicable codes. Each Cable System shall include equipment capable of providing stand-by power as specified in the License. The equipment shall be so constructed as to automatically revert to the stand-by mode when the electrical utility power returns. The system shall incorporate safeguards necessary to prevent injury to technicians resulting from Licensee's standby power sources.

Licensee shall at all time comply with applicable sections of:

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

(c) *Emergency Service.* The Licensee shall design and construct the system to provide for a restricted audio override of the audio portion of all channels during emergencies consistent with FCC regulations. Emergency or stand-by power sources will be installed at the main electronic control center and appropriate locations so as to minimize loss of signal. Key cable routings shall also be equipped with a stand-by power source. In case of any declared emergency or disaster, the Cable System shall, upon request of the Mayor or Town Administrator, make available immediately its facilities to the Town for emergency use during the emergency or disaster period. A declared emergency or disaster as used in this Article means such event that has been proclaimed by the Mayor, the Governor, or other competent authority.

In any event, the Cable System shall not endanger or interfere with the safety of persons or property in the License Area or other areas where the Licensee may have equipment located.

4-6 Utility locating system. A Licensee shall be required to be a participant in the regional one call utility locating system (Blue Stake).

4-7 Resident notification of construction activity required. The Licensee shall provide reasonable advance notice to all affected residents prior to system construction or upgrade crews entering the right-of-way in front of their property; provided that the Licensee shall not be

required to provide such notice in emergencies or for normal system repair and maintenance work.

ARTICLE 5 REGULATIONS PERTAINING TO USE OF TOWN STREETS AND PUBLIC RIGHTS-OF-WAY

5-1 Location of property of Licensee.

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

(b) Except as provided by the Town, a Licensee shall not install or erect any facility or apparatus in or on any privately owned area within the Town that has not yet become a Public Street, whether or not designated or delineated as a proposed Public Street on any preliminary subdivision approved by the Town.

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

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

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

(f) As required by the Town Administrator or other appropriate departments, the Licensee or its authorized contractors will obtain permits, prior to any physical work being performed in the Town's rights-of-way or on Town-owned property. All work will be done in accordance with the Town's technical and permitting specifications.

A Licensee shall make maps of the applicable portion of the Cable System showing the location of conduit, amplifier and power supplies available for inspection and review at the office where Licensee maintains such records. The Licensee shall provide the Town with up-to-date route maps of a suitable scale showing all transmitting and receiving pickup locations and cable route and pedestal locations.

(g) To prevent unnecessary disruption and damage to Streets, rights-of-way, and other property, the installation of Cable System shall be accomplished in new subdivisions at the same time, and in the same trench as other communications, electric, and other permanent services to structures. Except as federal law may grant them other rights, developers of new



residential buildings or mobile homes within a new or undeveloped subdivision, new residential units within new multiple occupancy residential developments, and new commercial and industrial buildings and structures shall treat cable facilities as they treat other communication facilities, utilities, and other underground facilities, in regards to availability and cost of trenching for undergroundings.

5-2 Emergency work. The Town reserves the right to move any portion of the Licensee's equipment and facilities as may be required in any emergency as determined by the Town without liability for interruption of Cable Service. However, prior to taking any actions pursuant to this Article, the Town shall provide, if feasible, reasonable notice to Licensee of the emergency to allow Licensee the opportunity to protect or repair Licensee's facilities involved in the emergency.

5-3 Removal and abandonment of property of Licensee.

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

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

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

5-4 Temporary removal of wire for building improvements. The Licensee, on the request of any person, firm, or corporation holding a building moving permit issued by the Town, shall temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of wires shall be paid to the Licensee by the person, firm, or corporation requesting the same, and the Licensee shall have the authority to require such payment in advance. The Licensee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

5-5 Changes required by public improvements. The Licensee shall from time to time protect, support, temporarily dislocate, temporarily or permanently, as may be required, remove or

relocate, without expense to the Town any facilities installed, used, or maintained under the License, if and when made necessary by any lawful change of grade, alignment, or width of any Street, by the Town or made necessary by any other public improvement or alteration in, under, on, upon, or about any Street, when such public improvement or alteration is at the instance of the Town, when such improvement or alteration is for a governmental or proprietary function, or made necessary by traffic conditions, public safety, Street vacation, or any other public project or purpose of Town, and when the Licensee has substantially the same obligations with respect to the cost thereof as all other users of the public rights-of-way.

5-6 Methods and materials of street construction. The Town shall have the right to specify the methods and materials of Street construction or reconstruction, together with the horizontal and vertical location of any underground facility proposed by Licensee within any public property or right-of-way. The Town shall also have the right to limit the work of the Licensee to assure a minimum of inconvenience to the traveling public and to impose traffic control requirements, as specified in the Carefree Town code. Licensee will be required to obtain permits from the Town, allowing Licensee to work in the public right-of-way.

5-7 Failure to perform street work. If a Licensee during construction, installation, or repair of its facilities causes damage to pavement, sidewalks, driveways, landscaping, or other property, the Licensee or the authorized agent shall, at its own expense and in a manner approved by the Town, replace and restore such places in accordance with Maricopa Association of Governments Standards. The Licensee shall further maintain all such restoration related to Licensee's activities, in the condition approved by the Town for a minimum period of one year following such restoration.

Upon failure of the Licensee to complete any work required by law, or by the provisions of this Code, or by its License, to be done in any Street, within ten days following due notice and to the satisfaction of the Town Administrator, the Town may, at its option, cause such work to be done through its own forces or through a hired contractor, and the Licensee shall pay to the Town the cost thereof in the itemized amounts reported by the Town Administrator to the Licensee within fifteen days after receipt of such itemized report. Or, at Town's option, Town may demand of Licensee the estimated cost of such work as estimated by the Town Administrator and such shall be paid by Licensee to Town within fifteen days of such demand. Upon award of any contract or contracts therefor, Licensee shall pay to Town, within fifteen days of demand, any additional amount necessary to provide for cost of such work. Upon completion of such work, Licensee shall pay to Town or Town shall refund to Licensee such sums so that the total received and retained by Town shall equal the cost to the Town of such work. "Cost" as used herein shall include fifteen percent of all other costs for its own personnel and equipment and materials or for a contractor to compensate the Town's for its overhead, including inspection and supervision, and any interest charges incurred by Town arising out of Licensee's late payment to Town under this Article.

## ARTICLE 6 SUBSCRIBER SERVICE PROVISIONS

6-1 Local business office requirements. The Licensee shall maintain at least one physical office located near or in the Town. "Near" for purposes of this Article shall mean within ten (10)

miles of the corporate limits of the Town. The physical office of the Licensee shall be in a place conveniently located where Subscribers may pay their bills; register complaints and have them resolved; schedule installations and Service Calls; obtain assistance on technical problems; obtain and return converter boxes, remotes, and other customer premises information; and receive information on the Licensee and its services. Said offices shall be open throughout Normal Business Hours.

6-2 Efficient telephone communications service. A Licensee shall render efficient telephone communication service to Subscribers and, at a minimum, meet all of the standards set forth below:

(a) Licensee shall have a publicly listed, local or toll-free telephone number and receive complaints, requests for repairs, Service Calls, billing inquiries, and other Subscriber information twenty-four hours a day, seven days a week.

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

(c) After Normal Business Hours, the access line may be answered by a service or an automated response system; provided, however, that such service or automated system shall notify Licensee personnel immediately in the case of a Service Interruption. Inquires received after Normal Business Hours must be responded to by a Licensee representative on the next business day.

(d) Under Normal Operating Conditions, the mean average telephone answer time by a Subscriber representative receiving calls on the Licensee's billing and repair line shall not exceed sixty seconds after the connection is made. If the call needs to be transferred, the mean average transfer time shall not exceed thirty seconds under Normal Operating Conditions. These standards shall be met no less than ninety percent of the time under Normal Operating Conditions, measured on a quarterly basis. A caller on hold shall be informed at least every sixty seconds of the status of the call.

(e) Under Normal Operating Conditions, the Subscribers shall not receive a busy signal more than five percent of the time.

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

6-3 Subscriber service standards.

(a) Each Licensee shall at all times satisfy Federal customer service standards and the Subscriber service standards set forth in this Code and in its License. If there is a conflict among standards, the standard set forth in the License and this Code shall prevail, unless federal law has preempted such standard, in which case the federal standard shall apply to the extent required by federal law.

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

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

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

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

(f) Under Normal Operating Conditions, each of the following four standards for Subscribers shall be met not less than ninety-five percent of the time, measured on a quarterly basis:

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

(2) Under Normal Operating Conditions, the Licensee will begin working on Service Interruptions promptly and in no event later than twenty-four hours after the Service Interruption becomes known.

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

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

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

6-4 Subscriber and Town notification requirements. Licensee shall meet the following Subscriber and Town notification requirements:

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

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the Cable Service;

(5) Information on a parental control feature that will permit a Subscriber to lock out any objectionable programming from the Cable Services entering Subscriber's home.

(6) Channel positions of programming carried on the system; and

(7) A description of the full billing and Subscriber complaint procedures, including the address and telephone number of the Town's designated office for handling cable television matters. The description of the complaint procedures shall delineate the process for submitting a Subscriber complaint and shall specify (i) the telephone number and address of the Licensee that the Subscriber can use to make a complaint, (ii) a statement indicating that a dissatisfied Subscriber should exhaust its efforts with the Licensee before submitting a complaint to the City, and (iii) the address and title of the Official in the Town designated by the Town Administrator to review complaints.

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

6-5 Billing practices; information and procedures.

(a) Bills to Subscribers shall be clear, concise, and understandable. Bills to Subscribers must be fully itemized, with itemizations including, but not limited to, Basic Service and premium service charges and equipment charges. Bills to Subscribers will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(b) Licensee shall bill all Subscribers to its Cable System in a uniform manner, regardless of Subscriber's level of service. In no case shall any Subscriber be billed for services in excess of thirty days prior to receipt of such service. Payment shall be due no sooner than the

fifteenth day of each billing period, and due date shall be listed on each bill. Bills shall be mailed no later than the first day of the billing period.

(c) In case of a Subscriber dispute, the Licensee must respond to a written complaint from a Subscriber within thirty days. The Licensee shall follow a written internal appeal procedure for resolution of Subscriber disputes.

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

(1) The Subscriber's next billing cycle following resolution of the request or thirty days, whichever is earlier; or

(2) For equipment deposits, upon the return of the equipment supplied by the Licensee if service is terminated; or

(3) For payment deposits, after twelve months of satisfactory customer payments.

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

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

#### 6-6 Changes to Subscriber service obligations.

(a) The Town shall enforce the customer service standards as set forth in Section 6. Nothing in this Section shall be construed to prevent or prohibit the Town from establishing or enforcing customer service standards that impose requirements that exceed, or that apply to matters not addressed by, the standards set forth in Section 6.

(b) Before adopting new customer service standards that impose requirements that exceed, or address matters not addressed by, the standards set forth in Section 6, the Town shall propose new customer service standards and meet with the Licensee to discuss the specific areas of concern and negotiate a mutually acceptable resolution of such areas. If no resolution is reached, the Town shall provide Licensee with ninety days written notice of its intent to adopt proposed new customer service standards.

6-7 Subscriber complaint procedures. A Licensee shall comply with the following Subscriber complaint procedures. A Subscriber complaint is any written or oral complaint by a Subscriber to the Town that the Subscriber did not receive the service the Subscriber requested consistent with the requirements of the License.

(a) The Licensee shall ensure that all Subscribers have recourse to a satisfactory process for submitting any complaints. Licensee shall respond to and resolve all Subscriber

complaints within a reasonable time. In case of written Subscriber complaint, the Licensee shall respond within thirty days. The Licensee shall follow a written internal appeal procedure for resolution of disputes over Subscriber complaints.

(b) Every Licensee shall establish and maintain a written log listing all Subscriber complaints. The written log shall include the name and telephone number, if given, of the Subscriber making the complaint and the action taken by the Licensee on the complaint. The record shall be maintained by the Licensee for three years and to the extent permitted by federal law shall be available to the Town Administrator and the public for inspection upon request during the Licensee's Normal Business Hours. The Licensee shall also report specific complaint categories that the Licensee tracks as a reasonable measure of Subscriber service response standards and is required to report in the License.

(c) A Licensee shall provide, in writing, upon request of the Town Administrator, a detailed description of any Subscriber complaint and the action taken by the Licensee.

6-8 Subscriber solicitation procedures. A Licensee shall comply with the following:

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

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

6-9 Disconnection and termination of Cable Services. A Licensee shall only disconnect or terminate a Subscriber's Cable Service for good and just cause. In no event shall a Licensee disconnect said Cable Service for nonpayment without the prior written notification to the affected Subscriber at least seven days before such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than thirty days after a Subscriber's failure to pay a bill due. Where the Licensee has improperly discontinued Cable System service to any such Subscriber, it shall provide free reconnection to the Cable System to such Subscriber.

6-10 Rights of individuals.

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

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

6-11 Protection of subscriber privacy.

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

(1) The nature of personally identifiable information collected or to be collected with respect to the Subscriber and the nature of the use of such information;

(2) The nature, frequency, and purpose of any disclosure that may be made of such information, including any identification of the types of persons to whom the disclosure may be made;

(3) The period during which such information will be maintained by the Licensee;

(4) The times and place at which the Subscriber may have access to such information in accordance with Subarticle (a)(2) of this Article; and

(5) The limitations provided by this Article with respect to the collection and disclosure of information by a Licensee and the right of the Subscriber under Subarticles (i) and (j) to enforce such limitations.

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

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

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

(1) Obtain information necessary to render a Cable Service or other service provided by the Licensee to the Subscriber; or

(2) Detect unauthorized reception of cable communications.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 7 ADMINISTRATION AND ENFORCEMENT PROVISIONS

### 7-1 Reports.

(a) Each year the Licensee shall brief the offices of the Town Administrator, no later than one hundred twenty days after the end of the Licensee's fiscal year. The briefing shall include a description of all major activities applicable to its operation during the preceding twelve month period. At the briefing, Licensee shall submit a written report that includes the following information, specific to the Town: number of homes passed, number of cable plant miles, number of Subscribers for each type of Cable Service offered and the Gross Revenues from each source attributable to the operations of Licensee from within the Town. This report shall be verified as being correct by an officer of the company. There shall be submitted along with this report such other information reasonably related to License compliance as the Town shall reasonably request.

(b) Upon request, there shall be provided to the Town, copies of any communications and reports submitted by Licensee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a Cable System in the Town.

(c) Licensee shall provide the Town with regular reports, as needed, to establish Licensee's compliance with the various standards and other provisions of this Code.

### 7-2 Inspection of property and records.

(a) At all reasonable times, the Licensee shall permit any duly authorized representative of the Town to examine all property of the Licensee, together with any appurtenant property of the Licensee situated within or without the Town, and to examine and transcribe any and all maps and other records kept or maintained by the Licensee or under its control that relate to License compliance and deal with the operations, affairs, transactions, or property of the Licensee.

(b) The Licensee shall at all times make and keep full and complete plans and records showing the exact location of all Cable System equipment installed or in use in Streets, public rights-of-way, and other places in the Town and make them available to the Town for review upon request.

(c) The Licensee shall provide the Town Administrator maps or sets of maps drawn to scale, showing the location of the Licensee's underground and above ground facilities. Upon request, such maps or sets of maps shall be provided in an electronic format compatible with the current Town electronic format.

7-3 Protection of Town against liability.

(a) *Indemnification.*

(1) Licensee shall fully indemnify, defend, and hold harmless the Town, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants, and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities, and judgments for damages, including but not limited to, expenses for legal fees, whether suit be brought or not, and disbursements and liabilities incurred or assumed by Town in connection with:

a. Damage to persons or property, in any way arising out of or through the acts or omissions of Licensee, its servants, officials, agents, attorneys, representatives, or employees;

b. Requests for relief arising out of any Licensee action or inaction that results in a claim for invasion of right of privacy, for defamation of any person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; or of any other right of any person, firm, or corporation;

c. Any and all claims arising out of Licensee's failure to comply with the provisions of this Code or a License or any federal, state, or local law, or regulation applicable to Licensee or the Cable System;

d. Any and all disputes arising out of a claim by any party other than Town wherein damages or other relief is sought (i) as a result of the Town's Cable System licensing of Licensee or (ii) as a result of the renewal or non-renewal of Licensee's Cable System License.

(2) If a lawsuit covered by the provisions of Subarticle (a)(1) be brought against Town, either independently or jointly with a Licensee, or with any other person or municipality; the Licensee, upon notice given by Town, shall defend Town at the cost of the Licensee. If final judgment is obtained against Town, either independently or jointly with Licensee or any other defendants, the Licensee shall indemnify Town and pay such judgment with all costs and attorneys fees and satisfy and discharge the same.

(3) Town shall cooperate with the Licensee and reserves the right to participate in the defense of any litigation.

(4) The Town is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives and/or employees.

(5) A Licensee shall make no settlement in any matter identified above without the Town's written consent, which shall not be unreasonably withheld. Failure to inform the Town of settlement shall constitute a breach of the License and the Town may seek any

redress available to it against the Licensee whether set forth in this Code or under any other municipal, state, or federal laws.

(6) All rights of Town, pursuant to indemnification, insurance, letter of credit, or performance bond(s), as provided for by this Code, are in addition to all other rights the Town may have under this Code or any other code, rule, regulation, or law.

(7) The Town's exercise of or failure to exercise all rights pursuant to any Article of this Code shall not affect in any way the right of the Town subsequently to exercise any such rights or any other right of Town under this Code or any other code, rule, regulation, or law.

(8) It is the purpose of this Article to provide maximum indemnification to the Town under the terms and conditions expressed and, if there is a dispute, this Article shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the Town by the Licensee.

(9) The provisions of this Article shall not be dependent or conditioned upon the validity of this Code or the validity of any of the procedures or agreements involved in the award or renewal of a License, but shall be and remain a binding right and obligation of the Town and a Licensee even if part or all of this Code, or the grant or renewal of a License, is declared null and void in a legal or administrative proceeding. It shall be expressly stated in a License, that it is the intent of the Licensee and Town, upon the effective date of the License, that the provisions of this Article survive any such declaration and shall be a binding obligation of and inure to the benefit of the Licensee and Town and their respective successors and assigns, if any.

(b) *Comprehensive Liability Insurance.*

(1) 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 that 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 non-automobile caused), or other damages. Such policy or policies shall include insurance against damages from unfair competition, copyright infringement (common law or statutory), and a failure of Licensee to secure consents, occasioned by any activity or operation of Licensee under such License, and regardless of any claimed or actual activities of Town, its officers, boards, commissions, agents, and employees. The Town Council, in any License granted, may waive the requirement for insurance from one or more perils mentioned in the last preceding sentence upon a finding that such insurance cannot be procured or cannot be procured at a reasonable cost, and in connection there with may reduce the otherwise required limits on coverage hereafter set forth. Such policy or policies shall be issued by a company approved by the Town Administrator and shall be in a form approved by the Town Attorney, with minimum combined single limits of liability coverage in the amount of three million dollars (\$3,000,000). The policy or policies shall name the 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 Town Clerk thirty days in advance of the effective date thereof. No License granted under this Code shall be effective unless and until each of the foregoing policies of insurance as required in this Subarticle has been delivered to the Town Clerk. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this Subarticle.

(2) The Town Council may require increases in the amount of types of coverage no more frequently than every three years, based on increases in the CPI, so as to ensure full protection of the Town of Carefree and the public. The Licensee shall have six months from the date of notification from the Town Administrator to comply with any increase.

(3) 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. A Licensee that elects to self-insure shall file with the Town a Certificate of Insurance as specified by the Town.

#### 7-4 Letter of credit.

(a) Within thirty days after the award or renewal of a License, a Licensee shall deposit with the Town an irrevocable letter of credit in an amount not to exceed Twenty-five Thousand dollars (\$25,000) issued by a federally insured commercial lending institution. The form and substance of said letter of credit shall be used to assure the faithful performance by a Licensee of all provisions of this and resulting License; and compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the Town having jurisdiction over its acts or defaults under a License and the payment by the Licensee of any penalties, liquidated damages, claims, liens, and taxes due to the Town that arise by reason of the construction, operation, or maintenance of the Cable System, including cost of removal or abandonment of any property of the Licensee.

(b) The letter of credit may be drawn upon by the Town by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the Town Administrator certifying that the Licensee has been found, pursuant to Subarticle 7-7(c) or Article 7-8, to have failed to comply with, its License or license agreement, stating the nature of noncompliance, and stating the amount being drawn. Examples of the nature of the noncompliance for drawing upon the letter of credit include, but are not limited to, the following:

(1) failure of the Licensee to pay to the Town any License Fees or taxes after ten days' written notice of delinquency.

(2) failure of the Licensee to pay to the Town, after ten days' written notice, after all judicial remedies have been exhausted, any amounts due and owing the Town by reason of the indemnity provisions of Article 7-3;

(3) failure of the Licensee to pay to the Town any liquidated damages due and owing to the Town pursuant to the License.

(c) The letter of credit shall be structured in such a manner so that if the Town at any time draws upon the letter of credit, upon notice to the Licensee by the issuing lending institution, Licensee shall increase immediately the amount of available credit to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the Town's draft. The lending institution shall notify the Town of the replenishment by Licensee. The intent of this Subarticle is to make available to the Town at all times a letter of credit in the amount of Twenty-five Thousand dollars (\$25,000).

(d) The rights reserved to the Town with respect to the letter of credit are in addition to all other rights of the Town, whether reserved by a License or authorized by law, and no action proceeding against a letter of credit shall affect any other right the Town may have.

#### 7-5 Construction bond.

(a) A Licensee shall obtain and maintain throughout any period of system construction and/or reconstruction, at its cost and expense, and file with the Town Clerk, a corporate surety bond issued by a company authorized to do business in the State of Arizona, and found acceptable by the Town Attorney, in the amount of Fifty Thousand dollars (\$50,000) solely for the purpose of guaranteeing the timely construction and/or reconstruction of the Cable System and the safeguarding of private property during construction and/or reconstruction. After one-half of the Cable System is constructed or reconstructed, Licensee may reduce the Construction Bond to Twenty-five Thousand dollars (\$25,000) until construction or reconstruction of the Cable System is complete. Upon completion of the construction or reconstruction of the Cable System a Construction Bond shall no longer be required.

The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the Town, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the Town resulting from the failure of a Licensee to satisfactorily complete construction and/or reconstruction of its Cable System throughout the License Area pursuant to the terms and conditions of this Code and such Licensee's License.

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

(c) The construction bond shall be terminated only after the Town Council finds that a Licensee has satisfactorily completed initial construction and activation or reconstruction of its Cable System pursuant to the terms and conditions of this Code and such Licensee's License.

(d) The rights reserved to the Town with respect to the construction bond are in addition to all other rights of the Town, whether reserved by this Code or authorized by law, and no action, proceeding or exercise of a right with respect to such construction bond shall affect any other rights the Town may have.

(e) The construction bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty days after receipt by the Town, by registered mail, or written notice of such intent to cancel or not to renew.

7-6 Liquidated Damages.

(a) If the Town notifies the Licensee, in writing, of an alleged violation of the customer service standards in Section 6, the Licensee shall have ninety days to correct or cure the alleged violation. If the alleged violation is not corrected or cured within ninety days, the Town and the Licensee shall meet to discuss the alleged violation and negotiate a mutually acceptable resolution. If no resolution is reached within ninety days, the Licensee is subject to liquidated damages pursuant to this Section 7-6.

(b) Each License granted by the Town shall state that a Licensee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this Code and the License will result in damage to the Town, and that it is and will be impracticable to determine the actual amount of such damage caused by delay or nonperformance; the License shall include provisions for liquidated damages to be paid by the Licensee, in amounts set forth in the License and chargeable to the letter of credit for the following concerns:

(1) Failure to provide a cable connection within the time(s) set forth in Article 4-3;

(2) Failure to properly restore the public right-of-way or to correct related violations of specifications, code, ordinance, or standards after having been notified by the Town to correct such defects;

(3) Failure to comply with Subscriber service provisions of this Code;

(4) Failure to test, analyze, and report on the performance of the Cable System following a written request pursuant to Article 4-5(a);

(5) Failure to provide in a continuing manner the type of services proposed in the accepted Proposal for Initial License or in the Initial or Renewal License unless the Town Council specifically approves modification of a Licensee's obligation;

(6) Failure to cure any violation of Article 6-3, following notice and an opportunity to cure pursuant to the provisions of that Article; and

(7) Any other action or non-action by the Licensee, to which none of the above reasonably apply and damages cannot be estimated on a daily basis.

(c) If the Town Administrator concludes that a Licensee is in fact liable for liquidated damages pursuant to this Article, he/she shall issue to Licensee by certified mail a Notice of Intention to Assess Liquidated Damages. The notice shall set forth the nature of the violation

and the amount of the proposed assessment. The Licensee shall, within thirty days of receipt of such notice:

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

(2) Cure any such violation (and provide written evidence of the same), or, if, by the nature of the violation, such violation cannot be cured within such thirty day period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. Licensee shall report to the Town, in writing, at thirty day intervals as to Licensee's efforts, indicating the steps taken by Licensee to cure said violation and reporting Licensee's progress until such violation is cured.

(d) If Licensee contests the Town's assertion of violation or fails to respond to the Town's notice of intent to assess liquidated damages, within fifteen days the Town shall schedule a hearing in accordance with the procedures set forth in Article 7-7.

7-7 Administrative hearing.

(a) Within fifteen days of (i) receipt of notice of contest pursuant to Article 7-6(b)(1), (ii) expiration of the response time referred to in Subarticles 6-3(g) or 7-7(c), or (iii) notice from Licensee that it contests an audit determination of License Fees under Article 3-2(d), an administrative hearing shall be scheduled by the Town Administrator. This shall be a public hearing, and Licensee shall be afforded full due process, including, without limitation, an opportunity to be heard, to present evidence, and to cross-examine witnesses. Within fifteen days after the conclusion of such hearing, the Town Administrator shall issue a determination. In that determination the Town Administrator may:

(1) Find that Licensee is not in violation of the terms of the License;

(2) Find that the Licensee is in violation, but that such violation was with just cause and waive any liquidated damages that might otherwise be imposed;

(3) Find that Licensee is in violation of the terms of the License, take corrective action and foreclose on all or any appropriate part of the letter of credit provided pursuant to Article 7-4;

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

(5) In the case of a material violation recommend that the Town Council terminate the License, provided that the Town Council may take action on any such recommendation only after a public hearing as set forth in Article 7-8.



(b) If the Town Administrator determines that Licensee has committed a violation, the determination shall be accompanied by a detailed statement of reasons for the determination, including findings of fact.

(c) The decision of the Town Administrator shall become final unless Licensee requests a public hearing before the Town Council within fifteen days of its receipt of the statement of reasons and findings of fact by the Town Administrator.

7-8 Hearing by Town Council. If a public hearing before the Town Council is requested by Licensee or is held pursuant to Subarticles 7-7(a)(5) or 7-7(c), it shall be de novo and it shall convene within thirty days of the request therefor. The Town Council may designate three of its members to act as a hearing subcommittee to collect all evidence in the matter and to present written findings of fact and conclusions of law to the entire Town Council. All witnesses shall be sworn and shall be subject to cross-examination; however, formal rules of evidence shall not apply. The Town Council's decision, which shall include findings of fact, shall be made not later than forty-five calendar days after the conclusion of the hearing. In that decision, the Town Council may:

(a) Find that Licensee is not in violation of the terms of the License;

(b) Find that Licensee is in violation but that such violation was with just cause and waive any liquidated damages or penalty that may otherwise be imposed;

(c) Find that Licensee is in violation of the terms of the License, take corrective action and foreclose on all of any appropriate part of the letter of credit provided pursuant to Article 7-4 to pay the cost thereof;

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

(e) In the case of a material violation of the License within the meaning of Article 7-9, declare the Licensee in violation and revoke the License.

7-9 Revocation.

(a) In addition to all other rights and powers retained by the Town Council under this Code or otherwise, the Council shall have the right to revoke the License and all rights and privileges of the Licensee thereunder upon a recurring or protracted substantial breach of the License terms and conditions, or this Code, which substantially affects the provision or quality of Cable Services, the ability of the Town of Carefree to effectively regulate the Licensee, or Carefree's collection of all fees and charges. The power of revocation shall not be used if the breach is a result of force majeure. The breaches appearing on the list set forth below in this Article shall be considered substantial breaches. The list is not exhaustive:

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

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

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

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

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

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

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

(8) Recurrent failures after notice by the Town Administrator to provide service to any part of the Licensee service area, consistent with Article 4-3;

(9) Unlawful acts or omissions by Licensee or its servants, officials, agents, representatives, or employees, which result in the Town's refusal to award a License to any other person, partnership, corporation or other legal entity.

(b) Before proceeding with a revocation hearing, the Town Administrator shall make a written demand that the Licensee comply. If a violation by the Licensee continues for a period beyond that set forth in the written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Town Council may revoke the License as provided in Article 7-9.

7-10 Continuity of service mandatory.

(a) It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to a Licensee are honored.

(b) If the License terminates, the Licensee shall cooperate with the Town, to ensure continuity of Cable Service to all Subscribers for a period not to exceed ninety days. Said period may be extended by mutual agreement between the Town and Licensee. During such period, Licensee shall be entitled to the revenues for any period during which it operates the Cable System.

(c) If Licensee fails to operate the Cable System for ninety-six consecutive hours without prior approval of the Town or without just cause, the Town may, at its option, operate the Cable System or designate an operator until such time as Licensee restores Cable Services under conditions acceptable to the Town or a new permanent operator is selected. If the Town is

required to fulfill this obligation for a Licensee, the Licensee shall reimburse the Town for all reasonable costs or damages that are the result of the Licensee's failure to perform.

7-11 Failure of Town to enforce a License not a waiver. A Licensee shall not be excused from complying with any of the terms and conditions of a License or this Code by any failure of the Town upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

7-12 Waivers.

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

(b) Licensee may submit a request for waiver to the Town Council at any time during the License term. Such request for waiver may, at the sole discretion of the Town Council, be set for public hearing and a decision shall be made within one hundred and twenty days following its submission.

(c) The Town Council may authorize the economic, technical, or legal evaluation of such Licensee's waiver request and the Licensee shall be required to reimburse the Town for all expenditures incurred by the Town in connection with such evaluation. The Town may require that Licensee deposit with the Town an amount estimated by the Town to cover the Town's expenditures incurred in connection with such evaluation.

(d) This Article is enacted solely for the convenience and benefit of the Town and shall not be construed in such a manner as to create any right or entitlement for the Licensee.

7-13 Validity of License. Licensee shall acknowledge as a condition of acceptance of a License, that Licensee was represented throughout the negotiations of any License award or renewal by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding the License.

7-14 Miscellaneous provisions.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the Town shall be filed with the office of the Town clerk.

(b) Neither Licensee nor any of its officers, or employees shall receive referral fees or gratuities from any television or radio sales or repair business.

(c) Unless otherwise provided for in this chapter, all notices that the Town may give to a Licensee or that a Licensee may give to the Town shall be given in writing and may be given by certified first class mail, postage prepaid addressed to Licensee's most recent address on file with the Town, and addressed to Town. Such notices, when sent by mail and if received, shall be deemed given one day after deposit in the U.S. Mail.

7-15 Force Majeure. With respect to any provision of this Code or any License granted pursuant thereto, the violation or noncompliance with which could result in the imposition of a financial penalty, liquidated damages, forfeiture, or other sanction upon a Licensee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonable foreseeable by Licensee and is beyond its reasonable control.

7-16 Severability. If any article, subarticle, sentence, clause, or phrase of this Code 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 Town Council hereby declares that it would have passed this Code and each article, subarticle, sentence, clause, and phrase hereof, irrespective of the fact that any one or more articles, subarticle, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of the Code shall not abate, reduce, or otherwise affect any consideration or other obligation required of the Licensee or any License granted hereunder.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective March 1, 2003, and shall apply to the existing license issued to DCA Cablevision whose successor is CoxCom, Inc., a Delaware corporation, upon the first to occur of amendment or renewal of the license. Before that date, the existing code shall apply to that license.

PASSED AND ADOPTED by the Council of the Town of Carefree, Arizona, this 4th day of February, 2003.

Ayes \_\_\_\_\_ Noes \_\_\_\_\_ Abstain \_\_\_\_\_ Absent \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
TOWN ATTORNEY

Published in Carefree \_\_\_\_\_  
Effective Date: \_\_\_\_\_

Publication Dates: \_\_\_\_\_