

RESOLUTION NO. 1703

**REPEALING RESOLUTION NO. 1173 AND ESTABLISHING REGULATIONS
AND PROVIDING PROCEDURES FOR THE ISSUANCE OF LICENSES TO
CONSTRUCT, INSTALL AND OPERATE LINES, WIRES, COAXIAL CABLE
AND APPURTENANCES FOR ORIGINATING, RECEIVING, DISTRIBUTING,
AND SUPPLYING CABLE COMMUNICATION SERVICES ALONG, ACROSS
AND UPON THE PUBLIC STREETS, WAYS, ALLEYS, AND PLACES WITHIN
THE UNINCORPORATED AREAS OF YAVAPAI COUNTY, ARIZONA**

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF
YAVAPAI, ARIZONA, DOES ORDER AS FOLLOWS:**

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SECTION 2: DEFINITIONS

For the purpose of this Resolution, the following terms shall have the meaning given herein.

- A. “County” means Yavapai County.
- B. “Licensing Authority” means the Board of Supervisors of Yavapai County.
- C. “Board of Supervisors” means the Yavapai County Board of Supervisors or its designee as expressed by resolution, except that all hearings, notices, and license approvals required by the Board of Supervisors under this Resolution must be done by the Board of Supervisors as a whole.
- D. “License” means the non-exclusive right and authority to construct, maintain and operate a Cable Television System through use of the public streets, other public rights-of-way or public places in the unincorporated part of Yavapai County designated as the Service Area granted by the Licensing Authority.
- E. “Person” means any natural person, all corporations, partnerships, joint ventures, and any other legal entity.
- F. “Applicant” means any Person that applies for a License.
- G. “Licensee” means the Person granted a License by the Board of Supervisors and the lawful successor, transferee, or assignee of said Person.
- H. “Street” means the surface, the air space above the surface and the area below the surface of any public street, other public right of way or public place.
- I. “Property of Licensee” means all property owned, installed or used within the County by Licensee in the conduct of a Cable Television System business.
- J. “Service Area” means the designated area for which the Board of Supervisors has granted a license to a particular Licensee.
- K. “Subscriber” means any Person receiving for any purpose any service of the Licensee’s Cable Television System.
- L. “Cable Television System” or “Cable System” or “CATV” means a system designated and constructed or used for the purpose of:

- (1) Collecting and amplifying local and distant broadcast television or radio signals and redistributing them;
- (2) Distributing original cablecast programming not received through television broadcast signals;
- (3) Distributing television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;
- (4) Receiving and distributing all other signals; digital, voice and audio-visual;

“Cable Television System” does not mean:

- (1) Any facility that serves fewer than fifty (50) subscribers;
- (2) Any facility that serves only the residents of one or more apartment dwellings under common ownership, and commercial

establishments located on the premises of these apartment dwellings.

- M. “Basic Subscriber Services” includes, but is not limited to the:
- (1) Redistribution of all broadcast signals provided for herein;
 - (2) Distribution of the public, educational and local government access signals;
 - (3) Distribution of the local origination channel signals;
 - (4) Distribution of such other cablecast channel signals as are required by the FCC; and
 - (5) Installation, reconnection and additional connections, and transfer fees of subscriber service outlets.
- N. “FCC” means the Federal Communications Commission, or a designated representative.
- O. “Channel” means a band of frequencies, in the electromagnetic spectrum, which is capable of carrying either one video signal, several audio signals, numerous digital signals, or some combination of these signals.
- P. “Refundable Advance” means the full cost of construction for a line extension paid by a subscriber or proposed subscriber to the Licensee pursuant to a Line Extension Agreement reimbursable to the subscriber or proposed subscriber by the Licensee.
- Q. “Line Extension Agreement” means a contract between the Licensee and a subscriber or proposed subscriber for the extension of cable television facilities to a previously unserved area consistent with Section 15 hereof and the Licensee’s Line Extension Policy.
- R. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in FCC Rules and Regulations shall apply.

SECTION 3: AUTHORITY TO GRANT LICENSE

- A. By A.R.S. §9-506, the Board of Supervisors of Yavapai County is empowered to authorize the issuance of non-exclusive licenses to install, construct, operate and maintain Cable Television Systems on streets, other public rights-of-way, or public places within the unincorporated areas of Yavapai County as well as regulate these activities.
- B. No provision of this resolution shall be deemed or construed to require the granting of a License.

SECTION 4: APPLICATION FOR LICENSE

- A. Each application for a License under this Resolution shall be filed with the Board of Supervisors and shall contain, at a minimum, the following:

- (1) The name, address and telephone number of the applicant. If the applicant is a partnership or joint venture, the home and business address of at least two partners shall be set forth. If the applicant is a corporation, the application shall include a copy of the most recent annual report filed with the Arizona Corporation Commission.
- (2) A statement setting forth in its entirety any and all agreements existing or proposed between the applicant and any Person who proposes to have an ownership interest with respect to the proposed License or to the proposed Cable Television operation. If such information is not disclosed in the application, the License shall be deemed void and of no force and effect.
- (3) Financial statements, as determined by the Board of Supervisors, prepared by a certified public accountant, or person otherwise satisfactory to the Board of Supervisors, showing applicant's financial status and financial ability to complete the construction and installation of the proposed Cable System.
- (4) A map and legal description satisfactory to the Board of Supervisors indicating the proposed Service Area within the unincorporated area of the County that will be served with Cable Television.
- (5) A proposed line extension policy in accordance with Section 15 hereof, attached and made a part of the licensing resolution, stating the terms and conditions under which Cable Services will be provided.
- (6) A proposed time schedule, satisfactory to the Board of Supervisors if construction is occurring in locations of preexisting and established development.
- (7) A statement describing the Cable System and specifying the type and capacity of the Cable System proposed to be constructed, installed, maintained or operated by the applicant and the proposed or existing location of the Cable System. (The applicant shall also include a policy statement describing the Cable System updating procedures to be used in keeping with technological advances.)
- (8) A description of all previous experience of the applicant in providing Cable Television System service and in related or similar fields.
- (9) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the Board of Supervisors, or by any provision of any other Resolution of the County.
- (10) A non-refundable application fee in the amount of \$350.

- B. Prior to the issuance of a License, the Board of Supervisors shall provide for any hearings, notices or publications as may be required by Arizona Revised Statutes.

SECTION 5: LICENSE REQUIREMENTS

- A. In making any determination hereunder as to any application, the Board of Supervisors shall give due consideration to the quality of the service proposed, experience, character, background, and financial responsibility of any applicant and its management and owners, technical and performance quality, quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, License limitations and requirements, and any other considerations deemed pertinent to the Board of Supervisors for safeguarding the interest of the County and the public. The Board of Supervisors, in its discretion, shall determine the award of any License on the basis of these considerations and without competitive bidding.
- B. Any License issued by the authority of this Resolution shall contain at a minimum:
 - (1) The findings of the Board of Supervisors.
 - (2) A description and map of the Licensee's service area.
 - (3) Minimum insurance policy coverage, as listed in Section 13 of this Resolution.
- C. Prior to issuance of any License, Licensee shall provide to the Board of Supervisors financial assurances to secure payment for inspection costs and damages caused by construction or operation of Licensee's system. Licensee shall contact the County Engineer for a review of the construction plans, and the County Engineer shall make a recommendation to the Board of Supervisors regarding the amount of financial assurances to be posted. Financial assurances may be in the form of a bond, an irrevocable letter of credit, etc. Minimum assurances required shall be equivalent to \$25,000 or 25% of construction costs, whichever is greater, payable upon demand. Said financial assurances may be reduced at the discretion of the Board of Supervisors.

SECTION 6: ACCEPTANCE OF THE LICENSE

- A. Within thirty (30) days after granting of a License, the Licensee shall file with the Clerk of the Board of Supervisors or the Clerk's designee its written acceptance of the License, together with the financial assurances and insurance policies required herein, and its agreement to be bound by and comply with the provisions of the License. Such acceptance and agreement shall be acknowledged by the Licensee before a Notary Public, and shall be in form and content satisfactory to and approved by the County Attorney.

- B. In default of the filing of such written acceptance as herein required, the Licensee shall be deemed to have rejected and repudiated the License. Thereafter, the acceptance of the Licensee shall not be received nor filed by the Clerk of the Board of Supervisors, and the action taken by the Board of Supervisors to grant the License shall be deemed invalid.
- C. Neither the granting of any License nor any of the provisions contained herein shall be construed to prevent the County from granting any License to any other Person embracing the same area.

SECTION 7: CONSTRUCTION OF SYSTEM

- A. The Licensee shall promptly obtain all necessary permits and authorizations and pay any applicable fees in accordance with such Yavapai County ordinances or resolutions as are or may be established by the Board of Supervisors.
- B. The Licensee shall accomplish significant construction within two years after the date the License becomes effective, and shall thereafter equitably and reasonably extend distribution cable throughout the community. If, after two years, the Licensee has failed to comply with this requirement, the Board of Supervisors may, at its discretion, hold a public hearing to determine whether the License should be revoked. Notice of such hearing shall be published at least ten (10) days prior to the hearing in a newspaper of general circulation within the Service Area, or if no such newspaper exists, shall be posted in a conspicuous place.
- C. Repair of Streets and Public Ways:
 - (1) Any and all streets and public ways in the Service Area which are disturbed by the Licensee shall be repaired by the Licensee at its expense and in accordance with such Yavapai County ordinances or resolutions as are or may be established by the Board of Supervisors and in accordance with the permit specifications set forth by the Yavapai County Engineer to restore the roadway to its condition before being disturbed. Before any public roadway or place is disturbed, the Licensee may secure from the County a statement of the current condition, composition and construction of the roadway or place, which statement shall be the standard of reconstruction to which the Licensee shall conform. The County and the Licensee may also agree in writing to the period of time that will be allowed for repair or reconstruction, which period shall be construed to be “reasonable” under (2) hereof. The Licensee shall bear the costs of inspections resulting from bona fide complaints.
 - (2) Upon the failure of the Licensee to cause any work or other act required by law or hereunder to be properly completed within a reasonable time, the Board of Supervisors may cause this work or

other activity to be completed in whole or in part to the satisfaction of the Board of Supervisors, and upon so doing shall submit to Licensee an itemized statement of the cost thereof. The Licensee shall, within thirty (30) days after mailing of the statement, pay to the County the entire amount.

- (3) The County Engineer is authorized to permit underground installation of cables at a minimum depth of thirty-six inches (36"). The County Engineer may permit a lesser depth when said installation will not interfere with County road maintenance or construction. As built drawings indicating cable locations and depths must be supplied, without cost, to the County Engineer upon completion of the system and updated to reflect system expansion. Licensee shall hold Yavapai County harmless for damages to Licensee's system which results from County's road maintenance or construction.
- (4) The County Engineer will notify the Licensee if it is determined that any cable is located at a depth which interferes with road maintenance. Any such cable shall be buried at a sufficient depth upon receipt of notice. In the event that cable must be relocated due to road construction or because of inadequate depth, the Licensee shall bear the cost of such relocation.

SECTION 8: MAINTENANCE, COMPLAINT PROCEDURE

A. The Licensee shall:

- (1) Put, keep and maintain all parts of the Cable Television System in good condition throughout the entire period of the License.
- (2) Render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Interruptions, insofar as possible, shall be preceded by notice given to subscribers twenty-four (24) hours in advance and shall occur during periods of minimum use of the system.
- (3) Investigate and resolve all complaints regarding quality of service, equipment and other similar matters within 48 hours, and shall maintain a local business office, agent or local toll-free phone number for these purposes.
- (4) Maintain a written record, or "log", listing date of customer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by the Licensee in response thereto. These records shall be kept at Licensee's local office and shall be available for inspection during regular business hours, without further notice or demand by the Board of Supervisors.
- (5) Provide each subscriber with a statement that delineates the process for submitting a complaint that specifies:

- (a) The telephone number and the address of the Licensee that the subscriber can utilize to make a complaint.
 - (b) A statement indicating that a dissatisfied subscriber should exhaust his remedy with the Licensee before submitting a complaint to the County.
 - (c) The address of the County Office that the subscriber can utilize to make a written complaint.
- (6) Upon written request of the Board of Supervisors, file a written report as to any complaint designated in the request, giving a detailed description of the complaint, the manner in which it has been met, and the time required to make the necessary repairs or adjustments. The report shall be returned no more than ten (10) business days after receipt of the request by Licensee.
- (7) Upon request by the Board of Supervisors, the Licensee shall make a demonstration satisfactory to it that a signal is being delivered to any designated area which is of sufficient strength and quality to meet the standards set forth in the regulations of the FCC.

SECTION 9: ANNUAL LICENSE FEE

- A. Licensee shall pay to the County on an annual basis as and for a license fee a sum representing five percent (5%) of Licensee's gross revenue as defined in A.R.S. 9-505(6). However, if at any time during the term of a license the Board of Supervisors determines that the fee should be increased to an amount not to exceed the legal limit for such fees, the Licensee shall commence paying the increased fee following sixty (60) days written notice from the County. In no event shall the fee or percentage exceed the maximum fixed by applicable law. Payment shall be due in two (2) annual installments, on July 15 and on January 15 for the preceding six (6) months of the year in which such installments are due. Delinquent payments shall bear interest at the rate of five (5) percent of the amount due plus one and one-half (1 ½) percent per month.
- B. The insurance and bond provisions of the License may be subject to re-evaluation and renegotiation by the Board of Supervisors every three (3) years commencing from the adoption of this resolution.
- C. Licensee shall, upon written request of the Board of Supervisors, provide to the County a copy of Licensee's annual report, or such other documents as may be used to verify the accuracy of the Licensee's gross annual subscriber receipts.

SECTION 10: DURATION OF LICENSE

The term of any License shall not exceed fifteen (15) years, commencing on the effective date of any License issued and shall be so stated in the License. A License may be renewed for an additional period in accordance with Section 12 herein.

SECTION 11:

TERMINATIONS

- A. Any License granted may be terminated prior to its date of expiration by the Board of Supervisors in the event that it shall have determined any of the following:
 - (1) The Licensee has failed to comply with any material provision of this Resolution.
 - (2) The Licensee has, by act or omission, violated any material term or condition of any License issued.
 - (3) The Licensee has failed to comply with any material rule or regulation of the Board of Supervisors validly adopted pursuant to this Resolution.
 - (4) The Licensee has failed to comply with any material rule, regulation, or order of the FCC.
- B. The Board of Supervisors shall make written demand that the Licensee do or comply with any of these requirements, limitations, terms, conditions, rules, or regulations. The demand shall be accompanied by an explanation of the standards that are alleged to be violated and the facts alleged to create the violation.
- C. If the alleged failure, neglect or refusal of the Licensee continues for a period of thirty (30) days following written demand, the Board of Supervisors may place its request for termination of the License upon the agenda for its next regular meeting. The Board of Supervisors shall cause to be served upon the Licensee, at least twenty (20) days prior to the date of the Board of Supervisors' meeting, a written notice of its intent to request termination, together with a complete and definite explanation of the grounds for the proposed action and the time and place of the meeting, notice of which shall be published at least ten (10) days before the meeting in a newspaper of general circulation with the Service Area. If no newspaper of general circulation is published within the Service Area, notice may be given by posting in a conspicuous place within the Service Area.
- D. If a failure, refusal or neglect by the Licensee was with just cause, the Board of Supervisors shall by resolution order the Licensee to comply (if compliance is necessary) within a reasonable time and in a reasonable manner. This resolution shall contain the findings and conclusions upon which it is based. These conclusions shall contain a conclusion of whether compliance is necessary.
- E. If a failure, a refusal or neglect by the Licensee was without just cause, the Board of Supervisors may, by resolution, declare that the License of the Licensee shall be terminated and forfeited unless there is compliance by the Licensee within such period as the Board of Supervisors may fix. This resolution shall contain the findings and conclusions upon which it is based.

- F. If the Board of Supervisors finds that there was no failure, refusal or neglect by the Licensee, it shall so resolve. This resolution shall contain the findings and conclusions upon which it is based.
- G. The Licensee may appeal the determination of the County to an appropriate court, which shall have the power to review the decision of the County. The proper venue shall be in Superior Court of Yavapai County or the District Court of the United States for the District in which the County is located.

SECTION 12: EXPIRATION OR TERMINATION

A. Renewal

Upon expiration of the term of any License granted hereunder, the License shall be renewed by the Board of Supervisors upon petition by the Licensee, for a term not to exceed fifteen (15) years. The new License shall conform with all License fees, insurance policy coverage and other terms in effect at the time of renewal. Renewal considerations shall include, but not be limited to, the reports prepared throughout the life of the License, the Cable System's technical performance, the development of Cable Services, the ability of the Licensee to service the portions of the Service Area meeting density and line extension qualifications that is designated by the Board of Supervisors, and cooperation exhibited by the Licensee with the County and its residents throughout the License period. Nothing herein shall be construed to require renewal.

B. Additional Proposals

In the event that the Board of Supervisors and the Licensee are unable to reach an accord on the renewal of any License, the Board of Supervisors may elect to invite additional proposals for the operation of one or more Cable Television Systems. These Cable System or Cable Systems may either replace the existing Cable System, or be an addition to the Cable System operated by the then current Licensee.

SECTION 13: LIABILITY INSURANCE

A. The Licensee shall be required to maintain for the duration of the license general comprehensive liability insurance against all damages charged to the County or the Licensee resulting from the installation, development, maintenance or expansion of a Licensee's Cable Television System as follows:

- (1) One million (\$1,000,000) dollars for bodily injury or death to any one person with an aggregate limit for any one occurrence of One Million Dollars (\$1,000,000) for bodily injury or death.
- (2) One hundred fifty thousand dollars (\$150,000) for property damage resulting from one accident.
- (3) Five hundred thousand dollars (\$500,000) for all other types of liability.

The County shall be named in all such policies as a co-insured, or added thereon by endorsement as a named insured. A certificate of insurance for each policy shall be filed with the County Risk Manager. A copy of the policy shall be provided upon request. Each certificate shall provide that if the policy it covers shall be cancelled by the insurance company of the Licensee during the term of the policy, ten (10) days written notice prior to the effective date of cancellation shall be given to the Board of Supervisors.

- B. The amounts of insurance required as set forth in this section shall be subject to renegotiation every three (3) years, commencing from the adoption of this resolution at the discretion of the Board of Supervisors.

SECTION 14: COMPLIANCE WITH RULES AND REGULATIONS OF THE FCC

The provisions of this Resolution shall be construed as consistent with any rule or regulation of the FCC. Any FCC Rule inconsistent with the terms herein is deemed to automatically amend the inconsistent term contained herein. Any License issued pursuant to the Resolution is subject to any FCC Rules and Regulations.

SECTION 15: LINE EXTENSION AND REFUNDABLE ADVANCE

- A. The extent of construction for the area to be covered by the License is hereby approved, and Licensee is authorized to extend construction throughout the License area.
- B. In order that existing Subscribers shall not be unfairly burdened, the existing rate schedule shall not apply where 150 feet or more of line or cable is required, or where undergrounding of cable is required to reach the proposed Subscriber; in such cases special rates (including a Capital Contribution) may be negotiated with the proposed Subscriber; absent a non-refundable Capital Contribution, Licensee shall not be required to extend service to an area unless at least thirty-five (35) Subscribers per cable plant-mile, as measured from Licensee's existing trunk, request service.

SECTION 16: ANNEXATION

- A. Any Licensee may annex additional service areas. The annexed area need not be contiguous to the existing service area. A petition requesting annexation shall be filed with the Board of Supervisors and shall contain the information required in Section 4 A(1), (3), (4), (6), and (9). All requirements of Section 4 B and Sections 5 and 6 apply to annexations, except that if the annexation is contiguous to the existing franchise area and the area to be annexed does not represent an increase of more than 50 percent in the total service area, the annexation may be approved administratively by the public works director. The application shall be accompanied by a non-refundable application fee of \$150 if the annexation can be approved administratively, or by a non-

refundable application fee of \$200 if the annexation cannot be approved administratively. Any new License issued as a result of annexation shall terminate the Licensee's existing License. The new License shall incorporate the Licensee's existing Service Area, existing and new schedule for installation, and the minimum insurance policy coverage in effect at the time of annexation. The new License shall be treated as any other License under this Resolution, and shall be for a term not to exceed fifteen (15) years. No annexation is permitted unless the Licensee is able to provide satisfactory service to at least seventy-five percent (75%) of the potential users within the Licensee's existing Service Area.

- B. At its discretion, the Board of Supervisors may grant any Licensee a comprehensive county-wide License. If not an initial application, such application shall be accompanied by a non-refundable application fee of \$350.

SECTION 17: TRANSFER OF LICENSE

An existing License may be transferred subject to the following conditions:

- (1) Notification of intent to transfer by the Licensee.
- (2) Application by the Person to whom the License is to be transferred, with said application to be made in accordance with Section 4.A.(1) through (9), and which shall be accompanied by a non-refundable transfer fee of \$200.
- (3) The application shall be reviewed by the County Attorney, the Finance Director, and the Public Works Director and if determined to be satisfactory, shall be approved administratively by the Public Works Director.

SECTION 18: SEVERABILITY

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

SECTION 19: CONFIDENTIALITY

All information of a financial or personal nature provided to the County or Board of Supervisors for the purposes of this Resolution under Section 4 or otherwise shall be used only for the purposes prescribed by this Resolution and further shall not be published or provided orally or in writing to any person, entity or agency, except the FCC.

SECTION 20: RIGHTS RESERVED TO THE COUNTY

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

- A. New developments in the areas of technology of Cable Communications Systems.
- B. Any changes in Federal or State laws, rules or regulations.

SECTION 21: EFFECT UPON EXISTING LICENSES

It is the intent of this Resolution that all Licenses in force at the time of enactment of this Resolution shall remain valid for the full term thereof subject to the following conditions:

- A. Each Licensee holding such a License shall within a period of eight (8) weeks following the enactment of this Resolution, execute an Addendum to License Agreement binding the Licensee to conform to all provisions, requirements, and obligations of this Resolution except that no Licensee shall be required to submit a new application, pay any additional fee, or submit to any hearing with regard to this section.
- B. License shall become valid for the entire license area, as defined in this Resolution, immediately upon execution of the Addendum to License Agreement specified in Paragraph A above.

SECTION 22: REVOCATION

This Resolution supersedes and revokes any inconsistent provisions in any prior Resolution and expressly revokes Yavapai County Resolution No. 815.

SECTION 23: EFFECTIVE DATE

This Resolution becomes fully effective on January 5, 2009.

PASSED AND ADOPTED THIS 5th DAY OF JANUARY, 2009, BY THE BOARD OF SUPERVISORS OF THE COUNTY OF YAVAPAI, ARIZONA.

/s/ Thomas Thurman
Thomas Thurman - Chairman,
Board of Supervisors

ATTEST:

/s/ Julie Ayers
Clerk, Board of Supervisors

APPROVED AS TO FORM:

/s/ Dave Hunt
Deputy County Attorney