

ORDINANCE 20 - _____
ESTABLISHING REGULATIONS FOR THE ISSUANCE OF LICENSES TO VIDEO SERVICE
PROVIDERS TO CONSTRUCT, INSTALL AND OPERATE VIDEO SERVICE NETWORKS
ALONG, ACROSS, UNDER AND UPON HIGHWAYS IN COCHISE COUNTY

WHEREAS, The State of Arizona enacted Title 11, Chapter 14 of the Arizona Revised Statutes (“A.R.S.”), declaring that licensing of video service providers and the regulation and use of video services are matters of statewide concern; and

WHEREAS, The State of Arizona has required that all Counties adopt new video service provider affidavits, applications, and licenses; and enact a local law in order to be able to continue to collect licensing fees to compensate the County for the use of its highways.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED AS FOLLOWS:

1. DEFINITIONS: For purposes of this Ordinance, the terms used herein have the meaning specified in Title 11, Chapter 14 of Arizona Revised Statutes (hereinafter referred to as the “Licensing Statute”).

2. AUTHORITY TO GRANT LICENSE: Pursuant to A.R.S. § 11-1911, the Board of Supervisors for Cochise County has the authority to issue non-exclusive uniform video service licenses to persons to provide video service and to construct and operate video service networks along, across, under and upon highways (as defined in A.R.S. § 11-1901) in Cochise County and to regulate these activities.

3. APPLICATION FOR LICENSE: Each application for a License under this Ordinance shall be filed with the Clerk of the Board of Supervisors for Cochise County and shall contain the information required by the affidavit, application and license approved by the Board of Supervisors, and as required by A.R.S. § 11-1911.

4. LICENSE TERMS: Any license issued by the authority of this Ordinance shall contain at a minimum: the terms of the License, and a description and map of the Licensee’s service area.

5. NON-EXCLUSIVE LICENSE: Neither the granting of any license, nor any of the provisions contained herein, shall be construed to prevent the County from granting a License to any other Person embracing the same service area.

6. CONSTRUCTION:

A. PERMITS, AUTHORIZATIONS AND FEES: Before initiating any construction related activities, the Licensee shall obtain all necessary permits and authorizations and pay any applicable fees in accordance with Cochise County resolutions, regulations and ordinances as are, or may be, established by the Board of Supervisors.

B. COMMENCEMENT OF SERVICE: Not later than twenty-four (24) months after issuance of a uniform video service license or an amended uniform video service license, the holder of the uniform video service license shall offer and provide video service to at least one subscriber within each service area authorized by the uniform video service license or amended uniform video service license (unless the holder cannot meet the requirement for reasons beyond the holder's control). If a holder fails to comply with this section, Cochise County may revoke the holder's uniform video service license for all affected service areas.

C. REPAIR OF HIGHWAYS AND PUBLIC WAYS:

1. Any and all highways, public streets, roads, alleys, public ways or places in the Service Area which are disturbed by the Licensee shall be repaired by the Licensee at its expense and in accordance with such Cochise County resolutions, regulations, and ordinances as are or may be established by the Board of Supervisors, and in accordance with the permit specifications set forth by Cochise County to restore the roadway to its condition before being disturbed. Licensee shall bear all reasonable costs associated with the repair or restoration of damage cause by Licensee. Before any public street, road, alley or other public way or place is disturbed, the Licensee may secure from the County a statement of the current condition, composition and construction of the highway, public street 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 time that will be allowed for repair or reconstruction, and any

such agreed upon period shall be deemed to be “reasonable” under (3) hereof. The Licensee shall bear the costs of inspections, including those resulting from bona fide complaints, if any.

2. Notwithstanding the foregoing, if emergency response work or repair becomes necessary in, on, under or over any highway as defined in the Licensing Statute, a video service provider may begin that work or repair without prior approval from the County, if the video service provider notifies the County as promptly as reasonably possible after learning that the work or repair is necessary.
3. Upon the failure of the Licensee to cause any work or other act required by law, this Ordinance, or its License, to be properly completed within a reasonable time, the Board of Supervisors may cause said 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.
4. 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 if the County Engineer determines that said installation will not interfere with County street 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 Cochise County harmless for damages to Licensee's system which result from the County's street maintenance, improvement or construction
5. The County Engineer will notify the Licensee if it is determined that any cable is located at a depth which interferes with street construction, improvement or maintenance. Any such cable shall be removed, relocated and buried at a sufficient depth promptly upon receipt of notice. If cable must be relocated due to street construction, improvement or maintenance, or because of inadequate depth, the Licensee shall bear all costs of relocation.

7. ALLOWED WI-FI EQUIPMENT: On application, the County shall issue to a video service provider or its affiliate a permit to attach Wi-Fi radio equipment to the video service network in the highways within the County. The permit shall allow installation, operation and maintenance of allowed Wi-Fi radio equipment. In addition to meeting general health and safety requirements, all allowed Wi-Fi radio equipment at a single location must fit within a fifteen-inch cube and be contained entirely within a ground-mounted pedestal or be connected directly to and mounted at the same height as one of the video service provider's aerial horizontal conductors.

8. MAINTENANCE AND COMPLAINTS: The Licensee shall:

A. Put, keep and maintain all parts of the video service network in good condition throughout the entire period of the License.

B. Render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

C. Investigate and resolve complaints regarding quality of service, equipment and other similar matters promptly.

D. In all other respects comply with applicable local, state and federal laws and regulations.

E. Provide each subscriber with a statement that delineates the process for submitting a complaint that specifies that the subscriber may submit complaints about video service to any of the following: the provider, the federal communications commission, the attorney general, the County where the subscriber resides, and any other authority as provided by law.

F. 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 way it has been resolved, 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.

9. ANNUAL LICENSE FEE:

A. In consideration of the fact that the public highways, streets, roads, and alleys of the County will be used by video service providers and holdover cable operators (hereinafter "Licensee"); and that said highways, streets, roads and alleys are valuable public properties acquired and/or maintained by the County at great expense to its taxpayers, and in consideration of the costs incurred by the County in regulating and administering each License and the authority granted by the Licensing Statute, each Licensee shall pay to the County the following amounts: Licensee shall pay to the County on an annual basis as and for a license fee a sum representing three percent (3%) of Licensee's gross revenue as defined in A.R.S. § 11-1901(A)(9). 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. Amounts due will be delinquent if not paid within 30 days of the due date. Delinquent payments shall bear interest at the federal short-term rate, determined pursuant to 26 United States Code section 6621(b), plus three percentage points.

If at any time during the term of a License the Board of Supervisors determines that the fee should be adjusted to an amount not to exceed the legal limit for such fees, the Licensee shall commence paying the adjusted fee following sixty (60) days written notice from the County. In no event shall the fee exceed the maximum fixed by applicable law.

A video service provider shall have the right to offset the following fees and charges imposed by the County and paid by Licensee during the preceding billing period against the next license fee payment made: rental, application, construction, permit, inspection, inconvenience and other fees and charges paid to the County related to the video service provider's use or occupancy of the highways.

B. Every three years, Cochise County, on reasonable written notice, may audit the business books and records of a video service provider to the extent necessary to ensure payment of license fees pursuant to this section. Any audit of a period before issuance of a uniform video service license shall be conducted pursuant to the local laws in effect during that period.

10. DURATION OF LICENSE: The term of any License shall be the term requested by the applicant and stated in the License. The term of a License may be extended. To extend a License, the holder of the uniform video service license shall file with the Clerk of the Board of Supervisors, at least one month before the end of the term

of the License, a notice to extend the term for a specified period not to exceed ten years. Effective on the date the holder files the written notice with the Clerk, the term will automatically be extended for the specified period from and after the date of the end of the then- current term.

11. LIABILITY INSURANCE: Each Licensee shall be required to maintain for the duration of the License general comprehensive liability insurance including operations and completed operations coverage, against all damages charged to the County or the Licensee resulting from the installation, construction, development, maintenance, relocation or expansion of a Licensee's video service network and all associated equipment and facilities as follows:

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

The County shall be named in all such policies as an additional insured. A certificate of insurance for each policy shall be filed with the Highways Department and the Risk Management Department. A copy of the policy shall be provided upon request. Each certificate shall provide that if the policy it covers should be cancelled during the term of the policy, thirty (30) days advance written notice prior to the effective date of cancellation shall be given to the County Risk Management Department and the Highways Department.

12. INDEMNIFICATION: To the fullest extent permitted by law, Each Licensee (as "indemnitor") shall defend, indemnify and hold harmless Cochise County (as "indemnitee"), its officers, officials, employees, agents, volunteers, successors and assigns ("indemnified group") for claims, damages, losses, liabilities and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees, court costs, costs of appellate proceedings, and all claim adjusting and handling expense) relating to, arising out of, resulting from or alleged to have resulted from the indemnitor's acts, errors, mistakes or omissions (collectively "Claims") including but not limited to work, services, acts, errors, mistakes or omissions in the installation, construction, development, maintenance, relocation or expansion of Licensee's video service network

by anyone directly or indirectly employed by or contracting with the indemnitor, or any person whose acts and liabilities are the obligation of the indemnitor.

If any claim, action or proceeding is brought against the Indemnified group, indemnitor shall have a duty, at its sole cost and expense, to resist or defend such claim or action on behalf of the Indemnified group. However, the indemnitor shall have no obligation to indemnify the Indemnified Group for the Indemnified Group's passive negligence.

13. COMPLIANCE WITH REGULATION: The provisions of this Ordinance 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 Ordinance is subject to all FCC Rules and Regulations.

14. ADDITION TO SERVICE AREA: To add one or more new service areas to a uniform video service license, the holder shall file with the Clerk of the Cochise County Board of Supervisors an application for an amendment to the uniform video service license to add each new service area.

15. TRANSFER OF LICENSE: Except as otherwise provided in this section or otherwise required by federal law a uniform video service license is fully transferable. To transfer a License, the holder shall file with the Clerk of the Cochise County Board of Supervisors written notice of the transfer of the uniform video service license. On the filing of notice, the transferee shall become the holder.

16. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any License hereunder is for any reason illegal, invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and it shall not affect the validity of the remaining portions hereof.

17. CONFIDENTIALITY: Any information of a financial or personal nature which is identified as confidential information at the time it is provided Cochise County or the Board of Supervisors for the purposes of this Ordinance will be used only for the purposes prescribed by this Ordinance and will not be published or provided orally or in writing to any other person or entity, except the FCC. In addition, all critical infrastructure information shall be treated in accordance with A.R.S. §11- 1932.

18. RIGHTS RESERVED TO THE COUNTY: Without limitation upon the rights which the County may otherwise have, the County does hereby expressly reserve the right to amend any section or provision of this Ordinance for any reason determined to be desirable by the County including, but not limited to: new developments in the areas of technology of video service networks, and any changes in Federal, State or Local laws, rules or regulations.

Nothing in this Ordinance shall abrogate the right of the County to perform any public works or public improvements of any description; be construed as a waiver of any codes or ordinances of the County or of the County's right to require any person to secure the appropriate permits or authorizations; or be construed as a waiver or release of the rights of the County in and to the highways, public streets, roads, alleys, public ways or places, including but not limited to the right to abandon or extinguish.

PASSED AND ADOPTED by the Board of Supervisors for the County of Cochise, Arizona this _____ day of _____, 2020.

Thomas E. Borer, Chairman
Cochise County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Arlethe R. Morrison
Clerk of the Board

Christine J. Roberts
Civil Deputy County Attorney