

CHAPTER 14

TELECOMMUNICATIONS SERVICE (3602)

SECTION:

- 9-14-1: **DEFINITIONS**
- 9-14-2: **LICENSE REQUIRED**
- 9-14-2: **LICENSE PROPOSAL**

9-14-1: **DEFINITIONS:**

In this Chapter, unless the context otherwise requires: (3602)

“CABLE SERVICES” and **“CABLE SYSTEM”** shall have the same meaning as defined in Chapter 7, Title 9, Mesa City Code. (3602)

“CITY” means the City of Mesa, Maricopa County, Arizona. (3602)

“COMMERCIAL MOBILE RADIO SERVICE” means two-way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 United States Code Section 157. (3602)

“FACILITIES” means the plant, equipment, and property, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under highways and not owned by the City in the provision of telecommunications services. (3602)

“PUBLIC HIGHWAY” or **“HIGHWAY”** means all roads, streets, and alleys and all of the dedicated public rights-of-way and public utility easements of the City. (3602)

“TELECOMMUNICATIONS” means the transmission, between or among points specified by the user of information of the user’s choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services, or cable services. (3602)

“TELECOMMUNICATIONS CORPORATION” means any public service corporation to the extent that it provides telecommunications services in this State. (3602)

“TELECOMMUNICATIONS SERVICES” means the offering of telecommunications for a fee directly to the public, or to such users to be effectively available directly to the public, regardless of the facilities used. (3602)

9-14-2: **LICENSE REQUIRED:**

- (A) No telecommunications corporation shall install, maintain, construct, or operate telecommunications facilities in any public highway in the City, or provide telecommunications service by means of such facilities unless a license to provide telecommunications services has first been granted by the City under this Chapter. (3602)

- (B) Notwithstanding Subsection (A), any telecommunications corporation that was providing telecommunications service within the State of Arizona as of October 31, 1997 pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona Constitution, may continue to provide telecommunications services pursuant to that State grant, until the State grant is lawfully repealed, revoked, or amended, and need not obtain any further authorization from the City to provide telecommunications services; provided, however, that such entity must in all other respects comply with the requirements applicable to telecommunications corporations, as provided in Title 9, Chapter, 5, Article 7, Arizona Revised Statutes. (3602)
- (C) Nothing in this Chapter shall be deemed to affect the terms or conditions of any franchise, license, or permit issued by the City prior to October 31, 1997, or to release any party from its obligations thereunder. Those franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. The City Manager, with the consent of the City Council, may enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement. (3602)
- (D) A license to any telecommunications corporation to use the highways to install, maintain, construct, or operate telecommunications facilities, or to provide telecommunications services under this Chapter shall not authorize the use of the highways to provide any other service; nor shall the issuance of the same invalidate any franchise, license, or permit that authorizes the use of the highways for such other service; nor shall the fact that an entity holds a franchise, license, or permit to make any other use of the highway or to provide any other service authorize installation, maintenance, construction, or operation of telecommunications facilities in any highway in the City, or permit such entity to provide telecommunications services by means of such facilities without obtaining a license hereunder. (3602)
- (E) Any license granted shall not be exclusive. (3602)

9-14-3: LICENSE PROPOSAL:

- (A) A telecommunications corporation desiring a license to occupy the streets and other highways of the City to provide telecommunications service shall file a proposal with the Development Services Manager in the form prescribed by such Manager, and shall pay a fee determined by the Development Services Manager. The amount of the fee shall be reasonably related to the cost directly incurred by the City relating to the granting or administration of the license and can be appealed to the City Manager. (3602,3766)
- (B) Each application shall, at a minimum, (1) show where the facilities the applicant will use will be located, or contain such other information as the City may deem necessary in order to ensure that the applicant will comply with the requirements for use of the highways; (2) identify the applicant, its name, current address, and telephone number; (3) contain a description of the services to be provided; and (4) set out a description of any agreement with any other entity that would permit such entity to use the facilities. (3602)
- (C) Upon receiving an application for a license that satisfies the conditions of Section (B), the City shall promptly offer a telecommunications license to the applicant for its review, and may inquire into matters relevant to the issuance of the license. If the applicant agrees to the terms and conditions of the offered license, the applicant's request shall be approved. Notwithstanding the foregoing, the City need not issue or renew a license if the applicant has previously had a license or permit revoked, or for any other reason permitted under Arizona law. (3602)

- (D) As a condition of issuing or renewing a license to use the public highways to provide telecommunications services, the City may require that: (3602)
1. The applicant show that it has received a Certificate of Public Convenience and Necessity from the Arizona Corporation Commission; (3602)
 2. The applicant agrees to comply with the highway use requirements that the City may establish from time to time; (3602)
 3. The applicant agrees to provide and maintain accurate maps showing the location of all the facilities it will use in the highways within the City, and to comply with such other mapping requirements as the City may establish from time to time. (3602)
 4. The applicant obtains the insurance, and provides proof of insurance, as required by the City; posts the performance bonds and security fund required by the City; agrees to fully indemnify the City, its Mayor and Councilmembers, officers, agents, boards, and commissions, in a form satisfactory to the City; and agrees that it shall have no recourse against the City for monetary damages as a result of any damage that may result from the City's exercise of its rights under the license, or applicable provisions of law. (3602)
 5. The applicant agrees to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the City which may include: (3602)
 - (a) Provisions covering assignment; (3602)
 - (b) The right to inspect records to determine compliance by the licensee; (3602)
 - (c) Provisions for renewal; (3602)
 - (d) Fees and charges contemplated by A.R.S. §9-582(C) may be charged by the City as allowed by law. (3602)
- (E) Any license granted by the City pursuant to this Chapter shall commence upon adoption of the license and acceptance of the license by the provider. The license shall be for a term of five (5) years, and subject to the conditions and restrictions provided in the instrument and this Chapter. (3602)
- (F) Every licensee shall be subject to the City's exercise of such police, regulatory, and other powers as the City now has or may later obtain, and a license may not waive the application of the same, and must be exercised in strict conformity therewith. Every license shall be subject to revocation if the licensee fails to comply with the terms and conditions of the license or applicable law. Provided, however, that a license shall not be revoked unless the licensee is given written notice of the defect in performance and fails to cure the defect within sixty (60) days of the notice, except where the City finds that the defect in performance is due to intentional misconduct, or is a violation of criminal law, or is part of a pattern of violations where the licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked or not renewed if the licensee requests a hearing. (3602)
- (G) The issuance of a license by the City is not a representation or warranty that such license is a legally sufficient substitute for a franchise and is not a representation or warranty that a franchise is not required. (3602)

THIS PAGE INTENTIONALLY LEFT BLANK