

CITY COUNCIL REPORT



Meeting Date: January 13, 2015
 General Plan Element: *Public Services & Facilities*
 General Plan Goal: *Provide reliable power and communication services that match the character of Scottsdale*

ACTION

Adopt Resolution No. 10003 authorizing the Mayor to execute Contract #2015-017-COS, a Cable Television License renewal with Qwest Broadband Services, Inc., dba CenturyLink.

BACKGROUND

In June 1997, the City Council approved a cable television license (Ordinance No. 3046) for U S WEST Communications to provide cable television services to residents in DC Ranch. U S WEST obtained approval to expand the services to include all areas within the city's boundaries in September 1998 (Ordinance No. 3185). In December 2003, Ordinance No. 3529 was approved to combine the two original licenses into a new cable television license that expired on September 14, 2013.

During 2014, QBSI upgraded the cables and electronic equipment in their network to launch "Prism TV" – a cable television service that is designed to provide a better experience for the customers. The number of Scottsdale households subscribing to Prism TV has grown from 500 customers in December 2013, to more than 1,700 customers as of December 2014.

This cable television license renewal will go into effect on February 1, 2015 and will expire on December 31, 2024.

(NOTE: In 2000, U S WEST Communications merged with Qwest Communications, and in 2011, Qwest Communications merged with CenturyLink. Despite the most recent merger, the operating entity for the cable television license has remained Qwest Broadband Services, Inc. (QBSI) and it will remain so for this license renewal.)

ANALYSIS & ASSESSMENT

Policy Implications

Since 1998, QBSI has been providing cable television service to residents of Scottsdale as a competitor to Cox Communications. At its peak in June 2007, QBSI had approximately 5,000 customers in Scottsdale. In 2010, QBSI decided to severely scale back its cable television services to

customers in Arizona, resulting in a dramatic decline in the number of customers to less than 100 in July 2013. In the Fall of 2013, QBSI began offering their Prism TV cable services and they have reported steady growth each month for the past year.

RESOURCE IMPACTS

Staffing, Workload Impact

The cable license renewal will not have any impact on staff or workload as the contract administrator has been managing this license as part of his normal duties.

Future Budget Implications

The cable license revenues for QBSI are projected to increase as they continue to have more residents subscribe to their services; however, it is unclear if these new customers are existing customers of Cox, which would result in a net zero impact to total city cable revenues.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 10003 authorizing the Mayor to execute Contract #2015-017-COS, a Cable Television License renewal with Qwest Broadband Services, Inc., dba CenturyLink.

RESPONSIBLE DEPARTMENT(S)

Information Technology

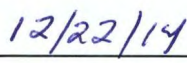
STAFF CONTACTS (S)

Kevin Sonoda, Cable Television License Administrator, ksonoda@scottsdaleaz.gov

APPROVED BY


Bradley Hartig, Chief Information Officer

480 312-7615, bhartig@scottsdaleaz.gov


Date

ATTACHMENTS

1. Resolution No. 10003
2. Contract #2015-017-COS

RESOLUTION NO. 10003

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING CABLE TELEVISION SERVICE RIGHT-OF-WAY LICENSE AGREEMENT NO. 2015-017-COS FOR QWEST BROADBAND SERVICES, INC. TO CONSTRUCT AND OPERATE A SYSTEM FOR SUCH PURPOSES IN THE RIGHT-OF-WAY

WHEREAS

A. City of Scottsdale, an Arizona municipal corporation ("City") has authority by virtue of federal and state statutes, the City's police power, and other City powers and authority to grant, renew, deny, amend and terminate licenses for the installation, operation and maintenance of private improvements within its public rights-of-way (the "Right-of-way") and to regulate use of the Right-of-Way.

B. Qwest Broadband Services, Inc., a Delaware corporation doing business in Arizona as CenuryLink ("Licensee") desires to construct and operate Cable Service over Qwest Corporation's telecommunications facilities (the "System") within the Right-of-way.

C. The System will provide valuable data transmission infrastructure for City and the public.

D. City desires to grant to the Licensee a license to install and operate the System in the Right-of-way pursuant to the terms set forth in License Agreement No. 2015-017-COS.

E. Without limitation, City is authorized to grant the License pursuant to Scottsdale Revised Code, Chapter 47, Article VI and Arizona Revised Statutes, Title 9, Chapter 5, Article 7.

F. The City Council has considered the city expenditure authorized by this Agreement and the direct consideration that City will receive and finds that there is a clearly identified public purpose and that City will receive direct consideration substantially equal to its expenditure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. License Authorized. The Mayor is hereby authorized and directed to execute License Agreement No. 2015-017-COS on behalf of the City.

PASSED, ADOPTED AND APPROVED by the Council of the City of Scottsdale this
_____ day of January, 2015.

CITY OF SCOTTSDALE, an
Arizona municipal corporation

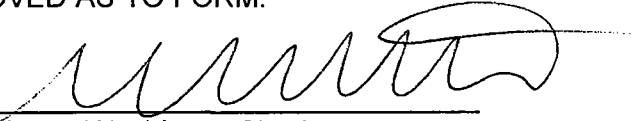
W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

By:



Bruce Washburn, City Attorney
By, Sherry R Scott

CABLE TELEVISION LICENSE AGREEMENT

THIS CABLE TELEVISION LICENSE AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20____, by and between the City of Scottsdale, an Arizona municipal corporation ("Licensor"), and Qwest Broadband Services, Inc., a Delaware corporation doing business in Arizona as CenturyLink ("Licensee").

RECITALS

A. Licensor owns public street and alley rights-of-way and public utility easements within the boundaries of the City of Scottsdale (the "Boundaries") that are dedicated and set apart for use by public utility companies for installation, operation and repair of water, electrical and other public utilities pursuant to franchises, licenses or other agreements between utility companies and Licensor (collectively, the "Right-of-way").

B. Various laws (the "Cable Laws") authorize Licensor to regulate its streets, alleys and public utility easements, and to grant, renew, deny, amend and terminate licenses for the installation, operation and maintenance of cable television systems and otherwise regulate cable television systems within the Boundaries. The Cable Laws include, without limitation, the following:

- (1) Chapter 7 of the Scottsdale Revised Code entitled "Cable Television" (the "Cable Code").
- (2) Other applicable provisions of the Scottsdale Revised Code.
- (3) The Scottsdale City Charter.
- (4) A.R.S. §§ 9-505 through 9-510 and other state and federal statutes.
- (5) The Constitution of the State of Arizona.
- (6) Other applicable federal, state and local laws, rules and regulations.
- (7) Licensor's police powers, its authority over its public rights-of-way, and its other governmental powers and authority.

C. Qwest Corporation, a Colorado corporation ("Qwest Corporation") owns and operates a telephone network (the "Telecommunications Facilities") in the Right-of-way to provide telephone service. Qwest Corporation does not deliver cable television signals over the Telecommunications Facilities.

D. The purpose of this Agreement is to allow Licensee to use the right-of-way to deliver cable television signals ("Cable Service") over Qwest Corporation's Telecommunications Facilities (the "Permitted Uses").

E. This Agreement allows Licensee to use the Right-of-way but does not allow Licensee to own, install, operate or maintain any physical cable television distribution equipment or other physical equipment of any kind of its own in the Right-of-way or to maintain or to operate Qwest Corporation's Telecommunications Facilities in the Right-of-way, or to otherwise use the Right-of-way. This Agreement grants to Licensee a limited right to deliver Cable Service over Qwest Corporation's Telecommunications Facilities that Qwest Corporation operates and maintains. The Permitted Uses do not include any use inconsistent with this paragraph.

F. By Ordinance No. 3046, date June 30, 1997 (the "Old Cable Television Ordinance"), Licensor granted to U.S. WEST Communications, Inc. ("Original Cable Provider") certain rights (the "Old Cable Rights") to deliver Cable Service in a limited portion of the Boundaries known as DC Ranch. By Ordinance No. 3185 dated September 14, 1998, the Old Cable Television Ordinance was updated to apply to the entire area within the Boundaries. By Ordinance No. 3529, dated December 8, 2003, the Old Cable Television Ordinance was updated with respect to Original Cable construction obligations under the Old Cable Television Ordinance. The Old Cable Television Ordinance includes all three ordinances. Licensee has succeeded to all of Original Cable Provider's rights under the Old Cable Television Ordinance.

G. This Agreement is subject to the Cable Laws.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and other good and valuable consideration, Licensor and Licensee agree as follows:

I. RIGHT-OF-WAY

1. Right-of-way. Licensor hereby grants to Licensee a license to deliver Cable Service over Qwest Corporation's Telecommunications Facilities in the Right-of-way. Licensee promises and guarantees, as a condition of exercising the privileges granted by this License, that any affiliate of Licensee directly involved in the offering of Cable Service in the Boundaries or directly involved in the management or operation of the cable System in the Boundaries will also comply with the obligations of this Agreement. The parties acknowledge, however, that Qwest Corporation, an affiliate of Licensee, will be responsible for the construction and installation of the Telecommunications Facilities in the Right-of-way that will be utilized by Licensee to provide Cable Service. So long as Qwest Corporation does not provide Cable Service to subscribers in the boundaries, Qwest Corporation will not be subject to the terms and conditions contained in this Agreement. Qwest Corporation's installation and maintenance of its Telecommunications Facilities in the Right-of-way is governed by applicable law.

II. TERM OF AGREEMENT

2. Term of Agreement. The term of this Agreement shall be as follows:

2.1 Original Agreement Superseded. This Agreement becomes effective and completely terminates and supersedes the Old Cable Television Ordinance as of 12:01 a.m. February 1, 2015 (except as to any unperformed liabilities arising before the termination of the Old Cable Television Ordinance).

2.2 Term. The original term of this Agreement shall terminate 11:59 p.m. December 31, 2024, unless sooner terminated as set forth in this Agreement.

2.3 Holding Over. In any circumstance whereby Licensee would continue to use the Right-of-way after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a use right from month to month that may be terminated at any time by Licensor upon sixty (60) days notice to Licensee, or by Licensee upon sixty (60) days notice to Licensor.

2.4 Agreement Accepted. By accepting this Agreement, Licensee acknowledges having carefully read the terms and conditions of the Cable Code and this Agreement and having accepted the obligations imposed thereby. Licensee further acknowledges and certifies that none of the obligations imposed on Licensee by this Agreement or the Cable Code is individually or cumulatively commercially impracticable.

III. LICENSEE'S PAYMENTS

3. Licensee's Payments. Licensee shall make payments to Licensor as follows:

3.1 Fee Payment Items. Licensee shall pay to City each of the following separate and cumulative amounts (collectively the "Fee Payment"):

3.1.1 An amount (the "License Fee Payment") comprising a certain percentage of certain Licensee gross revenues from Cable Service (the "Gross Revenue").

3.1.2 An amount (the "Violation Fee Payment") based on certain breaches by Licensee of this Agreement as set out below.

3.1.3 All other amounts required by this Agreement.

3.2 License Fee Payment. The License Fee Payment shall be calculated as a percentage of all revenues and other proceeds (collectively the "Gross Revenue") from Licensee's use of the Right-of-way as follows:

3.2.1 Applicable Percentage. The percentage used to calculate Percentage Use Fee shall be five percent (5.00%).

3.2.2 Gross Revenue Inclusions. Gross Revenue means gross revenue as defined in A.R.S. §9-505(6).

3.2.3 Bundled Service. If Licensee offers its customers a price discount if they obtain a bundle of Cable Service and other goods and services, then the following shall apply:

3.2.3.1 The discount shall be allocated equally among the Cable Service and other goods and services for purposes of computing Gross Revenue.

3.2.3.2 This Agreement does not authorize Licensee to offer or provide any service other than Cable Service. The bundles that this paragraph refers to are bundles that Licensee and Qwest Corporation might offer to their joint customers under a joint billing or marketing arrangement.

3.2.3.3 Licensee shall not bundle Cable Service with non-cable services in a manner that the amount of Gross Revenue attributed to Cable Service will unreasonably or significantly reduce the Use Fees payable under this Agreement.

3.3 Violation Fee Payment Amount. The amount of the Violation Fee Payment shall be the sum of various amounts (the "Violation Amounts") as hereafter described.

3.4 Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.

3.4.1 Fee Payment Schedule. All Fee Payment shall be payable quarterly in arrears on the date that is forty-five (45) days after the end of each last calendar quarter. For example, the License Fee Payment for the first calendar quarter of a year shall be payable on or before May 15.

3.5 Fee Payment Amount Report. Each installment of Fee Payment shall include a report showing the manner in which each component of Fee Payment was calculated. The report shall summarize the transactions giving rise to the License Fee Payment. When requested by Licensor from time to time, the reconciliation shall be accompanied by documentation substantiating Gross Revenue and other amounts.

3.6 Letter of Credit. Within thirty (30) days after the date of this Agreement, Licensee shall deliver to Licensor, a letter of credit from a financial institution approved by Licensor in the amount of Ten Thousand Dollars (\$10,000.00). The form and content of such letter of credit shall comply with all requirements of **Exhibit "A"** and the remainder of this Agreement and shall be approved by the city attorney. The letter of credit shall stand as a security deposit guaranteeing Licensee's faithful performance of this Agreement. Any portion of any security to which Licensee may then be entitled, net of any setoff or other obligation of Licensee, shall be paid to Licensee without interest by Licensor within sixty (60) days after the later of termination of this Agreement or completion of all of Licensee's obligations related to this Agreement.

3.7 Late Fees. Fee Payment is deemed paid only when Licensor actually receives good cash payment. Should any Fee Payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100). Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1 ½ %) per month from the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent fair and reasonable estimates by Licensor and Licensee of Licensor's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of Fee Payment.

Licensors shall have the right to allocate payments received from Licensee among Licensee's obligations.

3.8 Fee Payment Amounts Cumulative. All amounts payable by Licensee hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

IV. CUSTOMER AND COMMUNITY SERVICE REQUIREMENTS

4. Customer and Community Service Requirements. Licensee shall provide customer and community service as follows:

4.1 Customer Service Standards. Licensee shall provide customer service as follows:

4.1.1 Most Favored. Licensee shall provide customer service levels and standards of service to the customers it serves under this Agreement consistent with the highest levels and standards of service that Licensee provides to customers within the State of Arizona.

4.1.2 Rejection of Service. Licensee shall not arbitrarily refuse Cable Service to anyone within an area that this Agreement requires Licensee to serve. However, Licensee is not required to provide Cable Service to any Customer who does not pay applicable Cable Service charges.

4.1.3 Telephone Support. Licensee shall provide sales, billing, repair, installation, technical and other customer support by local telephone number (or toll free number) as follows:

4.1.3.1 Trained Licensee representatives will be available to respond to customer telephone inquiries during normal business hours.

4.1.3.2 After normal business hours, Licensee's customer service telephone line may be answered by a service or an automated response system, including an answering machine. A Licensee representative must respond to inquiries received after normal business hours on the next business day.

4.1.3.3 Under normal operating conditions, Licensor shall meet the following:

4.1.3.3.1 Ninety percent (90%) of all calls during any ninety (90) day period will be directed to an automated customer service call menu within an average of thirty (30) seconds.

4.1.3.3.2 Customers will receive a busy signal less than three (3%) percent of the time.

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

4.1.4 Local Business Office. The Licensee shall maintain a business office located within five (5) miles of the intersection of Scottsdale Road and Shea Boulevard for customers to make payments and/or address billing or service-related issues. The office shall be conveniently located and shall be open during normal business hours Monday through Friday, and shall include evening and weekend hours to meet customers' needs.

4.1.5 Field Services. Licensee shall provide installations, repairs and other field service as follows:

4.1.5.1 Under normal operating conditions, Licensee shall meet each of the following four (4) standards no less than ninety five (95%) percent of the time, measured during any ninety (90) day period:

4.1.5.1.1 Standard installations will be performed within seven (7) business days after an order has been placed, unless the customer requests a later installation.

4.1.5.1.2 Excluding conditions beyond Licensee's control, Licensee will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Licensee must begin actions to correct other service problems the next business day after notification of the service problem.

4.1.5.1.3 The "appointment window" for installations, service calls, and other installation activities will be either a specific time, or at maximum, a four (4)-hour time block during normal business hours. (Licensee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

4.1.5.1.4 Licensee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

4.1.6 Late Appointments. If a Licensee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, Licensee shall contact the customer. If necessary, Licensee shall reschedule the appointment at a time convenient for the customer.

4.1.7 Outages. Licensee shall respond to confirmed outages immediately. Licensee shall not exceed a four-hour average response time to outages during any consecutive three-months, under normal operating conditions.

4.1.8 Interruption. Licensee shall interrupt Cable Service only for good cause and for the shortest time possible. Interruptions, insofar as possible, shall occur during periods of minimum cable system use.

4.2 Billing. Licensee's billing activities shall comply with the following:

4.2.1 License shall provide the following written information to all customers at the time of installation of service, at least annually, and at any other time upon request:

4.2.1.1 Prices and options for programming services and conditions of subscription to programming and other services.

4.2.1.2 Installation, service and maintenance policies.

4.2.1.3 Billing and complaint procedures, including the address and telephone number of Licensor's cable office.

4.2.2 Licensee shall notify customers in advance of any changes in rates, programming services or channel positions. Licensee shall give notice to customers a minimum of thirty (30) days in advance of such changes if the changes are then known to Licensee or are within Licensee's control. In addition, Licensee shall notify customers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

4.2.3 Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Bills shall list a Licensor phone number and address provided by Licensor for customers to register customer service complaints with Licensor. Until Licensor provides another phone number, the phone number shall be (480) 312-2230, and the address is City of Scottsdale, Cable TV License Administrator, 7384 E 2nd St., Scottsdale, AZ 85251.

4.2.4 Licensee shall respond to a written complaint from a customer within thirty (30) days.

4.2.5 Licensee shall issue refund checks promptly, but no later than the earlier of:

4.2.5.1 The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier.

4.2.5.2 The return of the equipment supplied by Licensee if service is terminated.

4.2.6 Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

4.2.7 Any customer shall be entitled, upon request, oral or written, to Licensee to a refund equal to one day's service for each customer's loss of service caused by Licensee: (1) for a continuous twenty-four (24) hour period or (2) for a period of two (2) or more hours on each of any four (4) days within a monthly billing period.

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

4.2.9 Licensee shall afford each customer a right of rescission for ordering Cable Service. Such right of rescission shall end upon the earlier of three (3) days after the order or initiation of physical installation of Licensor's equipment on the customer's premises.

4.2.10 Licensee shall bill all customers in a uniform manner, regardless of the customer's level of service. In no case shall any customer be billed for services in excess of thirty (30) days prior to receipt of such service. Payment shall be due no sooner than the fifteenth (15th) day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the first day of the billing period.

4.2.11 It is not a violation of this Agreement for Licensee and Qwest Corporation jointly market their services, to issue joint billings or to coordinate or share customer billing and service processes.

4.3 Suspending Service. Licensee shall only disconnect or terminate a customer's service for good and just cause. In no event shall Licensee disconnect said Cable Service for nonpayment without first notifying the affected customer at least seven (7) days prior to such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than 30 days after a customer's failure to pay a bill due. Where Licensee has improperly discontinued Cable Service to any customer, Licensee shall provide free reconnection.

4.4 Complaints through Licensor. Licensee shall act upon complaints made through Licensor within three (3) days after Licensee is informed of the complaint.

4.5 Community Service. When requested by Licensor, Licensee shall provide Cable Service to Licensor's facilities at no charge ("Community Service") as follows:

4.5.1 Community Service includes at no charge a drop at any Licensor facility located within Four Thousand feet (4,000') of a remote terminal capable of providing Cable Service. The drop shall provide one outlet and expanded basic service tier (Channels 1-99) and all public safety programming at no monthly service charge.

4.5.2 Licensor may install at its own expense as many additional outlets as it deems appropriate beyond the one outlet provided at Licensee's expense at each location with no monthly service charge for such additional outlets. Licensee shall provide a reasonable signal level based on Licensor's design for additional outlets at each such location. If Licensee charges its residential customers a rental fee for additional set top converter boxes, then Licensor shall pay such fee for additional set top converter boxes necessary for additional outlets that Licensor requests.

4.5.3 Licensee shall provide Community Service to structures occupied by Licensor (whether owned or leased). However, if Licensor only has a single suite or area in a larger commercial building, such as shopping mall, then Lessee need only provide Community Services to the suite or area.

4.5.4 Licensor shall be responsible for the installation and maintenance of all interior distribution facilities for Community Service.

4.5.5 Licensor's cable television administrator or information systems department shall function as Licensee's point of contact with Licensor's departments requesting Community Service.

4.5.6 Licensee shall continue to provide and maintain a facility to Licensee's master headend from the Government Access Facility (City Cable 11) located at 7384 E. 2nd Street, Scottsdale, Arizona 85251.

4.6 Government and Education Channels. Licensee shall continue to provide to Licensor at no cost two channels in the Basic Programming Tier (channels 1-99) for use to transmit programming that is provided by Licensor or school districts selected by Licensor within the Boundaries.

4.7 Public Safety Channels. Licensee shall also provide at its expense the means for Licensor to transmit programming on two "virtual" Public Safety Channels in a secure manner, meaning that (a) either the programming is not transmitted to or available at locations other than those designated by Scottsdale, or (b) if the programming is available at other locations, neither the video nor audio portions can be received in usable or understandable form by an ordinary customer (for example, both the video and audio portions are encrypted). Licensor may use such channels for such purposes as secure broadcasts to municipal buildings and transmitting training videos or live training sessions to several fire, police or paramedic stations simultaneously. Licensee shall provide at all locations receiving Community Service, the facilities and equipment necessary to receive and unscramble the Public Safety Channel programming at the locations designated by Licensor at no cost to Licensor.

V. IMPROVEMENTS BY LICENSOR

5. Improvements by Licensor. Licensor has not promised to and is not obligated in any manner to make any improvements or perform any other construction or other work at the Right-of-way.

VI. LICENSEE'S IMPROVEMENTS GENERALLY

6. Licensee's Improvements Generally. Licensee's use of the Right-of-way shall only be through Qwest Corporation's Telecommunications Facilities. Licensee shall not own, install, repair, maintain operate or otherwise work on or control any physical improvements or equipment of any kind within the Right-of-way for Cable Service or otherwise.

VII. CABLE SYSTEM EXTENSION REQUIREMENTS

7. Cable System Extension Requirements. Licensee shall offer to provide Cable Service to all residential and business locations within the Boundaries in accordance with the following requirements (the "System Extension Requirements"):

7.1 Service Extension. Within six (6) months after an activated remote terminal capable of providing Cable Service is located no more than Four Thousand feet (4,000') away from a residential area, Licensee shall extend Cable Service at Licensee's expense and offer Cable Service to all residential and business locations within the area, without charging a cable extension

fee. Licensee is under no obligation to activate remote terminals capable of providing Cable Services. Licensee may not, however, deactivate a remote terminal without Licensor's permission.

7.2 Measuring Distances. The distance to extend service to a new location shall be measured along the Right-of-way from the nearest activated terminal capable of providing Cable Service to the nearest point on the parcel boundary.

7.3 Changes to Boundaries. The following shall apply upon any change in Boundaries:

7.3.1 This Agreement shall no longer apply to an area removed from the Boundaries.

7.3.2 This Agreement shall apply to an area added to the Boundaries. Within sixty (60) days after the change to Boundaries, Licensee shall comply with the System Extension Requirements for the added area.

7.3.3 Licensor and Licensee shall coordinate to develop a process for Licensee to receive notice of changes to the Boundaries within a reasonable time.

VIII. MAINTENANCE AND OPERATIONS

8. Maintenance and Operations. All maintenance, operations and other physical work to the Telecommunications Facilities in the Right-of-way shall be performed by Qwest Corporation and not Licensee. Neither Licensor nor Licensee has maintenance or repair obligations for the Right-of-way.

IX. BREACH BY LICENSEE

9. Breach by Licensee. Licensee shall comply with the terms and provisions of this Agreement. Licensee's failure to do so shall be a material breach by Licensee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Licensee of Licensee's material obligations under this Agreement:

9.1.1 If Licensee shall be in arrears in the payment of Fee Payment due and not paid and shall not cure such arrearage within ten (10) days after Licensor has notified Licensee of such arrearage.

9.1.2 If Licensee willfully fails to provide Cable Service as required by this Agreement over a substantial portion of the Boundaries for ninety-six (96) consecutive hours, unless Licensor authorizes a longer interruption of services.

9.1.3 If Licensee shall fail to maintain any insurance required by this Agreement, unless within thirty (30) days Licensee provides the insurance, including coverage that is retroactive to prevent any gap in coverage.

9.1.4 If Licensee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's property shall be made for the benefit of creditors or if Licensee dies or is not regularly paying its debts as they come due (collectively a "Licensee Insolvency").

9.1.5 If Licensee shall violate the provisions of the documents by which Licensor acquired its interests in the Right-of-way within any cure period that may be provided by such documents.

9.1.6 If the issuer of any letter of credit shall fail for any reason to timely and fully honor any request by Licensor for funds or other performance under the instrument and Licensee fails to cause the issuer to or some other person to honor the request within ten (10) days after Licensor notifies Licensee that such request has not been honored.

9.1.7 If Licensee shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Licensor has once given notice of any failure by Licensee to comply with any provision of this Agreement, the following shall constitute a repeated failure by Licensee to comply with such provision:

9.1.7.1 Another failure to comply with any provision of this Agreement during the following thirty (30) day period.

9.1.7.2 Three (3) or more failures to comply with any provision of this Agreement during any ninety (90) day period.

9.1.7.3 Six (6) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

9.1.8 If Licensee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after Licensor has notified Licensee in writing of such failure or neglect.

9.2 Licensor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Licensor may, at its option and from time to time, exercise at Licensee's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Licensor's option:

9.2.1 Terminate this Agreement. Termination of this Agreement due to Licensee's breach or for any other reason does not terminate Licensee's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Licensee's liability related to any breach of this Agreement. City shall not use such termination power without first conducting a hearing before its city manager or designee at which Licensee may appear and present evidence. The person conducting the hearing shall state in writing his or her determination of the validity of the proposed termination and shall summarize his or her findings on the controversy. Such findings may be appealed by Licensor or Licensee to a court for de novo review.

9.2.2 Cause a receiver to be appointed for the continuing performance of Licensee's obligations at the Right-of-way.

9.2.3 Pay or perform, for Licensee's account, in Licensee's name, and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee.

9.2.4 Abate at Licensee's expense any violation of this Agreement.

9.2.5 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Licensee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security pledged for Licensor's benefit pursuant to this Agreement and use the proceeds for any remedy permitted by this Agreement.

9.2.6 Be excused without any liability to Licensee therefor from further performance of any or all obligations under this Agreement.

9.2.7 Insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.8 Require an additional security deposit adequate in Licensor's sole discretion to protect Licensor and the Right-of-way in light of Licensee's history of performance under this Agreement.

9.2.9 Assert, exercise or otherwise pursue at Licensee's expense any and all other rights or remedies, legal or equitable, to which Licensor may be entitled, subject only to the limitation set out below on Licensor's ability to collect money damages in light of the Violation Fee Payment.

9.3 Violation Fee Payment. Licensee shall pay Violation Fee Payment to Licensor as follows:

9.3.1 Licensee's failure to comply with time and performance requirements in this Agreement specifies a Violation Fee Payment amount will result in money damage to Licensor for which it is and will be impracticable to determine the actual amount. Therefore, the parties have agreed that, in lieu of Licensee paying money damages to Licensor for Licensee's violation of this Agreement for which this Agreement specifies a Violation Fee Payment amount, Licensee shall pay Violation Fee Payment.

9.3.2 Violation Fee Payment is only intended to remedy direct money damage that Licensor suffers because of Licensee's breach. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this Agreement or limit in any way Licensee's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for such breach.

9.3.3 Except as expressly stated in this paragraph, no cure period applies to the accrual of Violation Fee Payment. For example, Violation Fee Payment for Licensee's failure to comply with the customer service standards shall begin to accrue on the first day that Licensee fails to remedy a violation of customer service standards after notice in writing from Licensor of the violation.

9.3.4 Licensee may elect to draw upon the letter of credit to collect the Violation Fee Payment.

9.3.5 The amount of the Violation Fee Payment per day or part thereof is as follows:

9.3.5.1 The amount of \$150.00 per day for each failure to comply with customer service standards required by this Agreement.

9.3.5.2 The amount of \$500.00 for each failure to comply with customer service standards required by this Agreement where the measure of performance is on an aggregate basis and cannot be reasonably categorized as a daily non-performance.

9.3.5.3 The amount of \$250.00 per day for each failure to make Licensee's books and records available as required by this Agreement.

9.3.5.4 The amount of \$2,750.00 per day for any unauthorized partial or total assignment of this Agreement.

9.3.5.5 The amount of \$150.00 per day for Licensee's failure to cure any other violation of the License, following such notice and opportunity to cure as may be allowed under this Agreement.

9.3.5.6 The amount of \$500.00 per instance of any other failure to comply with this Agreement.

9.3.6 Violation Fee Payments shall be assessed as follows:

9.3.6.1 If Licensor determines that Licensee is liable for Violation Fee Payment, then Licensor shall issue to Licensee a notice of Licensor's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.

9.3.6.2 Licensee shall have thirty (30) days after the notice to pay for the Violation Fee Payment or give Licensor notice contesting the assertion of noncompliance.

9.3.6.3 If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment. Otherwise, Licensor shall schedule a public hearing to investigate whether the Violation Fee Payment is properly assessed. Licensor shall provide Licensee at least ten (10) days prior written notice of such hearing, which shall specify the time, place and purpose of such hearing. At such hearing, Licensee shall be provided a full and fair opportunity to be heard and present evidence.

9.3.6.4 Licensee may appeal the outcome of the hearing to an appropriate court, which shall have the power to review Licensor's decision "de novo". Such appeal to the appropriate court must be taken within sixty (60) days after the issuance of Licensor's determination. Otherwise, the outcome of the hearing shall be final and conclusive as between Licensee and Licensor.

9.4 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensor to demand any performance required of Licensee under this Agreement, and no acceptance by Licensor of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Licensor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensor of Fee Payment payments or other performances hereunder shall be deemed a compromise or settlement of any right Licensor may have for additional, different or further payments or performances. Any waiver by Licensor of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Licensor from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Licensor or Licensee concerning payments or other performances due hereunder, or failure by Licensor to demand any performance hereunder, shall excuse Licensee from compliance with this Agreement nor estop Licensor (or otherwise impair Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against Licensor unless made in writing by a duly authorized representative of Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.5 Reimbursement of Licensor's Expenses. Licensee shall pay to Licensor within thirty (30) days after Licensor's demand any and all actual amounts expended or incurred by Licensor in performing Licensee's obligations together with interest thereon at the rate of twelve percent (12%) per annum from the date expended or incurred by Licensor.

9.6 Breach by Licensor. Notwithstanding anything in this Agreement to the contrary, in the event Licensor at any time is required to pay to Licensee any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Licensee to Licensor that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, Licensor shall not be in default so long as Licensor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after the notice.

9.7 Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, Licensor shall have the right to setoff and credit from time to time and at any time, any and all amounts due from Licensee to Licensor, whether pursuant to this Agreement or otherwise, against any sum which may be due from Licensor to Licensee pursuant to this Agreement or otherwise.

9.8 Enforcement. Either party shall have the right to pursue litigation or otherwise enforce its rights under this Agreement or other legal or equitable rights it might have.

X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.1 Surviving Obligations. Expiration of this Agreement (or Licensor's termination of this Agreement due to an Event of Default or any other reason) does not terminate Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

10.2 Delivery of Possession. Licensee shall cease using the Right-of-way for provision of Cable Services.

10.3 New Approvals and Agreements. Upon expiration or termination of this Agreement for any reason, Licensee shall no longer have the right to use the Right-of-way to provide Cable Service. Licensee shall have a one hundred eighty (180) day period thereafter to obtain from Licensor such licenses, permits or other approvals or agreements as Licensor may then be entitled to lawfully require for Licensee to continue using the Telecommunications Facilities in the Right-of-way for any other communication purpose Licensee may desire to provide. After such period, any right to use the Right-of-way shall be pursuant to such new approvals and agreements and not pursuant to this Agreement.

10.4 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Licensee shall provide to Licensor upon demand a confirmation of termination of this Agreement executed and acknowledged by Licensee and by all persons who claim that they have been received from or through Licensee any interest in or right to use the Right-of-way.

XI. INDEMNITY AND INSURANCE

11. Insurance Responsibility. During the entire term of this Agreement, Licensee shall insure its activities at and about the Right-of-way and shall provide insurance and indemnification as follows:

11.1 Insurance Required. Not later than the date of this Agreement, and at all times thereafter when Licensee is occupying or using the Right-of-way in any way, Licensee shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for each occurrence, a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for products and completed operations annual aggregate, and a limit of Ten Million and No/100 Dollars (\$10,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy will cover Licensee's

liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.

11.1.2 Broadcast Insurance. Broadcast/media communications liability coverage ("Broadcast Insurance") with a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for each claim and in the aggregate providing coverage for claims, expenses allegations, damages and other harm arising from use of the Telecommunications Facilities.

11.1.3 Automobile Liability. Automobile liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Licensee's use of the Right-of-way. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off-loading.

11.1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

11.1.5 Special Risk Property. Unless waived by Licensor in writing, all risk property insurance covering damage to or destruction of all real and personal improvements to the Right-of-way, including without limitation, all improvements existing upon the Right-of-way prior to this Agreement or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood). Coverage shall include pollutant clean up and removal with minimum limits coverage of Fifty-Thousand Dollars (\$50,000.00).

11.1.6 Other Insurance. Any other insurance Licensor may reasonably require for the protection of Licensor and Licensor's employees, officials, representatives, officers and agents (all of whom, including Licensor, are collectively "Additional Insureds"), the Right-of-way, surrounding property, Licensee, or the activities carried on or about the Right-of-way. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities could reasonably purchase.

11.2 Policy Limit Escalation. Licensor may elect by notice to Licensee to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Licensor reasonably determines to affect the prudent amount of insurance to be provided.

11.3 Form of All Insurance. All insurance provided by Licensee with respect to the Right-of-way, whether required by this Agreement or not, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted, except for Broadcast Insurance.

11.3.2 If Licensee uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.3.3 Policies must also cover and insure Licensee's activities relating to the business operations and activities conducted away from the Right-of-way.

11.3.4 Licensee must clearly show by providing copies of insurance certificates, formal endorsements or other documentation acceptable to Licensor that all insurance coverage required by this Agreement is provided.

11.3.5 Licensee's insurance shall be primary insurance with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.6 Except for Broadcast Insurance, all policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against Licensor, and the other Additional Insureds.

11.3.7 No deductibles, retentions, or "self-insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per year, per policy. Licensee shall be solely responsible for any self-insurance amount or deductible. At any time Licensee's net worth is more than One Hundred Million Dollars (\$100,000,000.00), Licensee may elect to self insure up to the amount of Ten Million and No/100 Dollars (\$10,000,000.00).

11.3.8 All policies except workers' compensation and Broadcast Insurance must name Licensor and the other Additional Insureds as additional insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.9 All policies must require the insurer to provide Licensor with at least thirty (30) days prior notice of any cancellation. The insurer's duty to notify Licensor of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

11.3.10 All policies shall require that notices be given to Licensor in the manner specified for notices to Licensor under this Agreement.

11.4 Insurance Certificates. Licensee shall evidence all insurance by furnishing to Licensor certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Licensor and the other Additional Insureds are additional insureds. Certificates must be in a form acceptable to Licensor. Licensee shall provide updated certificates at Licensor's request.

11.5 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Licensor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

11.6 No Representation of Coverage Adequacy. By requiring insurance herein, Licensor does not represent that coverage and limits will be adequate to protect Licensee. Licensor reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, Licensee's obligation to maintain the required insurance at all times.

11.7 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Licensee (and all other persons using, acting, working or claiming through or for Licensee or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally indemnify, defend and hold harmless Licensor and all other Additional Insureds for, from and against any and all claims or harm related to the Right-of-way or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Right-of-way or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Right-of-way or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Licensor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Licensee or Licensor may be liable. As a condition to Licensor's executing this Agreement, Licensee specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Licensee for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Licensor's or Licensee's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Licensor or Licensee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.7.1 Claims arising only from the sole gross negligence or intentionally wrongful acts of Licensor.

11.7.2 Claims that the law prohibits from being imposed upon the indemnitor.

11.8 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the Right-of-way or other property of Licensor, Licensee or third parties throughout the term hereof. Licensee shall be responsible for any and all damage to its property

and equipment related to this Agreement and shall hold harmless and indemnify Licensor and all other Additional Insureds, regardless of the cause of such damages.

11.9 Insurance to be Provided by Others. Licensee shall cause its contractors or other persons occupying, working on or about, or using the Right-of-way pursuant to this Agreement to be covered by their own or Licensee's insurance as required by this Agreement.

XII. CONDEMNATION

12. Condemnation. Licensor has not relinquished any right of condemnation or eminent domain.

XIII. DAMAGE TO RIGHT-OF-WAY

13. Damage to Right-of-way. Licensor and Licensee have no responsibility under this Agreement to repair any damage to the Telecommunications Facilities.

XIV. LICENSEE'S RECORDS

14. Licensee's Records. During the entire term of this Agreement, Licensee shall keep records and provide information to Licensor as follows:

14.1 Scope of Information. Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations under this article include and are limited to information about this Agreement and Licensor's and Licensee's rights and obligations hereunder (collectively, the "Covered Information"). Without limitation, Covered Information includes records required to be kept by Licensee pursuant to the rules and regulations of the FCC, and financial information underlying written reports. Covered Information does not include personally identifiable customer information without the customer's consent in violation of Section 631 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. Section 55.1.

14.2 Supplemental Reports. Licensee shall deliver to Licensor written reports (and, if requested by Licensor, a presentation to Licensor's governing council or designee) covering such Covered Information as Licensor may request from time to time. Without limitation, such reports shall include the following:

14.2.1 Licensee shall provide Licensor quarterly reports on the number of residential and business units passed to which it is capable of providing Cable Service and the number of subscribers.

14.2.2 Licensee shall participate in any annual performance review of Licensee's performance of the terms of this Agreement. Licensor may notice such reviews as public review hearings with the opportunity for public participation. Licensor shall give not less than thirty (30) days notice of such reviews.

14.2.3 Licensee shall provide Licensor with the reports, financial information, documents and information required by the Cable Code.

14.3 Records Inspection. At Licensee's expense, Licensee shall:

14.3.1 Permit and assist Licensor and its representatives at all reasonable times to inspect, audit, and copy Licensee's records of Covered Information.

14.3.2 Make the records of Covered Information (and reasonable accommodations for Licensor's audit and inspection) available to Licensor at Licensee's offices in Maricopa County, Arizona (or at another location requested by Licensor within the corporate limits of the City of Scottsdale).

14.3.3 Cause Licensee's employees and agents and accountants to give their full cooperation and assistance in connection with Licensor access to the Covered Information.

14.4 Standards for Records. Licensee shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with generally accepted accounting principles applied on a consistent basis. In the event Licensor does not receive Covered Information, Licensor shall have the right to estimate the information that is not provided, which estimate shall be binding upon Licensee.

14.5 Record Retention. Licensee shall preserve records of the Covered Information in a secure place at Licensee's corporate headquarters in the continental United States and available to Licensor on request for review within the City of Scottsdale, Maricopa County, Arizona for a period ending seven (7) years after the time period reported by the records.

14.6 Record Media Included. Licensor's and Licensee's rights and obligations regarding the Covered Information apply regardless of the type of media, materials, or data repositories that may contain the Covered Information. Licensor's rights to the Covered Information apply regardless of whether the Covered Information is stored on recordings, notes, ledgers, correspondence, reports, drawings, memoranda, or other repository of Covered Information.

14.7 Costs of Audit. If an audit, inspection or examination discloses underpayments (or other matters adjusted in favor of Licensor) of any nature that exceed five percent (5%) of any payments or single payment, Licensee shall pay to Licensor Licensor's actual cost (based on the amount paid by Licensor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the examination is performed by Licensor's employees) of the examination, together with late fees, interest, and other amounts payable in connection with such adjustments or payments. Any adjustments and/or payments due as a result of any such examination shall be made within a reasonable amount of time (not to exceed 30 days) after Licensor gives to Licensee notice of Licensor's findings. Any such audit shall take place within one thousand ninety-five (1,095) days following the close of each of Licensee's fiscal years.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Licensee shall perform its obligations under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Licensee shall comply with all and each of the following:

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15.1 Applicability of Municipal Law. Without limitation, Licensee shall comply with applicable provisions of municipal law as follows:

15.1.1 Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Licensee, the Right-of-way or Licensee's use of the Right-of-way.

15.1.2 All of Licensee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Licensee.

15.1.3 Licensor by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over the Right-of-way or any other property related to this Agreement or within the Right-of-way.

15.1.4 Licensor's rights and remedies hereunder for Licensee's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.2 Taxes, Liens and Assessments. In addition to all other amounts herein provided and to the extent consistent with applicable law, Licensee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Licensee's use of the Right-of-way, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, whether belonging to Licensor or Licensee. Licensee shall have the right to contest such amounts or impositions through all applicable proceedings and appeals. Licensee shall pay, indemnify, defend and hold harmless Licensor and the Right-of-way and all interests therein and improvements thereon from any and all such obligations, including any interest, penalties and other expenses which may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof.

15.3 Preemption. The parties acknowledge that the terms of this Agreement are affected by various existing Federal and state laws, which may vary during the term of this agreement, and that principles of preemption and other normal legal principles shall apply in determining the manner in which such future laws and regulations affect this Agreement.

15.4 Impairment of Contract Rights. This Agreement does not waive Licensor's or Licensee's right to assert any claim that future laws or regulations impair this Agreement.

XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Licensee (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

16.1 Assignments Affected. Every assignment of any of Licensee's interest in this Agreement or any of Licensee's rights or interests hereunder is prohibited unless Licensee first receives from Licensor notice of Licensor's consent to the assignment. All references in this Agreement to assignments by Licensee or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

16.1.1 Any voluntary or involuntary assignment, conveyance or transfer of the Right-of-way or any interest therein or any rights under this Agreement, in whole or in part.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting Licensee's rights to use the Right-of-way (collectively "Liens").

16.1.3 Any assignment by Licensee of any interest in this Agreement for the benefit of creditors, voluntary or involuntary.

16.1.4 A Licensee Insolvency.

16.1.5 The occurrence of any of the foregoing by operation of law or otherwise.

16.1.6 The occurrence of any of the foregoing with respect to any assignee or other successor to Licensee.

16.2 Pre-approved Assignments. Subject to certain conditions hereafter stated, Licensor hereby consents to certain assignments (the "Pre-approved Assignments"). Only the following assignments are Pre-approved Assignments:

16.2.1 Qwest Corporation Assignments. Licensee's complete assignment to Qwest Corporation or an entity owned by Qwest Corporation, or to an entity owned by an entity owned by Qwest Corporation.

16.2.2 Complete Assignment of Agreement. Licensee's complete assignment of all of Licensee's rights and Interests in this Agreement to a single assignee who assumes all of Licensee's obligations relating thereto. Such assignee must meet all of the following requirements, as determined by Licensor in Licensor's reasonable discretion (a "Qualified Operator):

16.2.2.1 The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Licensee's and adequate to successfully perform under this Agreement.

16.2.2.2 The assignee must be experienced in the management and operation of similar projects.

16.2.2.3 The assignee must assume all of Licensee's obligations relating to this Agreement.

16.2.2.4 The assignee has a net worth of not less than One Billion and No/100 Dollars (\$1,000,000,000.00).

16.2.3 Stock Transfers. The transfer of stock, regardless of quantity.

16.2.4 Merger. The merger or consolidation of Licensee with another entity that is a Qualified Operator.

16.3 Limitations on Assignments. Licensor's consent to any assignment, including without limitation, Pre-approved Assignments, is not effective until the following conditions are satisfied:

16.3.1 Except for the sale of stock, Licensee shall provide to Licensor the following:

16.3.1.1 Complete copies of documents accomplishing the assignment.

16.3.1.2 Each assignee must execute an assumption of this Agreement in form acceptable to Licensor.

16.3.2 Each Pre-approved Assignment must satisfy all other requirements of this Agreement pertaining to assignments.

16.4 Assignment Remedies. Any assignment without Licensor's consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement. Licensor may, in its sole discretion and in addition to all other remedies available to Licensor under this Agreement or otherwise, and in any combination, terminate this Agreement, collect Fee Payment from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive Licensor's consent.

16.5 Effect of Assignment. Consent by Licensor to an assignment shall not relieve Licensee from obtaining Licensor's consent to any further assignment. In recognition of the specific Permitted Uses, no assignment shall release Licensee from any liability hereunder up to the point of the assignment.

16.6 Unity of Assignment. Any assignment must cover Licensee's entire interest in this Agreement. All of Licensee's rights under this Agreement must at all times remain with the Licensee's interest under this Agreement so that Licensor is only dealing with a single Licensee as to this Agreement and the Right-of-way.

16.7 Enforceability after Assignment. No consent by Licensor shall be deemed to be a novation. Licensor's consent to any assignment does not in any way expand or modify this Agreement or waive, diminish or modify any of Licensor's rights or remedies under this Agreement. This Agreement shall be enforceable personally and in total against Licensee and each successor, partial or total, and regardless of the method of succession, to Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

16.8 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of this Agreement by Licensee is contemplated or bargained for. Without limitation, Licensor has the right to impose upon any consent to assignment such conditions and requirements as Licensor may deem appropriate.

16.9 Delayed Approval. Whether Licensor has timely responded to a request by Licensee for Licensor's consent to an assignment shall be determined based on 47 U.S.C. 537 and 47 C.F.R. 76.502(a); and the consequences of an untimely response by Licensor shall be as provided therein. Not more than forty-five (45) days nor less than thirty (30) days before any deadlines in such statute or regulation, Licensee shall give Licensor notice identifying the deadline and requesting that Licensor act.

16.10 Form of Assignment. Any assignment shall be by agreement in form and content acceptable to Licensor. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement.

16.11 Consent to Assignments. Licensee shall attach to each Pre-approved Assignment a copy of Licensee's notice to Licensor of the Pre-approved Assignment and other required documents, Licensee shall attach to each other assignment, a copy of Licensor's notice to Licensee of Licensor's consent to the assignment. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

16.12 Assignment Fee. Licensee shall pay to Licensor in advance the sum of Two Thousand Five Hundred Dollars (\$2,500) as a nonrefundable fee for legal, administrative and other expenses related to every Pre-approved Assignment (other than the sale of publicly traded stock) or to any request for a consent to assignment, whether or not Licensor grants such request.

XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

17.2 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.3 Survival of Liability. All obligations of Licensee and Licensor hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement for any reason.

17.4 Severability. If any provision of this Agreement shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, then:

17.4.1 The invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement.

17.4.2 This Agreement shall be automatically reformed to secure to the parties the benefits of the unenforceable provision, to the maximum extent consistent with law.

17.5 Conflicts of Interest. No officer, representative or employee of Licensor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

17.6 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.7 Nonliability of Officials and Employees. No official, representative or employee of Licensor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Licensor or for any amount which may become due to any party or successor, or with respect to any obligation of Licensor or otherwise under the terms of this Agreement or related to this Agreement.

17.8 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Licensor: City Manager
City of Scottsdale
3939 North Drinkwater Boulevard
Scottsdale, AZ 85251

Copy to: Cable Television Administrator
City of Scottsdale
Information Systems
7384 E. 2nd Street
Scottsdale, AZ 85251

Copy to: City Attorney
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

If to Licensee: Public Policy Department
Qwest Broadband Services, Inc., dba CenturyLink
1801 California Street, 10th Floor
Denver, CO 80202

Copy to: Public Policy Department
Qwest Broadband Services, Inc., dba CenturyLink
20 East Thomas Road
Phoenix, AZ 85012

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.9 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence, memoranda and representation regarding the Right-of-way.

17.10 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Licensee.

17.11 Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. In the event funds necessary to fulfill Licensor's obligations under this Agreement are not appropriated by the Scottsdale City Council, Licensor may terminate this Agreement, by notice to Licensee. Licensor shall use best efforts to give notice of such a termination to Licensee at least thirty (30) days prior to the end of Licensor's then current fiscal period. Termination in accordance with this provision shall not constitute a breach of this Agreement by Licensor. No person will be entitled to any compensation, damages or other remedy from Licensor if this Agreement is terminated pursuant to the terms of this subsection.

17.12 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.13 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Licensor shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.

17.14 Exhibits. All Exhibits specifically stated to be attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.15 Attorneys' Fees. In the event any action, suit or proceeding is brought by either party hereunder to enforce this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs (as determined by the court (and not a jury) in such proceeding).

17.16 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Licensor has not waived its claims procedures as respects this Agreement. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County Superior Court or a Federal district court sitting in Maricopa County. City and Lessee consent to personal jurisdiction in such court.

17.17 Approvals and Inspections. All approvals, reviews and inspections by Licensor under this Agreement or otherwise are for Licensor's sole benefit and not for the benefit of Licensee, its contractors, engineers or other consultants or agents, or any other person.

17.18 Statutory Cancellation Right. In addition to its other rights hereunder, Licensor shall have the rights specified in A.R.S. § 38-511.

EXECUTED as of the date first given above.

LICENSEE: **QWEST BROADBAND SERVICES, INC.,**
a Delaware corporation doing
business in Arizona as CenturyLink

By: _____
Its: _____

LICENSOR: **CITY OF SCOTTSDALE,** an Arizona
municipal corporation


W. J. "Jim" Lane, Mayor

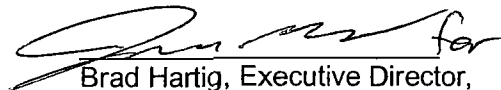
ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY


ERIC C. ANDERSON
for Bruce Washburn, City Attorney


Brad Hartig, Executive Director,
CIO Information Technology

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By:

Its: 
EVR

LICENSOR: **CITY OF SCOTTSDALE,** an Arizona
municipal corporation

W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

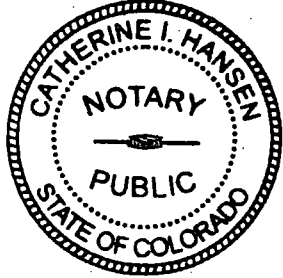
Bruce Washburn, City Attorney

Brad Hartig, Executive Director,
CIO Information Technology

11352895v13

STATE OF Colorado)
) ss.
County of Denver)

The foregoing instrument was acknowledged before me this 16th day of December, 2014, by B. Steven Davis, EVP of Qwest Broadband Services, Inc., a Colorado corporation doing business in Arizona as CenturyLink.



Catherine Hansen
Notary Public

My Commission Expires:
7/26/2015

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by W. J. "Jim" Lane, mayor of the City of Scottsdale an Arizona municipal corporation.

Notary Public

My Commission Expires:

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	3.8	Standards for letter of credit.

[Note: This page is not part of the agreement.]

Standards for Letters of Credit

Each letter of credit (the "Letter of Credit") issued pursuant to this Agreement shall meet and be governed by the following standards and requirements:

1. General Requirements. The Letter of Credit must:
 - 1.1 Be clean, unconditional, and irrevocable.
 - 1.2 Be payable to Licensor upon demand.
 - 1.3 Be subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 190.
 - 1.4 Be conditioned for payment solely upon presentation of the Letter of Credit and a sight draft.
 - 1.5 Be transferable multiple times by Licensor and its successors without the consent of Licensee or the issuer.
 - 1.6 Meet all other requirements imposed by this Agreement.
2. Letter of Credit Fees. Licensee shall pay upon Licensor's demand, as additional Fee Payment, any and all costs or fees charged in connection with the Letter of Credit, including without limitation, those that may arise due to:
 - 2.1 Licensor's sale or transfer of all or a portion of the Right-of-way.
 - 2.2 The addition, deletion, or modification of any beneficiaries under the Letter of Credit.
3. Issuing Bank. The issuer of the Letter of Credit shall meet all of the following requirements:
 - 3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona.
 - 3.2 The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to Licensor.
 - 3.3 The issuer shall have banking offices at which the Letter of Credit may be drawn upon in Maricopa County, Arizona.
 - 3.4 The issuer shall have a net worth of not less than \$1 billion.
4. Expiration of Letter of Credit. The term of the Letter of Credit must satisfy the following:
 - 4.1 The Letter of Credit shall have an original term expiring not sooner than the date twelve (12) months after the date it is delivered to Licensor.
 - 4.2 The Letter of Credit shall provide that it shall be automatically renewed for successive 12-month periods unless written notice of nonrenewal has been given by the issuing bank to Licensor not less than 60 days, nor more than ninety (90) days, prior to the expiration of the current period.

4.3 If the issuing bank does not renew the Letter of Credit, and if Licensee does not deliver a substitute Letter of Credit at least 30 days prior to the expiration of the current Letter of Credit, then, in addition to its other rights under this Agreement, Licensee shall be in default under this Agreement and Licensor shall have the right to draw on the existing Letter of Credit.

5. Draws. Licensor may draw upon the Letter of Credit as follows:

5.1 Licensor may use the proceeds of the Letter of Credit to remedy any breach by Licensee under this Agreement and to secure Licensee's performance under this Agreement.

5.2 Licensor may use, apply, or retain the proceeds of the Letter of Credit to the same extent that Licensor may use, apply, or retain any other Licensee funds or property to which Licensor may have access.

5.3 Licensor may draw on the Letter of Credit, in whole or in part, from time to time, at Licensor's election.

5.4 Within ten (10) days after Licensor gives Licensee notice that Licensor has drawn down the Letter of Credit, Licensee shall restore all amounts drawn by Licensor, or substitute cash security instead.

5.5 In the event the required amount of the Letter of Credit increases from time to time, Licensee shall, from time to time, on or before the date of the increase, deliver to Licensor an additional letter of credit in the amount of such increase, or cause the existing Letter of Credit held by Licensor to be amended to increase its amount.

5.6 Licensor may draw upon the Letter of Credit as otherwise permitted by this Agreement.

6. Cooperation by Licensee. Licensee shall promptly execute and deliver to Licensor any and all modifications, amendments, and replacements of the Letter of Credit, as Licensor may reasonably request.

7. Replenishing Letter of Credit. Whenever Licensor draws on the letter of credit, Licensee shall cause the institution that issued the letter of credit, to give notice to Licensor within ten (10) days that the letter of credit has been replenished to its full original amount.

8. Other Provisions. Licensor shall also have such additional rights with respect to the Letter of Credit as are provided elsewhere in this Agreement.