

## **TITLE 24 - UTILITIES AND COMMUNICATION**

### **CHAPTER 2 - CABLE COMMUNICATIONS**

*Legislative History: Ordinance No. 04-84, the "Cable Communications Ordinance," was enacted by the Papago Council on May 10, 1984 and approved by the Papago Agency Acting Superintendent on May 31, 1984.*

ORDINANCE OF THE PAPAGO TRIBAL COUNCIL

Cable Communications

Ord. No. 04-84

1 WHEREAS, The Papago Council has received and reviewed an ordinance to regulate  
2 the cable communications business when located on the Papago reserva-  
3 tion; and

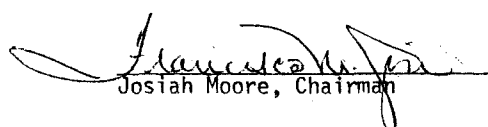
4 WHEREAS, It has considered the reasons for enacting a regulatory ordinance for  
5 the cable business; and

6 WHEREAS, The Papago Council believed it would be in the best interest of the  
7 Tribe and consumers of cable services to enact an ordinance which will  
8 protect their rights;

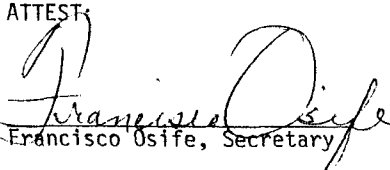
9 NOW, THEREFORE, BE IT RESOLVED by the Papago Council that it hereby adopts the  
10 Cable Communications Ordinance as presented to govern and regulate  
11 the Cable Communications business on the Papago reservation by estab-  
12 lishing certain standards, regulations and conditions for the con-  
13 struction, operation, maintenance and licensing of such systems.

14 The foregoing Ordinance was duly enacted by the Papago Council on the 10th  
15 day of May, 1984, at a meeting at which a quorum was present with a vote  
16 of 977.5 for; -0- against; 462.5 not voting; and 2 absent,  
17 pursuant to the authority vested in the Papago Council by Section 2(h), 3(b)(c)(e)  
18 (h) of Article V of the Constitution and by-laws of the Papago Tribe of Arizona  
19 as amended, ratified by the Papago Tribe on December 12, 1936, and approved  
20 by the Secretary of the Interior on January 6, 1937, pursuant to Section 16  
21 of the Act of June 18, 1934 (48 Stat. 984). Said Resolution is effective as  
22 of the date of its approval by the Superintendent of the Papago Agency and is  
23 subject to review by the Secretary of the Interior.

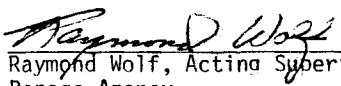
THE PAPAGO COUNCIL

  
Josiah Moore, Chairman

ATTEST:

  
Francisco Osife, Secretary

ORDINANCE APPROVED this 31<sup>st</sup> day of May 1984.

  
Raymond Wolf, Acting Superintendent  
Papago Agency



ORDINANCE OF THE PAPAGO COUNCIL  
CABLE COMMUNICATIONS ORDINANCE

ORD. NO. 24-80

STATEMENT OF PURPOSE: An Ordinance providing for the regulation of cable communications systems on the Papago Reservation through the establishment of certain standards, regulations and conditions for the construction, operation, maintenance and licensing of such systems.

BE IT ENACTED by the Council of the Papago Tribe of the Papago Reservation, as follows:

Section 1. TITLE

This Ordinance may be cited as the Cable Communications Ordinance of the Papago Tribe.

Section 2. INTERPRETATION

This Ordinance shall be deemed an exercise of the police power of the Papago Tribe for the protection of the public welfare, health, peace and morals of the people of the Papago Reservation. All provisions of this Ordinance shall be liberally construed for the accomplishment of this purpose. If any provisions of this Ordinance, or the applicability thereof, be held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provisions, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. PURPOSE

The purpose of this Ordinance is:

- (1) To regulate the installation, construction, operation and maintenance of a cable communications system upon, along, across, above, over or under or in any manner connected with the streets, public ways, or public places within the jurisdiction of the Papago Tribe as now or in the future may exist; and

- 1 (2) To provide for the payment of certain fees and other  
2 considerations to the Papago Tribe to regulate the  
3 construction and operation, development and use of a  
4 cable communications system within the Papago  
5 Reservation; and  
6 (3) To provide conditions under which a Licensee will  
7 serve present and future needs of government, public  
8 instructions, commercial enterprises, lawful public  
9 and private organizations and the citizens and general  
10 public of the Papago Reservation.  
11 (4) To provide remedies and prescribe penalties for any  
12 violation of this Ordinance.

13 Section 4. DEFINITIONS

14 Unless the context otherwise provides, or where different  
15 meanings are given in subsequent sections of this Ordinance,  
16 the following terms have the meanings given herein. Words not  
17 defined shall be given their common and ordinary meaning.

- 18 (1) APPLICANT means a person, as defined in this Section,  
19 who submits a written request to the Papago Tribe or  
20 a District Council for permission to provide cable  
21 communications services to an area within the bound-  
22 aries of the Papago Reservation.  
23 (2) BASIC SERVICE means all subscriber services provided  
24 by a Licensee, including the delivery of broadcast  
25 signals, community service channels and local origi-  
26 nation channels covered by the regular monthly charge  
27 paid by all subscribers for a particular service, or  
28 as specifically provided in the License Agreement.  
29 (3) CHANNEL means a Megahertz (MHz) frequency band capable  
30 of carrying standard color video signals.  
31 (4) COMMUNITY SERVICE CHANNEL means a channel assigned  
32 for programming produced or provided by persons,

1 organizations or institutions within the Papago  
2 Reservation for government, educational or public  
3 access purposes and approved by the Papago Tribe  
4 pursuant to this Ordinance.

5 (5) CONVERTER means an electronic device which converts  
6 signals to a frequency not susceptible to interference  
7 within the television or radio receiver of a sub-  
8 scriber, and with an appropriate channel selector  
9 which permits reception of signals transmitted by  
10 Licensee.

11 (6) FCC means the Federal Communications Commission or  
12 any legally designated successor.

13 (7) GROSS REVENUES means all cash, credits, property of  
14 any kind or nature, or other consideration received  
15 directly or indirectly by the Licensee, its affiliates  
16 subsidiaries, parent and any person in which Licensee  
17 has a financial interest, arising from or attributable  
18 to the sale or exchange of cable communications ser-  
19 vices by Licensee within the Papago Reservation or in  
20 any way derived from the operation of its system,  
21 including, but not limited to, basic subscriber  
22 service monthly fees, optional service monthly fees,  
23 installation and reconnection fees, leased channel  
24 fees, converter rentals or sales, studio rental,  
25 production equipment and personnel fees, advertising  
26 revenues and the sale, exchange or cablecast of any  
27 programming developed on or for community service  
28 channels or institutional users. This sum shall be  
29 the basis for computing the fee imposed pursuant to  
30 Section 19 (Licensee Fee). This sum shall not include  
31 any taxes on services furnished by Licensee imposed  
32 upon any subscriber or used by the Papago Tribe or

- 1 other governmental unit and collected by Licensee  
2 on behalf of said governmental unit.
- 3 (8) LICENSE means the right and authority granted by this  
4 Ordinance to Licensee to construct, maintain and  
5 operate a cable communications system through use of  
6 the public streets, other public rights-of-way or the  
7 public places of the Papago Reservation.
- 8 (9) LICENSEE means a person who, in accordance with the  
9 provisions of this Ordinance executes a License Agree-  
10 ment with the Papago Tribe for the nonexclusive privi-  
11 lege to erect, construct, operate, maintain or dis-  
12 mantle a cable communications system on the Papago  
13 Reservation.
- 14 (10) PAPAGO COUNCIL means the governing body of the Papago  
15 Tribe of Arizona existing and functioning pursuant to  
16 the Constitution of the Papago Tribe, as amended.
- 17 (11) PAPAGO RESERVATION means all property and territory  
18 established, existing and geographically defined under  
19 the laws of the United States, including allotted  
20 lands, patented lands, townsites, roads, waters,  
21 bridges and rights-of-way owned, used or claimed by  
22 any person.
- 23 (12) PERSON means an individual, and where appropriate,  
24 a public or private corporation, association, partner-  
25 ship or a government or governmental authority.
- 26 (13) STREET means the surface, the air space above the  
27 surface and the area below the surface of any public  
28 street, communications or utility easements or other  
29 public rights-of-way or public place.
- 30 (14) SUBSCRIBER means a person who lawfully receives any  
31 signal or service provided or distributed by a cable  
32 communications system Licensee.

1 (15) SYSTEM means the signal reception, processing and  
2 distribution system used by a Licensee in the con-  
3 struction, operation and maintenance of the cable  
4 communication service.

5 Section 5. LICENSE REQUIRED

6 (1) No person shall construct, install, maintain or  
7 operate a cable communications system within, along  
8 or under any street within any District of the Papago  
9 Reservation unless a license has first been granted  
10 pursuant to this Ordinance and unless a License Agree-  
11 ment is in full force and effect.

12 No application for a license shall be considered unless  
13 the applicant has first obtained the written consent  
14 to operate the system from the District Council(s)  
15 whose jurisdiction extends to the applicant's proposed  
16 service area.

17 (2) Any license granted pursuant to this Ordinance by the  
18 Papago Tribe shall not be exclusive and the Papago  
19 Tribe reserves the right to grant other licenses to  
20 any persons at any time and in any area of the Papago  
21 Reservation if the Papago Council determines that the  
22 granting of additional licenses is in the public in-  
23 terest.

24 (3) All provisions of this Ordinance and any license agree-  
25 ment shall be binding upon Licensee, its successors,  
26 lessees or assignees.

27 Section 6. LICENSE AGREEMENT

28 Each applicant shall, together with his application for a  
29 license, submit a proposed License Agreement which shall set  
30 forth the terms and conditions of the license. The agreement  
31 shall be subject to all provisions of this Ordinance and shall  
32 incorporate all terms and provisions included in Licensee's

1 proposal including, but not limited, to the following:

- 2 (a) An application fee in the amount of \$50.00 which shall  
3 be in the form of cash, certified or cashier's check,  
4 or money order, payable to the Papago Tribe, to pay  
5 the cost of processing the application.
- 6 (b) The name, address and telephone of the applicant. If  
7 the applicant is a partnership, the main address of  
8 each partner. If the applicant is a corporation, the  
9 names and addresses of its directors, main officers  
10 and the names and addresses of parent and subsidiary  
11 or affiliate corporations, if any.
- 12 (c) A list of stockholders holding three percent or more  
13 of the voting stock of Licensee or its parent, sub-  
14 sidiary or affiliate corporations, if any.
- 15 (d) A statement and description of the cable communications  
16 system to be constructed, installed, maintained and  
17 operated by the applicant; a description of the  
18 service area; and the extent in which existing or  
19 future poles or other facilities or existing utilities  
20 will be used for such system.
- 21 (e) A statement setting forth all agreements, whether  
22 written, oral or implied, existing between the appli-  
23 cant and any person other than those listed in the  
24 application, who propose to have ownership interest  
25 with respect to the proposed license or to the proposed  
26 cable communications operation.
- 27 If a license is granted to a person posing as a front  
28 or as a representative of another person and such in-  
29 formation is not disclosed in the original application  
30 such license shall be deemed voidable at the Tribe's  
31 option.
- 32 (f) A statement of schedule setting forth the number of



1 channels, including community service channels,  
2 and all other communications services received,  
3 distributed, relayed or otherwise conveyed over the  
4 cable system.

5 (g) Statement of costs of construction by component  
6 categories, projected income statement, balance  
7 sheet and statement of sources and applications of  
8 funds.

9 (h) Financial documents and statements showing the  
10 applicant's financial state and credibility, including  
11 income tax returns for the previous three (3) years  
12 and a current balance sheet.

13 (i) A proposed schedule showing all its rates and charges  
14 for services to be rendered to subscribers. The  
15 Papago Council shall approve or disapprove the rate  
16 schedule taking into consideration information re-  
17 garding Licensee's capital investment, expenses of  
18 operation, income, equipment, amortization schedule  
19 and all other information necessary for a determination  
20 of fair and just rates for services to be rendered.  
21 The Council shall allow and provide for a fair and  
22 reasonable return on investments to the Licensee. No  
23 charge shall be made except in accordance with the  
24 schedule submitted and approved by the Papago Council.

25 Section 7. GRANT OF AUTHORITY

26 (1) Length of License: Any license granted by the Papago  
27 Tribe pursuant to this Ordinance shall be effective  
28 upon execution of the License Agreement by Licensee  
29 and the Papago Tribe and shall be for a period of  
30 fifteen (15) years subject to the conditions and res-  
31 trictions of this Ordinance. No privilege or exemp-  
32 tion shall be inferred from the granting of any

1 license unless it is specifically provided for.

2 (2) Renewal and Termination:

3 (a) A License Agreement may be renewed after

4 a determination is made whether Licensee has  
5 performed its obligations under this Ordinance  
6 and the License Agreement. All relevant factors  
7 including, but not limited, to cost of services,  
8 programming, compliance with License obligations  
9 prescribed by this Ordinance, cooperation and  
10 encouragement of community service usage, industry  
11 performance and public comments from subscribers,  
12 residents or representatives from organizations.

13 (b) After a review of all relevant considerations the  
14 Papago Council shall take such actions as it deems  
15 appropriate which may include any of the following:

16 (i) Renew the License Agreement upon such con-  
17 ditions and terms and for such additional  
18 terms of less but not more than five (5)  
19 years; or

20 (ii) Exercise the Papago Tribe's option to pur-  
21 chase the system as provided herein; or

22 (iii) Authorize the Licensee to transfer the  
23 system pursuant to Section 20 of this  
24 Ordinance;

25 (iv) Deny the renewal and exercise any appro-  
26 priate options;

27 (c) Without regard to type and quality of performance  
28 by Licensee, the Papago Tribe is under no obli-  
29 gation to renew a license agreement.

30 (3) No Property Rights: The granting of any license pur-  
31 suant to this Ordinance shall be a privilege and  
32 shall not grant to a Licensee any right of property

1 in any tribal or District property.

- 2 (4) Police and Regulatory Powers: Licensee shall, at all  
3 times during the term of the License Agreement, be  
4 subject to all lawful exercise of the police power of  
5 the Papago Tribe, including any and all ordinances,  
6 rules, regulations which the Tribe has adopted or may  
7 adopt and which are applicable to the Licensee.

8 Section 8. NATURE OF GRANT

- 9 (1) The License granted by this Ordinance constitutes  
10 authority to use the public streets, places, or  
11 rights-of-way on the Papago Reservation to engage  
12 in the business of operating a cable communications  
13 system, within the service area described in the  
14 License Agreement, subject to all conditions and  
15 provisions of this Ordinance.  
16 (2) The License granted by this Ordinance is a privilege  
17 personal to the original Licensee. It cannot in any  
18 event be sold, transferred, leased, assigned, or dis-  
19 posed of, as a whole or in part, or otherwise, without  
20 the prior consent of the Papago Council, and then only  
21 under such conditions as the Papago Council deems  
22 appropriate.

23 Section 9. GEOGRAPHIC AREA COVERED

- 24 (1) The Papago Council may issue a nonexclusive license  
25 for the service area described by the Licensee and may  
26 further delineate portions of the Papago Reservation  
27 to be covered. Licensee shall not be required to  
28 provide service to an area unless at least fifty (50)  
29 subscribers per mile request service. In no event can  
30 Licensee extend into an area outside service area ori-  
31 ginally proposed without prior approval of the Papago  
32 Council and the District Council in whose jurisdiction

1 the area lies. Thereafter, the extended area shall  
2 be subject to all the terms of this Ordinance and  
3 the License Agreement.

4 (2) Cable communications services shall be made available  
5 to all individual, residential or multiple housing  
6 units, institutions, businesses or all other structures  
7 within the designated license area existing on effect-  
8 ive date of the License Agreement.

9 (3) Any potential subscriber within 150 feet of a main  
10 distribution cable shall be connected at no additional  
11 extension cost. Licensee shall, at the request of  
12 any potential subscriber residing beyond the 150 foot  
13 limit, extend service to such subscriber provided  
14 additional or special installation fees are paid. The  
15 fees shall be in accordance with the rate schedule in  
16 the License Agreement.

17 (4) The owner or developer of any new developments or  
18 subdivisions to be served by underground power and  
19 telephone utilities, shall give reasonable notice to  
20 the Licensee of all such substructures in order that  
21 Licensee may install all necessary cable communications  
22 facilities. The cost or expense of such undergrounding  
23 shall not be the responsibility of the Papago Tribe.

24 (5) A landlord or owner of multiple housing units shall  
25 not interfere with the right of any tenant or lawful  
26 resident to request or receive cable communication  
27 services from Licensee by any act which penalizes,  
28 charges or threatens to forfeit any right of such  
29 tenant or resident or discriminates in any manner  
30 against such tenant or resident who requests or  
31 receives cable communication services.

32 (6) The Licensee shall not be required to give any payment

1 service or gratuity in any form as a condition for  
2 permitting the installation of a cable communications  
3 system to a dwelling occupied by a tenant or resident  
4 requesting service.

5 Section 10. SYSTEM DESIGN AND CAPABILITY REQUIREMENTS

6 (1) The Licensee shall provide the broadest range of  
7 services possible limited only by the state of  
8 technology and by reasonable economic analysis of  
9 the cost implications to both Licensee and the  
10 Subscribers. All facilities, equipment and services  
11 shall be upgraded in accordance with the state of  
12 production technology over the time. Applicants are  
13 encouraged to propose the broadest range of services,  
14 facilities, equipment, technical assistance and other  
15 considerations as is technologically and economically  
16 feasible.

17 (2) In this regard the requirements set forth in this  
18 section are intended only as minimum specifications  
19 for cable communications systems:

20 (a) Channel Capacity: Licensee shall operate a cable  
21 system having the channel capacity required by  
22 the Federal Communications Commission, FCC, but  
23 shall provide at a minimum a twelve (12) channel  
24 capacity. Capacity shall be increased as supply  
25 and demand for additional channel utilization  
26 exceeds the minimum.

27 (b) Interconnection Compatibility: Licensee shall  
28 interconnect with any or all other cable systems  
29 operating within the Papago Reservation upon the  
30 directive of the Papago Council. Licensee shall  
31 design and operate the system to facilitate inter-  
32 connection as required in this subsection and to

1 be compatible with any and all other systems  
2 adjacent to or operating in other areas of the  
3 Reservation. Upon receiving the directive by the  
4 Papago Council to interconnect, Licensee shall  
5 immediately initiate negotiations with the other  
6 affected system(s) in order that costs may be  
7 shared equally by the systems for both the con-  
8 struction and operation of the interconnecting  
9 link.

10 (c) Emergency Override: Licensee shall provide an  
11 Emergency Alert capability which shall permit the  
12 Chairman or an authorized designate to override  
13 the regular programming on all channels and FM  
14 signals simultaneously, in the case of public  
15 emergencies. Licensee shall also designate a  
16 video channel to be used for emergency broadcasts.

17 (d) Standby Power: Licensee shall maintain in constant  
18 readiness equipment capable of providing standby  
19 power for the cable system for a minimum of four  
20 (4) hours.

21 (e) Radio: Licensee may designate in the License  
22 Agreement a range of individually processed FM  
23 radio signals. Such signals may include all local  
24 commercial and educational FM radio signals avail-  
25 able in or near the service area. The Licensee  
26 may include AM signals in addition to the FM  
27 signals.

28 (f) Systems Maps and Layout: Licensee shall have  
29 available at all times up to date route maps  
30 showing trunk and distribution lines for review  
31 by appropriate tribal officials.

32 (g) System Construction and Equipment Standards:  
Licensee shall construct, install and maintain the

1 cable system in accordance with all applicable  
2 codes, including the Occupational Safety and  
3 Health Act of 1970 and any amendments, the  
4 National Electric Safety Code and all other  
5 applicable laws, rules and regulations of the  
6 United States, in particular the Federal Communi-  
7 cations Commission, the Papago Tribe or the State  
8 of Arizona.

9 Section 11. CUSTOMER SERVICE STANDARDS

- 10 (1) Licensee shall maintain an office or agent in the  
11 service area or nearby vicinity; the office or agent  
12 shall be open or accessible during normal business  
13 hours weekdays, have a locally listed telephone  
14 number and operate so that complaints and requests  
15 for repairs or adjustments may be received and  
16 responded to.
- 17 (2) Service Procedures: Licensee shall provide each sub-  
18 scriber at the time service is installed, complete  
19 written instructions that clearly state procedures  
20 for service calls. The instructions should include  
21 at a minimum, the name, business address, business  
22 telephone number of the cable service representative,  
23 the service response time, information regarding  
24 service interruptions and a statement to the sub-  
25 scriber advising that the License Agreement and this  
26 Ordinance can be reviewed if Licensee fails to  
27 respond to a service call.
- 28 (3) Response time: Licensee shall correct all service  
29 complaints promptly if possible. If the circumstances  
30 warrant, service repairs and adjustments may be cor-  
31 rected within a reasonable period of time. In no  
32 event shall the response time for service calls

1 exceed seventy-two (72) hours.

2 (4) Service Interruptions: Services may be interrupted  
3 for routine testing, maintenance and repair only  
4 upon necessary cause and for the shortest period of  
5 time possible. To the extent possible, the Licensee  
6 shall provide advance notice of service interruptions,  
7 except for emergency situations.

8 Licensee shall provide in the License Agreement a  
9 rebate schedule in the event service to a subscriber  
10 is interrupted for an unreasonable period of time.

11 (5) Complaint Records: Licensee shall maintain a written  
12 record listing date of customer complaints, identifying  
13 the subscriber, describing the nature of the complaint  
14 and when and what action has been taken by the Licensee  
15 in response thereto. The record shall be kept at  
16 Licensee's local office and shall be available for  
17 inspection during regular business hours.

18 Section 12 RATE SCHEDULE

19 (1) Licensee shall provide a rate schedule of all sub-  
20 scriber and user rates, fees and charges of any kind  
21 for all cable services, equipment and facilities.  
22 Such rate schedule shall be established in the License  
23 Agreement and shall be binding. Rates shall not change  
24 except with the prior approval of the Papago Council.

25 (2) The Papago Council expressly reserves the right to  
26 regulate rates to the extent permitted by law and in  
27 accordance with the procedure provided in this Ordinance.  
28

29 (3) Licensee shall file with the tribal Secretary and  
30 Treasurer of the Papago Council an up-to-date schedule  
31 of all rates, fees and charges for all cable services  
32 to be kept in the office of the Secretary.



1     Section 13.   RATE REGULATION

2           (1)   Licensee may modify the current or existing rate  
3                structure upon approval of the Papago Council, provided  
4                the Licensee has complied with all provisions of this  
5                Ordinance and the License Agreement. Any modification  
6                shall ensure fair and reasonable rates.

7           (2)   The Papago Council shall determine whether the proposed  
8                rates, fees and charges are reasonable by considering  
9                the following factors:

10           (a)   The type of services provided by the Licensee and  
11                the return on investment therefrom;

12           (b)   The original cost of the system less standard  
13                depreciation;

14           (c)   The extent to which terms and conditions of the  
15                License Agreement and provisions of this Ordinance  
16                have been followed;

17           (d)   The presence or absence of competition in the  
18                cable business;

19           (e)   Fairness to subscribers, users, and residents of  
20                the Papago Reservation;

21           (f)   Complaints from subscribers, users or the general  
22                public that the rates are excessive or unreason-  
23                able;

24           (g)   Comments received at public hearings if such have  
25                been held.

26           (3)   If the Papago Council finds that the Licensee's pro-  
27                posed rates are excessive or unreasonable it shall  
28                adopt a demonstrated rate structure found to be fair  
29                and reasonable.

30           (4)   Appeals of rate decisions made by the Papago Council  
31                shall be referred to an impartial review board com-  
32                posed of three (3) specialists on rate structures used

1 in the cable communications business. Each party to  
2 an appeal shall nominate a specialist to sit on the  
3 review board. Both nominated specialists shall in  
4 turn select the third member of the review board.  
5 The decision of the review board shall be final and  
6 binding on the Licensee.

7 Section 14. DISCONNECTION

8 (1) Licensee may disconnect any installation or outlet and  
9 remove all cable communications equipment in the  
10 following cases:

11 (a) When the subscriber has requested that service be  
12 disconnected;

13 (b) When the subscriber is delinquent thirty (30) days  
14 after the due date of the monthly subscriber fee  
15 or other proper charge, and a ten (10) day written  
16 notice has been given by the Licensee to the Sub-  
17 scriber of the intent to disconnect service.

18 If the subscriber pays within thirty (30) days of  
19 the due date and after the ten (10) day written  
20 notice has been given, Licensee shall not discon-  
21 nect.

22 (2) Licensee shall reinstate service upon payment in full  
23 of all proper fees and charges, including any recon-  
24 nection charges, if any, by the subscriber.

25 Section 15. TIME OF ESSENCE

26 Time shall be deemed of the essence requiring the Licensee  
27 to diligently pursue and perform any acts for which a time sche-  
28 dule is prescribed by this Ordinance or the License Agreement.  
29 Licensee's failure to perform within the time periods specified  
30 will be sufficient grounds for the Papago Tribe to invoke the  
31 remedies provided for in this Ordinance.  
32 . . .

1 Section 16. CONDITIONS OF CONSTRUCTION:

- 2 (1) Licensee shall give the Papago Tribe at least ten  
3 (10) days notice of the intent to begin construction  
4 on any streets or public places.
- 5 (2) Licensee shall not open or disturb the surface of any  
6 street or public place without first having obtained  
7 a permit or written approval in accordance with any  
8 applicable regulation, code or ordinance. Excavations  
9 shall be coordinated with other utility excavations or  
10 construction so as to minimize disruption and incon-  
11 venience to the public.
- 12 (3) No new, different or additional poles, conduits or  
13 other facilities shall be constructed or installed  
14 without approval of the Papago Tribe. Licensee shall,  
15 with the consent of the owner, utilize existing poles,  
16 conduits and other facilities whenever possible. The  
17 Papago Tribe gives its consent to use by Licensee of  
18 existing poles and facilities owned by the Tribe upon  
19 negotiated agreements with the Papago Tribal Utility  
20 Authority containing standard terms and provisions for  
21 joint use of the Tribe's poles and facilities. Joint  
22 use agreements shall comply with the Authority's Plan  
23 of Operation and current agreements and applicable ad-  
24 ministrative regulations.
- 25 (4) Licensee shall install telephone and electric utility  
26 facilities underground in those areas where existing  
27 facilities are both underground at the time of con-  
28 struction. In areas where either facility is in-  
29 stalled aerially, Licensee may install its facilities  
30 aerially, provided however, that at such time as the  
31 facilities are placed underground, Licensee shall  
32

- 1 likewise place its facilities underground at sole  
2 cost to the Licensee.
- 3 (5) Licensee shall install or construct all facilities  
4 including wire, cable lines, conduits and other dis-  
5 tribution and transmission structures and other re-  
6 lated facilities in such a manner as to cause minimum  
7 interference with the use and access to streets and  
8 other public places and with consideration to the  
9 rights and reasonable convenience of property owners  
10 who adjoin any of the streets and public places.
- 11 (6) Licensee shall, at its own cost and expense, and in  
12 the manner approved by the Papago Tribe, replace and  
13 restore any street or public place which has been  
14 damaged by the Licensee..
- 15 (7) The Papago Tribe reserves the right, in the event of  
16 an emergency or by reason of public necessity or  
17 safety, to require the Licensee, at its own expense,  
18 to relocate, remove, temporarily disconnect, protect  
19 or support any of its property. Restoration and  
20 repair shall be made at the expense of the Papago  
21 Tribe.

22 Section 17. TERMINATION

- 23 (1) The Papago Council may terminate the License Agreement  
24 in the event of the material breach, failure, refusal  
25 or neglect by the Licensee to perform its obligations  
26 pursuant to the License Agreement, or of violation  
27 of any provision of this Ordinance, or of any rule or  
28 regulation passed by the Papago Council and applicable  
29 thereto.
- 30 (2) If the Papago Council determines that Licensee, by its  
31 acts or omissions has given the Tribe cause for  
32 termination it may make written demand that Licensee

1 comply. If the violation, breach, failure, refusal  
2 or neglect is not or cannot be remedied within thirty  
3 (30) days following such demand, the Papago Council  
4 may:

5 (a) Further direct that Licensee comply within such  
6 additional time and upon such terms and conditions  
7 as the Papago Council may direct; or

8 (b) Terminate the License Agreement.

9 (3) If the Papago Council terminates the License Agreement  
10 it may pursue any remedies available to the Tribe pur-  
11 suant to this Ordinance, or any other remedy available  
12 to the Tribe as provided by law.

13 (4) If the Papago Council directs the Licensee to dismantle  
14 the system, the Licensee shall, at its own expense and  
15 in an expeditious manner, restore any property to the  
16 condition in which it existed prior to the erection or  
17 construction of the system.

18 Section 18. CONTINUITY OF SERVICE

19 Licensee shall provide continuous service for the entire  
20 term of the License Agreement to all subscribers and users in  
21 return for payment of the established rates, fees and charges.  
22 If the Tribe revokes, fails to renew or terminates the License  
23 Agreement, or elects to purchase the system, Licensee shall  
24 continue to operate the system as trustee for its successor in  
25 interest, named or unnamed, until an orderly and lawful change  
26 of operation is effected. This period of operation shall not  
27 exceed six (6) months from the occurrence of the above events.  
28 During such interim period Licensee shall not make any material,  
29 administrative or operational changes without express written  
30 permission of the Papago Tribe. If Licensee fails to operate  
31 the system during the transition phase, the Papago Tribe shall  
32 have the right to operate the system, either directly or through

1 a designate, until such time as a new operator is selected. If  
2 the Tribe is required to operate the system for Licensee,  
3 Licensee shall reimburse the Tribe for any and all costs, fees  
4 or damages incurred by the Tribe.

5 Section 19. PURCHASE OF SYSTEM BY TRIBE

6 (1) The Papago Tribe shall have the first option, directly  
7 or as an intermediary, to purchase the system in the  
8 event the License Agreement is terminated or expires.  
9 The Tribe shall have ninety (90) days prior to the  
10 effective date of expiration or termination to notify  
11 Licensee of the Tribe's intent to exercise the option  
12 to purchase.

13 (2) The Papago Tribe shall select a Certified Public  
14 Accounting firm to audit the system's assets to  
15 determine the value of the system. The value of the  
16 system shall be solely based on the book value of  
17 the tangible assets of the system, and no value shall  
18 be assigned to the License itself or any right, privi-  
19 lege or expectancy arising out of the privilege to  
20 transact business under the License nor shall any  
21 value be assigned to goodwill or as a going concern.

22 (3) Upon the exercise of the Tribe's option to purchase,  
23 the Licensee shall, immediately upon payment of the  
24 purchase price by the Tribe, transfer to the Tribe  
25 possession and legal title to all system facilities  
26 and property, real and personal, free from any and  
27 all liens and encumbrances not agreed to be assumed  
28 by the Tribe, and Licensee shall execute such warranty  
29 deeds or other instruments of conveyance to the Tribe  
30 as shall be necessary to effectuate this transfer.

31 Section 20. TRANSFERS AND ASSIGNMENTS

32 (1) Licensee shall not sell, transfer, assign, exchange

1 or release, or permit the sale, transfer, assignment,  
2 exchange or release of the ownership of the system  
3 or rights in the License Agreement without the prior  
4 written authorization of the Papago Council.

5 (2) Any proposed transferee shall be required to comply  
6 with all provisions of this Ordinance and the License  
7 Agreement and shall be required to submit current  
8 financial information to establish to the satisfaction  
9 of the Papago Tribe the financial solvency of the  
10 transferee. In addition, the proposed transferee shall  
11 establish to the satisfaction of the Tribe that the  
12 transferee has the experience and ability to effect-  
13 ively operate and maintain the system.

14 (3) Any proposed transferee shall be required to execute  
15 an agreement in such form as the Tribe deems acceptable,  
16 stating that it will assume and be bound by all of the  
17 provisions, terms and conditions of this Ordinance, the  
18 License Agreement and any other conditions the Papago  
19 Council may require in granting authorization to  
20 transfer.

21 (4) The Papago Council reserves the right to deny, restrict  
22 or condition authorization to transfer upon such  
23 criteria as the Council determines to be necessary in  
24 the public interest.

25 (5) No transfer under this section shall be permitted  
26 within fifteen (15) months of the expiration date of  
27 the License Agreement.

28 (6) An unauthorized transfer or assignment shall provide  
29 the Papago Council with cause to terminate the License  
30 Agreement, at its option. In the event of such an oc-  
31 currence, the Licensee shall not enter into, make,  
32 execute into any deed, contract, lease, agreement or

1 sale without the written approval of the Papago  
2 Council.

3 Section 21. LICENSE FEE

4 (1) The Licensee shall pay to the Papago Tribe an amount  
5 equal to five percent (5%) of Licensee's gross  
6 revenues from all sources attributable to the opera-  
7 tions of Licensee pursuant to this Ordinance and the  
8 License Agreement.

9 (2) The payment required by this section shall be in  
10 addition to any other tax or payment required by the  
11 Papago Tribe pursuant to any other applicable ordi-  
12 nance or law.

13 (3) Payments due the Tribe under this section shall be  
14 computed quarterly and paid no later than thirty (30)  
15 days after the applicable computation date. Each  
16 payment shall be accompanied by a financial statement  
17 showing in detail the gross revenues of Licensee  
18 relating to the relevant quarter.

19 Section 22. RIGHTS RESERVED TO THE PAPAGO TRIBE

20 (1) The Papago Tribe expressly reserves, without limit-  
21 ation or effect on any other rights the Tribe might  
22 otherwise have, the following rights, power and  
23 authorities:

24 (a) To exercise its police and governmental powers  
25 to the extent necessary for the welfare of the  
26 public;

27 (b) To determine any question of fact relating to the  
28 meaning, term, obligation or other aspects of this  
29 Ordinance and the License Agreement;

30 (c) To grant other non-exclusive licenses within the  
31 Papago Reservation to persons for the operation of  
32 cable communications systems pursuant to this



Ordinance.

- (2) Nothing in this Ordinance shall be deemed or construed to impair or affect the right of the Papago Tribe to exercise its power of eminent domain to acquire property of Licensee at a fair and just value.

Section 23. EQUAL EMPLOYMENT OPPORTUNITY

- (1) Licensee shall not discriminate because of race, creed, color, sex, physical disability, national origin, or age in providing service. In this regard, Licensee shall comply with all applicable federal, state and tribal laws, rules and regulations and orders relating to nondiscrimination.
- (2) Licensee shall comply with the Tribal Employment Rights Ordinance, incorporated herein by this reference, making all reasonable efforts to assure employment for Papagos. Licensee shall review its employment structures and practices and adopt positive recruitment policies needed to assure genuine equality of opportunity.

Section 24. INSURANCE

- (1) Licensee shall maintain in full force and effect throughout the term of the License Agreement, insurance policies issued by an insurer duly authorized to conduct business in Arizona insuring with respect to the installation, construction, operation and maintenance of the system. Insurance coverage shall include, but not be limited to, comprehensive general and liability coverage with minimum amounts of \$500,000 combined single limits for bodily injury, including death, property damage, auto liability, and umbrella liability of at least \$10,000,000.

- 1           (2) All premiums due and payable shall be the sole res-  
2           ponsibility of the Licensee and shall include the  
3           Papago Tribe as an additional insured.

4       Section 25. PENALTIES

- 5           (1) Any person violating any provision of this Ordinance  
6           or any rule or regulation promulgated hereunder, may  
7           have his/her license revoked and have all rights to  
8           engage in business on the Papago Reservation suspended  
9           or terminated by the Papago Council, and may be en-  
10          joined by an action brought in the Papago Tribal  
11          Courts in the name of the Papago Tribe from engaging  
12          or continuing in any business on the Papago Reserva-  
13          tion.

- 14          (2) Any person convicted of violating any provision of  
15          this Ordinance or any rule or regulation promulgated  
16          hereunder shall be fined not less than one hundred  
17          dollars (\$100.00) nor more than five hundred dollars  
18          (\$500.00) and costs for each offense or may be im-  
19          prisoned in the tribal jail for not more than six (6)  
20          months, or both. Each day of a continuing violation  
21          shall constitute a separate and distinct offense.

22       Section 26. JURISDICTION

23           The Papago Tribal Courts shall have jurisdiction over all  
24           violations of this Ordinance and may, in addition to the  
25           penalties prescribed in Section 25 above, grant such other  
26           relief as is necessary and proper for the enforcement of this  
27           Ordinance, including but not limited to injunctive relief  
28           against acts in violation of this Ordinance. Nothing, however,  
29           in this Ordinance shall be construed to authorize or require  
30           the criminal trial and punishment of non-Indians except to the  
31           extent allowed by any applicable present or future Act of  
32           Congress or any applicable federal court decision.