

House Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 03

HOUSE BILL 2812

AN ACT

AMENDING SECTIONS 9-505 AND 9-506, ARIZONA REVISED STATUTES; RELATING TO
CABLE TELEVISION SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-505, Arizona Revised Statutes, is amended to
3 read:

4 9-505. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Area of jurisdiction" means that part of a city or town, or that
7 part of the unincorporated area of a county, or both when applied to a cable
8 television system within parts of more than one jurisdiction, for which a
9 license is issued.

10 2. "CABLE OPERATOR" MEANS A PERSON THAT IS ISSUED A LICENSE BY THE
11 LICENSING AUTHORITY TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION
12 SYSTEM IN PUBLIC STREETS, ROADS AND ALLEYS.

13 3. "CABLE SERVICE" MEANS THE TRANSMISSION TO SUBSCRIBERS OF VIDEO
14 PROGRAMMING OR OTHER PROGRAMMING SERVICE AND SUBSCRIBER INTERACTION, IF ANY,
15 THAT IS REQUIRED FOR THE SELECTION OR USE OF THE VIDEO PROGRAMMING OR OTHER
16 PROGRAMMING SERVICE.

17 ~~2.~~ 4. "Cable television system" means any facility that, in whole or
18 in part, receives directly, or indirectly over the air, and amplifies or
19 otherwise modifies the signals transmitting programs broadcast by one or more
20 television or radio stations and distributes such signals together with such
21 other signals as authorized by the federal communications commission and the
22 licensing authority, by wire or cable to subscribing members of the public
23 who pay for such service, but the term shall not include: CONSISTING OF A SET
24 OF CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL GENERATION, RECEPTION AND
25 CONTROL EQUIPMENT THAT IS DESIGNED TO PROVIDE CABLE SERVICE THAT INCLUDES
26 VIDEO PROGRAMMING AND THAT IS PROVIDED TO MULTIPLE SUBSCRIBERS WITHIN A
27 COMMUNITY. CABLE TELEVISION SYSTEM DOES NOT INCLUDE:

28 (a) ~~Any such~~ A facility that serves fewer than fifty subscribers.

29 (b) ~~Any such~~ A facility that serves only the residents of one or more
30 apartment dwellings under common ownership, and commercial establishments
31 located on the premises of such apartment dwellings SUBSCRIBERS WITHOUT USING
32 ANY PUBLIC STREET, ROAD OR ALLEY.

33 (c) A FACILITY THAT SERVES ONLY TO RETRANSMIT THE TELEVISION SIGNALS
34 OF ONE OR MORE TELEVISION BROADCAST STATIONS.

35 (d) A FACILITY OF A COMMON CARRIER THAT IS SUBJECT, IN WHOLE OR IN
36 PART, TO 47 UNITED STATES CODE SECTIONS 201 THROUGH 276, EXCEPT THAT THE
37 FACILITY IS CONSIDERED A CABLE TELEVISION SYSTEM, OTHER THAN FOR PURPOSES OF
38 47 UNITED STATES CODE SECTION 541(c), TO THE EXTENT THE FACILITY IS USED IN
39 THE TRANSMISSION OF VIDEO PROGRAMMING DIRECTLY TO SUBSCRIBERS, UNLESS THE
40 EXTENT OF THE USE IS SOLELY TO PROVIDE INTERACTIVE ON-DEMAND SERVICES.

41 (e) AN OPEN VIDEO SYSTEM THAT COMPLIES WITH 47 UNITED STATES CODE
42 SECTION 573.

43 (f) A FACILITY OF AN ELECTRIC UTILITY THAT IS USED SOLELY FOR
44 OPERATING ITS ELECTRIC UTILITY SYSTEM.

1 ~~3-~~ 5. "Existing cable television systems SYSTEM" means a cable
2 television system in operation on April 1, 1974, a cable television system
3 under construction on April 1, 1974, or a cable television system which had
4 received authorization for construction as of April 1, 1974.

5 6. "GROSS REVENUES" MEANS ALL CASH, CREDITS, PROPERTY OF ANY KIND OR
6 NATURE, OR OTHER CONSIDERATION, LESS RELATED BAD DEBT NOT TO EXCEED ONE AND
7 ONE-HALF PER CENT ANNUALLY, THAT IS RECEIVED DIRECTLY OR INDIRECTLY BY THE
8 CABLE OPERATOR, ITS AFFILIATES, SUBSIDIARIES OR PARENT OR ANY PERSON, FIRM OR
9 CORPORATION IN WHICH THE CABLE OPERATOR HAS A FINANCIAL INTEREST OR THAT HAS
10 A FINANCIAL INTEREST IN THE CABLE OPERATOR AND THAT IS DERIVED FROM THE CABLE
11 OPERATOR'S OPERATION OF ITS CABLE SYSTEM TO PROVIDE CABLE SERVICE IN THE AREA
12 OF JURISDICTION. GROSS REVENUES INCLUDE ALL REVENUE FROM CHARGES FOR CABLE
13 SERVICE TO SUBSCRIBERS AND ALL CHARGES FOR INSTALLATION, REMOVAL, CONNECTION
14 OR REINSTATEMENT OF EQUIPMENT NECESSARY FOR A SUBSCRIBER TO RECEIVE CABLE
15 SERVICE, AND ANY OTHER RECEIPTS FROM SUBSCRIBERS DERIVED FROM OPERATING THE
16 CABLE SYSTEM TO PROVIDE CABLE SERVICE, INCLUDING RECEIPTS FROM FORFEITED
17 DEPOSITS, SALE OR RENTAL OF EQUIPMENT TO PROVIDE CABLE SERVICE, LATE CHARGES,
18 INTEREST AND SALE OF PROGRAM GUIDES. GROSS REVENUES ALSO INCLUDE ALL INCOME
19 THE CABLE OPERATOR RECEIVES FROM THE LEASE OF ITS FACILITIES LOCATED IN THE
20 PUBLIC STREETS, ROADS AND ALLEYS, UNLESS SERVICES THAT THE LESSEE PROVIDES
21 OVER THE LEASED FACILITIES ARE SUBJECT TO A TRANSACTION PRIVILEGE TAX OF THE
22 LICENSING AUTHORITY. GROSS REVENUES DO NOT INCLUDE REVENUES FROM COMMERCIAL
23 ADVERTISING ON THE CABLE SYSTEM, THE USE OR LEASE OF STUDIO FACILITIES OF THE
24 CABLE SYSTEM, THE USE OR LEASE OF LEASED ACCESS CHANNELS OR BANDWIDTH, THE
25 PRODUCTION OF VIDEO PROGRAMMING BY THE CABLE OPERATOR, THE SALE, EXCHANGE,
26 USE OR CABLECAST OF ANY PROGRAMMING BY THE CABLE OPERATOR IN THE AREA OF
27 JURISDICTION, SALES TO THE CABLE OPERATOR'S SUBSCRIBERS BY PROGRAMMERS OF
28 HOME SHOPPING SERVICES, REIMBURSEMENTS PAID BY PROGRAMMERS FOR LAUNCH FEES OR
29 MARKETING EXPENSE, LICENSE FEES, TAXES OR OTHER FEES OR CHARGES THAT THE
30 CABLE OPERATOR COLLECTS AND PAYS TO ANY GOVERNMENTAL AUTHORITY, ANY INCREASE
31 IN THE VALUE OF ANY STOCK, SECURITY OR ASSET, OR ANY DIVIDENDS OR OTHER
32 DISTRIBUTIONS MADE IN RESPECT OF ANY STOCK OR SECURITIES.

33 ~~4-~~ 7. "Intergovernmental contract" means the joint exercise of powers
34 authorized by title 11, chapter 7, article 3.

35 ~~5-~~ 8. "License" means that ordinance or resolution which contains the
36 right, authority or grant, given by a licensing authority enabling ~~the~~
37 ~~license holder~~ A PERSON to construct, operate and maintain a cable television
38 system.

39 ~~6-~~ 9. "Licensing authority" means the board of supervisors of a
40 county or the governing body of an incorporated city, INCLUDING A CHARTER
41 CITY, or town.

42 10. "OTHER PROGRAMMING SERVICE" MEANS INFORMATION THAT A CABLE OPERATOR
43 MAKES AVAILABLE TO ALL SUBSCRIBERS GENERALLY.

1 11. "VIDEO PROGRAMMING" MEANS PROGRAMMING THAT IS PROVIDED BY, OR
2 GENERALLY COMPARABLE TO PROGRAMMING PROVIDED BY, A BROADCAST TELEVISION
3 STATION.

4 Sec. 2. Section 9-506, Arizona Revised Statutes, is amended to read:
5 9-506. Authority to issue license; limitations

6 A. For the purpose of authorizing and regulating the construction,
7 operation and maintenance of cable television systems, the licensing
8 authority of a city, INCLUDING A CHARTER CITY, or town for an incorporated
9 area, or the licensing authority of the county for unincorporated areas,
10 either individually or jointly by intergovernmental contract, may issue a
11 license to any person to use public streets, roads and alleys, and shall
12 impose conditions, restrictions and limitations upon the use of such public
13 streets, roads and alleys, and upon the construction, operation and
14 maintenance of cable television systems.

15 B. SUBJECT TO THE LIMITATIONS OF THIS SECTION, ~~any such~~ A licensing
16 authority may adopt resolutions or ordinances implementing and controlling
17 the license or joint license, ISSUE A LICENSE CONTAINING OTHER TERMS AND
18 CONDITIONS AND IMPOSE A LICENSE FEE ON GROSS REVENUES. ~~The license issued by~~
19 ~~a licensing authority may contain provisions, and may establish a permit fee,~~
20 ~~not to exceed the limits established by the federal communications~~
21 ~~commission.~~ IN ADDITION TO THE LIMITATIONS OF THIS SECTION, THE LICENSE IS
22 SUBJECT TO THE LIMITS ESTABLISHED BY THE COMMUNICATIONS ACT OF 1934, AS
23 AMENDED (47 UNITED STATES CODE SECTIONS 151 THROUGH 615b) AND THE FEDERAL
24 COMMUNICATIONS COMMISSION.

25 C. OTHER THAN THE LICENSE FEE ON GROSS REVENUES AUTHORIZED BY THIS
26 ARTICLE AND TRANSACTION PRIVILEGE TAXES AS PROVIDED IN THIS SUBSECTION, A
27 LICENSING AUTHORITY MAY NOT LEVY A TAX, RENT, FEE OR CHARGE, HOWEVER
28 DENOMINATED, ON A CABLE OPERATOR FOR THE USE OF THE PUBLIC STREETS, ROADS OR
29 ALLEYS TO PROVIDE CABLE SERVICE OR LEVY A TAX, FEE OR CHARGE ON THE PRIVILEGE
30 OF ENGAGING IN THE BUSINESS OF PROVIDING CABLE SERVICE IN THE AREA OF
31 JURISDICTION. TAXES, RENTS, FEES AND CHARGES INCLUDE ALL ACCESS CHANNEL
32 SUPPORT EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, RENTAL,
33 APPLICATION, CONSTRUCTION, PERMIT, INSPECTION, INCONVENIENCE AND OTHER FEES
34 AND CHARGES RELATED TO A CABLE OPERATOR'S USE OF THE PUBLIC STREETS, ROADS
35 AND ALLEYS. IN ADDITION, THE FOLLOWING APPLY:

36 1. ANY TRANSACTION PRIVILEGE TAXES OTHERWISE AUTHORIZED BY LAW TO BE
37 LEVIED ON THE BUSINESS OF PROVIDING CABLE SERVICE OR IN RELATION TO USE OF
38 THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICE MAY BE LEVIED ON
39 A CABLE OPERATOR IF THE TAXES ARE LEVIED ONLY ON GROSS REVENUES AND THE RATE
40 OF THE TAXES IS SUBJECT TO PARAGRAPH 3 OF THIS SUBSECTION. THIS SUBSECTION
41 DOES NOT AUTHORIZE THE IMPOSITION OF TRANSACTION PRIVILEGE TAXES ON
42 INTERSTATE TELECOMMUNICATIONS SERVICES.

43 2. THE LICENSE FEE AND ANY TRANSACTION PRIVILEGE TAXES LEVIED ON GROSS
44 REVENUES CONSTITUTE A FRANCHISE FEE WITHIN THE MEANING OF 47 UNITED STATES
45 CODE SECTION 542(g)(1).

1 3. UNDER NO CIRCUMSTANCES MAY THE TOTAL OF THE RATES OF THE LICENSE
2 FEE AND OF ANY TRANSACTION PRIVILEGE TAXES ON GROSS REVENUES LEVIED OR
3 ASSESSED BY A LICENSING AUTHORITY FOR THE PRIVILEGE OF PROVIDING CABLE
4 SERVICE AND RELATED USE OF THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE
5 CABLE SERVICE EXCEED A RATE OF FIVE PER CENT, EXCEPT DURING THE TRANSITION
6 PERIOD FOR CERTAIN LICENSES AS PROVIDED IN SUBSECTION H OF THIS SECTION.

7 4. A CABLE OPERATOR SHALL PASS ON TO SUBSCRIBERS ANY REDUCTION IN THE
8 AMOUNT OF FEES, TAXES OR OTHER CHARGES PAID BY A CABLE OPERATOR AND ITEMIZED
9 TO SUBSCRIBERS THAT RESULTS FROM THE IMPLEMENTATION OF THIS AMENDMENT TO THIS
10 SECTION.

11 D. A LICENSING AUTHORITY MAY NOT REQUIRE A CABLE OPERATOR TO PROVIDE
12 IN-KIND SERVICES, MAKE IN-KIND PAYMENTS OR PAY A FEE IN ADDITION TO THE
13 MONETARY LICENSE FEE LEVIED OR ASSESSED AS PROVIDED IN THIS SECTION AS PART
14 OF OR AS A CONDITION OF ISSUING A LICENSE TO PROVIDE CABLE SERVICE, EXCEPT
15 THAT:

16 1. A LICENSING AUTHORITY MAY REQUIRE A CABLE OPERATOR TO PROVIDE
17 CHANNEL CAPACITY TO TRANSMIT PROGRAMMING OVER WHICH THE CABLE OPERATOR
18 EXERCISES NO EDITORIAL CONTROL EXCEPT AS AUTHORIZED BY 47 UNITED STATES CODE
19 SECTION 531(e). THE CHANNEL CAPACITY SHALL BE LIMITED TO NOT MORE THAN TWO
20 CHANNELS OF PUBLIC, EDUCATIONAL OR GOVERNMENTAL ACCESS PROGRAMMING IN THE
21 BASIC SERVICE TIER OF THE CABLE TELEVISION SYSTEM AND NOT MORE THAN TWO
22 CHANNELS OF NONCOMMERCIAL GOVERNMENTAL PROGRAMMING, AT LEAST ONE OF WHICH MAY
23 BE PROGRAMMED BY THE FEDERAL GOVERNMENT, IN THE DIGITAL PROGRAMMING TIER OF
24 THE CABLE TELEVISION SYSTEM. IF CHANNEL CAPACITY IS REQUIRED, THE
25 PROGRAMMING SHALL BE SPECIFIED IN THE LICENSE AND THE CABLE OPERATOR MAY
26 REQUIRE THAT THE CHANNELS REGULARLY DISPLAY AN UNOBTRUSIVE LOGO OR OTHER
27 SUITABLE IDENTIFIER OF THE CABLE OPERATOR AS SET FORTH IN THE LICENSE.

28 2. A LICENSING AUTHORITY MAY REQUIRE A CABLE OPERATOR TO PROVIDE THE
29 BASIC SERVICE TIER OF CABLE SERVICE AT NO MONTHLY SERVICE CHARGE TO OFFICES
30 AND FACILITIES OF THE LICENSING AUTHORITY.

31 3. THE VALUE OF ANY CHANNEL CAPACITY PROVIDED PURSUANT TO PARAGRAPH 1
32 OF THIS SUBSECTION, INCLUDING ANY CAPITAL COSTS AND CHARGES FOR OR IN SUPPORT
33 OF ITS USE, AND OF BASIC SERVICE PROVIDED PURSUANT TO PARAGRAPH 2 OF THIS
34 SUBSECTION MAY NOT BE OFFSET AGAINST THE LICENSE FEE LEVIED OR ASSESSED UNDER
35 THIS SECTION.

36 E. THIS SECTION DOES NOT PROHIBIT A CABLE OPERATOR FROM AGREEING TO
37 PROVIDE IN-KIND SERVICES OR MAKE IN-KIND PAYMENTS IN THE AREA OF JURISDICTION
38 THAT ARE PROHIBITED BY SUBSECTION D OF THIS SECTION IF THE AGREEMENT WITH THE
39 LICENSING AUTHORITY IS NOT PART OF, OR ENTERED INTO AS A CONDITION OF BEING
40 ISSUED, A NEW, RENEWED OR AMENDED LICENSE TO PROVIDE CABLE SERVICE. AN
41 AGREEMENT THAT REQUIRES IN-KIND CABLE SERVICE OR PAYMENTS SHALL SET FORTH THE
42 TOTAL ANNUAL FAIR MARKET VALUE OF THE IN-KIND CABLE SERVICE AND PAYMENTS,
43 WHICH SHALL BE LESS THAN OR EQUAL TO AND OFFSET AGAINST THE LICENSE FEE
44 LEVIED OR ASSESSED ANNUALLY PURSUANT TO THIS SECTION. THE LICENSE SHALL
45 AUTHORIZE THE CABLE OPERATOR TO RETAIN LICENSE FEES AND TAXES COLLECTED FROM

1 ITS SUBSCRIBERS IN THE AMOUNT OF THIS OFFSET. IN-KIND CABLE SERVICES AND
2 PAYMENTS INCLUDE ANY CHANNEL CAPACITY AND ALL CAPITAL COSTS AND CHARGES FOR
3 OR IN SUPPORT OF THE USE OF ANY CHANNEL CAPACITY THAT THE CABLE OPERATOR
4 AGREES TO PROVIDE UNDER THIS SUBSECTION.

5 F. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, A LICENSING AUTHORITY
6 MAY REQUIRE THAT A CABLE OPERATOR:

7 1. BEAR REASONABLE COSTS THAT ARE ASSOCIATED WITH DAMAGE CAUSED TO
8 PUBLIC STREETS, ROADS AND ALLEYS BY CONSTRUCTION, MAINTENANCE AND OPERATION
9 OF ITS FACILITIES IN THE PUBLIC STREETS, ROADS AND ALLEYS AND THAT ARE
10 IMPOSED ON A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS IN RELATION TO
11 COSTS BORNE BY TELECOMMUNICATIONS CORPORATIONS UNDER SECTION 9-582,
12 SUBSECTION C.

13 2. PAY FINES, FEES, CHARGES OR DAMAGES FOR BREACH OF THE TERMS AND
14 CONDITIONS OF THE LICENSE.

15 G. THIS SECTION DOES NOT AFFECT THE AUTHORITY OF A LICENSING AUTHORITY
16 TO MANAGE THE PUBLIC STREETS, ROADS AND ALLEYS WITHIN ITS BOUNDARIES OR TO
17 EXERCISE ITS POLICE POWERS.

18 H. A LICENSE THAT IS IN EFFECT ON THE EFFECTIVE DATE OF THIS AMENDMENT
19 TO THIS SECTION, INCLUDING ONE THAT IS LATER RENEWED OR EXTENDED FOR A TERM
20 THAT BEGINS BEFORE JULY 1, 2007, IS ENFORCEABLE IN ACCORDANCE WITH ITS TERMS
21 AND CONDITIONS AS OF JULY 1, 2007 AND IS NOT SUBJECT TO THE PROVISIONS OF
22 THIS AMENDMENT TO THIS SECTION. IF A LICENSE THAT IS IN EFFECT ON THE
23 EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION IS LATER EXTENDED OR RENEWED
24 FOR A TERM THAT BEGINS AFTER JUNE 30, 2007, THE EXTENDED OR RENEWED LICENSE
25 IS SUBJECT TO THE PROVISIONS OF THIS AMENDMENT TO THIS SECTION, EFFECTIVE ON
26 THE FIRST DAY OF THE RENEWAL OR EXTENSION TERM, UNLESS THE TERM BEGINS BEFORE
27 JANUARY 1, 2008, IN WHICH CASE THE LIMITATION IN SUBSECTION C, PARAGRAPH 3 OF
28 THIS SECTION ON THE RATES OF THE LICENSE FEE AND OF ANY TRANSACTION PRIVILEGE
29 TAXES ON GROSS REVENUES IS:

30 1. FIVE PER CENT, IF THE GROSS EFFECTIVE RATE IS FIVE PER CENT OR
31 LESS.

32 2. IF THE GROSS EFFECTIVE RATE IS MORE THAN FIVE PER CENT, FIVE PER
33 CENT PLUS THE FOLLOWING PERCENTAGE:

34 (a) IN THE FIRST YEAR OF THE EXTENSION OR RENEWAL TERM, THE GROSS
35 EFFECTIVE RATE MINUS FIVE PER CENT, MULTIPLIED BY TWO-THIRDS.

36 (b) IN THE SECOND YEAR OF THE TERM, THE GROSS EFFECTIVE RATE MINUS
37 FIVE PER CENT, MULTIPLIED BY ONE-THIRD.

38 (c) IN THE THIRD YEAR OF THE TERM, AND THEREAFTER, ZERO PER CENT.

39 I. FOR PURPOSES OF SUBSECTION H OF THIS SECTION, "GROSS EFFECTIVE
40 RATE" MEANS ONE HUNDRED PER CENT MULTIPLIED BY THE FRACTION IN WHICH THE
41 NUMERATOR IS THE SUM OF ALL TAXES, FEES AND CHARGES OF THE LICENSING
42 AUTHORITY THAT THE CABLE OPERATOR ITEMIZED TO SUBSCRIBERS AND PAID TO THE
43 LICENSING AUTHORITY UNDER THE LICENSE FOR THE TWELVE CALENDAR MONTHS
44 IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION

1 AND THE DENOMINATOR IS THE CABLE OPERATOR'S GROSS REVENUES FOR THAT PERIOD IN
2 THE AREA OF JURISDICTION.

3 Sec. 3. Legislative findings

4 The legislature finds and determines that this act is necessary as a
5 matter of statewide concern to ensure that counties, cities, including
6 charter cities, and towns issue licenses to cable operators to use the public
7 streets, roads and alleys on terms and conditions, including fees, taxes and
8 other charges levied and assessed for use of the public streets, roads and
9 alleys, that are equitable. The public policy of this state is that this act
10 be enforced to the fullest extent permitted by federal law.

APPROVED BY THE GOVERNOR MARCH 3, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 3, 2006.

