

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2069

AN ACT

AMENDING SECTION 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 9-506, Arizona Revised Statutes, is amended to
3 read:

4 9-506. Authority to issue license; limitations

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

14 B. Subject to the limitations of this section, a licensing authority
15 may adopt resolutions or ordinances implementing and controlling the license
16 or joint license, issue a license containing other terms and conditions and
17 impose a license fee on gross revenues. In addition to the limitations of
18 this section, the license is subject to the limits established by the
19 communications act of 1934, as amended (47 United States Code sections 151
20 through 615b) and the federal communications commission.

21 C. Other than the license fee on gross revenues authorized by this
22 article and transaction privilege taxes as provided in this subsection, a
23 licensing authority may not levy a tax, rent, fee or charge, however
24 denominated, on a cable operator for the use of the public streets, roads or
25 alleys to provide cable service or levy a tax, fee or charge on the privilege
26 of engaging in the business of providing cable service in the area of
27 jurisdiction. Taxes, rents, fees and charges include all access channel
28 support ~~except as provided in subsection D of this section, OR CHARGES~~
29 ~~WHETHER DENOMINATED AS CAPITAL COSTS, PAYMENTS FOR OR IN SUPPORT OF THE USE~~
30 ~~OF ACCESS CHANNELS OR FACILITIES OR OTHERWISE,~~ rental, application,
31 construction, permit, inspection, inconvenience and other fees and charges
32 related to a cable operator's use of the public streets, roads and alleys.
33 In addition, the following apply:

34 1. Any transaction privilege taxes otherwise authorized by law to be
35 levied on the business of providing cable service or in relation to use of
36 the public streets, roads or alleys to provide cable service may be levied on
37 a cable operator if the taxes are levied only on gross revenues and the rate
38 of the taxes is subject to paragraph 3 of this subsection. This subsection
39 does not authorize the imposition of transaction privilege taxes on
40 interstate telecommunications services.

41 2. The license fee and any transaction privilege taxes levied on gross
42 revenues constitute a franchise fee within the meaning of 47 United States
43 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~~ THE amendment to
10 this section EFFECTIVE ON SEPTEMBER 21, 2006.

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~~ **SEPTEMBER 21, 2006**, including one that is later renewed or
20 extended for a term that begins before July 1, 2007, is enforceable in
21 accordance with its terms and conditions as of July 1, 2007 and is not
22 subject to the provisions of ~~this~~ **THE** amendment to this section **EFFECTIVE ON**
23 **SEPTEMBER 21, 2006**. If a license that is in effect on ~~the effective date of~~
24 ~~this amendment to this section~~ **SEPTEMBER 21, 2006** is later extended or
25 renewed for a term that begins after June 30, 2007, the extended or renewed
26 license is subject to the provisions of ~~this~~ **THE** amendment to this section
27 **EFFECTIVE ON SEPTEMBER 21, 2006**, effective on the first day of the renewal or
28 extension term, unless the term begins before January 1, 2008 **BY MUTUAL**
29 **AGREEMENT**, in which case the limitation in subsection C, paragraph 3 of this
30 section on the rates of the license fee and of any transaction privilege
31 taxes on gross revenues is:

32 1. Five per cent, if the gross effective rate is five per cent or
33 less.

34 2. If the gross effective rate is more than five per cent, five per
35 cent plus the following percentage:

36 (a) In the first year of the extension or renewal term, the gross
37 effective rate minus five per cent, multiplied by two-thirds.

38 (b) In the second year of the term, the gross effective rate minus
39 five per cent, multiplied by one-third.

40 (c) In the third year of the term, and thereafter, zero per cent.

41 I. For purposes of subsection H of this section, "gross effective
42 rate" means one hundred per cent multiplied by the fraction in which the
43 numerator is the sum of all taxes, fees and charges of the licensing
44 authority that the cable operator itemized to subscribers and paid to the
45 licensing authority under the license for the twelve calendar months

1 immediately preceding ~~the effective date of this amendment to this section~~
2 SEPTEMBER 21, 2006 and the denominator is the cable operator's gross revenues
3 for that period in the area of jurisdiction.

4 J. THIS SUBSECTION APPLIES TO A LICENSE THAT WAS IN EFFECT ON
5 SEPTEMBER 21, 2006, THAT HAS A DATE OF TERMINATION BEFORE JANUARY 1, 2010 AND
6 THAT IS NOT EXTENDED OR RENEWED BY MUTUAL AGREEMENT OF THE LICENSING
7 AUTHORITY AND CABLE OPERATOR OR FINALLY REVOKED UNDER APPLICABLE FEDERAL OR
8 STATE LAW BEFORE JANUARY 1, 2010. THE LICENSE SHALL REMAIN IN EFFECT AND
9 ENFORCEABLE IN ACCORDANCE WITH ITS TERMS AND CONDITIONS AS OF JULY 1, 2007
10 UNTIL AN EXTENSION OR RENEWAL BY MUTUAL AGREEMENT OF THE LICENSING AUTHORITY
11 AND CABLE OPERATOR TAKES EFFECT OR THE LICENSE IS FINALLY REVOKED UNDER
12 APPLICABLE FEDERAL AND STATE LAW. FOR PURPOSES OF SUBSECTION H OF THIS
13 SECTION, THE LICENSE IS SUBJECT TO THIS SECTION, EFFECTIVE ON THE FIRST DAY
14 AFTER THE DATE OF EXPIRATION, AND EXCEPT AS MUTUALLY AGREED BY THE LICENSING
15 AUTHORITY AND CABLE OPERATOR:

16 1. THE RATES OF THE LICENSE FEE AND OF ANY TRANSACTION PRIVILEGE TAX
17 ON GROSS REVENUES UNDER THE LICENSE SHALL BE MODIFIED BY OPERATION OF LAW AS
18 NECESSARY TO PROVIDE THE MAXIMUM MONETARY FEES AND TAXES PERMITTED IN
19 SUBSECTION C, PARAGRAPH 3 OF THIS SECTION, WITHOUT APPLICATION OF SUBSECTION
20 H, PARAGRAPHS 1 AND 2 OF THIS SECTION OR SUBSECTION I OF THIS SECTION.

21 2. THE CHANNEL CAPACITY FOR PUBLIC, EDUCATIONAL OR GOVERNMENTAL ACCESS
22 AND FOR NONCOMMERCIAL GOVERNMENTAL PROGRAMMING SHALL BE MODIFIED BY OPERATION
23 OF LAW AS NECESSARY TO PROVIDE THE MAXIMUM CHANNEL CAPACITY PERMITTED IN
24 SUBSECTION D, PARAGRAPH 1 OF THIS SECTION. BEFORE THE DATE OF EXPIRATION OF
25 THE LICENSE, THE LICENSING AUTHORITY SHALL GIVE NOTICE TO THE CABLE OPERATOR
26 THAT DESIGNATES THE PURPOSE OF EACH CHANNEL OF ACCESS OR OTHER PROGRAMMING IN
27 THE CHANNEL CAPACITY THAT THE CABLE OPERATOR SHALL PROVIDE TO COMPLY WITH
28 THIS PARAGRAPH AND THAT IDENTIFIES THE PROGRAMMING THEREFOR. THE CABLE
29 OPERATOR HAS NO OBLIGATION TO RESERVE ANY CHANNEL CAPACITY FOR ACCESS OR
30 NONCOMMERCIAL GOVERNMENTAL USE AFTER THE DATE OF EXPIRATION UNTIL THE
31 LICENSING AUTHORITY GIVES THAT NOTICE. A CABLE OPERATOR HAS NO OBLIGATION TO
32 ADD CHANNEL CAPACITY THAT IS NECESSARY TO COMPLY WITH THIS PARAGRAPH UNTIL
33 SIXTY DAYS AFTER THE LICENSING AUTHORITY GIVES THAT NOTICE. THE CABLE
34 OPERATOR SHALL GIVE ITS SUBSCRIBERS PROMPT NOTICE OF EACH ADDED, REMOVED OR
35 CHANGED CHANNEL AND SHALL ADD, REMOVE OR CHANGE EACH CHANNEL THIRTY DAYS
36 AFTER NOTIFICATION TO ITS SUBSCRIBERS AS REQUIRED BY LAW.

37 Sec. 2. Legislative findings

38 The legislature finds and determines that this act is necessary as a
39 matter of statewide concern to ensure that counties, cities, including
40 charter cities and towns, issue licenses to cable operators to use the public
41 streets, roads and alleys on terms and conditions, including fees, taxes and
42 other charges levied and assessed for use of the public streets, roads and
43 alleys, consistent with the requirements of Laws 2006, chapter 3, which
44 ensures that cable customers are not subject to excessive local cable related
45 fees and taxes and the imposition of excessive in-kind service requirements

1 as a condition of a city, town or county issuing a cable license to a cable
2 operator. Further, the legislature intends to clarify the terms and
3 conditions of cable television licenses after their date of expiration and
4 ensure that the customer protections in Laws 2006, chapter 3 not be delayed
5 beyond the expiration of existing cable licenses. The public policy of this
6 state is that this act be enforced to the fullest extent permitted by federal
7 law.