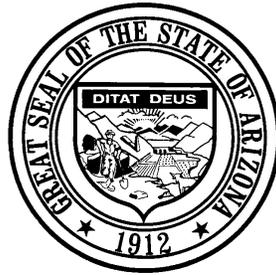


# **Essential Infrastructure for Information Delivery**

**Appendices to a Study  
Prepared for**

**Arizona Strategic Enterprise**

**Technology (ASET) Office**



**By Data Site Consortium, Inc.**

**November 2011 (V03 Draft)**

An Arizona Roadmap for Reducing Barriers Based in Arizona Law, Policy, and  
Rules Hindering Establishing Public Rights-of-Way as Essential Infrastructure  
for Information Delivery

# **Arizona Strategic Enterprise Technology (ASET) Office**

## **Essential Infrastructure for Information Delivery**

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### **Disclaimer:**

This report was researched and prepared by Data Site Consortium, Inc. for the Arizona Strategic Enterprise Technology (ASET) Office (<http://isd.azdoa.gov/>), a division of the Arizona Department of Administration (ADOA). However, any findings, opinions, conclusions or recommendations expressed herein are those of Data Site Consortium, Inc. and do not necessarily reflect the views of ASET, ADOA, and other agencies, employees, and officials of the State of Arizona. While Data Site Consortium, Inc. has exercised reasonable skill and care in producing this report, its accuracy cannot be guaranteed and it is not intended and does not purport to provide any legal advice. All trademarks and copyrights are the property of their respective owners.

**Arizona Strategic Enterprise Technology (ASET) Office  
Essential Infrastructure for Information Delivery Report**

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## Appendix A - ASET EIID Project Interviews

### Arizona Department of Transportation (ADOT)

The Arizona Department of Transportation (ADOT - <http://www.azdot.gov/>) builds and repairs the roads for the citizens of Arizona, operates the Motor Vehicles Division (MVD), and publishes Arizona Highways magazine. ADOT Divisions include the Transportation Services Group, Communications & Community Partnerships, Office of the Inspector General, Policy and Governmental Affairs, Aeronautics Division, Intermodal Transportation Division, Motor Vehicle Division, and the Multimodal Planning Division, which is home to the Geographic Information Systems for Transportation (GIS-T) Section.

#### ADOT Contacts:

Suzan Tasvibi-Tanha, Strategic Business Services Manager, Information Technology Group, Office: 602-712-6409, E-Mail: [stasvibi@azdot.gov](mailto:stasvibi@azdot.gov)

Paula Gibson, Deputy Chief Right of Way Agent, Intermodal Transportation Division, Office: 602-712-8758, E-Mail: [pgibson@azdot.gov](mailto:pgibson@azdot.gov)

Sam Maroufkhani, Deputy State Engineer, Intermodal Transportation Division, Office: 602-712-7391, E-Mail: [smaroufkhani@azdot.gov](mailto:smaroufkhani@azdot.gov)

Dallas Hammit, Deputy State Engineer, Operations, Intermodal Transportation Division, Office: 602-712-8274, E-Mail: [dhammit@azdot.gov](mailto:dhammit@azdot.gov)

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#### ADOT Interviews:

Mike Golden and Brad Zerbe of ASET (formerly GITA) along with Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted two interviews with ADOT personnel on February 9, 2011 and February 23, 2011. During the meeting, parties discussed the role of the ADOT ROW Group, of which the ADOT attendees represent, as well as horizontal and vertical rights-of-way (“ROW”) responsibilities, issues, and opportunities.

Scope of activities of the ADOT ROW Group:

- Longitudinal and vertical ROW
- Not including ADOT permitting processes
- Negotiates with underlying land owners (fee absolute owners) for an interest-in-the-land, which include
  - Easements
  - Licenses
  - Full fee absolute ownership

- Scope of existing longitudinal ROW limited to only “roadway purposes” not including water, power utility, or telecommunications, beyond ADOT Intelligent Transportation Systems (ITS) unless specifically negotiated/renegotiated for with land owners. Limited by:
  - Federal law and funding
  - Arizona Revised Statutes and funding
  - Arizona Proposition 400 based funding
  - Local zoning rules

ROW process steps:

- Planning/Engineering > surveying > appraisals > offer to underlying landowner > offer acceptance > if no acceptance, condemnation procedure > order to show cause (court action) > 90 days to vacate the land > ROW interest in the land.
- ADOT’s experience:
  - 70% of the underlying landowners tend to accept the appraisal offer (short cycle)
  - 30% of underlying landowners take the process into condemnation (longer ~ 2 years)
  - Very few underlying landowners pursue a subsequent court action (> 2-years)

Underlying landowners include:

- Federal entities (easements only)
  - BLM (easy to come to terms with)
  - BIA (more difficult to come to terms with)
  - Forest Service (more difficult to come to terms with)
- Native American entities
  - In conjunction with the Bureau of Indian Affairs (BIA)
- State
  - ASLD, controlling trust land
  - ADOT, controlling direct purchase of land
  - ADOA representing land interests of land owned by other AZ State agencies
- Local governments
- Private owners

ADOT Permitting process steps:

- Is an activity separate from establishing ROW?
- Is an activity associated with a short-term activity within an ADOT roadway or associated ADOT controlled land?
- Permitting process is primarily under the auspices of the ADOT District Offices (District Engineers)

Potential changes in federal rules:

- Modifying FHWA funding limits and assignments to include conduit and/or fiber
- FCC Broadband initiatives may influence FHWA and others

Potential changes in Arizona statutes and rules:

- Modifying ARS
- Modifying Proposition 400
- Modifying AZ agency PSPs (policies/standards/procedures)
- Constitutional constraints
  - Gift Clause
  - Land grant limitations (highest and best use issues)

Vertical ROW issues:

- Pole attachment (controlled by different group within ADOT)
- Attachment to bridges, overpasses, and other vertical assets, though power may not be present
- Land leased for cell sites
- Vertical asset communications maintenance by deployer/provider in cooperation with ADOT under permit

Other ROW opportunities:

- As highways widen, conduit may go under lanes, but archeological and environmental clearances remain necessary
- Rail (currently in use as well as abandoned paths)
- Pipelines
- Power utilities
- ADOT evolution in ITS and vehicle sensor tracking may help drive telecom expansion

Highway operational issues after construction:

- Service corridors
- Control of service access and safety issues significant for conduit and fiber maintenance and connections, but may be ameliorated by placing of vaults and regeneration capabilities off the highway near off ramps and other highway adjacent ADOT ROW
- Relocating existing telecommunications infrastructure with roadway re-construction

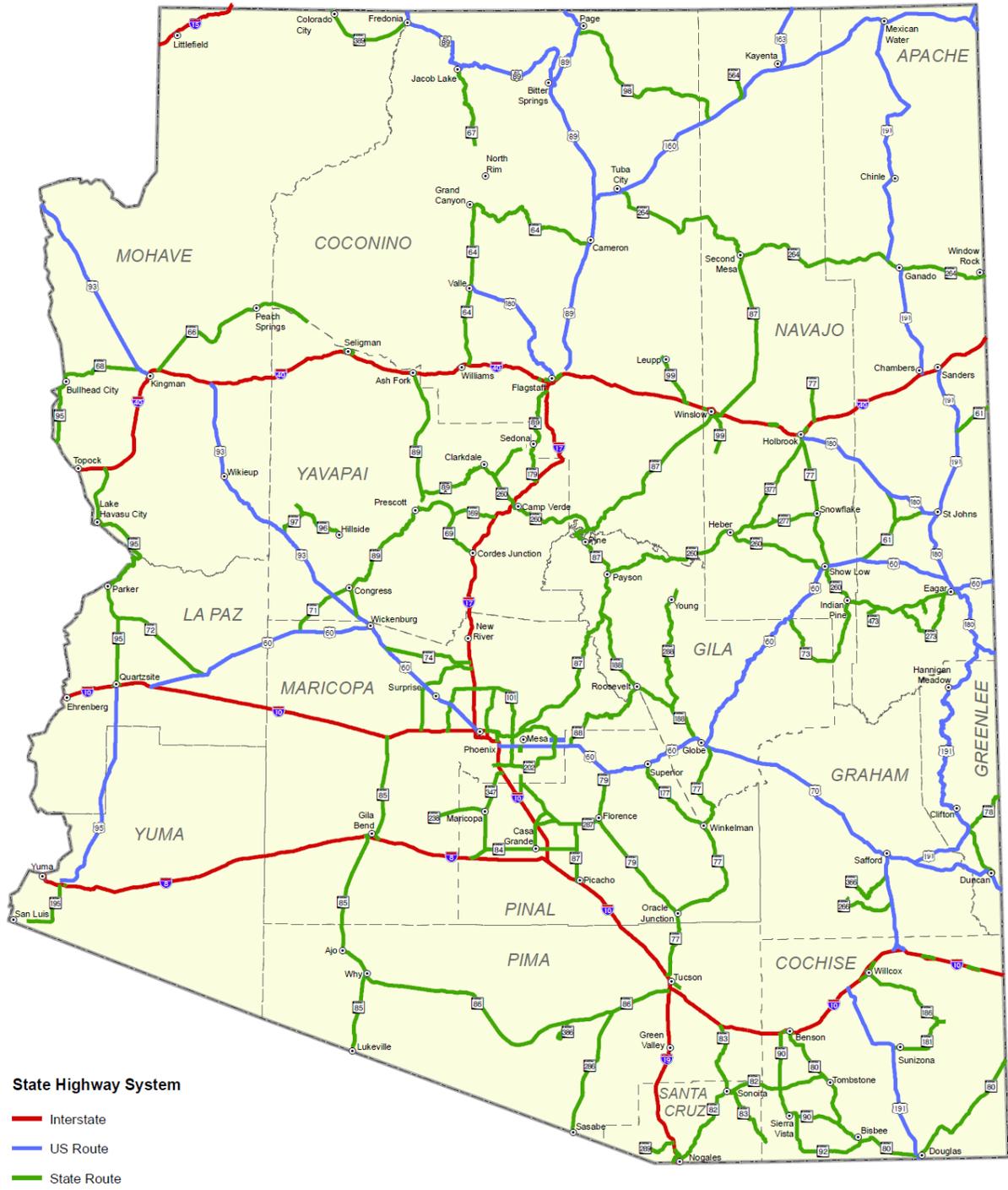
ADOT Shared ROW Recap:

- ADOT Shared ROW project back in 2000-2001 was approved by the Attorney General's office and resulted in an issued RFP, but unfulfilled due to market conditions at the time.
- Would have allowed long haul fiber deployment across major transportation corridors from East to West and North to South across the state by commercial carriers who would provide in kind access to ADOT of empty conduit from the build, anticipating one conduit being reserved for ADOT ITS applications and the other supporting regional connectivity and economic development.

SB1272 from 45<sup>th</sup> Arizona Legislative Session:

- Passed by both houses, signed by the Governor of April 4, 2001, and thought to perhaps expand ADOT authority to use acquired ROW for telecommunications purposes, but remains unconfirmed.

# State Highway System



**State Highway System**

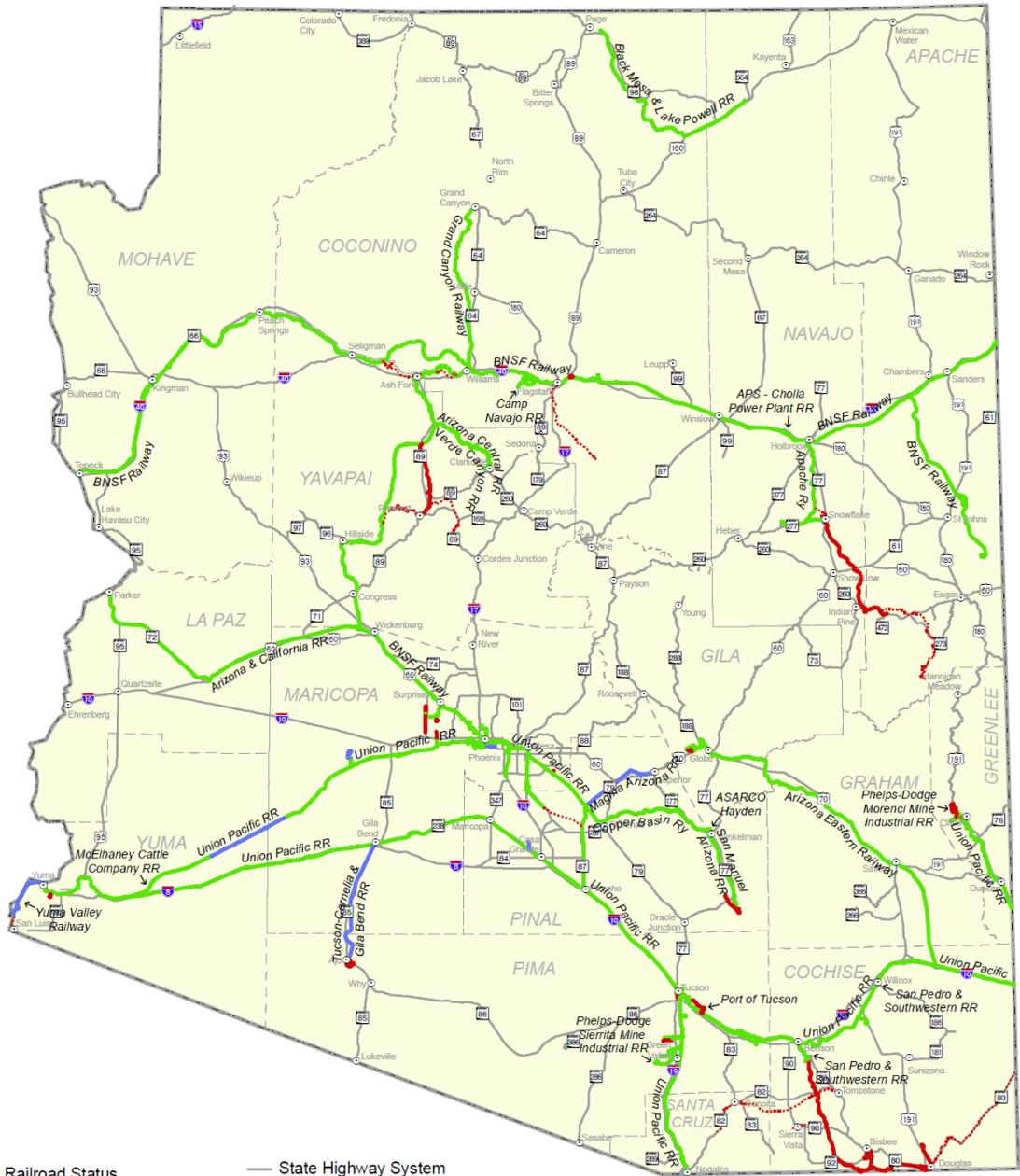
- Interstate
- US Route
- State Route

- Cities and Towns
- County Boundaries


 Prepared by:  
 Arizona Department of Transportation  
 Multimodal Planning Division  
 Transportation Analysis GIS Section  
 (602) 712-7333  
 September 2011

0 20 40 80 Miles

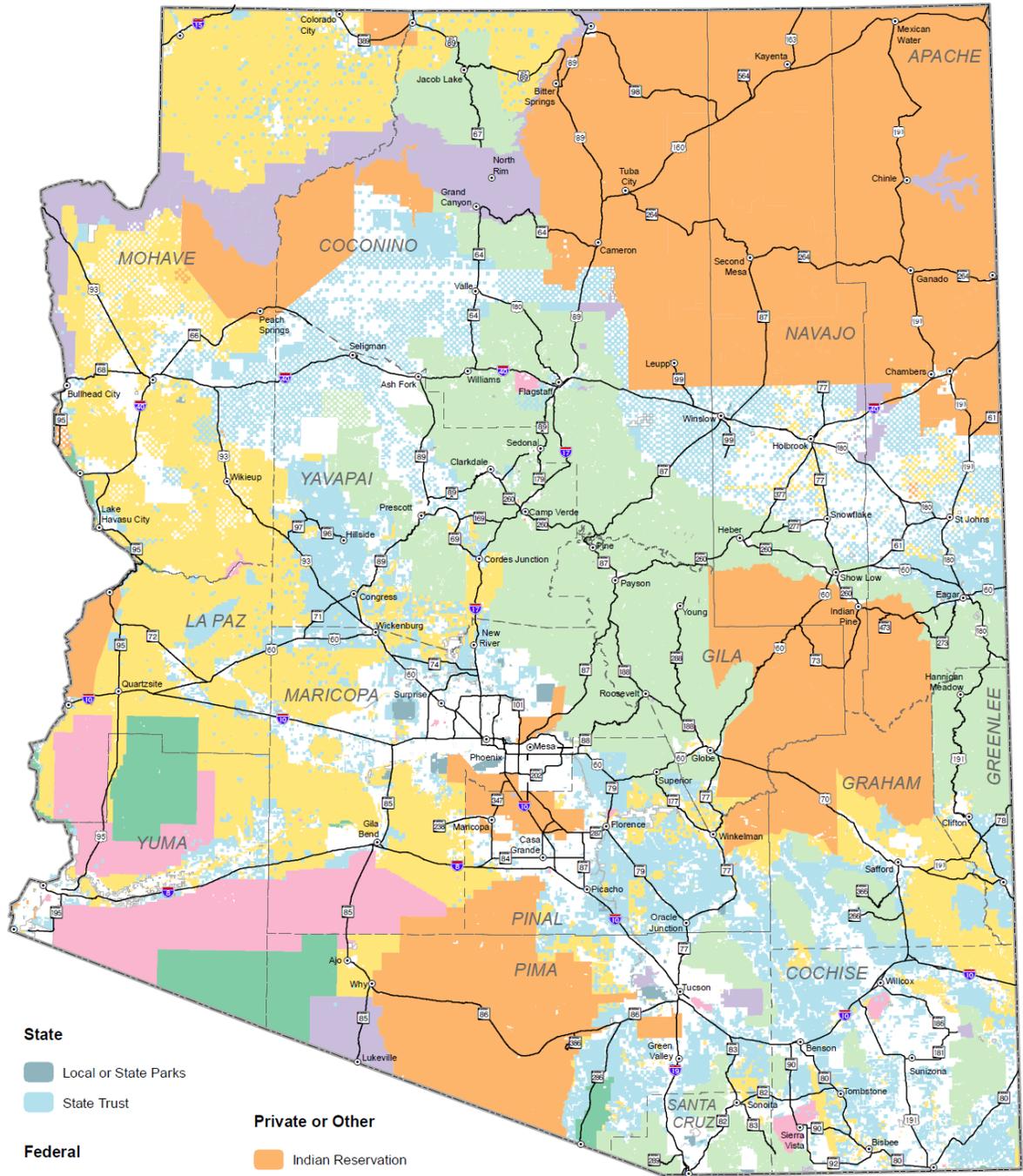
# Arizona Railroads (Service Status and Ownership)



- |   |  |
|---|--|
| <p><b>Railroad Status</b></p> <ul style="list-style-type: none"> <li><span style="color: green;">—</span> In Service</li> <li><span style="color: blue;">—</span> Out of Service</li> <li><span style="color: red;">—</span> Abandoned (1980 - 2007)</li> <li><span style="color: red;">⋯</span> Abandoned (1950 - 1979)</li> </ul> | <ul style="list-style-type: none"> <li><span style="border-bottom: 1px solid black; width: 20px; display: inline-block;"></span> State Highway System</li> <li><span style="display: inline-block; width: 10px; height: 10px; border: 1px solid black; border-radius: 50%;"></span> Cities and Towns</li> <li><span style="border: 1px dashed black; width: 10px; height: 10px; display: inline-block;"></span> County Boundaries</li> </ul> |
|---|--|

Prepared by:  
Arizona Department of Transportation  
Multimodal Planning Division  
Transportation Analysis GIS Section  
(602) 712-7333  
September 2011

# Land Ownership



**State**

- Local or State Parks
- State Trust

**Federal**

- Bureau of Land Mgmt
- National Forest
- Military Reservation
- National Parks
- Wildlife Refuge

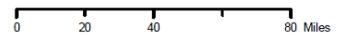
**Private or Other**

- Indian Reservation
- Other

- Cities and Towns
- State Highway System
- County Boundaries



Prepared by:  
 Arizona Department of Transportation  
 Multimodal Planning Division  
 Transportation Analysis GIS Section  
 (602) 712-7333  
 September 2011



## Appendix A - ASET EIID Project Interviews

### Arizona State Land Department (ASLD)

The Arizona State Land Department (ASLD - <http://www.land.state.az.us/>) mission is to manage State Trust lands and resources to enhance value and optimize economic return for the Trust beneficiaries, consistent with sound stewardship, conservation, and business management principles supporting socioeconomic goals for citizens here today and generations to come, as well as to manage and provide support for resource conservation programs for the well-being of the public and the State's natural environment. ASET and ASLD co-manage the Arizona Broadband Assessment Project (AZ BAP) to identify the availability and speed of broadband services, and the location of broadband infrastructure throughout Arizona under the American Recovery and Reinvestment Act of 2009 (ARRA) and the Broadband Data Improvement Act (BDIA), and in conjunction with the National Telecommunications and Information Administration (NTIA).

#### ASLD Contacts:

James L. Adams, Director, Real Estate Division, Office: 602-542-4621, E-Mail: [jadams@land.az.gov](mailto:jadams@land.az.gov)

Ruben Ojeda, Manager, Right of Way, Office: 602-542-2648, E-Mail: [rojeda@land.az.gov](mailto:rojeda@land.az.gov)

Gary J. Irish, GIS Manager, Office: 602-542-2605, E-Mail: [girish@land.az.gov](mailto:girish@land.az.gov) (Retired 10/11)

Vanessa P. Hickman, Deputy State Land Commissioner, Office: 602- 542-4621, E-Mail: [vhickman@land.az.gov](mailto:vhickman@land.az.gov)

Sandy Kelley, Manager, Commercial Leasing Section

Theresa M. Craig, Assistant Attorney General, Arizona Attorney General's Office, Main: 602-542-5025

#### ASLD Interview:

Mike Golden of ASET (formerly GITA) along with Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted an interview with ASLD personnel on March 23, 2011. During the meeting, parties discussed the role of the ASLD regarding horizontal and vertical rights-of-way ("ROW") responsibilities, issues, and opportunities.

The Federal Enabling Act and the Arizona State Constitution Mandate, as interpreted by Arizona and U.S. Supreme Courts, require ASLD to value all State land transactions at their "highest and best use of land," wherein "fair market value" is a minimum allowable value. This value is the ASLD Lease/ROW fee for a given State land transaction.

- ASLD takes into consideration: the viability of the proposed use; extent of improvements necessary to the use; compatibility with surrounding uses; local land use; planning and zoning; access; hydrology; geology; archaeology and environmental implications.
- ASLD is not allowed to directly or indirectly reduce the fees it charges in-kind-for "positive community benefits (e.g., economic, educational opportunities, medical

services, etc.) associated with providing broadband services to affected rural communities.” ASLD has an “undivided duty of loyalty to trustees” (trustees must be sole recipient of any benefit of State land transactions).

- ASLD auctions 10-year communication leases and ROWs having a term of 10-years or longer.

ASLD communication lease/ROW fees are not based on “parcel of the whole” determinations, but rather are based on “value in use” constructs. Communications lease fees generally comprise fees on land interest transactions for purposes of supporting telecommunications towers, etc. ASLD communications ROW fees generally apply to longitudinal rights of way, such as those required for fiber optic routes. Communications lease fees for both ASLD communication leases and communication ROW are based on an assigned monetary value for the “telecommunications usage,” not on a theoretical best use of the affected “parcel of the whole.” ASLD bases the telecommunications usage charge on at least one historic valuation study commissioned by itself.

This ASLD policy appears to differ with its policy of assessing and pricing utility leases and ROW on “parcel of the whole” determinations, even though longitudinal ROW is required for both utilities and fiber optic ROW easements. See *Lassen V. Arizona Highway Dept.*, 385 U. S. 458 (1967) holding “The State must compensate the trust in money for the full appraised value of any material sites or rights of way which it obtains on or over trust lands, not diminished by the amount of any enhancement in value of the remaining trust lands. *Id.* 385 U. S. 465-470.

Terms of ASLD communication leases are typically for 10-years. Land leases for cellular towers are specifically for 10-years in duration. Terms of communications ROWs can be for longer periods than 10-years, but the fee is reassessed every 10-year-portion of the longer ROW term. Optionally, an escalator linked to the CPI index may be used in lieu of reappraisal.

Typically, ASLD processing times for issuance of ASLD communication leases and ROWs are 12-14 months. Effective minimum processing time of communication ROW is 9-10 months, which is typically associated with adding communication ROW to existing roadway, utility or other existing ROW. Existing ADOT “clearances” generally accelerate the process for ASLD. However, ASLD requires a separate process and issuance of utility ROWs as distinguished from communications ROWs. This requirement for separate processes is somewhat based on the recognition that utilities tend to desire separate pricing and rights for utility ROW as opposed to communications ROW, even when the two requirements physically overlay each other.

Submission of an application does not guarantee a ROW will be issued. ASLD points out that failure of issuing of ASLD communication lease or ROW often results from applicant lack of pursuit through completion or incompleteness of their application. Conversely, ASLD notes that where a roadway, utility or other ROW exists and the applicant pursues, most often a communication ROW will also issue. However, county roads are often an ad hoc situation where special use can be problematic. ASLD recommends applicants engage someone with “real estate” background and significant experience in ROW processes.

Usually leases for communication tower placement can be accomplished in 6-9 months and no individual appraisal is needed. Utility power needs its own ROW, though there could be a joint application for power and fiber to the site. Site access may be through ROW or by helicopter. Pole attachment by telecom providers requires a separate ROW application for use and appraisal.

## **Appendix A - ASET EIID Project Interviews**

### **Arizona Corporation Commission (ACC)**

The Arizona Corporation Commission (ACC - <http://www.azcc.gov/>) is established via Article 15 of the Arizona Constitution and governed by five elected Commissioners. The ACC has responsibilities that go beyond traditional public utilities regulation including regulation of telephone services, facilitating the incorporation of businesses and organizations, securities regulation, and railroad/pipeline safety. By virtue of the Arizona Constitution, the Commissioners function in an Executive capacity, they adopt rules and regulations thereby functioning in a Legislative capacity, and they also act in a Judicial capacity sitting as a tribunal and making decisions in contested matters.

#### **ACC Contacts:**

Ernest G. Johnson, Executive Director, Office: 602-542-3931, E-Mail: [ejohnson@azcc.gov](mailto:ejohnson@azcc.gov)

Steven M. Olea, Director, Utilities Division, Office: 602-542-7270, E-Mail: [solea@azcc.gov](mailto:solea@azcc.gov)

Elijah Abinah, Assistant Director, Utilities Division, Office: 602-542-6935, E-Mail: [ecabinah@azcc.gov](mailto:ecabinah@azcc.gov)

Terri Ford, Chief Telecommunications Manager, Office: 602-542-0858, E-Mail: [tford@azcc.gov](mailto:tford@azcc.gov)

Will Shand, Public Utilities Analyst Manager

#### **ACC Interview:**

Mike Golden and Brad Zerbe of ASET (formerly GITA) along with Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted an interview with ACC personnel on April 5, 2011. During the meeting, parties discussed the role of the ACC regarding horizontal and vertical rights-of-way (“ROW”) responsibilities, issues, and opportunities.

The Telecommunications Act of 1996 in Section 224 narrows the scope of ACC jurisdiction over utility pole attachments for federally-defined utilities in Arizona (“Utilities”) unless Arizona has filed “State Pole Attachment Certification” with the FCC that it imposes its jurisdiction over Utility ROW. The term "pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility. Because Arizona has not filed the Certification with the FCC, it does not currently have jurisdiction over utility pole attachments for utilities in Arizona as defined by federal law (Utilities), including any person that is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications including pipelines.

However, the ACC may have jurisdiction over utility pole attachments for non-federally-defined utilities in Arizona (“utilities”). These potentially utilities include railroads, cooperatively organized utilities, and utilities owned by Arizona or subdivisions of the Arizona. But, in most cases, utilities owned by subdivisions of Arizona (counties and cities) often are under the direct

control of their respective counties and cities, and thus not under the jurisdiction of the ACC.

The ACC feels it has insufficient resources and interest in filing for “State Pole Attachment Certification” at this time. For information on states exerting such jurisdiction, see FCC Public Notice, DA 10-893, WC Docket No. 10-101 titled “States That Have Certified That They Regulate Pole Attachments” at [http://transition.fcc.gov/eb/Public\\_Notices/DA-10-893A1.html](http://transition.fcc.gov/eb/Public_Notices/DA-10-893A1.html).

As regards railroads, the ACC’s focus is on regulating safety at crossroads in particular and operational safety in general. Railroad placement may be grandfathered and either in current use or abandoned. The ACC has no interest in the variety of uses by railroad companies for their granted ROW including for telecommunications. See the included ADOT map of Arizona Railroads (Service Status and Ownership) for a view of these pathways.

As regards pipelines, the ACC has more jurisdiction over retail utility companies such as Southwest Gas. Long haul pipelines such as those owned by El Paso Natural Gas, Transwestern, and TransCanada are treated differently and with less jurisdiction exerted. The Federal Energy Regulatory Commission (FERC) has oversight on pipeline siting. ACC authority over any pipeline ROW use for fiber placement seems uncertain and interest limited.

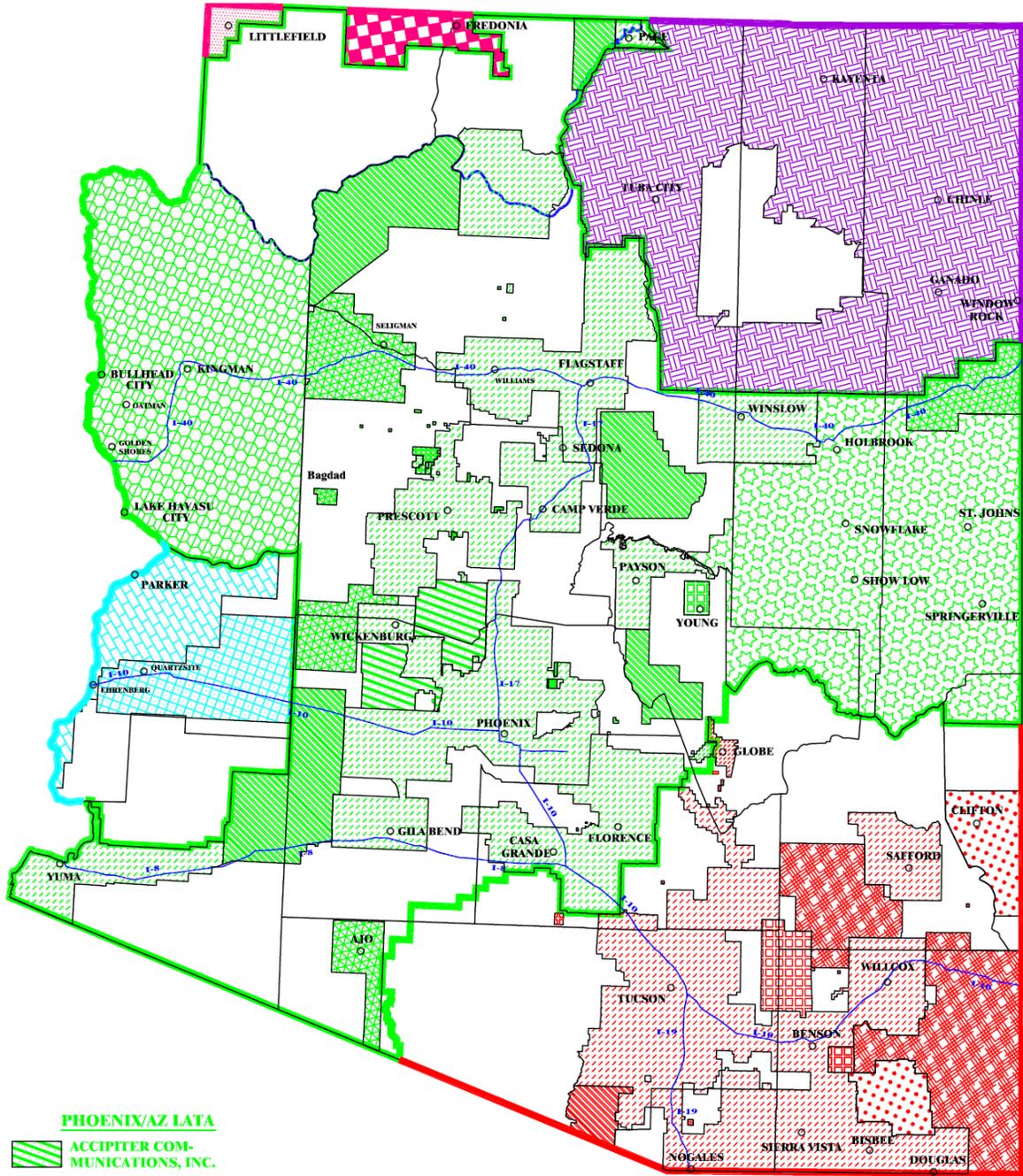
As regards electricity transmission lines, there is a separate siting commission and associated rate case. Again, ACC authority and interest regarding any power transmission ROW use for fiber placement seems limited.

Where squabbles over pole attachment rates between utilities or utilities with other commercial entities occur, the ACC may adjudicate, but would rather avoid. These matters are often adequately resolved by the parties behind closed doors.

The ACC has broad authority over telecommunication rate cases, but no similar authority for wireless rates. They have the option for oversight of wireless terms and conditions, but are not currently exercising it. As wireless broadband becomes more popular and universal service funding evolves at a state and federal level to address broadband services, that will likely evolve accordingly.

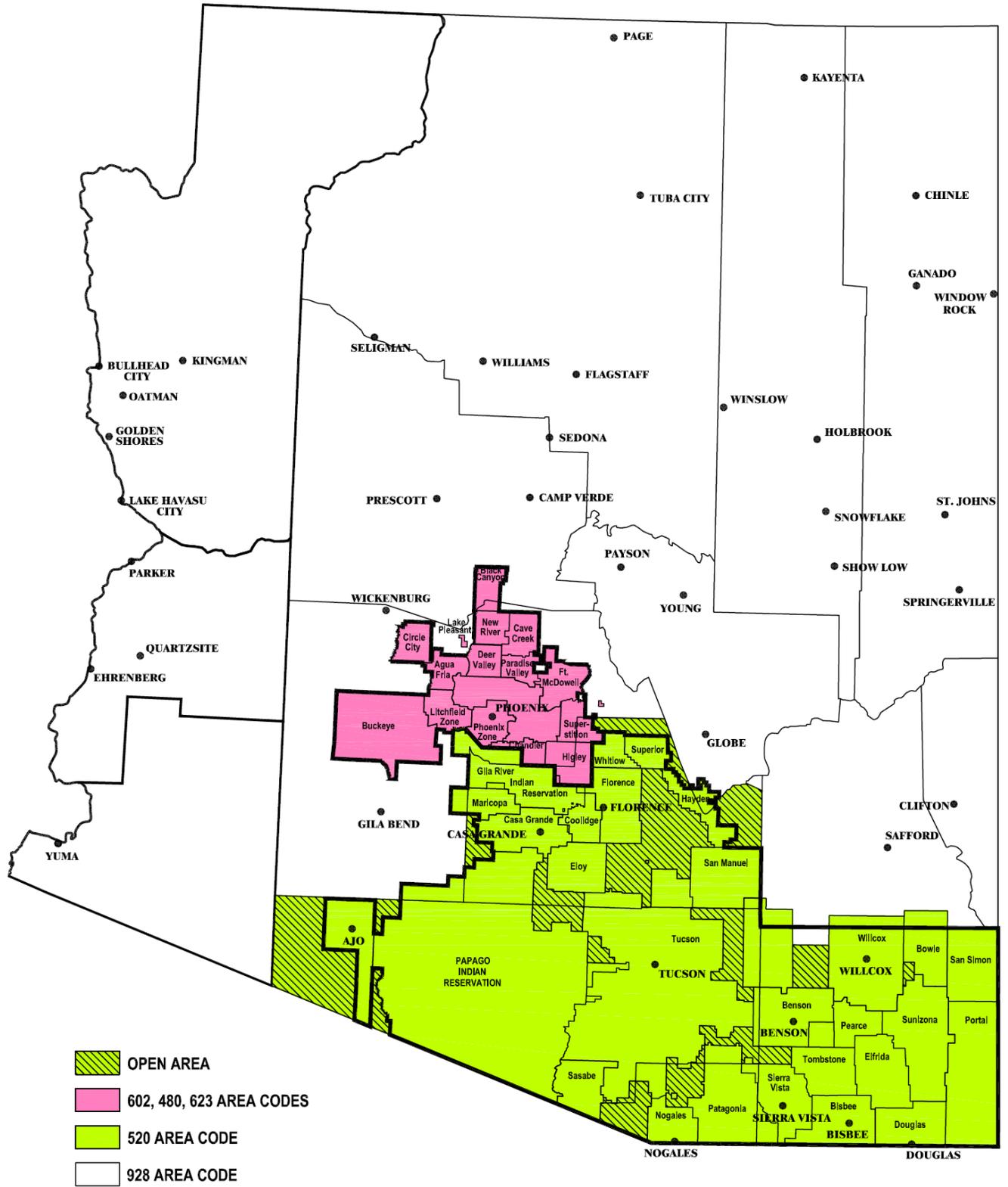
Where native-owned ILECs have bought out non-native-owned ILECs at fair market value through USDA Rural Utility Service (RUS) loans, the transfer/sale of such ILECs must be reviewed and approved by the ACC.

# Arizona ILEC and LATA Boundaries Map



- |                        |  |                       |                                    |                                |                                     |                              |   |
|------------------------|--|-----------------------|------------------------------------|--------------------------------|-------------------------------------|------------------------------|---|
| <b>PHOENIX/AZ LATA</b> |  | <b>TUCSON/AZ LATA</b> |                                    | <b>INDEPENDENT MARKET AREA</b> |                                     | <i>Revised June 27, 2007</i> |   |
|                        | ACCIPITER COMMUNICATIONS, INC.                 |                       | ARIZONA TELEPHONE COMPANY          |                                | NAVAJO COMMUNICATIONS COMPANY, INC. |                              | RIO VIRGIN TELEPHONE COMPANY              |
|                        | ARIZONA TELEPHONE COMPANY                      |                       | COPPER VALLEY TELEPHONE, INC.      |                                | LOS ANGELES/CA LATA                 |                              | SOUTH CENTRAL UTAH TELEPHONE ASSOC., INC. |
|                        | FRONTIER CITIZENS UTILITIES RURAL              |                       | MIDVALE TELEPHONE EXCHANGE, INC.   |                                | VERIZON CALIFORNIA, INC.            |                              |   |
|                        | FRONTIER COMMUNICATIONS OF THE WHITE MOUNTAINS |                       | QWEST COMMUNICATIONS, INC.         |                                | SOUTHWESTERN TELEPHONE CO.          |                              |   |
|                        | MIDVALE TELEPHONE EXCHANGE, INC.               |                       | VALLEY TELEPHONE COOPERATIVE, INC. |                                |                                     |                              |   |
|                        | TABLE TOP TELEPHONE COMPANY, INC.              |                       |                                    |                                |                                     |                              |   |
|                        | QWEST COMMUNICATIONS, INC.                     |                       |                                    |                                |                                     |                              |   |

# Arizona Area Codes Map



## **Appendix A - ASET EIID Project Interviews**

### **Arizona New Mexico Cable Television Association (AZ-NMCTA)**

The Arizona New Mexico Cable Television Association (AZ-NMCTA - <http://www.azcable.org/>) works closely with state and federal lawmakers to implement a positive legislative program for the cable television industry. AZ-NMCCA has successfully obtained state theft of service legislation, codified a state sales tax exemption, put a cap on state license fees, and was instrumental in developing the 1984 & 1996 Federal Cable Communications Acts. AZ-NMCCA offers guidance and assistance to cable television systems in dealing with local government relations issues.

#### **AZ-NMCTA Contacts:**

Susan Bitter-Smith, Executive Director, Office: 602-955-4122, E-Mail: [susan@azcable.org](mailto:susan@azcable.org)

#### **AZ-NMCTA Interview:**

Mike Golden and Brad Zerbe of ASET (formerly GITA) along with Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted a special session with AZ-NMCTA's leadership and membership at their Annual Meeting on February 9, 2011. During the meeting, attendees discussed the role of the AZ-NMCTA regarding horizontal and vertical rights-of-way ("ROW") role, issues, and opportunities.

Mike Keeling of Data Site Consortium, Inc. first gave a presentation titled "Right-of-Way as Essential Infrastructure for Statewide Information Delivery" to the assembled AZ-NMCCA members, followed by an open discussion. AZ-NMCTA members generally are looking for a seat at the table with both State and local authorities in the evolving regulatory environment and seek to elevate the conversation.

Multiple attendees commented on municipal deployments not being a level playing field for telecom compared to other utilities. Some of the issues and examples presented were:

- Most dominant issue was the lead time and difficulty in permitting projects. Significant impact to project timelines and costs with often the need to manage uncertainty in process progress. Observation that if you "push it" you may go to the bottom of the pile. However, there some receptiveness for the paying of expediting fees under a two tier system when needed for project completion commitments and/or schedule certainty, but a residual suspicion that such fees are extortive and the necessary work could have been done faster.
- When subsequent road widening or placement of new municipal infrastructure occurs, electrical and gas utilities are often reimbursed for moving their infrastructure assets while telecom companies are not. Treatment should be equal and there should be adequate notice and planning for relocation needs, as well as visibility for costs.
- Repaving of street surfaces after trenching vary greatly between municipalities and are often viewed as an opportunity to achieve fundamental road maintenance above and beyond the remediation of the infrastructure deployment. The municipality themselves

may only repave the disturbed area but require telecom companies to go far beyond that. The burden should be equalized.

- Municipalities should encourage and help coordinate collocation where open trench infrastructure is being place for telecom or other utility purposes to help minimize industry costs and traffic disruptions.
- Highway and significant road projects are often grant funded. Telecom providers should get early notice to evaluate and incorporate to their planning and budgeting. Often projects are impending or underway before visible to the telecom community.

Mike Golden of ASET introduced the “two highways for the cost of one” concept and explained how ADOT and other road building entities could be encouraged and/or required to place empty conduit along construction routes to provide a significant inventory of fiber deployment ready opportunities over time. The concept was generally welcome by AZ-NMCTA attendees with follow on discussion of reduced costs and time to market, as well as potential issues with shared use. There was a desire to see the collection and distribution of best practices from other states and municipalities as a guide to what may be done here.

Middle mile for backhaul from rural and remote areas remain a major challenge in Arizona. An example given was for fiber installation from Winslow to Sholow where two years was spent upfront in permitting and six years overall to deploy. BTOP grants often have an unrealistic timeframe and constraints due to permitting difficulties and cross-jurisdictional issues.

Microtrenching for fiber deployment minimizes construction costs and road damage, but has yet to shorten permitting cycles as well as road remediation requirements, and doesn't work in rock.

Generally AZ-NMCTA members feel pole attachment fees and processes are working well with FCC regulation of fees for some utilities and agreements in place with electric cooperatives. However, when there are multiple entrants, the lack of a central registry of pole use and capacity even within the owning entity makes it difficult to ascertain the underlying pole potential and clear path to plan for and authorize use. In pole management for late attachers, federal control preempts the State. For historic pole lines to undeveloped/underdeveloped areas, there is somewhat of a wildcat mentality and history of use.

There is a great need to streamline process(es) for different agencies and applications, perhaps by means of overriding legislation and/or a clearinghouse. The pending Arizona Broadband Development Council (ABDC) and interest from the Governor's Office were discussed at gateways to greater telecom provider engagement and drivers for removal/reduction of barriers going forward.

## Appendix A - ASET EIID Project Interviews

### Arizona Wireless Association (AZWA)

The Arizona Wireless Association (AZWA - <http://azwa.org/>) seeks to cultivate relationships within the wireless industry and with Arizona's cities and towns and to create a unified voice that supports the development of quality wireless networks, the enhancement of the communities we serve, and a spirit of charitable giving.

#### AZWA Contacts:

Lisa Johnson, Area Director of Property - West, Crown Castle and President of AZWA, Office: 480-735-6915, E-Mail: [lisa.johnson@crowncastle.com](mailto:lisa.johnson@crowncastle.com) & [lisa@azwa.org](mailto:lisa@azwa.org)

Karla Richards, Vice President of AZWA, E-Mail: [karla@azwa.org](mailto:karla@azwa.org)

John Stevens, Sales Development Manager West Region, Mobilitie Telecommunications Infrastructure and Treasurer, AZWA, Office: 602-314-0379, E-Mail: [john@mobilitie.com](mailto:john@mobilitie.com)

Matthew Dostal, National Business Development Manager, Telecom Division, CALTROP Corporation, Regulatory Affairs for AZWA, and ATIC Board Member, Office: 480-241-6363, E-Mail: [mdostal@caltrop.com](mailto:mdostal@caltrop.com)

#### AZWA Interview:

Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. initially attended an AZWA membership mixer and introduced this project on March 1, 2011. Mike Golden of ASET (formerly GITA) along with Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. subsequently worked with AZWA to schedule an collaborative session with AZWA leadership and membership at a special meeting attended by some two dozen individuals on April 14, 2011. During the meeting, attendees discussed the role of the AZWA and its members regarding horizontal and vertical rights-of-way ("ROW") role, issues, and opportunities.

Mike Keeling of Data Site Consortium, Inc. first gave an overview of the State's NTIA grant for broadband assessment and planning, the launch of the Arizona broadband map, and this policy project, then a presentation titled "Right-of-Way as Essential Infrastructure for Statewide Information Delivery" to the assembled AZWA members, followed by an open discussion.

AZWA members indicated that middle mile fiber backhaul was becoming increasingly important as microwave links became insufficient for burgeoning mobile data traffic. Thus, they welcomed ASET's efforts in reducing/eliminating barriers to greater middle mile fiber deployment and were quite receptive to the "two highways for the price of one" concept and potential.

FCC Order 224 gives equal footing for wireless as regards pole attachment. Since the ACC has not filed for "State Pole Attachment Certification" with the FCC, Category 1 investor owned poles remain under FCC purview, unlike coop and municipally owned poles. The wireless industry is quite interested in operating Distributed Antenna Systems (DAS) from power poles, among other existing vertical assets. The FCC order enables top of pole use which is quite important. Focus is on 12 KV and down distribution poles with 69 KV remaining business as

usual and not affected by the order. The Distributed Antenna System (DAS) Forum (<http://www.thedasforum.org/>) is developing a set of standards that should help.

Six states have enacted some form of “colocation by rights” legislation and something similar should be considered here. Also, AZWA would welcome various potential forms of State preemption of local authority in permitting and regulation, as well as with the establishment of model sets of standards (i.e. - Connecticut, New Jersey). Such standards should have a republishing cycle to account for technology half-life and layer on states’ cooperation for de facto national standards.

The California Public Utilities Commission (CPUC) adopted General Order 170 in December 2010 revamping its rules under the California Environmental Quality Act (CEQA ), which requires public agencies to identify the significant environmental effects of their actions and to provide alternatives to reduce those environmental effects. It is expected to substantially improve the process for telecom carriers to obtain environmental review when they deploy new facilities in California and level the playing field for all telecommunications utilities, especially CLECs. Dictates uniformity that’s technology neutral and deals with setback restraints that remove vertical assets from use.

Municipal public works generally trumps home owner associations (HOA) in permitting and oversight. The FCC precedent for overriding HOA/community rules on residential satellite dish placement may not carry over to commercial domains, though renewable energy interests could drive. There is a strong presumption of CLECs being utilities for purposes of ROW use, but where to drive State regulation and legislation from? In California, Davis-Sterling Act overrides HOA rights in their bylaws, CCRs, etc.

Municipalities may limit above ground equipment placement in an attempt to favor underground placement, but often proving impractical (Scottsdale example). A decision in California against Huntington Beach provides a potentially useful precedent.

There are significant fiber placement enforcement issues. A discussion of encroachment permits followed. Microtrenching in gutters is least intrusive and directional boring aids.

It could be useful to have documented evidence of broadband availability driving rural economic development. Tangible models and proof may help shift sentiment regarding reducing/removing deployment barriers.

## Appendix A - CenturyLink Project Interviews

### CenturyLink (Formerly Qwest Communications)

CenturyLink (<http://www.centurylink.com/>) acquired the former Qwest Communications and is now Arizona's primary Incumbent Local Exchange Carrier (ILEC) in metropolitan and some rural areas. CenturyLink is the third largest telecommunications company in the U.S. and provides broadband, voice, and wireless services to consumers and businesses across the country as well as advanced entertainment services under the CenturyLink Prism TV and DIRECTV brands. In addition, the company provides data, voice and managed services to business, government and wholesale customers in local, national and select international markets through its high-quality advanced fiber optic network and multiple data centers. As part of the merger with Qwest Communications, CenturyLink committed to the ACC to invest \$75 million in rural broadband infrastructure in Arizona.

#### CenturyLink Contacts:

George Favela, Director of State and Local Government Affairs, Office: 520-670-2422, E-Mail: [george.favela@centurylink.com](mailto:george.favela@centurylink.com)

Michael DiMaria, Director of State Legislative Affairs, Office: 602-630-5179, E-Mail: [michael.dimaria@centurylink.com](mailto:michael.dimaria@centurylink.com)

Wendell Nelson, Manager Engineering & Construction, Network Services, Office: 520-292-7555, E-Mail: [wendell.nelson@centurylink.com](mailto:wendell.nelson@centurylink.com)

#### CenturyLink Interview:

Mike Golden of ASET (formerly GITA) along with Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted an interview with CenturyLink personnel on September 12, 2011. During the meeting, parties discussed the role of the CenturyLink, as well as horizontal and vertical rights-of-way ("ROW") role, issues, and opportunities.

Century Link's (CL) concerns and opportunities regarding regulation of public and private rights of way (PROW/ROW):

- Longitudinal ROW
  - Forest Service, ASLD, ADOT, county, community issues
    - ASLD especially problematic to deal with
    - ADOT doesn't allow inside roadway fiber deployment which would be more cost effective
    - ADOT requires removal of abandoned cable at their discretion
  - Cell tower feeds
    - Time to market
    - Re-setting ASLD ROWs/licenses
      - 10x higher pricing if replacing
        - copper with fiber
        - fiber with more fiber

- Desire cost-based fees, not %-revenue-based fees
- Vertical ROW
  - Not substantial concern of in metro
  - CL's customers generally

Impact of Section 224 of the 1996 Telecommunications Act on CL's Operations:

- How Section 224 impacts CL's operations
  - CL sits on both sides of the issue
    - Operates as ILEC west of Mississippi River
    - Operates as CLEC east of Mississippi River
  - Some desire for local vs. federal adjudication of issues
  - City of Mesa program for limited street refurbishing with good cooperation may be example for other cities to follow

Scope of PROW that CL desires Arizona public-entities make available for telecommunications purposes:

- State land
  - Middle mile runs
  - Enabling loop topologies
- Municipal PROW
  - Process issues (See below)
  - Focus on streets and permitting restrictions
  - No set-back issues or other issues primarily associated with cell towers
  - Some areas just have no good location availability
  - Timeframes problematic under contractual deadlines
- PROW in rural areas
  - Process issues—see below
- Non-public resources
  - Not of great concern
- Other ROW, e.g., railroads
  - Not of great concern
- So many touch points. Simplify!

Restrictive regulation on use of PROW/ROW that CL would like to see modified:

- Federal laws and rules
  - No substantial inputs from CL re federal laws and rules
  - CL interest in FCC/ABC —unserved broadband areas
- Arizona State laws and rules
  - ASLD
    - Major concern over aggressive pricing behaviors
      - Terminating existing 50 year ROWs/easements
      - Replacing with 10 year ROWs/easements

- Replacement costs ranging upwards of 10x prior costs
- ADOT
  - Overly strict roadway-rules resulting in delayed permitting
  - Insufficient permitting personnel—need to pay salaries of additional persons dedicated to issuing CL requested permits
    - Use of expeditors
    - Bundled permits
  - No/little notice for relocations of existing plant
    - Transparency legislation (HB2513?)
  - ADOT ROW fee increases with relocations (reference I17 and 303 relocations)
  - CenturyLink would be interested in “two highways for the price of one” conduit availability if, and only if, good separation of dedicated fiber from other providers and security assured.
    - Issues of control, liability, and regulation
- ADOA
  - Procurement processes eliminate possible optimized proposals
  - SPOE proposal scoring detrimental to out of the box thinking
- Local government ordinances
  - Time to market issues
    - Permitting processes
    - Moratoriums on street digs
  - Cost issues
    - Excess fees
    - Insufficient permitting personnel. Need to pay salaries of additional persons dedicated to issuing CL requested permits.
  - Opportunity to restructure certain fees within the context of on-going “model city tax code” discussions
  - No/little notice for relocations of existing plant

## Appendix A - ASET EIID Project Interviews

### Salt River Project (SRP)

Salt River Project (SRP - <http://www.srpnet.com/>) consists of two entities: the Salt River Project Agricultural Improvement and Power District, a political subdivision of the state of Arizona, and the Salt River Valley Water Users' Association, a private corporation. The Power District provides electricity to nearly 934,000 retail customers in the Phoenix area and operates or participates in 11 major power plants and numerous other generating stations, including thermal, nuclear, natural gas, and hydroelectric sources.

SRP Telecom (<http://www.srpnet.com/telecom/>) is a carrier-neutral provider of telecommunications infrastructure products and services to Wireline and Wireless carriers alike, as well as to enterprise customers with fiber optic and cell site assets concentrated in the Phoenix metropolitan area, providing ready access and solutions to the unique network challenges of the expansive Phoenix marketplace. Some fiber assets extend to the East of Phoenix serving the Eastern Mining District in the Globe-Miami-Superior area.

#### SRP Contacts:

Michael Sherman, Director of Telecom Services, Office: 602-236-5806, E-Mail: [mcsherma@srpnet.com](mailto:mcsherma@srpnet.com)

Jeff Taylor, Telecom Wireline Manager, Office: 602-236-5807, E-Mail: [jxtaylor@srpnet.com](mailto:jxtaylor@srpnet.com)

Angela Castellano, Telecom Project Manager, Office: 602-236-2856, E-Mail: [amcastel@srpnet.com](mailto:amcastel@srpnet.com) (No longer with SRP)

Jennifer Marceau, Contract Services Manager, Office: 602-236-8663, E-Mail: [jennifer.marceau@srpnet.com](mailto:jennifer.marceau@srpnet.com)

#### SRP Interview:

Mike Golden of ASET (formerly GITA) along with Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted an interview with SRP personnel on August 2, 2011. During the meeting, parties discussed the role of the SRP, as well as horizontal and vertical rights-of-way (“ROW”) role, issues, and opportunities.

SRP Telecom considers all fiber deployment and wireless collocation asset builds more on a potential revenue basis than as a cost issue, and seeks to aggregate demand for a quicker ROI. Unlike pure commercial telecom providers, SRP’s investment ROI can and often does include consideration of community benefits, the value of joint projects, and positioning telecom assets as catalysts.

Fiber use across SRP’s network is leased to both wireline and wireless carriers, as well as to a limited number of large enterprise customers. SRP’s wireless site assets are fiber fed, usually through aerial fiber deployment carried with the 69 KV transmission system or fiber laterals where appropriate. Distributed DAS is deemed practical on owned transmission towers.

However, long haul high voltage distribution infrastructure is shared with other electric utilities and hard to utilize for fiber deployment or wireless transmitter attachment.

SRP rarely deploys empty conduit as it would rather fill with fiber and lease fiber access as a prime service offering. However, SRP does add conduit to new business parks that it is involved in constructing electrical distribution for, such as the Cotton Center in Phoenix, and later add fiber as needed to serve a growing customer base. Generally, SRP operates as a carrier's carrier under Master Fiber Lease Agreements including Service Level Agreements (SLA). The Product Order Process yields an initial quote +/- 30%. Non-Recurring Engineering (NRE) and recurring costs are quoted on a case by case basis for terms varying from month-to-month all the way to 20 year lease agreements. SRP experiences about a 10:1 ration of quotes provided to closes business.

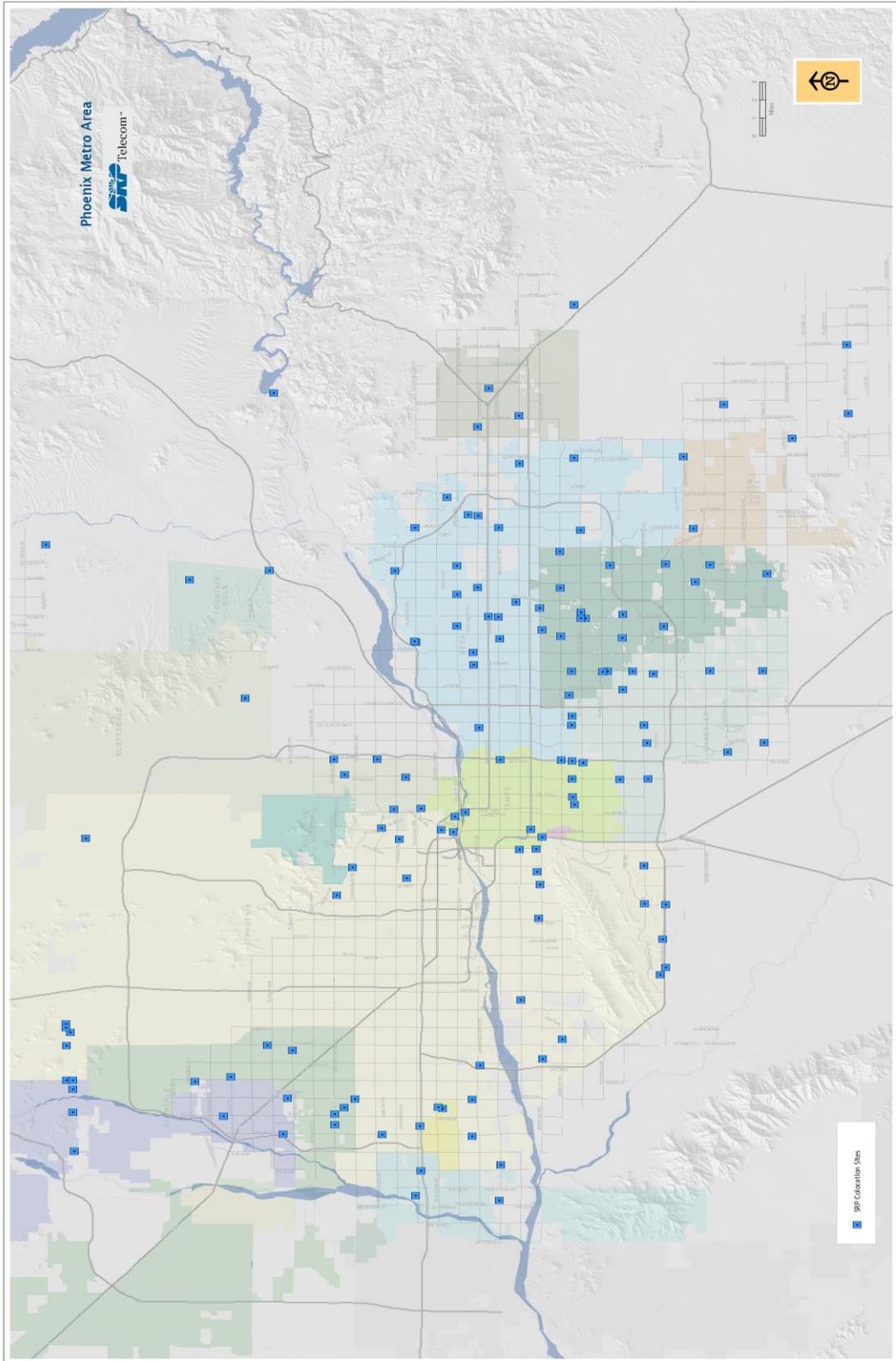
In regard to pole attachments, SRP is exempt from Section 224 of the 1996 Telecommunications Act as are railroads. However, SRP tends to voluntarily comply with pricing to the federal schedule, but internal analysis indicates that may be underpriced on the basis of cost and value. New FCC pole attachment rules for wireless assets may affect macrosite strategy.

SRP manages the Phoenix-area canal system for the Bureau of Reclamation, but generally does not use these pathways for buried fiber, rather going aerial at much lower cost. It does enable commercial providers to cross canal pathways on a case-by-case basis.

Communication towers are built out at some 260 sites and use of them leased as turnkey cell sites mostly at existing electrical infrastructure locations such as power substations. Pricing is based on industry comps and fiber backhaul offered as an add on service where carriers desire.



# SRP Phoenix Area Wireless Colocation Sites



## Appendix A - ASET EIID Project Interviews

### Union Pacific Railroad

Union Pacific Corporation (NYSE:UNP (<http://www.up.com/>)) is one of America's leading transportation companies. Its principal operating company, Union Pacific Railroad (UPR), is North America's premier railroad franchise, covering 23 states across the western two-thirds of the United States.

#### Union Pacific Railroad Contacts:

Mike Wallman, UPR Property Management, Office: 402-544-0577, E-Mail: [mwallman@up.com](mailto:mwallman@up.com)

David Elliot-Meisel, Project Director UPRR, SBA Site Management, Office: 402-657-4250, E-Mail: [delliot-meisel@sbsite.com](mailto:delliot-meisel@sbsite.com)

#### Union Pacific Railroad Interview:

Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted a phone interview with Mike Wallman, a representative of the Union Pacific Railroad, on June 29, 2011. During the meeting, parties discussed the role of the Union Pacific Railroad, as well as horizontal and vertical rights-of-way (“ROW”) role, issues, and opportunities.

Union Pacific Railroad total portfolio of ROW in Arizona:

- Sunset Route through Arizona
- Abandoned routes
- Other ROW sites/routes

Master agreement/NDAs in existence:

- Fees negotiated individually
- Multiple fiber agreements exists
- Multiple wireless
  - Union Pacific Railroad vertical assets
    - Well developed program and offerings for carriers to utilize
    - 17 vertical assets available in Arizona per table and map below
  - 3rd party vertical assets
    - 300 co-location agreements (total UPR system)
- Underlying fee simple landowner issues:
  - Rights granted by US Government (federal land grants) include all telecommunications rights
  - Native American Lands require additional negotiations
    - Telecommunications companies may need to negotiate with tribal entities directly/indirectly for a side agreement

- Abandoned line Opportunities
  - ROWs are typically reserved during the abandonment process
- Negotiating processes
  - Details available
- Crossing Agreements (< 2000 feet) are handled by UPR Real Estate Department
  - Fees - one-time fee that is standard

SBA Site Management subsidiary of UPR markets and manages wireless tower leased use:

- David Elliot-Meisel, Project Director UPRR, SBA Site Management
- SBA Site Management funds several ROW resources and will build new tower assets on a business case basis as needed

Federal Regulations:

- 100% coverage of passenger track miles must be served by Positive Train Control (PTC) communications capabilities by 2012
  - Requires new set of towers now being constructed
    - Along-track towers are 30 feet tall typically
    - Repeater towers are 100-120 feet tall typically
  - See [http://en.wikipedia.org/wiki/Positive\\_train\\_control](http://en.wikipedia.org/wiki/Positive_train_control)
- Federal exemption
  - UPR has and uses its federal exemption from state and local zoning/permitting processes

### Union Pacific Railroad Company Vertical Assets in Arizona

City	S	Lat	Long	Structure Height	Ground AMSL	Total AMSL	Facility Type (SSS = Steel Self Support, SG = Steel Guyed, WP = Wood Pole, WS = Wood Structure)
Bowie (MIC)	AZ	321943	1092910	50	3760	3760	SSS
Casa Grande (MIC)	AZ	325233	1114519	80	1390	1465	SSS
Gila Bend (MIC)	AZ	325646	1124250	80	735	815	SSS
Heliograph Peak (MIC)	AZ	323857	1095055	150	10002	10152	SSS
Midway Wells (MIC)	AZ	324236	1140733	400	115	515	SG
Mount Lemmon (MIC)	AZ	322623	1104704	125	9050	9175	SSS
Oatman Mtn. (MIC)	AZ	330306	1130803	100	1690	1790	SG
Phoenix (MIC)	AZ	332640	1120404	100	1080	1180	SSS
Pinal Peak (MIC)	AZ	331649	1104910	100	7720	7820	SG
Telegraph Pass (MIC)	AZ	324013	1142005	80	1590	1670	SSS
Tucson (MIC)	AZ	321324	1105759	45	2384	2429	Bldg
Tucson Yard Office	AZ	325235	1104520	100	425	525	SSS
Wellton (MIC)	AZ	324011	1140815	40	255	295	WP
White Tank Mtn. (MIC)	AZ	333431	1123441	80	4040	4120	SSS
Willcox (MIC)	AZ	321505	1094951	50	4167	4217	SSS
Yuma (MIC)	AZ	324322	1143654	60	130	190	SSS
Yuma East Yard (MIC)	AZ	324056	1143415	70	35	105	SSS



## Appendix A - ASET EIID Project Interviews

### BNSF Railway

The BNSF Railway (<http://www.bnsf.com/>) operates one of the largest railroad networks in North America covering the western two-thirds of the United States, the product of nearly 400 different railroad lines that merged or were acquired over the course of 160 years. BNSF Railway plays a vital role in the U.S. economy, hauling the products consumers use every day and the raw materials manufacturers need to make those products.

### BNSF Railway Contact:

Susan Odom, Manager Network Studies, Office: 817-352-6432, E-Mail: [Susan.Odom@bnsf.com](mailto:Susan.Odom@bnsf.com)

### BNSF Railway Interview:

Mike Keeling and Mark Goldstein of Data Site Consortium, Inc. conducted a phone interview with Susan Odom, a representative of the BNSF Railway, on August 19, 2011. During the meeting, parties discussed BNSF's current third party ROW initiatives, as well as horizontal and vertical rights-of-way ("ROW") role, issues, and opportunities.

Underlying landowner issues:

- BNSF has land grants from underlying land owners (fee absolute owners), including
  - Pre-1871 land grants
    - Generally are fee simple
    - Give BNSF full rights to contractually delegate ROW to third parties
  - Post-1871 land grants
    - Generally are limited to BNSF railroad purposes
    - Reversionary, meaning that if BNSF contractually delegates ROW to third parties, such delegations are subject to liability for exceeding-scope-of-use claims by the underlying land owners

Underlying landowners include:

- Federal entities
- Native American entities
- State governments
- Local governments
- Private owners

Scope of third party activities of the BNSF ROW Group:

- Longitudinal ROW
  - Long runs
    - BNSF long-run ROW processes are early-stage, requiring individual assessments for defining the underlying title restraints, which impact its ability to contractually delegate ROW to third parties.
    - Arizona route map provided and has been included below

- Route abandonment records are in place for abandonments after 1995
  - Short runs - Crossings
    - DNSF crossing (transverse) ROW permitting processes are mature, relatively standardized, requiring an initial fee and typically annual fees, delegated to a BNSF business partner
- Vertical ROW
  - BNSF
    - Has approximately 900 co-location communications towers, of which 37 are located in AZ
    - Has a process by which it identifies fee simple assets on which it can locate communications towers
    - Is open to expanding the number of co-location towers in AZ
    - Is open to expanding longitudinal fiber to its existing co-location towers (most now are microwave fed)
    - Is open to shared cost arrangements for the tower/fiber feed expansions
  - Is limited by
    - Underlying fee arrangements
    - Local zoning rules

Potential BNSF ROW initiatives:

- Co-funding common fiber builds
  - Leasing dark fiber
  - Indefeasible Right to Use (IRU)
  - Will take dark fiber rights as part of deal
    - Possible cross jurisdictional rights exchanges
  - Any fiber along ROW enhances control
  - Supports expanding network of microwave for backhaul
- BNSF will entertain new business models

Federal rules impacting ROW decisions:

- Positive Train Control (PTC) wireless deployment required in near future
  - Will drive new tower deals. Locations needed to be identified.
  - Larger tower sites for colocation opportunities
  - See [http://en.wikipedia.org/wiki/Positive\\_train\\_control](http://en.wikipedia.org/wiki/Positive_train_control)

Railroad operational issues:

- Service and safety are primary



## **Appendix B - ASET EIID Resources & References**

### **Index of Resources & References**

**Federal Government Agencies**

**State of Arizona Government Agencies**

**National Non-Profit Organizations and Trade Associations**

**Arizona Non-Profit Organizations and Trade Associations**

## Appendix B - ASET EIID Resources & References

### Federal Government Agencies:

**White House** - <http://www.whitehouse.gov/>

Technology Issues - <http://www.whitehouse.gov/issues/technology>

21st Century Digital Infrastructure -  
<http://www.whitehouse.gov/issues/technology#id-4>

**Federal Communications Commission (FCC)** - <http://www.fcc.gov/>

The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. It was established by the Communications Act of 1934 and operates as an independent U.S. government agency overseen by Congress.

Legacy FCC Site - <http://transition.fcc.gov/>

National Broadband Plan - <http://www.fcc.gov/topic/national-broadband-plan>

Broadband USA - <http://www.broadbandusa.gov/>

Broadband.gov Plan Site - <http://www.broadband.gov/plan/>

Chapter 6: Infrastructure -  
<http://www.broadband.gov/plan/6-infrastructure/>

Connecting America Fund - <http://www.fcc.gov/encyclopedia/connecting-america>

National Broadband Map - <http://broadbandmap.gov/>

Consumer Broadband Test (Beta) - <http://www.broadband.gov/qualitytest/about/>

Wireline Competition Bureau - <http://www.fcc.gov/wireline-competition-bureau>

Broadband Acceleration Initiative -  
<http://www.fcc.gov/encyclopedia/broadband-acceleration>

Wireless Telecommunications Bureau (WTB) - <http://wireless.fcc.gov/>

Tower Overview - <http://www.fcc.gov/topic/tower>

Tower and Antenna Siting Issues - <http://wireless.fcc.gov/siting/>

Antenna Structure Registration (ARS) Search -  
<http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistrationSearch.jsp>

Broadband Opportunities for Rural America -  
[http://wireless.fcc.gov/outreach/index.htm?job=broadband\\_home](http://wireless.fcc.gov/outreach/index.htm?job=broadband_home)

Spectrum Dashboard - <http://reboot.fcc.gov/reform/systems/spectrum-dashboard>

## **U.S. Department of Commerce (DOC) - <http://www.commerce.gov/>**

The U.S. Department of Commerce promotes job creation, economic growth, sustainable development and improved standards of living for all Americans by working in partnership with businesses, universities, communities and our nation's workers. The department touches the daily lives of the American people in many ways, with a wide range of responsibilities in the areas of trade, economic development, technology, entrepreneurship and business development, environmental stewardship, and statistical research and analysis.

### **National Telecommunications and Information Administration (NTIA) - <http://www.ntia.doc.gov/>**

NTIA is the Executive Branch agency that is principally responsible for advising the President on telecommunications and information policy issues. NTIA's programs and policymaking focus largely on expanding broadband Internet access and adoption in America, expanding the use of spectrum by all users, and ensuring that the Internet remains an engine for continued innovation and economic growth.

Broadband - <http://www.ntia.doc.gov/category/broadband>

Recovery Act Broadband Programs - <http://www2.ntia.doc.gov/>

Digital Literacy Initiative - <http://digitalliteracy.gov/>

National Broadband Map - <http://www.broadbandmap.gov/>

Broadband Adoption Research - <http://www.ntia.doc.gov/data>

Broadband Grants - <http://www.ntia.doc.gov/grants-combined>

Broadband Technology Opportunities Program (BTOP) - <http://www.ntia.doc.gov/category/broadband-technology-opportunities-program>

State Broadband Initiative (SBI) - <http://www2.ntia.doc.gov/SBDD>

Arizona Projects - <http://www2.ntia.doc.gov/arizona>

National Broadband Map Datasets - <http://www2.ntia.doc.gov/broadband-data>

## **U.S. Department of Agriculture (USDA) - <http://www.usda.gov/>**

### **Rural Utilities Service (RUS) - [http://www.rurdev.usda.gov/Utilities\\_LP.html](http://www.rurdev.usda.gov/Utilities_LP.html)**

Rural Development Loan Assistance - [http://www.rurdev.usda.gov/RD\\_Loans.html](http://www.rurdev.usda.gov/RD_Loans.html)

Farm Bill Broadband Program - [http://www.rurdev.usda.gov/utp\\_farmbill.html](http://www.rurdev.usda.gov/utp_farmbill.html)

Rural Development Grant Assistance -  
[http://www.rurdev.usda.gov/RD\\_Grants.html](http://www.rurdev.usda.gov/RD_Grants.html)

Community Connect -  
[http://www.rurdev.usda.gov/utp\\_commconnect.html](http://www.rurdev.usda.gov/utp_commconnect.html)

Distance Learning and Telemedicine Program (DLT) -  
[http://www.rurdev.usda.gov/UTP\\_DLT.html](http://www.rurdev.usda.gov/UTP_DLT.html)

**U.S. Department of Transportation (DOT) - <http://www.dot.gov/>**

Federal Highway Administration (FHWA) - <http://www.fhwa.dot.gov/>

Office of Infrastructure - <http://www.fhwa.dot.gov/infrastructure/>

Intelligent Transportation Systems (ITS) Library -  
<http://www.its.dot.gov/library.htm>

Rural Interstate Corridor Communications Study -  
[http://ops.fhwa.dot.gov/int\\_its\\_deployment/rural/congrpt0807/03potben.htm](http://ops.fhwa.dot.gov/int_its_deployment/rural/congrpt0807/03potben.htm)

**Universal Service Administrative Company (USAC) - <http://www.usac.org/>**

Schools and Libraries Program - <http://www.usac.org/sl/>

## Appendix B - ASET EIID Resources & References

### State of Arizona Government Agencies:

**Arizona Governor's Office - <http://www.azgovernor.gov/>**

Arizona.gov Official Web Site - <http://az.gov/>

Arizona Travel Guide - <http://www.arizonaguide.com/>

**Arizona State Legislature - <http://www.azleg.gov/>**

Arizona State Senate - <http://www.azsenate.gov/>

Arizona House of Representatives - <http://www.azhouse.gov/>

**Arizona Department of Administration - <http://www.azdoa.gov/>**

**Arizona Strategic Enterprise Technology (ASET) Office - <http://isd.azdoa.gov/>**

Arizona Broadband Project - <http://azbroadband.gov/>

Arizona Broadband Map - <http://broadbandmap.az.gov/map/>

Arizona Broadband Development Council (ABDC) -  
[http://azbroadband.gov/ABDC/About\\_ABDC.html](http://azbroadband.gov/ABDC/About_ABDC.html)

Task Groups - [http://azbroadband.gov/ABDC/Task\\_Groups/default.html](http://azbroadband.gov/ABDC/Task_Groups/default.html)

Former Government Information Technology Agency (GITA) -  
<http://www.azgita.gov/>

Telecom - <http://www.azgita.gov/telecom/>

Arizona GIS Broadband Survey Report (1/09) -  
<http://www.azgita.gov/telecom/AZ%20GITA%20Broadband%20Assessment%20GIS%20Study%20Jan2009.pdf>

Virtual Government Technology Center (VGTC) -  
<http://isd.azdoa.gov/sections/supply/itil/vgtc.aspx>

Telecommunications Program Office (TPO) - <http://www.tpo.az.gov/>

**Arizona Department of Transportation (ADOT) - <http://www.azdot.gov/>**

Geographic Information Systems for Transportation (GIS-T) Section -  
<http://www.azdot.gov/mpd/gis/index.asp>

GIS-T Projects - <http://www.azdot.gov/mpd/gis/projects/index.asp>

ADOT Maps - <http://www.azdot.gov/mpd/gis/maps/index.asp>

Arizona State Highway System - <http://www.azdot.gov/mpd/gis/maps/pdf/shs.pdf>

ADOT Engineering and Maintenance Districts -  
[http://www.azdot.gov/mpd/gis/maps/pdf/eng\\_maint\\_dist\\_mp.pdf](http://www.azdot.gov/mpd/gis/maps/pdf/eng_maint_dist_mp.pdf)

Report TRQS-02 - Arizona I-19 Wi-Fi Corridor: Assessment of Opportunities for Probe Data Operations (10/05) -  
<http://www.azdot.gov/TPD/ATRC/publications/QuickStudies/PDF/TRQS-02.pdf>

Report TRQS-03 - Arizona I-19 WiFi Corridor: Concept Demonstration of Probe Vehicle Tracking (3/07) -  
<http://www.azdot.gov/TPD/ATRC/publications/QuickStudies/PDF/TRQS-03.pdf>

**Arizona State Land Department (ASLD) - <http://www.land.state.az.us/>**

ASLD's mission is to manage State Trust lands and resources to enhance value and optimize economic return for the Trust beneficiaries, consistent with sound stewardship, conservation, and business management principles supporting socioeconomic goals for citizens here today and generations to come, as well as to manage and provide support for resource conservation programs for the well-being of the public and the State's natural environment.

Real Estate Division - <http://www.land.state.az.us/divisions/realestate.htm>

Sales & Commercial Leasing Section -  
<http://www.land.state.az.us/programs/realestate/sections/sales.htm>

Commercial Leasing Section -  
[http://www.land.state.az.us/programs/realestate/sections/comml\\_leasing.htm](http://www.land.state.az.us/programs/realestate/sections/comml_leasing.htm)

Right of Way Section -  
<http://www.land.state.az.us/programs/realestate/sections/row.htm>

Information Systems & Resource Analysis Division -  
<http://www.land.state.az.us/divisions/infoSystems.htm>

Arizona Land Resource Information System (ALRIS) -  
<http://www.land.state.az.us/alris/index.html>

ALRIS GIS Data - <http://www.land.state.az.us/alris/layers.html>

Arizona State Cartographer's Office (SCO) - <http://sco.az.gov/>

Arizona Geographic Information Council (AGIC) - <http://www.agic.az.gov/>

Telecommunications Site Rental Schedule for 2010 -  
[http://www.land.state.az.us/news/2009/103009\\_news.htm](http://www.land.state.az.us/news/2009/103009_news.htm)

## **Arizona Corporation Commission (ACC) - <http://www.azcc.gov/>**

The Arizona Corporation Commission (ACC - <http://www.azcc.gov/>) is established via Article 15 of the Arizona Constitution with elected Commissioners. The ACC has responsibilities that go beyond traditional public utilities regulation including regulation of telephone services, facilitating the incorporation of businesses and organizations, securities regulation, and railroad/pipeline safety. By virtue of the Arizona Constitution, the Commissioners function in an Executive capacity, they adopt rules and regulations thereby functioning in a Legislative capacity, and they also act in a Judicial capacity sitting as a tribunal and making decisions in contested matters.

Utilities Division - <http://www.azcc.gov/Divisions/Utilities/>

Telephone - <http://www.azcc.gov/divisions/utilities/telecom.asp>

Telecommunications Industry Page -  
<http://www.azcc.gov/divisions/utilities/telecom/industry.asp>

Arizona Universal Service Fund (AUSF) -  
<http://www.azcc.gov/divisions/utilities/telecom/ausf-faqs.asp>

Telecommunications Rules -  
[http://www.azsos.gov/public\\_services/Title\\_14/14-02.htm#ARTICLE\\_5](http://www.azsos.gov/public_services/Title_14/14-02.htm#ARTICLE_5)

## **Arizona Commerce Authority - <http://www.azcommerce.com/>**

Community Profiles -  
<http://www.azcommerce.com/facts-and-figures/community-profiles.aspx>

Maps & GIS Data - <http://www.azcommerce.com/facts-and-figures/maps.aspx>

Arizona Broadband Initiative Framework Analysis and Report (4/07) -  
<http://www.azcommerce.com/assets/pdfs/publications-and-reports/arizona-broadband-initiative-framework.pdf>

## **Arizona Department of Education - <http://www.azed.gov/>**

Educational Technology Group - <http://www.azed.gov/educational-technology/>

E-Rate - <http://www.azed.gov/educational-technology/e-rate/>

Multimedia Resource Links -  
<http://www.azed.gov/educational-technology/2011/09/14/multimedia-resource-links/>

Information Technology - <http://www.azed.gov/information-technology/>

## Appendix B - ASET EIID Resources & References

### National Non-Profit Organizations and Trade Associations:

#### National Governors Association (NGA) - <http://www.nga.org/cms/home.html>

NGA is the bipartisan organization of the nation's governors that promotes visionary state leadership, shares best practices, and speaks with a collective voice on national policy.

Communications Key Issue - <http://www.nga.org/cms/home/federal-relations/nga-key-committee-issues/page-edc-issues/col2-content/main-content-list/communications.html>

State Priorities in Communications Policy Position -  
<http://www.nga.org/cms/home/federal-relations/nga-policy-positions/page-edc-policies/col2-content/main-content-list/state-priorities-in-communicatio.html>

#### National Conference of State Legislatures (NCSL) - <http://www.ncsl.org/>

NCSL is a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths and territories providing research, technical assistance, and opportunities for policymakers to exchange ideas on the most pressing state issues. NCSL is an effective and respected advocate for the interests of state governments before Congress and federal agencies.

Telecommunications and Information Technology Issue -  
<http://www.ncsl.org/Default.aspx?TabID=756&tabs=951,71,531#951>

Telecommunications Technology and Regulation -  
<http://www.ncsl.org/Default.aspx?TabID=756&tabs=951,71,540#540>

Broadband Statutes - <http://www.ncsl.org/default.aspx?tabid=13455>

2010 Enacted Broadband Legislation -  
<http://www.ncsl.org/default.aspx?tabid=21125>

Transforming Health Care Through Technology: NCSL Partners Project -  
<http://www.ncsl.org/default.aspx?tabid=22228>

#### National Association of Regulatory Utility Commissioners (NARUC) - <http://www.naruc.org/>

NARUC is the national association representing the State Public Service Commissioners who regulate essential utility services, including energy, telecommunications, and water. NARUC members are responsible for assuring reliable utility service at fair, just, and reasonable rates. Founded in 1889, the Association is an invaluable resource for its members and the regulatory community, providing a venue to set and influence public policy, share best practices, and foster innovative solutions to improve regulation.

Committee on Telecommunications - <http://www.naruc.org/committees.cfm?c=53>

Ad Hoc Committee on National Wireless Consumer Protection Standards -  
<http://www.naruc.org/committees.cfm?c=59>

Staff Subcommittee on State Universal Service Fund Administrators -  
<http://www.naruc.org/committees.cfm?c=27>

Staff Subcommittee on Telecommunications -  
<http://www.naruc.org/committees.cfm?c=26>

National Regulatory Research Institute (NRRI) - <http://www.nrri.org/>

National Inventory of Broadband Projects and Programs -  
<http://communities.nrri.org/web/telecom-broadband-adoption/706-project-home>

Fundamentals of Telecommunications Regulation: Markets, Jurisdiction, and Challenges (1/11) -  
[http://www.nrri.org/pubs/telecommunications/NRRI\\_telecomm\\_overview\\_jan11-03.pdf](http://www.nrri.org/pubs/telecommunications/NRRI_telecomm_overview_jan11-03.pdf)

### **National League of Cities (NLC) - <http://www.nlc.org/>**

NLC is dedicated to helping city leaders build better communities. Working in partnership with the 49 state municipal leagues, NLC serves as a resource to and an advocate for the more than 19,000 cities, villages and towns it represents.

Information Technology & Communications Committee -  
<http://www.nlc.org/influence-federal-policy/policy-committees/information-technology-communications>

### **National Association of Counties (NACo) - <http://www.naco.org/Pages/default.aspx>**

NACo is the only national organization representing county government. Driven by a strong membership, NACo's Board of Directors represents counties across America.

Legislation & Policy - <http://www.naco.org/legislation/Pages/default.aspx>

Telecommunications & Technology Steering Committee -  
<http://www.naco.org/legislation/policies/Pages/TT.aspx>

### **National Association of Telecommunications Officers and Advisors (NATOA)**

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**<http://www.natoa.org/>**

NATOA is the premier local government professional association that provides support to members on the many local, state, and federal communications laws, administrative rulings, judicial decisions, and technology issues impacting the interests of local governments.

Policy/Advocacy - <http://natoa.org/policy-advocacy/>

Broadband - <http://natoa.org/broadband/national-broadband-plan.html>

Local Government Officials Principles Relating to Rights of Way (8/98) - [http://www.natoa.org/documents/Local\\_Government\\_Principles\\_Relating\\_to\\_Rights-of-Way.pdf](http://www.natoa.org/documents/Local_Government_Principles_Relating_to_Rights-of-Way.pdf)

Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance (6/00) - [http://www.natoa.org/documents/FCC\\_LSGAC\\_RF\\_Guide.pdf](http://www.natoa.org/documents/FCC_LSGAC_RF_Guide.pdf)

NATOA Local Government Official's e-Guide to Communications Facilities Siting (\$50 Members/\$100 Non-Members) - <http://www.natoa.org/documents/FacilitiesSitingFlyerUpdated.pdf>

## **National Association of State Chief Information Officers (NASCIO) - <http://www.nascio.org/>**

NASCIO's mission is to foster government excellence through quality business practices, information management, and technology policy.

State Connectivity and Broadband Working Group - <http://www.nascio.org/committees/broadband/>

Bowling for Broadband 2: Toward Citizen-Centric, Broadband-Based E-Government (8/06) - [http://www.nascio.org/publications/documents/NASCIO-Bowling\\_for\\_Broadband2.pdf](http://www.nascio.org/publications/documents/NASCIO-Bowling_for_Broadband2.pdf)

Bowling for Broadband: The Role of the State CIO in Promoting High-Speed Internet Access (9/04) - [http://www.nascio.org/publications/documents/NASCIO-CIO\\_and\\_Broadband.pdf](http://www.nascio.org/publications/documents/NASCIO-CIO_and_Broadband.pdf)

## **Rural Telecommunications Congress (RTC) - <http://www.ruraltelecon.org/pages/>**

RTC is a national membership organization dedicated to assuring that rural areas in the United States have access to the information and support they need to obtain and use advanced telecommunications services and technology for social and economic development.

Broadband Planning - <http://www.ruraltelecon.org/pages/BroadbandPlanning.aspx>

Community Toolkit - <http://www.ruraltelecon.org/pages/ruraltelecon10/RuralTeleCon11/Toolkit.aspx>

## **Rural Telecommunications Group (RTG) - <http://ruraltelecomgroup.org/>**

RTG is a trade association representing rural wireless carriers who provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, to regions with less than 100,000 subscribers comprising secondary, tertiary, and rural markets. RTG membership is comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies that have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country.

Advocacy - <http://ruraltelecomgroup.org/advocacy/>

RICA/RTG Fall Forum and RTG Annual Meeting 11/2/11 in Phoenix, AZ - <http://ruraltelecomgroup.org/types/events/>

## **PCIA - The Wireless Infrastructure Association - <http://www.pcia.com/>**

PCIA - The Wireless Infrastructure Association is the trade association representing the companies that make up the wireless telecommunications infrastructure industry. Members include the carriers, infrastructure providers and professional services firms that own and manage more than 130,000 telecommunications facilities throughout the world.

Advocacy -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=30&Itemid=33](http://www.pcia.com/index.php?option=com_content&view=article&id=30&Itemid=33)

Federal -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=14&Itemid=34](http://www.pcia.com/index.php?option=com_content&view=article&id=14&Itemid=34)

State -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=15&Itemid=35](http://www.pcia.com/index.php?option=com_content&view=article&id=15&Itemid=35)

Local -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=16&Itemid=36](http://www.pcia.com/index.php?option=com_content&view=article&id=16&Itemid=36)

Model Ordinances -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=17&Itemid=37](http://www.pcia.com/index.php?option=com_content&view=article&id=17&Itemid=37)

Model Legislation -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=78&Itemid=159](http://www.pcia.com/index.php?option=com_content&view=article&id=78&Itemid=159)

References -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=18&Itemid=38](http://www.pcia.com/index.php?option=com_content&view=article&id=18&Itemid=38)

Distributed Antenna System (DAS) Forum - <http://www.thedasforum.org/>

AWS Clearinghouse - <http://www.awsclearinghouse.com/>

Frequency Coordination -

[http://www.pcia.com/index.php?option=com\\_content&view=article&id=32&Itemid=10](http://www.pcia.com/index.php?option=com_content&view=article&id=32&Itemid=10)

## **CTIA - The Wireless Association - <http://www.ctia.org/>**

CTIA - The Wireless Association is an international nonprofit membership organization that represents the wireless communications industry. Membership includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products.

Advocacy - <http://www.ctia.org/advocacy/>

Policy Topics - [http://www.ctia.org/advocacy/policy\\_topics/](http://www.ctia.org/advocacy/policy_topics/)

Broadband -

[http://www.ctia.org/advocacy/policy\\_topics/topic.cfm/TID/37](http://www.ctia.org/advocacy/policy_topics/topic.cfm/TID/37)

Spectrum, Tower Siting & Antennas -

[http://www.ctia.org/advocacy/policy\\_topics/topic.cfm/TID/65](http://www.ctia.org/advocacy/policy_topics/topic.cfm/TID/65)

Research - <http://www.ctia.org/advocacy/research/>

Legislative Search -

<http://www.ctia.org/advocacy/research/index.cfm/AID/10586>

### **American Planning Association (APA) - <http://www.planning.org/>**

APA is an independent, not-for-profit educational organization that provides leadership in the development of vital communities.

Technology Division - <http://www.planning.org/divisions/tech/index.htm>

Resources - <http://www.planning.org/resources/>

### **American Public Works Association (APWA) - <http://www.apwa.net/>**

APWA serves professionals in all aspects of public works and acts as an effective voice of public works throughout North America. APWA includes not only personnel from local, county, state/province, and federal agencies, but also private sector personnel who supply products and services to those professionals.

Advocacy - <http://www.apwa.net/Topics/Advocacy>

Utility and Public Right-of-Way -

<http://www.apwa.net/Topics/Utility-and-Public-Right-of-Way>

### **International Municipal Lawyers Association (IMLA) - <http://www.imla.org/>**

IMLA is a non-profit, professional organization that has been an advocate and resource for local government attorneys since 1935 and serves as an international clearinghouse of legal information and cooperation on municipal legal matters.

Sections -

[http://www.imla.org/index.php?option=com\\_content&task=view&id=82&Itemid=170](http://www.imla.org/index.php?option=com_content&task=view&id=82&Itemid=170)

Including a Telecommunications & Franchise Section (no specific link)

### **APCO International (Public Safety Communications) - <http://www.psconnect.org/Home/>**

APCO International is the world's largest organization of public safety communications professionals. It serves the needs of public safety communications practitioners worldwide and the welfare of the general public as a whole by providing complete expertise, professional development, technical assistance, advocacy, and outreach.

Resources - <http://www.psconnect.org/Resources/AllLibraries/>

## **Appendix B - ASET EIID Resources & References**

### **Arizona Non-Profit Organizations and Trade Associations:**

#### **Arizona Telecommunications & Information Council (ATIC) -**

<http://arizonatele.com/atic/>

ATIC (ATIC) is an economic development foundation that functions as Arizona's recognized and authoritative organization guiding technology policy development, serving as a leading source of information and expertise on telecommunications and information technology matters. ATIC develops, promotes and supports initiatives and guides adoption of effective public policies that encourages wide-scale deployment and availability of telecommunication services and information technologies to insure economic prosperity for the Arizona community, expand the region's global competitive advantage, enable continued educational advancement, and support an enhanced quality of life.

Archived Arizona Telecom Directory (ATD) - <http://www.arizonatele.com/>

ATIC Calendar of Events - <http://arizonatele.com/atic/calendar.php>

ATIC Strategy Committee - <http://arizonatele.com/atic/strategy/default.htm>

#### **Arizona Telecommunications & Information Institute (ATI Institute) -**

<http://aztii.org/>

ATI Institute is dedicated to supporting and promoting initiatives in the area of advanced telecommunications and information infrastructure that lead to effective deployment and availability of innovative and state-of-the-art broadband services and information technologies for the entire Arizona community.

#### **Arizona New Mexico Cable Television Association (AZ-NMCTA) -**

<http://www.azcable.org/>

AZ-NMCCA works closely with state and federal lawmakers to implement a positive legislative program for the cable television industry. AZ-NMCCA has successfully obtained state theft of service legislation, codified a state sales tax exemption, put a cap on state license fees, and was instrumental in developing the 1984 & 1996 Federal Cable Communications Acts. AZ-NMCCA offers guidance and assistance to cable television systems in dealing with local government relations issues.

#### **Arizona Wireless Association (AZWA) - <http://azwa.org/>**

AZWA seeks to cultivate relationships within the wireless industry and with Arizona's cities and towns and to create a unified voice that supports the development of quality wireless networks, the enhancement of the communities we serve, and a spirit of charitable giving.

**Arizona Association for Economic Development (AAED) -**  
<http://www.aaed.com/>

**The League of Arizona Cities and Towns -** <http://www.azleague.org/>

Member Cities and Towns -

<http://www.azleague.org/index.cfm?fuseaction=about.cities>

Legislative Issues -

<http://www.azleague.org/index.cfm?fuseaction=legislative.main>

Resources & Research -

<http://www.azleague.org/index.cfm?fuseaction=resources.main>

**Arizona Investment Council (AIC) -** <http://www.arizonaic.org/>

**Arizona Technology Council (AZTC) -** <http://www.aztechcouncil.org/>

TechConnect Magazine -

<http://www.aztechcouncil.org/cwt/external/wcpages/initiatives/techconnect.aspx>

**Greater Arizona eLearning Association (GAZeL) -** <http://gazel.org/>

**Arizona Telemedicine Program (ATP) -** <http://www.telemedicine.arizona.edu/>

**Arizona BioIndustry Association -** <http://www.azbio.org/>

**Arizona Nanotechnology Cluster -** <http://www.aznano.org/>

**Science Foundation Arizona (SFAz) -** <http://www.sfaz.org/>

**CANAMEX Smart Corridors & CyberPort Projects** <http://www.canamex.org/>

**American Public Works Association (APWA) Arizona Chapter -**

<http://arizona.apwa.net/>

**Intelligent Transportation Society of Arizona (ITS AZ) -** <http://www.itsaz.org/>

**Arizona Section of Institute of Transportation Engineers (AZITE) -**

<http://azite.org/>

**Arizona Association of County Engineers (AACE) -** <http://www.azace.org/>

**American Council of Engineering Companies (ACEC) of Arizona -**

<http://www.acecaz.org/>

## **Appendix C - Arizona Broadband Conduit Deployment Act of 2012 Draft**

### **AN ARIZONA LEGISLATIVE BILL**

#### **(2 Highways for the Price of One)**

To amend Chapter 20 of title 28, Arizona Revised Statutes, to direct the Director of the Arizona Department of Transportation to require that broadband conduit be installed as part of certain rural highway construction projects, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the Arizona Legislature in the session assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Arizona Rural Broadband Conduit Deployment Act of 2012.”

Sec. 2 Chapter 20 of title 28, Arizona Revised Statutes, is amended by adding the following:

#### **Sec. 28-xxxx. Broadband conduit installation; rural highway construction projects**

A. The Director shall install broadband conduit in accordance with this section as part of any covered rural highway construction project. The Director shall ensure with respect to a covered highway construction project that--

1. an appropriate number of broadband conduits each with an appropriate number of preinstalled innerducts, as determined by the Director, are installed along the highway to accommodate multiple broadband providers, with consideration given to the availability of existing conduits;
2. the size of each conduit is consistent with industry best practices and is sufficient to accommodate potential demand, as determined by the Director;
3. hand holes and manholes for fiber access and pulling cable for each conduit are placed at intervals consistent with industry best practices, as determined by the Director; and
4. each project allocates sufficient off-highway space for vaults and re-generation enclosures.

B. The Director shall establish standards to carry out the purposes of this section that consider population density in the area of a covered rural highway construction project, the type of highway involved in the project, and existing broadband access in the area of the project.

C. The Director shall ensure that each broadband conduit and/or innerduct installed pursuant to this section includes a pull tape and is capable of supporting fiber optic cable placement techniques consistent with industry best practices, as determined by the Director.

D. The Director shall ensure that each broadband conduit installed pursuant to this section is placed at a depth consistent with industry best practices, as determined by the Director, and that, in determining the depth of placement, consideration is given to the location of existing utilities and the cable separation requirements of State and local electrical codes.

E. The Director shall ensure that any qualified requesting broadband provider as determined by the ABIA, has access to each broadband conduit installed pursuant to this section, on a competitively neutral and nondiscriminatory basis, for a charge not to exceed a cost-based rate.

F. The Director may waive the application of this section or any provision therein if the Director determines such waiver appropriate with respect to a covered rural highway construction project.

G. In carrying out this section, the Director shall coordinate with the ABDC and ABIA as the Director determines appropriate, including in making determinations with respect to potential

demand under subsection A, paragraph 2 of this section and existing broadband access in the area of the covered highway construction project.

H. For the purposes of this section:

1. 'broadband' means an Internet Protocol-based transmission service that enables users to send and receive voice, video, data, graphics, or a combination thereof.
2. 'broadband conduit' means a conduit for fiber optic cables that support broadband or, where appropriate, wireless facilities for broadband service.
3. 'covered highway construction project' means a project to construct a new rural highway or to construct an additional lane or shoulder for an existing rural highway that is commenced after the effective date of this section and that receives funding from state funds and/or from federal funds.
4. 'rural highways' means that portion of any highway in Arizona that is also outside the municipal boundary of any Arizona city having a population of 20,000 or more persons, or meets other criteria or definitions of "rural" as designated by the USDA, or by the Arizona Broadband Infrastructure Coordination Office.

I. The Director, at the request of the Arizona ADIA, may determine that conduit can also be installed without regard to the timing of a related existing construction project, but based on a particular need for broadband infrastructure because of a broadband deficit situation, or an overriding security or redundancy need, or because funding is available from the ABIA, or from other sources.

# **Appendix D - Arizona Broadband Infrastructure Coordination Office Draft**

**Section 1. Title 40, Arizona Revised Statutes, is amended by adding chapter 8, to read:**

## **CHAPTER 8 ARIZONA BROADBAND INFRASTRUCTURE COORDINATION OFFICE ARTICLE 1. GENERAL PROVISIONS**

### **40-1401. Definitions**

In this chapter, unless the context otherwise requires:

1. "ABICO" means the Arizona Broadband Infrastructure Coordination Office established by this chapter.
2. "Board" means the board of directors of the ABICO.
3. "Broadband Infrastructure" means facilities and equipment, including cable, fiber, conduit, ducts, poles, towers, cabinets, vaults, manholes, handholes and other associated equipment and appurtenances and related rights-of-way that are used directly or indirectly in providing broadband services, telecommunications, telecommunications services or other wire and wireless communications.
4. "Broadband Infrastructure Project" means constructing, acquiring, providing, developing, operating, maintaining, leasing or improving broadband infrastructure, broadband service or technologies that constitute a part of, or are related to, broadband infrastructure or broadband service, to provide for broadband service in unserved, underserved, and rural areas of this state.
5. "Broadband Provider" means private nonprofit entity or private investor owned entity that provides broadband service in this state for a fee by any technology.
6. "Broadband Service" means providing access to the internet or to computer processing, information storage or protocol conversion at a rate of at least one megabit per second in either the upstream or downstream direction. Broadband service does not include any information content or service applications provided over the access service or any intrastate service that was subject to a tariff as of January 1, 2012.
7. "Constructing" or "construction" includes:
  - (a) preliminary planning to determine the economic and engineering feasibility of broadband infrastructure projects.
  - (b) engineering, planning, legal, fiscal, and economic investigations and studies necessary to broadband infrastructure projects.
  - (c) surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of broadband infrastructure projects.
  - (d) erecting, building, acquiring, altering, remodeling, improving, interconnecting, or extending broadband infrastructure.
  - (e) inspecting and supervising the construction of broadband infrastructure and all costs incidental to acquiring and financing broadband infrastructure.
  - (f) any other physical devices or appurtenances in connection with, or reasonably attendant to, broadband infrastructure.
8. "Governmental Entity" means a county, city, town, special taxing district organized pursuant to title 48 or an agency or instrumentality of this state.

9. "Service Charge" means any periodic charge imposed by a broadband provider or by the ABICO for any infrastructure project financed by the authority pursuant to any assistance agreement.
10. "Underserved Area" means any described location where broadband service is not available to at least one-half of the residents, or where broadband service is not available from at least three providers other than by satellite.
11. "Unserved Area" means any described location where broadband service is not available to the residents other than by satellite.

**40-1402. Arizona Broadband Infrastructure Coordination Office**

- A. The Arizona Broadband Infrastructure Coordination Office is established.
- B. The ABICO is a corporate and political body and is not an agency of this state or of any political subdivision of this state.
- C. The ABICO is a public body for the purposes of Title 38, Chapter 3, Article 3.1.
- A. The ABICO is regarded as performing a governmental function in carrying out the purposes of this chapter and is not required to pay taxes or assessments on:
  1. The property acquired, constructed or financed.
  2. The activities of the ABICO in maintaining and caring for the property.
  3. The monies derived from the activities of the ABICO.

**40-1403. Board of directors; conflict of interest; classification**

- A. The ABICO shall be governed by a board of directors consisting of the following members:
  1. The State of Arizona Chief Information Officer (CIO), or the state CIO's designee, who shall serve as chairperson of the board.
  2. A senior member of the Arizona Commerce Authority or designee.
  6. Five members appointed by the governor pursuant to section 38-211 to staggered five year terms of office. At least one appointed member must be an enrolled member of an Indian tribe in this state. No more than two appointed members may reside in different counties. An appointed member may not serve more than two consecutive terms, except that service for a partial term of less than three years does not count toward the two term limitation.
- B. Members of the board are not eligible to receive compensation for their services but are eligible for reimbursement of expenses pursuant to Title 38, Chapter 4, Article 2.
- C. Members of the board are public officers for the purposes of Title 38, Chapter 3, Article 8.
- D. Members of the board, employees of the ABICO and persons retained or under contract by the ABICO shall not participate in any direct discussions or actions related to any project financed under this chapter in which the person has any direct or indirect personal financial interest. For the purposes of this subsection, a member of the board who is an employee or official of a participant in or applicant shall not be considered to have a direct or indirect personal financial interest in a project by virtue of the member's service alone. A violation of this subsection is a class 1 misdemeanor.

**40-1404. Administrative support**

- A. The Arizona Strategic Enterprise Technology (ASET) office of the Arizona Department Of Administration (ADOA) shall provide:
  1. General administrative support, equipment and office and meeting space to the ABICO.
  2. Staff support for administrative and technical requirements of the ABICO.
- B. The state treasurer shall serve as the treasurer or fiscal officer of the ABICO.

#### **40-1405. Advisory panel**

The Arizona Broadband Development Council (ABDC) shall serve as an advisory council to the ABICO. In addition, the chairperson of the board of directors may appoint others to act in an advisory role to assist the board as the chairperson considers necessary.

#### **40-1406. Organizational and administrative powers and duties**

- A. The ABICO shall have an official seal that is judicially noticed.
- B. As necessary to carry out its responsibilities under this chapter, the ABICO, through its board of directors, may:
  - 1. Sue and be sued.
  - 2. Contract.
  - 3. Acquire, hold, operate and dispose of property.
  - 4. Employ, retain or contract for professional assistance.
  - 5. Adopt and approve all policies and procedures of the ABICO.

#### **40-1407. Functional and operational powers and duties**

- A. The ABICO, through its board of directors, may:
  - 1. Petition the Federal Corporation Commission pursuant to section 1.1414(b) of the commission's rules on pole attachments, certifying to the commission that Arizona preempts the Commission from accepting pole attachment complaints under subpart j of part 1 of the rules; transferring related rule making and adjudication roles on behalf of Arizona, to itself.
  - 2. Provide technical staff and other professional assistance and adjudication as necessary for implementing transferring Section 1.1414(b) of the Federal Communication Commission's rules on pole attachments to the State Of Arizona.
  - 3. Apply for, accept, and administer grants and other financial assistance from the United States government and from other public and private sources to carry out its responsibilities under this chapter.
  - 4. Provide and enforce guidelines and best practices for broadband infrastructure permits and easements with local governments and public and private rights-of-way providers.
  - 5. Adjudicate disputes between providers and local governments and public and private rights-of-way providers with designated powers of arbitration and mediation.
  - 6. Establish and enforce rules and policies for fairly sharing broadband infrastructure enabled by the use of public rights-of-way.
- B. The board shall:
  - 1. Develop and adopt funding criteria and prioritization schedules for broadband infrastructure projects pursuant to this chapter and with consideration for recommendations submitted by governmental and educational entities, telecommunications businesses, information services, medical services and statewide trade and business organizations. For the purposes of this paragraph, "prioritization schedule" means a list of broadband infrastructure that the ABICO has evaluated and determined to be of priority for receiving assistance from the broadband universal service fund.
  - 2. Evaluate and select projects for technical and financial assistance under this chapter.
  - 3. Impose administrative fees and penalties that are necessary to recover the costs incurred in connection with providing technical assistance. All monies collected as administrative fees and penalties shall be credited to the broadband universal service fund.

4. Adopt administrative rules pursuant to Title 41, Chapter 6 to carry out the requirements of this chapter.
5. Consider developments and best practices in other states where broadband services are being deployed for underserved areas, the broadband infrastructure in those areas and the direct and indirect costs and benefits associated with the broadband infrastructure.
6. After considering existing state and regional broadband service assessments and information that becomes available during the board's deliberations, evaluate:
  - (a) the resources, infrastructure and cost structures in place or available in the underserved areas in this state for developing or accessing broadband services.
  - (b) the feasibility of using existing or alternative broadband infrastructure to support the economical development of broadband infrastructure projects in underserved areas.
  - (c) whether broadband services would benefit the underserved areas, including applications relating to commerce, medicine and education.
  - (d) for purposes of grants and other prioritization, and in conjunction with any federal designation, define the meaning of the terms “Underserved”, “Unserved”, And “Served”, “Broadband Deficit Area”, and other definitions appropriate to establishing conditions related to adoption or availability of broadband in the State Of Arizona.
  - (e) other matters that the board considers being applicable to establishing effective broadband services to underserved areas.
8. in conjunction with Arizona Broadband Development Council (ABDC) and other advisory bodies or individuals, and upon their advice, adopt specific goals for deployment of broadband services in unserved and underserved areas, including:
  - (a) the development of economically competitive access to broadband services in the public and private sectors in each unserved and underserved area.
  - (b) the availability of broadband service access throughout the underserved areas to address issues of unserved and underserved communities.
  - (c) the development and expansion of practical applications for the enhancement of economic development and other public benefits.
  - (d) the development of affinities and interconnection among governmental entities, educational institutions and private enterprise and other goals that the board considers to be in the public interest.
  - (e) develop proposals and recommendations for the establishment and enhancement of broadband services in unserved and underserved areas by:
    - (i) reviewing public policies for the promotion, development, and economically competitive use of broadband communications.
    - (ii) identifying sources of funding and support, including leveraging of state, federal, and private resources.
    - (iii) encouraging private and public participation in the development and use of broadband services in underserved areas, including demand aggregation or resource leveraging to enhance economic and technological development.
    - (iv) examining any other related issues.

**40-1408. State rights-of-way and easements; definition**

- A. The ABICO, through its board of directors, shall adopt rules for the use of state owned rights-of-way for broadband infrastructure requirements.
- B. Excepting the State Land Trust land any agency of this state shall allow the use of any right-of-way or easement it controls at cost, including administrative cost recovery, for the installation

of broadband infrastructure required by broadband providers to serve the unserved and underserved areas of this state.

C. The State Land Commissioner shall provide for the use of state agency easements or rights-of-way over state trust land consistent with its governing rules, statutes, and court decisions.

D. This section does not authorize a broadband provider to secure an exclusive right or privilege. A broadband provider does not have an exclusive right of access or use concerning any state or sub-division owned right-of-way.

E. For the purposes of this section, "right-of-way" means the area on, below or above a public highway, road, street, alley, building, public easement or other corridor or space dedicated for public travel or use, that is subject to the jurisdiction or control of a unit of government.

#### **40-1409. Annual audit and report**

A. The board shall cause an audit to be made of the funds administered by the ABICO. The audit shall be conducted by a certified public accountant within one hundred twenty days after the end of the fiscal year. The board shall immediately file a certified copy of the audit with the auditor general.

B. The Auditor General may make any further audits and examinations as necessary and may take appropriate action relating to the audit or examination pursuant to Title 41, Chapter 7, Article 10.1. If the Auditor General takes no official action within twenty days after the audit is filed, the audit is considered to be sufficient.

C. The board shall pay any fees and costs of the certified public accountant and Auditor General under this section from the broadband universal service fund.

D. Not later than January 1 of each year the board shall make an annual report of its activities during the preceding fiscal year, including a copy of the annual audit. The ABICO shall submit copies of the report to the Governor, the President Of The Senate, the Speaker Of The House Of Representatives, the Secretary Of State, the Arizona State Library, Archives And Public Records and any other person requesting a copy.

### **Article 2. Technical assistance**

#### **40-1431. Projects; application for assistance; priority; approval or disapproval**

A. The ABICO shall:

1. Establish forms for broadband providers to make application to the ABICO for access to rights-of-way or infrastructure under the control of the ABICO.
2. Establish a procedure for receiving, reviewing, evaluating and approving or disapproving on its merits each administratively complete and correct application for access to rights-of-way or infrastructure under the control of the ABICO.
3. Adopt by rule criteria by which access to rights-of-way or infrastructure will be determined. For access to rights of-way or infrastructure the criteria must include an assessment of the technical and financial applications on a fair and equitable basis.
4. Adopt rules to establish priority for applications for access to rights-of-way or infrastructure as provided by Section 40-1407, Subsection B, Paragraph 1.

B. The board shall:

1. Approve or disapprove applications for rights-of-way and infrastructure access and notify the applicant of the action within ninety days after the date of the application.
2. Determine the order and priority of the applications under this chapter based on the merits of the applications.

C. If an application is approved:

1. The board may condition the approval on assurances the board considers to be necessary to ensure that the rights-of-way or infrastructure access will be used according to law and the terms of the application.
2. The ABICO and the applicant shall enter into an assistance agreement as provided by either Section 40-1432 or 40-1433. The agreement may provide for access to rights-of-way or infrastructure by the ABICO to the broadband provider. The agreement may include any conditions concerning financial assistance the board considers to be necessary.

D. The ABICO may:

1. Assess fees sufficient to cover the ABICO's costs related to the application.

### **Article 3. Financial provisions**

#### **40-1451. Annual budget**

A. On or before June 30 of each year the board shall hold a public hearing to adopt a budget for the following fiscal year that includes:

1. Receipts during the past fiscal year.
2. Expenditures during the past fiscal year.
3. Estimates of amounts necessary for expenses during the following fiscal year including amounts proposed for administrative costs of the ABICO.
4. Anticipated revenue to the ABICO from each source in the following fiscal year.
5. A complete asset and liability statement.
6. A statement of profit or loss from operations.
7. Cash on hand as of the date the budget is adopted and the anticipated balance at the end of the current fiscal year.
8. An itemized statement of commitments, reserves and anticipated obligations for the following fiscal year.

B. The board may amend the budget on a finding of good cause.

#### **40-xxxx. Alternative dispute resolution means and rules**

A. The ABICO shall establish alternative dispute resolution means and rules for mediating, arbitrating, and approving agreement and for resolving disputes under its scope of activities.

## **Appendix E - Arizona Limiting Statutes and Rules**

In this appendix we highlight pertinent aspects of Revised Arizona Statutes (A.R.S.'s) that pertain to both local and state level entities-whose actions substantially impact the rate and extent to which broadband services will become available to Arizona citizens. We start with a review of A.R.S.'s that govern local entity activities relating to broadband services enablement and barriers.

### **A.R.S.'s Currently Enabling and Limiting Local Arizona Entities' Telecommunications Related Activities-Including Broadband**

#### **Political Subdivision Jurisdiction**

A.R.S. §§ 9-581-9-583 and A.R.S. § 9-583(A) (2001). A political subdivision (county, city, town.) has the authority to manage its public highways and exercise its police powers, but may not exercise such power to prohibit the ability of any telecommunications company to provide its service.

#### **Political Subdivision Compensation**

A.R.S. § 9-582(B) (2001). Any application or permit fees must be related to the costs incurred by processing the application, and must also be assessed within a reasonable amount of time after those costs are incurred.

A.R.S. § 9-582(D) (2001). Arizona permits a political subdivision and a telecommunications licensee or franchisee to agree to an in-kind arrangement, but the costs of the in-kind facilities offset the provider's obligation to pay local transaction privilege taxes or linear foot charges (applicable to interstate services) and must be equal to or less than the taxes or charges.

A.R.S. § 9-582(D) (2001). “The in-kind facilities . . . shall remain in possession and ownership of the political subdivision after the term of the existing license or franchise expires.”

A.R.S. § 9-582(D) (2001). “. . . [A] political subdivision shall not require a telecommunications corporation to provide in-kind services, make in-kind payments or pay a fee in addition to the fees [authorized in the act] as a condition of consent to use a highway to provide telecommunications services.”

A.R.S. § 9-582(D) (2001). “Notwithstanding subsections A and B of this section, in a license or franchise, a political subdivision and a telecommunications corporation may agree to in-kind payments for use of the public highways different from those specified in subsection A or B of this section.”

A.R.S. § 9-582(E) (2001). “. . . The license or franchise shall be structured so that the in-kind payments made for use of the public highways to provide interstate telecommunications services under the license or franchise are less than or equal to and are offset against any linear foot charge owed pursuant to § 9-583, subsection C, paragraphs 2 and 3.”

### **Political Subdivision Nondiscrimination Requirements**

A.R.S. § 9-583(B) (2001). Licenses or franchises must be issued on a competitively-neutral basis, and within a reasonable time after application. The requirements for such licenses or permits are limited to. 1) Proof that the applicant has received a certificate of convenience and necessity from the AZ Corporation Commission; 2) Public highway use requirements; 3) Mapping requirements; 4) Insurance, performance bonds, or similar requirements; and 5) Enforcement and administrative provisions.

A.R.S. § 9-581, para. 4. (2001). Cable companies are exempt from regulatory statutes relating to rights-of-way because they are excluded from the definition of “telecommunications.” However, under A.R.S. § 9-582 (G). “A municipality may not discriminate against a cable operator in its provision of telecommunications systems if that cable operator complies with the requirements applicable to telecommunications corporations.”

A.R.S. § 9-582 (A), (E) (2001). Any telecommunications company that was granted its franchise prior to November 1, 1997 is exempt from paying any additional fees.

### **Political Subdivision Mediation Requirements**

A.R.S. § 9-582(A)(3) (2001). “. . . Political subdivisions shall establish a nonbinding outside arbitration procedure to attempt to resolve disputes over recovery of reasonable, proportionate and attributable costs of construction permit fees pursuant to this paragraph and other fees pursuant to this article before the disputes are submitted to a court for resolution.”

A.R.S.’s Currently Enabling and Limiting the Arizona Corporation Commission’s Telecommunications Activities -which are not Interpreted as Including Broadband.

Under authority of the Arizona Constitution Article XV, § 3, and A.R.S. § 40-202 et seq., the Secretary of State of Arizona has published “Title 14. Public Service Corporations; Corporations and Associations; Securities Regulation, Chapter 2. Corporation Commission, Fixed Utilities.” Within this publication, available [here](#),<sup>1</sup> are Article 5-Telephone Utilities and Article 11-Competitive Telecommunications Services. These two Articles are the subject of this section.

Title 14, Article 5, Telephone Utilities, Of The Arizona Administrative Code.

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<sup>1</sup> [http://www.azsos.gov/public\\_services/Title\\_14/14-02.pdf](http://www.azsos.gov/public_services/Title_14/14-02.pdf)

The Article 5 preamble indicates that these rules govern all telecommunication companies that fall within the jurisdiction of the Arizona Corporation Commission. Under Article 5, the ACC takes a very narrow interpretation of what constitutes a “telecommunications company,” framing it as being a “Utility”-the company providing telephone service to the public in compliance with state law. This narrow Article 5 definition contrasts with the ACC’s broader Article 11 interpretation of a “telecommunications company,” wherein it defines a “public service corporation,” as per the Arizona Constitution, Article 15, § 2, which provides telecommunications services within Arizona and over which the Arizona Corporation Commission has jurisdiction.

#### **R14-2-501. Definitions**

Pertinent definitions in Article 5 include the following.

\* \* \* \*

5. “**Basic exchange service**”. Service provided to business or residential customers at a flat or measured rate which affords access to the telecommunications network.

15. “**Residential subdivision development**”. Any tract of land which has been divided into 4 or more contiguous lots with an average size of 1 acre or less for use for the construction of residential buildings or permanent mobile homes for either single or multiple occupancy.

16. “**Rules**”. The regulations set forth in the tariffs which apply to the provision of telephone service.

17. “**Service area**”. The territory in which the utility has been granted a Certificate of Convenience and Necessity and is authorized by the Commission to provide telephone service.

20. “**Tariffs**”. The documents filed with the Commission which list the utility services and products offered by the utility and which set forth the terms and conditions and a schedule of the rates and charges for those services and products.

24. “**Utility**”. The company providing telephone service to the public in compliance with state law.

**R14-2-502. Certificate of Convenience and Necessity for telephone utilities; additions/extensions; abandonments**

\* \* \* \*

Each utility which extends utility service to a person not located within its certificated service area, but located in a non-certificated area contiguous to its certificated service area, shall, notify the Commission of such service extension.

**R14-2-505. Service connections and establishments**

**B. Access line connection;**

3. Easements and rights-of-way

a. Each customer shall grant adequate easement and right-of-way satisfactory to the utility to ensure that customer's proper service connection. Failure on the part of the customer to grant adequate easement and right-of-way shall be grounds for the utility to refuse service.

b. When a utility discovers that a customer or his agent is performing work or has constructed facilities adjacent to or within an easement or right-of-way and such work, construction or facility poses a hazard or is in violation of federal, state or local laws, ordinances, statutes, rules or regulations, or significantly interferes with the utility's access to equipment, the utility shall notify the customer or his agent and shall take

whatever actions are necessary to eliminate the hazard, obstruction or violation at the customer's expense.

**D. Residential subdivision development and permanent mobile home parks.**

\* \* \* \*

**2. Rights-of-way and easements**

a. The utility shall construct or cause to be constructed and shall own, operate and maintain all underground communication feeder, distribution and service lines along public streets, roads and highways and on public lands and private property which the utility has the legal right to occupy.

b. Rights-of-way and easements suitable to the utility must be furnished by the developer at no cost to the utility and in reasonable time to meet service requirements. No underground communication facilities shall be installed by a utility until the final grades have been established and furnished to the utility. In addition, the easement strips, alleys and streets must be graded to within 6 inches of final grade by the developer before the utility will commence construction. Such clearance and grading must be maintained by the developer during construction by the utility.

\* \* \* \*

**3. Installation of underground communication lines** within subdivision and multiple occupancy residential developments:

a. The developer shall provide the trenching backfill (including any imported backfill required), compaction, repaving, and any earthwork required to install the underground communication system . . .

\* \* \* \*

d. . . . the utility shall use such common trench as long as the utility's design layout, easement specification, routing and scheduling requirements can be met, unless otherwise

agreed upon by utility and developer in writing or as otherwise established by the Commission.

#### **4. Special conditions**

\* \* \* \*

b. . . . no utility shall construct overhead communication lines in any new subdivision or new multiple occupancy residential development to which this regulation is applicable . . . .

Title 14, Article 11, Competitive Telecommunications Services, Of The Arizona Administrative Code.

#### **R14-2-1101. Application of Rules**

These rules govern the provision of competitive, intrastate telecommunications services to the public by telecommunications companies subject to the jurisdiction of the Arizona Corporation Commission.

#### **R14-2-1102. Definitions**

Pertinent definitions in Article 11 include the following. Here, under Definition 16-the ACC defines a broad category of telecommunications services. Arguably including broadband services-excepting the limitation that the services be entirely intrastate. It is important to note the ACC does not consider broadband services to be within this definition.

\* \* \* \*

1. “**Arizona Corporation Commission**” or “Commission.” The regulatory agency of the state of Arizona having jurisdiction over public service corporations operating in Arizona.

\* \* \* \*

4. “**Competitive Telecommunications Service.**” Any telecommunications service where customers of the service within the relevant market have or are likely to have reasonably available alternatives.

\* \* \* \*

15. “**Telecommunications Company.**” A public service corporation, as defined in the Arizona Constitution, Article 15, § 2, that provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.

16. “**Telecommunications Service.**” Any transmission of interactive switched and non-switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwave, or any other electromagnetic means (including access services), which originate and terminate in this state and are offered to or for the public, or some portion thereof, for compensation.

## Appendix F - PCIA State Model Siting Legislation

PCIA, The Wireless Infrastructure Association, has developed this state model legislation<sup>2</sup> for siting vertical structures such as towers for wireless broadband coverage. The model legislation encourages collocation on existing facilities and provides municipalities guidelines on how to effectively develop their own wireless siting ordinances. It attempts to balance municipalities' concerns about the aesthetic and safety impacts of wireless facilities with citizens' demand for ubiquitous wireless communications. This model legislation has been endorsed by the National Conference of State Legislatures (NCSL) and the American Legislative Exchange Council (ALEC).

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF \_\_\_\_\_

*Legislative Intent: These laws are enacted for the purpose of: ensuring (1) the safe and efficient integration of facilities necessary for the provision of advanced wireless communications services throughout the community and (2) the ready availability of reliable wireless service to the public and government agencies and first responders, with the intention of furthering the public safety and general welfare.*

**SECTION 1: Definitions: For the purposes of these regulations, the following definitions shall apply:**

**Authority:** A municipality, township, county or regional planning commission or any municipal or county legislative body that has adopted planning and zoning regulations for all or the majority of land uses within the jurisdiction.

**Antenna:** Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

**Building Permit:** An official administrative authorization issued by the local authority prior to beginning construction of any new or existing support structure. The issuance of a building permit is not a mechanism for the approval or denial of a zoning or land use application.

**Collocation:** The placement or installation of wireless facilities, on existing structures, including towers, buildings, utility poles, and water tanks in a manner that negates the need to construct a new free standing support structure such as a tower.

**Equipment Enclosure:** An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

**Existing Tower:** A free standing support structure constructed prior to the enactment of this statute that is used to provide wireless services.

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<sup>2</sup> Word document downloadable at [http://www.pcia.com/index.php?option=com\\_docman&task=doc\\_download&gid=2&Itemid](http://www.pcia.com/index.php?option=com_docman&task=doc_download&gid=2&Itemid).

**Local Government:** Any city, township or county municipality or other legally authorized public agency recognized by the State.

**Wireless Support Structure:** A freestanding structure, such as a monopole or tower designed to support wireless facilities.

**Utility pole:** A structure owned and/or operated by a public utility regulated by the state PUC that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity or to provide lighting.

**Application:** A formal request submitted to the local authority to construct or modify a wireless support structure or a wireless facility.

**Wireless Facility:** The set of equipment and network components, exclusive of the underlying support structure or tower, including, but not limited to, antennas, transmitters, receivers base stations, power supplies cabling and associated equipment necessary to provide wireless services to a discrete geographic area.

## ***SECTION 2: Construction of New Wireless Facilities and Support Structures***

- (1) An authority, as defined, may plan for and regulate the siting of wireless communications facilities in accordance with locally adopted planning or zoning regulations and in conformity with this title.
- (2) Any person that is engaged in the business of providing wireless telecommunications services or the wireless telecommunications infrastructure required therefore, and that proposes to construct a wireless telecommunications support structure within the jurisdiction of any planning authority that has adopted planning and zoning regulations in accordance with this title shall:
  - (a) Submit the necessary copies and attachments of the applicant's completed application to the appropriate planning authority to construct a wireless telecommunications support structure.
  - (b) Comply with any local ordinances concerning land use and the appropriate permitting processes, subject to the limitations imposed by this chapter.
- (3) All records (documents, electronic data, etc.) in the possession or custody of authority personnel are subject to the state Public Records Act. Disclosure of such records should be consistent with the applicable state law.

- (4) After an applicant's submission of a completed application to construct a wireless telecommunications support structure, the authority shall:
  - (a) Review the completed application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;
  - (b) Make its final decision to approve or disapprove the application; and
  - (c) Advise the applicant in writing of its final decision within \_\_\_ days commencing from the date that the application is deemed complete by the authority or within a date certain specified in a written agreement between the authority and the applicant
  
- (5) A party aggrieved by the final action of an authority denying an application under the provisions of this chapter may bring an action for review in any court of competent jurisdiction.

**SECTION 3: *Collocation of Antennas and Equipment on or at Existing Towers and other Structures***

- (1) In deploying, or expanding commercial and public safety wireless networks, the collocation of new antennas and equipment on existing support structures, including buildings, utility poles, water towers or existing conforming or non-conforming communication towers is preferred constructing new towers or support structures.
- (2) Applications for collocation on existing or replacement utility poles owned and operated by a public utility where the poles are located in the public right-of-way will not be subject to the authority's zoning, land use, or regulatory approval when the height of the pole will not be increased by more than the minimum separation safety zone required by the pole owner or by 25% of the height of the original pole, whichever is greater. Such collocations may be subject to applicable Federal, State and PUC regulation for pole attachments.
- (3) Irrespective of Section 3(2) and 3(3), an application for a collocation on an existing structure may be subject to the issuance of a building permit and any fee associated with such a permit, assuming that such fees are commensurate with permit fees for other uses.
- (4) The authority may deny an application to construct a new wireless communications support structure based on an applicant's unwillingness to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure or structures specifically identified by the authority.
- (5) The authority may not deny an application to construct a new wireless communications support structure under 3(5) if evidence is provided that

collocation is technically infeasible or unduly economically burdensome on the wireless service provider.

#### **SECTION 4. *Limitations.***

An authority may not:

- (1) Impose environmental testing, sampling, or monitoring requirements or other compliance measures for radio frequency emissions on wireless communications facilities that are categorically excluded under the FCC's rules for radio frequency emissions pursuant to 47 CFR 1.1307(b)(1);
- (2) Institute a moratorium on the construction of new wireless communications support structures lasting over 90 days in duration or institute any such moratorium within 6 months of the conclusion of any previous moratorium on the construction of wireless communications support structures.
- (3) Charge an application fee consulting fee or other fee associated with the submission, review, processing and approval of a permit that is not required for other types of commercial development. Fees imposed by a local authority or by a third-party entity providing review or technical consultation to the local authority, cannot exceed what is usual and customary. In no case should total charges and fees exceed \_\_\_\_ for a collocation or \_\_\_\_\_ for the placement and construction of a new wireless facility and/or support structures.
- (4) Permit third party consultants to charge wireless telecommunications service providers for any travel expenses incurred in the consultant's review of wireless telecommunications permits.
- (5) Establish or enforce regulations or procedures for RF signal strength or the adequacy of service quality in the consideration of any application for the construction, modification, maintenance, or operation of a wireless facility and/or support structure.
- (6) Impose surety requirements, including bonds, escrow deposits, or any other type of financial surety, to ensure that abandoned or unused facilities can be removed unless the jurisdiction imposes similar requirements on other permits for other types of commercial development or land uses. If surety requirements are imposed they must be competitively neutral, non discriminatory, reasonable in amount and commensurate with the historical record for local facilities and structures that fall into disuse.

- (7) Prohibit the placement of emergency power systems that comply with Federal and State environmental requirements;
- (8) Discriminate on the basis of the ownership of any property, structure or tower when promulgating rules or procedures for siting wireless facilities or for evaluating applications for collocations or new wireless facilities or support structures.
- (9) Condition the approval of a new support structure or collocation on the agreement of the structure owner to provide space on the structure for local governmental services at less than the market rate.
- (10) Limit the duration of any permit for a wireless facility or support structure when evaluating an application for a wireless facility or collocation.
- (11) Require an applicant to construct a Distributed Antenna System in lieu of constructing a new wireless support structure or collocating on an existing structure, such as a utility pole, existing tower or building.

**SECTION 5.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

This Act shall take effect on \_\_\_\_\_, the public welfare requiring it.

## Appendix G - PCIA Wireless Facilities Siting Model Ordinance

PCIA, The Wireless Infrastructure Association, has developed this model ordinance<sup>3</sup> to assist municipal authorities with the challenge of siting wireless communications facilities. The ordinance encourages and streamlines collocations on existing facilities, while granting municipalities' access to the critical information they need to make informed decisions about new wireless facilities. It is based on the 2007 North Carolina siting legislation, SB831.

### **I. Purpose and Legislative Intent.**

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents, public safety operations and businesses in [Jurisdiction] have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to [Jurisdiction's] zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws and is consistent with [the Jurisdiction's] land use policies, [the Jurisdiction] is adopts this single, comprehensive, wireless telecommunications ordinance. No provisions of this Ordinance shall apply to the siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is [the Jurisdiction's] intent to:

- (1) Ensure [Jurisdiction] has sufficient wireless infrastructure to support its public safety communications throughout [Jurisdiction];<sup>4</sup>
- (2) Ensure access to reliable wireless communications services throughout all areas of [the Jurisdiction];<sup>5</sup>
- (3) Encourage the use of Existing Structures for the collocation of Telecommunications Facilities;<sup>6</sup>

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<sup>3</sup> A MS Word document version is downloadable at [http://www.pcia.com/images/pcia\\_model\\_zoning\\_ordinance\\_final\\_2010.doc](http://www.pcia.com/images/pcia_model_zoning_ordinance_final_2010.doc).

<sup>4</sup> Many public safety operations utilize commercial networks; this trend will continue to grow as commercial providers further deploy wireless broadband systems.

<sup>5</sup> This is important because wireless users depend on their mobile devices everywhere - in their homes and offices, and while on travel.

<sup>6</sup> A core policy goal here is to encourage co-location of wireless facilities on existing structures.

- (4) Encourage the location of Support Structures, to the extent possible, in areas where any potential adverse impacts on the community will be minimized;
- (5) Facilitate the responsible deployment of Telecommunications Facilities in residential areas to ensure comprehensive wireless services across [Jurisdiction];
- (6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping, and construction practices;
- (7) Ensure public health, safety, welfare, and convenience.

## **II. Definitions.**

For the purposes of this Ordinance, the following definitions apply:

**Abandon** - Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

**Accessory Equipment** -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

**Administrative Approval** -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

**Administrative Review** -- Non-discretionary evaluation of an application by the [Zoning Administrator] or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV E of this Ordinance.

**Antenna** -- Any structure or device used to collect or radiate electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

**Collocation**<sup>7</sup> -- The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of a Existing Structure.

**Carrier on Wheels or Cell on Wheels (“COW”)** -- A portable self-contained

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<sup>7</sup> This definition is consistent with the FCC’s Declaratory Ruling on Wireless Infrastructure Siting.

Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Distributed Antenna Systems (“DAS”) - A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Existing Structure - Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications -- Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Monopole --A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located.<sup>8</sup> Ordinary Maintenance does not include Minor and Major Modifications.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility<sup>9</sup>-- Any Telecommunications Facility that is integrated as an architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure for providing wireless services is not

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<sup>8</sup> The description of antenna swaps as “ordinary maintenance” is important because carriers regularly upgrade antennas as part of periodic network improvements.

<sup>9</sup> The decision to employ stealth technology involves a variety of engineering, structural and financial factors, and should be made by the network operators.

readily apparent to a casual observer.

Substantial Increase:<sup>10</sup> Occurs when:

(1) [t]he mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Structure that would protrude from the edge of the Existing Structure more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) [t]he mounting of the proposed antenna would involve excavation outside the current Existing Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Structure and any access or utility easements currently related to the site.

Support Structure(s) - A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

### **III. Approvals Required for Telecommunications Facilities and Support Structures.**

#### **(A) Administrative Review**

(i) Collocations and Minor Modifications shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(ii) New Support Structures that are less than sixty (60)<sup>11</sup> feet in height shall

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<sup>10</sup> This definition is taken from the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

be permitted in any zoning district except residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(iii) Stealth Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(iv) Stealth Telecommunications Facilities up to 150 feet shall be permitted in any zoning district other than residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance except as noted above.

(v) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(vi) Monopoles or Replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(vii) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use is not otherwise exempt. If the use of the COW is either not in response to a declaration or emergency, or will last in excess of one hundred-twenty (120) days, Administrative Review and Administrative Approval shall also be required.

- (B) Special Permit.<sup>12</sup> Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the [Zoning Board] in accordance with the standards set forth in this Ordinance.
- (C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for

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<sup>11</sup> Sixty feet is a suggested height but actual height requirements may vary based upon local topography.

<sup>12</sup> This process refers to whatever quasi-judicial process the Jurisdiction already has in place. Such processes are also known as “special use” and “conditional use” among other names. Jurisdictions should conform this section to their existing language.

residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within [the Jurisdiction] after a declaration of an emergency or a disaster; and (4) television and AM/FM radio broadcast towers and associated facilities.

**IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.**

(A) Telecommunications Facilities Located on Existing Structures

- (1) Telecommunications Facilities are permitted in all zoning districts when located on any Existing Structure subject to Administrative Approval in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations within a zoning district, provided they do not constitute a Substantial Increase.
- (3) Minor Modifications are permitted in all zoning districts subject to Administrative Approval in accordance with the requirements of this

Part. (B) New Support Structures

- (1) New Support Structure less than sixty (60) feet in height shall be permitted in all zoning districts except residential districts in accordance with the requirements of this Part.
- (2) Stealth Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval provided that it meets the applicable Stealth Telecommunications Facility standards in accordance with this Ordinance
- (3) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage or capacity objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zoning district.
- (4) A Monopole or Replacement pole that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.<sup>13</sup>

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<sup>13</sup> This section allows for efficient use of public rights-of-way for the provision of wireless services.

- (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
  - (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
  - (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
  - (d) Monopoles and the Accessory Equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
  - (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
  - (f) Poles that use the structure of a utility tower for support are permitted under this Part. Such poles may extend up to twenty (20) feet above the height of the utility tower.
- (5) Monopoles or Replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of- way.

(C) Stealth Telecommunications Facilities

- (1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below. Stealth facilities in residential areas must not exceed sixty (60) feet and comply with the requirements below in order to qualify for Administrative Review.
  - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
  - (b) Existing Structures utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
  - (c) Setbacks for Stealth Facilities that utilize a new structure shall be

governed by the setback requirements of the underlying zoning district.

(D) COW Facilities and Minor Modifications

- (1) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use of the COW is either not in response to a declaration or emergency by the Governor or will last in excess of one hundred-twenty (120) days.

(E) General Standards, Design Requirements, and Miscellaneous Provisions

- (1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section VI and the provisions of Section VII.

(F) Administrative Review Process

- (1) All Administrative Review<sup>14</sup> applications must contain the following:
  - (a) Administrative Review application form signed by applicant.
  - (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.
  - (c) Site plans detailing proposed improvements which complies with [Jurisdiction's existing site plan requirements]. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
  - (d) In the case of a new Support Structure:
    - (i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically feasible as necessary to document the reasons why collocation is not

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<sup>14</sup> The name of this process should be conformed to the jurisdiction's existing name for a similar process.

- a viable option;<sup>15</sup> and
    - (ii) The applicant shall provide a list of all the existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unavailable, or technologically or reasonably infeasible.
    - (iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.
  - (e) Administrative Review application fee as listed in [Jurisdiction’s published fee schedule].<sup>16</sup>
- (2) Procedure<sup>17</sup>
  - (a) Within thirty (30) days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete. If the Zoning Administrator informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.
  - (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant’s unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice.<sup>18</sup> An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
  - (c) The [Zoning Administrator] must issue a written decision granting or denying the request within ninety (90) days of the submission of the initial application unless:
    - (i) [Zoning Administrator] notified applicant that its

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<sup>15</sup> This evidentiary requirement allows local jurisdictions an opportunity to review an application’s alternatives, and requires providers to prove that collocation is not viable in a specific circumstance.

<sup>16</sup> The jurisdiction should include a cross reference to its published fee schedule.

<sup>17</sup> The FCC has issued a Declaratory Ruling establishing the timeframes for a jurisdiction to act on an application to site wireless infrastructure. The procedure here is reflective of that Ruling, however Jurisdiction can substitute its current procedure so long as it complies with the FCC’s decision.

<sup>18</sup> Jurisdictions should conform this time requirement to meet their existing code for information submission.

application was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Applicant provides the missing information; or  
(ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within ninety (90) days shall constitute an approval of the application.

- (d) Should the [Zoning Administrator] deny the application, the [Zoning Administrator] shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.
- (f) Applicant may appeal any decision of the [Zoning Administrator] approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to [the Local Appeals Board] in accordance with this Ordinance.<sup>19</sup>

**V. Telecommunications Facilities and Support Structures Permitted by Special Permit.**

- (A) Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by Special Permit in all Zoning Districts Subject to:
  - (1) The submission requirements of Section V (B) below; and
  - (2) The applicable standards of Sections VI and VII below; and
  - (3) The requirements of the special permit general conditions at Code Section \_\_\_\_\_. [Insert cross reference to Jurisdiction code section that establishes general conditions applicable to Special Permits.]<sup>20</sup>
- (B) Submission Requirements for Special Permit Applications
  - (1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:
    - (a) Special Permit application form signed by applicant.

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<sup>19</sup> The jurisdiction should substitute its standard process for appeal.

<sup>20</sup> This allows for Special Permit/Conditional Permit review of proposed facilities that do not meet the “preferred” standards of Section IV.

- (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms
- (c) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
- (d) Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
- (e) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.<sup>21</sup>
- (f) Line-of-sight diagram or photo simulation,<sup>22</sup> showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
- (g) A statement justifying why Collocation is not feasible. Such statement shall include:
  - (i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
  - (ii) A list of the existing structures considered as possible alternatives to the proposed location and a written explanation why the alternatives considered were either unavailable or technologically infeasible.
- (h) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.
- (i) Notification of surrounding property owners as required by [insert Jurisdiction's relevant existing code provisions]
- (j) Special Permit application fee as listed in [Jurisdiction's published fee schedule].<sup>23</sup>

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<sup>21</sup> If you are proposing a monopole under 100' in a residential area no additional submission is required.

<sup>22</sup> Photo simulations provide the community with valuable visual data showing the effect of the proposed new structure on the visual landscape.

<sup>23</sup> Same as IV(E)(2) above.

(C) Procedure<sup>24</sup>

- (1) Within thirty (30) days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete and meet with the applicant. If the Zoning Administrator informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.
- (2) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice.<sup>25</sup> An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (3) A complete application for a Special Permit shall be scheduled for a hearing date as required by [insert Jurisdiction's relevant existing code provisions].
- (4) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.
- (5) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Special Permit application under this Ordinance.
- (6) The [Zoning Administrator] must issue a written decision granting or denying the request within one hundred-fifty (150) days of the submission of the initial application unless:
  - (i) [Zoning Administrator] notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the one hundred-fifty (150) day total review time is suspended until the Applicant provides the missing information; or
  - (ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within one hundred-fifty (150) days shall constitute an approval of the application.

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<sup>24</sup> The jurisdiction should include a cross reference to its published fee schedule.

<sup>25</sup> Jurisdictions should conform this time requirement to meet their existing code for information submission.

**VI. General Standards and Design Requirements.**

(A) Design

- (1) Support Structures shall be subject to the following:
  - (a) Shall be designed to accommodate a minimum number of collocations based upon their height:
    - (i) Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;
    - (ii) Support structures from one hundred (100) to one hundred-fifty feet (150) shall support at least three (3) telecommunications providers; and
    - (iii) Support structures greater than one hundred-fifty (150) feet in height shall support at least four (4) telecommunications carriers.
  - (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section VI(A)(1)(a).
- (2) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible.
- (3) Upon request of the Applicant, the [Zoning Board or Zoning Administrator] may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks

- (1) Property Lines. Unless otherwise stated herein, Support Structures shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point.
- (2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement structures shall not be subject to a setback requirement.

(3) Unless otherwise stated herein, all Accessory Equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.

(4) The [Zoning Board or Zoning Administrator] shall have the authority to vary any required setback upon the request of the applicant if:

(a) Applicant provides a letter stamped by a certified structural engineer documenting that the proposed structure's fall zone is less than the actual height of the structure.

(b) The Telecommunications Facility or Support Structure is consistent with the purposes and intent of this Ordinance.

(C) Height

(1) In non-residential districts, Support Structures shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(2) In residential districts, Support Structures shall not exceed a height equal to one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point, including appurtenances. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(3) In all districts, the [Zoning Board] shall have the authority to vary the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the [Zoning Board].

(D) Aesthetics

(1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

(2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(3) Landscaping. In all districts, the [Zoning Board or Zoning Administrator]

shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The [Zoning Board or Zoning Administrator] may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the [Zoning Board or Zoning Administrator], landscaping is not appropriate or necessary.

- (E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the [Zoning Board or Zoning Administrator].

## **VII. Miscellaneous Provisions.**

- (A) Fencing
  - (1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the [Zoning Board] or [Zoning Administrator].
  - (2) The [Zoning Board or Zoning Administrator] may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.
- (B) Abandonment and Removal. If a Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the [Jurisdiction] may require that such Support Structure be removed only after first providing written notice to the owner of the Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Support Structure within thirty (30) days of receipt of said written notice. In the event the owner of the Support Structure fails to reclaim the Support Structure within the thirty (30) day period, the owner of the Support Structure shall be required to remove the same within six (6) months thereafter. The [Jurisdiction] shall ensure and enforce removal by means of its existing regulatory authority.
- (C) Multiple Uses on a Single Parcel or Lot. Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use

on the same site or may be the principal use itself.

**VIII. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.**

- (A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.
- (B) The provisions of this Part are limited to those structures that do not meet the height or setback requirements set forth in these regulations.
- (C) Non-conforming Support Structures
  - (1) Non-conforming Support Structure. Ordinary Maintenance may be performed on a Non-conforming Support Structure or Telecommunications Facility.
  - (2) Collocation and/or Minor Modifications of Telecommunications Facilities on an existing non-conforming Support Structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section IV.
  - (3) Major Modifications may be made to non-conforming Support Structures utilizing the regulatory approval process defined in Section V.

## **Appendix H - Hopi Tribe Tower Colocation Lease Agreement Sample**

The Hopi Tribe in Northeast Arizona owns and operates several telecommunication towers in support of Tribal communications needs including public safety, as well as for use by Hopi Telecom Inc. (ILEC), federal agencies, and other communications providers. They have provided this sample agreement for the tower at the Village of Hotevilla as a courtesy. The primary Hopi Tribe contact for any follow up is Jerolyn Takala, Director, Management Information Systems at 928-734-3254 or [JTakala@Hopi.nsn.us](mailto:JTakala@Hopi.nsn.us).

### **Hopi Tribe**

### **Telecommunication Facility Use Agreement**

**THIS USE AGREEMENT** (the “Agreement”) is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009 (“Execution Date”), by and between \_\_\_\_\_ (“Tenant”), and The Hopi Tribe (“Landlord”) (also referred to herein, collectively, as “Parties” or, individually, as “Party”).

#### **RECITALS:**

**WHEREAS**, Landlord currently operates and maintains a communications shelter (“Shelter”) and tower (“Tower”) at the Village of Hotevilla (collectively, “Facility” or “Landlord’s Facility”) pursuant to a Lease of the land dated December 29, 2009 between the Village of Hotevilla and the Tribe; and

**WHEREAS**, the Tenant desires access to the Facility to locate therein certain communications equipment to provide \_\_\_\_\_ [cellular, broadband, radio] communications; and

**WHEREAS**, the Federal Communications Commission (“FCC”) has granted Tenant a license for \_\_\_\_\_ [cellular, wireless, broadband, radio telecommunications] systems which will serve Landlord and citizens and visitors of the Hopi Reservation in Arizona; and

**WHEREAS**, Tenant has applied for a permit from the Hopi Tribe Revenue Commission authorizing Tenant to conduct business on the reservation and thereby co-locate Tenant’s communications facilities at the Tower (the “Business Permit”); and

**WHEREAS**, Landlord and Tenant desire to enter into an agreement to ensure the proper installation, operation and maintenance of antennas and other broadcasting hardware located at the Facility; and

**WHEREAS**, Landlord has consulted with the Village of Hotevilla who owns the property upon which the Facility sits, and the Village has approved this Facility Use Agreement

of the Premises to the Tenant; and

**WHEREAS**, the Parties wish to enter into this Agreement whereby Tenant will operate and maintain cellular antennas, a cellular transmitter, internet broadband equipment, radio antennas, and other associated equipment (“Equipment” or “Tenant’s Equipment”) at Landlord’s Facility.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

1. **The Premises**. Upon the terms and conditions herein provided, Landlord hereby grants to Tenant the rights to use Tower space sufficient for Tenant to install the Equipment on Landlord’s Facility and sufficient ground space for Tenant to install Tenant’s electrical systems and additional equipment to support the operation of the Equipment (the “Premises”). The Equipment to be installed by Tenant at the Premises is listed on Exhibit A, attached and incorporated herein. The Tower space to be used is described in Exhibit B, attached and incorporated herein.

2. **Term**. The primary term of this Agreement shall be five (5) years and shall commence on the Execution Date (“Term”). No later than sixty (60) days prior to the expiration of the Term, the Parties shall meet to discuss the possible extension of the Agreement.

3. **User Fee**. During the Term of this Agreement, Tenant shall pay an annual fee to Landlord and the Village of Hotevilla (“Village”), in the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) respectively, which shall be paid on or before the Execution Date and each anniversary of the Execution Date of this Agreement (“User Fee”). Tenant also agrees to pay any applicable annual business license fees and other fees to the Hopi Tribe as may be required. Exhibit C attached hereto and incorporated herein by this reference sets forth the payment and disbursement schedule for the annual User Fees.

4. **Use**.

a. The Landlord grants permission to Tenant to occupy the Premises to install, construct, operate, maintain, repair, remove and inspect Tenant’s antennas and other equipment. Such occupancy shall be non-exclusive to the extent that the Landlord and other tenants shall also have non-exclusive access to the Premises. The antennas and equipment which Tenant may, at Tenant’s option, install, construct, operate, maintain, repair, remove and inspect or have inspected on or at the Premises shall include, but not be limited to, antennas, cables, wires, cellular base stations, internet broadband antennas and equipment, microwave equipment, batteries, generators, and other telecommunications and internet broadband equipment or accessories hereinafter collectively referred to as “Tenant’s Equipment” (which is described in Exhibit A, attached).

b. All uses of the Premises by Tenant shall be in conformance with applicable federal, state and Hopi Tribal laws.

c. Landlord will cooperate and help Tenant obtain copies of as-built plans and other documents indicating the exact locations on said Facility of such antennas, transmission lines and equipment, their transmission frequencies and their transmitter output powers to the extent approved by other such tenants or known by Landlord. Any copies of as-built plans or other documents contemplated by this paragraph shall be provided by Landlord at Tenant's sole expense. No alteration thereafter shall be made by the Landlord or Tenant that would in any way adversely affect or interfere with Tenant's technical use of its communications equipment at the Premises, without prior written notice as provided in Section 7(a). Landlord shall also prohibit other tenants from adversely affecting or interfering with Tenant's use of its communications equipment at the Premises. Landlord may not use and Landlord shall prohibit other tenants from using any portion of the Premises specifically to be used by Tenant under this Agreement.

5. **Access.** Tenant and its employees, agents, contractors, utility companies and inspectors are hereby given and granted non-exclusive access for ingress and egress to the Premises and over and across other lands owned and/or operated by Landlord and Village as may be required for the purpose of parking and erection, placement, installation, inspection, operation, repair, maintenance and removal of Tenant's Equipment, all on a twenty-four (24) hour per day basis (the "Access"). Tenant shall have the right at their own expense, but not the obligation, to improve any access easement either by grading, graveling or paving it. Further, both Landlord and Tenant and any utility company(ies) providing services to them are given and granted the right of access to all areas of the Premises and other lands or rights-of-way owned by Landlord as necessary for installation, maintenance and/or repair of such utility services. Both Landlord and Tenant agree that all service vehicles shall remain on designated access roads only.

6. **Landlord's Duties.**

a. To the extent required by current and/or future federal statutes, rules and regulations, Landlord shall observe and satisfy all tower lighting requirements and maintain records and provide notices, including notification to the Federal Aviation Administration, of any failure of any repairs and correction of same during the Term of this Agreement and any extensions thereof.

b. Landlord shall comply with all applicable laws, rules and regulations of federal, state and tribal government authorities, including the Federal Aviation Administration, the Federal Communications Commission, and building and electrical codes as have been implemented or adopted by the Landlord, during the Term of this Agreement. Additionally, Landlord will assist Tenant in obtaining a Business Permit from the Hopi Tribe Revenue Commission.

c. During the Term of this Agreement and any extensions thereof, Landlord will not subsequently give, convey or grant a lease or give other permission to any person or entity to place antennas or other equipment at the Premises if such subsequent grant would in any way adversely affect or interfere with Tenant's use of its Equipment at the Premises. In the event of any interference, Landlord shall cooperate to eliminate any interference within a reasonable period of time not to exceed thirty (30) days.

7. **Tenant's Duties.**

a. Tenant shall provide frequencies and transmitter output powers to the Landlord in order that the Landlord may ensure that all Tenant(s) uses are compatible and won't interfere with other uses of the Tower. Tenant shall give fifteen (15) days advance notice to Landlord prior to adding frequencies or modifying transmitter output powers or adding hardware to the Premises. Tenant shall not install any additional Equipment without the consent of the Landlord, which shall not be unreasonably withheld. If such additional equipment is proposed to increase the space usage of the Tenant the User Fees may be adjusted to compensate the Landlord for the increased use, upon agreement of the parties.

b. Tenant shall comply with all applicable laws, rules and regulations of federal, state and Hopi Tribal government authorities, including the Federal Aviation Administration, the Federal Communications Commission, and state and local building and electrical codes as have either been implemented or adopted by the Landlord.

8. **Utilities.**

a. Landlord shall provide utilities including but not limited to electricity and telephone services to the Facility, such that the Tenant may have such services available to operate its Equipment.

b. Tenant shall be solely responsible for and shall pay promptly all charges for electricity, telephone and other utilities used or consumed by Tenant at the Premises. Tenant shall have an electrical current meter installed at the Facility premises and the cost of such meter and installation, maintenance and repair thereof shall be paid by the Tenant. Should the Landlord be required to pay for such services on behalf of the Tenant, the Tenant will be responsible for reimbursing the Landlord such expenses within thirty (30) days of receipt of sufficient documentation and evidence indicating the percentage or amount attributable to Tenant and paid by the Landlord. Failure of the Tenant to pay for such utilities will be a material breach of the Agreement and cause for default.

9. **Taxes, Fees and Assessments.** Tenant shall be responsible for the payment of any taxes, fees or assessments attributable solely to Tenant's Equipment located at the Premises. If any such tax, fee or assessment is paid by Landlord, Tenant shall reimburse Landlord for the amount of any such tax payment within thirty (30) days of receipt of sufficient documentation and evidence indicating the percentage or amount attributable to Tenant and paid by the Landlord. Tenant's failure to pay the taxes, fees, or assessments as indicated above will be a material breach of the Agreement and cause for default.

10. **Interference.** The Parties recognize that intermodulation and electrical interference may occur when more than one antenna or other use(s) occurs on the same tower. The Parties wish to solve such interference problems by working together to eliminate the problem while establishing a primary rule that the prior use takes precedence. Stated another way, the first use has priority over subsequent uses. The Parties agree that any subsequent installation or modification of equipment whether the equipment belongs to the Landlord, the Tenant, or another third person (a "Subsequent Use") shall not interfere with Tenant's or Landlord's then-current operations. In the event that Landlord or Tenant experiences

interference caused by any Subsequent Use, that Party shall notify the other in writing of such interference and Landlord shall, or shall cause the operator of the interfering Subsequent Use, to power down its equipment and/or cease operations in order to correct and eliminate such interference within seventy-two (72) hours after Landlord's receipt of such notice. In the event that Landlord is notified of any interference experienced by Tenant alleged to be caused by a Subsequent Use on the Tower Site, Landlord shall be obligated to perform (or cause to be performed) whatever actions are commercially reasonable and necessary, at no cost or expense to Tenant, to eliminate such interference. If such Subsequent Use is unable to operate or modify its operation to stop or reduce such interference within a reasonable period of time not to exceed thirty (30) days, then Tenant may terminate this Agreement.

11. **Damage to the Premises.** If the Premises are damaged through no fault of Tenant so as to render all or any part of the Premises substantially unusable for Tenant's intended use, the User Fee payment shall abate while Landlord, at its expense, promptly restores the Premises to its previous condition or a mutually agreeable condition. Provided, however, that in the event Landlord fails to repair the Premises within a reasonable time (a maximum of thirty (30) days), Tenant shall have the right to terminate this Agreement in full or as it relates to the property so damaged, without affecting its remedies permitted by law, equity, and/or this Agreement. Tenant may also, after thirty (30) days notice and opportunity for the Landlord to make the repairs, repair or perform the necessary maintenance and Tenant's costs may be offset against future User Fees. If the Premises, the easements, and/or any utility easement are damaged for any reason other than Tenant's negligence, and if the damage does not render the Premises, the easements and/or any utility easement substantially unusable for Tenant's intended use, rent shall not abate, but Landlord, at Landlord's expense, shall promptly restore the Premises, the easements, and/or any utility easement to its previous condition or a mutually agreeable condition. Tenant may, after thirty (30) days notice and opportunity for the Landlord to make the repairs, repair or perform the necessary maintenance and Tenant's costs may be offset against future User Fees.

12. **Hazardous Materials.**

a. **Definition.** The term "Hazardous Materials" shall mean (i) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes" and "toxic pollutants" as such terms are defined under the Environmental Laws, or any of them, (ii) petroleum and petroleum products (including without limitation crude oil and any fractions thereof), (iii) natural gas, synthetic gas and any mixtures thereof, (iv) asbestos and or any material which contains any hydrated mineral silicate, whether friable or non-friable, (v) polychlorinated biphenyl ("PCB") or PCB-containing materials or fluids, (vi) radon, urea formaldehyde, lead, lead in drinking water or lead-based paint, (vii) any pathogen, toxin or other biological agent or condition, (viii) any other hazardous or radioactive substance, material, pollutant, contaminant or waste, and (ix) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. The term "Environmental Laws" shall mean all federal, state and local laws, statutes, guidelines, codes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including without limitation all applicable judicial or administrative orders, applicable consent decrees and binding judgments

relating to the regulation and protection of human health, safety, the environment and natural resources (including without limitation ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S. §§ 6901 et seq.), the Toxic Substance Control Act, as amended (42 U.S.C. §§ 7401 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f et seq.), Environmental Protection Agency regulations pertaining to asbestos (including without limitation 40 C.F.R. part 61, Subpart M), Environmental Protection Agency Guidelines on Mold Remediation in Schools and Commercial Buildings, the United States Occupational Safety and Health Administration regulations pertaining to Asbestos (including without limitation 29 C.F.R. Sections 1910.1001 and 1926.58), and the rules and regulations promulgated pursuant thereto regulating the storage, use and disposal of Hazardous Materials, and any state or local counterpart or equivalent of any of the federal statutes, rules and regulations set forth above.

b. **Landlord's Representations and Indemnity.** Landlord represents and warrants that, to the best of Landlord's knowledge, (A) the Premises have not been used for the use, manufacturing, storage, discharge, release or disposal of Hazardous Materials, (B) neither the Premises nor any part thereof are in breach of any Environmental Laws, (C) there are no underground storage tanks located on or under the Premises, and (D) the Premises are free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws. If any such representation is in any manner breached by Landlord during the Term or any renewal term of this Agreement, and if the breach gives rise to or results in liability (including but not limited to a response action, remedial action or removal action) under any Environmental Laws, or causes a significant effect on public health or safety, Landlord will promptly take any and all remedial and removal actions as required by law to clean up the Premises and will mitigate exposure to liability arising from, and keep the Premises free of any lien imposed pursuant to, any Environmental Laws. In addition, Landlord shall indemnify, defend and hold harmless Tenant and its officers and employees from and against any and all claims, costs, liabilities and damages, including attorneys' fees and costs, suffered or incurred by Tenant as a result of any such breach or any matter, condition or state of fact involving Environmental Laws or Hazardous Materials which existed on the Effective Date or arose during the term of this Agreement and which failed to comply with the Environmental Laws.

c. **Tenant's Representations and Indemnity.** Tenant represents and warrants as follows:

- (i) Tenant has obtained or will obtain a Business Permit from the Hopi Tribe Revenue Commission prior to installation of Tenant's Equipment on and at Landlord's Facility.
- (ii) Tenant's use of the Premises will not generate and Tenant will not store or

dispose of on the Premises, nor transport to or over the Premises, any Hazardous Materials. The Parties understand and agree that Tenant may use batteries as a necessary part of providing power to its Tower equipment; however, Tenant agrees not to store inoperative batteries at the Premises. Without limiting the scope of the foregoing, Tenant will be solely responsible for and will defend, indemnify and hold harmless the Village of Hotevilla and Landlord and its officers and employees from and against any and all claims, costs, liabilities and damages, including attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the Premises resulting from Tenant's use, storage, disposal or transportation of Hazardous Materials or violations of the Environmental Laws. Tenant's remedial obligations under this paragraph shall be coextensive with those of Landlord under paragraph 12.b.

d. **Survival of Obligations.** The Parties' respective obligations under paragraphs 12.a, 12.b and 12.c shall survive the termination of this Agreement.

13. **Termination.** The Parties shall have the right to terminate this Agreement at any time upon any of the following events:

a. With or without cause, upon providing the other Party written notice at least two years in advance.

b. On thirty (30) days written notice if (i) Tenant determines that the operation of Tenant's Equipment is no longer feasible at the Premises for technical or other reasons, or (ii) the approval of any agency, board, court or other governmental authority necessary for the construction and/or operation of Tenant's Equipment, including without limitation a Business Permit from the Hopi Tribe Revenue Commission, cannot be obtained or is revoked, or (iii) Tenant determines the costs of obtaining or retaining such approval is prohibitive.

c. Upon termination of this Agreement, each Party will owe no further obligation to the other, except for the indemnity obligations contained in Paragraph 12. Tenant shall be responsible for removing all of Tenant's Equipment from the Premises and restoring the areas occupied by Tenant to as near as practicable to the original condition, save and except normal wear and tear and acts beyond Tenant's control. Tenant shall complete the removal and restoration within ninety (90) days after the effective date of termination or expiration, and shall bear all costs and liability risks associated with the removal.

14. **Defaults and Remedies.** Neither Party shall be considered in default under this Agreement until there has been a failure to cure or resolve a default within thirty (30) days after receipt of written notice of default.

15. **Holding Over.** If Tenant should remain in possession of the Premises after the expiration of the Term of this Agreement, and the Parties have not extended the Agreement or executed a new Agreement, then Tenant shall be deemed to be occupying the Premises as tenant-at-sufferance on a month-to-month basis, subject to all the covenants and obligations of this Agreement.

16. **Insurance.** Tenant shall, at its expense, maintain in force during the term of this Agreement a general liability insurance policy providing insurance coverage for Tenant's use of the Premises for wrongful death, bodily injury and property damage, with a combined single limit of not less than Five Million Dollars (\$5,000,000). This liability insurance policy shall name the Village of Hotevilla and Landlord as an additional insured and shall require the insurance company to provide Landlord of notice of cancellation or non-renewal of such policy. Tenant may also purchase insurance to protect Tenant against casualty or other loss to Tenant's property. Likewise, the Village of Hotevilla and Landlord may at its expense purchase and maintain insurance coverage protecting against the casualty or other loss or damage to the Village of Hotevilla's and/or Landlord's property.

17. **Hold Harmless.** Tenant agrees to indemnify and save the Village of Hotevilla and Landlord harmless from any and all liability, claims, lawsuits, and costs, including reasonable attorneys' fees, costs and expert witness' fees, arising from or in any way relating to Tenant's use of the Premises or this Agreement. Likewise, Landlord agrees to indemnify and save Tenant harmless from any and all liability, claims, lawsuits, and costs, including reasonable attorneys' fees, costs and expert witness' fees, arising from or in any way relating to Landlord's or other tenants' use of the Premises or this Agreement.

18. **No Waiver.** The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

19. **Governing Law and Jurisdiction.** The construction, validity and performance of this Agreement shall be governed by, and construed in accordance with, the laws of the Hopi Tribe. The Parties agree that jurisdiction and venue for all claims shall lie in the Hopi Tribal Court. Nothing herein shall constitute a waiver of the sovereign immunity of the Hopi Tribe or of the Village of Hotevilla or of any of their agents or departments.

20. **Assignments.** Neither Party may assign its rights or obligations under this Agreement, except as specifically provided in this paragraph. Tenant may assign this Agreement upon receipt of prior written approval of the Village of Hotevilla and Landlord, which approval shall not be unreasonably withheld, but which shall be conditioned upon Landlord's receipt from Tenant of written proof that Tenant has received approval from the Hopi Tribe Revenue Commission to the assignment of Tenant's Business Permit to the proposed assignee.

21. **Severability.** If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

22. **Notices.** Any notice required by this Agreement shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

To the Landlord: Hopi Tribe  
PO Box 123  
Kykotsmovi, AZ 86039

With copies to: President, Village of Hotevilla  
PO Box 706  
Hotevilla, AZ 86030

Hopi Tribe  
MIS Department  
P.O. Box 123  
Kykotsmovi, AZ 86039

To the Tenant: xxxxx

With a copy to: xxxxx

The Parties may change the address to which it receives notices by mailing a change of address notice to the other Party and its attorney.

SIGNATURE PAGE FOLLOWS

DATED AND SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2009.

**LANDLORD:**  
Hopi Tribe

**TENANT:**

\_\_\_\_\_  
**Village of Hotevilla**  
**President**

\_\_\_\_\_  
**Approved As To Form:**

**EXHIBIT "A"**

Tenant's Equipment

[See attached plans - \_]

**EXHIBIT "B"**

Tower Space Description

**EXHIBIT "C"**

User Fee Schedule

**Appendix I - Arizona Public Service (APS)  
Pole Attachment Master License Agreement (MLA) Template**

**MASTER LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
“LICENSEE”  
FOR  
COMMUNICATIONS ATTACHMENT TO APS POLES**

AGREEMENT NO. **XXXXXX**

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Exhibit C - MEMORANDUM FOR THE JOINT USE OF POLES AND/OR TRENCHES

MASTER LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
“LICENSEE”  
FOR  
COMMUNICATIONS ATTACHMENT TO APS POLES

**1. PARTIES**

The parties to this Master License Agreement are “LICENSEE”, a “STATE OF INCORPORATION HERE” corporation, hereinafter referred to as "Licensee", and ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, hereinafter referred to as "APS".

**2. RECITALS**

This Agreement is made with reference to the following facts:

- 2.1. APS owns, utilizes, and maintains various utility poles throughout its service area.
- 2.2. Licensee desires to install, maintain, and operate aerial Cable on various APS distribution poles for the purpose of transmission and distribution of communications services to its Subscribers.
- 2.3. APS is willing to authorize the installation of such Cable on its poles, to the extent APS, in its sole discretion, may deem appropriate, and in accordance with the terms and conditions of this Agreement.

**3. ENTIRE AGREEMENT**

This Agreement embodies the entire understanding between APS and Licensee and shall supersede all prior contracts, representations, negotiations, or letters pertaining to the subject matter of this Agreement, whether written or oral. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not set forth herein, and this Agreement shall only be modified by an amendment signed by both parties. This Agreement includes all documents attached hereto and/or incorporated herein by reference.

**4. SECTION HEADINGS AND DEFINITIONS**

Section headings in this Agreement are for convenience only, and are not to be construed to define, limit, expand, interpret, or amplify the provisions hereof. When initially capitalized in this Agreement or amendments hereto, the following words or phrases shall have the meanings specified:

**Agreement**

Shall mean this contract including all documents attached hereto and/or incorporated herein by reference.

**Anchor(s)**

Shall mean a metal rod and anchor owned by APS and to which APS authorizes the attachment of Licensee's guy wire.

**Annual Attachment Fee**

Shall mean the fee set forth in Appendix A, SCHEDULE OF FEES AND CHARGES, assessed annually for attachment of Cable to each APS Pole.

**Application**

Shall be the document prepared by Licensee to request attachment of Cable to existing APS poles or request modifications to existing cable. Such Application will be written and issued substantially in the form set forth in Exhibit A, APPLICATION FOR POLE LICENSE OR MODIFICATION TO EXISTING CABLE. When properly completed pursuant to Appendix C, LICENSE PROCESS, the Application shall serve as authorization for the Licensee to attach its Cable to a specified pole or modify its existing Cable on a specified pole.

**APS Pole(s)**

Shall mean distribution poles (carrying electric circuits of 21kV or less) owned by APS for which APS authorizes the attachment of the Cable.

**Cable**

Shall mean the aerial cables, amplifiers, power supplies and associated hardware required to support the aerial cable, attached to poles in the communications space, utilized by Licensee for the transmission and distribution of communications services to its Subscribers.

**Joint Pole Participant**

Shall mean any entity with whom APS has an agreement or arrangement to reciprocally own and furnish poles for joint use and by which both parties have agreed to a method of pro-rating the fully allocated costs of ownership and maintenance of such joint use facilities.

**License**

Shall mean a revocable, nonexclusive written authorization to attach Cable to APS Poles, which will be in the form of either an Application approved by APS or by a fully executed Memo.

**Make-Ready Work**

Shall mean the work required, including engineering, field survey, rearrangement and/or transfer of existing facilities of APS, replacement of a pole, or any other modifications, to accommodate the Cable.

**Memo**

Shall be the document used to notify Licensee, Other Licensee, and Joint Pole Participant of proposed construction of new or to existing poles allowing said parties to respond and take necessary action. Such Memo(s) will be written and issued substantially in the form set forth in Exhibit C, SAMPLE MEMO. When properly completed pursuant to Appendix C, LICENSE PROCESS, the Memo shall serve as authorization for the Licensee to attach its Cable to a specified pole.

**Other Licensee**

Shall mean any entity, other than Licensee, whom APS has authorized under any agreement or arrangement to attach its facilities to the poles of APS, for any purpose.

**Subscriber**

Shall mean a person, firm, or corporation who receives Licensee's communications service.

**5. SCOPE OF AGREEMENT****5.1. General**

Subject to the provisions of this Agreement and the requirements of sufficient capacity, safety, reliability and generally applicable engineering purposes, APS agrees to issue to Licensee, from time to time and on a non-discriminatory basis, a License authorizing the attachment of Cable to various utility poles of APS, as designated by APS. It is understood and agreed that the License(s) granted hereunder are only for the attachment of aerial cables, amplifiers, power supplies and associated hardware required to support the aerial cable that are used solely for the transmission and distribution of communications service.

**5.2. Other Rights Reserved**

- 5.2.1. No use, however extended, of APS Poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such APS poles. Licensee's right herein shall be and remain a revocable license. Neither this Agreement nor any License granted hereunder shall constitute an assignment of any of APS' rights to use the public or private property at the location of APS Poles.
- 5.2.2. Nothing contained in this Agreement shall be construed to compel APS to construct, retain, extend, place, or maintain any pole or other facilities not needed for APS' own service requirements.
- 5.2.3. Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against APS with respect to any agreement and/or arrangement which APS has previously

entered into or may in the future enter into with others not a party to this Agreement, regarding the poles covered by this Agreement. The rights of Licensee shall at all times be subject to any such existing agreement and/or arrangement, and to any such future Joint Pole Participant agreement and/or arrangement.

- 5.2.4. No License granted hereby, or in the future under this Agreement shall extend to any APS Poles where the placement of Cable would result in a termination of the rights granted to APS, Other Licensee, and/or Joint Pole Participant by a property owner, to occupy the property on which such poles are located. If the existence of Cable on APS Poles would cause a termination of the right of APS, Other Licensee, and/or Joint Pole Participant, or any of them, to occupy such property, Licensee shall immediately remove the Cable upon notification by APS. If the Cable is not so removed, APS may perform and/or have performed such removal without liability on the part of APS, and Licensee shall pay APS, Other Licensee, and/or Joint Pole Participant or any or all of them, the cost thereof and for all losses and damages that may result.

## **6. FEES AND CHARGES**

### **6.1. General**

Licensee shall pay APS the fees and charges as specified in and in accordance with Appendix A, SCHEDULE OF FEES AND CHARGES. Any changes to Appendix A, SCHEDULE OF FEES AND CHARGES, shall be made by executing a new Appendix A, which shall be deemed to be an amendment to this Agreement.

### **6.2. Annual Attachment Fee**

An Annual Attachment Fee for each APS Pole shall be established for each calendar year that this Agreement is in effect in accordance with Appendix A, SCHEDULE OF FEES AND CHARGES.

### **6.3. Financial Security**

6.3.1. If requested by APS, Licensee shall furnish a letter of credit or other adequate evidence of financial security or assurance of performance, in a form satisfactory to APS and in such amount as APS from time to time may require, to guarantee the performance of all of Licensee's obligations hereunder. The amount of the letter of credit or financial security shall not operate as a limitation upon the liability of the Licensee hereunder.

6.3.2. If the Licensee shall fail to pay any sums demanded by APS as due under this Agreement, APS may, at its option, and without prior notice to or recourse by Licensee, apply any and all

amounts on deposit with APS or other forms of financial security to payment of the sum due or, pursuant to the provisions of the letter of credit, receive payment from Licensee's surety or sureties, whether or not Licensee contests its liability to pay such sum, and whether or not APS exercises any other rights or remedies it may have at law or under this Agreement. Any deposit of money, letter of credit or other evidence of financial security, if affected, shall, within thirty (30) days thereafter, be restored to its previous level.

## **7. INSURANCE**

- 7.1. Licensee shall provide and maintain the insurance coverages and shall comply with the insurance requirements set forth in Appendix B, INSURANCE.
- 7.2. APS reserves the right, from time to time in its sole discretion, to review the insurance requirements set forth in Appendix B and to require Licensee to make changes in such insurance or to provide additional insurance or amounts of insurance coverage, as deemed necessary by APS, based on circumstances as they exist at that time.

## **8. INDEMNITY:**

- 8.1 Licensee shall indemnify, defend, and save harmless APS, Other Licensee, and/or Joint Pole Participant and all of their employees, agents, representatives, and insurers (each hereinafter referred to as "Indemnatee") from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including but not limited to any attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by any Indemnatee i) on account of loss of or damage to any property or for injury to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any alleged act, omission, fault, mistake, or negligence of Licensee, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement, or ii) in connection with any valid claim made by any Indemnatee against Licensee for enforcement of any indemnity under this Agreement.
- 8.2 In all cases of death or injury to employees, officers or agents of either Licensee or its subcontractor, whether or not caused by Licensee, each Indemnatee shall be defended and indemnified by Licensee for any and all liability except where such death or injury results from the sole negligence of an Indemnatee.
- 8.3 Licensee shall defend each Indemnatee against all claims, demands, suits, actions, and proceedings for which Licensee has, or potentially has, indemnification responsibility under this Section 8. Each Indemnatee shall have the right, at its sole cost and discretion, to

provide for its own defense to whatever extent such Indemnitee deems necessary to protect its own interest or that of other Indemniteses and Licensee shall cooperate fully with such Indemnitee in any such participation.

- 8.4 The indemnification obligations of Licensee contained in this Section 8 are not limited in any respect by the insurance coverage required under Section 7.

## **9. LEGAL REQUIREMENTS**

### **9.1 Laws and Regulations**

Licensee shall at all times observe and comply with all applicable laws, ordinances, statutes, rules or regulations which in any manner relate to the rights and obligations of Licensee under this Agreement.

### **9.2 Permits**

Licensee shall obtain from the appropriate public and/or private authority any required franchises, authorizations, licenses, or permits to construct, operate, and/or maintain the Cable on public and private property at the location of APS Poles to which Licensee is attached. Licensee shall submit to APS such evidence of compliance with the foregoing requirements, as APS may require.

### **9.3 Authorized Personnel**

Only "Authorized Persons", as defined in Arizona Revised Statutes Section 40-360.41, shall install, maintain, repair, transfer, or otherwise perform any work related to the Cable under this Agreement.

## **10. LIMITATION OF LIABILITY**

APS shall not be liable to Licensee or any Subscribers for any incidental, indirect, or consequential loss or damage arising in any manner out of the use of APS Poles or APS' acts or omissions in connection therewith, and Licensee shall indemnify and save harmless APS from and against any and all claims, demands, causes of action, cost, and fees or expenses of whatever kind resulting from any such loss or damage. APS reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in such a manner as will best enable APS to fulfill its service requirements without liability to Licensee or any Subscribers.

## **11. RISK OF LOSS**

- 11.1 Licensee shall exercise reasonable care to avoid damaging the facilities of APS, and of Other Licensee, and/or Joint Pole Participant attached to APS Poles. Licensee assumes all responsibility for all loss or damage caused by Licensee's employees, agents, or contractors. Licensee shall make a

prompt report to APS, and to Other Licensee, and/or to Joint Pole Participant, as appropriate, of the occurrence of any such damage and shall reimburse the respective parties for all costs incurred in making repairs.

- 11.2 APS shall exercise reasonable care to avoid damaging the Cable; shall make a prompt report to the Licensee of the occurrence of any such damage caused by APS' employees, agents, or contractors; and shall reimburse Licensee for all costs incurred by Licensee to repair such damaged facilities. All costs incurred by Licensee for repair of such damaged facilities shall be supported by reasonable documentation.

## **12.GENERAL REQUIREMENTS**

### **12.1 Licensing**

- 12.1.1. Licensee shall not attach any Cable to any of APS' poles or Anchors without first having been issued a License pursuant to Appendix C, LICENSE PROCESS. Any changes to Appendix C, LICENSE PROCESS, shall be made by the execution of a new Appendix C, which shall be deemed an amendment to this Agreement. All Licenses shall be evidenced by a completed and approved written request substantially in the form of Exhibit A, APPLICATION FOR POLE LICENSE OR MODIFICATION TO EXISTING CABLE, or Exhibit C, SAMPLE MEMO. Approval for such License shall be conditioned upon the payment for and completion of all Make-Ready Work.
- 12.1.2. Licensee shall at all times bear full responsibility for the integrity and safety of its system. APS reserves the right to review Licensee's engineering plans and completed construction. Any such review by APS shall not relieve Licensee from or be deemed a waiver of APS' right to insist on strict compliance of Licensee's obligations under this Agreement, including Section 12.2 APPLICABLE STANDARDS. APS shall not, however, be obligated to review any engineering plans or completed construction.

### **12.2 Applicable Standards**

#### **12.2.1 Standards**

Licensee shall construct, install, operate, and maintain the Cable in accordance with the requirements and standards of the latest editions of the National Electrical Safety Code (NESC), US WEST Manual of Construction Procedures (Blue Book) the Occupational Safety and Health Act (OSHA), the rules and regulations of any governing authority having jurisdiction over the subject matter of this Agreement, any requirements APS may from time to time prescribe, and this Agreement. Where a difference in standards may exist, the more stringent shall apply.

### **12.2.2 Corrections**

If any part of the Cable is placed or maintained, or causes the facilities of others to be in violation of the standards prescribed in Section 12.2.1 and Licensee has not corrected the violation within fifteen (15) days from the date of the Memo or other written notice thereof, APS may, in addition to any other remedies it may have hereunder, remove or have removed the Cable from any or all of APS Poles or perform or have performed such other work and take such other action in connection with the Cable that APS deems necessary or advisable to comply with the applicable standards, at Licensee's cost and expense and without any liability on the part of APS; provided, however, that when in the sole judgment of APS such a condition may endanger the safety of the employees of APS, Other Licensee, and/or Joint Pole Participant or other third parties, or interfere with the performance of any service obligations of APS, Other Licensee, and/or Joint Pole Participant, APS may take such action without prior notice to Licensee.

### **12.3 Unauthorized Attachment**

- 12.3.1. If any of the Cable shall be found attached to poles or anchors of APS for which a License has not been issued, APS may, in addition to any other rights or remedies provided under this Agreement or by law, impose a charge and require Licensee to submit in writing, within fifteen (15) days after the date of written notification from APS of the unauthorized attachment, an Application in accordance with Appendix C. If such application is not received by APS within the specified time period, Licensee shall remove or have removed its unauthorized attachment within fifteen (15) days of the final date for submitting the required applications, or APS may remove such unauthorized attachment without liability, and the expense of such removal shall be paid by Licensee.
- 12.3.2. The charge to be imposed for any unauthorized pole or anchor attachment shall be as prescribed in Appendix A. All cost and expense incurred by APS in connection with such unauthorized attachment shall be paid by Licensee whether or not Licensee is permitted to continue the attachment.
- 12.3.3. No act or failure to act by APS with regard to said unlicensed use shall be deemed a ratification or the licensing of the unlicensed use; and if any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by APS of any of its rights or privileges under this Agreement or otherwise; provided however, that Licensee shall be subject to all liabilities, obligations, and responsibilities of this Agreement in regard to said unauthorized use from its inception.

## **12.4 Other Construction**

- 12.4.1. If Licensee should require Cable in a location upon any public thoroughfare or other public or private property other than the location(s) available through the use of the pole(s) of APS, Licensee shall advise APS of such pole-facility requirements. If APS intends to erect pole facilities in such location(s) to meet its own service requirements, or if APS is willing to erect the required pole facilities for the benefit of Licensee, it shall so notify Licensee, and Licensee may make application for a License pursuant to Appendix C, LICENSE PROCESS, to install Cable thereon.
- 12.4.2. Licensee shall pay APS a share of the cost of erecting such new pole facilities, according to the relative benefits to be derived by Licensee, as determined by mutual agreement prior to the construction of such facilities. All such poles, however, shall be the property of APS, and Licensee's use thereof shall be determined in accordance with this Agreement.
- 12.4.3. If APS, to meet its own service requirements, should desire to attach its facilities to any pole(s) of Licensee, APS may make application with Licensee for such license, under terms and conditions similar to this Agreement and for an attachment fee mutually agreed to by both parties, and Licensee shall issue a license and provide APS with space for attachment of its facilities on any such pole(s) of Licensee.

## **13.ASSIGNMENT**

Licensee shall not assign or transfer the rights, nor delegate the duties, or otherwise dispose of any right, title, or interest in all or any part of this Agreement without the prior written consent of APS. No such consent granted by APS shall be effective until Licensee's successor or assignee has agreed to assume Licensee's responsibilities under this Agreement and such assignment has been consented to in writing by APS; provided, however, such assignment shall not relieve Licensee of its responsibilities under this Agreement. Licensee shall not sell, assign or convey any part of the Cable without the prior written consent of APS.

## **14.TERM AND TERMINATION**

### **14.1 Term**

This Agreement shall be effective as of the date specified in Section 20, EXECUTION AND EFFECTIVE DATE, subject to approval by any applicable regulatory authority, if necessary, and shall continue in effect for a period of one (1) year and from year to year thereafter until terminated by either party or as otherwise provided in this Agreement.

### **14.2 Termination at Will**

Either party may terminate this Agreement or terminate any License

issued hereunder by giving the other party at least sixty (60) days prior written notice thereof. All notices of termination of a License by Licensee shall utilize the form as set forth in Exhibit B, NOTIFICATION OF TERMINATION OF POLE LICENSE BY LICENSEE, as it may be revised from time to time.

### **14.3 Termination for Default**

- 14.3.1. If Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations under this Agreement, and fails within sixty (60) days after the date of written notice from APS to correct such non-compliance or default, APS may, at its option and in addition to any other rights or remedies it may have, immediately terminate this Agreement and all Licenses issued pursuant hereto, under which such non-compliance or default has occurred.
- 14.3.2. Notwithstanding the provisions of Section 14.3.1, APS may immediately terminate this Agreement, or any License issued hereunder, without prior notice to Licensee, for any defaults by Licensee of the following sections of this Agreement: Section 6.3, Financial Security, Section 7, INSURANCE, Section 9, LEGAL REQUIREMENTS, Section 12.2, Applicable Standards, and Section 16, DISPUTES.
- 14.3.3. In the event of such termination for default, APS may take possession of all of the Cable affected thereby, subject to the rights of prior lien holders. At its discretion APS may retain the Cable for its use, the use of others, or may sell or otherwise dispose of such Cable for the purpose of securing payment of all fees, charges, and expenses of such termination and collections including, but not limited to, attorney's fees and/or litigation expenses. Nothing contained herein, however, shall be construed to preclude APS from pursuing any other remedy provided by law for the collection of any indebtedness or enforcement of any obligation or covenant under this Agreement.

### **14.4 Removal of Cable**

- 14.4.1. In the event of termination of this Agreement or any License issued hereunder for other than default, Licensee shall remove its Cable from APS Poles within sixty (60) days from the date of termination; provided, however, that Licensee shall be liable for and pay all applicable fees and charges to APS until the Cable are actually removed from APS Poles. Licensee shall advise APS in writing as to the date on which the removal of the Cable from each APS Pole has been completed.
- 14.4.2. If Licensee fails to remove the Cable in compliance with Section 14.4.1, APS may take possession of all of the Cable affected thereby. At its discretion APS may retain the Cable for its use,

the use of others or may remove, sell or otherwise dispose of such Cable. Any removal of such facilities will be at Licensee's expense and without any liability on the part of APS.

- 14.4.3. Licensee's Liabilities and Obligations - Termination of this Agreement or any License issued hereunder, in whole or in part, for any reason shall not affect Licensee's liabilities and obligations under this Agreement prior to the effective date of such termination and removal of the Cable.

## 15.SERVICE OF NOTICE

Any notice required or provided for hereunder shall be in writing and shall be delivered personally to the corporate representatives of APS and Licensee designated below, or shall be mailed thereto by certified mail, postage prepaid, return receipt requested. Notice shall be effective on the date delivered.

To APS:

Attn: Colin Barleycorn  
Arizona Public Service Co.  
PO Box 53999 MS 9505  
Phoenix, AZ 85072-3999

To Licensee:

**Contact Information Here**

## 16.DISPUTES

### 16.1 General

Any controversy or claim (except any claim for damages because of bodily injury including death at any time resulting therefrom, sustained by any person or persons, and except any claim for damages because of damage to or destruction of property) arising out of, or relating to this Agreement or its breach which may arise between Licensee and APS, and which is not resolved by the authorized representatives of the parties, shall be noticed in writing by the complaining party as provided in Section 15, SERVICE OF NOTICE. Such controversy or claim shall subsequently be reviewed and discussed between the APS Law Department, or its designee, and Licensee as a condition precedent to any litigation or submittal to any other authority.

### 16.2 Fee Disputes

In addition to the requirements of Section 16.1, any controversy or claim regarding the fees and charges established under this Agreement shall be settled by arbitration in Phoenix, Arizona, in accordance with the rules then in effect of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Licensee shall continue payment of all fees and charges when due and performance of all obligations under this

Agreement, during any such period of controversy or claim.

### **16.3 Expenses**

The prevailing party in any controversy or claim between APS and Licensee shall be entitled to recover from the other party, in addition to any other recovery awarded, any reasonable attorney's fees, litigation expenses, and/or arbitration expenses incurred by such prevailing party in connection with or incident to the controversy or claim; provided, however, that in the event APS brings an action for declaratory relief to resolve a dispute involving Licensee, APS shall be entitled to recover its attorney's fees and litigation expenses.

### **17.NON-WAIVER**

- 17.1. The failure of APS to enforce or insist upon strict compliance with any of the terms and conditions of this Agreement or to exercise or delay the exercise of any rights or remedies provided by this Agreement or by law shall not release Licensee from any of its duties or obligations imposed by law or by this Agreement and shall not be deemed a general waiver or relinquishment of any rights or remedies provided APS by this Agreement or by law, but the same shall be and remain at all times in full force and effect.
- 17.2. Nothing contained in this Agreement shall be construed in any way to fulfill, limit, restrict, substitute, or waive, in whole or in part, any of Licensee's obligations under Article 6.4, HIGH VOLTAGE POWER LINES AND SAFETY RESTRICTIONS, of Section 1, Title 40, Chapter 2 of the Arizona Revised Statutes, or any other laws, regulations, codes, standards, or industry practices pertaining to activities near overhead electric lines.

### **18.SEVERABILITY**

Should any provision of this Agreement be determined to be unenforceable or illegal, then said provisions shall be severed from this Agreement and the remainder shall remain in full force and effect.

### **19.GOVERNING LAW AND VENUE**

This Agreement shall be interpreted in accordance with the substantive laws of the State of Arizona. Any action at law or judicial proceeding shall be instituted only in the state or federal courts of the State of Arizona.

### **20.EXECUTION AND EFFECTIVE DATE**

This Agreement, No. \_\_\_\_\_, has been executed by the duly authorized representatives of the parties and shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ARIZONA PUBLIC SERVICE COMPANY

SIGNATURE: \_\_\_\_\_

NAME: Colin Barleycorn

TITLE: Joint Use Supervisor  
"APS"

**"LICENSEE"**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_  
"Licensee"

**APPENDIX A**  
**SCHEDULE OF FEES AND CHARGES**  
MASTER LICENSE AGREEMENT  
FOR  
COMMUNICATIONS ATTACHMENT TO APS POLES

**1. AGREEMENT FEE**

- 1.1. In consideration of Licensee's compliance with the provisions of this Agreement, the payment of a one time agreement fee of FIVE HUNDRED DOLLARS (\$500.00).

**2. ANNUAL ATTACHMENT FEE**

- 2.1. The Annual Attachment Fee for calendar year **INSERT YEAR HERE** shall be **\$FEE HERE** per pole.
- 2.2. The annual Attachment Fee shall be increased effective January 1 of each year. The amount of the increase will be calculated utilizing the average of the monthly Consumer Price Index figures for the preceding calendar year.
- 2.2.1. The annual February release of the Economic Indicators Prepared for the Joint Economic Committee by the Council of Economic Advisers and specifically the index category "All Items, Not Seasonally Adjusted (NSA)" shall be used in computing each of these Annual Attachment Fee increases.
- 2.2.2. The percentage of any increase in the annual average index numbers will be applied to the previous year's Annual Attachment Fee to determine the current year's Annual Attachment Fee.
- 2.2.3. APS will provide the Licensee sixty (60) days notice of the increased Annual Attachment Fee prior to the issue of an annual billing.
- 2.3. For the initial calendar year of each new License, the Annual Attachment Fee shall be assessed at one-half the annual rate set forth above, as of the effective date of the License, and shall not be refundable due to early termination of the License.
- 2.4. The total Annual Attachment Fees assessed as of the beginning of each calendar year shall be based upon the total number of pole attachments on record, times the Annual Attachment Fee effective for that calendar year. The total number of pole attachments on record shall be the number of pole attachments for which a License has been issued, less the number of pole attachments whose License has been terminated, as of the last day of the previous calendar year.

### **3. CHARGES**

#### **3.1 General**

Licensee shall advance funds to APS for all field surveys, engineering, and other Make-Ready Work, including, without limitation, inspections, supervision, removal, rearrangement, transfer, or other modifications of Licensee's facilities and any other work performed for Licensee, based upon the full cost and expense to APS for performing such work or for having such work performed. Licensee shall advance funds to APS for other construction as mutually agreed, pursuant to Section 12.4.2.

#### **3.2 New Construction**

When APS plans to install a pole for its use, and the Licensee requests a larger pole be installed to accommodate its facilities, Licensee shall be responsible for the difference in price between the original pole and the pole requested.

#### **3.3 Pole Replacements**

Licensee shall reimburse APS for replacement of any pole(s) required to accommodate Licensee's attachment(s), based on APS' fully installed costs less salvage value of the replaced pole(s), if any, plus the cost of removal of the existing pole(s).

#### **3.4 Taxes**

Licensee shall pay any and all sales tax, transaction privilege tax or other tax assessed or assessable as the result of its occupancy or use of APS Poles, including any such tax payable by APS, when due.

#### **3.5 Unauthorized Attachments**

Licensee shall pay a one-time fee of \$100 per pole or anchor to which Licensee has attached its Cable without the prior written authorization of APS.

### **4. TERMS OF PAYMENT**

#### **4.1 Annual Attachment Fee**

The initial Annual Attachment Fee shall be payable as of the effective date of the License, as appropriate. Thereafter, the Annual Attachment Fee shall be payable in advance, as of the first day of January of the applicable year. Annual Attachment Fees are not fully or partially refundable due to an early termination of a License.

#### **4.2 Payment Date**

All fees and charges, except taxes, shall be paid within thirty (30) days after the date of an invoice therefor or by any payment date indicated in the invoice.

### **4.3 Late Payment**

Amounts past due shall incur a late charge (which is subject to change from time to time at APS' discretion) equal to the prime rate (as reported by the Wall Street Journal) plus three percent (3%) (per annum), on the first day of the month in which the unpaid amount became delinquent. Payment or acceptance of such late charge, however, shall not constitute a waiver of any rights or remedies granted hereunder.

## **APPENDIX B**

### **INSURANCE**

#### **MASTER LICENSE AGREEMENT FOR COMMUNICATIONS ATTACHMENT TO APS POLES**

1. Licensee shall provide and maintain, during the term of and until all obligations under this Master License Agreement are satisfied, with forms and insurers acceptable to APS, the following insurance coverages:
  - 1.1. Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of its employees engaged in the performance of the work, and Employer's Liability insurance with a minimum limit of FIVE HUNDRED THOUSAND DOLLARS (\$500,000).
  - 1.2. Commercial General Liability insurance with a minimum combined single limit of FIVE MILLION DOLLARS (\$5,000,000) each occurrence. The policy shall include coverage for bodily injury liability, broad form property damage liability (including Completed Operations), personal injury liability (including coverage for contractual and employee acts), blanket contractual and products and completed operations. Said policy shall contain a severability of interest's provision. On "occurrence" form policies the products and completed operation coverage shall extend for two (2) years past termination of the Agreement.
  - 1.3. Comprehensive Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence with respect to Licensee's vehicles whether owned, hired, or non-owned, assigned to or used in connection with this Agreement.
  - 1.4. If applicable, Aircraft Public Liability insurance covering fixed wing and rotorcraft aircraft whether owned, hired, or non-owned with a combined single limit for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000), including passenger liability coverage.
2. The policies required by Sections 1.2, 1.3, and 1.4 herein shall be endorsed to include APS, its officers and employees as additional insureds and shall stipulate that the insurance afforded for APS, its officers and employees shall be primary insurance and that any insurance carried by APS, its officers or employees shall be excess and not contributory insurance.
3. Licensee and its insurers providing the required coverages shall waive all rights of recovery against APS and their directors, officers, employees, and agents.
4. Prior to the issuance of any License under this Agreement, Licensee shall

furnish APS with Certificates of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. The certificates shall identify the Agreement number and provide that not less than thirty (30) days' advance notice of cancellation, termination, or alteration shall be sent directly to APS addressed as follows:

Attn: Joint Use  
Arizona Public Service Company  
PO Box 53999 - Station 9505  
Phoenix, AZ 85072-3999

5. APS reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
6. APS shall not, however, be obligated to review any of Licensee's certificates of insurance, insurance policies, and/or endorsements or to advise Licensee of any deficiencies in such documents, and any receipt of copies or review by APS of such documents shall not relieve Licensee from or be deemed a waiver of APS' right to insist on strict fulfillment of Licensee's obligations under this Appendix B.
7. The stipulation of insurance coverages in this Appendix B shall not be construed to limit or waive any liabilities or other obligations of Licensee to APS, or any other parties, in connection with this Agreement.

**APPENDIX C**  
**LICENSE PROCESS**  
MASTER LICENSE AGREEMENT  
FOR  
COMMUNICATIONS ATTACHMENT TO APS POLES

All Licenses shall be evidenced by a written request, completed and approved pursuant to the following directions, substantially in the form of Exhibit A, APPLICATION FOR POLE LICENSE OR MODIFICATION TO EXISTING CABLE, or Exhibit C, SAMPLE MEMO.

**1. LICENSE BY APPLICATION:**

- 1.1. When an Application is submitted by Licensee, a field survey shall be required, at Licensee's expense, for each pole for which attachment or modification is requested. Licensee shall be responsible for field survey costs, regardless of how the survey is performed or whether a license is issued or attachments are installed. Applications which have not been addressed for field survey within 180 days shall be subject to review and may require resubmittal. At APS' sole discretion, the field survey shall be performed as described in either 1.1.1, 1.1.2, 1.1.3 or 1.1.4. APS will verbally notify Licensee of which method described below shall be used.

**Field Survey and Engineering by APS**

The field survey shall be performed jointly by representatives of APS and Licensee. If appropriate, a representative of the Other Licensee(s) and/or Joint Pole Participant(s) shall also be present during this field survey. Licensee shall furnish to APS data necessary to perform the field survey, in a format specified by APS and according to the standards of accuracy and completeness satisfactory to APS.

- 1.1.1.1. APS shall notify Licensee in writing of the estimated cost for the proposed construction work required to accommodate any of Licensee's attachment requests, specifying work and associated cost at each pole location. Licensee shall have thirty (30) days to determine if, at each pole location, APS should proceed with the detailed engineering. Licensee will be responsible for all engineering costs expended by APS as a direct result of work approved by Licensee on this estimate.
- 1.1.1.2. After response to the estimate is received, APS will complete the engineering for the approved work and submit an invoice to Licensee, payable in accordance with Appendix A, SCHEDULE OF FEES AND CHARGES. Costs reflected on the invoice will include costs for field surveys and engineering performed by APS and for proposed construction.

1.1.1.3. If Licensee delays approval of the estimate or payment of the invoice, and said delay causes the time elapsed from the date of the initial field survey to exceed 120 days, a second field survey may be required, at Licensee's expense, to determine any changes in the field that would impact Make-Ready Work requirements.

1.1.1.4. If during the course of this process, APS receives a request from another licensee for attachment to the same pole or poles APS will send written notification of the additional attachment request to Licensee. Licensee shall have 15 days from the date of the notification to submit payment for either the invoice for Make-Ready work, if issued, or for the estimated charges, if prior to billing.

#### **1.1.2 Field Survey by Licensee, Engineering by APS**

The field survey shall be performed by Licensee. Licensee shall take measurements at each pole and midspan, noting condition of poles and any other pertinent information. Licensee will notify APS if the poles meet all requirements. If any poles or midspans do not meet clearance, wind loading or any requirements, Licensee will provide the measurements and any calculations to APS. The steps outlined in Sections 1.1.1.1 through 1.1.1.4 will then be followed based on the information provided by Licensee.

#### **1.1.3 Field Survey by Licensee, Engineering by Contractor**

The field survey shall be performed by Licensee. Licensee shall take measurements at each pole and midspan, noting condition of poles and any other pertinent information. Licensee will notify APS if the poles meet all requirements. If any poles or midspans do not meet clearance, wind loading or any other requirements, Licensee will provide the measurements and any calculations to an APS approved engineering firm. The engineering firm will provide a preliminary estimate to Licensee and a determination will be made by Licensee at each pole location as to whether the engineering firm should proceed with detailed engineering. The engineering firm will prepare job sketches and material lists in a format specified by APS and according to the standards of accuracy and completeness satisfactory to APS. Licensee will be responsible for all costs of the field survey and associated engineering. APS will submit an invoice for the construction Make-Ready Work to Licensee, payable in accordance with Appendix A, SCHEDULE OF FEES AND CHARGES. Sections 1.1.1.3 and 1.1.1.4 shall then apply.

#### **1.1.4 Field Survey and Engineering by Contractor**

The field survey shall be performed by an APS approved engineering firm contracted by Licensee. The engineering firm shall take measurements at each pole and midspan, noting condition of poles and any other pertinent information. The engineering firm will determine if the pole(s) meet all requirements and Licensee will

notify APS of the results of the survey. If any poles or midspans do not meet clearance, wind loading or any other requirements, then, the engineering firm will provide a preliminary estimate to Licensee and a determination will be made by Licensee at each pole location as to whether the engineering firm should proceed with detailed engineering. The engineering firm will prepare job sketches and material lists in a format specified by APS and according to the standards of accuracy and completeness satisfactory to APS. Licensee will provide the job sketches to APS. Licensee will be responsible for all costs of the field survey and associated engineering. APS will submit an invoice for the construction Make-Ready Work to Licensee, payable in accordance with Appendix A, SCHEDULE OF FEES AND CHARGES. Sections 1.1.1.3 and 1.1.1.4 shall then apply.

- 1.2. Any required construction Make-Ready Work shall be performed by APS following receipt of Licensee's payment for such Make-Ready Work, in accordance with APS' normal work load schedule. APS shall provide Licensee with an estimated schedule of the Make-Ready Work. However, APS may adjust the schedule at any time to satisfy its own service requirements, and APS shall not be liable to Licensee or Subscriber for any delays caused by such adjustment. Licensee shall also notify Other Licensee and/or Joint Pole Participant attached to said poles and pay for any expense incurred by it or them in transferring or rearranging their facilities to accommodate the Cable. Licensee shall not be entitled to reimbursement of any amounts paid to APS for pole replacements or for rearrangement of facilities on APS Poles by reason of the use by APS, Other Licensee and/or a Joint Pole Participant of any additional capacity resulting from such replacement or rearrangement.
- 1.3. APS will perform construction Make-Ready Work that may be required on APS' facilities attached to poles owned by others and any such construction Make-Ready Work shall be treated in the same manner with regard to billing, etc., as construction Make-Ready Work on poles owned by APS.

#### **1.4 Other Attachments**

In the event APS receives a request for pole attachment from a third party for attachment to poles of APS for which Licensee submits, or has pending, an Application, but for which APS has not received payment from Licensee of the Annual Attachment Fees and Make-Ready charges, Licensee shall jointly participate with APS and the third party in, and shall pay its pro-rata share of, any Make-Ready Work as follows:

- 1.4.1. For applications received by APS on the same workday (Monday through Friday, except holidays), each applicant shall jointly participate in, and pay an equal share of the cost of, the field survey

and other Make-Ready Work.

- 1.4.2. For applications received by APS prior to the performance of the field survey, each applicant shall jointly participate in the field survey and other Make-Ready Work, and pay an equal share of the cost of the field survey; the first applicant shall pay only those costs for the other Make-Ready Work which would be applicable for its attachment(s), and the second applicant(s) shall pay the additional cost of other Make-Ready Work required for such additional attachment(s).
- 1.4.3. For applications received by APS after completion of the field survey, but prior to receipt by APS of full payment of the costs for the Make-Ready Work from the first applicant, the first applicant shall pay only those costs for the field survey and other Make-Ready Work which would be applicable for its attachments, and the second applicant(s) shall pay the additional cost of a field survey and other Make-Ready Work required for such additional attachment(s).
- 1.4.4. If the other Make-Ready Work to be performed for the first applicant, pursuant to the above two paragraphs, results in the availability of pole-space for the second applicant(s), each applicant shall pay an equal share of the cost of such other Make-Ready Work, and APS shall reimburse Licensee for any excess amount paid to APS.

## **2. LICENSE BY MEMO**

- 2.1. APS will notify Licensee of new pole installations, replacements, removals and modifications with a Memo which will generally specify the location of the pole(s) and the nature of the construction work to be done. Upon completion of the Memo process, and upon completion of APS' construction work, the Memo shall serve as evidence of the Licensee's authorization to attach to an APS Pole.
- 2.2. Licensee must reply to the Memo provided by APS within thirty (30) calendar days of the transmittal date. The response to each memo shall include any necessary information such as, but not limited to, which poles are desired for Attachment and the size, type and number of the cables Licensee wishes to attach. If any modifications to APS' planned construction are necessary to accommodate the Cable, Licensee shall specify this on the response. If APS' service requirements demand a shorter response time than thirty (30) calendar days, Licensee shall cooperate with APS to address these needs within the required time frame. If no response is received by APS from Licensee on the Memo within thirty (30) calendar days of the transmittal then it will be deemed that none of the poles indicated on the Memo are desired for the attachment of Communication Facilities and no provisions will have been made for the attachment of Cable. If transfer of the Cable

- to a new pole is required, the transfer shall be done within fourteen (14) calendar days after receipt of notice that APS' work is completed.
- 2.3. In the event it is determined that a new pole to which Licensee desires to attach, requires an upgrade in its planned height or class to accommodate the Cable, Licensee will be responsible for the difference in cost between APS' planned installation and the installation necessary to meet Licensee's requirements.
  - 2.4. If APS notifies Licensee that removal of Cable is required to accommodate rearrangement of existing facilities or attachment of additional facilities of APS or a Joint Pole Participant, Licensee shall have the option, within the time frame specified by APS, to request a pole replacement as needed to continue attachment of the Cable. Licensee will be responsible for all costs to APS and Joint Pole Participant for replacement of the APS Pole and transfer of existing facilities.
  - 2.5. If APS notifies Licensee that rearrangement of Cable is necessary Licensee shall, within thirty days (30) days of receipt of the Memo, perform such rearrangements. Licensee will be responsible for all costs it incurs for such rearrangement as necessary to meet the requirements of APS or a Joint Pole Participant. If APS notifies Licensee that removal or rearrangement of Cable is required and Licensee refuses to perform these removals or rearrangements within the required time frame, APS may remove or rearrange the facilities, without any liability on the part of APS, and Licensee will be responsible for APS' costs to perform such removals or rearrangements.
  - 2.6. APS will proceed with construction on the project represented by the Memo in accordance with its normal workload schedule. APS may adjust this schedule at any time to satisfy its own service requirements. APS will notify Licensee upon completion of the construction.

### **3. ANCHORS**

- 3.1. Licensee may attach its guy wire to an existing Anchor where adequate capacity is available, in accordance with the standards set forth in Section 12.2, APPLICABLE STANDARDS, upon obtaining written authorization from APS. The authorization to attach to an existing APS anchor shall be evidenced by APS notation on the field survey notes or Memo. In any other case, a separate written authorization must be obtained from APS prior to Licensee's use of any or each APS anchor. Licensee shall secure any necessary right-of-way therefor from the appropriate property owner.
- 3.2. Should APS, Other Licensee, and/or Joint Pole Participant attached to the Anchor for its own service requirements, need to increase its load on the Anchor to which Licensee's guy wire is attached, Licensee shall, if necessary, either remove, rearrange its guy wire on the Anchor or

- transfer it to a replacement Anchor, as determined by APS in its sole discretion. Any such removal, rearrangement and/or transfer of Licensee's guy wire and the placement of a new Anchor or replacement of an existing Anchor by APS to accommodate Licensee's guy wire shall be at Licensee's expense.
- 3.3. If Licensee does not remove, rearrange or transfer its guy wire within thirty (30) days following the date of the Memo or other written notice from APS regarding such requirements APS may perform the work involved and Licensee shall pay the full costs thereof, without liability on the part of APS.
  - 3.4. Should Licensee install any anchors to accommodate its guy wire, the types and general placement of Licensee's anchors shall be approved by APS prior to installation. Licensee shall be responsible for obtaining, and having marked, the locations of all underground facilities, including the underground electric facilities of APS, in connection with and prior to any such installation. Any such anchor shall be placed so that Licensee's guy wire does not cross any guy wire of APS.

#### **4. INSTALLATION OF CABLE**

- 4.1. After receipt of authorization from APS to attach to APS Poles, Licensee shall install and maintain the Cable in accordance with the standards indicated in Section 12.2, APPLICABLE STANDARDS at its own risk and expense, so as not to interfere with the use and operation of APS Poles by APS or others. All Cable authorized by a License for attachment to APS Poles shall be installed and energized within one hundred twenty (120) days from the date of APS' authorization for attachments provided, however, that Make-Ready Work for other APS Poles necessary for such energization, if any, has been completed. APS shall specify the general area on each APS Pole at which the Cable shall be attached. If construction is not completed within said one hundred twenty (120) day time frame a second field survey may be required, at Licensee's expense, to determine any changes in the field that would impact make ready requirements.
- 4.2. Licensee shall notify APS, in writing, within thirty (30) days after completion of the installation of Cable.
- 4.3. If, prior to completion of the installation of the Cable authorized by a License for attachment to APS Poles, APS receives a request from a third party for attachment to the same APS Pole(s), APS shall verbally notify Licensee within twenty-four (24) hours thereof, followed by written confirmation. Thereafter Licensee shall complete the installation of the Cable during the remainder of its one hundred twenty (120) day installation period, if any, or within fifteen (15) days of receipt of such verbal notice, whichever is greater. Should Licensee fail to complete the installation of the said Cable within the allowed

period, the License for such attachment to APS Poles shall thereby be automatically revoked. APS shall reimburse Licensee for all charges paid by Licensee for any such Make-Ready Work, upon receipt by APS of third party applicant's payment for such Make-Ready Work, but Licensee shall not be entitled to reimbursement for any Annual Attachment Fees paid by Licensee.

- 4.4. If Licensee, at any time, intends to use an alternate source of electricity to energize any part of the Cable, the electrical connection for such alternate source of electricity shall be made utilizing a single pole, double throw switch. All such contemplated installations must be approved in writing by an authorized representative of APS, prior to any such installation.

## **5. INSPECTION OF CABLE**

### **5.1 Final Inspection**

After Licensee has completed installation of Cable, pursuant to Appendix C, Section 4, APS will perform an inspection of the attachments. This inspection may also include, if appropriate, representatives for Other Licensee and/or Joint Pole Participant. Licensee shall provide a representative to participate in this inspection and shall reimburse APS all costs of performing such inspection. If any attachments are found to be in violation of Section 12.2, APPLICABLE STANDARDS, Licensee shall be responsible for correcting all such violations and shall reimburse APS the cost of any additional Make-Ready Work that may be required for such correction. Any such corrective work shall also be subject to inspection by APS.

### **5.2 Periodic Inspection**

APS may make periodic inspections of any part of the Cable, and Licensee shall reimburse APS for one (1) inspection every twenty-four (24) months; for any such inspection resulting from a serious safety violation or a series of three or more violations of the standards set forth in Section 12.2, Applicable Standards, during a twelve (12) month period; or for inspections made in connection with any unauthorized attachment to poles or anchors of APS. Such reimbursement shall be as set forth in Appendix A, SCHEDULE OF FEES AND CHARGES. APS shall give Licensee advance written notice of such inspections, except in those instances where, in the sole judgement of APS, safety considerations justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to Licensee. The making of periodic inspections, or the failure to do so, shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.

## **6. MODIFICATION OF CABLE**

- 6.1. In the event Licensee modifies existing Cable, Licensee shall notify

APS by Application.

- 6.2. Modifications to existing Licensee attachments shall be treated in the same manner as new attachment requests and shall be addressed pursuant to Section 1, LICENSE BY APPLICATION.

## **7. REMOVAL OF CABLE**

- 7.1. In the event Licensee chooses to remove its Cable, Licensee shall notify APS by Exhibit B, Notification of Termination of Pole License by Licensee, with current copies of exhibits attached to the form, indicating poles from which attachments have been removed. Once APS receives the Notification of Termination, APS shall perform an inspection to ensure that the Cable has been removed and once verified the exhibit and attachment database shall be modified. The modified number of attachments shall be applied to the next annual attachment fee year.

Send all **APS forms, job packages** to: APS, Attn: Joint Use, Mail Station 9505, P.O. Box 53999, Phoenix, AZ 85072-3999

Send all **Telephone Company forms**, job packages to: Appropriate Telephone Company contact

Send **APS remittance** to: APS, Attn: Cash Management, P.O. Box 53920, Mail Station 9996, Phoenix, AZ 85072-3920

**APS Engineering** contact: Art Taddei, (602) 371-6479

Any questions, please call: Brenda Bayless, (602) 250-3478, FAX (602) 250-3388, Internet address- [brenda.bayless@aps.com](mailto:brenda.bayless@aps.com)

# APPLICATION FOR POLE LICENSE OR MODIFICATION TO EXISTING CABLE

**ARIZONA PUBLIC SERVICE COMPANY**  
**P.O. BOX 53999 STATION 9505**  
**PHOENIX, ARIZONA 85072-3999**

Application/Modification No. \_\_\_\_\_

Date: \_\_\_\_\_

Town: \_\_\_\_\_

Application is hereby made for a License to install, maintain, and operate Cable upon APS Poles as specified on the attached drawing(s) and information sheet.

Licensee: \_\_\_\_\_

Agreement No: \_\_\_\_\_

Submitted by: \_\_\_\_\_

Number of poles to be reviewed	
APS Poles	TELCO Poles

Township	Range	Quarter	Section

**PLEASE SUBMIT SEPARATE FORM FOR EACH QUARTER SECTION**

APPLICATION FOR NEW ATTACHMENT?    YES \_\_\_\_\_ NO \_\_\_\_\_

MODIFICATION TO EXISTING CABLE?    YES \_\_\_\_\_ NO \_\_\_\_\_

If modification, attached information includes full description of said Modification/New Design.

Actual number of new attachments to APS Poles determined on field survey: \_\_\_\_\_

Make-Ready Work Required APS \_\_\_\_\_ TELCO \_\_\_\_\_ NONE \_\_\_\_\_

JOB # \_\_\_\_\_

WA # \_\_\_\_\_

Statement of Billing # \_\_\_\_\_

<p><b>Certification to be completed</b></p> <p>I hereby certify that upon construction completion, Cable will fully comply with the applicable rules of the NESC, other codes and requirements, and good engineering design.</p> <p>By: _____</p> <p>Title: _____</p> <p style="text-align: center;"><b>Licensee Representative</b></p>
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A License is hereby granted for attachment/modification of Cable to the APS Poles specified on the attached drawing(s), subject to the terms and conditions of the License Agreement referenced above. This License is conditioned upon receipt of Licensee's payment for Make-Ready Work, if any, and any initial Attachment Fee, per the attached invoice. APS shall not perform any Make-Ready Work until receipt of such payment. Licensee shall not attach or modify its facilities until receipt of written authorization from APS and any other Joint Pole Participant, in the form of a release letter. Licensee intends to construct plant within 120 days of receipt of said release. All attachments/modifications are subject to final inspection by APS.

Date \_\_\_\_\_

Date \_\_\_\_\_

**Arizona Public Service Company**

By \_\_\_\_\_

Licensee \_\_\_\_\_

By \_\_\_\_\_

## NOTIFICATION OF TERMINATION OF POLE LICENSE BY LICENSEE

ARIZONA PUBLIC SERVICE COMPANY  
P.O. BOX 53999 STATION 9505  
PHOENIX, ARIZONA 85072-3999

Termination No. \_\_\_\_\_

Date: \_\_\_\_\_

Town: \_\_\_\_\_

Notice is hereby given that the License covering attachment of Cable to APS Poles is terminated as specified on the attached drawing(s).

Licensee: \_\_\_\_\_

Agreement No: \_\_\_\_\_

Submitted by: \_\_\_\_\_

Township	Range	Quarter	Section

Number of APS Poles

Actual number of attachments to APS Poles to be terminated per field survey: \_\_\_\_\_

License is hereby terminated for attachment of Cable to the APS Poles specified on the attached drawing(s).

Date: \_\_\_\_\_

**Arizona Public Service Company**

By: \_\_\_\_\_

Licensee: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_