

REFERENCE TITLE: local governments; permits; equipment

State of Arizona
House of Representatives
Fifty-second Legislature
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2016

HB 2497

Introduced by
Representative Mitchell

AN ACT

AMENDING SECTION 9-506, ARIZONA REVISED STATUTES; AMENDING TITLE 9, CHAPTER 5, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-584; RELATING TO PUBLIC UTILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-506, Arizona Revised Statutes, is amended to
3 read:

4 9-506. Authority to issue license; limitations; permits for
5 Wi-Fi radio equipment; definitions

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

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

22 C. Other than the license fee on gross revenues authorized by this
23 article and transaction privilege taxes as provided in this subsection, a
24 licensing authority may not levy a tax, rent, fee or charge, however
25 denominated, on a cable operator for the use of the public streets, roads or
26 alleys to provide cable service or levy a tax, fee or charge on the privilege
27 of engaging in the business of providing cable service in the area of
28 jurisdiction. Taxes, rents, fees and charges include all access channel
29 support except for in-kind services or payments as provided in subsection D
30 of this section, ~~AND ALL~~ rental, application, construction, permit,
31 inspection, inconvenience and other fees and charges related to a cable
32 operator's use of the public streets, roads and alleys, **INCLUDING THE USE**
33 **AUTHORIZED BY SUBSECTION I OF THIS SECTION. THIS SUBSECTION DOES NOT**
34 **PROHIBIT A LICENSING AUTHORITY FROM LEVYING FEES AND CHARGES FOR MICROCELL**
35 **EQUIPMENT ON A CABLE OPERATOR AS PROVIDED UNDER SECTION 9-584.** In addition,
36 the following apply:

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

1 2. The license fee and any transaction privilege taxes levied on gross
2 revenues constitute a franchise fee within the meaning of 47 United States
3 Code section 542(g)(1).

4 3. Under no circumstances may the total of the rates of the license
5 fee and of any transaction privilege taxes on gross revenues levied or
6 assessed by a licensing authority for the privilege of providing cable
7 service and related use of the public streets, roads or alleys to provide
8 cable service exceed a rate of five ~~per-cent~~ PERCENT, except during the
9 transition period for certain licenses as provided in subsection H of this
10 section.

11 4. A cable operator shall pass on to subscribers any reduction in the
12 amount of fees, taxes or other charges paid by a cable operator and itemized
13 to subscribers that results from the implementation of the amendment to this
14 section effective on September 21, 2006.

15 D. A licensing authority may not require a cable operator to provide
16 in-kind services, make in-kind payments or pay a fee in addition to the
17 monetary license fee levied or assessed as provided in this section as part
18 of or as a condition of issuing a license to provide cable service, except
19 that:

20 1. A licensing authority may require a cable operator to provide
21 channel capacity to transmit programming over which the cable operator
22 exercises no editorial control except as authorized by 47 United States Code
23 section 531(e). The channel capacity shall be limited to not more than two
24 channels of public, educational or governmental access programming in the
25 basic service tier of the cable television system and not more than two
26 channels of noncommercial governmental programming, at least one of which may
27 be programmed by the federal government, in the digital programming tier of
28 the cable television system. If channel capacity is required, the
29 programming shall be specified in the license and the cable operator may
30 require that the channels regularly display an unobtrusive logo or other
31 suitable identifier of the cable operator as set forth in the license.

32 2. A licensing authority may require a cable operator to incur costs
33 and expenses to provide, maintain and operate facilities and equipment of the
34 cable television system, including facilities and equipment for signal
35 carriage, processing, reformatting and interconnection:

36 (a) To connect the cable television system, as it may be relocated
37 from time to time, to transmit programming to and from existing locations of
38 public, educational or governmental access facilities and to allow monitoring
39 of access programming at the facilities.

40 (b) To transmit public, educational and governmental access channels
41 to subscribers with the same prevailing quality, functionality and
42 identification as other channels.

43 3. A licensing authority may require a cable operator to provide the
44 basic service tier of cable service at no monthly service charge to offices
45 and facilities of the licensing authority.

1 4. The value of any channel capacity provided pursuant to paragraph 1
2 of this subsection, the costs and expenses incurred pursuant to paragraph 2
3 of this subsection and the value of basic service provided pursuant to
4 paragraph 3 of this subsection may not be offset against the license fee
5 levied or assessed under this section.

6 E. This section does not prohibit a cable operator from agreeing to
7 provide in-kind services or make in-kind payments in the area of jurisdiction
8 that are prohibited by subsection D of this section if the agreement with the
9 licensing authority is not part of, or entered into as a condition of being
10 issued, a new, renewed or amended license to provide cable service. An
11 agreement that requires in-kind cable service or payments shall set forth the
12 total annual fair market value of the in-kind cable service and payments,
13 which shall be less than or equal to and offset against the license fee
14 levied or assessed annually pursuant to this section. The license shall
15 authorize the cable operator to retain license fees and taxes collected from
16 its subscribers in the amount of this offset. In-kind cable services and
17 payments include any channel capacity and all capital costs and charges for
18 or in support of the use of any channel capacity that the cable operator
19 agrees to provide under this subsection.

20 F. Notwithstanding subsection C of this section, a licensing authority
21 may require that a cable operator:

22 1. Bear reasonable costs that are associated with damage caused to
23 public streets, roads and alleys by construction, maintenance and operation
24 of its facilities in the public streets, roads and alleys and that are
25 imposed on a competitively neutral and nondiscriminatory basis in relation to
26 costs borne by telecommunications corporations under section 9-582,
27 subsection C.

28 2. Pay fines, fees, charges or damages for breach of the terms and
29 conditions of the license.

30 G. This section does not affect the authority of a licensing authority
31 to manage the public streets, roads and alleys within its boundaries or to
32 exercise its police powers.

33 H. A license that is in effect on September 21, 2006, including one
34 that is later renewed or extended for a term that begins before July 1, 2007,
35 is enforceable in accordance with its terms and conditions as of July 1, 2007
36 and is not subject to the provisions of the amendment to this section
37 effective on September 21, 2006. If a license that is in effect on September
38 21, 2006 is later extended or renewed for a term that begins after June 30,
39 2007, the extended or renewed license is subject to the provisions of the
40 amendment to this section effective on September 21, 2006 and ~~of~~ the
41 amendment to this section **EFFECTIVE ON SEPTEMBER 19, 2007**, effective on the
42 first day of the renewal or extension term, unless the term begins before
43 January 1, 2008, in which case the limitation in subsection C, paragraph 3 of
44 this section on the rates of the license fee and of any transaction privilege
45 taxes on gross revenues is:

1 1. Five ~~per-cent~~ PERCENT, if the gross effective rate is five ~~per-cent~~
2 PERCENT or less.

3 2. If the gross effective rate is more than five ~~per-cent~~ PERCENT,
4 five ~~per-cent~~ PERCENT plus the following percentage:

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

7 (b) In the second year of the term, the gross effective rate minus
8 five ~~per-cent~~ PERCENT, multiplied by one-third.

9 (c) In the third year of the term, and thereafter, zero ~~per-cent~~
10 PERCENT.

11 I. A LICENSING AUTHORITY SHALL ISSUE TO A CABLE OPERATOR THAT APPLIES
12 A PERMIT TO ATTACH PERMITTED WI-FI RADIO EQUIPMENT TO THE CABLE TELEVISION
13 SYSTEM IN PUBLIC STREETS, ROADS AND ALLEYS IN THE AREA OF JURISDICTION. THE
14 PERMITS SHALL ALLOW INSTALLATION, OPERATION AND MAINTENANCE OF THE PERMITTED
15 WI-FI RADIO EQUIPMENT. A LICENSING AUTHORITY MAY REQUIRE THAT ALL OF THE
16 PERMITTED WI-FI RADIO EQUIPMENT AT A SINGLE LOCATION FIT WITHIN A
17 FIFTEEN-INCH CUBE AND BE CONTAINED ENTIRELY WITHIN A GROUND-MOUNTED PEDESTAL
18 OTHERWISE ALLOWED BY THE LICENSE OR BE CONNECTED DIRECTLY TO AND MOUNTED AT
19 THE SAME HEIGHT AS ONE OF THE CABLE OPERATOR'S AERIAL HORIZONTAL CONDUCTORS
20 OTHERWISE ALLOWED BY THE LICENSE. THIS ARTICLE DOES NOT AUTHORIZE THE
21 IMPOSITION OF A TAX, RENT, FEE OR CHARGE ON REVENUE FROM SERVICES PROVIDED
22 THROUGH PERMITTED WI-FI RADIO EQUIPMENT.

23 ~~I.~~ J. For THE purposes of ~~subsection H of~~ this section: ~~,-~~

24 1. "Gross effective rate" means one hundred ~~per-cent~~ PERCENT
25 multiplied by the fraction in which the numerator is the sum of all taxes,
26 fees and charges of the licensing authority that the cable operator itemized
27 to subscribers and paid to the licensing authority under the license for the
28 twelve calendar months immediately preceding September 21, 2006 and the
29 denominator is the cable operator's gross revenues for that period in the
30 area of jurisdiction.

31 2. "PERMITTED WI-FI RADIO EQUIPMENT" MEANS RADIO EQUIPMENT THAT USES
32 ONLY UNLICENSED RADIO SPECTRUM SUCH AS FOR WI-FI SERVICE.

33 Sec. 2. Title 9, chapter 5, article 7, Arizona Revised Statutes, is
34 amended by adding section 9-584, to read:

35 9-584. Microcell equipment in public highways; permits; fees;
36 limitations; definitions

37 A. A POLITICAL SUBDIVISION SHALL ALLOW THE FOLLOWING PERSONS TO
38 INSTALL, OPERATE AND MAINTAIN MICROCELL EQUIPMENT IN THE PUBLIC HIGHWAYS
39 WITHIN THE POLITICAL SUBDIVISION:

40 1. A TELECOMMUNICATIONS CORPORATION WITHIN THE LICENSED AREA OF A
41 LICENSE ISSUED BY THE POLITICAL SUBDIVISION UNDER THIS ARTICLE.

42 2. A TELECOMMUNICATIONS CORPORATION DESCRIBED IN SECTION 9-582,
43 SUBSECTION E.

44 3. A CABLE OPERATOR IN THE AREA OF JURISDICTION LICENSED BY THE
45 POLITICAL SUBDIVISION UNDER SECTION 9-506.

1 B. A POLITICAL SUBDIVISION SHALL ISSUE PERMITS FOR THE INSTALLATION,
2 OPERATION AND MAINTENANCE OF MICROCELL EQUIPMENT IN THE PUBLIC HIGHWAYS
3 WITHIN THE POLITICAL SUBDIVISION ON A COMPETITIVELY NEUTRAL AND
4 NONDISCRIMINATORY BASIS TO ALL PERSONS SPECIFIED IN SUBSECTION A OF THIS
5 SECTION THAT APPLY TO PLACE MICROCELL EQUIPMENT IN THE PUBLIC HIGHWAYS WITHIN
6 THE POLITICAL SUBDIVISION.

7 C. ALL APPLICATION FEES, PERMIT FEES AND CHARGES LEVIED BY A POLITICAL
8 SUBDIVISION FOR APPLICATIONS OR PERMITS SHALL BE LEVIED ON A COMPETITIVELY
9 NEUTRAL AND NONDISCRIMINATORY BASIS AND DIRECTLY RELATED TO THE COSTS
10 INCURRED BY THE POLITICAL SUBDIVISION IN PROVIDING SERVICES RELATING TO THE
11 GRANTING OR ADMINISTRATION OF APPLICATIONS OR PERMITS. THESE FEES AND
12 CHARGES ALSO SHALL BE REASONABLY RELATED IN TIME TO THE OCCURRENCE OF THE
13 COSTS.

14 D. A POLITICAL SUBDIVISION MAY NOT CHARGE A RECURRING FEE, RENT OR
15 OTHER CHARGE FOR USE OF MICROCELL EQUIPMENT IN THE POLITICAL SUBDIVISION'S
16 PUBLIC HIGHWAYS. THIS SUBSECTION DOES NOT PROHIBIT A POLITICAL SUBDIVISION
17 FROM CHARGING A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY RENT, FEE OR
18 CHARGE FOR THE USE OF POLES OF THE POLITICAL SUBDIVISION. ONLY A QUALIFIED
19 SERVICE PROVIDER MAY USE MICROCELL EQUIPMENT TO PROVIDE COMMERCIAL MOBILE
20 SERVICES. THIS ARTICLE DOES NOT AUTHORIZE A POLITICAL SUBDIVISION TO IMPOSE
21 A TAX, RENT, FEE OR CHARGE ON REVENUE FROM SERVICES PROVIDED THROUGH
22 MICROCELL EQUIPMENT.

23 E. EXCEPT AS THE POLITICAL SUBDIVISION AGREES IN THE POLITICAL
24 SUBDIVISION'S SOLE DISCRETION, AT EACH SITE MICROCELL EQUIPMENT IS LIMITED
25 TO:

26 1. NOT MORE THAN TWO STRAND-MOUNTED ANTENNAE AND RADIO PAIRS THAT ARE
27 OWNED BY A PERSON SPECIFIED IN SUBSECTION A OF THIS SECTION OR A QUALIFIED
28 SERVICE PROVIDER AND THAT ARE USED TO PROVIDE COMMERCIAL MOBILE SERVICE.

29 2. RELATED DEVICES THAT ARE OWNED BY A PERSON SPECIFIED IN SUBSECTION
30 A OF THIS SECTION AND THAT ARE MOUNTED ON STRAND BETWEEN UTILITY POLES,
31 INCLUDING POWER SUPPLIES, HOUSINGS, CABLES AND SIMILAR SUPPORTING FURNISHINGS
32 AND IMPROVEMENTS.

33 F. FOR THE PURPOSES OF THIS SECTION:

34 1. "MICROCELL EQUIPMENT" MEANS DEVICES THAT ARE CONNECTED TO THE
35 AERIAL FACILITIES OF A PERSON SPECIFIED IN SUBSECTION A OF THIS SECTION AND
36 THAT ARE USED SOLELY FOR TRANSMITTING, PROCESSING AND RECEIVING VOICE AND
37 DATA WIRELESS TELECOMMUNICATIONS SERVICES. MICROCELL EQUIPMENT DOES NOT
38 INCLUDE ANY GROUND-BASED EQUIPMENT.

39 2. "QUALIFIED SERVICE PROVIDER" MEANS A PERSON THAT HAS ALL APPLICABLE
40 AUTHORIZATIONS REQUIRED TO PROVIDE COMMERCIAL MOBILE SERVICE USING MICROCELL
41 EQUIPMENT.

42 Sec. 3. Legislative findings

43 Wireless services bring important daily benefits to the residents of
44 this state, including sending and receiving constitutionally protected speech
45 and other communications. Varying access to the public highways, streets,

1 roads and alleys across multiple subdivisions of this state can impede the
2 use of these services by, and their delivery to, the residents of this state.
3 Therefore, the legislature finds, determines and declares that this act is
4 necessary as a matter of statewide concern to ensure that cities, towns and
5 counties, including charter cities, compatibly and effectively authorize,
6 administer and manage the use of the public highways, streets, roads and
7 alleys for the provision of certain licensed and unlicensed wireless
8 communication services. It is the public policy of this state that this act
9 be enforced to the fullest extent permitted by federal law.

10 Sec. 4. Retroactivity: applicability

11 A. Section 9-506, subsection C, Arizona Revised Statutes, as amended
12 by this act, prohibiting a licensing authority from levying a tax, rent, fee
13 or charge for certain use of the public streets, roads and alleys for
14 permitted Wi-Fi radio equipment applies retroactively to from and after
15 December 31, 2015. This retroactive application supersedes any requirements
16 and agreements to pay such tax, rent, fee or charge that was adopted or made
17 on or before the effective date of this act.

18 B. Section 9-506, subsection I, Arizona Revised Statutes, as added by
19 this act, allowing a licensed cable operator to attach to the cable
20 television system and operate and maintain permitted Wi-Fi radio equipment in
21 public streets, roads and alleys applies to all licenses issued before the
22 effective date of this act.

23 C. Section 9-584, Arizona Revised Statutes, as added by this act,
24 allowing certain persons to install, operate and maintain microcell equipment
25 in the public highways within a political subdivision applies to all persons
26 specified in this act, including those with telecommunications or cable
27 licenses or other authorizations that took effect or were issued before the
28 effective date of this act.