

ORDINANCE NO. 115

AN ORDINANCE OF THE CITY OF PECK, NEZ PERCE COUNTY, IDAHO, GRANTING TO WESTSTAR COMMUNICATIONS I, A CALIFORNIA LIMITED PARTNERSHIP, LICENSE TO CONSTRUCT, OPERATE AND MAINTAIN A COAXIAL CABLE SUBSCRIBER SYSTEM FOR TELEVISION SIGNAL DISTRIBUTION THROUGHOUT THE CITY OF PECK; AND PROVIDING FOR SUCH LICENSEE TO RUN SUCH LINE OVER, THROUGH, UNDER AND ACROSS THE STREETS, ALLEYS AND SIDEWALKS OF THE CITY OF PECK; AND PROVIDING FOR THE APPROVAL OF SUCH INSTALLATION BY THE CITY ENGINEER OF THE CITY OF PECK; AND PROVIDING FOR THE REPAIR, REPLACEMENT AND RESTORATION OF ANY AND ALL PROPERTY DISTURBED OR REMOVED IN THE MAKING OF SUCH INSTALLATION; AND PROVIDING LIMITATIONS UPON THE RIGHTS GRANTED TO USE SAID STREETS, ALLEYS, AVENUES, THOROUGHFARES AND PUBLIC HIGHWAYS WITHIN THE CITY OF PECK; AND PROVIDING AN ANNUAL FRANCHISE FEE FOR THE RIGHTS, PRIVILEGES AND LICENSE HEREIN GRANTED; AND PROVIDING FOR THE DURATION OF SAID LICENSE, ITS EXPIRATION DATE AND CAUSE FOR CANCELLATION; AND PROVIDING FOR PERFORMANCE BOND AND LIABILITY INSURANCE, THE OBLIGATION OF WHICH IS TO SAVE THE CITY OF PECK FREE AND HARMLESS FROM ANY DAMAGES THAT MAY BE SUSTAINED BY REASON OF THE INSTALLATION, ERECTION, MAINTENANCE OR OPERATION OF SAID SYSTEM; AND PROVIDING THE RIGHT FOR THE LICENSEE TO CHARGE AND COLLECT REASONABLE COMPENSATION FROM ALL PERSONS RECEIVING TELEVISION RECEPTION SERVICE; AND PROVIDING FOR A RENEWAL OF SAID LICENSE UPON THE EXPIRATION OF SAID LICENSE HEREIN GRANTED; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and City Council of the City of Peck, Idaho, as follows:

Section 1: The City of Peck, hereinafter referred to as "CITY," hereby grants to Weststar Communications I, a California Limited Partnership, referred to as "LICENSEE," under the conditions and limitations prescribed, the right, privilege and authority by license to install, lay down, maintain and operate in, over, upon and under the streets, alleys and public highways (hereinafter referred to as "STREETS") of the City of Peck, underground pipes and conduits with the necessary manholes and other appliances therefor, and to erect poles, with or without cross-arms, and stretch wires and cables on all streets; and antennae or other appurtenances thereon, and to maintain and use the same for the purposes of erecting and operating a coaxial cable subscription system for television signal distribution and allied or associated uses to subscribers' homes, and to such businesses and public establishments as may also desire this service; whenever it is practicable to make use of the poles, in conformity with such arrangements as may be made with the local pole line service utilities, provided, however, that all work and construction hereby authorized shall be performed in a workmanlike manner and shall conform with the requirements of the National Electric Safety Code, the laws of the State of Idaho and the Ordinances of the City of Peck; provided, further, that before any new poles, wires, cables, antennae or other appliances be constructed or installed under the license, the Licensee shall file with the City Clerk or other designated official of the City of Peck, plans showing the location of such construction, and that said plans must receive the approval of the City Engineer or other designated official of the City of Peck before any location or construction work. Such construction or repair shall be done, if possible, so as not to obstruct or prevent the free use of said Streets.

Section 2: The Licensee shall have the right and privilege to make all needful excavations in any such Streets in

the City for the purpose of erecting, laying and maintaining poles or other supports or conduits for said wires, or repairing, renewing or replacing same. Said work shall be done in compliance with the reasonable and necessary rules, regulations, ordinances or orders, which may, during the continuance of this license, be adopted from time to time by the City or the City Engineer.

Section 3: Whenever the Licensee shall disturb any of the Streets for the purpose aforesaid, it shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so, the City shall give Licensee notice to make the necessary repairs and restorations within 30-days and upon failure of such repairs being timely made by said Licensee, the City shall cause such repairs to be made at the expense of the Licensee.

Section 4: Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City from sewerage, grading, planking, rocking, paving, repairing, altering or improving any of the Streets within the City in or upon which the poles, wires or other conductors of said Licensee shall be placed, but all such work or improvement shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus. Where tree trimming is necessary on public streets or places for the operations of the lines, wires, cables and antennae or other appurtenances of the Licensee, such trimming shall be done by competent employees, agents or contractors of the Licensee after application for and granting of a written permit of the City Engineer or such other person or officer as the Mayor and City Council may from time to time designate, and it shall be done without cost or expense to the City.

Section 5: Permission and authority herein granted are on express condition that the Licensee, in consideration thereof and as compensation for the use herein granted of streets, alleys and other public ways, shall pay to the City the sum of Two Hundred Fifty Dollars (\$250) payable on the first (1st) day of January of each and every year for the term of the license, plus a sum equal to two percent (2%) of its gross operating revenues which are hereby defined to mean all amounts of money which the Licensee receives, for the sale or rental of all television reception service within the corporate limits of the City. The Licensee agrees not to pass these franchise fees on to its customers.

The Licensee shall file with the Clerk of the municipality quarterly within sixty (60) days after the first day of January, April, July and October in each and every year, a statement in such form and detail as shall from time to time be prescribed by the Clerk, of its said gross operating revenues for the calendar quarter next preceding. This statement shall be sworn to by an authorized officer of the Licensee. At the time of filing said statement, the Licensee shall pay into the municipal treasury a sum equal to two percent (2%) of its said gross operating revenues (as hereinbefore defined) for the preceding calendar quarter year.

The municipality may, at any reasonable time during business hours, make examinations at the Licensee's office of any and all of its books and records for the purpose of verifying any of the statements of revenues herein provided for, and for any other purpose whatsoever connected with the duties or privileges of the municipality or Licensee under this ordinance.

Section 6: The rights, privileges and authority by the license herein granted shall cease and terminate at twelve o'clock

midnight (12:00 a.m.) the 31st day of December, 2012.

Section 7: Licensee shall indemnify and save the City free and harmless from any and all liability, loss, cost, damage or expense from accident or damage, either to itself or to persons or property of others which may occur by reason of the exercise of the rights and privileges herein granted; and shall, for the purpose of carrying out the provisions of this section, and prior to commencing construction of any kind, have in full force and effect, and file evidence thereof with the City Clerk a good and sufficient policy (or policies) covering One Million Dollars (\$1,000,000) personal injury each person, One Million Dollars (\$1,000,000) personal injury each accident, and Two Million Dollars (\$2,000,000) property damage with said policy or policies to be executed by an insurance company or companies authorized and qualified to do business in the State of Idaho and conditioned to indemnify and save harmless the City from and against any and all claims, actions, suits, liability loss, cost, expense or damage of any kind or destruction which may accrue to or be suffered by the City or by anyone by reason of the erection, construction, reconstruction, relocation, replacement, readjustment, repair, maintenance or operation of the coaxial cable and appurtenances thereto, or by reason of anything that has been done or may be done by the Licensee hereunder which may in anywise cause liability by reason thereof.

Section 8: To qualify, prospective Licensee shall execute and deliver, and file evidence thereof with the City Clerk, a good and sufficient bond in the penal sum of Two Thousand Dollars (\$2,000.00) executed by a surety company authorized and qualified to do business in the State of Idaho conditioned to strictly conform with the conditions, provisions and covenants of this ordinance, and to insure that should City property be damaged by any installation, removal or failure to remove upon termination, that the City be reimbursed and its damages completely covered. This bond shall only be to insure construction and will terminate one year after the signing of this agreement.

Section 9: Said Licensee shall have the right to charge and collect reasonable compensation from all persons and corporations to whom television reception service (including installation and connection work) shall be furnished subject to the rules and regulations of legally constituted regulatory bodies of the City, State or Federal governments. City does not waive any authority of franchise fee regulation granted under Idaho Code Section 50-330 pertaining to franchise holders.

Section 10: Provided that the Licensee herein has fully and completely complied with all of the terms and conditions of this ordinance, the rights and privileges herein granted to the Licensee shall, at the option of the City, be renewable for a Twenty (20) year period and subject to the same, or to revised conditions as contained in this ordinance.

Section 11: The rights and privileges herein granted shall not be deemed exclusive, nor shall the Licensee herein assign, transfer, mortgage or encumber said rights or privileges without the consent of the Mayor and City Council of the City given by resolution. It being understood that consent shall not be withheld unreasonably if the terms and conditions of this agreement have been complied with by Licensee.

Section 12: In further consideration of the rights, privileges and franchise hereby granted by the City to the Licensee, said Licensee gives and grants to the City free television signal service for one (1) television receiving set for

the use of the City within its corporate limits, such television service to be furnished by the Licensee at such location, within one hundred (100) feet of any cable installed by the Licensee, and operated hereunder, within the corporate limits of the City, as the Council may designate.

Section 13: The Licensee shall furnish, except as hindered or prevented by strikes of employees, or by damage caused by fire or other casualty, acts of God, acts of any governmental agency, acts of the public, or weather conditions, an adequate and efficient coaxial cable subscription service for television distribution to all its patrons for the full period during each day that said television signals are reasonably available to the Licensee for such purposes at the site of the antenna. Adequate and efficient distribution and service used herein shall include reasonable complete and uniform service throughout the City; provided, however, that the Licensee shall not be required to service any area which, due to location or number of inhabitants, makes the servicing thereof economically impracticable. Good and efficient service hereunder shall include good and efficient picture and sound in showing and presenting television pictures and signals hereunder, and the providing by the Licensee of television pictures and signals and sound from all reasonable outlets therefor from all television station channels reasonably available at the central television transmitter station as permitted or required by the F.C.C. or other regulatory bodies.

Section 14: Permission is hereby granted for the reasonable solicitation, for the purpose of seeking subscriptions to such cable TV system mentioned herein, of persons, residences, firms or businesses within the City, subject to such reasonable rules and regulations, including hours of solicitation or contact, as prescribed by the City; reserving to the City Council, in the event of its determination, after hearing, that this privilege has been in any way abused or the rules or regulations violated, the right to deny or limit such right of solicitation.

Section 15: Should the Licensee violate any of the privileges of this ordinance or fail to comply with any of the requirements thereof upon written notice of said infractions the Licensee shall have a period of thirty (30) days to cure the non-compliance and in the event the non-compliance continues beyond the thirty (30) days then, the City Council may revoke the rights, privileges and franchise hereby granted after a hearing before the City Council, upon reasonable notice given to the Licensee.

Section 16: Should any section or part of section of this ordinance be held unconstitutional or invalid, by final judgment of any court, or by decision of any commission or other lawful body of the State of Idaho or of the United States having jurisdiction, or by final judgment of the court upon appeal from a decision of any such commission or other body, it shall not impair or render invalid any other section or part section not so held or decided to be invalid or unconstitutional.

Section 17: This ordinance, before going into effect or being required to be published, shall be accepted by the Licensee, and the Licensee shall have forty-five (45) days from the date of its approval in which to accept the same, and this ordinance shall take effect and be in force immediately after its passage, approval, acceptance and publication.

Section 18: Any and all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 17th
DAY OF AUGUST, 1992.

Delbert A. Walker
Delbert Walker, Mayor

ATTEST:

Ann Hesson
Ann Hesson, City Clerk

The foregoing ordinance and franchise, and all the provisions thereof, are agreed to, approved and fully accepted this 17th day of August, 1992.

WESTSTAR COMMUNICATIONS I, a
California Limited Partnership

By

Reel L. L. L.
President