



ORDINANCE NO. 507

AN ORDINANCE GRANTING TO DON ELLIS, HIS HEIRS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO CONSTRUCT, ERECT, OPERATE AND MAINTAIN OVER AND UNDER THE STREETS, ALLEYS AND PUBLIC WAYS OF THE CITY, POLES, TOWERS, WIRES, CABLES AND UNDERGROUND CONDUITS, AND TO CONDUCT AND OPERATE A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF REXBURG, IDAHO, AND PROVIDING THE TERMS, CONDITIONS AND REGULATIONS THEREOF.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF REXBURG, IDAHO:

SECTION I: DEFINITIONS:

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given here. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "City" is the City of Rexburg.
- (b) Don Ellis is the grantee of rights under this Franchise.
- (c) "Council" is the City Council of the City of Rexburg. Term is to include Mayor unless stated to the contrary.
- (d) "Person" is any person, firm partnership, association, corporation, company, or organization of any kind.

SECTION II: GRANT AND TERMS.

- (a) In consideration of the benefits that will accrue to the City of Rexburg, and the inhabitants thereof, and of the payment by the grantee, Don Ellis, to said City of Rexburg, Idaho, the total sum collected of the amounts designated as "franchise fee" on the Schedule of Charges of the grantee as approved by the City Council for each year of the franchise hereinafter granted, Don Ellis, his heirs and assigns, herein referred to as the grantee, is hereby given and vested with the exclusive right, authority, easement, privilege, and franchise to construct, erect, suspend, install, lay down, repair, renew, maintain, operate, and conduct in the City of Rexburg, Idaho, a plant or plants and/or system or systems for the distribution and reception of television signals for all purposes whatsoever, for a period of time beginning on the effective date of this ordinance and ending at midnight 20 years from effective date of this ordinance. Don Ellis is given the option of renewal on the terms and conditions of the franchise herein granted for an additional 10 years if said option is exercised in writing six months before the expiration of the franchise herein granted.
- (b) The grantee is hereby given and granted and vested with the exclusive right, authority, easement, privilege and franchise to construct, erect, suspend, install, renew, maintain, operate, and conduct in the City of Rexburg, Idaho, a system of poles, towers, conduits, cables, underground cables and conduits, conductors, amplifying equipment on poles, fittings, and all appliances or appurtenances as necessary or desirable to the furnishings, distribution or sale of the television reception service for all purposes whatsoever or to the operation of community antenna system, over, under, along and across all streets, avenues, alleys, ways, bridges, and public places in the City of Rexburg, Idaho, as they now exist or may hereafter exist or be laid out or extended, together with the further exclusive right, privilege and franchise to construct conduits, cables, underground cables and appliances and appurtenances necessary or desirable to the distribution within, into, through, over and above and beyond to the City of Rexburg, Idaho, and furnishing, supplying and distributing to the City of Rexburg, Idaho, and to the inhabitants both

within and beyond the limits thereof, television reception service and for the purpose of extending its lines beyond the limits of the City of Rexburg, Idaho, together with the further right to contract with power company and or telephone company for the use of its poles and equipment and appliances for use in carrying to the inhabitants and corporations of the City of Rexburg, Idaho, and beyond said television reception service.

SECTION III: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

The grantee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

SECTION IV: SERVICE STANDARDS.

The grantee shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be set forth by the Council as provided for in Section VII, of this Ordinance, or by the public Utilities Commission of the State of Idaho, and U.S. Government rules and regulations.

SECTION V: NOTICE OF INTERRUPTION FOR REPAIRS.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the grantee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

SECTION VI: CONDITIONS ON STREET OCCUPANCY.

- (a) Approval Procedure: All installations shall be done only in accordance with plans first submitted to and approved by the City Engineer, or officer, employee, person, or firms designated by the City. The City Engineer is herein for convenience called, "engineer". Any repair work which requires the disturbance of the surface of any street or which will interfere with traffic, shall not be undertaken without prior permission and approval of the manner of doing the work by engineer.
- (b) Requirements: All installations shall be done in a neat and workmanlike manner. All construction shall conform to the requirements of the National Electric Safety code and any statutes, regulations and ordinances governing the same or similar installations.
- (c) Use: All transmission and distribution structures, lines and equipment erected by the grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
- (d) Restoration: In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the City Building Inspector and City Engineer, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of one (1) year. Such restoration to be made within 72 hours after disturbance, unless time extended by Council.
- (e) Relocation: In event that at any time during the period of this Franchise the City shall lawfully elect to alter, or change the grade of, any street, alley, or other public way, the grantee upon reasonable notice by the City shall remove, relay, and relocate its Poles, wires, cable, underground conduits, manholes, and other telephone fixtures at its own expense.
- (f) Placement of Fixtures: The grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such poles or other fixtures placed in any street, shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.
- (g) Temporary Removal of Wire for Building Moving: The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily removal,

raising, or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

- (h) Tree trimming: The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to present the branches of such trees from coming in contact with the wires and cables of the grantee, all trimming to be done under the supervision and direction of the City and at the expense of the grantee. Grantee assumes all liability for damages incurred by reason of trimming said trees.
- (i) Safety Precautions: The grantee's work while in progress shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices to protect all members of the public having occasion to use the portion of the streets involved or adjacent property.
- (j) Determination of right to use Streets: It is understood that there may be within the City various streets as defined in Section II of this Ordinance which the City does not have the unqualified right to authorize the grantee to use, because of reservations; therefore, in making this grant the City does not warrant or represent as to any particular street or portion of a street that it has the right to authorize the grantee to install or maintain portions of its system therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the grantee.

SECTION VII: CITY RIGHTS IN FRANCHISE

- (a) City Rules: The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of Idaho.
- (b) Use of system by City: The City shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of the grantee within the City limits wire and pole fixtures necessary for a police and fire alarm system, such wires and fixtures to be constructed and maintained to the satisfaction of the grantee and in accordance with its specifications.
 - 1. Compliance with Grantee's Rules. The City in its use and maintenance of such wires and fixtures, shall at all times comply with the rules and regulations of the grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the grantee and the wires and fixtures used by the City.
 - 2. Liability. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this Section and shall save the grantee harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change, or removal of said wires and fixtures to the poles of the grantee. In case of rearrangement of the grantee's plant or removal of poles or fixtures the City shall save the Grantee harmless from any damage to persons or property arising out of the removal or construction of its wires or other fixtures. Grantee to give City reasonable notice of such rearrangement or removal.
- (c) Supervision and Inspection: The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Ordinance and to make such inspections as it shall find necessary to insure compliance with governing ordinances.
- (d) Procedure after Termination or Revocation: Upon the revocation of this Franchise by the Council, or at the end of the term of this Franchise, the City shall have the right to determine whether the grantee shall continue to operate and maintain its distribution system pending the decision of the City as to the future maintenance and operation of such system.

- (e) Right of Acquisition by the City: At the expiration of the term for which this Franchise is granted, the City, at its election and upon the payment of an amount as hereinafter provided, shall have the right to purchase and take over the property of the Company in its entirety. Upon the exercise of this option by the City by the service of an official notice upon the grantee to that effect, the grantee shall immediately execute such deeds or instruments of conveyance to the City as shall be required to convey to the City title to the property in fee simple, free from any and all liens and encumbrances. The grantee shall make it a condition of each contract entered into by it with reference to operations under this Franchise that the Contract shall be subject to the exercise of this option by the City and that the City shall have the right to succeed to all privileges and the obligations thereof at its option.

SECTION VIII: PROTECTIVE AND INDEMNITY PROVISIONS.

- (a) The grantee shall indemnify and hold harmless the City, its officers, agents and employees from all claims, debts, liabilities, demands, interests, court cost and attorneys fees to itself or any third person, whether for bodily injury, death, property damage, or otherwise, in any way arising out of the operations of grantees contemplated by the grant, or related work upon grantee's system, whether directly authorized by this grant or not.
- (b) Permanent payment and Performance Guarantee: The grantee shall furnish bond to the City in the sum of \$25,000.00 which shall remain in full force and effect throughout the terms of this Franchise Ordinance to guarantee the payment of all sums which may become due to the City for rentals, inspections, or work performed for the benefit of the grantee under this Franchise Ordinance, including the removal of attachments upon termination of this Franchise Ordinance by any of its provisions, and such bond shall guarantee to the City the performance by the grantee of all the provisions of this Franchise Ordinance and all laws, rules and regulations herein permitted to be adopted and enforced.
- (c) Prior to commencing construction of any kind, grantee shall have in full force and effect and thereafter constantly maintain and file evidence thereof with the City Clerk, a good and sufficient policy or policies of insurance covering \$100,000.00 personal injury, each person; \$300,000.00 personal injury each accident; and \$50,000.00 property damage to be executed by an insurance company or companies authorized and qualified to do business in Idaho and conditioned to indemnify and save harmless the City from and against any and all claims, actions, suits, liabilities, loss, costs, expenses, interest, attorneys fees or damage of any kind or description which may accrue to or be suffered by the City or by anyone by reason of any construction, extension, repair, maintenance, operation or other work, or by reason of anything that has been done by the grantee hereunder which may in any way cause liability by reason thereof; provided, however, that whenever in the judgment of the City Council of the City, said insurance shall be deemed insufficient or inadequate, then grantee upon demand by said City Council shall furnish new or additional insurance in such amount (reasonable amount) or amounts as may be specified by it.

SECTION IX: PURCHASE.

- (a) The City shall have the right at any time during the life of the grant and franchise made by this ordinance to acquire by purchase or condemnation for the use of the City itself, all the property of the grantee, placed under this grant within the limits of the streets, at a fair and just value, which shall not include any amount for the grant itself or of any of the rights and privileges hereby granted and this grant and franchise shall hereupon terminate.
- (b) The City hereby reserves the right at and after the expiration of this grant and franchise to purchase the property of the grantee used hereunder, as provided by the Laws of Idaho, in effect at the time of grantee's acceptance hereof.

SECTION X: CHARGES AND SERVICES.

The grantee shall have the right to charge and collect reasonable compensation from all subscribers to whom it shall furnish service under this grant and franchise. The grantee shall submit a proposed "Schedule of Charges", to be filed as a separate document, on every second anniversary of the effective date of this ordinance, which then will be approved or modified by the City Council. In the event the City Council fails to act as provided, the schedule of charges then in force shall

continue in effect. Grantee may petition the City Council for a reconsideration of the "Schedule of charges" at any time.

SECTION XI: COMPENSATION TO THE CITY.

In consideration for the franchise granted herein, grantee will pay to the City of Rexburg, Idaho, a franchise fee in the amount of all sums collected as such as designated a "Schedule of Charges" to be filed as a separate document. The said franchise fee shall be specifically 2% of the gross service charges up to and including a total subscription of 750. When the subscription exceeds 750 the franchise fee shall be increased to 3% of the gross service charges. When the subscriptions exceed 1400 the franchise fee shall be subject to review and renegotiation by the City Council and Grantee, At the expiration of each three year period thereafter, the City and Grantee shall meet and in good faith renegotiation the compensation payable to the City on the basis of customary rates then in effect in the industry and economic conditions then prevailing in the City of Rexburg, Idaho. Gross service charges shall not include fees for installation and connection. All franchise fees shall be paid to the City quarterly.

SECTION XII: RECORDS AND REPORTS.

The City shall have access at all reasonable hours to all of the Grantee's plans, engineering statistical, customer and service records relating to the business operations of the grantee and to all other records required to be kept under the terms of this franchise. An annual summary report showing gross service charges and subscriptions from its operations in the City shall be made by the grantee, and such other information as the City shall request, shall be submitted to the City Clerk on or before the 31st day of December of each year. At the end of June and December of each year a map shall be filed with the City showing the area of the City presently being served by the Grantee and such other information as required by the City.

SECTION XIII: INTERRUPTIONS.

In the event the television signal service and/or the community antenna system should be interrupted or fail by reason of accident or otherwise beyond the control of the grantee, the grantee shall restore the service within a reasonable time such interruption shall not constitute a breach of this franchise, nor shall the grantee be liable for damage by reason of such interruption or failure. However, in the event the operations of the grantee are discontinued for a period of sixty consecutive days, for reasons other than those stated above, then in that event, this franchise will terminate and all rights granted hereunder will be null and void.

SECTION XIV: SERVICE AVAILABILITY:

A sample copy of all types of contracts to be entered into between grantee and its subscribers shall be filed with the City Council. In the event that any subscriber shall breach said contract, the grantee reserves to itself the right to withhold and/or deny service to such subscriber. Otherwise the service rendered by the grantee shall be available to all inhabitants of the City of Rexburg, Idaho, that may desire such service, allowing a reasonable time for installation of the system throughout the city.

SECTION XV: ACCEPTANCE

The Grantee shall forfeit and shall be deemed to have forfeited and abandoned all rights and privileges conferred by this ordinance and this ordinance shall be null and void and of no force and effect unless grantee shall, within 60 days after the effective date of this ordinance, file with the City Clerk its written acceptance of the rights and privileges hereby conferred with the terms and conditions and restrictions hereby imposed.

SECTION XVI: EXTENSION OF CITY LIMITS.

Upon the annexation of any territory by the City of Rexburg, Idaho, the right, privilege and franchise hereby granted shall extend to the territory so annexed, and all facilities owned, maintained or operated by said grantee, located within the territory so annexed upon any of the streets, alleys, avenues, or other public places situated in such annexed territory, shall thereafter be subject to all the terms hereof.

SECTION XVII: TIME LIMIT.

- (a) Grantee, or his heirs and/or assigns, shall commence construction no later than Aug. 1, 1970, of the within mentioned installation; provided, however, that grantee is not barred or prevented from commencement of construction during this designated period on account of 'strike' or other labor strike against Utah Dower and Light Company and/or Mountain Bell Telephone Company.

- (b) Grantee, shall within 120 days after commencement- of construction of the installation proposed herein, the period for commencement of construction to be determined by sub-paragraph (a) of this Section, complete construction of the proposed installation herein, and be ready and able to provide television circuit reception to customers in the community of Rexburg, Idaho.

SECTION XVIII: POLE LINE ATTACHMENT FEE.

- (a) Grantee, hereby agrees to pay to the City of Rexburg, Idaho, that fee per pole per year that are owned by the City of Rexburg, Idaho, and used in the installation of the proposed construction herein, arrived at by negotiation and contract with Utah Power & Light Company and/or the Mountain Bell Telephone Company for the use of their poles in carrying to the inhabitants and corporations of the City of Rexburg, Idaho and beyond television service.
- (b) Grantee further agrees that in the event the negotiated contract; fee pole per year with Utah Power and Light Company and the Mountain Bell Telephone Company is dissimilar, then grantee hereby agrees to pay to the City of Rexburg, Idaho, that fee per pole per year owned by the City of Rexburg, Idaho, and used by grantee in the proposed installation herein, which is the higher of the two negotiated contract fees.

SECTION XIX: PROPOSED CHANNEL SYSTEM.

- (a) Grantee proposes to construct a system with twelve (12) channel capabilities. Proposed service would consist of not less than 6 television signals.. As additional television and other services become available, they will be added to the system and may exceed 1.2 channels.

SECTION XX: PROHIBITION PAY TELEVISION, MUSIC SERVICE, AND OR REGULATED PUBLIC UTILITIES.

- (a) Pay television. The grantee shall not engage in the business of Pay Television, that is, the sale of programs on a program by program basis.
- (b) Music to Businesses, Etc. The grantee shall not contract for or otherwise provide a music service which is originated by the system or procured from any source other than from signals broadcasted by duly authorized broadcasting stations to any business, professional or commercial establishment.
- (c) Regulated Public Utilities. The grantee shall not use the system to interfere or conflict with services offered by public utilities regulated by the Idaho Public Utilities Commission.

SECTION XXXI: CANCELLATION AND TERMINATION:

The franchise may be cancelled and terminated by the City at any time for failure of the grantee to comply with the terms and conditions hereof. Such termination and cancellation shall be by ordinance duly adopted after 60 days notice to the grantee by certified mail of such intent to terminate and cancel after a public hearing at which the grantee has been given an opportunity to be heard before the City Council. In the event of such cancellation or termination, the Grantee shall, at its own expense, forthwith remove all of its construction and equipment from, in, upon, along, across, above, over, and under the streets, alleys, highways, public ways and public places at and within the City, and restore the said streets, alleys, highways, public ways, and public places in a good condition acceptable to the City, reasonable wear and tear excepted

SECTION XXII: NEW DEVELOPMENTS:

It shall be the policy of the City liberally to amend this franchise, upon application of the grantee, when necessary to enable the grantee to take advantage of any developments in the field of transmission of television and radio signals which afford it an opportunity for effectively, efficiently or economically to serve its customers.

SECTION XXIII: MISCELLANEOUS:

- (a) Any franchise granted hereunder shall be a privilege to be held in trust by the original grantee. Said franchise cannot in any event be sold, transferred, leased, assigned, or disposed of in whole or in part, either by force or voluntary sale, merger, consolidations or any other means without the prior consent of the City expressed by Council resolution, and then only such conditions as the Council may establish; provided, however, that the Council shall not unreasonably withhold its consent or impose any unreasonable conditions.

- (b) Time shall be of the essence of any franchise granted hereunder. The grantee shall not be relieved of its obligations to comply promptly with the provisions of this ordinance, or by any failure of the City to enforce prompt compliance.
- (c) Any privilege in the public way granted by a franchise issued under this ordinance shall be subordinate to any prior lawful occupancy of said public way.
- (d) No privilege or exemption except those specifically conferred by any franchise granted under this ordinance shall be given or implied.

SECTION XXIV: CONFLICTING ORDINANCES.

All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed; however, the City shall not hereby be deemed to have surrendered any part of its control over the streets, nor shall any other franchise granted to any other person, firm, or corporation be deemed to be repealed in any respect herewith.

SECTION XXV: SEPARABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION XXVI: METHOD OF PUBLICATION.

This ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 3rd day of June, 1970.

Mayor Henry Shirley

ATTEST:

Beulah Johnson, City Clerk

STATE OF IDAHO)

)ss.

County of Madison)

I, BEULAH JOHNSON, City Clerk of the city of Rexburg, Idaho, do hereby certify: That the above and foregoing is a full, true and correct copy of the Ordinance Entitled:

AN ORDINANCE GRANTING TO DON ELLIS, HIS HEIRS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO CONSTRUCT, ERECT, OPERATE AND MAINTAIN OVER AND UNDER THE STREETS, ALLEYS AND PUBLIC WAYS OF THE CITY, POLES, TOWERS, WIRES, CABLES AND UNDERGROUND CONDUITS, AND TO CONDUCT AND OPERATE A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF REXBURG, IDAHO, AND PROVIDING THE TERMS, CONDITIONS AND REGULATIONS THEREOF.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 3rd day of June, 1970.

Beulah Johnson, City Clerk

(SEAL)