

ORDINANCE NO. 212

AN ORDINANCE OF THE TOWN OF JEROME GRANTING A PERMIT TO THOMPSON COMMUNICATIONS TO LOCATE, CONSTRUCT, MAINTAIN AND OPERATE A CABLE COMMUNICATION SYSTEM WITHIN THE TOWN OF JEROME; GRANTING THOMPSON COMMUNICATIONS THE RIGHT, PRIVILEGE AND AUTHORITY TO USE, CONSTRUCT, MAINTAIN AND OPERATE IN, OVER, ACROSS, UNDER AND UPON THE PUBLIC STREETS, PARKWAYS, ALLEYS AND SIDEWALKS OF THE TOWN OF JEROME; PROVIDING REGULATIONS GOVERNING THE INSTALLATION AND OPERATION OF THE CABLE COMMUNICATION SYSTEM AND PROVIDING FOR THE PAYMENT OF FEES FOR THE PERMIT.

BE IT ORDAINED by the Mayor and Common Council of the Town of Jerome as follows:

Section 1. DEFINITIONS.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. 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.

(a) "Service area". Shall include all points in the Town of Jerome, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(b) "Cable Communication System (The System)". Shall mean a system of antenna, coaxial cables, wires, wave guides or other conductors, equipment or facilities designed, constructed or used for the purpose of providing audio, video and all forms of digital information or FM radio service by cable or through its facilities as herein contemplated.

(c) "Council". Shall mean the present governing body of the Town or any future board constituting the legislative body of the Town.

(d) "Gross Annual Receipts". Shall mean any compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by permittee from subscribers or users in

payment for audio, video, digital or FM radio signals or service received within the Town from the permittee, including any installation charge, monthly charge and line extension charges.

Such term shall not include any taxes on services furnished by the permittee imposed directly on any subscriber user by any town, state or other governmental unit and collected by the permittee for such governmental unit.

(e) "Permittee". Shall mean Thompson Communications to whom a permit is being granted by this Ordinance or its lawful successor or assigns.

(f) "Permit Property". Shall mean all property owned, installed or used by permittee under the authorization of this permit.

(g) "Street". Shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, easement, right of way or drive.

(h) "Subscriber". Shall mean any person or entity receiving for any purpose the service of permittee.

Section 2. ISSUANCE OF PERMIT.

A nonexclusive permit is hereby granted to Thompson Communications, its successors and assigns, to locate, construct, maintain and operate a cable communication system in the Town of Jerome, Arizona. This permit shall include, without limitation, the authority, right privilege and power to construct, maintain and operate in, over, under, across and upon the public streets, parkways, alleys and sidewalks the necessary equipment for the operation of a cable communication system in the Town, except as herein specified.

Section 3. DURATION OF PERMIT; COMMENCEMENT OF CONSTRUCTION.

This permit shall be effective for a period of twenty (20) years, with an automatic renewal privilege of twenty (20) years unless the Town has cause of dissatisfaction with the Grantee's performance subject to the conditions and provisions herein contained. The Town Council of the Town of

Jerome, Arizona, may terminate this permit in the event the Council shall have found, after notice and hearing by the Council that the Grantee has failed to comply with any material provisions hereof and has failed to correct any failure after thirty (30) days written notice, subject however to the following:

Cable T.V. service shall be substantially provided to the community within twelve (12) months after the issuance of a Radio Receive Only License by the Federal Communications Commission and failure to comply with the provisions of this provision shall terminate the permit without notice and render the same null and void.

Section 4. TERMS AND CONDITIONS.

The permit granted by this Ordinance shall be subject to the following conditions:

(a) Issuance of the permit shall not be deemed to limit the authority of the Town to include any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with the permit pursuant to the authority conferred by this section.

(b) The permit granted under this Ordinance shall be nonexclusive.

(c) No privilege or exemption shall be granted or conferred by the permit granted under this Ordinance, except those specifically prescribed herein.

(d) Any privilege claimed under the permit by the permittee in any street or other public property shall be subordinated to any prior lawful occupancy of the streets or other public property.

(e) Time shall be of the essence of the permit granted. The permittee shall not be relieved of its obligation to comply promptly with any of the provisions of this Ordinance by any failure of the Town to enforce prompt compliance.

(f) Any right or power in or duty impressed upon, any officer,

employee, department or board of the Town shall be subject to transfer by the Town to any other officer, employee, department or board of the Town.

(g) The permittee shall have no recourse whatsoever against the Town for any loss, costs, expense or damage arising out of any provision or requirements of this Ordinance or of the permit issued under this Ordinance or because of its enforcement.

(h) The permittee shall be subject to all requirements of Town ordinances, rules, regulations and specifications.

(i) The permittee shall be subject to all laws, rules and regulations of the State and the United States governments and any of their agencies, relating to the business of cable communication systems.

(j) The permit shall not relieve the permittee of any obligation involved in obtaining pole space from any department of the Town, utility company or from others maintaining poles in streets.

Section 5. RECORDS TO BE KEPT; REQUIRED REPORTS; INSPECTION OF RECORDS AND PROPERTY BY TOWN.

(a) Permittee shall prepare and furnish to the Council such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the duties of the Town of any of its officers and employees in connection with this permit.

(b) The permittee shall at all times make and keep in the Town full and complete plans and records showing the exact location of all cable communication system equipment installed or in use by permittee in the streets and other public places in the Town.

(c) The permittee shall file with the Director of Public Works of the Town on or before the last day of December of each year a current map or set of plans to scale showing all cable communication system equipment installed and in use in the streets and other public places in the Town.

(d) At all reasonable times the permittee shall consent to any duly

authorized representative of the Town to examine all permit property, together with any appurtenant property of the permittee situated within or without the Town and to examine and transcribe any and all maps and other records kept or maintained by the permittee or under its control, which deal with the operations, affairs, transactions or property of the permittee with respect thereto. If any such maps or records are not kept in the Town or upon reasonable request made available to the Town and if the Town Council shall determine that the examination thereof is necessary or appropriate then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the permittee.

(e) Permittee shall maintain a local business office or agent. Permittee shall take reasonable steps to keep its cable communication system in good operating condition and permittee shall cause all subscriber complaints to be duly investigated and where the circumstances warrant, corrected within a reasonable period of time. Records reflecting such complaints and the time and manner in which the same are disposed shall be maintained by Permittee for at least one year and shall be available for inspection by the Town.

Section 6. INSTALLATION STANDARDS.

All installations made by permittee shall be made in a safe substantial condition and maintained in such condition at all times. All of such installation of equipment shall be of a permanent nature, durable and of sufficient height not to interfere in any manner with the rights of the public or individual property owners and shall not interfere with the travel and use of public places by the public nor during the construction, repair and removal shall not obstruct nor impede traffic. The Town reserves the right of reasonable regulation of the erection and construction of any work by the permittee and to reasonably designate where such works and construction shall be placed. The permittee agrees when requested by the

Town to make minor changes in its equipment to conform to the reasonably necessary requirements of the Town promptly.

Section 7. EXTENSION OF CORPORATE LIMITS: UNDERGROUND LINES.

(a) The permittee shall have the right to extend this cable communication system upon and/or under the streets and alleys of any addition or additions hereafter made to the Town's corporate territory and to use the streets and alleys to continue to points beyond the corporate limits of said Town.

(b) Permittee shall place its lines underground in the first instance in any area which it serves where telephone and electric power service is already underground and permittee shall place its lines underground in any area which it serves where the telephone service and electric power services goes underground and such shall be done solely at permittee's expense.

Section 8. ASSIGNMENT.

The permit granted hereby shall not be assigned without written consent being first granted by the Town for such assignment.

Section 9. LOCATION OF PERMIT PROPERTY.

Permit property shall be constructed or installed in streets only at such locations and in such manner as shall be approved by the Council. Construction or installation of permit property in all other public places shall be subject to approval of and regulation by the Town Council.

Section 10. REPAIR OF STREETS.

The permittee shall, at its expense, promptly repair any and all streets, sidewalks or other public and/or private property damaged or destroyed by permittee, its agents, servants or employees in exercising the privileges herein granted.

Section 11. REMOVAL AND ABANDONMENT OF PERMIT PROPERTY.

(a) In the event that the use of any permit property is discontinued for any reason for a continuous period of twelve (12) months or that permit property has been installed in any street without complying with the

requirements of the permit or the permit has been terminated, canceled or has expired, the permittee shall promptly remove from the streets all such property other than any which the Council may permit to be abandoned in place. In the event of any such removal, the permittee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the Council.

(b) Any property of the permittee remaining in place thirty (30) days after the termination or expiration of the permit shall be considered permanently abandoned. The Town may extend such time not to exceed an additional thirty (30) days.

(c) Permit property to be abandoned in place shall be abandoned in such manner as the Council shall prescribe. Upon permanent abandonment of any permit property in place, the permittee shall submit to the Town an instrument, satisfactory to the Town Attorney, transferring to the Town the ownership of such property.

Section 12. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS.

The permittee shall, at its expense, protect, support, temporarily disconnect, relocate, in the same street, alley or public place or remove from any street, alley or public place, any permit property when required by the Town by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity or any other structures or public improvements provided, however, that permittee shall in all such cases have the privileges and be subject to the obligation to abandon permit property in place; as provided in Section 11.

Section 13. FAILURE TO PERFORM STREET WORK.

Upon failure of the permittee to complete any work required by law or

by the provisions of this permit to be done in any street, within the time prescribed and to the satisfaction of the Council, the Council may cause such work to be done and the permittee shall pay to the Town the cost thereof in the itemized accounts reported by the Town to the permittee, within thirty (30) days after receipt of such itemized report.

Section 14. INDEMNIFICATION OF CITY.

The permittee shall defend the Town against all claims for injury to any person or property caused by the negligence of the permittee in the construction or operation of its property and in the event of a determination of liability shall indemnify the Town. More particularly the permittee herein, its successors and assigns, does hereby agree to indemnify and hold harmless the Town, from any and all liability, claim, demand or judgment growing out of any injury to any person or property, as a result of the violation or failure on the part of the permittee, its successors and assigns, to observe their proper duty or because of negligence in whole or in part arising out of construction, repair, extension, maintenance or operation of its equipment of any kind or character used in connection with this permit.

Section 15. LIABILITY INSURANCE REQUIRED.

(a) Permittee agrees that at all times during the existence of this permit it will maintain in force, furnish and file with the Town, at its own expense, a general comprehensive liability insurance policy, in protection of Town, its boards, commissions, officers, agents, employees and the public, with a company authorized to do business in the State of Arizona, and in form satisfactory to the Town Attorney, protecting the Town and all persons against liability for loss or damages for personal injury, death and property damage occasioned by the operations of permittee under this permit, with minimum liability limits of \$200,000 for personal injury or death of any one occurrence and \$50,000 for damages to property resulting from any one occurrence.

(b) The policies mentioned in the foregoing paragraph shall name the Town, its officers, boards, commissions, agents and employees as additional insureds and shall contain a provision that a written notice of a cancellation or reduction in coverage of said policy shall be delivered to the Town fifteen (15) days in advance of the effective date hereof. If such insurance is provided in either case by a policy which also covers permittee or any other entity or person than those above named, then such policy shall contain the standard cross-liability endorsement.

Section 16. FEES.

(a) The permittee shall pay the Town of Jerome, Arizona a quarterly fee of an amount equal to three (3) percent of the gross receipts. The fee owed by permittee for the previous quarter shall be paid to the Town not later than the 10th working day following the end of each calendar quarter and shall be levied as a tax upon the permittee in lieu of all other license or permit fees. A failure to pay such license or permit fee by the 10th day following the quarter in which it is due shall terminate this permit and render the same null and void.

(b) The Town shall have the right to inspect permittee's records showing the gross quarterly receipts from which its permit payments are computed and the right of audit and recomputation of any amount paid under this section. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable under this section or for the performance of any obligation under this Ordinance.

(c) The percentage of gross quarterly receipts due the Town and the insurance provisions of this Ordinance shall be subject to re-evaluation and renegotiations by the Town every three (3) years, subject to ARS 9-506B.

(d) All fees, due to the Town as described in paragraph (a) through (c) shall be applicable and take effect immediately upon system activation,

at which time the amount due to the Town will begin to accrue according to paragraph (a) above and will be due and payable by the 10th day of the following quarter.

Section 17. OTHER PROVISIONS.

(a) Permittee shall provide free service to all public schools and municipal buildings within the service area as may be desired by the Town.

(b) The permittee's service and extension policies shall show no preferential or discriminatory practices and shall be on file with the Town Clerk.

(c) No person in the existing service area of permittee shall be arbitrarily refused service, provided that permittee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge.

Section 18. SEVERABILITY.

If any section, subsection, paragraph, 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 separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19. RESERVATION OF POWERS.

(a) There is hereby reserved to the Town every right and power which is required to be herein reserved or provided by an Ordinance of the Town and the permittee, by its acceptance of this permit agrees to be bound thereby and to comply with any action or requirements of the Town in its exercise of any such right or power, heretofore or hereafter enacted or established.

(b) Neither the granting of this permit nor any of the provisions contained herein shall be construed to prevent the Town from granting any identical or similar permit to any person or corporation other than the permittee.

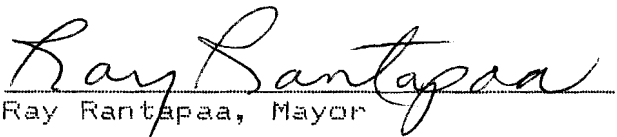
Section 20. REPEAL OF CONFLICTING ORDINANCES.

This ordinance shall repeal all ordinances and parts of ordinances previously adopted by the Town of Jerome which run inconsistent herewith.

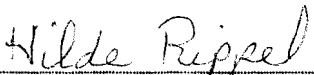
Section 21. EFFECTIVE DATE.

This permit shall take effect upon the effective date of this ordinance.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF JEROME this 13th day of October, 1987.


Ray Rantapaa, Mayor

ATTEST:


Hilde Rippel, Town Clerk

APPROVED AS TO FORM:


Robert S. Pecharich, Town Attorney