ORDINANCE #318-97

AN ORDINANCE GRANTING TO PACIFICORP, AN OREGON CORPORATION AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TWENTY (20) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF WALLOWA, WALLOWA COUNTY, OREGON, COMMUNICATIONS FACILITIES, ELECTRIC LIGHT AND POWERLINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF WALLOWA, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THE ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCE #240 OF THE CITY OF WALLOWA, PASSED AND APPROVED JULY 12, 1997.

THE CITY OF WALLOWA ORDAINS AS FOLLOWS:

Section 1. The City of Wallowa, Wallowa County, Oregon, hereinafter called the City, does hereby grant to PacifiCorp, an Oregon corporation and to its successors and assigns, hereinafter called Grantee, a right and franchise for the period of twenty (20) years from and after the effective date of this Ordinance, to construct, maintain and operate in, on and under the present and future streets, alleys, bridges and public places of the City, hereinafter referred to as "streets", communications facilities, electric light and power lines, with all the necessary or desirable appurtenances, for the purpose of supplying communications services, electricity and electric service to the City and to the inhabitants thereof, subject to the terms and conditions and to the making of payments hereinafter specified.

Section 2. The right and franchise hereby granted shall not be nonexclusive. The City may at any time during the term of this

franchise grant rights or franchises for uses consistent with appropriate statues, rules and regulations.

Section 3. The location and methods of installation and maintenance of all poles, wires, fixtures, underground lines and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the Council of the City and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All of such facilities shall be installed and at all times maintained by Grantee in accordance with good electrical practice. If the removal or relocation of facilities is caused by an identifiable development of property in the area or is made for the convenience of a customer, this agreement shall not preclude the Grantee form charging the expense of removal or relocation to the developer or customer.

Section 4. The service to be furnished hereunder by Grantee shall be continuous and shall be adequate for the requirement of the City and its inhabitants, subject to accidents, interferences or interruptions beyond the reasonable control of Grantee and shall be furnished under such reasonable rules and regulations as Grantee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefore and all rules and regulations pertaining thereto or to the making of necessary and proper extension of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Oregon

Public Utility Commission or by any other governmental authority having jurisdiction thereof.

Section 5. When necessary, in order to permit any duly authorized person to move any building or structure across or along any of said streets, Grantee shall temporarily raise or remove its facilities upon such streets, upon reasonable notice in advance from the Recorder of the City and at such time and in such manner as may be reasonably required to accommodate such moving, consistent with the maintenance of proper service to Grantee customers; provided, however, that the cost to Grantee of such temporary raising or removal and of any interruption of Grantee's service to its customers caused thereby, shall first be paid or satisfactorily secured to Grantee by the owner or mover of such building or other structure.

Section 6. The City shall have the right, upon reasonable notice to Grantee and without payment or charge therefor, to attach its fire alarm, police signal wires or traffic control systems to the poles of Grantee but at its own risk and only in accordance with good electrical practice. If there is not sufficient space available thereon for said purposes, Grantee's structures may be changed, altered or rearranged at the expense of the City so as to provide proper clearance for such wires or appurtenant facilities. Such facilities shall be subject to interference by Grantee only when and to the extent necessary for the proper construction, maintenance operation or repair of Grantee's facilities.

Section 7. Grantee shall protect and save the City, its officers, employees and agents, harmless against and from any and all damage claims and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of Grantee in the construction, maintenance, operation or repair of Grantee's property or any use thereof and Grantee shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use or the repair or improvement of said streets.

Section 8. Grantee shall have the right and privilege of trimming all trees which overhang said streets, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its facilities; providing no such trees are trimmed or cut back further than may be reasonable necessary to prevent such interference and to allow the proper operation and maintenance of said facilities. Nothing contained in this Section shall prevent Grantee, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang said streets.

Section 9. (A) Grantee shall pay to the City a franchise fee or charge equivalent to three and one-half percent (3 1/2%) of Grantee's gross operating revenue as the same is defined herein.
(B) "Gross Operating Revenue", means Grantee's gross revenues from

the sale and use of electricity and electric service within the corporate limits of the City, other than such revenues derived from business done with the government of the United States or any agency thereof and after deducting therefrom any amounts paid by Grantee to the United States or to the State of Oregon as excise, occupation or business taxes upon the sale or distribution of electric service in the City. At the election of Grantee, Grantee may also deduct uncollectible accounts of customers within the City.

(C) Said franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with respect to Grantee's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges from corresponding periods shall be reduced by deducting therefrom the amount of said franchise fee paid hereunder. Grantee shall not be charged or required to pay any permit, inspection or inspector fees or similar charges from street cuts or openings, pole or line construction, installation or relocation and the like.

(D) Said franchise fee shall be paid monthly on or before the 20th of each month during the term hereof and shall be computed upon the gross operating revenue accruing during the previous calendar month or portion hereof.

Section 10. Upon the effective date hereof, but not otherwise, Ordinance #240 of the City of Wallowa passed and approved July 12, 1997 is repealed.

Section 11. This Ordinance shall take effect thirty (30) days after its enactment by the Council and approval by the Mayor but shall become null and void unless within sixty (60) days after such enactment Grantee shall file with the Recorder Grantee's written acceptance of terms, conditions and obligations to be complied with or performed by it hereunder.

PASSED AND APPROVED BY THE MAYOR AND WALLOWA CITY COUNCIL THIS 26TH DAY OF AUGUST, 1997.

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MAYOR

ATTEST:

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CITY RECORDER