

STATE OF ALABAMA
TOWN OF BROOKWOOD

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83-113

AN ORDINANCE GRANTING A FRANCHISE TO THE WEST ALABAMA CABLE T.V. COMPANY, INC. ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BROOKWOOD, ALABAMA:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "Brookwood Community Antenna Television Company Franchise Ordinance."

Section 2. Definitions. For the purposes 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. The word "shall" is always mandatory and not merely directory.

(1) "City" is the Town of Brookwood.

(2) "Council" is the Town Council of Brookwood.

(3) "Community antenna television system," hereinafter referred to as "CATV System" or "system," means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.

(4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(5) "Grantee" is West Alabama Cable T.V. Company or anyone who succeeds West Alabama Cable T.V. Company, Inc. in accordance with the provisions of this Franchise.

(6) WAC T.V. is West Alabama Cable T.V. Company, Inc.

SECTION 3. Grant of Nonexclusive Authority.

(a) There is hereby granted by the City to the grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in

the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV system for the interception, sale and distribution of television and radio signals.

(b) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this Franchise.

SECTION 4. 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 provide.

SECTION 5. Territorial Area Involved. This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise.

SECTION 6. Liability and Indemnification.

(a) The grantee shall pay and by its acceptance of this Franchise the grantee specifically agrees that it will pay all damages and penalties which the City may legally be required to pay as a result of granting this Franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation, or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(b) The grantee shall pay and by its acceptance of this Franchise specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his assistants or any employees of the City.

(c) The grantee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain throughout the terms of this Franchise liability insurance insuring the City and the grantee with regard to all damages mentioned in subparagraph (a) above in the minimum amounts of:

(1) \$500,000.00 for bodily injury or death to any one person, within the limit, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident.

(2) \$250,000.00 for property damage resulting from any one accident.

(3) \$500,000.00 for the infringement of copyrights, and

(4) \$500,000.00 for all other types of liability.

(d) The grantee shall hold the Town of Brookwood safe and harmless from all damages or claims for damages arising by reason of negligence in the constructing or maintenance or operation of said television cable system.

SECTION 7. Color T.V. The facilities used by the grantee shall be capable of distributing color TV signals, and when the signals the grantee distributes are received in color they shall be distributed in color where technically feasible.

SECTION 8. Signal Quality Requirements. The grantee shall:

(1) Produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows;

(2) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing crossmodulation in the cables or interfering with other electrical or electronic systems;

(3) Limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than forty-eight (48) hours after notice;

(4) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

SECTION 9. Operation and Maintenance of System.

(a) The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the system.

(b) The grantee shall maintain an office in the City, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

SECTION 10. Program Alteration. All programs of broadcasting stations carried by the grantee shall be carried in their entirety as received, with announcements and advertisements and without additions.

SECTION 11. Service to Schools. The grantee shall provide service to public school locations and teaching stations within the City for educational purposes upon request by the City and at no cost to it or to the public school

system. The grantee may at its election provide similar services without cost to private schools, including parochial or other religious schools.

SECTION 12. Emergency Use of Facilities. In the case of an emergency or disaster, the grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster period.

SECTION 13. Other Business Activities.

(a) Neither the grantee hereunder nor any shareholder of the grantee shall engage in the business of selling, repairing, or installing television receivers, radio receivers, or accessories for such receivers within the City during the term of this Franchise and the grantee shall not allow any of its shareholders to so engage in any such business.

(b) This Franchise authorized only the operation of a CATV system as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by law of the grantee.

SECTION 14. Safety Requirements.

(a) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) Construction, maintenance, and operation of the television transmission and distribution system, including connections made to the system to provide service to subscribers, shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Code of the National Board of Fire Underwriters and such applicable ordinances and regulations of the Town of Brookwood affecting electrical installations which may be presently in effect or which may be enacted by the Town Council of the Town of Brookwood. The operation of the television system shall conform to all rules and regulations of the Federal Communications Commission applicable thereto.

(c) All structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(d) The grantee shall maintain a force of one or more resident agents or employees at all times and shall have sufficient employees to provide safe, adequate, and prompt service for its facilities.

SECTION 15. 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 will afford it an opportunity more effectively, efficiently, or economically to serve its customers. Provided, however, that this Section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

SECTION 16. Conditions on Street Occupancy.

(a) All transmissions 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 and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(b) In case of disturbances of any street, sidewalk, alley, public way, or paved area, the grantee shall, at its own cost and expense and in a manner approved by the City replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(c) If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(d) Any poles or other fixture placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way.

(e) The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or 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 Seven (7) days advance notice to arrange for such temporary wire changes.

(f) The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City

so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

(g) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, the grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

SECTION 17. Preferential or Discriminatory Practices Prohibited.

The grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage.

SECTION 18. Removal of Facilities Upon Request. Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

SECTION 19. Transfer of Franchise. The grantee shall not transfer this Franchise to another person without prior approval of the City by ordinance.

SECTION 20. Change of Control of Grantee. Prior approval of the City Council shall be required where ownership or control of more than 50% of the right of control of grantee is acquired by a person or group of persons acting in concert, none of whom already own or control 50% or more of such right of control, singularly or collectively. By its acceptance of this Franchise the grantee specifically grants and agrees that any such acquisition occurring without prior approval of the City Council shall constitute a violation of this Franchise by the grantee.

SECTION 21. Deleted.

SECTION 22. City Rights in Franchise.

(a) The right is hereby reserved to the City or the City Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(b) The City shall have the right to inspect the books, records, maps, plans, and other like materials of the grantee at any time during normal business hours.

(c) The City shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles of the grantee any wire and pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the CATV operations of the grantee.

(d) After the expiration of the term for which this Franchise is granted, or after its termination and cancellation, as provided for herein, the City shall have the right to determine whether the grantee shall continue to operate and maintain the CATV system pending the decision of the City as to the future maintenance and operation of such system.

SECTION 23. Maps, Plats, and Reports.

(a) The grantee shall file with the City Clerk true and accurate maps or plats of all existing and proposed installations.

SECTION 24. Payment to the City. The grantee shall pay to the City quarterly; provided that WAC T.V. shall have 30 days to compute said fee and make payment, an amount equal to two percent for the first year of operation, two and one-half percent for the second and third year of operation and three percent for years four and five and each year thereafter; provided that, after the fifth year the city may increase said fees to the maximum allowed by law, of the annual gross operating revenues taken in and received by it on all retail sales of television signals within the City during the year, excluding fees from "PAY T.V.", for the use of the streets and other facilities of the City in the operation of the CATV system and for the municipal supervision thereof. This payment shall be in addition to any other tax or payment owed to the City by the grantee. A penalty of two percent per month shall be taxed to WAC T.V. if payment is not made within the time hereinabove stated.

SECTION 25. Forfeiture of Franchise.

(a) In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights and privileges of the grantee hereunder in the event that the grantee:

(1) Violates any provision of this Franchise or any rule, order, or determination of the City or City Council made pursuant to this Franchise, except where such violation, other than of Section 21 or subsection (2) below, is without fault or through excusable neglect;

(2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;

(3) Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the City; or

(4) Fails to begin complete construction of 75% of available services to residences under this Franchise before July 17, 1984 (being 12 months from passage of this ordinance).

(b) Such termination and cancellation shall be by ordinance duly adopted after 30 days notice to the grantee and shall in no way affect any of the City's rights under this Franchise or any provision of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the City Council or its representative shall be conclusive. Provided, however, that before this Franchise may be terminated and cancelled under this Section, the grantee must be provided with an opportunity to be heard before the City Council.

SECTION 26. City's Right of Intervention. The grantee agrees not to oppose intervention by the City in any suit or proceeding to which the grantee is a party.

SECTION 27. Further Agreement and Waiver by Grantee. The grantee agrees to abide by all provisions of this Franchise, and further agrees that it will not at any future time set up as against the City or the City Council the claim that the provisions of this Franchise are unreasonable, arbitrary, or void.

SECTION 28. Duration and Acceptance of Franchise.

(a) This Franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of 25 years, provided that within 15 days after the date of the passage of this ordinance the grantee shall file with the City Clerk its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the grantee before a notary public or other officer authorized by law to administer oaths.

(b) Should the grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this Franchise whatever.

SECTION 29. Erection, Removal, and Common User of Poles.

(a) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the City Council with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall be vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the grantee, but it does not make arrangements for such use, the City Council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(c) Where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of the grantee but agreement therefor with the grantee cannot be reached, the City Council may require the grantee to permit such use for such consideration and upon such terms as the Council shall determine to be just and reasonable, if the Council determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

SECTION 30. Number of Channels. The grantee's cable distribution system shall be capable of carrying at least twelve television channels. Further, the grantee shall make available upon the request of the City Council one channel for educational TV. Beginning with the first day of year six of operation the system shall offer twenty channels, at least.

SECTION 31. Existing Ordinances. The grantee shall be subject to all ordinances now in force or that may be hereafter passed relative to the use of highways, streets, alleys, bridges and public places of said town.

SECTION 32. Publication Costs. The grantee shall assume the cost of publication of this Franchise as such publication is required by law and such is payable upon the grantee's filing of acceptance of this Franchise.

SECTION 33. 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.

PASSED AND ADOPTED, this the 20th day of June, 1983.

TOWN COUNCIL OF THE TOWN OF
BROOKWOOD, ALABAMA

ATTEST: Clerk, Clara Pierce By Alton C. Hyche
Town Clerk Mayor

WEST ALABAMA CABLE T.V. COMPANY, INC.

Approved and adopted by: Roth Hook
Its President