

ORDINANCE NO. 127

AN ORDINANCE EVIDENCING THE CONSENT OF
THE TOWN COUNCIL OF THE TOWN OF BROOKWOOD
TO THE AMENDMENT AND TRANSFER OF A FRANCHISE HERETOFORE
GRANTED BY SAID TOWN AND AUTHORIZING THE
TOWN CLERK TO DELIVER A CERTIFIED COPY
OF THIS ORDINANCE AS WRITTEN EVIDENCE
OF THE APPROVAL OF SAID TRANSFER

BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL (HEREIN
TOGETHER CALLED THE "COUNCIL") OF THE TOWN OF BROOKWOOD,
ALABAMA, AS FOLLOWS:

Section 1. Findings by the Council. The Council
has ascertained and does hereby find and declare that:

(a) On July 5, 1983, the Town Council of the Town
of Brookwood, Alabama duly adopted an Ordinance, titled the
"Brookwood Community Antenna Television Company Franchise
Ordinance," granting West Alabama Cable T.V. Company, Inc.,
its successors and assigns (herein referred to as "West
Alabama Cable TV"), the right to build, maintain, and
operate a cable television system in the Town of Brookwood,
Alabama (herein called the "Franchise Ordinance"), a
complete copy of which is attached hereto as Exhibit "A" and
made a part hereof; +

(b) The Council has now been requested to approve
the transfer of all of West Alabama Cable TV's rights,
title, and interest in and under the Franchise Ordinance to
Cheaha Cablevision, Inc., an Alabama corporation; and

(c) It is desirable and in the public interest
that the Council evidence its approval of such transfer to
Cheaha Cablevision, Inc. by the adoption of this Ordinance.

Section 2. No Knowledge of Defaults. The Council
hereby declares that, to the best of its knowledge,
information, and belief, there exists no breach or default
of any kind by West Alabama Cable TV under the Franchise
Ordinance.

Section 3. Approval and Acknowledgment. The
Council hereby approves and consents to the transfer of all
rights, title, and interest of West Alabama Cable TV in and
under the Franchise Ordinance to Cheaha Cablevision, Inc.,
its successors or assigns, said consent to be effective upon
the later of: (i) the closing of the sale to Cheaha
Cablevision, Inc. of substantially all the operating assets
of West Alabama Cable TV, as certified in writing to the
Town Clerk by an officer of Cheaha Cablevision, Inc.; or
(ii) five days following publication of this Ordinance in
accordance with Alabama law. The Council hereby
acknowledges that upon the effective date of said transfer,
Cheaha Cablevision, Inc. will possess a valid franchise
which is in good standing and which is not subject to
revocation on account of any acts or omissions of West
Alabama Cable TV. The Council further acknowledges and
agrees that, as of the effective date of said transfer,
Cheaha Cablevision, Inc. will be in full compliance with all
the terms, provisions, conditions, and requirements set
forth in the Franchise Ordinance, as amended in the manner
described below.

Section 4. Only Ordinance Pertaining to Matter. The Council acknowledges that the Franchise Ordinance and this Ordinance are the only ordinances or resolutions heretofore adopted by the Council with respect to the rights of West Alabama Cable TV to exercise the rights and franchise granted under the Franchise Ordinance.

Section 5. Amendments to Section 8. Subsection (1) of Section 8 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows, and the following subsection (5) shall be added to the end of Section 8 of the Franchise Ordinance:

(1) Produce a picture, whether in black or 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 meeting all Federal Communications Commission technical standards for signal quality and technical performance of the system;

(5) Without limiting or restricting the applicability of the law governing the impossibility of performance of contracts, the grantee shall be relieved of and from undertakings, duties and responsibilities imposed upon the grantee by virtue of this Franchise when the performance of such undertakings, duties or responsibilities has been prevented, curtailed or delayed by virtue of circumstances beyond the grantee's reasonable control, including, but not limited to, strikes, war (whether declared or not), acts of God, or changes of law (whether the result of legislative, executive, administrative, or judicial action). Under such circumstances, the grantee shall not be deemed to have committed a breach or to be in default under the pertinent term or terms of this Franchise.

Section 6. Amendment to Section 9. Subsection (b) of Section 9 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

(b) The Grantee shall maintain an office in or in reasonable proximity to 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 7. Amendment to Section 11. Section 11 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

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 if the cost to the grantee for the installation of such service does not exceed the grantee's standard residential installation costs for one outlet per school location or teaching station. Any costs to the grantee in excess of this amount shall be reimbursed to the grantee after notice, either by the City or the public school system. The grantee may, at its election, provide similar services at the same cost to

private schools, including parochial or other religious schools.

Section 8. Amendment to Section 13. Subsection (a) of Section 13 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

(a) Neither the grantee hereunder nor any shareholder of the grantee shall engage in the business of selling, repairing, or installing 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.

Section 9. Amendment to Section 14. Subsection (b) of Section 14 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

(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 material and applicable 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.

Section 10. Amendment to Section 17. Section 17 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

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, or subject any person to prejudice or disadvantage. However, nothing in this Franchise shall prohibit the grantee from (a) conducting reasonable marketing promotions and test marketing activities in targeted portions of the City or (b) privately negotiating independent rates for commercial or "bulk" multi-unit complex subscribers.

Section 11. Amendment to Section 23. Section 23 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

At any time upon request, the grantee shall promptly file with the City Clerk true and accurate maps or plats of all existing or proposed installations.

Section 12. Amendment to Section 24. Section 24 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

The grantee shall pay to the City, as a franchise tax and as compensation for the rights

and privileges hereunder, a sum equaling three percent (3%) of the revenues received by the grantee for "basic cable television service", as defined under the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, from subscribers within the City. These fees shall be paid in quarterly installments, provided, however, that the grantee shall have thirty (30) days after the end of each quarter in which to compute the amount due to the City and make payment 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 (2%) per month shall be taxed to the grantee if payment is not made within the time hereinabove stated.

Section 13. Amendment to Section 25. Subsection (b) of Section 25 of the Franchise Ordinance is hereby amended in its entirety and shall read as follows:

(b) Such termination and cancellation shall be by ordinance duly adopted after thirty days notice to the grantee after following the procedures and requirements described below. No such termination and cancellation shall be effective until the following procedures have been complied with:

(1) The City shall promptly notify the grantee, in writing, of the alleged grounds on which this Franchise may be terminated and cancelled by the City.

(2) The grantee shall have thirty (30) days after receipt of such written notice to commence and, within a reasonable time thereafter, to correct such violation.

(3) If after such thirty (30) day period, the grantee has failed to begin correcting the violation, or if the grantee has failed to correct the violation within a reasonable time thereafter, the City shall immediately schedule an administrative hearing, after providing prompt public notice of such hearing, at which time the grantee's alleged violation of this Franchise shall be considered. At any such administrative hearing, the grantee shall be afforded adequate notice and a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding, at the grantee's expense.

(4) If after the administrative hearing the City still concludes that the grantee has violated this Franchise, it shall formally terminate this Franchise by ordinance duly adopted after thirty days notice to the grantee, as provided above. Written notice of the City's decision and the reasons for it shall be promptly delivered to the grantee after such decision has been rendered by the Council.

Nothing contained in this Franchise shall in any way affect the grantee's rights, at law or in equity, to pursue

appropriate actions and remedies against the City, nor shall the City's authority, actions, or decisions be accorded more weight than those of a private party in any subsequent court proceedings.

Section 14. Security Interest. The Council agrees that Cheaha Cablevision, Inc., its successors or assigns, may grant a security interest in the Franchise Ordinance, as amended, to any reputable financial institution for the purpose of financing, and may assign its rights, title and interest under the Franchise Ordinance, as amended, as collateral to such financial institutions and their assigns pursuant to such financing arrangements.

Section 15. Ratification and Confirmation. The Franchise Ordinance, as amended, is hereby ratified and confirmed.

Section 16. Publication and Delivery. The Council hereby directs the Town Clerk to publish this Ordinance by posting copies hereof in accordance with the laws of the state of Alabama, the costs of such publication to be paid by Cheaha Cablevision, Inc. The Council also directs the Town Clerk to deliver a certified copy of this Ordinance to Cheaha Cablevision, Inc., as evidence of the Council's conditional approval of the transfer of West Alabama Cable TV's franchise rights to Cheaha Cablevision, Inc., as provided above.

ADOPTED AND APPROVED this the 4th day of December, 1987.

Ranger Holloway
Mayor

ATTEST:

Clara Williamson
Town Clerk

INCUMBENCY AND NO-LITIGATION CERTIFICATE

I, Clara Williamson, Town Clerk of the Town of Brookwood, Alabama, do hereby certify as follows:

(1) There is no litigation pending, and to the best of my knowledge and belief, there is none threatened, in any court, state or federal, with respect to the right of the Mayor or any of the members of the Town Council of the Town of Brookwood to hold their respective offices, or the power of the Town Council to authorize and consent to the incorporation of the Town of Brookwood, Alabama, a municipal corporation and instrumentality under the laws of Alabama, or to appoint or elect the members of the Town Council, or the validity of the actions taken by the Town Council in granting permission for the incorporation of the Town of Brookwood, Alabama, or in electing or appointing the members of the Town Council.

(2) According to the records of the Town, the present members of the Town Council are as follows:

Wybogene Toney
M. L. Hosmer
Clifford Stanley
Gayland Barger
Leon Hatter

(3) There are no general laws of local application or local ordinances or resolutions regarding the organization of the Town or regarding the procedure for adopting or approving Ordinance Number 127.

WITNESS my signature in my official capacity as Town Clerk of the Town of Brookwood, Alabama, under its seal, this 14th day of December, 1987.

Clara Williamson
Town Clerk

(SEAL)

Ref:Qcs9BPE.WK

I, Clara Williamson, as Town Clerk of the Town of Brookwood, Alabama, hereby certify that the attached pages numbered consecutively from 1 to 7, inclusive, constitute a true, correct, and complete copy of all those portions of the minutes of the regular meeting of the Town Council of the Town of Brookwood held on Dec. 14, 1987, that pertain to the matters therein set out, as the same appear in the official records of the Town.

WITNESS my signature as Town Clerk of the Town of Brookwood, Alabama, under its seal, this the 14th day of December, 1987.

Clara Williamson
Town Clerk

(SEAL)

Ref:Ncs98PE.WK

MINUTES OF A REGULAR MEETING OF
THE MAYOR AND TOWN COUNCIL OF
THE TOWN OF BROOKWOOD, ALABAMA

HELD ON December 14, 1987

The Mayor and Town Council of the Town of Brookwood, Alabama, met in regular session at the Town Hall in the said Town on December 14th, 1987, at 7:00 o'clock P.M. m., Central Daylight Time. Mayor Larry W. Holloway presided as chairman of the meeting and called the meeting to order. Clara Williamson, the Town Clerk, who was also present at the meeting, acted as clerk and secretary of the meeting. Upon roll call, the following were found to be present: Mayor Holloway and Councilmembers M. L. Hosmer, Clifford Stapley, and Leon Hatter

and the following were absent: Dene Foxey and Gayland Barger. The chairman stated that a quorum was present and that the meeting was open for the transaction of business. The minutes of the preceding meeting were read and approved.

* * *

Councilmember M. L. Hosmer then introduced the following ordinance in writing: