

ORDINANCE NO.2010-6

AUTHORIZING AND GRANTING A FRANCHISE TO
WEST ALABAMA TV CABLE COMPANY, INC.
IN THE CITY OF HAMILTON, ALABAMA

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF THE CITY OF HAMILTON, ALABAMA, as follows:

Section 1. FRANCHISE.

In consideration of the benefits to accrue to the City of Hamilton, Alabama and the inhabitants thereof, and based upon a finding of public convenience and necessity, West Alabama T.V. Cable Co., Inc. Hereinafter called the "Grantee", is hereby given, granted, invested with the right, authority, privilege, consent and franchise, to use the streets, avenues and public ways of the City of Hamilton, Alabama, for the purpose of engaging in the business of operating a cable TV system including 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 West Alabama T.V. Cable Co., Inc., system for the interception, sale and distribution of television and radio signals, subject to and in accordance with the following conditions and requirements.

Section 2. DEFINITIONS

For the purpose of this ordinance, the following words or phrases shall have the meaning assigned to them as hereinafter set out:

(a) "Basic Cable Service" Any service tier which includes the retransmission of local television broadcast signals.

(b) "Cable Channel" or "Channel" A portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering television channel (as television channel is defined by the Federal Communication Commission Regulations).

(c) "Cable Operator" is grantee, West Alabama TV Cable Company, Inc.

(d) "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming which is provided to multiple subscribers within a community.

(e) "City" is the city of Hamilton, a municipal corporation.

(f) "City Council" is the City Council of the City of Hamilton or governing body.

(g) "Grantee" is the cable operator of West Alabama TV Cable Company, Inc.

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

(i) "Public, Education, or Governmental Access Facilities" means channel capacity designated for public, educational or governmental use and facilities and equipment for the use of such channel capacity.

(j) "Service Tier" means the category of cable service or other services provided by a cable operator for which a separate rate is charged by the cable operator.

(k) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 3. NON EXCLUSIVITY.

The grant of the right, privilege and franchise herein to West Alabama Tv Cable Co., Inc., to use and otherwise occupy the streets, alleys, and public ways and places for the purposes herein set forth shall be non-exclusive and the City of Hamilton reserves the right to grant other franchises or rights in said streets, alleys, public ways or public places, to any other person, firm or corporation at any time. This franchise is not exclusive.

Section 4. DURATION/TERM OF FRANCHISE

The duration and term of this franchise and all rights and

authorities herein granted shall be for a maximum period of ten (10) years from the date of the final adoption of this ordinance. This franchise may be terminated sooner in accordance with the provision hereof.

This franchise and the rights, privileges and authority hereby granted shall take effect as the first day of the first month next following its final enactment. The grantee shall, within ten (10) days after the effective date, file with the City Clerk its unconditional acceptance of this franchise and promise to comply with and abide by all the 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. Should the operator fail to comply with the aforesaid, it shall acquire no rights, privileges or authority under this franchise whatever.

Section 5. COMPLIANCE WITH APPLICABLE LAWS.

The grantee shall, at all times during the term of this franchise, be subject to and comply with all applicable laws, ordinances and regulations, including the lawful exercise of the police power by the City and 47 U.S.C. Section 521, et seq.

Section 6. SERVICE AREA.

This franchise relates to the present territorial corporate limits of the City of Hamilton and to any area henceforth added thereto during the term of this franchise.

Section 7. INSURANCE.

The grantee shall, for the duration of this franchise, maintain worker's compensation insurance and liability insurance in the form of a comprehensive, general and automobile liability policy or policies. This insurance shall be in sufficient amounts to reasonably assure the operator's financial responsibility in the event of injury or death or property damage, with the following minimum limits: one million combined single limit bodily injury and property damage and public liability insurance. The City, its officers, agents and employees

shall be listed as additional insureds on said insurance policies. Certificates of insurance, certifying the existence of said insurance shall be filed with and kept by the City Clerk of the City of Hamilton.

Section 8. INDEMNIFICATION.

(a) The grantee shall pay and, by its acceptance of this franchise, the grantee specifically agrees that it will pay all damages or penalties which the City, its officers, agents, servants and employees, may legally be required to pay as a result of the granting of this franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of the ownership, lease, use, installation, operation, or maintenance of the West Alabama T.V. Cable Co., Inc., 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, its officers, agents, servants, and employees, 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 attorneys' fees and shall also include the reasonable value of any services rendered by any officers or employees of the City.

Section 9. POLICE POWERS.

It is expressly understood that, in granting this franchise, the City of Hamilton does not waive or surrender any of its rights or police powers in exercising governmental control. The grantee shall comply with all reasonable regulations and ordinances duly adopted pursuant to the police powers and governmental authority of the governing body of the City and the City, by entering into this franchise, does not subordinate any of its powers of governmental authority to the franchise herein being granted. Further, there is hereby reserved to the City every right and power which is required to

be reserved by the provision of this ordinance or by any law of the City, and the operator, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or powers heretofore or hereinafter enacted or established.

Section 10. REGULATION OF SERVICES,
FACILITIES, RATES AND EQUIPMENT.

Construction, installation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. Multiple cable configurations shall be arranged and parallel and bundled with due respect for engineering considerations.

Operator's system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the operator may have equipment located.

The operator shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.

The operator shall maintain a staffed office in the City of Hamilton which shall be open during all normal and usual business hours, having a listed telephone number and be so operated that complaints and requests for repairs or adjustments may be received during routine business hours.

Section 11. CARRIAGE OF SIGNALS

All FCC Regulations shall be complied with regarding the carriage of the programming of any existing or future television broadcasting station which covers the City of Hamilton in its principal broadcast area.

Section 12. OTHER REQUIREMENTS.

This franchise authorizes only the operation of West Alabama T. V. Cable Co., Inc. as provided for herein and does not operate as a substitute for any other franchise, license, or permit which might be

required by law, ordinance or regulation.

Section 13. USE OF STREETS.

(a) 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 rights and reasonable convenience of property owners who adjoin any of the said streets.

(b) In case of a disturbance of any street, easement or paved area or other property the grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street, easement or paved area or other property in as good a condition as before the work involved in such a disturbance was done.

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

(d) Any poles or other fixtures placed in or adjacent to any street by the grantee shall be placed in such a manner as to comply with all requirements of the City.

(e) The grantee shall, at the request of any person holding a moving permit duly and lawfully 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 shall be made 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 (48) hours notice to arrange for such temporary wire changes.

Section 14. NON ASSIGNMENT.

The rights and privileges herein granted to the operator shall not be assigned, sublet or transferred without the prior written consent of the City, such consent being duly adopted by resolution as spread upon the minutes of the City Council.

Section 15. 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 request.

Section 16. RESERVATION OF RIGHTS.

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

At the expiration of the term for which this franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the grantee to remove, at its own expense, all portions of the West Alabama T. V. Cable Company, Inc. system from all public ways within the City.

Section 17. FORFEITURE OF FRANCHISE.

(a) In addition to all of the 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 Council made pursuant to this franchise, except where such violation, other than of subsection (2) below is in the opinion of the City without fault or through excusable neglect;

(2) Become insolvent, unable or unwilling to pay its debts, files or has filed against it a petition of bankruptcy; or,

(3) Attempts to evade any of the provisions of this franchise or practices any fraud or deceit upon the City or its citizens.

(b) Such termination and cancellation shall be by ordinance adopted after thirty (30) days written 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 is made by the

City Council shall be conclusive provided, however, that before this franchise may be terminated and cancelled under this section, the operator must be provided with an opportunity to be heard before the City Council.

Section 18. CITY'S RIGHT OF INTERVENTION.

The operator agrees not to oppose intervention by the City in any suit or proceedings to which the operator is a party.

Section 19. FURTHER AGREEMENT AND WAIVER BY OPERATOR.

The operator agrees to abide by all provisions of this franchise and further agrees that it will not at any further time set up against the City of the City Council, the claim that the provisions of this franchise are unreasonable, arbitrary or void.

Section 20. PUBLICATION.

This ordinance shall be published one time in the Journal-Record a newspaper published in Marion County, Alabama, and the City Clerk is hereby directed to cause such publication to be made. Expense of such publication shall be paid by the grantee.

Section 21. FRANCHISE FEE.

In addition to all licenses, permits and taxes required by any rule, regulation, ordinance or law required to be paid by 47 U.S.C. Section 542, the operator shall pay an annual franchise fee to the City in the amount equal to Two and one-fourth percent (2 1/4%) of such cable operator's annual basic services gross revenues each year during the term of this franchise.

Section 22. ERECTION, REMOVAL AND COMMON USER OF POLES.

Where the City Council or a public utility serving the City desires to make use of the poles or other wire holding structures of the grantee, but agreement therefore 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 determines that the use would enhance the public convenience and would not unduly

interfere with the operator's system.

Section 23. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, 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 25. REPEALER.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Adopted by the City Council of the City of Hamilton on this 6th day of July, 2010.

Joseph Robert Holliday, Jr.,
MAYOR

ATTEST:

CITY CLERK