

PASSED

JUN 21 1979

ORDINANCE GRANTING A FRANCHISE TO
CHEROKEE CABLEVISION

TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION
SYSTEM (CATV SYSTEM) IN
THE CHEROKEE INDIAN RESERVATION
CHEROKEE, NORTH CAROLINA

SECTION I. SHORT TITLE:

This ordinance shall be known and may be cited as the
"Cherokee Community Antenna Television Franchise Ordinance."

SECTION II. DEFINITIONS:

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

(a) "Grantor" is the Eastern Band of Cherokee Indians.

(b) "Grantee" is the corporation to whom the rights and
privileges under this Franchise Ordinance is granted and includes
the assigns and successors of said firm and is specifically:
Cherokee Cablevision.

(c) "Governing Authority" is the governing body of the
Grantor and includes all successors in office and is specifically:
The Tribal Council of the Eastern Band of Cherokee Indians.

(d) "Franchise Area" is the physical area within the
geographical limits of the Grantor over which the Governing Autho-
rity has exclusive jurisdiction and authority to control and to
grant franchises: The Qualla Boundary and the 3200 Acre Tract of
the Cherokee Indian Reservation.

SECTION III. FRANCHISE GRANT AND CONDITIONS:

There is hereby granted by the Grantor to the Grantee the
right and privilege to construct, erect, operate and maintain
poles, wires, cables, underground conduits, manholes, electronic

components, microwave relay systems and other television conductors and fixtures necessary for the maintenance and operation in the Franchise Area of a Community Antenna Television System for the reception and distribution of television and radio signals in, upon, along, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all future extensions thereof and thereto in the Franchise Area. The Franchise hereby granted shall be subject to the following conditions:

(a) The right to use and occupy the said streets, alleys, public ways, and places for the purposes herein set forth shall not be exclusive, and the Grantor 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 for purposes other than the operation and maintenance of a community antenna television system.

(b) The Grantee and its employees and agents shall not require nor attempt to direct its subscribers to patronize any particular firm or person in regard to sale, service, rental or leasing of television receivers, radio receivers, or television or radio parts and accessories.

(c) The Grantee shall carry a minimum of nine (9) television channels. One (1) channel of the nine may be signals of a FCC license non-commercial educational television station.

(d) The Grantee shall operate its system so that there will be no interference with television or radio reception through individually owned receiving antennas.

(e) The Grantor shall have the right to inspect, by a qualified electronics engineer, the construction, operation and maintenance of the system by the Grantee to insure proper performance with the terms of this franchise and with applicable FCC Regulations.

(f) The Grantee shall file with the Governing Authority copies of such rules, regulations, permits, licenses and agreements relating to the construction, maintenance and operation of the Grantee's business and a map showing the area of the Franchise Area being served by the Grantee on or before the 31st day of December of each year; provided, that upon completion of construction, the said map may be amended once each year, with all and any additions until such time that all subscribers of the Franchise Area are covered, through sixty (60) days before the date of filing being noted thereon; and, provided further, that nothing herein shall require the disclosure of any of the private financial or other records of the Grantee.

(g) If the Grantee shall fail to comply with any of the provisions of this franchise, or default in any of its obligations hereunder, except for causes beyond its reasonable control, and shall fail within sixty (60) days after written notice from the Grantor to commence and, within a reasonable time, to complete the correction of such default or non-compliance to the satisfaction of the Governing Authority, the Governing Authority shall have the right to revoke this special privilege and all rights to the Grantee hereunder.

In the event the Grantee shall be adjudicated bankrupt or placed in receivership, the Grantor may declare the special privilege herein granted forfeited and terminated.

In the event this Franchise is revoked or forfeited as herein provided, or the Grantee fails to renew this franchise at the termination of the franchise period, all property of the Grantee used in connection with the operation under this franchise shall remain the property of the Grantee. The Grantee shall offer said property for sale at current market value and the Grantor shall have first option of refusal on the purchase of the system; said offer of sale will be on reasonable terms and conditions at the prevailing current Market Value for such property.

(h) The Grantee shall, unless additional time is granted by all appropriate authorities, accomplish significant construction within eighteen (18) months after approval of this franchise and shall have twenty-five (25%) percent of the Franchise Area receiving cable television service on a regular basis within said time.

(i) The Grantee shall secure such consents from the Federal or State government or other authorities or from owners or lessees of property necessary to construct, maintain and operate facilities on or at the locations of poles in the Franchise Area which it desires to use.

SECTION IV. REGULATIONS:

The Grantee shall, at all times during the term of this franchise, be subject to such reasonable regulations as the Grantor shall hereafter by ordinance provide, and shall comply with the rules and regulations, as the same may be amended from time to time, of the Federal Communications Commissions and other regulatory bodies of the United States of America and statutes, including amendments, of the United States of America. The Grantee is hereby empowered, subject always to approval, if necessary, of regulatory bodies having jurisdiction, to use proper practices and procedures within the spirit of this franchise and appropriate to the service within the Franchise Area.

SECTION V. INSURANCE AND INDEMNITY AGREEMENT:

It is expressly understood and agreed by and between Grantor and Grantee that the Grantee shall indemnify, hold harmless and defend the Grantor, at all times during the term of this franchise, from and against all claims for injury or death of persons, or physical damage to property, both real and personal, alleged to have resulted from the negligence of the Grantee, its employees, or assigns in the construction, erection, operation, or maintenance of any structure, equipment, appurtenances or product authorized or used pursuant to authority of this Franchise.

(a) The Grantee shall carry and pay the costs of the following liability insurance, in the form and with such companies as shall be approved by the Governing Authority or its Attorney. The amounts of such insurance shall be at least as indicated below for such type, covering injury to or death of persons and injury to or destruction of property as a result of any accident or negligence arising out of the conduct of business or use of the premises or any operations which are necessary or incidental thereto, the same to protect the Grantor and to include the Grantor as a named insured:

Personal injury liability insurance:

One person, one accident	\$100,000.00
More than one person, one accident	300,000.00

Property damage liability insurance:

One accident	\$ 50,000.00
--------------	--------------

(b) A certificate showing that such coverage has been obtained, and is currently in force and effect, shall be filed with the Governing Authority prior to the commencement of construction by the Grantee and within thirty (30) days of the anniversary date of the policy in each and every year.

(c) The Grantee, upon notice in writing from the Grantor, shall defend or cause to be defended, at its own expense, any action or proceeding against the Grantor in which the Grantor is a defendant or joint defendant, any action or proceedings in which any property, equipment, actions, or activities of the Grantee in any matter whatsoever, are alleged as a cause of injury, whether it be for death claims, compensation for injuries, damages or any or all of the above stated reasons, provided, however, that such notice shall be given to the Grantee within a reasonable time after knowledge of same is had by the Grantor; and, provided further, that the Grantor shall cooperate and assist fully in the defense of any such action or proceeding.

(d) The Grantee shall provide at its own expense, any further insurance, for any purpose whatsoever, required by other regulatory bodies or by other firms or companies with whom the Grantee has agreements for the use of equipment, poles, and other television facilities. Certification of such insurance coverage must be set forth in subparagraph (b) hereof; provided, that the Grantor need not, but may, be named as an insured therein.

SECTION VI. CONSTRUCTION AND MAINTENANCE OF SYSTEM:

(a) Construction, maintenance and operation of the transmission and distribution system (CATV System), including connections made to the system to provide service to subscribers, shall be in accordance with any and all ordinances and regulations of the Grantor, the National Electric Code as prepared by the National Bureau of Standards or any successor thereto, and the National Electric Code of the National Board of Fire Underwriters or any successor thereto; the construction, maintenance and operation of said system shall also conform to any and all rules and regulations of the Federal Communications Commission (FCC) applicable thereto or which may become applicable thereto in the future.

(b) Permission to erect poles and/or excavate: The Grantee is hereby granted the right and privilege to erect poles and to excavate upon the streets, public ways, public places, alleys, avenues and public grounds as shall be reasonably necessary for the construction, maintenance and operation of the CATV System in the Franchise Area without the necessity of obtaining prior permission from the Governing Authority; provided, however, that the Grantee shall be required to obtain normal building permits under applicable regulations now existing or as shall exist when such permits are applied for.

(c) Use: All transmission and distribution structures, lines and equipment of any kind or type whatsoever erected by the Grantee under this franchise, shall be so located as to cause minimum interference with the proper use of the streets, alleys, avenues and other public ways and places.

(d) Restoration of pavement: Where the business of the Grantee necessitates disturbance of pavement, sidewalk, drive way or other surfacing, the Grantee shall, at its own expense, replace and restore the same according to standards and specifications set forth by the Grantor and such work shall be completed as promptly as may be.

(e) Placement of fixtures: The Grantee shall not place poles or other fixtures where the same will interfere with any existing utility facilities in the Franchise Area.

(f) Use of Poles: The poles used for the transmission and distribution system shall be those of the Grantee unless a mutually satisfactory agreement can be entered into with utility companies operating within the Franchise Area and whose poles are in place prior to the effective date of this franchise; provided, however, that the Grantee shall, insofar as practicable, attempt to make use of the situs of existing poles, either by using the existing poles or by replacing said existing poles; provided, further, that if by lack of permission or impracticability of using such situs, new or additional poles must be installed, such poles may be installed upon obtaining the required building permits.

(g) Underground Facilities: The Grantee shall, in all areas where other similar utilities provide their services through underground means, use such cables and equipment as shall be necessary to provide its service by underground means.

(h) Construction Conditions: The construction, maintenance and operation of the transmission and distribution system in the streets, alleys, traverses, bridges and other public ways and places and the new construction and/or addition to the system shall proceed so as to cause the least inconvenience to the general public. No opening or obstruction in the streets or other public places made in the course of the operation of the CATV System shall be made without the Grantee obtaining the required building permit prior to the making of such opening or obstruction; provided, that the Grantee shall not unreasonably withhold the issuance of such

permits, and; provided, further, that the Grantee shall be notified of any reasons for withholding any such permits. Nothing contained hereinabove shall require the Grantee to obtain such permits for emergency repair work, when the delay in obtaining such permit could cause harm to any person, thing or property, or could cause harm and damage to the CATV System itself; provided, however, that the Grantee must report said emergency and the underlying circumstances thereof to the Grantor within forty-eight (48) hours after said emergency repair work is commenced and shall make application for the required building permit at such time, said permit, when issued, to be effective from the date and time such emergency repairs were commenced. The Grantee further agrees with the Grantor to suspend such repair work, upon receiving written notice that a permit will not be issued for same.

(i) Guarding Construction Areas: Any opening or obstruction made by the Grantee for the purposes specified hereinbefore, shall be properly guarded and protected at all times by the Grantee by the placement of adequate barriers, fences or guarding and adequate warning signs or devices.

(j) Restoration of Excavations, Openings and Obstructions: Where excavations, openings or obstructions are made, and the surfacing thereof removed or obstructions placed, the Grantee shall fill in such excavation or opening or shall remove such obstruction within forty-eight (48) hours after completion of the work performed, removing excess dirt and debris, and shall fill in such place. If there should be any evidence of settlement of the refilled excavation or opening or other damage caused by same, within thirty (30) days of the refilling or removal thereof, the Grantee shall immediately repair same. Upon failure of the Grantee to make such correction within same time, it is hereby agreed and the Grantee does hereby give its consent that the Grantor may make such correction as is advisable and necessary for the use of the public without further notice to the Grantee, and the Grantor will charge reasonable rates to the Grantee for this service. The restoration, repair or correction mentioned above shall include the removal of excess dirt and debris.

The Grantee shall, at all times, comply with any and all rules and regulations which the Grantor has made or may make which apply to the public generally with reference to the removal of or replacement of pavement and which apply to excavations in streets and other public places, not inconsistent with the rights and privileges specifically given in this franchise.

(k) Inspection: The Grantor reserves the right to inspect each new installation of the Grantee on its poles in the vicinity of its lines or appliances or equipment and to make periodic inspections as conditions may warrant. Such inspections, or the lack thereof, shall not operate to relieve the Grantee of any responsibility, obligation or liability assumed under this franchise.

SECTION VII. COMPLAINTS:

The Grantee shall resolve all subscriber complaints within fifteen (15) days after having received notice thereof. The Grantee shall report any unresolved complaints to the Grantor within thirty (30) days thereafter. The Governing Authority shall then take action under this franchise to resolve said complaint in a reasonable manner. The Grantee shall be required to maintain a local business office for this purpose. The Grantee shall report annually all complaints and the resolution thereof to the Grantor.

SECTION VIII. TRANSFER:

The Grantee shall not sell or transfer its plant or system to any other, nor transfer any rights under this franchise to another without prior formal approval of the Governing Authority; no such sale or transfer shall in any event be effective until the vendee, assignee, or lessee has filed in the office of the Governing Authority an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions hereof.

Provided, however, that the Company may pledge or mortgage or place in trust its plant, system and/or equipment to any person or firm for the purpose of raising capital or for the purpose of securing any debts of the Grantee, without the necessity of obtaining the aforesaid prior formal approval.

The Grantee agrees and shall furnish to the Grantor detailed information concerning the transfers or assignments under the latter provision within fifteen (15) days after such occurrence.

SECTION IX. ENFORCEMENT:

Failure to enforce or insist upon compliance with any of the terms or conditions of this franchise shall not operate as or constitute a general waiver or relinquishment of any of such terms or conditions, but the same shall be and remain at all times in full force and effect.

SECTION X. AUTOMATIC AMENDMENT:

If any section, sentence, clause, phrase or regulation of this franchise ordinance is contrary to Tribal or Federal Law or to rules and regulations of the Federal Communications Commission (FCC) or other applicable Tribal or Federal regulatory agency, presently in effect or hereafter placed in effect, then such section, sentence, clause, phrase, or regulation of this ordinance is hereby amended to conform therewith; provided that this Franchise Ordinance may be amended to conform with applicable FCC regulations at any time, but in no event later than one (1) year from the issuance and promulgation thereof.

SECTION XI. SEVERABILITY:

If any section, sentence, clause, phrase, word or regulation of this ordinance is for any reason held illegal, invalid, unconstitutional, or void, all other sections, sentences, clauses, phrases, words or regulations not so held shall be and remain in full force and effect.

SECTION XII. TERM:

The term of this franchise is fixed at twenty-five (25) years, beginning with the effective date of this ordinance.

SECTION XIII. SUBSEQUENT REGULATION:

The right is hereby reserved in the Grantor, by ordinance, to adopt in addition to the provisions herein contained and in addition to other existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power.

SECTION XIV. QUALITY OF SERVICE:

During the term of this franchise, the Grantee shall furnish to all persons desiring the service offered (subject only to the specifications in this ordinance); and paying for same, a wire service capable of producing as good a quality of television picture or reception as may be practicable from time to time, and essentially of the same quality as received at the antenna site. The Grantee shall make all reasonable and practicable betterment of said services as improvements in the science of the carrying of television signals shall warrant as well as in the elimination of objectionable radio interferences.

SECTION XV. AREA OF SERVICE COVERAGE AND EXTENSIONS:

The Grantee shall extend regular CATV service to twenty (20%) percent of the Franchise Area and the inhabitants thereof each year until the total Franchise area is receiving service on a regular basis. At least thirty days prior to the anniversary date of this franchise in each and every year, the Grantee shall file a written report to the Governing Authority, showing the extension of service during the previous year, the proposed extension of service during the succeeding year, the names and addresses of all persons applying for service by the Grantee who were not served in the previous year and the reasons why service was not extended to such persons.

The Governing Authority shall then approve or disapprove the proposed extension of service and, if disapproved, shall give the reasons therefor. The Grantee may thereafter submit proposals in the same manner until the Governing Authority shall approve same; provided, however, that this provision shall not require the Grantee to supply service to persons who are so located as to make it economically impossible to supply such service to them, or in areas of repeated vandalism or interference.

SECTION XVI. RATES:

The Grantee shall not charge in excess of the following rates per subscriber:

Connection Charge:

- | | |
|---|-----------|
| (a) Initial connection charge for first T.V. or radio set | \$25.00 |
| (b) Additional installations at the same location | \$ 5.00 |
| (c) Relocation of service within a home | \$10.00 |
| (d) Disconnect service | No Charge |

Monthly Rates:

- | | |
|---------------------------------------|---------|
| (a) Initial T.V. or radio set | \$ 8.00 |
| (b) Each additional T.V. or radio set | \$ 2.00 |

Special Rates:

- | | |
|--|---------|
| (a) Motels and Hotels | \$ 8.00 |
| Per month per set | \$ 3.50 |
| (b) Pay Cable T.V., film library, home box office, etc. (satellite service): | |
| Installation of satelite service | \$15.00 |
| Per month | \$10.00 |

The Grantee may, at any time, petition the Governing Authority for an increase in fees, setting forth the proposed fee increase and the reason therefor. The Governing Authority shall, upon receipt of such petition, refer the matter to the Cherokee Public Utilities Commission, if such is then in existence, for hearings in accordance with such commissioner's rules and regulations, or itself hold a full public hearing on said petition, said hearing to be held not more than forty-five (45) days after the petition is filed. At such hearing, all interested parties may

present evidence in support of or in opposition to the proposed fee increase. The Governing Authority shall then either approve or disapprove said petition, in whole or in part, and shall give their reasons therefor.

SECTION XVII. FRANCHISE FEE:

During the term of this franchise, and for the privilege of operating hereunder, the Grantee shall pay to the Grantor one (1%) percent of gross revenues accruing from fees collected from monthly subscribers for basic cable T.V. or radio service rendered to its subscribers within the Franchise Area for the first three years of operation, and three (3%) percent thereafter. Installation fees and revenues collected for satellite service shall be excluded. Sales taxes and other taxes levied directly on a per subscription basis shall be excluded from the gross revenues in computing sums due the Grantor. Payments due the Grantor under the terms of this Ordinance shall be paid annually within ninety (90) days after the expiration of the Grantee's fiscal year, and the payment shall be accompanied by a statement certified to by a public accountant or attorney of the amount of gross revenues and such payments shall not be in lieu of business licenses. Reasonable inspection by the Grantor of the books of the Grantee hereunder, to the extent necessary to check the correctness of the report of revenues as above defined, shall be permitted, upon notice duly given the Grantee.

SECTION XVIII. ADDITIONAL CONDITIONS:

(a) Failure to Comply: If the Grantee shall fail to comply with the provisions of the Franchise, in part or in whole, or default in any of its obligations hereunder, except for causes beyond the control of the Grantee, and shall fail within thirty (30) days after receipt of written notice from the Grantor to correct such defaults or noncompliance, the Governing Authority shall have the right to revoke this Franchise and all rights of the Grantee hereunder.

(b) Annexed Territory: Upon the additon of any land to the Cherokee Indian Reservation, the portion of such television system that may be located within such added lands and upon the streets, alleys, traverses, bridges and public grounds thereof shall thereafter be subject to all the terms of this Ordinance as though it were an extension made thereunder.

(c) Taxes: It is expressly understood that the property of said Grantee situated within the Franchise Area of the Grantor shall be exempt from taxes and special assessments by the Grantor except as set forth in this Ordinance.

(d) Medical Use: Notwithstanding the contrary hereinbefore stated, nothing in this franchise shall be construed to limit or restrain the use of Cable Television, if needed, for the medical treatment of the sick and ill.

SECTION XIX. EFFECTIVE DATE:

This Ordinance shall become effective upon passage by the Governing Authority according th law.

Passed and adopted by the Tribal Council this ___ day of _____, 1979.

JUN 21 1979

The attached Resolution No. _____ Dated _____ was
Passed () Killed () and ratified in open Council on JUN 21 1979
by 11/4 members voting for the act and _____ voting against it as
follows:

	FOR	AGAINST	ABSENT	ABSTAIN
Dan McCoy				
Thomas Lambert	/			
Jonathan Taylor	/			
Robin Toineeta	/			
Bertha Sainooke	/			
John Quintin Beck	/			
Serard Parker	/			
Eugene Thompson	/			
Ammons Rattler	/			
Albert Martin			/	
Reuben Teesatuskie	/			
Woodrow Lossiah	/			

SIGNED ON BEHALF OF THE COUNCIL BE:

Dan McCoy

Chairman

Winnah W. High

Clerk

APPROVED:

John A. Crowe
Principal Chief

I, Mark Reed, Interpreter for the Council, hereby certify that the foregoing act of the Council was duly Passed () Killed () and ratified in open Council after the same has been interpreted by me and has been fully and freely discussed.

() *Robin Toineeta*
Omitted

Interpreted

() _____
Interpreted

I hereby certify that the foregoing act of the Council was duly Passed () Killed () and ratified in open Council after the same had been interpreted by the official interpreter and had been fully and freely discussed.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians.

() *J. A. V. Toineeta*
Omitted

Interpreted

() _____
Interpreted