

ORDINANCE NO. 409

AN ORDINANCE REPEALING ORDINANCE # 398 and ORDINANCE # 403 AND ALL CONFLICTING PRIOR ORDINANCE PROVISIONS CONCERNING TURTLE MOUNTAIN COMMUNICATIONS, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, NORTH DAKOTA, HEREINAFTER CALLED THE "CITY", THAT ORDINANCE 409 RELATING TO TURTLE MOUNTAIN COMMUNICATIONS BE ADOPTED AS FOLLOWS:

WHEREAS, the City of Rolla is authorized to grant non-exclusive franchise operations of communications systems within the City rights-of-way; and

WHEREAS, Turtle Mountain Communications, has applied for a franchise to construct, operate, and maintain communications services within the boundaries of Rolla; and

WHEREAS, the terms, conditions, and obligations provided herein are needed to protect the safety and welfare of the citizens of Rolla; and provide for the communications services needs of the City.

NOW, THEREFORE, THE CITY OF ROLLA, NORTH DAKOTA, HEREBY ORDAINS AS FOLLOWS:

Section 1: Purpose

This Ordinance shall establish a non-exclusive Franchise, which constitutes an agreement between the City of Rolla (hereinafter the "City") and Turtle Mountain Communications (hereinafter the "Operator"). The Operator agrees to construct, maintain, and operate a communications services system for the distribution of telephone service, broadband services, and video service pursuant to the terms of the Franchise. The City agrees to grant all necessary rights and privileges to use public rights of way necessary for the communications services system. This agreement shall, as of the effective date, supersede all existing franchises previously granted by the City of Rolla to Operator, or any of its predecessors, subsidiaries, or affiliated companies.

Section 2: Length of Franchise

The length of this Franchise shall be for a term through midnight of December 31, 2024.

Section 3: Service Area

The Operator's service area shall be the entire area of the City of Rolla, in its present form or in any later reorganized, or enlarged, or re-incorporated form.

Section 4: Liability and Indemnification

Grantee shall, at all times, keep in effect the following types of insurance coverage:

- (a) Workforce Liability Insurance upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Rolla, North Dakota.
- (b) Property damage liability insurance to the extent of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars as to each occurrence and Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars aggregate, and personal injury insurance to the extend of Five Hundred Thousand and No/100 (\$500,000.00) Dollars aggregate. Excess bodily insurance and property damage of One Million and No/100 (\$1,000,000.00) Dollars each occurrence and One Million and No/100 (\$1,000,000.00) Dollars aggregate. Automobile, bodily injury, and property damage liability combined of One Million and No/100 (\$1,000,000.00) Dollars each occurrence.

Operator shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, for property within the City, or by any act of Operator, its agents or employees.

Section 5: Technical Standards

Grantee shall be governed by technical standards established by the Federal Communications Commission.

Section 6: Operation and Maintenance of System

- (a) The Operator shall render efficient service, make repairs promptly, and interrupt service only for good

cause and for the shortest possible time. Such interruptions in so far as possible shall be preceded by notice and shall occur during periods of minimum use of the system, if possible.

- (b) All service requests and complaints should be responded to within forty-eight (48) hours of receipt.
- (c) If at any time the City, acting through its City board, shall deem it necessary to make any improvements or changes on all or any part of the right of way of the City road which affect a utility located on City highway right of way, then and in such event, the owner of the utility shall within 15 days after written notice from the City chairman or clerk proceed to alter, change, vacate or remove said utility from the City highway right of way so as to conform to said City highway changes and as directed by the City chairman. Such work shall be done without any cost whatsoever to the City and shall be completed within the date specified in said written notice.

Section 7: Emergency Use of Facilities.

In the case of an emergency or disaster, the Operator shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster.

Section 8: Successors or Assigns.

This Franchise shall be binding upon the Operator, its successors, and assigns.

Section 9: Acceptance

This grant of Franchise and its terms and provisions shall be accepted by Operator by the submission of a written instrument, executed and sworn by a corporate office of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise.

Section 10: Effective Date

This Ordinance shall take effect five (5) days from the date of publication and adoption by the City. The Franchise granted by this Ordinance shall not be effective until the Operator files written acceptance thereof.

Section 11: Severability

Each section, subsection, or portion of this Ordinance shall be severable if any section, subsection, or portion shall be found to be invalid.

Section 12: Notice

Written notices shall be deemed to have been duly serviced if delivered in person to the individual or the entity for which it was intended, or if delivered by registered or certified U.S. mail to the last business address known to the party who gives notice. All notices and requests shall be addressed as follows:

CITY:
City of Rolla
City Auditor's Office
PO Box 1200
14 First St SE
Rolla, ND 58367-1200

OPERATOR:
Turtle Mountain Communications
411 7th Ave
PO Box 729
Langdon ND 58249-0729

Section 13: Franchise Fee

During the term of the rights granted herein, the Grantee shall pay as compensation to the City a sum (Franchise Fee) equal to three percent (3%) of the total Gross Receipts for Grantee's video services. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers living within the corporate limits of the City for video programming services and premium pay services such as HBO. Gross Receipts shall not include revenues received from installation charges, or fees for reconnections, inspections, repairs or modifications, of any installation, equipment rental, or State and Federal taxes relating thereto.

The Franchise Fee shall be payable monthly, within thirty days of the end of each of the Grantee's fiscal month

Section 14: Rates

Operator shall at all times maintain on file with the City secretary a schedule setting forth all rates and charges to be made to subscribers for all communications services.

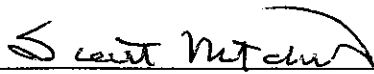
During the term hereof, the City may regulate rates only if authorized to do so by the Federal Communications Commission regulations and then such regulations shall only be in accordance with the provision of such regulations.

In the event that the City has the authority to regulate the rates, the following procedure shall be used:

- (a) Before making any changed in the rates and charges to subscribers for the Operator's communications services, Operator shall file in writing with the City a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate change shall become effective upon the expiration of the thirty (30) days notice.
- (b) If the City wishes to hold a hearing on the proposed rate change, the hearing shall be held within forty-five (45) days of the filing of the proposed rate change by Operator. Following the hearing, the City shall take final action on the proposed rate change within thirty (30) days.

First Reading: April 12, 2011
 Second Reading: May 18, 2011
 Adopted: May 18, 2011
 Effective Date: May 18, 2011

Attest:



 Scott Mitchell, Mayor



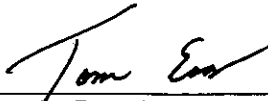
 Mae Murphy, City Auditor

 ACCEPTANCE

TOM EAGAN, President of Turtle Mountain Communications, Inc. does hereby accept the terms and conditions of the above Franchise.


Dated this the 1 day of AUGUST, 2011

TURTLE MOUNTAIN COMMUNICATIONS.



 By: Its President

Subscribed and sworn to before me this the 1 day of AUGUST, 2011.


 _____ Notary Public
 _____ CAVALIER County, North Dakota

PERRY OSTER
 Notary Public, State of North Dakota
 My Commission Expires September 14, 2011

My Commission Expires: _____
 3