

ORDINANCE 463

AN ORDINANCE OF THE CITY OF ROLLA, NORTH DAKOTA GRANTING A NON-EXCLUSIVE FRANCHISE TO TURTLE MOUNTAIN COMMUNICATIONS, INC. FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A COMMUNICATIONS SYSTEM WITHIN THE CITY LIMITS PROVIDED FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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, Inc. 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 community;

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, Inc. (hereinafter the "Operator"). The Operator agrees to construct, maintain, and operate a communications services system for the distribution of telephone service, digital subscriber lines, broadband services and DSL video 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 a term of Twenty (20) years from January 1, 2025 through midnight of December 31, 2044.

Section 3: Service Area.

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

Section 4: Liability and Indemnification.

Operator 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.

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 extent of Five Hundred Thousand and No/100 (\$500,000.00) Dollars as to each occurrence and 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 an act of Operator, its agents or employees.

Section 5: Technical Standards.

Operator 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 right of way, then and in such event, the Grantee shall within 15 days after written notice from the Mayor or auditor, proceed to alter, change, vacate or remove said utility from the City right of way so as to conform to said City roadway changes and as directed by the City Mayor. Such work shall be done without any cost whatsoever to the City and shall be completed within the date specified in said written notice.
- (d) The Operator shall obtain a building permit as provided by the City before commencing any construction upgrade or extension of the System. The Operator shall impose no permit fee upon the City. The city auditor shall have the authority to sign the building permit immediately upon submission.
- (e) Any property of Operator to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Operator, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property. Said City approvals shall be obtained at a City Council Regular Meeting.

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 officer 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 to the City of Rolla, as follows:

CITY:

City Auditor
City of Rolla
PO Box 1200
Rolla, ND 58367-1200

OPERATOR:

Turtle Mountain Communications, Inc.
411 7th Ave
Langdon, ND 58249

Section 13: Payment to the City

During the term of the rights granted hereunder, and so long as the Operator operates said system, the Operator shall pay, as compensation to the City a sum equal to three percent (3%) of the annual total gross receipts of its video services within the City of Rolla. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers for the noted services. Gross receipts shall not include revenues received, for telephone services, installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, or State and Federal taxes relating thereto.

The payments that Operator makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City and shall be paid on a monthly basis based on the preceding years gross receipts. Upon completion of Operator's audit, Operator shall pay to the City within 15 days, the balance due, if any, for the operating year covered by the audit.

This amount payable by the Operator to the City shall be the sole amount payable for all of its rights under this Ordinance including, but not limited to, the use of the streets and other facilities of the City in the Operation of Operators systems and for the municipal supervision thereof and shall be in lieu of any other occupational tax.

Notwithstanding the annual gross receipts fee or tax payable hereunder, if the Operator is legally obligated to collect or pay any sales tax or other taxes, the Operator shall have the right to charge the subscribers an additional amount equal to such tax.

Section 14: Rates.

Operator shall at all times maintain on file with the City Auditor 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 changes 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 changes 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.

Section 15: City's Right to Revoke.

City reserves the right to revoke, terminate or cancel a Franchise, if it is determined that an Operator has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation within 10 days of notification of said violation.

First Reading	:	November 20, 2024
Second Reading	:	December 18, 2024
Adopted	:	December 18, 2024
Effective Date	:	December 19, 2024

CITY OF ROLLA, NORTH DAKOTA

[Signature]
By: Kevin Juntunen

Its Mayor

ATTEST/AUTHENTICATED:

[Signature]

By: City Auditor

ACCEPTANCE

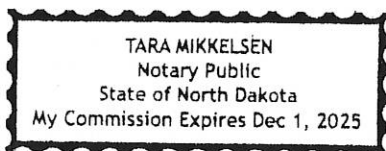
Steve Swanson, General Manager/CEO of Turtle Mountain Communications, Inc., does hereby accept the terms and conditions of the above Franchise.

Dated this 30 day of December 2024

Turtle Mountain Communications, Inc.

[Signature]
By: Its General Manager/CEO

Subscribed and sworn to before me this 30 day of December 2024.



[Signature]

Notary Public

Cavalier County, North Dakota

My Commission Expires: December 1, 2025