

CHAPTER 8

CABLE TELEVISION

ARTICLE I – MOULTRIE TELECOMMUNICATIONS, INC.

8-1-1 **FRANCHISE AGREEMENT.** The Village does hereby adopt the following Cable Television Agreement with Moultrie Telecommunications Inc. as **Appendix "A"**.

(Ord. No. O-080513; 08-05-13)

APPENDIX "A"

AN ORDINANCE RENEWING A CABLE TELEVISION FRANCHISE IN LOVINGTON AND RULES GOVERNING THE OPERATION OF SAME.

DEFINITIONS:

1. "Cable Telecommunications System" means franchisee's cables, wires and other equipment used for the transmission of cable television signals and other one or two-way video and electronic communications signals.
2. "Franchisor" is the Village of Lovington.
3. "Franchise" means the rights and obligations contained in the Ordinance.
4. "Franchisee" is MOULTRIE TELECOMMUNICATIONS, INC.
5. "FCC" is the Federal Communications Commission of the United States.
6. The word "shall" is always mandatory.
7. The word "may" allows discretion.

WHEREAS, the Franchisor has granted the Franchisee a renewable 15-year cable television franchise under Ordinance No. 441; adopted on October 13, 1980, and

WHEREAS, the Franchisee has notified the Franchisor of the Franchisee's interest in and intent to obtain a 15-year renewal of its Franchise, and

WHEREAS, the Franchisor has following reasonable notice, conducted a full public hearing, affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualification, general character and current and past performance of the Franchisee, and

WHEREAS, the Franchisor after such consideration, analysis and deliberation, has approved and found sufficient the technical ability, financial condition, legal qualification, character and current and past performance of the Franchisee, and

WHEREAS, the Franchisor has at the said public hearing, also considered and analyzed the plans of the Franchisee for the continuing operation of the cable communication system and found the same to be adequate and feasible in view of the needs and requirements of the entire area to be served by the said system, and

WHEREAS, it is understood and agreed by the Franchisor and Franchisee that the franchise renewal is non-exclusive.

NOW, THEREFORE, be it ordained by the President and Board of Trustees of the Village of Lovington as the Franchisor that there is hereby created, granted, and established, a full and complete franchise renewal for a period of fifteen (15) years for the installation, operation and maintenance of a Cable Telecommunication System within the Village of Lovington to Moultrie Telecommunications, Inc.

The Franchise shall be subject to the following terms and performance conditions:

1. Grant of Nonexclusive Authority.

A. The Franchise shall have 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 Lovington, Illinois, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the village of a Cable Telecommunications System.

B. The right to use and occupy said streets, alleys, public places and ways for the purpose herein set forth shall not be exclusive, and the village 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.

C. To avoid unfair competition, in the event that Franchisor grants another Franchise for a Cable Telecommunications System during the term of this Franchise or any renewal, Franchisee shall be entitled to immediately modify this Franchise with any terms or performance conditions contained in another Franchise that it considers more favorable.

2. Renegotiation of Franchise Terms. Any renewal of this Franchise shall be for a period of not more than fifteen (15) years. Renegotiation of any or all of the terms of the Franchise, except the length of the Franchise, may occur at such times as may be mutually agreed upon by the Franchisor and Franchisee, however, Franchisor and Franchisee agree that at least one such renegotiation shall occur five (5) years from the effective date of the Ordinance if requested by either party, and one such renegotiation shall occur ten (10) years from the effective date of this Ordinance if requested by either party. In addition, such renegotiation shall occur at the end of the franchise term. Nothing contained in this paragraph shall be considered to be a requirement that said franchise must be changed during said fifteen (15) year term.

3. Subscriber Privacy. No signals of a cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practice without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Such written permission shall be for a limited period of time not to exceed one (1) year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by a subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of cable communications activity planned for the purpose.

4. Subscriber Rates.

A. The Franchisee shall establish and adhere to rates for cable television services, associated equipment and installation charges that do not exceed the maximum permissible rates established under federal and state law and FCC regulations.

B. Residential subscriber contracts, if any, may not exceed twelve (12) months duration.

C. Upon written request, the Franchisee shall furnish, free of charge, the outside connections, when other connections to residential or commercial buildings are being made within the particular area of the party requesting, and basic monthly subscriber service during the length of the franchise, to the following parties within the Village:

Lovington Grade School
Lovington Township Library
Lovington Fire Protection District Firehouse
Lovington Community Ambulance Service, Inc.
Village Hall

And any and all inside wiring or work shall be done at the expense of the party requesting it.

5. Change in Rates. The Franchisee may increase the rates only in accordance with applicable federal and state law and FCC regulations.

6. Franchise Fee. The Franchisee shall pay a franchise fee equal to three percent (3%) of its gross annual basic subscriber revenues. Said fee shall be payable to Franchisor quarterly. Gross annual basic subscriber revenues means any and all compensation received directly or indirectly by the Franchisee from subscribers within village limits for basic CATV service. Gross annual basic subscriber revenues shall not include revenue derived from expanded CATV service, advertising revenues, installation charges, or any taxes on service furnished by the Franchisee imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Franchisee for such governmental unit. Basic CATV services means the distribution of broadcast television and radio signals. Expanded CATV service means any communications service in addition to basic CATV service provided by the Franchisee either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications service, including, but not limited to, pay TV (such as HBO), burglar alarm service, data or other electronic transmission service, facsimile reproduction service, meter reading service and home shopping service.

It is understood that said franchise fee is imposed to cover the use of streets and rights-of-way and the cost of regulation.

7. Repairs and Complaints.

A. The Franchisee shall provide a toll free telephone number for subscriber complaints and shall maintain a repair service capable of responding to subscriber complaints or requests for service other than installations within twenty-four (24) hours after receipt of the complaint or request. Installations will be made by appointment during normal business hours.

B. Whenever it is necessary to shut off or interrupt services for the purpose of making repairs, adjustments or installation, the Franchisee shall do so during periods of minimum use by subscribers. Unless such interruption is unforeseen, the Franchisee shall give reasonable notice thereof to the subscribers affected. All costs incurred in making such repairs, adjustments or installations, shall be borne by the Franchisee unless otherwise provided for in this Ordinance or subscriber contract.

C. All complaints by Franchisor, subscribers or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable television system, shall be investigated by the Franchisee within twenty-four (24) hours. The Franchisee shall rectify the cause of the complaint if reasonably possible. If a subscriber or citizen complaint cannot be resolved within thirty (30) days, the Complainant may then file the complaint with the City Clerk who shall inform the Franchisor that the Franchisee and complainant have been unable to resolve the complaint. The Franchisor will then initiate the resolution of the complaint with a certified letter to the Franchisee, and the complaint shall be

resolved as follows: to the extent such procedure is not invalid under applicable federal and State law and FCC regulations, the Franchisee shall comply with the following procedures:

The Franchisor shall notify the Franchisee in writing by certified mail of the complaint issue. Within thirty (30) days of the receipt of the registered letter by the Franchisee, the Franchisor must arrange a meeting between the Franchisee and the Franchisor to discuss the complaint issue. If the Franchisor does not agree with the Franchisee regarding the resolution during the meeting with the Franchisee, then a Board of Arbitrators shall be selected. The Board of Arbitrators shall be composed of five (5) members, two to be selected by the Franchisor, two to be selected by the Franchisee, and the fifth to be selected by the four aforementioned representatives on the Board of Arbitrators, and these five (5) representatives are to be selected within forty-eight (48) hours of the meeting between the Franchisor and the Franchisee. Said Board of Arbitrators shall render a decision for or against the complaint resolution after not more than fifteen (15) days from the date of their appointment to said Board. Any decision made by such Board of Arbitrators shall be in writing and a copy thereof duly authenticated shall be delivered on the day said decision is rendered to each, the Franchisor and the Franchisee, and shall be binding upon all parties concerned.

Any special testing necessary to resolve the complaint shall be done in accordance with Section 23 of this Franchise.

8. Channel Capacity. The Franchisee shall provide a Cable Telecommunications System having a minimum 300 MHZ of bandwidth (the equivalent of 35 television broadcast channels). Franchisee shall initially provide a minimum of 9 activated channels, and any reductions must be approved only by prior written approval of Franchisor (or FCC regulation). Channels may be added to the system from time to time in order to provide alternative programming.

9. Compliance with State and Federal Laws. The Franchisee shall conform to all federal and state laws, rules and regulations regarding cable communications not later than one (1) year after their promulgation. Franchisee and Franchisor acknowledge that federal law may preempt or supersede terms of this Ordinance. In case of such conflict of law, Franchisee shall follow applicable federal law and regulations.

10. Operating Standards.

A. The system shall deliver to the subscriber's terminal, a signal that is capable of producing a black and white or colored picture without visual material degradation in quality within the limitations imposed by the technical state of the art.

B. The system shall transmit or distribute signals without causing objectionable cross-modulation in the cables or interfering with other electrical or electronic networks or with the reception of other television or radio receivers in the area not connected to the network.

11. Indemnification and Liability Insurance. The Franchisee shall indemnify and hold harmless, the Franchisor with regard to all legal damages and penalties which may result from the exercise of this franchise at all times during the term of the Franchise and shall maintain throughout the term of the Franchise, liability insurance in the amounts of:

\$75,000.00 for property damage to any one person,
\$150,000.00 for property damage in any one occurrence,
\$500,000.00 for bodily injury to any one person,
\$1,000,000.00 for bodily injury in any one occurrence.

This shall be guaranteed to the Franchisor by a public liability and property damage policy naming the Village, the Village Board, and all Village employees, agents and officers as co-insured, and to be negotiated and paid for by the Franchisee. The insurance shall be obtained from a company acceptable to the Franchisor and such acceptance shall not be unreasonably withheld and a certificate of coverage shall be provided to the Franchisor. The policy shall provide that the Franchisor shall be notified in writing at least thirty (30) days in advance of any proposed cancellation or termination of such policy. The Franchisor shall annually review the above insurance provisions and if it is determined that the insurance coverage is inadequate, additional insurance may be required by the Franchisor and shall be provided for by the Franchisee.

Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injury to the Franchisee's facilities while performing any work connected with grading, re-grading, or changing the line of any street or public place, or with the construction or reconstruction of any sewer or water system.

12. Access to Financial Records. The Franchisee shall file with the Franchisor annually, reports of gross subscriber revenues and such other information as the Franchisor may deem appropriate.

13. Municipal Right to Purchase. Upon expiration of the Franchise renewal term, or upon revocation of the Franchise, or upon receipt of an application for the Franchisee for approval of any assignment or transfer of the Franchise, the Franchisor shall have the first right to purchase the Franchisee's cable, wires and other equipment related to the Cable Telecommunications System, within sixty (60) days following notification of any of the above conditions, at a mutually agreed upon sale and purchase price.

14. Transferability. Any assignment or transfer of this Franchise requires the prior consent of the Franchisor which consent shall not be unreasonably withheld.

15. Termination. The Franchisor may terminate and cancel the franchise and all rights and privileges of the franchise in the event that the Franchisee substantially violates any provision of the franchise ordinance or any rules, order or determination of the Franchisor or attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the municipality. Conditions or circumstances for the municipality's termination of the franchise shall include, but not necessarily be limited, to the following:

A. If the Franchisee should default in the performance of any of its obligations under the franchise, and shall fail to act on the default within thirty (30) days after receiving written notice of default;

B. If a petition is filed by the Franchisee under the Bankruptcy Code, or other insolvency or creditors rights law, state or federal, or the Franchisee is adjudged bankrupt or insolvent under any insolvency or creditor's rights law, state or federal.

The Franchisor shall provide the Franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the Franchisee a minimum of thirty (30) days subsequent to receipt of the notice in which to correct the violation. The Franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the Franchisor, prior to the termination of the franchise. In the event that the Franchisor determines to terminate the franchise, the Franchisee shall have a period of thirty (30) days beginning the day next following the date of the conclusion of the

public hearing at which the termination of the franchise is considered within which to file an appeal under the Administrative Review Act of Illinois Compiled Statutes. During such thirty (30) day waiting period and until the Circuit Court determines the appeal, if any is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires. If the Circuit Court approves of the action of the Franchisor, the Franchise shall terminate immediately; if the Circuit Court disapproves of the action of the Franchisor, the Franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law. Any such appeal to the Circuit Court is a contested case to which the Circuit Court is not a party. This remedy is in addition to any other legal remedies available to the parties.

16. Procedure Upon Termination. Upon termination or forfeiture of the franchise, the Franchisee shall have the opportunity to sell its cable, wires, and all other appliances relating to the cable communications system, in the streets, alleys and other public places within the franchise area.

17. Authorization to Commence Construction. Permission by Franchisor for commencement of construction of the cable communications system authorized herein, is granted herewith, subject to Franchisee giving Franchisor reasonable notice of the proposed construction thereof, so as to coordinate all work between Franchisor and Franchisee.

18. Construction Standards.

A. The granting of this franchise permits the Franchisee to open the surface of any street, sidewalk, or public place, if done so under these qualifications: The lines, conduits, cables, and other property placed in the streets and public places shall be so located as not to grossly interfere with a previously located utility construction. The Franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same to a condition as good as formerly, and shall exercise reasonable care to maintain the same in good condition for one year. Such work shall be performed with due diligence and if the Franchisee shall fail to perform the work promptly, the Franchisor shall have the right to put the street or public place back into good condition at the expense of the Franchisee, and the Franchisee shall, upon demand, pay to the Franchisor, the cost of such work done or performed.

Such work as described to occur on private property shall be negotiated individually with the property owner, and restored to as near the same condition as possible.

B. All wires, conduits, cable and other property and facilities of the Franchisee, shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel, upon the streets and public places of the franchise area. The Franchisee shall keep and maintain all of its property in good condition, order and repair, so that the same shall not menace or endanger the life or property of any person. The Franchisor shall have the right to inspect and examine at any reasonable time and upon reasonable notice, the property owned or used, in part or in whole, by the Franchisee. The Franchisee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the Franchisor.

C. All wires, cables, amplifiers and other property of the Franchisee shall be constructed and installed in an orderly and workmanlike manner. If possible cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with respect for engineering consideration.

- D. Franchise shall at all times comply with:
1. National Electric Safety Code (National Bureau of Standards);
 2. National Electrical Code (National Bureau of Fire Underwriters);
 3. Applicable FCC or other Federal, State and Local Regulations.

In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Franchisee may have equipment located.

19. Public Improvements. Whenever the Franchisor shall undertake any public improvement which affects cable communications equipment, it shall, with due regard to reasonable working conditions, direct the Franchisee to remove or relocate its wires, conduits, cables, and other property located in said street, right-of-way, or public place. The Franchisee shall relocate or protect its aerial facilities at its own expense. The Franchisor or any customer requesting underground moves shall pay for such relocations. The Franchisor shall give the Franchisee reasonable notice of the undertaking of public improvements which affect the Franchisee's cable communication equipment.

20. Franchise Administrator. The City Clerk shall be responsible for the continuing administration of this franchise.

21. Technical Standards. The Franchisee shall, as a minimum, adhere to the applicable technical standards, promulgated by the FCC relating to cable communications systems contained in subpart K of part 76 of the FCC Rules and Regulations relating to Cable Communications Systems as the same now provide and may from time to time be amended. The results of any tests required by the FCC shall be filed within ten (10) days of the conducting of such tests with the Franchisor and the Board.

22. Special Testing. In the event that special testing is required by the Franchisor to determine the source of technical difficulties, the cost of said testing shall be borne by the Franchisee if the testing reveals the cable company to be responsible. If the testing reveals the difficulties to be caused by factors which are beyond the cable company's control, the cost of testing shall be borne by the Franchisor.

23. Signal Carriage. The Franchisee reserves the right to change or expand the Signal Carriage in compliance with federal rules and regulations.

24. Effective Date. This Ordinance shall take effect and be in force after proper waivers are obtained and then from and after its passage and publication as required by law.

Passed this 5th day of August, 2013.