

AN ORDINANCE OF THE TOWNSHIP OF PYMATUNING, MERCER COUNTY, PENNSYLVANIA, GRANTING TO CENTURY SHENANGO CABLE TV CORP., THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM, INCLUDING POLES, WIRES, CABLES, AND FACILITIES OF EVERY KIND TO PROVIDE CABLE TELEVISION, CABLE COMMUNICATIONS AND OTHER TELECOMMUNICATIONS SERVICES TO OR FOR SUBSCRIBERS OR OTHER USERS THEREOF, IN, OVER, AND THROUGH STREETS AND ALL OTHER PUBLIC PLACES, PUBLIC RIGHTS-OF-WAY AND ALSO EASEMENTS DEDICATED FOR COMPATIBLE USES, AND THE FURTHER RIGHT AND AUTHORITY TO LEASE OR IN OTHER MANNER OBTAIN THE USE OF POLES, AND FACILITIES OF EVERY KIND FROM PUBLIC UTILITIES AND THE HOLDERS OF PUBLIC LICENSES WITHIN THE TOWNSHIP OF PYMATUNING, FOR THE SAID CONSTRUCTION, OPERATION AND MAINTENANCE, FOR A PERIOD OF TEN (10) YEARS, PROVIDING FOR TERMS AND CONDITIONS ACCOMPANYING THE GRANT; PROVIDING FOR TERMINATION ON DEFAULT BY THE GRANTEE AFTER NOTICE AND DUE PROCESS; AND PROVIDING FOR SEVERABILITY, FOR THE REPEAL OF INCONSISTENT ORDINANCES OR PARTS THEREOF AND FOR THE EFFECTIVE DATE OF THE GRANT.

WHEREAS, the Township of Pymatuning (hereinafter the "Township") is authorized to grant, renew and deny franchises for the installation, operation and maintenance of cable television and other telecommunications systems within the Township's boundaries by virtue of (i) Federal and State statutes, (ii) the Township's police powers, and (iii) the Township's authority over its public rights of way;

WHEREAS, Century Shenango Cable TV Corp. (hereinafter "Century") has applied to the Township of Pymatuning (hereinafter the "Board of Supervisors") of the Township for the renewal of a franchise to construct, operate and maintain a cable television system within the Township; and

WHEREAS, the Township hereby finds that it would serve the public interest of the citizens of the Township to approve the renewal of the Franchisee's cable television franchise in the Township subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE be it enacted by the Board of Supervisors that a nonexclusive cable television franchise be granted to Century, under the terms and conditions as hereinafter set forth:

**Section 1. Definitions**

For the purposes of this Ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

- A. Cable Television Service means the one-way transmission to the Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- B. Cable Television 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 Television Service which includes video programming and which is provided to multiple Subscribers within a community, but such terms do not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations, (2) a facility that serves only certain residents in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; or (3) any facilities of any electric utility used solely for operating its electric utility systems.
- C. Gross Revenues shall mean all monthly basic service revenues received from Subscribers by Century from the operation of its Cable Television System within the Township excluding installation, relocation of outlets and rental charges, that share of fees remitted to suppliers for programming services and monies which Century is required by a third party to expend for promotional activities. Gross Revenues shall not

1.29.92

ORDINANCE NO. 155-1992

CABLE TELEVISION FRANCHISE AGREEMENT

AN ORDINANCE GRANTING A FRANCHISE TO CENTURY SHENANGO CABLE TV CORP., FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A CABLE TELEVISION SYSTEM IN THE TOWNSHIP OF PYMATUNING, PENNSYLVANIA.

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include refunds to Subscribers, uncollectible accounts or taxes on services furnished by Century herein which are imposed directly upon any Subscriber or user by the local or other governmental unit and collected by Century on behalf of such governmental unit.

- D. Person shall mean any person, firm, partnership, association, corporation, company or organization of any kind.
- E. Street shall mean any street, alley, lane, sidewalk or other public place of the Township.
- F. Subscriber shall mean an authorized recipient lawfully receiving Cable Television Service.

## Section 2. Grant of Franchise

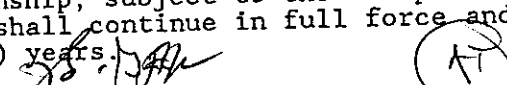
The nonexclusive right is hereby granted to Century, for the Term (as hereinafter defined) and subject to the terms, conditions, and limitations hereinafter stated, to use the streets, alleys, lanes and public places of the Township now laid out or dedicated, and all extensions thereof, and additions thereto, to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the aforementioned streets, alleys, lanes and public places of the Township, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Township of a Cable Television System for the reception, sale, and distribution of television and radio signals and for any and all other lawful purposes except as otherwise hereinafter provided.

## Section 3. Area of Operation

- A. The grantee shall have the right to construct, operate, and maintain, in, on, along, across, above, over and under the streets, alleys, lanes and public places of the Township, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Township of a Cable Television System at such locations as are reasonably suitable and convenient for the purposes of Century and the Township, subject to the lawful exercise of the police power heretofore or hereafter granted to the Township by the General Assembly.
- B. Century will make service available to all resident located within the County in which the density of homes is at least 35 per cable mile.
- C. Century will make service available to all residents located within the County in which the density of homes is less than 35 per cable mile, in the following manner subject to the following: Century will calculate the cost of construction to provide service to any such area upon the request of any residents of such area. The residents requesting service will pay in advance of such construction, in equal amounts, such portion of the cost of construction determined by applying to such costs a fraction the numerator of which is 35 reduced by the density of homes within a particular area, and the denominator of which is 35.
- D. Century shall, upon request, make basic service available to all commercial establishments located within 300 feet of its feeder cable at the expense of such commercial establishments.
- E. The Township agrees that any grant of additional franchises by the Township shall cover the entire territorial area of the Township and shall not be on terms more favorable to the grantee of any such additional franchises than the terms and conditions of this franchise.

Section 4.

Acceptance; Effective Date; Term

- A. Within sixty (60) days after the Township has taken final action to approve the granting of this Franchise, Century will file its acceptance with the Township by countersigning this Franchise. Such acceptance will acknowledge that Century agrees to be bound by and to comply with the provisions contained herein.
- B. Concurrent with the filing of written acceptance, Century will obtain the insurance specified herein.
- C. The Franchise granted herein will take effect and be in full force from and after final passage by the Township, subject to the acceptance provided in paragraph A above and shall continue in full force and effect for a period of ~~fifteen~~ <sup>15</sup> years. 

Section 5.

Conditions on Use of Streets and Roads

- A. Trimming/Cutting Trees. Century shall have the right to trim and keep clear of its poles, wires, cables, underground conduits, manholes, and other conductors and fixtures, the trees in and along the Streets. In the exercise of such right, Century shall not cut or otherwise injure any such tree to any greater extent that is reasonably necessary.
- B. Restoring Streets. Century shall restore, reconstruct, or repair any Street, and any sewer or gas or water main, or pipe, or fire alarm, disturbed, or destroyed by the exercise of any right granted to Century by this Franchise, in a manner reasonably satisfactory to the Township. In the event that the Township determines that Century has not made such restoration, reconstruction or repair in a reasonably satisfactory manner, the Township, after giving Century notice and opportunity to correct such failure, shall have the right to carry out such restoration, reconstruction or repair, and Century shall reimburse the Township in full for all reasonable expenses incurred by the Township in carrying out all or part of such restoration, reconstruction or repair.
- C. Safety. Century shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Streets, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair. Any opening or obstruction in the streets shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which will be clearly designated by warning lights.
- D. Compliance with Applicable Laws. Century shall install and maintain its wire, cables, fixtures, and other equipment in accordance with the requirements of the Laws of the State of Pennsylvania, the Ordinances of the Township as amended, any pertinent subdivision restrictions, and the applicable section of the National Electric Safety Code as revised, during the Term and in such manner which shall not interfere with any installations of the Township or of any public utility serving the Township.
- E. Temporary Moving of Wires. Century shall, on the request of any Person holding a building moving permit issued by the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Century shall have the authority to require such payment in advance. Century shall be given not less than five business days advance notice to arrange for such temporary wire changes.

- F. Inspection. The Township shall have the right to inspect all construction or installation work performed in, over, under and upon the Streets, subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.
- G. Underground Cable. Century shall place its cables, wires, or other like facilities underground, as may be required by the provisions of the Laws of the State of Pennsylvania, the Ordinances of the Township, as they may be amended, any pertinent subdivision restrictions and the applicable section of the National Electric Safety Code as revised during the life of this Franchise. The Township acknowledges that as of the effective date of this Franchise Century's existing cables, wires and other like facilities are in compliance with this provision. For all new residential structures in which undergrounding is required by the Township, the builder, subdivider or developer of such structure at his sole costs and expense, shall provide, in accordance with Century's current specifications all conduits, trenches to buildings' point of entry, from the boundary of the development, back fill and restoration of trench area.
- H. Poles. The poles used for the distribution system will be, to the extent possible, those erected and maintained by either the power company or the telephone company or both, whenever agreement can be reached with the owners of such poles. Century will have the right to erect and maintain poles where none exists at the time Century seeks to install its Cable Television System. No poles or other wireholding structure shall be erected by Century without prior approval of the Township, through established permit procedure. The Township agrees that such prior approval will be given on a timely basis and will not be unreasonably withheld. Location of any pole or structure shall be removed or modified by Century at its own expense whenever the Township determines that the public health, safety and welfare would be enhanced thereby.
- I. Moving of Century Property. Century will, at its expense, and upon reasonable notice from the Township, protect, support, temporarily disconnect or relocate its property in the same Street when required by the Township or State by reason of traffic conditions, public safety, street closing or abandonment, highway or street construction, change or establishment of street grade, installation of sewer drains, water pipes, power lines, signals lines, or any other types of structures or improvements; and the Township will not be liable for any disturbance of Century's installation resulting therefrom.

Section 6.                      Construction and Operation

- A. All installation and maintenance of electronic equipment will be durable and installed in accordance with the applicable sections of the current edition of the National Electric Safety Code and all State and local codes where applicable.
- B. All working facilities, conditions, and procedures, used or occurring during construction and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.
- C. Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Township following accepted construction procedures and practices and working through existing committees and organizations.

- D. All cable and wires installed above ground shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
- E. Any antenna structure used in the Cable Television System shall comply with construction, marking and lighting of antennae structures required by the United States Department of Transportation.
- F. Century will not intentionally interfere with television reception of Persons not served by Century, nor will the Cable Television System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Township.

Section 7. Signal Quality

Century will use its best efforts to:

- A. Produce a picture that is undistorted and accompanied with proper sound on typical standard production television sets in good repair, and in compliance with FCC technical standards;
- B. Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross modulation in the cables.
- C. Limit failures to a minimum by locating and correcting malfunctions promptly, except in the event that any malfunction is beyond the control of Century. The system shall incorporate safeguards necessary to prevent injury to lineman resulting from a standby generator powering a "dead" utility line.
- D. If requested, demonstrate by instruments and otherwise that a signal of adequate strength and quality is being delivered.
- E. Make available upon request by any Subscriber, a lockout device which prevents the viewing of unwanted channels. Century shall not be precluded from making a reasonable charge for such devices.

Section 8. Conduct of Operations

- A. Century will render efficient Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible. Century will use reasonable efforts to assure that such interruptions will occur during periods of minimum system use.
- B. Century shall be equipped to respond to system outages within four hours and to respond to complaints within twenty-four (24) hours excluding weekends except in the event of circumstances beyond Century's control.
- C. Century shall comply with all Federal Communications Commission rules and regulations, both present and future.
- D. Century shall provide, upon request, one connection and basic service to each public school, fire and police station located within 150 feet of an existing service line situated in the Township upon request of the Township and at no cost to it or any other agency of the Township.

Section 9. Insurance and Indemnification

- A. By its acceptance of this Franchise Century specifically agrees that it will pay all damages and penalties which the Township may legally be required to pay which result from any negligent operation of the Cable Television System on the part of Century. These damages or penalties shall include, but shall not be limited to, damages arising out of

copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

- B. Century will indemnify the Township, its officers and employees, from and against any and all claims, demands, actions, suits, and proceedings by others, and against all liability to others, arising out of the negligence of Century in the construction and operation of its Cable Television System in the Township, provided that the Township gives Century prompt notice in writing of any such claims, demands, actions, suites and proceedings, without limitation.
- C. The Township, to the extent provided by the statutory and common law of the State of Pennsylvania and by the Constitution of the State of Pennsylvania, will be responsible for acts of negligence or breach of obligation committed by the Township for which the Township is legally responsible, subject to any and all defenses and limitation of liability provided by law. This provision does not and shall not be construed as a waiver, relinquishment or abrogation of the statutory limitation of liability available to the Township. This paragraph in no way waives the Township's limited right of sovereign immunity or protection under the applicable statutory limitation of liability available to cities generally in this State.
- D. Century shall maintain in full force for the full term of the Franchise and in effect at all times, at the expense of Century, a comprehensive liability insurance policy with the Township named as an insured, written by a company authorized to do business in the State of Pennsylvania, protecting the Township against liability for loss, personal injury and property damage occasioned by the operation of the Cable Television System by Century, in an amount not less than \$500,000.00. Such insurance shall be kept in full force and effect by Century during the existence of the Franchise. Evidence in the form of a certificate of insurance shall be provided to the Township upon request.

Section 10. Unauthorized Connections or Modifications

- A. It is unlawful for any person to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the Cable Television System for any purpose whatsoever, without the express consent of Century.
- B. It is unlawful for any Person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the Cable Television System for any purpose whatsoever.
- C. Any Person convicted of a violation of this section will be subject to the maximum penalty allowed by Federal, State and local law. The Township agrees to cooperate with Century in the prosecution of any such violations.

Section 11. Franchise Fees

- A. Century will pay to the Township annually, within sixty (60) days following the end of each calendar year an amount equal to FIVE (5%) percent of Century's annual Gross Revenues ("Franchise Fee"). The Franchise Fee will be deemed to reimburse the Township for the rights granted herein and for all costs of regulation and administration of the Franchise.

*J.S. [Signature]*  
(AT)

Section 12.                    Records and Reports

- A. Copies of all petitions, applications and communications submitted by Century and directly related to Century's Franchise to the Federal Communications Commission, Securities and Exchange Commission or any other Federal or State regulatory Commission or Agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Franchise, shall be submitted to the Township upon written request.
- B. The Township shall have the right to inspect Century's books and records directly related to Century's Franchise Fee and Century's Proof of Performance tests.
- C. Century shall maintain maps and plats of the Cable Television System and shall update these maps and plats to reflect changes in the system, copies of which shall be made available to the Township for review upon written request.

Section 13.                    Franchise Renewal

Upon completion of the Term, the Township may grant renewal of this Franchise in accordance with the procedures for franchise renewals as established by the Cable Communications Policy Act of 1984.

Section 14.                    Transfer of Franchise

Century shall not transfer this Franchise to another person, except to a company controlling, controlled by or under common control with Century, without prior written notice to the Township.

Section 15.                    Termination; Cancellation

- A. In addition to all other rights and powers pertaining to the Township by virtue of this Franchise or otherwise, the Township reserves the right, after reasonable notice to Century and the reasonable opportunity of Century to cure any alleged Franchise violation, and to be heard before the Board of Supervisors, to terminate and cancel this Franchise and all rights and privileges of Century hereunder in the event that Century:
  - (i) Willfully fails to reasonably carry out any material provision of this Franchise or any material rule, order, or determination of the Township pursuant to this Franchise.
  - (ii) Becomes insolvent, unable or unwilling to pay its debts, or is adjudicated bankrupt.
- B. Such termination and cancellation shall be by ordinance duly adopted after sixty (60) days notice to Century and shall in no way affect any of the Township's rights under this Franchise or any provision of law.

Section 16.                    Force Majeure

With respect to any provision of this ordinance or any franchise agreement granted pursuant thereto, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon a Grantee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by grantee and is beyond its reasonable control.



Section 17.

Miscellaneous

- A. The right is hereby reserved to the Township or the to adopt, in addition to the provision contained herein and in existing applicable ordinances, such additional regulation as it shall find necessary in the exercise of its police power.
- B. If any section, subsection, sentence, clause, phrase or portion of the Franchise 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.
- C. The Township and Century acknowledge that each expressly reserves all of their respective rights under applicable Federal and State Constitutions and law.

IT IS FURTHER ORDAINED, that all ordinances or parts of ordinances, inconsistent with this ordinance, to the extent of such inconsistency, are hereby repealed.

This Ordinance shall become effective upon acceptance of such by Century.

TOWNSHIP OF PYMATUNING

By: 1. Joseph A. Schick  
 2. George J. Fredler  
 3. \_\_\_\_\_  
 Board of Supervisors

ATTEST:

James E. Leventy  
 Township Secretary

Century Shenango Cable TV Corp. hereby accepts this Franchise and agrees to be bound by and comply with the provisions contained herein.

SWORN to before me this

24 day of April, 1991

George A. Nadig (L.S.)

Notary Public for the State of Connecticut, County of Fairfield  
My commission expires: 6/30/97

CENTURY

By: \_\_\_\_\_

Title: \_\_\_\_\_

[Signature]  
ASST. TOW  
SENIOR VILL PRESIDENT