

22.01 GRANT OF FRANCHISE.

1. GRANT.

The City hereby grants a nonexclusive franchise to Century, for a period of fifteen (15) years from the date the franchise is accepted by Century for the right and privilege to install, operate and maintain a cable communications system ("System") in the City under the restrictions and conditions of this Franchise Agreement. This franchise shall not be construed to create any right beyond that set forth herein.

2. POLICE POWER.

Century shall, at all times during the operation of this franchise, be subject to all lawful exercise of the police power as may be hereafter provided by the City.

3. SERVICE AREA.

Century shall provide service to all residential areas located within the City in accordance with the provisions of Section 22.04(a).

4. FAVORED NATIONS.

The City agrees that any grant of additional franchises by the City shall cover the entire territorial area of the City and shall not be on terms and conditions (including without limitation the franchise fee) more favorable to the grantee of any such additional franchise than those which are set forth herein.

22.02 TRANSFER OF FRANCHISE.

1. PRIOR NOTICE FOR TRANSFER.

No transfer of control of the system shall take place, whether by forced or voluntary sale, lease, assignment, or any other form of disposition, without prior notice to and approval by the City after submission of an application by the transferee. Such approval shall not be unreasonably withheld.

2. PRIOR APPROVAL FOR TRANSFER OR ASSIGNMENT.

None of the rights and privileges or the delegations, duties or liabilities created by this franchise may be transferred or assigned, either voluntarily or involuntarily, by Century without prior approval by the City after submission of an application by the proposed transferee or assignee. Such approval shall not be unreasonably withheld.

3. PRIOR APPROVAL FOR ENCUMBRANCE.

Century shall not assign, mortgage, pledge, hypothecate or otherwise encumber the franchise or all or any part of the cable, wires or other equipment located within the City, nor permit the same to occur, nor permit a prior assignment, mortgage, pledge, hypothecation or encumbrance to continue, without prior notice to and approval by the City Common Council which approval will not be unreasonably withheld.

4. FORECLOSURE OR OTHER JUDICIAL SALE.

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, Century shall immediately notify the City Common Council of such fact, and such notification shall be treated as a notification that a change in control of Century has taken place, and the provision of this subsection governing the consent of the City to such change in control of Century shall apply.

22.03 FRANCHISE RENEWAL.

This franchise may be renewed by the City in accordance with Federal Law, in particular, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection, Competition Act of 1992, and the 1996 Telecommunications Act.

22.04 CONDITIONS AND RESTRICTIONS ON CONSTRUCTION AND OPERATION.

Century shall be subject to the following restrictions and conditions with regard to the operation of the System, which conditions and restrictions shall be in addition to any other subsections of this agreement.

1. SERVICE AREA.

- a. Residences.

Century shall make service available to all residences located within the existing City limits within six months of the effective date of this Franchise. Such services shall be made available provided that any such facilities may be served by a drop no more than 150 feet from Century's existing cable plant.

b. Commercial Establishments.

Century shall, upon request, make service available to all commercial establishments within the City limits which are located within 150 feet of its existing feeder cable at the expense of such commercial establishments.

c. Annexed Areas.

Within twelve months of request, Century shall extend service to all residences within an annexed area adjacent to the existing Service Area in which the density of homes is 50 per cable mile. In the event that such annexed area is served by another cable operator or other video provider at the time of such request, Century will have the option, but not the obligation, to provide service.

2. INSTALLATION AND OPERATION.

Cable, wires, and other equipment in connection with such System shall only be installed and operated on or under the Streets upon the poles, or in underground conduit and equipment of the existing utilities within the City where conduits exist and where space in installed conduits is available. Installation of any additional poles, conduit or other equipment for the installation of cables, wires and other overhead equipment and underground equipment in Streets in connection with said System shall not be authorized and is expressly forbidden except as such additional authorization may be secured by the special permission of the City Common Council; provided, however, that in no event may installation of poles be authorized along a public street. Installation over or on private property shall be subject to prior utility easement and prior notification by mail or personal service to property owners.

3. LOCATION.

Such wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the Public Service Commission of Wisconsin. All equipment shall be grounded in the same manner as required by the Electrical Code of the City for electrical services.

4. DISTURBANCE OF STREETS.

In the event it becomes necessary for Century to open or otherwise disturb any street, Century shall first secure a permit from the office of the City's Building Inspector. The charge for restoring the premises shall be determined by the fee schedule of the City. Century shall pay the charge therefore to the City in advance of the work. The work of restoring the Street shall be performed by the City. As an alternative regarding restoration, the City may allow Century to restore the Street, providing prior approval is granted by the City and inspection and approval of the restoration is given by the City.

5. REMOVAL OF EQUIPMENT.

Century shall, at its own expense, protect, support, temporarily or permanently disconnect, relocate in the same Street or remove from any Street, any property owned or used by Century when required by the City Engineer, by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or any other structures or public improvements.

6. NECESSITY FOR RAISING, LOWERING OR DISCONNECTING LINES.

Century shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of wires shall be paid by the person requesting the same, and Century shall be given not less than five (5) days advance notice to arrange for such temporary wire changes.

7. COMPLIANCE WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS.

All installations by Century of cable and incidental equipment shall comply in all respects with all laws, ordinances, rules and regulations of the Federal Communications Commission, the State of Wisconsin, or any agency or department thereof, and of the City or any agency or department thereof, or any other governmental entity, now or hereafter in effect.

8. MAINTENANCE OF EQUIPMENT.

Century shall provide and maintain its equipment in such quality so that none of its service will adversely affect radio

and television reception.

9. SERVICING OR REPAIR OF TELEVISION RECEIVERS.

Century shall not either directly or indirectly engage in the servicing or repair of television receivers in the City, nor directly or indirectly require of any Subscriber the patronage of any designated person or company engaged in such service or repair business. The foregoing shall not apply to the repair or adjustment of equipment which is part of the System of Century.

10. INSPECTIONS.

Century shall submit to inspections by duly authorized personnel of the City and shall make available to such inspectors or duly authorized personnel its facilities and equipment.

11. AUTHORITY TO TRIM TREES.

Century, subject to prior approval of the City Public Works Director, shall have the authority to trim trees upon and overhanging Streets of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Century, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of Century.

12. PLACEMENT OF CABLES, WIRES, ETC. UNDERGROUND.

In all areas of the City where the cables, wires, or other like facilities of public utilities are now placed underground, Century shall place its cables, wires or other like facilities underground. In all areas of the City where cables, wires, or other like facilities of public utilities are in the future placed underground, Century shall at such time place its cables, wires or other facilities underground. Unless otherwise determined by the City Common Council, upon termination of its franchise by revocation, non-renewal or any other event Century shall remove or cause to be removed its plant, structures and equipment.

13. REFILL OF EXCAVATION.

In removing its plant, structures and equipment, Century shall refill at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances, without affecting the electrical or telephone cables, wires or attachments. Such obligation shall be met by Century within 12 months of the date of revocation, termination or other future date fixed by the City Common Council. Any cost for such removal or disposal incurred by the City shall be reimbursed by Century. The City Common Council shall inspect and approve the condition of the public ways and public places and wires, cables, attachments and poles after removal. Liability insurance and indemnity required to be provided hereunder shall continue in full force and effect during the period of removal. The period of removal shall end only after inspection of the removal results and upon issuance of an approval of Century's removal results by the City Common Council.

14. PENALTY FOR FAILURE TO COMPLETE WORK.

In the event of a failure by Century to complete any work required by above or any work required by City regulation or ordinance within the time established and to the satisfaction of the City, the City may after providing reasonable prior notice to Century, cause such work to be done and Century shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs.

22.05 PROHIBITED USE OF STREETS.

No individual, partnership, corporation or association shall use the Streets for or in connection with a Cable Communication System except as may be specifically permitted by the City Common Council. No cable or other equipment or device installed in, over or under the Streets under a franchise granted under this section shall be used for any purpose except for a Cable Communications System as herein defined or other services described in the application of Century or approved by the City Common Council.

22.06 PAYMENT TO THE CITY.

1. FRANCHISE FEE.

For the use of the Streets, and other facilities of the incorporated area of the City for the operation of the Cable Communications System and for the supervision thereof by the City, Century shall pay to the City three percent (3%) of Century's Gross Revenues from the operations of the Cable Communications System in the incorporated area of the City during the previous year.

2. GROSS REVENUES.

"Gross Revenues" shall mean all cash, credits, property of any kind or nature, or other consideration received directly by Century, from or attributable to the sale or exchange of cable service by Century within the City or in any way received by Century from the operations of its cable system within the City, including, but not limited to, all cable, pay television and pay-per-view fees net of that share of fees which is remitted to suppliers of those services, without any deduction whatsoever. Gross revenues shall not include converter deposits, refunds to subscribers by Century, uncollectible accounts, or receipts from sales or use taxes or any other tax that Century collects on behalf of any taxing authority or Pay monies paid to a Grantee which Century is required to pay to a third party in full for promotional activities.

3. WHEN TO BE PAID.

The annual sum shall be payable one-half (1/2) thereof at the end of each semi-annual period (6 months). The semi-annual anniversary shall be the last day of the sixth month anniversary and the last day of the twelve-month anniversary of the effective date of this agreement each year during the Term (as hereinafter defined), and each semi-annual payment shall be paid within sixty (60) days thereafter.

4. STATEMENTS.

Century shall with the payment set forth above, submit a statement of Gross Revenues and payments to the City.

5. AUDIT.

The City shall have the right to inspect Century's income records directly related to Gross Revenues and the right to audit and to recompute any amounts determined to be payable under this section; provided, however, that such audit shall take place within twelve (12) months following the close of each of Century's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within the thirty (30) days following written notice to Century by the City which notice shall include a copy of the audit report.

6. PAYMENTS OF COMPENSATION NOT A TAX.

Payments of compensation made by Century to the City pursuant to the provisions of this section shall not be considered in the nature of a tax but shall be in addition to any and all taxes which are now or hereafter required to be paid by any law of the United States, the State of Wisconsin, the County of Waukesha or the City.

22.07 BROADBAND CABLE COMMUNICATIONS SERVICE.

The Cable Communications System permitted to be installed and operated hereunder shall be operated in conformance with the Technical Standards established by the Federal Communications Commission.

22.08 CITY SERVICES.

1. FREE DROPS.

Century agrees to furnish and install a cable drop or connection to schools within the corporate limits of the City, City Hall, Library, Fire Department and Law Enforcement Services offices. (Rep. & Recr. 09-21)

2. EMERGENCY ALERT.

The system shall be capable of transmitting an emergency alert signal to all subscribers, in the form of an audio override to permit the City to interrupt and cable cast an audio message on all channels simultaneously in the event of disaster or public emergency. Such emergency messages will be initiated from any touch tone phone with an access code. Persons to be provided with access codes shall be selected by the City. The City will hold Century harmless for any acts of the City in connection with the City's use of such emergency alert capability.

22.09 COMPLAINT PROCEDURE.

1. BUSINESS AND TELEPHONE LISTING.

Century shall maintain a business office and telephone listing in the Milwaukee Metropolitan Area for the purpose of receiving inquiries and complaints from its customers and the general public. Century shall investigate all complaints within forty-eight (48) hours of their receipt and shall in good faith attempt to resolve them within forty-eight (48) hours after notice. Century shall maintain records of written complaints including action taken thereon for a period of two years and shall keep such records in the local business office. Century shall make the records available to the City Common Council upon request.

2. FAILURE TO RESOLVE COMPLAINTS.

In the event of the failure by Century to resolve complaints, the City Common Council may review complaints, other than those relating to program content.

3. NOTICE OF COMPLAINT PROCEDURE.

In all brochures and other written material, Century shall state the fact that a complaint procedure has been established, and state the mailing address and telephone number of the office handling inquiries and complaints.

4. TESTING FOR COMPLAINTS ON SERVICE.

When there have been similar written complaints made or where there exists reliable evidence which, in the judgment of the City the City Common Council shall have the right and authority after presenting Century with such written complaints or other reliable evidence, to represent that Century test, analyze and report on the performance of the System at the expense of Century. Such test or tests shall be made and the reports of such test or tests shall be delivered to the City no later than thirty (30) days after the City Common Council formally notifies Century. Such report shall include the following information: what System component was tested; the equipment used and procedures employed in said testing; the results of such tests and the method in which complaints were resolved.

5. DEFINITION OF COMPLAINT.

Except where otherwise required by applicable law, the word "Complaint" as used herein will mean a Subscriber contact or inquiry regarding Century's service or picture quality and requiring some follow-up or investigation and resolution by Customer Service Representative or the Cable Television System's technical staff. Complaints will not include those contacts or inquiries by Subscribers which are resolved on the telephone with the Subscriber at the time of the contact or inquiry or those contacts or inquiries regarding programming or rates.

22.10 INDEMNIFICATION AND INSURANCE.

1. INDEMNIFICATION.

Century shall indemnify and save the City, its agents and employees harmless from and against all loss, liability, damage and expenses, including attorney's fees, sustained by the City, its agents and employees, on account of any suit, judgment, execution, claim or demand arising out of the installation, operation or maintenance of the Cable Communication system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this section and any franchise granted hereunder; including, but not limiting said indemnity to, claims for personal injuries, libel, slander, death or property damages, expenses of investigation and litigation of claims and suits arising hereunder, and claims based on copyright violation or infringements or violation of proprietary rights.

2. DEFENSE OF ACTION OR PROCEEDING AGAINST CITY.

Century, upon receipt of due notice in writing from the City, shall defend at its own expense any action or proceeding against the City in which it is claimed that injury or damages arose from Century's activities or failure to act in the installation, maintenance or operation of its Cable Communication System.

3. WHEN INDEMNIFICATION NOT NECESSARY.

Century shall not be required to indemnify the City for active negligence or willful misconduct on the part of the City or its officials, City Common Councils, commission, agents, or employees (hereinafter "such acts"). The City shall hold Century harmless for any damage resulting from any such acts of the City or its officials, City Common Councils, commission, agents, or employees including, but not limited to, such acts in connection with the use of the emergency alert system described in this agreement, and for any such acts committed by the City in connection with work performed by the City on or adjacent to the Cable System.

4. PUBLIC LIABILITY INSURANCE POLICY.

Century shall carry and at all times keep in force a public liability policy of insurance, insuring such Century and the City against any and all liability of not less than \$500,000 for property damage and \$1,000,000 for any one person for personal injury, death, or other damages attributable to the installation and/or operation of the Cable Communication System. Such policies of insurance or certificate thereof by a company licensed to do business in the State of Wisconsin shall be filed with the City Clerk prior to the commencement of installation. Such policy or certificates shall provide that the City shall be notified thirty (30) days in advance of the cancellation or termination of the policy.

22.11 COMPLIANCE WITH FCC REGULATIONS.

Century shall comply with all conditions imposed by the Federal Communications Commission and any FCC regulations and any other governmental regulations of general applicability. Failure to obtain any required licenses or to comply with all such conditions shall be grounds to revoke the franchise without liability assigned to the City. Copies of all documents

pertaining to the City filed by Century with the FCC, shall be furnished to the City concurrently.

22.12 RIGHT OF REVOCATION.

1. TERMINATION OF FRANCHISE.

The City Common Council may declare the franchise herein granted to be forfeited and terminated upon the happening or discovery of any of the following events:

- a. Century adjudicated a bankrupt;
- b. Century becomes insolvent;
- c. Century is placed in receivership;
- d. Century practices fraud or deceit upon the City, its agents, and employees or upon the Subscribers;
- e. Century fails to comply with material requirements of this agreement.

2. NOTICE OF REVOCATION.

Upon such violation by Century of any such material obligation as described above contained herein, the City Common Council will provide written notice to Century. Thirty (30) days subsequent to such written notice, if Century fails to comply and has not commenced reasonable action to bring about such compliance, the City Common Council may terminate this agreement upon ten (10) days written notice to Century.

3. DETERMINATION OF MATERIAL VIOLATION.

In determining a material violation for purposes of this franchise, the City shall take into consideration the reliability of the evidence of the violation, nature of the violation, whether the violation was chronic, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further such violations, and such other matters as the City may deem appropriate.

22.13 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

Century shall not, as to rates, charges, service, service facilities, rules, regulations, employment, or in any other respect make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage because of race, creed, religion, sex, age, marital status or national origin.

22.14 SUBSCRIBER PRIVACY.

Century will operate its Cable Communication System at all times in accordance with Cable Communications Policy Act of 1984 Subscriber Privacy provisions.

22.15 CABLE REVIEW COMMISSION.

1. CABLE REVIEW COMMISSION.

The initial Cable Review commission shall be the City Common Council, provided, however, the City Common Council may appoint commissioners as set forth herein at its pleasure. The Cable Review Commission shall consist of four citizen members and one Council Member. The Council Member shall be appointed annually in April on or after the third Tuesday of the month.

2. TERM OF MEMBERSHIP.

The term of each citizen member shall be four years except that those of the first appointed, one each shall be appointed for terms of one through four years so that a new member is appointed each year.

3. POWERS AND DUTIES.

The duties and powers of the commission are as follows:

- a. Resolving disputes or disagreements between Subscribers and Century after investigation should the Subscriber and Century not first be able to resolve their dispute or disagreement.

- b. Reviewing and auditing reports submitted to the City as required by this franchise. Review rules and regulations set by Century as permitted by this ordinance.
- c. Assuring that all tariffs, rates and rules pertinent to the operation of the System in the City are made available for inspection by the public at reasonable hours and upon reasonable request.
- d. Soliciting, reviewing and providing recommendations to the City to insure compliance with this subchapter.
- e. Making recommendations to Century of the System and to the users of the public, educational and governmental access channels.
- f. Performing such other duties and functions as may be assigned from time to time by the City .

22.16 PROTECTIONS AFFORDED CENTURY.

1. WILLFUL AND MALICIOUS DAMAGES.

A person who willfully or maliciously damages, or causes to be damaged, any wire, cable, conduit, apparatus or equipment of Century, or who commits any act with intent to cause damage to any wire, cable, conduit, apparatus or equipment of Century, or who taps, tampers with, or connects any wire or device to a wire, cable, conduit or equipment of Century with intent to obtain a signal or impulse therefrom without authorization of Century, shall be subject to a forfeiture as determined by the appropriate court.

2. SLANDER OR LIBEL.

Century or its agents shall not, in any action for slander or for publishing a libel, be held liable in damages for or on account of any defamatory matter uttered, telecast, cablecast, or published over the facilities of Century by any person whose utterance, telecast, cablecast, or publications is not, under the provisions of any law of the United States or any regulation, ruling or order of the FCC, subject to censorship or control by Century.

22.17 FORCE MAJEURE.

With respect to any provision of this Franchise Agreement, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon Century, such violation or noncompliance shall be excused where such violation or noncompliance is the result of an Act of God, war, civil disturbance, strike or other labor unrest, or similar event, the occurrence of which was not reasonably foreseeable by Century or is beyond Century's reasonable control.

22.18 RESERVATION OF RIGHTS.

Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Century or by the City of any constitutional or legal right which either party may have or may be subsequently determined to have, either by subsequent legislation or court decisions. The City and Century acknowledge that each reserves all of their respective rights under applicable Federal and State Constitutions and laws.