

Chapter A185

CABLE TELEVISION FRANCHISE

[HISTORY: Adopted by the Town Council of the Town of Pennington Gap 4-19-1999. Amendments noted where applicable.]

§ A185-1. 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.

CABLE TELEVISION SERVICE — The one-way transmission to subscribers of video programming or other programming services and subscriber interaction, if any, which is required for the selection of such video programming or other programming services.

CABLE TELEVISION SYSTEM — 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 other services 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.

GROSS REVENUES — All monthly basic service revenues received from subscribers by Century from the operation of its cable television system to provide video cable services within the Town, including installation and rental charges. Gross revenues shall not include that share of fees remitted to suppliers for programming services, monies which Century is required by a third party to expend for promotional activities, franchise fees, 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.

PERSON — Any person, firm, partnership, association, corporation, company or organization of any kind.

STANDARD INSTALLATION — Any aerial installation to a single-family residence located up to 125 feet from the existing distribution system.

STREET — Any street, alley, lane, sidewalk or other public place of the Town.

SUBSCRIBER — An authorized recipient lawfully receiving cable television service.

§ A185-2. 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 Town 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 Town, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Town 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.

§ A185-3. Area of operation.

- A. Century 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 Town, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Town of a cable television system at such locations as are reasonably suitable and convenient for the purposes of Century and the Town, subject to the lawful exercise of the police power heretofore or hereafter granted to the Town by the General Assembly.
- B. Century will make standard installations to all residences located within the Town unserved by another video provider in which the density of homes is at least 35 per cable mile measured from Century's existing distribution plant.
- C. Century will make standard installations to all residences located within the Town unserved by another video provider in which the density of homes is less than 35 per cable mile measured from Century's existing plant, in the following manner subject to the following: calculate the cost of construction to provide service to any request of any residents of such area. The residents will pay in advance of such construction, in equal such portion of the cost of construction determined by applying costs a fraction the numerator of which is 35 reduced by the homes requesting service 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 existing distribution plant at the expense of such commercial establishments.
- E. Century will make standard installations to all residences within an annexed area adjacent to the Town unserved by another video provider in which the density of homes is at least 35 per cable mile measured from Century's existing distribution plant. In the event that such annexed area is served by another cable operator or entity at the time of such request, Century will have the option, but not the obligation, to provide service.
- F. The Town agrees that any grant of additional franchises by the Town to any other entity to provide the services similar to those provided by Century pursuant to this agreement and over which the Town has regulatory authority similar to the Town's

regulatory authority over Century shall cover the entire territorial area of the Town and shall not be on terms and conditions (including, without limitation, the franchise fee) more favorable or less burdensome to the grantee of any such additional franchise than those which are set forth herein.

§ A185-4. Acceptance; effective date; term.

- A. After the Town has taken final action to approve the granting of this Franchise, Century will file its acceptance with the Town by countersigning this Franchise. Such acceptance will acknowledge that Century agrees to be bound by and to comply with the provisions contained herein.
- B. The Franchise granted herein will take effect and be in full force from and after final passage by the Town, subject to the acceptance provided in Subsection A above, and shall continue in full force and effect for a period of 10 years (hereinafter the "term").

§ A185-5. 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 tree to any greater extent than 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 Town. In the event that the Town determines that Century has not made such restoration, reconstruction or repair in a reasonably satisfactory manner, the Town, 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 Town in full for all reasonable expenses incurred by the Town 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 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 boardings, 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 applicable law, including any pertinent subdivision restrictions, and the applicable section of the National Electric Safety Code as revised, during the term and in such manner as shall not interfere with any installations of the Town or of any public utility serving the

Town. The Town 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.

- E. Temporary moving of wires. Century shall, on the request of any person holding a building moving permit issued by the Town, 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 Town 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.
- G. Location of distribution lines; poles/underground cable. 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 exist at the time Century seeks to install its cable television system. No poles or other wire-holding structure shall be erected by Century without prior approval of the Town, through established permit procedure. The Town 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 whenever the Town determines that the public health, safety and welfare would be enhanced thereby. For all new residential structures in which undergrounding is required by the Town, the builder, subdivider or developer of such structure, at his sole cost and expense, shall provide, in accordance with Century's current specifications, all conduits, trenches to buildings' points of entry, from the boundary of the development, back fill and restoration of trench area.
- H. Moving of Century property. Century will, upon reasonable notice from the Town, protect, support, temporarily disconnect or relocate its property in the same street when required by the Town 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.

§ A185-6. Construction and operation.

- A. Within 24 months of the effective date of this Agreement, Century will upgrade the system to a seventy-eight channel capacity.
- B. 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.

- C. 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.
- D. 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 Town following accepted construction procedures and practices and working through existing committees and organizations.
- E. 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.
- F. Any antenna structure used in the cable television system shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation.
- G. 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 Town.

§ A185-7. Signal quality.

Century will use commercially reasonable efforts to 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.

§ A185-8. 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 comply with all Federal Communications Commission rules and regulations, both present and future.

§ A185-9. Insurance and indemnification.

- A. By its acceptance of this Franchise, Century specifically agrees that it will pay all damages and penalties which the Town 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 Town, 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 Town, provided that the Town gives Century prompt notice in writing of any such claims, demands, actions, suits and proceedings, without limitation.
- C. The Town, to the extent provided by the statutory and common law of the State of Virginia and by the Constitution of the State of Virginia, will be responsible for acts of negligence or breach of obligation committed by the Town for which the Town 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 Town. This paragraph in no way waives the Town's limited right of sovereign immunity or protection under the applicable statutory limitation of liability available to municipalities generally in this state.
- D. Century shall maintain in full force and effect for the term of the Franchise, at Century's expense, a comprehensive liability insurance policy with the Town named as an insured, written by a company authorized to do business in the State of Virginia, protecting the Town 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. Evidence in the form of a certificate of insurance shall be provided to the Town upon request.

§ A185-10. 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 Town agrees to cooperate with Century in the prosecution of any such violations.

§ A185-11. Franchise fees.

Century will pay to the Town semi-annually, within 60 days following the end of June and December of each calendar year, an amount equal to 5% of Century's annual gross revenues ("franchise fee"). The franchise fee will be deemed to reimburse the Town for the rights granted herein and for all costs of regulation and administration of the Franchise.

§ A185-12. 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 Town upon written request.
- B. The Town 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 Town for review upon written request.

§ A185-13. Franchise renewal.

Upon completion of the term, the Town may grant renewal of this Franchise in accordance with the procedures for franchise renewals set forth in the Cable Communications Policy Act of 1984 and Television Consumer Protection and Competition Act of 1992.

§ A185-14. 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 Town.

§ A185-15. Termination; cancellation.

- A. In addition to all other rights and powers pertaining to the Town by virtue of this Franchise or otherwise, the Town 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 Town Council, to terminate and cancel this Franchise and all rights and privileges of Century hereunder in the event that Century:
 - (1) Willfully fails to reasonably carry out any material provision of this Franchise or any material rule, order, or determination of the Town pursuant to this Franchise.
 - (2) Becomes insolvent, unable or unwilling to pay its debts, or adjudicated bankrupt.
- B. Such termination and cancellation shall be by ordinance duly adopted after 60 days' notice to Century and shall in no way affect any of the Town's rights under this Franchise or any provision of law.

§ A185-16. Force majeure.

With respect to any provision of this Franchise 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 acts of God, war, civil disturbance, strike, labor unrest, or other events, the occurrence of which was not reasonably foreseeable by Century or is beyond Century's reasonable control.

§ A185-17. Additional regulations; severability; no waiver of rights; service of notices.

- A. The right is hereby reserved by the Town 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 Town acknowledges that acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressed or implied, by Century of any constitutional or legal right which Century may have or may be subsequently determined to have, either by subsequent legislation or court decisions. The Town acknowledges that Century hereby reserves its rights under applicable federal and state constitutions and law.
- D. All notices or correspondence to be served upon the Town or Century by the other party shall be in writing and delivered by first-class mail, postage prepaid, or by facsimile or by a national express mail service.

- (1) Notices or correspondence to the Town shall be addressed as follows:

Mayor
Town of Pennington Gap
131 Constitution Road
Pennington Gap, VA 24277

- (2) Notices or correspondence to Century shall be addressed as follows:

Century Virginia Corp.
P.O. Box 1300
Norton, VA 24273
ATTN: General Manager

With a copy to:

Century Communications Corp.
50 Locust Avenue
New Canaan, CT 06840
ATTN: Legal Department

- (3) The Town or Century may designate such other address or addresses from time to time by giving written notice to the other as set forth above.