

**CITY OF SCAPPOOSE**

**ORDINANCE NO. 707**

**AN ORDINANCE GRANTING A TELECOMMUNICATION  
FRANCHISE TO CENTURYTEL OF OREGON, INC., DBA  
CENTURYTEL; PROVIDING TERMS AND CONDITIONS  
THEREFOR.**

THE CITY OF SCAPPOOSE DOES ORDAIN AS FOLLOWS:

**Section 1. Franchise.** The City of Scappoose ("City") hereby grants to CenturyTel of Oregon ("CenturyTel") a non-exclusive franchise at CenturyTel's cost, to construct, place, erect, lay, maintain, and operate in, upon, over, and under the present and future streets, alleys, avenues, bridges, and public places of the City ("streets") poles, wires, cables, conductors, and other appliances and appurtenances ("facilities") for provision of telephone, telegraph and other telecommunication services to the City, the inhabitants thereof, and others and to persons and corporations beyond the limits of the City, subject to the terms and conditions and payments specified herein. For purposes of this agreement, "telecommunications services" shall have that meaning provided in ORS 759.005. This franchise does not authorize CenturyTel to operate a cable system or provide video programming as defined in Section 602 of the Cable Communications Policy Act of 1984, 47 USC Section 522. CenturyTel's authority to provide telecommunications services is limited to the authority obtained from the Oregon Public Utilities Commission ("PUC") and the Federal Communications Commission ("FCC").

**Section 2. Term.** This franchise shall be for the period of five (5) years, beginning July 1, 2001 and ending June 30, 2006.

**Section 3. Construction and Installation.** All lines and equipment under this grant shall be constructed in accordance with established practices as prescribed by current REA specifications and drawings and the rules and regulations of the Public Utility Commission of the State of Oregon, and its duly or legally constituted successors in authority; and the rights and privileges herein granted shall be subject at all times to such ordinances and reasonable regulations as are now or shall hereafter be ordained or passed by City concerning uses and excavations of City streets.

**Section 4. Location and Removal of Facilities.** CenturyTel's facilities may be strung upon poles or other fixtures above ground, direct buried or underground in pipes or conduits, at the option of City, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. CenturyTel's facilities shall not interfere with the City's water mains, sewer mains, gas mains or other municipal use of streets and other public places. CenturyTel's facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition.

**Section 5. Excavations.** As needed, CenturyTel may make excavations in any of such streets in the City for the purpose of placing, erecting, laying and maintaining poles, or other supports or conduits for wires, cables, appliances, and auxiliary apparatus or for repairing, renewing

or replacing the same. Such work shall be done in a timely and expeditious manner which minimizes the inconvenience to the public. Such work shall be done in compliance with all applicable rules, regulations, ordinances or orders which apply or may be adopted from time to time by the City. Except in emergencies, prior to making an excavation in any street, CenturyTel shall obtain from the City approval of the proposed excavation and of its location. Except in emergencies, CenturyTel shall notify the City at least 24 hours prior to starting excavation. When CenturyTel makes any excavation, CenturyTel shall promptly restore the affected portion of the street to the same condition in which it was prior to the excavation. The restoration shall be in compliance with directions, specifications, requirements and regulations of the City in effect at the time of such restoration. If CenturyTel fails to restore promptly the affected portion of a street to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by CenturyTel.

**Section 6. Reservation of Rights.** The City reserves the right, at its expense, to:

- a. Construct, install, maintain, remove and operate any public improvement, work or facility;
- b. Do any work that the City may find desirable on, over or under any street;
- c. Vacate, alter or close any street.

**Section 7. City Construction.** Whenever the City shall excavate or perform any work in any of the present and future streets, alleys and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb CenturyTel's facilities, the parties shall act in accordance with ORS 757.541 through 757.571; Chapter 691 Oregon Laws 1995; OAR 860-024-0005 and 0007, and all rules and regulations adopted by the Oregon Utility Notification Center.

**Section 8. Vacation.** Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency or instrumentality other than the City, CenturyTel's rights shall be preserved as to any of its facilities then existing in such street or public place except to the extent that the City may require removal or relocation of such facilities pursuant to Section 11.

**Section 9. System Improvements.** City shall have all authority provided by ORS 221.420(b) and may require CenturyTel, by ordinance or otherwise, to make such improvements, upgrades, modifications, additions, and extensions to its physical equipment, facilities, plant or service within the City as shall be reasonable or necessary in the interest of the public, and designate the location and nature of all improvements, upgrades, modifications, additions and extensions, the time within which they must be completed and all conditions under which they must be constructed or put into effect. The costs for such improvements shall be borne by CenturyTel.

**Section 10. Service Time Limits.** Facilities constructed or provided by CenturyTel, whether to new construction or existing structures, shall be installed pursuant to the provisions of OAR 860-023-0055 as that rule may be amended from time to time. Violation of this section shall be subject to the penalties of Section 23.



**Section 11. Removal of Facilities.** City may require, in the public interest, the removal or relocation of facilities maintained by CenturyTel in the streets of the City, at CenturyTel's expense, and CenturyTel shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. If the removal or relocation is required for the convenience or benefit of any person other than the City or other governmental agency, CenturyTel shall be entitled to reimbursement for the reasonable cost thereof from such person. Collection of such reimbursement shall be the responsibility of CenturyTel.

**Section 12. Destruction of Facilities.** In the event that CenturyTel's communications system, or any part thereof, is partially or wholly destroyed or incapacitated, CenturyTel shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

**Section 13. Moving of Buildings.** Whenever any person has obtained permission of the proper City officials to use any of City's streets for the purpose of moving any building or other large object, CenturyTel, upon reasonable notice from such person and such person paying the actual costs thereof, shall raise or remove any and all of said wires or cable which may obstruct the moving of such building or object so as to allow the unobstructed passage of the same; and in the case of the failure of CenturyTel to comply with the terms of this section, the City may remove said wires or cables at the expense of CenturyTel. When acting in conformity with this section, neither the City nor any of its employees shall be held liable for the consequences or cost of any act done in connection with the moving of such building or object, or rearrangement of wires or cables.

**Section 14. Emergencies.** If, in order to get fire ladders or other apparatus to a building during a conflagration or other emergency situation, it becomes necessary to cut or remove any wires, cables or other conductors or equipment of CenturyTel, City shall not be liable for any damages done to such wires, cables or conductors or equipment.

**Section 15. Annexations.** If during the term of this franchise the boundaries of the City are extended within the Scappoose Exchange Area, CenturyTel's service to annexed areas shall be in accordance with the terms of this franchise agreement, including payment of privilege taxes.

**Section 16. Use of CenturyTel's Facilities.** In further consideration of the rights and privileges granted herein, CenturyTel, its successors, and assigns hereby grant without charge to the City the right and privilege to suspend and maintain on poles placed by CenturyTel in the streets such signal wires as are necessary for City's exclusive use for fire alarm and police signal circuits, or other signal or control circuits, required by the City. In the event that CenturyTel discontinues use of poles in certain areas and underground circuits are substituted therefor, CenturyTel will reserve space in the underground conduit to accommodate City's fire alarm and police signal circuits and other signal circuits which otherwise would be suspended on CenturyTel's poles, without charge to City. All of City's wires shall be so placed on or in CenturyTel's poles or conduits so as not to interfere with CenturyTel's communication service, and shall not carry such electrical current or voltage as may endanger CenturyTel's plant or customers.

**Section 17. Privilege Tax.** In further consideration of the privilege hereby granted, CenturyTel shall pay to City, on a quarterly basis, a privilege tax equivalent to seven percent (7%) of CenturyTel's gross revenues earned within the boundaries of the City during the previous calendar quarter. For purposes of this section, "gross revenues" shall mean those revenues derived by CenturyTel from exchange access services, as defined in ORS 221.515 and ORS 401.710, less net



uncollectibles from such revenues. Payments under this section shall be made in quarterly installments to the City Clerk within thirty (30) days after the close of such quarter year or fraction thereof. Payments due for fractions of any quarter shall be prorated. CenturyTel shall furnish to City with each payment required by this section a written statement, under oath, executed by an officer of CenturyTel, showing the amount of CenturyTel's receipts within the City for the period covered by the payment, and certifying the truth and accuracy of the statement. The statement shall detail the revenues received by CenturyTel from its operation within the City, and shall specify the nature and amount of all exclusions and deductions from such revenues claimed by CenturyTel in calculating the payment due. If Oregon law or administrative rules are changed to allow a higher fee to be charged, including additional tax or charge on the telephone customer's bill, CenturyTel shall pay to City the higher privilege tax, effective as of the effective date of the law or rule and without amendment to this Ordinance.

**Section 18. Records and Audits.** CenturyTel shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 17 of this Ordinance. City may inspect the books of account at any time during business hours and shall have access to the books of the CenturyTel for the purpose of auditing or checking to ensure that the privilege tax has been correctly computed and paid. The City Council may require periodic reports from CenturyTel relating to its operations and revenues within the City. In the event that an inspection or audit results in an assessment by, and an additional payment due to the City, such additional payment shall be subject to interest at the rate of the current U.S. National Bank of Oregon prime rate plus two percent (2.5%) per year from the date the original tax payment was due.

**Section 19. Other Fees/Taxes.** Nothing in this Ordinance shall give CenturyTel any credit against any nondiscriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment levied on CenturyTel's property. Nothing in this Ordinance shall be construed to limit City's right to require CenturyTel to pay reasonable costs incurred by City in connection with the issuing of a permit, making an inspection, or performing any other service for or in connection with CenturyTel or its facilities, whether pursuant to this Ordinance or any other Ordinance or resolution now in effect or hereafter adopted by the City. To the extent that separate fees other than building permit fees for structures are imposed by the City on CenturyTel for street openings, construction, inspection or maintenance of fixtures or facilities, such fees may be deducted from the privilege tax imposed by this Ordinance. However, CenturyTel shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, Ordinances, resolutions, or permit conditions from the privilege taxes imposed by this Ordinance.

**Section 20. Regulations and Tariffs.** CenturyTel may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the CenturyTel to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Oregon. CenturyTel shall keep on file in its office in Lebanon, Oregon, or other location in the vicinity, copies of all its tariffs currently in effect and on file with the Public Utilities Commission. Such tariffs shall be available for inspection by the public. CenturyTel shall comply with all rules and regulations adopted by the Public Utilities Commission. CenturyTel shall furnish communication facilities within City, to City and to all persons, businesses and industries within City at the rates and under the terms and conditions set forth in its tariffs on file with the Public Utilities Commission. City and CenturyTel recognize that the lawful provisions of



the CenturyTel's tariffs on file and in effect with the Public Utilities Commission are controlling over any inconsistent provision in this franchise dealing with the same subject matter.

**Section 21. Safety Regulations.** City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not in violation of any state or federal laws. CenturyTel agrees to comply with all such regulations, now existing or duly adopted, in the construction, maintenance and operation of its facilities and in the provision of telecommunications services under this agreement.

**Section 22. Franchise Compliance.** The City Manager shall be responsible for determining CenturyTel's compliance with the terms of this Ordinance. Should the City Manager determine that CenturyTel is not in compliance, the City Manager shall notify CenturyTel, in writing, of the deficiency. CenturyTel may appeal the decision of the City Manager to the City Council by filing a written Notice of Appeal, specifying the grounds therefor, with the City Manager. The Notice of Appeal must be received by the City Manager not later than twenty (20) days from the date of City's mailing of the notice of the deficiency. After receiving a timely Notice of Appeal, the City Council shall, within sixty (60) days thereafter, hold a public hearing to review the appeal, and thereafter shall issue a decision, in writing, which decision shall be final.

**Section 23. Penalties.** Pursuant to ORS 221.510(2)(c), City may assess a penalty for each material violation by CenturyTel of any provision of this Ordinance, or for any failure by CenturyTel to perform or comply with any requirement of the City pursuant to this Ordinance. Such penalty shall be One-Hundred Dollars (\$100) per day during the continuation of each such violation or failure to perform. After thirty (30) days of non-payment of a penalty from the date of notice thereof, each penalty assessment shall bear interest at the rate of twelve percent (12%) per annum.

**Section 24. Pay Station.** Unless otherwise agreed to according to Section 38 of this Ordinance, CenturyTel shall maintain facilities in the City during normal business hours where its customers may pay their bills for service.

**Section 25. Maps.** CenturyTel shall maintain on file, at any office in Oregon, current maps and operational data pertaining to its operations and location of all facilities in City. City may inspect the maps and data at any time during business hours. Upon City's request, CenturyTel shall furnish, without charge to City, maps showing the location of the CenturyTel's facilities in the City.

**Section 26. Indemnity.** CenturyTel shall defend, indemnify and hold harmless City and its agents, officers and employees, from any and all claims, demands, and damages of any kind, including attorney fees, which may arise, in any manner, from the acts or omissions of the CenturyTel, its agents, officers or employees, in connection with the CenturyTel's operations pursuant to the privileges granted in this Ordinance. City will provide notice to CenturyTel of the pendency of any claim or action against City arising out of the exercise by CenturyTel of its franchise rights. CenturyTel will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.

**Section 27. Insurance.** CenturyTel shall secure, and maintain throughout the term of this franchise, insurance against liability in the forms of coverage and minimum amounts herein stated, and shall insure both CenturyTel and the City, its elected and appointed officers, officials, agents and

employees as additional insureds. The carrier, forms of coverage and amounts shall be submitted to City for its review and approval in advance of the performance of any work within public right of way:

- a. Commercial General Liability (CGL) coverage, with no exclusions for explosion, collapse or underground subsidence or claims between insureds, with limits not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000 in the aggregate);
- b. Automobile Liability coverage for any motorized vehicle, with limits of not less than One Million Dollars (\$1,000,000) per occurrence;
- c. Professional Errors and Omissions coverage in the same amounts as the CGL coverage above, and endorsed to include contractual liability;
- d. Workers' Compensation and Employer's Liability insurance coverage within statutory limits and including a waiver of subrogation in favor of the City;

All insurance provided under this section shall be primary in any claim made pertinent to CenturyTel's services under this agreement. CenturyTel's failure to comply with reporting or other provisions of its insurance policies shall not affect the coverage afforded to City. All policies shall be endorsed to require 60 days' prior written notice to City of any suspension or cancellation of coverage, and CenturyTel shall show proof of replacement coverage in amounts required by this section no later than 30 days after the date of notice to City of cancellation or non-renewal of prior insurance coverage.

**Section 28. Dispute Resolution.** Except for violations arising under Section 20 above, all disputes between the parties arising from this agreement shall be submitted to binding arbitration. If the parties cannot agree on a single arbitrator, each party shall select an arbitrator and the two arbitrators shall select a third arbitrator. The decision of the arbitrator shall be final and may be converted to a judgment by the prevailing party. The costs of arbitration shall be shared equally by the parties. Nothing in this paragraph shall preclude City from seeking injunctive relief in a court of competent jurisdiction to prevent violations of this Ordinance.

**Section 29. Successors in Interest.** This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of CenturyTel.

**Section 30. Publication Costs.** CenturyTel shall pay for all expenses relating to the publication of notice and Ordinances arising out of the process for obtaining this franchise.

**Section 31. Repealed.** Ordinance 649 is hereby repealed.

**Section 32. Acceptance.** CenturyTel shall, within thirty (30) days from the date of this Ordinance, file with City its written unconditional acceptance of this franchise. If CenturyTel fails to do so, this Ordinance shall be void.

**Section 33. Sale of CenturyTel.** In the event of sale or transfer of the majority of assets or stock of CenturyTel, CenturyTel shall notify City of such sale or transfer within 30 days thereof. Upon such notice, City may elect to renegotiate or otherwise alter the terms of this Ordinance.



**Section 34. Assignment.** CenturyTel shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the CenturyTel not including a third party, without City's written approval. Approval of the transfer or assignment shall not be unreasonably withheld.

**Section 35. Survival.** If any portion of this Ordinance is declared illegal or void by a court of competent jurisdiction, the remainder of the Ordinance shall survive and not be affected thereby. In such case, the parties shall proceed with due diligence to attempt to draft provisions that will achieve the original intent.

**Section 36. Attorneys' Fees.** In the event of litigation or arbitration arising under this franchise, the prevailing party shall be entitled to recover its costs and reasonable attorneys fees.

**Section 37. New Businesses by CenturyTel.** The City specifically reserves the right to impose a fee or tax, as allowed by law, on any new business undertaking of CenturyTel if operated within the City, and to otherwise separately regulate and obtain compensation for any other use of the City's rights of way than that specifically authorized herein.

**Section 38. Amendment.** This agreement may be amended by written amendment, signed by both parties.

First Reading: August 20, 2001

Second Reading: September 4, 2001

PASSED by the Council this 4<sup>th</sup> day of September, 2001 and signed by the Council President, and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON

  
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Floyd Pittard, Council President

ATTEST:

  
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Debi G. Schmit, City Recorder