ORDINANCE NO. 2010-_____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES (ORDINANCE NO. 223) OF THE TOWNSHIP OF MAIDENCREEK, BERKS COUNTY, PENNSYLVANIA, ADOPTING CHAPTER 91 ENTITLED "CABLE SERVICE PROVIDERS."

Be it ordained by the Board of Supervisors of the Township of Maidencreek, as follows:

SECTION 1. The Code of the Township of Maidencreek, Berks County, Pennsylvania is hereby amended by adopting new Chapter 91, entitled "Cable service Providers," which shall read as follows:

CHAPTER 91: CABLE SERVICE PROVIDERS

91-1 Title and Purpose

This chapter shall be known and may be cited as the Cable Service Provider Ordinance. The Purpose is to provide authorization and structure to the process of issuing franchises to Cable Service Providers. Notwithstanding anything to the contrary, nothing in this chapter shall be construed or interpreted to exceed any governing Federal or State Statutes concerning the granting of franchises and the administration of franchise agreements with Cable Service Providers, and this Chapter shall be construed and administered consistent with the provisions of such applicable Federal and State Statutes.

91-2 Definitions

For the purpose of this Chapter, the following terms, phrases and words shall have the following meanings:

1. "Cable Service Provider" means any duly licensed Person qualified to and approved to offer Cable Service.
2. "Cable Service" is the provision of any lawful service through data transmission or electrical or electronic signal transmission for which the Township may by law be entitled to receive Franchise Fees including television service and all related services and facilities.
3. "Cable System" means a facility that crosses public rights of way, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services video programming, but such term does not include: (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings not including single family dwellings under common ownership, control or management, unless such facility or facilities uses any public right of way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions

of Title II of the Communications Act of 1934, except that such facility shall be considered as a cable system to the extent such facility is used in transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility system.

4. “Franchising Authority” is the Township of Maidencreek, Berks County, Pennsylvania.

5. “Gross Revenue” means all receipts of income by Cable Service Providers derived from offering Cable Service through a Cable System within the Township that are allowed to be the subject of franchise fees under federal and/or state law, including any such revenues from, basic, premium, and pay-per-view video fees, installation fees, subscriber equipment rental fees, advertising revenue (excluding agency commissions), and locally derived revenue or commissions from home shopping channels. Gross Revenue does not include refundable deposits, bad debts, late fees, investment income, advertising sales commissions, or taxes, franchise fees or assessments imposed by any governmental authority. Notwithstanding anything to the contrary, Gross Revenue also does not include any income against which Townships are not entitled to collect Franchise fees under federal and/or state enabling legislation as amended from time to time.

6. “Grantee” is any person or entity which is granted a non-exclusive franchise pursuant to the terms of this Chapter.

7. “Board of Supervisors” is the Board of Supervisors of the Township of Maidencreek, Berks County, Pennsylvania.

8. “Person” is any individual, firm, partnership, association, corporation, Limited Liability Company, or other company or organization of any kind, whether for profit or not for profit.

9. “Township” is the Township of Maidencreek.

91-3 Franchise Required

No Person or Cable Service Provider shall provide any Cable Service or operate a Cable System within the Township without first obtaining a franchise from the Township pursuant to the terms of this Chapter. A non-exclusive franchise to construct, operate and maintain a Cable System and to provide Cable Service within all or any portion of the Township is required of any Person desiring to provide Cable Service in the Township. A franchise may be granted by the “Board of Supervisors” by Resolution

or written approval of a franchise agreement to any person, firm, or corporation, whether operating under an existing franchise or not, who or which offers to furnish and provide such Cable Service. Such franchises shall be Non-exclusive. No right to use and occupy said streets, alleys, public ways and places granted pursuant to this Chapter shall be deemed to be exclusive, and the Township reserves the right to grant co-extensive rights to any other qualified Cable Service Provider at any time and from time to time in the future.

91-4 Compliance with applicable Laws and ordinances

. Grantees shall, at all times during the term of a franchise granted pursuant hereto, be subject to all lawful exercise of the police power by the Township, and to such reasonable regulation, pursuant to the exercise of such police power, as the Township, Commonwealth of Pennsylvania or United States of America shall hereafter by resolution, ordinance, statute or regulation provide including but not limited to:

1. Interference. If there is any interference on any television, radio, or other electronic device not connected with the conductors or fixtures of the Grantee, the Grantee shall immediately at its own cost and expense eliminate such interference. If such interference cannot be eliminated within forty-eight (48) hours after notice to do so Township may direct the suspension of the operation of the Grantee within the affected area of the Township until such interference is eliminated.
2. Building Permits. In addition, the Grantee shall apply for and take out building permits, required by the Township for construction of buildings, placement of poles, attachments to bridges, and cuts into streets and sidewalks to be undertaken by Grantee. Such permits will not be unreasonably withheld or delayed by the Township but shall be issues in the normal course. Grantee shall pay a fee for inspections of any work involved in the public right of way including but not limited repairs to roads due to cuts or other disturbance. No permit shall be required for individual subscriber connections or terminations or for routine maintenance and repair that does not impede traffic or cause occupancy of any public right of way.
3. Fees. The fee shall be fixed by Resolution of the Board of Supervisors from time to time.

91-5 Indemnification and Insurance

Grantee shall indemnify and save harmless the Township and its elected and appointed officials, employees and agents from any suit, judgment, claim, demand, loss cost or expense of any kind whatsoever, including all counsel fees and court costs arising out of or in any way relating to the Grantees activities and/or operations within the Township including but not limited to the operation, the construction, maintenance or repair of its Cable System in the Township, The Township shall notify the Grantee as

soon as reasonably possible upon the presentation of any suit, claim or demand made against the Township on account of any damages or losses as aforesaid resulting from the operations of the Grantee. The Township shall promptly notify Grantee of any such claim or legal proceeding and afford Grantee the opportunity to participate in and otherwise defend (subject to the duty to cooperate with the Township) any such action or proceeding and any related compromise, settlement, resolution or disposition of such claim or proceeding. Both parties will cooperate fully with each other in the defense of such claim and make available to Grantee all such information under its control relating thereto. Notwithstanding the foregoing, Grantee shall be solely responsible and liable for all costs, fees, judgments, awards, and/or settlement payments.

The Grantee shall furnish to the Township, prior to the grant of a franchise hereunder, evidence in writing that the Grantee has in full force and effect public liability insurance of not less than $1,000,000.00 for any one person and $2,000,000.00 for any one incident, and property damage insurance of not less than $1,000,000.00 duly issued by an insurance company or companies authorized to do business in the Commonwealth of Pennsylvania, said insurance to cover all operations by the Grantee within the Township. Upon request, written evidence of the maintenance of such insurance in full force and effect shall be furnished annually thereafter to the Township and such other terms as shall be provided for in the Franchise Agreement.

91-6 Grantee Rules

The Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under a franchise granted pursuant to this Cable Television Ordinance and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, additional regulations or ordinances of the Township, or the laws of the Commonwealth of Pennsylvania or the United States of America.

91-7 Street Occupancy

1. Use. All transmission and distribution structures, lines and equipment erected by the Grantee within the Township shall be so located as to cause minimum interference with the use by all others of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of owners of property which abut the said streets, alleys or other public ways and places.

2. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, Grantee shall at its own cost and expense and in a manner approved by the Township Engineer or other person designated by the Board of Supervisors, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced.

3. Relocation. In the event that at any time during the period of any franchise granted pursuant to this Chapter, the Township shall lawfully elect to alter or change the grade or location of any street, alley, or other public way, Grantee, upon reasonable notice by the Township, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

4. Placement of Fixtures. Grantee, insofar as it is reasonably possible to do so, shall locate its wires, cables, conduits and other television conductors and fixtures on existing utility poles of either the electric or the telephone company. Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main or other utilities, and all such poles or other fixtures placed in any ultimate street right of way shall be placed in such a way as not to impede or interfere with sight distances the flow of traffic, or other safety concerns. Ordinarily facilities may be placed at the outer edge of the sidewalk and inside the curb line; those placed in alleys shall be placed close to the line of the lot abutting on said alley, and in such a manner as not to interfere with the usual travel on said alleys and shall otherwise place all facilities in accordance with all applicable codes and ordinances..

5. Temporary Removal of Wire for Building Moving. Grantee shall, on the request of any person holding a building permit issued by the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than 20 days advance notice to arrange for such temporary wire changes.

6. Tree Trimming. Grantee shall have the authority to the same extent that the Township has such authority, to trim trees and upon overhanging streets, alleys, sidewalks and public places of the Township so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

91-8 Township Rights.

1. Township Rules. Township may at any time adopt by Resolution such additional reasonable regulations as it shall find prudent or necessary in the exercise of the

police power, provided that such regulations shall not be in conflict with the laws of the Commonwealth of Pennsylvania and the United States.

2. Use of facilities by Township. The Township shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of Grantee within the Township wires and fixtures necessary for any municipal purpose including but not limited to police communications, fire alarm and emergency management, civil defense or other use systems. Township will be responsible for installation and maintenance of any such systems. If any such systems interfere with operation or maintenance of the Cable System, then the Township shall move or remove the same upon reasonable notice from Grantee.

3. Inspection. The Township shall have the right to inspect all construction or installation work during such construction or installation or at any time after completion thereof, in order to insure compliance with the provisions of this Chapter and all other governing ordinances.

91-9 Service to Institutions

Grantee will, upon request, provide free installation and standard Cable Service to one (1) outlet in each municipal building, public and private school building and police facility, fire and ambulance station within Township provided such structures are within 200 feet of existing service area.

91-10 Expansion

Grantee shall have no obligation to extend the Cable System beyond that which exists on the effective date of this Chapter except in accordance with Grantee's then current line extension policy. Notwithstanding the foregoing, Grantee shall use all reasonable efforts to provide Cable Service to all residents of the Township who request the same. Specifically, Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least 35 dwelling units per linear mile and is within one mile of the existing Cable System.

91-11 Payments to the Township

Any Grantee holding a franchise pursuant to the terms of this Chapter shall pay to the Township a Franchise Fee for the privilege of operating its Cable System the sum of up to 5 percent (5%) of the annual Gross Revenue of the Cable Service Provider. Payment shall be made as agreed between the Township and the Cable Service

Provider but in no event later than March 31st of each year for the preceding calendar year.

91-12 Records and Reports

The Grantee shall at all times maintain adequate records of the gross receipts from service rental income, which shall be available at all reasonable times during regular business hours to inspection by the Township through it duly designated agents or officers.

91-13 Franchise term

Any franchise granted hereunder shall be for the initial term of five (5) years. Unless otherwise required by any applicable Federal or State statute, the Franchise may be renewed by the Township at five (5) year intervals. The Grantee shall give the Township six (6) months notice of its intent to request each renewal; otherwise the franchise shall terminate at the end of the then current term.

91-14 Applications

All applicants for a franchise shall submit to the Township a statement containing the following:

1. Name of the applicant.
2. Address of the applicant.
3. Evidence of financial condition of the applicant and, if the applicant is a corporation or partnership, the names of the principal stockholders or partners, whichever is applicable. A financial statement of the person or corporation shall be submitted and shall be certified b a certified public accountant.
4. Description of the area to be covered by the franchise.

Upon receipt of the above information, together with such other information as is requested by the Township, the Board of Supervisors shall determine whether or not it is in the best interests of the Township to grant a franchise to the applicant.

91-15 Termination of Franchise

Upon revocation of the franchise by the Township, or if any franchise is not renewed, Grantee shall remove all of its equipment and other facilities from the Township within a reasonable time, and shall restore as nearly as possible all public and private property affected thereby to the condition it was in prior to the installation of

such equipment and facilities by said company. Nothing in this section shall be construed to require removal otherwise prohibited by any applicable Federal or state statute.

In addition to all other rights and remedies retained by the Township under this Chapter, the Township shall have the right to revoke a franchise if the Grantee knowingly fails to substantially comply with any material provisions of this Chapter or the Franchise Agreement. The Township shall not have the right to revoke a franchise if the Grantee cures the material breach in accordance with Section A below or if the material breach occurs without fault of the Grantee or occurs as a result of circumstances beyond Grantee's control. Revocation shall be by ordinance duly adopted by three-fourths (¾) of all the members of the Board of Supervisors, in accordance with the following procedures:

1. The Board of Supervisors shall notify the Grantee in writing of the alleged failure of compliance, setting forth the reasons for alleging that the failure is knowing, material and substantial. The Grantee shall have sixty (60) days subsequent to the receipt of the notice to correct the failure and respond to the Board of Supervisors.

2. Within thirty (30 days of the receipt of the Grantee's response, or if the Grantee fails to respond, the Board of Supervisors, if it concludes that a basis for revocation still exists, shall notify the Grantee in writing of this conclusion.

3. Within thirty (30) days of the determination that a basis for revocation exists, the Board of Supervisors shall hold a public hearing upon reasonable notice and affording due process to consider revocation. At the public hearing, the Grantee shall be given an opportunity to address the grounds for revocation including the right to present evidence and examine witnesses in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. The Board of Supervisors will provide a stenographic record of the public hearing. The Board of Supervisors shall, within twenty-one (21) days of the hearing, either determine not to revoke the franchise, or, upon stated grounds, revoke the franchise absolutely or conditionally. No revocation will be deemed effective, however, until either the Grantee accepts in writing the ruling of the Board of Supervisors or has exhausted all its administrative and judicial appeals and the Board of Supervisors' ruling has been upheld by a court of last resort.

4. Unless otherwise noted, all Notices shall be in writing and shall be sent by either U.S. Postal Service via certified mail – return receipt requested,

hand delivery or by a nationally recognized overnight courier service that guarantees next day delivery.

91-16 Franchise Renewal

In accordance with Section 626 of the Cable Act 47 U.S.C.§ 546, a franchise may be renewed by the Township pursuant to the procedures established in this section and applicable federal and state law and regulations.

1. During the six-month period which begins with the 36th month before the expiration of the franchise, the Township may on its own initiative, and shall at the request of the Grantee, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purposes of:

   (A) Identifying future cable-related community needs and interests; and

   (B) Reviewing the performance of the Grantee under the franchise during the then current franchise term. If the Grantee submits, during such six-month period, a written renewal notice requesting the commencement of such a proceeding, the Township shall commence such a proceeding not later than six months after the date such notice is submitted.

2. A) Upon completion of such proceedings, the Grantee may submit a proposal for renewal. Upon the request of the Township, a Grantee shall submit a proposal for renewal.

   B) Subject to restrictions contained in the Cable Act, including Section 624, any such proposal shall contain such material as the Township may require, including proposals for an upgrade of the cable system.

   C) The Township may establish a date by which any such proposal shall be submitted.

3. Upon submittal of a proposal for the renewal of a franchise, the Township shall provide prompt public notice of such proposal and, during the 4-month period which begins on the completion of any proceedings under subparagraph A, shall either renew the franchise or issue a preliminary assessment that the franchise should not be renewed and commence at the request of the Grantee or on its own initiative, an administrative proceeding to consider whether:

   a) the Grantee has substantially complied with the material terms of the existing franchise, this Chapter, and applicable law,

b) the quality of the Grantee's cable service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality and level of programming or other services provided over the system, has been reasonable in light of community needs,

c) the Grantee has the financial, legal and technical ability to provide the cable services, facilities and equipment as set forth in the proposal, and

d) the Grantee's proposals are reasonable to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

4. In any administrative proceeding, the Grantee and the public shall be afforded adequate notice, and the Grantee and the Township shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

5. At the completion of an administrative proceeding, the Township shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and shall transmit a certified copy of such decision to the Grantee. Such decision shall state the reasons thereof.

6. Any refusal to renew a franchise or denial of a proposal for renewal shall be based only on one or more adverse findings made with respect to the factors set forth in subparagraph 3, based upon the record of the proceeding. The Township may not base a refusal to renew or a denial of renewal upon factors 3(a) and 3(b) unless the Township has given a Grantee notice of and an opportunity to cure violations or problems, or has waived its right to object to, or effectively acquiesced in, such violations and problems.

7. If a Grantee's proposal for renewal has been denied by a final decision of the Township made pursuant to this section, or if the Grantee has been adversely affected by a failure of the Township to act in accordance with the procedural requirements of this section, the Grantee may appeal such decision or failure pursuant to the provisions of the then appertaining provisions of the Cable Act. The court may grant appropriate relief if it finds that any action of the Township is not in compliance with the procedural requirements of this section or that the denial of the renewal proposal by the Township is not in compliance with the procedural requirements of this section or that the denial of the renewal proposal by the Township is not supported by a preponderance of the evidence based on the record of the proceeding conducted under this section.

8. Any decision of the Township on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred, or the opportunity therefore has lapsed.

9. Notwithstanding the provisions of this section, a Grantee may submit a proposal for the renewal of a franchise at any time, and the Township may after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced.) The provisions of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a proposal for renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections A through F of this section.

If the current franchise expires by its own terms before the Township and the franchise or before the completion of the formal renewal procedures set forth in this section, the Township may extend the expiration date of the current franchise until either a new franchise has been granted or the Township's denial has been upheld by the court of last resort. Notwithstanding anything to the contrary, nothing in this Section shall prevent the Township from renewing a Franchise by resolution and continuing to collect franchise fees so long as a Cable Service Provider continues to provide Cable Service within the Township.

91-17 Severability

The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid to unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this Ordinance.

SECTION 2. Repealer

All ordinances or parts of ordinances conflicting with the provisions of this Chapter are hereby repealed insofar as they are inconsistent herewith.

SECTION 3. Savings Clause

This Ordinance is intended to comply with applicable federal and State Statutes and shall be interpreted in a way consistent with such statutes. .

SECTION 4. Effective Date.

This Ordinance shall become effective upon enactment.

ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of the Township of Maidencreek, Berks County, Pennsylvania in lawful session duly assembled this ___ day of _____, 2010.

BOARD OF SUPERVISORS OF
MAIDENCREEK TOWNSHIP

_____
Claude Beaver

_____
Roy Timpe

Attest:

_____
Diane Hollenbach, Township Manager

_____
Joseph E. Rudderow, III