ORDINANCE NO. 239

AN ORDINANCE OF THE TOWNSHIP OF MAIDENCREEK, BERKS COUNTY, PENNSYLVANIA AMENDING THE CODE OF ORDINANCES (ORDINANCE NO. 223) AND AUTHORIZING THE GRANTING OF NON-EXCLUSIVE CABLE FRANCHISES FOR CABLE SERVICE PROVIDERS TO PROVIDE CABLE SERVICE TO THE RESIDENTS OF MAIDENCREEK TOWNSHIP.

WHEREAS, Maidencreek Township, Berks County, Pennsylvania (Township) may by law grant cable service franchises within its borders; and,

WHEREAS, Maidencreek Township has considered the adoption of a cable television franchise agreement;

WHEREAS, Maidencreek Township is authorized to grant one or more nonexclusive, revocable, franchises to construct, operate, and maintain, within the Township, a system for providing "Cable Service" as defined in the Franchise Agreement and the Cable Act within the Township and

NOW THEREFORE the Board of Supervisors of Maidencreek Township, Berks County, Pennsylvania, in public session lawfully convened does hereby ENACT and ORDAIN as follows:

SECTION I. Amending Provisions

Part II General Legislation, Chapter 91 Cable Service Providers, Article 2 Definitions Section 91-2 is hereby amended in the following manner:

A) "Cable Service" is amended to read "Cable Service or Service" as follows:

The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

B) "Cable System" is amended to read as follows:

A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Township, 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 Subscribers without using 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 Cable Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 521 of the Cable Communications Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Communications Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

C) "Gross Revenue" is amended to read "Gross Revenues" as follows:

All revenue received by Franchisee or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Franchisee's Cable System in the Township to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

(1) Basic Service fees;
(2) fees charged to Subscribers for any Cable Service tier other than Basic Service;
(3) fees charged for premium Cable Services;
(4) fees charged to Subscribers for any optional, per-channel or per program Cable Services;
(5) revenue from the provision of any other Cable Services;
(6) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for Cable Service;
(7) fees for downgrading any level of Cable Service programming;
(8) fees for service calls on Cable Services;
(9) fees for Leased Access Channels;
(10) charges based on the sale or lease of any portion of the Cable System for Cable Service;
(11) rental or sales of any and all Cable Service equipment, including converters and remote control devices;
(12) any and all locally derived advertising revenues on a pro rata basis;
(13) fees charged for use of any Cable Service equipment, including cable transmission wires, by any other entity;
(14) revenues or commissions from locally derived home shopping channels on a pro rata basis;
(15) revenue from interactive Cable Services;
(16) fees for any and all Cable music services where such services are available to
Subscribers as an optional service and/or on a subscription basis;
(17) fees for video-on-demand;
(18) late payment fees on Cable Services;

Gross Revenues shall not include bad debts; program launch fees, interest income; refundable deposits; or any taxes on services furnished by Franchisee

and imposed directly upon any Subscriber or user by the Township, state, federal or other governmental unit. In the event of any dispute over the classification of revenue, the Township and franchisee agree that reference should be made to generally accepted accounting principles ("GAAP").

Part II General Legislation, Chapter 91 Cable Service Providers, Article 11 Payments to Township Section 91-11 is hereby amended in the following manner:

A) "Payments to Township" is amended to read as follows:

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 of the sum of up to five percent (5%) of the annual gross revenue of the cable service provider. In the event that federal law is amended to authorize a franchise fee higher than five percent (5%), the franchise fee shall automatically adjust to the highest rate allowable by law with such adjusted fee payable by Franchisee upon the effective date of such amendment. Payment shall be made as agreed between the Township and the cable service provider but in no event later than March 31 of each year for the preceding calendar year.

Part II General Legislation, Chapter 91 Cable Service Providers, Article 12 Records and Reports Section 91-12 is hereby amended in the following manner:

A) "Records and Reports" is amended to read as follows:

The grantee shall at all times maintain adequate records of the gross receipts from service rental income, which shall be reported, together with a statement showing the basis for computation of fees, on a quarterly basis to the Township within ten (10) days of each franchise fee payment. The statement shall contain line items for all sources of revenue received and the amount of revenue received from each source. The report shall be verified by an authorized representative of Franchisee.

Part II General Legislation, Chapter 91 Cable Service Providers, Article 13 Franchise Term Section 91-13 is hereby amended in the following manner:

A) "Franchise Term" is amended to read as follows:

Any franchise granted hereunder shall be for an initial term as agreed upon by the Township and Franchisee. Unless otherwise required by any applicable federal or state statute, the franchise may be renewed at the Township's discretion. The grantee shall give the Township six months' notice of its intent to request each renewal; otherwise the franchise shall terminate at the end of the then-current term.

SECTION II. Grant of Franchise The Board of Supervisors hereby authorizes the entering into of Cable Franchise Agreements between Maidencreek Township and Cable Service

Providers to construct, install, maintain, and operate a Cable System to provide Cable Service to the residents of Maidencreek Township.

SECTION III. Construction and Severability In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Township that such remainder shall be and shall remain in full force and effect.

SECTION IV. Repealer All ordinances or parts of ordinance conflicting with the provisions of this ordinance are hereby repealed insofar as they are inconsistent herewith.

SECTION V. Effective Date This Ordinance shall become effective five (5) days after its adoption.

ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of Maidencreek Township, Berks County, Pennsylvania, in lawful session duly assembled this ____ day of _____, 2016.

BOARD OF SUPERVISORS OF
MAIDENCREEK TOWNSHIP

_____
Joseph E. Rudderow, III, Chairman

_____
Claude Beaver, Supervisor

_____
Diane Hollenbach, Township Manager

_____
David Franke, Supervisor