

ORDINANCE NO. 06-1

AN ORDINANCE OF THE TOWNSHIP OF UNION, UNION COUNTY, PENNSYLVANIA, GRANTING A CABLE TELEVISION FRANCHISE TO D&E COMMUNICATIONS, INC. TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWNSHIP OF UNION, UNION COUNTY, PENNSYLVANIA; SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION OF THE CABLE TELEVISION SYSTEM.

WHEREAS, D&E Communications, Inc., a Pennsylvania corporation ("Grantee"), has begun construction for its digital television network in the Township of Union, Union County, Pennsylvania ("Township") and intends to operate a cable television system in the Township; and

WHEREAS, the Township's Board of Supervisors ("Board") has determined that it is advisable to grant Grantee a franchise for cable system operation within the Township and that rules and regulations be promulgated to protect the general welfare of the public; and

WHEREAS, the Grantee is desirous of obtaining a franchise to commence cable television operations within the Township; and

WHEREAS, the Township has reviewed and is satisfied with the qualifications of the Grantee and its performance in operating its local telephone system.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF UNION, UNION COUNTY, PENNSYLVANIA, AND IT IS HEREBY ENACTED AND ORDAINED BY THE AUTHORITY OF THE SAME AS FOLLOWS:

**Section 1. Grant of Authority**

- 1.1 The Township hereby grants to the Grantee the nonexclusive right and privilege within the Township ("Franchise") to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Township of a cable television system.

**Section 2. Compliance with Applicable Laws and Ordinances**

- 2.1 The Grantee shall, at all times during the duration of this Franchise, be subject to all lawful exercise of the police power by the Township and to such reasonable regulation, not inconsistent with the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq., as amended, as the Township shall hereafter lawfully provide.

### **Section 3. Duration of Franchise**

- 3.1 The duration of the rights, privileges and authority hereby granted shall be for an initial term of ten (10) years from the date of enactment of this Ordinance by the Board; provided, however, that the Grantee shall have the right to extend this Franchise for one additional five (5) year term upon notice to the Board not later than twelve (12) and not earlier than thirty-six (36) months prior to the expiration of the then current term, subject to appropriate review by the Board of the Grantee's compliance with the terms of this Franchise and the Grantee's ability to meet the future cable-related needs of the Township.
- 3.2 The Board shall have the right to increase the franchise fee payable under Section 4 of this Ordinance after the first five (5) years of the initial term of the Franchise upon notice given to Grantee at least ninety (90) days before expiration of the first five (5) years of the said initial term and also for the additional extension term set forth in Section 3.1 hereof upon notice given to Grantee within ninety (90) days following receipt of Grantee's extension notice, provided that such fee does not exceed the legal limit and further provided that Grantee shall not be required to pay at a rate in excess of the franchise fee applicable to or payable by any other multichannel video program distributor under the Township's jurisdiction.
- 3.3 Notwithstanding anything to the contrary herein, renewal of the Franchise shall be governed by the procedures, rights, and remedies set forth in Section 626 of the Communications Act of 1934, 47 U.S.C. Section 151, et seq., as amended by the Cable Communications Policy Act of 1984, Pub. L. 988-549.

### **Section 4. Payment to Township**

- 4.1 For use of the streets and other facilities of the Township in the operation of the cable television system and for the municipal supervision thereof, the Grantee shall pay to the Township an amount equal to three percent (3%) of the Grantee's basic cable subscriber revenues and pay cable revenues from operations within the Township during each twelve (12) month period of the initial and extension terms of the Franchise. For purposes of this Ordinance, "basic cable subscriber revenues" shall mean those revenues derived by Grantee from periodic service charges made in connection with the carriage of simultaneous television broadcast signals and Federal Communications Commission mandated non-broadcast video services within the Township, but shall not include any refunds or credits made to subscribers, any taxes imposed on the services furnished by Grantee or revenues derived from ancillary or auxiliary services. "Pay cable revenues" shall mean those revenues derived by Grantee from delivery over the cable television system of video signals to subscribers for a fee or charge (over and above the charge for basic cable service) on a per program, per channel or other subscription basis.
- 4.2 Payments to the Township hereunder by Grantee shall be made on or before February 1<sup>st</sup> of each year for the twelve-month period ending on the previous December 31<sup>st</sup>.

**Section 5. Indemnification**

- 5.1 The Grantee shall hold the Township harmless from any and all losses, damages, costs or fees resulting from any suit, judgment, execution, claim or demand whatsoever arising out of the construction, maintenance, or operation in the Township of the cable television system or other apparatus under the control of the Grantee. The Township shall notify the Grantee within thirty (30) days after the presentation of such claim or demand, whether by suit or otherwise, made against the Township. Within thirty (30) days from the date of enactment of this Ordinance, the Grantee shall furnish satisfactory evidence in writing that it has in force public liability insurance of not less than One Million (\$1,000,000.00) Dollars combined single limit, duly issued by an insurance company or insurance companies authorized to do business in the Commonwealth of Pennsylvania.

**Section 6. Standards of Service**

- 6.1 Grantee shall provide all subscribers within the Township with a quality signal for each channel offered by Grantee in the Township.
- 6.2 Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Interruptions within Grantee's control (for repairs and similar service), insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
- 6.3 Insofar as possible, the Grantee shall investigate subscriber complaints within twenty-four (24) hours following receipt of the complaint and shall resolve complaints promptly. The Grantee shall maintain a toll-free business telephone number so as to receive requests for repairs or service or complaints during regular business hours. The Grantee shall have a repairman on call from 8:30 a.m. to 11:30 p.m. each day, seven days a week.
- 6.4 Grantee shall, at all times during the term of this Franchise or any extension thereof, maintain a current map of its cable television system in the Township, which map shall be available at reasonable times for inspection by the Township through its duly designated agents or officers.

**Section 7. Construction and Restoration**

- 7.1 All transmission and distribution structures, lines and equipment erected by the Grantee within the Township shall be located so as to cause minimum interference with the reasonable use of the streets, alleys, and other public ways and places, and cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places.
- 7.2 In case of any disturbances of pavement, sidewalk, driveway, or other surfacing, the Grantee shall at its sole cost and expense and in a manner approved by the Township Road Master or Engineer, replace or restore all paving, sidewalk,

driveways, or surface of any street or alley disturbed to the same condition as before said work was commenced.

**Section 8. Right of Revocation**

- 8.1 The Township shall have the right to rescind or revoke the rights herein granted upon any substantial violation by the Grantee of any of the obligations contained herein after written notice by the Board to the Grantee and continuation of such violation.
- 8.2 Such written notice to the Grantee shall specify precisely the manner in which the Grantee is in violation of the Franchise.
- 8.3 The notice given by the Township shall give the Grantee a specified, reasonable amount of time within which to correct the violation, but in no event shall the time period be less than sixty (60) days from the date of receipt of the notice by the Grantee.
- 8.4 Grantee shall have the right, within sixty (60) days from the date of receipt of revocation notice from the Township, to demand that prior to any revocation of the rights granted herein the Township shall hold a public hearing regarding any alleged violation that forms the basis for such revocation, at which Grantee shall have the right to respond to such allegations and to present to the Township evidence on its behalf. Such public hearing shall be scheduled by the Township not less than ten (10) days nor more than forty-five (45) days following the date on which Grantee's demand is made. The Township shall render its decision, in writing, regarding revocation of Grantee's license within thirty (30) days following the date of such public hearing.

**Section 9. Transfer**

- 9.1 Grantee shall have the right to transfer or assign any right, interest, or privilege granted or vested by this Ordinance without prior approval of the Township; provided, however, that Grantee's assignee shall agree in writing to be bound by and perform Grantee's obligations under this Franchise.

**Section 10. Separability**

- 10.1 If any section, sub-section, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid by any court of competent jurisdiction, or any state or federal agency having jurisdiction over such matters, such portion shall be deemed a separate, distinct, and independent provision and such holdings shall not affect the validity of the remaining portions hereof.

**Section 11. Regulatory Action**

- 11.1 The performance by the Grantee hereunder is subject to limitations, restrictions, requirements, or regulations, including but not limited to the regulation of rates, now existing or which may henceforth be imposed by law, rules, or order of the Federal Communications Commission or any other government, board, commission or authority of any kind. The Grantee shall not be deemed in

breach of any of the requirements of this Ordinance to the extent it performs in accordance with or refrains from doing anything prohibited by law, rules, or order.

- 11.2 Upon the written request of the Township, Grantee agrees to provide the Township with copies of such books, records and other documents, related to Grantee's business in the Township, as the Township, in the reasonable exercise of its discretion, deems necessary.

**Section 12. Notices**

- 12.1 All notices or other communications hereunder shall be in writing and deemed given if mailed by registered or certified mail, return receipt requested, to the Township or the Grantee at the addresses set forth below or such other addresses as shall be specified by notice by one party to the other hereunder:

To the Township:

Union Township  
Attn: Township Secretary  
P.O. Box 184  
Winfield, PA 17889

With a copy to:

Andrew D. Lyons, Esquire  
51 North Third Street  
P.O. Box 264  
Lewisburg, PA 17837

Or The Township Solicitor at such time.

To Grantee:

D&E Communications, Inc.  
Video Business Manager  
124 East Main Street  
P.O. Box 458  
Ephrata, PA 17522-0458

With a copy to:

D&E Communications, Inc.  
441 Science Park Road  
State College, PA 16803  
ATTN: General Manger

**Section 13. Publication Costs**

- 13.1 Grantee shall assume the cost of publication of this Ordinance, in the event publication is required by law, and shall reimburse the Township therefor upon receipt of notification of the cost thereof.

**Section 14. Repeal**

14.1 All ordinances or parts of ordinances conflicting or inconsistent with the provisions of this Ordinance be and the same are hereby repealed.

**Section 15. Effectiveness**

15.1 This Ordinance shall become effective five (5) days after its enactment.

ENACTED AND ORDAINED as an Ordinance of the Township of Union, Union County, Pennsylvania, this 7<sup>th</sup> day of March, 2006

ATTEST:

TOWNSHIP OF UNION:

Shirley L. Doyle  
Shirley L. Doyle, Township Secretary

By: R. Nelson Poe  
R. Nelson Poe, Chairman  
Thomas R. Reitz  
Thomas R. Reitz, Supervisor  
K. Palmer Felme  
K. Palmer Felme, Supervisor