

1                   **MUNICIPAL TELECOMMUNICATIONS AMENDMENTS**

2                                   2013 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Keith Grover**

5                                   Senate Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

9                   This bill amends provisions related to a rate charged by a municipality for cable  
10 television or public telecommunication service.

11 **Highlighted Provisions:**

12                   This bill:

13                   ▶ requires a municipality that offers cable television service or public  
14 telecommunication service to charge a rate that is just and reasonable for the  
15 service;

16                   ▶ prohibits a municipality from collecting compensation in excess of a rate or  
17 discounting a rate;

18                   ▶ repeals outdated language; and

19                   ▶ makes technical corrections.

20 **Money Appropriated in this Bill:**

21                   None

22 **Other Special Clauses:**

23                   None

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26                   **10-18-104**, as enacted by Laws of Utah 2001, Chapter 83

27                   **10-18-301**, as enacted by Laws of Utah 2001, Chapter 83



28           **10-18-303**, as last amended by Laws of Utah 2009, Chapter 388

29 ENACTS:

30           **10-18-303.5**, Utah Code Annotated 1953



31  
32 *Be it enacted by the Legislature of the state of Utah:*

33           Section 1. Section **10-18-104** is amended to read:

34           **10-18-104. Application to existing contracts.**

35           (1) (a) If before the sooner of March 1 or the effective date of the chapter, the  
36 legislative body of a municipality authorized the municipality to offer or provide cable  
37 television services or public telecommunications services, each authorized service:

- 38           (i) is exempt from Part 2, Conditions for Providing Services; and
- 39           (ii) is subject to Part 3, Operational Requirements and Limitations.

40           (b) The exemption described in Subsection (1)(a)(i) may not apply to any cable  
41 television service or public telecommunications service authorized by the legislative body of a  
42 municipality on or after the sooner of March 1 or the effective date of this chapter.

43           (2) This chapter does not:

44           (a) invalidate any contract entered into by a municipality before the sooner of March 1  
45 or the effective date of this chapter:

46           (i) for the design, construction, equipping, operation, or maintenance of facilities used  
47 or to be used by the municipality, or by a private provider under a contract with the  
48 municipality for the purpose of providing:

- 49           (A) cable television services; or
- 50           (B) public telecommunications services;
- 51           (ii) with a private provider for the use of the facilities described in Subsection (2)(a)(i)

52 in connection with the private provider offering:

- 53           (A) cable television services; or
- 54           (B) public telecommunications services;
- 55           (iii) with a subscriber for providing:
- 56           (A) a cable television service; or
- 57           (B) a public telecommunications service; or

58           (iv) to obtain or secure financing for the acquisition or operation of the municipality's

59 facilities or equipment used in connection with providing:

60 (A) a cable television service; or

61 (B) a public telecommunications service; or

62 (b) impair any security interest granted by a municipality as collateral for the

63 municipality's obligations under a contract described in Subsection (2)(a).

64 (3) (a) A municipality meeting the one or more of the following conditions is exempt  
65 from this chapter as provided in Subsection (3)(b):

66 (i) a municipality that adopts or enacts a bond resolution on or before January 1, 2001,  
67 to fund facilities or equipment that the municipality uses to provide:

68 (A) cable television services; or

69 (B) public telecommunications services; or

70 (ii) a municipality that has operated for at least three years consecutively before the

71 sooner of March 1 or the effective date of this chapter:

72 (A) a cable television service; or

73 (B) a public telecommunications service.

74 (b) A municipality described in Subsection (3)(a) is exempt from this chapter except  
75 for:

76 (i) Subsection 10-18-303(4);

77 (ii) Subsection 10-18-303(7);

78 (iii) Subsection 10-18-303(9);

79 (iv) Section 10-18-304; and

80 (v) Section 10-18-305.

81 ~~[(4) For the time period beginning on the effective date of this chapter and ending on~~  
82 ~~December 31, 2001, a municipality that operated a cable television service as of January 1,~~  
83 ~~2001, is exempt from Subsection 10-18-301(1)(d).]~~

84 Section 2. Section **10-18-301** is amended to read:

85 **10-18-301. Enterprise funds for cable television or public telecommunications**  
86 **services.**

87 ~~[(+)]~~ A municipality that provides a cable television service or a public  
88 telecommunications service under this chapter:

89 ~~[(a)]~~ (1) shall establish an enterprise fund to account for the municipality's operations

90 of a cable television service or public telecommunications service;

91 ~~[(b)]~~ (2) for accounting purposes only, may account for its cable television services and  
92 its public telecommunications services in a single enterprise fund under Chapter 6, Uniform  
93 Fiscal Procedures Act for Utah Cities;

94 ~~[(c)]~~ (3) shall, consistent with the requirements of Section 10-6-135, adopt separate  
95 operating and capital budgets for the municipality's:

96 ~~[(i)]~~ (a) cable television services; and

97 ~~[(ii)]~~ (b) public telecommunications services;

98 ~~[(d)]~~ (4) may not transfer any appropriation or other balance in any enterprise fund  
99 established by the municipality under this section to another enterprise fund; and

100 ~~[(e)]~~ (5) may not transfer any appropriation or other balance in any other enterprise  
101 fund established by the municipality under Chapter 6, Uniform Fiscal Procedures Act for Utah  
102 Cities, to any enterprise fund established by the municipality under this section.

103 ~~[(2) The restrictions on transfers described in Subsections (1)(d) and (e) do not apply to  
104 transfers made by a municipality between other enterprise funds established by the  
105 municipality.]~~

106 Section 3. Section **10-18-303** is amended to read:

107 **10-18-303. General operating limitations.**

108 A municipality that provides a cable television service or a public telecommunications  
109 service under this chapter is subject to the operating limitations of this section.

110 (1) A municipality that provides a cable television service shall comply with:

111 (a) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.; and

112 (b) the regulations issued by the Federal Communications Commission under the Cable  
113 Communications Policy Act of 1984, 47 U.S.C. 521, et seq.

114 (2) A municipality that provides a public telecommunications service shall comply  
115 with:

116 (a) the Telecommunications Act of 1996, Pub. L. 104-104;

117 (b) the regulations issued by the Federal Communications Commission under the  
118 Telecommunications Act of 1996, Pub. L. 104-104;

119 (c) Section 54-8b-2.2 relating to:

120 (i) the interconnection of essential facilities; and

- 121 (ii) the purchase and sale of essential services; and
- 122 (d) the rules made by the Public Service Commission of Utah under Section 54-8b-2.2.
- 123 (3) A municipality may not cross subsidize its cable television services or its public
- 124 telecommunications services with:
  - 125 (a) tax dollars;
  - 126 (b) income from other municipal or utility services;
  - 127 (c) below-market rate loans from the municipality; or
  - 128 (d) any other means.
- 129 (4) (a) A municipality may not make or grant any undue or unreasonable preference or
- 130 advantage to itself or to any private provider of:
  - 131 (i) cable television services; or
  - 132 (ii) public telecommunications services.
- 133 (b) A municipality shall apply without discrimination as to itself and to any private
- 134 provider the municipality's ordinances, rules, and policies, including those relating to:
  - 135 (i) obligation to serve;
  - 136 (ii) access to public rights of way;
  - 137 (iii) permitting;
  - 138 (iv) performance bonding;
  - 139 (v) reporting; and
  - 140 (vi) quality of service.
- 141 (c) Subsections (4)(a) and (b) do not supersede the exception for a rural telephone
- 142 company in Section 251 of the Telecommunications Act of 1996, Pub. L. 104-104.
- 143 (5) In calculating the rates charged by a municipality for a cable television service or a
- 144 public telecommunications service, the municipality:
  - 145 (a) shall include within its rates an amount equal to all taxes, fees, and other
  - 146 assessments that would be applicable to a similarly situated private provider of the same
  - 147 services, including:
    - 148 (i) federal, state, and local taxes;
    - 149 (ii) franchise fees;
    - 150 (iii) permit fees;
    - 151 (iv) pole attachment fees; and

- 152 (v) fees similar to those described in Subsections (5)(a)(i) through (iv); [~~and~~]
- 153 (b) may not price any cable television service or public telecommunications service at a
- 154 level that is less than the sum of:
  - 155 (i) the actual direct costs of providing the service;
  - 156 (ii) the actual indirect costs of providing the service; and
  - 157 (iii) the amount determined under Subsection (5)(a)[-]; and
  - 158 (c) shall comply with the requirements of Section 10-18-303.5.
- 159 (6) (a) A municipality that provides cable television services or public
- 160 telecommunications services shall establish and maintain a comprehensive price list of all cable
- 161 television services or public telecommunications services offered by the municipality.
- 162 (b) The price list required by Subsection (6)(a) shall:
  - 163 (i) include all terms and conditions relating to the municipality providing each cable
  - 164 television service or public telecommunications service offered by the municipality;
  - 165 (ii) (A) be published in a newspaper having general circulation in the municipality; and
  - 166 (B) be published in accordance with Section 45-1-101; and
  - 167 (iii) be available for inspection:
    - 168 (A) at a designated office of the municipality; and
    - 169 (B) during normal business hours.
  - 170 (c) At least five days before the date a change to a municipality's price list becomes
  - 171 effective, the municipality shall:
    - 172 (i) notify the following of the change:
      - 173 (A) all subscribers to the services for which the price list is being changed; and
      - 174 (B) any other persons requesting notification of any changes to the municipality's price
      - 175 list; and
      - 176 (ii) (A) publish notice in a newspaper of general circulation in the municipality; and
      - 177 (B) publish notice in accordance with Section 45-1-101.
      - 178 (d) In accordance with Subsection (6)(c)(ii)(A), if there is no newspaper of general
      - 179 circulation in the municipality, the municipality shall publish the notice required by this
      - 180 Subsection (6) in a newspaper of general circulation that is nearest the municipality.
      - 181 (e) A municipality may not offer a cable television service or a public
      - 182 telecommunications service except in accordance with the prices, terms, and conditions set

183 forth in the municipality's price list.

184 (7) A municipality may not offer to provide or provide cable television services or  
185 public telecommunications services to a subscriber that does not reside within the geographic  
186 boundaries of the municipality.

187 (8) (a) A municipality shall keep accurate books and records of the municipality's:

188 (i) cable television services; and

189 (ii) public telecommunications services.

190 (b) The books and records required to be kept under Subsection (8)(a) are subject to  
191 legislative audit to verify the municipality's compliance with the requirements of this chapter  
192 including:

193 (i) pricing;

194 (ii) recordkeeping; and

195 (iii) antidiscrimination.

196 (9) A municipality may not receive distributions from the Universal Public  
197 Telecommunications Service Support Fund established in Section 54-8b-15.

198 Section 4. Section **10-18-303.5** is enacted to read:

199 **10-18-303.5. Rate is just and reasonable -- Rate may not vary.**

200 (1) If a municipality calculates and charges a rate in accordance with Section  
201 10-18-303, the municipality shall:

202 (a) charge a rate that is just and reasonable;

203 (b) in accordance with Subsection (1)(a), consider in its rate calculation:

204 (i) the cost of providing service to each category of customer;

205 (ii) the economic impact of a charge on:

206 (A) each category of customer; and

207 (B) the state;

208 (iii) consider methods to reduce wide periodic variation in demand of the service  
209 provided by the municipality; and

210 (iv) consider methods to encourage municipal and customer conservation of resources  
211 and energy.

212 (2) (a) A municipality may not charge, demand, collect, contract for, or receive a  
213 greater, less, or different compensation for a cable television service or public

214 telecommunication service than the rate calculated and charged in accordance with this section  
215 and Section 10-18-303.

216 (b) A municipality may not charge or collect compensation for cable television service  
217 or public telecommunication service from a person who does not receive the service.

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**Legislative Review Note**  
**as of 1-2-13 4:13 PM**

**Office of Legislative Research and General Counsel**