

1 **MUNICIPAL CABLE TELEVISION AND PUBLIC**
2 **TELECOMMUNICATIONS SERVICES ACT**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Greg J. Curtis**

6 **This act modifies the Utah Municipal Code and the Interlocal Cooperation Act to limit the**
7 **authority of municipalities to own and operate cable television and public**
8 **telecommunications facilities and to provide cable television and public telecommunications**
9 **services to a municipality's inhabitants. This act enacts the Municipal Cable Television and**
10 **Public Telecommunications Services Act. This act makes related conforming and technical**
11 **amendments. This act has an immediate effective date.**

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **10-8-14**, as last amended by Chapter 365, Laws of Utah 1999

15 **11-13-4**, as enacted by Chapter 14, Laws of Utah 1965

16 ENACTS:

17 **10-18-101**, Utah Code Annotated 1953

18 **10-18-102**, Utah Code Annotated 1953

19 **10-18-103**, Utah Code Annotated 1953

20 **10-18-104**, Utah Code Annotated 1953

21 **10-18-105**, Utah Code Annotated 1953

22 **10-18-106**, Utah Code Annotated 1953

23 **10-18-201**, Utah Code Annotated 1953

24 **10-18-202**, Utah Code Annotated 1953

25 **10-18-203**, Utah Code Annotated 1953

26 **10-18-204**, Utah Code Annotated 1953

27 **10-18-301**, Utah Code Annotated 1953



- 28 **10-18-302**, Utah Code Annotated 1953
- 29 **10-18-303**, Utah Code Annotated 1953
- 30 **10-18-304**, Utah Code Annotated 1953
- 31 **10-18-305**, Utah Code Annotated 1953
- 32 **10-18-306**, Utah Code Annotated 1953

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **10-8-14** is amended to read:

35 **10-8-14. Water, sewer, gas, electricity, telephone, and public transportation --**
 36 **Service beyond city limits -- Retainage.**

37 (1) ~~They~~ A city may:

38 (a) construct, maintain, and operate waterworks, sewer collection, sewer treatment
 39 systems, gas works, electric light works, ~~telephone~~ telecommunications lines, cable television
 40 lines, or public transportation systems~~, or~~;

41 (b) authorize the construction, maintenance and operation of the ~~same~~ works or systems
 42 listed in Subsection (1)(a) by others~~, or~~;

43 (c) purchase or lease ~~such~~ the works or systems listed in Subsection (1)(a) from any
 44 person or corporation~~;~~; and ~~they may~~

45 (d) sell and deliver the surplus product or service capacity of any ~~such~~ works or system
 46 listed in Subsection (1)(a), not required by the city or ~~its~~ the city's inhabitants, to others beyond
 47 the limits of the city, except the sale and delivery of cable television services or public
 48 telecommunications services is governed by Subsection (3).

49 (2) If any payment on a contract with a private person, firm, or corporation to construct
 50 waterworks, sewer collection, sewer treatment systems, gas works, electric light works, ~~telephone~~
 51 ~~lines~~ telecommunication lines, cable television lines, or public transportation systems is retained
 52 or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

53 (3) A city's actions under this section related to works or systems involving public
 54 telecommunications services or cable television services are subject to the requirements of Chapter
 55 18, Municipal Cable Television and Public Telecommunications Services Act.

56 Section 2. Section **10-18-101** is enacted to read:

57 **CHAPTER 18. MUNICIPAL CABLE TELEVISION AND PUBLIC**
 58 **TELECOMMUNICATIONS SERVICES ACT**

Part 1. General Provisions

10-18-101. Title -- Policy statement.

(1) This chapter is known as the "Municipal Cable Television and Public Telecommunications Services Act."

(2) The Legislature finds that it is the policy of this state to:

(a) ensure that cable television services and public telecommunications services are provided through fair competition consistent with the federal Telecommunications Act of 1996, Public Law 104-104, in order to provide the widest possible diversity of information and news sources to the general public;

(b) advance the exercise of rights under the First Amendment of the Constitution of the United States;

(c) enhance the development and widespread use of technological advances in providing cable television services and public telecommunications services;

(d) encourage improved customer service of cable television services and public telecommunications services at competitive rates;

(e) ensure that cable television services and public telecommunications services are each provided within a consistent, comprehensive, and nondiscriminatory federal, state, and local government framework; and

(f) ensure that when a municipality provides to its inhabitants cable television services, public telecommunications services, or both, and competes with private providers whose activities are regulated by the municipality, the municipality does not discriminate against the competing providers of the same services.

Section 3. Section **10-18-102** is enacted to read:

10-18-102. Definitions.

As used in this chapter:

(1) "Cable television service" means:

(a) the one-way transmission to subscribers of:

(i) video programming, or

(ii) other programming service; and

(b) subscriber interaction, if any, that is required for the selection or use of:

(i) the video programming; or

90 (ii) other programming service.

91 (2) "Capital costs" means all costs of providing a service that are capitalized in accordance
92 with generally accepted accounting principles.

93 (3) "Cross subsidize" means to pay a cost included in the direct costs or indirect costs of
94 providing a service that is not accounted for in the full cost of accounting of providing the service.

95 (4) "Direct costs" means those expenses of a municipality that:

96 (a) are directly attributable to providing:

97 (i) a cable television service; or

98 (ii) a public telecommunications service; and

99 (b) would be eliminated if the service described in Subsection (4)(a) were not provided
100 by the municipality.

101 (5) "Feasibility consultant" means an individual or entity with expertise in the processes
102 and economics of providing:

103 (a) cable television service; and

104 (b) public telecommunications service.

105 (6) (a) "Full-cost accounting" means the accounting of all costs incurred by a municipality
106 in providing:

107 (i) a cable television service; or

108 (ii) a public telecommunications service.

109 (b) The costs included in a full-cost accounting include all:

110 (i) capital costs;

111 (ii) direct costs; and

112 (iii) indirect costs.

113 (7) (a) "Indirect costs" means any costs:

114 (i) identified with two or more services or other functions; and

115 (ii) that are not directly identified with a single service or function.

116 (b) "Indirect costs" may include cost factors for:

117 (i) administration;

118 (ii) accounting;

119 (iii) personnel;

120 (iv) purchasing;

121 (v) legal support; and
122 (vi) other staff or departmental support.
123 (8) "Private provider" means a person that:
124 (a) provides:
125 (i) cable television services; or
126 (ii) public telecommunications services; and
127 (b) is a private entity.
128 (9) "Public telecommunications service" means the two-way transmission of signs, signals,
129 writing, images, sounds, messages, data, or other information of any nature by wire, radio,
130 lightwaves, or other electromagnetic means offered to the public generally.
131 (10) "Subscribers" means a person that lawfully receives:
132 (a) cable television services; or
133 (b) public telecommunications services.
134 Section 4. Section **10-18-103** is enacted to read:
135 **10-18-103. Antitrust immunity.**
136 (1) When a municipality is offering or providing a cable television service or public
137 telecommunications service, the immunity from antitrust liability afforded to political subdivisions
138 of the state under Section 76-10-919 does not apply to the municipality providing those services.
139 (2) A municipality that provides a cable television service or a public telecommunications
140 service is subject to applicable antitrust liabilities under the federal Local Government Antitrust
141 Act of 1984, 15 U.S.C. Sections 34 to 36.
142 Section 5. Section **10-18-104** is enacted to read:
143 **10-18-104. Application to existing contracts.**
144 (1) (a) If before the sooner of March 1 or the effective date of the chapter, the legislative
145 body of a municipality authorized the municipality to offer or provide cable television services or
146 public telecommunication services, each authorized service:
147 (i) is exempt from Part 2; and
148 (ii) is subject to Part 3.
149 (b) The exemption described in Subsection (1)(a)(i) may not apply to any cable television
150 service or public telecommunications service authorized by the legislative body of a municipality
151 on or after the sooner of March 1 or the effective date of this chapter.

152 (2) This chapter does not:

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

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

158 (A) cable television services; or

159 (B) public telecommunications services;

160 (ii) with a private provider for the use of the facilities described in Subsection (2)(a)(i) in
161 connection with the private provider offering:

162 (A) cable television services; or

163 (B) public telecommunications services;

164 (iii) with a subscriber for providing:

165 (A) a cable television service; or

166 (B) a public telecommunications service; or

167 (iv) to obtain or secure financing for the acquisition or operation of the municipality's
168 facilities or equipment used in connection with providing:

169 (A) a cable television service; or

170 (B) a public telecommunications service; or

171 (b) impair any security interest granted by a municipality as collateral for the municipality's
172 obligations under a contract described in Subsection (2)(a).

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

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

177 (A) cable television services; or

178 (B) public telecommunications services; or

179 (ii) a municipality that has operated for at least **h [five] THREE h** years consecutively before
179a the sooner
180 of March 1 or the effective date of this bill:

181 (A) a cable television service; or

182 (B) a public **§ [television] TELECOMMUNICATIONS §** service.

- 183 (b) A municipality described in Subsection (3)(a) is exempt from this chapter except for:
- 184 (i) Subsection 10-18-303(4);
- 185 (ii) Subsection 10-18-303(7);
- 186 (iii) Subsection 10-18-303(9);
- 187 (iv) Section 10-18-304; and
- 188 (v) Section 10-18-305.

188a **h (4) FOR THE TIME PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS CHAPTER AND**
 188b **ENDING ON DECEMBER 31, 2001, A MUNICIPALITY THAT OPERATED A CABLE TELEVISION**
 188c **SERVICE AS OF JANUARY 1, 2001 IS EXEMPT FROM SUBSECTION 10-18-301 (d). h**

189 Section 6. Section **10-18-105** is enacted to read:

190 **10-18-105. Scope of chapter.**

191 (1) Nothing in this chapter authorizes any county or other political subdivision of this state
 192 to:

193 (a) provide:

194 (i) a cable television service; or

195 (ii) a public telecommunications service; or

196 (b) purchase, lease, construct, maintain, or operate a facility for the purpose of providing:

197 (i) a cable television service; or

198 (ii) a public telecommunications service.

199 (2) Nothing in this chapter applies to a municipality purchasing, leasing, constructing, or
 200 equipping facilities:

201 (a) that are designed to provide services within the municipality; and

202 (b) that the municipality:

203 (i) uses for internal municipal government purposes; or

204 (ii) by written contract, leases, sells capacity in, or grants other similar rights to a private
 205 provider to use the facilities in connection with a private provider offering:

206 (A) cable television services; or

207 (B) public telecommunication services.

208 Section 7. Section **10-18-106** is enacted to read:

209 **10-18-106. Severability.**

210 If any provision of this chapter or the application of any provision of this chapter is found
 211 invalid, the remainder of this chapter shall be given effect without the invalid provision or
 212 application.

213 Section 8. Section **10-18-201** is enacted to read:

214 **Part 2. Conditions for Providing Services**
 215 **10-18-201. Limitations on providing a cable television and public telecommunications**
 216 **services.**

- 217 (1) Except as provided in this chapter, a municipality may not:
 218 (a) provide to one or more subscribers:
 219 (i) a cable television service; or
 220 (ii) a public telecommunications service; or
 221 (b) for the purpose of providing a cable television service or a public telecommunications
 222 service to one or more subscribers, purchase, lease, construct, maintain, or operate any facility.
 223 (2) For purposes of this chapter, a municipality provides a cable television service or
 224 public telecommunications service if the municipality provides the service:
 225 (a) directly or indirectly, including through an authority or instrumentality:
 226 (i) acting on behalf of the municipality; or
 227 (ii) for the benefit of the municipality;
 228 (b) by itself;
 229 (c) through:
 230 (i) a partnership; or
 231 (ii) joint venture; or
 232 (d) by contract, resale, or otherwise.

233 Section 9. Section **10-18-202** is enacted to read:
 234 **10-18-202. Required steps before a municipality may provide cable television or**
 235 **public telecommunications services.**

236 Before a municipality may engage or offer to engage in an activity described in Subsection
 237 10-8-201(1), the legislative body of the municipality shall:

- 238 (1) hold a preliminary public hearing;
 239 (2) if the legislative body elects to proceed after holding the preliminary public hearing
 240 required by Subsection (1), approve the hiring of a feasibility consultant to conduct a feasibility
 241 study in accordance with Section 10-18-203;
 242 (3) determine whether under the feasibility study conducted under Section 10-18-203, the
 243 average annual revenues under Subsection 10-18-203(2)(f) exceed the average annual costs under
 244 Subsection 10-18-203(2)(e) by at least the amount necessary to meet the bond obligations of any

245 bonds issued to fund the proposed cable television services or public telecommunications services:
246 (a) based on the feasibility study's analysis:
247 (i) for the first year of the study; and
248 (ii) the five-year projection; and
249 (b) separately stated with respect to:
250 (i) the proposed cable television services; or
251 (ii) the proposed public telecommunications services;
252 (4) if the conditions of Subsection (3) are met, hold the public hearings required by Section
253 10-18-203; and
254 (5) after holding the public hearing required by Section 10-18-203, if the legislative body
255 of the municipality elects to proceed, adopt by resolution the feasibility study.
256 Section 10. Section **10-18-203** is enacted to read:
257 **10-18-203. Feasibility study on providing cable television or public**
258 **telecommunications services -- Public hearings.**
259 (1) If a feasibility consultant is hired under Section 10-18-202, the legislative body of the
260 municipality shall require the feasibility consultant to:
261 (a) complete the feasibility study in accordance with this section;
262 (b) submit to the legislative body by no later than 180 days from the date the feasibility
263 consultant is hired to conduct the feasibility study:
264 (i) the full written results of the feasibility study; and
265 (ii) a summary of the results that is no longer than one page in length; and
266 (c) attend the public hearings described in Subsection (4) to:
267 (i) present the feasibility study results; and
268 (ii) respond to questions from the public.
269 (2) The feasibility study described in Subsection (1) shall at a minimum consider:
270 (a) (i) if the municipality is proposing to provide cable television services to subscribers,
271 whether the municipality providing cable television services in the manner proposed by the
272 municipality will hinder or advance competition for cable television services in the municipality;
273 (ii) if the municipality is proposing to provide public telecommunications services to
274 subscribers, whether the municipality providing public telecommunications services in the manner
275 proposed by the municipality will hinder or advance competition for public telecommunications

- 276 services in the municipality;
- 277 (b) whether but for the municipality any person would provide the proposed:
- 278 (i) cable television services; or
- 279 (ii) public telecommunications services;
- 280 (c) the fiscal impact on the municipality of:
- 281 (i) the capital investment in facilities that will be used to provide the proposed:
- 282 (A) cable television services; or
- 283 (B) public telecommunications services; and
- 284 (ii) the expenditure of funds for labor, financing, and administering the proposed:
- 285 (A) cable television services; or
- 286 (B) public telecommunications services;
- 287 (d) the projected growth in demand in the municipality for the proposed:
- 288 (i) cable television services; or
- 289 (ii) public telecommunications services;
- 290 (e) the projections at the time of the feasibility study and for the next five years, of a full
- 291 cost accounting for a municipality to purchase, lease, construct, maintain, or operate the facilities
- 292 necessary to provide the proposed:
- 293 (i) cable television services; or
- 294 (ii) public telecommunications services; and
- 295 (f) the projections at the time of the feasibility study and for the next five years of the
- 296 revenues to be generated from the proposed:
- 297 (i) cable television services; or
- 298 (ii) public telecommunications services.
- 299 (3) For purposes of the financial projections required under Subsections (2)(e) and (f), the
- 300 feasibility consultant shall assume that the municipality will price the proposed cable television
- 301 services or public telecommunications services consistent with Subsection 10-18-303(5).
- 302 (4) If the results of the feasibility study satisfy the revenue requirement of Subsection
- 303 10-18-202(3), the legislative body, at the next regular meeting after the legislative body receives
- 304 the results of the feasibility study, shall schedule at least two public hearings to be held:
- 305 (a) within 60 days of the meeting at which the public hearings are scheduled;
- 306 (b) at least seven days apart; and

307 (c) for the purpose of allowing:
308 (i) the feasibility consultant to present the results of the feasibility study; and
309 (ii) the public to:
310 (A) become informed about the feasibility study results; and
311 (B) ask questions of the feasibility consultant about the results of the feasibility study.
312 (5) (a) Except as provided in Subsection (5)(c), the municipality shall publish notice of the
313 public hearings required under Subsection (4) at least once a week for three consecutive weeks in
314 a newspaper of general circulation in the municipality.

315 (b) The last publication of notice required under Subsection (5)(a) shall be at least three
316 days before the first public hearing required under Subsection (4).

317 (c) (i) If there is no newspaper of general circulation in the municipality, for each 1,000
318 residents, the municipality shall post at least one notice of the hearings in a conspicuous place
319 within the municipality that is likely to give notice of the hearings to the greatest number of
320 residents of the municipality.

321 (ii) The municipality shall post the notices at least seven days before the first public
322 hearing required under Subsection (4) is held.

323 Section 11. Section **10-18-204** is enacted to read:

324 **10-18-204. Vote permissible -- Referendum.**

325 (1) (a) A legislative body by a majority vote may call an election on whether or not the
326 municipality shall provide the proposed:

327 (i) cable television services; or

328 (ii) public telecommunications services.

329 (b) If under Subsection (1)(a) the legislative body calls an election, the election shall be
330 held:

331 (i) (A) at the next municipal general election; or

332 (B) as provided in Subsection 20A-1-203(1), at a local special election the purpose of
333 which is authorized by this section; and

334 (ii) in accordance with Title 20A, Election Code, except as provided in this section.

335 (c) The notice of the election shall include with any other information required by law:

336 (i) a summary of the cable television services or public telecommunications services that
337 the legislative body of the municipality proposes to provide to subscribers residing within the

338 boundaries of the municipality;

339 (ii) the feasibility study summary under Section 10-18-203;

340 (iii) a statement that a full copy of the feasibility study is available for inspection and
341 copying; and

342 (iv) the location in the municipality where the feasibility study may be inspected or copied.

343 (d) The ballot at the election shall pose the question substantially as follows: Shall the
344 [name of the municipality] provide [cable television service or public telecommunications service]
345 to the inhabitants of the [municipality].

346 (e) The ballot proposition may not take effect until submitted to the electors and approved
347 by the majority of those voting on the ballot.

348 (2) In accordance with Title 20A, Chapter 7, Issues Submitted to the Voters, a municipality
349 legislative body's action to have the municipality provide cable television services or public
350 § [television] TELECOMMUNICATIONS § services is subject to local referenda.

351 Section 12. Section **10-18-301** is enacted to read:

352 **Part 3. Operational Requirements and Limitations**

353 **10-18-301. Enterprise funds for cable television of public telecommunications**
354 **services.**

355 (1) A municipality that provides a cable television service or a public telecommunications
356 service under this chapter:

357 (a) shall establish an enterprise fund to account for the municipality's operations of a cable
358 television service or public telecommunications service;

359 (b) for accounting purposes only, may account for its cable television services and its
360 public telecommunications services in a single enterprise fund under Chapter 6, Uniform Fiscal
361 Procedures Act for Utah Cities;

362 (c) shall, consistent with the requirements of Section 10-6-135, adopt separate operating
363 and capital budgets for the municipality's:

364 (i) cable television services; and

365 (ii) public telecommunications services;

366 (d) may not transfer any appropriation or other balance in any enterprise fund established
367 by the municipality under this section to another enterprise fund; and

368 (e) may not transfer any appropriation or other balance in any other enterprise fund

369 established by the municipality under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities,
370 to any enterprise fund established by the municipality under this section.

371 (2) The restrictions on transfers described in Subsections (1)(d) and (e) do not apply to
372 transfers made by a municipality between other enterprise funds established by the municipality.

373 Section 13. Section **10-18-302** is enacted to read:

374 **10-18-302. Bonding authority.**

375 (1) The legislative body of a municipality may by resolution determine to issue one or
376 more bonds to finance the capital costs for facilities necessary to provide to subscribers:

377 (a) a cable television service; or

378 (b) a public telecommunications service.

379 (2) The resolution described in Subsection (1) shall:

380 (a) describe the purpose for which the indebtedness is to be created; and

381 (b) specify the dollar amount of the one or more bonds proposed to be issued.

382 (3) (a) A bond issued under this section shall be secured and paid for solely from the
383 revenues generated by the municipality from providing:

384 (i) cable television services with respect to bonds issued to finance facilities for the
385 municipality's cable television services; and

386 (ii) public telecommunications services with respect to bonds issued to finance facilities
387 for the municipality's public telecommunications services.

388 (b) A municipality may not pay the origination, financing, or other carrying costs
389 associated with the one or more bonds issued under this section from the general funds or other
390 enterprise funds of the municipality.

391 Section 14. Section **10-18-303** is enacted to read:

392 **10-18-303. General operating limitations.**

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

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

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

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

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

400 (a) the Telecommunications Act of 1996, Pub. L. 104-104;
 401 (b) the regulations issued by the Federal Communications Commission under the
 402 Telecommunications Act of 1996, Pub. L. 104-104;
 403 (c) Section 54-8b-2.2 relating to:
 404 (i) the interconnection of essential facilities; and
 405 (ii) the purchase and sale of essential services; and
 406 (d) the rules made by the Public Service Commission of Utah under Section 54-8b-2.2.
 407 (3) A municipality may not cross-subsidize its cable television services or its public
 408 telecommunications services with:

409 (a) tax dollars;
 410 (b) income from other municipal or utility services;
 411 (c) below-market rate loans from the municipality; or
 412 (d) any other means.
 413 (4) (a) A municipality may not make or grant any undue or unreasonable preference or
 414 advantage to itself or to any private provider of:

415 (i) cable television services; or
 416 (ii) public telecommunications services.
 417 (b) A municipality shall apply without discrimination as to itself and to any private
 418 provider the municipality's ordinances, rules, and policies, including those relating to:
 419 (i) obligation to serve;
 420 (ii) access to public rights of way;
 421 (iii) permitting;
 422 (iv) performance bonding;
 423 (v) reporting; and
 424 (vi) quality of service.

424a **h (c) SUBSECTIONS (4)(a) AND (b) DO NOT SUPERSEDE THE EXCEPTION FOR A RURAL**
 424b **TELEPHONE COMPANY IN SECTION 251 OF THE TELECOMMUNICATIONS ACT OF 1996, PUB. L.**
 424c **104-104. h**

425 (5) In calculating the rates charged by a municipality for a cable television service or a
 426 public telecommunications service, the municipality:
 427 (a) shall include within its rates an amount equal to all taxes, fees, and other assessments
 428 that would be applicable to a similarly situated private provider of the same services, including:
 429 (i) federal, state, and local taxes;
 430 (ii) franchise fees;

431 (iii) permit fees;
432 (iv) pole attachment fees; and
433 (v) fees similar to those described in Subsections (5)(a)(i) through (iv); and
434 (b) may not price any cable television service or public telecommunications service at a
435 level that is less than the sum of:
436 (i) the actual direct costs of providing the service;
437 (ii) the actual indirect costs of providing the service; and
438 (iii) the amount determined under Subsection (5)(a).
439 (6) (a) A municipality that provides cable television services or public telecommunications
440 services shall establish and maintain a comprehensive price list of all cable television services or
441 public telecommunications services offered by the municipality.
442 (b) The price list required by Subsection (6)(a) shall:
443 (i) include all terms and conditions relating to the municipality providing each cable
444 television service or public telecommunications service offered by the municipality;
445 (ii) be published in a newspaper having general circulation in the municipality; and
446 (iii) be available for inspection:
447 (A) at a designated office of the municipality; and
448 (B) during normal business hours.
449 (c) At least five days before the date a change to a municipality's price list becomes
450 effective, the municipality shall:
451 (i) notify the following of the change:
452 (A) all subscribers to the services for which the price list is being changed; and
453 (B) any other persons requesting notification of any changes to the municipality's price list;
454 and
455 (ii) publish notice in a newspaper of general circulation in the municipality.
456 (d) If there is no newspaper of general circulation in the municipality, the municipality
457 shall publish the notice required by this Subsection (6) in a newspaper of general circulation that
458 is nearest the municipality.
459 (e) A municipality may not offer a cable television service or a public telecommunications
460 service except in accordance with the prices, terms, and conditions set forth in the municipality's
461 price list.

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

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

466 (i) cable television services; and

467 (ii) public telecommunications services.

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

471 (i) pricing;

472 (ii) recordkeeping; and

473 (iii) antidiscrimination.

474 (9) A municipality may not receive distributions from the Universal Public

475 Telecommunications Service Support Fund established in Section 54-8b-15.

476 Section 15. Section **10-18-304** is enacted to read:

477 **10-18-304. Eminent domain.**

478 A municipality may not exercise its power of eminent domain to condemn plant and
479 equipment of a private provider for the purpose of providing to a subscriber:

480 (1) a cable television service; or

481 (2) a public telecommunications service.

482 Section 16. Section **10-18-305** is enacted to read:

483 **10-18-305. Quality of service standards.**

484 (1) A municipality that provides a cable television service or a public telecommunications
485 service shall adopt an ordinance governing the quality of service the municipality shall provide to
486 its subscribers.

487 (2) The ordinance required by Subsection (1) shall:

488 (a) be competitively neutral; and

489 (b) contain standards that are substantially similar to the standards imposed on private
490 providers operating within the geographic boundaries of the municipality under:

491 (i) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.;

492 (ii) the Telecommunications Act of 1996, Pub. L. 104-104;

493 (iii) Title 54, Public Utilities;
494 (iv) regulations issued by the Federal Communications Commission under the statutes
495 listed in Subsections (2)(b)(i) and (ii); and
496 (v) rules made by the Public Service Commission of Utah under Title 54, Public Utilities.

497 Section 17. Section **10-18-306** is enacted to read:

498 **10-18-306. Enforcement and appeal.**

499 (1) Before a person that is or is likely to have a substantial interest affected by a
500 municipality's violation of this chapter may file an action in district court for violation of this
501 chapter, that person shall file a written complaint with the municipality in accordance with this
502 section.

503 (2) (a) A municipality that provides a cable television service or a public
504 telecommunications service shall enact an ordinance establishing a procedure for the filing and
505 resolution of complaints relating to the municipality providing:

506 (i) a cable television service; or

507 (ii) a public telecommunications service.

508 (b) The procedure required by Subsection (2)(a) shall:

509 (i) permit any person described in Subsection (1) to file a complaint including:

510 (A) an individual subscriber; or

511 (B) a private provider that competes with the municipality in the geographic boundaries
512 of the municipality;

513 (ii) establish an expedited process that requires within 45 days after the date the complaint
514 is filed:

515 (A) that a hearing be held, unless the parties to the proceeding waive the requirement of
516 a hearing; and

517 (B) the issuance of a final decision; and

518 (iii) provide that failure to render a decision within the time allotted shall be treated as an
519 adverse decision for purposes of appeal.

520 (3) Appeal of an adverse decision from the municipality may be taken to the district court
521 for a de novo proceeding.

522 Section 18. Section **11-13-4** is amended to read:

523 **11-13-4. Joint exercise of powers, privileges, or authority by public agencies**

524 **authorized.**

525 (1) Any power or powers, privileges or authority exercised or capable of exercise by a
526 public agency of this state may be exercised and enjoyed jointly with any other public agency of
527 this state having the power or powers, privileges or authority, and jointly with any public agency
528 of any other state or of the United States permit such joint exercise or enjoyment. Any agency of
529 the state government when acting jointly with any public agency may exercise and enjoy all of the
530 powers, privileges, and authority conferred by this [act] chapter upon a public agency.

531 (2) This chapter may not enlarge or expand the authority of a public agency not authorized
532 to offer and provide cable television services and public telecommunications services under Title
533 10, Chapter 18, Municipal Cable Television and Public Telecommunications Services Act, to offer
534 or provide cable television services and public telecommunications services.

535 **Section 19. Effective date.**

536 If approved by two-thirds of all the members elected to each house, this act takes effect
537 upon approval by the governor, or the day following the constitutional time limit of Utah
538 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
539 date of veto override.

Legislative Review Note **as of 2-9-01 11:12 AM**

This bill addresses a municipality's ability to provide certain services including cable television and public telecommunication services. The bill might be challenged under the Utah Constitution on grounds such as whether it is a municipal function to provide such services and if so whether it is subject to limitations under Utah Constitution. These constitutional limitations include Article VI, Sec. 28, which prohibits the Legislature from delegating to a special commission, such as the Public Service Commission, the performance of a municipal function; or Article XI, Sec. 5, which appears to give to charter cities the power to furnish local public services; to own, maintain, and operate public utilities; or to acquire property through condemnation for public improvements. There is conflicting case law as to whether Article XI, Sec. 5 applies to all cities or only charter cities. Moreover, the Federal Telecommunications Law of 1996 may arguably preempt state law and require competitively neutral state regulation of cable and telecommunication services. It would be for a court to decide whether the Legislature has properly regulated a municipality's provision of these cable television and telecommunication services.

Office of Legislative Research and General Counsel