

Chapter 18 **Municipal Cable Television and Public 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, Pub. L. 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.

Enacted by Chapter 83, 2001 General Session

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
 - (ii) other programming service.
- (2) "Capital costs" means all costs of providing a service that are capitalized in accordance with generally accepted accounting principles.
- (3) "Cross subsidize" means to pay a cost included in the direct costs or indirect costs of providing a service that is not accounted for in the full cost of accounting of providing the service.
- (4) "Direct costs" means those expenses of a municipality that:
 - (a) are directly attributable to providing:
 - (i) a cable television service; or
 - (ii) a public telecommunications service; and

- (b) would be eliminated if the service described in Subsection (4)(a) were not provided by the municipality.
- (5) "Feasibility consultant" means an individual or entity with expertise in the processes and economics of providing:
 - (a) cable television service; and
 - (b) public telecommunications service.
- (6)
 - (a) "Full-cost accounting" means the accounting of all costs incurred by a municipality in providing:
 - (i) a cable television service; or
 - (ii) a public telecommunications service.
 - (b) The costs included in a full-cost accounting include all:
 - (i) capital costs;
 - (ii) direct costs; and
 - (iii) indirect costs.
- (7)
 - (a) "Indirect costs" means any costs:
 - (i) identified with two or more services or other functions; and
 - (ii) that are not directly identified with a single service or function.
 - (b) "Indirect costs" may include cost factors for:
 - (i) administration;
 - (ii) accounting;
 - (iii) personnel;
 - (iv) purchasing;
 - (v) legal support; and
 - (vi) other staff or departmental support.
- (8) "Private provider" means a person that:
 - (a) provides:
 - (i) cable television services; or
 - (ii) public telecommunications services; and
 - (b) is a private entity.
- (9) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.
- (10) "Public telecommunications service facilities" means a facility described in Subsection 10-18-105(2).
- (11) "Subscribers" means a person that lawfully receives:
 - (a) cable television services; or
 - (b) public telecommunications services.

Amended by Chapter 419, 2016 General Session

10-18-103 Antitrust immunity.

- (1) When a municipality is offering or providing a cable television service or public telecommunications service, the immunity from antitrust liability afforded to political subdivisions of the state under Section 76-10-3109 does not apply to the municipality providing those services.

- (2) A municipality that provides a cable television service or a public telecommunications service is subject to applicable antitrust liabilities under the federal Local Government Antitrust Act of 1984, 15 U.S.C. Secs. 34 to 36.

Amended by Chapter 187, 2013 General Session

10-18-104 Application to existing contracts.

- (1)
- (a) If before the sooner of March 1 or the effective date of the chapter, the legislative body of a municipality authorized the municipality to offer or provide cable television services or public telecommunications services, each authorized service:
 - (i) is exempt from Part 2, Conditions for Providing Services; and
 - (ii) is subject to Part 3, Operational Requirements and Limitations.
 - (b) The exemption described in Subsection (1)(a)(i) may not apply to any cable television service or public telecommunications service authorized by the legislative body of a municipality on or after the sooner of March 1 or the effective date of this chapter.
- (2) This chapter does not:
- (a) invalidate any contract entered into by a municipality before the sooner of March 1 or the effective date of this chapter:
 - (i) for the design, construction, equipping, operation, or maintenance of facilities used or to be used by the municipality, or by a private provider under a contract with the municipality for the purpose of providing:
 - (A) cable television services; or
 - (B) public telecommunications services;
 - (ii) with a private provider for the use of the facilities described in Subsection (2)(a)(i) in connection with the private provider offering:
 - (A) cable television services; or
 - (B) public telecommunications services;
 - (iii) with a subscriber for providing:
 - (A) a cable television service; or
 - (B) a public telecommunications service; or
 - (iv) to obtain or secure financing for the acquisition or operation of the municipality's facilities or equipment used in connection with providing:
 - (A) a cable television service; or
 - (B) a public telecommunications service; or
 - (b) impair any security interest granted by a municipality as collateral for the municipality's obligations under a contract described in Subsection (2)(a).
- (3)
- (a) A municipality meeting the one or more of the following conditions is exempt from this chapter as provided in Subsection (3)(b):
 - (i) a municipality that adopts or enacts a bond resolution on or before January 1, 2001, to fund facilities or equipment that the municipality uses to provide:
 - (A) cable television services; or
 - (B) public telecommunications services; or
 - (ii) a municipality that has operated for at least three years consecutively before the sooner of March 1 or the effective date of this chapter:
 - (A) a cable television service; or
 - (B) a public telecommunications service.

- (b) A municipality described in Subsection (3)(a) is exempt from this chapter except for:
 - (i) Subsection 10-18-303(4);
 - (ii) Subsection 10-18-303(7);
 - (iii) Subsection 10-18-303(9);
 - (iv) Section 10-18-304; and
 - (v) Section 10-18-305.
- (4) For the time period beginning on the effective date of this chapter and ending on December 31, 2001, a municipality that operated a cable television service as of January 1, 2001, is exempt from Subsection 10-18-301(1)(d).

Amended by Chapter 189, 2014 General Session

10-18-105 Scope of chapter.

- (1) Nothing in this chapter authorizes any county or other political subdivision of this state to:
 - (a) provide:
 - (i) a cable television service; or
 - (ii) a public telecommunications service;
 - (b) purchase, lease, construct, maintain, or operate a facility for the purpose of providing:
 - (i) a cable television service; or
 - (ii) a public telecommunications service.
- (2) Except as provided in Subsections (3) and (4), this chapter does not apply to a municipality purchasing, leasing, constructing, or equipping facilities:
 - (a) that are designed to provide services within the municipality ; and
 - (b) that the municipality:
 - (i) uses for internal municipal government purposes; or
 - (ii) by written contract, leases, sells capacity in, or grants other similar rights to a private provider to use the facilities in connection with a private provider offering:
 - (A) cable television services; or
 - (B) public telecommunications services.
- (3)
 - (a) As used in this Subsection (3), "municipal entity" means:
 - (i) a municipality; or
 - (ii) an entity created pursuant to an agreement:
 - (A) under Title 11, Chapter 13, Interlocal Cooperation Act; and
 - (B) to which a municipality is a party.
 - (b) Notwithstanding Subsection (2), a municipal entity shall comply with Subsection (3)(c) if the municipal entity purchases, leases, constructs, or equips facilities that the municipal entity by written contract leases, sells capacity in, or grants other similar rights to a private provider to use the facilities in connection with a private provider offering:
 - (i) cable television services; or
 - (ii) public telecommunications services.
 - (c) A municipal entity described in Subsection (3)(b) shall, with respect to an action described in Subsection (3)(b), comply with the obligations imposed on a municipality pursuant to:
 - (i) Section 10-18-302; and
 - (ii) Subsections 10-18-303(3) and (4).
- (4) A municipality described in Subsection 10-18-105(2) may call an election under Section 10-18-204 with respect to the provision of public telecommunications service facilities.

Amended by Chapter 419, 2016 General Session

10-18-106 Severability.

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

Enacted by Chapter 83, 2001 General Session

Part 2
Conditions for Providing Services

10-18-201 Limitations on providing a cable television and public telecommunications services.

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

Enacted by Chapter 83, 2001 General Session

10-18-202 Required steps before a municipality may provide cable television or public telecommunications services.

Before a municipality may engage or offer to engage in an activity described in Subsection 10-18-201(1), the legislative body of the municipality shall:

- (1) hold a preliminary public hearing;
- (2) if the legislative body elects to proceed after holding the preliminary public hearing required by Subsection (1), approve the hiring of a feasibility consultant to conduct a feasibility study in accordance with Section 10-18-203;
- (3) determine whether under the feasibility study conducted under Section 10-18-203, the average annual revenues under Subsection 10-18-203(2)(f) exceed the average annual costs under Subsection 10-18-203(2)(e) by at least the amount necessary to meet the bond obligations of any bonds issued to fund the proposed cable television services or public telecommunications services:
 - (a) based on the feasibility study's analysis:

- (i) for the first year of the study; and
- (ii) the five-year projection; and
- (b) separately stated with respect to:
 - (i) the proposed cable television services; or
 - (ii) the proposed public telecommunications services;
- (4) if the conditions of Subsection (3) are met, hold the public hearings required by Section 10-18-203; and
- (5) after holding the public hearings required by Section 10-18-203, if the legislative body of the municipality elects to proceed, adopt by resolution the feasibility study.

Enacted by Chapter 83, 2001 General Session

10-18-203 Feasibility study on providing cable television or public telecommunications services -- Public hearings.

- (1) If a feasibility consultant is hired under Section 10-18-202, the legislative body of the municipality shall require the feasibility consultant to:
 - (a) complete the feasibility study in accordance with this section;
 - (b) submit to the legislative body by no later than 180 days from the date the feasibility consultant is hired to conduct the feasibility study:
 - (i) the full written results of the feasibility study; and
 - (ii) a summary of the results that is no longer than one page in length; and
 - (c) attend the public hearings described in Subsection (4) to:
 - (i) present the feasibility study results; and
 - (ii) respond to questions from the public.
- (2) The feasibility study described in Subsection (1) shall at a minimum consider:
 - (a)
 - (i) if the municipality is proposing to provide cable television services to subscribers, whether the municipality providing cable television services in the manner proposed by the municipality will hinder or advance competition for cable television services in the municipality; or
 - (ii) if the municipality is proposing to provide public telecommunications services to subscribers, whether the municipality providing public telecommunications services in the manner proposed by the municipality will hinder or advance competition for public telecommunications services in the municipality;
 - (b) whether but for the municipality any person would provide the proposed:
 - (i) cable television services; or
 - (ii) public telecommunications services;
 - (c) the fiscal impact on the municipality of:
 - (i) the capital investment in facilities that will be used to provide the proposed:
 - (A) cable television services; or
 - (B) public telecommunications services; and
 - (ii) the expenditure of funds for labor, financing, and administering the proposed:
 - (A) cable television services; or
 - (B) public telecommunications services;
 - (d) the projected growth in demand in the municipality for the proposed:
 - (i) cable television services; or
 - (ii) public telecommunications services;

- (e) the projections at the time of the feasibility study and for the next five years, of a full-cost accounting for a municipality to purchase, lease, construct, maintain, or operate the facilities necessary to provide the proposed:
 - (i) cable television services; or
 - (ii) public telecommunications services; and
- (f) the projections at the time of the feasibility study and for the next five years of the revenues to be generated from the proposed:
 - (i) cable television services; or
 - (ii) public telecommunications services.
- (3) For purposes of the financial projections required under Subsections (2)(e) and (f), the feasibility consultant shall assume that the municipality will price the proposed cable television services or public telecommunications services consistent with Subsection 10-18-303(5).
- (4) If the results of the feasibility study satisfy the revenue requirement of Subsection 10-18-202(3), the legislative body, at the next regular meeting after the legislative body receives the results of the feasibility study, shall schedule at least two public hearings to be held:
 - (a) within 60 days of the meeting at which the public hearings are scheduled;
 - (b) at least seven days apart; and
 - (c) for the purpose of allowing:
 - (i) the feasibility consultant to present the results of the feasibility study; and
 - (ii) the public to:
 - (A) become informed about the feasibility study results; and
 - (B) ask questions of the feasibility consultant about the results of the feasibility study.
- (5)
 - (a) Except as provided in Subsection (5)(b), the municipality shall publish notice of the public hearings required under Subsection (4):
 - (i) at least once a week for three consecutive weeks in a newspaper of general circulation in the municipality and at least three days before the first public hearing required under Subsection (4); and
 - (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks, at least three days before the first public hearing required under Subsection (4).
 - (b)
 - (i) In accordance with Subsection (5)(a)(i), if there is no newspaper of general circulation in the municipality, for each 1,000 residents, the municipality shall post at least one notice of the hearings in a conspicuous place within the municipality that is likely to give notice of the hearings to the greatest number of residents of the municipality.
 - (ii) The municipality shall post the notices at least seven days before the first public hearing required under Subsection (4) is held.

Amended by Chapter 90, 2010 General Session

10-18-204 Vote permissible -- Referendum.

- (1)
 - (a)
 - (i) A legislative body of a municipality may, by a majority vote, call an election on whether the municipality shall provide proposed:
 - (A) cable television services; or
 - (B) public telecommunications services.

- (ii) A municipal legislative body that, before July 1, 2016, approves the provision of public telecommunications service facilities may, by a majority vote, call an election on whether the municipality shall provide proposed public telecommunications service facilities.
 - (b) If under Subsection (1)(a) the legislative body calls an election, the election shall be held:
 - (i)
 - (A) at the next municipal general election; or
 - (B) as provided in Subsection 20A-1-203(1), at a local special election the purpose of which is authorized by this section; and
 - (ii) in accordance with Title 20A, Election Code, except as provided in this section.
 - (c)
 - (i) The notice of the election called under Subsection (1)(a)(i) shall include with any other information required by law:
 - (A) a summary of the cable television services or public telecommunications services that the legislative body of the municipality proposes to provide to subscribers residing within the boundaries of the municipality;
 - (B) the feasibility study summary under Section 10-18-203;
 - (C) a statement that a full copy of the feasibility study is available for inspection and copying; and
 - (D) the location in the municipality where the feasibility study may be inspected or copied.
 - (ii) The notice of an election called under Subsection (1)(a)(ii) shall include a summary prepared by the municipality describing the proposed public communications service facilities.
 - (d)
 - (i) For an election called under Subsection (1)(a)(i), the ballot for the election shall pose the question substantially as follows:

"Shall the [name of the municipality] provide [cable television service or public telecommunications service] to the inhabitants of the [municipality]?"
 - (ii) For an election called under Subsection (1)(a)(ii), the ballot for the election shall pose the question substantially as follows:

"Shall the [name of the municipality] provide public telecommunications service facilities within [name of the municipality] by [brief description of the method or means and financing terms, including total principal and interest costs, by which the public communications service facilities will be provided]?"
 - (e) The ballot proposition may not take effect until submitted to the electors and approved by the majority of those voting on the ballot.
- (2) In accordance with Title 20A, Chapter 7, Issues Submitted to the Voters, a municipal legislative body's action to have the municipality over which the legislative body presides provide cable television services or public telecommunications services is subject to local referenda.
- (3)
 - (a) The results of an election called under Subsection (1)(a)(ii) are not binding and do not:
 - (i) require the municipality that called the election to take, or refrain from taking, any action; or
 - (ii) limit the municipality that called the election from taking any action authorized under Section 10-8-14 or 10-18-105.
 - (b) An election called under Subsection (1)(a)(ii) does not exempt a municipality from the applicable requirements of this Title 10, Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

Amended by Chapter 419, 2016 General Session

Part 3 Operational Requirements and Limitations

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

- (1) A municipality that provides a cable television service or a public telecommunications service under this chapter:
 - (a) shall establish an enterprise fund to account for the municipality's operations of a cable television service or public telecommunications service;
 - (b) for accounting purposes only, may account for its cable television services and its public telecommunications services in a single enterprise fund under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities;
 - (c) shall, consistent with the requirements of Section 10-6-135, adopt separate operating and capital budgets for the municipality's:
 - (i) cable television services; and
 - (ii) public telecommunications services;
 - (d) may not transfer any appropriation or other balance in any enterprise fund established by the municipality under this section to another enterprise fund; and
 - (e) may not transfer any appropriation or other balance in any other enterprise fund established by the municipality under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities, to any enterprise fund established by the municipality under this section.
- (2) The restrictions on transfers described in Subsections (1)(d) and (e) do not apply to transfers made by a municipality between other enterprise funds established by the municipality.

Enacted by Chapter 83, 2001 General Session

10-18-302 Bonding authority.

- (1) In accordance with Title 11, Chapter 14, Local Government Bonding Act, the legislative body of a municipality may by resolution determine to issue one or more revenue bonds or general obligation bonds to finance the capital costs for facilities necessary to provide to subscribers:
 - (a) a cable television service; or
 - (b) a public telecommunications service.
- (2) The resolution described in Subsection (1) shall:
 - (a) describe the purpose for which the indebtedness is to be created; and
 - (b) specify the dollar amount of the one or more bonds proposed to be issued.
- (3)
 - (a) A revenue bond issued under this section shall be secured and paid for:
 - (i) from the revenues generated by the municipality from providing:
 - (A) cable television services with respect to revenue bonds issued to finance facilities for the municipality's cable television services; and
 - (B) public telecommunications services with respect to revenue bonds issued to finance facilities for the municipality's public telecommunications services; and
 - (ii) notwithstanding Subsection (3)(b) and Subsection 10-18-303(3)(a), from revenues generated under Title 59, Chapter 12, Sales and Use Tax Act, if:
 - (A) notwithstanding Subsection 11-14-201(3) and except as provided in Subsections (4) and (5), the revenue bond is approved by the registered voters in an election held:

- (I) except as provided in Subsection (3)(a)(ii)(A)(II), pursuant to the provisions of Title 11, Chapter 14, Local Government Bonding Act, that govern bond elections; and
 - (II) notwithstanding Subsection 11-14-203(2), at a regular general election;
 - (B) the revenues described in this Subsection (3)(a)(ii) are pledged as security for the revenue bond; and
 - (C) the municipality or municipalities annually appropriate the revenues described in this Subsection (3)(a)(ii) to secure and pay the revenue bond issued under this section.
 - (b) Except as provided in Subsection (3)(a)(ii), a municipality may not pay the origination, financing, or other carrying costs associated with the one or more revenue bonds issued under this section from the town or city, respectively, general funds or other enterprise funds of the municipality.
- (4)
- (a) As used in this Subsection (4), "municipal entity" means an entity created pursuant to an agreement:
 - (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and
 - (ii) to which a municipality is a party.
 - (b) The requirements of Subsection (3)(a)(ii)(A) do not apply to a municipality or municipal entity that issues revenue bonds, or to a municipality that is a member of a municipal entity that issues revenue bonds, if:
 - (i) on or before March 2, 2004, the municipality that is issuing revenue bonds or that is a member of a municipal entity that is issuing revenue bonds has published the first notice described in Subsection (4)(b)(iii);
 - (ii) on or before April 15, 2004, the municipality that is issuing revenue bonds or that is a member of a municipal entity that is issuing revenue bonds makes the decision to pledge the revenues described in Subsection (3)(a)(ii) as security for the revenue bonds described in this Subsection (4)(b)(ii);
 - (iii) the municipality that is issuing the revenue bonds or the municipality that is a member of the municipal entity that is issuing the revenue bonds has:
 - (A) held a public hearing for which public notice was given by publication of the notice:
 - (I) in a newspaper published in the municipality or in a newspaper of general circulation within the municipality for two consecutive weeks, with the first publication being not less than 14 days before the public hearing; and
 - (II) on the Utah Public Notice Website created in Section 63F-1-701, for two weeks before the public hearing; and
 - (B) the notice identifies:
 - (I) that the notice is given pursuant to Title 11, Chapter 14, Local Government Bonding Act;
 - (II) the purpose for the bonds to be issued;
 - (III) the maximum amount of the revenues described in Subsection (3)(a)(ii) that will be pledged in any fiscal year;
 - (IV) the maximum number of years that the pledge will be in effect; and
 - (V) the time, place, and location for the public hearing;
 - (iv) the municipal entity that issues revenue bonds:
 - (A) adopts a final financing plan; and
 - (B) in accordance with Title 63G, Chapter 2, Government Records Access and Management Act, makes available to the public at the time the municipal entity adopts the final financing plan:
 - (I) the final financing plan; and

- (II) all contracts entered into by the municipal entity, except as protected by Title 63G, Chapter 2, Government Records Access and Management Act;
- (v) any municipality that is a member of a municipal entity described in Subsection (4)(b)(iv):
 - (A) not less than 30 calendar days after the municipal entity complies with Subsection (4)(b)(iv)(B), holds a final public hearing;
 - (B) provides notice, at the time the municipality schedules the final public hearing, to any person who has provided to the municipality a written request for notice; and
 - (C) makes all reasonable efforts to provide fair opportunity for oral testimony by all interested parties; and
- (vi) except with respect to a municipality that issued bonds prior to March 1, 2004, not more than 50% of the average annual debt service of all revenue bonds described in this section to provide service throughout the municipality or municipal entity may be paid from the revenues described in Subsection (3)(a)(ii).
- (5) On or after July 1, 2007, the requirements of Subsection (3)(a)(ii)(A) do not apply to a municipality that issues revenue bonds if:
 - (a) the municipality that is issuing the revenue bonds has:
 - (i) held a public hearing for which public notice was given by publication of the notice:
 - (A) in a newspaper published in the municipality or in a newspaper of general circulation within the municipality for two consecutive weeks, with the first publication being not less than 14 days before the public hearing; and
 - (B) on the Utah Public Notice Website created in Section 63F-1-701, for 14 days before the public hearing; and
 - (ii) the notice identifies:
 - (A) that the notice is given pursuant to Title 11, Chapter 14, Local Government Bonding Act;
 - (B) the purpose for the bonds to be issued;
 - (C) the maximum amount of the revenues described in Subsection (3)(a)(ii) that will be pledged in any fiscal year;
 - (D) the maximum number of years that the pledge will be in effect; and
 - (E) the time, place, and location for the public hearing; and
 - (b) except with respect to a municipality that issued bonds prior to March 1, 2004, not more than 50% of the average annual debt service of all revenue bonds described in this section to provide service throughout the municipality or municipal entity may be paid from the revenues described in Subsection (3)(a)(ii).
- (6) A municipality that issues bonds pursuant to this section may not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of:
 - (a) cable television services; or
 - (b) public telecommunications services.

Amended by Chapter 176, 2014 General Session

10-18-303 General operating limitations.

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

- (1) A municipality that provides a cable television service shall comply with:
 - (a) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.; and
 - (b) the regulations issued by the Federal Communications Commission under the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.
- (2) A municipality that provides a public telecommunications service shall comply with:

- (a) the Telecommunications Act of 1996, Pub. L. 104-104;
 - (b) the regulations issued by the Federal Communications Commission under the Telecommunications Act of 1996, Pub. L. 104-104;
 - (c) Section 54-8b-2.2 relating to:
 - (i) the interconnection of essential facilities; and
 - (ii) the purchase and sale of essential services; and
 - (d) the rules made by the Public Service Commission of Utah under Section 54-8b-2.2.
- (3) A municipality may not cross subsidize its cable television services or its public telecommunications services with:
- (a) tax dollars;
 - (b) income from other municipal or utility services;
 - (c) below-market rate loans from the municipality; or
 - (d) any other means.
- (4)
- (a) A municipality may not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of:
 - (i) cable television services; or
 - (ii) public telecommunications services.
 - (b) A municipality shall apply without discrimination as to itself and to any private provider the municipality's ordinances, rules, and policies, including those relating to:
 - (i) obligation to serve;
 - (ii) access to public rights of way;
 - (iii) permitting;
 - (iv) performance bonding;
 - (v) reporting; and
 - (vi) quality of service.
 - (c) Subsections (4)(a) and (b) do not supersede the exception for a rural telephone company in Section 251 of the Telecommunications Act of 1996, Pub. L. 104-104.
- (5) In calculating the rates charged by a municipality for a cable television service or a public telecommunications service, the municipality:
- (a) shall include within its rates an amount equal to all taxes, fees, and other assessments that would be applicable to a similarly situated private provider of the same services, including:
 - (i) federal, state, and local taxes;
 - (ii) franchise fees;
 - (iii) permit fees;
 - (iv) pole attachment fees; and
 - (v) fees similar to those described in Subsections (5)(a)(i) through (iv); and
 - (b) may not price any cable television service or public telecommunications service at a level that is less than the sum of:
 - (i) the actual direct costs of providing the service;
 - (ii) the actual indirect costs of providing the service; and
 - (iii) the amount determined under Subsection (5)(a).
- (6)
- (a) A municipality that provides cable television services or public telecommunications services shall establish and maintain a comprehensive price list of all cable television services or public telecommunications services offered by the municipality.
 - (b) The price list required by Subsection (6)(a) shall:

- (i) include all terms and conditions relating to the municipality providing each cable television service or public telecommunications service offered by the municipality;
- (ii)
 - (A) be published in a newspaper having general circulation in the municipality; and
 - (B) be published in accordance with Section 45-1-101; and
- (iii) be available for inspection:
 - (A) at a designated office of the municipality; and
 - (B) during normal business hours.
- (c) At least five days before the date a change to a municipality's price list becomes effective, the municipality shall:
 - (i) notify the following of the change:
 - (A) all subscribers to the services for which the price list is being changed; and
 - (B) any other persons requesting notification of any changes to the municipality's price list; and
 - (ii)
 - (A) publish notice in a newspaper of general circulation in the municipality; and
 - (B) publish notice in accordance with Section 45-1-101.
- (d) In accordance with Subsection (6)(c)(ii)(A), if there is no newspaper of general circulation in the municipality, the municipality shall publish the notice required by this Subsection (6) in a newspaper of general circulation that is nearest the municipality.
- (e) A municipality may not offer a cable television service or a public telecommunications service except in accordance with the prices, terms, and conditions set forth in the municipality's price list.
- (7) A municipality may not offer to provide or provide cable television services or public telecommunications services to a subscriber that does not reside within the geographic boundaries of the municipality.
- (8)
 - (a) A municipality shall keep accurate books and records of the municipality's:
 - (i) cable television services; and
 - (ii) public telecommunications services.
 - (b) The books and records required to be kept under Subsection (8)(a) are subject to legislative audit to verify the municipality's compliance with the requirements of this chapter including:
 - (i) pricing;
 - (ii) recordkeeping; and
 - (iii) antidiscrimination.
- (9) A municipality may not receive distributions from the Universal Public Telecommunications Service Support Fund established in Section 54-8b-15.

Amended by Chapter 388, 2009 General Session

10-18-304 Eminent domain.

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

- (1) a cable television service; or
- (2) a public telecommunications service.

Enacted by Chapter 83, 2001 General Session

10-18-305 Quality of service standards.

- (1) A municipality that provides a cable television service or a public telecommunications service shall adopt an ordinance governing the quality of service the municipality shall provide to its subscribers.
- (2) The ordinance required by Subsection (1) shall:
 - (a) be competitively neutral; and
 - (b) contain standards that are substantially similar to the standards imposed on private providers operating within the geographic boundaries of the municipality under:
 - (i) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.;
 - (ii) the Telecommunications Act of 1996, Pub. L. 104-104;
 - (iii) Title 54, Public Utilities;
 - (iv) regulations issued by the Federal Communications Commission under the statutes listed in Subsections (2)(b)(i) and (ii); and
 - (v) rules made by the Public Service Commission of Utah under Title 54, Public Utilities.

Enacted by Chapter 83, 2001 General Session

10-18-306 Enforcement and appeal.

- (1) Before a person that is or is likely to have a substantial interest affected by a municipality's violation of this chapter may file an action in district court for violation of this chapter, that person shall file a written complaint with the municipality in accordance with this section.
- (2)
 - (a) A municipality that provides a cable television service or a public telecommunications service shall enact an ordinance establishing a procedure for the filing and resolution of complaints relating to the municipality providing:
 - (i) a cable television service; or
 - (ii) a public telecommunications service.
 - (b) The procedure required by Subsection (2)(a) shall:
 - (i) permit any person described in Subsection (1) to file a complaint including:
 - (A) an individual subscriber; or
 - (B) a private provider that competes with the municipality in the geographic boundaries of the municipality;
 - (ii) establish an expedited process that requires within 45 days after the date the complaint is filed:
 - (A) that a hearing be held, unless the parties to the proceeding waive the requirement of a hearing; and
 - (B) the issuance of a final decision; and
 - (iii) provide that failure to render a decision within the time allotted shall be treated as an adverse decision for purposes of appeal.
- (3) Appeal of an adverse decision from the municipality may be taken to the district court for a de novo proceeding.

Enacted by Chapter 83, 2001 General Session