

Representative Keith Grover proposes the following substitute bill:

MUNICIPAL TELECOMMUNICATIONS AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires a municipality that offers cable television service or public telecommunication service to charge a rate that is just and reasonable for the service;
- ▶ prohibits a municipality from collecting compensation in excess of a rate or discounting a rate;
- ▶ repeals outdated language; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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



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 -- Exempt entities.**

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(3);

77 ~~[(i)]~~ (ii) Subsection 10-18-303(4);

78 ~~[(ii)]~~ (iii) Subsection 10-18-303(7);

79 ~~[(iii)]~~ (iv) Subsection 10-18-303(9);

80 (v) Section 10-18-303.5;

81 ~~[(iv)]~~ (vi) Section 10-18-304; and

82 ~~[(v)]~~ (vii) Section 10-18-305.

83 ~~[(4) For the time period beginning on the effective date of this chapter and ending on~~
84 ~~December 31, 2001, a municipality that operated a cable television service as of January 1,~~
85 ~~2001, is exempt from Subsection 10-18-301(1)(d).]~~

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

87 **10-18-301. Enterprise funds for cable television or public telecommunications**

88 services.

89 [(†)] A municipality that provides a cable television service or a public
90 telecommunications service under this chapter:

91 [(a)] (1) shall establish an enterprise fund to account for the municipality's operations
92 of a cable television service or public telecommunications service;

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

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

98 [(i)] (a) cable television services; and

99 [(ii)] (b) public telecommunications services;

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

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

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

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

109 **10-18-303. General operating limitations.**

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

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

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

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

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

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

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

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

181 circulation in the municipality, the municipality shall publish the notice required by this
182 Subsection (6) in a newspaper of general circulation that is nearest the municipality.

183 (e) A municipality may not offer a cable television service or a public
184 telecommunications service except in accordance with the prices, terms, and conditions set
185 forth in the municipality's price list.

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

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

190 (i) cable television services; and

191 (ii) public telecommunications services.

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

195 (i) pricing;

196 (ii) recordkeeping; and

197 (iii) antidiscrimination.

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

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

201 **10-18-303.5. Rate is just and reasonable -- Rate may not vary.**

202 (1) If a municipality calculates and charges a rate in accordance with Section
203 10-18-303, the municipality shall:

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

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

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

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

208 (A) each category of customer; and

209 (B) the state;

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

212 (iv) consider methods to encourage municipal and customer conservation of resources
213 and energy.

214 (2) (a) A municipality may not charge, demand, collect, contract for, or receive a
215 greater, less, or different compensation for a cable television service or public
216 telecommunication service than the rate calculated and charged in accordance with this section
217 and Section 10-18-303.

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