

HB0273S01 compared with HB0273

~~deleted text~~ shows text that was in HB0273 but was deleted in HB0273S01.

inserted text shows text that was not in HB0273 but was inserted into HB0273S01.

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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- ▶ repeals outdated language; and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.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

10-18-303.5, Utah Code Annotated 1953

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

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

10-18-104. Application to existing contracts -- Exempt entities.

(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;

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(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)~~3);

~~{~~ (ii) Subsection 10-18-303(7);

~~}~~ [(~~ii~~) (~~(iii)~~ii) Subsection 10-18-303(~~(9)~~);

~~—~~ (iv)4);

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

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

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(v) Section 10-18-303.5;

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

[(v)] (vii) 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).]~~

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

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

~~[(b)]~~ (2) 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)]~~ (3) shall, consistent with the requirements of Section 10-6-135, adopt separate operating and capital budgets for the municipality's:

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

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

~~[(d)]~~ (4) 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)]~~ (5) 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.]~~

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

10-18-303. General operating limitations.

A municipality that provides a cable television service or a public telecommunications

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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

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(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)~~[-];~~ and

(c) shall comply with the requirements of Section 10-18-303.5.

(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

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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.

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

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

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

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

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

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

(ii) the economic impact of a charge on:

(A) each category of customer; and

(B) the state;

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

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

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

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

†

Legislative Review Note

~~as of 1-2-13 4:13 PM~~

~~Office of Legislative Research and General Counsel~~