

**CHAPTER 7.5 CABLE TELEVISION****Article 7.5-1. In General (Reserved)****Article 7.5-2. Franchise****Article 7.5-1. In General (Reserved)****Article 7.5-2. Franchise**

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**7.5-2-1. Grant of authority.**

There is hereby granted to Community Cable of Utah, Inc., a Colorado Corporation, its successors and assigns for a period beginning from and after the effective date of Ordinance No. 1981-17, and until the thirty-first day of December, 1996, the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, under and over the streets, alleys, public ways and public places now or hereafter laid out or dedicated, and all extensions thereof and additions thereto in Utah County, Utah, poles, wires, coaxial and other cables, underground conduits, manholes, and such other television conductors and fixtures as are necessary or proper for the maintenance and operation in the County of a system for the transmission of television, FM radio, and electrical impulses and signals for all public and private use; provided, however, that such poles or other fixtures placed on any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line on the lot abutting said alleys and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways, and provided further that underground conduits, cables and other facilities shall be located and constructed in such a

manner and placed at such depths as not to interfere with the facilities of the County or any public utility operating by virtue of any prior ordinance adopted by the County or otherwise, or with the grading and maintenance of such streets, alleys and public ways and, before constructing any such facilities the County shall be furnished complete drawings of any construction pursuant to the provisions of Ordinance No. 1981-17, and that the County shall keep and maintain permanent records of the location and character of any underground facilities constructed and the relationship of such facilities to those of the County and public utilities operating within the County.

(1) Nonexclusive grant. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the County reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this franchise. (Ord. No. 1981-17, Section 1, 4-1-81)

**7.5-2-2. Conditions on street occupancy.**

(a) Use. All transmission and distribution structures, and equipment erected by the grantee within the County shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(b) Restoration. In case of any disturbance of pavement sidewalk, drivewalk, driveway or other surfacing, the grantee shall, at its own cost and expense, and in a manner approved by the County Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed. Grantee shall obtain and pay for all permits required by ordinance for and shall be subject to all ordinances relating to excavations or obstructions made by grantee in streets or alleys.

(c) Relocation. In event that at any time during the period of this franchise the County shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the grantee, upon reasonable notice by the County, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense so as to comply with the requirements of grantor.

(d) Placement of fixtures. The grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line,

and those placed in alleys shall be placed close to a line of the lot abutting on side alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways. Grantee agrees to conform to requirements of the County Surveyor's department in regard to all installations, and specifically that in any area where electrical utilities are installed underground, that grantee will likewise install all equipment and cables underground.

(e) Temporary removal of wire for building moving. The grantee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire changes.

(f) Tree trimming. The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the County so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, all trimming to be done under the supervision and direction of the County and at the expense and liability of the grantee. (Ord. No. 1981-17, Section 2, 4-1-81)

#### **7.5-2-3. Indemnity and liability coverage.**

It is expressly understood and agreed by and between the grantee and the County that the grantee shall hold the County harmless from all loss sustained by the County on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the grantee in the construction, operation or maintenance of its system in the County. The County shall notify the grantee's representative in the County within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the County on account of any negligence as aforesaid on the part of the grantee. The grantee agrees to maintain and keep in full force and effect at all times during the term of this franchise ordinance sufficient liability insurance coverage to protect the County against any such claims, suits, judgment, executions or demands in a sum not less than one hundred thousand dollars (\$100,000.00) per person in any one claim, three hundred thousand dollars (\$300,000.00) as to any one accident or occurrence, and not less than one hundred thousand dollars (\$100,000.00) for property damage as to any one accident or occurrence, the County to be

named as an insured. (Ord. No. 1981-17, Section 3, 4-1-81)

#### **7.5-2-4. Compliance with applicable laws and ordinances.**

The grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the County, and to such reasonable regulation as the County shall hereafter by resolution or ordinance provide, and shall fully comply with all applicable rules and regulations now in effect or hereafter adopted by the Federal Communications Commission, the State of Utah and the United States Government. (Ord. No. 1981-17, Section 4, 4-1-81)

#### **7.5-2-5. Use of system by County.**

The County shall have the right, without cost, to make attachments to poles owned and used by the grantee within the County for County wire used by the County in connection with its fire alarm or police signal systems; such attachments to be installed and maintained in accordance with the requirements of the National Electrical Safety Code pertaining to such construction, and only after written notices to the grantee; provided, however, that the grantee shall assume no liability nor be put to any additional expense in connection therewith, and provided further that the County's use thereof shall be in such manner as not to interfere with the grantee's use of the same. (Ord. No. 1981-17, Section 5, 4-1-81)

#### **7.5-2-6. System construction and extension.**

(a) The grantee is hereby authorized to extend the system within the franchise area to the extent that such extension is or may become technically and economically feasible.

(b) Whenever the grantee shall have received written requests for service from at least fifteen (15) subscribers within four hundred (400) cable meters (thirteen hundred (1300) cable feet) of its aerial trunk cable, or from at least twenty-five (25) subscribers within four hundred (400) cable meters (thirteen hundred (1300) cable feet) of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The four hundred (400) meters shall be measured in extension length of grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

(c) No person in the grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances,

including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than forty five (45) meters (one hundred fifty (150) cable feet) or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

(d) For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision of development may acquire CATV service for this development under the following conditions; but otherwise the grantee shall not be obligated to construct CATV system in such new development: Developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required, and will furnish and install for the grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the grantee's plans and specifications. Developer may enter into a written agreement with the grantee whereby such costs may be reimbursed to the developer by grantee at the rate of fifty (50) per cent of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed three (3) years.

In addition to providing plans and specifications to the developer, the grantee shall inspect the facilities required hereunder, and certify to the County prior to final approval of the subdivision or development that the facilities required herein are properly installed. The County shall have the right to review and require its approval of the maps and specifications provided by the grantee. The costs of that portion of an extension to a subdivision or development from the grantee's existing facilities in excess of sixty (60) meters (two hundred (200) feet) outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated and maintained by grantee. (Ord. No. 1981-17, Section 6, 4-1-81)

**7.5-2-7. Consent to use existing utility facilities.**

The County hereby gives its consent to Mountain States Telephone and Telegraph Company, Utah Power and Light Company and any other utility company to authorize the grantee to use their poles, underground conduits, and other facilities for the purpose of conducting the business of the grantee and to attach coaxial and other cables, lines, conduits, transformers and other electrical equipment thereto. Grantee shall nevertheless obtain appropriate consent

and shall contract with such companies for approval for the use of such poles, towers and conduits as are owned by said Mountain States Telephone and Telegraph Company, Utah Power and Light Company and other utilities and companies respectively pursuant to the provisions of such ordinance. The rights granted to the grantee pursuant to the provisions of Section 7.5-2-1 of this Article shall be supplemental and additional to those granted to the Mountain State Telephone and Telegraph Company, Utah Power and Light Company and other utilities and companies who have been granted franchises; provided, nevertheless, that the poles of such telephone and power companies shall be utilized by the grantee hereunder wherever practicable. (Ord. No. 1981-17, Section 7, 4-1-81)

**7.5-2-8. Franchise payment.**

The grantee shall pay the County, on or before each March 31st, a franchise fee of three (3%) per cent of basic subscriber revenues received for cable television operations in the County for the preceding calendar year, and no other fee, charge or consideration. Sales tax or other taxes levied on a per subscription basis and collected by the grantee shall be deducted from the gross annual basic subscriber revenues in computing any sums due the County. The grantee shall provide an annual summary report showing gross annual basic subscriber revenues received during the preceding year. (Ord. No. 1981-17, Section 8, 4-1-81)

**7.5-2-9. Approval of transfer.**

The grantee shall not sell or transfer its plant or system to another nor transfer any rights under this franchise to another without prior written approval of the County Commission and provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the County Recorder an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof. (Ord. No. 1981-17, Section 9,4-1-81)

**7.5-2-10. County rules.**

The right is hereby reserved to the County to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the laws of the State of Utah. (Ord. No. 1981-17, Section 10, 4-1-81)

**7.5-2-11. Supervision and inspection.**

All construction or installation work performed subject to the provisions of this Chapter, shall be subject to approval of the County Engineer and to such inspection as he shall find necessary to insure compliance with governing ordinances. (Ord. No. 1981-17, Section 11, 4-1-81)

**7.5-2-12. Binding on assigns.**

The rights granted by this franchise ordinance shall be binding upon and insure to the benefit of the heirs, assigns, grantees and successors in interest of the parties. (Ord. No. 1981-17, Section 12, 4-1-81)

**7.5-2-13. Time to commence construction.**

The grantee shall begin construction of the system within sixty (60) days after all licenses, permits and other authority requisite for the operation of microwave facilities is obtained and pole line agreements and all other necessary legal requirements for the installation of the system are satisfied. (Ord. No. 1981-17, Section 13, 4-1-81)

**7.5-2-14. Forfeiture.**

Any violation by the grantee, its vendee, lessee or successor, of the provisions of this franchise, or any material portions thereof, or the failure to promptly perform any of the provisions thereof shall be cause for forfeiture of this franchise and all rights hereunder to the County, after written notice to the grantee and continuation of such violation, failure or default, sixty (60) days after such notice. (Ord. No. 1981-17, Section 14, 4-1-81)

**7.5-2-15. Rates.**

The Company's rates shall be no more than:

Single Dwelling Connection Charge Monthly Charge

First TV outlet \$25.00 \$7.50

These rates may be increased only with prior approval of the County after an appropriate public hearing affording due process. From time to time, the company may seek approval of the County for a rate increase; however, rates approved shall remain in effect for not less than twelve (12) calendar months after effective date. The County Commission approval of subscriber rates shall not be unreasonably withheld. (Ord. No. 1981-17, Section 15, 4-1-81)

**7.5-2-16. Local office complaints.**

The company shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges so that CATV maintenance service shall be promptly available. Should a subscriber have unresolved complaints regarding the quality of cable television service, equipment

malfunction or similar matters, the subscriber shall be entitled to meet jointly with a representative of the franchised County and a representative of the company within thirty (30) days to fully discuss and resolve such matters. (Ord. No. 1981-17, Section 16, 4-1-81)

**7.5-2-17. Severability.**

If any part of this Chapter, is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this Chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the grantee. All ordinances and parts of ordinances in conflict with the provisions of this Chapter are hereby repealed. (Ord. No. 1981-17, Section 17, 4-1-81)