

Chapter 3

GREEN RIVER CABLEVISION, A UTAH PARTNERSHIP

13-3-1: DEFINITIONS:

When used in this chapter, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given:

CATV: A cable television system.

CABLE TELEVISION SYSTEM: A system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by cable, radio, television or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.

CITY: The city of Green River, Utah.

CITY COUNCIL: The governing body of the city.

FRANCHISE AREA: That area within the corporate limits of the city as now or hereafter constituted.

GRANTEE: Green River Cablevision and its successors and assigns, the grantee of rights under this chapter.

GROSS REVENUE: All remuneration received directly by the grantee from any source whatsoever in connection with services rendered by the Green River cable system, but shall not include any taxes on services furnished by the grantee imposed on any subscriber or user by any government, government unit, political subdivision, agency or instrumentality, and collected by the grantee.

PERSON: Any natural person, company or entity of any kind.

PROPERTY OF GRANTEE: All property owned, installed or used by the grantee in the conduct of a CATV business in the city.

STREET: The surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.

SUBSCRIBER: Any person or entity receiving and paying for basic CATV service. (1995 Code § 28-3-1)

13-3-2: GRANT OF AUTHORITY:

There is hereby granted by the city to the grantee the right and privilege to engage in the business of operating and providing a CATV system in the city, and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; or properties rented or leased from other persons, including, but not limited to, any public utility. (1995 Code § 28-3-2)

13-3-3: NONEXCLUSIVE GRANT:

The city's grant of authority to grantee, as set forth in section 13-3-2 of this chapter, is nonexclusive. (1995 Code § 28-3-3)

13-3-4: DURATION OF FRANCHISE:

The franchise and rights herein granted shall take effect twenty (20) days after publication or posting of the ordinance codified herein, and shall continue in force and effect for fifteen (15) years after said effective date. Upon application by the grantee to the city, the franchise may be renewed for subsequent ten (10) year periods. (1995 Code § 28-3-4)

13-3-5: CONDITIONS OF STREET OCCUPANCY:

The grantee shall first obtain the approval of the building inspector before any construction is commenced on any of the streets, alleys, public grounds or places of the city. The grantee shall give the city reasonable written notice of proposed construction so as to coordinate all work between the city and the grantee. In the event the building inspector does not approve a request made by the grantee, the grantee may appeal through a written statement submitted to the city council within thirty (30) days from the date of the inspector's failure to approve. (1995 Code § 28-3-5)

13-3-6: ELECTRONIC INTERFERENCE:

Grantee shall assure that operation of its cable TV system does not cause electronic

interference with reception of translator signals on any channels by residents of the city. If such interference occurs, the building inspector is authorized to direct grantee to remove TV signals from those cable channels or take whatever other action is necessary to eliminate such interference. (1995 Code § 28-3-6)

13-3-7: INTERRUPTION OF SERVICE:

The grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, as far as possible, shall be preceded by notice and shall occur during periods of minimum use of the system. (1995 Code § 28-3-7)

13-3-8: RESTORATION OF STREETS:

In case of disturbance of any street or paved area, the grantee shall, at its expense and in a manner approved by the city, replace and restore such street or paved area in as good condition as theretofore. (1995 Code § 28-3-8)

13-3-9: RELOCATION OR REMOVAL:

The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when lawfully required by the city by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structure or improvements by the city. (1995 Code § 28-3-9)

13-3-10: RIGHT OF ABANDONMENT:

The grantee shall have the right of abandonment of its property subject to city approval, and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the grantee. (1995 Code § 28-3-10)

13-3-11: RAISING/LOWERING OF WIRES:

The grantee shall, on the request of any person holding a building permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings, provided:

- A. The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the grantee, making such payment in advance; and
- B. The grantee is given not less than three (3) business days advance notice to arrange for such temporary wire changes. (1995 Code § 28-3-11)

13-3-12: TREE TRIMMING:

The grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with the grantee's wires and cables, except that at the option of the city, such trimming may be done by it or under its supervision and direction at the grantee's expense. (1995 Code § 28-3-12)

13-3-13: CITY USE:

Subject to any applicable state or federal regulations or tariffs, the city shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the grantee in any street, provided:

- A. Such use by the city does not interfere with the use by the grantee; and
- B. The city holds the grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits. (1995 Code § 28-3-13)

13-3-14: MAINTENANCE OF TRANSLATORS:

Grantee shall assume complete maintenance for existing translators presently maintained by the city. Signal strength of translators signals shall be, as a minimum, as set forth in appendix A attached to the ordinance codified herein. (1995 Code § 28-3-14)

13-3-15: CONSTRUCTION OF COAXIAL SYSTEM:

Grantee shall construct a broadband coaxial system capable of providing thirty five (35) channels of satisfactory television reception. Installation and maintenance of the system shall be such that standard NTSC color signals may be transmitted to any color receiver with full fidelity. The system shall conform to FCC requirements, and the provisions of the national electrical safety code and all applicable federal, state and local rules and regulations. (1995 Code § 28-3-15)

13-3-16: SAFETY REQUIREMENTS:

The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair. (1995 Code § 28-3-16)

13-3-17: SYSTEM CONSTRUCTION AND EXTENSION:

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. (1995 Code § 28-3-17)

13-3-18: ACQUISITION OF PERMITS AND LICENSES:

Grantee, promptly following the effective date hereof, shall make all necessary applications to all appropriate entities for authority with respect to the distribution system and shall proceed with due diligence to acquire all necessary licenses and authorizations for the construction of the distribution system and the furnishing of CATV service. Grantee shall, in good faith, following the receipt of all necessary rights from public and private parties and all necessary licenses and authorizations, complete the execution of all contracts for construction of the distribution system and construction shall be completed with reasonable speed. (1995 Code § 28-3-18)

13-3-19: BOND DEPOSIT:

Grantee shall deposit with the city clerk, within ninety (90) days of the effective date of this

ordinance, a surety bond in the amount of twenty five thousand dollars (\$25,000.00) to ensure construction of the cable system as proposed. The bond shall be released upon completion of "passing" of all residences in the city of Green River which are technically and economically feasible to be "passed" by the cable plant. (1995 Code § 28-3-19)

13-3-20: EXTENSION OF SERVICE AREA:

Whenever the grantee shall have received written requests for services from at least fifteen (15) subscribers within four hundred (400) cable meters (1,300 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 subscriber's home or premises. (1995 Code § 28-3-20)

13-3-21: RECOVERY OF SERVICE EXTENSION COSTS, WHEN:

No person in the grantee's service area shall be arbitrarily refused service; but in recognition of the capital cost 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 (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. (1995 Code § 28-3-21)

13-3-22: SUBDIVISION DEVELOPMENT:

For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or 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:

- A. Developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required; and

- B. Will furnish and install for the grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the grantee plans and specifications; and
- C. In addition to providing plans and specifications to the developer, the grantee shall inspect the facilities required hereunder, and certify to the city prior to final approval of the subdivision or development that the facilities required herein are properly installed. The city shall have the right to review and require its approval of the maps and specifications provided by the grantee. (1995 Code § 28-3-22)

13-3-23: LOCAL OFFICE; COMPLAINTS:

The grantee 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 complaints regarding cable television operations may be promptly reported to other grantee. (1995 Code § 28-3-23)

13-3-24: RATES:

Rates charged by the grantee for monthly service hereunder shall be fair and reasonable and nondiscriminatory and designed to meet all necessary costs of service and to provide a reasonable rate of return on invested capital. Initial and all subsequent modifications of rates shall be set for the operation and maintenance of a CATV system as fair and reasonable under existing conditions in connection with the rights granted herein. The city may, upon its election, review rates and determine if rate regulation is in the public interest. Such reviews may occur every three (3) years, and grantee must be notified of council's intent to assume rate regulation within ninety (90) days of the anniversary date of the effective date of this ordinance. If council determines rate regulation to be in the public interest, from that time on, grantee must obtain consent of council to increase rates, such consent not to be unreasonably withheld. Council agrees not to act in an arbitrary and capricious manner in exercising such rate regulation. Notwithstanding the above, grantee may increase rates annually in sufficient amount to offset inflation and/or direct increases in supplier services. Grantee agrees to maintain rates as contained in appendix B attached to the ordinance codified herein for a period of two (2) years from inception of service, except for inflation or supplier related increase. (1995 Code § 28-3-24)

13-3-25: FRANCHISE PAYMENTS:

The grantee shall pay the city, on or before the March 30 of each year following the year in which this ordinance is adopted and approved by the city, a franchise fee of three percent (3%) of annual gross revenues received for cable television operations in the city for the preceding calendar year. (1995 Code § 28-3-25)

13-3-26: INDEMNIFICATION OF CITY:

The grantee shall at all times protect and hold the city harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description including investigation costs, court costs and reasonable attorney fees, which may accrue or be suffered or claimed by any person or persons arising out of the negligence of the grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the city gives the grantee reasonably prompt notice of any such claims, actions and suits, without limitation, in writing. (1995 Code § 28-3-26)

13-3-27: COMPREHENSIVE LIABILITY INSURANCE:

The grantee shall, within ninety (90) days of the award of a franchise hereunder, furnish to the city, and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy in a company approved by the city council protecting the city and all of its officers, boards, commissions, agents, employees and appointees against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of the grantee under the franchise, with minimum liability limits of five hundred thousand dollars (\$500,000.00) for the personal injury or death of any one person and one million dollars (\$1,000,000.00) for personal injury or death of two (2) or more persons in any one occurrence, and two hundred fifty thousand dollars (\$250,000.00) for damage to property resulting from one occurrence. (1995 Code § 28-3-27)

13-3-28: CITY NAMED ADDITIONAL INSURED; NOTICE OF CANCELLATION:

The policy mentioned in the foregoing paragraph shall name the city, its officers, boards, commissions, agents, employees and appointees as additional insureds and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the city thirty (30) days in advance of the effective date thereof; if such insurance is provided by a policy which also covers the franchise or any other entity or

person other than those above named, then such policy shall contain an endorsement concerning gross liability, which endorsement shall be subject to approval by the city attorney. (1995 Code § 28-3-28)

13-3-29: REVIEW OF COVERAGE:

The city council shall annually review the above insurance provisions; and, if it is determined that the insurance coverage is inadequate, additional insurance may be required as reasonably determined by the city council and shall then be provided by the grantee. (1995 Code § 28-3-29)

13-3-30: PROCEDURE UPON TERMINATION:

Upon expiration of the franchise, if the grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the city for the purposes of removing therefrom any or all of its property or otherwise. In so removing said property, the grantee shall refill, at its expense, any excavation that it shall make and shall leave said streets in as good condition as that prevailing prior to the grantee's removal of its property. (1995 Code § 28-3-30)

13-3-31: MISCELLANEOUS PROVISIONS:

- A. When not otherwise prescribed herein, all matters herein are required to be filed with the city recorder.
- B. The grantee shall provide, without charge, one outlet of basic CATV service to each governmental office building, fire station, police station, public school buildings, and senior citizen center, that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.
- C. In the case of any emergency or disaster, the grantee shall, upon request of the city, make available its facilities to the city for emergency use during the emergency or disaster period. (1995 Code § 28-3-31)

13-3-32: 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 city. The city reserves the right to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, not in conflict with the laws of the state or other local or federal laws or regulations. (1995 Code § 28-3-32)

13-3-33: UNAUTHORIZED CONNECTIONS PROHIBITED:

It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised CATV system within this city for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to grantee. (1995 Code § 28-3-33)

13-3-34: TAMPERING WITH CATV EQUIPMENT PROHIBITED:

It shall be unlawful for any person, without the consent of the grantee, to wilfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound. (1995 Code § 28-3-34)

13-3-35: RIGHTS OF AMENDMENT RESERVED TO CITY:

The city reserves the right to amend or repeal any section of this ordinance and adopt additional provisions hereto in order to adopt subsequent amendments which cause the ordinance to comply with all applicable FCC rules of standards. (1995 Code § 28-3-35)

13-3-36: TRANSFER OF FRANCHISE:

The company shall not transfer the franchise without prior approval of the city. Such approval shall not unreasonably be withheld. (1995 Code § 28-3-36)

13-3-37: SEPARABILITY:

If any part of this ordinance 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 ordinance 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 the ordinance are hereby repealed. (1995 Code § 28-3-37)

13-3-38: EFFECTIVE DATE:

This ordinance shall take effect and be in force twenty (20) days from and after its publication or posting. (1995 Code § 28-3-38)