



**Before the Committee on Energy, Utilities and Technology
October 25, 2023**

Testimony of Chris Hodgdon, Comcast

LD 1967 An Act To Support Municipal Franchise Agreements

Chair Lawrence, Chair Zeigler, distinguished members of the Energy, Utilities and Technology Committee, thank you for the opportunity to offer the following testimony in opposition to LD 1967 and the recently distributed sponsor amendment. My name is Chris Hodgdon. I am Comcast's Vice President of Government Affairs here in Maine. Comcast Cable serves 17 Maine communities in the Mid Coast region, from Freeport to Woolwich and along the New Hampshire border from Kittery to Sanford. We currently offer our gigabit broadband, video, voice, and mobile services to more than 71,000 Maine homes, businesses and institutions. Further, NBCUniversal a division of Comcast Corporation owns Peacock a video streaming service with more than 22 million subscribers including tens of thousands in Maine.

Comcast opposes LD 1967 because it seeks to extend 1980s-era obligations found in cable television franchises to modern non-cable television services such as popular streaming services. The legislation seeks to do this in a discriminatory way by only imposing obligations on providers, such as Comcast, who invest in Maine by deploying broadband networks while its streaming service competitors have no such requirements and fees. The results is higher fees on consumers at a time when consumers are already feeling the sting of the rising costs of daily life.

The primary objective of the bill is to increase funding for and distribution of public, educational, and governmental channels by imposing new financial and carriage obligations on streaming services provided by cable companies. This proposal ignores these key realities:

- Customers no longer rely on cable channels to find hyper-local information from community organizations and local government – they use the Internet to access local web pages, Facebook pages, and services like YouTube. The traditional cable PEG channels are sparsely watched and are an inefficient way of distributing this type of information.
- There is no legal authority to require streaming video service providers to carry and fund PEG channels. Requiring them to do so would be a violation of the First

Amendment by compelling speech and would not survive the inevitable court challenge. Moreover, it is not technically or financially feasible for streaming services to receive and distribute hyper-local channels like PEG.

- Cable customers already carry the majority of the burden of funding PEG channels. If these channels need more funding, the legislature should require that all cable franchise fees paid to municipalities be used in support of PEG programming as is done in Vermont.
- Imposing additional costs and burdens on streaming services only when offered by cable companies (and other companies with physical plant in the rights-of-way) is discriminatory and only contributes to additional cord-cutting and customer migration to non-wired services, which ultimately harms the PEG programming the bill seeks to protect.

Lastly, LD 1967 includes several provisions related to the frequency of franchise fee payments, late payments, audits and required arbitration. These provisions are unnecessary and needlessly onerous, as there is scant if any evidence that Comcast fails to meet its obligations under its franchises with local Maine municipalities.

Comcast opposes LD 1967 and the sponsor amendment for the following reasons:

- 1. Higher consumer fees on streaming services.** LD 1967 will result in new fees on streaming services like Comcast's Peacock and its new service XUMO which is a joint venture with other cable companies and available outside the Comcast network footprint. Often 5%, this fee would be applied to the gross receipts of the streaming service as a line-item charge on consumer Bills. The gross receipts fee applies to the consumer price of the subscription as well as the advertising revenue derived from the community in which the consumer is billed. In addition to this fee consumers will also be charged a separate line item to recover the capital costs of PEG obligations related to providing PEG content on the streaming platform.

The language of the Bill and amendment suggest these new fees will apply in any community Comcast, or an affiliate owns infrastructure in the Public Rights of Way (ROW) including communities where it does not provide cable TV services. For example, if Comcast provides fiber optic infrastructure to a cell tower, broadband services to a business or installs fiber optic infrastructure in a community for purposes of redundancy or the interconnection of Comcast facilities a franchise will now be required. The obligations associated with securing a franchise are not only related to PEG, but they also trigger so called build out requirements which include statutorily required construction of Comcast's network throughout a town to serve customers.

- 2. Customer preference for finding local content has transitioned from PEG channels to online sources and doesn't justify higher fees.** PEG channels are among the least

watched channels of all the channels offered on Comcast's Maine channel lineup. In an analysis of March 2023 viewership, fewer than .5% of all Comcast's Maine viewers who have access to PEG channels watched an hour or more per week. This compares poorly with other channels with a focus on local content. For example, more than 20% and 45% of Comcast customers tuned in to an hour or more a week of Maine Public's and an average of Maine's local Broadcaster's programming during the same period. It maybe that this very low viewership has more to do with how consumers prefer to find this content than the usefulness of the content. Interactive technologies such as Facebook and local government websites, and online video services such as Youtube, have revolutionized the way citizens connect with their government and other local community news. These new public resources for localized information have far broader reach than PEG channels which are limited to cable service subscribers. Rather than raise fees on consumers to fund rarely watched services the legislature could consider reforms to ensure more efficient and cost-effective operations.

3. **Franchise fees paid to Maine municipalities are increasing and could be shared with PEG programmers if PEG programming were really a priority for the community.** An analysis of franchise fees paid by Comcast cable television customers between 2019 and 2023 show that Comcast has succeeded in increasing franchise fees paid to municipalities despite the cord-cutting trend overall. This amount grew from \$1,180,994 in 2019 to \$1,227,269 in 2022 not including Franchise Fees from Sanford consumers which Comcast expanded into in 2022. If proponents argue that LD 1967 is necessary because traditional cable television services and therefore the fees those customers pay are declining the data clearly contradicts that argument. Rather than focus on schemes to apply these fees to non-cable television services and products, proponents should instead focus on using resources more efficiently and seeking community-based funding sources just like any other local performing arts, theater or other non-profit organization. Most importantly, few communities choose to use their cable franchise fees to support PEG operating expenses. If the legislature wants to ensure the adequate funding of PEG programming, the legislature could follow Vermont's lead by requiring that all franchise fees be used for PEG or Massachusetts' example by creating PEG Enterprise Funds.
4. **LD 1967 picks winners and losers while discriminating against companies investing in Maine.** The video marketplace is evolving with new products and services and consumer preferences changing at a breakneck pace. By offering streaming services and other enhancements to its products Comcast is seeking to offer services customers want to stay competitive with other non-cable services. Comcast is also investing in Maine heavily by deploying broadband and upgrading existing customers. New infrastructure has been constructed to serve over 11,000 new homes and businesses with more than \$30M in capital invested during the last three years alone. The legislature should not be disincentivizing the deployment of additional facilities by subjecting companies that do so to discriminatory fees and regulations that make their services less competitive.

- 5. Overbroad, vaguely defined, and contradictory statutory references result in unenforceable and likely preempted language.** In no less than 9 states, municipalities are suing online streaming service providers by relying on language like that found in LD 1967's definition of "video service provider" to apply their franchise fees to such services. Courts have ruled against the application of these fees to streaming services across the country. Further, the vagueness of Section 12 of LD 1967 could result in arguments that the 5% franchise fee is applicable to revenue from any and all services delivered over the cable company's infrastructure. This would clearly violate the Cable Act, 47 U.S.C. § 542(b), which both the courts and the FCC have repeatedly held limits franchise fees to revenues from cable service only. Further, LD 1967 would also directly violate the FCC's mixed-use rule, now codified at 47 C.F.R. § 76.43, which expressly prohibits state and local governments from regulating non-cable services provided over franchised cable systems.

Thank you for your attention to this issue and willingness to consider my testimony. We ask that you oppose LD 1967. New and increased fees are unwanted by consumers, and new and increased regulation is unnecessary.

Chris Hodgdon
Vice President State Government Affairs
Comcast NBCUniversal
603-628-3380
chris_hodgdon@comcast.com