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Date: (Filing No. H- )

**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 676, L.D. 920, “An Act To Promote Oversight of and Competitive Parity among Video Service Providers”

Amend the bill in section 5 in subsection 1-A in paragraph D in the 2nd line (page 1, line 32 in L.D.) by inserting after the following: "governmental" the following: 'transmission'

Amend the bill in section 5 in subsection 1-A in paragraph E in the first line (page 1, line 39 in L.D.) by inserting after the following: "governmental" the following: 'transmission'

Amend the bill in section 5 in subsection 1-A in paragraph E in the 6th line (page 2, line 3 in L.D.) by inserting after the following: "governmental" the following: 'transmission'

Amend the bill in section 5 in subsection 1-A by striking out all of paragraph H (page 2, lines 17 to 27 in L.D.) and inserting the following:

"H. "Video service provider" means any person that sells in the State access to video, audio or computer-generated or computer-augmented entertainment services and directly or through one or more affiliates, owns or operates facilities located in whole or in part in public rights-of-way that are used to provide such services, irrespective of the technology used to deliver such services. "Video service provider" includes, but is not limited to, a cable system operator and a common carrier that operates a cable television system.

"Video service provider" does not include:

(1) A commercial mobile service provider, as defined in 47 United States Code, Section 332(d); or

(2) A provider of an Internet access service, as defined in 47 United States Code, Section 231(e)(4), with respect to the provision of the Internet access service by the provider.'

Amend the bill by striking out all of section 9 and inserting the following:

**COMMITTEE AMENDMENT**

1           **'Sec. 9. 30-A MRSA §3008, sub-§3, ¶G** is enacted to read:

2           G. Notwithstanding any provision in a franchise, a video service provider is  
3           responsible for all costs associated with public, educational and governmental  
4           transmission facility equipment used for the management of public, educational and  
5           governmental access channels within the franchising municipality, including, but not  
6           limited to, technology upgrade costs for signal quality improvement or for other  
7           reasons. A video service provider may not offset any such costs through the payment  
8           of any franchise fees in accordance with subsection 5-A.'

9           Amend the bill in section 11 in subsection 5 by striking out all of paragraph C-1 (page  
10          4, lines 15 and 16 in L.D.) and inserting the following:

11          'C-1. Provisions regarding the payment or remittance of any franchise fees by the video  
12          service provider as may be required under the agreement or contract between the  
13          municipality and the video service provider and in accordance with subsection 5-A.'

14          Amend the bill by striking out all of section 12 and inserting the following:

15          **'Sec. 12. 30-A MRSA §3008, sub-§5-A** is enacted to read:

16          **5-A. Franchise fees.** Beginning January 1, 2022, any new or renewed franchise  
17          agreement or contract between a municipality and a video service provider that includes  
18          provisions requiring payment of any franchise fees by the video service provider to the  
19          municipality must include the following provisions.

20          A. The municipality must be authorized to use the fees for costs associated with the  
21          regulation of the operation of the video service provider within the municipality; to  
22          support the provision of public, educational and governmental programming within the  
23          municipality; to offset municipal property taxes; or for any other purpose identified by  
24          the municipality.

25          B. The fees must be paid by the video service provider to the municipality or its  
26          designee on a quarterly basis and must be received by the municipality or designee no  
27          later than 45 days after the end of the calendar quarter for which the payment is made.  
28          The repeated failure to timely pay such fees is a material breach of the terms of the  
29          franchise agreement or contract. If the video service provider fails to timely pay the  
30          fees to the municipality or its designee:

31                  (1) Interest must accrue on the required, unpaid fees at the rate of 12% simple  
32                  interest per annum; and

33                  (2) The municipality may at its discretion terminate the agreement or contract for  
34                  the repeated failure of the video service provider to timely pay such fees.

35          C. Each payment under paragraph B must include a statement prepared by a financial  
36          representative or agent of the video service provider, testified and verified as correct,  
37          identifying the total amount of gross annual revenue generated by all activities of the  
38          provider within the municipality for that payment period and describing the  
39          calculations used to determine the amount of the payment. The video service provider  
40          shall prepare and maintain the financial information and records necessary to provide  
41          the information required under this paragraph in accordance with accounting principles  
42          and auditing standards generally accepted within the video service industry.

1           D. The municipality may request that the information provided by the video service  
2           provider pursuant to paragraph C be subject to audit by a qualified 3rd party to be  
3           selected by the municipality. The costs of the audit are to be paid by the municipality  
4           except when the results of the audit demonstrate that the video service provider  
5           underpaid by more than 4% any franchise fees required under the franchise agreement  
6           or contract, in which case the video service provider must reimburse the municipality  
7           for the costs of the audit.

8           E. A municipality's or its designee's acceptance of franchise fees paid by the video  
9           service provider does not constitute an agreement by the municipality that the amount  
10           of the fee is correct unless the municipality has not initiated a process to challenge or  
11           audit the amount of the fee paid within 36 months of receipt or, in the case of a fee not  
12           accompanied by a statement under paragraph C that is verified as correct, 48 months  
13           of receipt. Prior to the expiration of such time period, the municipality may inspect  
14           relevant financial information and records of the video service provider and initiate a  
15           process to seek compensation for any underpayment.'

16           Amend the bill by striking out all of section 13.

17           Amend the bill in section 14 in subsection 7 in the blocked paragraph in the first line  
18 (page 6, line 41 in L.D.) by striking out the following: "cable television" and inserting the  
19 following: '~~eable television~~ video'

20           Amend the bill in section 14 in subsection 7 in the blocked paragraph in the last line  
21 (page 6, line 42 in L.D.) by striking out the following: "cable television" and inserting the  
22 following: '~~eable television~~ video'

23           Amend the bill in section 16 in subsection 9 in the 4th line (page 7, line 11 in L.D.) by  
24 striking out the following: "fees required by this section" and inserting the following:  
25 'franchise fees'

26           Amend the bill in section 16 in subsection 9 in the first blocked paragraph in the last  
27 line (page 7, line 15 in L.D.) by striking out the following: "fees required by this section"  
28 and inserting the following: 'franchise fees'

29           Amend the bill in section 20 in subsection 2 in paragraph A in subparagraph (1) in the  
30 3rd line (page 8, line 15 in L.D.) by striking out the following: ", the Public Utilities  
31 Commission"

32           Amend the bill in section 20 in subsection 2 in paragraph A in subparagraph (2) in the  
33 first line (page 8, line 17 in L.D.) by striking out the following: "Public Utilities  
34 Commission and the"

35           Amend the bill in section 20 in subsection 2 in paragraph B in the 3rd line (page 8, line  
36 27 in L.D.) by striking out the following: "Public Utilities Commission and the"

37           Amend the bill by inserting after section 28 the following:

38           '**Sec. 29. 35-A MRSA §102, sub-§13**, as amended by PL 2019, c. 298, §1, is further  
39 amended to read:

40           **13. Public utility.** "Public utility" includes every gas utility, natural gas pipeline  
41 utility, transmission and distribution utility, telephone utility, water utility, video service  
42 provider and ferry, as those terms are defined in this section, and each of those utilities is  
43 declared to be a public utility. "Public utility" does not include the operation of a radio

1 paging service, as that term is defined in this section, or mobile telecommunications  
2 services unless only one entity or an affiliated interest of that entity, as defined in section  
3 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency  
4 spectrum assigned by the Federal Communications Commission to provide mobile service  
5 to the service area.

6 Nothing in this subsection precludes:

7 A. The jurisdiction, control and regulation by the commission pursuant to private and  
8 special act of the Legislature;

9 B. The commission's jurisdiction and control over and regulation of a public utility  
10 that provides, in addition to other services, radio paging service or mobile  
11 telecommunications services;

12 C. The commission's jurisdiction and control over and regulation of basic exchange  
13 telephone service offered by a provider of mobile telecommunications services if, after  
14 investigation and hearing, the commission determines that the provider is engaged in  
15 the provision of basic exchange telephone service; and

16 D. Negotiations for, or negates agreements or arrangements existing on the effective  
17 date of this paragraph relating to, rates, terms and conditions for interconnection  
18 provided by a telephone utility to a company providing radio paging or mobile  
19 telecommunications services.

20 **Sec. 30. 35-A MRSA §102, sub-§21-B** is enacted to read:

21 **21-B. Video service provider.** "Video service provider" has the same meaning as in  
22 Title 30-A, section 3008, subsection 1-A, paragraph H.'

23 Amend the bill by inserting after section 29 the following:

24 '**Sec. 30. 35-A MRSA §116, sub-§1**, as amended by PL 2013, c. 600, §1, is further  
25 amended to read:

26 **1. Entities subject to assessments.** Every transmission and distribution, gas,  
27 telephone and water utility, video service provider and ferry subject to regulation by the  
28 commission and every qualified telecommunications provider is subject to an assessment  
29 on its intrastate gross operating revenues to produce sufficient revenue for expenditures  
30 allocated by the Legislature for the Public Utilities Commission Regulatory Fund  
31 established pursuant to this section. The budget for the Public Utilities Commission  
32 Regulatory Fund is subject to legislative review and approval in accordance with  
33 subsection 2. The portion of the total assessment applicable to each category of public  
34 utility or qualified telecommunications provider is based on an accounting by the  
35 commission of the portion of the commission's resources devoted to matters related to each  
36 category. The commission shall develop a reasonable and practicable method of  
37 accounting for resources devoted by the commission to matters related to each category of  
38 public utility or qualified telecommunications provider. Assessments on each public utility  
39 or qualified telecommunications provider within each category must be based on the  
40 utility's or qualified telecommunications provider's gross intrastate operating revenues.  
41 The commission shall determine the assessments annually prior to May 1st and assess each  
42 utility or qualified telecommunications provider for its pro rata share for expenditure during  
43 the fiscal year beginning July 1st. Each utility or qualified telecommunications provider

1 shall pay the assessment charged to the utility or qualified telecommunications provider on  
 2 or before July 1st of each year. Any increase in the assessment that becomes effective  
 3 subsequent to May 1st may be billed on the effective date of the act authorizing the  
 4 increase.

5 A. The assessments charged to utilities and qualified telecommunications providers  
 6 under this section are just and reasonable operating costs for rate-making purposes.

7 B. For the purposes of this section, "intrastate gross operating revenues" means:

8 (1) In the case of all utilities except telephone utilities, revenues derived from filed  
 9 rates except revenues derived from sales for resale;

10 (2) In the case of a telephone utility, all intrastate revenues, except revenues  
 11 derived from sales for resale, whether or not the rates from which those revenues  
 12 are derived are required to be filed pursuant to this Title; and

13 (3) In the case of a qualified telecommunications provider, all intrastate revenues  
 14 except revenues derived from sales for resale.

15 C. Gas utilities subject to the jurisdiction of the commission solely with respect to  
 16 safety are not subject to any assessment.

17 D. The commission may correct any errors in the assessments by means of a credit or  
 18 debit to the following year's assessment rather than reassessing all utilities or qualified  
 19 telecommunications providers in the current year.

20 E. The commission may exempt utilities or qualified telecommunications providers  
 21 with annual intrastate gross operating revenues under \$50,000 from assessments under  
 22 this section.

23 For purposes of this section, "qualified telecommunications provider" means a provider of  
 24 interconnected voice over Internet protocol service that paid any assessment under this  
 25 subsection, whether voluntarily, by agreement with the commission or otherwise, prior to  
 26 March 1, 2012.'

27 Amend the bill by inserting after section 31 the following:

28 '**Sec. 32. Appropriations and allocations.** The following appropriations and  
 29 allocations are made.

30 **PUBLIC UTILITIES COMMISSION**

31 **Public Utilities - Administrative Division 0184**

32 Initiative: Provides allocations for 2 Staff Attorney and 2 Utility Analyst positions and  
 33 related All Other costs.

34 <b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
35 POSITIONS - LEGISLATIVE COUNT	4,000	4,000
36 Personal Services	\$371,770	\$581,248
37 All Other	\$23,384	\$35,520
38		
39 OTHER SPECIAL REVENUE FUNDS TOTAL	\$395,154	\$616,768

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
2 number to read consecutively.

3 **SUMMARY**

4 This amendment, which is the majority report of the committee, makes the following  
5 changes to the bill.

6 1. It removes from the bill the provisions requiring a video service provider to collect  
7 from its subscribers a video service regulatory surcharge, with such amounts collected to  
8 be used by the Public Utilities Commission in its oversight and enforcement of provisions  
9 relating to the municipal franchising of video service providers. The amendment instead  
10 defines "video service provider" to be a public utility under Title 35-A of the Maine Revised  
11 Statutes and authorizes the Public Utilities Commission to offset its oversight and  
12 enforcement costs related to video service providers through an assessment on the intrastate  
13 gross operating revenues of video service providers in the same manner as the commission  
14 requires the payment of such assessments by other public utilities.

15 2. It amends the definition of "public, educational and governmental facility  
16 equipment" to instead define "public, educational and governmental transmission facility  
17 equipment." It also amends the definition of "video service provider."

18 3. It removes from the bill the requirement that any franchise agreement or contract  
19 between a video service provider and a municipality require payment by the video service  
20 provider of a franchise fee equal to 5% of the provider's gross annual revenue from its  
21 operations within the municipality.

22 4. It removes from the bill provisions requiring the Public Utilities Commission to  
23 receive, investigate and resolve consumer complaints regarding services provided by a  
24 video service provider.

25 5. It makes a number of related technical changes or clarifications to the bill.

26 6. It also adds an appropriations and allocations section.

27 **FISCAL NOTE REQUIRED**

28 **(See attached)**