

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FOUR

H.P. 1264 - L.D. 1967

An Act to Support Municipal Franchise Agreements

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §3008, sub-§1, ¶C, as amended by PL 2007, c. 548, §1, is further amended to read:

C. To provide adequate statutory authority to municipalities to make franchising and regulatory decisions to implement this policy and to avoid the costs and uncertainty of lawsuits challenging that authority; ~~and~~

Sec. 2. 30-A MRSA §3008, sub-§1, ¶D, as enacted by PL 2007, c. 548, §1, is amended to read:

D. To ensure that all ~~cable television operators~~ video service providers receive the same treatment with respect to franchising and regulatory processes and to encourage new providers to provide competitive pressure on the pricing of such services; ~~and~~

Sec. 3. 30-A MRSA §3008, sub-§1, ¶E is enacted to read:

E. Consistent with the applicable requirements of this section, to prohibit a video service provider from offering or providing its services within a municipality unless it has entered into a franchise agreement or contract with the municipality pursuant to this section.

Sec. 4. 30-A MRSA §3008, sub-§1-A, as enacted by PL 2007, c. 548, §1, is amended to read:

1-A. Definitions. ~~For purposes of~~ As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

A. "Cable system operator" has the same meaning as "cable operator," as that term is defined in 47 United States Code, Section 522(5), as in effect on January 1, 2008;

B. "Cable television service" has the same meaning as "cable service," as that term is defined in 47 United States Code, Section 522(6), as in effect on January 1, 2008; ~~and~~

C. "Cable television system" has the same meaning as "cable system," as that term is defined in 47 United States Code, Section 522(7), as in effect on January 1, 2008.

D. "Affiliate" means a business entity effectively controlling or controlled by another person or associated with other persons under common ownership or control.

E. "Application" means an interactive computer or software program operating on a device that provides for the reception of transmitted or streamed video, audio or other digital content from a video service provider over the Internet or other electronic communications network in real time or near real time, allowing a user to receive such content on a device without downloading the entire content file.

F. "Facility support transmission equipment" means the equipment associated with the interconnection between public, educational and governmental facility equipment and the headend of a video service provider's system, beginning at the point at which a public, educational and governmental signal enters transmitting equipment, which must be owned, maintained and upgraded for signal quality or another reason by the video service provider. "Facility support transmission equipment" includes, but is not limited to, the equipment and facilities associated with signal transmission and carriage methodologies employed to send, receive, manage, troubleshoot and maintain audio and video signals; all physical wires, fiber lines and related connectivity medium or device; and all equipment associated with the formatting of public, educational and governmental programming for transmission to a subscriber of the video service provider.

G. "Public, educational and governmental facility equipment" means, with respect to any public, educational and governmental access channel, the equipment used to capture and process programming in the field or in a public, educational or governmental studio, including all equipment used prior to the point at which that signal enters the private network of the video service provider.

H. "Public, educational and governmental programming" means content produced or provided by any person, group or public or private agency or organization that is used in conjunction with public, educational and governmental access channels and facility support transmission equipment.

I. "Public, educational and governmental signal" means any transmission of electromagnetic or optical energy that carries audio or video from one location to another for the purposes of providing public, educational and governmental programming.

J. "Video service provider" means any person that directly or through one or more affiliates sells in the State access to video, audio or computer-generated or computer-augmented entertainment and owns or operates facilities located in whole or in part in a municipality's public rights-of-way that are used to provide those services, irrespective of the technology or application 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 provider of commercial mobile service, as defined in 47 United States Code, Section 332(d)(1); 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 service by the provider.

Sec. 5. 30-A MRSA §3008, sub-§3, ¶B, as amended by PL 2007, c. 548, §1, is further amended to read:

B. Notwithstanding any provision in a franchise, a ~~eable-system-operator~~ video service provider may not abandon service or a portion of that service without having given 6 months' prior written notice to the franchising municipality, if any, and to the municipalities affected by that abandonment. When abandonment of any service is prohibited by a municipal franchise, a ~~eable-system-operator~~ video service provider may not abandon that service without written consent of the municipal officers. Any ~~eable-system-operator~~ video service provider that violates this paragraph commits a civil violation for which a fine of \$50 a day for each day that the violation continues may be adjudged.

Sec. 6. 30-A MRSA §3008, sub-§3, ¶C, as amended by PL 2007, c. 548, §1, is further amended to read:

C. Neither the ~~eable-system-operator~~ video service provider whose ~~facilities are~~ facility support transmission equipment is used to transmit a program produced by a person other than that ~~operator~~ provider, under Federal Communications Commission regulations or municipal ordinance, nor the officers, directors or employees of ~~any such eable-system-operator~~ that provider are liable for damages arising from any obscene or defamatory statements or actions or invasion of privacy occurring during any program when that ~~eable-system-operator~~ provider does not originate or produce the program.

Sec. 7. 30-A MRSA §3008, sub-§3, ¶F, as enacted by PL 2019, c. 308, §1, is repealed.

Sec. 8. 30-A MRSA §3008, sub-§3, ¶G is enacted to read:

G. Notwithstanding any provision in a franchise, a video service provider is responsible for all costs associated with public, educational and governmental facility equipment shown by the franchising municipality to be reasonably necessary in light of community needs and interests for the capture, processing and delivery to the video service provider of public, educational and governmental access channels within the franchising municipality, including, but not limited to, technology upgrade costs for signal quality improvement or for other reasons. A video service provider may not offset any such costs through the payment of required fees under subsection 5-A, but may recover such costs from subscribers to the extent permitted by applicable law and as negotiated with the municipality.

Sec. 9. 30-A MRSA §3008, sub-§3, ¶H is enacted to read:

H. New facility support transmission equipment installed must be at the current resolution technology afforded to broadcasting stations.

Sec. 10. 30-A MRSA §3008, sub-§4, as amended by PL 2007, c. 548, §1, is further amended to read:

4. Franchise procedures. Pursuant to subsection 2, a municipality may enact ordinances governing the procedures for granting franchises to ~~eable-system-operators~~

video service providers. These ordinances must be enacted before granting any such franchise or franchises and must be designed to ensure that the terms and conditions of a franchise will adequately protect the needs and interests of the municipality. The ordinances must include, but are not limited to, provisions for the following:

- A. A mechanism for determining special local needs or interests before issuing a request for proposals, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals;
- B. The filing of franchise applications and related documents as public records, with reasonable notice to the public that the records are open to inspection during reasonable hours;
- C. A reasonable opportunity for public input before granting franchises; and
- D. The assessment of reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the municipality in acting upon applications.

Sec. 11. 30-A MRSA §3008, sub-§5, as amended by PL 2019, c. 245, §§1 to 3, is further amended to read:

5. Franchise agreements or contracts. The State specifically authorizes municipal officers pursuant to ordinances to contract on such terms and conditions and impose such fees as ~~are in the best interests of the municipality provided for under this subsection~~, including the grant of ~~exclusive or nonexclusive~~ franchises for a period not to exceed 15 years, for the placing and maintenance of cable television systems and appurtenances, or parts thereof, ~~along in~~ public ways and including contracts with ~~cable system operators~~ video service providers that receive the services of television signal transmission offered by any public utilities using public ways for such transmission. A video service provider may not offer or provide its services within a municipality unless it has entered into a franchise agreement or contract with the municipality pursuant to this subsection. A public utility may not be required to contract with the municipal officers under this subsection. ~~Each~~ Any new, renewed or amended franchise must contain the following provisions:

- A. The area or areas to be served;
- B. A line extension policy, which must specify a minimum density requirement of no more than an average of 15 residences per linear strand mile of aerial cable for areas in which the ~~cable system operator~~ video service provider will make cable television service available to every residence. A strand mile under this paragraph is measured from the end of the current cable system strand installation;

A video service provider may not establish mandatory preconditions to be met by potential subscribers for the construction of a line extension on a municipal public right-of-way including, but not limited to, a requirement that a potential subscriber sign a contract for service in advance of the construction of the line extension. Nothing in this paragraph prohibits a video service provider from requiring payment of cost sharing from potential subscribers prior to construction of a line extension in accordance with a line extension policy required by this paragraph.

- C. A provision for renewal, the term of which may not exceed 15 years. A provision for automatic renewal or other provision for extending the initial term is prohibited. Franchise renewal is governed by section 3010, subsection 5-C;

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

D. Procedures for the investigation and resolution of complaints by the ~~cable system operator~~ video service provider;

D-1. A provision for the use and support of public, educational and governmental access channels, which must be carried in the same manner and numerical location sequence as are the local broadcast channels originating from the State and carried on the cable television system pursuant to section 3010, subsection 5-A; and

E. Any other terms and conditions that are in the best interests of the municipality.

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

5-A. Franchise fees. Any new, renewed or amended franchise agreement or contract between a municipality and a video service provider that includes provisions requiring payment of any franchise fees by the video service provider to the municipality must include the following provisions.

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

B. The franchise fees must be paid by the video service provider to the municipality or its designee on a quarterly basis and must be received by the municipality or its designee no later than 45 days after the end of the calendar quarter for which the payment is made. If the video service provider fails to timely pay to the municipality or its designee:

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

(2) The repeated failure to timely pay such fees is a material breach of the terms of the franchise agreement or contract, and the municipality may at its discretion terminate the agreement or contract.

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

D. The municipality may request that the information provided by the video service provider pursuant to paragraph C be subject to audit by a qualified 3rd party to be selected by the municipality. The costs of the audit are to be paid by the municipality except when the results of the audit demonstrate that the video service provider underpaid by more than 4% any franchise fees required under the franchise agreement

or contract, in which case the video service provider must reimburse the municipality for the costs of the audit.

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

Sec. 13. 30-A MRSA §3008, sub-§7, as amended by PL 2019, c. 245, §4, is further amended to read:

7. Model franchise agreement. The Department of Administrative and Financial Services, Office of Information Technology, or a successor state agency, referred to in this subsection as "the office," shall develop and may update and amend a model franchise agreement for use by any municipality and any ~~eable-system-operator~~ video service provider that mutually choose to adopt the model franchise agreement or any of its provisions. A ~~eable-system-operator~~ video service provider may not modify or amend the model franchise agreement without the consent of the municipality. The office shall make the model franchise agreement available on its publicly accessible website. In the development of the model franchise agreement, the office shall, at a minimum, consider the following issues:

- A. Franchise fees;
- B. Build-out requirements;
- C. Public, educational and governmental access channels and reasonable public, educational and governmental facility support equipment for such channels;
- D. Customer service standards;
- E. The disparate needs of the diverse municipalities in this State; and
- F. The policy goal of promoting competition in the delivery of ~~eable television~~ video service.

This subsection does not allow the office to establish prices for any ~~eable television~~ video service or to regulate the content of ~~eable television service~~ video services.

Sec. 14. 30-A MRSA §3008, sub-§8 is enacted to read:

8. Authorized judicial actions; statute of limitations. A violation of this section constitutes a violation of the Maine Unfair Trade Practices Act.

A municipality that has suffered an adverse impact due to the action of an entity not in compliance with the requirements of this section may bring an action against that entity to recover any unpaid franchise fees or to enjoin the operation of that entity.

Notwithstanding any provision of law to the contrary, an action brought under this section must be commenced within 7 years of the date that the cause of action arose.

Sec. 15. 30-A MRSA §3009-B is enacted to read:

§3009-B. Dispute resolution

When there is a dispute between a municipality and a video service provider relating to negotiations of a franchise agreement or contract, the obligations of the parties under the agreement or contract or the obligations of the video service provider under sections 3008 and 3010, the municipality or video service provider may seek resolution under subsection 1 or 2. For purposes of this section, unless the context indicates otherwise, "video service provider" has the same meaning as in section 3008, subsection 1-A, paragraph J.

1. Public Utilities Commission process. The Public Utilities Commission shall adopt a process for dispute resolution between a municipality and a video service provider in accordance with this subsection. The commission shall adopt rules to implement this subsection, except that the commission may not adopt a process that addresses any provision of section 3010 relating to consumer rights and protections. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Binding arbitration. A municipality or a video service provider may request binding arbitration by a mutually agreed upon arbitrator from a statewide association of mediators. The arbitration must be conducted consistent with the general procedures set forth in the Uniform Arbitration Act. If the municipality and the video service provider are unable to agree on an arbitrator, they may request that a statewide association of mediators select an arbitrator.

Sec. 16. 30-A MRSA §3010, as amended by PL 2021, c. 348, §48 and c. 553, §20, is further amended by amending the section headnote to read:

§3010. Consumer rights and protection relating to ~~eable television service~~ services provided by video service providers

Sec. 17. 30-A MRSA §3010, first ¶, as amended by PL 2019, c. 245, §5, is further amended to read:

This section applies to every franchisee. For purposes of this section, "franchisee" means a ~~cable system operator~~ video service provider that is granted a franchise by a municipality in accordance with section 3008. For purposes of this section, "cable system operator," ~~and~~ "cable television service" ~~and~~ "video service provider" have the same meanings as in section 3008, subsection 1-A, except that "~~cable system operator~~" "video service provider" includes a cable system operator that is a multichannel video programming distributor as defined in 47 United States Code, Section 522(13). For purposes of this section, "originator" means a local unit of government or the entity to which a local unit of government has assigned responsibility for managing public, educational and governmental access channels.

Sec. 18. 30-A MRSA §3010, sub-§1, as amended by PL 2007, c. 548, §2, is further amended to read:

1. Credits and refunds for interruption of service. Credits and refunds for interruption of ~~eable television service~~ of video services provided by a franchisee must be as follows.

A. In the event service to any subscriber is interrupted for 6 or more consecutive hours in a 30-day period, the franchisee will, upon request, grant that subscriber a pro rata credit or rebate.

B. An office of the franchisee must be open during usual business hours, have a listed toll-free telephone and be capable of receiving complaints, requests for adjustments and service calls.

C. The franchisee shall provide subscribers with 30 days' advance written notice of an increase in rates, changes in billing practices, the movement of a channel to a different location or service tier or the deletion of a channel.

Sec. 19. 30-A MRSA §3010, sub-§2, ¶A, as amended by PL 2007, c. 548, §2, is further amended to read:

A. For each new subscriber, and annually thereafter, every franchisee shall cause to be mailed to each of its subscribers a notice that:

(1) Informs subscribers of how to communicate their views and complaints to the ~~cable system operator~~, video service provider and to the proper municipal official and the Attorney General;

(2) States the responsibility of the Department of the Attorney General to receive, investigate and resolve consumer complaints or complaints raised by the franchising authority under section 3008 concerning matters other than ~~channel selection~~ program choices and rates;

(3) States the policy regarding and method by which subscribers may request rebates or pro rata credits as described in subsection 1, paragraph A; and

(4) Informs subscribers of their right to request basic-tier, nonpremium programming service and the cost of that service.

Sec. 20. 30-A MRSA §3010, sub-§5, as amended by PL 2007, c. 548, §2, is further amended to read:

5. Franchises. All franchises must be nonexclusive. All franchises must include provision for access to, and ~~facilities~~ facility support transmission equipment and public, educational and governmental facility equipment necessary to make use of, one or more local public, educational and governmental access channels subject to the definitions and requirements of the Cable Communications Policy Act of 1984, Public Law 98-549 or related requirements or regulations of the Federal Communications Commission.

As used in this subsection, "facility support transmission equipment" has the same meaning as in section 3008, subsection 1-A, paragraph F. As used in this subsection, "public, educational and governmental facility equipment" has the same meaning as in section 3008, subsection 1-A, paragraph G.

Sec. 21. 30-A MRSA §3010, sub-§5-A, as enacted by PL 2019, c. 245, §6, is amended to read:

5-A. Public, educational and governmental access channels. A ~~cable system operator~~ video service provider shall carry public, educational and governmental access channels on the ~~cable system operator's~~ provider's basic cable or video service offerings or tiers accessed through a cable television receiver or application. A ~~cable system operator~~

video service provider may not separate public, educational and governmental access channels numerically from other local broadcast channels carried on the ~~eable-system operator's~~ provider's basic cable or video service offerings or, tiers or applications and, in the event of a franchise license transfer, shall use the same channel numbers for the public, educational and governmental access channels as used for those channels by the incumbent ~~eable-system operator~~ video service provider, unless prohibited by federal law. After the initial designation of public, educational and governmental access channel numbers, a ~~eable system operator~~ video service provider may not change the channel numbers without the agreement of the originator, unless the change is required by federal law.

A ~~eable-system operator~~ video service provider shall restore a public, educational or governmental access channel that has been moved without the consent of the originator within the 24 months preceding the effective date of this subsection to its original location and channel number within 60 days after the effective date of this subsection.

As used in this subsection, "application" has the same meaning as in section 3008, subsection 1-A, paragraph E.

Sec. 22. 30-A MRSA §3010, sub-§5-B, as enacted by PL 2019, c. 245, §6, is repealed.

Sec. 23. 30-A MRSA §3010, sub-§5-C, as enacted by PL 2019, c. 245, §6, is amended to read:

5-C. Franchise renewals. The franchise renewal process must be conducted in compliance with 47 United States Code, Section 546 and this subsection.

A. A ~~eable-system operator~~ video service provider shall maintain adequate personnel and resources to respond to municipal requests for renewal information in a timely manner. Failure to respond in a timely manner is a violation of the Maine Unfair Trade Practices Act.

B. If an automatic renewal provision exists in a franchise agreement on the effective date of this subsection, the automatic renewal provision remains in effect until that franchise agreement expires. The ~~eable-system operator~~ video service provider shall notify the franchising authority of the automatic renewal no later than 36 months in advance of the expiration of the franchise.

C. A municipality may require maps, diagrams, annual reports and franchise fee statements at renewal, which the ~~eable-system operator~~ video service provider shall make available upon reasonable notice. If information is proprietary, the municipality may execute a nondisclosure agreement with the ~~eable-system operator~~ video service provider.

Sec. 24. 30-A MRSA §3010, sub-§5-D is enacted to read:

5-D. Transmission. A video service provider shall retransmit public, educational and governmental access channel signals in the format in which they are received from the originator and at the same signal quality as that provided to all subscribers of the cable television service for local broadcast channels. A video service provider may not diminish, down convert or otherwise tamper with the signal quality or format provided by the originator. A video service provider shall deliver a public, educational or governmental access channel signal to the subscriber in a quality and format equivalent to the quality and

format of local broadcast channel signals carried on the cable television service if provided as such by the originator. A video service provider shall carry each public, educational or governmental access channel in both a high definition format and a standard digital format in the same manner as that in which local broadcast channels are provided, unless prohibited by federal law.

A video service provider, when requested, shall assist in providing the originator with access to the entity that controls the cable television service's electronic program guide so that subscribers may view, select and record public, educational and governmental access channels in the same manner as that in which they view, select and record local broadcast channels. In addition, a video service provider shall identify public, educational and governmental access channels on the electronic program guide in the same manner as that in which local broadcast channels are identified. This subsection does not obligate a video service provider to list public, educational and governmental access channel content on channel cards and channel listings. If channels are selected by a viewer through a menu system, the video service provider shall display the public, educational and governmental access channels' designations in a similar manner as that in which local broadcast channel designations are displayed.

A video service provider shall make available to the originator a toll-free telephone number with a direct line to a service technician who is familiar with the signal path and equipment associated with public, educational and governmental access channels on the cable television system for resolution of a signal quality problem.

Sec. 25. 30-A MRSA §3010, sub-§6, as amended by PL 2021, c. 553, §20, is further amended to read:

6. Rights of individuals. A ~~cable system operator~~ video service provider may not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of actual or perceived race, color, sex, sexual orientation, gender identity, physical or mental disability, ancestry or national origin, age or familial status.

Sec. 26. 30-A MRSA §3010, sub-§6-A, as amended by PL 2007, c. 548, §2, is further amended to read:

6-A. Subscriber privacy. A ~~cable system operator~~ video service provider may not intrude upon the privacy of a subscriber by installing or using any equipment that allows the ~~cable system operator~~ video service provider to observe or to listen to what is occurring in an individual subscriber's household or to monitor the viewing habits of the subscriber without express, prior written consent of the subscriber. A ~~cable system operator~~ video service provider may not sell, disclose or otherwise make available, or permit the use of, lists of the names or addresses of its subscribers, or any list or other information that identifies by name or address subscribers or subscriber viewing habits, to any person or agency for any purpose whatsoever without the prior written consent of the subscriber except that the ~~cable system operator~~ video service provider may make such lists available to persons performing services for the ~~cable system operator~~ video service provider in connection with its business or operations, such as a billing service, when the availability of such lists is necessary to the performance of such services if, in either case, the persons or entity receiving such lists agree in writing that they will not permit them to be made available to any other party.

Sec. 27. 30-A MRSA §3010, sub-§6-B, as amended by PL 2007, c. 548, §2, is further amended to read:

6-B. Late fees. A ~~cable system operator~~ video service provider may not charge a late fee or other penalty or charge for late payment of any bill that exceeds 1.5% per month of the amount due in the bill. If the bill includes separate charges for different levels of service, a late fee or other penalty or charge must be calculated on the total amount overdue for all levels of service and may not be calculated separately for each level of service. A payment is not late under this subsection until at least 30 days after those services to which the late fee applies have been received by the consumer.

Sec. 28. 30-A MRSA §3010, sub-§8, as enacted by PL 2007, c. 548, §2, is amended to read:

8. Filing of franchise agreements. A ~~cable system operator~~ video service provider that maintains a publicly accessible website shall post on that website a copy of the most recently executed franchise agreement for each franchise that it has been granted by a municipality in the State.

Sec. 29. 35-A MRSA §2503, sub-§20, as amended by PL 1995, c. 254, §5, is further amended to read:

20. Exclusive method. Compliance with this section by any person is the exclusive method of obtaining the rights and privileges conferred in this section and no person or cooperative may be required, with respect to the location of its facilities, to comply with or be subject to any other law, including, but not limited to, Title 30-A, chapter 165, except that a person subject to Title 30-A, section 3008 must comply with the requirements of that section with respect to the location of its facilities.