Joint Standing Committee on Energy, Utilities and Technology

Testimony of Charter Communications

LD 1967 An Act to Support Municipal Franchise Agreements

October 25, 2023

Chairman Lawrence, Chairman Zeigler, and members of the Energy, Utilities and Technology Committee, my name is Kate Gore and I am the Director of State Government Affairs for Charter Communications in Maine. I am providing written testimony in opposition to LD 1967.

Charter Communications provides broadband services to over 300 communities in Maine serving 466,000 customers and is a leading broadband connectivity company and cable operator serving more than 32 million customers in 41 states through its Spectrum brand. Over an advanced communications network, the company offers a full range of state-of-the-art residential and business services including Spectrum Internet, TV, Mobile and Voice.

LD 1967 is portrayed as an opportunity for the legislature to support municipalities with control of negotiating franchise agreements, when in truth it creates new rules and definitions that will disincentivize extending services to unserved areas and increase the cost of video service for Maine residents, without corresponding benefits to Maine consumers.

LD 1967 reflects a fundamental misunderstanding of today's robust video marketplace. Consumers today have a multitude of video choices and video providers, from cable to wireless to satellite. Traditional cable competes with online video providers like Hulu, Netflix and Amazon Prime. According to the FCC's 2022 Communications Marketplace Report, "MVPDs (Comcast, Charter, DIRECTV, and DISH) saw subscriber declines from 2017 to 2021, while OVDs (Amazon, Netflix, Hulu, and Disney+) saw subscriber increases over the same period," with 69 million subscriptions nationally to MVPDs, but 330 million subscriptions to online video providers.[1]

Despite the extraordinary competition from online video providers and their success relative to traditional cable video, LD 1967 further expands the disparity between these competitors in favor of online video and to the detriment of Maine consumers. Just as subscribers cite rising costs[2] for moving away from traditional video providers, whose franchise fees fund production and distribution of PEG programming, LD 1967 would further increase costs for Maine consumers. Not only would Maine consumers pay more, these unnecessary fee hikes could also hurt the

[1] Federal Communications Commission, 2022 Communications Marketplace Report, ¶¶ 283-287, https://docs.fcc.gov/public/attachments/FCC-22-103A1.pdf

[2] *Id.*, at ¶ 281.

municipalities and PEG providers that rely on cable-funded franchise fees to underwrite PEG facilities and operations. Popular and well-resourced OVDs like Amazon Prime, Disney/ESPN+, Netflix and others that lack facilities in the ROW do not pay any franchise fees or PEG support today, and this disparity is exacerbated by LD 1967 because they are completely exempt from the bill. Increasing costs accelerates a spiral in which even more subscribers abandon their cable video service, thereby lessening the base from which franchise fees are calculated.

Additionally, this bill unnecessarily and unreasonably burdens those who subscribe to cable television (and other forms of video programming provided over facilities in the rights of way that are owned or occupied by such video providers), even though the content is not exclusive to our customers. The PEG capabilities that this bill requires cable customers to fund and transmit is then distributed over the internet to all, on the backs of a diminishing number of cable and video customers paying for it under the terms of this legislation.

PEG and PEG programming grew from a time when most, if not all, Americans received their video programming from cable. But, as stated previously, this is no longer the case. It is neither the sole nor even the dominant distribution medium for this content anymore. This is evident by the fact that almost every local government has its own internet website and most, if not all, localities with PEG channels distribute this content – in a video format – over their own web URL. While cable providers like Charter have no problem participating in the process of developing and distributing PEG, leaving the entire programming operation, maintenance, and transmission responsibilities to our customers is not fair to them.

Further, while this bill does not require that municipalities impose franchise fees, it substantially increases costs to consumers.[3] The bill significantly expands beyond current Maine law and beyond federal law the types of costs that a video service provider must cover for the capture and delivery of PEG programming. The bill specifies that these costs may not be recovered through franchise fees, but may be recovered from subscribers. So municipalities that currently impose franchise fees would see their residents' costs increase beyond those fees and residents of municipalities that don't impose franchise fees could see new fees added to their bills.

The bill also supplants municipalities' judgment in the manner of enforcing franchise agreements. The bill would make noncompliance with the statute and franchise agreements a violation of Maine's Unfair Trade Practices Act. In effect, this would not only grant enforcement authority to the Attorney General, it would create a private right of action for anyone who can claim harm under the franchise or franchising law. Rather than enforcement being a mechanism to ensure compliance, the PRA and possible increase in penalties that come with the Unfair Trade Practices Act means increased costs across the board and a potential bonanza for the plaintiffs' bar with no corresponding benefit to consumers or municipalities. The increased costs associated with having to defend a raft of unnecessary and unreasonable new lawsuits will inevitably need to be passed onto consumers through higher operating expenses.

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[3] Many municipalities are very concerned about costs to their residents. For example, despite longstanding authority under federal law to charge up to 5% in franchise fees, over 110 municipalities in Spectrum's Maine footprint have chosen to not assess franchise fees at all and another 109 municipalities impose a fee of less than 5%.

We also note that many portions of the legislation are preempted by longstanding federal law and therefore go beyond the authority granted to states and local governments.

In summary, LD 1967 is a bill that will raise costs for video subscribers and reduce municipal authority over franchises. For these reasons we respectfully urge the Committee to vote ought not to pass on LD 1967. Thank you for the opportunity to provide you with this testimony.