

**Testimony of Tony Vigue  
In Support of LD 1967, An Act To Support Municipal Franchise Agreements  
Committee on Energy, Utilities and Technology  
10-25-23**

Senator Lawrence, Representative Ziegler and members of the Committee, I come before you today to present the need for precise and clear definitions in Maine Statutes relative to the Video Service Provider (VSP) industry here in Maine.

The definition of a (VSP) is described in the bill<sup>1</sup> and it includes traditional cable operators in addition to any other video entertainment provider that owns facilities along the public right of way *and* sells a channel selection application with a similar functionality as a traditional cable TV. This definition was provided to us by attorneys at the Washington DC law firm of Spiegel, McDiarmod who specialize in National Telecommunications Law.

“VSP” does not include satellite services, 5G deployment by telco’s, ISP’s or streaming services such as Amazon, Netflix, Disney or Hulu *unless* they, or their affiliate, own facilities along the public right of way and offer a channel selection application as do traditional Cable TV operators.

Definitions that have been subject to interpretation in the past by cable operators and municipalities are “facilities,” “programming,” “equipment,” and “signal.”

This bill clearly identifies the meaning of each one. For example, following the passage of PL245 in 2021, multiple PEG stations repeatedly requested HD Video Transmission Specs from one cable operator and in turn received a costly proposal for HD upgrades of *operator owned equipment* and additional monthly line maintenance fees that have always been the responsibility of the operator as part of the “facilities to make use of” requirement in State Statute.

Because of a lack of definitions in our statutes, costly franchise renewals have been delayed and confusion over equipment ownership and subsequent repairs, upgrades and replacements has also increased. Promises of PEG channel placement on video applications have not materialized either, so that is also required by this legislation.

Under this bill, municipalities still remain the primary franchise contract authority, (home rule) and the PUC only gets involved as a State level *resource* for mediation assistance when there is an issue the municipalities would have to litigate or pass legislation to enforce a requirement of the franchise or State and Federal statutes.

A recent example where mediation would have been helpful is the Pro-Rata Cable Bill law, which prevents cable operators from continuing to bill subscribers for service that they did not receive after canceling.

The franchise agreement is arguably the most expensive contract that a municipal official will ever sign. In a ten year contract, the VSP will receive a minimum of 10 million dollars in revenue alone from a municipality with only 1000 subscribers.

As cable operators are moving toward streaming applications such as Xumo, I urge you to support this forward looking clarification and mediation legislation because if it doesn't pass, there will be additional consumer protection legislation to come.

Thank you for your time today, a Congressional Research Report is attached to your handouts showing where Maine stands in relation to other states franchising methods.

-----

<sup>K</sup>  
TV  
1"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 directly or through one or more affiliates 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 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 service by the provider.

2. Recently in the town of Poland during franchise renewal negotiations, Charter attempted to insert a 2 year contract precondition before a resident on a qualifying road could receive service. They withdrew that requirement after the Attorney General was notified. In the Town of Sebago, Charter also refused to allow wording from State law to be used in their franchise renewal document until it was made clear to them that their refusal would be included in testimony to the EUT.

A third instance is one in which an independent audit in 2020 turned up irregularities in the payments of franchise fees to nine Cumberland County towns by the same operator.

[https://www.mainepublic.org/business-and-economy/2020-09-24/audit-indicates-spectrum-underpaid-franchise-fees-to-nine-cumberland-county-towns?\\_amp=true](https://www.mainepublic.org/business-and-economy/2020-09-24/audit-indicates-spectrum-underpaid-franchise-fees-to-nine-cumberland-county-towns?_amp=true)

In addition, Charter routinely refuses to accept the terms of Town Ordinances that were legally enacted prior to the granting of a cable franchise as State Law requires.

<https://www.mainelegislature.org/legis/statutes/30-a/title30-Asec3008.html> (para. 4)

## Supplemental information regarding “PEG Facility Transmission Equipment” as falling under Consumer Protections

<https://codes.findlaw.com/us/title-47-telecommunications/47-usc-sect-552.html>

### Section 632(d)(1)

Provides that “nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.”

Further, Section 632(d)(2) states that “nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under the section, or addresses matters not addressed by the standards set by the Commission under this section.”

Defining the ownership and subsequent maintenance requirement of *their own equipment* is a consumer protection requirement because the expense of that cable owned equipment should not be transferred to the station or town which is funded by public monies.

Furthermore, the industry maintains that the [FCC 621 R&O](#) permits this but that order pertains to “in-kind services” *not* capital equipment.

We consider High Definition a Consumer Protection issue as previously established in Maine PL245, because HD is now the industry standard and it is difficult to see maps and other presentation materials at municipal meetings in Standard Definition quality.

I cite the following from Federal Statutes;

USC 546, 544 and 552:

<https://codes.findlaw.com/us/title-47-telecommunications/47-usc-sect-546.html>

C (1)(B) Renewal... “the franchising authority shall provide prompt public notice of such proposal to consider whether... the quality of the operator’s service, **including signal quality**... has been reasonable in light of community needs”;

Also

<https://codes.findlaw.com/us/title-47-telecommunications/47-usc-sect-544.html>

Regulation of services, facilities and equipment

Sec b(1) 1) in its request for proposals for a franchise ...[Franchising Authorities] **may establish requirements for facilities and equipment,**

Maine State Statute MRSA §3008 §5-E which states:

Each franchise must contain the following provisions: .....”E. Any other terms and conditions that are in the best interests of the municipality.”

Maine MRSA 3010 paragraph 5 states: All franchises must include provision for access to, and “**facilities to make use of**”, one or more local public, educational and governmental access channels. This bill defines the word “facilities”.

This page intentionally left blank.

**State-Level Franchising Authority**

As the LECs sought to enter the video distribution market, they pursued statewide reforms to speed their entry, rather than seeking franchises in individual municipalities.<sup>58</sup> The LECs' competitors, the incumbent cable operators, contended that state-level franchising would present new entrants with fewer obligations than cable companies had faced when they entered the market, specifically the obligation to build networks serving all parts of a community.<sup>59</sup>

In 2005, Texas became the first of several states to replace local franchising with a state-level regime for video service providers, with the express purpose of facilitating entry by new competitors.<sup>60</sup> As Table 1 illustrates, many other states have since either replaced municipal franchising with state-level franchising or offered providers a choice.

**Table 1. State vs. Local Franchising of Video Service Providers**

<b>Full State Control</b>	<b>Operator Option for State Franchise</b>	<b>Limited State Franchising</b>	<b>State Oversight of Municipal Franchises</b>	<b>State Support of Municipal Franchises</b>	<b>State Specifies Terms and Conditions; No Agency to Enforce</b>	<b>Municipal Franchising Only; No State Oversight</b>
Alaska	Arizona	Delaware	Massachusetts	Maine	Alabama	Colorado
California	Arkansas	Louisiana	Michigan	New Hampshire	Kentucky	Maryland
Connecticut	Georgia	Nevada	New York		Minnesota	Mississippi
Florida	Idaho	West Virginia			Oklahoma	Montana
Hawaii	Illinois				Pennsylvania	Nebraska
Indiana	Iowa				Virginia	New Mexico
Kansas	New Jersey					North Dakota
Missouri	Tennessee					Oregon
North Carolina						South Dakota
Ohio						Utah
Rhode Island						Washington
South Carolina						Wyoming
Texas						
Vermont						
Wisconsin						

**Source:** CRS analysis of state statutes. See also, *Telecommunications and Cable Regulation*, v. 1, "13.05(2): State Franchising Structures; State Regulatory Schemes" (updated through 2011); National Conference of State Legislatures, "Statewide Video Franchising Statutes," May 31, 2019, <http://www.ncsl.org/research/telecommunications-and-information-technology/statewide-video-franchising-statutes.aspx>, and Federal Communications Commission, "EDOCS: Commission Documents, 'Enforcing Laws Governing Cable Franchising,'" July 11, 2019, n. 426.

**Notes:** The District of Columbia, Guam, Puerto Rico, and the Virgin Islands have designated agencies to issue video franchises. Statutes from the Northern Mariana Islands were not available in Lexis.