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Testimony of Representative Melanie Sachs in support of LD 1967, "An Act to Support Municipal Franchise Agreements" before the Joint Standing Committee on Energy, Utilities, and Technology

Senator Lawrence, Representative Ziegler, and the esteemed members of the Joint Standing Committee on Energy, Utilities, and Technology:

Thank you for allowing me to present LD 1967 "An Act to Support Municipal Franchise Agreements" to you today. The State of Maine authorizes a municipality to enter into franchise agreements, or contracts, with entities that want to provide video, audio, or computer-generated entertainment to that municipality's residents utilizing the "public right of way" for commercial purposes. This franchise agreement outlines the terms of service and fees that will be paid by the entity. Communities often use revenue from these franchise agreements to support their community owned programming, often known as PEG (public, educational, and governmental) programming, which is a vital service for Maine communities. You will hear from many of these wonderful PEG providers today testifying in support of this bill.

The statutes governing these contracts, or franchise agreements, are woefully out of date, and have led to confusion, lost revenue for communities, and litigation. This bill seeks to update Maine statute by reflecting the evolving media landscape, adding critical clarity to definitions and contract terms, and providing options for dispute resolution through our existing regulatory framework. My testimony will highlight the issues and the solutions that this legislation proposes. I have worked collaboratively with interested parties such as the Public Utilities Commission, the Maine Community Media Association, the Maine Municipal Association, the Maine Connectivity Authority, and the Maine Attorney General's office to bring a bipartisan bill forward that addresses these issues in a thoughtful and collaborative manner.

As noted, a franchise agreement or contract outlines the terms of service between a local government and an entity which would like to sell their entertainment products over lines that are using the public right of way. This video home entertainment service used to only be provided by cable television operators. One of the outcomes of the Public Advocate's stakeholder meetings on this topic held in the fall of 2021 was a realization that some new entrants in the "video entertainment to the home" business, such as some phone and broadband companies, were not franchising individually with the towns, even if they were using the public right of way, because they were not cable television operators. This meant no municipal contracts, compensation, or franchise agreements, and few municipal and consumer protections or benefits. This gives them an unfair advantage over traditional cable television operators who do hold individual

franchise contracts with the towns. Section 3 codifies that a video service provider cannot offer their services utilizing the public right of way without a franchise agreement with the local municipality.

Section 4 of the bill updates and clarifies definitions of several terms to reflect this changing communications landscape. It defines video service provider as any entity which provides access to this entertainment utilizing the public right of way. (Much of the content of this bill is simply updating the statute by replacing the term “cable system operator” with “video service provider”.) Note that this definition does not include streaming services such as Netflix – they do not operate in the public right of way. It does ensure that any new entrants using the public right of way, as technology continues to evolve, will be required to obtain individual franchise agreements with each municipality they serve, ensuring parity as all services in a community using the public right of way will be operating under the same rules.

There are also clarifying changes in this section to definitions of equipment- both facility support transmission equipment and PEG equipment. These definitions state explicitly what equipment is included in the category, who owns it, and who is responsible for maintaining and replacing it. The importance of these definitions will become clear in Section 8.

Section 7, as noted in the Sponsor amendment, is proposed to be repealed. That portion of the statute had been passed through legislation in the 130th Legislature (sponsored by the Honorable Jeff Evangelos). That portion was subsequently found to be unconstitutional. The Attorney General’s office pointed out that development during the course of our conversations, and while that section is not salient in any material way to the changes proposed in this bill (it just happens to be part of the statute we are addressing), I am always happy to do clean-up along the way.

Section 8 prevents cost shifting of replacement and maintenance of industry owned equipment to municipalities, and strengthens the language ensuring optimal signal quality. LD 1967 clarifies and assures that both cable operators and video service providers, as defined in the legislation, must adhere to Maine law, and provide access and facilities to PEG channels. (Here is the relevant section of current Maine law (Title 30):

All franchises must include provision for access to, and facilities 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

Maine Law says cable operators (and with this legislation, now video service providers) must provide “facilities” but that word has never been defined until now. Ownership, upgrades and maintenance of this equipment and lines have always been the responsibility of the cable operator. By defining the transmitter and the fiber lines in LD 1967 as “facilities”, the cable operator and future video service providers must own, upgrade, and maintain that equipment as they always have and not pass that cost on to the town just because there has been a shift in signal quality technology.

Section 11-5B in the sponsor amendment will be discussed in greater depth by the Maine Connectivity Authority. There has been significant disagreement in the interpretation of this section between industry operators and municipalities, both in coverage, and the definition of strand mile.

Section 12 deals with franchise fees. Franchise agreements can last for up to 15 years. With the turnover on town councils, selectboards, and town staff, and with the length of time of these contracts, there is a knowledge deficit within municipalities about their rights and responsibilities within franchise agreements, including the fee structure. This has enormous implications for revenue, cost, and service provisions within a community. You may hear testimony today that speaks to the struggle some municipalities have in knowing what is allowable and/or what may be required in the assessing, administration, and auditing of these fees.

Section 15 discusses dispute resolution processes. Many franchise agreements can be worked out between a municipality and a video service provider. There are times, however, where there are significant disagreements. There is currently no State dispute resolution process for franchise agreements, short of costly litigation for municipalities. I have worked closely with the team at the Public Utilities Commission, who currently has a dispute resolution process for disputes “involving interconnectors and the utilities and pole attachers and the pole owners”. As you will hear from them in later testimony, this process is adaptable for franchise agreements. I am deeply grateful for their commitment to working through this issue with community groups and with me, resulting in the proposed language. Municipalities also have the option of going through arbitration. Each option is voluntary.

The Maine Community Media Association will be providing the Committee with a table of how other states manage their franchise agreement regulation. Many states have opted to require state-level franchising, as opposed to letting municipalities maintain local control. As noted, this is a complex area, and that sort of drastic shift is not proposed in this bill. Instead, by working with so many interested parties, we are offering a bill for Maine that fits within our existing structures while resolving long-standing issues.

Section 24 codifies optimal signal quality and channel placement. Making sure the signal is optimal (i.e. high definition if every other channel is offered in high definition) is an equity issue for these PEG channels.

It should be noted that dates currently found in Sections 12 and 24, and the addition of a date in section 11, should be amended in the work session.

And finally, I note that this bill began, as so many of our best bills here in the Legislature begin, because of members of my community. One of my constituents, who loves and values this service, asked me to sponsor this bill during one of my constituent hours sessions held outside at the picnic table of our public library. He knows I love this service as well - as a Town Councilor for six years in Freeport, I was often stopped in the local market by someone who had seen the broadcast the night before of a Town Council meeting on our local PEG community television station, and who wanted to let me know their thoughts. That same station broadcasts school board meetings and concerts, provides train and community safety information, and records interviews with our own local legends, preserving and sharing their memories for generations. During the height of Covid, many of your community television stations like mine stepped up and enhanced their programming even further to bring information and connection when we could not be together. You will receive additional excellent testimony from many others today about the value of public, educational, and governmental programming for our communities, which is at the very heart of this bill. PEG programming is civic engagement and service at its best, and deserves to have a level playing field, clarity, and support.

I urge you to unanimously support this important bipartisan legislation. I welcome your questions and will be available at the work session.

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LD 1967
PROPOSED SPONSOR AMENDMENT
Offered by Rep. Sachs
CHANGES HIGHLIGHTED

An Act to Support Municipal Franchise Agreements

Amend Section 4 of the bill as follows:

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. "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.

E. "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.

F. "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.

G. "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.

H. "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.

Strike section 7 of the bill and replace with the following:

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

Amend section 11 of the bill as follows:

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 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 ~~with no mandatory preconditions~~. ~~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. A strand mile under this paragraph is measured from the end of the current cable system strand installation;

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 ~~eable 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.

Amend section 13 of the bill as follows:

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 service~~ video service or to regulate the content of ~~eable television service~~ video services.

Amend section 14 of the bill as follows:

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

8. Authorized judicial actions; statute of limitations. ~~In accordance with the authority provided in Title 5, chapter 10, the Attorney General may bring an action to enforce the provisions of this section, including, but not limited to, an action to recover any unpaid franchise fees and an action to enjoin the operation of an entity not in compliance with the requirements of this section.~~

~~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.

Amend section 15 of the bill as follows:

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 H.

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 mediator 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.

SUMMARY

This amendment makes the following changes to the bill.

1. It makes several technical changes to the definition of “video service provider.”
2. It repeals the law requiring a cable system operator to offer subscribers the option of purchasing access to cable channels or programs on cable channels individually.
3. It amends the language in existing law establishing required provisions in a franchise to specify that a line extension policy’s minimum density requirement must be of no more than an average of 15 residences per linear strand mile of aerial cable.
4. It prohibits a video service provider from establishing mandatory preconditions to be met by potential subscribers for the construction of a line extension on a municipal public right-of-way.
5. It specifies that a violation of Title 30-A, section 3008, of the Maine Revised Statutes is a violation of the Unfair Trade Practices Act.
6. It makes language changes for consistency within the bill.