



**Written Testimony of Charter Communications, Inc.
before the Joint Standing Committee on Energy, Utilities and Technology
on**

**LD 1932 An Act to Require Broadband Internet Access Service Providers to
Prorate Customer Bills**

May 23, 2023

Thank you for the opportunity to provide written testimony in opposition to LD 1932.

Charter Communications serves 466,000 customers in 295 Maine communities across the state. We employ over 750 Maine residents and just recently announced an \$82 million dollar investment which will build on an already established and robust network across the state.

Charter’s Whole-Month Billing Policy For Broadband Internet Service

Charter has long sold broadband Internet service to customers on a monthly basis, charging for service at the beginning of each monthly billing period. Under this “whole-month” billing policy, those customers that cancel may continue to receive service until the end of the month, but are not charged for the next billing period. Charter’s Terms of Service clearly spell out this policy, providing clear notice that if a customer cancels service mid-month, that customer receives the full month of internet or mobile service already paid for: aside from the introductory promotional period, a “[s]ubscriber shall be responsible for the full monthly charge (without pro-ration) for those Services that are offered on a monthly subscription basis to which the Subscriber has subscribed.”¹ Similar language is included on each monthly service bill.

¹ See <https://www.spectrum.com/content/spectrum/residential/en/policies/residential-terms.html>

Maine's Lack of Proration Parity

In 2020, Maine passed a law, later upheld by the First Circuit, requiring cable operators like Charter, but no other video service providers, to prorate customer bills. Since that time, when a customer asks to cancel video service mid-month, Charter stops their service and provides a pro rata refund for the remainder of the month.

Charter competes in a crowded video-content marketplace that includes traditional cable service providers, satellite video providers, and as well online streaming services. The streaming services now account for more video viewership than traditional cable video² but Maine's law only applies to cable video. Most of these streaming video companies apply "whole-month" billing with no proration. Customers are billed for service in advance; if a customer cancels service mid-month, the customer receives the full month of service already paid for and is then not billed for the next month.

If the legislature believes that consumers should not be responsible to pay a full monthly subscription after termination of service, it should ensure that the law treats all competitors alike. A consumer that subscribes to Charter video and cancels mid-month is required by law to receive a pro-rated refund. A consumer that subscribes to Charter's streaming video competitors and cancels mid-month is charged for the whole month and the law does not require them to receive a refund. If the legislature wants to ensure pro rata refunds for *some* Maine subscribers, it should surely ensure pro rata refunds for *all*.

Further, if the legislature wants to extend this requirement to broadband, there are countless other products and services for which Maine consumers are sold either full monthly or annual subscriptions, where such terms do not entitle the customer to receive a refund or credit upon

² <https://www.nbcnews.com/business/consumer/streaming-viewership-overtakes-cable-tv-first-time-rcna43704>

termination of service. Health club memberships and social club dues are all examples of services sold on a monthly basis, where customers are not typically entitled to refunds after termination of service. Lastly, even many newspaper subscriptions for Maine’s largest newspapers do not prorate or offer refunds to a customer that is billed monthly when they cancel their subscription in the middle of the billing cycle.

LD 1932 Seeks to Hold Providers Accountable for Issues Beyond Their Control

LD 1932 requires Internet Service Providers to provide a pro rat credit or rebate for, interruptions of service to a customer for 6 or more consecutive hours in a 30-day period, when requested by the customer. While Charter typically does this voluntarily, as a matter of practice, a legislative mandate ignores the fact that the most common reasons for interruptions are due to matters outside the direct control of the provider, such as electric service disruptions. When broadband service is disrupted by the loss of commercial power – or other issues outside of the control of the internet service provider - a credit obligation, if any, should be measured from the restoration of electric service (or the elimination of such other issue causing the outage that is not within the provider’s control).

LD 1932 is Unlawful Rate Regulation and Therefore Preempted

Separately, LD 1932 seeks to impose the pro rata refund requirement on an entirely new category of services, broadband internet services. Doing so would be considered common carrier regulation and preempted by the FCC. In 2019, the D.C. Circuit in *Mozilla v. FCC* upheld the FCC’s classification of broadband service as a Title I information service, rather than as a Title II common carrier service.³ Though the *Mozilla* court held that the FCC could not expressly preempt all state broadband regulation in advance, it specifically stated that “[i]f the [FCC] can explain

³ *Mozilla v. FCC*, 940 F.3d 1 (2019)

how a state practice actually undermines the [2018 Restoring Internet Freedom Order], then it can invoke conflict preemption.” There is no clearer form of common carrier regulation than rate regulation, and thus rate regulation of broadband service through a proration requirement would directly conflict with the FCC’s Title I classification of broadband, as well as its findings that “[u]tility-style regulation is particularly inapt for a dynamic industry built on technological development and disruption” and would “run contrary to the public interest.”⁴

Conclusion

If passed LD 1932 would further regulate the rates of broadband providers, require Internet Service Providers to provide a pro rata credit or rebate for circumstances beyond their control, and leave an anti-competitive law in place to the detriment of Maine consumers. Furthermore, the law would seek to impose proration on services that it is preempted from doing so under federal law. Accordingly, Charter is opposed to this piece of legislation.

⁴ *Restoring Internet Freedom*, FCC 17-166, Order (2018)