

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2048

7 S.P. 745

In Senate, February 2, 1984

8 Reference to the Committee on Public Utilities. Ordered printed and sent
9 down for concurrence.

10 Submitted by the Joint Standing Committee on Public Utilities as
approved by the Legislative Council on June 1, 1983.

JOY J. O'BRIEN, Secretary of the Senate

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT Regarding Franchising and
18 Regulation of Cable Television Systems.
19

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

22 Sec. 1. 30 MRSA §2151, sub-§2, ¶H, as amended by
23 PL 1975, c. 623, §45-C, is repealed.

24 Sec. 2. 30 MRSA §2151, sub-§2, ¶I, as enacted by
25 PL 1973, c. 676, §3, is repealed.

26 Sec. 3. 30 MRSA §2151, sub-§2, ¶J, as enacted by
27 PL 1981, c. 308, is repealed.

28 Sec. 4. 30 MRSA §2151, sub-§2, ¶L is enacted to
29 read:

30 L. Governing cable television, as provided in
31 section 2158.

1 Sec. 5. 30 MRSA §2158 is enacted to read:

2 §2158. Cable television

3 1. State policy. It is the policy of this State,
4 with respect to cable television, to:

5 A. Affirm the importance of municipal control of
6 franchising and regulation in order to assure
7 that the needs and interests of local citizens
8 are adequately met;

9 B. Provide minimum state guidelines and supervi-
10 sion to guard against arbitrary or unsound deci-
11 sions by municipalities while seeking to avoid
12 time-consuming and expensive litigation;

13 C. Encourage widespread development of cable
14 television systems which are technically and fi-
15 nancially sound and which address local needs and
16 interests; and

17 D. Provide adequate statutory authority to mu-
18 nicipalities to make franchising and regulatory
19 decisions to implement this policy and to avoid
20 the costs and uncertainty of lawsuits challenging
21 that authority.

22 2. Ordinances. A municipality may enact any or-
23 dinances, not contrary to this chapter, governing
24 franchising and regulation of cable television sys-
25 tems using public ways. Systems located in accordance
26 with those ordinances, franchises and regulations are
27 not defects in public ways.

28 The municipal officers of towns shall have exclusive
29 power to enact all ordinances authorized by this sec-
30 tion. Seven days' notice of the meeting at which
31 those ordinances are to be proposed shall be given in
32 the manner provided for town meetings and those ordi-
33 nances shall be effective immediately.

34 3. General requirements. The following require-
35 ments apply generally to cable television systems
36 governed by this section.

- 1 A. Any cable television system shall be con-
2 structed and operated in accordance with Federal
3 Communications Commission regulations.
- 4 B. No cable television company, notwithstanding
5 any provision in a franchise, may abandon service
6 or portion thereof without having given 6 months'
7 prior written notice to the franchising municipi-
8 pality, if any, and to the municipalities af-
9 ected by that abandonment. When abandonment of
10 any service is prohibited by a municipal fran-
11 chise, no cable television company may abandon
12 that service without written consent of the mu-
13 nicipal officers. Any cable television company
14 which violates this paragraph shall be subject to
15 a fine of \$50 a day for each day that the viola-
16 tion continues.
- 17 C. Neither the cable television company whose
18 facilities are used to transmit a program pro-
19 duced by a person other than the cable television
20 company, pursuant to Federal Communications Com-
21 mission regulations or municipal ordinance, nor
22 the officers, directors or employees of any such
23 cable television company shall be liable for dam-
24 ages arising from any obscene or defamatory
25 statements or actions or invasion of privacy oc-
26 curring during any program when that company does
27 not originate or produce the program.
- 28 D. Notwithstanding any other provisions of this
29 chapter, any permit to provide a cable television
30 system issued prior to July 1, 1965, without a
31 fixed termination date, shall be deemed to expire
32 on September 18, 1996, unless an earlier expira-
33 tion date is mutually agreed upon by the municipi-
34 pality and the permit holder. These cable televi-
35 sion systems, as a condition of franchise, shall
36 be operated in such a manner as to provide a
37 safe, adequate and reliable service to subscrib-
38 ers.
- 39 E. A party aggrieved by a decision of a municipi-
40 pality to enact an ordinance or grant a franchise
41 under this section may, within 20 days of the ef-
42 fective date of the decision, request review of
43 the decision by the Public Utilities Commission

1 as provided in Title 35, section 5101. In the ab-
2 sence of such a request, or if the review results
3 in a finding in favor of the municipal decision,
4 the action of the municipality shall be deemed to
5 be pursuant to and in implementation of the state
6 policy expressed in subsection 1.

7 F. A municipality shall be entitled to injunc-
8 tive relief in addition to any other remedies
9 available by law to protect any rights conferred
10 upon the municipality by this section or any or-
11 dinances enacted under this section.

12 4. Franchise procedures. Pursuant to subsection
13 2, a municipality may enact ordinances governing the
14 procedures for granting cable television franchises.
15 These ordinances must be enacted prior to granting
16 any such franchise or franchises and shall be rea-
17 sonably designed to assure that the terms and condi-
18 tions of a franchise will adequately protect the
19 needs and interests of the municipality. The ordi-
20 nances shall include, but are not limited to, provi-
21 sions for the following:

22 A. A mechanism for determining special local
23 needs or interests before issuance of a request
24 for proposals, whether by actively seeking to de-
25 termine those needs or interests, or by allowing
26 a period for public comment on a proposed request
27 for proposals;

28 B. The filing of franchise applications and re-
29 lated documents as public records, with reason-
30 able notice to the public that the records are
31 open to inspection during reasonable hours;

32 C. A reasonable opportunity for public input
33 prior to granting franchises; and

34 D. The assessment of reasonable fees, not to ex-
35 ceed \$25 an applicant, to defray the costs of
36 public notice, advertising and other expenses in-
37 curred by the municipality in acting upon appli-
38 cations.

39 5. Information from applicants. The municipal
40 officers may require from applicants any information

1 they consider necessary or helpful to making a
2 franchising decision and shall allow a reasonable pe-
3 riod of time for an applicant to provide that infor-
4 mation.

5 6. Franchise agreements or contracts. Pursuant
6 to ordinances, the municipal officers may contract on
7 such terms and conditions and impose such fees as are
8 in the best interests of the municipality, including
9 the grant of an exclusive franchise for a period not
10 to exceed 15 years, for the placing and maintenance
11 of cable television systems and appurtenances or
12 parts thereof, along public ways, and including con-
13 tracts with cable television companies which receive
14 the services of television signal transmission of-
15 fered by any public utilities using public ways for
16 that transmission.

17 In addition to other terms and conditions determined
18 by the municipal officers to be in the best interest
19 of the municipality, the agreement or contract may
20 include, in the discretion of the municipal officers,
21 provisions for the following:

22 A. Review of franchisee performance during the
23 term of the franchise, with the possibility of
24 extension of the term, not to exceed 15 years
25 from the time of the review, in return for
26 upgrades in service or area of coverage;

27 B. Rights of the municipality and franchisee at
28 expiration or termination, including standards
29 for municipal buy outs or procedures for
30 refranchising; or

31 C. Distribution of locking program control de-
32 vices enabling subscribers to limit the reception
33 in the subscriber's residence of any channel
34 which displays public access programs or for
35 which a specific, optional premium charge is im-
36 posed.

37 7. Interlocal agreements. Pursuant to chapter
38 203, municipalities may enter into cooperative ar-
39 rangements with other public agencies to implement
40 the policy of this section.

1 8. Local authority; construction. In view of the
2 policies enumerated in subsection 1, this section
3 shall not be construed to limit the authority of mu-
4 nicipalities to make franchising or regulatory deci-
5 sions not specifically enumerated in this section,
6 unless those decisions are prohibited or they are
7 manifestly contradictory to these policies.

8 9. Current ordinances and agreements. This sec-
9 tion shall not be construed to invalidate any ordi-
10 nance, franchise or agreement in effect or under con-
11 sideration on the effective date of this section.

12 Sec. 6. 35 MRSA c. 501 is enacted to read:

13 PART 11

14 TELECOMMUNICATIONS

15 CHAPTER 501

16 CABLE TELEVISION

17 §5101. Review of municipal decisions

18 1. Jurisdiction. The commission shall review mu-
19 nicipal decisions to enact ordinances or grant fran-
20 chises for cable television systems upon request of
21 an aggrieved party as provided in Title 30, section
22 2158, subsection 3, paragraph E.

23 2. Scope of review. The review of the municipal
24 decision shall be limited to alleged violations of
25 the requirements of Title 30, section 2158.

26 3. Disposition. If the commission finds in favor
27 of the municipality, it shall issue a decision stat-
28 ing that. If the commission finds that the alleged
29 violation did occur, it may order the modification or
30 revocation of any agreement or invalidate any ordi-
31 nance, only to the extent the commission deems it
32 necessary and appropriate to bring the municipal de-
33 cision into accordance with the state policies ex-
34 pressed in Title 30, section 2158.

35 4. Rulemaking. The commission may adopt rules to
36 effectuate the purposes of this section.

1 §5102. Regulation

2 1. Two-way cable television. In order to assure
3 coordinated state policy in telecommunications, the
4 commission may, to the full extent permitted under
5 federal law, adopt rules concerning the construction,
6 maintenance and operation of 2-way cable television
7 services in this State, including standards to protect
8 personal privacy. The authority granted by this
9 subsection is in addition to the authority granted to
10 municipalities to generally regulate cable television
11 systems.

12 2. Pole attachments. The commission may regulate
13 the rates charged to cable television systems for access
14 to poles owned by utilities whose rates are subject
15 to approval by the commission.

16 §5103. Technical assistance

17 The commission shall establish a program of technical
18 assistance on cable television and make it
19 available to a municipality upon request.

20 Sec. 7. Technical system standards. The commis-
21 sion shall review the need for state technical system
22 standards and report their recommendations to the
23 Second Regular Session of the 112th Legislature.
24 These standards may address services offered, area
25 covered, quality of service and related matters, but
26 shall not address entertainment program content.

27 STATEMENT OF FACT

28 This bill is a product of the telecommunications
29 study conducted by a subcommittee of the Joint Stand-
30 ing Committee on Public Utilities.

31 The subcommittee found that recent litigation in
32 the federal courts, including the 1982 United States
33 Supreme Court case of Community Communications Compa-
34 ny, Inc. v. City of Boulder, has brought into ques-
35 tion the validity of the state's cable television
36 franchising process. One disturbing aspect of these
37 cases is that, unless a municipality can demonstrate
38 that its cable television regulation is in further-

1 ance of a "clearly articulated and affirmatively ex-
2 pressed state policy," municipalities may be subject
3 to enormous civil penalties to aggrieved parties.
4 Even an eventually successful municipality may suffer
5 under the weight of time-consuming, costly litigation
6 through the federal court system, meanwhile preclud-
7 ing development of the cable television system in the
8 community.

9 The approach taken by this bill is to provide a
10 clear state policy and carefully limited state in-
11 volvement to avoid the threat of such vexations liti-
12 gation, while reaffirming the traditional preference
13 for local control.

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