

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 745, L.D. 2048)

2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE
5

6 Legislative Document

No. 2423

7
8 S.P. 903

In Senate, April 3, 1984

9 Reported by Senator Emerson of Penobscot from the Committee on
10 Public Utilities and printed Joint Rule 2.

11 JOY J. O'BRIEN, Secretary of the Senate

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FOUR
17

18 AN ACT Regarding Franchising and
19 Regulation of Cable Television Systems.
20

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

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24 PL 1975, c. 623, §45-C, is repealed.

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26 PL 1973, c. 676, §3, is repealed.

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28 PL 1981, c. 308, is repealed.

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

31 L. Governing cable television, as provided in
32 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:

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

9 B. That each municipality, when acting to dis-
10 place competition with regulation in the area of
11 cable television, shall proceed according to the
12 judgment of the municipal officers as to the type
13 and degree of regulatory activity deemed to be in
14 the best interests of its citizens; and

15 C. To provide adequate statutory authority to
16 municipalities to make franchising and regulatory
17 decisions to implement this policy and to avoid
18 the costs and uncertainty of lawsuits challenging
19 that authority.

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

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

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

35 A. Any cable television system shall be con-
36 structed and operated in accordance with Federal
37 Communications Commission regulations.

1 B. No cable television company, notwithstanding
2 any provision in a franchise, may abandon service
3 or portion thereof without having given 6 months'
4 prior written notice to the franchising municipi-
5 ality, if any, and to the municipalities af-
6 ected by that abandonment. When abandonment of
7 any service is prohibited by a municipal fran-
8 chise, no cable television company may abandon
9 that service without written consent of the mu-
10 nicipal officers. Any cable television company
11 which violates this paragraph shall be subject to
12 a fine of \$50 a day for each day that the viola-
13 tion continues.

14 C. Neither the cable television company whose
15 facilities are used to transmit a program pro-
16 duced by a person other than the cable television
17 company, pursuant to Federal Communications Com-
18 mission regulations or municipal ordinance, nor
19 the officers, directors or employees of any such
20 cable television company shall be liable for dam-
21 ages arising from any obscene or defamatory
22 statements or actions or invasion of privacy oc-
23 curring during any program when that company does
24 not originate or produce the program.

25 D. Notwithstanding any other provisions of this
26 chapter, any permit to provide a cable television
27 system issued prior to July 1, 1965, without a
28 fixed termination date, shall be deemed to expire
29 on September 18, 1996, unless an earlier expira-
30 tion date is mutually agreed upon by the municipi-
31 ality and the permit holder. These cable televi-
32 sion systems, as a condition of franchise, shall
33 be operated in such a manner as to provide a
34 safe, adequate and reliable service to subscrib-
35 ers.

36 E. A municipality shall be entitled to injunc-
37 tive relief in addition to any other remedies
38 available by law to protect any rights conferred
39 upon the municipality by this section or any or-
40 dinances enacted under this section.

41 4. Franchise procedures. Pursuant to subsection
42 2, a municipality may enact ordinances governing the
43 procedures for granting cable television franchises.

1 These ordinances must be enacted prior to granting
2 any such franchise or franchises and shall be de-
3 signed to assure that the terms and conditions of a
4 franchise will adequately protect the needs and in-
5 terests of the municipality. The ordinances shall in-
6 clude, but are not limited to, provisions for the
7 following:

8 A. A mechanism for determining special local
9 needs or interests before issuance of a request
10 for proposals, whether by actively seeking to de-
11 termine those needs or interests, or by allowing
12 a period for public comment on a proposed request
13 for proposals;

14 B. The filing of franchise applications and re-
15 lated documents as public records, with reason-
16 able notice to the public that the records are
17 open to inspection during reasonable hours;

18 C. A reasonable opportunity for public input
19 prior to granting franchises; and

20 D. The assessment of reasonable fees to defray
21 the costs of public notice, advertising and other
22 expenses incurred by the municipality in acting
23 upon applications.

24 5. Franchise agreements or contracts. The State
25 specifically authorizes municipal officers pursuant
26 to ordinances to contract on such terms and condi-
27 tions and impose such fees as are in the best inter-
28 ests of the municipality, including the grant of ex-
29 clusive or nonexclusive franchises for a period not
30 to exceed 15 years, for the placing and maintenance
31 of cable television systems and appurtenances, or
32 parts thereof, along public ways and including con-
33 tracts with cable television companies which receive
34 the services of television signal transmission of-
35 fered by any public utilities using public ways for
36 such transmission. No public utility may be required
37 to contract with the municipal officers pursuant to
38 this subsection. Each franchise shall contain the
39 following provisions:

40 A. The area or areas to be served;

- 1 B. A line extension policy;
2 C. A provision for renewal, the term of which
3 shall not exceed 15 years;
4 D. Procedures for the investigation and resolu-
5 tion of complaints by the cable television compa-
6 ny; and
7 E. Such other terms and conditions which are in
8 the best interests of the municipality.
9 6. Current ordinances and agreements. This sec-
10 tion shall not be construed to invalidate any ordi-
11 nance, franchise or agreement in effect or under con-
12 sideration on the effective date of this section.

13 Sec. 6. 35 MRSA §256 is amended to read:

14 §256. Joint use of equipment

15 Whenever the commission, after a hearing had upon
16 its own motion or upon complaint of a public utility
17 or cable television system affected, shall find that
18 public convenience and necessity require the use by
19 one public utility or cable television system of the
20 conduits, subways, tracks, wires, poles, pipes or
21 other equipment, or any part thereof, on, over or un-
22 der any street or highway and belonging to another
23 public utility or cable television system, and that
24 such use will not result in irreparable injury to the
25 owner or other users of such conduits, subways,
26 tracks, wires, poles, pipes or other equipment or in
27 any substantial detriment to the service, and that
28 such public utilities or cable television system have
29 failed to agree upon such use or the terms and condi-
30 tions or compensation for the same, the commission
31 may by order direct that such use be permitted and
32 prescribe a reasonable compensation and reasonable
33 terms and conditions for the joint use. If such use
34 be directed, the public utility or cable television
35 system to whom the use is permitted shall be liable
36 to the owner or other users of such conduits, sub-
37 ways, tracks, wires, poles, pipes or other equipment
38 for such damage as may result therefrom to the prop-
39 erty of such owner or other users thereof. Any ac-
40 tions taken or orders issued by the commission under

1 this section shall take into account the interests of
2 the subscribers of the affected cable television sys-
3 tem, as well as the customers of the affected public
4 utilities.

5 Sec. 7. 35 MRSa §2362 is enacted to read:

6 §2362. Public Utilities Commission regulation

7 Cable television companies, to the extent they
8 offer services like those of telephone companies sub-
9 ject to regulation by the Public Utilities Commis-
10 sion, shall be subject to the commission's jurisdic-
11 tion over rates, charges and practices, as provided
12 in this Title.

13 STATEMENT OF FACT

14 The new draft deletes provisions in the bill for
15 Public Utilities Commission's review of local
16 franchising of cable television. It does establish a
17 clear state policy of municipal regulation, including
18 the option of awarding exclusive or nonexclusive
19 franchises, so that municipalities will be immune
20 from antitrust suits if they award such franchises.

21 The new draft states clearly in the Revised Stat-
22 utes, Title 35, section 2362, that cable television
23 companies are subject to Public Utilities Commis-
24 sion's regulation when they offer services like those
25 services offered by telephone companies which are so
26 regulated.

27 The new draft gives the Public Utilities Commis-
28 sion jurisdiction over pole attachments involving ca-
29 ble television companies and public utilities, when
30 the parties fail to reach agreement.

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