

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

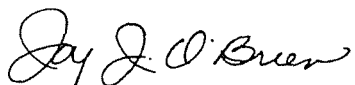
Legislative Document

No. 1045

S.P. 401

In Senate, April 5, 1989

Reference to the Committee on Utilities suggested and ordered printed.


JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BOST of Penobscot.

Cosponsored by Senator BALDACCI of Penobscot, Representative CARTER of Winslow and Representative PARADIS of Old Town.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act Concerning the Regulation of Cable Television.



1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 30-A MRSA §3008**, as enacted by PL 1987, c. 737, Pt.
A, §2, and Pt. C, §106, and as amended by PL 1989, c.c. 6 and 9,
5 is further amended to read:

7 **§3008. Cable television ordinances**

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

11 A. To affirm the importance of municipal ~~control~~ of
13 franchising and regulation subject to the authority of the
15 State as defined in Title 35-A in order to ensure that the
needs and interests of local citizens are adequately met;

17 ~~B. That each municipality, when acting to displace~~
19 ~~competition with regulation in the area of cable television,~~
21 ~~shall proceed according to the judgment of the municipal~~
~~officers as to the type and degree of regulatory activity~~
~~considered to be in the best interests of its citizens, and~~

23 C. To provide adequate statutory authority to
25 municipalities to make franchising and regulatory decisions
to implement this policy and to avoid the costs and
27 uncertainty of lawsuits challenging that authority; and

29 D. To provide for state regulation of cable television to
the maximum extent allowed under federal law.

31 **2. Ordinances.** A municipality may enact any ordinances,
33 not contrary to this chapter or Title 35-A, governing franchising
and regulation of cable television systems using public ways.
35 Systems located in accordance with those ordinances, franchises
and regulations are not defects in public ways.

37 The municipal officers of municipalities have the exclusive power
to enact all ordinances authorized by this section. They shall
39 give 7 days' notice of the meeting at which those ordinances are
to be proposed in the manner provided for town meetings. Those
41 ordinances take effect immediately, or as provided.

43 **3. General requirements.** The following requirements apply
generally to cable television systems ~~governed by this section~~
45 using public ways.

47 A. Any cable television system must be constructed and
operated in accordance with Federal Communications
49 Commission regulations.

51 B. Notwithstanding any provision in a franchise, no cable
television company may abandon service or a portion of that

1 service without having given 6 months' prior written notice
2 to the franchising municipality, if any, and to the
3 municipalities affected by that abandonment. When
4 abandonment of any service is prohibited by a municipal
5 franchise, no cable television company may abandon that
6 service without written consent of the municipal officers.
7 Any cable television company which violates this paragraph
8 commits a civil violation for which a fine of \$50 a day for
9 each day that the violation continues may be adjudged.

11 C. Neither the cable television company whose facilities
12 are used to transmit a program produced by a person other
13 than the cable television company, under Federal
14 Communications Commission regulations or municipal
15 ordinance, nor the officers, directors or employees of any
16 such cable television company are liable for damages arising
17 from any obscene or defamatory statements or actions or
18 invasion of privacy occurring during any program when that
19 company does not originate or produce the program.

21 D. Notwithstanding any other provisions of this chapter,
22 any permit to provide a cable television system issued
23 before July 1, 1965, without a fixed termination date, is
24 deemed to expire on September 18, 1996, unless an earlier
25 expiration date is mutually agreed upon by the municipality
26 and the permit holder. These cable television systems, as a
27 condition of franchise, shall be operated in such a manner
28 as to provide a safe, adequate and reliable service to
29 subscribers.

31 E. A municipality is entitled to injunctive relief in
32 addition to any other remedies available by law to protect
33 any rights conferred upon the municipality by this section
34 or any ordinances enacted under this section.

35
36 **4. Franchise procedures.** Pursuant to subsection 2, a
37 municipality may enact ordinances governing the procedures for
38 granting cable television franchises. These ordinances must be
39 enacted before granting any such franchise or franchises and
40 shall be designed to ensure that the terms and conditions of a
41 franchise will adequately protect the needs and interests of the
42 municipality. The ordinances shall include, but are not limited
43 to, provisions for the following:

45 A. A mechanism for determining special local needs or
46 interests before issuing a request for proposals, whether by
47 actively seeking to determine those needs or interests or by
48 allowing a period for public comment on a proposed request
49 for proposals;

51 B. The filing of franchise applications and related
documents as public records, with reasonable notice to the

1 public that the records are open to inspection during
reasonable hours;

3
4 C. A reasonable opportunity for public input before
5 granting franchises; and

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

11 5. Franchise agreements or contracts. The State
specifically authorizes municipal officers pursuant to
13 ordinances, and subject to approval by the Public Utilities
Commission under Title 35-A, to contract on such terms and
15 conditions and impose such fees as are in the best interests of
the municipality, including the grant of ~~exclusive~~ or
17 nonexclusive franchises for a period not to exceed 15 10 years,
for the placing and maintenance of cable television systems and
19 appurtenances, or parts thereof, along public ways and including
contracts with cable television companies which receive the
21 services of television signal transmission offered by any public
utilities using public ways for such transmission. No public
23 utility may be required to contract with the municipal officers
under this subsection. Each franchise must contain the following
25 provisions:

27 A. The area or areas to be served;

29 B. A line extension policy;

31 C. A provision for renewal, the term of which may not
exceed 15 10 years;

33 D. Procedures for the investigation and resolution of
35 complaints by the cable television company; and

37 E. Any other terms and conditions that are in the best
interests of the municipality.

39
41 6. Current ordinances and agreements. This section shall
not be construed to invalidate any ordinance, franchise or
43 agreement in effect or under consideration on July 25, 1984, but
those ordinances, franchises or agreements shall be subject to
this section upon renewal at any time after that date.

45
47 **Sec. 2. 35-A MRSA §102, sub-§§1-A, 1-B and 1-C** are enacted to
read:

49 1-A. Cable television franchise. "Cable television
franchise" means any franchise, privilege, permit, license or
51 other authorization granted by a municipality to construct,
operate, maintain or manage a cable television system;

1
3 1-B. Cable television system. "Cable television system"
5 means any system which receives and amplifies programs broadcast
7 by one or more television or radio stations and other programs
9 initiated by the owner or operator of the system or by any other
11 person, and distributes those programs by wire, cable, microwave
13 or other means, whether the means are owned or leased, to persons
15 who subscribe to the service. This definition shall not include:

17 A. Any system which serves fewer than 50 subscribers;

19 B. Any master antenna television system;

21 C. Any specialized closed-circuit system which does not use
23 the public rights-of-way for its physical plant;

25 D. Any translator system which simply receives and
27 rebroadcasts over-the-air signals; or

29 E. The interactive television system of the University of
31 Maine System.

33 1-C. Cable television utility. "Cable television utility"
35 includes every person, its lessees, trustees, receivers or
37 trustees appointed by any court owning, controlling, operating or
39 managing any cable television system for compensation within this
41 State.

43 **Sec. 3. 35-A MRSA §102, sub-§§9-A and 11-A are enacted to read:**

45 9-A. Master antenna television system. "Master antenna
47 television system" means any system which serves only the
49 residents of one or more apartment buildings under common
51 ownership, control or management and which transmits only signals
broadcast over the air by stations which may normally be viewed
locally, and which does not provide any additional service.

11-A. Program. "Program" means any broadcast-type program,
signal, message, graphics, data or communication content service.

Sec. 4. 35-A MRSA §102, sub-§13, as enacted by PL 1987, c.
141, Pt. A, §6, is amended to read:

13. Public utility. "Public utility" includes every cable
television utility, gas utility, natural gas pipeline utility,
electric utility, telephone utility, telegraph utility, water
utility, public heating utility and ferry, as those terms are
defined in this section and each of those utilities is declared
to be a public utility. "Public utility" does not include the
operation of a radio paging service, as that term is defined in
this section. Nothing in this subsection precludes the

1 jurisdiction, control and regulation by the commission pursuant
to private and special act of the Legislature.

3 **Sec. 5. 35-A MRSA §107, sub-§1, ¶A**, as enacted by PL 1987, c.
5 141, Pt. A, §6, is amended to read:

7 A. An administrative director, a director of cable
9 television, a director of finance, a director of technical
analysis and a director of consumer assistance;

11 **Sec. 6. 35-A MRSA §107, sub-§2, ¶¶A and C**, as amended by PL
13 1987, c. 631, §3, are further amended to read:

15 A. The general counsel, the administrative director, the
17 assistant administrative director, the administrative
assistant to the administrative director, the director of
19 cable television, the director of finance, the director of
technical analysis, the director of consumer assistance and
the assistant to the director of consumer assistance shall
serve at the pleasure of the commission and their salaries
shall be set by the commission within the ranges established
by Title 2, section 6-A.

23 C. The salaries of the other subordinate officials and
25 employees of the commission, other than those of the general
counsel, the administrative director, the assistant
27 administrative director, the administrative assistant to the
administrative director, the director of cable television,
29 the director of finance, the director of technical analysis,
the director of consumer assistance, the assistant to the
31 director of consumer assistance and the staff attorney,
financial analyst, chief utility accountant and utility
33 accountant III positions, shall be subject to the Civil
Service Law, except as provided in paragraph D.

35 **Sec. 7. 35-A MRSA §301, sub-§5** is enacted to read:

37 5. Cable television utilities. Cable television utility
39 rates shall not be subject to subsections 2, 3 and 4, nor to
41 section 303, 310 or 312. Those rates shall be subject to section
8312.

43 **Sec. 8. 35-A MRSA §2102, sub-§3** is enacted to read:

45 3. Cable television utilities. Cable television utilities
47 shall not be subject to subsections 1 and 2, nor to section 2105.

49 **Sec. 9. 35-A MRSA §8301**, as enacted by PL 1987, c. 141, Pt.
A, §6, is amended to read:

51 **§8301. Public Utilities Commission regulation**

1 Cable television companies, to the extent they offer
2 services like those of telephone utilities subject to regulation
3 by the commission, shall be subject to the commission's
4 jurisdiction over rates, charges and practices, as provided in
5 this Title for telephone utilities.

7 Sec. 10. 35-A MRSA §8301-A is enacted to read:

9 §8301-A. Short title; purpose

11 1. Short title. This chapter shall be known and cited as
12 the "Maine Cable Television Act."

13 2. Purpose. In order to protect the vital state interests
14 involved in public rights-of-way, municipal franchising and
15 necessary business and community service, this Act subjects cable
16 television operations to state oversight to the maximum extent
17 permitted under federal law.

19 Sec. 11. 35-A MRSA §8302, as enacted by PL 1987, c. 141, Pt.
20 A, §6, is amended to read:

23 §8302. Pole attachments

25 Where a cable television system and any other public utility
26 have failed to agree on the joint use of poles or other equipment
27 or on the terms and conditions or compensation for the use, the
28 matter shall be subject to section 711.

29 Sec. 12. 35-A MRSA §§8303 to 8320 are enacted to read:

31 §8303. Duties of the commission

33 The commission shall, to the extent permitted by federal law
34 and regulations:

37 1. Procedures and practices for municipal franchises.
38 Prescribe procedures and practices which municipalities shall
39 follow in granting franchises under Title 30-A, section 3008,
40 which standards shall provide for:

41 A. The issuance of a public invitation to compete for the
42 franchise;

45 B. The filing of all franchise applications and related
46 documents as public records, with reasonable notice to the
47 public that the records are open to inspection and
48 examination during reasonable business hours;

49 C. The holding of a public hearing in the proposed
50 franchise area, upon reasonable notice to the public and the
51 commission, at which the applicants and their proposals

1 shall be examined and members of the public and interested
2 parties are afforded a reasonable opportunity to express
3 their views;

5 D. The rendition of a written report by the municipality,
6 made available to the public, setting forth the reasons for
7 its decision in awarding the franchise; and

9 E. Other procedural standards that the commission may deem
10 necessary or appropriate to assure maximum public
11 participation and competition and to protect the public
12 interest;

13 2. Minimum franchise standards. Prescribe minimum
14 standards for inclusion in franchises, including:

17 A. Maximum initial and renewal terms;

19 B. Minimum channel capacity;

21 C. Provisions regarding access to, and facilities to make
22 use of, channels for education and public service programs;

23 D. A requirement that no franchise may be exclusive;

25 E. Standards necessary or appropriate to protect the
26 interests of viewers of free broadcast television and the
27 public generally, which prohibit or limit cable television
28 companies from prohibiting or entering into agreements
29 prohibiting the sale or other transfer of rights for the
30 simultaneous or subsequent transmission over free broadcast
31 television of any program originated or transmitted over
32 cable television; and

35 F. Other standards for inclusion in franchises that the
36 commission shall deem appropriate to protect the public
37 interest;

39 3. Criteria for evaluating applicant. Prescribe standards
40 by which the franchising authority shall determine whether an
41 applicant possesses the qualifications necessary to operate a
42 cable television system in the public interest, including:

43 A. The technical ability;

45 B. The financial ability;

47 C. Good character; and

49 D. Other necessary qualifications;

51

1 4. Construction and operation. Prescribe standards for the
2 construction and operation of cable television systems, which
3 standards shall be designed to promote and establish:

5 A. Safe, adequate and reliable service to subscribers;

7 B. The construction and operation of systems consistent
8 with the state of the art;

9 C. A construction schedule providing for maximum
11 penetration as rapidly as possible within the limitations of
12 economic feasibility;

13 D. The construction of systems with the maximum practicable
15 channel capacity, facilities for local program origination,
16 facilities to provide service in areas conforming to various
17 community interests and facilities capable of transmitting
18 signals from subscribers to the cable television company or
19 to other points;

21 E. The prompt handling of inquiries, complaints and
22 requests for repairs; and

23 F. Minimum specifications for equipment, service and safety
25 of cable television systems;

27 5. Technical assistance. Provide advice and technical
28 assistance to municipalities and community organizations in
29 matters relating to cable television franchises and services;

31 6. Certificate of confirmation. Review and act upon
32 applications for certificates of confirmation in accordance with
33 section 8309;

35 7. Represent State. Represent the interests of the people
36 of the State before the Federal Communication Commission; and

37 8. Studies. Undertake such studies as may be necessary to
38 meet the objectives of this chapter.

41 §8304. Powers of commission

43 1. Rules and orders. The commission may adopt and amend
44 any rules and orders it finds appropriate to carry out the
45 purposes of this chapter. A copy of any rule or order adopted
46 under this chapter shall be subject to public inspection during
47 reasonable business hours.

49 2. Reports, contracts and statements. The commission may
50 require cable television companies to maintain and file reports,
51 contracts and statements, including, but not limited to,
ownership, accounting, auditing and operating statements,

1 engineering reports and other data that the commission deems
3 appropriate to administer this chapter. The commission,
5 including members of its staff, may make reasonable inspections
7 of the records and facilities of any cable television company.

9 3. Examination under oath. The commission may examine,
11 under oath, all officers, agents, employees and stockholders of
13 any cable television company, municipal officials and any other
15 persons and compel the production of papers and the attendance of
17 witnesses to obtain the information necessary to administer this
19 chapter.

21 4. Interagency cooperation. The commission may require and
23 receive from any agency of the State, or any of its political
25 subdivisions, assistance and data that may be necessary to enable
27 the commission to administer this chapter. The commission may
29 enter into cooperative arrangements with the University of Maine
31 System, other state agencies and municipalities, each of which is
33 hereby authorized to enter into those cooperative arrangements,
35 as appropriate to assure maximum use of existing expertise in
37 communications technology, cable television operations and
39 programming so that the purposes of this chapter may be
41 effectively accomplished. Upon request of the commission, any
43 state agency may transfer to the commission those officers and
45 employees that the commission deems necessary from time to time
47 to assist the commission in carrying out its functions and
49 duties. Officers and employees transferred shall not lose their
51 civil service status or rights.

53 5. Other powers. The commission shall have all other
55 powers appropriate to carry out this chapter.

57 §8305. Funding of cable television activities of commission

59 1. Source of funds. Except for expenses funded through the
61 Public Utilities Commission Reimbursement Fund, the expenses of
63 the commission in implementing this chapter shall generally be
65 paid pursuant to allocation from the Public Utilities Commission
67 Cable Television Regulatory Fund.

69 2. Deposit of funds. All revenues derived from assessments
71 levied against cable television companies under subsection 3
73 shall be deposited with the Treasurer of State in a separate
75 account to be known as the Public Utilities Commission Cable
77 Television Regulatory Fund.

79 3. Cable television utilities subject to assessments.
81 Every cable television utility subject to regulation by the
83 commission shall be subject to an assessment of not more than 2%
85 on its intrastate gross operating revenues to produce no more
87 than \$500,000 in revenues annually beginning in the 1990-91
89 fiscal year. The commission shall determine the assessments

1 annually prior to May 1st and shall assess each cable television
2 utility for its pro rata share. Each cable television utility
3 shall pay its assessment by July 1st of each year. Any increase
4 in the assessment that becomes effective subsequent to May 1st
5 may be billed on the effective date of the act authorizing the
6 increase.

7
8 A. The assessments charged to utilities under this section
9 are just and reasonable operating costs.

11 B. For the purposes of this section, "intrastate gross
12 operating revenues" means intrastate revenues derived from
13 all program services, except revenues derived from sales for
14 resale.

15
16 C. The commission may correct any errors in the assessments
17 by means of a credit or debit to the following year's
18 assessment rather than reassessing all utilities in the
19 current year.

21 D. The commission may exempt utilities with annual
22 intrastate gross operating revenues under \$10,000 from
23 assessments under this section.

25 4. Legislative approval of budget. The assessments and
26 expenditures provided in this section are subject to legislative
27 approval in the same manner as the budget of the Public Utilities
28 Commission is approved. The commission shall make an annual
29 report in accordance with section 120 of its planned expenditures
30 for the year and on its use of funds in the previous year. The
31 commission may also receive other funds as appropriated by the
32 Legislature.

33
34 5. Deposit of funds. All revenues derived from assessments
35 levied against utilities described in this section shall be
36 deposited with the Treasurer of State in a separate account known
37 as the Public Utilities Commission Cable Television Regulatory
38 Fund.

39
40 6. Use of funds. The commission may use the revenues
41 provided in accordance with this section to fund up to 10
42 employees and to defray the other costs incurred by the
43 commission to administer this chapter, including administrative
44 expenses, general regulatory expenses, consulting fees and all
45 other reasonable costs.

47 7. Unexpended funds. Except as specified in this
48 subsection, any amount of the funds that is not expended at the
49 end of a fiscal year shall not lapse, but shall be carried
50 forward to be expended for the purposes specified in this chapter
51 in succeeding fiscal years; but any unexpended funds in excess of
52 7% of the total annual assessment authorized in subsection 3

1 shall, at the option of the commission, either be presented to
3 the Legislature in accordance with subsection 4 for reallocation
and expenditure for commission purposes, or used to reduce the
5 utility assessment in the following fiscal year.

7 8. Violations. Any utility, subject to this section, that
willfully fails to pay the assessments in accordance with this
9 section commits a civil violation for which a forfeiture of not
more than \$500 may be adjudged for each day for which payment is
11 not made following the due date.

13 9. Initial assessment. Every cable television utility
subject to assessment under this section shall be subject to an
15 additional assessment on its intrastate gross operating revenues
to produce no more than \$250,000 in revenues in fiscal year
17 1989-90. The revenues produced from this assessment shall be
used to initiate implementation of this chapter by the
19 commission, and shall be deposited in the Public Utilities
Commission Cable Television Regulatory Fund. The authority to
21 issue assessments under this subsection shall terminate on June
30, 1990. The assessments charged to utilities under this
23 subsection shall be deemed just and reasonable operating costs.
Any of these funds remaining in the fund after June 30, 1990,
25 shall be used to reduce the following year's Public Utilities
Commission Cable Television Regulatory Fund assessment.

27 10. Reimbursement fund. All money collected by the
commission in the form of filing fees, expense reimbursements
29 ordered by the commission or payment for services, such as
reproduction and distribution of copies of commission decisions
31 and photocopying or for the use of facilities in connection with
cable television utilities, shall be deposited with the Treasurer
33 of State in accordance with section 117.

35 11. Fines. Fines collected by the commission in connection
with cable television which do not constitute a reimbursement of
37 commission expenses shall be deposited in the General Fund of the
State Treasury as provided in section 117.

39 **§8306. Municipal fees; taxes or charges**

41 Nothing in this chapter shall be construed to limit the
43 power of any municipality to impose upon any cable television
company, a fee, tax or charge, provided that the fee, tax or
45 charge when added to the amount payable to the commission
pursuant to section 8305 does not exceed the maximum amount
47 permitted by applicable federal law, rules or regulations.

49 **§8307. Franchise requirement**

51 1. Operation without franchise prohibited. Notwithstanding
any other law, no cable television system, whether or not it is

1 deemed to occupy or use a public thoroughfare, may commence
2 operations or expand the area it serves unless it has been
3 franchised by each municipality in which it proposes to provide
4 or extend service.

5
6 2. Municipal authority. A municipality may require a
7 franchise of any cable television system providing service within
8 the municipality, notwithstanding that the cable television
9 system does not occupy, use or in any way traverse a public
10 street. Any municipal charter or other law authorizing a
11 municipality to require and grant franchises is hereby enlarged
12 and expanded, to the extent necessary, to authorize those
13 franchises.

14 3. Additional requirement. Nothing in this chapter may be
15 construed to prevent franchise requirements in excess of those
16 prescribed by the commission, unless that requirement is
17 inconsistent with this chapter, any rule, policy or procedure of
18 the commission or federal law.

19
20 §8308. Construction of systems

21
22 Every cable television system constructed or undergoing a
23 major modification, as defined by the commission by rule, after
24 April 1, 1991, shall comply with construction standards that the
25 commission may prescribe pursuant to subsection 4 of section 8303.

26
27 §8309. Certificate of confirmation

28
29 1. Certificate of confirmation required. After April 1,
30 1991, no person shall exercise a franchise, and no franchise may
31 be effective until the commission has confirmed the franchise. A
32 person wishing to exercise a franchise shall file with the
33 commission an application for a certificate of confirmation in
34 the form and containing the information and supportive
35 documentation that the commission requires. The application
36 shall be accompanied by proof of service on the franchisor and by
37 any fee that the commission sets.

38
39 2. Public hearing. The commission may hold a public
40 hearing on any application for a certificate of confirmation if
41 it determines that the hearing is in the public interest. The
42 commission shall fix the time and place for the hearing and
43 notify the applicant, the municipality issuing the franchise and
44 any other persons that the commission deems appropriate.
45 Testimony may be taken and evidence received at the hearing
46 pursuant to the Maine Administrative Procedure Act, Title 5,
47 chapter 375.

48
49 3. Criteria for approval. The commission shall issue a
50 certificate of confirmation of the franchise unless it finds that
51 the applicant, the proposed cable television system or the

1 proposed franchise does not conform to the standards embodied in
3 the rules adopted by the commission pursuant to section 8303,
5 subsection 2, or that operation of the proposed cable television
7 system by the applicant under the proposed franchise would be in
9 violation of law, or any rule or standard adopted by the
11 commission or the public interest.

13
15 4. Conditional approval. The commission may issue a
17 certificate of confirmation contingent upon compliance with
19 standards, terms or conditions set by the commission which it
21 determines would not have been met by the applicant, system or
23 franchise as proposed.

25
27 5. Denial of certificate. If the commission decides not to
29 issue a certificate of confirmation, it shall set forth in
31 writing the reasons for its decision.

33
35 6. Fee. When an application for a certificate of
37 confirmation is filed, the applicant shall pay to the commission
39 a fee equal to 1% of the estimated value of the cable television
41 system in question. The fee shall be deposited in the Public
43 Utilities Commission Reimbursement Fund. Within 90 days after
45 final action by the commission on the application, any portion of
47 the fee which is not needed to cover the cost of review and
49 processing that application shall be returned to the applicant.

51
53 §8310. Transfer, renewal or amendment of franchises and transfer
55 of control over franchises and system properties

57
59 1. Commission approval required. No transfer, renewal nor
61 amendment of any franchise, or any transfer of control of a
63 franchise or certificate of confirmation nor any transfer of
65 facilities constituting a significant part of any cable
67 television system may be effective without the prior approval of
69 the commission. Commission approval shall be required in
71 addition to any municipal approval required under the franchise
73 or by law. For the purposes of this section, a merger or
75 consolidation of 2 or more cable television companies shall be
77 deemed to be a transfer of the franchises or certificates granted
79 to those companies.

81
83 2. Application. A person wishing to transfer, renew or
85 amend a franchise, or to transfer control of a franchise or of a
87 substantial part of its facilities shall file with the commission
89 an application for approval of the change, in the form and
91 containing the information and supporting documents that the
93 commission requires. The application shall be accompanied by
95 proof of service on the franchisor, if any, and by any fee the
97 commission may set. The commission may hold a public hearing on
99 any application set forth in section 8309, subsection 2.

1 3. Criteria for approval. The commission shall approve the
3 transfer, renewal or amendment unless it finds that the
5 applicant, the proposed transferee or the cable television system
7 does not conform to the standards embodied in the rules adopted
 by the commission pursuant to section 8303 or that approval would
 be in violation of law, any rule or standard promulgated by the
 commission or the public interest.

9 4. Conditional approval. The commission may approve the
11 application contingent upon compliance with standards, terms or
13 conditions set by the commission which it determines would not
 have been met by the proposed transfer, renewal or amendment.

15 5. Denial of approval. If the commission decides not to
17 approve the application, it shall set forth in writing the
 reasons for its decision.

19 6. Illegal franchises. Approval of a transfer, renewal or
21 amendment under this section shall not preclude invalidation of a
 franchise obtained illegally.

23 7. Fee. When an application for transfer or amendment
25 renewal is filed, the applicant shall pay the commission a fee
27 equal to 0.5% of the estimated value of the cable television
29 system in question. The fee shall be deposited in the Public
 Utilities Commission Reimbursement Fund. Within 90 days after
 final action by the commission on the application, any portion of
 the fee which is not needed to cover the cost of review and
 processing that application shall be returned to the applicant.

31 §8311. Requirement for adequate service

33 1. Required. Every cable television company shall provide
35 safe, adequate and reliable service in accordance with applicable
 laws, rules and franchise requirements.

37 2. Delays. Whenever upon complaint or upon its own motion
39 and after public notice and opportunity for hearing the
41 commission finds that, despite its economic feasibility, the
43 construction or operation of a franchised or certificated cable
45 television system has been unreasonably delayed or that the
 extension of service to any persons or area within a cable
 television company's territory has been unreasonably withheld, it
 may order construction, operation or extension on terms and
 conditions that it deems reasonable and in the public interest.

47 3. Compliance orders. Whenever upon complaint or upon its
49 own motion and after public notice and opportunity for hearing,
51 the commission finds that a cable television company is not
 meeting its service requirements and obligations, it may order
 compliance on terms and conditions that it deems reasonable and
 in the public interest.

1
3 4. Denial; suspension or revocation. Failure to comply
5 with an order of the commission issued under subsection 2 or 3
7 shall be grounds for denial, suspension or revocation of the
9 right to exercise a franchise or to operate pursuant to a
11 certificate of confirmation.

13 §8312. Rates

15 1. Set in franchise. Except as otherwise provided in this
17 section, the rates charged by a cable television company shall be
19 those specified in the franchise which may establish, or provide
21 for the establishment of reasonable classifications of service
23 and categories of subscribers, or charge different rates for
25 differing services or for subscribers in different categories.

27 2. Rate changes. Rates may not be changed except by
29 amendment of the franchise.

31 3. Conditions. The following conditions apply to rates.

33 A. No rate provision in any franchise may bind a
35 municipality for more than 10 years and no rate provision in
37 any renewed franchise may bind a municipality for more than
39 5 years.

41 B. Any rate or rates found by the commission, after public
43 notice and opportunity for hearing, to be discriminatory or
45 preferential as between subscribers similarly situated shall
47 thereafter be void. Reduced rates or free service to
49 government, educational or charitable institutions shall not
51 be considered unduly discriminatory or preferential.

4. Discriminatory rates. If the commission finds that any
rate is discriminatory or preferential pursuant to subsection 3,
paragraph B, or that any cable television company is in violation
of an order issued by the commission pursuant to section 8311
requiring adequate service, it may issue an order requiring the
municipality and the cable television company to provide for new
rates which are nondiscriminatory and nonpreferential or reduced
to reflect the inadequate service, as the case may be.

§8313. Unauthorized receipt of services

1. Prohibition. Any cable television company may initiate
a civil proceeding within the appropriate courts of this State to
collect any rates, charges or fees duly imposed in accordance
with applicable law, or to enjoin the procurement or reception of
cable television services from the facilities of the cable
television company without its consent, and to seek appropriate
monetary damages for that procurement or reception of cable
television services. Upon a showing that the cable television

1 service has been obtained without its consent, the cable
3 television company shall be granted an injunction prohibiting the
5 continuation of those practices and, upon a showing that the
7 cable television service was obtained under circumstances
9 evincing a knowledge that the service would be obtained without
11 payment of the proper charges, the company may be awarded
13 monetary damages and any punitive award that the court in its
15 discretion deems appropriate.

17 2. Implied consent. Every cable television company is
19 deemed to have consented to the attachment of one television
21 receiver, of a type accepted by the Federal Communications
23 Commission, to an authorized outlet of its facilities by any of
25 its cable television service subscribers.

27 §8314. Abandonment of service

29 1. Notice required. No cable television company,
31 notwithstanding any provision in a franchise, may abandon any
33 service or portion of service without having given 6 months'
35 prior written notice to the commission and to the franchisor, if
37 any, and to the municipalities it serves.

39 2. Franchise conditions. When abandonment of any service
41 is prohibited by a franchise, no cable television company may
43 abandon service without written consent of the franchisor, if
45 any, and the commission. In granting the consent, the commission
47 may impose any terms, conditions or requirements which in its
49 judgment are necessary to protect the public interest.

51 §8315. Termination of franchises

53 1. Early termination. A franchise shall terminate at the
55 expiration of its term or otherwise in accordance with the
57 provisions of the franchise, unless the commission orders an
59 earlier termination. The commission may so order only if it
61 finds, after public notice and opportunity for a hearing, that
63 the franchisee:

65 A. Has committed a material breach of its franchise or of
67 this chapter or of the rules promulgated hereunder and has
69 failed, without reasonable justification, to cure that
71 breach within 60 days after having received written notice
73 from the commission; or

75 B. Has been adjudicated bankrupt or has filed a voluntary
77 petition for bankruptcy or reorganization or for an order
79 protecting its assets from the claims of creditors and the
81 commission finds that termination of the franchise or
83 certificate of confirmation under those conditions is in the
85 best interests of the public.

1 2. Disposition of facilities. Upon termination of a
2 franchise or certificate of confirmation, the cable television
3 company shall dispose of its facilities in accordance with the
4 provisions of the franchise or certificate. However, on motion
5 of any interested party or upon its own motion, and after public
6 notice and opportunity for hearing, if the commission finds that
7 the continued presence of the facilities in any public
8 thoroughfare would pose a nuisance to the municipality or its
9 residents, the cable television company shall remove its
10 facilities within a period that the commission orders. In the
11 absence of any applicable franchise or certificate provision or
12 order by the commission to the contrary, the cable television
13 company may abandon its facilities.

15 **§8316. Civil penalties**

17 1. Failure to comply with orders. Every cable television
18 company and all officers, agents and employees of any cable
19 television company shall comply with every order made by the
20 commission under this chapter. Except as provided in subsection
21 2, any cable television company which violates any provision of
22 this chapter, or which fails to comply with any order of the
23 commission, shall be subject to a civil penalty not to exceed
24 \$1000 for each offense, payable to the State, to be recovered in
25 a civil action; every violation of this order or this chapter
26 shall be a separate offense and, in case of a continuing
27 violation, every day's continuance of the violation shall be a
28 separate offense.

29 2. Failure to file. Notwithstanding subsection 1, any
30 cable television company which, within the period specified for
31 submission to the commission, fails to make and file its annual
32 report; to make specific answers to any question formally posed;
33 or to submit any special reports that the commission may from
34 time to time require commits a civil violation for which a
35 forfeiture not to exceed \$100 may be adjudged. Each day the
36 company continues to be in default with respect to that annual
37 report, answer or special report is a separate violation.

38 3. Action to recover. An action to recover a civil penalty
39 under subsection 1 or 2 may be brought at any time within one
40 year after the cause of action occurs, in any court of competent
41 jurisdiction in this State, in the name of the people of the
42 State on the request of the commission. In any such action, all
43 forfeitures incurred up to the time of commencing the action may
44 be sued for and recovered, and the commencement of an action to
45 recover a civil penalty shall not be, nor be held to be, a waiver
46 of the right to recover any other penalty or forfeiture. All
47 money recovered in that action, together with its costs, shall be
48 paid into the General Fund.

51 **§8317. Landlord-tenant relationship**

1
3 1. Prohibition. No landlord may:

5 A. Interfere with the installation of cable television
7 facilities upon the landlord's property or premises, except
9 that a landlord may require:

11 (1) That the installation of cable television
13 facilities conform to any reasonable conditions that
15 are necessary to protect the safety, functioning and
17 appearance of the premises and the convenience and
19 well-being of other tenants;

21 (2) That the cable television company or the tenant,
23 or both, bear the entire cost of the installation,
25 operation or removal of the facilities; and

27 (3) That the cable television company agree to
29 indemnify the landlord for any damage caused by the
31 installation, operation or removal of the facilities;

33 B. Demand or accept payment from any tenant, in any form,
35 in exchange for permitting cable television service on or
37 within the landlord's property or premises, or from any
39 cable television company in exchange for those services in
41 excess of any amount which the commission, by regulation,
43 determines reasonable; or

45 C. Discriminate in rental charges, or otherwise, between
47 tenants who receive cable television service and those who
49 do not.

51 2. Tenant's rights. No cable television company may enter
53 into any agreement with the owners, lessees or persons
55 controlling or managing buildings served by cable television, or
57 permit any act that would have the effect, directly or
59 indirectly, of diminishing or interfering with existing rights of
61 any tenant or other occupant of the building to use or avail the
63 tenant of master or individual antenna equipment.

65 §8318. Censorship prohibited

67 1. Commission. The commission may not prohibit or limit
69 any program or any class or type of program or otherwise censor
71 the communications or signals transmitted by any cable television
73 company or over any cable television system, and may not
75 promulgate any regulation or condition which would interfere with
77 the right of free speech by means of cable television.

79 2. Municipality. No municipality may prohibit or limit any
81 program or class or type of program or impose discriminatory or
83 preferential franchise fees in any manner that would tend to

1 encourage or discourage programming of any particular nature,
2 directly or indirectly.

3
4 3. Company. No cable television company may prohibit or
5 limit any program or class or type of program presented over a
6 leased channel or any channel made available for public access or
7 educational purposes.

8 **§8319. Subscriber limitation on television reception**

9
10 1. Locking devices. To the extent technologically
11 feasible, every cable television company shall offer to each of
12 its subscribers a locking program control device which enables
13 the subscriber to limit the reception in the subscriber's
14 residence, of any channel which displays public access programs
15 or for which a specific, optional premium charge is imposed.

16
17 2. Subscriber's request. Program control devices need only
18 be installed when they are requested by the subscriber. Any
19 subscriber requesting a device may be charged by the cable
20 television company, on a one-time or recurring basis, no more
21 than 15% above the actual cost to the company for the
22 manufacture, purchase and installation of the device.

23
24 3. Notice. Every cable television company shall notify
25 each of its subscribers in writing of the availability of the
26 device described in subsection 1. The notice shall be printed in
27 prominent type face and shall include information concerning the
28 cost to the subscribers. The notice may be included with other
29 materials distributed by the company. Notice shall be given to
30 all new subscribers at the time of initial subscription, to each
31 subscriber who requests a change in service and to all
32 subscribers annually thereafter.

33
34 **§8320. Liability for obscenity, defamation and invasion of**
35 **privacy**

36
37 Neither the cable television company whose facilities are
38 used to transmit a program produced by a person other than the
39 cable television company nor the officers, directors or employees
40 of that cable television company shall be liable for damages
41 arising from any obscene or defamatory statements or actions or
42 invasion of privacy occurring during any program when the company
43 does not originate or produce the program.

44
45 **Sec. 13. Allocation.** The following funds are allocated from
46 the Public Utilities Commission Cable Television Regulatory Fund
47 to carry out the purposes of this Act.

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	1989-90	1990-91
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51 **PUBLIC UTILITIES COMMISSION**

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Cable Television Division

Positions	(7.0)	(7.0)
Personal Services	\$144,252	\$206,717
All Other	15,748	18,283
Capital Expenditures	15,000	

PUBLIC UTILITIES COMMISSION

TOTAL	<u>\$175,000</u>	<u>\$225,000</u>
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STATEMENT OF FACT

This Act may be cited as the Maine Cable Television Act. The Legislature finds that, while cable television serves in part as an extension of interstate broadcasting, its operations also involve public rights-of-way, municipal franchising and vital business and community service, which are of state concern.

The purpose of this Act is to respond to the widespread public concern over cable television operations by subjecting them to state oversight, under the jurisdiction of the Public Utilities Commission, to the maximum extent permitted under federal law. At the same time, those operations must be protected from undue regulation to assure development of cable systems with optimum technology and maximum penetration in this State as rapidly as economically and technically feasible.

The Legislature also intends that municipalities and the State should benefit from valuable educational and public services through cable communications systems; the cable communications industry must provide the opportunity for minority participation; and the public and the business community should be served by cable channels sufficient to meet the needs of producers and distributors of program and other communication content services. The Legislature also notes that many municipalities lack the necessary resources and expertise to plan for and secure these benefits and to protect subscribers and other parties and the public interest in franchise negotiations.

Further, the intent of this Act is to promote the rapid development of the cable communications industry responsive to community and public interest and consonant with policies, regulations and laws of the Federal Government; to assure that cable communications companies provide adequate, economical and efficient service to their subscribers, the municipalities within which they are franchised and other parties to the public interest; to encourage the endeavors of public and private institutions, municipalities, associations and organizations in developing programming for public interest; and to provide

1 minorities with the fullest opportunity to make effective use of
the medium.

3

5 It is the intent of this Act to establish mechanisms to
oversee development of the cable television industry in Maine; to
7 review the suitability of practices for franchising cable
communications companies to protect the public interest; to set
standards for cable communications systems and franchise
9 practices; to assure channel availability for municipal services,
educational television, program diversity, local expression and
11 other program and communications content services; to provide
guidance to community organizations and municipalities in
13 franchise negotiations; and to stimulate the development of
diverse instructional, educational, community interest and public
15 affairs programming with full access thereto by cable
communications companies, educational broadcasters and public and
17 private institutions operating closed circuit television systems
and instructional television fixed services.

19

21 This bill expands chapter 83 of Title 35-A to provide for
comprehensive regulation of cable television systems by the
Public Utilities Commission, within the limits of federal law, as
23 follows:

25 1. Cable television operators would be regulated as public
utilities, but, because of federal preemption, regulation of
27 rates and program content would be extremely limited;

29 2. Cable television franchises will continue to be issued
by municipalities, but will not become operational until
31 confirmed by the commission. Operation without a confirmed
franchise is prohibited;

33

35 3. The commission will establish minimum statewide
standards for cable television franchises and the procedures by
which they are awarded;

37

39 4. The commission will establish minimum statewide
technical standards for construction and operation of cable
television systems; and

41

43 5. The commission will provide advice and technical
assistance to municipalities.

45 Funding of \$500,000 per year is provided by an assessment on
cable television utilities, in a manner similar to the assessment
47 of other utilities for operation of the Public Utilities
Commission. Allocation of funds in the budget requires approval
49 by the Legislature.

1 Landlords would be prohibited from interfering with the
3 installation of cable television facilities, but could set
reasonable conditions.

5 Other provisions prohibit censorship, require the offering
of locking devices and limit the liability of cable television
7 companies for program content.