

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1649

H.P. 1124

House of Representatives, April 24, 1991

Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Millinocket.

Cosponsored by President PRAY of Penobscot, Senator CARPENTER of York and Representative MORRISON of Bangor.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Promote the Access of Cable Television to Maine Citizens.**

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

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4       **Sec. 1. 30-A MRSA §3008, sub-§5**, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

6       **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, 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 public ways and including contracts with cable television companies which receive the services of television signal transmission offered by any public utilities using public ways for such transmission. No public utility may be required to contract with the municipal officers under this subsection. Each franchise must contain the following provisions:

20           A. The area or areas to be served;

22           B. A line extension policy;

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

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

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

30  
32       Notwithstanding paragraph E, a municipality may not grant any additional franchises to cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing franchise within the municipality.

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38       **Sec. 2. 30-A MRSA §3010, sub-§5**, as enacted by PL 1989, c. 352, is amended to read:

40       **5. Public access channels.** ~~All--franchises--shall--be nonexclusive.~~ All franchises shall 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, Public Law 98-549.

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48       **Sec. 3. 35-A MRSA §711, sub-§§4 to 6** are enacted to read:

50       **4. Reasonable compensation for joint use of equipment.** For purposes of subsection 1, a pole attachment rate provides reasonable compensation if it assures a utility the recovery of

2 not less than the additional costs of providing pole attachments,  
4 nor more than an amount determined by multiplying the percentage  
6 of the total useable space or the percentage of the total  
8 duct-of-conduit capacity, which is occupied by the pole  
10 attachment, by the sum of the operating expenses and actual  
12 capital costs of the utility attributable to the entire pole,  
14 duct, conduit or right-of-way. This space that separates  
16 communications and power lines may not be considered as occupied  
18 by the pole attachment.

20 5. Definitions. As used in this section, unless the  
22 context otherwise indicates, the following terms have the  
24 following meanings.

26 A. "Average pole height" is rebuttably presumed to be 37.5  
28 feet. This presumption may be overcome by evidence of  
30 actual average pole height, as determined by a statistically  
32 accurate pole survey. The format and execution of the  
34 survey must be agreed to by the parties and approval by the  
36 Public Utilities Commission. The cost of this survey must  
38 be shared equally by the parties. Subject to the approval  
40 of the Public Utilities Commission, the parties may agree to  
42 be bound by the results of existing surveys, data or other  
44 evidence of average pole heights.

46 B. "Minimum grade level" means the lowest point of  
48 attachment of wires, cables and related equipment in  
50 accordance with the most recent edition of the National  
Electric Safety Code or NESC. For the purposes of computing  
useable space, the lowest point of attachment is rebuttably  
presumed to be 18 feet. This presumption may be overcome by  
evidence of the weighted average height of the actual lowest  
points of attachment on all utility poles in the State as  
determined by a statistically accurate pole survey. The  
format and execution of the survey must be approved by the  
Public Utilities Commission. The costs associated with the  
survey must be borne by the party challenging the  
presumption. The parties may agree that the lowest point of  
attachment is 18 feet or, subject to the approval of the  
Public Utilities Commission may agree to be bound by the  
results of existing surveys, data or other evidence useful  
in determining the lowest point of attachment.

C. "Occupied space" means that part of the pole to which  
lines, wires or cables of cable television systems are  
attached. The attachment of cable television systems is  
rebuttably presumed to occupy one foot of useable space on  
each pole to which the systems are attached. This  
presumption may be overcome by evidence of actual space  
occupied by the attachment.

2 D. "Pole attachment" means any attachment for cable  
4 television transmission or reception on a pole, duct,  
6 conduit or other right-of-way owned or controlled by a  
8 public utility operating within the State.

10 E. "Public utility" means any person or entity that owns or  
12 controls poles, ducts, conduits or other rights-of-way used  
14 or useful, in whole or in part, for wire communications.

16 F. "Useable space" means the space on a utility pole above  
18 the minimum grade level, including the space that separates  
20 communications and power lines.

22 6. Rental calculation. The annual rental rate per pole is  
24 calculated as the product derived by multiplying the amounts in  
26 paragraphs A to C as follows:

28 A. The occupied space divided by the useable space;

30 B. The net investment per pole. The net investment per  
32 pole is calculated using the formula set forth in the  
34 Federal Communications Commission Rules and Policies  
36 Governing Attachment of Cable Television Hardware to Utility  
38 Poles, 47 Code of Federal Regulations, 1.1401 to 1.1415; and

40 C. Carrying charges. Carrying charges are calculated using  
42 the formula set forth in the Federal Communications  
44 Commission Rules and Policies Governing Attachment of Cable  
46 Television Hardware to Utility Poles, 47 Code of Federal  
Regulations, 1.1401 to 1.1415.

## 34 STATEMENT OF FACT

36 This bill corrects an error and inconsistency that currently  
38 exists in the law by clarifying that franchises are to be  
40 exclusive. The bill also requires that, in instances where more  
42 than one cable company holds a franchise in a given municipality,  
44 no one company may be given a franchise with more favorable or  
46 less burdensome terms than those which are granted to its  
competitor. Finally, this bill provides the standard by which  
the Public Utilities Commission shall determine reasonable pole  
attachment rates paid by cable television systems to utilities in  
instances where the Public Utilities Commission exercises  
jurisdiction in order to resolve a rate dispute.