

# MAINE STATE LEGISLATURE

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Date: 3/19/08

L.D. 2133  
(Filing No. H-777)

**UTILITIES AND ENERGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
123RD LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1515, L.D. 2133, Bill, "An Act To Establish Consistent Consumer Protections for Cable and Video Programming Customers"

Amend the bill by striking out the title and substituting the following:

**'An Act To Amend the Cable Television Laws and Establish a Model Cable Franchise Agreement'**

Amend the bill by striking out everything after the title and before the summary and inserting the following:

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

**Sec. 1. 30-A MRSA §3008**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

**§3008. Ordinances relating to cable television systems**

- 1. State policy.** It is the policy of this State, with respect to cable television systems:
  - A. To affirm the importance of municipal control of franchising and regulation in order to ensure that the needs and interests of local citizens are adequately met;
  - B. That each municipality, when acting to displace competition with regulation ~~in the area~~ of cable television systems, 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~~
  - C. To provide adequate statutory authority to municipalities to make franchising and regulatory decisions to implement this policy and to avoid the costs and uncertainty of lawsuits challenging that authority; and

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1 D. To ensure that all cable television operators receive the same treatment with  
2 respect to franchising and regulatory processes and to encourage new providers to  
3 provide competitive pressure on the pricing of such services.

4 1-A. Definitions. For purposes of this section, unless the context otherwise indicates,  
5 the following terms have the following meanings:

6 A. "Cable system operator" has the same meaning as "cable operator," as that term is  
7 defined in 47 United States Code, Section 522(5), as in effect on January 1, 2008;

8 B. "Cable television service" has the same meaning as "cable service," as that term is  
9 defined in 47 United States Code, Section 522(6), as in effect on January 1, 2008; and

10 C. "Cable television system" has the same meaning as "cable system," as that term is  
11 defined in 47 United States Code, Section 522(7), as in effect on January 1, 2008.

12 **2. Ordinances.** A municipality may enact any ordinances, not contrary to this  
13 chapter, governing franchising and regulation of cable television systems using public  
14 ways. Systems located in accordance with those ordinances, franchises and regulations  
15 are not defects in public ways.

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

20 **3. General requirements.** The following requirements apply generally to cable  
21 television systems governed by this section.

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

24 B. Notwithstanding any provision in a franchise, ~~no a cable television company~~  
25 system operator may not abandon service or a portion of that service without having  
26 given 6 months' prior written notice to the franchising municipality, if any, and to the  
27 municipalities affected by that abandonment. When abandonment of any service is  
28 prohibited by a municipal franchise, ~~no a cable television company~~ system operator  
29 may not abandon that service without written consent of the municipal officers. Any  
30 ~~cable television company~~ which system operator that violates this paragraph commits  
31 a civil violation for which a fine of \$50 a day for each day that the violation continues  
32 may be adjudged.

33 C. Neither the ~~cable television company~~ system operator whose facilities are used  
34 to transmit a program produced by a person other than ~~the cable television company~~  
35 that operator, under Federal Communications Commission regulations or municipal  
36 ordinance, nor the officers, directors or employees of any such ~~cable television~~  
37 ~~company~~ system operator are liable for damages arising from any obscene or  
38 defamatory statements or actions or invasion of privacy occurring during any  
39 program when that ~~company~~ cable system operator does not originate or produce the  
40 program.

41 ~~D. Notwithstanding any other provisions of this chapter, any permit to provide a~~  
42 ~~cable television system issued before July 1, 1965, without a fixed termination date,~~

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1 is deemed to expire on September 18, 1996, unless an earlier expiration date is  
2 mutually agreed upon by the municipality and the permit holder. These cable  
3 television systems, as a condition of franchise, shall be operated in such a manner as  
4 to provide a safe, adequate and reliable service to subscribers.

5 E. A municipality is entitled to injunctive relief in addition to any other remedies  
6 available by law to protect any rights conferred upon the municipality by this section  
7 or any ordinances enacted under this section or section 3010.

8 **4. Franchise procedures.** Pursuant to subsection 2, a municipality may enact  
9 ordinances governing the procedures for granting franchises to cable television franchises  
10 system operators. These ordinances must be enacted before granting any such franchise  
11 or franchises and ~~shall~~ must be designed to ensure that the terms and conditions of a  
12 franchise will adequately protect the needs and interests of the municipality. The  
13 ordinances ~~shall~~ must include, but are not limited to, provisions for the following:

14 A. A mechanism for determining special local needs or interests before issuing a  
15 request for proposals, whether by actively seeking to determine those needs or  
16 interests or by allowing a period for public comment on a proposed request for  
17 proposals;

18 B. The filing of franchise applications and related documents as public records,  
19 with reasonable notice to the public that the records are open to inspection during  
20 reasonable hours;

21 C. A reasonable opportunity for public input before granting franchises; and

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

25 **5. Franchise agreements or contracts.** The State specifically authorizes municipal  
26 officers pursuant to ordinances to contract on such terms and conditions and impose such  
27 fees as are in the best interests of the municipality, including the grant of exclusive or  
28 nonexclusive franchises for a period not to exceed 15 years, for the placing and  
29 maintenance of cable television systems and appurtenances, or parts thereof, along public  
30 ways and including contracts with cable ~~television companies which~~ system operators  
31 that receive the services of television signal transmission offered by any public utilities  
32 using public ways for such transmission. ~~No~~ A public utility may not be required to  
33 contract with the municipal officers under this subsection. Each franchise must contain  
34 the following provisions:

35 A. The area or areas to be served;

36 B. A line extension policy;

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

38 D. Procedures for the investigation and resolution of complaints by the cable  
39 ~~television company~~ system operator; and

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

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COMMITTEE AMENDMENT "A" to H.P. 1515, L.D. 2133

1 ~~6. Current ordinances and agreements.~~ This section shall not be construed to  
2 ~~invalidate any ordinance, franchise or agreement in effect or under consideration on July~~  
3 ~~25, 1984.~~

4 7. Model franchise agreement. The Department of Administrative and Financial  
5 Services, Office of Information Technology, referred to in this subsection as "the office,"  
6 shall develop a model franchise agreement for use by any municipality and any cable  
7 system operator that mutually choose to adopt the model franchise agreement or any of its  
8 provisions. The office shall make the model franchise agreement available on its publicly  
9 accessible website. In the development of the model franchise agreement, the office  
10 shall, at a minimum, consider the following issues:

- 11 A. Franchise fees;
- 12 B. Build-out requirements;
- 13 C. Public, educational and governmental access channels and reasonable facility  
14 support for such channels;
- 15 D. Customer service standards;
- 16 E. The disparate needs of the diverse municipalities in this State; and
- 17 F. The policy goal of promoting competition in the delivery of cable television  
18 service.

19 This subsection does not allow the office to establish prices for any cable television  
20 service or to regulate the content of cable television service.

21 **Sec. 2. 30-A MRSA §3010**, as amended by PL 2007, c. 104, §1, is further  
22 amended to read:

23 **§3010. Consumer rights and protection relating to cable television service**

24 ~~Every franchisee shall agree to the following~~ This section applies to every franchisee.  
25 For purposes of this section, "franchisee" means a cable system operator that is granted a  
26 franchise by a municipality in accordance with section 3008. For purposes of this  
27 section, "cable system operator" and "cable television service" have the same meanings as  
28 in section 3008.

29 **1. Credits and refunds for interruption of service** Credits and refunds for  
30 interruption of cable television service ~~shall~~ of a franchisee must be as follows.

- 31 A. In the event service to any subscriber is interrupted for 6 or more consecutive  
32 hours in a 30-day period, ~~it~~ the franchisee will, upon request, grant that subscriber a  
33 pro rata credit or rebate.
- 34 B. An office ~~shall~~ of the franchisee must be open during usual business hours, have  
35 a listed toll-free telephone and be capable of receiving complaints, requests for  
36 adjustments and service calls.
- 37 C. The franchisee shall provide subscribers with 30 ~~days~~ days' advance written  
38 notice of an increase in rates, changes in billing practices or the deletion of a channel.

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1       **1-A. Service disconnection.** A franchisee must discontinue billing a ~~consumer~~  
2 subscriber for a service within 10 working days after the ~~consumer~~ subscriber requests  
3 that service disconnection unless the ~~consumer~~ subscriber unreasonably hinders access by  
4 the franchisee to equipment of the franchisee on the premises of the ~~consumer~~ subscriber  
5 to which the franchisee must have access to complete the requested disconnection.

6       **2. Notice to subscribers regarding quality of service.** Notice to subscribers  
7 regarding quality of service ~~shall~~ must be as follows.

8       A. For each new subscriber, and annually thereafter, every franchisee shall cause to  
9 be mailed to each of its subscribers a notice that:

10           (1) Informs subscribers of how to communicate their views and complaints to  
11 the cable ~~company~~ system operator, the proper municipal official and the  
12 Attorney General;

13           (2) States the responsibility of the Department of the Attorney General to  
14 receive consumer complaints concerning matters other than channel selection and  
15 rates; ~~and~~

16           (3) States the policy regarding and method by which subscribers may request  
17 rebates or pro rata credits as described in subsection 1, paragraph A; and

18           (4) Informs subscribers of their right to request basic-tier, nonpremium  
19 programming service and the cost of that service.

20       B. The notice ~~shall~~ must be in nontechnical language, understandable by the general  
21 public and in a convenient format. On or before January 30th of each year, the  
22 franchisee shall certify to the franchising authority and to the Department of the  
23 Attorney General that it has distributed the notice during the previous calendar year  
24 as required by this section.

25       **2-A. Notice on subscriber bills; credits and refunds.** Every franchisee shall  
26 include on each subscriber bill for service a notice regarding the subscriber's right to a pro  
27 rata credit or rebate for interruption of service upon request in accordance with subsection  
28 1. The notice must include a toll-free telephone number and a telephone number  
29 accessible by a teletypewriter device or TTY for contacting the franchisee to request the  
30 pro rata credit or rebate for service interruption. The notice must be in nontechnical  
31 language, understandable by the general public and printed in a prominent location on the  
32 bill in boldface type.

33       **4. Recording subscriber complaints.** Recording subscriber complaints ~~shall~~ must  
34 be as follows.

35       A. Every franchisee shall keep a record or log of all written complaints received  
36 regarding quality of service, equipment malfunctions, billing procedure, employee  
37 attitude and similar matters. These records ~~shall~~ must be maintained for a period of 2  
38 years.

39       B. The record ~~shall~~ must contain the following information for each complaint  
40 received:

41           (1) Date, time and nature of the complaint;

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- 1 (2) Name, address and telephone number of the person complaining;
- 2 (3) Investigation of the complaint;
- 3 (4) Manner and time of resolution of the complaint;
- 4 (5) If the complaint regards equipment malfunction or the quality of reception, a
- 5 report indicating corrective steps taken, with the nature of the problem stated; and
- 6 (6) Consistent with subscriber privacy provisions contained in the Cable
- 7 Communications Policy Act of 1984, Public Law 98-549, every franchisee shall
- 8 make the logs or records of complaints available to any authorized agent of any
- 9 franchising authority having a franchise with that franchisee or any authorized
- 10 agent of a municipality considering a franchise with that franchisee upon request
- 11 during normal business hours for on-site review.

12 **5. Franchises.** All franchises ~~shall~~ must be nonexclusive. All franchises ~~shall~~ must

13 include provision for access to, and facilities to make use of, one or more local public,

14 educational and governmental access channels subject to the definitions and requirements

15 of the Cable Communications Policy Act of 1984, Public Law 98-549 or related

16 requirements or regulations of the Federal Communications Commission.

17 **6. Rights of individuals.** ~~No~~ A cable ~~television~~ system operator may not deny

18 service, deny access or otherwise discriminate against subscribers, channel users or

19 general citizens on the basis of age, race, religion, sex, physical handicap or country of

20 natural origin.

21 **6-A. Subscriber privacy.** A cable ~~television~~ system operator may not intrude upon

22 the privacy of a subscriber by installing or using any equipment that allows the cable

23 system operator to observe or to listen to what is occurring in an individual subscriber's

24 household or to monitor the viewing habits of the subscriber without express, prior

25 written consent of the subscriber. A cable system operator may not sell, disclose or

26 otherwise make available, or permit the use of, lists of the names or addresses of its

27 subscribers, or any list or other information that identifies by name or address subscribers

28 or subscriber viewing habits, to any person or agency for any purpose whatsoever without

29 the prior written consent of the subscriber except that the cable system operator may

30 make such lists available to persons performing services for the cable system operator in

31 connection with its business or operations, such as a billing service, when the availability

32 of such lists is necessary to the performance of such services if, in either case, the persons

33 or entity receiving such lists agree in writing that they will not permit them to be made

34 available to any other party.

35 **6-B. Late fees.** A cable ~~television~~ system operator may not charge a late fee or other

36 penalty or charge for late payment of any bill that exceeds 1.5% per month of the amount

37 due in the bill. If the bill includes separate charges for different levels of service, a late

38 fee or other penalty or charge must be calculated on the total amount overdue for all

39 levels of service and may not be calculated separately for each level of service. A

40 payment is not late under this subsection until at least 30 days after those services to

41 which the late fee applies have been received by the consumer.

# COMMITTEE AMENDMENT

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1 7. **Penalty.** A violation of any provision of this section is a violation of the ~~Unfair~~  
2 ~~Trades Practices Act~~, Title 5, chapter 10.

3 **8. Filing of franchise agreements.** A cable system operator that maintains a  
4 publicly accessible website shall post on that website a copy of the most recently  
5 executed franchise agreement for each franchise that it has been granted by a  
6 municipality in the State.

7 **Sec. 3. Model franchise agreement deadline; report and authority for**  
8 **legislation.** By December 15, 2008, the Department of Administrative and Financial  
9 Services, Office of Information Technology shall complete the development of the model  
10 franchise agreement for cable television service pursuant to the Maine Revised Statutes,  
11 Title 30-A, section 3008, subsection 7 and submit a report to the joint standing committee  
12 of the Legislature having jurisdiction over utilities and energy matters regarding the  
13 model franchise agreement and its development. After receipt and review of the report,  
14 the committee is authorized to submit legislation regarding cable television service to the  
15 First Regular Session of the 124th Legislature. ’

16 **SUMMARY**

17 The amendment makes the following changes to the bill.

18 1. It adds definitions of "cable television service," "cable television system," and  
19 "cable system operator" based on definitions in federal law and adopts these terms  
20 consistently throughout the bill. The addition of these definitions ensures that traditional  
21 cable companies and other providers of video services that fall within the federal  
22 definitions are subject to the Maine law, as was intended under the bill. The amendment  
23 also adds clarifying language to connect the section of law governing consumer rights  
24 and protections relating to cable television and the section of law governing ordinances  
25 relating to cable television.

26 2. It changes the provision in the bill regarding the model cable franchise agreement  
27 to direct the Department of Administrative and Financial Services, Office of Information  
28 Technology, rather than the Public Utilities Commission, to develop the model agreement  
29 and to require that specific issues be considered by the Office of Information Technology  
30 in the development of the model franchise agreement. The amendment also establishes a  
31 deadline of December 15, 2008 for the Office of Information Technology to complete the  
32 model franchise agreement and submit a report regarding the model franchise agreement  
33 and its development to the joint standing committee of the Legislature having jurisdiction  
34 over utilities and energy matters.

35 3. It eliminates the provision in the bill that directs the Public Utilities Commission to  
36 adopt by rule uniform consumer protection standards for cable television customers. It  
37 also eliminates all other references to the Public Utilities Commission that had been  
38 added in the bill within the section of law governing consumer protection for cable  
39 television customers.

40 4. It eliminates the provision in the bill that entitles municipalities to collect  
41 reasonable attorney’s fees if successful in any enforcement action against a cable system  
42 operator.







Approved: 03/16/08 *MAC*

# 123rd MAINE LEGISLATURE

LD 2133

LR 2927(02)

**An Act To Establish Consistent Consumer Protections for Cable and Video Programming Customers**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Utilities and Energy**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Costs associated with this legislation can be absorbed by the Office of Information Technology within the Department of Administrative and Financial Services and the Public Utilities Commission utilizing existing budgeted resources.