

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 2133

H.P. 1515

House of Representatives, January 8, 2008

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

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BLISS of South Portland.  
Cosponsored by Senator BROMLEY of Cumberland and  
Representatives: EBERLE of South Portland, GERZOFKY of Brunswick, KAENRATH of  
South Portland, RINES of Wiscasset.

1       **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3       **Whereas,** this legislation needs to take effect before the expiration of the 90-day  
4 period in order to be in place before action is taken on the federal level; and

5       **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
6 the meaning of the Constitution of Maine and require the following legislation as  
7 immediately necessary for the preservation of the public peace, health and safety; now,  
8 therefore,

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

10       **Sec. 1. 30-A MRSA §3008,** as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,  
11 §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further  
12 amended to read:

13       **§3008. Ordinances relating to cable television and video services**

14       **1. State policy.** It is the policy of this State, with respect to cable television and  
15 video services:

16       A. To affirm the importance of municipal control of franchising and regulation in  
17 order to ensure that the needs and interests of local citizens are adequately met;

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

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

25       D. To ensure that video service providers using a telecommunications platform  
26 receive the same treatment with respect to franchising and regulatory processes as is  
27 available to cable television systems and to encourage new providers to provide  
28 competitive pressure on the pricing of such services.

29       **2. Ordinances.** A municipality may enact any ordinances, not contrary to this  
30 chapter, governing franchising and regulation of cable television systems and video  
31 services using public ways. Systems located in accordance with those ordinances,  
32 franchises and regulations are not defects in public ways.

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

37       **3. General requirements.** The following requirements apply generally to cable  
38 television systems and video service providers governed by this section.

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

3 B. Notwithstanding any provision in a franchise, ~~no a cable television company or~~  
4 video service provider may not abandon service or a portion of that service without  
5 having given 6 months' prior written notice to the franchising municipality, if any,  
6 and to the municipalities affected by that abandonment. When abandonment of any  
7 service is prohibited by a municipal franchise, ~~no a cable television company or video~~  
8 service provider may not abandon that service without written consent of the  
9 municipal officers. Any cable television company ~~which~~ or video service provider  
10 that violates this paragraph commits a civil violation for which a fine of \$50 a day for  
11 each day that the violation continues may be adjudged.

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

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

26 E. A municipality is entitled to collect reasonable attorney's fees if successful in any  
27 enforcement action and to seek injunctive relief in addition to any other remedies  
28 available by law to protect any rights conferred upon the municipality by this section  
29 or any ordinances or rules enacted under this section or section 3010.

30 **4. Franchise procedures.** Pursuant to subsection 2, a municipality may enact  
31 ordinances governing the procedures for granting franchises to cable television franchises  
32 companies and video service providers. These ordinances must be enacted before  
33 granting any such franchise or franchises and ~~shall~~ must be designed to ensure that the  
34 terms and conditions of a franchise will adequately protect the needs and interests of the  
35 municipality. The ordinances ~~shall~~ must include, but are not limited to, provisions for the  
36 following:

37 A. A mechanism for determining special local needs or interests before issuing a  
38 request for proposals, whether by actively seeking to determine those needs or  
39 interests or by allowing a period for public comment on a proposed request for  
40 proposals;

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

- 1 C. A reasonable opportunity for public input before granting franchises; and  
2 D. The assessment of reasonable fees to defray the costs of public notice,  
3 advertising and other expenses incurred by the municipality in acting upon  
4 applications.

5 **5. Franchise agreements or contracts.** The State specifically authorizes municipal  
6 officers pursuant to ordinances to contract on such terms and conditions and impose such  
7 fees as are in the best interests of the municipality, including the grant of exclusive or  
8 nonexclusive franchises for a period not to exceed 15 years, for the placing and  
9 maintenance of cable television systems or video service systems and appurtenances, or  
10 parts thereof, along public ways and including contracts with cable television companies  
11 which or video service providers that receive the services of television signal  
12 transmission offered by any public utilities using public ways for such transmission. ~~No~~  
13 A public utility may not be required to contract with the municipal officers under this  
14 subsection. Each franchise must contain the following provisions:

- 15 A. The area or areas to be served;  
16 B. A line extension policy;  
17 C. A provision for renewal, the term of which may not exceed 15 years;  
18 D. Procedures for the investigation and resolution of complaints by the cable  
19 television company or video service provider; and  
20 E. Any other terms and conditions that are in the best interests of the municipality.

21 ~~**6. Current ordinances and agreements.** This section shall not be construed to~~  
22 ~~invalidate any ordinance, franchise or agreement in effect or under consideration on July~~  
23 ~~25, 1984.~~

24 **7. Model franchise agreement.** The Public Utilities Commission shall adopt by  
25 rule a model franchise agreement for use by any municipality that chooses to adopt its  
26 provisions. This subsection does not allow the commission to establish prices for any  
27 cable television or video service or to regulate the content of cable television or video  
28 service. Rules adopted under this subsection are routine technical rules pursuant to Title  
29 5, chapter 375, subchapter 2-A.

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

32 **§3010. Consumer rights and protection**

33 Every franchisee shall agree to the following.

34 **1. Credits and refunds for interruption of service.** Credits and refunds for  
35 interruption of service ~~shall~~ must be as follows.

- 36 A. In the event service to any subscriber is interrupted for 6 or more consecutive  
37 hours in a 30-day period, it will, upon request, grant that subscriber a pro rata credit  
38 or rebate.

1 B. An office ~~shall~~ must be open during usual business hours, have a listed toll-free  
2 telephone and be capable of receiving complaints, requests for adjustments and  
3 service calls.

4 C. The franchisee shall provide subscribers with 30 ~~days~~ days' advance written  
5 notice of an increase in rates, changes in billing practices or the deletion of a channel.

6 **1-A. Service disconnection.** A franchisee must discontinue billing a consumer for a  
7 service within 10 working days after the consumer requests that service disconnection  
8 unless the consumer unreasonably hinders access by the franchisee to equipment of the  
9 franchisee on the premises of the consumer to which the franchisee must have access to  
10 complete the requested disconnection.

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

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

15 (1) Informs subscribers of how to communicate their views and complaints to  
16 the cable company, the proper municipal official ~~and~~, the Attorney General and  
17 the Public Utilities Commission;

18 (2) States the responsibility of the Department of the Attorney General and the  
19 Public Utilities Commission to receive consumer complaints concerning matters  
20 other than channel selection and rates; ~~and~~

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

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

25 B. The notice ~~shall~~ must be in nontechnical language, understandable by the general  
26 public and in a convenient format. On or before January 30th of each year, the  
27 franchisee shall certify to the franchising authority, to the Public Utilities  
28 Commission and to the Department of the Attorney General that it has distributed the  
29 notice during the previous calendar year as required by this section.

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

38 **4. Recording subscriber complaints.** Recording subscriber complaints ~~shall~~ must  
39 be as follows.

40 A. Every franchisee shall keep a record or log of all written complaints received  
41 regarding quality of service, equipment malfunctions, billing procedure, employee

1 attitude and similar matters. These records ~~shall~~ must be maintained for a period of 2  
2 years.

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

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

17 **5. Franchises.** All franchises ~~shall~~ must be nonexclusive. All franchises ~~shall~~ must  
18 include provision for access to, and facilities to make use of, one or more local public,  
19 educational and governmental access channels subject to the definitions and requirements  
20 of the Cable Communications Policy Act of 1984, Public Law 98-549 or related  
21 requirements or rules of the Federal Communications Commission. These facilities at a  
22 minimum must consist of a transmitting device and an electronic pathway from the  
23 designated public, educational and governmental access origination point to the video  
24 service provider's location for retransmission to subscribers on the system.

25 **6. Rights of individuals.** ~~No~~ A cable television system operator or video service  
26 provider may not deny service, deny access or otherwise discriminate against subscribers,  
27 channel users or general citizens on the basis of age, race, religion, sex, physical handicap  
28 or country of natural origin.

29 **6-A. Subscriber privacy.** A cable television system operator or video service  
30 provider may not intrude upon the privacy of a subscriber by installing or using any  
31 equipment that allows the ~~system~~ operator or provider to observe or to listen to what is  
32 occurring in an individual subscriber's household or to monitor the viewing habits of the  
33 subscriber without express, prior written consent of the subscriber. A cable television  
34 system operator or video service provider may not sell, disclose or otherwise make  
35 available, or permit the use of, lists of the names or addresses of its subscribers, or any  
36 list or other information that identifies by name or address subscribers or subscriber  
37 viewing habits, to any person or agency for any purpose whatsoever without the prior  
38 written consent of the subscriber except that the operator or provider may make such lists  
39 available to persons performing services for the operator or provider in connection with  
40 its operations, such as a billing service, when the availability of such lists is necessary to  
41 the performance of such services if, in either case, the persons receiving such lists agree  
42 in writing that they will not permit them to be made available to any other party.

1       **6-B. Late fees.** A cable television system operator or video service provider may not  
2 charge a late fee or other penalty or charge for late payment of any bill that exceeds 1.5%  
3 per month of the amount due in the bill. If the bill includes separate charges for different  
4 levels of service, a late fee or other penalty or charge must be calculated on the total  
5 amount overdue for all levels of service and may not be calculated separately for each  
6 level of service. A payment is not late under this subsection until at least 30 days after  
7 those services to which the late fee applies have been received by the consumer.

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

10       **8. Filing of franchise agreements.** A cable television company or video service  
11 provider shall file with the Secretary of State a copy of each franchise agreement that it  
12 makes with a municipality in the State. The Secretary of State shall make the content of  
13 each franchise agreement available on its publicly accessible website.

14       **9. Consumer rights.** The Public Utilities Commission shall establish by rule  
15 consumer protection standards to implement the provisions of this section and to  
16 supplement the consumer protection standards set forth in federal law in order to protect  
17 consumers of cable television and video services. The Attorney General and  
18 municipalities have jurisdiction to enforce consumer protection standards adopted by the  
19 Public Utilities Commission. Rules adopted under this subsection are routine technical  
20 rules pursuant to Title 5, chapter 375, subchapter 2-A. These rules must include, but are  
21 not limited to, standards governing:

22       A. Notice to consumers of rates and service and programming offerings and any  
23 changes to those rates and offerings;

24       B. Billing and collection practices, customer security deposits, late payment charges  
25 and disconnection of service;

26       C. Installation, repair and service practices;

27       D. Prohibitions against negative option billing;

28       E. Protection of consumer privacy;

29       F. Resolution of consumer complaints; and

30       G. Credit for loss of service.

31       **Emergency clause.** In view of the emergency cited in the preamble, this  
32 legislation takes effect when approved.

## 33 SUMMARY

34       This bill directs the Public Utilities Commission to adopt a uniform set of consumer  
35 protection standards for all cable television and video services and to adopt a model  
36 franchise agreement for use by any municipality that chooses to adopt its provisions. It  
37 also adds video service providers to certain laws that govern cable television companies.