

Ten facts about the bill, An Act to Support Municipal Franchise Agreements: 1-19-23

1. This legislation only applies to commercial entities that own facilities in the public right of way *and* provide Video entertainment channels or Apps. If no channel selection Apps are offered, no franchise is required.
2. State level oversight is necessary to insure compliance with municipal franchise agreements and prevent costly litigation as evidenced by recent court cases <https://www.mainepublic.org/courts-and-crime/2023-01-10/maine-cable-law-upheld-after-u-s-supreme-court-declines-to-hear-appeal>

And https://www.mainepublic.org/business-and-economy/2021-08-04/federal-court-upholds-maine-law-protecting-access-to-community-tv?_amp=true
3. The PUC will not be regulating Video Service Providers as a Utility or common carrier. It will be providing compliance oversight of municipal franchises in accordance with the Cable Act, FCC Regulations and Maine State statutes.
4. There will be no action required of the PUC unless a municipality files a non-compliance report or a Video Service Provider violates a provision of the Cable Act, FCC Regulations or Maine State Statutes.
5. Estimated cost of PUC oversight is less than five cents per subscriber per month but only if the cost is passed through to them by the Video Service Provider.
6. Municipal compensation for commercial use of the public right of way for non-essential entertainment purposes not related to public safety is well established in law. In the words of esteemed historian and former Maine Legislator, Herb Adams, “It may be the dusty side of the road where the pole lines go, but under the law it is the same as a public park and the use of it for commercial profit without compensation is a decision for Local Franchise Authorities.” <https://www.govinfo.gov/content/pkg/USCODE-2011-title47/html/USCODE-2011-title47-chap5-subchapV-A-partIII-sec542.htm>
7. In short, Maine will be the 29th State to empower a State Commission to oversee the Video Entertainment Service Providers operating within their borders *but more importantly*, Maine will be the first to retain home rule status for municipalities. See attached .pdf document.
8. As a secondary benefit to municipalities, this legislation will retain millions of dollars for local use that would otherwise leave the state as profits for the industry. It prevents the industry from collecting the full amount of what the market will bear.
9. Cable's increases are more than double that of inflation. On average, cable prices went up 5.8% yearly for the past 20 years. Inflation clocked in at 2.2% per year, on average. <https://www.businessinsider.com/cable-tv-prices-inflation-chart-2016-10?amp>

10. Charter, which owns 92% of all cable franchises in Maine has a quarterly gross profit Margin of 45% https://ycharts.com/companies/CHTR/gross_profit_margin Comcast with 15 franchises in Maine is at 70%. [https://ycharts.com/companies/CMCSA/gross_profit_margin#:~:text=Comcast%20Gross%20Profit%20Margin%20\(Quarterly\)%3A%2070.02%25%20for%20Sept.,30%2C%202022](https://ycharts.com/companies/CMCSA/gross_profit_margin#:~:text=Comcast%20Gross%20Profit%20Margin%20(Quarterly)%3A%2070.02%25%20for%20Sept.,30%2C%202022)

-Compiled by T. Vigue,
Maine Community Media Association

Examples for PUC Oversight, An Act to Support Municipal Franchise Agreements: 1-19-23

1. Following the passage of PL245 in 2019 with a 15 residences minimum density requirement, Charter sought to insert a mandatory contract precondition in the Town of Poland's renewal contract. They were advised not to do this by the AG but it took time and resources from the town and the AG's office to accomplish this.

2. Saco and Gorham have had franchise fee discrepancies in the past as well as the 9 Cumberland county towns that were underpaid in 2021. State oversight by the PUC will put VSP's on notice that someone with more resources than the towns are watching.

https://www.mainepublic.org/business-and-economy/2020-09-24/audit-indicates-spectrum-underpaid-franchise-fees-to-nine-cumberland-county-towns?_amp=true

3. Regarding the new 15 residences per mile requirement of Maine PL245, Charter is currently trying to include "closest feasible tie-in point" language in their renewal franchises instead of beginning the measurement where the strand currently ends. In so doing, they count over-lash to the fiber node as additional footage to keep them out of the 15 homes per mile requirement. Overlash on existing strand on permitted poles, is relatively inexpensive. It also permits them to stop the fiber short of the end of line, so they can charge for this additional footage. This loophole is closed by new language in the bill.

4. Maine's first-in-the-nation [Pro Rata Law](#) now requires a cable system operator to grant a subscriber a pro rata credit or rebate if that subscriber requests service disconnection three or more working days before the end of a monthly billing period. The cable industry appealed this law, which again required considerable resources at the AG's office to defend. Without the AG's and legislative intervention, cable operators would not have even negotiated those terms. Individual Towns do not have the budget or legal resources to fight these types of consumer protection initiatives.

This law should be also be applied to phone and internet services, by future legislation if necessary.

<https://www.mainepublic.org/courts-and-crime/2023-01-10/maine-cable-law-upheld-after-u-s-supreme-court-declines-to-hear-appeal>

5. After 40 years of providing PEG Facility Transmission Equipment as part of their obligation under Maine Law to "include provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels," the cable operators are now insisting that municipalities provide this equipment. Maine PL245 places additional obligations for this equipment and the Cable Operators have refused to comply. The new bill also addresses this loophole which should not have been necessary.

6. Cable operators no longer agree to franchises that contain fines and penalties for non-compliance. If the municipality has a Cable Ordinance with these provisions, the cable operator requires the addition of a "Controlling Document" clause in the Renewal Franchise that renders the municipal ordinance useless.

7. Late or no posting of franchise renewals on Charters web page:

<https://www.spectrum.com/franchise-agreements/maine>

This places them in violation of Section 8 of <http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec3010.html>

Oversight for all Cable operators for this issue is required as Bee Line Cable for example, has not posted any of their franchises despite repeated notices to Linda Conti at the Office of the Attorney General from November 22, 2017 through July of 2021.

8. Franchise renewal delays. This issue has improved little since PL245 was passed requiring adequate Government Relations staffing by the Cable operator and small towns still need an oversight resource when there is no response from the cable operator.

9. Failure to provide Annual Reports or other Franchise required documentation to municipalities. Again, small communities do not have the resources to bring compliance.

10. The Office of the Attorney General is does not appear to be staffed for this mission and the Office of the Public Advocate does not list municipal or public assistance with cable tv complaints as a resource on their web page.

11. Charter's profit oriented measure to move PEG Channels to "digital Siberia" in the 1300 channel range in 2017, prompted legislation that overturned this marginalization of PEG channels See Public Law 245 passed in 2021.

https://legislature.maine.gov/legis/bills/bills_129th/chapters/PUBLIC245.asp

and

https://www.mainepublic.org/business-and-economy/2021-08-04/federal-court-upholds-maine-law-protecting-access-to-community-tv?_amp=true

This court case and subsequent defense of appeals by Charter would not have been necessary with a State level Commission in place.

The PUC is a critical part of the regulatory and oversight structure of many utilities, and can be a vital entity to partner with municipalities in this area, as they do in so many others. Rather than set up a new regulatory entity as many states have done, this bill seamlessly integrates current PUC functions into much needed support for our communities.

-Compiled by T. Vigue,
Maine Community Media Association



Maine Community Media Association

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Good afternoon and thank you for having us.

My name is Tony Vigue from Standish, and I am currently serving on the membership committee of the Maine Community Media Association.

We are a nonpartisan non-profit networking organization for the 47 Community Television stations which serve approximately 300,000 homes in Maine via cable tv and on the internet.

Our mission is to facilitate transparency and communication through televised municipal and school board meetings and to build the culture of the community with local programming about the people and events around us.

We are an Affiliate of the Maine Municipal Association and conducted educational seminars at their annual conferences in Augusta. We have also participated in proceedings such as Stakeholder meetings with the Office of the Public Advocate. We have sponsored successful bipartisan legislation and resolutions to protect municipal interests as they relate to the public right of way, broadband expansion and yes, even Net Neutrality.

A critical part of our mission is to educate municipal officials about the lawful obligations of commercial entertainment entities and Video Service Providers when they sign a franchise agreement with a community. That franchise agreement with a Cable Operator or Video Service Provider is the single most expensive contract that local elected officials will ever sign while in office.

The municipal officials who sign those contracts are your friends and neighbors who, like you, have chosen public service above profit and personal wealth. They have good intentions, community spirit, and in most all cases, a background and education that qualifies them for that position.

But prior to signing a franchise agreement, few if any, have obtained a degree in Telecommunications law, have ever read the Telecommunications Acts of 1984 or 1996, United States Telecom Codes, FCC Rules and Orders or even Maine State Statutes related to Cable TV. This applies to many Town Attorneys as well, and because of that municipal officials are unaware of their rights.

Municipal compensation for commercial use of the public right of way for non-essential entertainment purposes not related to public safety, is well established in law.

This session we are supporting bipartisan legislation titled "An Act To Support Municipal Franchise Agreements" sponsored by Representative Melanie Sachs and Representative David

Woodsome. It provides oversight mechanisms and levels the playing field for our communities when signing these agreements. It is based on a bill submitted last year, but with important changes made as a result of conversations with businesses, the Maine Municipal Association, and a bipartisan coalition of legislators.

By giving our local public servants tools to craft equitable agreements, Maine will become the 29th State with this resource but more importantly, will retain home rule and the local control provisions unique to Maine. Recent court decisions in favor of municipalities have focused on the need for these resources, which we look forward to discussing further when the bill comes to you for consideration.

Thank you very much for your time. We look forward to working with you. Are there any questions?