

September 15, 2009

Phil Lindley
Office of Information Technology
26 Edison Drive
145 State House Station
Augusta, ME 04333-0145

Dear Phil,

Please accept this letter as the comments of Jeffrey Austin of the Maine Municipal Association and Tony Vigue and John Goran of the Cable Television Association of Maine for the OIT report to the Legislature on the development of a model cable television franchise agreement.

The need to revise and improve the cable franchising process here in Maine has long been recognized. The most compelling evidence of a problem is that cable franchise agreements in many municipalities have lapsed and no successor has been negotiated. In these communities, both the municipalities (and their citizens) and the operator of the cable system are stuck in a log-jam.

There have been several unsuccessful pieces of legislation over the past few Legislative cycles that would have addressed the process of cable franchising in different ways.

In 2008, LD 2133, *An Act To Amend the Cable Television Laws and Establish a Model Cable Franchise Agreement* was filed and an amended version ultimately was enacted as PL 2007, c. 548.

The bill as drafted required the Utilities and Energy commission to adopt via rulemaking a model franchise agreement for use by any municipality that would have chosen to adopt its provisions as a municipal ordinance. It would also have required the Public Utilities Commission to review each side's position and make binding decisions over disputed issues where necessary.

The Utilities and Energy Committee ultimately rejected the PUC rulemaking process and instead requested the parties – municipal representatives and industry representatives – to see if a negotiated model could be developed (the Office of Information Technology was tabbed to oversee the negotiations).

Dozens of meetings were held over the course of the following year between the cable and telephone industry representatives, MMA, CTAM, municipal officials and the

Office of Information Technology. As is typical for negotiations, there were periods where agreement was easy to find and provisions readily drafted. There were also painfully slow periods of “wordsmithing”, revisions and even stalemate.

Ultimately though, a model franchise was developed that was acceptable to both sides. Each could undoubtedly point to concessions and provisions that were uncomfortable to make. Nevertheless, we believe the final product is enough of a compromise that both sides can recommend its use.

Maine Municipal Association and Community Television Association of Maine will recommend that municipalities seriously consider use of this model franchise. We feel it is thorough and provides a satisfactory level of consumer protection and municipal benefits with multiple references to relevant Federal and State statutes. It also includes penalties and protections, however accessing those penalties is not going to be easy and a town will have to be willing to do some work in the event that it becomes necessary.

The franchise agreement that a town adopts will be tailored to the particular needs of a community. The model franchise is flexible in that several basic issues require further specific negotiation. These issues include:

- the franchise fee,
- the number of PEG channels, and,
- build out density.

These important topics are not predetermined in a “one-size-fits all” manner. Instead, the model franchise includes some “fill-in-the-blanks” following local negotiation. The benefit of the model is that it provides standardized terms and conditions that should not require expensive negotiation to develop.

The bottom line is that if a particular municipality is comfortable with the model - then it should be in a very good position to successfully negotiate a cable franchise agreement. Municipalities do not have to use the model and are free to propose changes. That said, the more substantive changes to the model a municipality seeks in its favor, a similar reaction could fairly be expected of a cable company.

Ultimately, we are hopeful that municipalities will benefit from the hours of negotiation and compromise in which the stakeholders were engaged over the past year in the development of Maine’s Model Cable Television Franchise Agreement.

Jeffrey Austin
Tony Vigue
John Goran