

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law
123rd Legislature
Second Regular Session

Chapter 548
H.P. 1515 - L.D. 2133

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. A mechanism for determining special local needs or interests before issuing a request for proposals, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals;
- B. The filing of franchise applications and related documents as public records, with reasonable notice to the public that the records are open to inspection during reasonable hours;
- C. A reasonable opportunity for public input before granting franchises; and
- D. The assessment of reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the municipality in acting upon applications.

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 system operators that receive the services of television signal transmission offered by any public utilities using public ways for such transmission. ~~No~~ A public utility may not be required to contract with the municipal officers under this subsection. Each franchise must contain the following provisions:

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

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

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

- A. Franchise fees;
- B. Build-out requirements;
- C. Public, educational and governmental access channels and reasonable facility support for such channels;
- D. Customer service standards;
- E. The disparate needs of the diverse municipalities in this State; and

F. The policy goal of promoting competition in the delivery of cable television service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Recording subscriber complaints. Recording subscriber complaints shallmust be as follows.

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

B. The record shallmust contain the following information for each complaint received:

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

(2) Name, address and telephone number of the person complaining;

(3) Investigation of the complaint;

(4) Manner and time of resolution of the complaint;

(5) If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated; and

(6) Consistent with subscriber privacy provisions contained in the Cable Communications Policy Act of 1984, Public Law 98-549, every franchisee shall make the logs or records of complaints available to any authorized agent of any franchising authority having a franchise with that franchisee or any authorized agent of a municipality considering a franchise with that franchisee upon request during normal business hours for on-site review.

5. Franchises. All franchises ~~shall~~must 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 or related requirements or regulations of the Federal Communications Commission.

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

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

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

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

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

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