

**STAKEHOLDER GROUP**  
**Examine a Statewide Franchise Approach for**  
**Cable Television Service**



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Janet T. Mills  
GOVERNOR

Barry J. Hobbins  
PUBLIC ADVOCATE

January 20, 2021

Chairman Lawrence, Chairman Berry and Members of the Energy, Utilities and Technology Committee,

Pursuant to a request from the Joint Standing Committee on Energy, Utilities and Technology (EUT) of the One Hundred and Twenty-Ninth Maine Legislature, the Office of the Public Advocate (OPA) was requested to convening a stakeholder group to explore and consider issues related to establishing a single statewide cable franchise. Furthermore, the OPA was directed to provide the EUT with an update on the work of this stakeholder group and we are pleased to come before you today to report on the process that was undertaken and the progress of this group. The committee requested that the OPA invite certain relevant parties including the Public Utilities Commission (PUC), ConnectMaine Authority, Maine Municipal Association (MMA), the Telecommunications Association of Maine (TAM), the Community Television Association of Maine (CTAM), and cable service providers, including but not limited to: Comcast, Charter Communications (Spectrum) and Consolidated Communications to participate. On May 29, 2020, the OPA sent to the relevant parties an invitation to take part in this group. Attached to this report is a full listing of the members who participated in this group.

Meetings were conducted via Microsoft Teams and were held on July 15, 2020, August 19, 2020, September 16, 2020, and October 21, 2020. During these meetings the OPA invited presentations, written submissions and there was time set aside at each meeting for group discussions. Written submissions were encouraged and are attached to this report. Please note that written submissions were voluminous and have not been repeated in their entirety in this report. These meetings were recorded and are available on the OPA website at <https://www.maine.gov/meopa/reports-and-testimony#cable>.

We would also like to note that (Former) Secretary of State Matt Dunlap was asked by Chair Seth Berry to participate, was invited and sent all materials. He respectfully declined, stating he did not see the role that the Secretary of State

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(“SOS”) would or should play in not only the stakeholder group but in the establishment of a statewide cable franchise.

The OPA has attempted in this report to identify the issues raised and discussed by the group over the course of the meetings. In short, the main areas of discussion included the structure of any statewide cable franchise system (including regulation of the providers and protection of the public interest), Public, Educational and Government (“PEG”) access, considerations related to municipalities, expansion of broadband, and budget considerations. There may be additional issues that stakeholders will raise in the future or aspects of issues that may not be covered herein but an effort has been made to provide you with an overview of the discussions held. Notably, several parties provided extensive research and summaries of statewide cable franchises in other states and of applicable federal regulations, Federal Communication Commission Orders and litigation surrounding issued raised as part of this discussion.

Discussions included how the public interest would be protected by developing a statewide cable franchise system. Opinions differed on whether the Secretary of State (in combination with the Attorney General’s Office (AGO)) or the PUC should enforce the terms of any statewide cable franchise: TAM initially proposed language that would replace the current cable franchise system with one that is regulated by the State through the Secretary of State’s office. Parties raised concerns about the proposed system and language. Particularly, whether the Secretary of State’s office has the technical expertise to track and rule on non-compliance of cable operators. Another expressed concern was that the suggested language supplied by TAM appeared to provide an automatic grant of franchise if SOS did not act on application in 45 days. Additional concerns may be found in the submissions of the parties. Another suggestion was replacing the current cable franchise system with a State-level appeals process within the PUC. The PUC in its letter dated October 16, 2020, states that it maintains a neutral posture on proposals related to a statewide cable franchise and regulation of such a franchise. The Commission notes that there is a broad range of preferences held by the stakeholders and complex legal considerations as a result of cable, telecommunications, and internet services being subject to different sets of laws and regulations at the federal and state levels. The PUC also raises the point that should oversight of cable franchise activities fall to the PUC, the Commission would not be able to take on this added responsibility without the provision of additional staff resources commensurate with the amount of regulation enacted. The PUC notes that the State of Hawaii, with a roughly similar population, has a Cable Television Division within the Hawaii Department of Commerce that includes one Administrator, two Staff Attorneys, one Program Specialist/Analyst, and

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one Secretary (plus two Program Specialists devoted to broadband issues.) Modification or discontinuation of service in an area and customer service issues were raised as concerns by the group. As an alternative, CTAM suggested instead of doing away with the existing system and developing a Universal Franchise based on the Maine Model Franchise created in 2008. Transitioning to any new system may cause concerns about customer service issues that are currently in only some negotiated franchises, such as location of customer service offices, customer service in excess of FCC regulations, institutional networks and courtesy service, as noted by Comcast. TAM expressed significant concerns with the idea of making competitive entry into the cable market more difficult through the proposed Universal Franchise, asserting that it would simply abandon plans to offer competitive cable service if the Universal Franchise was adopted.

The parties raised issues related to Public, Educational and Government (“PEG”) access, including continuation of PEG channels, calculation of PEGs support fees, and generally the manner in which PEG infrastructure and funding would be handled in a statewide cable franchise system. In its Summary Report dated October 20, 2020, CTAM raises concerns that statewide cable franchises result in adverse consequences to PEG cable access TV. CTAM cites over 100 closures of such channels in the past decade. In its October 22, 2020 memorandum to the Stakeholder Group, MMA raises concerns about any proposal that would make it more difficult for municipal leaders to get information out to citizens. On the topic of PEG support fees, MMA stated it would not support any proposal that would make it more costly for municipal leaders to get information out to citizens. In its Summer 2020 Memorandum, Comcast raises concerns about how PEG support fees may be calculated in the future. Comcast, in its Summer 2020 Memorandum, lays out its concerns with statewide franchise and PEG falling into the following categories: (1) The role of ascertainment in determining PEG, line extensions and other demands; (2) PEG infrastructure funding; (3) PEG consortia in smaller communities; (4) Over the top providers and PEG; (5) Origination locations and personnel; and (6) the impact of the FCC 621 Order.

Issues related to municipalities were raised by the parties, including protecting Home Rule. In its October 22, 2020 memorandum to the Stakeholder Group, MMA urged that all recommendations considered and potentially enacted respect municipal home rule. MMA strongly asserts that municipalities should retain the authority to work with providers to negotiate cable franchise contracts that reflect the needs of communities. CTAM, in its October 20, 2020 attachment to its Summary Report, states it is concerned the statewide cable franchise proposal does not protect Home

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Rule for Maine's municipalities. TAM raised the idea of an opt-in for existing municipal franchises whereby new franchise could opt-in to the same terms as the existing cable provider. Comcast and TAM brought up infrastructure and right-of-way management concerns. Comcast raises the issue that local franchises frequently include certain local priorities such as provider buildout requirements, questioning how these needs will be accommodates under a statewide system. Comcast questioned is franchise authority to use a right of way is issued by the State, how will other permitting work.

TAM noted that broadband facilities installed by telecommunications service providers are statutorily guaranteed access to right of way. *See* 35-A M.R.S. §§ 2501, 2503. Franchise fees paid to municipalities was a topic of conversation among the parties. CTAM, in its October 20, 2020 attachment to its Summary Report, believes that a statewide cable franchise would direct franchise fees away from municipalities. CTAM also raises concerns about enforcement of franchise fee obligations to municipalities. In addition, CTAM and other stakeholders disagree about the impact and meaning of FCC 621 Order, discussing whether the 5% cap on franchise fees applies to not only monetary contributions, but in-kind services. Comcast, in its Summer 2020 Memorandum, lays out its concerns with franchise fees: (1) the evolving video marketplace resulting in in disparities with only some providers required to pay franchise fees; (2) the possibility that franchise fees could increase to the full 5% allowed in municipalities where the fee is currently less; (3) the impact of the FCC 621 Order; (4) how will revenue sharing of franchise fees with municipalities work if the State were to collect the fees; and (5) the variation of franchise related costs in addition to fees, such as capital costs for PEG, and related PEG infrastructure questions.

Broadband expansion was discussed by the parties as part of the Stakeholder group. TAM asserted that the use of a statewide cable franchise could fuel rural broadband expansion. Comcast, in its letter of November 19, 2020, cites the lack of change in rural broadband availability in states that moved to state issued franchises. MMA notes that the pandemic has demonstrated how vital broadband service to the State. In particular, MMA states that Maine would be better served if public and private investors worked together to expand reliable broadband service throughout the State. CTAM states in its October 20, 2020 Summary Report that changes in technology is changing the way Americans watch TV, including resulting in Local Franchising Authorities (LFAs) seeing decreases in revenue from traditional cable TV.

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CTAM states that broadband needs to be part of Maine's strategy for the future but that there are many unanswered questions regarding how this will occur. CTAM notes that broadband is expensive and hard to implement in rural areas.

Finally, concerns around any increase in costs, including in State and local budgets, were expressed by the parties. Budget challenges and shortfalls at both the State and local level, as well as the need to limit further burden on Maine's property taxpayers, were raised as a concern by MMA for consideration. The PUC in its letter dated October 16, 2020, raises the point that should oversight of cable franchise activities fall to the PUC, the Commission would not be able to take on this added responsibility without the provision of additional staff resources commensurate with the amount of regulation enacted. The PUC notes that the State of Hawaii, with a roughly similar population, has a Cable Television Division within the Hawaii Department of Commerce that includes one Administrator, two Staff Attorneys, one Program Specialist/Analyst, and one Secretary (plus two Program Specialists devoted to broadband issues.)

We have included along with this report a list of the participating members of this group along with pertinent documentation.

The OPA was pleased to organize this group and hopes this groups work as detailed above will be beneficial in considering the feasibility of establishing a single statewide franchise.

Respectfully submitted,



Barry J. Hobbins, Public Advocate



Nanette Ardry, Senior Counsel



LD 2031 Stakeholder Group  
EXAMINE A STATEWIDE FRANCHISE APPROACH FOR CABLE  
TELEVISION SERVICE  
MEMBERS

Office of the Public Advocate – Barry Hobbins, Nanette Ardry and Gayle Witham

Telecommunication Association of Maine (TAM) – Ben Sanborn

UniTel, Inc. - Beth Osler

ConnectME – Peggy Schaffer and Stephenie MacLagan

Maine Municipal Association – Kate Dufour

Public Utilities Commission – Garrett Corbin

Charter Communications (Spectrum) – Melinda Kinney and Shelley Winchenbach

Comcast - Chris Hodgdon and Bryan Christiansen

Consolidated Communications – Sarah Davis and Madeline Malisa

Atlantic Broadband – Francis Bradley and Thomas Gunerman

Community Television Association of Maine (CTAM) – Tony Vigue

Community Television Association of Maine (CTAM) and South Portland  
Community Television - W. Maurice Amaral

Mike Edgecomb

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Monitored the Process

Representative Christopher Kessler and Harold Pachios, Esq.

Maine Association of Broadcasters – Suzanne Goucher – invited but did not  
participate

Secretary of State – (Matt Dunlap was copied and invited to all meetings with no  
reply)







Maine Municipal  
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To: Maine Office of the Public Advocate  
Members of the Stakeholder Group to Explore and Consider Issues regarding a Statewide  
Cable Franchise

From: Kate Dufour, Director, State & Federal Relations

Date: October 22, 2020

Re: MMA Response to Stakeholder Group Discussions

To the extent a course of action emerges from these discussions, the Association urges that all recommendations considered and potentially enacted respect municipal home rule authority. A proposal to squeeze all communities into a one size fits all approach does a disservice to providers, consumers and property taxpayers. The Association strongly believes that municipalities should continue to be entrusted with the authority to work with providers to negotiate cable franchise terms that best meet the needs and desires of the entire community.

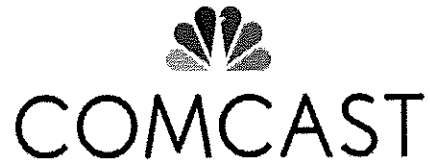
Second, initiatives that make it more difficult or costly for municipal leaders to push much needed information to residents, businesses and visitors should be avoided at all costs. Throughout the course of the COVID-19 pandemic, municipal leaders have partnered with state agencies to ensure that residents and guests have the information and educational materials necessary to remain safe and healthy.

In addition, the pandemic has shown that access to reliable broadband service is no longer a luxury, but the foundation of Maine's economic vitality. The state, as a whole, would be better served if all public and private investors worked together to fund and implement initiatives that move reliable broadband access into all areas of the state.

Finally, the Association asks that all the interested parties keep in mind the revenue shortfalls that will challenge and frustrate state and local budgets for years to come. Now is not the time to implement changes that further burden Maine's property taxpayers.

Thank you for providing the Association with this opportunity to comment.





November 19, 2020

The Honorable Barry Hobbins  
Maine Office of Public Advocate  
112 SHS  
Augusta, Maine 04333-0122

Dear Public Advocate Hobbins,

Comcast wishes to extend our appreciation to the Public Advocate's Office for its convening a group of stakeholders to explore and consider issues related to Maine adopting a single statewide cable franchise. This charge was made by the Joint Standing Committee on Energy, Utilities and Technology during the 129<sup>th</sup> Maine Legislature, and the Advocate's office should be credited for thoughtful and thorough process that allowed all stakeholders to share information and ideas freely. We would also like to recognize the contributions of all the participants who stayed committed to this worthwhile process during unique and challenging times.

By way of background, franchises are nonexclusive and revocable authorizations to operate within the public right of way. The Federal Cable Act, 47 U.S.C. §521, et seq., provides the substantive and procedural framework for this cable franchising. In Maine, these franchises are granted by municipalities through a grant of authority from the state. In addition to being nonexclusive they must be nondiscriminatory. In return for this franchise to utilize the public right of way, municipalities may request certain types of compensation based on an assessment of the unique needs of the community but within the parameters of the Federal Cable Act. This compensation may take the form of a franchise fee, and in some cases funds for infrastructure to provision Public, Educational and Government Access Channels (PEG). All costs associated with this compensation including the franchise fee, which can be up to 5% of gross video revenue, are recoverable from customers through a separate line item on the monthly bill.

Some participants argued that a state issued franchise would encourage rural broadband deployment. Maine can look to other states' experiences to judge whether this might be true. When certain large telephone providers attempted to offer cable video services over their networks approximately 15 years ago, they argued that they needed state issued franchises to speed their market entry. Approximately half the states accepted this premise and changed their laws. An analysis of rural broadband availability today shows little statistical difference between the two. Rural availability in local control state's is 72.8% while it is 73.5% in state issued states with the median in each group being the same at 73%. Maine's rural broadband availability in contrast is 89.6%. While the evidence does not suggest that state issued franchises lead to greater rural deployment, we do agree that a consistent, timely and efficient process with a minimum of regulatory requirements will encourage investment.

Other participants argued that municipalities were ill equipped to negotiate favorable terms because of their size and many competing duties and priorities. Maine's cable providers flatly reject that notion, as our experience in working with Maine communities and their elected leaders is that they understand the needs of the communities and are prepared to balance competing interests when franchise terms are negotiated. The Federal Cable Act provides a clear guideline for municipalities in carrying out this function. Further, the same proponents argued for a model which presupposes that every community wants to invest limited resources in PEG channels, employees, studios and equipment. But that model does not work for all communities. Maine municipalities clearly have access to the resources and expertise necessary for them to determine and negotiate for their interests.

Further, since franchise fees are remitted to the franchise authority, the state of Maine in the model discussed, a move to a state issued franchise may result in franchise revenues no longer going directly to municipalities. Although the stakeholder group discussed ways to ensure that municipalities could be assured revenue sharing between the state and communities no model ensured municipalities would continue to receive the \$10,000,000 they currently receive. Consequently, cable providers agree with the Maine Municipal Association that now is the wrong time to reduce resources at the local level.

Lastly, cable providers highlighted the challenge presented by efforts to impose a one size fits all approach. Attempting to do so at the state level in a state as diverse as Maine is likely impossible. Determining where line extensions occur, what towns receive community television studios and connectivity between government facilities and how limited channel capacity is utilized when considering increasingly limited resources is best done at the local level.

This summary letter only covers in part the information and issues the cable participants highlighted in our presentations and documents. For more information please review the documents we provided regarding a recent franchise-related order from the FCC, franchising's impact on broadband deployment, and the policy considerations and implications of a change in issuing authority.

Again, we would like to thank the Public Advocate and the Office's staff for their efforts shepherding this discussion and we recognize everyone's contribution to this effort.

Sincerely,

Chris Hodgdon  
Vice President Government Affairs  
Comcast Northeast Division

Bryan Christiansen  
Senior Manager of Government Affairs  
Comcast Greater Boston Region

**Community Television Association of Maine  
OPA STAKEHOLDER MEETINGS SUMMARY REPORT**

Prepared by W. Maurice Amaral, Tony Vigue, John Goran, Brian Knoblock, Larry Sidelinger  
November 13, 2020

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### **Exhibit list**

- CTAM Comparison of Statewide Franchises – 8-30-20
- CTAM Uniform Video Service Local Franchise Agreement 9-7-20  
Note: to be used only if EUT Committee Requests it.
- CTAM Report to the OPA Stakeholder Group – 9-15-20
- CTAM legislation (proposed) introducing Universal Franchise agreement 10-15-20  
Note: to be used only if EUT Committee Requests it.

## Abstract

The Community Television Association of Maine (CTAM) does not support a statewide franchise. However, should the Energy, Utilities and Technology Committee decide to put this idea before the Maine Legislature, CTAM has crafted an alternative Uniform Franchise based upon the existing Maine Model Franchise which was created in 2008. The terms of this model franchise were arrived at after a prolonged period of negotiation between stakeholders and were thoroughly reviewed and vetted by legal counsel for the cable industry. The model franchise was designed to create a generally accepted starting point for negotiations between Maine's towns and cities – known in this context as “Local Franchising Authorities” or LFAs - and Cable Operators (COs) wishing to do business in the state. It also provides a stand-alone “boilerplate” solution for towns that either do not wish to or do not have the resources to engage in franchise negotiations. Time Warner Cable (TWC) was the primary CO in Maine at the time the model franchise was negotiated. TWC has since become Charter (DBA Spectrum) which has sought to distance itself from the terms as negotiated, as evidenced by dialog in the stakeholder meetings where Charter's representative has claimed the model franchise to be in some way invalid due to material changes made to it after the fact. CTAM denies any such changes took place, (the original is still on the ConnectMe web page) at

<https://www.maine.gov/connectme/sites/maine.gov.connectme/files/inline-files/Model%20Cable%20Franchise%20Agreement.pdf>

CTAM sees Charter's unwillingness to support the document, which was created through an arduous process involving mutual compromise between COs and CTAM (acting in the interest of Maine's LFAs) as deeply troubling. In effect, Charter does not want to honor the terms agreed to by the business it took over and has continued to insert franchise language that is harmful to municipalities not skilled in the franchise renewal process. Multiple examples can be cited upon request.

This pattern repeats itself again and again in the telecommunications industry. Whether it be CO's or telecoms, evidence drawn from decades of experience and spanning the entire country show a pattern of broken promises and noncompliance to agreed terms. States and LFAs have found themselves in the untenable position of changing their laws to suit the needs of special interests only to find that the promised results do not materialize. In states where statewide franchises have been passed, Public Education and Government (PEG) cable access TV has been adversely affected, with over 100 closures in the past decade. These centers serve a crucial purpose, connecting Americans with their local governments and facilitating public discourse. CTAM is comprised of people who work in more than 50 PEG stations across the State. And because PEG centers are inextricably linked with LFAs due to the franchising process (by US Congress's intent) CTAM has been in a position to safeguard the public interest by essentially being Maine's “Franchise Police,” assisting more than 90 municipalities with franchise related issues in the past three decades.

Unfortunately the scale and complexity of this task has grown exponentially in recent years. A small coalition of volunteer PEG enthusiasts is no longer enough to ensure that the public interest remains intact. The Telecommunications Association of Maine's (TAM) proposed statewide franchise will not



benefit everyday Mainers, it will benefit TAM, just as similar franchises in other states benefited other telecoms at the expense of taxpayers.

What is needed is a clear and well-defined solution to regulating telecom in this state. There needs to be a state body – with adequate funding – and a mandate to ensure that telecoms and COs honor their obligations and remember that being a video service provider in this state, using the publicly owned rights of way, is a privilege, not their right. The state saw fit to make a note of that fact back in 1987 when the following statute was added:

***§2504. Use of facilities alone creates no legal right for continuance***  
*No enjoyment by any person for any length of time of the privilege of having or maintaining its facilities in the public way, may give a legal right to the continued use of the enjoyment or raise any presumption of a grant of a legal right*

Changes in technology necessitate changes in regulatory law. The United States is currently going through this process; with various lawsuits, legislative initiatives and FCC Orders playing out at the federal, state and local level. Streaming technology has changed the way Americans watch TV. The franchise framework of yesterday will not address changes in technology today. LFAs are already seeing decreases in the revenue derived from traditional linear cable TV. COs and telecoms know this, they are pivoting to line up lucrative new paths to customers. They know that one thing is certain, whatever the future looks like, it will unfold over broadband connections.

Broadband is a big part of their strategy - making up an ever-increasing portion of their total receipts. Broadband needs to be part of Maine's strategy too. It's a good thing. How will Maine position itself for the future? By planning a comprehensive broadband strategy now. Who will implement it? How will it be paid for? Who will own the network? CTAM is invested in proposing solutions.

Increasing broadband availability for all Mainers - regardless of income or geographic location – continues to be a statewide priority. Maine's leaders have made it clear that bridging the "digital divide" is an important policy issue. TAM has argued that the traditional approach to network development remains the best option for rural broadband penetration. As stated above, this model relies on statewide franchises and public moneys spent to build private networks that once deployed, have a captive customer base. This monopolistic business model has failed to deliver the promised results time and again. CTAM has learned a great deal from decades of experience negotiating with COs (cable TV itself being a virtual permitted monopoly). We are skeptical of any broadband deployment model that diminishes the state's regulatory authority or which threatens Home Rule within its communities. TAM's proposed statewide franchise does both.

TAM has argued that what is good for the corporate bottom line is also good for the state. To a certain extent, this is true. Both COs and telecoms deliver needed services to their customers. They have the expertise to build and administer sophisticated data networks. They employ customer service and

maintenance personnel, bringing jobs to the region. They can be good stewards of the environment by embracing green technology initiatives. They allow access to connectivity, entertainment and knowledge via their networks. All good things. CTAM recognizes the value that this connectivity brings and notes that historically it has been brought by business models based on private ownership of the network. In the case of telecoms, access to public funds to build these networks is more or less assumed. This is the exact opposite of the build-out scenario experienced by COs - who historically had to self-fund the majority of their infrastructure spends (this has been steadily changing, as evidenced by the ongoing legal battle between Charter and the state of New York concerning Charter's failure to meet negotiated build-out terms – see link to article on page 10). In this context, a “public/private partnership” can be interpreted to mean an arrangement where public dollars are spent on a network that will then be owned and run by a private telecom.

Why is this arrangement the only option on the table?

Looking to the future, why not use public dollars to build publicly owned dark fiber networks that both telecoms and COs have access to? Why not create a truly open playing field? An open network where ISPs, COs and content providers compete for customers would deliver new markets to them while increasing connectivity for all. There would be lucrative contracts available to handle customer service, system engineering, building and maintenance - all awarded via a competitive bidding process.

Perhaps what is good for the state - and the public that it serves - could also be good for the corporate bottom line?

## **Problems and Solutions**

### **Problem - TAM's proposal is not a good idea for Maine**

- It does not protect Home Rule for Maine's municipalities, taking away their right to negotiate a contract that reflects their local needs and requirements
- It re-directs all Franchise Fees to the state from the municipalities with no mechanism for distributing that money back to municipalities
- It eliminates funding to municipalities for Public, Educational and Government Access TV stations
- It grants an automatic process for franchises in perpetuity with no oversight or regulation

### **Solution – Empower a state agency with true regulatory authority**

- CTAM believes that streaming services, which are delivered to the home/business on the same wires on the same poles in the same public right of way that delivers cable TV, should be subject to a fee similar to the cable TV Franchise Fee. Such a fee would offset funding losses experienced by Maine's municipalities and Public Access TV stations and provide funding to the state to oversee & regulate cable TV and streaming services.
- Leave existing franchises alone, establish a licensing procedure for all providers, ensure home rule but make resources available via a state agency to assist LFAs in negotiating franchises
- Fund the state telecommunications regulatory agency with receipts from a streaming fee and a regulatory fee on CO's, and direct a portion of these receipts back to LFAs and ConnectME. Allow LFAs to continue to capture the dwindling CO franchise receipts in accordance with their negotiated terms but make 5% of gross revenues, paid quarterly, a statewide requirement.
- Continue to fund PEG via traditional franchise fees, augmented with streaming receipts
- Ensure that video providers meet performance criteria and are subject to periodic audits to for compliance

### **Problem - Cable Operators want to preserve the status quo**

- The status quo ensures their continued virtual monopoly of broadband penetration and "captive" customer base and competition is limited. In addition, as more cable TV customers "cut the cord" and obtain more and more content through streaming channels delivered by their Broadband connection, municipalities are experiencing a significant drop in cable TV Franchise Fees, which are applied only to cable TV subscribers.
- LFAs are unable to effectively regulate Cos. Limited tools, short of litigation, are available to ensure compliance. Currently Maine municipalities must invest scarce time and money to enforce Franchise non-compliance.
- COs are willing to flaunt state laws and avoid fiduciary responsibility. Recent news accounts of underpayment of Franchise Fees to towns in Maine show that such non-compliance occurs here.

**Solution – Empower a state agency with true regulatory authority**

- Create a regulatory framework that incentivizes customer service and retention by establishing performance criteria. Level the regulatory playing field so that all participants face the same burdens and opportunities
- Vest the state agency with regulatory authority including the ability to fine for noncompliance and fund the agency with receipts from a modest CO regulatory fee
- Hold COs accountable to state law, establish periodic auditing regime to ensure that the franchise fee paid actually represents the number of subscribers in a given community

**Problem – Broadband deployment is expensive and hard to implement in rural areas**

- TAM's stated intention to expand Broadband facilities in Maine is welcome. However, similar promises in many other states following granting of a Statewide Franchise have not been delivered and there is a well documented history of non-compliance with many cable & telecom operators on this and other issues
- Using tax dollars to create privately-owned networks without regulatory oversight in the public's interest will replicate the situation that LFAs currently face with noncompliant COs.

**Solution – Earmark funds for municipal and state fiber initiatives**

- TAM cites North Carolina as a case study of a well-executed state franchise. TAM neglects to mention that North Carolina embarked on a rural fiber buildout program that was a public/private partnership which delivered broadband to hard to reach areas. Shortly thereafter, NC established laws that created legal barriers for such initiatives. NC is currently exploring its options to repeal those laws
- There are many cases where publicly-owned fiber meets the needs of constituents when the private sector will not.
- Public/private partnerships can work, and can incentivize connectivity – as long as there is regulatory oversight and shared ownership of the physical network

## Recent Articles

The City of New Boston, Texas has filed a proposed class action in which it claims Netflix and Hulu “should be and are required by law” to pay municipalities statewide a franchise fee of five percent of their gross revenue given they use broadband wireline facilities located partly in public rights-of-way.

<https://www.classaction.org/news/texas-city-argues-netflix-hulu-owe-franchise-payments-for-providing-streaming-services-statewide>

“Spectrum allegedly owes more than \$140,000 to southern Maine towns”

<https://www.newsbreak.com/news/2068053473547/spectrum-allegedly-owes-more-than-140000-to-southern-maine-towns>

“AT&T’s Track Record for Broadband in Mississippi: A String of Broken Promises.”

<https://kushnickbruce.medium.com/at-ts-track-record-for-broadband-in-mississippi-a-string-of-broken-promises-e951670e331d>

“Cable companies blocked municipal broadband in NC and left a gap. Let others fill it.”

<https://amp.newsobserver.com/opinion/article246341885.html>

“North Carolina considers loosening municipal broadband regulations”

<https://statescoop.com/north-carolina-considers-loosening-municipal-broadband-regulations/>

“Frustrated by internet service providers, cities and schools push for more data”

<https://www.nbcnews.com/tech/internet/frustrated-internet-service-providers-cities-schools-push-more-data-n1246698>

“Voters Overwhelmingly Back Community Broadband in Chicago and Denver”

<https://www.vice.com/en/article/xgzxvz/voters-overwhelmingly-back-community-broadband-in-chicago-and-denver>

“Here’s How Comcast, Fox, and a Few Others Will Survive the Cord-Cutting Nightmare - Advertisements delivered via streaming platforms are far more effective than conventional cable’s scattershot ad approach.”

<https://www.fool.com/investing/2020/10/12/heres-how-comcast-fox-and-a-few-others-will-survive/>

“T-Mobile is throwing a lifeline to many communities being abandoned by AT&T DSL services.”

<https://www.fool.com/amp/investing/2020/10/11/look-out-cable-t-mobile-is-accelerating-its-5g-hom/>

“SpaceX is preparing to offer Starlink satellite broadband internet in northern portions of the United States and southern Canada before this year ends.”

<https://www.tesmanian.com/blogs/tesmanian-blog/starlink-deorbit-1>

"New York hasn't followed through on order to kick Charter out of state"

<https://arstechnica.com/tech-policy/2019/03/new-york-hasnt-followed-through-on-order-to-kick-charter-out-of-state/>

"Spectrum Broadband Compliance Verification"

<https://www.syracuse.com/news/2020/03/new-york-comptroller-knocks-states-oversight-of-spectrum-other-utilities.html>



STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

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October 16, 2020

Hon. Barry Hobbins, Public Advocate  
Office of the Public Advocate  
112 State House Station  
Augusta, Maine 04333

**Re: Cable Stakeholder Meeting Comments**

Public Advocate Hobbins,

The Public Utilities Commission (PUC) has taken part in the first three meetings of the stakeholder group to explore and consider issues related to establishing a single statewide cable franchise, as requested by the Legislature's Joint Standing Committee on Energy, Utilities, and Technology in its letter to you dated February 27, 2020.

We write today to communicate our impression of the proposals discussed in those three previous stakeholder group meetings, to the extent it may be of help to the key stakeholders.

So far as we have been able to discern from written and verbal comments, the articulated stakeholder positions might be grouped into one of three general categories:

- Replacing the current cable franchise system with one that is regulated by the state, through the Office of the Secretary of State (*Telecommunications Association of Maine*);
- Reinforcing the current cable franchise system with a state-level appeals process within the PUC, while possibly also allowing municipalities to cede their franchise authority in part or in whole to the PUC (*Community Television Association of Maine*); and
- Something in between the status quo and the proposals described above (*most other stakeholders*).

As participants are aware, the Commission does not regulate the provision of cable television or internet services, and the proposals outlined to date may be described as being of a more general than specific nature. The conversations thus far have also not focused on the manner of state regulation, but rather have devoted most attention to the parameters of what types of regulation are legally permissible, and in the public interest.

For these reasons, the Commission maintains a neutral posture and will not be estimating with any specificity a fiscal impact resulting from these proposals. However, the Commission would not be able to take on oversight of cable franchise activities without specific legislative authority that includes the provision of additional staff resources. The extent of resources necessary would be commensurate with the level of regulation required.

For the purpose of comparison, we note that the State of Hawaii has roughly the same population as the State of Maine while also including a mix of urban centers scattered throughout a generally rural area. Hawaii's Cable Television Division of the Hawaii Department of Commerce and Consumer Affairs includes the following staff positions: one Administrator, two Staff Attorneys, one Program Specialist/Analyst, and one Secretary (plus two Program Specialists devoted to broadband issues).

The conversations have thus far made clear there is not only a broad range of policy preferences across the spectrum of stakeholders, but also a fairly complex set of legal considerations at play as a result of cable, telecommunications, and internet services being treated differently by statutes and regulations at the federal and state levels. The Commission looks forward to continuing to work with all stakeholders to the extent we are in a position to provide specialized utility-related insight.

Sincerely,



Garrett Corbin  
Legislative Liaison

cc: Nanette Ardry, Senior Counsel, Office of the Public Advocate  
Hon. Mark W. Lawrence, Senate Chair, Energy, Utilities and Technology Committee  
Hon. Seth A. Berry, House Chair, Energy, Utilities and Technology Committee  
Lucia Nixon, Legislative Analyst, Maine Office of Policy and Legal Analysis