

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 stablishing a single statewide franchise.

Respectfully submitted,



Barry J. Hobbins, Public Advocate



Nanette Ardry, Senior Counsel