



**Testimony of Chris Hodgdon, Vice President Government Relations  
Energy Utilities and Technology Committee**

**L.D. 1371 An Act to Ensure Nondiscriminatory Treatment of Public, Educational  
and Governmental Access Channels be Cable System Operators**

**April 10, 2019**

Chairman Lawrence, Chairman Berry and distinguished members of the Committee; thank you for the opportunity to offer comments in opposition to LD 1371. My name is Chris Hodgdon I am Comcast's Vice President of Government Affairs in Maine

LD 1371 seeks to reverse decades of municipal decision-making regarding cable licensing and public access television while increasing costs to consumers. There is already a process in place for municipal officials, on behalf of their community and public access groups, to negotiate the appropriate support for community access television that best suits the needs of individual communities.

Please recommend LD 1371 Ought Not to Pass for the following reasons.

- 1. LD1371 takes decisions about investment in public access away from local elected leaders and cable providers and creates expensive mandates which will ultimately be borne by municipalities and consumers.**

Under federal law, a municipality, also known as a franchising authority, may require a cable provider to designate Public, Educational or Government (PEG) channel capacity on the cable system. The decision on whether to require a cable operator to set aside space for a PEG channel(s) and/or provide support for PEG operations is left primarily to local officials. PEG TV is a legacy of an era when cable providers did not face competition and outlets for providing locally generated content were limited. However, it is also a tradition in many communities, and ongoing support for PEG is a result of decades of local cable license negotiations, where support for PEG TV is only one of the many issues that come up in the negotiation process.

During these negotiations, local officials must balance the benefit of providing PEG with the cost to municipal residents. Consistent with federal law, cable operators pass the cost of providing support for PEG programming through to subscribers on their monthly bills. The legislation (LD 1371) currently proposed

by PEG groups to require carriage of PEG channels in High Definition (HD), would take such authority to balance community needs and interests with the costs of meeting those needs and interests away from local officials. The power to negotiate for and balance the needs and priorities of public access groups with the desires of residents to seek other changes to the license should remain with local officials and not be mandated through this legislation.

2. **Separate from its negative impact on consumers, PEG mandates also harm competition among providers of programming content.** Competitors to cable providers do not carry or support PEG channels (nor are they mandated to do so), whether it is satellite providers like DishNetwork or DirecTV, or over the top providers like Hulu, Netflix or Amazon. This legislation would put a costly mandate on cable subscribers at a time when consumers are often choosing new providers who do nothing for PEG channels. As more customers turn to these competitors, the more communities lose in franchise fees from cable customers. Remaining customers also end up paying more to then support the PEG channel support obligations required by the existing license with the municipality.
3. **Mandates related to where PEG channels are placed, what technology is used and how it is accessed run afoul of federal law and are preempted.** Section 624(f)(1) of the Cable Act declared that no State or local government “may regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title.”<sup>1</sup> There is no express authorization under federal law granting franchise authorities the right to mandate carriage of PEG channels in HD. To the contrary, the Cable Act expressly provides that a “[s]tate, or franchising authority may not impose requirements regarding the provision or content of cable services...”<sup>2</sup> and federal law does not allow states or franchising authorities to dictate cable operators’ technology choices. Specifically, Section 624(e) of the Cable Act expressly prohibits state and local governments from “prohibit[ing], condition[ing] or restrict[ing] a cable operator’s use of any subscriber equipment or transmission technology.”<sup>3</sup> Accordingly, if enacted, LD 1371 would be inconsistent with various provisions of the Cable Act.<sup>4</sup>

Similarly, LD 1371 unlawfully elevates to the level of PEG Channels the status Congress gave Broadcast channels under Section 611 of the Communications Act. Specifically the Bill requires that cable operators must carry PEG channels, “in the same manner and numerical location sequence as are the local broadcast channels originating from the State”. The problem is that Congress addressed

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<sup>1</sup> See Cable Act, Section 624, codified at 47 U.S.C. § 544(f)(1).

<sup>2</sup> 47 U.S.C. § 544(f)(1).

<sup>3</sup> *Id.*

<sup>4</sup> See, e.g., 47 U.S.C. § 544(f)(1), 626, and 624e.

PEG channels in section 611 of the Act,<sup>5</sup> but did not give them the same rights granted to broadcast channels in section 614. Nor did Congress authorize State or local government to confer on PEG channels the carriage rights Congress gave to broadcast channels. In section 614 Congress gave broadcast special rights to be carried on certain channels.<sup>6</sup> In section 611, by contrast, Congress did not give PEG channels the right to be carried on any particular channel. Thus, the statute does *not* give PEG Channels the same status as broadcast channels. Because Congress declared that the "State... may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title,"<sup>7</sup> and did not allow the State to require cable systems to give PEG channels the same carriage status as broadcasts channels, LD 1371 violates the Cable Act.

Thank you for the opportunity to speak before the committee.

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<sup>5</sup> 47 U.S.C. § 531.

<sup>6</sup> 47 U.S.C. § § 534(b)(6)-(7)

<sup>7</sup> 47 U.S.C. § 541(f)(1)