§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; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. That each municipality, when acting to displace competition with regulation 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; [PL 2007, c. 548, §1 (AMD).]

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; [PL 2023, c. 502, §1 (AMD).]

D. To ensure that all video service providers 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; and [PL 2023, c. 502, §2 (AMD).]

E. Consistent with the applicable requirements of this section, to prohibit a video service provider from offering or providing its services within a municipality unless it has entered into a franchise agreement or contract with the municipality pursuant to this section. [PL 2023, c. 502, §3 (NEW).]

[PL 2023, c. 502, §§1-3 (AMD).]

1-A. Definitions. As used in 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. [PL 2023, c. 502, §4 (AMD).]

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. [PL 2023, c. 502, §4 (AMD).]

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. [PL 2007, c. 548, §1 (NEW).]

D. "Affiliate" means a business entity effectively controlling or controlled by another person or associated with other persons under common ownership or control. [PL 2023, c. 502, §4 (NEW).]

E. "Application" means an interactive computer or software program operating on a device that provides for the reception of transmitted or streamed video, audio or other digital content from a video service provider over the Internet or other electronic communications network in real time or near real time, allowing a user to receive such content on a device without downloading the entire content file. [PL 2023, c. 502, §4 (NEW).]

F. "Facility support transmission equipment" means the equipment associated with the interconnection between public, educational and governmental facility equipment and the headend of a video service provider's system, beginning at the point at which a public, educational and governmental signal enters transmitting equipment, which must be owned, maintained and upgraded for signal quality or another reason by the video service provider. "Facility support transmission equipment" includes, but is not limited to, the equipment and facilities associated with signal transmission and carriage methodologies employed to send, receive, manage, troubleshoot

and maintain audio and video signals; all physical wires, fiber lines and related connectivity medium or device; and all equipment associated with the formatting of public, educational and governmental programming for transmission to a subscriber of the video service provider. [PL 2023, c. 502, §4 (NEW).]

G. "Public, educational and governmental facility equipment" means, with respect to any public, educational and governmental access channel, the equipment used to capture and process programming in the field or in a public, educational or governmental studio, including all equipment used prior to the point at which that signal enters the private network of the video service provider. [PL 2023, c. 502, §4 (NEW).]

H. "Public, educational and governmental programming" means content produced or provided by any person, group or public or private agency or organization that is used in conjunction with public, educational and governmental access channels and facility support transmission equipment. [PL 2023, c. 502, §4 (NEW).]

I. "Public, educational and governmental signal" means any transmission of electromagnetic or optical energy that carries audio or video from one location to another for the purposes of providing public, educational and governmental programming. [PL 2023, c. 502, §4 (NEW).]

J. "Video service provider" means any person that directly or through one or more affiliates sells in the State access to video, audio or computer-generated or computer-augmented entertainment and owns or operates facilities located in whole or in part in a municipality's public rights-of-way that are used to provide those services, irrespective of the technology or application used to deliver such services.

"Video service provider" includes, but is not limited to, a cable system operator and a common carrier that operates a cable television system. "Video service provider" does not include:

(1) A provider of commercial mobile service, as defined in 47 United States Code, Section 332(d)(1); or

(2) A provider of an Internet access service, as defined in 47 United States Code, Section 231(e)(4), with respect to the provision of the Internet service by the provider. [PL 2023, c. 502, §4 (NEW).]

[PL 2023, c. 502, §4 (AMD).]

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.
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Notwithstanding any provision in a franchise, a video service provider 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, a video service provider may not abandon that service without written consent of the municipal officers. Any video service provider 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. [PL 2023, c. 502, §5 (AMD).]

C. Neither the video service provider whose facility support transmission equipment is used to transmit a program produced by a person other than that provider, under Federal Communications Commission regulations or municipal ordinance, nor the officers, directors or employees of that provider are liable for damages arising from any obscene or defamatory statements or actions or invasion of privacy occurring during any program when that provider does not originate or produce the program. [PL 2023, c. 502, §6 (AMD).]

D. [PL 2007, c. 548, §1 (RP).]

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. [PL 2007, c. 548, §1 (AMD).]

F. [PL 2023, c. 502, §7 (RP).]

G. Notwithstanding any provision in a franchise, a video service provider is responsible for all costs associated with public, educational and governmental facility equipment shown by the franchising municipality to be reasonably necessary in light of community needs and interests for the capture, processing and delivery to the video service provider of public, educational and governmental access channels within the franchising municipality, including, but not limited to, technology upgrade costs for signal quality improvement or for other reasons. A video service provider may not offset any such costs through the payment of required fees under subsection 5-A, but may recover such costs from subscribers to the extent permitted by applicable law and as negotiated with the municipality. [PL 2023, c. 502, §8 (NEW).]

H. New facility support transmission equipment installed must be at the current resolution technology afforded to broadcasting stations. [PL 2023, c. 502, §9 (NEW).]

[PL 2023, c. 502, §§5-9 (AMD).]

4. Franchise procedures. Pursuant to subsection 2, a municipality may enact ordinances governing the procedures for granting franchises to video service providers. These ordinances must be enacted before granting any such franchise or franchises and 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 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; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. A reasonable opportunity for public input before granting franchises; and [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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. [PL 1987, c. 737, Pt. A, §2

(NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[PL 2023, c. 502, §10 (AMD).]

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 provided for under this subsection, including the grant of nonexclusive franchises for a period not to exceed 15 years, for the placing and maintenance of cable television systems and appurtenances, or parts thereof, in public ways and including contracts with video service providers that receive the services of television signal transmission offered by any public utilities using public ways for such transmission. A video service provider may not offer or provide its services within a municipality unless it has entered into a franchise agreement or contract with the municipality pursuant to this subsection. A public utility may not be required to contract with the municipal officers under this subsection. Any new, renewed or amended franchise must contain the following provisions:

A. The area or areas to be served; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. A line extension policy, which must specify a minimum density requirement of no more than an average of 15 residences per linear strand mile of aerial cable for areas in which the video service provider will make cable television service available to every residence. A strand mile under this paragraph is measured from the end of the current cable system strand installation.

A video service provider may not establish mandatory preconditions to be met by potential subscribers for the construction of a line extension on a municipal public right-of-way including, but not limited to, a requirement that a potential subscriber sign a contract for service in advance of the construction of the line extension. Nothing in this paragraph prohibits a video service provider from requiring payment of cost sharing from potential subscribers prior to construction of a line extension in accordance with a line extension policy required by this paragraph; [RR 2023, c. 2, Pt. A, §46 (COR).]

C. A provision for renewal, the term of which may not exceed 15 years. A provision for automatic renewal or other provision for extending the initial term is prohibited. Franchise renewal is governed by section 3010, subsection 5-C; [PL 2019, c. 245, §1 (AMD).]

C-1. Provisions regarding the payment or remittance of any franchise fees by the video service provider as may be required under the agreement or contract between the municipality and the video service provider and in accordance with subsection 5-A; [PL 2023, c. 502, §11 (NEW).]

D. Procedures for the investigation and resolution of complaints by the video service provider; [PL 2023, c. 502, §11 (AMD).]

D-1. A provision for the use and support of public, educational and governmental access channels, which must be carried in the same manner and numerical location sequence as are the local broadcast channels originating from the State and carried on the cable television system pursuant to section 3010, subsection 5-A; and [PL 2019, c. 245, §3 (NEW).]

E. Any other terms and conditions that are in the best interests of the municipality. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[RR 2023, c. 2, Pt. A, §46 (COR).]

5-A. Franchise fees. Any new, renewed or amended franchise agreement or contract between a municipality and a video service provider that includes provisions requiring payment of any franchise fees by the video service provider to the municipality must include the following provisions.

A. The municipality is authorized to use the franchise fees for costs associated with the regulation of the operation of the video service provider within the municipality; to support the provision of public, educational and governmental programming within the municipality; to offset municipal property taxes; or for any other purpose identified by the municipality. [PL 2023, c. 502, §12 (NEW).]

B. The franchise fees must be paid by the video service provider to the municipality or its designee on a quarterly basis and must be received by the municipality or its designee no later than 45 days after the end of the calendar quarter for which the payment is made. If the video service provider fails to timely pay to the municipality or its designee:

(1) Interest must accrue on the required, unpaid fees at the rate of 12% simple interest per annum; and

(2) The repeated failure to timely pay such fees is a material breach of the terms of the franchise agreement or contract, and the municipality may at its discretion terminate the agreement or contract. [PL 2023, c. 502, §12 (NEW).]

C. Each payment under paragraph B must include a statement prepared by a financial representative or agent of the video service provider, testified and verified as correct, identifying the total amount of gross annual revenue generated by all activities of the provider within the municipality for that payment period and describing the calculations used to determine the amount of the payment. The video service provider shall prepare and maintain the financial information and records necessary to provide the information required under this paragraph in accordance with accounting principles and auditing standards generally accepted within the video service industry. [PL 2023, c. 502, §12 (NEW).]

D. The municipality may request that the information provided by the video service provider pursuant to paragraph C be subject to audit by a qualified 3rd party to be selected by the municipality. The costs of the audit are to be paid by the municipality except when the results of the audit demonstrate that the video service provider underpaid by more than 4% any franchise fees required under the franchise agreement or contract, in which case the video service provider must reimburse the municipality for the costs of the audit. [PL 2023, c. 502, §12 (NEW).]

E. A municipality's or its designee's acceptance of franchise fees paid by the video service provider does not constitute an agreement by the municipality that the amount of the fee is correct unless the municipality has not initiated a process to challenge or audit the amount of the fee paid within 36 months of receipt or, in the case of a fee not accompanied by a statement under paragraph C that is verified as correct, 48 months of receipt. Prior to the expiration of such time period, the municipality may inspect relevant financial information and records of the video service provider and initiate a process to seek compensation for any underpayment. [PL 2023, c. 502, §12 (NEW).]

[PL 2023, c. 502, §12 (NEW).]

6. Current ordinances and agreements.

[PL 2007, c. 548, §1 (RP).]

7. Model franchise agreement. The Department of Administrative and Financial Services, Office of Information Technology, or a successor state agency, referred to in this subsection as "the office," shall develop and may update and amend a model franchise agreement for use by any municipality and any video service provider that mutually choose to adopt the model franchise agreement or any of its provisions. A video service provider may not modify or amend the model franchise agreement without the consent of the municipality. 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; [PL 2007, c. 548, §1 (NEW).]

B. Build-out requirements; [PL 2007, c. 548, §1 (NEW).]

C. Public, educational and governmental access channels and reasonable public, educational and governmental facility equipment for such channels; [PL 2023, c. 502, §13 (AMD).]

D. Customer service standards; [PL 2007, c. 548, §1 (NEW).]

E. The disparate needs of the diverse municipalities in this State; and [PL 2007, c. 548, §1 (NEW).]

F. The policy goal of promoting competition in the delivery of video service. [PL 2023, c. 502, §13 (AMD).]

This subsection does not allow the office to establish prices for any video service or to regulate the content of video services.
[PL 2023, c. 502, §13 (AMD).]

8. Authorized judicial actions; statute of limitations. A violation of this section constitutes a violation of the Maine Unfair Trade Practices Act.

A municipality that has suffered an adverse impact due to the action of an entity not in compliance with the requirements of this section may bring an action against that entity to recover any unpaid franchise fees or to enjoin the operation of that entity.

Notwithstanding any provision of law to the contrary, an action brought under this section must be commenced within 7 years of the date that the cause of action arose.
[PL 2023, c. 502, §14 (NEW).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 2007, c. 548, §1 (AMD). PL 2019, c. 245, §§1-4 (AMD). PL 2019, c. 308, §1 (AMD). PL 2023, c. 502, §§1-14 (AMD). RR 2023, c. 2, Pt. A, §46 (COR).

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