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October 28, 2009

Honorable Barry J. Hobbins, Senate Chair
Honorable Jon Hinck, House Chair
Joint Standing Committee on Utilities and Energy
100 State House Station
Augusta, Maine 04333-100

Re: Public Law, Chapter 548, 123rd Legislature, An Act To Amend Cable Television Laws and Establish a Model Cable Franchise Agreement.

Dear Senator Hobbins and Representative Hinck:

Public Law, Chapter 548, 123rd Legislature, added a new subsection to M.R.S.A. 30-A, §3008; subsection 7, Model franchise agreement. The new subsection directs the Department of Administrative and Financial Services, Office of Information Technology (OIT), to “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.” OIT will also make the model franchise agreement available on its publicly accessible website.

The Act says that OIT will, at a minimum consider the following issues:

- A. Franchise fees;
- B. Build-out requirements;
- C. Public, educational, and governmental access channels (referred to as PEG 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.

Section 3 of the Act contained a December 15, 2008, deadline. Because of the complexity of the issues involved, the multitude of interested stakeholders, and the firm belief by all that there was great value in a model agreement, OIT asked for and received two extensions of time from the Utilities and Energy Committee. While we are considerably later than those extensions, the group believes that we have crafted an exceptional product, well worth the time and effort.

The working group consisted of members or representatives from municipalities, Maine Municipal Association, industry groups, cable companies, telephone companies, and staff from OIT and the PUC. The group was chaired by the Executive Director of the ConnectME Authority. The group started meeting in June 2008, with the last meeting July 13, 2009. There were over forty large and small group (for specific tasks) meetings as well as hundreds of email messages exchanged.

The purpose of these meetings was to create a “model” cable franchise that could be used as a starting point for negotiations between the cable operator and municipality. The benefit of such a model is that, as "blessed" by the various stakeholders, many of the standard boilerplate items would already be resolved. Issues such as insurance and bonding, consumer protection standards and others would be the same across the State and neither side would need to engage in needlessly expensive negotiation of these issues.

The final document will require tailoring to the particular needs of a community and thus both sides anticipated fill-in-the-blank provisions requiring local negotiation. As far as we know, this idea is unique in the nation and Maine is the first to attempt it. The model and the accompanying appendices were developed in a collaborative give and take process not unlike the standard franchise negotiation process.

An issue that came up repeatedly was confidentiality. Municipalities are currently unable to adequately protect company supplied confidential or proprietary information. The companies are willing to provide more detailed information to the municipalities about their systems, strategies, and customers, if that information can be protected, possibly with an exemption in Maine’s Freedom of Access Act.

Both “sides” began last year by discussing a model franchise that was a compilation of three older approved franchises in Maine, plus several from other states that had been negotiated recently with current laws and practices in effect. After extensive discussion, each side has since agreed to modification of over fifty items to accommodate the concerns of the other side. We believe we have brought forward an up-to-date, but lean document that still provides for consumer and municipal protections. It clearly references Federal and State regulations by means of hyper-linked appendices for easy reference and meets the charge that was given to us by the legislature.

In effect, the working group negotiated an individual agreement that all municipalities and companies can work with, adding their own unique parts as necessary. This should allow the smaller towns to feel comfortable in signing the agreement and should alleviate the need for expensive legal work. Money probably better spent maintaining roads, etc.

Sincerely,

Richard B. Thompson, Jr.
Chief Information Officer

Phillip Lindley
Executive Director, ConnectME Authority

cc: Members of the Utilities and Energy Committee
Lucia Nixon, Legislative Analyst