Community Television Association of Maine
OPA STAKEHOLDER MEETINGS SUMMARY REPORT

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- 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-surviv/

"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