SUMMARY OF MODEL VIDEO SERVICE FRANCHISE AGREEMENT

The Maine Community Media Association (MCMA) has developed a model franchise agreement for cable and other video service providers (MFA) and strongly urges all Maine municipalities to use this MFA whenever granting a new franchise or renewing an existing franchise with a cable or other video service provider. Our MFA updates Maine's out-of-date 2009 model cable franchise agreement and reflects the latest developments in Maine and federal law and in cable technology and service delivery. In particular, it is intended to provide clear ground rules for implementing 2019 and 2023 changes in Maine law and addressing ongoing changes in service delivery, especially the cable industry's transition to selling cable service to customers via Internet streaming. In practical terms, this MFA applies franchising requirements to systems provided by Spectrum (Charter) and Xfinity (Comcast) that deliver video services to customers via the Internet either directly or through an affiliate, whether done by continuing to sell conventional cable service or by selling streamed video services via an affiliate or a provider-supplied device (*e.g.,* Xumo).

This MFA does not apply to fiber providers that provide pure Internet service in spite of the fact that those systems are installed in the public right-of-way in your municipality and function in many ways much like a conventional cable operator. The two-prong test for application of franchise obligations under federal and Maine law are that the provider's distribution facilities are installed in the public right-of-way and that it sells video services to customers directly or through an affiliate. Fiber providers typically satisfy only one of the two prongs, installing distribution facilities in the public right-of-way (and connecting their customers to the Internet) but not selling video services to their customers, who contract with third parties (like YouTube) for video service packages. At this time, due to the anomalies of our regulatory system, these fiber providers are generally exempt from the franchise process despite the similarity between their operations and service offerings and those of conventional cable providers.

We urge Maine municipalities to require strict compliance with the MFA in dealing with all cable and other video service providers (VSP)[1] that are subject to franchising requirements under Maine law. It incorporates the latest legal developments and carefully and fairly balances the interests of municipalities and VSPs.

INTRODUCTION TO MCMA'S MODEL FRANCHISE AGREEMENT

MCMA developed the model MFA in response to the Maine Connectivity Authority's (MCA)[2] suggestion that it do so. MCA made that proposal in connection with its decision to prematurely

[1] VSP is a term that encompasses both conventional cable operators and newer video service providers that provide cable-like services to subscribers either directly or via an affiliate by streaming.

[2] MCA is a quasi-governmental agency, established by the state in 2021 (35-A M.R.S.A. §§ 9401-09) and serving primarily as the distributor of federal Broadband Equity, Access, and Deployment program (BEAD) funds to cable and other broadband providers to improve service in unserved and underserved areas of Maine. MCA's chief areas of expertise are broadband infrastructure and planning and equitable access to broadband technology and service. It does not grant or manage cable or video franchises or provide legal advice to municipalities or assistance with franchising.

end review of its draft MFA on August 26, 2025, without addressing many unresolved technical and substantive concerns about MCA's proposed MFA, resulting in MCA's finalizing a flawed and incomplete MFA.[3]

The MCA MFA, posted on the MCA website on August 26, 2025, is not a viable option for Maine communities for many reasons, including that it does not establish a set of orderly and coherent rules, lacks basic enforcement tools, and contains many technical and substantive flaws:

- It is vitally important for all Maine municipalities in developing franchise agreements for VSPs to work from a single set of documents and a coherent perspective as is provided by the MCMA MFA, especially since what happens in one community affects other communities.
- The flaws of the MCA MFA include requiring a "surety fund" (instead of a "security fund"), sharply limiting the rights of municipalities in renewal proceedings, eliminating the requirement for a local business office, and tying the availability of the basic service tier to the FCC's rate regulation rules even though those rules generally do not apply to Maine communities under the FCC's current rules.
- MCA's MFA is an unfinished and flawed product that was finalized by MCA before the review process had run its course and without considering essential feedback from municipal representatives on the many provisions in need of further work.

Based on these concerns about the MCA MFA, MCMA acted as suggested by MCA and spent several months finalizing this MFA, developing a technically and legally correct MFA for use by municipalities. ***Municipalities should rely on the MCMA MFA as a standard template in renewing or granting franchises for VSPs and should not deviate from the recommended franchise standards except in the areas where customizing is appropriate or necessary*** as indicated by blank spaces to be filled in by the municipality (discussed in more detail below in the section-by-section analysis):

- Name of franchising authority (§§ 1.27 and 2.1) and the VSP (§ 2.1) and contact details for both the municipality and the VSP (§ 2.3)
- Length of the franchise and its beginning and ending dates (§ 2.9)
- The system's service area and build-out commitments (Exhibit A (as explained in § 3.2.1 and 3.2.4))
- The maximum length for a standard installation for residential installations (possible options include: 150, 200, or 250 feet) (§ 3.2.2.c)

[3] Through an opaque bureaucratic process, MCA took over responsibility for drafting the MFA from the agency designated by state law to draft the MFA (the Office of Information Technology in Maine's Department of Administrative and Financial Services, 30-A M.R.S.A. § 3008(7)). According to the law setting up MCA, it is subject to "sunset review" by the legislature with termination of MCA one of the options to be considered by the legislature (35-A M.R.S.A. § 9409(2)).

- Franchise enforcement (§ 6) (performance bonds (§ 6.1.1))
- Franchise fees (§ 8) (applicable percentage in your municipality up to a maximum of 5%)
- Public, educational, and government access (PEG) (§ 9) (*e.g.,* number of PEG channels (§ 9.1.2), financial support for PEG facilities (§ 9.2.2), address of PEG facility return feed (§ 9.3.4))
- A cap on the amount of reimbursable expenses associated with review of a transfer request (§ 13.8)

Municipalities should not deviate from the MFA or delete provisions of the MFA during franchise negotiations to the extent possible. Maine and federal law are complicated, with many twists and turns that are covered by the MFA that will not necessarily be obvious to municipal officials or will be misrepresented or distorted by providers as a negotiating technique. Further, Maine law is not self-executing and does not require direct state enforcement, meaning that it is primarily up to local franchise authorities (LFA) to enforce the updated provisions of Maine law through strong and clear franchises and proactive franchise enforcement. The MFA is designed to equip municipalities with the tools needed to provide for enforcement of these new state mandates. In fact, Spectrum's (Charter) attorneys asserted in a September 12, 2025, letter to Maine Attorney General Aaron Frey that the proper forum for implementing and enforcing the new requirements of Maine law is the franchise renewal process.

Finally, it is important for municipal representatives to be aware of the strong case law produced by a challenge to the 2019 Maine legislation in the *Spectrum Northeast, LLC v. Frey,* 22 F.4th 287 (1st Cir. 2022) (*Spectrum Northeast v. Frey*), case and its relevance to their authority. In this case, the First Circuit Court of Appeals found in early 2022 that states (and, by the same reasoning and federal law, municipalities) have sweeping authority to regulate cable and other video service providers under the "consumer protection" authority of the Cable Communications Policy Act (Cable Act (47 U.S.C. §§ 521-573)):

- This statutory authority over consumer protection (47 U.S.C. § 552(d)(1)) is broad and includes any state or local consumer protection law that is not expressly and unambiguously preempted by federal cable law.
- The federal Court of Appeals found that state (and municipal) authority over consumer protection trumps the industry's clams of federal preemption.
- The federal Court of Appeals relied on this consumer protection argument to uphold all the provisions related to public, educational, and government access (PEG) in the 2019 amendments to Maine law, including the requirement that all PEG channels be carried on the basic service tier.
- Consistent with the Court of Appeals' reasoning, the MFA contains many references to this consumer protection authority to further bolster the legal authority underlying many of the MFA's provisions.

KEY:

- **Capitalized words are generally defined terms, with most definitions established in § 1**
- **The terms Section, Subsection, Paragraph, and Subparagraph are also capitalized**
- **Blank spaces are to be filled in as appropriate for your community before submitting your proposed franchise to your provider or applicant**
- **Italics and closed brackets are used in several areas following blank spaces to explain or clarify the options for your community in filling in the blank space. When you finalize the proposed franchise for your community by filling in those blanks, you should delete the brackets and all the material in italics between the brackets**
- **The MFA is in Word format and, to the extent it is edited, should be edited in Word to avoid losing formatting or adversely affecting the table of contents**

Attached is a section-by-section analysis of the MFA that provides critical information on its key provisions.

SECTION-BY-SECTION ANALYSIS OF THE MFA

The MFA is organized into 17 sections. The highlights of the main provisions of the MFA are discussed below.

SECTION 1: DEFINITIONS

The first paragraph of this section includes anti-preemption language that makes clear that the provisions of the MFA are protected from preemption either because they are not "inconsistent" with the Cable Act (47 U.S.C. § 556(c)) or because they constitute consumer protection measures under federal law (47 U.S.C. § 552(d)(1)), which generally cannot be preempted.

This paragraph also makes clear that future changes in law or regulation, whether federal, Maine, or municipal, are automatically incorporated into the franchise and become binding without any further action by the municipality, as long as the Maine or municipal law or regulation represents a *bona fide* exercise of police powers (clarified and explained in § 16.5). This change is intended to place municipalities on the same footing as cable and other video providers, which have long taken advantage of changes in federal or state law regardless of what the franchise says.

The MFA contains only definitions for terms that are a part of the MFA. It does not, for example, include definitions for institutional networks and free or discounted service for public buildings. The MFA leaves out these two items because the FCC finalized rules in 2019 that classified franchise requirements requiring either of these items as franchise fee payments (47 C.F.R. §§ 76.42(a)(1) and (3)), subjecting them to the 5% cap on franchise fees. Given the problems associated with valuing these public benefits and the likely resulting reduction or elimination of franchise fee payments, municipalities should generally avoid franchise provisions that require institutional networks or free or discounted service for government or other public buildings.

The following provides background information on several of the key definitions:

Basic Video Service (§ 1.4): The MFA's definition of basic service requires the carriage of the system's PEG channels and local broadcast stations on the basic tier and applies whether or not the local system is subject to "effective competition." Consistent with the *Spectrum Northeast v. Frey* ruling, this definition makes clear that the requirement for universal access to the basic tier is a consumer protection measure that applies to all VSP systems, including those that are not subject to rate regulation. This definition is necessary because the VSP industry can be expected to argue that it is not required to provide universal access to the basic service tier, especially for Xumo-based and similar offerings or bundled streaming service provided by an affiliate, for various reasons, including the argument that Internet-based service delivery is not subject to must-carry requirements (the industry apparently relies on the more broadly available retransmission consent rights to secure carriage rights for Internet-based services) and that the Cable Act's definition of basic service (47 U.S.C. § 543(b)(7)(A)) only applies in the tiny number of noncompetitive markets where rate regulation is still permitted under the restrictive rules of the Federal Communications Commission (FCC) (47 C.F.R. § 76.906).

Business Office (§ 1.6): The MFA requires that all VSPs provide a local business office. The MFA's definition requires that this business office be "conveniently located" for subscribers and residents of the municipality and at a location approved by the municipality.

Cable or Video Service (§ 1.9): The MFA's definition of "cable or video service" closely tracks the Cable Act's definition of cable service (47 U.S.C. § 522(6)) and makes clear that it also encompasses video services such as those provided by Xumo-based providers of video programming via Internet or bundled streaming service provided by an affiliate. Cable service has been defined since the inception of the Cable Act in 1984 as including the "subscriber interaction" required to select or use video programming, including the selection of video programming via a Xumo or similar device. The provision concerning interactivity was included in the Cable Act in response to the existence of interactive cable services in the early 1980s in the form of Warner-Amex's QUBE service. As a result of this accident of history, the Cable Act's definition of "cable service" covers contemporary services that are functionally equivalent to QUBE services by enabling subscriber selection of video services via an Internet connection.

The litigation surrounding Internet access service began in the early 2000s and generally centered on whether Internet access service is an "information service" under federal law (as opposed to the more regulated "telecommunications service") and whether requirements like the FCC's Net Neutrality rules can be applied to Internet access services. That back-and-forth litigation has not reached the question of the regulatory status of the delivery of cable services via the Internet or found that it falls outside the Cable Act's definition of cable service and therefore does not limit the ability of LFAs to regulate the Internet-based delivery of video services through the cable franchising process or the ability of states to require LFAs to do so.

Gross Annual Revenue (§ 1.22): Federal law defines the gross revenues that may be subject to franchise fees as limited to the revenues derived from the operation of a system to provide "cable service." By federal law, the term "cable service" includes "video programming" (47 U.S.C. § 522(6)) and related subscriber interactions. The MFA makes clear that, based on this definition of cable service, revenues derived from delivering video services over the VSP system via Internet-based streaming services, including those involving Xumo or Xumo-like devices, may be subject to franchise fees under local franchises.

Public, Educational, and Governmental Facility Support Transmission Equipment or PEG Facility Support Transmission Equipment (§ 1.39): This provision of the MFA refers to the equipment and other facilities that the VSP is required to provide as part of the system. These facilities connect PEG facilities to the VSP system's headend to deliver the signals of PEG channels to customers and is the provider's responsibility under Maine law (30-A M.R.S.A. § 3008(1-A)(F)) and a basic component of the system. This definition undergirds § 9, which precludes VSPs from passing through the costs associated with providing this component of the system (§ 9.3.1) to customers and spells out the minimum signal quality obligations associated with providing this component of the VSP system and delivering PEG channels to subscribers under Maine law (§ 9.3.3).

Transfer (§ 1.47): The MFA defines transfers broadly, including changes in control of the ownership of the system or franchise as well as direct transfers of the franchise or the system.

Exceptions to required municipal approval of transfers are narrow and limited and are spelled out in § 13 as is the process for rejecting a transfer request.

Video Service Provider or VSP (§ 1.51): The MFA's definition of VSP includes both conventional cable operators and broadband providers that sell video services over the Internet to customers whether via a Xumo device or similar technology or whether provided by the provider or an affiliate of the provider without any special equipment. This broad definition of VSP is consistent with both Maine law (30-A M.R.S.A. § 3008(1-A)(J)) and federal law (47 U.S.C. § 522(7)) and is the linchpin for establishing municipal authority over the latest form of cable delivery.

Video Service Provider System or VSP System (§ 1.52): The MFA's definition of VSP system includes video distributions systems installed in the local public right-of-way and operated by a provider that sells video services to customers either directly or through an affiliate. It does not cover pure broadband providers where the system provider is not involved in selling video services to customers. Thus, it encompasses systems where the provider sells video services to customers via the Internet either directly or via an affiliate but does not cover broadband systems to the extent used by customers to purchase video services from third parties like YouTube if the third party is not affiliated with the system provider.

SECTION 2: GRANT OF AUTHORITY

The first paragraph of this section acknowledges the limits federal law (47 U.S.C. § 541(a)) places on the ability of a municipality to refuse a request by another provider to construct a system to compete with an existing franchised provider. This obligation applies only to other VSP systems (*i.e.,* either a conventional cable system or a newer broadband system over which the system provider sells video services directly or via an affiliate to customers, including sales via the Internet like services delivered by Xumo or similar devices). It requires a careful assessment of the conditions imposed on new providers to ensure that those conditions do not result in discrimination against an existing provider by, for example, applying conditions on the new entrant that are less burdensome than those applicable to an established provider.

§ 2.9 (term of the franchise):

This provision of the MFA requires specification of the length of the franchise, which, under Maine law, may not exceed 15 years (30-A M.R.S.A. § 3008(5)). A municipality may establish a shorter franchise term than 15 years if, for example, it has concerns about the provider's future performance. Further, all key provisions of the MFA apply whenever the franchise is "in effect," thereby covering actual or *de facto* extensions of the franchise after its expiration date (cable operators sometimes operate systems well after the expiration date of the applicable franchise, knowing that many municipalities are reluctant to litigate the status of an unfranchised provider or risk service interruptions for community residents).

§ 2.10 (law applicable to the franchise):

This provision of the MFA restates the introductory paragraph to § 1 (definitions) for emphasis and makes clear that future changes in law or regulation, whether federal, State, or municipal, are automatically incorporated into the franchise and become binding without any further action by the municipality, subject to limits on the exercise of police powers under Maine or local law (§ 16.5). This change is intended to place municipalities on footing more like that of cable and other video providers, which have been systematically taking advantage of changes in federal or state law and unilaterally implementing changes in FCC rules regardless of what the franchise says.

SECTION 3: VSP SYSTEM CONSTRUCTION

§ 3.2 (service area and imstallations):

- The franchise's service area should be specified and described in Exhibit A (§ 3.2.1). Depending on the circumstances, the description provided in Exhibit A may be general where appropriate (*e.g.,* all addresses within the municipality) or a detailed map or list of addresses if the service area does not include all addresses in the municipality.
- Maine law requires that franchises include build-out requirements for parts of the franchise area that are unserved and where density is at least 15 residences per linear strand mile of aerial cable (30-A M.R.S.A. § 3008(5)(B)) (§ 3.2.2). If a build-out is required due to the existence of pockets of unserved areas in the municipality, the build-out area must be specified in Exhibit A by a list of addresses or service locations (§ 3.2.4). The build-out plan included in Exhibit A may include deadlines and a schedule for implementation of the build-out.
- The length of a standard installation should be specified in the franchise (§ 3.2.2.c) in order to ensure that homes within a reasonable distance of the system's distribution lines have ready access to the system had predetermined and standardized rates. Options for the possible maximum length of a standard installation include 150, 200, and 250 feet, with a final determination of length based on community characteristics (*e.g.,* a longer maximum standard connection may be appropriate for a less densely populated community).

SECTION 4: VSP SYSTEM DESIGN AND OPERATION

§ 4.1 (VSP system design and capabilities):

- **§ 4.1.1:** Required disclosure of the design of the VSP system, including all key components and estimated costs for new builds and upgrades required by the franchise (to establish the amount of the performance bond required by § 6.1.1).

- **§ 4.1.2:** Required disclosure to the municipality of any upgrade plans developed after the franchise is granted, estimates of the costs of the upgrade, and posting of a performance bond under § 6.1.2 to guarantee fulfillment of upgrade plans.
- **§ 4.1.3:** Required standby power for headends and subheadends of at least 24 hours (cable operators often object to requirements for standby power of more than 4 hours even though weather-related outages in Maine often run much longer than 4 hours).

SECTION 5: INSURANCE AND INDEMNIFICATION

§ 5.1 (VSP's insurance obligations):

This section of the MFA establishes baseline requirements for insurance coverage for the VSP provider. These minimums apply regardless of the size of the community or the system as damage resulting from an accident or other incident caused by the system or its operations does not necessarily correlate to the size of the community or the system.

SECTION 6: FRANCHISE ENFORCEMENT

§ 6.1 (performance bond, security fund, and letters of credit):

The MFA establishes a framework for enforcement of the franchise without requiring court action by the municipality. One measure (the performance bond) is a temporary tool to ensure that system construction takes place as promised and is generally available only while construction is ongoing. The other two measures (the security fund and letter of credit) are permanent features of the franchise that are designed to deal with ongoing enforcement matters (*e.g.,* whether the provider has provided PEG equipment grants, whether the provider is carrying PEG channels at the proper signal quality) but can be adjusted as appropriate during the course of the franchise based on the provider's performance:

- The performance bond or construction guarantee (§ 6.1.1) will only be required in the case of a new build or planned upgrade of the existing system under § 4.1.1 or a system upgrade during the course of the franchise under § 4.1.2. A performance bond is typically provided by an insurance company and costs a small percentage of the overall planned construction costs. The amount of the performance bond is based in the projected construction costs under § 4.1.1 and § 4.1.2. If the provider fails to construct that system or to complete an upgrade as promised, the proceeds from the performance bond may be used to cover the costs of completing the construction as promised. The obligation to provide a performance bond ends once the municipality certifies that the provider has completed the agreed-upon construction.
- A security fund (§ 6.1.2) remains in effect throughout the period in which the franchise is in effect and is intended to guarantee

compliance with the franchise. It may, for example, be used to recoup liquidated damage payments required by the franchise (§ 6.5) or unpaid franchise fees or PEG facility grants. It is typically funded by a cash payment to the municipality and held by the municipality to cover the provider's liability for violations of the franchise. A municipality may decide to return some or all of the security fund to the provider in exchange for the provider's provision of a letter of credit in the same amount as the returned amount. This option is intended to provide a way to lighten the costs of the security fund for providers that have established a track record of complying with the franchise.

§ 6.5 (liquidated damages):

This subsection of the MFA sets forth modest financial penalties that are intended to provide a way to recover damages from the provider if it fails to comply with basic requirements of the franchise. These penalties are set out in the franchise in order to avoid costly litigation as to the damages caused to the municipality as a result of franchise violations. The MFA establishes a maximum annual cap of $100,000 on the total amount of liquidated damages that may be collected from a provider and establishes clear-cut procedural requirements, including a requirement for a public hearing, that insure procedural fairness for both the provider and the municipality. This cap does not apply to the recovery of unpaid franchise fees or PEG facility payments that are associated with the assessment of liquidated damages.

SECTION 7: RECORDS AND REPORTS

Background: The cable industry often tries to limit its obligation to retain records regarding compliance with the franchise and past performance issues, citing the costs of record retention. In fact, federal law effectively requires record retention by the provider by strictly limiting municipalities to the consideration of 4 factors under 47 U.S.C. § 546(c)(1) in formal renewal proceedings, 2 of which depend upon the municipality's ability to obtain access to the provider's records. These 4 renewal factors are, broadly speaking, franchise compliance, past performance, the provider's qualifications, and future cable-related community needs and interests and are discussed in more detail under § 14 (franchise renewal proceedings). Ultimately a municipality's leverage in the renewal process depends on which it has access to the records required for a formal renewal proceeding that would enable the municipality to document flaws in the provider's past performance or its failure to comply with the franchise.

§ 7.2 (VSP's obligation to maintain books and records):

This provision of the MFA requires that the provider retain records that a municipality may need in a contested renewal proceeding to show deficiencies in the provider's past performance or failure to comply with the franchise. One of its provisions (§ 7.2.2) tracks Maine law by relieving the provider of the obligation to retain detailed records of customer interactions and service issues but supplements those rules by requiring that the provider maintain summary records of essential

information about customer interactions and service issues for the entire period in which the franchise is in effect.

SECTION 8: FRANCHISE FEE

Municipalities may determine the percentage of the franchise fee but within strict limits established by federal law. First, federal law establishes a maximum cap on franchise fees of 5% of the provider's gross revenues (47 U.S.C. § 542(b)). Second, it also limits gross revenues that may be subject to that fee to those generated by the system in connection with providing cable service, including video services (this limitation is covered by the MFA's definition of gross annual revenue (§ 1.22)). Maine law also sets the schedule for franchise fee payments (quarterly and within 45 days of the close of the quarter) (30-A M.R.S.A. § 3008(5-A)), which is incorporated into the MFA (§ 8.1). That same Maine law also sets interest payments for late payments of franchise fees at 12%, which is also incorporated into the MFA (§ 8.4).

Federal law's limits on the revenues that may be subject to the franchise fee means that the municipal franchise fee may not be imposed on revenues produced by the sale of pure Internet access service. Both cable and video streaming services are subject to Maine's 5.5% sales tax, with video streaming service, whether provided by the system provider or a third party (like YouTube) subject to the state's 5.5% sales tax as of January 1, 2026 (36 M.R.S.A. 1752 (1-P)). This change in state law is part of a move to improve parity between video streaming and conventional cable in terms of sales tax liability.

Federal law grants cable providers the right to itemize franchise fee costs on subscriber bills (47 U.S.C. § 542(c)(1)). Federal law also defines assessments that are subject to the 5% cap broadly (47 U.S.C. 542(g)), resulting in the FCC's adoption of rules in 2019 that treat certain in-kind requirements included in a franchise as franchise fees (chiefly institutional networks and free or discounted service for public buildings) and therefore subject to the 5% cap. This broad definition of franchise fees effectively precludes the inclusion of requirements for institutional networks and free or discounted service for public buildings unless the municipality is prepared to forego franchise fee revenues in exchange for other public benefits.

The rules pertaining to franchise fee limits and payment schedules are largely set in stone by a combination of federal and Maine law and have been incorporated into the MFA where appropriate.

SECTION 9: PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS (PEG)

Background: Generally speaking, municipalities have broad authority under federal and Maine law to regulate PEG facilities and equipment based in part on their broad authority to regulate system establishment and operation (47 U.S.C. § 544(b)(2)(A)) through the franchise and in part on multiple grants of authority regarding PEG access. This expansive municipal authority includes franchise requirements regarding: (1) PEG facilities and equipment (47 U.S.C. §§ 531(c), 544(b)); (2) PEG channels (47 U.S.C. §§ 531(b) and (c)); (3) financial support for PEG-related capital costs (47 U.S.C. §§ 531(c), 544(b), and 542(g)(2)(C)); and (4) VSP system capabilities (47 U.S.C. §§ 531(b) and (c) and 544(b)) required for PEG channel operations (*e.g.,* the provision of PEG facility transmission equipment by the provider, equipping and operating the system to deliver PEG channels in HD format to subscribers):

- Statutory authority in each of these areas is further buttressed by broad municipal authority to establish consumer protection laws (47 U.S.C. § 552(d)), which was recognized by the federal appeals court in *Spectrum Northeast v. Frey* and has been incorporated into the MFA where appropriate.
- The two primary limits on municipal authority over PEG pertain to the VSP's rights to: (a) itemize costs associated with PEG channel use on subscriber bills (47 U.S.C. § 542(c)); and (b) apply the 5% cap on franchise fees to in-kind "assessments," including PEG support payments (*e.g.,* funds to cover staff to operate a PEG studio) and I-Nets (47 U.S.C. § 542(g); 47 CFR § 76.42(a)).
- Federal law provides a broad exemption from franchise fee limits for "capital costs" associated with the use of PEG channels (47 U.S.C. § 542(g)(2)(C)), which covers most PEG-related requirements, including requirements governing components or physical capabilities of the VSP system or requiring the designation of channels for PEG use or financial support for the purchase of PEG facility equipment.

An area of possible dispute with providers is the scope of the VSP's right to itemize on subscriber bills the costs it incurs to provide system facilities to deliver PEG signals to the headend:

- The Cable Act permits the itemization on subscriber bills of the costs of franchise requirements to "support" PEG channels or their "use" (47 U.S.C. § 542(c)(2)) but does not directly address the application of this provision to system transmission facilities or to PEG-related system or capital costs. Historically, this provision has been construed as pertaining to cash payments to the municipality for the purchase of PEG studio equipment. Spectrum's attorneys have advanced an expansive reading of this provision, asserting in their September 12, 2025, letter to Maine Attorney General Frey that VSPs have the right to itemize PEG facility transmission equipment costs under this provision even though there are no federal rules to that effect.
- The MFA (§ 10.3.1) requires that any PEG costs itemized on subscriber bills must be calculated pursuant to the FCC's rate regulations as is required by federal law (47 U.S.C. § 542(c)).
- The MFA includes language limiting the itemization of PEG facility transmission equipment costs (§§ 9.3.1, 10.1.3) primarily because PEG facility transmission equipment is a component of the system (*e.g.,* a fiber line running between the PEG facility and the headend) like any other distribution line on the system, is required by Maine law, and does not constitute a PEG channel "support" or "use" requirement.

§ 9.1 (PEG access channels):

The municipality has broad discretion to establish the number of required PEG access channels for the system. Any limits established on the number of PEG channels are specified in the franchise (§ 9.1.2) and are not otherwise limited by federal or Maine law. The municipality should specify the minimum number of PEG channels that it knows will be needed by the community at the beginning of the franchise (*e.g.,* one channel for the municipality and a second channel for the school district). The MFA establishes outside limits on the number of PEG channels (generally 5 video channels), which should suffice to accommodate future growth in demand for PEG channel capacity in Maine communities.

In case demand for PEG channels exceeds the number of PEG channels specified in § 9.1.2., § 9.1.3 provides a process and a time frame for the municipality to request and obtain additional PEG access channel capacity.

The MFA (§ 9.1.5) makes clear that the provider is responsible for all PEG costs and may not transfer PEG costs to the municipality or other PEG channel users or offset PEG costs against franchise fees. ***The only costs that may be itemized on subscriber bills are franchise requirements for financial support for PEG facility equipment (e.g., equipment for PEG channel operation or use) (see § 9.2).***

The MFA incorporates requirements of Maine law governing the placement of PEG channels on the basic tier (§ 9.1.7), PEG channel numbers (§ 9.1.8), and the inclusion of information about PEG channels in electronic program guides (§ 9.1.9). These provisions are a necessary component of the MFA because the cable industry often disregards requirements of Maine law unless they are also included in local franchises.

§ 9.2 (PEG facility equipment):

Just as with the designation of channels for PEG use, municipalities have broad discretion to require the provider to provide financial support throughout the franchise's existence for PEG facilities and equipment. This category consists of items like cameras, editors, servers, other studio equipment, transmitting equipment, and vans that are used in connection with producing PEG programming for live or delayed transmission over the system. As noted above in the discussion of PEG access channels (§ 9.1), the provider is responsible for all PEG costs and may not transfer PEG costs to the municipality or other users of the PEG channels or offset PEG costs against franchise fees.

§ 9.2.2 (capital support for PEG facility equipment):

Municipalities may require annual capital support payments for PEG facility equipment or may require a single upfront payment or a series of periodic payments (like once every 4 years). The amount of money required under this provision should be based on the municipality's assessment of how much money it will need to properly equip PEG operations over the expected duration of the franchise (its term plus any extensions that might occur by agreement or acquiescence). If the payments are spread out in annual or other periodic increments, the municipality might consider

including an automatic annual or other periodic adjustment to the amount based on adjustments in the Consumer Price Index or a similar measure of inflation to compensate for reductions in the value of the dollar over time and increases in the cost of equipment.

§ 9.2.3 (competitive fairness in funding PEG facility equipment):

The "competitive fairness" provision is a limited purpose provision that is intended to provide a way to ensure fairness if the municipality awards a franchise to a new VSP after granting an initial franchise. This provision comes into play only if the municipality grants a VSP franchise to another provider, meaning that it is not applicable to entry into the local market by a pure Internet provider that is not required to obtain a local franchise (*e.g.,* a broadband provider that provides high-speed Internet service to customers but does not sell video services to customers either directly or through an affiliate). It is a necessary part of the MFA because federal law precludes municipalities from "unreasonably refus[ing] to award an additional competitive franchise" (47 U.S.C. § 541(a)(1)).

This provision requires good faith negotiations between the municipality and the incumbent VSP regarding possible modifications to the incumbent's funding obligations for PEG facility equipment if the PEG facility equipment funding obligations applicable to the new entrant are less burdensome on a per-subscriber basis than the requirements applicable to the existing provider. The MFA requires that any franchise modifications agreed to in these negotiations take into account the per-subscriber impact of the modified obligation, the need to preserve total funding available from both providers for PEG facility equipment, and compliance with the Cable Act's anti-redlining provisions, which prohibit discrimination in access to service to groups of potential subscribers based on the income of areas in which members of the group live (47 U.S.C. § 541(a)(3)).

§ 9.3 (PEG facility transmission support equipment and PEG transmission standards):

Maine law establishes various requirements governing the capabilities of PEG facility transmission support equipment connecting PEG facilities to system headends and the quality of PEG access channel signals delivered to subscribers. The Maine legislature enacted these requirements in 2019 and 2023 but the cable industry has failed to implement these requirements in many communities, claiming that new requirements governing PEG facility transmission support equipment and PEG access channel signal quality may only be established by incorporating them into franchises. The MFA is designed to provide the tools needed to incorporate these new requirements of Maine law into local franchises.

PEG access channel signal quality is generally not subject to clear-cut federal standards, meaning that it is the up to municipalities and other LFAs to establish signal quality standards in franchises. In the case of Maine, the legislature has enacted laws that are intended to require the provider to deliver PEG channels to customers at signal standards that meet certain minimum requirements but these new state laws are not self-executing and must be included in local franchises in order to have real force.

§ 9.3.1 (VSP's PEG facility transmission support equipment obligations):

This subsection of the MFA requires the VSP to equip the system with PEG facility transmission support equipment to ensure that PEG access channels are transmitted to subscribers without altering or reducing signal format or quality. This essential requirement is implemented by requiring the VSP to provide equipment and facilities that connect PEG facilities to the provider's headend (§ 9.3.4). This connection is also referred to as the "return feed" and is typically a fiber connection (and associated transmitting equipment) connecting the PEG facility and the headend. The franchise should specify the location of the PEG facility (typically the municipality's town or city hall where government meetings take place) that is to be connected to the headend.

§ 9.3.2 (transmission standards for PEG channels):

In addition to the baseline requirement that the VSP retransmit PEG channels over the system to subscribers without altering or reducing signal format or quality (discussed above in § 9.3.1), Maine law also establishes clear-cut PEG channel signal standards (30-A M.R.S.A. § 3010(5-D)) that are implemented through the MFA. Specifically, the MFA requires that VSPs retransmit PEG access channels in the same format as received from the PEG provider (including both HD and standard format) and in the same signal quality as the VSP provides for local television broadcast channels.

SECTION 10: RATES AND SERVICES

§ 10.1 (rates, fees, and charges):

The FCC revamped federal rate regulation rules in 2015 to eliminate rate regulation in virtually all communities in the United States. It did so by reversing the presumption that cable systems were not subject to "effective competition" and finding VSP systems to be subject to "effective competition"[4] (except in cases where proven otherwise) and therefore exempt from rate regulation (47 C.F.R. § 76.906). The MFA recognizes the legal reality of sweeping deregulation of cable rates but also preserves authority for municipalities to reinstitute rate regulation if relevant law is modified in the future (§ 10.1.1).

§ 10.2 (basic video service):

The MFA requires all VSPs to provide the basic service tier to all subscribers regardless of whether the system is subject to effective competition or exempt from rate regulation. The basic tier is defined as the tier that includes PEG channels and local broadcast stations (§ 1.4) and is intended to ensure access for community residents to locally oriented video programming.

- In the absence of rate regulation, the VSP industry may attempt to claim that it is not required to provide universal access to the basic service tier, especially with regard to Xumo-based video

[4] Federal law allows LFAs to regulate basic service rates only if a cable system is not subject to effective competition and sets standards for measuring the existence of effective competition based primarily on whether a community's residents have access to more than one provider of multichannel video service (47 U.S.C. §§ 543(a), (b)(7), and (l)(1)).

programming (the industry has apparently concluded that federal must-carry requirements do not apply to the Xumo-based delivery of video programming, invoking the more broadly available retransmission consent rights to obtain carriage rights for Xumo-based video programming).

- It is important for municipalities to keep in mind, in dealing with industry arguments of this sort, that the federal Court of Appeals ruled in *Spectrum Northeast v. Frey* that local regulation of the composition of the basic service tier is not tied to rate regulation and, as a consumer protection measure, is not preempted by federal law under 47 U.S.C. § 552(d)(1).

While federal law precludes municipalities from requiring the provision of particular cable or information services (other than PEG channels) in franchises, it allows franchises to include requirements for "broad categories" of "video programming or other services" (47 U.S.C. § 544(b)(2)(B)):

- A franchise provision requiring a basic service tier constitutes a "broad category" of service that is permitted by the Cable Act.
- Under § 1.4 of the MFA, the basic tier consists of two broad categories of cable service (local broadcast stations and PEG channels) and does not involve the required carriage of a particular cable service.

§ 10.3 (video programming):

The MFA recognizes that existing federal law limits the right of municipalities to require the provision of specific video services over VSP systems except for PEG channels and broad categories of service, including the basic service tier discussed in § 10.2 (47 U.S.C. §§ 544(b)(2)(B) and 544(f)).

SECTION 11: RIGHTS OF SUBSCRIBERS AND OTHER INDIVIDUALS

This section of the MFA recognizes the existence of basic subscriber rights, including privacy rights established by federal and Maine law (§ 11.1) and the right of individual subscribers to inspect personal information about them retained by their provider and challenge its accuracy (§ 11.5).

SECTION 12: CUSTOMER SERVICE

§ 12.1 (customer service standards):

This provision of the MFA adopts the FCC's customer service standards *verbatim* and incorporates them into the MFA in Appendix B, with notice of their adoption provided to the provider via their inclusion in the franchise. The FCC has established detailed customer service standards (47 C.F.R.

§§ 76.309, .310, .1602-.1604, and .1619) for providers but they do not automatically apply in a local market unless the municipality notifies the provider of its intent to adopt them.
The FCC's customer service standards are comprehensive but if a municipality wishes to augment or strengthen them it may do so by including additional customer service standards in the franchise (47 U.S.C. 552(d)(2)). It may also adopt more stringent customer service standards via ordinance or regulation without the consent of the provider (47 U.S.C. 552(d)(2)).

§ 12.4 (late fees):

This provision of the MFA implements Maine law's restrictions on late payments to no more than 1.5% per month of the outstanding bill (30-A M.R.S.A. § 3010(6-B)).

SECTION 13: TRANSFERS

§ 13.1.1 (general prohibition of transfers without municipal approval):

The MFA generally precludes the transfer of the system or the franchise to another provider whether it is a direct transfer or whether it is an indirect transfer through a change in control or ownership of the entity that owns or controls the local system. The exceptions to this rule are for: (1) transfers of less than 20% of voting rights or ownership interests in the VSP or related entities (§ 13.1.1); (2) transfers associated with mortgage or other secured interests in the franchise or system (§ 13.1.2); and (3) transfers of control or restructuring of the existing entity without involving a new third-party acquiror or owner.

§ 13.3 (VSP's notice to municipality of a proposed transfer):

This provision of the MFA spells out the paperwork which the VSP is required to submit to the municipality to initiate the transfer review process. The information to be provided includes the information required by FCC Form 394 as well as additional information requests that are spelled out in Exhibit C of the MFA. This provision tracks the FCC rules which limit the ability of LFAs to delay the review process, including the requirement that a transfer application be deemed complete if the municipality does not object to its completeness within 30 days of receiving it.

§ 13.4 (limits on time for review by the municipality of a transfer request):

The MFA incorporates the strict timing requirements of the FCC's transfer rules, including the 120-day limit on the time period for acting on a transfer request (47 C.F.R §§ 76.502(a) and (c)). If the municipality fails to complete action on the transfer request within that 120-day period (or as it may be extended in limited circumstances spelled out in §13.4), the transfer request is automatically deemed approved by operation of FCC rules (47 C.F.R. § 76.502(c)).

§ 13.5 (public hearing on a transfer request):

This provision of the MFA requires a public hearing on a transfer request if the municipality deems it appropriate or the VSP requests it. To stay within the FCC's compressed time period for

completing action on a transfer request, the MFA requires that the hearing be conducted within 90 days of the municipality's receipt of a completed transfer request.

§ 13.8 (responsibility for the costs of the transfer process):

This provision of the MFA requires the transferring entity to reimburse the municipality for the costs of the transfer review process, including associated legal expenses, but also places an outside limit on the amount of reimbursable costs. This outside limit should be developed by the municipality on the basis of the municipality's estimated costs of retaining attorneys and consultants to review and provide guidance on a transfer request.

SECTION 14: FRANCHISE RENEWAL PROCEEDINGS

§ 14.1 (basic franchise renewal proceedings):

This provision of the MFA carefully tracks the franchise renewal provisions of federal law. Although most franchises are renewed through informal negotiations, the municipality's leverage in those negotiations depends in large part on whether it is equipped to activate formal renewal proceedings if the informal process goes off the tracks and appears unlikely to reach a successful conclusion. Formal renewal proceedings are limited to consideration of 4 factors, which are spelled out in 47 U.S.C. § 546(c)(1):

- Whether the incumbent provider has complied with the material provisions of the existing franchise (*i.e.,* franchise compliance);
- The reasonableness of the quality of the incumbent's service provided under the existing franchise (*i.e.,* past performance);
- The financial, legal, and technical ability of the incumbent to provide the services, facilities, and equipment included in its renewal proposal (*i.e.,* the provider's qualifications); and
- The reasonableness of the incumbent's renewal proposal to meet the future cable-related community needs and interests of the municipality, taking into account the cost of meeting those needs and interests (*i.e.,* whether the incumbent's proposal meets future community needs and interests).

The formal renewal process is not available to the VSP unless it is initiated within the time frame specified by federal law (*i.e.,* the 6-month window that begins 36 months before the franchise's scheduled expiration date (47 U.S.C. § 546(a)(2)). Federal cable law penalizes cable operators for missing the renewal provision's deadlines with a loss of the renewal protections of federal law but does not impose similar penalties on franchising authorities (47 U.S.C.C § 546(a)(2)).

The cable industry may attempt to weaken the hand of municipalities in renewal proceedings by using the franchise process to sharply limit the provider's obligation to retain records regarding its compliance with the existing franchise and its past performance under that franchise. For example, the provider might suggest sharp limits on its obligation to retain records regarding past performance and franchise compliance to as little as two or three years, meaning that there would

be little-to-no data available in formal renewal proceedings concerning the provider's past performance and its compliance with the franchise. Section 7 of the MFA makes clear that the provider is obligated to retain records for the entire period covered by the franchise.

§ 14.3 (municipal requests for renewal-related information):

This provision of the MFA incorporates 2023 amendments to Maine law, which require that the provider respond within 15 days to requests for renewal-related information (30-A M.R.S.A. § 3010(5-C)), including maps, franchise fee data, and other information that the municipality may request under § 7.

§ 14.4 (responsibility of the VSP for renewal costs):

This provision of the MFA recognizes the right of the municipality to recoup the "reasonable" expenses of a renewal proceeding, including legal expenses. These renewal-related reimbursable expenses are limited only by the concept of reasonableness.

SECTION 15: FRANCHISE REVOCATION OR TERMINATION

The MFA spells out standards and procedures for revocation or termination of a franchise that provide clear due process rights for providers. A municipality contemplating the possible termination of a franchise must carefully comply with these requirements in view of a possible claim by the provider that it has vested property rights in the system or the franchise and the right to due process protections. Neither federal nor Maine law provides express guidance or ground rules for franchise revocations so it is the municipality's responsibility to include clear and understandable guidelines for franchise revocation or termination in the franchise that can withstand possible constitutional challenges.

§ 15.1 (grounds for the municipality to revoke or terminate the franchise):

This provision of the MFA specifies grounds for possible termination or revocation of a franchise in 4 broad areas: (1) any violation of a material provision of the franchise or applicable law; (2) any evasions or attempt to evade compliance with a material provision of the franchise or applicable law; (3) failure to provide or maintain any insurance policy, performance bond, security fund, or letter of credit required by the franchise; and (4) the cessation of system operations for 48 hours or more without the consent of the municipality and in the absence of *force majeure*. In legal terms, a material provision of the franchise is a significant condition or requirement of the franchise that significantly affects the legal obligations or the expectations of a party to the franchise.

§ 15.2 (revocation procedures):

Procedural requirements for franchise revocation or termination include providing notice to the provider of grounds for possible revocation (§ 15.2.1) and a 30-day period for the provider to "cure" the violation or other improper act or activity (§ 15.2.2). The MFA also sets forth the requirement for a public hearing before a franchise can be terminated or revoked and the various procedural requirements associated with a hearing (§ 15.2.3).

SECTION 16: MISCELLANEOUS

§ 16.1 (disposition of the VSP system following termination of the franchise):

If a franchise is not renewed, the MFA assumes that the provider and the municipality will try to reach an agreement on the disposition of the system. If an agreement on disposition of the system is not reached, then the municipality is entitled to issue an order disposing of the system as it sees fit, including taking over some or all of the system itself or transferring it to a new provider.

§ 16.5 (police powers):

Cable providers often try to slip language into franchises that preclude the application to the provider of new laws or regulations adopted by either the municipality or the state after the franchise has gone into effect. The genesis for these efforts is the industry's contention that the contracts clause of the U.S. Constitution (U.S. CONST. art. I, § 10, cl. 1) bars the application of new laws or regulations to cable franchises. This flawed reading of the Constitution has sometimes been invoked to include provisions in cable franchises effectively barring states and municipalities from exercising basic regulatory authority regarding cable providers. We see this in the context of the cable industry's resistance to Maine laws that were enacted in 2023 and are designed to ensure compliance with basic signal quality standards for PEG channels. We also see it in the industry's claim that only new "generally applicable" municipal or state laws can be applied to franchise holders once a franchise has been granted. The "generally applicable" limitation is a murky and much litigated qualifier that would arguably preclude Maine or the municipality from adopting and applying new cable or video specific laws to any provider that was already franchised.

In fact, the contracts clause, because it butts up against the 10th amendment (U.S. CONST. amend. x) and its broad reservation of state authority (and, through states, municipal authority) does not mean what the industry often claims. The contracts clause has been construed as only affecting state or local laws or regulations that "substantially" impair contracts and, even in the case of substantial impairment, a state or local law is not preempted by the contracts clause as long as it is reasonable and tailored to advance a significant and legitimate public purpose. (*See, e.g., Sveen v. Melin*, 584 U.S. 400 (2018.)

This provision of the MFA clarifies that providers are not exempt from new Maine or municipal laws or regulations that comply with the basic rules regarding preserving police powers that have long been recognized by the U.S. Supreme Court.

SECTION 17: VSP'S WARRANTIES

This provision of the MFA establishes standard "warranty" provisions, which are intended to ensure that the franchise is executed by a person who has the authority to act for the VSP.