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First Circuit Upholds Maine Law Ensuring Nondiscriminatory Treatment of Public, Educational, and Governmental Access Channels

August 4, 2021 | *Jeffrey M. Bayne*

On August 3, 2021, the U.S. Court of Appeals for the First Circuit affirmed a district court decision that upheld a 2019 Maine law requiring nondiscriminatory treatment of public, educational, and governmental ("PEG") access channels. The First Circuit's decision is a major victory for PEG access centers, which have long been subject to inequitable treatment from cable operators. A copy of the court's opinion is available here.

The 2019 Maine law addressed various cable operator practices that made PEG access channels less accessible to viewers. First, it requires cable operators to carry PEG access channels on their basic service tiers. Second, it prohibits cable operators from separating PEG access channels numerically from other local broadcast channels. Third, it requires cable operators to retransmit PEG access channel signals in the format in which they are received and at the same signal quality as the operator retransmits local broadcast channels' signals. Among other things, this requirement prevents cable operators from refusing to carry PEG access channels in high definition format. Fourth, the Maine law requires cable operators to include PEG access channel programming information in their electronic program guides in the same manner they do for local broadcast channels, which enables viewers to search for and record PEG access channel programming with the same convenience as other channels' programming. Separately, the 2019 Maine law establishes a minimum density requirement for line extension policies that cable franchising authorities in Maine must include in any cable franchise agreement.

NCTA–The Internet & Television Association, a trade association for the cable television industry, challenged the 2019 Maine law at the U.S. District Court for the District of Maine. After the district court upheld the Maine law, NCTA appealed to the First Circuit.

The First Circuit upheld the 2019 Maine law in full. It rejected NCTA's arguments that the law's PEG-related provisions were preempted by the federal Cable Act. The court explained that the Maine law must be upheld even assuming that the PEG-related provisions were not, as the district court found, consumer-protection laws. While consumer-protection laws are valid unless "specifically preempted" by federal law, 47 U.S.C. § 552(d)(1), the First Circuit explained that the Maine law's PEG-related provisions were not even "inconsistent with" federal law, 47 U.S.C. § 556(d). It also upheld the Maine law's line-extension provision.

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Spiegel attorneys Jim Horwood, Tim Lay, and Jeff Bayne represented the Community Television Association of Maine, the Alliance for Community Media, and the Alliance for Communications Democracy as *amici curiae* in support of the State of Maine before both the district court and the First Circuit.

Related Practices and Services

- Telecommunications
- Litigation and Appeals

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