



Dear BCAP System and Associate Member:

Happy Holidays!

We're taking this opportunity to thank all of you for your ongoing support and valuable input on many industry issues, during the challenges of 2019. Throughout this past year, your Association has championed broadband cable positions and promoted our message through the legislative and regulatory halls of Harrisburg. We look forward to an equally challenging and exciting 2020, as we remain focused on representing and communicating your business interests every day.

Our hope is that you are able to spend as much time with family, friends and loved ones as possible while celebrating and enjoying this wonderful season. On behalf of the entire Board of Directors and staff of the Broadband Cable Association of Pennsylvania, we wish you every happiness during this blessed and joyous holiday...and a prosperous New Year!

Fran Bradley     Dan Tunnell  
Chairman        President

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December 24, 2019

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A federal judge has temporarily blocked a new state law in Maine that requires cable companies to provide TV programming on an à la carte basis.

U.S. District Court Judge Nancy Torresen ruled Friday that cable companies suing over the law are likely to prevail on their claim that the legislation harms their First Amendment rights and that the law should be blocked while legal proceedings over the measure continue. Cable companies and broadcasters **filed a lawsuit in September** over the law, which would be the first in the country to

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### **Harrisburg Patriot-News**

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### **Philadelphia Inquirer**

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***BCAP offices will be closed Wednesday, December 25***

require cable TV providers to offer content on a channel-by-channel and even program-by-program basis.

Most cable operators offer TV programming on a tier basis, requiring consumers to buy a package of channels rather than choosing the individual programs or channels they want. The legal challenge claims Maine's law runs afoul of federal legislation governing cable companies, and that requiring the companies to offer channels individually violates the companies' First Amendment right to editorial control over programming.

Torresen said she was won over by the latter argument, largely because the state hadn't shown that requiring à la carte options would reduce prices and make cable TV more affordable. Cable companies claim that switching to an à la carte system would be complex and costly, and that the added costs would be passed on to consumers.

To issue the preliminary injunction, the judge had to find that the challenge to the law is likely to succeed and that the plaintiffs – the cable companies – would suffer irreparable harm if the law went into effect. She also had to weigh the hardships on both sides and determine that the public interest was in favor of an injunction. Torresen found in favor of the cable companies on all four factors, noting that the likelihood of success is the most important factor in issuing an injunction and that the other factors are inconsequential if the challenge is unlikely to succeed.

On the other major legal challenge – that Maine's law is contrary to federal laws – Torresen found that the cable TV providers are unlikely to prevail. Christopher Taub, Maine's deputy attorney general who is defending the law in court, said he was "extremely pleased" with that part of Torresen's ruling, but said the rest of the decision left him disappointed. "The court had before it a limited factual record," he said. "We will now have opportunity to supplement that record."

Taub said states have a vital role to play in protecting consumers from unfair businesses practices, and that while cable TV operators repeatedly insist federal law immunizes their practices from state oversight, the court's decision "demonstrates that this is simply not so." He said the state is reviewing all of its options, including a possible appeal of Torresen's decision to grant the preliminary injunction. State Rep. Jeffrey Evangelos, an independent from Friendship, the chief sponsor of the à la carte measure, called the part of Torresen's ruling that federal laws and the Maine law were not in conflict "a big victory."

Cable companies have been "hiding behind" that argument for years as a way to resist providing television programming on a per-channel basis, he said. However, Evangelos disagreed with the rest of Torresen's decision, saying it put a company's free speech ahead of an individual's free choice. "It's absurd, just like Citizens United, once again conferring human rights onto corporations," Evangelos said in an email. "Of course it's going to save money to purchase just 10 channels; the kids are already doing it for peanuts with their gadgets. This law would save the cable industry from itself, but they refuse to see what the rest of us are witnessing – the young people are

purchasing choice through their smart phones and TVs. (If) the industry keeps it up, and fails to adapt to consumer choice, 10 years from now, cable is dead.”

A spokeswoman for the Maine Association of Broadcasters said the organization was happy with Torresen’s ruling because it freezes implementation of the new law until a trial is held. Torresen set a preliminary trial date in early August. The association has filed documents in court supporting the cable TV industry’s legal challenge, which was filed by the cable giant Comcast and other providers and broadcasters. Suzanne Goucher, the executive director of the organization, said the concern of local broadcasters is that à la carte channel ordering would weaken support for some local stations. Industry rules currently require cable TV companies to carry local channels on their basic, and least costly, tiers of service. –

**Portland (ME) Press Herald**

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Congress is handing traditional broadcasters such as CBS and ABC a surprise victory in a contentious, multimillion-dollar TV lobbying fight by letting key parts of a 31-year-old satellite TV law die. The battle, pitting legacy broadcasters against AT&T and some consumer groups, centered on the recurring satellite TV law known as STELAR, which first passed in 1988 and provides hundreds of thousands of rural satellite TV households with access to broadcast programming.

And both sides spent mightily to advance their cases: The National Association of Broadcasters spent just shy of \$10 million on lobbying in the first three quarters of 2019, while AT&T spent nearly as much at \$9.22 million. The law is typically reauthorized every five years, but this time, Congress will let significant aspects of the statute expire as part of the fiscal 2020 spending bill, potentially leaving thousands of satellite subscribers cut off from local broadcasting smack in the middle of the 2020 election cycle. Essentially, STELAR lets hundreds of thousands of rural satellite customers watch broadcast programming ported in from far-away cities like New York. Broadcasters opposed reauthorizing STELAR, arguing the law is obsolete and maintains an outdated subsidy that discourages satellite TV providers from negotiating to secure local broadcast channels for some of these rural customers.

AT&T, which owns satellite TV provider DirecTV, and consumer groups such as Public Knowledge said letting the statute expire would create an untenable risk for a wide swathe of rural households that could lose access to broadcast channels. “Make no mistake, when the screens of those consumers go dark, the sole reason will be that Congress did not act to protect them,” AT&T senior executive Jim Cicconi said in a statement Thursday. “This most recent example of broadcaster exploitation and overreach underscores the urgent need for Congress to address the issue of retransmission fees and their negative impact on consumer wallets.”

The move may please President Donald Trump, who has repeatedly attacked AT&T and unsuccessfully sought to block its acquisition of Time Warner, which owns CNN. This summer, he [tweeted](#) that people should stop subscribing as a way to “make big changes” at CNN, which he has blasted as biased against his administration. STELAR’s Dec. 31 expiration will mark a final brief

reauthorization ahead of May, without any future battle over renewal thanks to the deal tucked into the spending bill, which Trump is expected to sign into law before government funding expires Friday. The late-game proposal comes as a boon for broadcasters who had asked Capitol Hill to simply let the law expire. “I feel like the dog that finally caught the mail truck,” one broadcast industry lobbyist recently texted POLITICO.

The law has generally been the source of contentious spats over the future of the TV marketplace, with lawmakers often clamoring to hitch unrelated TV marketplace proposals to a must-pass vehicle — which broadcasters fear could unsettle the rules related to reimbursements for programming that are central to their revenue. All these traditional media marketplace players have been under added pressure amid changing consumer tastes and the rise of internet streaming giants like Netflix, Hulu and Amazon. The deal is a letdown to the lawmakers and industry players who pushed for more aggressive overhaul to challenge the market power of broadcasters.

AT&T and others like Charter Communications, satellite provider DISH Network and telecommunications companies had unsuccessfully pushed for Congress to use the law’s Dec. 31 expiration as leverage to overhaul broader complex array of TV marketplace laws and try to stop TV blackouts, which happen when programming talks between networks and cable and satellite providers break down.

At the year’s outset, House GOP Whip Steve Scalise (R-La.) and Rep. Anna Eshoo (D-Calif.) had shared a hug and pledged to use STELAR reauthorization as the vehicle to try to curb TV blackouts. To do so, they would have to overhaul the retransmission consent framework under which broadcasters charge cable and satellite providers for their programming. But that effort never picked up steam amid broadcaster opposition. Ultimately, the more modest deal Congress put together picks apart the various pieces of the underlying satellite TV bill. It would extend the distant-signal license for many rural households only until May 31 and then force satellite companies to contend with market negotiations. Although satellite provider DISH Network already provides local programming in these rural markets, DirecTV-parent company AT&T will face a crunch over how to serve its customers starting in June.

AT&T’s Cicconi is arguing that Congress is bowing “to further demands from broadcasters” rather than tackling rising retransmission fees and in killing STELAR, will be “removing hundreds of thousands of consumers’ access to broadcast channels they receive today.” He blasted broadcasters for using “free market” rhetoric surrounding the distant-signal license when they enjoy free airwaves and local monopoly privileges. Other parts of STELAR will now be detached from expiring deadlines.

The deal would permanently extend the license to import distant broadcasting to a small share of groups like RV owners and truckers (conditioned on the satellite companies delivering local programming throughout the country) and permanently re-up STELAR’s requirements that broadcasters and pay-TV companies act in good faith during programming discussions.

Broadcasters now get to avoid future potentially messy renewal battles. "If I were a broadcaster, I'd be pretty happy," House Energy and Commerce ranking member Greg Walden (R-Ore.) said in an interview. "Where they really win, I think, is we did not have some big legislative effort on [retransmission consent]. When you look at the revenues that broadcasters make on retransmission consent agreements, that's a huge underpinning of their cash flow now, which allows them to do everything they do in the community."

The outcome was hardly certain in the months leading up to the law's expiration. Early on, Senate and House Commerce panel leaders insisted on reauthorizing the 2014 STELAR law, which seemed destined to set up another multi-year renewal term. But the Judiciary panels ultimately hold sway over the more controversial distant-signal license at issue. Senate Judiciary Chairman Lindsey Graham (R-S.C.) favored letting the law die, while House Judiciary Chairman Jerry Nadler (D-N.Y.) spearheaded his own measure aimed at sunseting much of the license, a basis for the eventual deal. The Senate ultimately never cleared any of its own legislation on the matter, following internal squabbling on the Commerce Committee over how members should handle TV marketplace rules.

Congress is advancing a mix of other TV marketplace reforms as part of the deal. It takes House Energy and Commerce language on cable billing transparency, which consumer groups are lauding as a triumph for the broader public, and provisions that would let small cable operators join in a buyers' group to conduct programming negotiations with broadcasters. One Senate Republican, who requested anonymity to speak candidly, told POLITICO that broadcasters, behind the scenes making the case about the changing TV marketplace, "did a very effective job of picking off members one by one." "The broadcasters had the bit in their teeth this time," the senator said. "The only people that lost big time were AT&T." -- **Politico**



127 State Street, Harrisburg, PA 17101  
717-214-2000 (t) 717-214-2020  
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