IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

COMCAST OF MAINE/NEW HAMPSHIRE, INC.; A&E TELEVISION NETWORKS, LLC; C-SPAN; CBS CORP.; DISCOVERY, INC.; DISNEY ENTERPRISES, INC.; FOX CABLE NETWORK SERVICES, LLC; NBCUNIVERSAL MEDIA, LLC; NEW ENGLAND SPORTS NETWORK, LP; and VIACOM INC., Plaintiffs, v. JANET MILLS, in her official capacity as the Governor of Maine; AARON FREY, in his official capacity as the Attorney General of Maine; the CITY OF BATH, MAINE; the TOWN OF BERWICK, MAINE; the TOWN OF BOWDOIN, MAINE; the TOWN OF BOWDOINHAM, MAINE; the TOWN OF BRUNSWICK, MAINE; the TOWN OF DURHAM, MAINE; the TOWN OF ELIOT, MAINE; the TOWN OF FREEPORT, MAINE; the TOWN OF HARPSWELL, MAINE; the TOWN OF KITTERY, MAINE; the TOWN OF PHIPPSBURG, MAINE; the TOWN OF SOUTH BERWICK, MAINE; the TOWN OF TOPSHAM, MAINE; the TOWN OF WEST BATH, MAINE; and the TOWN OF WOOLWICH, MAINE; Defendants.	Case No. ____________ **DECLARATORY AND INJUNCTIVE RELIEF SOUGHT**

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COMPLAINT

Plaintiff Comcast of Maine/New Hampshire, Inc. ("Comcast Cable"), and plaintiffs A&E Television Networks, LLC ("AETN"), National Cable Satellite Corp. ("C-SPAN"), CBS Corp. ("CBS"), Discovery, Inc. ("Discovery"), Disney Enterprises, Inc. ("DEI"), Fox Cable Network Services, LLC ("Fox"), NBCUniversal Media, LLC ("NBCUniversal"), New England Sports Network, LP ("NESN"), and Viacom Inc. ("Viacom") (collectively, "Plaintiff Programmers," and together with Comcast Cable, "Plaintiffs"), bring this suit for declaratory judgment and injunctive relief against Janet Mills, in her official capacity as the Governor of Maine; Aaron Frey, in his official capacity as the Attorney General of Maine; the City of Bath, Maine; the Town of Berwick, Maine; the Town of Bowdoin, Maine; the Town of Bowdoinham, Maine; the Town of Brunswick, Maine; the Town of Durham, Maine; the Town of Eliot, Maine; the Town of Freeport, Maine; the Town of Harpswell, Maine; the Town of Kittery, Maine; the Town of Phippsburg, Maine; the Town of South Berwick, Maine; the Town of Topsham, Maine; the Town of West Bath, Maine; and the Town of Woolwich, Maine (collectively, "Defendants"), stating as follows:

NATURE OF THE CASE

1. This case arises from the State of Maine's attempt to regulate the provision of cable television in a manner that is squarely preempted by federal law and foreclosed by the First Amendment. Specifically, Maine's H.P. 606 – L.D. 832, "An Act to Expand Options for Consumers of Cable Television in Purchasing Individual Channels and Programs," mandates that, "[n]otwithstanding any provision in a franchise, a cable system operator shall offer subscribers the option of purchasing access to cable channels, or programs on cable channels,

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individually." 129 Pub. L. Ch. 308 (2019) ("L.D. 832"), *available at* http://legislature.maine.gov/legis/bills/bills_129th/chapters/PUBLIC308.asp.

2. An array of federal statutory provisions precludes Maine from dictating how cable programming is presented to consumers. Those provisions reflect Congress's considered judgment that consumers' interests will be best served if content developers, programming networks, and cable operators (and other distributors) enter into market-based agreements to determine the optimal packaging of video programming, without micromanagement by 50 different states and myriad local governments. Maine's effort to foist an "à la carte" regime on these industry participants not only is unlawful, but would end up causing the very harms it seeks to avoid—namely, higher costs and reduced programming choice. Indeed, as discussed further below, the Federal Communications Commission ("FCC") and Government Accountability Office ("GAO") have studied the implications of an à la carte mandate in depth and concluded that forced unbundling of all cable tiers and packages would diminish carriage opportunities for many programmers and ultimately drive many out of business, thereby curtailing choice and diminishing diversity, while also increasing programming costs for consumers and forcing many of them to lease new equipment.

3. L.D. 832 is expressly preempted by several provisions of the Communications Act of 1934, as amended (the "Communications Act" or "Act"). First, L.D. 832 runs afoul of Section 624(f) of the Act, which prohibits state and local authorities from regulating the "provision or content of cable services, except as expressly provided in" Title VI of the Communications Act. 47 U.S.C. § 544(f)(1); *see Lafortune v. City of Biddeford*, 222 F.R.D. 218 (D. Me. 2004) (invalidating city ordinance regulating content of cable services in a manner that violated Section 624(f)), *aff'd* 142 F. App'x 471 (1st Cir. 2005). Because nothing in Title VI

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provides for or authorizes the à la carte mandates imposed by L.D. 832, Maine is barred from imposing such requirements. For similar reasons, L.D. 832 is expressly preempted by Sections 624(a) and (b) of the Act, which prohibit municipalities functioning as local franchising authorities ("LFAs")—the entities principally charged with enforcing L.D. 832—from regulating "the services, facilities, and equipment provided by a cable operator except to the extent consistent with [Title VI]," or from "establish[ing] requirements for video programming," except in very limited respects not applicable here. 47 U.S.C. §§ 544(a), (b)(1).

4. L.D. 832 is also preempted by Section 636(c), which expressly "preempt[s] and supersede[s]" any state law that "is inconsistent with [the Communications Act]." *Id.* § 556(c). L.D. 832 is exactly that, because it conflicts with federal law and policy objectives established by the Communications Act and FCC rules adopted pursuant to it. For example, the Communications Act and FCC rules require that cable operators provide all subscribers with certain broadcast stations as part of a mandatory "basic tier" of service. *Id.* §§ 534, 543(b)(7)(A). Yet L.D. 832, by its terms, mandates the offering of such individual channels (and even individual programs on channels) *without* any need to purchase the federally mandated basic tier, making it impossible to comply with L.D. 832 without violating federal law. More broadly, L.D. 832 effectively dismantles tiers of cable service that Congress and the FCC have repeatedly recognized as valid and, in certain cases, required. *See, e.g.*, 47 C.F.R. § 76.920 ("Every subscriber of a cable system must subscribe to the basic tier in order to subscribe to any other tier of video programming or to purchase any other video programming."); *id.* § 76.921(a) ("A cable operator may . . . require the subscription to one or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services."). Under the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2, and Section 636 of the

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Act, state measures that contravene validly adopted federal laws and policy determinations are preempted and have no force or effect.

5. More fundamentally, L.D. 832 violates the First Amendment. As the federal government recognized in declining to impose an à la carte mandate, tiers and bundling are not just a product of unilateral decision-making by cable operators or an exercise of purely contractual rights. Tiers and bundling reflect the exercise of First Amendment rights—both by the programmers who decide how to license their programming to cable operators, and by the cable operators who decide how to provide that programming to the public. The federal statutory and regulatory provisions, which give cable operators and programmers flexibility to package and sell programming in whatever manner they deem most appropriate (apart from the mandatory carriage requirements set forth in the Act), thus are, at their core, grounded in the First Amendment. By taking away that flexibility, L.D. 832 imposes both content- and speaker-based restrictions, infringing the rights of programmers and cable operators. And, to make matters worse, the statute uniquely burdens cable operators (exempting all other video distributors). Restrictions of this type must satisfy strict scrutiny, a standard that L.D. 832 cannot possibly meet. Indeed, this unsupported one-sentence state mandate could not satisfy even intermediate scrutiny, which would require Maine to show that L.D. 832 furthers an important or substantial governmental interest and imposes restrictions on First Amendment freedoms that are no greater than is essential to further that interest. *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994) ("*Turner I*"). L.D. 832 does not even begin to meet that test.

6. As a preliminary matter, the thin legislative record falls short of satisfying the State's burden of showing that L.D. 832 materially advances any purported interests in expanding programming options and saving consumers money. Leaving aside that the statute

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