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## Maine's a la carte cable law faces swift legal setbacks after being first of its kind in US

Christopher Hutton

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*Before the law went into effect, Maine's court system granted Comcast a temporary injunction claiming that the law violated the cable providers' First Amendment rights.*

A federal appeals court rejected a Maine law that would have required cable companies to provide subscribers the ability to purchase individual channels.

For years, consumers have had to subscribe to large bundles to get access to most channels. Some consumers have asked to subscribe to channels independently but have mostly seen opposition to this practice from cable and satellite providers and lawmakers alike.

Maine made the first attempt to pass an a la carte bill in 2019. The bill, titled “Chapter 308: An Act To Expand Options for Consumers of Cable Television in Purchasing Individual Channels and Programs,” would require cable companies, such as Verizon or Comcast, to allow customers to purchase channels or programs individually instead of relying solely on bundles.

Before the law went into effect, Maine's court system granted Comcast a temporary injunction claiming that the law violated the cable providers' First Amendment rights. According to Comcast's lawyers, the First Amendment violation occurred in two forms: “First, that Maine mandating cable operators sell every channel and program individually was overriding the editorial choices of cable operators and programmers. The second was that the law was singling out cable providers since many consumers received television through satellite or online broadcast options.”

While Maine eventually sought an appeal, the court declared in 2021 that the law “triggers heightened First Amendment scrutiny because it 'singles out' cable operators.”

Cato Institute fellow Walter Olson also noted the broad strokes of the law, saying, “Maine's law was written in a way that asked not only to sell channels independently but programs as well. That meant that if a channel wanted to broadcast sports games, it would have to allow consumers to buy each sports game separately. Maine poorly framed the legal definitions, and that's why it did not survive in court.”

Cable companies have been bundling channels together since 1992 when Congress passed a bill that enabled more prominent broadcasters to bundle their smaller niche channels with the primary channels. For example, Fox uses this practice to bundle Fox News, FX, and Fox Sports into a singular package alongside its competitors. However, some lawmakers have pushed back on the bundling practice. The late Sen. John McCain proposed the Television Consumer Freedom Act in 2013 in the Senate, introducing a la carte pricing as a national option.

Studies found that removing the bundling option puts many channels at a disadvantage and increases the cost based on selective channel pricing. Other organizations argue that a la carte would limit content diversity and diminish black-centric and religious channels' income. The introduction of streaming platforms, such as Disney+ and Discovery+, also cause complications because they bundle specific types of programming and channels on their internet-based streaming platforms.

When asked about future attempts to make a la carte cable sales possible, Olson said he believes it could happen in time. The process would require better legal definitions and categories, however. A representative for Comcast told the *Washington Examiner* that the industry of cable providers as a whole would prefer to let the market make such determinations about content access rather than the government.