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Testimony on L.D. 1185, "An Act To Establish the Municipal Gigabit Broadband Network Access Fund"

Presented by Representative Norman E. Higgins District 120

Energy, Utilities, and Technology Committee
April 21, 2015

Good afternoon Senator Woodsome, Representative Dion, and fellow members of the Joint Standing Committee on Energy, Utilities, and Technology:

I am State Representative Norman Higgins, and I proudly represent District 120, which includes the towns of Atkinson, Brownville, Dover-Foxcroft, Medford, and Milo, along with Lake View Plantation and Orneville Township in southern Piscataquis County. It is an honor to appear before you for the purpose of introducing L.D. 1185, "**An Act To Establish the Municipal Gigabit Broadband Network Access Fund.**"

This legislation establishes the Municipal Gigabit Broadband Network Access Fund within the Department of Economic and Community Development (DECD) for the purpose of fulfilling six stated goals:

1. to provide high-speed broadband access to attract, create, and grow the State's economy, as well as to market the products and services of Maine firms both nationally and internationally;
2. to provide access to real time data and communications for agriculture, fishing, and forestry;
3. to provide expanded healthcare services by facilitating access to telemedicine and further apportion State and local resources to senior citizens, which will enable them to remain in their homes longer;
4. to expand educational opportunities for K-12 students utilizing virtual and distance learning. This will, in turn, help to minimize the impact of limited educational resources in rural Maine;

Over, please

District 120 Atkinson, Brownville, Dover-Foxcroft, Medford, Milo and Plantation of Lake View, plus the unorganized territory of Orneville Township

5. to cultivate broader public access for municipal and county governments, including law enforcement entities; the judicial system; and child, youth, and family social services; and
6. to provide expanded residential services to support employment opportunities for home-based businesses.

Why do we need high-speed broadband Internet?

There is a shared consensus by the public and members of the Legislature that high-speed broadband Internet is the foundation for economic advancement in Maine. While public tax policy and reasonable and stable energy costs are often cited as the key ingredients for the State's economy, the missing link is accessible high-speed Internet. We know that over 75% of new jobs are created by small businesses, and over half of these new jobs are created by people under thirty-five. This population expects high-speed Internet as a condition for job growth. Our state has placed a premium priority on attracting young, educated people while retaining our present resident young adults. It is our quality of life that entices them to the Pine Tree State, but it is access to high-speed technology that will keep them here.

When should we implement high-speed internet across our state?

Ask our business community or the general population this question and the answer is **YESTERDAY**. In 2009, the federal government invested millions of dollars in installing an 1,100 mile dark fiber network. The Three Ring Binder extends in rural Maine and makes available a foundation for high-speed broadband Internet. There is wide-ranging disbelief that this important resource is under-utilized. Consequently, the answer to the aforementioned question is **NOW**.

How can we "kick Start" Maine to be a broadband leader?

Planning Grants

L.D. 1185 directs the DECD to manage the Access Fund to promote economic development by establishing municipal public-private gigabit broadband networks. The Access Fund provides up to \$20,000 to a municipality or regional partnership with a \$5,000 local cash match to develop a comprehensive local plan. The plan will require:

1. information on how the municipality will use high-speed broadband to fulfill its economic development goals;
2. a written commitment to non-discriminatory, open-access to the broadband infrastructure;
3. a written summary of public forums that gathered information in the development of the plan;
4. the identification of how broadband networks expand access to State and local services; and
5. a summary of input received from the business community.

The development of a well-crafted plan involving multiple stakeholders is fundamental to effective implementation of a community-based initiative.

Implementation Grants

A municipality or regional partnership, when certified as a broadband ready community by the DECD, shall be eligible to apply for an implementation grant of \$200,000. Each grant will require a 25% cash match at the local level. The DECD shall award a minimum of twenty-five such grants. Fifteen grants shall be awarded to economic disadvantaged communities based on a criteria established by the Department.

Technical Assistance

The DECD shall establish standards for implementation and a process for awarding planning and implementation grants. The DECD shall conduct six related workshops in certain regions of the State and shall assist communities in the selection of consultants, implementation contractors, and requests for an Internet service provider.

Evaluation

The DECD shall perform an evaluation of the effectiveness of the municipal broadband network grants and of the overall effectiveness of the Access Fund. The evaluation shall identify best practices, barriers to implementation, and the effect on the local and State economy. The DECD shall report its findings to the Energy, Utilities, and Technology Committee by January 1, 2017.

In summary, earlier today, we learned more about L.D. 1063, which outlined one approach for increasing broadband Internet availability by expanding the role and mission of ConnectMe. Recently, we heard about the need to address the unserved and underserved areas of our State. In addition, the Committee will have several associated bond proposals to consider. This bill, L.D. 1185, offers a different approach. It is not a bond, nor does seek to instill a tax on wireless services. Instead, L.D. 1185 is a direct request for a \$6 million appropriation from the General Fund. If addressing our broadband needs is actually worth achieving, it is surely worth paying for in the State budget.

Thank you for your consideration, and I ask for your support of L.D. 1185.



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CONNECTME AUTHORITY
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JEAN WILSON
CHAIR

TESTIMONY of Richard Thompson
Chief Information Officer, University of Maine System
Member, Connect Maine Authority

GREG McNEAL
DICK THOMPSON
RALPH JOHNSON
ANDREW S. HAGLER
AUTHORITY MEMBERS

LD 1185 – An Act to Establish the Municipal Gigabit Broadband Network Access Fund

**JOINT STANDING COMMITTEE ON ENERGY, UTILITIES
AND TECHNOLOGY**
April 21, 2015

Senator Woodsome, Representative Dion and Members of the Joint Standing Committee on Energy, Utilities and Technology, I am Richard Thompson, CIO of the University of Maine System and a member of the ConnectME Authority, and I am pleased to speak on behalf of the Authority neither for nor against LD 1185, *An Act to Establish the Municipal Gigabit Broadband Network Access Fund*.

The ConnectMe Authority is interested in good planning and coordinated efforts to increase broadband capacity and throughput across the State. This bill instructs the DECD, working with the Authority, to create additional broadband definitions through a public process. It further directs the Authority to review laws, rules and regulations to identify barriers that may impede access to federal, state or private funding that supports expanded broadband access. This may cause redundant work with other initiatives required of the Authority and even with new requirements that may come through this session.

We suggest that consideration be given to a strengthened partnership between DECD and the Authority within this bill. One opportunity is to include the Authority in the implementation grant process or assign the work specifically to the Authority. There may be other synergistic areas as well.

Thank you for the opportunity to speak and I will be available at the work session and can participate as you desire. I am would be happy to answer any questions.

Richard Thompson
Chief Information Officer, University of Maine System
Member, Connect Maine Authority

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TESTIMONY
Of
Belle Ryder
Town of Orono
Old Town - Orono Fiber Corporation
Before the Joint Standing Committee on Energy, Utilities and Technology
LD-1185
"An Act To Establish the Municipal Gigabit Broadband Network Access Fund"
LD-1323
"An Act To Expand Rural Broadband"

Tuesday, April 21, 2015

Senator Woodsome, Representative Dion, and Members of the Joint Committee on Energy, Utilities, and Technology, my name is Belle Ryder and I am the Assistant Town Manager for the Town of Orono. I testify today on behalf of the Town of Orono and the Old Town – Orono Fiber Corporation in support of both LD-1185 and LD-1323. These bills provide additional tools that local governments need to drive the creation of modern day broadband infrastructure in their communities.

The municipalities of Orono and Old Town have been working with the University of Maine System since 2011 to build a fiber-optic network with open access for retail broadband providers to sell modern broadband services to the residences and businesses in their communities. These efforts originally started as part of the national Gig.U initiative and most recently have resulted in the creation of Old Town - Orono Fiber Corporation through an inter-local agreement between the three parties.

Our initial plan was to attract private investment to create the fiber-optic network by identifying demand and helping define new business models for broadband providers. After pursuing these efforts for over a year we abandoned this approach. Even in our relatively densely populated neighborhoods with demonstrated high take-rates and near perfect demographics (college students and data-intense businesses are an easy sell for high-speed broadband) the private sector was hesitant to make the large, long-term investment fiber-optic networks require.

Since that first year we have attempted to develop the infrastructure for lease to retail service providers. To that end, we have unsuccessfully pursued various government grants, twice from the Northern Borders Regional Commission and most recently from the ConnectME Authority. While we were initially awarded a grant from the ConnectME Authority, Time Warner Cable successfully challenged that award and the grant was rescinded. While disappointing, this setback has not weakened our resolve. Our communities were built around easy access to the abundant network of waterways leading to the Penobscot River and the world beyond; today, the future of our communities is dependent on easy and abundant access to the world-wide information networks of the 21st century.

The strengths of LD-1185 and LD-1323 are many.

- They allow for ongoing funding rather than a one-time boost because communities are at different stages of planning and development.
- They recognize that solid planning is required before undertaking large capital projects.
- They highlight the advantages that public-private partnerships can bring to large, complex infrastructure projects.
- They support the creation of a competitive marketplace for the delivery of broadband services rather than creating broadband monopolies.
- They recognize that one size does not fit all and that there will likely be more than one answer to Maine's broadband challenges.
- Most importantly, these two bills signify that Maine understands that all levels of government; Federal, State, and local, have a role to play in fostering the development of the next generation of broadband networks as they all benefit from the societal gains these networks will enable.

It is for these reasons that the Town of Orono and OTO Fiber urges the committee to vote Ought to Pass on both LD-1185 and LD-1323.

Thank you very much for your time. I am happy to answer any questions you may have today or at future work sessions.

Testimony of Fletcher Kittredge, CEO, GWI
In Support of
LD 1185, "An Act To Establish the Municipal Gigabit Broadband Network Access Fund"
Tuesday, April 21st, 2015

Chairman Dion, Chairman Woodsome and Members of the Energy, Utilities and Technology Committee, I would like to testify in support of LD 1185. It is a carefully crafted bill with many strong points:

1. It promotes municipal broadband, one of the most promising techniques for enhancing Maine's broadband infrastructure.
2. It focuses on planning, a critical step before large investments in infrastructure are made.
3. By requiring matching funds, it requires communities to "put skin in the game".
4. Recognizing that lack of broadband infrastructure is a large problem that will take years to fix, it establishes a revolving fund which can be replenished by state, federal, nonprofit or private grants.
5. It recognizes the importance of the State in working to maximize federal funds for Maine broadband.
6. This is not a million dollar problem; it is far larger. The amount of money allocated is appropriate as a pump priming effort to start the process of building superior broadband architecture.

I believe that any bill passed out of committee ought to have these features of LD 1185. Further, I think that the concepts of large numbers of planning/development grants to dozens of towns could be the best way to quickly determine what works, and what doesn't work, at the lowest cost. In a new field such as gigabit broadband infrastructure, carefully monitored experimentation is the most prudent path forward and the one most likely to yield successful results.

While the overall structure of the bill is sound, I do have some concerns about specific features.

1. It seems to set up two centers of broadband infrastructure in state government. I believe that the ConnectME Authority ought to be strengthened and be the single center for broadband infrastructure expertise in Maine State government.
2. It does not allocate ongoing technical and economic staff to act as the central, non-partisan body in broadband infrastructure for the State, the public, and private industry. Conditions change, technology evolves, needs change. We will need to constantly reevaluate and refine. To avoid regulatory capture, there needs to be a strong, independent, and technically astute department with a knowledgeable staff dedicated to closely overseeing the State's investments.
3. While municipal broadband may hold promise now as a technique for providing broadband infrastructure, it isn't the only technique as conditions will likely change. There may be, particularly in the future, better tools and regional solutions. Any final bill should be neutral on techniques to solve the problem.

I believe LD 1185 forms a good foundation for closing the gap between Maine's broadband infrastructure today and the superior networks being built in the rest of the country.

Joint Standing Committee on Energy, Utilities and Technology

Testimony of Time Warner Cable
In Opposition

LD-1185

4/21/15

Senator Woodsome, Representative Dion, and member of the Joint Standing Committee on Energy, Utilities and Technology, Time Warner Cable offers the following testimony in opposition to LD-1185.

This bill proposes to set up the Municipal Gigabit Broadband Network Access Fund to be administered by the Department of Economic and Community Development. In doing so, the bill would set up a second broadband fund and have it administered by an entity other than the ConnectME Authority. It is not clear what advantage is gained by duplication of effort by the department and the Authority.

The bill presumes that municipal networks are the solution (to a still largely undefined problem) when the experience nationally demonstrates that municipally owned networks are problematic and sometimes disastrous.

The bill calls for public-private partnerships without establishing what that means. In practice, a public-private partnership often means it is the public that takes on the ownership, the liability and the risk and it is the private partner that provides services for a fee. If the economics of a network fail, as has often been the case around the country, it is the public that is left holding the bag.

This bill seems to be the cart to LD-1063's horse, and it places itself before the horse. That is, this bill funds municipal gigabit fiber-optic broadband networks with little inquiry into the need for such a network, the impact such networks would have on future private investment in broadband networks in Maine, or the economics of owning, maintaining, and operating such a network.

For the reasons stated above, Time Warner Cable respectfully opposes the bill.

TELECOMMUNICATIONS ASSOCIATION OF MAINE

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April 21, 2015

Senator David Woodsome, Senate Chair
Representative Mark Dion, House Chair
Members of the Committee on Energy, Utilities and Technology
127th Maine Legislature
100 State House Station
Augusta, ME 04333

**Re: LD 1185, An Act To Establish the Municipal Gigabit Broadband Network
Access Fund**

The Telecommunications Association of Maine (TAM) offers the following testimony in **OPPOSITION** to LD 1185, "An Act To Establish the Municipal Gigabit Broadband Network Access Fund".

This legislation seeks to appropriate millions of dollars for the sole purpose of solving an anecdotal problem. The simple reality is private industry in Maine has done a great job building out broadband. According to the FCC's 2015 Broadband Progress Report, 78% of all Maine residences currently have access to 25 Mbps download and 3 Mbps upload speed service. To use the common parlance, this is the equivalent of over 8 different Netflix shows being streamed simultaneously on 8 different devices in the home. In addition, companies have been deploying fiber throughout their networks in a manner that allows for even greater speeds for customers who want or need it. The drive towards municipal broadband is based on the anecdotal, but demonstrably false, idea that Maine lacks broadband or that Maine's companies are hopelessly mired in copper. The empirical data suggests the exact opposite is true. However, with that said, the first step in this process of developing a better broadband policy for the State must be determining what is in the communities, and what the communities actually need. In addition, the State can gather data by tracking the progress of municipalities such as Rockport and potentially Islesboro, that have chosen to place their own taxpayers' dollars at risk to see how they are doing after a few years of operation and learn from their successes and failures.

The other disconcerting part of this legislation is that it moves directly contrary to the long standing public utility policy that, to the greatest extent possible, financial risk should be borne by private money, not public money. This legislation would instead put millions of public dollars at risk in a manner that would actually drive away private dollars. Simply put, if a municipality builds its own facilities to the low cost and high margin locations in a community, it decreases the incentive for private companies to invest in those locations. Moreover, if the high margin locations in a community are taken, it makes it significantly less likely that a company would invest simply to reach the low margin portions of a town. Ironically, for a municipal network to be successful, this form of driving out private investment must happen, because the alternative is that private companies invest to provide services that undercut the value of the municipal offering leading to fewer people using the municipal network, which results in a decreased ability to recover sufficient funds to operate the network, which ultimately ends in bankruptcy and an increased taxpayer debt burden similar to what occurred in Burlington VT.

Accordingly, for the reasons set forth above, TAM would urge this committee to vote **OUGHT NOT TO PASS** on LD 1185, "An Act To Establish the Municipal Gigabit Broadband Network Access Fund".

Sincerely,

A handwritten signature in black ink, appearing to read "B. Sanborn", with a long horizontal flourish extending to the right.

Benjamin M. Sanborn, Esq.
Telecommunications Association of Maine

Testimony of FairPoint Communications

Before the Joint Standing Committee on Energy, Utilities & Technology

Regarding LD 1185, An Act To Establish the Municipal Gigabit Broadband Network Access Fund

April 21, 2015

Good afternoon, Chairman Woodsome, Chairman Dion, and distinguished members of the Joint Standing Committee on Energy, Utilities & Technology. My name is RoJean Tulk, and I am Director of Government Relations for FairPoint Communications. On behalf of FairPoint, I am here today to offer the following comments on LD 1185.

LD 1185 would appropriate \$12.5 Million from the general fund to establish and fund a so-called Municipal Gigabit Broadband Network Access Fund under the auspices of the Maine Department of Community & Economic Development (DECD). The monies contained in the MGBNAF would be earmarked for planning and implementation grants for municipal and community use in the creation of "gigabit fiber-optic broadband network(s)." While it may be informative to have a conversation about what types of broadband networks could be built with a large infusion of public funds, FairPoint suggests that this conversation is premature. The state of Maine is already rich with fiber-optic networks through companies such as FairPoint, Time Warner, Comcast, and Maine Fiber Company, so the need to overbuild more fiber networks is not in evidence.

At this point in time, raising significant public funds through taxation to fund more public networks would be a waste of time and money. However, one matter has become clear during the many broadband public hearings held so far this session: some of the state's municipalities, economic development districts, and other regional entities apparently aren't aware of the broadband resources currently available in their areas, whether via fiber optics or other technologies. Until these important facts are known, the state should not contemplate raising significant tax dollars to fund a perceived need that has yet to be identified.

LD 1185 calls for high-speed broadband access to, among other things, "...provide expanded health care services by facilitating access to telemedicine..." and "...expand educational opportunities for students across the State through virtual and distance learning." Maine has enjoyed significant tele-health services and distance learning for a number of years.

Whether the state needs to expand these types of services may be determined through further study and recommendation, but meanwhile, public policy makers should not spend time creating a state fund to deal with what is currently only a perceived need.

FairPoint, as much as any other broadband entity in the state, understands that Maine public policy needs to find efficient and effective ways to get broadband service to virtually all Mainers throughout the state. Broadband deployment has been FairPoint's primary goal since it took over the former Verizon territories in northern New England in 2008. The company immediately engineered and built a fiber-optic core network and expanded end-user broadband coverage from 67 percent to 87 percent within its footprint. We know how to run broadband networks, and we know how costly it is to build and operate them. The rural nature of Maine, along with its difficult topography, makes broadband deployment to the last "last mile" end users extremely challenging, both logistically and financially.

Therefore, we question whether it makes sense to foster gigabit networks throughout the state, and we strongly suggest that many areas don't and won't need them. We're also concerned that if gigabit networks become the requirement of future broadband investment, many people – particularly in the rural regions of Maine – will be left behind without adequate broadband service because their regions could not support the high cost of building and maintaining a gigabit network. We agree that public policy makers should be focused on attaining faster broadband service for Maine's rural areas, but focusing solely on financing gigabit networks will not result in wise investments for the state's true broadband needs.

Finally, we question the advisability of encouraging the development of municipal and other public networks. Broadband networks are expensive to build and expensive to operate and maintain. Public policy makers must determine whether it is in the state's best interest to attempt to promote competition between the public and private sectors, or whether such networks run the risk of producing future stranded costs when municipalities can no longer afford the high costs of operating and maintaining these networks.

Some portions of LD 1185 are similar to LD 1063 in that both bills provide for municipal or community planning grants, though their proposed funding mechanisms are different. We agree that understanding the extent of current broadband deployment is necessary to chart an efficient and effective course for Maine's future. If regional and municipal planning initiatives show compelling evidence that the state should develop funding mechanisms to assist private investment, those plans can and should be developed only after empirical data has been collected and verified.

FairPoint appreciates the opportunity to comment on LD 1185 and the proposals it contains. We're pleased to answer questions now and at the work session.



ENERGY, UTILITIES AND TECHNOLOGY COMMITTEE

TESTIMONY OF VERIZON COMMUNICATIONS

LD 1185 - An Act To Establish the Municipal Gigabit Broadband Network Access Fund

April 21, 2015

Chairman Dion, Chairman Woodsome, and members of the Energy, Utilities, and Technology Committee, my name is Jim Cohen of Verrill Dana, LLP, and I am here today on behalf of Verizon to speak *neither for nor against* LD 1185. Our primary purpose in speaking is to provide information to the Committee.

What would LD 1185 do? It would create a new fund under the ConnectME Authority, funded through the Maine's General Fund, to provide grants to units of local government to support "public-private partnerships to support a municipal gigabit fiber-optic broadband network" at "ultra high-speed" with "symmetric connectivity." The bill also directs the PUC to evaluate obstacles to allowing "broadband providers" to have "equitable access to utility poles."

More equitable funding mechanism. Verizon takes no position on the underlying bill because we offer a mobile voice and data product in Maine that is not addressed in this bill, which is instead focused on fixed wireline broadband services. However, we do wish to point out that the proposed funding mechanism in the bill is superior to the broadband funding mechanisms proposed in some other bills, for three reasons:

1. By using taxpayer funds to lower the cost of buildout, it addresses one of the barriers to buildout – namely, the lack of a sufficient return on investment in a geography;
2. It avoids making broadband service more costly through new fees on broadband, which would otherwise reduce customer adoption and create barriers to investment; and
3. It does not create any unfair cross-subsidies between the wireline broadband services the bill seeks to promote, and other unrelated services such as mobile voice or data. As we have elsewhere noted, it is not fair to burden the growth of mobile voice and data services that Maine values in order to promote fixed-base broadband services that Maine also values.

New York and Connecticut broadband initiatives NOT based on taxing providers. A number of states are focusing on efforts to expand access to high-speed broadband through fiber. Two highly recognized initiatives are in New York and Connecticut, neither of which rely on fees or taxes on providers. By contrast, both programs focus on attracting private investment and recognize that return on investment is a key element. The *New York* program leverages \$500 million in proceeds from bank settlements as 50% matching grants for private investors,¹ and the *Connecticut* program involves communities leveraging local assets and streamlined planning to encourage private investment.² Likewise, when *Chattanooga* built a municipal network, it leveraged a \$110M federal Stimulus grant.³ Similarly, the *North Carolina Next Generation Network* leveraged existing fiber, permitting assistance, and a strong customer base to attract a private partner to build, own, and operate a fiber network.⁴

¹ <http://www.ny.gov/programs/broadband-all>

² <http://ct.gov/broadband/cwp/view.asp?a=4524&q=525910>

³ http://www.nytimes.com/2014/02/04/technology/fast-internet-service-speeds-business-development-in-chattanooga.html?_r=0#

⁴ <http://ncngn.net/wp/faqs/>

Symmetric connectivity not needed. We would simply note that downloading and uploading are not the same and their speeds need not be symmetrical. The FCC has consistently recognized that there is a difference, and in recent years has established standards such as 4/1Mbps and now 10/1Mbps under the Connect America Fund (CAF), and it recently set 25/3Mbps as the definition of “advanced” broadband service. The FCC’s 2015 Broadband Availability Report notes the relative upload and download speeds necessary to meet what it considers to be “advanced” services:

Trends in deployment and adoption, the speeds that providers are offering today, and the speeds required to use high-quality video, data, voice, and other broadband applications all point at a new benchmark. The average household has more than 2.5 people, and for family households, the average household size is as high as 4.3. We take the needs of multiple users into account when considering what level of service is necessary to be considered advanced telecommunications capability. We consider, too, the services that providers are offering today, as well as the services that American consumers are choosing. With these factors in mind, we find that, having “advanced telecommunications capability” requires access to actual download speeds of at least 25 Mbps and actual upload speeds of at least 3 Mbps (25 Mbps/3 Mbps). (§3).

The Commission further illustrated the availability of certain services at differing upload and download speeds in the charts below:

Table 1: Simultaneous Household Uses 25 Mbps Versus 10 Mbps Download

	25 Mbps Download	10 Mbps Download
Download email; and participate in an online class	Yes	Yes
Stream 1 HD video	Yes	Yes
Participate in an online class, download files, and stream a movie	Yes	No
View 2 HD videos	Yes	No
Stream 1 4K TV service	Yes	No

Table 2: Simultaneous Household Uses 3 Mbps Versus 1 Mbps Upload

	3 Mbps Upload	1 Mbps Upload
Browse the web	Yes	Yes
Upload 2 large files ¹⁰⁰	Yes	No
Participate in online video chat	Yes	No
Participate in an online class and upload a file	Yes	No

Conclusion. We hope this information is helpful as the Committee considers how best to address the issues of broadband in Maine, and please let us know if we can provide anything else.



Maine Municipal Association

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Testimony of the Maine Municipal Association

In Support Of

LD 1185 – An Act To Establish the Municipal Gigabit Broadband Network Access Fund

April 21, 2015

Senator Woodsome, Representative Dion and members of the Energy, Utilities and Technology Committee, my name is Garrett Corbin and I am testifying in support of LD 1185 on behalf of the Maine Municipal Association (MMA) at the direction of MMA's 70-member Legislative Policy Committee (LPC).

LD 1185 establishes the Municipal Gigabit Broadband Network Access Fund within the Department of Economic and Community Development and capitalizes the Fund with an appropriation of \$12.5 million for FY 2016. The bill establishes the parameters for both planning grants (up to \$20,000) and implementation grants (up to \$200,000) to be awarded to municipal or multi-municipal applicants to establish access to gigabit fiber-optic broadband or ultra high-speed broadband infrastructure in their regions.

To members of MMA's Legislative Policy Committee, the approach to broadband expansion offered by LD 1185 is timely. As noted in MMA's testimony on other broadband bills before this Committee on April 2nd, municipal officials are very supportive of state efforts to assist the expansion of high-speed internet in the near-term. MMA's Legislative Policy Committee has made expanded access to reliable high-speed internet part of its 2015 legislative platform. This is a statewide issue with significant local ramifications.

Municipal officials also appreciate the forward-thinking nature of this legislation, aiming for the development of last-mile fiber optic broadband infrastructure at speeds of one gigabit/second. While the gigabit speed may seem to some opponents like a quicker speed than is needed today, broadband infrastructure expenditures should be targeted at future needs. Cell phones today have storage and processing capacities that exceed those of computers produced five years ago. Given the rapid pace of technology development, aiming for gigabit capacity is warranted. The trend is unquestionably toward ever-expanding demand for broadband capacity, not less.

Furthermore, the separation of grants into separate categories for both planning and implementation is wise given the differing needs of municipalities in each phase of the build-out process. Municipal officials view LD 1185 as a large step in the right direction, but a step that should not be mutually exclusive of other approaches offered in bills like LD 68, LD 465, LD 912, and LD 1063.



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April 21, 2015

**Office of the Public Advocate Testimony on LD 1185 “An Act to Establish the
Municipal Gigabit Broadband Network Access Fund”**

Chairman Dion, Chairman Woodsome and Members of the Energy, Utilities and
Technology Committee,

The Office of the Public Advocate testifies in support of LD 1185, An Act to
Establish the Municipal Gigabit Broadband Network Access Fund. The bill offers a wide-
ranging approach to addressing the state’s broadband needs, with an investment of general
fund appropriations that reflects the scope of this need. The bill’s Municipal Gigabit
Broadband Network Access Fund is an ambitious, public-ownership focused effort to jump-
start the construction of next generation telecommunications networks in Maine.

This testimony will focus on three elements of the bill: 1) community planning grants;
2) pole attachment; and 3) the role of the ConnectME Authority.

Planning Grants

The bill proposes to provide municipalities with matching grants to fund broadband
planning efforts, and provide technical support to those communities. Providing this kind
of assistance to communities is important to ensuring that those communities make
informed decisions regarding use of public funds for broadband investment. The bill offers
several novel and useful concepts not seen in other legislation that are particularly promising.
These include:

- The concept of a DECD –administered certification of a “broadband-ready community” and the requirement that an applicant “demonstrate . . . participation with public and private institutions.” To succeed, community efforts will need local champions, and these measures will help identify community and business leaders who can be those champions.
- The requirement that “the cash match for planning grants may not consist of funds provided by the vendor or private business that proposes to build, operate or provide retail services using [the network].” This is a reasonable limitation that will limit potential conflicts of interest.

Pole Attachment

The bill appropriately identifies the importance of equitable, transparent pole attachment rules in promoting broadband deployment in Maine. The bill directs the Public Utilities Commission to revise its pole attachment rules to support broadband investment and expansion, and recommend statutory changes to ensure equitable access to poles. The Commission’s existing statutory authority to set terms and conditions regarding pole attachments, found at 35-A M.R.S. § 711, could be read to be limited to disputes between a utility and an attacher, and pole attachment rates. If this interpretation were to prevail, the Commission’s ability to revise its pole attachment rules as contemplated by the bill would be substantially limited.

Role of ConnectME Authority

Finally, the bill places responsibility for the Municipal Gigabit Broadband Network Access Fund with the Department of Economic and Community Development (DECD), with no specified role for the ConnectME Authority. The change recognizes the centrality of broadband for economic development, but also creates a second administrative entity within state government focused on broadband, with a separate designated silo of funds. One of the traits that distinguishes Maine nationally on broadband matters is the close communication between broadband stakeholders within the state—a communication made possible by the existence of the ConnectME Authority. In short, there is value in a single,

centralized entity that offers a “one-stop shop” for state financial and technical support for broadband. I would urge the Committee to consider how to integrate this proposal within the existing ConnectME structure.

We look forward to working with the Committee on this bill and will be present at the work session.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Timothy R. Schneider".

Timothy R. Schneider
Public Advocate



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

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ADMINISTRATIVE DIRECTOR

April 21, 2015

Honorable David Woodsome, Senate Chair
Honorable Mark N. Dion, House Chair
Energy, Utilities and Technology Committee
100 State House Station
Augusta, Maine 04333

**Re: LD 1185, An Act to Establish the Municipal Gigabit Broadband Network
Access Fund**

Dear Senator Woodsome and Representative Dion:

The Public Utilities Commission (Commission) testifies neither for nor against LD 1185, An Act to Establish the Municipal Gigabit Broadband Network Access Fund. Our testimony addresses Section A-3, which would require the Commission to revise, by November 1, 2015, its utility pole attachment rules in a manner that will support the goals of the Municipal Gigabit Broadband Network Access Fund established in the bill. Section A-3 would also require that the Commission prepare a report, by February 15, 2016, containing any recommendations by the Commission regarding possible statutory changes to Title 35-A, chapter 7, that might be warranted to further the goal of ensuring equitable access to utility poles for all broadband providers in support of the goals of the Municipal Gigabit Broadband Network Access Fund.

Title 35-A M.R.S. § 711 authorizes the Commission to order that joint use be permitted of the system of conduits, subways, wires, poles, pipes and other equipment, or any part of them, on, over or under any street or highway, and to resolve disputes among various users of such facilities where agreement among them of the terms of such use has been unsuccessful. Were it not for the enactment of §711, and the adopting by the Commission of its existing implementing rules, the regulatory authority over such attachments in Maine would revert to the Federal Communications Commission (FCC) pursuant to a "reverse preemption" provision of federal law.

The language of 35-A M.R.S. § 711 has not kept pace with modern developments in methods of supplying communications services such as broadband access service, or with the types of carriers capable of supplying broadband access. For instance, the statute describes the types of firms that may seek Commission intervention to reach connection agreements with the firms that control space on utility poles, yet confers upon only one single "dark fiber" provider – the so-called "three ring binder" project that was funded, in part, through the receipt of one particular federal grant – a statutory right to access poles. "Dark fiber" is fiber-optic cable that is capable of transmitting high-speed data once attached to certain equipment that "lights" the fiber. The existing limitation of pole attachment rights for dark fiber to a single, non-incumbent local exchange carrier provider may be impeding private investment in this important part of the infrastructure necessary for the growth of a high speed broadband network. Statutory revisions to § 711 could help to encourage, and perhaps accelerate, the deployment of fiber to areas of Maine.

April 21, 2015

Likewise, the Commission's rule governing pole attachments, Chapter 880, was last amended in 1993 and is addressed largely to the apportionment of costs among telephone utilities, electricity distribution and transmission utilities, and cable television providers. More recently, in 2011, the FCC updated the pole attachment rules that it applies in jurisdictions that have not, like Maine, undertaken the regulation of pole attachments. We believe that a fresh look at Maine's pole attachment rule, in light of both the FCC's recent consideration of the topic and the likely increasing demand in Maine by non-traditional providers for space on utility poles, is warranted. The opportunity to do so in conjunction with an evaluation of possible revisions to the statutory language of 35-A M.R.S. § 711, may prove especially valuable.

The Commission looks forward to working with the Committee on LD 1185 and I would be happy to respond to questions the Committee has at this time. The Commission will also be present at the work session should the Committee have additional questions in its consideration of this bill.

Sincerely,



Paulina McCarter Collins, Esq.
Legislative Liaison

cc: Energy, Utilities and Technology Committee Members
Deirdre Schneider, Legislative Analyst