



State of Maine
Office of the Public Advocate
112 State House Station, Augusta, Maine 04333-0112
(207) 287-2445 (voice) 711 (TTY) www.Maine.gov/meopa

Paul R. LePage
GOVERNOR

Timothy R. Schneider
PUBLIC ADVOCATE

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Office of the Public Advocate Testimony on LD 1167 “An Act to Modernize Maine’s Broadband Standards”

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

The Office of the Public Advocate testifies in opposition LD 1167, An Act to Modernize Maine’s Broadband Standards. While the bill is well-intentioned, we are concerned that it replaces an existing, effective and objective standard currently used by ConnectME Authority to establish Maine-specific broadband standards.

In 2007 the Connect ME Authority adopted major substantive rules, subsequently approved by this Legislature, that govern the process for defining broadband service and un- and underserved areas. Those rules (excerpt attached) require the Authority to set minimum broadband performance criteria based “on the state of the market as well as the performance necessary to meet the current broadband needs of common applications and network services in use in the State.” Applying this standard, the Authority adopted a definition of 10 MBps download and 10 MBps upload in January of 2015.

The bill leaves in place language that requires the Authority to take into account whether its definition of un-served and underserved would “diminish the value of prior investment in advanced communications technology infrastructure within any area” and “whether investment is planned in an area within a reasonable time.” Other legislation under consideration by this Committee removes this language. The definition of broadband, and by extension the definition of un- and underserved, should be based on objective,

performance-based criteria, and not its effect on prior investment.¹ By definition, the determination that an area is unserved would reflect a conclusion that the prior investment is inadequate. Any reduced value would be the result of this inadequacy, and not the Authority's determination.

The Authority's existing rules for defining broadband largely omit this consideration in lieu of the objective criteria described above. Nonetheless, the bill reflects a concern that for many years, the Authority was slow to revise its definition in response to changes in the market.

The adoption of the 10/10 symmetric standard is an indication that the process established by this rule is working. The Authority, with the input of the Advisory Council, updated its definition to reflect changing needs and the state of the market.

The changes proposed by the bill, while not harmful, move the definition of unserved away from standards based on Maine's needs to external standards, such as the definition established by the FCC, or the actual broadband speeds in other New England states. While we do not believe that any change is necessary, the Committee should ensure that in considering any changes, ConnectME retains the authority to set state-specific broadband standards based on objective criteria.

Respectfully submitted,



Timothy R. Schneider
Public Advocate

¹ Similarly, the language in the existing statute implies a third category of "about to be served": those areas where "investment is planned . . . within a reasonable time." Providers have proven reluctant to provide information regarding their existing infrastructure, much less planned future upgrades, so as a practical matter this consideration has proven moot.

§ 5 DESIGNATION OF BROADBAND SERVICE AND ELIGIBLE AREAS

- A. **Broadband Service.** At least annually, the Authority must update the minimum performance criteria for broadband service, for the purposes of this Chapter. The Authority must base its criteria on the state of the market as well as the performance necessary to meet the current broadband needs of common applications and network services in use in the State.
1. **Criteria Governing Performance.** To determine minimum performance criteria, the Authority may consider:
 - a. Minimum sustained bandwidth for both upstream and downstream transmission;
 - b. Maximum latency;
 - c. Maximum jitter;
 - d. Minimum reliability; and
 - e. Any other performance criteria necessary for the use of common broadband applications and network services.
 2. **Criteria Governing Common Applications and Network Service.** To determine common applications and network services, the Authority may consider:
 - a. Real-time voice and video communication;
 - b. Audio and video streaming;
 - c. Network applications;
 - d. Network storage;
 - e. Collaborative work environments;
 - f. Interactive gaming;
 - g. File-sharing; and
 - h. Any other application or network service that facilitates communication, and data and content exchange.
 3. **Initial Standard.** Until the Authority makes the performance designation provided for in subsection 5(A), broadband is designated as a service capable of being used for the transmission of information at a rate that is not less

than 500kbps in both directions (symmetric or bi-directional) for residential and small business users, providing access to the Internet.

B. **Unserviced Areas.** At least annually, the Authority must designate unserved areas for broadband service and mobile communications service, using data under section 3 of this Chapter. The Authority may also designate unserved areas based on verifiable data provided by an individual or group.

1. **Broadband Unserviced Areas.** In designating an unserved area for broadband service, the Authority must find the following characteristics:

- a. The area is currently unserved by a broadband service provider; and
- b. A project to provide broadband service will not be completed in the area within one year.

2. **Mobile Communications Service Unserviced Areas.** In designating an unserved area for mobile communications service, the Authority will designate as unserved any area:

- a. Outside the -95dB area as indicated in maps provided pursuant to subsection 3(B) of this Chapter; and
- b. For which a project to provide mobile communications service will not be completed in the area within one year.

C. **Underserved Areas.** At least annually, the Authority will designate underserved areas for broadband service and mobile communications service, using data under section 3 of this Chapter. The Authority may also designate underserved areas based on data provided by an individual or group.

1. **Broadband.** In designating an underserved area for broadband service the Authority will consider the following:

- a. The lowest cost broadband service that is available is provided at a price that exceeds 150% of the statewide average for reasonably similar service; or
- b. The overall capacity, reliability, or quality of the broadband service available is inadequate to meet current or projected needs for the area.

§ 6 **ConnectME AUTHORITY SUPPORT**

A. **Eligible Areas.** The Authority will determine whether an unserved or underserved area is eligible for ConnectME support. The Authority's first priority will be to support projects in unserved areas where there are no prior plans to develop infrastructure improvements. In determining eligibility, the Authority will consider the following criteria:

1. **Broadband.** An eligible unserved or underserved area for broadband service may create an overlap in existing broadband coverage for less than twenty percent (20%) of households in the proposed coverage area;
2. **Mobile Communications Service.** An eligible unserved or underserved area for mobile communications service, one or more of these priorities:
 - a: Population data census blocks with more than 100 people per square mile;
 - b: Any public road with over 500 vehicles per day usage; or
 - c: Service center communities and high usage service “holes.”
3. **Private Investment.** Authority support for projects in the unserved or underserved area will not inhibit or impede private investment in the area; and
4. **Prior Investment.** Authority support for projects in the unserved or underserved area will not diminish the value of prior investment in advanced communications technology infrastructure used to provide broadband service or mobile communications service within the area.