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Broadband Infrastructure Deployment Working Group Report

*to the Joint Standing Committee on Energy,
Utilities and Technology, and the Joint Standing
Committee on Transportation*

Augusta, Maine | February 2014

Staffed by the ConnectME Authority
<http://www.maine.gov/connectme/>

With assistance by Planning Decisions, Inc.
www.planningdecisions.com

Table of Contents

Executive Summary	1
Chapter 1: Work Group Charge and Approach	3
Chapter 2: Dig Once for Transportation Projects.....	7
Chapter 3: Updating Pole Attachment Regulations	11
Chapter 4: Leasing State Property For Rural Broadband	15
Chapter 5: Broadband Sustainability Fee Repeal	18
Chapter 6: Helping Maine Municipalities Use Dig Once Policies.	22
Appendix A: Maine 2013 Legislative Resolve.....	23
Appendix B: Connecticut Utility Pole Management.....	26
Appendix C: Broadband Sustainability Fee Language	28

EXECUTIVE SUMMARY

In 2013, the Maine Legislature passed a resolve asking the ConnectME Authority to convene a work group to “identify technical, legal, funding and jurisdictional challenges” to broadband infrastructure deployment in Maine, and to “develop solutions necessary to achieve and facilitate the deployment of broadband infrastructure” (see Appendix A for text of resolve). This is the report of the work group convened by the ConnectME Authority; it does not reflect the position of the ConnectME Authority itself.

Maine has a relatively high level of basic internet service – more than 93% of street locations in Maine have access to broadband, according to data from internet providers. But this service is limited. Many Maine households and businesses fail to reach the minimum connection speeds for Tier 1 speeds and levels of service, which are associated with common internet functions such as web-based email, sending and receiving small files, and limited web browsing. Many things must happen in order for higher speed internet service to become available to all Maine households and businesses, but one essential is that the infrastructure of wired and wireless service available to rural Maine must improve.

A key strategy that is being promoted by the federal government and implemented in other states is called “Dig Once.” Dig Once is a policy that encourages the co-location of broadband conduit whenever roads, bridges, or other government rights-of-way are dug up. The US Federal Highway Administration notes that Dig Once policies are most applicable in urban areas with high-density development that want to minimize traffic disruption, or have limited space under the roadbed. A Dig Once policy has limited applicability in Maine. The Maine Department of Transportation (MDOT) rebuilds only 10-60 miles of its approximately 8,500 miles of road each year. A blanket policy of installing broadband conduit in every construction site would lead to multiple, unconnected fragments of broadband conduit. Also, as is the case in neighboring Vermont, telecommunications infrastructure in Maine is almost entirely on aerial utility poles due to geography and cost.

The Work Group considered the broad range of issues relating to access which are mentioned in the resolve, including Dig Once policies for bridges and large road projects, open-access issues for right of ways and pole attachments, the potential use of state-owned property for broadband expansion, existing price structures that impede the open-access nondiscriminatory use of conduit, and other administrative strategies that promote the expansion of broadband capacity through municipal policies.

After review, the Work Group recommends that the following actions be taken to remove challenges to the deployment of broadband conduit in Maine.

*1) The **ConnectME Authority** serve as the clearinghouse identifying otherwise unknown broadband providers that may need to be included in Maine Department of Transportation and Maine Turnpike Authority construction projects. In this arrangement, MDOT and the Maine Turnpike Authority will work with the ConnectME Authority to establish and implement*

procedures to identify work plan project locations of potential interest to broadband providers. ConnectME staff will, in turn, notify broadband providers operating in the area of the project to let them know about the opportunity to install conduit.

2) If, in the analysis of ConnectME staff, there is a business case for building conduit into a given bridge project, but there is no broadband provider with the resources to take the expense on, we recommend **that ConnectME be given the legislative authority to use its available grant funds** to:

- a. **Assist a local broadband provider to buy conduit** in the construction project; or
- b. In the absence of an interested local provider, **buy conduit itself** in the project, with the goal of leasing the conduit out and repaying the state fund in the near future.

3) The Maine legislature direct the Maine Public Utilities Commission to **review its existing pole attachment regulations** and make such revisions as may be necessary to facilitate the deployment of broadband access throughout the state. In this review, the Commission should examine the FCC's current guidelines on pole attachment procedures and costs and consider whether existing Maine regulation is in harmony with the federal approach. While the FCC's guidelines on pole attachment procedures do not of their own force apply in Maine, the FCC's approach to cost allocation and the establishment of predictable procedures for pole attachments is likely to provide helpful insight into the appropriate regulatory approach for Maine.

4) The Maine legislature direct the Maine Public Utilities Commission to review Title 35-A, Chapter 7, and recommend any statutory changes needed to **ensure that there is clear and equitable access to utility poles for all wireline and wireless broadband providers** that "advance Maine's state broadband policy to develop a secure, reliable and sustainable forward-looking infrastructure that can meet future broadband needs." This would enable the PUC, as part of its larger inquiry into pole attachments rules, to identify any existing statutory barriers that prevent broadband providers, regardless of technology or regulatory status, from using this essential infrastructure to expand access throughout Maine.

5) The ConnectME Authority work with the Maine Office of Information Technology and the Bureau of General Services to **review current state property lease standards for broadband provider accessibility in unserved areas**, and propose any relevant legislative changes to the Maine Legislature. In reviewing current state standards, ConnectME, OIT and BGS should use Vermont's wireless attachment policies for state property as an example.

6) The Maine Legislature **repeal the Broadband Sustainability Fee**.

7) The **ConnectME Authority and the Maine Municipal Association (MMA) work together to serve as a resource for municipalities** for Dig Once policies.

CHAPTER I: WORK GROUP CHARGE AND APPROACH

Resolve

In 2013, the Maine Legislature passed a resolve asking the ConnectME Authority to convene a work group to “identify technical, legal, funding and jurisdictional challenges” to broadband infrastructure deployment in Maine, and recommend policies to the Maine legislature (see Appendix A for text of resolve).

For purposes of this report, “broadband” refers to internet access that is always on, and has sufficient speed and capacity to download reports and videos and similar materials. The group was tasked with developing policies to increase coordination among government agencies, including (but not limited to) state agencies, municipalities, and utility companies, for the purposes of decreasing the frequency of road excavations and expanding broadband capacity. Other work group duties included reviewing federal dig once policy, other states’ broadband deployment strategies, right of way issues, and administrative and funding models. The work group was to submit a written report to the Joint Standing Committee on Energy, Utilities and Technology and the Joint Standing Committee on Transportation by February 1, 2014.

The resolve named ten groups to be represented on the work group: the Maine Public Utilities Commission, the Chief Information Officer of the Maine Department of Administrative and Financial Services, the Department of Economic and Community Development, the Maine Department of Transportation, the Maine Public Advocate’s office, the Maine Turnpike Authority, the Maine School and Library Network, the Maine State Chamber of Commerce, the Maine Municipal Association, a member of the public with significant knowledge of communications technology, and other parties “at the discretion of the authority.” All except the Maine State Chamber of Commerce were available to participate. The members of the group are:

- Michael Johnson, Staff Analyst, Maine Public Utilities Commission
- Andrew Hagler, Director, Telephone & Water Division, Maine Public Utilities Commission
- Greg McNeal, Chief Technology Officer, Office of Information Technology
- Kristine Schumann, Maine Department of Economic and Community Development
- David Bernhardt, Commissioner of the Maine Department of Transportation
- Brian Burne, Maine Department of Transportation
- Tim Schneider, Maine Public Advocate
- Peter Mills, Executive Director of the Maine Turnpike Authority
- Jeff Letourneau, Executive Director, Network Maine (Maine School and Library Network)
- Kate Dufour and Garrett Corbin, Maine Municipal Association
- Joshua Broder, President, Tilson

The legislation creating the resolve went into effect on October 1, 2013. The work group was created in September by the ConnectME Authority, and met in October and December of 2013,

and January of 2014. The group was staffed by the ConnectME Authority, with assistance from the Maine consulting firm Planning Decisions, Inc. This is the work group's report.

Approach

The fundamental concern raised by the resolve is what policies the State of Maine might pursue in order to increase the accessibility of broadband infrastructure (and services) to rural Maine.

Maine has a relatively high level of basic internet service – more than 93% of street locations in Maine have access to broadband, according to data from internet providers. But this service is limited. Many Maine households and businesses fail to reach the minimum connection speeds for Tier 1 speeds and levels of service,¹ which are associated with common internet functions such as web-based email, sending and receiving small files, and limited web browsing.² Maine ranks 49th in internet speeds in the nation, with an average download capacity that just barely qualifies as Tier 1 broadband access. More information about the status of broadband speeds in Maine can be found at <http://www.maine.gov/connectme>, which includes the December 2013 report from the Governor's Broadband Capacity Building Task Force, as well as the most recent connection survey data from the James W. Sewall Company.

Many things must happen in order for higher speed internet service to become available to all Maine households and businesses, but one essential is that the infrastructure of wired and wireless service available to rural Maine must improve. A key strategy that is being promoted by the federal government and implemented in other states is called "Dig Once." Dig Once is a policy that encourages the co-location of broadband conduit whenever roads, bridges, or other government rights-of-way are dug up.

In 2013, the US Federal Highway Administration (FHWA) sent a letter to state transportation leaders, encouraging them to "take an active role in accommodating broadband infrastructure on highway rights of way." The letter, which was received by the Maine Department of Transportation, included a copy of a 2012 Presidential Executive order (*Accelerating Broadband Infrastructure Deployment*) which ordered the FHWA and federal agencies to do the same thing at a national level. The letter included a list of policy options for states to consider, including developing a statewide broadband plan, making information about conduits and fiber available electronically, reviewing state utility accommodation policies and coordinating with utilities to minimize repeated excavations for broadband installation in the public right of way.³

The FHWA estimates that roadway excavation accounts for 90 percent of the cost of broadband deployment, and that coordinating highway projects with broadband conduit installation can

¹ James W. Sewall Company for the ConnectME Authority, *Developing Broadband in Maine: Baseline Update 2013, Volume 1*, Retrieved from <http://www.maine.gov/connectme> (publication pending)

² *The Whole Picture: Where America's Broadband Networks Really Stand*, February 12, 2013, by Richard Bennett, Luke A. Stewart and Robert D. Atkinson, <http://www.itif.org/publications/whole-picture-where-america-s-broadband-networks-really-stand>; and *Exploring the Digital Nation: America's Emerging Online Experience*, Prepared by National Telecommunications and Information Administration and Economics and Statistics Administration, June 2013, <http://www.ntia.doc.gov/report/2013/exploring-digital-nation-americas-emerging-online-experience>

³ Letter from FHWA/DOT Administrator Victor M. Mendez to state transportation leaders, August 2013

save on excavation costs. A “Dig Once” policy minimizes the “number and scale of excavations when installing telecommunications infrastructure in highway rights-of-way.” The FHWA notes that dig once policies are most applicable in urban areas with high-density development that want to minimize traffic disruption, or have limited space under the roadbed.⁴ Most states do not have explicit dig once policies, but there are a variety of state and local initiatives that promote a similar idea. The FHWA notes that the majority of Vermont’s telecommunications infrastructure is on telephone poles; their statewide broadband infrastructure policies include comprehensive guidelines on pole attachments.⁵

Strictly speaking, a Dig Once policy has limited applicability in Maine. The Maine Department of Transportation (MDOT) rebuilds only 10-60 miles of its approximately 8,500 miles of road each year (see Figure 1).

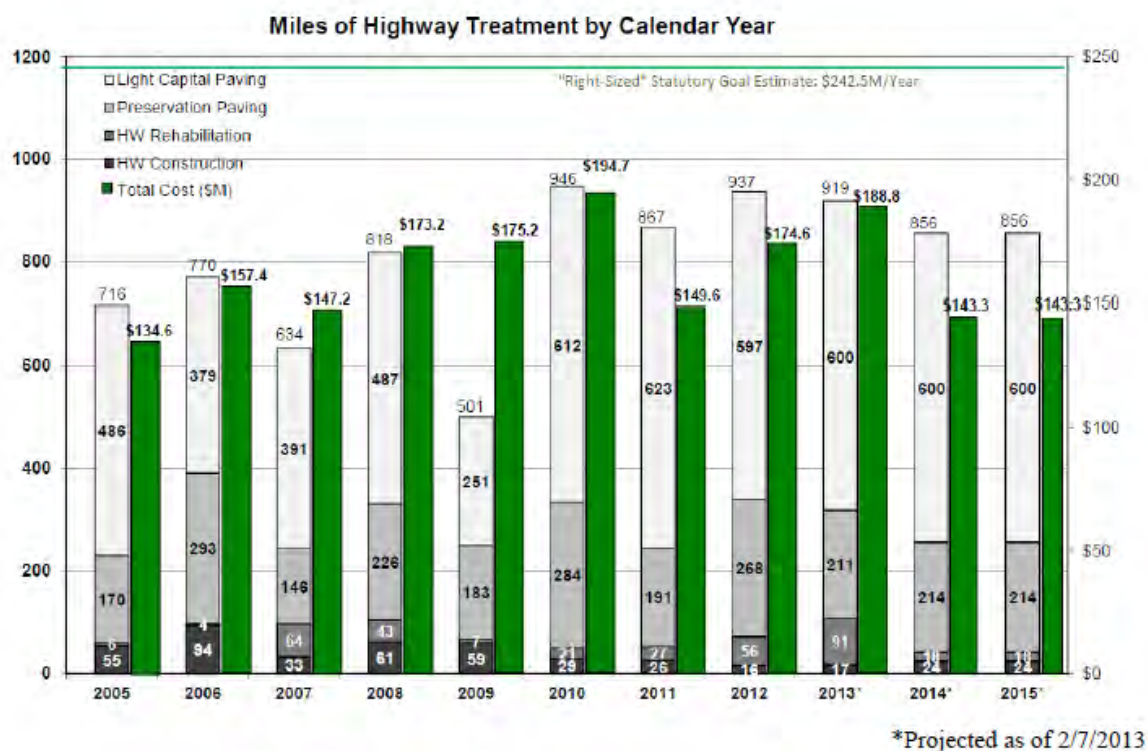


Figure 1: Miles of Road Rebuilt Per Year

A blanket policy of installing broadband conduit in every construction site would lead to multiple, unconnected fragments of broadband. As is the case in neighboring Vermont, telecommunications infrastructure in Maine is almost entirely on aerial utility poles due to geography and cost. This includes the recently constructed 3-Ring Binder, which provides 1,100

⁴ Federal Highway Administration Office of Transportation Policy Studies. Policy Brief: Minimizing Excavation Through Coordination. October 2013

⁵ Federal Highway Administration Office of Policy and Governmental Affairs. Executive Order: Accelerating Broadband Infrastructure Deployment: Background Paper and Work Plan Strategy. December 2012

miles of dark fiber to the state.

Therefore, the work group has considered the broad range of issues relating to access which are mentioned in the resolve:

- Dig Once policies and funding models with regard to bridges and large road projects (see Chapter 2);
- Open-access issues with regard to right of ways, as well as other states' experiences related to pole attachments (see Chapter 3);
- Exploring the potential use of state-owned or leased property to expand broadband access to rural areas, as part of a statewide broadband infrastructure plan (see Chapter 4);
- Existing price structures that impede the open-access, nondiscriminatory use of broadband conduit (see Chapter 5); and
- Other administrative strategies that promote the expansion of broadband capacity through municipal policies (see Chapter 6).

CHAPTER 2: DIG ONCE FOR TRANSPORTATION PROJECTS

Although it doesn't make sense to add broadband conduit to *every* highway project in Maine, it does make sense to add conduit to *some* projects.

Bridges are a specific example. If conduit is installed on bridges at the time of their construction, the cost is much less than if conduit has to be attached to bridges at a later time. This is particularly an issue for bridges with longer spans which cannot be crossed aerially by way of poles. The Maine Department of Transportation (MDOT) constructs around 1,000 linear feet of bridges with spans over 200 feet each year. In the 2014 MDOT work plan, there are 7 bridge replacements scheduled that will cost over \$3 million (see Figure 2 for historic trends).

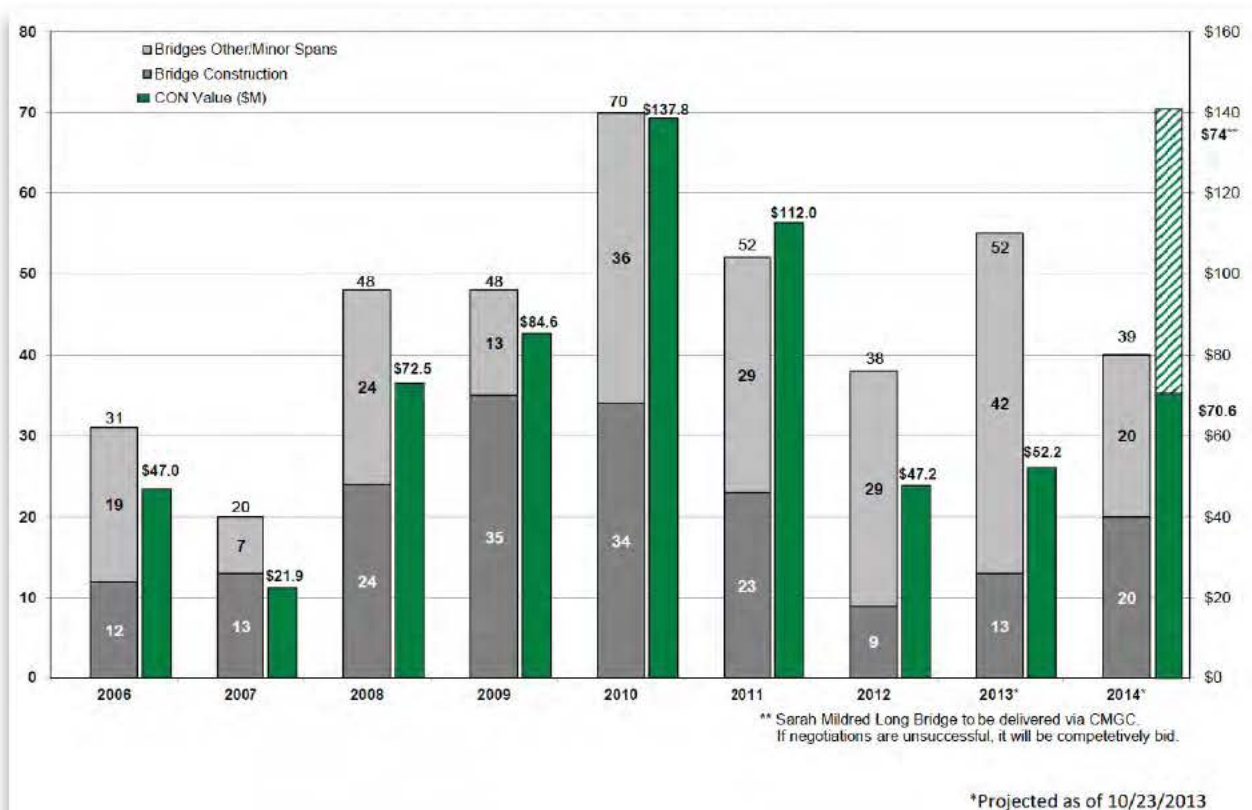


Figure 2: MDOT bridge construction

Like MDOT, the Maine Turnpike Authority has many bridges, some spanning rivers, and most crossing above the turnpike to provide local road access over the highway. These bridges were built in the 1950s and 1960s, and are now approaching their replacement age. In the next twenty years, it can be expected that dozens of bridges will be replaced. In some of these cases, it is likely that broadband conduit would be a useful addition. In 2014, the Turnpike Authority has \$35 million in bridge work scheduled.

Beyond bridges themselves, there may be occasional large road construction or reconstruction

projects that also will offer an opportunity for building conduit into the right of way. In 2014, MDOT will have five highway construction and reconstruction projects that will involve more than \$3 million in expense. In addition, there has been continuing discussion of the development of a possible “energy corridor” through Maine in the last several years, and a state interagency review panel has been established to negotiate compensation terms in the event that the idea becomes real. In the coming years, some of these projects may justify the addition of broadband conduit.

There are many variations in the way MDOT and the Turnpike Authority engineer and bid out bridge projects. The construction technique of greatest interest involves prestressed, precast concrete bridges. Such bridges can either have conduits built into the span, or have anchors attached below the deck at regular frequencies to hold conduit. Once a prestressed precast concrete bridge is built, the opportunity for building conduits into the span is lost forever, and the cost of gluing hangers onto the bottom of the deck is high. Therefore, the cost-effective solution is to accommodate conduit at the point of construction.

Currently, MDOT contacts the major utilities during the engineering phase of large bridge projects to inquire if they wish to pay for conduit on the structure. If the utilities are interested, MDOT charges them the cost of the added conduit for the project. If they are not interested, the conduit is not built. Sometimes the utilities indicate no interest during the engineering phase, then change their minds during construction or after the construction is complete. By that time, the cost of the addition is much higher. The prohibitive cost may cause the utility to look for detours over poles, sometimes taking the lines miles out of the way of their logical routes.

There are two ways this cumbersome system presents issues for broadband provision in rural Maine:

- 1) Broadband service is being provided by multiple groups in Maine, not just the large utilities, and the actors are shifting constantly. So many broadband service providers don’t know when a conduit opportunity presents itself on a bridge project; and
- 2) Bridges last for decades; it may be that there is no demand for conduit today on a given bridge from existing utilities, but sometime in the future it can be anticipated that such a need will likely occur. There is no way in the present system to pay for conduit to be added in anticipation of likely future demand.

We recommend that:

- 1) ***The ConnectME Authority serve as the clearinghouse identifying otherwise unknown broadband providers that may need to be included in Maine Department of Transportation and Maine Turnpike Authority construction projects. In this arrangement, MDOT and the Maine Turnpike Authority will work with the ConnectME Authority to establish and implement procedures to identify work plan project locations of potential interest to broadband providers. ConnectME staff will, in turn,***

notify broadband providers operating in the area of the project to let them know about the opportunity to install conduit.

- 2) *If, in the analysis of ConnectME staff, there is a business case for building conduit into a given bridge project, but there is no broadband provider with the resources to take the expense on, ConnectME be given the legislative authority to use its available grant funds to:*
- a. Assist a local broadband provider to buy conduit in the construction project; or*
 - b. In the absence of an interested local provider, buy conduit itself in the project, with the goal of leasing the conduit out and repaying the state fund in the near future.*

We do not believe that these activities require new implementing legislation. The ConnectME Authority is currently empowered, under Title 35-A, Section 9204, to:

2. Enhance communications technology infrastructure. *The authority, through partnerships, grants, direct investment, loans, demonstration projects and other appropriate means, shall, in a competitively neutral fashion and without giving preference to any one form of technology over another:*

- A. Monitor wireless coverage in areas where the authority determines the quality of the coverage is inadequate; [2005, c. 665, §3 (NEW).]*
- B. Determine whether an area is an unserved or underserved area; [2005, c. 665, §3 (NEW).]*
- C. Expand the availability of broadband service to residential and small business customers in unserved or underserved areas. In awarding grants, the authority shall give priority to those proposals that, relative to other proposals, extend access to broadband service to a higher percentage of an unserved area within a municipality or other appropriate geographic area; [2009, c. 63, §2 (AMD).]*
- D. Expand the availability of broadband with bandwidth, synchronicity, reliability and security adequate to serve business, education and enterprise consumers in unserved or underserved areas; [2005, c. 665, §3 (NEW).]*
- E. Otherwise enhance the State's communications technology infrastructure in unserved and underserved areas; and [2005, c. 665, §3 (NEW).]***
- F. Cover reasonable administrative costs of the authority. [2005, c. 665, §3 (NEW).]*

The proposed activities do not transgress the limitations of the Authority (see below):

4. Limitations on activities of the authority. *The authority may not develop, acquire, fund, coordinate or otherwise undertake any project or make any grant, direct investment or loan under this chapter unless:*

- A. The action is taken on behalf of, in partnership with or in support of one or more communications service providers that are remitting assessments to the authority under section 9211; and [2005, c. 665, §3 (NEW).]*

B. The authority determines that, without the authority's action, the installation of adequate advanced communications technology infrastructure in an unserved or underserved area would not otherwise occur. [2005, c. 665, §3 (NEW).]

We believe, however, that an expression of legislative intent, indicating support for this initiative, would be useful.

We also do not anticipate that this use of funds will involve large amounts of money, or will occur frequently, in the years ahead; but for those rare occurrences where the need occurs, and the ConnectME Authority Board concurs with the business case for action prepared by the staff, it will be helpful for the ConnectME Authority to have this arrow in its quiver.

CHAPTER 3: UPDATING POLE ATTACHMENT REGULATIONS

As was mentioned previously, telecommunications infrastructure in Maine is almost completely aerial.⁶ This means that the wires for broadband internet are attached to utility poles, near the wires for telephones, cable television, and other services. Utility poles are owned by private utility companies. Pole owners are required to rent space, when it is available on the pole, to other specified utilities.

A 2012 ConnectME report found that “The issue of access to existing utility poles and the cost and time for make-ready work is a large challenge for independent wired broadband service providers, both for last-mile and middle-mile facilities.”⁷

The two problems of access and cost are described separately below.

The problem of access

Maine statute gives the Maine Public Utilities Commission authority to order joint use of poles by certain groups, provided that “reasonable compensation” is provided to pole owners under “reasonable terms and conditions”⁸

Under Maine statute, the following groups are allowed to attach to poles:

- Public Utilities (gas, natural gas, electricity, telephone, water and ferry)
- Voice Service Providers (two-way voice communication, but not dark fiber)
- Dark Fiber⁹ Providers who received federal stimulus funding before January 2010 (this is only one company, the Maine Fiber Company, which was established to install and manage the Three Ring Binder)
- Wholesale Competitive Exchange Carriers (competitive telecommunications)
- Cable Television Systems

Although dark fiber providers are allowed to attach to utility poles as a telephone utility, the statute is limited to dark fiber providers that received federal stimulus funding before January 2010 – which is Maine Fiber Company, the company that administers the Three Ring Binder of dark fiber in Maine. Maine Public Utilities Commission pole attachment regulations have specific information about attachments by electric utilities, telephone utilities, and cable television systems – but not other types of providers. While many cable television systems provide broadband internet service, there is no clear space for new providers, or existing broadband providers that are not also cable television systems.

⁶ Tilson Fiber Technology, Highway Broadband Utilization Study, Dig Once White Paper. March 2013.

⁷ ConnectME Authority. Annual Report on the Activities of the ConnectME Authority, January 13, 2012. Accessed at <http://www.maine.gov/connectme/documents/ConnectMEAnnRpt2012.pdf>

⁸ <http://www.mainelegislature.org/legis/statutes/35-A/title35-Asec711.html>

⁹ “Dark fiber” is optic fiber used in telecommunications that is in place, but as of yet unused.

Since a new broadband provider whose business does not fit neatly within statutory class of those entitled to obtain access to poles may, in some cases, potentially compete with the utility company owning the pole, there is no incentive for the pole owner to provide access to the pole at a reasonable cost, and at present there is limited statutory power at the Maine Public Utilities Commission to prevent such uncompetitive behavior.

The problem of cost

The Maine Public Utilities Commission regulates pole attachment costs, allocations of pole space and other procedures necessary for pole attachments by electric utilities, telephone utilities and cable television systems. For a standard-size pole, the electric utility likes to locate its wires at the top of the pole, followed by telephone utilities and cable television systems (see Figure 3).

The PUC allows the owner of the utility pole to charge “reasonable expenses” for:

- a) A one-time charge to make the pole ready for the new attachment, which may include the cost of rearranging other wires on the pole. This is called a “make-ready” charge; and
- b) A monthly charge for maintenance such as tree-trimming and brush control. The PUC determines an allowable monthly rate by the cost of service for the pole, multiplied by the percent of wires on the pole allocated to the new attacher. The rates vary by type of attachment and service area.¹⁰

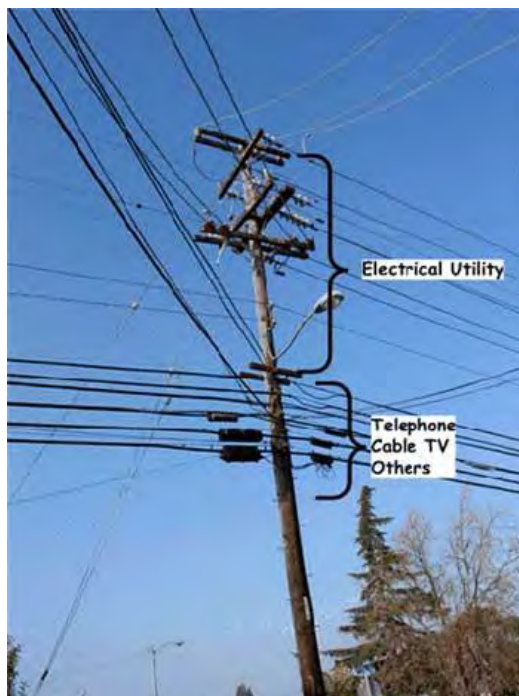


Figure 3: Typical Pole Space Allocation
(telephone and cable tv in no particular order)

Pole attachment fees are typically annual, with 50 percent paid every six months.

There are many ways the owner of a pole can obstruct or slow down others who wish to attach to the pole. The owner can claim that the pole is fully used and deny access; the owner can charge a high make-ready fee for moving wires around; the owner can simply be slow to respond and negotiate, thus stretching out time and costs for the requesting organization. These are not common problems in Maine; most pole negotiations are efficient and cooperative. Still, the potential for obstacles or unexpected costs and delays figures into the business plans of new broadband providers, and it discourages new investment. Additionally, existing regulations in Maine don’t provide sufficient clarity on pole attachments for wireless

¹⁰ Maine Public Utilities Commission. Chapter 880: Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedures.

broadband providers, an important emerging technology that may play an important role in providing ubiquitous broadband access, particularly in rural Maine.

This is a problem across the country. In 2011, the Federal Communications Commission (FCC) issued an order to revise federal pole attachment rules to accelerate broadband buildout. The new FCC rules created timelines for utilities to respond to pole attachment requests and identify necessary “make-ready” work, and also reduced rate disparities and encouraged negotiated resolution procedures for pole attachment disputes.

The new FCC rules do not apply to Maine. Maine is one of 30 states that regulates its own utility pole attachments. The work group believes that as Maine reviews its own pole attachments rules to encourage broadband deployment, the FCC’s previous efforts to do the same would provide a template that could be adopted by Maine in whole or in part.

Other states are examining this issue as well. Connecticut is in the process of setting up a bold new approach to pole management – the state and all of its pole owners are creating a single administrator for all utility poles in Connecticut (see Appendix B for more details). For the pole owners, this will provide a cost-effective management system; for pole attachers, it will provide consistent, predictable processes; for the state, it will provide better emergency response communications and capabilities. The process took years of planning in Connecticut, and is just now reaching the implementation stage.

In summary, there are both access and cost obstacles to broadband providers to attach to poles in Maine. Their presence discourages the buildout of broadband infrastructure to rural areas.

We recommend that:

- 3) The Maine legislature direct the Maine Public Utilities Commission to review its existing pole attachment regulations and make such revisions as may be necessary to facilitate the deployment of broadband access throughout the state. In this review, the Commission should examine the FCC’s current guidelines on pole attachment procedures and costs and consider whether existing Maine regulation is in harmony with the federal approach.*** While the FCC’s guidelines on pole attachment procedures do not of their own force apply in Maine, the FCC’s approach to cost allocation and the establishment of predictable procedures for pole attachments is likely to provide helpful insight into the appropriate regulatory approach for Maine.
- 4) The Maine legislature direct the Maine Public Utilities Commission to review Title 35-A, Chapter 7, and recommend any statutory changes needed to ensure that there is clear and equitable access to utility poles for all wireline and wireless broadband providers that “advance Maine’s state broadband policy to develop a secure, reliable and sustainable forward-looking infrastructure that can meet future broadband needs.”*** This would enable the PUC, as part of its larger inquiry into pole attachments rules, to identify any existing statutory barriers that prevent broadband providers,

regardless of technology or regulatory status, from using this essential infrastructure to expand access throughout Maine.

CHAPTER 4: LEASING STATE PROPERTY FOR RURAL BROADBAND

Most of Maine's broadband infrastructure is clustered in southern Maine (see Figure 4). This makes sense. This is where people live in enough density to support private businesses investing in broadband service. In northern and eastern Maine, where the population is more spread out, it is harder for businesses to make the investment.

However, Maine does have a communications resource in northern and eastern Maine that can help address this problem. Maine and the federal government have a wireless communication infrastructure set up to assist with homeland security, forest fire management, and emergency services that stretches well into rural Maine (see Figure 5).

The question for Maine government is whether the government communications network can provide facilities to make it less expensive for private companies to provide rural broadband.

Several states promote rural broadband access by allowing wireless providers to attach to state property in unserved and underserved areas:

- **Massachusetts** allows Department of Conservation and Recreation fire towers to be used for wireless broadband infrastructure deployment, and has awarded use to several providers that will provide broadband access in the relatively sparsely populated western half of the state.¹¹
- **Michigan** has a contract with the US Small Business Administration to build and lease space on state-owned towers and buildings for commercial cell carrier antennas, which are managed by the state's Public Safety Communications System.¹²
- **Vermont's** Secretary of Administration can contract, lease or grant all state owned buildings, structures and land for wireless facilities, and consults with all affected state officials and agencies to determine the best use of the facility¹³

¹¹ Official Website of the Governor of Massachusetts. Patrick-Murray Administration Announces the Use of State Fire Towers to Expand Broadband Access in Western Massachusetts. October 28, 2010.

¹² NASCIO Community Email Communication, December 16, 2013.

¹³ An act relating to the advancement of cellular, broadband and other technology infrastructure in Vermont. (S.78). Accessed at <http://www.leg.state.vt.us/docs/2012/Acts/ACT053.pdf>

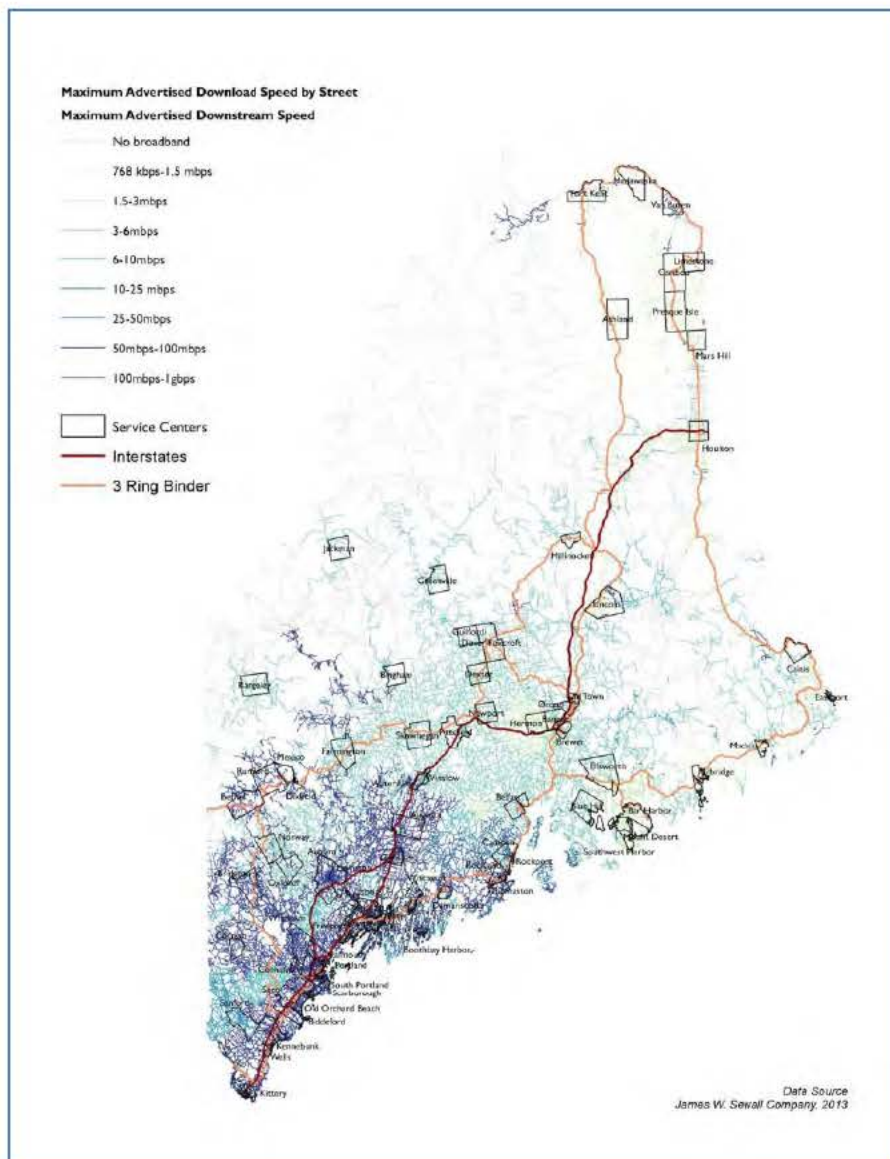


Figure 4: Broadband Service



Figure 5: Government Communications

Maine statute allows the state to lease its facilities, but there are limitations:

- 1) the property must not be in use; and
- 2) the lessee must cover the entire cost of utilities, heat, custodial services.

There is some freedom for Maine government in setting rents – the monthly fee does not need to reflect current market rates for similar facilities.¹⁴

Obviously, the law has been made with empty buildings in mind, and not the co-location of communications facilities.

This is an area of promise for rural broadband expansion, but a lot of groundwork remains to be done.

We recommend that:

- 5) The ConnectME Authority work with the Maine Office of Information Technology and the Bureau of General Services to review current state property lease standards for broadband provider accessibility in unserved areas, and propose any relevant legislative changes to the Maine Legislature. In reviewing current state standards, ConnectME, OIT and BGS should use Vermont's wireless attachment policies for state property as an example.***

¹⁴ Maine Revised Statutes, Title 5, Chapter 154. Lease of State-Owned Facilities. Accessed at <http://www.mainelegislature.org/legis/statutes/5/title5ch154sec0.html>

CHAPTER 5: BROADBAND SUSTAINABILITY FEE REPEAL¹⁵

The legislative resolve establishing this working group asks it to consider *“the allocation and use of conduit capacity on an open-access, nondiscriminatory basis so that any financially responsible entity, including an institutional customer, telecommunications provider or Internet service provider, may lease fiber-optic cable along a route with the intent that all users have access at the same pricing structure and for substantially similar terms and conditions relative to their use of the network.”*

One important state policy that affects the ability of rural users to have access to fiber “at the same pricing structure” is a tax imposed by the Legislature in 2009 called the “broadband sustainability fee.” The tax is imposed on the Maine Fiber Company for its lease of “dark fiber” strands in the Three Ring Binder project. The tax is comes to \$3 per month per leased strand mile. The tax will decline to \$2/leased strand mile/month in June of 2015, then lapse entirely in December of 2017 (see Appendix C for details).

The Maine Fiber Company is the only telecommunications company in Maine that has to collect this tax. The law authorizing the tax was expressly phrased to only cover Maine Fiber Company – the one provider of “federally supported dark fiber” in the state. The federal support is grant funding of \$25 million provided by the US Department of Commerce under the American Recovery and Reinvestment Act to Maine Fiber Company to construct the “Three Ring Binder” project, which brings high speed internet capability to rural parts of the state. The \$25 million represented about 80% of the total project cost.

The money which is collected under the tax goes to the ConnectME Authority. The Authority takes 5% for administrative expenses, and puts the remainder into a broadband sustainability fund. The fund is available to local telephone companies in the areas where Maine Fiber Service is provided, to help them subsidize the expansion of their broadband services in rural Maine. The major beneficiary of the program is Fairpoint, which is eligible for 80% of the 2012 funds. If the telephone companies choose not to use the funds, the ConnectME Authority may spend the money as part of



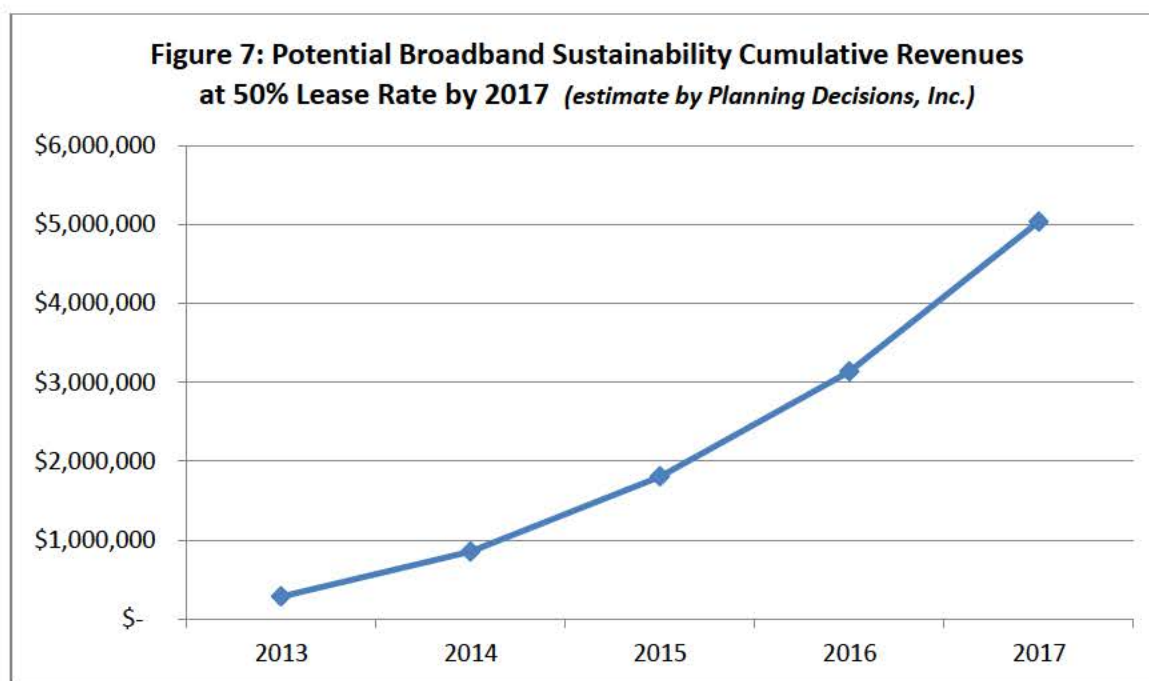
Figure 6: Three Ring Binder Route

¹⁵ Note: Due to the possible involvement of the Maine Public Utilities Commission in legal action related to the Broadband Sustainability Fee, Maine Public Utilities Commission staff who are on the working group abstain from joining into the analysis or recommendations of this chapter

its annual grants program. No other broadband providers are eligible for the initial use of the money.

The tax has been in effect since May of 2010. However, the Three Ring Binder project was only completed in the fall of 2012, so initial payments under the tax have been limited. As of October, 2013, roughly \$200,000 had been collected, and another \$140,000 was due. Only \$10,000 had been paid out (an additional \$30,000 was paid out in December). The \$10,000 went to Fairpoint to support its role in an expansion of broadband to Georgetown, in a project in which ConnectME contributed \$250,000 in other grant funds.

The fund has the potential to grow considerably. Assuming that Maine Fiber Company is able to lease out half of its available strand-miles by 2017, this would mean that over the life of the tax the company would collect around \$5 million in taxes for submission to the Broadband Sustainability Fund.



Currently, Maine Fiber Company charges a base rate of \$10 to \$16 per strand mile per month for most of its territory. With these rates, the broadband sustainability tax is at an effective rate of between 19% (on a \$16 strand mile) and 30% (on a \$10 strand mile). The largest payer of the tax at the present time is the University of Maine, which pays more than \$100,000 per year.

It stands to reason that a 20% to 30% tax on broadband usage in rural Maine on the Three Ring Binder discourages organizations from leasing dark fiber from the service. A draft report issued by the staff of the Maine Public Utilities Commission in 2011 summarized the potential impact:

This arrangement has the economic effect of reducing the revenues that Maine Fiber earns on each lease of its dark fiber and, undoubtedly, the price that its customers pay. By increasing the price of dark fiber leased by Maine Fiber, the fee artificially diminishes the competitiveness of Maine Fiber's offerings in the dark fiber market. In addition, the receipt of Maine Fiber's fee payment by competing ILECs subsidizes the ILECs capital improvements. The initial source of Maine Fiber's funding for its dark fiber construction in Maine was a grant award by the federal government based upon the demonstrated need in Maine of readily available dark fiber in order to increase broadband penetration in the state. Regardless of the funding source, the Broadband Sustainability Fee diminishes the competitiveness of the dark fiber market without significant countervailing benefits to the public welfare¹⁶.

The draft report recommended the abolition of the broadband sustainability fee. The final plan, issued two months later, dropped the recommendation for abolition of the fee, while still maintaining that the fee is anticompetitive. The Commission wrote:

The draft of the Plan circulated by the Commission for comments included its proposal that the Broadband Sustainability Fee, established by 35-A M.R.S.A. § 9216, be eliminated. In the Commission's view, this fee is anti-competitive. FairPoint objected, on the grounds that the transfer payments required by the Fund are not anticompetitive as compared to the award, by the federal government, of stimulus funds to assist in the construction of the Three Ring Binder dark fiber project. The Commission strongly disagrees with FairPoint's analysis. Nonetheless, as is the case with the existing AFOR, the Broadband Sustainability Fee will expire, by its own terms, on a date-certain. To advance a consistent policy of honoring the expectations of the affected parties regarding sun-setting provisions of law and of Commission Orders (such as the AFOR), the Commission has removed from the Plan its suggestion that the Legislature repeal Section 9216.¹⁷

The broadband sustainability fee was the subject of an order by the Maine Public Utilities Commission (PUC) on December 30, 2013. The PUC had been asked by the ConnectME Authority to investigate the non-payment of the broadband sustainability fee by Great Works Internet (GWI) of Biddeford, Maine. GWI is refusing to pay on the basis that the fee is tantamount to a tax and is "unconstitutional, discriminatory, anti-competitive, and against public policy." The PUC found that under the governing statute, it does not possess jurisdiction to enforce the obligation that the fee be paid by a customer of Maine Fiber Company. The Commission also found that it does not possess the authority to determine, of its own accord, whether the statutorily created fee violates other state or federal statutes or the state or federal constitution. It is possible that the next step in this dispute will be in the courts.

¹⁶ Plan of the Maine Public Utilities Commission to Reform Telecommunications Regulation, Draft, 2011-00224, item 38, 11/1/2011, page 60.

¹⁷ Maine Public Utilities Commission Plan to Reform Telecommunications Regulation, Docket 2011-00224, item 50, 12/30/11, page 64.

In summary, four points may be made about this fee:

- On its face, a 20% to 30% tax imposed on users of the Three Ring Binder will make efforts to extend rural service through this mechanism more expensive;
- The largest payer of the fee is the University of Maine, which means that taxpayer dollars and student tuition are being used for non-educational purposes;
- Only certain broadband providers (i.e., telephone companies) have access to the money collected by the fund to use for service enhancement in rural areas; and,
- To date, only a small amount of the money collected under the fee (\$40,000 of \$340,000) has actually been requested for use to support the extension of rural broadband service.

The argument can be made to leave the fee alone, since it expires in 2017. The counterargument is that collections under the tax will increase dramatically between now and 2017, so the economic hardship it creates for rural Maine will increase.

Weighing the arguments together, the work group comes down on the side of eliminating a tax which is complicated and not conducive to better rural broadband service:

We recommend that:

6) The Maine Legislature repeal the Broadband Sustainability Fee.

CHAPTER 6: HELPING MAINE MUNICIPALITIES USE DIG ONCE POLICIES

While Dig Once policies are not practical for all of Maine's highways, they might have fruitful applications in Maine's larger cities like Bangor, Portland, Lewiston, and Auburn. These are cities with a high density of houses and businesses, as well as many underground utilities that require frequent street construction.

Maine cities, under home rule, already have the authority to enact Dig Once ordinances. There is no state enabling legislation needed. The limitations to such ordinances are simply lack of expertise and experience about the subject. However, there has been a lot of experience in other cities around the country. Municipal Dig Once strategies include:

- Improving coordination with telecommunication providers when plans are made to open the ground.
- Requiring that all utilities and broadband service providers install their infrastructure at the same time, in the same trench or in the same conduit, and share the cost of installing the infrastructure.
- Creating a moratorium on street excavation to preserve new roadway construction (*note: Maine already has a five-year moratorium law for municipalities*).
- Installing empty conduit during new construction for future broadband needs.
- Using of trenchless technologies, such as horizontal directional drilling or microtrenching.

In 1994, Boston adopted a policy that requires all telecommunications providers to install underground conduits in the same trench, at the same time, on a shared-cost basis. Under this policy, the lead company coordinates the construction and submits the application to the city for review. This has helped to both “minimize street excavation and expedite the broadband deployment process.”¹⁸

We recommend that:

- 7) The ConnectME Authority and the Maine Municipal Association (MMA) work together to serve as a resource for municipalities for Dig Once policies.***

¹⁸ Federal Highway Administration Office of Transportation Policy Studies. Policy Brief: Minimizing Excavation Through Coordination. October 2013

APPENDIX A: MAINE 2013 LEGISLATIVE RESOLVE

LAW WITHOUT
GOVERNOR'S
SIGNATURE

MAY 22, 2013

CHAPTER

28

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

S.P. 301 - L.D. 876

Resolve, To Establish a Working Group To Study Issues Relating to Broadband Infrastructure Deployment

Sec. 1. Working group to study issues relating to broadband infrastructure deployment. Resolved: That the ConnectME Authority, established in the Maine Revised Statutes, Title 35-A, section 9203 and referred to in this resolve as "the authority," shall convene a working group to identify technical, legal, funding and jurisdictional challenges to the deployment of broadband conduit for fiber-optic communications and to develop solutions necessary to achieve and facilitate the deployment of broadband infrastructure. The working group shall consider access to public facilities and rights-of-way for broadband conduit installation, particularly as rights-of-way are disturbed for infrastructure projects, including, but not limited to, road and bridge construction, reconstruction and maintenance. The working group shall develop policies focused on increasing coordination between government agencies, including, but not limited to, state and municipal entities, and utility companies to decrease the frequency of highway and local road excavation while expanding broadband capacity in the State; and be it further

Sec. 2. Participants. Resolved: That the authority shall invite the following to participate in the working group:

1. The chair of the Public Utilities Commission or the chair's designee;
2. The Chief Information Officer within the Department of Administrative and Financial Services or the officer's designee;
3. The Commissioner of Economic and Community Development or the commissioner's designee;
4. The Commissioner of Transportation or the commissioner's designee;
5. The Public Advocate or the Public Advocate's designee;
6. The executive director of the Maine Turnpike Authority or the executive director's designee;

7. A member of the public with significant knowledge of communications technology;

8. A representative of the Maine School and Library Network;

9. A representative of the Maine State Chamber of Commerce;

10. A representative of the Maine Municipal Association; and

11. Other parties at the discretion of the authority; and be it further

Sec. 3. Duties. Resolved: That the duties of the working group are as follows:

1. To review the so-called federal dig once policy;

2. To review other states' experiences and strategies relating to broadband infrastructure deployment, including the so-called dig once policies in other states;

3. To review state laws and rules and agency policies relating to highway, local road and bridge construction and reconstruction and utility accommodation, including an evaluation of the feasibility and need for broadband conduit as part of the highway and local road construction process;

4. To consider right-of-way issues, including management of right-of-way access;

5. To consider administrative issues, including ownership of conduit and procurement;

6. To consider funding models for the installation and maintenance of broadband conduit;

7. To consider the allocation and use of conduit capacity on an open-access, nondiscriminatory basis so that any financially responsible entity, including an institutional customer, telecommunications provider or Internet service provider, may lease fiber-optic cable along a route with the intent that all users have access at the same pricing structure and for substantially similar terms and conditions relative to their use of the network;

8. To collaborate with Internet service providers to consider so-called dig-once policies to encourage build-out to unserved areas;

9. To identify road and bridge construction funding for broadband conduit installation; and

10. To explore the feasibility of incorporating a statewide broadband infrastructure plan to ensure that the State makes informed and knowledgeable decisions on a per project basis regarding whether installing conduit in the right-of-way of the project path affords reasonable potential benefit to expand broadband capacity and availability in the State; and be it further

Sec. 4. Report. Resolved: That, by February 1, 2014, the authority shall submit a written report of the findings of the working group under this resolve and any recommendations, including suggested legislation, to the Joint Standing Committee on Energy, Utilities and Technology and the Joint Standing Committee on Transportation. The Joint Standing Committee on Energy, Utilities and Technology may submit a bill to the Second Regular Session of the 126th Legislature relating to the subject matter of the report. The Joint Standing Committee on Transportation may make recommendations regarding that bill to the Joint Standing Committee on Energy, Utilities and Technology.

APPENDIX B: CONNECTICUT UTILITY POLE MANAGEMENT

WATERBURY REPUBLICAN-AMERICAN (newspaper) Regulators to consider simpler way to manage telephone poles in state

December 2, 2013

BY MICHAEL C. JULIANO

The state Office of Consumer Counsel on Monday asked state regulators to consider approving a plan to centrally manage telephone poles in the state.

Through a proposed "Single Pole Administrator" plan, Connecticut Light & Power Co. and The United Illuminating Co. -- the state's two largest electric utilities -- would solely manage the poles in their respective service territories. Many of the utilities' poles are also co-owned by AT&T or Verizon.

The plan would create a more informal but faster process to resolve and prevent rights-of-way disputes over the poles, according to a news release from the counsel's office. It would also facilitate coordination between pole owners and the state Department of Transportation, municipalities, and third-party pole attachers, and create a single point of contact for pole administration issues.

CL&P and UI in late 2011 presented the plan to the then-state Department of Public Utility Control, predecessor to the Public Utilities Regulatory Authority, or PURA, after many poles were damaged during Tropical Storm Irene in August 2011 and the October 2011 nor'easter.

"Because the current system involves ad hoc management of utility poles and wires, usually by multiple pole owners on each pole, there were many instances of confusion and delay in repairs, replacement of poles, and re-attachments" after the storms, Consumer Counsel Elin Swanson Katz said. "The OCC has been advocating for central management of the state's public rights of way for over a decade. It's therefore an exciting moment today when we can present you with an efficient, effective plan for managing the poles, the attachments and the attendant rights-of-way."

Katz made her comments Monday during a public hearing at PURA's New Britain headquarters.

She said the proposal presents "years of hard work" by an OCC-convened PURA Single Pole Administrator-Working Group, comprised of CL&P and UI, telephone and cable companies, and municipalities.

CL&P and AT&T share ownership of more than 733,000 utility poles in 149 communities in the state served by CL&P, which has 1.2 million customers, according to CL&P spokesman Mitch

Gross.

"We agree with the OCC that a single administrator would improve the process for repairing and maintaining the poles and would benefit CL&P customers, because a single administrator would mean 'one-stop shopping' for utility pole issues," Gross said in an email Monday.

UI, which serves 325,000 customers across 17 communities in southern Connecticut, proposes buying AT&T's ownership rights in the poles in its service territory, according to the OCC. AT&T and Verizon, however, have objected to selling those rights at this time.

"While AT&T supports many of the efficiencies associated with a single point of contact for administration of pole attachments, we're concerned with those proposals that, if implemented, could impact our ability to provide the best service to our customers," AT&T Connecticut spokesman Chuck Coursey said Monday in an email.

PURA expects to issue a decision in February 2014, according to PURA spokesman Michael Coyle.¹⁹

¹⁹ <http://www.wtnh.com/news/politics/proposal-for-pole-restoration-information>

APPENDIX C: BROADBAND SUSTAINABILITY FEE LANGUAGE

Maine Revised Statutes

Title 35-A: PUBLIC UTILITIES HEADING: PL 1987, c. 141, Pt. A, §6 (new)

Chapter 93: ADVANCED TECHNOLOGY INFRASTRUCTURE HEADING: PL 2005, c. 665, §3 (new)

§9216. BROADBAND SUSTAINABILITY FEE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "First assessment period" means the period:

(1) Commencing on the first day of the month following the date on which a dark fiber provider first sells, leases or otherwise provides one or more strands of federally supported dark fiber to an entity in this State; and

(2) Ending on the last day of the 60th month following the commencement under subparagraph (1). [2009, c. 612, §10 (NEW).]

B. "Incumbent local exchange carrier" means a telephone utility that provided single-party service, voice grade access to the public switched telephone network in a defined service territory in the State on February 8, 1996, or its successor, or that is designated as an incumbent local exchange carrier pursuant to 47 United States Code, Section 251(h)(2). [2009, c. 612, §10 (NEW).]

C. "Second assessment period" means the period:

(1) Commencing on the first day of the month following the end of the first assessment period; and

(2) Ending on December 31, 2017. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

2. Broadband sustainability fee. An entity that purchases, leases or otherwise obtains federally supported dark fiber from a dark fiber provider is subject to the following broadband sustainability fees:

A. During the first assessment period, a monthly fee equal to \$3 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month; and [2009, c. 612, §10 (NEW).]

B. During the 2nd assessment period, a monthly fee equal to \$2 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

3. Collection. A dark fiber provider shall collect the broadband sustainability fees under subsection 2 and within 15 days after the end of each month remit the amounts collected to the authority. When remitting funds to the authority, the dark fiber provider shall include sufficient information to allow the authority to determine the number of miles of federally supported dark fiber strands sold, leased or used in the service territory of each incumbent local exchange carrier.

[2009, c. 612, §10 (NEW) .]

4. Deposit. The authority shall:

A. Deposit 5% of the funds received under subsection 3 into the ConnectME Fund established under section 9211 and may use these funds to support the activities of the authority under this section and for the purposes of section 9204; and [2009, c. 612, §10 (NEW).]

B. Deposit 95% of the funds received under subsection 3 into the broadband sustainability fund established pursuant to subsection 5. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW).]

5. Broadband sustainability fund. The authority shall establish a broadband sustainability fund, separate and distinct from any other funds held or maintained by the authority, for use in accordance with subsection 6. The fund is nonlapsing and all interest on funds in the fund remains in the fund for use in accordance with subsection 6. The authority may contract with an appropriate independent fiscal agent that is not a state entity to serve as the administrator of the fund. All funds deposited in the broadband sustainability fund are deemed to be encumbered for purposes of subsection 6 at the time the funds are deposited in the fund.

[2009, c. 612, §10 (NEW).]

6. Use of the broadband sustainability fund. The authority shall provide incumbent local exchange carriers a right of first refusal to access the broadband sustainability fund established pursuant to subsection 5 in accordance with this subsection.

A. The authority shall allocate funds in the broadband sustainability fund established pursuant to subsection 5 to each incumbent local exchange carrier in accordance with this paragraph. Each month, the authority shall allocate to each incumbent local exchange carrier an amount equal to the total amount deposited that month into the broadband sustainability fund multiplied by a fraction, the denominator of which is the total number of miles of federally supported dark fiber leased, sold or used in this State during the previous month and the numerator of which is the total number of miles of federally supported dark fiber leased, sold or used in that incumbent local exchange carrier's service territory during the previous month. Any accumulated interest in the fund must be allocated proportionally. Only those amounts allocated to an incumbent local exchange carrier under this paragraph are available for disbursement to that carrier pursuant to paragraph B. By December 31st of each calendar year, the authority shall make an accounting of the total funds allocated during that calendar year to each incumbent local exchange carrier under this paragraph, and if by December 31st of the following calendar year some or all of those funds allocated to a carrier are not disbursed to that carrier in accordance with paragraph B, the authority shall transfer those unspent funds to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund under this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. [2009, c. 612, §10 (NEW).]

B. To receive a disbursement from the broadband sustainability fund established pursuant to subsection 5, an incumbent local exchange carrier must file with the authority a request for funds together with a certification indicating that the funds requested will be used to deploy broadband infrastructure in unserved areas within the carrier's service territory. The certification must include the projected cost for the project and the scope of work, which must indicate how the funds will be spent. Upon receipt of a request for funds accompanied by the required certification, the authority shall disburse the requested amount to the incumbent local exchange carrier up to an amount not to exceed the total amount allocated under paragraph A to the requesting carrier. [2009, c. 612, §10 (NEW).]

C. An incumbent local exchange carrier may not expend funds received under paragraph B in a manner inconsistent with the certification provided by the carrier under paragraph B. The authority may audit the use by an incumbent local exchange carrier of funds disbursed in accordance with paragraph B. [2009, c. 612, §10 (NEW).]

D. On the last day of the 12th month following the end of the 2nd assessment period, the authority shall transfer all funds remaining in the broadband sustainability fund established pursuant to subsection 5 to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund pursuant to this paragraph cease to be available to any incumbent local exchange carrier

pursuant to the provisions of this section. [2009, c. 612, §10 (NEW) .]

[2009, c. 612, §10 (NEW) .]

SECTION HISTORY

2009, c. 612, §10 (NEW) .

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