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# ConnectME Authority Meeting Notes & Video - November 18, 2016

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## **ConnectME Authority**

November 18, 2016

### Meeting Notes

#### 1. Introduction of ConnectME Authority members and staff

Board members: Ralph Johnson, Dick Thompson, Acting Chair, Denise Garland, Sue Woods, Sandy Saunders

Staff: Phil Lindley, Lisa Leahy

#### 2. Rulemaking, Chapter 101 Public Hearing - 2:05 PM hearing opened.

Those Providing comments: four people raised hands.

Reviewed rule. Public hearing publicized electronically and newspaper outlets.

Format for taking comments: Opposing some or all, approving some or all, neither for nor against.

Opposing some or all.

Ben Sanborn, Telecommunications Association of Maine (TAM), filed prehearing comments. Spoke to intersection between rules and statutes. Purpose of the rule is to implement the law from the agency. Statute may be ambiguous; a rule should provide more detail. As revised §2A and §2F following the statute in both instances are ambiguous. The change from “or” to “and” should be reversed.

§2 A as currently revised has to provide both broadband and wireless. The legislative process may not reflect the language as precisely as desired. Broadband availability or wireless service coverage, not meant to promote a combination of the two. TAM encourages the ConnectME Authority to keep it or strike it. Is there going to be complete overhaul of wireless? What is the long term strategy of interpreting the statute?

§2F added retail in the rule where it did not exist in statute. The two retail word references could be awkward; it should be different than statute.

§3C. Does not matter what agency calls it, it matters what it does. Major substantive should be very detailed. He suggests eight points or types of data to collect. Track impact of investments over five years. Is this information useful? Collection of data encouraged. Broadband businesses get data to support anecdote. Include data in legislative annual report. The written comments provide alternative language for §3A.

§5B, §5C. Speaks to data collected in §3, which has been substantially changed. Order adopting rule could encourage participation.

§6(D)(1)(a)(2). Statute changes took away the challenge process. Not detailed language, TAM comments suggest additions. Issue; if you have the market working in an area and use rate payer dollars to overbuild an existing area, is this an appropriate use of rate payer money? TAM would say no. After unserved is met first; then underserved.

§6(D)(2)(b). If providing details is a rule, policy statement is a rule under Secretary of State guidelines. Provide more details, otherwise not legally enforceable. Get data in now stating what we mean by this structure so everyone has a clear understanding.

Dick Thompson referenced the Division of Purchases, Chapter 110, criteria and weights in rule are not required, but published in request for proposal.

Ben Sanborn believes that the infrastructure grant section does provide adequate amount of detail. TAM see this as true of scoring criteria. The core components for the planning grants, how we weight or score is separate. More detail about what the criteria are is needed.

Ben Sanborn it can be interpreted to clarify the rule. Ben Sanborn said that a statute can be interpreted in rule.

Ben Sanborn said that the language is ambiguous in statute, if read entirely as written, with no interpretation, then none of infrastructure grants in first 10 rounds were legal.

Ben Sanborn if statute or rule say "and." RFP can't be a new rule, what agency does to interpret the statute, even an RFP, it is a rule.

Dick Thompson this discussion shows that we may have to meet again to deliberate.

Phil Lindley discussed the term retail service regarding comments submitted by NetworkMaine. The University of Maine does not provide retail service. The definition of communication service provider definition does not need to include retail in all three places as it is included in the definition of communication service.

Ben Sanborn said it went in initially for clarity, could be read as video retail service. Clarity is important, needs to be transparent and the interpretations for everyone to review and understand.

§3C. Dick Thompson on use of data, how was 5 year arrived at? Staff has already talked about tracking for five years. This is good info for the ConnectME Authority, are there any others we want to add to this section?

Liz Wyman, Office of the Public Advocate, believes there is need for clarification as drafted. Liz will submit written comments before 28<sup>th</sup>. There needs to be additional information about what we are going to be looking for in applications to serve statutory directions. Section 5 – designation of unserved/underserved, does not specify how to make the determination, statute mentions that we must take into account the percentage of households served but that is not in rule. This needs to be somewhere in the rule for methodology to measure. Start with clear definition of broadband service. Effective broadband service, they believe it is confusing, circular. As if the Authority is saying we will tell you what effective broadband is when we see it. Public Utilities Commission believes it should be one thing. If you evaluate on an annual basis that is fine but the rule should specify how a process will happen and what we will use as measurement. Section 3 on the filing of data – rule went from a directive to a suggestion. Suggesting is not enforceable; Ms. Wyman is troubled by this. Regarding section 6 – rule could do more to ensure application process is more clear, rule should have more specificity but does not think it needs to be set forth in rule, can be done in a RFP. Methodology for scoring – there is nothing in rule that talks to it. Planned deliverables is not defined. Tracking the success of projects would be helpful in rule. Those granted funds should be required to report and assist ConnectME Authority when reporting to legislature. Clear expectation should be placed on the parties.

Dick Thompson to Liz Wyman, were you able to review TAM comments? Liz, no, but the criteria should be in rule.

Sarah Davis, FairPoint, agrees with Ben Sanborn on the “and” in section 2. Most grants don’t go to wireless. Plain reading suggests it has to do both. End the language at broadband availability. In Maine statute we do not capitalize defined terms. It might help in the rule.

§2F2, Retail, same comment. Leave retail before mobile voice. Retain retail above and remove the rest. Data same thing, it appears wishy washy, we should be clear. §3C, no directive to provide data. We have traditionally held that people supply data to come for a grant, if we say it’s important for people to work with us we should require grantees to give us data. Need to be more specific about broadband availability throughout the year. Providers should not get grant if they don’t give data. Annual update of performance criteria. Not easy way to track ConnectME Authority’s latest definition of broadband. If it were published more clearly on the website it would make it easier to find. Sarah Davis is supportive of TAM comment about what we should be collecting, making sure grant applicants check with incumbent providers. Written comments will be filed.

Nether for nor against.

Tom Federle, Charter is, working with other cable providers in state and written comments will be filed on behalf of cable industry. Issues will include some of what TAM and OPA are bringing up. Data collection, definitions, and planning grants. Tom Federle provided a general perspective. Funding comes from customers from incumbent providers to encourage private funding to get broadband where private providers are not going. Couple of areas seem to depart from this, §6, the 20% overlap rule and granting to unserved area. It’s not clear to Tom Federle that there may be a shift happening to take focus off the ConnectME Authority funding prioritization of unserved areas. Seems to open door in underserved areas. It would be helpful to understand this better. Language ambiguity could encourage applications in areas that are already served which could lead to overbuilding. Will take funding from areas where there is no service. Tom Federle does not recall any directive of moving away from this fundamental tenant.

Ralph Johnson, truth of matter is that we have to keep un/underserved door open. In the last few grant rounds we have not met any underserved and still have to turn way unserved. We just don’t have enough money for the un/underserved scenario to play out.

Tom Federle, the proposed rule takes that safeguard out.

Phil Lindley §6(A) states that the ConnectME Authority first priority is to unserved.

Actions to be taken and schedule:

Phil Lindley read schedule. Depending on level of comments a second meeting in December may be needed. Rule to legislature by Jan 13.

Dick Thompson reviewed the sequence, Authority meets on the 9<sup>th</sup>, if changes are proposed at this meeting, will there be time to have another meeting? Yes, another meeting will be scheduled if needed. Staff to create a whole package and make it available to ConnectME Authority for review to include all comments and notes from the meeting.

Phil Lindley asked “should staff make comments on the comments?”

Dick Thompson, staff can add comments.

Dick Thompson, circulate a draft and do a deliberation in a public meeting.

Phil Lindley, it has to go into order, if ConnectME Authority agrees with comments and why.

Hearing closed at 3:05.

### 3. Executive Director Report.

Financial report – same report as last meeting

Executive Director will clarify and reorganize the financial report to display expenses and income, to show cost of operation versus what we are distributing. Dick Thompson asked for clarification about what items were in each classification such as what expenses are in the Executive Director report.

Court case –

GWI filed motions regarding court decision largely in our favor. Tom Knowlton has filed opposition to the motions. Oral argument on Dec. 16, 10:00 am, Phil Lindley will attend.

Mapping contract being finalized.

No update on FirstNet.