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ConnectME Authority Meeting Notes - November, 7, 2008

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ConnectME Authority
Minutes of Meeting – November 7, 2008

1. Introductions

Authority Members: Jean Wilson, Dick Thompson, Sharon Reishus

Staff: Phil Lindley, Amy Spelke, Kelly Arata

2. First Round Grants Review

Phil Lindley provided an update on the first round of grants:

- The Somerville project is about complete but behind schedule. Grant award expires on November 18, 2008.
- The Edgecomb project has seen little progress and the Authority should consider cancelling the grant. Stuart Smith of the Town of Edgecomb has stated that they would be filing another application.
- The Cornerstone project is nearly complete. Andy Hinckley may ask for an extension.

Phil Lindley has requested that the Authority authorize him to grant specific extensions. Dick Thompson asked if Mr. Lindley had any idea how long would be the extension request. Mr. Lindley stated that he was not sure. Andy Hinckley is out of town but is working through the issues. Mr. Thompson asked if the Authority has the authority to waive the one-year deadline. Dick Thompson made a motion to give authority to the Executive Director to grant up to 90 days for an extension upon sufficient demonstration. Phil Lindley stated that Section 6 of the Authority's Rules state: "Projects contained in approved proposals must be completed within one year of funding unless a waiver is granted by the Authority due to unique or unforeseen circumstances."

Vote: All members present voted in favor of the motion.

Sharon Reishus asked if the Town of Edgecomb wants to cancel their grant. Phil Lindley stated that the Town of Edgecomb does want to cancel the grant for their town. The town is already in communication with another provider. Dick Thompson made a motion to cancel the grant awarded to Midcoast Internet Solutions to serve the Town of Edgecomb.

Vote: All members present voted in favor.

Dick Thompson then asked if the Authority can accept a grant for just that area. Phil Lindley stated that the Authority specifies the grant rounds and timing of awards. Third round grants will most likely be in February or March of 2009. Dick Thompson asked if the town can transfer their grant. Amy Spelke asked if the Authority ask the Town of Edgecomb to determine if the area is still unserved. Dick Thompson stated that the grant

application would still need to meet the requirements as a whole. Phil Lindley stated that he would work with them. Stuart Smith, Selectman, said they were looking at multi-modal solution. Amy Spelke stated that Section 6(D)(1) of the Authority's Rule sets forth those requirements:

§6 D. Application Process. Within 90 days of the effective date of this Chapter, the ConnectME Authority will establish an application process that, at a minimum, includes the following provisions:

1. **Content of Application.** The application will include, at a minimum, the following:
 - a. a description of the area proposed to be served by the project and sufficient information to establish that it is an unserved or underserved area;
 - b. a description of the proposed project, including public-private partnerships that have been established, evidence that the private partner in the project is eligible to receive funding from the Authority, the type of service to be provided and, in the case of broadband service, the upstream and downstream speeds of the service to be provided, an estimate of the time required to complete the proposed project, the percentage distribution of households and businesses within the area to be served by the project and the estimated price per customer of the service to be provided by the proposed project;
 - c. the total amount of funding requested from the Authority;
 - d. the applicant's financial commitment to the project in addition to the funding requested from the Authority;
 - e. the estimated number of customers who will directly benefit from the project who are currently unserved or underserved; and
 - f. evidence of community support for the proposed project, which may include letters or signatures of residents or businesses located within the area of the proposed project.

Dick Thompson amended his initial motion to cancel the grant awarded to Midcoast Internet Solutions to serve the Town of Edgecomb and added that Section 6(D) of the Authority's Rule would still apply.

Vote: All members present vote in favor.

3. Second Grant Award Challenges

Phil Lindley reviewed the procedure for the Authority regarding challenges to grant awards: (1) Accept the grant award challenge and cancel grant award; (2) Reject the challenge and affirm grant award; (3) Revise the grant award if there is overlap; or (4) Require the Provider and the Challenger to collaborate and come back with a joint solution. Amy Spelke stated that the Authority could consider other proposals if deemed necessary.

Dick Thompson thought this was a great idea and stated that the Authority needs a straight forward mechanism on appeals. Mr. Thompson further outlined the process:

- Do we confirm this as an unserved area? The answer could be: (1) yes; (2) yes in a portion of the area; or (3) no and would be invalidated.
- Is there is a 20% or more overlap? The answer could be: (1) yes and would be invalidated; (2) yes and would ask for the parties to work together; or (3) no and reward continues.
- Has anyone committed to serve within 45 days? The answer could be: (1) yes and would be invalidated; (2) only a partial and would ask the parties to coordinate; or (3) no and would move forward.
- Whether the Authority has the authority to grant a waiver for a unique circumstance? The answer could be: (1) yes and move forward; or (2) no and would be invalidated.

Sharon Reishus agrees that this is an excellent framework. Jean Wilson agrees that this makes sense and is a good process. Phil Lindley stated that the Rule gives them the authority and this process would be more efficient than going back to ground zero. Dick Thompson asked if they needed a motion about the process. Phil Lindley stated that we can write up in the minutes and the Authority can approve it.

Phil Lindley guided the Authority through all the individual challenges.

Cornerstone Communications

- Premium Choice Broadband – Cornerstone is working with Premium Choice Broadband to eliminate overlap and have requested a postponement to the Authority's next meeting.

Axiom

- Union River Telephone – Axiom has agreed not to install equipment in Beddington or Deblois that already have access to DSL service. Ben Sanborn stated that Union River has concerns and questions as to where the equipment is located and

where the overlap might be. Susan Corbett from Axiom stated that they have sent software and data in support of this project and has worked with towns and town offices. Axiom believes that there is no broad coverage in this area. Ms. Corbett further stated that Axiom was not aware of DSL in Deblois or Beddington and agrees to serve outside of the Union River DSL area.

- Pioneer Wireless – Axiom agrees that there is overlap of Pioneer Wireless's territory to get to the outlying areas. Axiom believes that any place you can't get broadband is unserved. Axiom has a Reseller Agreement with Pioneer and has offered a reciprocal agreement to Pioneer.
- Time Warner Cable – Time Warner Cable agrees that there is minimal overlap and both parties agree to continue to communicate. In addition, Axiom has agreed not to install equipment in areas that are served by TWC.

Axiom's Response to Union River Challenge and Pioneer Wireless Challenge

Phil Lindley stated that the Rule specifies the 20% overlap restriction. Susan Corbett from Axiom stated that they had invested with private funds in Deblois. Sharon Reishus asked if Pioneer has certain coverage and if Axiom was going for unserved areas. Ms. Corbett stated that Axiom can see where Pioneer access points are and can tell by the address and then tell which radio gets the strongest signal. Axiom looks at what is in the best interest for the customer.

Amy Spelke asked how we would hold Axiom to that. Ms. Corbett stated that she is a person of integrity and noted that Axiom has even referred customers to others.

Amy Spelke asked Ms. Corbett to elaborate on the updated survey in 2007. Jennifer Peters from the Sunrise Economic Council stated that every household had a chance to respond to the survey and also was in the newspapers to respond. She does not recall the response rate.

Phil Lindley stated that the Authority would need more street level data on a going forward basis. Dick Thompson asked whether we had the authority to talk about specific customers. There is not overlap if one side of the street is not served. Amy Spelke stated that the Authority needs a method for compliance. Phil Lindley asked whether a wireless signal flying over served areas is considered overlap, stating that he did not think that could be considered overlap.

Time Warner Cable Challenge

Tom Federle for Time Warner Cable (TWC) stated that this is uncharted territory and the Authority needs to come up with a better process. Mr. Federle suggested that the challenge opportunity should be up front as opposed to the tail end of the grant process. Mr. Federle asked what the application and challenge has to show if there is a 20% overlap. Time Warner is not in a position to say if there is an overlap or not yet regarding

the Axiom's application. There is a question whether coverage area provides an overlap. If Axiom and Union River can make agreement, then a challenge does not come to the Authority. TWC is not here to provide a "wet blanket." They will work with the Applicant to make sure people are served. ConnectME Authority money only goes to these projects that are not covered. Mr. Federle further stated that waiving the rules does not apply to the 20% rule. The three options that Phil Lindley presented were reasonable and Dick Thompson's process makes sense. TWC's concern with Axiom regards existing coverage and not other areas that are unserved, but does not have confidence in Axiom's maps. TWC wants to reserve the right to look further at this issue. TWC is not withdrawing the challenge at this time and will work with Axiom.

Dick Thompson asked if Tom Federle was suggesting that the Authority can't waive the 20% rule, but that parties can have an enforceable agreement. Mr. Federle stated that perhaps. If there are negotiations outside this room, then the Authority would not know about it. Dick Thompson is still struggling over the issue if the signal flies over the served areas. He thinks he understands what Mr. Federle is saying. Mr. Federle stated that if there is over 20% overlap and TWC challenges, then the Authority would uphold its challenge. If you didn't hear the challenge from TWC, then you wouldn't know about it. The 20% overlap issue was meted out in a long legislative process. Mr. Federle further stated that the Authority does not have the right to change the rules. The figure of 20% overlap was the solution to the dilemma. The relevant question is the percentage of overlap within the proposed coverage area. TWC has good data but does not necessarily think that the Applicant does.

Phil Lindley wanted clarification that Time Warner Cable is not withdrawing at this point, but wants more discussion with Axiom. Tom Federle stated that Mr. Lindley's statement is correct. TWC wants to reserve their right, but sees merit in what Axiom is going to do. Mr. Lindley asked if TWC is requesting an extension to the next meeting so that there can be further discussion between the parties. Mr. Federle stated that the extension requested would be most likely until the next meeting.

Union River's Challenge

Ben Sanborn on behalf of Union River stated that Union River has had DSL service in Beddington and Deblois for 6 or 7 years. They have had significant investment in those areas and will make a big investment next year. There are not a lot of customers at this time. Union River does not want Axiom to serve in their area and understands if the wireless service goes over to reach unserved customers.

Amy Spelke wanted to know if Union River gives DSL to all those areas. Vern Heale from Union River stated that they can serve 90%. Ms. Spelke wanted to know if they had 100% coverage. Ben Sanborn stated that the statute says "unserved" and "underserved" areas and asked how the Authority quantifies "the 20% overlay." It appears that Axiom's signal will go into the Union River area. Union River has a problem as it would be impeding a current provider if Axiom provides on another side of the street. If

there is an agreement with the current provider, then it won't impede investment. Union River believes that this would be an appropriate resolution. In addition, Union River does not like Mr. Lindley's Option #3 that would pare back the grant if there is an overlap.

Dick Thompson stated that the statute protects companies like Union River. The award grantee has one year to complete proposed project.

Ben Sanborn stated that Union River believes that the details should be worked out in advance. The process should not harm existing and planned investment. The award grantee should come back with a new proposal. Amy Spelke stated that it would be their risk. Ben Sanborn stated that the question is the definition of area. The grant for that area would be denied. The definition is flexible. Jean Wilson questioned what would happen if the parties could not agree. Ben Sanborn stated that the parties would come to the Authority if there was not any agreement.

Phil Lindley stated that there does not look like there is a 20% overlap issue in this case. Mr. Lindley also asked if Union River was raising an impediment issue in this case. Ben Sanborn stated that Union River was raising the impediment issue. Axiom could be a viable competitor to Union River. The question is whether there is a competitor. The exact percentage (20%) does not appear in statute. The Authority needs to look at the statutory requirement not to impede in investment. Public money needs to be spent where needed.

Phil Lindley asked whether Union River thinks affordability should be taken into account. Ben Sanborn stated that affordability should not be taken into account. Private investment needs to be made. The Authority's funds should catch places where private investment does not work. Phil Lindley asked if Union River was okay if Axiom does not provide service to Beddington and Deblois. Ben Sanborn stated that Union River was okay with that.

Amy Spelke asked what the difference between altering the existing grant and putting in a new grant. Ben Sanborn stated that the Authority can set grant windows when they want. The policy issue is that proposals should be as specific as possible. Sharon Reishus stated that timing delays the process. We need to get broadband to customers as soon as possible. Ben Sanborn stated that integrity of the process is important.

Phil Lindley stated that the next grant round could be front loaded to change our challenge process to the first step instead of the last step, but that we need to get this round going.

Dick Thompson stated that Axiom has already said that they won't serve Beddington and Deblois. The cost/benefit and how much invested should be looked at. What do we expect when a challenger says it serves 20% or more? We would expect some statistical analysis. How would you tell? Phil Lindley stated that the Authority would assume that what they are providing is accurate. State Planning Office has census information. Amy Spelke stated that the Authority has used different source materials that seem to be conflicting.

Jean Wilson stated that we are asking for the number of homes. Phil Lindley stated that in the future we would need statistics. Amy Spelke asked if 20% was hard and fast and if it is 20% of households or 20% of the area. Phil Lindley stated that 20% of the total project area. Ben Sanborn stated that the 20% overlap is 100% of Union River customers and whether the 20% impedes the area. Phil Lindley further stated that it seems like this is a significant argument and that collaboration and cooperation should be encouraged. The Authority could ask them to work out a collaborative for the next meeting. Amy Spelke stated that the Authority could give guidance to Axiom.

Pioneer Wireless Challenge

Timothy McAfee for Pioneer Wireless stated that they are also a wireless system. It is not hard to find out if their coverage is there or not. Pioneer has been in Danforth for six years. They believe it is not right for public money to come in for this part of the project. It is tough if they have invested private money. They look at a 32% take-rate. There is a flaw with a 100% take rate. Pioneer Wireless applied for a grant a few years ago, did their homework with the initial application. Axiom's grant does not have street level research. He will not repeat the other parties' issues.

Dan Flewelling for Pioneer Wireless agrees with Dick Thompson's process questions. Their company is from Aroostook County. They did not know others were challenging. They would have added engineering criteria to their application and would say where towers were, would ask for capital investment and not customer investment. In addition, Pioneer did not realize why they were rejected, but knows now and will apply again in the future. Their engineering staff agreed that it would be good to have challenges front loaded in the process. There is also concern with potential electrical inference. Pioneer is interested in collaborating.

Ruling from the Authority

Dick Thompson moved to table the final decision and give instructions to Axiom to submit a new proposal to address these issues and come back to the next meeting with a revised proposal. He wants to give the parties an opportunity to collaborate. They would still have the 14 days to appeal after review. Phil Lindley stated that the Authority could table this matter to the next meeting and ask Axiom to come back with a revised plan, but with no subsequent appeal process. Dick Thompson stated if they can't come to a conclusion, the Authority would still need to accept the proposal. Jean Wilson stated that if Axiom is pulling back, then everyone has had a chance to challenge it. Sharon Reishus stated that the idea is that we want to fill in the holes.

Dick Thompson made a motion to table this matter to the next meeting.

Vote: All members present were in favor.

Mainely Wired

- Premium Choice Broadband – Mainely Wired is in discussions with Premium Choice Broadband and have requested a postponement to the Authority's next meeting.
- Time Warner Cable – There could be overlap in the town of Penobscot.

Peter Peterson from Mainely Wired stated that they did their homework upfront. The town provided service details and Mainely Wired did pre-engineering review in the Town of Penobscot. They had found overlap with three providers and so withdrew. Mainely Wired then reengineered and found zero overlap. They found a bleed into Castine-Blue Hill area. They were not sure why challenged by Time Warner Cable.

Time Warner Cable Challenge

Tom Federle on behalf of Time Warner Cable stated that they applaud Mainely Wired. Time Warner did not have time to look at maps because they didn't have time so they had to appeal. Time Warner withdraws their challenge.

Premium Choice Broadband

Peter Peterson from Mainely Wired will collaborate with Premium Choice Broadband. Premium Choice would like more time.

RedZone Wireless

- Time Warner Cable – The company believes there is an overlap exceeding 50%.

Red Zone Wireless Response to Time Warner Cable Challenge

Jim McKenna from Red Zone Wireless believes that Time Warner Cable's challenge is baseless. Red Zone believes that private investment is not working and that TWC's price/investment was exorbitant for a town. The towns want to know the solutions offered up by the challengers. There will be inevitable overlap. The question is what if Red Zone does not make this investment. TWC is providing a distraction. He had previously worked at TWC. Red Zone believes that cable passings of houses are irrelevant and the issue is actual availability of cable modem service. Mr. McKenna provided handouts to the Authority members including coverage maps that are theoretical, line-of-site coverage from the primary radio locations that Red Zone will use to expand service in connect with the recent grant award. Even though TWC talks about homes passed and did give specifics, TWC's connections are \$1500-\$2000 to connect in some instances.

Dick Thompson asked how Red Zone can say that they will use private funds if they put up a radio or a tower. Jim McKenna stated that it is a complex issue. His market is unserved customers.

Time Warner Cable Challenge

Tom Federle on behalf of Time Warner Cable stated that it seems as though Jim McKenna from Red Zone Wireless is asking to set the statute and rules aside. TWC has tried to overlay Red Zone's coverage map with TWC's street maps. If limited to proposed coverage area and you look at overlaps, it shows that areas, such as Frenchboro and Swan's Island, has no overlap. In regards to homes passed, there is some confusion over calculation. The State Planning Office has a number of homes in a municipality. He doesn't know if they count businesses and hotels with their separate rooms. The Authority may want to standardize the definition of homes. Mr. Federle agrees that there could be a two-prong test (20% overlap or impeding, diminishing or prohibiting investment) as suggested by Ben Sanborn. TWC is interested in getting the project through without any overlap.

Jim McKenna stated that Time Warner Cable's maps are not accurate. Dick Thompson asked if the overlap was less than the 20%. Jim McKenna stated that it was hard to say. Public investment would be used to serve unserved areas and will not use if there is Time Warner cable modem service available.

Ruling from the Authority

Dick Thompson moved to table this matter until the next meeting.

Vote: All members present voted in favor of the motion.

Suggestions for Future Grant Applications

Phil Lindley provided a list of suggestions for future grant applications:

- \$100,000 maximum grant amount.
- More accurate street-level data regarding coverage.
- Notify/involve incumbents at pre-application stage.
- Revise grant application papers for next grant round.

4. Legislative Discussion

The Authority does not have suggestions or proposals for legislative changes governing the operation of the Authority.

5. Executive Director Report

Phil Lindley gave his Executive Director's Report to the Authority.

- The Authority may want to consider funding a comprehensive mapping and inventory project in the future. The statute requires that the Authority undertake this project.

- The work groups for LD 2133 and LD 2293 are moving forward.

Public Comment

Andy Vamvakias from Premium Choice Broadband stated that the Authority should come up with standardized GIS formats. The Authority could work with the State Planning Office and others on this project. Small companies do not have the ability to count houses.