



STATE OF MAINE
HOUSE OF REPRESENTATIVES
HOUSE DEMOCRATIC OFFICE
AUGUSTA, MAINE 04333-0002

JEFF M. McCABE
MAJORITY LEADER

April 21, 2015

Testimony of Rep. Jeff McCabe
LD 1323, An Act To Expand Rural Broadband
Before the Legislature's Joint Standing Committee on Energy, Utilities and Technology

Senator Woodsome, Representative Dion and distinguished members of the Energy, Utilities and Technology Committee, I am Rep. Jeff McCabe of Skowhegan. I am here to testify on my bill, **LD 1323, An Act To Expand Rural Broadband**.

My bill would allow Maine communities to form local public authorities to provide broadband to rural parts of Maine.

There are many small businesses and farmers in rural Maine that would greatly benefit from access to broadband. Too many businesses struggle to compete because they do not have Internet that is fast enough to run their business online. We need to level the playing field and extend broadband to all parts of Maine.

According to Google Director of Marketing Scott Levitan, 97 percent of American consumers search online for goods and services. At the same time, 59 percent of small businesses in Maine do not have a website and 55 percent see no use in the Internet.

The website, BroadbandNow, which publishes federal data on broadband access, states that nearly 200,000 Maine residents don't have access to high-speed Internet access or even access of any kind.

Many Internet providers are not willing to extend service to rural parts of Maine. By allowing Maine communities to form their own local authorities, they can provide their residents with access to high-speed broadband.

The goal of my bill is to allow a municipality, groups of municipalities and counties to create corporate entities or authorities, similar to water and sewer districts, with the ability to issue bonds for the purpose of constructing broadband infrastructure to provide regional broadband service. Such an authority would provide the "last mile" of broadband to rural homes and business using the fees from that service to pay for the needed infrastructure.

The bill also states that the expansion of broadband using optical fiber is an authorized expense under the state universal service fund administered by the Public Utilities Commission, which would provide further funds to such authorities to extend broadband service to Maine residents.

The bill amends Maine's goals for broadband policy by requiring the ConnectME Authority to define "broadband" as having at least the same speed as the current Federal Communications Commission standard. It would also create a standard providing that upload and download speeds are the same. This addition will help to ensure that Maine broadband speeds are competitive with the rest of the country.

We need to make our state more competitive. The best way to do this is by expanding broadband throughout the rural parts of our state.

This proposal simply provides an additional tool for our rural communities to offer broadband to its residents and businesses. I urge the committee to consider this and all proposals that move us forward to true statewide broadband.

Thank you and I would be happy to answer any questions that you may have.



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Mark A. Vannoy
CHAIRMAN

David P. Littell
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COMMISSIONERS

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ADMINISTRATIVE DIRECTOR

April 22, 2015

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

Re: LD 1323, An Act to Expand Rural Broadband

Dear Senator Woodsome and Representative Dion:

The Public Utilities Commission (Commission) testifies neither for nor against LD 1323, An Act to Expand Rural Broadband. Our testimony addresses Section 2 of the bill, which concerns the Maine Universal Service Fund (MUSF) – a telecommunications support mechanism administered by the Commission.

The Commission established the MUSF through a rule adopted pursuant to the authority conferred upon the Commission by 35-A M.R.S. § 7104. Contributions to the fund are made by customers of each of the wireline and wireless voice carriers in Maine. Of the approximately \$8.1 million disbursed through the MUSF, \$7.3 million is disbursed to certain rural incumbent local exchange carriers in order to support their revenues so that they are able to offer POLR service at rates that are reasonably comparable to the rates charged by carriers in urban areas where the cost of service is generally lower than it is in rural areas.¹ As is generally the case with regards to the revenues collected by utilities subject to Commission regulation, there is no requirement that MUSF support payments be dedicated to any particular expense.

Section 2 of LD 1323 would expressly permit a recipient of MUSF support to use its support payments to fund the purchase and installation of fiber optic cable. In the Commission's view, this express authorization is unnecessary because, as noted above, utilities are not generally required to obtain prior authorization from the Commission in connection with how they spend their revenues.

¹ Approximately \$785,000 is used to fund various programs intended to benefit the hard of hearing community, and another \$37,000 to fund the public interest payphone program.

April 22, 2015

The Commission looks forward to working with the Committee on LD 1323 and I would be happy to respond to questions the Committee has at this time. The Commission will also be present at the work session should the Committee have additional questions in its consideration of this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paulina McCarter Collins".

Paulina McCarter Collins, Esq.
Legislative Liaison

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



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Paul R. LePage
GOVERNOR

Timothy R. Schneider
PUBLIC ADVOCATE

April 21, 2015

**Office of the Public Advocate Testimony on LD 1323 “An Act to Expand Rural
Broadband”**

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

The Office of the Public Advocate testifies neither for nor against LD 1323, An Act
to Expand Rural Broadband. The bulk of the bill’s text relates to municipal bonding
authority, which could provide a useful funding mechanism to fill Maine’s broadband
investment gap. This testimony focuses instead on the bills’ provisions related to the Maine
Universal Service Fund, broadband mapping, and the definition of broadband.

Maine Universal Service Fund (MUSF)

The bill adds “expansion of broadband through use of optical fiber” to the permitted
uses of the MUSF. While transitioning MUSF to broadband support, as the federal
government has done, may be reasonable, any such transition for Maine should be
considered in the context of continued support for basic telephone service throughout the
state. Maine currently has a dedicated assessment to promote broadband deployment in the
ConnectME Fund. The Legislature could achieve similar goals by expanding the
contribution base for the ConnectME fund so that it mirrors the MUSF, to which all
providers contribute.

Mapping

Section 6 of the bill appropriately identifies the need for accurate maps that reflect
street level broadband availability and speeds. The ConnectME Authority has spent a great

deal of federal money on broadband maps in recent years. However, due to limitations on data collection these maps are at best “directionally accurate” and tend to overstate actual broadband availability in a given area. Specifically, the primary source of data the Authority uses is advertised connection speeds that are self-reported by internet service providers, reported on a census block basis.

In its Broadband Study for the Town of Isleboro, Tilson Technology compared the Authority’s data to the results of online speed tests by actual residents and businesses. Though the Authority’s data suggested 99 percent of the island had access to Tier 6 download speeds (between 25 Mbps and 100 Mbps download), Tilson found just one respondent with a download speed above 8 Mbps. The average download and upload speeds reported on the island were 3.74 Mbps and 0.62 Mbps respectively.¹ The Authority itself recently reached similar conclusions in rejecting a challenge by FairPoint to a proposed grant on Great Diamond Island. Residents provided broadband speed tests demonstrating that their actual broadband speeds were far slower than those indicated by the Authority’s maps.

While improved mapping would provide better information to consumers and policy makers, there is a risk that the Authority spends its time and resources developing ever more detailed and accurate maps, and not expanding the availability of broadband.²

Definition of Broadband

As noted in previous testimony, the ConnectME Authority’s existing rules require it to update the definition of broadband on an annual basis, using objective criteria based on specified uses and market analysis. Using this existing process, the Authority adopted a 10 Mbps symmetric standard for broadband in January of this year.

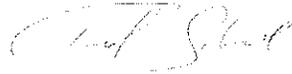
¹Isleboro Broadband Study, http://townofislesboro.com/fileadmin/Committees/other/broadband/Report_Islesboro_Municipal_Broadband_Study.pdf

² For a more literary description of this problem, see the (one paragraph) Jose Luis Borges short story, On Exactitude in Science.

The bill establishes the FCC's definition of broadband as a floor for any state standard, and requires that standard to be symmetric. By its terms, this would appear to require Maine to adopt a 25 Mbps symmetric standard.

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

Respectfully submitted,



Timothy R. Schneider
Public Advocate

Joint Standing Committee on Energy, Utilities and Technology

Testimony of Time Warner Cable
In Opposition to

LD-1323

4/21/15

Senator Woodsome, Representative Dion, and members of the Joint Standing Committee on Energy, Utilities and Technology, Time Warner Cable offers the following testimony in opposition to LD-1323.

LD-1323 provides in statute that municipalities may issue revenue bonds to fund the development of broadband infrastructure. It is not clear that municipalities need this authorization in order to issue revenue bonds to build broadband networks. At the very least, it appears that some municipalities have already done so without LD-1323 enacted into law.

The bill also authorizes the use of Maine Universal Service Fund to expand broadband through the use of optical fiber. In its January 7, 2015 report to this Committee, the Maine Public Utilities Commission addressed this issue as follows:

"A policy of advancing the availability of broadband service in Maine through the disbursement of funds collected from telecommunications customers raises a set of economic and legal issues that are entirely different in kind, complexity, and sheer financial magnitude than those that are implicated by the State's policy goal of universal basic voice service. In the Commission's view....it would be counterproductive to attempt to create a direct linkage, through disbursements made through the MUSF, between the policy of ensuring universal voice service and the policy of encouraging improved broadband in Maine.

While the MPUC answered the question in the context of reviewing POLR service, its answer highlights the complexities of intertwining MUSF funding with broadband deployment. Moreover, the MUSF is yet another fund, administered by yet another entity (the PUC). In conjunction with LD-1185, we could end up with the PUC collecting fees and running a broadband fund, the DECD using general fund revenue to run a fund to promote broadband development, all while the ConnectME Authority continues to collect a fee and runs a broadband fund. It should be noted that the zeal to establish funds is outpacing the analysis of how to spend the money, where to spend the money, or even if spending money results in meaningful progress.

The bill also proposes that the speed of broadband infrastructure in Maine should be equal to the speed in the most recent definition of broadband by the FCC. That speed set by the FCC is asynchronous. However, the bill also requires that the speed

adopted by the state be synchronous. As such, these two provisions (C and D in sec. 3 of the bill) are in conflict with each other.

For the reasons set forth above, Time Warner Cable respectfully opposes this bill.



ENERGY, UTILITIES AND TECHNOLOGY COMMITTEE

TESTIMONY OF VERIZON COMMUNICATIONS

LD 1323 - An Act To Expand Rural Broadband

April 21, 2015

Chairman Dion, Chairman Woodsome, and members of the Energy, Utilities, and Technology Committee, my name is Jim Cohen of Verrill Dana, LLP, and I am here today on behalf of Verizon to speak *against* LD 1323 for the limited purpose of addressing the component of the bill that would expand Maine's Universal Service Fund (USF).

What would LD 1323 do? Two things. First, it allows local municipalities to create bonding authorities for the purpose of broadband buildout. Second, it would modify the State's Universal Service Fund to allow for the funding of "broadband through the use of optical fiber" and requires that broadband speeds be "symmetrical." Our opposition is focused on the second piece.

Bonding is an equitable funding mechanism. The portion of the bill that calls for bonding is an appropriate mechanism for funding broadband infrastructure, for three reasons:

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

Expanding the USF to cover broadband is problematic. This portion of the bill would essentially duplicate what the ConnectME Authority was established to do, but unlike the ConnectME Authority, the Maine Universal Service Fund does not place any limits on how much money can be raised through fees on customers. Rather, the fee can be raised by the PUC without any need for approval by the Legislature. By contrast, the ConnectMe fee is established by the Legislature.

By way of background, over the past several years, this Committee has carefully reviewed options to modify the way telecommunications services are regulated in Maine, and in 2012, the Committee passed a law that greatly reduced the level of regulation on wireline telecommunications providers to achieve closer regulatory parity with other carriers. As part of this carefully negotiated and balanced legislation, all "voice service providers" in Maine would continue to be required to contribute to the Maine USF – this includes mobile telecommunications providers and interconnected VoIP providers. In practice, this fund collects approximately \$7 million per year, and all of the funds are provided to the rural ILECs to support voice service provided through "provider of last resort" (POLR) service. None of the funds are currently provided to FairPoint for POLR service, and none of the funds are provided to mobile telecommunications providers or VoIP providers.

Last year, this Committee spent a substantial amount of time considering whether and how to revise Maine's USF, including whether to place a statutory cap on the fund, or phase it out entirely. Many advocated for a cap in order to limit the risk to telecommunications customers in Maine who are asked to pay the fees. In the end, the Legislature

placed a temporary cap on the Fund, which expires this Fall, and directed the PUC to explore the continued need for POLR service. The Commission completed that task, and has reported to the Committee that modifying and/or reducing POLR support should be considered. Verizon and a coalition of wireless and VoIP providers agreed.

The challenge with LD 1323 is that it proposes to add a new goal of the Maine USF: *broadband by optical fiber*, but it fails to address other key elements of the USF governing how much money Maine consumers should be asked to pay. For this reason, we offer the following observations:

1. The USF should not be expanded in scope without establishing a statutory mechanism for how much can be raised through the USF. Giving a blank check to a state regulatory agency is unwise.
2. If broadband is added to the USF, the Legislature should phase out contributions to voice service. This is more consistent with changes made through the FCC regarding the Connect America Fund.
3. The USF is not a competitively-neutral funding mechanism to pay for landline broadband because it will result in an unfair cross-subsidy from mobile voice and data users who would not derive any benefit from the fund.

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

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

Conclusion. For the reasons noted above, we support funding for broadband infrastructure through competitively neutral means such as bonds, but oppose funding mechanisms that skew the competitive landscape and unfairly burden mobile voice and data consumers. Thank you, and please let us know if we can provide any additional information.

TELECOMMUNICATIONS ASSOCIATION OF MAINE

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April 21, 2015

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

Re: LD 1323, An Act To Expand Rural Broadband

The Telecommunications Association of Maine (TAM) offers the following testimony in **OPPOSITION** to LD 1323, "An Act To Expand Rural Broadband".

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

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

This legislation does include language that would explicitly permit the Maine Universal Service Fund (MUSF) to be used for the purpose of expanding broadband. TAM agrees that this

would be an appropriate transition, especially in light of the manner in which the FCC is transitioning universal service support into broadband projects and the recent reclassification of Broadband Internet Access Service (BIAS) as a telecommunications service. However, given the new classification of BIAS as a telecommunications service, it may not be necessary for a change in law to permit MUSF to be used to deploy broadband capable facilities.

Accordingly, TAM would urge this committee to vote **OUGHT NOT TO PASS** on LD 1323, "An Act To Expand Rural Broadband".

Sincerely,

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

Benjamin M. Sanborn, Esq.
Telecommunications Association of Maine



**Testimony of Chris Hodgdon, Vice President Government Relations
Joint Committee on Energy, Utilities and Technology
April, 21 2015**

Chairman Woodsome, Chairman Dion and distinguished members of the Committee; thank you for the opportunity to offer comments today regarding our concern with certain provisions of LD 1323.

Comcast takes no position on the sections of the Bill which create a revenue bonding structure for municipal networks. There are however several provisions which are unrelated to the issue of revenue bonding included in this legislation and Comcast does wish to share our concerns.

First and foremost Section 2 of the legislation expands the Maine Universal Service Fund to include costs associated with deployment of broadband through fiber optics. This represents a major expansion of the purpose and ultimately size and cost of the Maine Universal Fund and is contrary to the Public Utilities Commissions recent recommendation in its Provider of Last Resort report that the legislature not combine broadband subsidies with the Funds existing telephone subsidies. Turning the Maine Universal Service Fund into a broadband fund is a major policy decision which will have major implications on the taxes and fees customers pay as well as the competitive environment. It should not be undertaken as a one sentence section to a larger Bill.

Further, Section 3 of LD 1323 amends 35-A MRSA §9202-A, Sub-§1 to include a new provision which requires the ConnectME Authority's definition of broadband to be a symmetric standard. By defining the standard in this manner the authority's long standing and successful policy of being technologically neutral would be discarded. Defining broadband in this manner not only ignores consumer preferences for higher download speeds but it will unavoidably result in ConnectME's limited funds being diverted away from unserved areas towards projects in areas where broadband already exists. Additionally, by forcing providers to now build networks to match the definition in statute rather than to meet customer's actual needs and preferences scarce resources will be consumed inefficiently limiting the ability of providers to deploy services in truly unserved areas where they are needed. This provision unnecessarily constrains the Authority's flexibility to invest resources as efficiently and wisely as possible and should be struck.

Lastly, Section 6 of the Bill amends 35-A MRSA §9204 to add a new sub section which requires the ConnectME Authority to conduct street level mapping of availability and measurement of actual street-level speeds. The cost of this provision could easily

consume all of the Authority's available resources several times over and will likely result in little or no useful data. Providers are currently already required to provide mapping data related to availability to the FCC and this more granular standard will have little if any practical value. Similarly, efforts to collect street level speed data will be extremely expensive and will not yield any new data which is not already available through publically available data regarding advertised speeds.

We know that advertised speeds are a useful and far less expensive tool for estimating actual speeds because the FCC has looked extensively at speed performance in its ***2014 Measuring Broadband America Fixed Broadband Report, A Report on Consumer Fixed Broadband Performance in the US***. This report found that using recent test data over all the ISPs tested, actual speeds were 101% of advertised speeds and among the cable providers sustained download speeds were 102% of advertised speeds. Providers are routinely and consistently delivering on their advertised speeds. Requiring a new and expensive testing system for the ConnectME Authority will only succeed in consuming scarce resources which should be focused on supporting deployment in unserved areas. Comcast recommends deleting this provision.

Thank you for the opportunity to provide comment on this legislation, I would be happy to answer any questions that you may have.

CONTACT:

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Testimony of FairPoint Communications

Before the Joint Standing Committee on Energy, Utilities & Technology

Regarding LD 1323, An Act To Expand Rural Broadband

April 21, 2015

Good afternoon, Chairman Woodsome, Chairman Dion, and distinguished members of the Joint Standing Committee on Energy, Utilities & Technology. My name is RoJean Tulk, and I am Director of Government Relations for FairPoint Communications. On behalf of FairPoint, I am here today to offer the following comments on LD 1323.

LD 1323 represents yet another bill proposing a way to expand the availability of broadband in Maine. This, and other well-meaning proposals, highlights the important role advanced telecommunications products and services have become to businesses and individuals alike. Access to broadband opens world markets to the state's businesses and entrepreneurs. In a few short years, access to broadband has become a vital underpinning to the development of a strong economy in Maine.

Some form of broadband service has reached approximately 94 percent of the state, mostly by private investment - and with some additional investment through the ConnectME Authority. Broadband has become so necessary a service that the state is currently searching for ways to provide it to the six percent of the state currently "unserved" as well as to improve broadband speeds to the many areas of rural Maine known as "underserved." In light of these facts, FairPoint agrees with the title of LD 1323 - to expand rural broadband.

We have all heard several bills this afternoon that propose to expand broadband in Maine. LDs 1063, 1185, and 1323 explore ways to pay for more broadband deployment, recognizing that private investment alone cannot provide service to the most remote, high cost areas of the state. Each of these bills proposes a distinct funding mechanism. LD 1063 proposes to increase the ConnectME fund five-fold. LD 1185 would raise money through the general fund. And LD 1323 would tap into the Maine Universal Service Fund. All three bills tacitly agree on one premise - building and maintaining broadband networks costs millions of dollars.

Additionally, each of these bills proposes to build broadband networks through municipalities and other government entities. As the broadband needs of Maine's citizens and

businesses have grown in recent years, there is concern about the realities of relying solely on private investment. Many parts of Maine are extremely rural. The cost to deploy broadband there is prohibitively expensive, and a return on private investment would take decades. Yet, access to broadband for all Mainers is no longer a luxury or an "extra." In most cases, it is a necessity. This is a concept upon which we likely can all agree.

The questions for public policy makers then become:

1. How much broadband currently exists in Maine and where is it?
2. What are Maine's broadband requirements – for now and well into the future?
3. Is there a broadband funding mechanism that will maximize the state's private and public resources, and if so, what is it?
4. Which entities are most capable of building, operating, and maintaining broadband networks while avoiding stranded costs?

Answers to these and related questions represent crucial information that Maine needs to craft appropriate public policy with regard to the state's broadband requirements. Analysis of these types of data must take place well before any public funds are allocated. Maine, along with the rest of the country, currently finds itself in a sea change regarding advanced telecommunications services. Technological innovation is occurring rapidly, creating a penchant to find quick solutions. Considering the expense and magnitude involved in creating broadband networks, Maine's public policy makers must base their decisions on facts, not anecdotes, as they move forward to create the appropriate telecommunications strategy for the 21st Century.

FairPoint looks forward to working with the Committee on the important telecommunications issues before it this session. We're happy to answer questions now, and we'll be available at the work session as well.