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Testimony on L.D. 465, "An Act To Eliminate the Broadband Sustainability Fee"

Presented by
Representative Norman E. Higgins
District 120

Energy, Utilities, and Technology Committee
April 2, 2015

Good afternoon Senator Woodsome, Representative Dion, and distinguished members of the Joint Standing Committee on Energy, Utilities, and Technology Committee:

I am State Representative Norman Higgins, and I proudly represent District 120, which includes the towns of Atkinson, Brownville, Dover-Foxcroft, Medford, and Milo, along with Lake View Plantation and Orneville Township in southern Piscataquis County. It is an honor to appear before you to introduce L.D. 465, "*An Act To Eliminate the Broadband Sustainability Fee.*"

In 2009, the State received a \$25 million grant from the federal government to install 1,100 miles of dark fiber (Three Ring Binder) throughout rural Maine. During this time period, the Maine Legislature imposed a tax called the Broadband Sustainability Fee on only the Three Ring Binder. The tax is \$3.00 per leased strand mile of dark fiber.

In 2015, the cost is reduced to \$2.00 per leased strand mile and sunsets in December of 2017. The funds are collected by the ConnectME Authority and are placed in the Broadband Sustainability Fund, which are made available to telephone companies to subsidize the expansion of broadband services to rural Maine. The Broadband Sustainability Fee increases costs by 20% to 30 % on the usage of the Three Ring Binder. It is a barrier to the deployment of high-speed Internet to underserved areas of the State.

A draft report of the Public Utilities Commission (PUC) summarized the impact, stating that "the Broadband Sustainability Fee diminishes the competitiveness of the dark fiber market without significant countervailing benefits to the public welfare." The draft report recommended eliminating the Broadband Sustainability Fee. The PUC

Over, please

District 120 Atkinson, Brownville, Dover-Foxcroft, Medford, Milo and Plantation of Lake View, plus the unorganized territory of Orneville Township

ultimately decided, due to a challenge to the draft proposal by telephone providers, to take no action and let the sunset provision of the law prevail.

In 2013, Maine lawmakers passed a resolve directing the ConnectMe Authority to convene a working group to identify challenges to broadband infrastructure deployment in Maine and to recommend policies to the Legislature. The resolve named ten organizations to be represented, including the PUC, the Maine Turnpike Authority, the Maine Department of Transportation, the Maine State Chamber of Commerce, the Maine Municipal Association, the Maine School and Library Network, the Maine Department of Administrative and Financial Services, and the Public Advocate's Office.

The resolve directed the panel to consider "the allocation and the use of conduit capacity on an open-access, nondiscriminatory basis so that any financially responsible entity, such as 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 sustainability terms and conditions relative to their use on the network."

The work group had several meetings and generated a list of recommendations that were published in the Broadband Infrastructure Deployment Working Group Report for presentation to the Energy, Utilities, and Technology Committee for February 2014. The Report was distributed to members of the Committee; however, the Report was not presented to the Committee.

In summary, the group made the following points:

1. the tax imposed on users of the Three Ring Binder will make efforts to extend rural service more expensive;
2. the largest payer is the University of Maine, which uses taxpayer dollars and student tuition to fund the fee;
3. only telephone companies have access to the money to fund service enhancements in rural areas; and
4. the funds collected are substantially less than anticipated and are being challenged in court.

Why not just let the Broadband Sustainability Fee sunset? Maine's broadband capability has been ranked 49th in the nation and was recently characterized by a major business magazine as having broadband capacity of a third-world country. New York has announced a \$500 million dollar investment, Kentucky a \$300 million dollar investment, and Massachusetts a \$90 million dollar investment in rural areas west of Springfield. Montana, which is rated 50th, is proposing a \$25 million dollar investment. In Maine, our two-year proposed State budget contains zero investment. Instead, we have a public policy that imposes a fee to stifle the use of a major broadband connection in rural Maine. It is on their behalf I ask for your support of L.D. 465.

Thank you for your consideration. I would be happy to answer any questions you may have at this time.



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Paul R. LePage
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April 2, 2015

Office of the Public Advocate Testimony in SUPPORT of LD 465 “An Act to Eliminate the Broadband Sustainability Fee”

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

The Office of the Public Advocate testifies in strong support of LD 465, An Act to Eliminate the Broadband Sustainability Fee. This bill eliminates a fee that makes it more expensive to provide broadband service in rural Maine. Passing this bill is a simple, no-cost measure that the Legislature can take to improve broadband service in rural Maine.

Overview

- The increased costs imposed by the Broadband Sustainability Fee fall disproportionately on those rural parts of the state where our broadband challenges are greatest.
- The Broadband Sustainability Fund is a case study in how not to fund broadband investment: funding is designated to a single class of provider, on a non-competitive basis, with little to no accountability.
- The Broadband Sustainability Fee was a quid pro quo for access to poles and rights of way that exemplifies the anti-competitive potential of limiting such access.
- If the Broadband Sustainability Fee can be eliminated in 2018, it can be eliminated today.

The increased costs imposed by the Broadband Sustainability Fee fall disproportionately on those rural parts of the state where our broadband challenges are greatest.

First, a little bit of background about the problem that the Three Ring Binder is intended to solve. Though it may seem like the Internet is everywhere, it is not in Maine. To connect to the global internet Mainers must send and receive data to Internet points of

presence, (for most Maine internet service providers, in Boston), where they can interconnect with the larger networks that form the global Internet. To move data from Maine to where the Internet is, Maine internet service providers and businesses who don't own their own connections must pay a third party for transit. Transit is priced per megabit per second per month, and predictably, the costs are greater the further you have to go. The more rural you are, the fewer competitive options for transit you are likely to have. The high cost of transit on this "middle mile" is one of the less-talked-about challenges of providing high speed broadband service in rural Maine. It simply costs more to offer a customer the same broadband service in Caribou or Calais than in Kittery or Kennebunk.

The federal government provided a subsidy to construct the Three Ring Binder to ensure that nearly the entire state of Maine had access to affordable middle mile infrastructure, on an open-access, non-discriminatory basis. This means that anyone—an internet service provider, a business, a university—may lease dark fiber along the route, at the same or similar pricing and terms and conditions as any other user. While other providers offer connections on some portions of the Three Ring Binder's route, it is the only middle mile infrastructure offering dark fiber on an open access basis.

By statute, the Broadband Sustainability fee is assessed on users of the Three Ring Binder on a per mile basis. The farther you need to travel on the 3 Ring Binder the more of the Fee you have to pay. And in rural parts of the state, you need to travel further to reach the same number of customers. As a result, the burden falls disproportionately the parts of Maine where data must travel the farthest to reach the Internet, not coincidentally, the places where our broadband challenges are greatest. It exacerbates the problem the Three Ring Binder was constructed to solve. Eliminating the fee would eliminate this inequitable burden.

The Broadband Sustainability Fund is a case study in how not to fund broadband investment.

Unlike all other funding disbursed by the ConnectME Authority, funds collected from Broadband Sustainability Fee are not distributed on a competitive basis, subject to the rules and scoring guidelines established by the Authority. Rather, these funds are designated to specific incumbent local exchange carriers, who must simply ask for those funds and

certify that they will be used to deploy broadband infrastructure in unserved areas. Though the authority has the (as yet unexercised) ability to audit such disbursements, it has no authority to claw them back, or otherwise offer any input on how they are used.

Moreover, the method of generating revenue is fundamentally inequitable. Though other entities own middle mile infrastructure in Maine, the state only imposes a surcharge on the customers of Maine Fiber Company, the only entity that qualifies as a “dark fiber provider.” If the Legislature believes that placing a per-mile surcharge on users of middle mile infrastructure is an appropriate way to generate funds for last-mile broadband investment, it should impose that surcharge on all such users and infrastructure.

The Broadband Sustainability Fee was a quid pro quo for access to poles and rights of way that exemplifies the anti-competitive potential of limiting such access.

One of the primary arguments I have heard in support of maintaining the Broadband Sustainability Fee is that the statute represents a carefully calibrated deal made by parties in 2010. If so, it is a deal that cries out for reconsideration. The 3 Ring Binder was conceived, funded and built largely without involvement from Maine state government. Indeed, the developers of the 3 Ring Binder approached the Legislature only because they needed a statutory change to obtain rights to utility poles and rights of way. Public Law 2009, Chapter 612 (attached) did just two things: 1) gave the 3 Ring Binder access to utility poles and rights of way, and 2) created the broadband sustainability fee.

Both the Maine Public Utilities Commission and the Federal Communications Commission have recognized that fair, timely and reasonable access to poles and rights of way is essential for broadband expansion. The FCC devoted a whole section of the National Broadband Plan to this issue. As the Maine Commission observed,

Utility poles are a scarce resource and represent bottleneck facilities for competitive telecommunications providers and to the development of facilities based competition. Accordingly, the State has a public policy interest in ensuring that pole space is administered fairly and reasonably and in a manner that does not unnecessarily impede entry to the market by competitive providers.¹

¹ *Oxford Networks F/K/A Oxford County Telephone, Request for Investigation into Verizon's Practices and Acts Regarding Access to Utility Poles*, No. 2005-00486, Order at 9 (Oct. 26, 2006).

If this Legislature is serious about promoting broadband expansion, it should make it easier and cheaper to access utility poles. The law that created the Broadband Sustainability Fee did the opposite.

If the Broadband Sustainability Fee can be eliminated in 2018, it can be eliminated today.

Whatever the circumstances in 2010, in 2015 Maine simply cannot afford a self-imposed handicap on use of valuable broadband infrastructure. There is no reason to wait until 2018 to repeal a law that right now is making it more expensive to deploy and deliver broadband in rural Maine.

We look forward to working with the Committee on LD 465, and will be present at the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,



Timothy R. Schneider
Public Advocate



City of Sanford, Maine

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Steven R. Buck

Testimony in Support of Municipal Broadband and elements of;

LD 912 An Act To Allow the Establishment of Regional Municipal Utility Districts To Support Telecommunications, Broadband Communications and Energy Infrastructure.

LD 465 An Act To Eliminate the Broadband Sustainability Fee.

LD 826 An Act To Promote Maine's Economic Development and Critical Communications for Rural Family Farms, Businesses and Residences by Strategic Public Investments in High-speed Internet.

April 2nd, 2015

Senator David Woodsome

Representative Mark Dion

Members of the Committee on Energy, Utilities and Technology

My name is Steven R. Buck, City Manager of the City of Sanford, and I am offering testimony in favor of legislation to assist municipal investment in the creation and expansion of broadband services through the establishment of public-private partnerships.

The City of Sanford identified the need to increase broadband connectivity as a foundation of economic competitiveness. To this end the City contracted with Tilson Technology Company of Portland to perform a Feasibility Study inclusive of existing infrastructure assessment, existing provider assessment, businesses and or community anchor institutions and their needs, as well as existing potential future providers of ISP services. Four independent business models were developed as a goal, all focused on public-private partnerships of municipal investment to aid in the future profitable operation of expanded broadband services to be operated by the private providers.

On March 11th, 2015, Sanford launched an RFP sent directly to at least 22 Vendors. Eleven of the initial 22 Vendors have already indicated that they will be replying and the number of respondents is growing. The RFP that Sanford issued is specifically designed to solicit responses from existing providers to identify best business practices and a model for a public-private partnership to expand Sanford's broadband infrastructure, capabilities, cost competitiveness, and saturation of both business and residential markets. The result will be Sanford having taken a lead in the establishment of the new business model and making an investment in infrastructure for long term economic development returns that are currently not being made by the private sector. The City recognizes that the private sector will invest when they recognize a sufficient level of customers to support their business models. Those current business models have not produced sufficient investments in Sanford to provide a competitive edge necessary to attract Information Technology and Software Development companies



demanding higher levels of services or to support current businesses in a cost advantageous manner.

The City seeks to partner with respondents to take advantage of existing infrastructure and providers to improve all levels of services. Such improvements can be made by creating an Open Access Non-discriminatory Fiber Network owned and controlled by the City and then utilized by providers to enhance existing services or provide new levels of services not currently available. The system will encourage the expansion of infrastructure in Sanford, expand the capabilities of current providers in Sanford, encourage competition in Sanford, and ultimately result in a broadband system sought after by IT companies and modern business models. From reviewing literature around the U.S. and the world, we know that open access arrangements can be the catalyst for encouraging competition, better consumer choices and lower prices; we want this opportunity and competitive advantage for Sanford, for Maine. This is a vision of the Utilities of the future necessary to compete for economic development and growth. Connection to the Three Ring Binder will be an essential element of Sanford's future broadband system capturing cost competitiveness gained from prior investments.

Given this foundation of Sanford's vision and work, there are a number of beneficial elements contained in the following pieces of proposed legislation:

LD 912 An Act To Allow the Establishment of Regional Municipal Utility Districts To Support Telecommunications, Broadband Communications and Energy Infrastructure.

1. LD 912 adds prescriptive powers to municipalities under Title 30-A Chapter 115 Interlocal Cooperation §2203 Joint Exercise of Powers specifically listing the increased powers of Telecommunications, Broadband, Internet, and Energy generation and distribution.
2. LD 912 further provides for the capacity to issue revenue bonds in support of the creation of such cooperative utilities.
3. LD 912 not only grants the prescriptive powers to municipalities to create such utility districts, it preserves such rights as will reasonably be challenged by the legacy entities currently granted virtual monopolies by either the PUC or Franchise Agreements. Modern business investments are best protected by an adaptive aggressive business model and not by governmental protections that hinder competition. LD 912 ensures the ability to partner and compete.
4. There are a number of Municipalities currently exploring public-private partnerships towards the creation and exercise of a best business model to expand and make more competitive broadband infrastructure and services. LD 912 will allow for Interlocal cooperation towards linking these efforts to capture further economies of scale. For example, Sanford proposes to build 9 miles of fiber optic cable to connect to the Three Ring Binder. That cable will pass through the Town of Wells and offer close connectivity to West Kennebunk. LD 912 will allow for these initial Communities to share in the creation and operation of this infrastructure. Once completed, Sanford's fiber optic loop will also be available to provide future connectivity to our neighbors to the north and west of Sanford.
5. LD 912 also provides for Interlocal cooperation in energy generation and distribution. Sanford will benefit from this prescriptive right as it continues to work on establishing a Photovoltaic Solar Array to generate electricity to be distributed to Sanford based businesses. It is foreseeable that the ability to cooperate interlocally could expand this concept for the mutual benefit of multiple jurisdictions.

LD 912 assures that public-private partnerships that will be the impetus of such build outs are provided for and preserved. I strongly urge all Maine Legislators to support LD 912 in recognition of the investments waiting to be made by local governments and the value of their Interlocal cooperation that will propel Maine forward.



LD 465 An Act To Eliminate the Broadband Sustainability Fee.

The redirect of the broadband sustainability fee to support municipal efforts to expand services into underserved areas would be very beneficial. Through the Feasibility Study, Sanford identified the need to construct a Dark Fiber loop internally to serve the 80 plus anchor institutions and then the residential customers. The estimated investment in that Dark Fiber loop is over \$960,000. In order to make a connection to the Three Ring Binder, the City needs to invest over \$440,000 of additional resources to achieve cost competitive backhaul options. This is an indication of the level of investment necessary to establish a higher level of service, a competitive edge, and the investment necessary to make a meaningful public-private partnership. Sanford is focused on the partnership aspect, not in creating duplicative services, but rather investing to enhance the ability of multiple business models to meet their business and profit objectives. Sanford businesses and residents will benefit from such investment.

LD 826 An Act To Promote Maine's Economic Development and Critical Communications for Rural Family Farms, Businesses and Residences by Strategic Public Investments in High-speed Internet.

The City of Sanford can support this Bill in recognizing that the expansion of broadband capabilities anywhere in the State benefits all of the State. The City also supports LD 826 from the perspective that as the infrastructure necessary to support the most rural areas of our State are constructed and or enhanced, all regions through which this infrastructure passes has the opportunity to connect, enhance, or otherwise partner to gain the full advantage of this improved infrastructure. The City recognizes this concept by the State to be the same Sanford has developed for itself, invest in the necessary infrastructure with the return being increased economic development of high quality jobs and development.

Respectfully Submitted,

Steven R. Buck

Steven R. Buck
City Manager, Sanford



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April 2, 2015

Senator David Woodsome, Senate Chair
Representative Mark Dion, House Chair
Members of the Committee on Energy, Utilities and Technology
127th Maine Legislature
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Re: LD 465, "An Act To Eliminate the Broadband Sustainability Fee"

The Telecommunications Association of Maine (TAM) offers the following testimony
Neither For Nor Against LD 465, "An Act To Eliminate the Broadband Sustainability Fee."

TAM takes no position on the elimination of the Broadband Sustainability Fee (BBSF) as set forth in Section 1 of the bill. However, if the BBSF is eliminated, TAM believes that any remaining amounts in the fund should be used for the purposes for which they were initially collected. Thus, TAM would urge the Committee to reject Section 2 of the bill.

The current language of the law clearly directs that BBSF funds be used for expanding last mile broadband in unserved areas. To date, thousands of BBSF dollars have been used to bring broadband services, including fiber connections, to customers who previously were unserved. The program has been working, and there is no evidence to show that repurposing these funds for use by municipalities in developing plans to promote broadband would yield greater benefits for the people of the State. TAM believes that rather than directing ratepayer funds to municipalities to "promote" broadband, the Legislature, should encourage the ConnectME Authority to work with municipalities to examine the needs of their communities in detail to determine the best and most effective means of ensuring access to broadband service. Accordingly, TAM believes that changing the BBSF distribution structure would not be appropriate at this time.

Accordingly, TAM is neither for nor against the legislation as a whole, however if the Committee does consider adopting the bill, TAM would urge the committee not to change the usage of remaining funds and, therefore, reject the proposed amendments set forth in Section 2 of the bill.

Sincerely,



Benjamin M. Sanborn, Esq.
Telecommunications Association of Maine

Testimony of FairPoint Communications

Before the Joint Standing Committee on Energy, Utilities and Technology

LD 465, An Act To Eliminate the Broadband Sustainability Fee

April 2, 2015

Good afternoon, Chairman Woodsome, Chairman Dion, and distinguished members of the Joint Standing Committee on Energy, Utilities and Technology. My name is RoJean Tulk. I live in New Gloucester, Maine. I am Director of Government Relations for FairPoint Communications. On behalf of FairPoint, I'm here today to offer the following comments in opposition to LD 465:

LD 465 proposes to eliminate the Broadband Sustainability Fund (BSF). The bill's sponsor has stated that the surcharge is just another tax on telecommunications customers' bills, and it should be eliminated. FairPoint contends that the BSF was created for a specific purpose – to deploy broadband to unserved parts of Maine – and should not cavalierly be eliminated. This type of broadband deployment is known as providing service to the “last mile.” In our view, the BSF program has demonstrated a successful public/private partnership to deploy broadband service to the very high cost to serve, rural parts of the state.

To better understand the important role the BSF has played in this endeavor, a review of the circumstances that led to its establishment will assist you as you ponder this bill. In the 2009-2010 timeframe, the federal government awarded approximately \$24 Million in federal taxpayer funds to build a “middle mile” fiber network that essentially mirrors FairPoint's privately owned fiber network. Two investors put up an additional \$8 Million in private investment, and the so-called Three Ring Binder (3RB) was funded. At that time, the Legislature recognized the conundrum of allowing a mostly publicly funded duplicative network to be built to compete with the private sector and private investment.

The Utilities & Energy Committee asked the various stakeholders to meet and develop an agreement that reflected the concerns of all the parties. The stakeholders included representatives of Maine Fiber Company (the owners of the Three Ring Binder), FairPoint, the International Brotherhood of Electrical Workers (IBEW) and Communications Workers of America (CWA) local unions, the Maine State Chief Information Officer, the Public Advocate, and the Telecommunications Association of Maine (TAM). The group met for several weeks during the second session of the 124th Maine Legislature and unanimously agreed on a proposal

to mitigate, in part, the anti-competitive effects of the 3RB. Within that agreement, the BSF was crafted to address the fact that the 3RB dealt only with a "middle mile" system and that "last mile" broadband deployment could not and would not be addressed by this publicly funded network. The Broadband Sustainability Fund was created so that monies collected in the BSF were expressly allocated for broadband deployment to unserved areas of the state. (MRSA 35-A §9216.6) In return, the Maine Fiber Company received a statutory designation whereby a "dark fiber provider" was authorized to attach to utility poles. The agreement was unanimously approved by the stakeholders, followed by unanimous passage out of the U&E Committee, and subsequently passed the 124th Legislature.

Since then, FairPoint has used its BSF dollars to deploy broadband to areas where it could not deploy broadband through private investment alone. To date, FairPoint has received approximately \$178,000 in BSF funds and has used those monies, along with its own private investment, to deploy broadband in unserved areas of Robbinston, Sweden, Vinalhaven, Georgetown, Otisfield, Limington, and Eagle Lake. Our use of these BSF monies as prescribed by statute has enabled FairPoint to stretch its own private investment funds to reach additional unserved areas of Maine such as to areas in Eddington, Winterport, Sedgewick, Guilford, Dover-Foxcroft, Madison, and Dixfield – to name a few. And it has helped preserve the state's telecommunications workforce needed to physically deploy advanced telecommunications service throughout the state.

An additional element of the BSF statute to keep in mind as you ponder LD 645 is that the entire program is scheduled to sunset on December 31, 2017. The program has only three more years to exist, and the fee itself will be scaled back by 33 percent at the end of 2015. As I stated previously, this program was developed by all the competing stakeholders, and the final resolution appropriately considered the positions of each stakeholder. By establishing the BSF, resources were funneled into getting service from a "middle mile" network to the "last mile" end user. Without this component, consumers would not see much benefit from the federally funded 3RB. Conversely, the BSF was set up to decrease and finally sunset as its core mission of getting broadband to the last mile was achieved.

The Broadband Sustainability Fund is an example of competing parties working together to develop a compromise to address the broadband deployment issues facing Maine early in this decade. In effect, it represents a contract where the parties agreed that certain actions and activities would occur over the course of several years. The Maine Fiber Company has already reaped the benefit of this agreement by receiving authority to attach to Maine's utility poles and, in fact, attaching to them in a timely manner largely facilitated by the state's utilities, including FairPoint. And, that same statute supports "last mile" broadband deployment through the BFS until the end of 2017. Repealing the BSF portion of the statute now, in 2015, is

tantamount to renegeing on a deal after one party has enjoyed the benefits of the agreement while the other parties to the deal lose the benefits originally promised them.

Since its inception in 2010, the BSF has succeeded in fulfilling its purpose to provide resources to deploy broadband service to high cost, unserved portions in the state. It attempted to address the legislature's concern with regarding the use of public funds and entities to compete with the private sector. In Maine's rapidly changing and highly competitive telecommunications market, the BSF effectively utilizes limited resources to address some of our state's communications challenges. The BSF isn't broken, so you don't need to fix it.

We urge you to vote "Ought Not To Pass" on LD 354. Thank your for your time and attention. We'll be pleased to answer questions now and be available for the work session.