

**STATE OF MAINE
CONNECTME AUTHORITY**

CONNECTME AUTHORITY
ConnectME Authority Operation (Chapter 101)

COMMENTS OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

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Introduction

AT&T Communications of New England, Inc. (on behalf of itself and its affiliates) (“AT&T”) is pleased to submit the following response to the September 27, 2006 Notice of Rulemaking proposed by the ConnectME Authority.

Comments

I. THE CONTRIBUTIONS TO THE CONNECTME FUND SHOULD BE COMPUTED USING THE SAME BASE THAT IS ALREADY REPORTED BY PROVIDERS FOR THE MAINE SERVICE PROVIDER TAX.

The statute provides that communications service providers are to contribute to the ConnectME Fund a tax computed on “all revenue received or collected for all communications services provided in this State.” Communications services are defined as any “wireline voice, satellite, data, fixed wireless data or video retail service.” In its Notice of Rulemaking, the ConnectME Authority has sought comments on whether “provided to a location in Maine” is an administratively burdensome standard. We contend that it is.

The phrase “in this State” does not provide sufficient guidance for determining whether a particular telecommunications transaction has a significant connection with Maine so that Maine can tax the transaction. In addition it is not clear whether the tax is limited to intrastate transactions in Maine. The proposed rule provides no additional guidance and makes the situation even less clear. The proposed rule suggests that everything billed to a Maine address is subject to the tax. This is a flawed approach. For example, if a call takes place totally in California but the bill is sent to an address in Maine the proposed rule would apply the Maine tax even though Maine has no right to tax the transaction.

Computing the contributions to the ConnectME fund using the same base that is already reported by carriers for the Maine Service Provider Tax is a better approach. First, this approach is logical and consistent with the ConnectME statute. As with the ConnectME fund, the Maine Service Provider Tax is imposed on receipts for “services sold in this State,” including “telecommunications services” as well as “extended cable and satellite television services.” 36 M.R.S. § 2552. Obviously, to the extent that there are certain services that are taxable under the Service Provider Tax but are not taxable for the ConnectME Fund, those must be excised from the Service Provider Tax base when reported for purposes of the ConnectME Fund. For example, mobile telecommunications services are taxable under the Service Provider Tax but are only taxed for the ConnectME Fund if the provider voluntarily agrees to be assessed. However, for those services taxable under both, the Service Provider Tax already provides a system for determining which services are “in this State.”

Moreover, this approach would be administratively easier for both telecommunications service providers and the ConnectME authority. Providers will be able to use the same data already collected for purposes of the Maine Service Provider Tax and will avoid the need to create systems to identify different fields of receipts attributable to Maine. The ConnectME Authority will be able to rely on Maine Revenue Services to audit or otherwise verify the amounts reported, as well as to handle any disputes over whether certain receipts are includible in the base.

II. BECAUSE PROVIDERS WILL NEED TIME TO IMPLEMENT THIS NEW TAX IN THEIR BILLING AND COMPLIANCE SYSTEMS, WE REQUEST THAT AT LEAST FOUR MONTHS ADVANCE NOTICE BE GIVEN.

Currently the legislation provides that the tax can not exceed 0.25%. However the actual rate is not clear and there is no time frame for when notice of the actual rate will be provided. In addition, as discussed above the base upon which the tax will be computed has not yet been determined. To the extent that the base does not match the current base used for the Maine Service Provider Tax, research may need to be conducted in order to evaluate the taxability of certain services.

Presently, the effective date is uncertain. While it can be no earlier than January 15, 2007 it could be a later date. Moreover, there is no established period of advanced notice that is required to be given prior to implementation. The statute permits providers to pass this new tax through to customers, but requires that they "must explicitly identify the amount owed by a customer on the customer's bill and indicate that the funds are collected for use in the ConnectME Fund." Making changes to billing systems in order to properly reflect such a tax is complex. By way of example, for the AT&T Tax

Department to implement such a change in its billing system by working with IT to hard code the changes, realistically at least three months time is needed.

Once the rate and base have been determined, there should be a span of three to four months before the tax becomes effective. Finally, the actual effective date should apply to service on bills issued on or after the effective date which should be the first day of a month to avoid breaking a billing cycle.

III. THE REQUIREMENT TO PROVIDE CUSTOMER COUNTS BY OFFERING SHOULD BE ELIMINATED, GIVEN THE COST IT IMPOSES ON COMMUNICATION SERVICE PROVIDERS AND THE LACK OF A CLEAR USE.

In addition to requiring a copy of a communication service provider's FCC Form 477, Section 3(A)(3) of the proposed rules would require communication service providers to provide the ConnectME Authority with the following information for each "broadband service" : service description, offer pricing, target customers, total number of customers purchasing each offer, the total number of business customers, and the total number of residential customers. Many communication service providers do not normally collect the pricing or customer count data at an offer level as called for here and as such this will represent an additional reporting obligation. Communication service providers will thus need to develop methods, procedures and systems at considerable cost to comply with this requirement.

AT&T recognizes the Authority's statutory obligations to collect and aggregate data concerning communications services within the state, especially for the purpose of determining unserved or underserved areas within the state. We question, however, whether certain of these data are necessary for the Authority to fulfill its role, given that the additional data required by this proposed rule appear to be statewide in nature, while

the underserved/unserved determinations are implicitly at a lower geographic level. The unserved designation will presumably be made from the zip code level reporting contained in the Form 477, by the maps provided by wireless broadband providers or via individual/group petitions.

While pricing data may be required to calculate the 150% threshold under Section 5(C), customer count information is not necessary or even useful for purposes of fulfilling the Authority's obligation to determine areas as being underserved as described in Section 5(C). Given the cost such a requirement imposes on communication service providers, the requirement to provide customer counts by offering should be eliminated.

IV. IN ORDER TO AVOID UNNECESSARY ADMINISTRATIVE COSTS, INFORMATION PROVIDED PURSUANT TO SECTION 3(A) SHOULD BE ACCORDED THE SAME PRESUMPTIVELY PROTECTED TREATMENT AS TREATMENT ACCORDED TO BOTH FORM 477 DATA AND INFORMATION PROVIDED PURSUANT TO SECTION 3(B).

Section 4 pertains to "Protection of Confidential Information." Section 4(A)(2)(c)(i) states that it will protect provider's Form 477 data "without further showing from the providers." However, the proposed rule does not explicitly afford the same protection for the additional, non-Form 477 data called for under Section 3(A)(3) titled "Description of Products and Services." As a result, providers would be required to file proprietary information such as customer counts, separately by business and residential, without any assurance that such sensitive information will be protected. Such information is extremely competitively sensitive and easily satisfies the criteria under Section 4(A)(2)(b) for determining what proprietary information will be protected. As a result, there is no need to subject providers and the Authority to cost of filing and deciding individual requests and no need to impose on the providers the uncertainty that

an individual request will be denied. AT&T, therefore, recommends that it receive the same level of presumptive confidential treatment as Form 477.

A simple fix would be to change Section 4(A)(2)(c)(ii), which currently reads “Information provided pursuant to subsection 3(B),” to “Information provided pursuant to subsections 3(A) and 3(B).” Given the protection criteria enumerated in this section, the confidential nature of the data that Section 3(A) requests, and the fact that the rule will already be automatically protecting the balance of data called for in Section 3, the rule should codify the automatic protection for all these data. The alternative, which is contemplated by the proposed rule, would almost certainly produce the same result, but only after the administrative burden of having all providers file, and the Authority decide, motions for confidential treatment twice each year. There is little to be gained from requiring such routine filings with predictable results each year.

Conclusion

AT&T appreciates this opportunity to provide comments on the Authority’s proposed rules and looks forward to a productive working relationship in assisting the Authority to fulfill its mission.

Respectfully Submitted,

**AT&T Communications of New England Inc.
and its Affiliates**



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