Comments of the Maine Internet Service Providers Association
On Draft Rules Promulgated Pursuant to PL 2006, Ch. 665
ConnectME Authority Operation (Chapter 101)

The Maine Internet Service Providers Association (MISPA) is a trade organization comprised of many of the small and intermediate sized Internet service providers from all across the State of Maine. MISPA has worked for the past few years to actively support legislation that would promote the re-establishment of Maine as a technological leader in the electronic communications industry. We were actively involved in the crafting processes that led to the passage of P.L. 2006, Chapter 665. We thank you for the opportunity to comment on these draft rules that have been promulgated under the auspices of that law.

Section 1. Purpose

MISPA noted several instances where the draft rules seems to depart from the specific language in the statute. We are concerned that such departures and discrepancies will only lead to confusion. Section 9204, subsection 1 spells out in detail the duties of the ConnectME Authority, vis-à-vis the establishing the criteria defining unserved and underserved areas. However, Section 1, subsection 1 of the rule omits a significant portion of the language that governs the discretionary activity of the Authority. Such authority, as contained in the statute would potentially protect a provider who had a demonstrable project anticipated in the near future, yet such language is not contained in the rule. MISPA would urge the Authority to resolve such discrepancies between the statute and the rule.

Similarly, Section 2.A. of the Statute authorizes the Authority to "Monitory wireless coverage in areas where the authority determines the quality of the coverage is inadequate[.]" However, Section 1, subsection 3 changes the language to: "Monitor wireless (cellular) coverage[.]" In MISPA's opinion, this substantially changes the meaning of the charge to the Authority. The term "cellular" is a term of art which represents only one type of commercial radio service that is only used by some carriers. We would urge the Authority to reconcile the language of the draft rule to agree with the statute.

Section 2. Definitions

While the definitions section of the draft rule appears to have included more definitions than does the statute, MISPA does not generally have any concerns about that. However, probably a scriveners error has caused the deletion of a completion of one definition; Section 2, subsection E notes that a "Certificate of Qualification means the certificate issued to an applicant by the Authority in accordance with the requirements of section 3 of _____." The definition is incomplete. We suspect that it refers to the rules

promulgated by Maine Revenue Services. Further, we would urge the Authority to devise a way in its rules to adopt the recommendation of MRS in this regard, as opposed to being required to accept a designation of another agency without any discretion to accept or deny MRS' designation by the Authority.

A second problematic area is the change in the definition of Communications Service. In section 9202, subsection 3, the statute defines it as ". . . any wireline voice, satellite, data, fixed wireless data or video retail service." However, in the draft rule, in section 2, subsection F, it is defined as ". . . any retail wireline voice, wireline data, fixed wireless data, satellite data or any video retail service." These are all industry terms that materially change the meaning of the statute. For example, in the statute, all satellite communications service is covered, whereas, in the draft rule, only satellite data is governed by the rule. This substantially reduces the Authority in overseeing certain communications modalities. Again, MISPA would respectfully urge the Authority to adhere to the statutory language.

Section 3. Required Filing of Data

The MISPA supports the idea of assessing the status of services offered on a bi-annual basis. We do note however, that there is no consequence for failure to file the required information. For example, we would urge the Authority to specifically articulate that failure to file or significant tardiness in filing the requested information would make the entity ineligible for grants or contracts with the Authority during the time-frame during which they have been recalcitrant.

Section 4. Protection of Confidential Information

The proposed rule sets out an appropriate standard to determine whether information of a competitive or proprietary nature should be protected – such information will be protected only to the <u>minimum</u> extent necessary to protect the legitimate competitive or proprietary interests of the provider. MISPA believes that within the communications industry generally, extraordinarily broad concepts of what constitutes sensitive competitive or proprietary have developed. The reasons for such development are undoubtedly complex, but they surely include the tendency of regulators to seek the path of least resistance and the natural incentive for regulated entities to keep regulatory adversaries uninformed. The result of this trend, however, has been to erode seriously the public's legitimate right to access to public information.

Having proposed an appropriate standard for deciding whether information should be protected, however, the drafters of the rule unfortunately propose to adopt mandatory protection for broad categories of information in Section 4(A) (2) (c) without application of the standard. While some of the information listed there might indeed be of a competitive or proprietary nature, much of it surely is not, and much of the remainder does not need to be shielded from the public in order to protect the legitimate competitive or proprietary interests of the provider. It is not unduly burdensome to require providers

affirmatively to seek a protective order under Section 4(A) (2) (d) for information that truly warrants protection under the proposed standard.

Section 5. Designation of Broadband Service and Eligible Areas

MISPA notes that the draft rules segregate out satellite as a wireless broadband service under Section 5(A) (4). MISPA would urge the Authority to confine itself only to parameters of service in making its designations. That is, define the minimum service standards that the Authority deems necessary for provision of service; that way, the draft rule remains technologically neutral. For example, if the Authority wishes to set the initial standard as:

> 'a service capable of being used for the transmission of information at a rate that is not less than 1.5Mbps in at least one direction for residential and small business users, providing access to the internet, and demonstrates synchronicity and no latency discrepancies,'

The Authority could do so without singling out one type of provider or one specific technology that may at some future date be able to meet the criteria.

MISPA would also urge the Authority to define the terms used in Section 5(C) (1) (b). While most service providers in the industry know that the reliability of a service is as important as is the price, what we do not know is what the "current or projected needs for the area might be in the eyes of the Authority. Accordingly, we would urge the Authority to further define the terms: capacity, reliability, quality of broadband service available vis-à-vis the "current or projected needs for the area."

MISPA would also specifically argue against the recommendation that no new service provider could enter an area where another service provider has invested in any infrastructure installed within the area for the provisioning of broadband service to residential customers within the past 12 months. This is the type of activity that has blocked the ability of ISPs to enter into communities. We firmly believe that merely clarifying the definitions as listed above will ameliorate any vagueness to the criterion without giving an undue advantage to incumbent providers in any one particular area.

Section 6. ConnectME Authority Support

MISPA believes that the current structure of the grant and support procedures contained in the draft rules are as detailed as they should be. By going into more specificity, and by granting a bias toward any one provider, the Authority runs the risk of continuing the current stalemate for investment into underserved and unserved areas. MISPA further believes that establishing the methodology for determining the criteria and prioritization within the rules will tie the hands of the Authority in its ability to review creative approaches to difficult problems. We would urge the Authority not to carve out the

methodology for grants in its rules more than is there now. Instead, we would urge the Authority to carve out a role for the Advisory Committee in its rules,

- to assist the Authority in arriving at creative new ways to encourage investment in underserved and unserved areas;
- to assist in assessing the processes used by other states to determine their effectiveness and the possibility of similar implementations in Maine;
- to assist in the prioritization of projects; and,
- To assist in the development of private/public partnerships.

While there was a suggestion at the Public Hearing that the rules should be viewed as a "business plan" and as such should contain a methodology for assessing and awarding grants, MISPA argues that the latter suggestion be roundly rejected. While the rules may be viewed as a business plan, no business plan would contain such specifics as to the creation and execution of contracts. Indeed, insertion of such detail would strangle a business by requiring adherence to a rigid code of performance. Insertion of the methodology and prioritization of awards of grants in this rule would similarly be stifling for the Authority, leaving it no room for creativity or flexibility. No other grant-making Authority in the State has its methodology for prioritizing and awarding grants in its rulemaking. MISPA feels strongly that it should not be in these rules either.

Section 7. ConnectME Fund

Section 9211 of the statute specifically states that "[t]he assessment may not exceed 0.25% of the revenue received or collected for all communications service provided in this State by the communications service provider." Yet Section 7(A) requires each communications service provider that received retail revenues for communications services provided to a Maine location of $12,500 or more during the most recently completed quarter must report the quarterly retail revenues . . ." Section 7(B) then determines the amount of the assessment as).25% of those reported revenues. This seems to be a departure from the statute. The statute is clear that the assessment is on all revenue received or collected for communications services in the state. MISPA would urge the Authority to reconcile the language of the draft rule with the clear language of the statute.

Section 8. Waiver of Provisions of Chapter

MISPA has no objection to this section of the draft rule.

Conclusion

MISPA sincerely appreciates the opportunity to submit these comments, and urge the Authority to reconcile the discrepancies between the rule and the statute. Further, we urge the Authority to enlist the assistance of the Advisory Committee to determine multiple methodologies for awarding grants and for assisting with generation of other funding sources. We believe that with these rules in place, we are well on our way to re-establishing Maine as a forerunner in communications technology accessibility.

Respectfully submitted,

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