STATE OF MAINE
CONNECTME AUTHORITY

CONNECTME AUTHORITY
ConnectME Authority Operation
(Chapter 101)

COMMENTS OF VERIZON ENGLAND INC. d/b/a VERIZON MAINE

Verizon New England Inc. d/b/a Verizon Maine submits the following comments on the proposed Rules in Chapter 101 – ConnectME Authority.

Verizon Maine has participated in all phases of the process leading to the creation of the ConnectME Authority, including serving on the Broadband Access Infrastructure Board and working with other parties on the legislation, enacted as P.L. 2006 Chapter 665, which created the Authority.

The private sector has aggressively deployed technology throughout the State The latest FCC's "High Speed Services for Internet Access Report (status as of December 31, 2005) shows that overall industry efforts have increased broadband availability in Maine from 65% of zip codes as of June, 2001 to 97% as of December 2005. This same Report shows the number of high-speed lines in service in Maine, provided by 29 service providers, grew impressively from 38,149 lines in June, 2001 to 214,599 lines as of December, 2005.

Announcements have been made by the private sector in the past few months regarding additional investments that are planned in Maine that will further expand that availability of broadband services. The ConnectME Authority needs to be cognizant of these private sector activities and ensure that any attempts to support projects to further expand broadband availability do not negatively impact current and future private sector investments. The full title of Chapter 665 is "An Act to Accelerate Private Investment in Maine's Wireless and Broadband Infrastructure" and the Authority should center on the issue of encouraging – not supplanting – private investments, in a manner that is both technology-neutral and competitively fair.

Verizon Maine's comments and suggested changes to the proposed Rules will assist the Authority in the tasks fixed by the legislature. The Authority must provide the Utilities and Energy Committee of the Legislature with the requested "business plan" for enhancing the availability of broadband services, as well as the estimated cost to taxpayers of pursuing this goal. The proposed Rules lack several key elements of a needed business plan: (1) a process for conducting a market analysis of current conditions and demand for broadband services; (2) a means for prioritizing investment opportunities that might lead to broadband expansion and; (3) a required commitment by participating

petitioners and bidders to continue to provide service beyond the first year. Without this type of detail and information in the Rules, the "business plan" that the Legislature intended cannot be created, nor will its success be effectively gauged.

Verizon Maine's comments below follow the organization of the Rules.

Section 1. Purpose

To be consistent with the language of the legislation, the final Rule should directly reference the sections of the statute that are cited in Section 1. Thus, for example, the Rule should indicate that the criteria directive is pursuant to § 9204(1). In Section 1(3) of the Rule, the drafters indicated that a purpose was to "monitor wireless (cellular) coverage." This is too broad. The Rule should be changed to state more specifically that the duty of the Authority is to "monitor wireless coverage in areas where the authority determines the quality of coverage is inadequate." Subsection 1(3) should be replaced by the language of § 9204, and the Rule should include all of the duties listed in the statute, using the exact wording of the statute.

Section 2. Definitions

The definition of "Certificate of Qualification" is incomplete, as some text appears to have been omitted.

The statute (at 35-A M.R.S.A. §9202(3)) defines Communications service as "any wireline voice, satellite, data, fixed wireless data or video retail service." Although all satellite and all data retail services are included in the statutory definition of Communications service, the proposed Rule would limit satellite service to satellite *data* service, and limit data service to *wireline* data service. This is incorrect. The Rule should be modified to track the language that is in the statute.

Section 3. Required Filing of Data

The market information requested from service providers by the Authority in Section 3(A) (3) is not necessarily maintained by providers in a manner that fits these categories. For example, it is not always possible for providers to know whether a service is being used for business or residential purposes. Verizon Maine therefore recommends eliminating Subsections (c), (e) and (f), and that any information that is provided is considered confidential.

Section 4. Protection of Confidential Information

The proposed Rule in Section 4(A)(2)(c) indicates that information provided under subsection 3(A) is not protected, but that Form 477 data is automatically protected, as is wireless data provided under subsection 3(B). Information requested in subsection 3(A) is indeed highly confidential information that should automatically be protected

from public disclosure. Verizon Maine recommends amending Subsection 4(2)(c)(i) so as to protect "Information provided pursuant to Section 3."

Section 5. Designation of Broadband Service and Eligible Areas

Section 5(A) (3) establishes an initial minimum performance criteria standard for broadband of 1.5 Mbps in at least one direction. This speed is several times greater than the current FCC standard of 200 Kbps, and which is reported on Form 477. Considering that the standard can be adjusted in the future, Verizon Maine suggests a starting point closer to the FCC's definition. This may keep the door open for certain unique broadband projects to go forward in unserved areas.

Section 5(A) (4) is unnecessary and is not technology-neutral. All services seeking support from the Authority should be evaluated in the same manner, by the same standards, as established in Section 5(A). If satellite service can meet the minimum performance criteria for broadband, it should qualify for support consideration.

Subsection 5(C) (1) defines an "underserved" area for broadband and mobile communications services. The statute, at Section 9204, clearly states that a determination must be made as to whether declaring a location to be underserved would inhibit or impede private investment or diminish the value of prior private investment. This standard is absent in the Rule as proposed. While the proposed Rule Subsection 5(C)(1)(a) establishes an objective standard for determining underserved, Subsection 5(C)(1)(b) lacks specifics, and does not define what constitutes adequate capacity, adequate reliability, adequate quality and what would constitutes a "projected need" for an area.

Verizon Maine suggests replacing Section 5 C.1. with the following language:

1. <u>Broadband</u>. An area may only be designated as underserved if:
    A. The lowest cost broadband service that is available from any provider within the area is provided at a price that unreasonably exceeds the statewide average for comparable services and;

    B. No Broadband service provider has invested or installed any infrastructure within that area for the provisioning of broadband service to residential customers.

This change provides consistency with the statute in Section 9204.

Section 6. ConnectME Authority Support

The proposed Rule does not create the virtual "business plan" requested by members of the Joint Standing Committee on Utilities and Energy. The Rule lacks details, criteria and a process for the Authority to make a determination that an area is underserved or for determining whether a specific project is worthy of support. This is

the time to create an objective process by which taxpayer money will be used to fund future projects. Legislative policymakers and taxpayers will demand this information if the Rule is not specific in these areas.

The Rule should contain a process for conducting a market analysis of current conditions and demand for broadband services. This would take time to complete, but in so doing, the Authority would have information by which to base future decisions. The Rule as proposed is silent on the criteria the Authority will use to prioritize investment opportunities that might lead to broadband expansion. Now is the time to inform all parties of the specifics of what projects may be funded with Authority-created funds. The Rule also lacks any requirement for participating petitioners or bidders to provide service beyond the initial implementation period. While the Rule states that all projects must be completed within a year, there is nothing that requires service be provided beyond this period.

There is a waiver provision included in Section 6(B) of the Rule that indicates "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." Verizon Maine supports this provision, which should also be applied to Section 6(F). This would provide the same consideration to an existing broadband service in the event there are unforeseen delays.

Section 7. ConnectME Fund

1. Revenue Base Used to Compute the ConnectME 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." In its Notice of Rulemaking, the ConnectME Authority has sought comments on whether "provided to a location in Maine" is an administratively burdensome standard. Verizon Maine contends that it is.

The statutory phrase "provided in this State" does not provide sufficient guidance for determining whether a particular communications transaction has a significant connection with Maine so that Maine can tax the transaction. It also is not clear whether the tax is limited to intrastate transactions in Maine. The proposal in the Rule to substitute "billed to a location in Maine" 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, services in Maine may be billed, at the customer's request, to a customer location outside Maine.

As an alternative, Verizon Maine supports the proposal of AT&T (in its Comments) that contributions to the ConnectME fund use the same revenue base that is already reported by carriers for the Maine Service Provider Tax. 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. A. § 2552. Thus, for those service providers required to, or who choose to contribute to the ConnectME fund, using the same base as is used for the Maine Service Provider Tax should similarly capture the range of services "in this State."

Moreover, this approach would be administratively easier to administer and apply 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.

2. Effective Date and Timing

Currently the legislation provides that the amount of the tax cannot exceed 0.25%. However, the actual rate to be applied is yet to be determined and there is no timeframe 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, further research may need to be conducted in order to evaluate the taxability of certain services.

The effective date of the new tax 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 necessary for providers to implement the plan. 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 a complex task. By way of example, Verizon Maine estimates that to implement such a change in its billing system requires at least three months lead time.

Once the surcharge rate and revenue 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.

Section 8. Waiver of Provisions of Chapter

Verizon Maine has no objection to this section.

Conclusion

The Rules in Chapter 101 must include the necessary details of a "business plan" to allow for implementation of P.L. 2006 Chapter 665. The Authority must provide the Utilities and Energy Committee of the legislature with a specific, detailed business plan for enhancing the availability of broadband services, and the estimated impact on taxpayers of this proposal. Verizon Maine's comments will assist in meeting this task, and accordingly, urges the Authority to adopt the changes proposed in these comments.

Respectfully submitted,

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