



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