

SUMMARY: This Chapter describes the operation of the ConnectMaine Authority.

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§ 1 PURPOSE

The purpose of this Chapter is to implement the provisions of the Advanced Technology Infrastructure Act contained in 35-A M.R.S., Chapter 93. This Chapter describes the operation of the ConnectMaine Authority.

As stated in 35-A M.R.S. §9204-A, duties of the Authority include:

1. Establish criteria defining unserved and underserved areas;
2. Promote use of broadband service;
3. Support local and regional broadband planning;
4. Support broadband investment;
5. Facilitate state support of deployment of broadband infrastructure;
6. Collect and disseminate information; and
7. Administer funds.

§ 2 DEFINITIONS

As used in this Chapter, the following terms have the following meanings.

- A. **Advanced Communications Technology Infrastructure.** “Advanced communications technology infrastructure” means any communications technology infrastructure or infrastructure improvement that expands the deployment of or improves the quality of broadband service or wireless service coverage and can perform common applications and network service.
- B. **Authority.** "Authority" means the ConnectMaine Authority established in 35-A M.R.S. §9203.
- C. **Broadband Service.** “Broadband service” means a two-way, always-on, communications service that provides access to public data networks and the Internet, without usage limits and meets certain performance criteria determined annually by the Authority pursuant to §5 of this Chapter to be necessary to use common applications and network services.
- D. **Common Applications and Network Service.** “Common Applications and Network Service” means the ability to deliver commonly used applications for consumer use over the network.
Including:
 1. Real-time, synchronous voice and video communication, including video conferencing used in remote learning, telehealth, and remote working;
 2. Audio and video streaming;
 3. Network and cloud-based applications; including office productivity tools, e-commerce, and government services;
 4. Network file and data storage, sharing, retrieval, visualization, and search;

5. E-Sports, interactive gaming, and other recreational use;
 6. Home and business automation, security, and telemetry; and
 7. Any other application or network service that facilitates communication, and information exchange for the purposes of education, business use, telemedicine and other economic purposes.
- E. **Communications Service.** “Communications service” means any wireline voice, satellite, data, fixed wireless data or video retail service.
- F. **Communications Service Provider.** “Communications service provider” means:
1. Any entity offering communications service to customers in the State; or
 2. Any facilities-based provider of mobile wireless voice or data retail service that voluntarily chooses to be assessed by the Authority under 35-A M.R.S. §9211.
- G. **Household.** “Household” means a house and its occupants, regarded as a unit.
- H. **Infrastructure.** “Infrastructure” means a physical component or collection of physical components that provide the basic support for distributing advanced communication technology services.
- I. **Line.** A "line" is any wired or wireless connection capable of real-time concurrent inbound or outbound voice communication calls that are made or received to or from the public switched telephone network. For the purposes of this Chapter, private branch exchange (PBX) lines and Centrex lines are considered to be lines. For the purposes of this Chapter, the number of lines a service provider provides to a subscriber shall be deemed to equal the number of inbound or outbound calls the subscriber can maintain at the same time using the service provider’s service.
- J. **Mobile Communications Service Provider.** “Mobile communications service provider” means any facilities-based provider of retail mobile wireless voice or data service that voluntarily contributes to the ConnectMaine Fund.
- K. **Underserved Area.** “Underserved Area” means any geographic area where broadband service exists, but where the Authority has determined that the service is inadequate pursuant to criteria set forth in section 5(C) of this Chapter.
- L. **Unserved Area.** “Unserved Area” means any geographic area that the Authority has determined is without broadband service pursuant to criteria set forth in section 5(B) of this Chapter.

§ 3 REQUIRED FILING OF DATA

In order to achieve the purpose, set forth in §1, the following is required:

- A. **Communications Service Provider.** The authority shall collect data annually from communications service providers and any wireless provider providers that own or operate advanced communications technology infrastructure in the State data concerning infrastructure deployment for the purpose of developing mapping information to assist

the authority in implementing the provisions of section 9202-A: pricing data for advertised retail pricing for broadband services offered in the State and revenue data for the purpose of assessing communications service providers subject to section 9211. The authority shall permit providers that have provided data to the authority at a level of detail that the authority has determined acceptable to continue to provide the data in the same format. For mapping data, the authority, whenever possible, shall use data formats consistent with data formats used for mapping at the federal level.

1. Pricing data for advertised retail pricing for broadband services offered in the State:
 - a. Narrative description of any affordability option and the relevant qualifying criteria and the number of subscribers who have taken advantage of this provision within the prior year;
 - b. Narrative description of range of pricing and service options available in the State;
 - c. The cost and speeds of the most subscribed to standalone internet offering;
 - d. The cost, speeds, and other components of the most subscribed to bundle or package that includes internet service;
 - e. Cost range for 100mbps/100mpbs or faster service; and
 - f. Revenue data for the purpose of assessing communications service providers subject to §7.
2. Data to help the authority determine extent of broadband service in Maine:
 - a. Address level data that includes the technology and maximum speeds available; or
 - b. A map that depicts the extent of broadband service provided by the provider and delineates the availability of different service speeds, including areas where 25mbps/3mbps is available; where 10mbps upload is available; and anywhere where 100mbps/100mbps or faster is available; or
 - c. Other information that shows the extent of service lines, the type of broadband service provided and actual delivered maximum service speeds and latency.
3. If a communications service provider does not provide ConnectMaine with data set forth in §3 within three months of the annual request in the format ConnectMaine requested, that provider will not be eligible for ConnectMaine funding for the following round of grants, or until the data is provided, whichever comes first, absent an affirmative vote by the board prior to opening a grant round that a provider is eligible.
4. Reports containing data set forth in §3 for the previous year are due within one month of filing the required Federal Communications 477 data or its successor. Filings shall be made via a secure electronic transmission.
5. **Additional Information.** The Authority may request and communications service providers may voluntarily provide additional information to determine availability of broadband service in specific geographic locations to assist in evaluating or developing infrastructure grant proposals. Any information

collected pursuant to this subsection shall be held as confidential by the Authority and may be used for only the purposes set forth in this subsection.

§ 4 PROTECTION OF CONFIDENTIAL INFORMATION

- A. **Protected Information.** Pursuant 35-A M.R.S. §9207, all data concerning infrastructure deployment, pricing and revenue data included but not limited to service area and types of service data provided to the Authority is confidential and therefore not a public record under Title 1, section 402, subsection 3. An entity submitting information protected under this section will mark the top of each page in large, conspicuous typeface “CONFIDENTIAL.”
- B. **Removal of Confidential Designation.** The removal of the confidential designation for data provided pursuant to §3 of this chapter can only occur upon a determination made by the Authority that extenuating circumstances warrant this action; that the removal of confidential designation is as narrow as possible under the circumstances; and that any party who has provided confidential data has both actual notice of the Authority’s intent and has an opportunity to comment on the removal. In making this determination, the Authority will consider:
1. **Standard.** The Authority will protect from public disclosure information concerning any communication service infrastructure that could facilitate the intentional, illegal interference with a communications service or mobile communications service.
 2. **Criteria.** In determining what information is to be removed from information protected as critical infrastructure, the Authority will consider:
 - a. The extent to which the information could facilitate the disruption of critical emergency or other government communication services such as E911;
 - b. The extent to which the information could facilitate the disruption of public communication services;
 - c. The ease or difficulty with which a person could acquire or duplicate the information from other sources; and
 - d. The degree to which third parties have placed the information in the public domain or rendered the information “readily ascertainable.”
- C. **Exception to Public Record Law.** Information designated as confidential by the Authority is not a public record under Title 1, section 402, subsection 3, per the authority granted in 35-A M.R.S. §9207.

§ 5 DESIGNATION OF BROADBAND SERVICE AND ELIGIBLE AREAS

- A. **Broadband Service.** At least annually, and subject to a thirty (30) day comment period, the Authority must determine the minimum performance criteria for broadband service,

for the purposes of this Chapter. The Authority must base its criteria on the state of the market as well as the performance necessary to meet the current broadband needs of common applications and network services in use in the State.

1. **Criteria Governing Performance.** To determine minimum performance criteria, the Authority may consider:
 - a. Minimum sustained bandwidth for both upstream and downstream transmission in Common Applications and Network Service;
 - b. Maximum monthly throughput on a flat rate service offering; and
 - c. Any other performance criteria necessary for the use of common broadband applications and network services.

- B. **Unserved Areas.** At least annually, and subject to thirty (30) day comment period, the Authority shall designate all geographic areas that are unserved. In making such a designation, the Authority shall consider data collected pursuant to §3 of this Chapter as well as other data sources that the Authority deems credible and appropriate to help make this determination.
 1. **Broadband Unserved Areas.** In designating an unserved area, the Authority must find the following criteria:
 - a. Broadband service is not offered at any household within the geographic area pursuant to the most recent data submitted under §3 or other credible data sources utilized by the Authority;
 - b. Broadband service is not offered to any other potential subscriber within the geographic area pursuant to the most recent data submitted under §3 or other credible data sources utilized by the Authority.
 - c. The extent to which the broadband service meets the criteria governing Common Applications and Network Service.

- C. **Underserved Areas.** The Authority, subject to a thirty (30) day comment period, shall designate any geographic area as an underserved area and, therefore, eligible for a grant, when the Authority finds that:
 1. Credible evidence has been presented that less than 20% of the households within a geographic area have access to broadband service. The use of grant funds is limited to only the unserved portions of the area.

- D. **Opportunity to Review Proposed Designation of Unserved and Underserved Areas**
 1. Annually, based on the data provided by communication service providers, the Authority shall post a list of any geographic area identified in an infrastructure grant application as unserved or underserved for the purpose of confirming the availability of broadband service within that geographic area.

2. The Authority shall allow 30 days for the requesting entity to confirm the availability, or lack thereof, of broadband service prior to designating any geographic area an underserved area.

§ 6 CONNECTMAINE AUTHORITY SUPPORT

In order to achieve the purpose set forth in § 1., the Authority shall determine:

- A. **Priority infrastructure projects.** The Authority shall give preference among eligible infrastructure grant applications to projects in unserved areas that provide the greatest relative improvement to existing Internet service in unserved areas. In determining what constitutes relative improvement, the Authority will consider the following criteria:
 1. The number of potential subscribers to be served by the project, and the capital cost per potential subscriber to extend advanced communications technology infrastructures to potential subscribers;
 2. Whether Authority support for the project will inhibit or impede private investment in the area;
 3. Whether Authority support for the project will diminish the value of prior investment in advanced communications technology infrastructure used to provide broadband service or mobile communications service within the area; and
 4. Whether without the Authority's support for the project, the installation of adequate advanced communications technology infrastructure would not otherwise occur.
 5. The increase in download and upload speeds.
- B. **Eligible Applicants.** Applicants eligible to receive Authority support may include the following:
 1. **For Community Planning Grants**
 - a. General-purpose local governments (municipalities, groups of municipalities and counties);
 - b. Groups or regional partnership of general-purpose local governments;
 - c. Local government authorities, and joint or multi-county development authorities; and
 - d. Non-profit local or regional community organizations that are providing local or regional economic development programs.
 2. **For Infrastructure Grants**
 - a. Communications service providers;

- b. Units of local government including broadband utility districts; and
 - c. Any other responsible entity or group determined by the Authority to be capable of installing, using, and managing advanced communications technology infrastructure in the area.
- C. **Eligible Activities.** Eligible uses of funds provided under the ConnectMaine Fund include activities, facilities, and services described in 35-A M.R.S., Chapter 93, including the provision of public infrastructure, services, facilities and improvements needed to implement new broadband services, enhance existing broadband services, implement new mobile communications service, or enhance existing mobile communications service or the provision of technical and financial assistance to support local and regional broadband planning activities, to unserved areas. Funds may also be used for matching requirements, “gap” financing, and grants, that may assist projects in qualifying for other sources of funding, as well as any other activities that are integral and necessary for the development, installation and use of a broadband or mobile communications system.
- D. **Application Process.** The Authority will initiate a round of grant-making through public announcement. Applicants will be provided information on how to apply for a grant and a copy of a grant scoring guide at the time of the announcement of the grant round. The application process is subject to change, depending on funds available for granting, but will include, at a minimum the following provisions:
- 1. **Infrastructure Grant Application.** The application for a grant to build infrastructure will include, at a minimum, the following:
 - a. a description and GIS enabled map of the area proposed to be served by the project and sufficient information to establish that it meets the Authority’s definition of an unserved or underserved area, as set forth in section 5 of this Chapter;
 - b. a description of the proposed project, including public-private partnerships that have been established, evidence that the partners in the project are eligible to receive funding from the Authority, the type of service to be provided and, in the case of broadband service, the upstream and downstream speeds of the service to be provided, an estimate of the time required to complete the proposed project, the percentage distribution of households and businesses within the area to be served by the project and the estimated price per customer of the service to be provided by the proposed project;
 - c. the total amount of funding requested from the Authority;
 - d. the applicant’s financial commitment to the project in addition to the funding requested from the Authority;
 - e. the estimated number of customers who will directly benefit from the project who are currently unserved or underserved and the number of locations that will be left unserved in the community;

- f. evidence of community support for the proposed project, which may include letters or signatures of residents or businesses located within the area of the proposed project;
 - g. certification that the applicant has contacted the incumbent service provider(s) in the project area regarding current or impending plans for broadband infrastructure expansion and a description of such contact;
 - h. Timeline for completion of the proposed project; and
 - i. All infrastructure grantees must agree in writing to provide net neutral services in the provision of broadband internet access service across advanced communications technology infrastructure constructed with the use of the state funds. Net Neutral Services must be provided for all subscriber locations that were funded in full or in part with any State funds. For the purposes of this section Net Neutral Services shall have the same meaning as MRSA 5 Section 1541 B.
2. **Evaluation of Applications for Infrastructure Grants.** The application evaluation process will allow the Authority to evaluate all applications submitted during a particular application period that has been set by the Authority. In addition to evaluation of the greatest relative improvement offered by the project, the application will be judged using the following scoring categories:
- a. **Cost-Benefit.** The cost-benefit scoring is based on relevant factors, including, but not limited to, the amount of funding requested from the Authority per customer eligible to be served by the project, with lower funding per customer receiving a higher cost-benefit score;
 - b. **Community Support.** The community support score is based on relevant factors, including, but not limited to, evidence of community support for the project and the percentage of households within the project area that will be served by the proposed project;
 - c. **Project Scope.** The project scope score is based on relevant factors, including, but not limited to, the number of customers to be served by the project, the type and, when relevant, the speed of service to be offered by the project and the applicant's financial commitment to the project; and
 - d. **Project Value.** The project value score is based on relevant factors, including, but not limited to, the estimated price per customer to receive service from the proposed project and any other details of the project that may benefit customers in the area proposed to be served by the proposed project.
3. **Planning Grant Applications.** An applicant for a community broadband planning grant shall address the following information:

- a. a description of the area proposed to be the subject of the study and plan for broadband expansion;
 - b. a description of the applicant, including any public-private partnerships that have been established to seek the planning grant;
 - c. a description of any institutions or entities within the community that would qualify as an “anchor institution” that are supportive of broadband expansion;
 - d. the amount requested from the Authority to support the planning project;
 - e. the applicant’s financial commitment to the study and planning for broadband expansion in the community;
 - f. the applicant’s in-kind contribution to the study and planning for broadband expansion, including commitment of labor (paid or volunteer) and community resources;
 - g. an attestation that funds provided by the applicant for purposes of funding the planning project do not consist of in-kind contributions from the applicant or a vendor or private business that proposes to build, operate or provide retail services using broadband infrastructure constructed pursuant to the planning grant, pursuant to 35-A MRSA §9217(4);
 - h. a description of community support for broadband expansion in the form of letters or testimonials;
 - i. the estimated number of customers who currently have access to broadband service within the proposed project area;
 - j. the estimated number of unserved customers who could be served by expanded broadband infrastructure;
 - k. a description of the contact that the applicant has had with any incumbent service provider(s) in the community regarding current or impending plans for broadband infrastructure expansion; and
 - l. a description of any prior applications by the communities within the area of the grant application, either jointly or individually, for community planning grants.
4. **Planning Grant Evaluation process.** The Authority shall provide grants for planning projects to municipalities, groups of municipalities or nonprofit local or regional community economic development organizations to develop plans to expand the availability of broadband service in accordance with the following provisions:
- a. The authority shall score each application using the following scoring categories:

- i. **Community Support.** The community support score is based on relevant factors, including, but not limited to, the scope of participation by residents of each affected community in the application process and the amount of economic support to be provided by members of each affected community.
- ii. **Project Focus.** The project focus score is based on the degree to which the application proposes a project that is likely to produce the required results set forth in 35-A MRSA §9217(1).
- iii. **Project Preparation.** The degree of completeness with which the applicant has provided the required information set forth in subsection 3.
- iv. **Financial Commitment.** The amount of financial support to be provided by members of each affected community.

The Authority must ensure that community broadband planning grants are equitably distributed throughout unserved and underserved areas of the state and that the grants encourage collaboration between multiple communities.

The authority may fund up to 25% of the total award amount upon the granting of an award, subject to recapture by the Authority in the event of failure to successfully complete the grant. Full payment shall be awarded upon successful completion of the grant as set forth in subsection 5.

The Authority shall make all plans developed using grant funds available on the Authority's website.

5. **Project Completion and Evaluation.** A project will be considered successfully completed and eligible for final payment only if it complies with the following provisions.

- a. **Infrastructure Grants**

- i. Projects of less than \$1,500,000, that have received grant approval must be completed within one year of receipt of funds from the Authority or within 180 days of all licenses and permits or governmental approvals necessary to complete the project, whichever later occurs, unless a waiver is granted by the Authority due to unforeseen circumstances. Projects that are over \$1,500,000 will have a contractually agreed to completion date; and
- ii. Within one year of receipt of funds from the Authority or within 180 days of all licenses and permits or governmental approvals necessary to complete the project, whichever later occurs, the recipient must submit a report demonstrating completion, or in the case of a project that has been granted an extension of the one-year time period for completion, a report of progress. Such report must include an itemization of costs for which the

Authority's funding was used as well a description of the service that has been created through use of the funds.

b. Planning Grants

- i. Planning projects that have received grant approval must be completed within one year of funding unless a waiver is granted by the Authority due to unforeseen circumstances; and
- ii. Upon the date of completion, the recipient must submit a report with sufficient detail to allow the authority to determine whether the Plan generated by the project complies with 35-A MRSA §9217(1) to include the following information: ~~as follows:~~
 1. Define local broadband needs and goals;
 2. Inventory existing broadband infrastructure assets within the community or region;
 3. Include a gap analysis defining the additional broadband infrastructure necessary to meet identified needs and goals;
 4. Include one or more potential network designs, cost estimates, operating models and potential business models based on input from broadband providers operating within the community or region; and
 5. Include an assessment of all municipal procedures, policies, rules and ordinances that have the effect of delaying or increasing the cost of broadband infrastructure deployment.

The authority will provide final funding for only plans that comply with the provisions of 35-A MRSA §9217(1)

6. **Project Completion and Evaluation.** Projects with a total cost of less than \$1,500,000 and that have received grant approval, including planning projects, must be completed within one year of receipt of funds from the Authority or within 180 days of all pole licenses and permits or governmental approvals necessary to complete the project, whichever later occurs, unless a waiver is granted by the Authority due to unforeseen circumstances. Projects where the total cost exceeds \$1,500,000 will have a contractually agreed to completion schedule. Within one year of receipt of funds from the Authority or of all licenses and permits or governmental approvals necessary to complete the project, whichever later occurs, the recipient must submit a report demonstrating completion, or in the case of a project that has been granted an extension of the one-year time period for completion, a report-of progress. Such report must include an itemization of costs for which the Authority's funding was used as well as description of the service or the planning study that has been created through use of the funds.

7. **Infrastructure Grant Tracking.** For any grants awarded by the Authority for infrastructure deployment project, the grant awardee shall, annually for 5 years from the date of the grant award, provide the Authority data on the infrastructure deployment project that includes the
- a. The number of households within the project area that did not have access to broadband service;
 - b. The percentage of households in the project area that subscribe to broadband service from the grant awardee that is below the effective broadband service level set by the Authority;
 - c. The percentage of households within the project area that subscribe to broadband service from the grant awardee that is at or above the effective broadband service level set by the Authority;
 - d. The broadband option from the grant awardee subscribed to by the largest number of customers in the project area;
 - e. The price and speeds for the following services:
 - i. The broadband offering with the lowest annual cost;
 - ii. The broadband offering with the highest upload and download speeds; and
 - iii. The broadband offering taken by the greatest number of subscribers within the project area;
 - f. The number of businesses that take service from the grant awardee in the project area; and
 - g. The total number of businesses in the project area.

Information collected under this subsection shall be considered confidential pursuant to 35-A MRSA §9207. The Authority shall aggregate the data on an annual basis and include aggregated information as deemed appropriate by the Authority in its annual report.

§ 7 ConnectME FUND

- A. **Assessment.** The statutory assessment is imposed on the value of the following:
1. All retail revenues received or collected from communications services provided in Maine.
 2. All retail revenues received or collected from mobile communications service providers that voluntarily agree to be assessed by the Authority.

3. Beginning January 1, 2020, a surcharge of 10¢ per line or number per month is assessed and collected on a monthly basis. If the communications service provider recovers the amount from its customers, it shall identify this surcharge on each customer bill as "ConnectME – Statewide Broadband" and indicate that the funds are collected for use in the ConnectME fund."
- B. **Additional Funds.** Any additional funds the Authority collects pursuant to 35-A M.R.S. Chapter 93 shall be paid into the ConnectME Fund to be used for the purposes authorized by statute and in accordance with this Chapter.
- C. **Fund Administrator.** The Authority will contract with an appropriate independent fiscal agent to serve as the Fund Administrator. The administrator will establish the time and procedures for payment after consultation with the Authority.

§ 8 WAIVER OF PROVISIONS OF CHAPTER

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Authority may, for good cause, waive any of the requirements of this Chapter that are not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or 35-A M.R.S. Chapter 93.

STATUTORY AUTHORITY:

23 M.R.S. §3360-A; 35-A M.R.S. §§ 9201-9218.

History

EFFECTIVE DATE: This chapter, a major substantive Final Adoption (filing 2007-228), was approved as to form and legality by the Attorney General on May 30, 2007. It was filed with the Secretary of State on May 30, 2007 and becomes effective on June 29, 2007.

EFFECTIVE DATE: This chapter, a major substantive Final Adoption (filing 2019-091), was approved as to form and legality by the Attorney General on May 31, 2019. It was filed with the Secretary of State on May 31, 2019 and became effective on June 30, 2019.

EFFECTIVE DATE: This chapter, a routine technical adoption (filing 2019-215), was approved as to form and legality by the Attorney General on November 26, 2019. It was filed with the Secretary of State on November 27, 2019 and became effective on December 2, 2019.

EFFECTIVE DATE: This chapter, a routine technical adoption (filing 2021-053), was approved as to form and legality by the Attorney General on February 25, 2021. It was filed with the Secretary of State on March 3, 2021 and became effective on March 8, 2021.