

**SUMMARY:** This Chapter describes the operation of the ConnectME Authority.

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**TABLE OF CONTENTS**

|            |  |    |
|------------|--|----|
| <b>§ 1</b> | <b>PURPOSE</b> .....   | 3  |
| <b>§ 2</b> | <b>DEFINITIONS</b> .....   | 3  |
| <b>§ 3</b> | <b>REQUIRED FILING OF DATA</b> .....                             | 4  |
|            | A.     Broadband Service Provider .....                          | 4  |
|            | B.     Mobile Communications Service Provider.....               | 5  |
| <b>§ 4</b> | <b>PROTECTION OF CONFIDENTIAL INFORMATION</b> .....              | 5  |
|            | A.     Protected Information .....                               | 5  |
|            | B.     Issuance of Protective Orders .....                       | 7  |
|            | C.     Revocation of Confidential Treatment of Information ..... | 8  |
|            | D.     Exception to Public Record Law .....                      | 8  |
| <b>§ 5</b> | <b>DESIGNATION OF BROADBAND SERVICE AND ELIGIBLE AREAS</b> ..... | 8  |
|            | A.     Broadband Service.....                                    | 8  |
|            | B.     Unserved Areas.....                                       | 9  |
|            | C.     Underserved Areas.....                                    | 10 |
| <b>§ 6</b> | <b>CONNECTME AUTHORITY SUPPORT</b> .....                         | 10 |
|            | A.     Priority Infrastructure Projects.....                     | 10 |
|            | B.     Eligible Applicants .....                                 | 10 |
|            | C.     Eligible Activities .....                                 | 11 |
|            | D.     Application Process .....                                 | 11 |

**§ 7 CONNECTME FUND**..... 16

    A. Assessment..... 16

    B. Additional Funds..... 16

    C. Fund Administrator..... 16

**§ 8 WAIVER OF PROVISIONS OF CHAPTER** ..... 16

## § 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 ConnectME 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, any communication technology infrastructure or infrastructure improvement that expands the deployment or improves the quality of broadband service or any communication technology infrastructure or infrastructure improvement that expands the deployment or improves the quality of wireless service coverage.
- B. **Authority.** "Authority" means the ConnectME 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, and meets certain performance criteria determined annually by the Authority pursuant to § 5 of this Chapter to be the minimum necessary to use common applications and network services.
- D. **Broadband Service Provider.** “Broadband service provider” means a facilities based provider of broadband connections to end users that is required to file Form 477 with the Federal Communications Commission.
- 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 communication services.
- I. **Mobile Communications Service Provider.** “Mobile communications service provider” means any facilities-based provider of retail mobile wireless voice or data service.
- J. **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.
- K. **Unserviced Area.** “Unserviced 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. **Broadband Service Provider.** All broadband service providers shall file copies of all publicly available portions of FCC Form 477 pertaining to locations in Maine with the Authority within 60 days of the date the Form is filed at the FCC.
1. **Schedule**
    - a. Reports containing data for the period July 1 through December 31 are due March 1 the following year or within 30 days after filing at the FCC, whichever is later.
    - b. Reports containing data for the period January 1 through June 30 are due September 1 of the same year or within 30 days after filing at the FCC, whichever is later.
  2. **Filing Procedure.** Filings shall be made via a secure electronic transmission, under procedures determined by the Authority.
  3. **Description of Products and Services.** Along with filing the publicly available FCC Form 477 data with the Authority, each broadband service provider will provide additional information that describes its services as of December 31 or June 30, depending on the filing date. The additional information must include, at a minimum:

- a. A general description of each type of broadband service offered and technology used to provide the service; and
  - b. The retail, non-promotional prices for each offering.
- B. Mobile Communications Service Provider.** By March 1 of each year, each mobile communications service provider that contributes to the ConnectME Fund will file the following information with the Authority, with information current as of December 31 of the previous year.
1. **Map One.** A coverage map at -95 dB in a GIS format and in real-world coordinate space (such as ESRI SHP). This map layer must be a true or false depiction indicating where the mobile communications service provider network operates at -95dB or better, and need not include a continuous qualitative depiction of signal quality across the network;
  2. **Map Two.** A coverage map at -85 dB in a GIS format and in real-world coordinate space (such as ESRI SHP). This map layer must be a true or false depiction indicating where the mobile communications service provider network operates at -85dB or better, and need not include a continuous qualitative depiction of signal quality across the network; and
  3. **Description of Service.** A description containing:
    - a. Frequency and/or spectrum (e.g., 700 MHz, Cellular, AWS, PCS, BRS/EBS) band used in each area served;
    - b. Transmission technology (e.g, EV-DO, HSPA+, TDMA, CDMA, GSM, LTE) in each area served;
    - c. Areas of digital and analog service; and
    - d. The minimum upload/download data speeds that users should expect to receive for the deployed technology in the given frequency band;
    - e. Number of mobile communications devices provided in Maine.
- C. 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, the Authority may, on its own or upon request of any person or entity, designate information as protected and exempt such information from public disclosure, and may further limit disclosure as provided in 35-A M.R.S.A. § § 9207(2), to protect the security of public utility systems or to protect the

legitimate competitive or proprietary interests of communications service providers and mobile communications service providers. An entity submitting information protected under § 4 or an Authority-issued protective order, will mark the top of each page in large, conspicuous typeface “CONFIDENTIAL.” Each type of confidential information contained in the document must contain a reference to the specific subsection or protective order providing protection.

## 1. **Critical Infrastructure Information**

- a. **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.
- b. **Criteria.** In determining what information is protected as critical infrastructure information, the Authority considers:
  - i. The extent to which the information could facilitate the disruption of critical emergency or other government communication services such as E911;
  - ii. The extent to which the information could facilitate the disruption of public communication services; and
  - iii. The ease or difficulty with which a person could acquire or duplicate the information from other sources.
- c. **Protected Information.** The Authority must automatically protect and not make public precise infrastructure location and deployment information, including geo-referenced data and the number(s) or extent of market penetration of a service provider’s subscribers and connections in discrete service areas, without a motion for protective order submitted by any provider. This includes, but is not limited to:
  - i. Any electronic devices used in the transmission of communication services;
  - ii. Wireless towers and transmitters; and
  - iii. Distribution plant (including, but not limited to copper and fiber telephone plant as well as coaxial cable).
- d. **Information Protected Upon Request.** Upon request, the Authority will designate information other than that described in subsection (4)(1)(c) above as protected if it finds that such information meets the criteria of this subsection.

## 2. **Proprietary Business Information**

- a. **Standard.** The Authority will protect from public disclosure information of a competitive or proprietary nature to the minimum extent necessary

to protect the legitimate competitive or proprietary interests of communications service providers and mobile communications service providers.

- b. **Criteria.** In determining what proprietary business information will be protected, the Authority will consider:
    - i. The value of the information to the provider and its competitors;
    - ii. The amount of effort or money the provider expended in developing the information;
    - iii. The extent of measures taken by the provider to guard the secrecy of the information;
    - iv. The ease or difficulty with which others could properly acquire or duplicate the information; and
    - v. The degree to which third parties have placed the information in the public domain or rendered the information “readily ascertainable.”
  - c. **Protected Information.** The Authority must protect the following proprietary business information without further showing from the providers:
    - i. Information provided pursuant to § 3, except if it is otherwise publicly available;
    - ii. Equipment make and model; and
    - iii. Non-public financial statements.
  - d. **Information Protected Upon Request.** Upon request, the Authority will consider designating other information as protected if it finds that such information meets the criteria of this subsection.
- B. **Issuance of Protective Orders.** The Authority may, on its own motion or by motion of any person or entity, protect specific information or a class of information that has not been previously designated by the Authority as protected.
1. **Motion for Protective Order.** The party seeking the protective order must submit a Motion for Protective Order or Notice of Protective Order showing how the information meets the standards of either subsection 4(A)(1) or 4(A)(2), and how the protection it seeks is narrowly tailored.
  2. **Filing and Notice.** The Motion for Protective Order or Notice of Protective Order must be submitted to the Authority, which will then post it on its website and distribute to interested parties.

3. **Opposition to Motion or Notice.** Filings in opposition to or support of the Motion for Protective Order or Notice of Protective Order must be made within seven days of the filing of the Motion or Notice.
  4. **Protective Order Decision.** No later than 14 days after the filing of the Motion Protective Order or Notice of Protective Order the Authority will either issue the Protective Order or deny the motion for the Protective Order, stating its reasons for issuance or denial.
- C. **Revocation of Confidential Treatment of Information.** The Authority, upon its own motion or upon motion from any party seeking access to information protected under a Protective Order issued by the Authority or designated confidential by a provider pursuant to these rules, may revoke any prior confidential treatment or overrule a particular provider's designation of specific documents as confidential.
1. **Filing of Motion of Revocation.** The party seeking access to the confidential information contained in a Protective Order will file a Motion for Revocation of Protective Order (or in the case of the Authority, a Notice of Revocation of Protective Order) explaining why the information sought does not meet the criteria for protection as established by the Authority in this Chapter or otherwise.
  2. **Notice of Motion.** If the Motion for Revocation of Protective Order is directed at a specific Provider, the Motion must be served on that Provider and filed with the Authority. If the Motion is directed to a class of Providers, it need only be filed with the Authority. The Authority will post all Motions for Revocation of Protective Order on its website and distribute it to interested parties.
  3. **Opposition.** Filings in opposition or support of a Motion for Revocation of Protective Order must be made within seven days of the date the Motion was filed.
  4. **Protective Order Decision.** No later than 14 days after the filing of the Motion Protective Order or Notice of Protective Order the Authority will either issue the Protective Order or deny the motion for the Protective Order, stating its reasons for issuance or denial; provided, that no release of records shall take place before seven (7) days following issuance of a denial of stay request either by the Authority or by a court of competent jurisdiction, whichever later occurs.
- D. **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;
    - 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.
  2. **Criteria Governing Common Applications and Network Service.** To determine common applications and network services, the Authority may consider:
    - a. Real-time voice and video communication;
    - b. Audio and video streaming;
    - c. Network applications;
    - d. Network storage;
    - e. Interactive gaming;
    - f. File-sharing; and
    - g. Any other application or network service that facilitates communication, and data and content exchange.
- 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 subsection 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 subsection 3 or other credible data sources utilized by the Authority; and

- 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. Upon request, the Authority shall provide the boundary 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 ConnectME 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; and
  - b. 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 ConnectME 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 only 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 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 private partner in the project is 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, which

must meet the minimum requirement established by the Authority as set forth in § 5 of this Chapter, 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;
- 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; and
- 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.

2. **Evaluation of Applications for Infrastructure Grants.** The application evaluation process will allow the Authority to concurrently 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 a 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 must submit the following information to the Authority:
  - 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 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; 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) 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 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. 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 a 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;
- e. 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.
- 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.

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STATUTORY AUTHORITY: 23 M.R.S.A. §3360-A, 35-A M.R.S.A. §§ 9201-9218.

EFFECTIVE DATE: This chapter, a major substantive Final Adoption (filing XXXX-YYY), was approved as to form and legality by the Attorney General on \_\_\_\_\_. It was filed with the Secretary of State on \_\_\_\_\_ and becomes effective on \_\_\_\_\_.