

ConnectME Authority

August 19, 2009 – Minutes

1. Introduction

Authority Members: Sharon Reishus (Acting Chair), Dick Thompson, Mitch Davis
Staff: Phil Lindley and Kelly Arata

2. Third Round Grant Awards – Deliberation of Grant Award Challenges

Premium Choice Broadband

Phil Lindley stated that Premium Choice Broadband had initially filed six applications for various projects, including a project in Mt. Abram. After further consideration, Premium Choice withdrew its application for this particular project. The Authority cancelled the grant award as a result of this request.

Town of Edgecomb – Fairpoint Challenge

The Town of Edgecomb was working with Time Warner Cable (TWC) and Lincolnville Communications to provide cable modem service from TWC and fiber-to-the-home service from Lincolnville in a small part of the town. Fairpoint Communications filed its challenge citing potential overlap issues. Rojean Tulk from Fairpoint Communications stated that they will meet with Stuart Smith share and compare maps of service areas. However, Fairpoint requests a condition that the applicant should cooperate with the incumbent. The Authority agreed and added a condition that Edgecomb not cause to be installed end user equipment in areas to be served by Fairpoint with normal installations (see discussion below).

Town of Jefferson – Fairpoint Challenge

The Town of Jefferson has partnered with Midcoast Internet Solutions on this project. Fairpoint filed its challenge citing potential overlap issues. Rojean Tulk from Fairpoint stated that they plan to work with the Town of Jefferson, having contacted Joe Bodner and is willing to partner with the applicants on this project. Fairpoint had plans to expand in Jefferson but stepped back from that project because of economic conditions. However, Fairpoint is willing to meet with Joe Bodner of Jefferson to compare maps. Fairpoint further requested a condition that the applicant should cooperate with the incumbent. The Authority agreed and added an additional condition that the Town of Jefferson not cause to be installed end user equipment in areas to be served by Fairpoint with normal installations (see discussion below).

General Discussion & Recommendations

Phil Lindley stated that the incumbent can challenge an applicant after the grant has been awarded and further noted that not all pre-applications turned into applications. Mr. Lindley recommended that the standard condition (i.e. no end users put in Fairpoint area) and get a letter from all concerned parties.

Mitch Davis wanted further explanation in regards to Ms. Tulk's reference to recession impacts on the company's build out plans. Ms. Tulk from Fairpoint stated that they had planned to go in but understands the Town of Jefferson's need. Fairpoint was not able to provide service to the town so they do not have a problem with Midcoast Internet Solutions providing the service.

Dick Thompson stated that he wanted time to enter into an overlap agreement and would rather have the ConnectME Authority be a party to the agreement. He wonders if there was any problem with that concept. Ms. Tulk stated that Fairpoint does not see a problem with that concept.

Dick Thompson asked how long of a period that they should not compete in your area - perpetuity or vice versa? Ms. Tulk stated that there is an issue with deployment using public funds. The issue is not cut and dry. Thinks it would be in perpetuity if using public funds or at least for a year.

Mitch Davis stated that a lot of these places are not providing any service at all and seems to be creating some legal problems. Dick Thompson stated that he has a problem with in perpetuity. Phil Lindley stated that the projects are to be done within a year. The Authority could condition on the duration of the grant project. Mitch Davis asked if Mr. Lindley could ask the Advisory Council this question. Phil Lindley stated that incumbents aren't serving in the area. Sharon Reishus also does not like in perpetuity. The Authority should not be standing in the way future development. Mitch Davis stated that the Authority still sees it as a public-private partnership.

Stuart Smith from the Town of Edgecomb stated that their grant application does not overlap. Fairpoint and Time Warner Cable overlap. He warned that the Authority should be careful of what they say and is concerned with contracts. Dick Thompson stated that it comes down to what is funded with public money. The Authority should get the Advisory Council to look at this issue and further stated that we are more concerned with wireless. Stuart Smith stated that cable is already there and that they are just extending service. Phil Lindley stated that the issue will go to the Advisory Council for review and recommendation.

Steve Hudson stated that a standard condition sounds appropriate. Fairpoint would like to see the language before the Authority adopts it.

Joe Bodner from the Town of Jefferson stated that their grant application has a map by Midcoast Internet Solutions. There is some overlap with Fairpoint. The Town of

Jefferson was trying to get a grant last year but work never got started in Jefferson. It is going better now and is confident that things are moving along. Midcoast Internet Solutions says there is no problem signing a letter if there is potential overlap. Fairpoint has four remote terminals in the area. The question is how many customers are served by remote terminals and getting DSL. Rojean Tulk is trying to get that information for them. A consumer of the Town of Jefferson stated that there should be a non-compete for a reasonable time but not in perpetuity. Joe Bodner from the Town of Jefferson stated that he could see that as a starter but does not want to be stuck with aging technology if there is no competition.

Phil Lindley stated that this is where the template comes in for the Time Warner Cable overlap issue. Mitch Davis stated that there is no overlap issue if private funds are being used. Sharon Reishus recommended still having the conversation with Fairpoint.

Phil Lindley handed out copies of the draft Overlap Avoidance Agreement to the Authority and to the public who were present. Mr. Lindley stated that they can add the condition to the grant awards, the parties will work out any overlap issues and then sign the letters.

Ben Sanborn for the Telephone Association of Maine (TAM) stated that there needs to be a general conversation regarding "in perpetuity." It seems odd in wording. Section 9204(1) of the Authority statute seems to imply that it is in perpetuity and it discusses impairing the value of investment. Discussions on what equipment is being funded and what service is provided are being morphed. TAM is okay with doing private investment. The statute allows someone to get a start where there is no service at all.

Phil Lindley stated that "for the duration of the grant project" could be added. Sharon Reishus would rather stick with the language they are using now. Mitch Davis noted that companies could stipulate to terms themselves. Phil Lindley stated that the applicants in the Town of Jefferson and the Town of Edgecomb could sign overlap avoidance agreements. Mike Edgecomb from Time Warner Cable stated that there is overlap because of wireless. TWC is doing wired roads in Edgecomb and would not do any agreement. Dick Thompson stated that there is no overlap so no agreement needs to be signed.

Dick Thompson made a motion to accept both applications with conditions and the overlap avoidance agreement. All members present voted in favor.

3. NTIA Mapping

Phil Lindley stated that Mike Smith and Amy Spelke along with Sewall & Company helped him put the application together. He has received an email response back from NTIA acknowledging receipt. Mr. Lindley further stated that he needs to complete a draft contract with Sewall & Company and further noted that Sewall & Company has provided assistance without a contract.

4. Executive Director Report

Broadband Strategy Council

Phil Lindley stated that the Broadband Strategy Council received a presentation from Fairpoint but has not endorsed any proposals yet. Mr. Lindley noted that the NTIA grant application deadline was moved from August 14, 2009 to August 20, 2009. Sharon Reishus asked when the BBSC was going to meet again. Mr. Lindley stated that the BBSC has not scheduled another meeting yet. Sharon Reishus asked if the applications were public information. Mr. Lindley's answer was yes, summaries of applications will be posted on the "BroadbandUSA.Gov" website. Dick Thompson asked if the BBSC would see the applications prior to applying. Mr. Lindley stated that some parts of the applications could be confidential. Steve Hudson stated that there are six items on the website with a short description on the proposed projects. Fairpoint would want a mandate to preserve confidential information. Mr. Lindley stated that RUS does not have to consult with states on the applications, only NTIA is required to.

Financial Report

Phil Lindley discussed the July 2009 fund status in the Authority's financial report.

5. Public Comment

There were no public comments.