

**Title 35-A: PUBLIC UTILITIES HEADING:
PL 1987, c. 141, Pt. A, §6 (new)
Chapter 93: ADVANCED TECHNOLOGY
INFRASTRUCTURE HEADING: PL 2005, c. 665, §3 (new)**

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Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES HEADING:
PL 1987, c. 141, Pt. A, §6 (new)
Chapter 93: ADVANCED TECHNOLOGY
INFRASTRUCTURE HEADING: PL 2005, c. 665, §3 (new)

§9201. SHORT TITLE

This chapter may be known and cited as "the Advanced Technology Infrastructure Act." [2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9202. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 665, §3 (NEW) .]

1. 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 availability and wireless service coverage.

[2005, c. 665, §3 (NEW) .]

2. Authority. "Authority" means the ConnectME Authority established in section 9203.

[2005, c. 665, §3 (NEW) .]

3. Communications service. "Communications service" means any wireline voice, satellite, data, fixed wireless data or video retail service.

[2005, c. 665, §3 (NEW) .]

4. Communications service provider. "Communications service provider" means:

A. Any entity offering communications service to customers in the State; or [2005, c. 665, §3 (NEW) .]

B. Any facilities-based provider of wireless voice or data retail service that voluntarily chooses to be assessed by the authority pursuant to section 9211. [2005, c. 665, §3 (NEW) .]

[2005, c. 665, §3 (NEW) .]

5. Unserved or underserved area. "Unserved or underserved area" means an area that the authority pursuant to section 9204, subsection 2, paragraph B determines to meet criteria established by the authority by rule adopted pursuant to section 9205, subsection 3 in accordance with section 9204, subsection 1.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9202-A. STATE BROADBAND POLICY

1. Goal. It is the goal of the State that:

A. Broadband service become and remain, as nearly as possible, universally available in this State, including to all residential and business locations and community anchor institutions in the State; and [2009, c. 586, §1 (NEW).]

B. A secure, reliable and sustainable forward-looking infrastructure that can meet future broadband needs is developed. [2009, c. 586, §1 (NEW).]

[2009, c. 586, §1 (NEW) .]

2. Policy. It is the policy of the State to:

A. Maximize sustainable private investment in broadband infrastructure in the State and to promote broadband infrastructure deployment and availability to all individuals, businesses and institutions in this State, including those that require ultra high-speed Internet access; [2009, c. 586, §1 (NEW) .]

B. Maximize federal grant resources and private investment opportunities to support the deployment of broadband infrastructure in unserved and underserved areas of the State in a manner consistent with paragraph A; [2009, c. 586, §1 (NEW) .]

C. Prioritize the use of state broadband resources to assist private infrastructure deployment in unserved and underserved areas of the State; [2009, c. 586, §1 (NEW) .]

D. Maximize the number of state permits and licenses that may be obtained or renewed online at rates equal to or less than the rates set for obtaining or renewing the permits or licenses in person; [2009, c. 586, §1 (NEW) .]

E. Increase the number of subscribers to broadband services in the State so as to ensure that all residents of the State are able to fully take advantage of the economic opportunities available through broadband Internet connectivity, including by:

(1) Educating residents of the State about the benefits and opportunities associated with broadband services, such as distance learning opportunities, opportunities in telemedicine, as defined in Title 24-A, section 4316, and state programs available online; and

(2) Educating small businesses regarding the advantages of broadband access, such as online business reporting and tax filings and national and global sales opportunities; and [2009, c. 586, §1 (NEW) .]

F. Seek to expand computer ownership and training in this State and ensure appropriate computer equipment is available for use by public school students. [2009, c. 586, §1 (NEW) .]

[2009, c. 586, §1 (NEW) .]

In order to facilitate the achievement of the goals and policies of this section, the authority shall establish and regularly update, after opportunity for public comment and taking into consideration relevant federal policies, a definition of "broadband." [2009, c. 586, §1 (NEW) .]

SECTION HISTORY

2009, c. 586, §1 (NEW) .

§9203. CONNECTME AUTHORITY

1. Establishment; membership. The ConnectME Authority is established to stimulate investment in advanced communications technology infrastructure in unserved or underserved areas. The authority is created as a body corporate and politic and a public instrumentality of the State. The exercise by the authority of powers conferred by this chapter is considered to be the performance of essential governmental functions. The authority consists of the following 5 voting members:

A. The chair of the Public Utilities Commission or the chair's designee; [2005, c. 665, §3 (NEW) .]

B. The Chief Information Officer of the State, or the officer's designee; [2005, c. 665, §3 (NEW) .]

C. One representative of consumers, appointed by the Governor; and [2005, c. 665, §3 (NEW) .]

D. Two members with significant knowledge of communications technology, appointed by the Governor. [2005, c. 665, §3 (NEW) .]

Compensation of members is as provided in Title 5, section 12004-G, subsection 33-F.

[2005, c. 665, §3 (NEW) .]

2. Terms; chair; vacancies. All members are appointed for 3-year terms. The Governor shall appoint a chair from among the 3 members appointed by the Governor. In the event of a vacancy in the membership, the Governor shall appoint a replacement member for the remainder of that vacated term. Each member of the authority serves until that member's successor is appointed and qualified. Any member of the authority is eligible for reappointment.

[2005, c. 665, §3 (NEW) .]

3. Officers; quorum. The authority may elect a secretary and a treasurer, who may, but need not, be members of the authority. Three members of the authority constitute a quorum, and the affirmative vote of 3 members is necessary for any action taken by the authority.

[2005, c. 665, §3 (NEW) .]

4. Participation by members. A member may participate in a meeting of the authority and place a vote electronically or telephonically as long as members of the public have an opportunity to listen to the deliberations of the authority and otherwise participate in or observe the proceedings of the authority consistent with Title 1, section 405.

[2005, c. 665, §3 (NEW) .]

5. Indemnification. Each member of the authority must be indemnified by the authority against expenses actually and necessarily incurred by the member in connection with the defense of any action or proceeding in which the member is made a party by reason of being or having been a member of the authority and against any final judgment rendered against the member in that action or proceeding.

[2005, c. 665, §3 (NEW) .]

6. Staff. At the request of the authority, the commission or any other state agency with expertise in communications services or advanced communications technology infrastructure shall provide to the authority staff designated by the commission or agency. Staff resources provided by the commission and other agencies

may not exceed in total the equivalent of 3 full-time employees. The salaries and costs of such staff must be allocated proportionately to the authority. The authority may retain staff in addition to the staff designated and provided by the commission or other state agencies.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9204. DUTIES OF AUTHORITY

1. Establish criteria defining unserved and underserved areas. The authority, by rule adopted pursuant to section 9205, subsection 3, shall establish criteria to define unserved and underserved areas. The authority shall establish criteria that ensure that an area is not determined to be an unserved or underserved area if the effect of that determination would inhibit or impede private investment in any area or diminish the value of prior investment in advanced communications technology infrastructure within any area. Criteria established by the authority must include but are not limited to whether investment is planned in an area within a reasonable time. Criteria established by the authority to define unserved and underserved areas with respect to broadband service must include the percentage of households with access to broadband service within a municipality or other appropriate geographic area.

[2009, c. 63, §1 (AMD) .]

2. Enhance communications technology infrastructure. The authority, through partnerships, grants, direct investment, loans, demonstration projects and other appropriate means, shall, in a competitively neutral fashion and without giving preference to any one form of technology over another:

- A. Monitor wireless coverage in areas where the authority determines the quality of the coverage is inadequate; [2005, c. 665, §3 (NEW) .]
- B. Determine whether an area is an unserved or underserved area; [2005, c. 665, §3 (NEW) .]
- C. Expand the availability of broadband service to residential and small business customers in unserved or underserved areas. In awarding grants, the authority shall give priority to those proposals that, relative to other proposals, extend access to broadband service to a higher percentage of an unserved area within a municipality or other appropriate geographic area; [2009, c. 63, §2 (AMD) .]
- D. Expand the availability of broadband with bandwidth, synchronicity, reliability and security adequate to serve business, education and enterprise consumers in unserved or underserved areas; [2005, c. 665, §3 (NEW) .]
- E. Otherwise enhance the State's communications technology infrastructure in unserved and underserved areas; and [2005, c. 665, §3 (NEW) .]
- F. Cover reasonable administrative costs of the authority. [2005, c. 665, §3 (NEW) .]

[2009, c. 63, §2 (AMD) .]

3. Additional duties. In addition to its duties established under this chapter, the authority shall:

- A. Collect, aggregate, coordinate and disseminate information and data concerning communications services and advanced communications technology infrastructure in the State; [2005, c. 665, §3 (NEW) .]
- B. Track investment in advanced communications technology infrastructure; [2005, c. 665, §3 (NEW) .]
- C. Continually assess the availability of and need for advanced communications technology infrastructure in unserved or underserved areas within the State; [2005, c. 665, §3 (NEW) .]

D. Identify and secure federal and other funding sources for broadband or wireless deployment or education; [2005, c. 665, §3 (NEW).]

E. Identify opportunities for coordination among providers, consumers and state and local governmental entities, including coordination with the statewide emergency radio network; and [2005, c. 665, §3 (NEW).]

F. Create and facilitate public awareness and educational programs to encourage the use of broadband services. [2005, c. 665, §3 (NEW).]

[2005, c. 665, §3 (NEW) .]

4. Limitations on activities of the authority. The authority may not develop, acquire, fund, coordinate or otherwise undertake any project or make any grant, direct investment or loan under this chapter unless:

A. The action is taken on behalf of, in partnership with or in support of one or more communications service providers that are remitting assessments to the authority under section 9211; and [2005, c. 665, §3 (NEW).]

B. The authority determines that, without the authority's action, the installation of adequate advanced communications technology infrastructure in an unserved or underserved area would not otherwise occur. [2005, c. 665, §3 (NEW).]

Notwithstanding any other provision of this chapter, the authority may not provide any wireline, wireless, satellite, voice, data or video service at retail or wholesale.

[2005, c. 665, §3 (NEW) .]

5. Public notice and opportunity for private investment. Prior to taking any action described in subsection 4, the authority shall provide public notice of its intention to take the action. The authority may not take the action if a service provider franchised or certificated to provide a communications service to the area submits a timely certification to the authority that the service provider will commence within 45 days and will complete within one year the installation of sufficient advanced communications technology infrastructure to provide broadband or wireless service in a manner that would render the authority's action unnecessary or redundant.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW). 2009, c. 63, §§1, 2 (AMD).

§9205. GENERAL POWERS

In order to carry out the purposes of this chapter, the authority has the following powers with respect to a project together with all powers incidental to or necessary for the performance of these powers: [2005, c. 665, §3 (NEW).]

1. Power to sue and be sued. To sue or initiate or appear in any proceeding. The authority may be sued on its written contracts or in accordance with Title 1, section 409; Title 5, chapter 375; or Title 14, chapter 741;

[2005, c. 665, §3 (NEW) .]

2. Official seal. To adopt and have an official seal and alter the seal at pleasure;

[2005, c. 665, §3 (NEW) .]

3. Bylaws; rules. To adopt bylaws and any rule necessary or useful for carrying out any of the authority's powers or duties pursuant to this chapter. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A;

[2005, c. 665, §3 (NEW) .]

4. Acquire real or personal property. To acquire real or personal property or any interest in real or personal property, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise; to improve, hold, sell with or without public bidding, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, any interest in real or personal property or mortgage interests owned or in its control, custody or possession; and to release or relinquish any right, title claim, lien, interest, easement or demand, however acquired, including threat of foreclosure;

[2005, c. 665, §3 (NEW) .]

5. Prepare and plan projects and facilities. To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment for a project and attendant facilities and from time to time to modify or cause to be modified those plans, specifications, designs or estimates;

[2005, c. 665, §3 (NEW) .]

6. Improve and equip project and attendant facilities. By contract or contracts to construct, acquire, alter, repair, reconstruct, rehabilitate, improve and equip a project and necessary and usual attendant facilities;

[2005, c. 665, §3 (NEW) .]

7. Maintain, reconstruct and operate. To maintain, reconstruct and operate, or cause to be maintained, reconstructed and operated, a project;

[2005, c. 665, §3 (NEW) .]

8. Fix and collect fees. To fix and collect fees, lease-rentals and other charges for the use of a project to transmit voice, data or video signals and to provide for the adoption of such reasonable and proper rules as may be necessary to ensure the maximum use at all times of the facilities of any project;

[2005, c. 665, §3 (NEW) .]

9. Provide for financing or refinancing. To provide financing for a project or to provide for refinancing of existing indebtedness and for the financing of the project and of other necessary and usual attendant facilities;

[2005, c. 665, §3 (NEW) .]

10. Make and execute contracts. To make and execute contracts and other instruments and enter into such transactions as necessary or convenient for the exercise of the authority's powers and functions under this chapter;

[2005, c. 665, §3 (NEW) .]

11. Agreements; acceptions; contributions; aid; grants. To enter into agreements with and accept loans, aid, contributions, grants and the cooperation or assistance of the United States, or any agency of the United States, or of the State or any agency or governmental subdivision in furtherance of the purposes of this chapter, including, but not limited to, the development and financing of a project, and to do all things necessary in order to avail the authority of those loans, aid, contributions, grants and cooperation;

[2005, c. 665, §3 (NEW) .]

12. Accept aid or contributions. To receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this chapter, subject to the conditions upon which those grants and contributions are made, including, but not limited to, gifts or grants from any department or agency of the United States or the State for any purpose consistent with this chapter;

[2005, c. 665, §3 (NEW) .]

13. Insurance. To procure insurance against any loss in connection with the authority's securities and its property and other assets in such amounts and from such insurers as it considers desirable;

[2005, c. 665, §3 (NEW) .]

14. Modification of contract, lease, indenture or agreement. To consent to any modification of any contract, lease, indenture or agreement of any kind to which the authority is a party;

[2005, c. 665, §3 (NEW) .]

15. Manage or operate real and personal property. To manage or operate, or cause to be managed or operated, real and personal property, to take assignments of leases and rentals or to take any other action necessary or incidental to the performance of the authority's duties under this chapter;

[2005, c. 665, §3 (NEW) .]

16. Lease or rent facilities or equipment used to transmit voice, data or video signals. To lease or rent any facilities or equipment for a project for such amounts as the authority determines to a communications service provider to further the purposes of this chapter, as long as the obligation of the service provider is considered a binding contract with the authority and as long as no liability on account of the authority may be incurred beyond the money available for that purpose and may be considered a liability of the State;

[2005, c. 665, §3 (NEW) .]

17. Investments. Except as otherwise provided in this chapter, to invest any funds not needed for immediate use, including any funds held in reserve, in property or in securities in which fiduciaries in the State may legally invest funds;

[2005, c. 665, §3 (NEW) .]

18. Appearances. To appear on the authority's own behalf before boards, commissions, departments or agencies of a municipality or the State Government or the Federal Government;

[2005, c. 665, §3 (NEW) .]

19. Executive director; other employees. To employ an executive director, consulting engineers, architects, attorneys, accountants, construction and financial experts and such other employees and agents as may be necessary in the authority's judgment; and

[2005, c. 665, §3 (NEW) .]

20. All acts granted or implied. To do any act necessary or convenient to exercise the powers granted in this chapter or reasonably implied by this chapter.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9206. CONNECTME ADVISORY COUNCIL

The ConnectME Advisory Council, referred to in this section as "the advisory council," is established to advise the authority in accordance with this section. [2005, c. 665, §3 (NEW) .]

1. Membership. The advisory council is composed of the following members:

A. Four members who have experience with issues concerning advanced communications technology infrastructure, appointed by the Governor; [2005, c. 665, §3 (NEW) .]

B. Two members who have experience with issues concerning the telecommunications and technology infrastructure implemented by the State's education community, appointed by the Governor; [2005, c. 665, §3 (NEW) .]

C. One member who serves on the Maine Telecommunications Education Access Fund Advisory Board established by rules adopted by the commission, or a successor board, appointed by the Governor; [2005, c. 665, §3 (NEW) .]

D. One member from the Maine Technology Institute appointed by the Director of the Office of Innovation within the Department of Economic and Community Development; [2005, c. 665, §3 (NEW) .]

E. One member representing the Small Enterprise Growth Fund, established in Title 10, section 383, appointed by the Director of the Office of Innovation within the Department of Economic and Community Development; and [2005, c. 665, §3 (NEW) .]

F. Up to 2 additional members, appointed by the authority, as needed to ensure adequate representation and expertise. [2005, c. 665, §3 (NEW) .]

Compensation of members is as provided in Title 5, section 12004-I, subsection 85-A.

[2005, c. 665, §3 (NEW) .]

2. Duties; rules. The advisory council shall provide advice and counsel to the authority on technical, policy, financial and economic issues. The advisory council shall also perform limited functions assigned to it by the authority or as provided for by rule adopted by the authority pursuant to section 9205, subsection 3.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9207. COLLECTION OF DATA

Subject to the provisions in this section, the authority may collect data from communications service providers and any wireless provider that own or operate advanced communications technology infrastructure in the State concerning infrastructure deployment and costs, revenues and subscribership. [2005, c. 665, §3 (NEW) .]

1. Confidential information. If the authority, on its own or upon request of any person or entity, determines that public access to specific information about communications service providers in the State could compromise the security of public utility systems to the detriment of the public interest or that specific information is of a competitive or proprietary nature, the authority shall issue an order designating that information as confidential. Information that may be designated as confidential pursuant to this subsection includes, but is not limited to, network diagrams. The authority may designate information as confidential under this subsection only to the minimum extent necessary to protect the public interest or the legitimate competitive or proprietary interests of a communications service provider. The authority shall adopt rules pursuant to section 9205, subsection 3 defining the criteria it will use to satisfy the requirements of this paragraph and the types of information that would satisfy the criteria. The authority may not designate any information as confidential under this subsection until those rules are finally adopted.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.

[2005, c. 665, §3 (NEW) .]

2. Protection of information. A communications service provider may request that confidential or proprietary information provided to the authority under subsection 1 not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9208. LEGISLATIVE OVERSIGHT; REPORT TO COMMITTEE

No later than January 15th of each year, the authority shall provide a report to the joint standing committee of the Legislature having jurisdiction over utilities matters that: [2005, c. 665, §3 (NEW) .]

1. Budget. Includes a report on the budget of the authority;

[2005, c. 665, §3 (NEW) .]

2. Activities. Documents the activities of the authority, including review of applications for funding received by the authority;

[2005, c. 665, §3 (NEW) .]

3. Investments. Contains a listing of any investments of money in the ConnectME Fund, as established pursuant to section 9211, and a tracking of the infrastructure improvements resulting from the investments; and

[2005, c. 665, §3 (NEW) .]

4. Market conditions. Contains an analysis of the availability of communications services and advanced communications technology infrastructure, including an analysis of the competitive market in the State for communications services and advanced communications technology infrastructure and whether the communications services provided in the State are reasonably comparable to services provided regionally and nationwide.

[2005, c. 665, §3 (NEW) .]

After receiving a report under this section, the joint standing committee of the Legislature having jurisdiction over utilities matters may report out legislation relating to the authority. [2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9209. CONFLICTS

A member of the authority may not participate in any decision on any contract entered into by the authority under this chapter if that member has any interest, direct or indirect, in any firm, partnership, corporation or association that is party to the contract. The interest must be disclosed to the authority in writing and must be set forth in the minutes of the authority. [2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9210. ACTIONS AGAINST AUTHORITY

A member of the authority, while acting within the scope of this chapter, is not subject to any personal liability resulting from the exercise or carrying out of any of the authority's purposes or powers. [2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW) .

§9211. CONNECTME FUND

1. ConnectME Fund established. The ConnectME Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the authority for the purposes of supporting the activities and projects of the authority under this chapter.

[2005, c. 665, §3 (NEW) .]

2. Assessment. After receiving authorization pursuant to Title 5, section 8072 to finally adopt major substantive rules under section 9205, subsection 3 or after January 15, 2007, whichever is later, the authority may require every communications service provider to contribute on a competitively neutral basis to the fund. The assessment may not exceed 0.25% of the revenue received or collected for all communications services

provided in this State by the communications service provider. A facilities-based provider of wireless voice or data retail service may voluntarily agree to be assessed by the authority as a communications service provider under this subsection.

[2005, c. 665, §3 (NEW) .]

3. Explicit identification on customer bills. A communications service provider assessed pursuant to subsection 2 may recover the amount of the assessment from the provider's customers. If a provider recovers the amount from its customers, it 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.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW).

§9212. GIFTS AND CONTRIBUTIONS

The authority may accept gifts and contributions on behalf of the authority for the purpose of designing, constructing, reconstructing, renovating or acquiring a project. [2005, c. 665, §3 (NEW).]

The authority, in accepting gifts of money, federal funds or other types of income, shall place this money in a special account for the purpose for which it is provided. The authority may invest the money in accordance with the purposes of this chapter, subject to any limitations imposed by the donor. [2005, c. 665, §3 (NEW).]

SECTION HISTORY

2005, c. 665, §3 (NEW).

§9213. USE OF REVENUES

The revenues derived by the authority from any assessment, transfer of funds, lease, assignment, rental agreement or other disposition or any other revenue must be used for the purposes of this chapter and applied in a competitively neutral fashion and without giving preference to any one form of technology over another. [2005, c. 665, §3 (NEW).]

SECTION HISTORY

2005, c. 665, §3 (NEW).

§9214. NO FRANCHISE FEES

The authority may not establish or collect a franchise fee pursuant to 47 United States Code, Section 542 or Title 30-A, section 3008. If any tax, fee, charge or assessment or portion thereof established by the authority is held by a court of competent jurisdiction to be a franchise fee, the imposition of that tax, fee, charge or assessment or portion thereof is unenforceable. [2005, c. 665, §3 (NEW).]

SECTION HISTORY

2005, c. 665, §3 (NEW).

§9215. REPEAL

(REPEALED)

SECTION HISTORY

2005, c. 665, §3 (NEW). 2007, c. 698, §1 (RP).

§9216. BROADBAND SUSTAINABILITY FEE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "First assessment period" means the period:

- (1) Commencing on the first day of the month following the date on which a dark fiber provider first sells, leases or otherwise provides one or more strands of federally supported dark fiber to an entity in this State; and
- (2) Ending on the last day of the 60th month following the commencement under subparagraph (1). [2009, c. 612, §10 (NEW).]

B. "Incumbent local exchange carrier" means a telephone utility that provided single-party service, voice grade access to the public switched telephone network in a defined service territory in the State on February 8, 1996, or its successor, or that is designated as an incumbent local exchange carrier pursuant to 47 United States Code, Section 251(h)(2). [2009, c. 612, §10 (NEW).]

C. "Second assessment period" means the period:

- (1) Commencing on the first day of the month following the end of the first assessment period; and
- (2) Ending on December 31, 2017. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

2. Broadband sustainability fee. An entity that purchases, leases or otherwise obtains federally supported dark fiber from a dark fiber provider is subject to the following broadband sustainability fees:

A. During the first assessment period, a monthly fee equal to \$3 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month; and [2009, c. 612, §10 (NEW).]

B. During the 2nd assessment period, a monthly fee equal to \$2 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

3. Collection. A dark fiber provider shall collect the broadband sustainability fees under subsection 2 and within 15 days after the end of each month remit the amounts collected to the authority. When remitting funds to the authority, the dark fiber provider shall include sufficient information to allow the authority to determine the number of miles of federally supported dark fiber strands sold, leased or used in the service territory of each incumbent local exchange carrier.

[2009, c. 612, §10 (NEW) .]

4. Deposit. The authority shall:

A. Deposit 5% of the funds received under subsection 3 into the ConnectME Fund established under section 9211 and may use these funds to support the activities of the authority under this section and for the purposes of section 9204; and [2009, c. 612, §10 (NEW).]

B. Deposit 95% of the funds received under subsection 3 into the broadband sustainability fund established pursuant to subsection 5. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

5. Broadband sustainability fund. The authority shall establish a broadband sustainability fund, separate and distinct from any other funds held or maintained by the authority, for use in accordance with subsection 6. The fund is nonlapsing and all interest on funds in the fund remains in the fund for use in accordance with subsection 6. The authority may contract with an appropriate independent fiscal agent that is not a state entity to serve as the administrator of the fund. All funds deposited in the broadband sustainability fund are deemed to be encumbered for purposes of subsection 6 at the time the funds are deposited in the fund.

[2009, c. 612, §10 (NEW) .]

6. Use of the broadband sustainability fund. The authority shall provide incumbent local exchange carriers a right of first refusal to access the broadband sustainability fund established pursuant to subsection 5 in accordance with this subsection.

A. The authority shall allocate funds in the broadband sustainability fund established pursuant to subsection 5 to each incumbent local exchange carrier in accordance with this paragraph. Each month, the authority shall allocate to each incumbent local exchange carrier an amount equal to the total amount deposited that month into the broadband sustainability fund multiplied by a fraction, the denominator of which is the total number of miles of federally supported dark fiber leased, sold or used in this State during the previous month and the numerator of which is the total number of miles of federally supported dark fiber leased, sold or used in that incumbent local exchange carrier's service territory during the previous month. Any accumulated interest in the fund must be allocated proportionally. Only those amounts allocated to an incumbent local exchange carrier under this paragraph are available for disbursement to that carrier pursuant to paragraph B. By December 31st of each calendar year, the authority shall make an accounting of the total funds allocated during that calendar year to each incumbent local exchange carrier under this paragraph, and if by December 31st of the following calendar year some or all of those funds allocated to a carrier are not disbursed to that carrier in accordance with paragraph B, the authority shall transfer those unspent funds to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund under this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. [2009, c. 612, §10 (NEW) .]

B. To receive a disbursement from the broadband sustainability fund established pursuant to subsection 5, an incumbent local exchange carrier must file with the authority a request for funds together with a certification indicating that the funds requested will be used to deploy broadband infrastructure in unserved areas within the carrier's service territory. The certification must include the projected cost for the project and the scope of work, which must indicate how the funds will be spent. Upon receipt of a request for funds accompanied by the required certification, the authority shall disburse the requested amount to the incumbent local exchange carrier up to an amount not to exceed the total amount allocated under paragraph A to the requesting carrier. [2009, c. 612, §10 (NEW) .]

C. An incumbent local exchange carrier may not expend funds received under paragraph B in a manner inconsistent with the certification provided by the carrier under paragraph B. The authority may audit the use by an incumbent local exchange carrier of funds disbursed in accordance with paragraph B. [2009, c. 612, §10 (NEW) .]

D. On the last day of the 12th month following the end of the 2nd assessment period, the authority shall transfer all funds remaining in the broadband sustainability fund established pursuant to subsection 5 to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund pursuant to this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. [2009, c. 612, §10 (NEW) .]

[2009, c. 612, §10 (NEW) .]

SECTION HISTORY

2009, c. 612, §10 (NEW) .

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