



Oregon

Kate Brown, Governor

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November 2, 2015

Public Utility Commission of Oregon
PO Box 1088
Salem OR 97308-1088

Re: Docket No. AR 592 Temporary Rules on SB 611

Chair Ackerman and Members of the Commission:

I am writing today to make you aware of some concerns the Department of Revenue has related to temporary rule language proposed by PUC staff for implementation of Senate Bill 611. I would respectfully ask that you not adopt the rules in their current form.

Senate Bill 611 provides for a wide range of property tax incentives to various companies that are subject to central assessment in Oregon, especially communication companies. The PUC rules relate to section 5 of SB 611 as amended by section 7 of HB 2485. In order to qualify for the exemption in section 5 as amended companies must have “the capacity to provide, at least, approximately one gigabit per second symmetrical service, to a majority of the residential customers of the company’s broadband services” among other requirements.

The Department’s main concern is the definition found in the proposed rule limiting “broadband service” to speeds greater than 10 Mbps. This speed would exclude many DSL customers for instance, and over 30% of broadband customers statewide according to the PUC’s numbers found in the staff report. Under the rule language as proposed it is possible a company with a large DSL customer base with speeds below 10 Mbps and a relatively small number of gigabit customers could qualify for the exemption and have all their intangible property exempt, most of which would be property related to the slower DSL infrastructure.

This would put the legislature in the odd position of subsidizing the slowest connections in the state, exactly the opposite of the intent of the bill. Additionally, once the company had qualified for the exemption they would not have any further incentive to increase the speed of their networks. In fact, they would be incentivized *against* increasing the speeds of existing DSL customers above the 10 Mbps or risk their qualification for the exemption.

The Department provided input during the legislative process for SB 611 and attended nearly every public hearing and work session on the bill; the notion of limiting the definition of broadband customers to customers above a certain speed was never discussed to our knowledge. The Department worked with Legislative Revenue Office by providing information that LRO needed to craft their Revenue Impact Statement. The information provided by the Department did not anticipate this definition and we believe the temporary rule as written could increase the cost to local budgets beyond what LRO estimated and the legislature approved. We do not feel

the definition as proposed meets our understanding of legislative intent, and we have concerns that the rule may go beyond what is provided for in the bill language.

The PUC staff report cites multiple definitions of broadband, none of which would explicitly exclude DSL customers at any speed. The staff report points to the FCC's "benchmark speed" of 25 Mbps, which by the Department's understanding is more a statement of where the FCC will target investment as opposed to a comprehensive definition of broadband. Ironically, by setting the definition at 10 Mbps or higher in the rule, the PUC would actually be increasing the chance that Oregon tax dollars will subsidize slower connections, which seems to be just what the FCC is trying to avoid by raising their benchmark speed.

The FCC defines broadband as on their website, and rather than reference specific speeds they list technologies which would qualify, including DSL (<https://www.fcc.gov/encyclopedia/types-broadband-connections>, last accessed November 2, 2015):

"The term broadband commonly refers to high-speed Internet access that is always on and faster than the traditional dial-up access. Broadband includes several high-speed transmission technologies such as:

- Digital Subscriber Line (DSL)
- Cable Modem
- Fiber
- Wireless
- Satellite
- Broadband over Powerlines (BPL)"

The FCC also requires broadband providers to file a Form 477, including providers who have speeds well below 10 Mbps (<https://transition.fcc.gov/form477/477glossary.pdf>, last accessed November 2, 2015):

"Broadband connections: Lines (or wireless channels) that terminate at an end-user location and enable the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction."

Closer to home, the Oregon Broadband Advisory Council similarly defines broadband as including all speeds greater than dial-up (<http://www.orinfrastructure.org/Infrastructure-Programs/Telecommunications/OBAC/Reports/BroadbandRpt2014.pdf>, page 75, last accessed November 2, 2015):

"Broadband is a general term used to represent a wide range of telecommunications technologies and services which utilize a faster data transmission rate than that available over the standard voice grade telephone line, which is 56 Kbps and usually less. Broadband is also widely referred to as "high-speed" Internet access service."

PUC staff has not had an easy task, and we recognize that they feel it is important to get temporary rules in place so applications may proceed. Given the previous concerns (incentivizing slow connections, not meeting legislative intent, and contradicting established definitions in the literature) we would encourage you to not adopt the temporary rules as proposed. Despite the fact that the rules are temporary, we are concerned that a company would claim that any positive determination of a qualified project made under the weakened definition was permanent, which could result in litigation and increase uncertainty for potential applicants.

I appreciate your attention in this matter and am available should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Gharst". The signature is written in a cursive, slightly stylized font.

Mark Gharst
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