



# Oregon Citizens' Utility Board



November 6, 2018

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem OR 97308-1088

**In the Matter of Oregon Public Utility Commission Docket Nos. AR 618 and AR 619;  
Rulemaking for Information Disclosures by Broadband Internet Access Service Providers  
Contracting with Public Bodies (AR 618) and Rulemaking Regarding Procedures for  
Commission Determinations Set forth in HB 4155, Oregon Laws 2018, Chapter 88 (AR 619)**

The Oregon Citizens' Utility Board ("Oregon CUB") and the American Civil Liberties Union of Oregon ("ACLU of Oregon") appreciate the opportunity to file the following joint comments in support of Oregon Public Utility Commission ("OPUC") rulemaking, as authorized by Oregon House Bill 4155 and Oregon 2018 Laws, Chapter 88. Specifically, our two organizations strongly encourage adoption of the following proposed rules as set out in the OPUC's Notice of Proposed Rulemaking dated September 21, 2018: OARs 860-250-0005, 860-250-0010, 860-250-0015, 860-250-0020, 860-250-0030, 860-250-0035, 860-250-0040, 860-250-0045, and 860-250-0050.

## **Background Context**

Oregon CUB and ACLU of Oregon have longstanding and well-documented histories advocating for common sense and even—as the current Federal Communications Commission ("FCC") often remarks—"light-touch" maintenance of a fair and open, or neutral, modern internet ecosystem.

Our two organizations advocate for a 21<sup>st</sup> century Internet—one that is easily accessed and utilized by all those who require education and learning opportunities, entertainment, communicability, civic engagement, vital health services, and much more, without fear of unreasonable discrimination or quid pro quo arrangements perpetrated by Broadband Internet Access Service ("BIAS") providers.

For this reason, our two organizations, in cooperation with Oregon House Majority Leader, Jennifer Williamson, and with the support of numerous other advocacy organizations and elected officials, ushered passage of Oregon House Bill 4155 during the 2018 spring legislative session. Our endeavor from the start was to neither replicate nor reference the now repealed federal network neutrality guidelines outlined in the FCC's 2015 Open Internet Order.

Rather, our shared endeavor was to operate within our understanding of the new restrictions imposed by the FCC's 2018 Restoring Internet Freedom Order ("RIFO"). Therein, we intentionally, by way of the Oregon Legislature, sought to enshrine in statute common sense, light touch network neutrality provisions that would both protect a majority BIAS consumers in Oregon and narrowly restrict such provisions to only new contracts engaged in or by public bodies after the effective date of January 1, 2019. Consultants on the drafting of House Bill 4155 included legal experts at the Electronic Frontier Foundation and national ACLU, as well the Oregon Department of Justice ("DOJ") and internal counsel at Oregon CUB and ACLU of Oregon. Together, we invested

significant time, effort, and legal analysis into the careful crafting of Oregon House Bill 4155, which ultimately passed with decisive, bipartisan majorities in both chambers of the Oregon legislature.

Indeed, Oregon House Bill 4155 is the will of Oregonians; settled law; passes legal scrutiny; does not impose utility style rate or service regulation on BIAS providers in Oregon; does not instruct OPUC to develop a list of pre-approved BIAS providers; and certainly does not instruct OPUC to regulate public procurement processes for BIAS in Oregon. Suggestions otherwise are, at best, distractions.

### **Oregon Public Utility Commission Role and Responsibilities**

Oregon CUB and ACLU of Oregon applaud OPUC staff efforts concerning their preparation of rules implementing requirements outlined in Oregon Laws 2018, Chapter 88. Over the course of three workshops, OPUC staff facilitated meaningful discussion and graciously received feedback from all parties. The results of these efforts are rules reflecting both feedback from workshop participants, as well as existing Oregon and federal law.

To summarize: Oregon Laws 2018, Chapter 88 instructs OPUC to (1) specify both the manner and form of service information regarding BIAS providers' network management practices; performance characteristics; and commercial terms sufficient for end users to verify compliance with the statute applicable restrictions and exceptions; and (2) make various determinations, including the functional equivalency of BIAS; applicability of nonharmful [sic] devices as they relate to BIAS; justification of paid prioritization of BIAS having significant public interest benefits; clarifying the rationale for reasonable network management practices under the exception outlined in statute; and that public interest benefits justify a public body contracting with a provider that has engaged in activities outlined in the statute after its effective date, but has since attested to all ceasing of such activities.

That bill drafters and advocates of Oregon House Bill 4155, including but certainly not limited to Oregon CUB and ACLU of Oregon, did not seek to replicate nor in any way reference FCC's 2015 Open Internet Order bears repeating. That OPUC staff, in consultation with Oregon DOJ, in their consideration, research, and drafting of new instructions required of them by Oregon House Bill 4155, similarly took into account the repeal of the 2015 Order and imposition of the 2018 RIFO, indeed bears highlighting.

Notwithstanding exhaustive threats from local and national cable telecommunications associations to sue the state of Oregon in response to implementation of Oregon House Bill 4155 – Oregon CUB, ACLU Oregon, Oregon DOJ, and Oregonians themselves, conclude that the State of Oregon, and therein OPUC, has every right and responsibility to carry forward as instructed by the Oregon legislature earlier this year.

Respectfully,



Samuel Pastrick  
Outreach Manager  
Oregon Citizens' Utility Board



Kimberly McCullough  
Policy Director  
American Civil Liberties Union of Oregon