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## PERMANENT ADMINISTRATIVE ORDER

**PUC 9-2018**  
CHAPTER 860  
PUBLIC UTILITY COMMISSION

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FILING CAPTION: Disclosures and Procedures for Broadband Internet Access Service Providers Contracting with Public Bodies.

EFFECTIVE DATE: 01/01/2019

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**RULES:**

860-250-0005, 860-250-0010, 860-250-0020, 860-250-0030, 860-250-0035, 860-250-0040, 860-250-0045, 860-250-0050

ADOPT: 860-250-0005

RULE TITLE: Applicability and Waiver

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule explains to whom the rules apply, states the effective date, and set forth a waiver provision.

**RULE TEXT:**

(1) These rules apply to broadband Internet access service providers engaged in the provision of broadband Internet access service to a public body, as set forth in Oregon Laws 2018, Chapter 88, Section 1(5), and any participant in a proceeding involving a determination made by the Commission under Oregon Laws 2018, Chapter 88, Section 1. These rules become effective on January 1, 2019.

(2) Upon request or its own motion, the Commission may waive any Division 250 rule for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

STATUTORY/OTHER AUTHORITY: ORS Ch. 183, 756, 2018 OL Ch. 88

STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1

ADOPT: 860-250-0010

RULE TITLE: Definitions

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule defines terms used in the division 250 rules. These definitions mirror the definitions set forth in the law.

RULE TEXT:

For the purposes of Division 250:

(1) "Broadband Internet access service" or "BIAS" has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(a).

(2) "Broadband Internet access service provider" or "BIAS provider" has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(b).

(3) "Covered broadband Internet access service provider" or "covered BIAS provider" means a broadband Internet access service provider engaged in the provision of broadband Internet access service to a public body under Oregon Laws 2018, Chapter 88, Section 1(5)(a).

(4) "End user" has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(e).

(5) "Functionally equivalent service" or "functional equivalent" means a service that the Commission finds is providing a service that is the functional equivalent of the service described in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(i).

(6) "Paid prioritization" has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(i).

(7) "Public body" means a public body, as defined in ORS 174.109, in the State of Oregon.

STATUTORY/OTHER AUTHORITY: ORS Ch. 183, 756, 2018 OL Ch. 88

STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1

ADOPT: 860-250-0020

RULE TITLE: Required Public Disclosures by Covered BIAS Providers

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule fulfills the Commission's obligation under 2018 OL Ch. 88, Sect. 1(5)(b) to specify the manner and form of disclosures that must be made by BIAS providers that engage in the provision of BIAS to Oregon public bodies. It states that disclosures made in a manner and form that comply with existing parallel federal disclosure requirements presumptively satisfy the disclosure requirements under this statute, too. If the federal disclosure requirements change, this rule provides 180 days for the Commission to determine whether the state rules also need to change.

RULE TEXT:

(1) Disclosures Consistent with Federal Law. Covered broadband Internet access service providers' disclosures made in a form and manner that complies with 47 C.F.R. § 8.1(a); Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2018); and the FCC's Instructions for Internet Service Providers, located at <https://www.fcc.gov/disclosure-instructions-isps>, presumptively satisfy the requirement that such providers publicly disclose information regarding their network management practices, performance characteristics, and commercial terms of their broadband Internet access service sufficient for end users to verify that the service is provided in compliance with Oregon Laws 2018, Chapter 88, Sections 1(3) and 1(4).

(2) Changes to Applicable Federal Law. If the requirements for broadband Internet access service providers' disclosures change under any federal law, rule, or guidance cited in section (1) of this rule, the Commission will determine within 180 days of that change whether it is necessary or appropriate to modify the Commission's rules as a result of that change.

STATUTORY/OTHER AUTHORITY: ORS Ch. 183, 756, 2018 OL Ch. 88

STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1(5)(b)

ADOPT: 860-250-0030

RULE TITLE: Functionally Equivalent Service Determinations

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule specifies that the PUC's contested case rules will govern proceedings to determine functionally equivalent services. The rule requires a petition or responsive pleading to describe the service and why it is or is not a functional equivalent to mass-market retail Internet access service provided by wire or radio that enables a person to transmit data or receive data between the person's customer premises equipment, including mobile devices, and all, or substantially all, Internet endpoints, and prompts for relevant explanations.

RULE TEXT:

(1) A petition requesting that the Commission make a determination regarding whether a service is a functional equivalent as provided for in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(ii) will be governed by ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.

(2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:

(a) A detailed description of the service at issue.

(b) A detailed explanation of why the service at issue is or is not a functional equivalent of the service described in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(i). To the extent possible, this explanation should include the following:

(A) a description of the technical differences between the service at issue and the service described in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(i);

(B) a description of or examples of how the service at issue is marketed to customers, including available marketing materials;

(C) a description of or examples of how the service at issue is described to or by other third parties, such as standards bodies; and

(D) a description or copy of an example customer service agreement for the service at issue.

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Any parallel or related proceedings pending in any forum, if known.

(e) A request for an appropriate protective order, as needed.

(3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

STATUTORY/OTHER AUTHORITY: ORS Ch. 183, 756, 2018 OL Ch. 88

STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1(1)(a)(A)(ii)

ADOPT: 860-250-0035

RULE TITLE: Nonharmful Device Determinations

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule specifies that depending on how the proceedings are initiated, either the PUC's contested case rules or the Oregon Administrative Procedures Act will govern proceedings to determine by rule whether a device is nonharmful to BIAS. The rule requires a petition or responsive pleading to describe the device, how it works, why it is or is not harmful, and other relevant information.

RULE TEXT:

(1) A petition requesting that the Commission determine by rule whether a device is nonharmful under Oregon Laws 2018, Chapter 88, Section 1(1)(h) will be governed by the requirements set forth in this rule and either of the following:

(a) ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001; or

(b) the Oregon Administrative Procedures Act and the generally applicable filing, rulemaking, and confidentiality procedures contained in OAR chapter 860, division 001.

(2) A contested case petition under section (1) of this rule must conform with OAR 860-001-0400(1) and (2) and a petition for adopting, amending, or repealing a rule under section (1) of this rule must conform with OAR 860-001-0250. Either type of filing must also include the following additional information to the extent relevant information is available to the petitioning party:

(a) A detailed description of the device at issue. At a minimum, this description should include:

(A) The name, manufacturer, and distributor of the device;

(B) The purpose of the device (e.g., personal communication, medical monitoring);

(C) A description of how the device works, including whether it alters, intercepts, diverts, or otherwise interferes with end user traffic or end user information; and

(D) Any relevant determinations regarding the device made by other bodies, including the FCC.

(b) A detailed explanation of why the device at issue is or is not a nonharmful device under Oregon Laws 2018, Chapter 88, Section 1(1)(h).

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Any parallel or related proceedings pending in any forum, if known.

(e) A request for an appropriate protective order, as needed, if a contested case petition.

(3) A response to a contested case petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

STATUTORY/OTHER AUTHORITY: ORS Ch. 183, 756, 2018 OL Ch. 88

STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1(1)(h)

ADOPT: 860-250-0040

RULE TITLE: Excepted Paid Prioritization Determinations

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule specifies that the PUC's contested case rules will govern proceedings to determine whether paid prioritization provides significant public interest benefits and does not harm the open nature of the provided BIAS. The rule requires a petition or responsive pleading to describe the paid prioritization and provide other relevant information, including an explanation of why a PUC determination is sought if an exception that does not require PUC action applies.

RULE TEXT:

- (1) A petition requesting that the Commission make a determination regarding whether certain paid prioritization meets the standard set forth in Oregon Laws 2018, Chapter 88, Section 1(4)(c) will be governed by ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.
  - (2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:
    - (a) A detailed description of the paid prioritization at issue.
    - (b) A detailed explanation of why the paid prioritization at issue does or does not provide significant public interest benefits and does or does not harm the open nature of the provided broadband Internet access service under Oregon Laws 2018, Chapter 88, Section 1(4)(c).
    - (c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.
    - (d) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(a) applies to the contract(s) or RFP(s) identified under subsection (2)(c) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(c) is sought.
    - (e) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(b) applies to the paid prioritization at issue in the initiating pleading. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(c) is sought.
    - (f) Any parallel or related proceedings pending in any forum, if known.
    - (g) A request for an appropriate protective order, as needed.
  - (3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.
- STATUTORY/OTHER AUTHORITY: ORS Ch. 183 756, 2018 OL Ch. 88
- STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1(4)(c)

ADOPT: 860-250-0045

RULE TITLE: Reasonable Network Management Determinations

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule specifies that the PUC's contested case rules will govern proceedings to determine whether a BIAS provider's practices fall within the statutory exception for reasonable network management, which requires the PUC to determine the practice (a) has a technical network management justification; (b) does not include other business practices; and (c) is narrowly tailored to achieve a legitimate network management purpose, taking into account the particular network architecture and technology. The rule requires a petition or responsive pleading to describe the practice and provide other relevant information, including an explanation of why a PUC determination is sought if an exception that does not require PUC action applies.

RULE TEXT:

(1) A petition requesting that the Commission make a determination regarding whether certain activity constitutes reasonable network management under Oregon Laws 2018, Chapter 88, Section 1(4)(d) will be governed by ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.

(2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:

(a) A detailed description of the activity at issue.

(b) A detailed explanation of why the activity at issue is or is not reasonable network management under Oregon Laws 2018, Chapter 88, Section 1(4)(d). At a minimum, the explanation must address:

(A) the technical network management justification for the activity, if any;

(B) the other business practices included in the activity, if any; and

(C) whether and how the activity is narrowly tailored to achieve a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(a) applies to the contract(s) or RFP(s) identified under subsection (2)(c) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(d) is sought.

(e) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(b) applies to the activity at issue in the initiating pleading. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(d) is sought.

(f) Any parallel or related proceedings pending in any forum, if known.

(g) A request for an appropriate protective order, as needed.

(3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

STATUTORY/OTHER AUTHORITY: ORS Ch. 183, 756, 2018 OL Ch. 88

STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1(4)(d)

ADOPT: 860-250-0050

RULE TITLE: Determinations Regarding Newly Compliant BIAS Providers

NOTICE FILED DATE: 09/21/2018

RULE SUMMARY: This rule specifies that the PUC's contested case rules will govern proceedings to determine whether allowing a public body to contract with a particular BIAS provider provides significant public interest benefits. The rule provides the path back to contracting eligibility for a BIAS provider who engages in practices after January 1, 2019, that would otherwise have prevented a public body from contracting with that provider under the new law. The rule requires a petition or responsive pleading to provide the provider's certification and other relevant information, including an explanation of why a PUC determination is sought if an exception that does not require PUC action applies.

RULE TEXT:

(1) A petition requesting that the Commission make a determination regarding whether a particular provider meets the standard set forth in Oregon Laws 2018, Chapter 88, Section 1(4)(e) will be governed by ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.

(2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:

(a) The provider at issue and that provider's certification under Oregon Laws 2018, Chapter 88, Section 1(4)(e)(A).

(b) A detailed explanation of why Oregon Laws 2018, Chapter 88, Section 1(4)(e) applies to the provider at issue. At a minimum, the explanation must address:

(A) which of the activities described in Oregon Laws 2018, Chapter 88, Section 1(3) that the provider engaged in after January 1, 2019, and the basis for this assertion;

(B) the date or dates on which the provider ceased engaging in the activities identified in section (2)(b)(i) of this rule; and

(C) the reason or reasons that allowing a public body to contract with the broadband Internet access service provider provides significant public interest benefits.

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(a) applies to the contract(s) or RFP(s) identified under subsection (2)(c) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(e) is sought.

(e) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(b) applies to the activity described in section (2)(b)(a) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(e) is sought.

(f) Any parallel or related proceedings pending in any forum, if known.

(g) A request for an appropriate protective order, as needed.

(3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

STATUTORY/OTHER AUTHORITY: ORS Ch. 183, 756, OL 2018 Ch. 99

STATUTES/OTHER IMPLEMENTED: 2018 OL Ch. 88, Sect. 1(4)(e)