LEAGUE of Oregon CITIES

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March 10, 2016

Oregon Public Utility Commission
201 High St., NE, Suite 100
Salem, Oregon 97301
Sent via email: PUC.FilingCenter@state.or.us

Re: **Docket AR 594 Comments by the League of Oregon Cities**

Dear Chair Ackerman and Commissioners,

On behalf of the League of Oregon Cities, thank you for the opportunity to provide you with our comments regarding AR 594. Our comments are provided below.

Originally founded in 1925, the League of Oregon Cities is an intergovernmental entity consisting of Oregon's 242 incorporated cities that was formed to be, among other things, the effective and collective voice of Oregon's cities before the legislative assembly and state courts. The League advocates for improved quality of municipal services through technical assistance, research, and education. The League's interest in this case—and therefore the interest of its 242 members—arises because the gigabit services contemplated and the special property tax exemption that may be available to qualified businesses under SB 611 (2015), HB 2485 (2015) and the rules proposed under AR 594 will have a significant impact on our member cities.

Having said that, we are not speaking on behalf of any individual city in this response. We expect that many of our member cities have or will provide you with their comments, and this letter should not be taken in any way as being inconsistent with the responses of those cities.

To facilitate your review, our comments will follow the order presented by OPUC staff in section I. A through D of the Staff Comments.

I. A. Staff indicates that the proposed change to OAR 860-200-0100(3) is to clarify Staff's intent that informal requests and responses to informal requests should not be required to be filed in an application docket. We believe that most requests and responses should be included as a part of the public record and contained within the application docket, and the proposed language is too broad and without any qualifications for such exclusion from the filing requirements. The proposed rule removes important transparency from the process. Indeed, the proposed rule change, which seeks to exclude responses to staff from OAR 860-001-0170 would seem to defeat the purpose of that PUC rule which provides for the filing requirements and ensures transparency and ease of administration. Among other things, that rule requires filed materials meet format standards and addresses labeling requirements and important confidentiality issues. Presumably staff is asking for further information because it is necessary to determine whether the application meets the standards. Thus, they provide vital information. If the responses do not follow OAR 860-200-0170, the business will not be responsible for addressing confidentiality labeling and will be a manipulation of the formalities required. It would seem to exclude such information from the official file for any review which is a problem. The proposed rule would also seem to put the burden more on staff to label and control the file as it would also seem to require staff to figure out what is "informal". However, the rule doesn't actually use the word "informal". This is a dangerous precedent to allow exclusion of some information without standards. The League recommends rejecting the proposed change, thus ensuring more information and a greater understanding of the process is available. Including the

requests and responses will enable the DOR, Commissioners, courts, the League and others have more informed responses to application requests in the future. (We acknowledge that some information will be redacted.) We recommend that this proposed change be deleted.

I. B. Staff indicates that proposed addition to OAR 860-200-0150 (6) will provide more information to cities and counties and enable them to provide meaningful feedback on the applications. We applaud this goal. However, we feel that the proposed addition, as written, will do little, if anything, to advance this goal. A requirement that applicants provide "a brief description of the project, and how it may affect the city or county" is vague. Without requiring more specific and identifiable information to be provided, cities and counties may receive nothing more than a bare bones description of the project and overly generalized statements of how the project will affect a community. To be more transparent, and to adequately inform impacted local governments, specific and meaningful information relating to what the proposal is, its timeframe, locations both as to facilities and available services, and potential impacts must be provided. We support the goal but believe that the information to be provided needs to be identified in the rules to be able to provide meaningful information which will enable cities and counties to provide informed comments and responses.

I.C. Staff has proposed a modification to OAR 860-200-0150 (6) (which under the proposal would become OAR 860-200-0150 (7)). The proposed modification would eliminate references to whether an applicant is operational or non-operational. We are not opposed to this specific proposal.

I.D. Staff has proposed a further modification to OAR 860-200-0150 (10). This proposal relates to a clarification of the project description requirements. As we have previously stated, we believe that more information and more information available for public review and comment must be provided to create a more transparent and informed process. We are not convinced that language that "the applicant must provide information regarding the project sufficient…" to

allow the Commission to make a recommendation provides the specificity and detail required to engage in the thorough and exhaustive process that SB 611 contemplates.

We also have some grammatical/ organizational suggestions for this proposal. The proposed additional language "using one of the example methods listed below or an alternate method" should be deleted as it is redundant. It also creates a new term of "alternate method" which is confusing. Existing language already indicates that "subsections (a) through (d) of this section are non-exclusive examples...." In addition, the standard for what is an acceptable non-listed method is already stated in the rule preceding this proposed change: it has to be a method sufficient to allow the Commission to make the determination. Thus, the existing sentences in the rule are clear. We suggest simply deleting the admittedly awkward existing last sentence of OAR 860-200-0150(10) but also rejecting the new proposed bold language. It reads well and clearly without it.

Then, for the example methods themselves, we suggest that paragraphs (a) and (b) can be combined into a single paragraph as much of those two subsections contain the same language. This can be accomplished by modifying subparagraph (F) of subsection (a) to include the language currently found in subparagraph (F) of subsection (b). The resulting language could read:

"(F) One of the following:

(i) A copy of a customer service agreement for Oregon customers who receive service that provides at least approximately on gigabit per second symmetrical service; or

(ii)Documentation that the application operates a network in another jurisdiction confirming that . . . .; or ; (iii) A copy of all franchise agreements in effect where the applicant intends to provide the qualified service . . . .

The balance of the section would be renumbered or re-lettered to fit the change made. It is believed that this change would clarify and simplify the proposed rule.

I.E. We have no concern with the proposed updating of references from Senate Bill 611 to ORS 308.677.

I am happy to answer any questions that you may have. Thank you.

Respectfully,

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