

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OR OREGON**

3 AR 594

4 In the Matter of Rulemaking )  
to Implement )  
5 2015 Senate Bill 611: Qualified Project ) STAFF COMMENTS  
6 Determination )

7 The Public Utility Commission of Oregon Staff (“Staff”) submits these additional  
8 comments in response to written comments on the proposed rules submitted by the City of  
9 Eugene (Eugene), City of Portland (Portland), United Telephone Company of the Northwest,  
10 CenturyTel of Oregon, CenturyTel of Eastern Oregon and Qwest Corporation (CenturyLink),  
11 and the League of Oregon Cities (League) on March 10, 2016.

12 **I. Staff’s Response to the League’s Objection to Staff’s Proposed Revision to OAR**  
13 **860-200-0100(3).**

14 The League objects to the revision proposed in Staff’s comments regarding OAR 860-  
15 200-0100(3), arguing that information requests and responses should be filed in application  
16 dockets. The revision is intended to confirm that existing practices remain unchanged. Use of  
17 the word “submissions” is not intended to extend beyond the filing of comments to include  
18 requests for information between Staff and an applicant. An applicant’s responses to Staff may  
19 lead Staff to request that an application be amended, but the exchange of requests and responses  
20 has never been subject to filing in a docket.

21 Proposing that information requests become part of the docket is a significant departure  
22 from current practices and would seriously inhibit Staff’s ability to evaluate applications if there  
23 were no avenue for the informal exchange of information. Even data requests and responses in  
24 contested cases are not filed in the underlying docket. *See* OAR 860-001-0540. Information  
25 requests and the responses to those requests may not be relevant or germane to the application  
26 but may clarify the issues under review by Staff. Confidential responses may be submitted to

1 Staff under the confidential submission rule. OAR 860-001-0070. Filing in the docket is not  
2 necessary and may cause undue delay thereby hampering Staff's ability to complete the reviews  
3 in the limited time for review of the applications.

4 **II. Staff's Response to CenturyLink's Comment on Homes Passed.**

5 CenturyLink in its comments urges the Commission to adopt rules that apply the criteria  
6 for a qualified project to all residences that could subscribe to services, or "homes passed". In  
7 proposed OAR 860-200-0050(5), "qualified service" is defined as "the offering of  
8 communication service, including a capacity to provide, at least, approximately one gigabit per  
9 second symmetrical service, to a majority of the residential customers of a company's broadband  
10 services." This language is taken directly from ORS 308.677(2)(a). CenturyLink's underlying  
11 concern is with the language of the statute, not the rule.

12 CenturyLink's comments that ORS 759.015 and ORS 759.016 somehow require the  
13 Commission to ignore the statutory language are without merit. ORS 308.677 establishes a  
14 property tax exemption under the general assessment tax laws. It is not a regulatory law, but a  
15 tax exemption for which any eligible company may qualify.

16 **III. Staff's Response to the League's Suggested Re-Organization of OAR 860-200-**  
17 **0150(10).**

18 Staff does not support the League's proposed organizational changes to OAR 860-200-  
19 0150(10). The "using one of the example methods listed below or an alternate method" language  
20 is intended for clarity as Staff fielded concerns when this particular sentence was absent.

21 Staff does not support combining OAR 860-200-0150(10)(a)(F)(a) and (b) or in any other  
22 location in the rule. The distinctions are necessary. Subparagraph (F)(a) requires a description  
23 of the infrastructure "that enables", while (b) requires a description of the planned infrastructure  
24 "that will enable". Staff does not find projects with functional infrastructure need be allowed to  
25 use documentation from another jurisdiction to support the capability of its Oregon project.  
26 Where the infrastructure exists in Oregon, Staff evaluates that infrastructure.

1                   **IV. Staff's Response to the League, Eugene and Portland's Comments on**  
2                   **Notification to Cities and Counties.**

3                   The League, Portland, and Eugene each comment that the revisions proposed by Staff to  
4 provide cities and counties with additional time and information regarding applications do not go  
5 far enough. Eugene references the Commission's obligation to consult with certain cities under  
6 ORS 308.677(4)(b)(B), "The commission shall consult with any city with which the company  
7 has entered into a franchise fee agreement to provide services to which the application relates."  
8 Staff understands that such franchise cities are likely to have information regarding the  
9 applicant's project. While the Department of Revenue is to be provided a copy of the  
10 application, the franchise fee city is not. *See* ORS 308.677(3)(a). Regardless, the proposed rule  
11 and Staff's recent revisions require information dissemination to a broader group of cities and  
12 counties – those likely to be affected by the project. Staff supports casting a wider net so that it  
13 may receive comments from cities and counties with information about their jurisdictions they  
14 can share with Staff. Ultimately, the duty to review an application lies with the Commission. To  
15 the extent the filed comments are intended to duplicate the review process, Staff does not support  
16 such revisions.

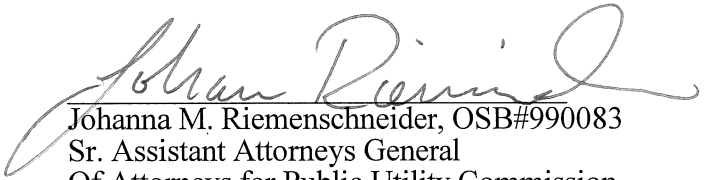
17                   **V. Conclusion.**

18                   For the foregoing reasons, Staff respectfully requests that the proposed permanent rules  
19 in Docket AR 594 be adopted as proposed with the revisions requested in Staff's Comments filed  
20 March 3, 2016.

21                   DATED this 10<sup>th</sup> day of March 2016.

22                   Respectfully submitted,

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25                     
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