



Central Services

City of Eugene
100 West 10th Av., Ste 450
Eugene, Oregon 97401
(541) 682-5070
www.eugene-or.gov

February 19, 2016

Oregon Public Utility Commission
Ms. Stephanie Yamada, Utility Analyst
Mr. Stephen Hayes, Utility Analyst
201 High St SE, Suite 100
Salem, Oregon 97301

RE: City of Eugene Comments Opposing Comcast's SB 611 Qualified Project Determination Application
(Docket No. UM 1760)

Dear Mr. Hayes and Ms. Yamada:

The City of Eugene has appreciated the opportunity to provide comments to OPUC staff regarding Comcast's SB 611 Qualified Project Determination Application (Docket No. UM 1760). We have previously done so in letters dated February 1 and February 10, 2016 (attached). We also appreciate this opportunity to provide comments to the Commission in advance of its February 23, 2016 public meeting to consider Comcast's application. Eugene opposes Comcast's request that its Gigabit Pro service be determined an SB 611 qualified project because we do not believe it meets either the letter or the spirit of that law.

SB 611, provides in part, a project is qualified if it "requires capital investment in newly constructed or installed real or tangible personal property constituting infrastructure that enables the company to offer communications services..." The intent of SB 611 was to incentivize companies, in exchange for a very generous tax exemption, to make new capital investment in communications infrastructure capable of providing gigabit speeds and to offer that service to a majority of their residential broadband customers. Significant new capital investment should be an absolute prerequisite for every qualified project determination. Additionally, the bill provides that companies should not deny access to the service to customers based on income level, so the service should be one that is actually economically accessible for customers. Merely offering a service that the majority of its customers cannot afford is not what was intended by SB 611. We believe Comcast's Gigabit Pro project fails to meet these statutory requirements.

The majority of Eugene's concerns regarding Comcast's application are outlined in our two previous communications solicited by the OPUC, and we request that those letters, along with this one, be provided to the Commission prior to the public hearing. However, we wish to add a few additional comments:

1. Does Comcast qualify under the 'Newly constructed or installed' criterion of SB 611? We remain concerned about the substantial redactions in Comcast's application, which made it difficult for us (and other cities) to provide meaningful comments on the application. However, we glean that Comcast appears to want an SB 611 tax exemption for an existing service they are now offering, but it appears that no documentation

was provided that outlined when and to what extent any part of Comcast's network infrastructure has been "newly constructed or installed" to deliver the Gig service.

As the effective date of SB 611 was October 5, 2015, to satisfy the newly constructed or installed criterion, the infrastructure must have been constructed or installed on or after that date. Comcast's own website states that Gigabit Pro is now offered in 20 cities throughout Oregon including Beaverton, Corvallis, Damascus, Eugene, Forest Grove, Gladstone, Gresham, Happy Valley, Hillsboro, Junction City, Lake Oswego, McMinnville, Milwaukie, Oregon City, Portland, Salem, Tigard, West Linn, Wilsonville. We find it impossible to believe that the firm was able to make significant 'new' infrastructure investments, similar to the types of investments intended to be incentivized by SB 611 in such a short timeframe. **This piece of legislation was designed to promote new infrastructure investments for the benefit of Oregon's residents and businesses, not to be used as a vehicle for reducing corporate tax liability through minor changes to pre-existing network infrastructure.**

We find it concerning that the OPUC application review process has not required the applicants to provide sufficient information to determine whether the project uses "newly constructed or installed" infrastructure to provide the service. We fear that lack of rigorous examination may result in a high likelihood that Comcast is using an existing system, perhaps built for a different set of purposes, to qualify for a tax exemption intended for newly constructed projects.

2. Does Comcast qualify under the 'offering the service to a majority of their customers' criterion of SB 611? We are concerned that Comcast has not demonstrated that its Gigabit Pro service is truly accessible to its residential customers, which must preclude any tax exemption enabled through SB 611. In other words, the mere act of offering a service at \$299.95 a month cannot be the meaningful intent of SB 611 – the intent was to offer a service that would stand a chance of being truly accessible. The FCC has frequently discussed accessibility in terms of affordability, and a service that is merely offered, but has little to no takers, surely cannot be considered to be "accessible." The \$299.95 per month fee level, in addition to the contract and installation requirements, which we understand may be as much as \$1,000 (plus an up to \$1,150 termination fee if canceled prior to the two year contract term) seem untenable in our region, and not something we understood SB 611 sought to achieve.

In addition to our concern about affordability, the City is concerned that the service is not truly accessible to the majority of Comcast's residential customers in Eugene. Our understanding is that a customer must generally live within 1/3 of a mile from Comcast's fiber network in order to obtain the Gigabit Pro service. Because Comcast's application redacted any information showing the network and project infrastructure, we are unable to determine just how many Eugene residences fall within that 1/3 mile radius. We have serious doubts as to whether Gigabit Pro is actually accessible to the majority of Comcast's Eugene broadband customers. Can the OPUC process really approve a project for a tax exemption without a process that demonstrates the number of subscribers and feasibility among the customer base in order to ensure that non-discrimination provisions have been met?

3. Does Comcast meet the non-discriminatory criterion of SB 611?

The City of Eugene asserts that Comcast's proposed monthly price of \$299.95 for Gigabit Pro service is discriminatory to a large majority of households in the Eugene service area on the basis of resident income levels. According to the U.S. Census, 2014 inflation adjusted, median annual household income for residents of the City of Eugene (before taxes) is \$42,715. At \$299.95 a month, Comcast's gigabit Pro is \$3,599.40 a year, which is equivalent to 8.4% of annual income for the median income household in Eugene. This is an exorbitant price for Internet services that a large majority of households simply cannot afford after paying taxes and meeting basic necessities such as food, shelter, transportation, health care, clothing, water, sewer and electric utilities.

In addition to median household income provided by the U.S. Census, the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), shows that per capita income for the Eugene-Springfield metropolitan statistical area (MSA) is below the national metropolitan average, other cities in Oregon and the state of Oregon as a whole. As such, Comcast's proposed annual price of \$3,599.40 is not affordable in Eugene, even though the Gigabit Pro service may be economically viable in more affluent parts of the state of Oregon or U.S. Per capita income as a percent of the U.S. metropolitan average is 79% for the Eugene-Springfield MSA, far below the national average for metropolitan areas, making this internet service economically discriminatory for a large majority of the Eugene population.

Per Capita Income as a Percent of the U.S. Metropolitan Average					
Year	US	Oregon	Corvallis, OR MSA	Eugene-Springfield MSA	Portland-Vancouver-Beaverton MSA
2014	100	90	83	79	96

*2014 is the latest year in which this data is available. Source: <http://www.bea.gov/>

Conclusion

In conclusion, the City of Eugene opposes Comcast's application for SB 611 Qualified Project status for its Gigabit Pro service because Comcast has failed to meet the requirements of SB 611. We request that our concerns be reviewed, not only as to Comcast's specific application, but also OPUC's application review process. We urge OPUC to amend its process to provide for a more rigorous examination of applications to ensure only those projects that meet SB 611 requirements are approved, as well as provide cities and other interested parties adequate information and time to provide meaningful comments to OPUC staff on future applications.

Sincerely

Pam Berrian
Telecommunications and Cable Program Manager

Cc: Hwa Go, Eugene City Attorney
Cc: Mike Streepey, City of Eugene Senior Finance Analyst



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City of Eugene
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Eugene, Oregon 97401
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(541) 682-6899 FAX
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February 10, 2016

Oregon Public Utility Commission
Ms. Stephanie Yamada, Utility Analyst
Telecommunications and Water Division
201 High St SE, Suite 100
Salem, Oregon 97301

Dear Ms. Yamada,

I am writing in response to your letter dated February 3, 2016, indicating that OPUC staff would like information regarding Comcast's (the applicant for central assessment exemption under SB 611) operations in Eugene. Previously, the City of Eugene pointed out several difficulties, mostly outside of our control, in providing OPUC with the desired feedback. We are encouraged by the additional efforts being taken by OPUC but would like to mention that the February 10th deadline has limited our ability to thoroughly verify all the information provided here. The responses to your questions reflect the City's best available information given the short deadline.

OPUC Question 1.

A) What services does the company currently provide in your city?

B) Please list the services for which franchise agreements currently exist with the applicant for the offering of communication to the public, including the provisioning of voice, video, text or other electronic form of information.

Eugene response:

A) In addition to our response here, we believe it would be prudent for OPUC to also ask Comcast (the applicant) directly about its operations in Eugene. What OPUC and/or Eugene characterizes as voice, video, text or other electronic forms of communication allowed by one or more of the City's franchises or licenses, may not be equivalent to Comcast's definition(s) or description of their operations.

B) What Eugene City staff can provide you is information that Comcast provides to the City related to Comcast's commercial use of the public rights of way. Often, long-term public rights of way use agreements are called franchises, but sometimes they are also referred to as licenses, as is the case in Eugene, which has both franchises and licenses. Comcast and its related companies have the following long-term public ROW use agreements and associated fee accounts (the following service information was provided to the City by Comcast):

1. Comcast of Oregon II LLC cable franchise ordinance 19775 (adopted by the city council): Cable Communications System. More specifically, Section 2 of this franchise ordinance states that ordinance 19775 shall be known as the "Metropolitan Cable TV Franchise Ordinance".

2. Comcast of Oregon II LLC Ordinance 20083 License: Internet Access/cable modem services.

Note re: Items 1 and 2 above: The City reiterates (as it did in its response to the PUC's first request for comments regarding Comcast's application) that it disputes Comcast's assertion that Comcast is authorized to provide Internet access under its cable television franchise. Additionally, Comcast has refused for many years to pay public rights of way use license fees on its Internet access fees. Both of these are subjects of the litigation between the City and Comcast, which is currently pending in the Oregon Supreme Court.

3. Comcast IP Phone, LLC Ordinance 20083 License: 'IP Enabled Digital [voice] Provided Over Private Broadband Network'.

4. Comcast Business Communication LLC Ordinance 20083 License: 'Interstate wholesale cellular backhaul and other telecommunications and interstate point-to-point or multi-point services between customer locations.'

As a note, there are media reports that Comcast and Verizon are embarking upon a partnership relating to the marketing and delivery of wireless services. The rollout is expected nationally in a few months. Verizon is already registered in Eugene's Ordinance 20083 telecommunications program. Comcast has not yet provided information explaining their exact role in the delivery of the media-reported wireless series in the Eugene community, perhaps because they have not rolled it out. If and when they do, we expect Comcast will contact the City to confirm how Ordinance 20083 applies.

OPUC Question 2. Does any ordinance or current franchise agreement between the city and the company contain provisions to restrict the company's ability to deny access to residential customers based on income levels?

Eugene Response: No ordinance or agreement exists requiring Comcast to deliver services to subscribers without sufficient income to pay for services. Additionally, no ordinance or agreement exists to restrict the company's ability to deny access to customers based on income. Rates for television services are not, under current federal law regulated by local franchise or licensing authorities, except for the lowest, Basic Programming tier. We are not aware of what conditions OPUC may place on Comcast for its broadband service but we can tell you that we do have this provision in our cable franchise:

Prohibition of Discriminatory or Preferential Practices. The Grantee shall not, in its rates or charges, or in making available the services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant discriminatory preference or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system; and shall not subject any such persons to any prejudice or disadvantage; provided nothing herein shall prevent Grantee from establishing different rates for uniform classes of subscribers or adjusting rates for marketing purposes.

OPUC Question 3. Does the city currently have methods in place to receive comments and complaints from customers of the company? If yes, please provide the telephone number and/or email address to which customers may direct comments and complaints.

Eugene response: A protocol is in place for receiving complaints from a portion of Comcast customers: that is, Comcast cable TV customers, due to the customer service standards contained within Comcast's cable television franchise. (Comcast disputes that the franchise requires Comcast to extend the complaint protocol to

its Voice, and Internet Access customers, but will accept complaints from those customers “as a courtesy.”) Comcast provides specific corporate dispute resolution staff for City staff to contact to resolve a customer’s complaints. However, Comcast is a large corporation with many “customers” in Eugene. Comcast does not proactively indicate or advertise the option for subscribers to contact the City for assistance with complaints anywhere in their informational materials, despite our suggestion they offers that information. Instead, Comcast inserts one line on their TV bill: “Your Eugene franchise authority is Eugene City Hall, 541-682-5590.” Practically speaking, only when customers are upset to the point of calling the Mayor will they notice the words “City Hall” and call. Comcast has done very little to notify subscribers that City staff may intervene on their behalf.

OPUC Question 4. Is the city aware of any previous incidents in which the company denied access to residential customers based on income levels? If so, please describe the incident(s).

Eugene response: The City is not aware of the method by which Comcast determines who is and is not eligible for services. As such, it is difficult to know if the company has denied access based on income levels or some other criteria. Comcast does deny access to subscribers who lack ability to pay.

OPUC Question 5. Going forward, does the city have any specific concerns regarding the company’s ability to provide access to the company’s services without regard to residential income levels?

Eugene response: In that this is the third of 5 questions relating to potential subscriber income levels, the OPUC appears to have severe concerns or fears about Comcast’s ability to serve all customers desiring their services. Or, it may be the OPUC is concerned that buildouts will occur only in specific portions of a community, the higher income level portions. If that is the case, instead of waiting for harm to be experienced, OPUC should establish an iron-clad requirement to prevent red-lining. In addition, Comcast or its predecessors have been in the Eugene community since the 1970’s and the system is essentially built out to our jurisdictional borders. Perhaps these questions are better asked of territories where Comcast is not fully built out.

Thank you for reaching out to the City of Eugene regarding this application and I hope our response is helpful to you and the Commission.

Sincerely,



Pam Berrian
Telecommunications & Cable Program Manager

From: BERRIAN Pam C

Sent: Monday, February 01, 2016 12:12 PM

To: 'stephanie.yamada@state.or.us' <stephanie.yamada@state.or.us>

Subject: FW: Eugene response: Comcast Application to OPUC for Qualified Project Determination

February 1, 2016

Dear Ms. Yamada,

I am writing in response to your email requesting comments and input regarding Comcast's application for qualified project determination for its Gigabit Pro Internet service. The City of Eugene values its good working relationship with the Commission and would like to assist you as requested, however, several things hamper our ability to provide meaningful and informed comments. The first is the short timeline for reviewing and responding to your request, which was less than one week. The second and most significant is that the application materials that are available for the City to review contain no real substantive information about Comcast's service, infrastructure that will be used, the service area(s), and the households to be served.

As you are aware, the application materials that are available to Eugene (and other local governments) are so heavily redacted that they provide no substantive information other than a very general description of Gigabit Pro via Comcast's marketing materials, FAQs, and a sample agreement, stating that the service provides "download and upload speeds of up to 2 gigabits per second" and that the service is "299.95 per month (pricing subject to change)." The remainder of the application is redacted for alleged confidentiality and which Comcast asserts is protected under the Oregon Public Records exemptions of ORS 192.501(2), which covers trade secrets and ORS 192.502(8), which covers information that is prohibited from being disclosed by federal law. It's worth pointing out that the public records exemptions contained in ORS 192.501 and 192.502 may be used by public entities, if they so choose (but are not required to do so), to withhold public records requested by a public records requests. This process for submitting an application for qualified project determination is not a public records request. Additionally, because the materials are so heavily redacted, the City has no way of knowing whether the redacted information truly constitutes trade secrets or information that is actually prohibited from disclosure by federal law.

The lack of any information about the infrastructure to be used by Comcast for this service leaves us unable to provide any feedback on, or evaluate whether, Comcast's project is qualified under the requirements of SB 611 (Oregon Laws 2015, Chapter 23, Section 5), which provides in part, a project is qualified if it "requires capital investment in newly constructed or installed real or tangible personal property constituting infrastructure that enable the company to offer communications services..." One of the concerns the City of Eugene expressed during the temporary rulemaking process is that the PUC's temporary rules do not require an applicant to show or describe the "newly constructed or installed" property. The City still maintains that that should be a requirement for every application as it is necessary information that allows the PUC to determine whether the project is truly qualified.

The lack of information about the service area and households to be served leaves the City unable to derive any specific information about the residential income levels and thus we cannot provide very specific feedback to your question of "whether residential income levels may have any impact on access to services." We can state however, that we believe the quoted price of \$299.95 per month may be so high that most residents of Eugene are either unlikely to be able to afford the service or to choose to

allocate that much of their monthly resources to such an expense. We also think it would be more appropriate for the applicants themselves to be required to provide information about their price setting rationale for the services in particular service areas and how the residential income levels will affect accessibility of the service. Additionally, as a general matter, we believe the service area should be very broad in order for a company to be qualified for this valuable tax exemption.

As for the speed of the Gigabit Pro service, Comcast's materials state that it provides "download and upload speeds of up to 2 gigabits per second" but no minimum speeds are provided, and SB 611 provides the capacity should be at "a capacity of at least one gigabit per second symmetrical service, to a majority of the residential customers of the company's broadband services.'

Finally, the City of Eugene wishes to make clear that to the extent that Comcast is asserting that its cable television franchise, granted by the City of Eugene, authorizes Comcast to provide Internet services in Eugene, the City strongly disagrees. That is one of the main issues of disagreement between the City and Comcast in our pending litigation entitled *City of Eugene v. Comcast of Oregon II*, which is currently before the Oregon Supreme Court (we are awaiting the court's decision).

Thank you for reaching out to the City of Eugene regarding this application and I hope our response is helpful to you and the Commission.

Sincerely, Pam Berrian

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