

PUBLIC UTILITY COMMISSION OF OREGON  
REDACTED STAFF REPORT  
PUBLIC MEETING DATE: February 23, 2016

REGULAR   X   CONSENT        EFFECTIVE DATE   February 24, 2016  

DATE: February 10, 2016

TO: Public Utility Commission

FROM: Stephanie Yamada, Malia Brock, and Stephen Hayes 

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck 

SUBJECT: FRONTIER COMMUNICATIONS CORP.: (Docket No. UM 1761) Request for Qualified Project Determination.

**STAFF RECOMMENDATION:**

Staff recommends the Commission determine that Frontier Communications Corp. (Frontier's or Company's) project is a qualified project and approve Frontier's application.

**ISSUE:**

Whether Frontier's project is or is not a qualified project.

**APPLICABLE LAWS:**

In 2015, the legislature adopted Senate Bill 611, later amended by House Bill 2485, ("SB 611") to provide a special tax exemption to a company that offers communications services through a "qualified project." See ORS 308.677. SB 611 provides that a company seeking the exemption granted under the bill must submit an application to the Public Utility Commission, with a copy to the Department of Revenue, on or before January 15 preceding the first property tax year for which the exemption is sought. See ORS 308.677(3)(a).

A project is qualified under SB 611 if:<sup>1</sup>

- (a) The project requires capital investment in newly constructed or installed real or tangible personal property constituting infrastructure that enables the company to offer communication services, including the

<sup>1</sup> See ORS 308-677(2).

capacity to provide, at least, approximately one gigabit per second symmetrical service, to a majority of the residential customers of the company's broadband services; and

(b) With respect to communication services offered by the company using the infrastructure, the company does not deny access to the communication services to any group of residential customers because of the income level of the residential customers in the local service area in which the residential customers reside.

The application must include a certification that the project meets the requirements of ORS 308.677(2) and the application fee. See ORS 308.677(3)(b). The application review process is specified in ORS 308.677(4).

OAR 860-200-0100 and 860-200-0150<sup>2</sup> provide the application requirements for a company seeking a qualified project determination under SB 611, including what information to provide in and with the application.

An application for a qualified project determination must include specific and sufficient information and facts that demonstrate the applicant's project includes all of the legally required features of a qualified project. Commission determinations are based on a review of the applicant's project as meeting the requirements set forth in the law and do not include general public interest determinations.

#### **ANALYSIS:**

Frontier submitted its application for a qualified project determination on January 15, 2016, and filed an amendment to the application on January 20, 2016. Staff has reviewed the application and relevant laws. Staff finds that Frontier has submitted the information required in an application under ORS 308.677(3) and its application is complete, containing the information required under OARs 860-200-0100 and 860-200-0150. On January 22, 2016, Frontier requested that Staff confirm the Company's application was complete. Staff confirmed in writing that the application is complete.

#### **Project Summary**

Frontier currently owns, operates and maintains a fiber-to-the-home broadband network (FiOS) that serves customers in Clackamas, Multnomah, Washington, and Yamhill

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<sup>2</sup> Hist.: PUC 8-2015(Temp), f. & cert. 11-6-15 thru 5-3-16

counties. Frontier states that its qualified project is proposed and that planned capital investment will enable a large portion of its “FiOS” footprint to provide symmetrical broadband service of at least, approximately one gigabit per second to the majority of its residential broadband customers if the application is approved. Frontier plans to complete the capital investment in 2016.<sup>3</sup>

As required by OAR 860-200-0150(2), Frontier submitted a sworn statement, executed by Trent Anderson, Senior Vice President and General Manager of Operations for Frontier’s Oregon market, certifying that Frontier’s project meets the requirements for a qualified project under Oregon law. Frontier submitted a third-party engineering certification from an Oregon licensed professional engineer with its application along with other documentation that the planned project meets the requirements of SB 611.<sup>4</sup>

### **Staff Consultation with Municipalities**

Consultation with any city with which the applicant has entered into a franchise fee agreement to provide services to which the application relates is required under 308.677(4)(b)(B). Staff contacted a number of cities, as detailed below, and Staff has not identified any cities with which Frontier entered into a franchise fee agreement to provide services to which the application relates.<sup>5</sup>

On January 25, 2016, Staff contacted representatives of the cities and counties likely to be affected by the project. Staff requested input in the Commission’s review of applications for qualified project determination by February 1, suggesting cities and counties may have data or insights relating to qualified projects of which Staff may not be aware.<sup>6</sup> Several responders noted that the time available for a reply was insufficient as was the information contained in the non-confidential application posted in this docket. Staff may consider changes in the application process developed for project determinations in light of these concerns, such as within the pending permanent rulemaking for in Docket No. AR 594.

Subsequently, Staff asked representatives of the likely affected cities, on February 3, 2016, to answer a five question survey about the applicant’s current operations within the city to assist Staff’s analysis as to whether residential income levels may have any

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<sup>3</sup> Applicant’s January 15, 2016, Application project overview at 2.

<sup>4</sup> Submission of a third-party engineering certification is an option under OAR 860-200-0150(10).

<sup>5</sup> A Staff review of local government requirements for such franchise fee agreements has not been performed.

<sup>6</sup> See Appendix A for generic city letter.

impact on access to services based on the provision of existing services.<sup>7</sup> Staff sincerely thanks each city for its very thoughtful and timely responses.

### **Staff Discussions with Oregon Department of Revenue**

Staff met with Oregon Department of Revenue staff on multiple occasions in February 2016 to discuss Frontier's application for a qualified project determination. In addition, Staff has reviewed the application and considered Frontier's responses to 14 Staff Information Requests.

Staff's analysis that the application material provided in support of a finding that Frontier's project meets the requirements of ORS 308.677(2) is provided below.

The requirements that a qualified project must meet are:

#### **I. New Capital Investment - ORS 308.677(2)(a)**

The Frontier project includes infrastructure improvements with additional equipment to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

The symmetrical gigabit service will be accessible to FiOS customers in [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] as well as existing FiOS customers in [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], where [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] upgrades have already been completed.

While no amount of required capital investment is specified in SB 611, Staff reviewed actual amounts provided by Frontier for infrastructure expenditures for the last quarter of 2014 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], 2015 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], as well as estimated expenditures on additional infrastructure through 2016 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] that will enable Frontier to offer the qualified service to a majority of its customers. Frontier's project meets this requirement.

#### **II. One Gigabit Symmetrical Service - ORS 308.677(2)(a)**

As noted above, Frontier submitted a certification from a licensed Oregon professional engineer (P.E.) along with other documentation of the project infrastructure. The P.E.

<sup>7</sup> See Appendix B for generic city questionnaire.

reviewed the project and in the report submitted with Frontier's application certifies that the applicant's planned network information provided is capable of providing the qualified service. Staff consulted with Oregon State Board of Examiners for Engineering and Land Surveys (OSBEELS) and found the P.E. certifying this project is licensed and in good standing in Oregon. Additionally, the methodology employed ensured review by individuals with current pertinent industry certifications and years of experience in the industry.

The Applicant also provided a commitment as required in OAR 860-200-0150 that helps to ensure that if the Applicant's Oregon network meets the qualified service requirements that its use of third parties to complete the connection to intrastate and interstate third party peering partners and internet backbone providers will be handled in an industry standard manner. This provides Staff with confidence that a network will not be hampered by critical internet connections or other current or future dependence on third-parties.

Frontier's P.E. assessment includes [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL], which Staff finds appropriate.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL] Staff finds the documentation submitted by Frontier supports a finding that the project will provide symmetrical broadband service of at least, approximately one gigabit per second, as required under ORS 308.677(2)(a).

### **III. Offer to a Majority of Broadband Customers - ORS 308.677(2)(a)**

The statutory test necessary for the applicant to pass in order to obtain a qualified project determination is what Staff refers to as the Majority Offer Test (MOT). The MOT is set forth in ORS 308.677(2)(a) which requires that the project enable the applicant to:

"...offer communications services...to a majority of the residential customers of the company's broadband services."

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<sup>8</sup> A well-established internationally known standard.

In Staff's analysis and in information requests, we commonly refer to the number of the Applicant's existing broadband customers as the denominator and the number of those customers to which the company is able to offer communication services as a result of the project as the numerator.

Staff reviewed the project footprint information submitted in the application. The project footprint was compared to a similar footprint within FiOS broadband customers submitted in the Oregon Broadband Mapping project reflecting the Company's service area as of June 30, 2014. The project footprint compares adequately to the comparable footprint of customers existing as of June 30, 2014. The FiOS project footprint includes an adequate number of occupied households to reasonably verify the number of existing broadband customers.

The Applicant provides in its application the numbers it uses to establish that the project meets the MOT with communication services to be made available to a majority [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of existing broadband customers. The denominator provided by the Applicant is well representative of the occupied housing located within the boundaries of its footprint submitted as part of the Oregon Broadband Map project as of June 30, 2014. The Applicant describes how the denominator was determined in response to Staff Information Request Number Two:

"The number of residential broadband customers that will have access to the qualified service (confidential Appendix F) was determined by pulling actual billing data from our DPI system for all current residential broadband customers in Oregon (as of January 1, 2016). This includes all Oregon broadband customers with speeds above dial-up (denominator)."

The Applicant identifies the numerator by a process of identifying the FiOS customers in wire centers impacted by the project. Staff further notes that in the Company's response to Staff Information Request Number Four the Applicant states that confidential Appendix C to the application identifies the area covered by the project and "that every consumer who resides within that footprint, regardless of whether or not they are a Frontier customer, will have access to or be able to purchase the qualified service based on the census blocks provided in Appendix E" of the application.

Staff reviewed the billing information provided by the Applicant and finds that it sufficiently documents the numerator and denominator used to determine the MOT. Staff arrived at a slightly lower calculation of the numerator but the difference did not affect the MOT percentage when rounded up to the nearest percent.

After reviewing the documentation provided in the Application, responses to information requests, and comparing known information obtained independently from the Application, as described below, the Company has adequately demonstrated that the project requires infrastructure that enables the Company to offer communication services including a capacity of at least, approximately, one gigabit per second symmetrical service to a majority of its existing broadband customers. The Applicant's project meets this requirement.

**IV. No Denial of Access to Services Based on Income Level - ORS 308.677(2)(b)**

For the purposes of its analysis, Staff has applied the term "access" as referring to a customer's ability to obtain the Company's communication services based on 1) the physical shape and location of the Company's network footprint, and 2) the Company's practices for providing access to customers within its network footprint.

As noted above, Frontier submitted a sworn statement of a corporate officer certifying that Frontier's project meets the requirements for a qualified project under Oregon law. In order to verify this certification as it pertains to ORS 308.677(2)(b), Staff examined residential income levels in and around the areas proposed to be served by the project. Staff also verified that all customers within the Company's proposed network footprint will have access to the service.

As required under OAR 860-200-0150(4), Frontier submitted electronic GIS-compatible mapping files as well as a paper map of the area to be served by the prospective project. Frontier also submitted a list of the census blocks planned to be served by the project as required under OAR 860-200-0150. Staff compared this information against census block group-level 2014 median household income data from the U.S. Census Bureau's American Community Survey 5-year estimates.

Based on information submitted by Frontier in *confidential* Appendix E to its application, a total of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] households will have access to the qualified service. The distribution of median household incomes in the census block groups to be served by the project is shown in the table below.

[The following chart contains CONFIDENTIAL information]

Median Household Income	Households with Access	% of Total
\$ 0 to \$ 20,000		
\$ 20,001 to \$ 40,000		
\$ 40,001 to \$ 60,000		
\$ 60,001 to \$ 80,000		
\$ 80,001 to \$ 100,000		
\$ 100,001 to \$ 120,000		
\$ 120,001 to \$ 140,000		
Over \$ 140,000		
TOTAL		100%

[End CONFIDENTIAL chart]

From a visual inspection of the map of the company's proposed service area overlaid onto a map showing median household income data, it is clear that Frontier's proposed project footprint will include a wide variety of residential income levels. Staff looked into a selection of 18 distinct areas which were excluded from Frontier's proposed service area despite being very close to or encircled by areas which Frontier does propose to serve. Staff found no evidence that Frontier avoided serving certain areas due to the residential income levels in those areas. The 18 distinct unserved areas that Staff investigated were associated with various geographic or other obstacles, including hills, parks, wetlands, industrial areas, and private property, and were not associated with a particular residential income level.

Based on the information described above, Staff does not believe that Frontier's proposed network footprint excludes groups of residential customers based on income level. Furthermore, we again note that in response to Staff's Information Request Number Four, Frontier asserts that "every customer who resides within [Frontier's proposed network] footprint, regardless of whether or not they are a [current] Frontier customer, will have access to or be able to purchase the qualified service."

Neither Frontier's proposed network footprint nor Frontier's practices for providing access to services within the proposed footprint appear to deny access to any group of residential customers because of residential income level in the local service area. Staff believes that Frontier meets the qualified project requirements described in ORS 308.677(2)(b).



Staff also consulted with cities within which Frontier operates regarding income discrimination. The City of Portland expressed concern regarding Frontier's service offerings in Outer Southeast Portland, where there are a significant number of low-income households. Frontier's proposed network footprint is based on its current FiOS service area. Outer Southeast Portland is not within the FiOS service area, though a small portion of it is within Frontier's ILEC service territory. The decision to offer the communication services in its project is based on the existing FiOS network and not the income levels of the residential customers in the local service area in which the residential customers reside.

**CONCLUSION:**

Staff concludes from its review of the material provided with and through the application process that Frontier's project as described in its application is a qualified project under ORS 308.677(2) and Staff recommends the Commission approve the application.

**PROPOSED COMMISSION MOTION:**

Frontier Communications Corp.'s project is a qualified project and that Frontier Communications Corp.'s application for a qualified project determination be approved.



# Oregon

Kate Brown, Governor

## Public Utility Commission

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**Consumer Services**

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Local: 503-378-6600

**Administrative Services**

503-373-7394

1/25/2016

Greetings,

The purpose of this letter is to inform you about and request your input in the Oregon Public Utility Commission's (OPUC) review of applications for qualified project determination pursuant to Senate Bill 611, codified in Chapter 23, Section 5, and as amended by Chapter 31, Section 7, Oregon Laws 2015. These laws pertain to a special tax exemption that may be provided to companies that build, maintain, and operate a "qualified project" in Oregon. Status as a qualified project relates to the ability to provide residential communication services with access to gigabit speeds and meeting other requirements. The OPUC is assigned the task of reviewing applications to determine if a project meets the requirements for a "qualified project" according to the law. The specific requirements for status as a qualified project are found in Section 5(2) as shown below:

(2) A project is qualified under this section if:

(a) The project requires capital investment in newly constructed or installed real or tangible personal property constituting infrastructure that enables the company to offer communication services, including **a capacity of at least one gigabit per second symmetrical service, to a majority of the residential customers** of the company's broadband services; and

(b) With respect to the communication services offered by the company using the infrastructure, **the company does not deny access to the communication services to any group of residential customers because of the income level** of the residential customers in the local service area in which the residential customers reside.

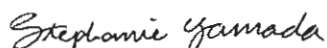
(Emphasis added). Additional application requirements are listed in OAR 860-200-0150. Staff is also directed to consult with certain cities in SB 611 5(4)(b)(B), which states, "The Commission shall consult with any city with which the company has entered into a franchise fee agreement to provide services to which the application relates."

On [DATE], [COMPANY] filed an application for qualified project determination under SB 611, and your city or county is among those that may be affected by the project. You can review the application by visiting <http://apps.puc.state.or.us/edockets/search.asp> and searching "UM [NUMBER]" in the "Go to Specific Docket" section of the page.

To facilitate a thorough review of the application, OPUC staff respectfully requests your help. Staff believes that individual cities and counties may have data or insights relating to qualified projects in or near their localities that OPUC staff may not be aware of, and encourages you to share any concerns or other pertinent information during this application review process. In particular, Staff requests that you consider whether residential income levels may have any impact on access to services.

You can get in touch with us at the contact information provided below. The OPUC must make a determination regarding each application on or before March 1, 2016; given the short time available to address this filing, your prompt attention to this matter by February 1 would be appreciated.

Sincerely,



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# Oregon

Kate Brown, Governor

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February 3, 2016

Greetings,

You recently received a letter from Staff of the Oregon Public Utility Commission (OPUC) requesting the input of your city or county in Staff's review of [COMPANY]'s application for qualified project determination. The letter was initially sent on January 25, 2016, and requested your response by February 1, 2016.

OPUC Staff sincerely thanks all cities, counties, and other organizations that have provided comments in response to our letter. Any cities that intend to provide further comments in response to the letter may continue to do so, and Staff will consider these comments as time allows. However, based on the responses that we have received, Staff acknowledges that many cities feel that they are unable to provide useful input relating to the company's application due to 1) the lack of publicly-available application information, and 2) the short timeframe available for providing input.

It is Staff's desire to provide a simpler means for cities to provide input regarding the company's current operations within their city. The short questionnaire below is intended to focus on the applicant's current operations within your city or county rather than the specific requirements of the proposed qualified project. Please reply to the questions below on or before February 10, 2016.

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.
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?

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.
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).
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?

Again, OPUC Staff thanks you for your assistance in this matter as we work to review applications for qualified project determination.

Sincerely,

*Stephanie Yamada*

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