

ORDER NO. 15 363

ENTERED NOV 06 2015

**BEFORE THE PUBLIC UTILITY COMMISSION**  
**OF OREGON**  
AR 592

In the Matter of Temporary Rules  
Implementing 2015 Senate Bill 611 and  
House Bill 2485 – Qualified Project  
Determination

ORDER

DISPOSITION: TEMPORARY RULES ADOPTED

**I. INTRODUCTION**

In this order, we adopt temporary rules to implement Chapter 23, Section 5 and Chapter 31, Section 7, Oregon Laws 2015. These laws pertain to a tax exemption that may be provided to a company that offers, through a “qualified project,” communication services that include a capacity to provide at least approximately one gigabit per second symmetrical service to a majority of residential customers of the company’s broadband service. These laws provide that we are responsible for determining if a project is qualified.

**II. NEED FOR TEMPORARY RULEMAKING**

Temporary rulemaking is needed to enable a company seeking a qualified project determination, which is necessary for the Ch. 23, OL 2015 tax exemption, to provide the information needed for us to make that determination within the time specified in the law. The laws took effect on October 5, 2015, and the initial applications for qualified project determination are due no later than January 15, 2016. Absent the temporary rules adopted herein, a company would not have the information it needs to file a complete application, and we would not have the specific information we need to make a determination by the statutory deadline of March 1.

Moreover, these laws were intended to provide a tax exemption that will benefit the public. Failure to develop the rules necessary to the application process may delay the development of such broadband projects in Oregon and could prejudice the public interest. The potential consequences from a project not being pursued range from Oregonians not receiving access to the qualifying service to lost wages or jobs.

### III. TEMPORARY RULES

The temporary rules set out the requirements for an application for a qualified project determination, including the application fee and payment information, and the specific information about what is to be included in and with the application. The rules also provide information for processing an application amendment if required. Given the short turnaround time (approximately 6 weeks) between application and determination, if an amendment is required, we will require the extension allowed by law to consider the amended information in our determination.

Our staff informs us that they will begin permanent rulemaking so that permanent rules will be in place before these temporary rules expire. The permanent rules will also establish the annual reporting requirements for companies whose property is granted the tax exemption, which will be used to compile our annual reports to the Legislature beginning February 2017.

### IV. DISCUSSION

The attached temporary rules are the result of collaboration between our staff and a wide range of stakeholders and comments received before, during, and after the November 3, 2015 Public Meeting. Prior to the meeting, written comments were received from Representative Barnhart, Google Fiber, Representative Mike McLane, Senator Mark Hass, the Association of Oregon Counties (AOC), the League of Oregon Cities (LOC), and the Oregon Department of Revenue (DOR). Representative Phil Barnhart, Google Fiber Oregon LLC, Oregon Cable Telecommunications Association, TechNet, AOC, Senator Hass's Office, LOC, DOR, Frontier Communications Northwest Inc., and CenturyLink provided comments at the public meeting.

While Google Fiber and Senator Hass's office expressed concurrence with the proposed temporary rules, others providing comment took issue with the proposed definition for broadband service, which they claimed would change the outcome of what they understood was intended by the legislation. After consideration of the comments, we directed our staff to present at the November 5, 2015 Special Public Meeting, a definition of broadband services consistent with our understanding of the goal of the legislation.

The LOC also requested in its oral and written comments that we add language to the proposed OAR 860-0200-0100(6) to clarify that we will not be determining the actual property tax exemption, but that we will be determining if a project or potential project meets the qualifications for the exemption. We also directed the staff to include language capturing the concern of the League of Oregon Cities.

**V. ORDER**

IT IS ORDERED that:

1. The temporary rules, OAR 860-200-0005 through 860-200-0150, as shown in Appendix A, are adopted.
2. The temporary rules become effective for a maximum of 180 days beginning upon filing with the Secretary of State.

Made, entered, and effective NOV 06 2015.

  
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**Susan K. Ackerman**  
Chair



  
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**John Savage**  
Commissioner

  
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**Stephen M. Bloom**  
Commissioner

A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

**860-200-0005****Applicability and Waiver**

(1) These rules apply to a company that is seeking a qualified project determination as set forth in Section 5 of Chapter 23, Oregon Laws 2015.

(2) Upon request or its own motion, the Commission may waive any of the Division 200 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015

Hist.: NEW

**860-200-0050****Definitions**

For the purposes of this division of rules:

(1) "Broadband services" means the provision of data transmission technology that provides two-way data transmission to and from the Internet through other than a dial-up connection.

(2) "Company" has the same meaning as that term is defined in ORS 308.505.

(3) "Communication" has the same meaning as that term is defined in ORS 308.505.

(4) "Communication services" is the offering of communication to the public, including the provisioning of voice, video, text or other electronic form of information using any means of transmission.

(5) "Qualified service" is the offering of communication services, including a capacity to provide, at least, approximately one gigabit per second symmetrical service, to a majority of the residential customers of a company's broadband services.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015

Hist.: NEW

**860-200-0100****Application for Qualified Project Determination**

(1) A company seeking a qualified project determination under Oregon Laws 2015, Chapter 23 must submit an application to the Commission.

(2) Each applicant must:

(a) Complete and file an application. As part of the application, the applicant must file an Application Cover Sheet on a form approved by the Commission.

(b) Submit the \$50,000 application fee made payable to the Public Utility Commission of Oregon.

(c) Confirm a copy of the application was sent to the Oregon Department of Revenue at: Valuation Section, Property Tax Division, Oregon Department of Revenue; PO Box 14600, Salem, OR 97309-5075.

(3) The application, any subsequent amendments, and any other submissions related to the application must be filed in the same manner as provided in OAR 860-001-0170.

(4) An applicant must file a complete application.

(a) If an application, in any material respect, lacks required information, if the filing fee is not paid in full, or the Department of Revenue is not provided a copy of the application, the application is incomplete. The Commission will not make a determination regarding an incomplete application. Pending application filings that are incomplete as of March 15 of each year will be closed. Once an application file is closed, the applicant must submit a new application for consideration by the Commission.

(b) An applicant may submit a written request to Commission staff for confirmation regarding the completeness of its application or amended application. Commission staff shall respond to such a written request within five business days from the date the written request is received.

(c) The Commission will not consider amendments to an application filed after February 15, unless the applicant requests an extension of two weeks for the determination.

(5) The Commission will issue a determination on an application in writing.

(6) Upon determination by the Commission that a company has a qualified project, the Commission shall forward the approval determination to the Company, the Oregon Department of Revenue and the assessor of each county in which the project is located. The Commission's determination under subsection 5(4) of Chapter 23, Oregon Laws 2015 shall only determine whether a project is or is not a qualified project.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015

Hist.: NEW

## **860-200-0150**

### **Application Requirements**

The application must contain all of the following:

(1) The name and mailing address of the applicant and the name, mailing address, telephone number, and electronic mail address of the following: the applicant's representative; an individual authorized to answer technical questions regarding the application, if different from the applicant's representative; and, if applicable, the applicant's legal counsel.

(2) A certification executed by an authorized representative(s) of the company that the applicant's project meets the requirements for a qualified project set forth in Oregon Laws 2015, chapter 23, section 5, subsection (2) as amended by Oregon Laws 2015, chapter 31, section 7.

The representative's certification must be a sworn statement under ORS 162.055 attesting to the truth of the certification.

(3) A written commitment by the applicant that when its network depends in part or wholly on a third party to provide the qualified service, the applicant will use commercially reasonable practices to ensure that the use of any third party will not impede the performance of the project's infrastructure in providing the applicant's qualified service.

(4) A paper map and an electronic version with GIS-compatible map layers of the area served or to be served by the project's infrastructure depicting:

- (a) County labels and boundaries; and
- (b) City labels and boundaries.

(5) A list of Oregon municipalities and counties where the applicant's project is or will be located, including the name and contact information for the representative of each such municipality and county that the applicant understands is most knowledgeable with respect to applicant's project.

(6) For an applicant that is operating the project described in its application at the time of the application, a list, in an Excel-readable spreadsheet format, of the census blocks served by the project, and for each census block:

- (a) The number of occupied households (using the most current available U.S. Census statistics);
- (b) The number of those occupied households with access to the applicant's communication services which will be enabled by the project, as described in the application; and
- (c) The associated county.

(7) For an applicant that is not operating the project described in its application at the time of the application, a list, in an Excel-readable spreadsheet format, of the census blocks planned to be served by the project, and for each census block;

- (a) The number of occupied households (using the most current available U.S. Census statistics);
- (b) The number of those occupied households with planned access to the communication services which will be enabled by the project, as described in the application; and
- (c) The associated county.

(8) For an applicant that is providing broadband service to residential customers in Oregon at the time of the application, the number of the applicant's existing residential broadband customers in Oregon and the number of those residential broadband customers with access to the applicant's qualified service and the number of those residential broadband customers with planned access to the qualified service.

(9) An electronic version, in Excel-readable spreadsheet format, of the FCC Form 477 Part 1A and Part 6, most recently filed, if any, with the Federal Communications Commission by the applicant, listing only Oregon-specific data. Information identified as confidential in the applicant's filing with the Federal Communications Commission must be identified as confidential consistent with OAR 860-001-0070.

(10) A description of the project. The applicant must provide information regarding the project sufficient to allow the Commission to make a determination as to whether the project is capable of providing the qualified service. Subsections (a) through (d) of this section are non-exclusive examples of acceptable information that may be provided. The applicant may make a showing under only one method.

(a) For a project that the applicant is operating at the time of application: A description of the project's infrastructure that enables the applicant to offer the qualified service, a provision for physical observation of key network elements by Commission staff and speed test data of a statistically significant number of customers who receive service that provides, at least, approximately one gigabit per second symmetrical service. The speed test methodology must conform to industry standards. The project's infrastructure description must specifically identify:

(A) The transport medium and basic technology or technologies utilized;

(B) A drawing of the infrastructure topology;

(C) The technical specifications of the network's key infrastructure and equipment directly affecting network capacity including, but not limited to, routers, switches, hubs, and other integral active or passive electronics and transport medium including, but not limited to, fiber;

(D) The capacity provided at the applicant's internet traffic aggregation points; e.g., the engineered throughput ratio of switch or router equipment used at aggregation points;

(E) The tier designation of the applicant's internet backbone provider; and

(F) A copy of a customer service agreement for Oregon customers who receive service that provides, at least, approximately one gigabit per second symmetrical service.

(b) For a project that the applicant is not operating at the time of application, a description of the project's planned infrastructure that will enable the applicant to offer the qualified service. The description must specifically identify:

(A) The transport medium and basic technology or technologies utilized;

(B) A drawing of the infrastructure topology;

(C) The technical specifications of the network's key infrastructure and equipment directly affecting the network capacity including, but not limited to, routers, switches, hubs, and other integral active or passive electronics and transport medium including, but not limited to, fiber;

(D) The capacity provided at the applicant's internet traffic aggregation points; e.g., the engineered throughput ratio of switch or router equipment used at aggregation points;

(E) The tier designation of the applicant's internet backbone provider; and

(F) One of the following:

(i) Documentation that the applicant operates a network in another jurisdiction confirming that the applicant's communication services operating in that jurisdiction are capable of providing, at least, approximately one gigabit per second symmetrical service along with, for comparison purposes, any technical data and network information provided to the referenced jurisdiction by the applicant. Documentation may be provided by the applicant or the referenced jurisdiction. Applicant will also provide a copy of a customer service agreement for customers in the referenced jurisdiction who receive service that provides, at least, approximately one gigabit

per second symmetrical service. The applicant must provide contact information for individuals in the referenced jurisdiction for technical questions. Documentation need not be provided if the applicant is not providing service of, at least, approximately one gigabit per second symmetrical service in another jurisdiction; or

(ii) A copy of all franchise agreements in effect where the applicant intends to provide the qualified service if such agreements require the applicant to provide and operate a project for the qualified service as described in Oregon Laws 2015 chapter 23, Section 5(2) and Oregon Laws 2015 chapter 31, Section 7.

(c) An applicant may provide a third-party engineering certification from an Oregon licensed professional engineer, in good standing, with a report detailing the reviewing engineer's qualifications as an independent evaluator and a description of the methodology used in the third-party's examination of the applicant's infrastructure sufficient to allow the engineer to certify that the applicant's project is capable of providing the qualified service.

(d) An applicant may provide documentation that the applicant participates in a qualified gigabit network certification program from a national organization recognized by the Commission as competent to certify a gigabit network and that the applicant has received a certification that the project identified in the application is capable of providing the qualified service.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015

Hist.: NEW