ORDER NO. 16 085

ENTERED MAR 01 2016

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1760

In the Matter of COMCAST CORPORATION & SUBSIDIARIES, Application for Qualified Project Determination.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at the public meeting on March 1, 2016, to adopt Staff's recommendation in this matter. The public version of the Staff Report with the recommendation is attached as Attachment A.

Dated this 1st day of March, 2016, at Salem, Oregon.

Susan K. Ackerman
Chair

John Savage
Commissioner

Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ORDER NO. 16 085

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
REDACTED STAFF REPORT
PUBLIC MEETING DATE: March 1, 2016

REGULAR X **CONSENT** ___ **EFFECTIVE DATE** **March 1, 2016**

DATE: February 10, 2016

TO: Public Utility Commission

FROM: Stephen Hayes and Stephanie Yamada

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck

SUBJECT: Comcast Corporation & Subsidiaries: (Docket No. UM 1760) Request for Qualified Project Determination.

STAFF RECOMMENDATION:

Staff recommends the Commission determine that Comcast Corporation & Subsidiaries (Comcast's or Applicant's) project is a qualified project and approve Comcast's application.

ISSUE:

Whether Comcast'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:[1]

> (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

[1] *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 in Oregon; 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[2] 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:

Comcast, including the subsidiaries identified in the application, submitted a timely application for a qualified project determination on January 12, 2016. Staff has reviewed the application and relevant laws. Staff finds that Comcast 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 February 4, 2016, Comcast requested Staff to confirm that the application was complete. On February 9, 2016, Comcast filed an amended application. Staff confirmed in writing on February 11, 2016, that the Comcast application, as amended, was complete.

[2] Hist.: PUC 8-2015(Temp), f. & cert. 11-6-15 thru 5-3-16

Project Summary

Comcast states that its project is operational in Oregon and enables communication services, including internet access service delivering download and upload speeds of up to two gigabits per second. Comcast calls this service "Gigabit Pro" which it offers to residential customers in and around 19 Oregon cities.[3] The project uses fiber-based facilities with Gigabit Pro available to customers within a third of a mile of Comcast's fiber network where Gigabit Pro is offered. Comcast provides services in the following ten Oregon counties: Benton, Clackamas, Columbia, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill.

As required by OAR 860-200-0150(2), Comcast submitted a sworn statement, executed by Pamela Willmoth, Senior Director of Property Tax for Comcast Corporation, certifying that Comcast's project meets the requirements for a qualified project under Oregon law. In addition, Comcast submitted a detailed description of the project's infrastructure with its application.[4]

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 Comcast entered into a franchise fee agreement to provide services to which the application relates.[5]

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.[6] 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 in Docket No. AR 594.

[3] Applicant's January 12, 2016, cover letter with Application at 2.
[4] OAR 860-200-0150(10)(a).
[5] A Staff review of local government requirements for such franchise fee agreements has not been performed.
[6] See Appendix A for generic city letter.

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 impact on access to services based on the provision of existing services.[7] 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 Comcast's application for a qualified project determination.

Staff has reviewed the material submitted in the application, made a site visit to observe project equipment and testing and considered Comcast's responses to 14 Staff information requests. Staff's analysis of specific aspects of the application is provided below and the analysis supports a finding that Comcast's project meets the requirements of ORS 308.677(2).

The requirements that a qualified project must meet are:

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

The Comcast project includes infrastructure improvements with additional equipment installed including fiber optic [Begin Confidential] [redacted] [End Confidential] The Company installed infrastructure in 2015 that enables the company to offer project services, including [Begin Confidential] [redacted] [End Confidential]

While no amount of required capital investment is specified in SB 611, Staff reviewed actual amounts provided by Comcast for infrastructure expenditures for 2015 [Begin Confidential] [redacted] [End Confidential] that enables Comcast to offer the qualified service to a majority of its customers. Comcast's capital investment in the project is significant.

In addition to written information, Staff observed key infrastructure elements of the Applicant's Oregon network infrastructure in operation. Staff observed that there was considerable room for expansion in key installed network equipment.

[7] See Appendix B for generic city questionnaire.

After reviewing the documentation provided in the Application, responses to information requests, making on-site visits, and observing installed equipment, Staff finds that the Applicant's project requires capital investment and meets this requirement.

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

In addition to written information, Staff observed a test of the Applicant's Oregon network ability to provide the Gigabit Symmetrical Service through the customer provided equipment identified in the application. Staff also observed the operation of existing key infrastructure during an on-site visit. Beyond inspecting the network, Staff was given the opportunity to view the customer premises equipment (CPE) and found it to be sufficient to provide speeds in excess of one gigabit per second. Staff notes that CPE is not traditionally considered part of the network. The network testing showed speeds exceeding one gigabit per second.

The applicant chose to submit application material following the guidance listed in OAR 860-200-0150(10)(a).
The application includes the following elements shown in subsection (10)(a):
(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.

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.

Staff independently reviewed the information provided in the application by verifying that the specification provided for each key piece of infrastructure was also indicated in

vendor data sheets and that those technical specifications provided for operation at at least, approximately, one Gigabit symmetrical network capacity. Staff further observed that there was room for network capacity expansion in existing network infrastructure, easily observable available card slots in key pieces of equipment were noted that could be utilized to accommodate near to mid-term demand.

The Applicant states in its confidential response to Staff Information Request Number Five that it anticipates that it will be able to [Begin Confidential] [redacted] [End Confidential] The Applicant indicates that [Begin Confidential] [redacted] [End Confidential] fiber will be used to provide the Gigabit Pro service on the network. Providing service on fiber offers the ability to scale network efficiently to increase capacity. Because the Gigabit Pro service is a new Oregon product offering it seems normal and prudent to make infrastructure investments incrementally as needed, and as provided for [Begin Confidential] [redacted] [End Confidential] The Applicant would be able to scale its capacity efficiently by placing different electronics at key distribution points that allows for faster and denser traffic transport on the same piece of [Begin Confidential] [redacted] [End Confidential] fiber. Additionally, [Begin Confidential] [redacted] [End Confidential] fiber allows for long distance transmission of light pulses using different light frequencies that do not have the same distance limitations we might expect with other broadband transport technologies.

The Applicant, by detailing its footprint for its existing fiber distribution facilities, and its extensive capacity of key network elements, has sufficiently demonstrated that it has the capacity to offer communication services to its existing Oregon broadband subscribers at sufficient speeds. The Applicant's project meets this requirement.

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."

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 that the Company submitted in the application. The project footprint was compared to a footprint of broadband customers submitted within in the Oregon Broadband Mapping project reflecting the service area as of June 30, 2014. The Gigabit Pro project footprint compares adequately to the comparable footprint of customers existing as of June 30, 2014. The Gigabit Pro 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 of its customers. In this case, Comcast estimates that it will be offered to [Begin Confidential] [redacted] [End Confidential] of its customers. The denominator used represents the existing broadband customers and matches exactly the number of existing customers reported on the Company's latest filed FCC 477 report dated June 30, 2015. The FCC Form 477 data was provided in the application. This number is also well representative of the occupied housing located within the boundaries of the Company's footprint submitted for the Oregon Broadband Map project as of June 30, 2014.

The Applicant describes how it determined its numerator in confidential responses to Staff Information Requests Numbers Two and Five. The Applicant states that [Begin Confidential] [redacted] [End Confidential], Comcast states that [Begin Confidential] [redacted] [End Confidential]

After reviewing the documentation provided in the Application, responses to Information requests, and comparing known information obtained independently apart from the Application, Staff finds that the Company has adequately demonstrated that the project infrastructure 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 extending service to customers within its network footprint.

As noted above, Comcast submitted a sworn statement, executed by a corporate representative certifying that Comcast'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.

Staff analyzed the Company's proposed network footprint alongside median household income data for the areas proposed to be served by the project in order to identify any income-related discrepancies in the proposed service area. As required under OAR 860-200-0150(4), Comcast submitted electronic Geographic Information System (GIS)-compatible mapping files as well as a paper map of the area to be served by the project. Comcast also submitted a list of the census blocks served by the project as required under OAR 860-200-0150(6). Staff compared this information against 2014 block group-level median household income data from the U.S. Census Bureau's American Community Survey 5-year estimates.

Based on information submitted by Comcast with 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.

[Begin chart containing confidential information.]

Median Household Income	Households with Access	% of Total
$ - to $ 20,000	[redacted]	[redacted]
$ 20,001 to $ 40,000	[redacted]	[redacted]
$ 40,001 to $ 60,000	[redacted]	[redacted]
$ 60,001 to $ 80,000	[redacted]	[redacted]
$ 80,001 to $ 100,000	[redacted]	[redacted]
$ 100,001 to $ 120,000	[redacted]	[redacted]
$ 120,001 to $ 140,000	[redacted]	[redacted]
Over $ 140,000	[redacted]	[redacted]
TOTAL	[redacted]	100%

[This ends the chart containing confidential information.]

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 Comcast's proposed project footprint will include a wide variety of residential income levels. Staff looked into a selection of 27 distinct areas which were excluded from Comcast's proposed service area despite being very close to or encircled by areas which Comcast does propose to serve. Staff found no evidence that Comcast avoided serving certain areas due to the residential income levels in those areas. The 27 distinct unserved areas which Staff investigated were associated with geographic or other obstacles, including parks, rivers, creeks, wetlands, quarries, and private property, and were not associated with a particular residential income level.

In response to Staff's Information Request Number Two, Comcast states that [Begin Confidential] [redacted] [End Confidential] Comcast included the specific details of its Gigabit Pro service, including pricing and other terms and conditions, with its application.

Comcast states in its application that "Comcast does not deny access to Gigabit Pro (or any other communication services) to any group of residential customers based on the income level of the residential customers in the local service area in which the residential customers reside." The Company also states that "most, if not all, of Comcast's franchise agreements with Oregon franchising authorities contain anti-discrimination provisions."

As part of its investigation, Staff consulted with the cities with which Comcast has entered into franchise agreements. The majority of responses from cities and counties indicated that they have processes in place to receive citizen complaints regarding inequitable treatment.

Based on the information described above, Staff concludes that Comcast's project does not deny access to the communication services to any group of residential customers because of the income level in the local service area in which the residential customers reside. Comcast's project meets this requirement.

CONCLUSION:

Staff concludes from its review of the material provided with and through the application

process that Comcast's project as described in its application is a qualified project under ORS 308.677(2). Staff recommends the Commission approve the application.

PROPOSED COMMISSION MOTION:

Comcast's project is a qualified project and that Comcast's application for a qualified project determination be approved.

SB611 / Comcast Corporation & Subsidiaries

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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,

Stephanie Yamada

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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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