

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 618

In the Matter of

Rulemaking Regarding Information
Disclosures by Broadband Internet Access
Service Providers Contracting with Public
Bodies and Procedures for Commission
Determinations Set forth in HB 4155, Oregon
Laws 2018, Chapter 88.

ORDER

DISPOSITION: RULES ADOPTED

I. SUMMARY

In this order, we adopt rules to implement the information disclosure rules for broadband Internet access service (BIAS) providers as required by House Bill 4155, Oregon Laws 2018, chapter 88, section 1(5).

II. BACKGROUND

In late 2017, the Federal Communications Commission (FCC) adopted its Restoring Internet Freedom (RIF) Order. The FCC's action repealed the agency's 2015 Open Internet Order, which along with prior policies had established net neutrality rules whereby Internet service providers (ISPs) were required to treat all web traffic equally.

On April 10, 2018, Oregon's Governor signed Oregon HB 4155 to prohibit public bodies in Oregon from contracting with a BIAS provider that undermines net neutrality by engaging in certain actions. These actions include the following: paid prioritization; blocking lawful content, applications or services or nonharmful devices; discriminating against or favoring certain Internet content, applications or services or nonharmful devices of an end user's choice by impairing or degrading lawful traffic; or unreasonably interfering with or unreasonably disadvantaging an edge provider's ability to make devices or lawful content, applications or

services available. The new law took effect upon passage, but the provisions related to this rulemaking become operative on January 1, 2019.

HB 4155 gives us the authority to “adopt rules and take any action before” January 1, 2019, “that is necessary to enable the [C]ommission * * * to exercise all of the powers and functions” conferred on it.¹ These responsibilities include the determining the disclosures that must be made by BIAS providers engaged in the provision of service to public bodies. In addition, we must make certain determinations about when:

- (1) a service may be deemed to provide the “functional equivalent” of a broadband Internet access service;²
- (2) a device is “nonharmful” to broadband Internet access services;³
- (3) paid prioritization provides “significant public interest benefits and does not harm the open nature” of the service and is therefore permissible;⁴
- (4) otherwise prohibited activities constitute “reasonable network management” and are therefore permissible;⁵ and
- (5) allowing a public body to contract with a provider that has engaged in activity prohibited by the new law after its effective date provides “significant public interest benefits” and is therefore permissible.⁶

In response to the passage of HB 4155, we opened two rulemaking dockets. At the May 29, 2018 Public Meeting, we approved Staff’s request to open a rulemaking docket (Docket No. AR 618) to specify the manner and form of the information disclosures that must be made by BIAS providers engaged in the provision of service to public bodies. At the June 19, 2018 Public Meeting, we approved Staff’s request to open a rulemaking docket (Docket No. AR 619) to identify the processes and procedures the Commission will use to make the determinations assigned to it under the statute.

Later, at the September 11, 2018 Public Meeting, we approved Staff’s recommendation to consolidate Docket Nos. AR 618 and AR 619. We also approved Staff’s request to issue a Notice of Proposed Rulemaking on broadband Internet access service disclosures and Commission determinations under HB 4155. On September 21, 2018, we filed a Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State, and we provided notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d).

¹ Or Laws 2018, ch 88, § 1(5).

² Or Laws 2018, ch 88, § 1(1)(a)(A)(ii).

³ Or Laws 2018, ch 88, § 1(1)(h);

⁴ Or Laws 2018, ch 88, § 1(4)(c).

⁵ Or Laws 2018, ch 88, § 1(4)(d).

⁶ Or Laws 2018, ch 88, § 1(4)(e)(B).

Notice of the rulemaking was published in the August 2018 Oregon Bulletin, setting a hearing date of October 30, 2018, and a comment deadline of November 6, 2018.

The rulemaking hearing was held on October 30, 2018. At the rulemaking hearing, Staff, the Cellular Telecommunications and Internet Association (CTIA), and the Oregon Cable Telecommunications Association (OCTA) offered oral comments on the proposed rules. On November 5, 2018, the Oregon Citizens' Utility Board and the American Civil Liberties Union (ACLU) jointly filed comments. On November 6, 2018, CenturyLink, CTIA, and OCTA filed written comments.

III. DISCUSSION

A. Legality of Oregon Laws 2018, Chapter 88

1. Discussion

Oral and written comments by the parties either support the proposed rules in their entirety, or challenge the legality of the underlying legislation. CUB and the ACLU filed joint comments that applaud Staff's efforts with regard to preparation of rules that implement requirements outlined in HB 4155. They observe that Staff facilitated meaningful conversation during three workshops and crafted rules that reflect the feedback, as well as the existing Oregon and federal law. Regarding the underlying legislation, they argue that HB 4155 operates within the new restrictions imposed by the FCC's RIF Order, and passes legal scrutiny.

CenturyLink observes, "However, it is widely believed that Oregon Laws 2018, Chapter 88, like similar initiatives in other states is vulnerable to legal challenge."⁷ CenturyLink asserts that all state net neutrality regulation is preempted by the FCC 2017 RIF Order. According to CenturyLink, HB 4155 seeks to use the state's spending power as a means to indirectly regulate in a manner replicating the regulations repealed by the 2017 RIF Order.

CTIA also argues that HB 4155 is preempted by federal law. CTIA states the FCC has recognized that Internet access service is not practically separable into intrastate and interstate activities, and contends that the effect of HB 4155, under the "dormant" or "negative" Commerce Clause, is to "discriminate against or burden the interstate flow of articles of commerce" or "erect barriers against interstate trade."⁸ OCTA submitted comments indicating that the organization generally concurs with CTIA's comments, particularly with regard to preemption.

⁷ CenturyLink Re: Docket No. AR 618 Comments at 1 (Nov 6, 2018).

⁸ CTIA Re: Docket No. AR 618 Comments at 5 (Nov 6, 2018).

2. *Resolution*

We decline to address CTIA’s preemption arguments in this rulemaking proceeding. Although Oregon administrative agencies have the power to declare statutes unconstitutional, the courts have made clear that such authority should be “exercised infrequently, and always with care * * *. ”⁹ Moreover, such authority is generally exercised in an action in which an agency was charged with enforcement. As the courts have explained, “[i]f a statute tells an agency to do something that a constitution forbids, the agency should not do it.”¹⁰

Here, we are not tasked with enforcing HB 4155, but rather with fulfilling the legislative mandate to craft rules to advance and complete the expressed legislative policy. Even the rulemaking participants that contest the legality of HB 4155 acknowledge that the proposed rules result from the legislature’s directions. Although these participants wish either for an alternative legislative path or court intervention with regard to the current legislative course, they acknowledge that we are compelled to implement HB 4155, as directed by the legislature.

B. **Recommended Changes to Proposed Rules**

Below, we address parties’ comments on specific provisions or recommendations for additional language. As discussed above, CUB and the ACLU support the proposed rules in their entirety. CenturyLink and CTIA, however, suggest adding or removing certain language.

1. *CenturyLink Proposals*

CenturyLink proposes two additional provisions be added to Staff’s proposed rules. First, CenturyLink requests that the following provision be added to clarify that HB 4155 cannot be interpreted as imposing net neutrality obligations exceeding those imposed by the FCC:

860-250-0055 Prohibited/Permitted Practices of Covered BIAS Providers

(1) Practices Consistent with Previous Federal Law. Covered broadband Internet access service providers’ practices consistent with previous Federal Law as reflected in “In the Matter of Protecting and Promoting the Open Internet,” WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) presumptively satisfy the requirements of Oregon Laws 2018, Chapter 88, Sections 1(3) and 1(4). Statutory/Other Authority: ORS Ch. 183, 756, 2018 OL Ch. 88 Statutes/Other Implemented: 2018 OL Ch. 88, Sect. 1((3) and 1(4)

⁹ *Nutbrown v. Munn*, 311 Or. 328, 346 (1991).

¹⁰ *Employment Div. v. Rogue Valley Youth for Christ*, 307 Or. 490, 495 (1989).

Second, CenturyLink proposes the following language to clarify that the state's sole remedy for violations of HB 4155 would be termination of the relevant contract:

860-250-0060 Dispute Resolution Process; Actions in Event of Contract

Disputes Regarding Internet Neutrality Principles. In the event of any disagreement, dispute, claim or controversy arising out of or relating to the Internet Neutrality principles described herein or in Oregon Laws 2018, Chapter 88, including but not limited to the perceived violation, threatened breach or actual breach thereof (collectively, an "Internet Neutrality Dispute"), the following procedures shall apply. In the event of an Internet Neutrality Dispute, the parties will attempt to resolve the Internet Neutrality Dispute through good faith negotiations conducted by the representatives designated by each party. The party asserting the Internet Neutrality Dispute will give prompt written notice to the other party describing the Internet Neutrality Dispute in reasonable detail. If the designated representatives are unable to resolve the Internet Neutrality Dispute within 45 business day(s) (or such other period agreed upon by the parties), the parties shall refer the Internet Neutrality Dispute to their respective senior management. If senior management is unable to resolve the Internet Neutrality Dispute within the subsequent 45 business days (or such other period agreed upon by the parties), then either party may terminate the Contract without liability, except for obligations unrelated to the Internet Neutrality Requirements in Oregon Laws 2018, Chapter 88, including and arising prior to the date of termination. For the avoidance of doubt, termination of the Contract shall be the parties' sole and exclusive remedy for an Internet Neutrality Dispute.

Statutory/Other Authority: ORS Ch. 183, 756, 2018 OL Ch. 88 Statutes/Other Implemented: 2018 OL Ch. 88, Sect. 1((3) and 1(4)

No other rulemaking participant commented on CenturyLink's proposed new rules.

2. *CTIA's Proposal*

CTIA asks that we remove Staff's proposed rule language clarifying that these rules do not relieve a carrier's obligation to protect Customer Proprietary Network Information (CPNI). CTIA contends that the rule is not required by HB 4155, is unnecessary due to existing standards, and is inapplicable. CTIA asserts that the privacy of consumers' personal and proprietary information is already legally safeguarded by existing state and federal standards. Moreover, CTIA indicates that the wireless industry is independently committed to protecting consumer privacy, as is CTIA. CTIA notes that it has its own Consumer Code for Wireless

Service that includes a provision for signatories to abide by a specific set of practices for the protection of customer privacy that requires compliance with applicable federal and state laws. CTIA also explains why the proposed rule is jurisdictionally inapplicable.

No other rulemaking participant commented on CTIA's recommendation.

3. Resolution

We decline to add the language proposed by CenturyLink. With respect to CenturyLink's first suggestion, we believe that it exceeds the scope of this rulemaking, which we established in Order No. 18-338. This rulemaking is intended to set forth the basic processes and procedures for implementation of HB 4155. We may consider CenturyLink's proposal in a future proceeding.

With respect to CenturyLink's second suggestion, we find that existing laws and rules regarding the resolution of disputes under our rules apply and obviate the need for CenturyLink's recommended language. To the extent CenturyLink comments on methods for resolving disputes that are not related to the Commission's responsibilities under Oregon Laws 2018, Chapter 88, we question our authority to enact such provisions.

We accept CTIA's proposal to remove Staff's proposed CPNI rule. Although we agree with Staff that the proposed CPNI rule does not impose obligations beyond those that exist under current law, the rule is redundant and we find it unnecessary to adopt it.

IV. ORDER

IT IS ORDERED that:

1. OAR 860-250-0005 through 860-250-0050 are adopted as set forth in Appendix A.

2. The new rules become effective January 1, 2019.

Made, entered, and effective Dec 27, 2018.

Megan W. Decker

Megan W. Decker
Chair

Stephen M. Bloom (by dbd)

Stephen M. Bloom
Commissioner



COMMISSIONER TAWNEY WAS
UNAVAILABLE FOR SIGNATURE

Letha Tawney
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.

DIVISION 250
BIAS PROVIDERS CONTRACTING WITH PUBLIC BODIES – DISCLOSURES AND DETERMINATIONS

860-250-0005

Applicability and Waiver

(1) These rules apply to broadband Internet access service providers engaged in the provision of broadband Internet access service to a public body, as set forth in Oregon Laws 2018, Chapter 88, Section 1(5), and any participant in a proceeding involving a determination made by the Commission under Oregon Laws 2018, Chapter 88, Section 1. These rules become effective on January 1, 2019.

(2) Upon request or its own motion, the Commission may waive any Division 250 rule for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1

Hist.: NEW

860-250-0010

Definitions

For the purposes of Division 250:

(1) “Broadband Internet access service” or “BIAS” has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(a).

(2) “Broadband Internet access service provider” or “BIAS provider” has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(b).

(3) “Covered broadband Internet access service provider” or “covered BIAS provider” means a broadband Internet access service provider engaged in the provision of broadband Internet access service to a public body under Oregon Laws 2018, Chapter 88, Section 1(5)(a).

(4) “End user” has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(e).

(5) “Functionally equivalent service” or “functional equivalent” means a service that the Commission

finds is providing a service that is the functional equivalent of the service described in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(i).

(6) “Paid prioritization” has the same meaning as defined in Oregon Laws 2018, Chapter 88, Section 1(1)(i).

(7)“Public body” means a public body, as defined in ORS 174.109, in the State of Oregon.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1

Hist.: NEW

860-250-0020

Required Public Disclosures by Covered BIAS Providers

(1) Disclosures Consistent with Federal Law. Covered broadband Internet access service providers’ disclosures made in a form and manner that complies with 47 C.F.R. § 8.1(a); *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2018); and the FCC’s *Instructions for Internet Service Providers*, located at <https://www.fcc.gov/disclosure-instructions-isps>, presumptively satisfy the requirement that such providers publicly disclose information regarding their network management practices, performance characteristics, and commercial terms of their broadband Internet access service sufficient for end users to verify that the service is provided in compliance with Oregon Laws 2018, Chapter 88, Sections 1(3) and 1(4).

(2) Changes to Applicable Federal Law. If the requirements for broadband Internet access service providers’ disclosures change under any federal law, rule, or guidance cited in section (1) of this rule, the Commission will determine within 180 days of that change whether it is necessary or appropriate to modify the Commission’s rules as a result of that change.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1(5)(b)

Hist.: NEW

860-250-0030

Functionally Equivalent Service Determinations

(1) A petition requesting that the Commission make a determination regarding whether a service is a functional equivalent as provided for in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(ii) will be governed by ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.

(2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:

- (a) A detailed description of the service at issue.
- (b) A detailed explanation of why the service at issue is or is not a functional equivalent of the service described in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(i). To the extent possible, this explanation should include the following:
 - (A) a description of the technical differences between the service at issue and the service described in Oregon Laws 2018, Chapter 88, Section 1(1)(a)(A)(i);
 - (B) a description of or examples of how the service at issue is marketed to customers, including available marketing materials;
 - (C) a description of or examples of how the service at issue is described to or by other third parties, such as standards bodies; and
 - (D) a description or copy of an example customer service agreement for the service at issue.
- (c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.
- (d) Any parallel or related proceedings pending in any forum, if known.
- (e) A request for an appropriate protective order, as needed.
- (3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1(1)(a)(A)(ii)

Hist.: NEW

860-250-0035

Nonharmful Device Determinations

- (1) A petition requesting that the Commission determine by rule whether a device is nonharmful under Oregon Laws 2018, Chapter 88, Section 1(1)(h) will be governed by the requirements set forth in this rule and either of the following:
 - (a) ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001; or
 - (b) the Oregon Administrative Procedures Act and the generally applicable filing, rulemaking, and confidentiality procedures contained in OAR chapter 860, division 001.

(2) A contested case petition under section (1) of this rule must conform with OAR 860-001-0400(1) and (2) and a petition for adopting, amending, or repealing a rule under section (1) of this rule must conform with OAR 860-001-0250. Either type of filing must also include the following additional information to the extent relevant information is available to the petitioning party:

(a) A detailed description of the device at issue. At a minimum, this description should include:

- (A) The name, manufacturer, and distributor of the device;
- (B) The purpose of the device (e.g., personal communication, medical monitoring);
- (C) A description of how the device works, including whether it alters, intercepts, diverts, or otherwise interferes with end user traffic or end user information; and
- (D) Any relevant determinations regarding the device made by other bodies, including the FCC.

(b) A detailed explanation of why the device at issue is or is not a nonharmful device under Oregon Laws 2018, Chapter 88, Section 1(1)(h).

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Any parallel or related proceedings pending in any forum, if known.

(e) A request for an appropriate protective order, as needed, if a contested case petition.

(3) A response to a contested case petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1(1)(h)

Hist.: NEW

860-250-0040

Excepted Paid Prioritization Determinations

(1) A petition requesting that the Commission make a determination regarding whether certain paid prioritization meets the standard set forth in Oregon Laws 2018, Chapter 88, Section 1(4)(c) will be governed by ORS 756.500 to 756.610 and the generally applicable filing,

contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.

(2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:

(a) A detailed description of the paid prioritization at issue.

(b) A detailed explanation of why the paid prioritization at issue does or does not provide significant public interest benefits and does or does not harm the open nature of the provided broadband Internet access service under Oregon Laws 2018, Chapter 88, Section 1(4)(c).

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(a) applies to the contract(s) or RFP(s) identified under subsection (2)(c) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(c) is sought.

(e) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(b) applies to the paid prioritization at issue in the initiating pleading. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(c) is sought.

(f) Any parallel or related proceedings pending in any forum, if known.

(g) A request for an appropriate protective order, as needed.

(3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1(4)(c)

Hist.: NEW

860-250-0045

Reasonable Network Management Determinations

(1) A petition requesting that the Commission make a determination regarding whether certain activity constitutes reasonable network management under Oregon Laws 2018, Chapter 88, Section 1(4)(d) will be governed by ORS 756.500 to 756.610 and the generally

applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.

(2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:

(a) A detailed description of the activity at issue.

(b) A detailed explanation of why the activity at issue is or is not reasonable network management under Oregon Laws 2018, Chapter 88, Section 1(4)(d). At a minimum, the explanation must address:

(A) the technical network management justification for the activity, if any;

(B) the other business practices included in the activity, if any; and

(C) whether and how the activity is narrowly tailored to achieve a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(a) applies to the contract(s) or RFP(s) identified under subsection (2)(c) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(d) is sought.

(e) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(b) applies to the activity at issue in the initiating pleading. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(d) is sought.

(f) Any parallel or related proceedings pending in any forum, if known.

(g) A request for an appropriate protective order, as needed.

(3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1(4)(d)

Hist.: NEW

860-250-0050

Determinations Regarding Newly Compliant BIAS Providers

(1) A petition requesting that the Commission make a determination regarding whether a particular provider meets the standard set forth in Oregon Laws 2018, Chapter 88, Section 1(4)(e) will be governed by ORS 756.500 to 756.610 and the generally applicable filing, contested case, discovery, and protective order procedures contained in OAR chapter 860, division 001, and the requirements set forth in this rule.

(2) A petition under section (1) of this rule must conform with the requirements of OAR 860-001-0400(1) and (2) and must include the following additional information to the extent relevant information is available to the petitioning party:

(a) The provider at issue and that provider's certification under Oregon Laws 2018, Chapter 88, Section 1(4)(e)(A).

(b) A detailed explanation of why Oregon Laws 2018, Chapter 88, Section 1(4)(e) applies to the provider at issue. At a minimum, the explanation must address:

(A) which of the activities described in Oregon Laws 2018, Chapter 88, Section 1(3) that the provider engaged in after January 1, 2019, and the basis for this assertion;

(B) the date or dates on which the provider ceased engaging in the activities identified in section (2)(b)(i) of this rule; and

(C) the reason or reasons that allowing a public body to contract with the broadband Internet access service provider provides significant public interest benefits.

(c) Any public body, contract, or request for proposal (RFP) to which the petition relates. If applicable, the petition should include contact information for any public body identified and a description of the current status of and timeline for the affected contract or RFP. If the pleading relates to a procurement or contracting dispute, the petition should also identify any negative determination made by the relevant public body and indicate whether any applicable procurement appeal process was utilized.

(d) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(a) applies to the contract(s) or RFP(s) identified under subsection (2)(c) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(e) is sought.

(e) Whether Oregon Laws 2018, Chapter 88, Section 1(4)(b) applies to the activity described in section (2)(b)(a) of this rule. If it applies, the petition should also explain why a determination under Oregon Laws 2018, Chapter 88, Section 1(4)(e) is sought.

(f) Any parallel or related proceedings pending in any forum, if known.

(g) A request for an appropriate protective order, as needed.

(3) A response to a petition filed under sections (1) and (2) of this rule must conform with the requirements of OAR 860-001-0400(3) and (4)(a) and must respond to or supplement the information identified in section (2) of this rule to the extent relevant information is available to the responding party.

Stat. Auth.: ORS Ch. 183, 756, 2018 OL Ch. 88

Stats. Implemented: 2018 OL Ch. 88, Sect. 1(4)(e)

Hist.: NEW