

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1631

In the Matter of

FITZ STENDER,

Request for a Partial Waiver of OAR 860-033-0530, (Minimum Age Requirement).

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on August 25, 2020, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

**Nolan Moser**  
Chief Administrative Law Judge

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.

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: August 25, 2020**

**REGULAR** \_\_\_\_\_ **CONSENT**   X   **EFFECTIVE DATE** \_\_\_\_\_ **N/A**

**DATE:** August 17, 2020

**TO:** Public Utility Commission

**FROM:** Jon Cray

**THROUGH:** Michael Dougherty and Phil Boyle **SIGNED**

**SUBJECT:** RESIDENTIAL SERVICE PROTECTION FUND:  
(Docket No. UM 1631)  
Waiver of OAR 860-033-0530(1).

**STAFF RECOMMENDATION:**

Staff recommends that the Commission waive the minimum age requirement for Fitz Stender (Stender) to submit an application to receive an Assistive Telecommunication Device or Adaptive Equipment under OAR 860-033-0530.

**DISCUSSION:**

Issue

Whether the Commission should waive the minimum age requirement for Stender to submit an application to receive an Assistive Telecommunication Device or Adaptive Equipment under OAR 860-033-0530.

Applicable Law

With the enactment of Chapter 290, Oregon Laws 1987, §9 to §16, as amended, the Oregon Legislature authorized the Commission to establish a program to purchase and distribute assistive telecommunication devices and, as appropriate, adaptive equipment to Oregon residents certified as deaf, deafblind, hard of hearing, speech impaired, vision impaired, or as having a physical condition by a designated authority.<sup>1</sup>

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<sup>1</sup> The law designates licensed physicians, physician assistants, nurse practitioners, audiologists, hearing aid specialists, speech-language pathologists, rehabilitation instructors for persons who are blind, or

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Certification, in accordance with the law, “implies the individual cannot use the telephone for expressive or receptive communication” and “requires the use of an assistive telecommunication device [or adaptive equipment] to communicate effectively on the telephone.”

OAR 860-033-0530(1) states that, “A person age four and above may apply to receive an Assistive Telecommunication Device or Adaptive Equipment from the Commission.”

Under OAR 860-033-0001(2), any of the Division 33 rules may be waived for good cause upon a written request or the Commission’s own motion.

### Analysis

#### *Background*

On May 31, 2017, in Docket No. AR 612, the Commission adopted the minimum age requirement of four years in OAR 860-033-0530(1). See Docket AR 612, Order No. 17-200. Commission Staff had initially proposed the age requirement after receiving applications for individuals as young as one year old. As a result, Commission Staff surveyed other states with a similar program and learned those states commonly had adopted age requirements with the minimum range from three to five years old. The Commission, ultimately, adopted Staff’s recommendation to mirror the neighboring State of Washington’s program age threshold of four years.

On July 8, 2020, the Commission received an application for adaptive equipment from Stender, who had recently become three years old, with the certification completed by Cortney Brummond, an American Speech-Language and Hearing Association certified speech-language pathologist. Staff’s email to the Brummond on July 8, 2020, explained that Stender’s application was denied due to the minimum age requirement for TDAP equipment.

Staff contacted Brummond, by phone, after she requested the reasoning behind the age limit. Brummond stated that she submitted the application to TDAP as a last resort, which is not required, on Stender’s behalf after efforts to obtain a speech-generating device through Stender’s insurance carrier was unsuccessful. Brummond stated that Stender is at a crucial stage for language acquisition and development. Absent immediate intervention, a child in this circumstance is at grave risk for further language delays that will be detrimental to their ability to effectively communicate on the telephone. Staff requested that Brummond supplement the application with a detailed narrative in the waiver request about Stender’s existing and future communication

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vocational rehabilitation counselors of the Department of Human Services to, within the scope of their practice or profession, certify an Oregonian’s disability for TDAP services.

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abilities and goals for telephone usage with a speech-generating device, a type of adaptive equipment.

Brummond submitted an email on July 8, 2020, in which she explained that, due to the nature of his disability, Stender's speech is limited. In trialing different speech-generating devices, Stender demonstrated independent skill in navigating and selecting core words through pictures to convey his message. With a speech-generating device, Brummond explains that Stender will be able to learn and initially use the telephone to communicate with his grandparents. He will also be able to make a 9-1-1 call in the event of an emergency. Addressing the immediate need during Stender's formative years will increase his prospect of a successful future that will affect his ability to effectively communicate on the phone and participate in family and social activities as he ages.

The Commission makes available assistive telecommunication devices and adaptive equipment that provides a means of access to communicate effectively on the telephone, including speech-generating devices for TDAP recipients. The Commission has adequate funding for the purchase and distribution of the requested speech-generating device for Stender.

The premise for the law that established the TDAP is explained in ORS 759.694. The Oregon Legislature recognized that "present technology is available, but at significant cost." Therefore, by providing assistive telecommunication devices or adaptive equipment, it would allow Oregonians with disabilities "to more fully participate in the activities and programs offered by government and other community agencies, as well as in their family and social activities at no additional cost beyond normal telephone service."

The Commission established precedence by granting two similar petitions for waiver.<sup>2</sup> Although applications for similar assistive telecommunication devices or adaptive equipment for individuals under four years old is not common, Staff will review these applications on a case-by-case basis and, if necessary and appropriate, may propose that the Commission amend the rule in a rulemaking proceeding.

### Conclusion

Staff finds that a waiver will fulfill the objective of the law so Stender can begin to use the phone to more fully participate in his family and social activities at no additional cost and without waiting to reach four years of age.

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<sup>2</sup> See Order Nos. 17-506 and 18-310.

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**PROPOSED COMMISSION MOTION:**

Approve a partial waiver of the age requirement in OAR 860-033-0530(1) to allow Fitz Stender to submit an application to the Commission for an assistive telecommunication device or adaptive equipment.

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