



Oregon

Kate Brown, Governor

Department of Revenue
Property Tax Division
955 Center St NE
PO Box 14380
Salem, OR 97309-5075
www.oregon.gov/dor

February 23, 2016

Public Utility Commission of Oregon
PO Box 1088
Salem OR 97308-1088

Re: Docket No. UM 1760, Comcast Qualified Project Determination
Confidential Material Enclosed

Chair Ackerman and Members of the Commission:

I am writing today to share concerns that the Department of Revenue (DOR) has related to the staff report on the above docket item. Because this letter relates to information that was provided within confidential applications to the Public Utility Commission (PUC) I would ask that it be made a part of the confidential file and not be made publicly available. Because it necessarily references information contained in confidential applications submitted under docket numbers UM 1761 (Frontier) and UM 1762 (Google) I would ask that you consider redactions as appropriate if you feel it is necessary to share this letter with the applicant.

Per the staff report we have met with PUC staff on multiple occasions. Your staff is very knowledgeable and has been patient in sharing their technical expertise. Likewise, we have previously shared our concerns described below, but because we feel they may not be adequately represented in the staff report I wanted to specifically bring them to your attention. The DOR is not requesting that you reject or approve the PUC staff recommendation, but at your discretion you may find that the staff report should be modified or that certain statements should be made a part of the public record.

During the temporary administrative rules process last October it became apparent that the PUC would be making prospective determinations, meaning positive determinations of a qualified project on incomplete or planned projects. The temporary rules as adopted under 860-200-0150 indicate differences with regard to the applications for applicants who are operating and not operating at the time of application. Of the three applications before you, only the Comcast application claims to have a project in operation to a level that could qualify it for an exemption.

ORS 308.677 states that a company shall be granted the exemption "if the company builds, maintains and operates a qualified project in Oregon." The PUC staff reports for both Frontier and Google make it clear that the positive determinations of qualified networks are prospective,

CONFIDENTIAL TO PUC - APPLICATION RELATED MATERIAL

that is, that the projects are either not yet operational or not operational to a level which would qualify them for the exemption. The staff report on the Comcast application has no such language, instead indicating only that "Comcast states that its project is operational in Oregon." (Page 3, Confidential Staff Report)

The DOR has asked PUC staff to inquire through its information request process as to how many residential customers Comcast had as of January 1, and how many customers they have currently. We understand that PUC staff may not feel that the number of customers, or even whether there were customers, would be determinative as to whether the project should be qualified. Nonetheless, the DOR would prefer that this information was on the public record as it speaks directly to whether the project was operational as of January 1 and arguably whether the exemption should be granted for the 2016-2017 tax year.

Another concern we would like to make you aware of relates to the requirement for the project to require new capital investment in infrastructure. The DOR has shared concerns with PUC staff around Comcast's confidential responses to information requests six through eight. The staff report indicates that Comcast spent [REDACTED]

[REDACTED]

It would be helpful if Comcast were to further sort their costs into categories including non-qualifying property like coaxial cable, shared assets including shared fiber assets, and property used exclusively for the qualifying project. While the staff report rightly notes that "no amount of required capital investment is specified in SB 611" (Page 4, Confidential Staff Report) we are of the opinion that such a breakdown would be helpful in determining whether the project required new capital investment and whether that qualifying infrastructure was completed in the year prior to January 1, 2016. The staff report concludes that "Comcast's capital investment in the project is significant" (Page 4, Confidential Staff Report) but without a detailed accounting of costs we think this is a difficult statement to support.

The example of infrastructure topology found behind tab 10B of the amended confidential Comcast application is for a [REDACTED]. We are aware that Comcast has been offering speeds above one gigabit to business customers for some time. It would be problematic if the infrastructure for the qualifying residential network was not newly constructed or installed. Having a more detailed accounting of capital expenditures would be helpful in determining whether the infrastructure that enables the company to offer the service is newly constructed.

The final concern we will raise relates to whether and to what degree the service is actually being offered. Since the Comcast application has gone public we are aware of several interested parties who were told the service is not available in their location despite being located in "serviceable cities" per the application. This is consistent with descriptions we have seen in the press of customer experiences attempting to sign up for the service in other states. As of the writing of this letter this webpage for Comcast Xfinity in Portland only shows offerings for speeds up to 250 Mbps:

<http://www.xfinity.com/locations/internet-service/oregon/portland.html>.

Again, we are not requesting that the application be rejected or approved. The DOR will be looking into these issues moving forward as we decide whether to grant the exemption for the upcoming tax year. We wanted to make you aware of the above concerns so that if you felt some clarification was required we could avoid an appearance down the road that the DOR and PUC were in disagreement on these issues. I appreciate your attention in this matter and am available should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Gharst". The signature is written in a cursive style with a large, looped "G" at the end.

Mark Gharst
Policy Liaison
503-302-8136
mark.gharst@oregon.gov