

ORDER NO. 18 310

ENTERED AUG 28 2018

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1631

In the Matter of

RESIDENTIAL SERVICE PROTECTION  
FUND,

Request for Waiver of OAR 860-033-0530(1).

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on August 28, 2018, 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:



**Michael Grant**  
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 28, 2018

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

DATE: August 9, 2018

TO: Public Utility Commission

FROM: Jon Cray *JC*

THROUGH: Michael Dougherty *M* and Phil Boyle *PB*

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 Kellen Wright to receive an Assistive Telecommunication Device or Adaptive Equipment under Oregon Administrative Rule (OAR) 860-033-0530.

**DISCUSSION:**

Issue

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

Applicable Law

With the enactment of Oregon Revised Statute (ORS) 759.693 to ORS 759.695, as amended, the Oregon Legislature authorized the Commission to establish a program (Telecommunication Devices Access 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> Certification, in

<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 vocational rehabilitation counselors of the Department of Human Services to, within the scope of their

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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."

### 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 State of Washington's program age threshold of four years.

On July 26, 2018, Staff received an email inquiry from Stephanie Crawford, an American Speech-Language and Hearing Association certified speech-language pathologist (SLP), about whether an exception to the rule exists prior to completing and submitting Wright's application for adaptive equipment to the Commission. Crawford also provided reasons for why an exception was necessary in her email. Staff informed Crawford, by phone, on July 30, 2018, that the Commission may waive the rule for good cause shown pursuant to OAR 860-033-0001 and requested that Crawford complete and submit the application with a detailed narrative on Wright's plans for successful phone communication.

On August 1, 2018, the Commission received the application for Wright, who had recently turned three years old. Wright's SLP, Crawford, described his communication capabilities relative to telephone usage and the rationale for the selection of the requested device. She states that Wright is motivated to communicate and is persistent in conveying his message using a variety of communication methods. She explained that, due to the nature of Wright's speech disability, he has severe difficulty expressing himself. Therefore, he relies on individuals like his mother who are somewhat familiar with his speech patterns to interpret and provide the context of his message when he attempts to communicate on the phone with extended family members in another state.

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practice or profession, certify an Oregonian's disability for services from the Telecommunication Devices Access Program.

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When Wright trialed a tablet with an application software designed to generate speech through the selection of pictures, he demonstrated age appropriate engagement and success in using it with support from his SLP and family. Crawford indicates that it is crucial for Wright to learn and use the tablet and application software, a type of adaptive equipment, at his age so he can continue to develop his expressive speech through early intervention, thereby affecting his ability to communicate effectively on the phone as he ages. According to Crawford, Wright may not need to rely on adaptive equipment in the future as his speech progresses and becomes more intelligible due to the benefits of the tablet and software application provided by the Commission.

The Commission makes available assistive telecommunication devices and adaptive equipment that provides a means of access to communicate effectively on the telephone, including tablets with applications, for qualifying Oregonians with disabilities. Otherwise, the recipient, like Wright, are not be able to independently foster relationships with his family members who reside in a different state. The Commission currently has adequate funding for the purchase and distribution of the requested device for Wright.

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 a precedent by granting a partial waiver of the age requirement in OAR 860-033-0530(1) for a three year old in Order No. 17-506. Although Staff, at the time, did not anticipate additional applications for similar assistive telecommunication devices or adaptive equipment for individuals under four years old, it is the second waiver request in eight months. Staff will continue to 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.

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Conclusion

Staff finds that a waiver will fulfill the objective of the law so Wright 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.

**PROPOSED COMMISSION MOTION:**

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

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