

Status of ORTCC Legislation Concepts as of July 23, 2004

As of the above date, this is the known status of possible legislative recommendations.

- The Role of the Oregon Economic Development Department (OECDD) in Telecommunications Planning and Education

Telecommunications is now more than ever a critical lynchpin to Oregon's economic recovery. OECDD has a role to perform that includes encouragement of the development and utilization of statewide telecommunications infrastructure to support commercial and workforce development activities throughout the state. OECDD needs to continue to fund, promote and execute this role. Appropriate legislation appears to be in place but may require clarification to reduce industry objections.

Status: No further action to be taken with regards to proposing legislation. The report of the ORTCC to the JLCIMT will reflect the commitment received from Marty Brantley, Director OECDD, to continue to this role within the OECDD.

- Electronic Commerce Enterprise Zones

E-Commerce is a growing force for economic recovery in Oregon. The Legislature should facilitate and promote E-commerce through the expansion of E-commerce Zones to more communities.

Status: At a June 24, 2004 ORTCC session Marty Brantley, Director OECDD, concurred with the ORTCC recommendation to expand the number for currently eligible sites from 5 to 10. Draft legislation is attached.

- Advanced telecommunications facilities tax credit

The existing tax incentive legislation for telecommunications infrastructure will be more useful and stimulate investment when it allows "carry-forward" and also "assignment" of the tax credit. Current legislative language is unrealistic and in effect provides none of the intended incentives originally intended. The usefulness will also be increased by including a larger group of eligible organizations, including but not limited to, non-profits, consortia, cooperatives and Internet service and access providers. The 20% tax credit should be increased to improve the economic impact of the credit on investment decisions and the \$2 million cap on annual tax savings should be increased to \$10 million.

Status: At a June 24, 2004 ORTCC session Marty Brantley, Director OECDD, concurred with the ORTCC recommendation to fix this tax credit. Discussions to date reveal no opposition from the Oregon Telecommunications Association (OTA) but also no solid support per say. Some non-OTA members have indicated interest in this measure. Draft legislation is attached.

- Benchmarks

To be able to measure, both quantitatively and qualitatively, the state's progress toward achieving these goals, identifiable and measurable benchmarks should be

defined. A state agency needs to be identified to monitor, collect, maintain and report the information and data needed to assess progress, or lack thereof, in addressing these goals.

Status: At a June 24, 2004 ORTCC session Marty Brantley, Director OECDD, did not support this recommendation. He cited the increasing burden of reporting on businesses at a time when the state is seeking to reduce that effort. Further clarifying discussion may be required with OECDD. There also needs to be contact with the Oregon Progress Board (OPB) to initiate dialogue with these folks. There is some question re funding for the OPB, perhaps with a reduction in those funds being suggested.

Further dialogue on this topic would benefit from a specific delineation of proposed benchmarks. Prospects for successful support and passage of these recommendations are at risk without a specifically delineated set of benchmarks.

- Special Public Works Fund

The State should continue and enhance funding programs for infrastructure critical to the economic well-being of the state's businesses, institutions and residents, including the development and enhancement of telecommunications backbone, "middle-mile" and local distribution "last-mile" networks to improve access.

Status: At a June 24, 2004 ORTCC session discussion with Marty Brantley, Director OECDD, indicated that the fund is considered adequate as formulated. No legislative recommendation will be forthcoming on this subject.

- Telecommunications plan for education and health care communities

In 2003 House Bill 2577 was enacted into law. That legislation directed the Oregon Telecommunications Coordinating Council (ORTCC) to prepare a plan to ensure that education and health care communities are able to connect by broadband and other telecommunications infrastructures necessary for distance learning. That plan is to be reported to the interim legislative committees relating to health care no later than July 1, 2004.

Status: To comply with this legislation, the ORTCC has established a healthcare-education committee, which in turn has established a steering committee and three subcommittees: Application and Content, Policy and Funding, Technology and Connectivity. While work continues to finalize the details of the plan, recommendations for legislation have yet to be identified. Substantial work remains.

ELECTRONIC COMMERCE ENTERPRISE ZONES

Draft language

ORS 285B.672 is amended to read:

285B.672. (1) A sponsor of an existing enterprise zone may seek to have the zone designated for electronic commerce under this section.

(2) The sponsor shall file an application to have the zone designated for electronic commerce with the Economic and Community Development Department. The application shall be in the form and contain the information that the department by rule may require.

(3) The application shall be accompanied by a copy of a resolution, adopted by the governing body of the sponsor, requesting that the zone be designated for electronic commerce.

(4) The department shall review applications for electronic commerce designation and shall approve { - no more than four - } zones for electronic commerce designation. In approving zones for electronic commerce designation, the department shall strive to approve zones for electronic commerce designation indifferent geographic areas of this state.

ADVANCED TELECOMMUNICATIONS FACILITIES INCENTIVES

Draft language

SECTION 3. ORS 285B.486 is amended to read:

285B.486. (1) As used in this section and ORS 285B.488:

(a) 'Advanced telecommunications facilities' means high-speed, dedicated or switched broadband telecommunications infrastructure or equipment that enables users to send or receive high quality voice, data or video telecommunications using any technology.

(b) 'Last mile connection' means a communications channel from the feed from a connecting bypassing intercity telecommunications carrier through a telecommunications switching center, or an individual message distribution point, to a user terminal.

(c) 'Local exchange carrier' means a person that holds a certificate of authority issued by the Public Utility Commission under ORS 759.020 to provide intrastate telecommunications service or local exchange telecommunications service within this state.

(d) 'Telecommunications carrier' { + :

(A) + } Means a provider of telecommunications services, { - but does not include - } { + including but not limited to a nonprofit corporation, a cooperative as defined in ORS 62.015, a telecommunications consortium formed by intergovernmental agreement under ORS 190.010, an Internet service provider, an Internet access provider or any provider of advanced telecommunications facilities; and

(B) Does not include + } an aggregator, as defined in 47 U.S.C.226.

(2) A telecommunications carrier seeking a tax credit under ORS 315.511 for the installation of advanced telecommunications facilities { - , prior to incurring any costs associated with the installation, - } shall apply to the Economic and Community Development Department for certification of the facilities as advanced telecommunications facilities { + before the facilities are placed in service + }.

(3) The application for certification shall be in the form and shall contain the information required by the department pursuant to rules adopted by the department for the administration of the tax credit certification under this section, including but not limited to:

(a) A complete description of the installation project and the customers to be served by the project;

(b) The expected costs for completing the project;

(c) The { - expected - } start date and the expected date on which the advanced telecommunications facilities are to be placed in service;

(d) The geographic area or areas in which the advanced telecommunications facilities are to be installed; and

(e) A description of how the facilities will be integrated into the operations of the intrastate telecommunications services provided by the telecommunications carrier.

(4) The application for certification shall be accompanied by technical documentation demonstrating that the facilities will meet or exceed applicable minimum performance standards established by the department under ORS 285B.488.

(5) The department may approve or deny an application for certification or may request changes to the application before issuing certification. Denial of an application may be appealed to the department in the manner of a contested case under ORS 183.310 to 183.550.

(6) The department shall approve an application and certify the facilities as advanced telecommunications facilities if the facilities:

(a) Are to be located in an area in which current minimum bandwidth service is not available to a majority of customers;

(b) Improve access to advanced telecommunications services for a majority of all customers in unserved or underserved service areas; and

(c) Meet the minimum performance standards to comply with ORS 285B.488.

(7) Upon approval of an application, the department shall send to the applicant a written certification of the facilities as advanced telecommunications facilities. The certification shall state the date by which the facilities must be placed in service and the cost of the facilities that are being certified.

(8) Notwithstanding subsection (6) of this section, the department may not approve an application and certify a facility if the cost of the facility plus the certified costs of all other facilities that have been certified during the year exceeds { - \$10 million - } { + \$50 million + }.

(9) The department may establish by rule the amount of fees charged to applicants seeking certification of facilities as advanced telecommunications facilities. Revenues from the fees shall be used to offset the costs incurred by the department in administering the tax credit certification under this section.

SECTION 4. { + The amendments to ORS 285B.486 by section 3 of this 2003 Act apply to applications for advanced telecommunications facility certification filed on or after the effective date of this 2003 Act. + }

SECTION 5. ORS 285B.488 is amended to read:

285B.488. { + For purposes of the income and corporate excise tax credit under ORS 315.511: + }

(1) The Economic and Community Development Department shall adopt rules setting minimum performance standards that facilities must meet to be certified as advanced telecommunications facilities. The rules must establish minimum performance standards in the following areas:

- (a) Enhancement of individual and business access to advanced telecommunications services at an economically reasonable cost;
- (b) Development and transition to a fully competitive telecommunications marketplace;
- (c) Provision of bidirectional bandwidth capabilities to customers;
- (d) Accessibility to competitive local exchange carriers;
- (e) Improvement in access by public and private educational institutions, rural health clinics and libraries to advanced telecommunications services;
- (f) Improvement in telecommunications connections between communities in this state;
- (g) Improvement in last mile connections within this state; and
- (h) Improvement in access by Oregon health care providers to interactive video and other health care applications requiring advanced telecommunications services.

(2) In order for facilities to be certified under ORS 285B.486, the facilities must meet or exceed the minimum performance standards in at least one of the areas set forth in subsection (1) of this section.

SECTION 6. ORS 315.511 is amended to read:

315.511. (1) There shall be allowed a credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapters 317 and 318) for advanced telecommunications facilities, as defined in ORS 285B.486, that have been certified by the Economic and Community Development Department.

(2) The amount of the credit shall equal { - 20 - } { + 50 + } percent of the certified cost of the facilities that was actually paid or incurred by the taxpayer, except that:

(a) The amount of the credit may not include facility costs that were paid using moneys withdrawn from the taxpayer's Telecommunications Infrastructure Account established pursuant to ORS 759.405; and

(b) Revenues forgone by the taxpayer upon the taxpayer's waiver of installation charges for advanced telecommunications facilities to schools, rural health clinics or libraries may be added to the amount of the credit.

(3) The { - credit may be claimed by the - } taxpayer { + may first claim the credit allowed under this section + } for the tax year in which the advanced telecommunications facilities are placed in service.

(4) The credit allowed under this section may not exceed the tax liability of the taxpayer { - and may not be carried forward to a succeeding tax year - } .

{ + (5) Any credit otherwise allowable under this section in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. + }

{ - (5) - } { + (6) + } In the case of a credit allowed under this section:

(a) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(b) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

{ - (6) - } { + (d) + } The credit shall be claimed on a form prescribed by the Department of Revenue and containing any information as may be required by the department. The taxpayer shall attach a copy of the certification to the return for the tax year for which the credit is claimed.

{ + (7) Before filing a return for the first tax year for which the credit is claimed, a credit otherwise allowed under this section may be transferred to another taxpayer by:

(a) Transferring the certification issued under ORS 285B.486 to the taxpayer who is to claim the credit;

(b) Filing a notice of credit transfer with the Department of Revenue on a form prescribed by the department; and

(c) Taking any other action required by the department under rules prescribed by the department.

(8) The credit allowed under this section is not in lieu of any depreciation or amortization deduction to which the taxpayer is otherwise entitled. The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any amount of credit allowed. + }

SECTION 7. { + The amendments to ORS 315.511 by section 6 of this 2003 Act apply to tax years beginning on or after January 1, 2004. + }