



## OAR 141-126 RAC Meeting #2 Summary

September 14, 2021, 2:00-5:00 PM

### Overview

The OAR 141-126 Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on September 14, 2021, via Zoom. This second RAC meeting was convened to continue to provide input on proposed administrative rules governing the authorizing of communication site facilities on state-owned land.

### RAC Members and Attendance

Present?	Name	Affiliation
Yes	Chip O’Hearn	Smartlink/AT&T, industry representative
Yes	Jon Bial	Oregon Public Broadcasting, a non-profit lessee
Yes	Steve Quick	Harney County School District 3 Superintendent, Common School Fund beneficiary
Yes	Lori Noble	Cow Creek Band of Umpqua Tribe of Indians
Yes	Gabriel Rendon	ODOT Wireless Group, a lessee/state agency
Yes	Kassandra Rippee	Coquille Indian Tribe
Yes	Stephanie Bowen	Harney Electric Co-op, a lessee
Yes	Travis Coleman	Lumen/Century Link, industry representative
<b>Staff/Advisors</b>		
Yes	Chris Parkins	DSL, Manager, Bend Field Office
Yes	Amber McKernan	DSL, Property Manager
Yes	Sheena Miltenberger	DSL, Rangeland Manager
Yes	Erin Serra	DSL, Ownership Specialist (Support)
Yes	Lani Ahmadian	DSL, Executive Support Specialist (Support)
No	Shawn Zumwalt	DSL, Property Management
<b>Interested Parties</b>		

### Welcome/Agenda Review

Chris Parkins, Facilitator, welcomed the group and explained the agenda, meeting goals, and a reminder of zoom meeting protocols.

## **Review of Meeting 1 Summary**

Amber asked the group if they had any additions or changes to the Meeting 1 Summary. No comments were received from the group.

## **Rate Study Introduction and Q & A session**

Amber and Sheena led the presentation and discussion of the Rate Study that DSL conducted to establish Market Values and leasing program comparisons from other western states with school trust lands, and from the BLM. Sheena discussed how DSL performed the Rate Study and stated that 20 states (including Oregon) and the BLM were contacted, with 11 states (including Oregon) providing information. The information submitted included application fees, compensation rates, sublease/co-location rates and fees, and general communication site leasing program and process information. The main finding of the study was that all the states that submitted information had vastly different fee structures and leasing and co-location processes. To make comparisons with the proposed DSL use types and compensation rates with data submitted by other states.

Jon and Chip asked why commercial and cellular uses were not completely differentiated in the table. *Department Response:* This information was difficult to split out due to the format of the feedback we received from other states. Some states do not differentiate cellular from commercial, and some do. Jon also asked if the proposed rate for government/emergency services would go up based on the rate study averages and would they be higher than the commercial rate. *Department Response:* Government and emergency services rates will not be more than commercial rates. If non-commercial rates remain as first proposed, the Department will see a loss in revenue in the first 20 years. If we bump rates to what was shown in the rate study, there will not be that same loss.

Jon Asked how we calculated the numbers for the current lease rates and the proposed lease rates over time. *Department Response:* The Department calculated the revenue generated from the current lease rates based on current rules and the actual lease terms including renewal terms. It did the same for the proposed lease rates. However, it was pointed out that the Department made an error and missed including one current non-commercial lease. That lease will be added and re-calculated for the next RAC meeting.

There was some concern that the rates supplied by other states were not comparable to Oregon rates and how the Department ensured we were comparing “apples to apples”. *Department Response:* We were very specific in what we asked other western states in order to be able to compare programs and fees. There is a vast difference across other states due to raw land vs. developed land, urban vs. rural zones etc. so we calculated the average high rates and the average low rates to aid in developing the proposed rates for each use types.

Jon indicated that the proposed rates are good, and the argument could be made that we are meeting the trust obligations because of the differences and biases acknowledged in the rate study. *Department Response:* We will continue to mull that over while working the numbers and go over the proposed rules.

## Discussion-Draft Rules

Amber McKernan and Sheena Miltenberger shared the draft Division 126 rules and led the discussion looking at each section, rule by rule, asking for questions, comments, and discussion of each. Amber opened the discussion by stating that we would not necessarily read the rules word for word and that we would be taking notes on comments, questions, and discussion.

141-126-0150: Compensation

141-126-0150 (2) and (3-new): Live editing during meeting to clarify rule language regarding when the Department may require compensation rates other than the minimum rate for a new lease. The Department may require compensation rates based on bid at public auction or as determined by an appraisal.

141-126-0150 (2): Stephanie asked what “personal use” meant. *Department Response*: Personal use is defined in these rules as amateur radio or HAM radio.

The Department checked in with the RAC members on proposed rates for government and non-commercial. RAC members responded that the rates were justifiable based on the rate study, but Stephanie indicated that the rates were high for the small amount of land impacted by the use. Jon seconded this comment. Stephanie also commented that HEC thinks the Department is making out like bandits due to the total rent amount being paid by lessees to DSL for a small piece of land. Stephanie also noted that a small business in Burns would have a hard time recovering the rent amount annually. *Department Response*: Total rents received for each communication site area was not a consideration of the rate study. Each individual use is a separate and discrete and requires its own lease. Jon commented that this rent structure would promote more co-location in order to get the pro-rated co-location rent amounts.

The Department inquired of the group if there were any thoughts on the proposed rates and structure for Commercial uses. There are not that many current leases that fit into these categories. The Department asked Travis if he had any idea what rates CenturyLink is currently paying. Travis responded that he didn't have any numbers at the time but would get back to use with what rates an internet provider would expect to pay.

Regarding the proposed rates for Cellular Communications, Chip stated that there is a difference in urban vs. rural and blanket rates do not account all the variables in sites. *Department Response*: If DSL continued the proposed rate, does it fit what should be paid for a rural site? Chip responded that it is a little high for rural sites, but the annual increase of 3% is right on track.

141-126-0150 (4-new): Regarding the 3% annual increase. RAC members agreed that this was a normal increase rate and that it is also what the BLM charges. Changed some language to clarify when the 3% annual increase commences and how it will continue upon lease renewal.

141-126-0150 (6-new): Regarding the Department's right to periodically conduct a market rate study to ensure compensation rates are within market value. Chip asked if there was a timeframe attached to this. *Department Response*: We thought about it but did not want to have the rates stuck. Expect to get 10-20 years out of the rates for a given lease. About every 10 years is appropriate to do a market study and we want to make sure we are staying on par with other states.

141-126-0150 (7-new): Jon asked what this statute is and how is it related to these rules (ORS 758.010). *Department Response*: This statute applies to linear sites such as powerlines. It goes back to the “electrification” of Oregon, with the original intent to prevent utility companies from having to pay outrageous easement fees

for utility lines that are benefitting communities. It pertains only to easements, not leases. Stephanie commented that this probably pertains to RUS borrowers, i.e., rural electric co-ops that have debt with the government and not companies like PG&E.

141-126-0160: General Terms and Conditions

141-126-0160 (1): Regarding term(s) of the lease, Chip stated that it was normal for cellular sites to have 5-year lease with four, 5-year renewal terms to total a 25-year lease. Jon also commented that having longer lease terms is preferable. *Department Response:* We have been issuing the shorter 5-year lease terms in preparation for the rulemaking of these proposed rules. The initial term cannot exceed 10 years, but willing to have two 10-year lease renewals as an option. Not to exceed 30 years.

141-126-0160 (4): Regarding access, Jon stated that this rule does not guarantee access to a site for leaseholders. *Department Response:* That is addressed specifically in (18) of this section.

141-126-0160 (12): Jon noted that this provision could pose a problem for lessees if they are financing their equipment. *Department Response:* We do have a consent agreement option for lessees if there is a bank or other entity involved.

141-126-0160 (13): Regarding facility managers, the Department asked Chip if this seemed appropriate and if he had any input. Chip stated that he did not see an issue with this provision. On the management of a lease there could be a switch in vendors. Could provide something in writing that a new vendor is taking over on behalf of the lessee. Could be situations where a general contractor is going into an initial build or modifications to the tower, but either way, want one lease administration and to make sure this is on record.

141-126-0160 (15): The Department would like to have structures and buildings labeled with the lease number so they can be easily identified. It would be the responsibility of the lessee to make sure their structures are identified. Jon asked if this will be a requirement in the new leases, to which the Department responded that yes, it would be in the new lease. Gabe indicated that this would not be an issue for ODOT. Stephanie asked if they would be responsible for labeling the structures of all their co-locators. *Department Response:* Each lessee would be responsible for their own structures, including co-location lessees, all we are asking for is the lease number as we do not want equipment to become a specific target.

141-126-0160 (16): Jon requested that we remove the word “public” so that it just reads as “review period”. The Department agreed to do so.

141-126-170: Co-Location of Communication Site Facilities

Amber started this discussion with an example of a current Lease/sublease situation that involves multiple lessees and sublease agreements between them. This example was shared to explain how the Department wants to change the current lease/sublease structure through these proposed rules to a “base lease” and “co-location lease”.

141-126-0170 (1) and (2): The RAC members commented that there were not any big changes so far and seemed straight forward.

141-126-0170 (3): Jon asked if someone applying to put an antenna on a tower they don't own would apply to DSL and pay the co-locator application fee, and how this would result in less work for DSL. Right now, there is a one-page application and not the multiple page application for a full lease. *Department Response:* The co-locator

would be the applicant of their own lease and would be responsible for paying all fees. We need the same amount of information for a co-locator as we do for a base lessee (i.e., where equipment will be located on a site, business information, frequencies, etc.). The current one-page application is not sufficient to answer these questions. We have also had problems in the past tracking what equipment is on site and who it belongs to, and this will hopefully eliminate some of those issues. This structure will also remove the base lessee from the “enforcement” role and billing would not have to be calculated in arrears. Stephanie wanted to clarify that the Base lessee would no longer be responsible for paying the sublease application fees, to which the Department confirmed the base lessee would not be required to pay those fees under this structure. Stephanie indicated that she was in favor of this structure.

141-126-0170 (5): Regarding proposed co-location compensation fees, the Department stated that other states were very inconsistent on this topic and these current proposed rates are approximately 2/3 of the full base lease rates. Jon provided another example of how a non-commercial entity could have a commercial co-locator and how that would work. The Department said that we were open to suggestions and input to make this work for everyone. Stephanie pointed out that small businesses would have a very difficult time recovering these compensation rates and would have to also pay rent to the base lessee. Chip seconded this with an example of how co-location works on a cellular site. The Department asked the group if DSL taking fees directly from the co-locator messes up the relationship between the co-locator and the base lessee. Chip said this does happen to some degree but is rare. In a lot of situations these days the carrier that built the tower has the lease with DSL, the new co-locator would get their own ground space from DSL and a separate lease to co-locate with the tower owner. Stephanie, Chip and Jon iterated that these fees were too high. And that 25% of the base lease is standard for the industry. Travis also stated that 25% was standard. The Department will run some numbers at 25% and see what they look like.

Stephanie brought up how “local commercial” was currently defined and that there should probably be a category for small businesses that only have a service area within a few counties surrounding a site. The rates as proposed will have a huge impact on these types of companies and they may not be able to recoup the rental costs. Department Response: We will investigate the definitions for commercial use and take that into account.

141-126-0170 (8): Jon stated that he could see a situation where a competitive bid might be less than the minimum amount. Department Response: We will add language to clarify that the minimum competitive bid amount will not be less than the minimum compensation rate.

### **Summary and Next Steps**

The next RAC meeting is scheduled for Wednesday, October 27<sup>th</sup> from 1:30 pm – 4:30 pm. We will continue the discussion on co-location leasing and fees and the remainder of the draft rules. All meeting materials will be provided for your review along with the updated draft rules including track changes based on our Meeting 2 discussion.