

OAR 141-126 Rulemaking Public Comments and Agency Response



Comments & Agency Response

The public comment period was open from July 1, 2022, to July 31, 2022. The Department received 3 comments in total, 0 of which were submitted via form letter.

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first. Comments that were received via PDF are attached at the end of the document.

Table of Contents

Comment	Page
Oregon Wild	1
CTIA	4
CTIA PDF (full comments)	7

Doug Heiken, Oregon Wild – July 18, 2022

Comment: Oregon Wild recognizes that communication using electromagnetic waves is a critically important technology now and for the foreseeable future.

Our suggestions for this rule-making are:

1. Provide an opportunity for informed public comment on the siting of comm sites that are new or are being considered for expansion of the existing physical footprint.
2. Adopt a policy to consider and document environmental trade-offs and a policy to avoid and minimize environmental effects to the extent practicable. Relevant environmental impacts include loss/degradation/fragmentation of habitat (forest meadow, rock garden, wetlands, etc.), wildlife collisions and mortality, scenic impacts, light pollution, noise pollution, soil erosion, water pollution, weeds, fire hazards, etc.
3. Adopt a policy to avoid siting new comm sites in locations that will require increased fire suppression effort or add to the complexity of fire control, especially in places where fire is a natural part of the natural disturbance regime.
4. Consider alternatives such as alternative locations for comm sites and access roads so that tradeoffs of different sites can be weighed.
5. Require site decommissioning and site restoration when comm sites are no longer needed. Require performance bonds or collect fees to cover the cost of decommissioning and site restoration.

Agency Response:

1. Per proposed OAR 141-126-0140(5), the Department will circulate the application for a new lease or lease modification with an expanded footprint to “applicable local, state, federal agencies, Tribal governments, and other interested persons, including but not limited to adjacent property Holders, affected lessees and permittees, and easement Holders for review and comment.”

OAR 141-126 Rulemaking Public Comments and Agency Response



2. It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), “leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use,” so as to minimize impact to land, habitat and environment. While the Department has not specifically adopted an in-depth environmental review, the most impactful uses such as cell towers are required by federal law to go through a full Environmental Impact Statement prior to siting any tower and is also required to co-locate on towers that already exist within the area of interest. Compliance with the Federal Communications Commission (FCC) rules implementing NEPA on new tower construction includes separate procedures the Endangered Species Act and the National Historic Preservation Act. Per proposed OAR 141-126-0160(8)(a), Holders of communication site leases must cooperate and comply in “the detection, prevention, and control of noxious plants,” and per proposed OAR 141-126-0160(8)(b), in “the management of plant pests and diseases.” Also, per proposed OAR 141-126-0160(9), all operations must be conducted “in a manner that conserves fish and wildlife, protects water quality, and does not contribute to insect or animal infestation, soil erosion, or the growth of noxious plants.”
3. As stated above, per proposed OAR 141-126-0160(2), “leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use,” so as to minimize impact to land, habitat and environment. Any analysis would involve consideration of the wildfire regime for a given location. Most existing communication sites are located on butte tops in ecosystems with sparse fuels. In addition, according to proposed OAR 141-126-0160(8)(c), Holders of communications site leases must cooperate and comply with “the Department and other agencies in the detection, prevention, and control of wildfires on a lease area.”
4. Per proposed OAR 141-126-0130(1)(a), applicants “must contact the Department to schedule and complete a pre-application meeting.” During these meetings consideration is given to alternative site locations and issues such as access roads. It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), “leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use” so as to minimize impact to land, habitat and environment. Finally, multiple alternatives regarding new tower locations and associated roads will be evaluated during FCC compliance.
5. A site decommissioning plan is a requirement for certain communications site facilities as determined by a risk assessment by the Department provided by proposed OAR 141-126-0200(6). Furthermore, as per proposed OAR 141-126-0200(6)
 - (a) In the event a decommissioning plan is required, the Holder has one hundred eighty (180) calendar days to submit a decommissioning plan to the Department for approval. The decommissioning plan will also include a cost estimate of the decommissioning work. The cost estimate must be prepared by a person qualified by experience and knowledge to prepare such cost estimates.

OAR 141-126 Rulemaking Public Comments and Agency Response



- (b) The Holder may be required to obtain a surety bond or other financial instrument as described in OAR 141-126-0200(3) for the full amount of the decommissioning costs as determined by the risk assessment.
- (c) The Holder is required to provide notice to the Department in writing sixty (60) calendar days in advance of implementing the decommissioning plan.
- (d) The Holder must demonstrate to the Department that the decommissioning work has been completed to allow the Department to release the surety bond or other financial instrument.

The intent of decommissioning plans is to ensure that sites no longer in use will be returned to a native state to the extent practical. Components to be included would include tower/structure removal, structure demolition, concrete slab removal, removal of electrical equipment and wiring, disposal of gas, batteries or other hazardous materials, reseeding/rehabilitation of the site with site-specific rehabilitation requirements, and timelines for completion.



OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The proposed rules would undermine the longstanding Oregon policy goal to expand broadband availability.

Agency Response:

The Department's proposed rules attempt to balance the Department's mission along with Oregon policy related to broadband expansion. Revisions to the proposed rules will appropriately align the Department rules with broader federal and Oregon's broadband policies.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should acknowledge the difference between large and small wireless facilities in the proposed rules, and significantly reduce the recurring fees for installations of new small wireless facilities.

Agency Response:

The Department is adding a category of cellular communication facilities for small wireless facilities (SWF). This category will differentiate between Macro Cellular uses and Small Wireless Facility uses. The Department will adopt the FCC definitions for size and volume regarding SWFs. The minimum compensation rates for SWFs will be set at the FCC recommended level of \$270 per facility. Application fees for SWFs will also follow the FCC recommendations as described in proposed OAR 141-126-0130(3)(d), \$500 for up to five (5) SWFs in the same application, \$100 per additional SWF beyond five (5) in the same application, and \$1,000 for a new pole (not a co-location) intended to support one or more SWF.

Matt DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should reduce the recurring fees for larger wireless facilities, aligning them with the BLM's approach rather than an ill-defined "market rate".

Agency Response:

Minimum compensation rates for macro cellular facilities will be reduced to \$10,000 per year.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should significantly reduce the annual fees for co-locations.

Agency Response:

Co-location application fees will be reduced from \$1,000 to \$750 for each macro cellular co-locator. Co-location application fees for SWFs will be set at \$100. Co-location compensation rates for macro cellular sites will be revised from \$10,000/year to 25% of the fee charged to each co-locator. Co-location compensation rates for SWFs will be set at \$100/year.



OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should align its application fees with the FCC's.

Agency Response:

Fees for the newly added category of small wireless facilities (SWFs) are aligned with the FCC recommended fees. Application fees for all existing macro cellular categories have been reduced from the original proposal. Application fees for a new or renewed lease with changes will be \$1,500. Application fees for leases with no changes, co-locations, and assignments have been reduced to \$750. Application fees for the new category of SWFs will be structured according to the FCC guidance, \$500 for a single application that includes up to five SWFs, with an additional \$100 for each additional facility, and \$1,000 for a new pole (not a co-location) intended to support one or more SWF. Application fees for SWF co-locations will be \$100, \$250 for assignments and \$250 for a modification simply resulting in changes of frequencies and \$500 for modifications resulting in changes to structures or poles.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should streamline application procedures and eliminate unnecessary and/or duplicative processes.

Agency Response:

The Department's public review policy stated in proposed OAR 141-126-0140(5) is standard language for the Department's public process. All Department operations are part of public record. The Department maintains a list service where any member of the public or group can sign up and receive notifications regarding communication sites. New leases or renewals with changes require a public review. Renewals with no changes do not require a public review.

Regarding state and federal environmental and cultural review processes, the Department's application process includes a short list of tasks that require coordination with other agencies. The application requires applicants to check a box to indicate that they have considered these requirements. It is not a duplicative requirement as the Department is not requiring any further action from the applicant.

Regarding execution of a lease to an applicant that still requires subsequent approvals the Department would be willing to negotiate during the lease process on a case-by-case basis. If an applicant requires securing site control prior to other permits or authorizations, it must be requested in the application.

The timelines for the Department to process an application have been adjusted to conform with the FCC's 2009 and 2018 declaratory rulings on "shot clocks" for both macro cellular and small wireless facilities. The new timeline for small wireless facilities is 60 days for co-locations on existing structures and 90 days for new builds. The new timeline for macro cellular sites is 90 days for co-locations and 150 days for new facilities and renewals.



OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should delete or modify certain other rules that would undermine Oregon's broadband policies or conflict with federal law.

Agency Response:

Regarding lease terms, an initial lease has a 10-year term with additional renewal periods granted provided the leaseholder has complied with all terms and conditions of the lease and applies to the Department for a renewal per proposed OAR 141-126-0110(10). The shorter term (10 years) provides the Department the opportunity to keep leases up to date and not using antiquated rules.

Language regarding intent to terminate a lease is found in the lease document. Termination of a lease is an exception to the norm.

A lessee is not prohibited from fencing the leased areas to provide security to their equipment and operations. Most communication sites on state lands are behind locked gates. Emphasis in proposed OAR 141-126-0160(6) is on lawful public use. Typically, closures of state land require rulemaking under OAR Chapter 141, Division 88.

The Department does not regulate frequencies, that is the duty of the FCC. However, the Department has an obligation to ensure there is no conflict among the users of a shared communication site. Proposed OAR 141-126-0110(7) states that "The Department will not grant a communication site facility lease if it determines that the proposed use or development would unreasonably impact current uses, frequencies, or developments proposed or already in place within the requested area." The Department notifies other users of changes or additions in frequencies to avoid user conflict. The Department has had complaints from users in the past about interference from other user's new frequencies. The process is one of notification not regulation. A statement has been added to proposed OAR 141-126-0160(16) regarding the federal role in regulation of radio frequencies.

The indemnification clause described in proposed OAR 141-126-0160(19) is more general than that proposed by CTIA. This language must suit a variety of communication site lessees including large wireless companies, small radio companies, local governments, and non-profit organizations. Additional detail regarding the indemnification clause can be captured during an individual contract negotiation.

Competitive bidding, as described in proposed OAR 141-126-0210, is a standard process used by the Department outside the realm of communication site leases. The Department's fiduciary responsibility to the Common School Fund makes this an allowable process. Competitive bidding is used by other states as well. Competitive bidding for the use of communication sites has not been pursued by the Department in the past but it must remain an option.

It is not the Department's experience that any wireless firms are self-insured and are unable to provide policies that meet the Department's rule requirements. The Department will coordinate with the Department of Administrative Services, Risk Management, on a case-by-case basis if such an occurrence should arise per proposed OAR 141-126-0200(2).

OAR 141-126 Rulemaking Public Comments and Agency Response



Proposed OAR 141-126-0230(2) has been modified to give lessees advance notice of inspections into buildings or structures owned by lessees. Proposed OAR 141-126-0230(3) has been modified to provide lessees 60 days to correct violations prior to enforcement action being taken.