



OAR 141-126 RAC Meeting #3 Summary

October 27, 2021, 1:30-4:30 PM

Overview

The OAR 141-126 Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on October 27, 2021, via Zoom. This third 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
No	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
No	Travis Coleman	Lumen/Century Link, industry representative
Staff/Advisors		
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
Interested Parties		

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 2 Summary

Sheena asked the group if they had any additions or changes to the Meeting 2 Summary. Jon requested a change to some language on page 4 on 141-126-0160 (16) from “suggested” to “requested”. The change was accepted and made.

Rate Study & Compensation Rates Updates

Amber updated the group on changes made to the rate study, compensation rates and the draft rules based on the discussion of each from RAC meeting 2 and a careful analysis of the proposed rates.

For Government and Emergency services use category, the rate study low came out to \$4,000 and the high was \$10,000. The Department opted to create a separation between Local Government and Emergency Services and State/Federal/Tribal Government and Emergency Services. It was determined to keep the minimum compensation rate for local government at \$3000 and have the minimum rate for State/Federal/Tribal governments be \$4500. This change was made because when we looked at the 20-year revenue forecast in the rate study for the proposed fees it became clear that keeping fees for government below the market study rate, combined with cutting renewal application fees in half had a large impact over time. Co-location rates will be 25% of the use category minimum. Jon asked why “Emergency Services” was in two locations here, and if there are any local emergency services outside of OPB. *Department Response:* This is stated in the definitions, but local 911, state police, and wildfire cameras are all located on the communication sites. These fall into both the local category and the state government category which is why emergency services is stated on both.

The definitions and rates for commercial uses were also adjusted based on the RAC meeting 2 comments. The new proposed definitions for commercial uses are based off the population of the county in which the communication site lease is located. This results in “Small Commercial” which is less than 50,000 people in the county and a minimum compensation rate of \$4000, “Medium Commercial” means a population of 50,001 to 150,000 and a minimum rate of \$6000, and “Large Commercial” with a population greater than 150,000 and a minimum rate of \$8000. Co-location rates for commercial will be 25% of the use category minimum. Stephanie asked for some clarification on the commercial co-location rates. The Department explained that the co-locator use type determines the co-location lease rent. So, a commercial co-locator on a non-profit base lease would be charged the commercial co-location rent amount and not 25% of the base lease.

The Department also made the decision to keep the minimum rate for cellular uses at \$20,000 based on the average highs and lows of the market study and forecasted revenue. The \$20,000 minimum annual compensation rate is in the middle of the rate range in the market study from other states and the BLM. Minimum compensation fees for cellular co-location uses will be \$10,000. This minimum rate for a cellular co-location is supported by the revenue the Department is currently receiving from cellular sub-leases. No comments were received from the RAC on this subject.

The application fees were also adjusted from the previous proposal as the previous proposed application fees would essentially keep the revenue stagnant. Based on this, the Department decided to return the application fee for all government categories for new leases to \$750. All renewal lease

application fees will be half of the fee for new lease applications. There were no comments from the RAC on this subject.

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.

Jon had a comment on 141-126-0120 (24) Definitions: Jon advised the non-profit; not-for-profit designations were through the state not federal. So “federally” was removed and “state” was added.

141-126-0170: Co-location

The Department wanted to revisit this topic as we made some changes to the co-location rates and to make sure that this proposed process would work for all parties. As the RAC requested in meeting 2, the Department re-ran the numbers for the rate study and determined that the co-location lease rates non-commercial and commercial uses would be 25% of the minimum compensation rate for base leases of that same use type. Cellular co-location rates will be 50% of a cellular base lease as justified by the revenue the Department is currently receiving for cellular sub-leases.

Chip explained that a cellular co-location would normally be two separate leases, a ground lease (with the Department) and a tower lease (with the cellular company that owns the tower). Pricing is always based on the location of the site and the market. Chip indicated that \$10,000 a year is a little steep and carriers generally don't see a co-location lease higher than \$1000 a month, and even that is rare.

Department Response: The way the rules are proposed, a cellular lease with a building would have their own base lease, we need to think on this a little more.

Stephanie also asked what would happen if a base lessee terminated or had to remove a co-locator, how would DSL handle that? *Department Response:* Under 141-126-0170 (8) the proposed rules address what would happen if a base lease was terminated for some reason. It appears this is an event that was overlooked and needs to be addressed. The Department would likely follow suit in this instance and would terminate the co-location lease if the base lessee provided written documentation.

Stephanie asked about the term of the co-location leases and who decided the lease term of a co-location lease. *Department Response:* This is addressed in 141-126-0170 (4), the base lease sets the term for the co-location lease so that everyone is in sync.

141-126-0180 Lease Modifications

The Department explained the proposed rules for lease modifications, stating that this was the Department's current process, and these rules are just codifying it. Chip asked if a modification was just for upgrading equipment and stated that adding equipment should have a lease modification for sure. *Department Response:* Replacing equipment with equipment with no change in size, this is covered in the lease agreement. If there is a change in frequency, this is a modification. Chip added that changing frequencies is usually handled internally by the carrier and that there is rarely a problem between carriers because the engineers know this. The \$1000 application fee seems high and is usually

not often seen. *Department Response:* This may not happen much with cellular, but this is meant to protect all the lessees. We have had complaints about frequency interference in the past from smaller users that were not cellular. To remedy this, we started requiring a review period for frequency changes that notified other users of a site, since then we have not had problems, and this has been our practice for a while now. The Department then asked if anyone has had interference problems on one of our sites. Stephanie responded that she did not know of any issues.

141-126-0190 Assignments

The Department explained the lease assignment process and stated that not much has changed on this process. Chip commented that they look fine, except usually do not see a fee for an assignment but the fee is not that concerning.

141-126-0200 Insurance and Bonding

The Department explained that in the past the insurance requirements were basic and didn't cover much. The language in the proposed rules is like other recently adopted rules that require insurance for the specific use being authorized. For instance, cellular site has propane tanks, batteries, and potentially other hazardous materials. Our concern is that there are safety hazards, and the Department needs insurance that is appropriate for the specific use. This section also covers bonds, and the Department may require bonds, certificates of deposit that names State of Oregon/DSL as co-owner. The Department recently had an incident where something did go wrong during construction and there was no bond in place. As a result, we need to have rules to cover this type of situation. The Department may also require a decommissioning plan, and that a qualified person is needed to write the decommissioning plan.

Stephanie commented that the type of person qualified to write a decommissioning plan may be difficult to find in Harney County. Jon asked if the decommissioning plan was a new requirement. *Department Response:* Yes, currently decommissioning has been addressed individually. Jon asked if this requirement would apply to existing leases as well? There are concerns about negotiating a lease, then getting hit with an extensive decommissioning requirement that changes the analysis completely. Also concerned that changes in DSL employees that may require something new/different than originally required. A decommissioning plan could require an extensive outlay of cash by the lessee, coming in after the lessee after the fact is not holding up the bargain that was made when the lease was originally signed. Jon said he is on board with this being an up-front requirement for new leases, but not for existing leases. Stephanie and Chip agreed with Jon's questions and statements. *Department Response:* The new lease templates will include decommissioning plans, so when an existing lease expires after these new rules are adopted, the new lease will have this requirement. The decommissioning plan requirement will be based on the use being applied for.

141-126-0210 Competitive Bidding Process

The Department explained the long-standing process for competitive building in the instance we receive applications for the same site from separate qualified applicants. This has not ever happened with communications sites to staff's knowledge. Jon asked how we would competitive bid a commercial application vs. a non-commercial application? *Department Response:* We would probably try to accommodate both applications instead of going to competitive bid. Maybe if there were

competing entities both wanting to build a tower and the county was only allowing one to be built, we would go to competitive bid.

141-126-0220 Termination of a Communication Site Facility Lease for Default
This section was explained, and no comments were received from the RAC.

141-126-0230 Enforcement Actions; Civil Penalties and Other Remedies
Stephanie asked if lessees will be notified prior to impending inspections. Department Response: Usually there is no notification as inspections are often performed by staff that are in the area. If something gets reported to the Department, staff will go check it out. Or if something doesn't look right, we will contact lessees to find out what's going on. We will investigate before going straight to an enforcement.

141-126-0240 Reconsideration of Decision
The Department explained this process, no comments were received from the RAC

-End of rule draft-

Open Discussion for General Questions or Comments

The Department asked for any comments or questions about the rule draft or the rulemaking process and checked in with each member of the RAC that was present.

Chip indicated that this was looking good. Gabe stated that this looks like what ODOT has to deal with and it looks good. Kassie commented that it all sounds good to her. Steve did not have any comments but thanked the Department for inviting him to be included in the process.

Stephanie had a lingering question and asked to clarify what co-location lessees would be charged for rent. Previously "sub-lessees" were charged 25% based on the lease amount, and now the "co-location" lease will be charged 25% of the minimum for the use type. The Department confirmed that was correct.

Stephanie also commented that she would like to see the draft templates and was willing to provide input. Department Response: The templates still must be drafted and sent to DOJ. Once those are reviewed, we will be able to share. The Application template will not change much. We will finalize the draft rules, and they will get submitted to DOJ. Once DOJ reviews, there will be a public hearing where all current lessees and other interested parties will be notified and allowed to submit comments. The comments will be addresses and then the draft will go back to DOJ, then through the Secretary of State Process.

Adjourn Final RAC Meeting

Chris, Amber and Sheena thanked everyone for their participation and adjourned the final RAC meeting.