

Policy Options - Gigabit Exemption

This document contains various policy options relating to Oregon’s property tax exemption available to property owners that build, maintain and operate qualified gigabit projects. While the document is not an exhaustive list of all policy options, leading policy options discussed by the gigabit work group and during the 2017 legislative session are included. Not included are policy options related to the broader “intangibles” question of central assessment, just options specific to gigabit repeal. Potential benefits and drawbacks of the policy options are described.

Repeal

1. Full retroactive repeal
2. Immediately sunset exemption for new applicants
3. Immediately sunset exemption for new applicants plus phase out exemption for existing qualified projects

Make Company “Whole”

1. New tax relief mechanism designed to compensate company for gigabit investment costs
2. Partial or delayed repeal for existing exemption in recognition of company’s gigabit investment costs

Other

1. Enhance qualifying or reporting requirements
2. Address contradictory or vague existing law language

Full Retroactive Repeal

HB 2770 provides a blueprint of how to retroactively repeal the gigabit exemption. Whether or not to accompany the retroactive repeal with any other legislation is a policy decision.

HB 2770 (2017) as introduced retroactively repealed the “Gigabit exemption” portion of SB 611 (2015). The non-gigabit related portions of SB 611 (Data centers, exemptions for: franchises, satellites, HC*130%) all remained unchanged. The engrossed version of HB 2770 which passed out of House Revenue and went to Joint Ways and Means contained the retroactive repeal along with the creation of a Task Force that would “study and evaluate the viability, impact and effectiveness” of tax incentives designed to incentivize the development of broadband communications infrastructure that might otherwise not occur.

Benefits

- Would be as though the Gigabit exemption was never created

Drawbacks

- Companies have invested in providing Gigabit service with expectation of receiving tax benefit

<ul style="list-style-type: none"> • Limits litigation of Gigabit exemption qualification dispute, litigation regarding retroactive repeal could ensue • Eliminates potential revenue impact of Gigabit exemption (depending upon litigation outcome, around \$15m per year, increasing over time) • Allows Legislature to “start fresh” in designing incentive program, if any • Potential to include provision compensating Comcast and Frontier for investment into Gigabit service (see below) 	<ul style="list-style-type: none"> • Potential of sending negative signal regarding Oregon’s commitment to economic development
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Immediately Sunset Exemption for New Applicants

Sunset the new approval portion of the gigabit exemption, thereby immediately eliminating the possibility of new applicants receiving approval from PUC for a gigabit project. Companies with projects already certified by PUC may still qualify for exemption if approved by DOR.

Current law sunsets new approvals for the Gigabit exemption on 6/30/2021. This means no new companies will be able to initially qualify for the Gigabit exemption after 6/30/2021. Companies that have initially qualified prior to the 2021 deadline continue to receive the exemption for the duration that their qualified Gigabit project is built, maintained and operated.

<p style="text-align: center;">Benefits</p> <ul style="list-style-type: none"> • Limits companies that could qualify to Comcast and Frontier • To some extent, limits revenue losses to taxing districts • Allows Legislature time to evaluate whether current gigabit exemption policy is working as intended without expanding pool of eligible companies qualifying for exemption • Potential to limit exemption applicability to companies certified by PUC <u>and</u> receiving exemption as of specified date (this is a legislative option). Will cause exemption qualification going forward to be dependent upon DOR’s exemption qualification determination and potential litigation between Comcast/Frontier and DOR 	<p style="text-align: center;">Drawbacks</p> <ul style="list-style-type: none"> • Will probably result in, or not alleviate ongoing litigation • Would not alleviate potential revenue impact from Comcast or Frontier qualifying for exemption for the duration of the gigabit project (potential long revenue impact)
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Immediate Repeal New Applicants with Phase Out of Existing Qualified Projects

Immediately sunset the exemption to new applicants, sunset exemption for projects already certified by PUC. Could potentially allow exemption for PUC certified projects for maximum of _____ specified number of years. The specified number of years could function as the “making whole” Comcast and Frontier.

Benefits

- Similar to benefits of “Non-retroactive Immediate Repeal” above
- Limits duration of revenue impact from Comcast and Frontier
- Uses number of years to function as “making whole” both Comcast and Frontier eliminating need for some other tax relief mechanism (would have to specify number of years to receive exemption, however)

Drawbacks

- While Comcast and Frontier have received positive determination of their projects from PUC, neither has received the property tax exemption, either company may not be “made whole” if they fail to qualify for exemption from DOR
- Potential of sending negative signal regarding Oregon’s commitment to economic development

Making Comcast/Frontier “Whole”

As discussed during work group meeting, if existing gigabit exemption is retroactively repealed or phased out, a tax relief option could be made available to Comcast and Frontier compensating the two companies for their investment in the PUC certified gigabit project

Benefits

- General consensus of work group participants is that a retroactive repeal should be accompanied by provision to make Comcast/Frontier whole or compensate the two companies in some sufficient way
- Potential to balance benefit to companies with costs of companies (avoid providing excessive tax benefit for incentivized behavior)
- Provides a path for legislature to determine cap amount of revenue impact by limiting amount of tax benefit provided to make company whole (e.g. - equal to company costs of gigabit investment, not to exceed \$___)

Drawbacks

- Difficulty of determining costs to Comcast/Frontier
- In documentation provided by Comcast to PUC, Comcast states that it made an estimated aggregate capital investment of approximately \$176,817,933 within Oregon in 2015 and 2016 combined, similar PUC documentation for Frontier is not available at this time
- Timing of revenue impact of making companies whole (navigating the deferred billing credit/potential refund credit structure), potential large reduction in revenues for taxing districts in a single year (depending upon bill language)
- Difficulty in determining investment by company in gigabit related property
- If exemption is not retroactively repealed (e.g. phased out), will be difficult to quantify amount needed to make Comcast whole as qualification for exemption is being litigated by Comcast & DOR

Enhance Qualifying or Reporting Requirements

SB 611 (2015) included annual reporting requirements regarding the gigabit exemption (ORS 308.681). Reporting requirements could be expanded upon. Expanded qualification requirements could also be included in the existing statutory language.

Benefits

- Allows legislature to add more specific exemption qualification or reporting requirements
- New qualification requirements could be phased in over subsequent years
- PUC has existing annual reporting requirements allowing for new reporting requirements to work within existing reporting structure
- Could include greater rural availability requirements which was brought up by some of the work group members

Drawbacks

- Potential administrative costs
- Changing qualifying requirements could be viewed as “moving the goalposts” on companies that have already invested (goes back to making companies whole argument)

Address Contradictory or Vague Existing Law Language

Benefits

- Could aid in DOR’s and/or PUC’s administration of the exemption

Drawbacks

- Changes would be highly technical and could potentially lead to more ambiguity