

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE PUBLIC  
UTILITY COMMISSION'S INQUIRY ) CASE NO. GNR-T-21-10  
INTO THE REVIEW OF APPLICATIONS )  
TO DETERMINE WHETHER ) ORDER NO. 35297  
BROADBAND EQUIPMENT MEETS )  
THE ELIGIBILITY REQUIREMENTS )  
FOR INVESTMENT TAX CREDITS )  
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On November 19, 2021, Commission Staff (“Staff”) of the Idaho Public Utilities Commission (“Commission”) by and through its legal counsel applied to the Commission requesting that the Commission initiate a case to inquire into the process for obtaining a broadband tax credit (“Memo”). *See* Order No. 28784. Staff recommended the Commission establish an intervention period followed by a public comment and reply period.

On November 30, 2021, the Commission issued a Notice of Application, Notice of Intervention Deadline and Notice of Modified Procedure. Order No. 35243.

Ziply Fiber Northwest, LLC and Ziply Fiber Idaho, LLC (collectively “Ziply”) intervened on December 21, 2021. Order No. 35264.

Staff and Ziply filed comments. Ziply filed additional comments in reply to Staff’s comments.

Having reviewed the record, including the comments of Staff and Ziply, we approve Staff’s proposed changes to the necessary criteria for obtaining a broadband tax credit.

**BACKGROUND**

Beginning in 2001, a taxpayer could obtain a tax credit for installing “qualified” broadband equipment pursuant to *Idaho Code* § 63-3029I. *Idaho Code* § 63-3029I(4) specifically provides that the Commission “may issue procedural orders necessary to implement” *Idaho Code* § 63-3029I. Procedural Order No. 28784, issued in 2001, clarified what information a taxpayer must include when applying to the Commission for an order that its installed equipment meets the statutory definition of “qualified broadband equipment” and is, therefore, eligible for the broadband tax credit under *Idaho Code* § 63-3029. Order No. 28784 at 2-3. Specifically, to obtain an order that installed equipment is qualified broadband equipment under the current criteria, a taxpayer must provide the information set forth in the following paragraphs.

1. The name and address of applicant including the contact person in the event there are questions regarding the application and its content. An indication whether the applicant is a telecommunications carrier, a commercial mobile service carrier, a cable or open video operator, a satellite carrier, or other type of wireless carrier.
2. The area or location where the equipment is installed in Idaho.
3. A description of the type of broadband service(s) offered to the public in Idaho.
4. The network transmission rate in bits per second at which subscribers to the relevant broadband network can receive and send (download and upload).
5. A specific list of the equipment or types of equipment that the applicant is requesting that the Commission determine is “qualified broadband equipment” as defined in *Idaho Code* § 63-3029I(3)(b) including the brand, manufacturer, model numbers, or other distinguishing features of the installed equipment.
6. The date(s) or time period(s) when the broadband equipment was installed in Idaho.
7. A written description (including basic schematics or general drawings) of the relevant broadband network including a description of how the installed equipment is “an integral part” of a broadband network.
8. A quantification of the percentage and number of potential Idaho subscribers that could be served with the broadband equipment and the percentage and number of non-Idaho subscribers that will be/could be served by the broadband network.
9. A statement certifying that the applicant has read the applicable statutes for broadband investment income tax credit and the applicant believes that the subject broadband equipment qualifies for the tax credit under *Idaho Code* § 63-3029I.

Order No. 28784, Case No. GNR-T-01-10. Staff recommended that the Commission initiate a case so that it could examine the necessity and relevance the above information has today and to ensure continued compliance with Order No. 28784.

#### **STAFF COMMENTS**

After a careful review of paragraphs one through nine set forth above, Staff concluded that paragraphs one through three, six, and nine should remain unchanged; that paragraph seven should be deleted; and paragraphs four, five and eight should be rewritten. Staff Comments at 3. Staff also recommended that the Commission reiterate the importance of providing a specific list of the information required under paragraph five. *Id.* at 4.

Staff believed it beneficial to update paragraph four to require telecom companies to indicate the lowest speed they offer to customers, and that such speed should be above 200,000 bits per second to a subscriber and 125,000 bits per second from a subscriber, as required by statute. *Id.* at 3. Staff stated that requiring companies to report the lowest transmission rate they offer customers would also serve to better illuminate the nature and extent of broadband services available within Idaho. *Id.*

Staff recommended expanding paragraph five to clarify that number of items and total cost is required. Staff expressed its concern with taxpayers' frequent practice of providing a "data dump" of information to satisfy the requirements of paragraph five. *Id.* Staff expressed the need for a detailed description of the proposed broadband equipment to properly vet a telecom company's investment. Thus, Staff urged the Commission to reiterate the importance of providing all the information in paragraph five and the expectation that detailed information was necessary for any application to be approved. *Id.* at 4. Specifically, Staff stated that to satisfy the requirements of paragraph five, it expected a taxpayer to provide a spreadsheet listing the brand or name of the product, the manufacturer, and the model numbers of the installed equipment, number of items, and the total cost. *Id.*

Staff recommended fully eliminating paragraph seven. *Id.* Staff pointed out that, when telecom companies first started applying for the tax credit, Staff was not as familiar with the different equipment and network setups required to provide broadband service. Staff stated that this type of information is more readily available now and that most companies have stopped providing it without any deleterious effects. *Id.* at 3.

Finally, Staff recommended changing the conjunctive 'and' to the disjunctive 'or' in paragraph eight. Staff based on this recommendation on that fact that telecom companies generally only provide either a percentage or customer count but not both.

Staff attached a clean copy of its proposed changes to the list of information required in applications seeking an order for installed broadband equipment to its comments.<sup>1</sup> See Attachment A to Staff's Comments.

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<sup>1</sup> This attachment is also attached to this Order.

## **ZIPLY INITIAL AND REPLY COMMENTS**

Ziply initially commented that the language in paragraph four asking applicants to state the “network transmission rate in *bits* per second at which subscribers to the relevant broadband network can receive and send . . .” should be modified to reflect a *megabits* per second rate to acknowledge the technological advancements since 2001. Ziply Comments at 1-2 (emphasis added.)

Ziply then replied that it concurred with the entirety of Staff’s recommendations except Staff’s recommendation for paragraph five. Specifically, Ziply stated that requiring an applicant to report all “the listed items [in paragraph five] would force a carrier to publicly reveal competitively sensitive and trade secret information that could be useful to a competitor planning to deploy and/or market its network in the same or adjacent geography in Idaho.” *Id.* at 2. Ziply urged “the Commission to find that, taken as a whole, the list required by rewritten [paragraph] 5 constituted confidential information and should be available only to Staff, and where appropriate, admitted parties in any future docket (or other proceeding) who sign a standard protective order.” *Id.*

## **FINDINGS AND DISCUSSION**

The Commission is empowered to issue orders confirming that installed equipment is qualified broadband equipment pursuant to the statutory provisions of *Idaho Code* § 63-3029I(3)(b)(i)-(vi) and is vested with the authority to issue procedural orders necessary to implement those statutory provisions. *See Idaho Code* § 63-3029I(4).

Based on our review of the record, we find Staff’s recommended modifications to the requirements set forth in Order No. 28784 to be just and reasonable. We have considered Staff’s concern that taxpayers have failed to provide all the required information in paragraph five. We direct taxpayers applying for the broadband tax credit to include a list of all equipment they seek to have approved as “qualified broadband equipment” consistent with paragraph five.

We acknowledge Ziply’s concern that paragraph five may require sensitive information. Trade secrets or other confidential information required to be disclosed per paragraph five shall be filed and processed pursuant to the procedures outlined in Rule 67, IDAPA 31.01.01.067.

This Order is intended modify the information—initially set forth in Order No. 28784—a taxpayer is required to provide to the Commission to receive the broadband tax credit.

## ORDER

IT IS HEREBY ORDERED that taxpayers applying for Commission determination of whether installed broadband equipment is eligible for the Idaho state tax credit must include the information set out in Attachment A to this Order.

IT IS HEREBY ORDERED that this Order shall update Order No. 28784.

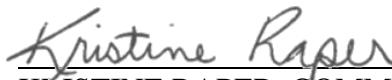
THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code §§ 61-626 and 62-619.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21<sup>st</sup> day of January 2022.



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ERIC ANDERSON, COMMISSIONER



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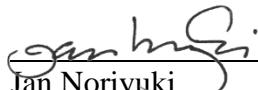
KRISTINE RAPER, COMMISSIONER



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JOHN CHATBURN, COMMISSIONER

ATTEST:



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Jan Noriyuki  
Commission Secretary

## **ATTACHMENT A**

1. Name and address of applicant including the contact person in the event there are questions regarding the application and its content. Indicate whether the applicant is a telecommunications carrier, a commercial mobile service carrier, a cable or open video operator, a satellite carrier, or other type of wireless carrier.
2. Identify the area or location where the equipment is installed in Idaho.
3. Describe the type of broadband service(s) offered to the public in Idaho.
4. Provide the lowest transmission rate offered to customers, in bits per second, that subscribers to the relevant broadband network can receive and send (download and upload).
5. Provide a specific list of the equipment or types of equipment that the applicant is requesting that the Commission determine is “qualified broadband equipment” as defined in Idaho Code § 63-3029I(3)(b). List the brand, manufacturer, model numbers, of the installed equipment, number of items, and total cost.
6. Provide the date(s) or time period(s) when the broadband equipment was installed in Idaho.
7. Quantify the percentage or number of potential Idaho subscribers that could be served with the broadband equipment and the percentage or number of non-Idaho subscribers that will be/could be served by the broadband network.
8. Enclose a statement certifying that the applicant has read the applicable statutes for broadband investment income tax credit and the applicant believes that the subject broadband equipment qualifies for the tax credit under Idaho Code § 63-3029I.

ATTACHMENT A  
Case No. GNR-T-21-10  
Order No. 35297