

HOUSE COMMITTEE ON COMMERCE

June 01, 1999 Hearing Room 50

1:00 p.m. Tapes 78 ñ 81

MEMBERS PRESENT: Rep. Jim Hill, Chair

Rep. Ryan Deckert, Vice-Chair

Rep. Al King

Rep. Jerry Krummel

Rep. Bob Montgomery

Rep. Anitra Rasmussen

Rep. Diane Rosenbaum

Rep. Bill Witt

MEMBER EXCUSED: Rep. Mark Simmons

STAFF PRESENT: Jason Cody, Administrator

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD: SB 622 ñ Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 78, A		
003	Chair Hill	Calls meeting to order at 1:22 p.m. and opens work session on SB 622.

SB 622 n WORK SESSION

005	Gary Bauer	Oregon Telecommunication Association. Submits and reads statement in support of SB 622 (EXHIBIT A) and the n4 amendments. (EXHIBIT B).
041	Chair Hill	Asks if there is any opposition to the original SB 622.
041	Bauer	Responds he has spoken with the League of Oregon Cities (LOC). They had concerns about whether this would change anything. Adds that the intent is not to change how people operate today. SB 622 will clarify that franchise statutes do apply to telephone cooperatives.
047	Chair Hill	Acknowledges that a LOC representative in the audience is nodding affirmatively.
068	Mike Dewey	Oregon Cable Telecommunications Association. Testifies in support of the SB 622-1 amendments (EXHIBIT C):
		<ul style="list-style-type: none"> • Intent is to level the playing field
		<ul style="list-style-type: none"> • Amendments provide that if a municipality is in the telecommunications business on a retail basis and competing with a private provider, the municipality's direct and indirect costs are included in their cost of service.
		<ul style="list-style-type: none"> • The incremental costs would be less than that of a private company providing telecommunication services.
		<ul style="list-style-type: none"> • Gives example of the City of Tacoma assuming the city could utilize dollars from the electric business for subsidy.
		<ul style="list-style-type: none"> • Municipality would be the regulator and the competitor.
104		Explains why the association believes the indirect costs should be included in the rate.
142		Believes amendments are fair and in the public interest. Believes OiConnor's amendments would not change current law.
152	Tom OiConnor	Oregon Municipal Electric Utilities. Opposes the n1 amendments proposed by the cable association and offers the SB 622n3 amendments (EXHIBIT D).
163		<ul style="list-style-type: none"> • Reviews Section 3 of the n3 amendments (EXHIBIT D).

179		<ul style="list-style-type: none"> • Reviews Section 4 of the ñ3 amendments.
192		<ul style="list-style-type: none"> • Explains Section 5 of the ñ3 amendments.
200	OíConnor	Explains how municipalities would operate under the provisions relating to establishing costs.
224	OíConnor	Explains that municipalities are operating in the environment of public records and open meetings law; competitors do not.
248	Rep. Rosenbaum	Asks OíConnor to respond to Deweyís comment that the ñ3 amendments only restate what the law requires now and are unnecessary.
251	OíConnor	Explains they have attempted to clarify which sections apply to the municipalities and how they apply. The municipalities believe the Telecommunications Act requires them to operate in a fair and non-discriminatory manner. The amendments intend to offer a fair and responsible mechanism to ensure that the requirements do apply to the municipalities and that they do operate in a fair and non-discriminatory manner.
270	Mike Dewey	Comments that is the current federal law.
271	Rep. Deckert	Asks what the rationale is for not having language on cross subsidy and eminent domain, and whether it would preclude a municipality from making the investment.
277	OíConnor	Responds that the issue of eminent domain has not been raised on this issue lately. Adds that the municipalities have a Public Utility Commission (PUC) certificate. Adds that he does not believe the municipality could do eminent domain without the certificate being pulled by the PUC. Adds that they will work with anyone on the language; it is not an issue.
291	Rep. Deckert	Asks if cross subsidy is an issue.
292	OíConnor	Responds that their proposal is an alternative that lays out the way municipalities do business.
343	Rep. King	District 44. Explains the SB 622-2 amendments (EXHIBIT E):
		<ul style="list-style-type: none"> • The purpose is to allow up to \$200 million in industrial development revenue bonds for the purpose of telecommunication infrastructure and development in Oregon. It would not affect the bond rating of Oregon because the assets purchased would secure the bonds.
		<ul style="list-style-type: none"> • Has discussed this with the treasurerís office.

		<ul style="list-style-type: none"> • If local governments use the bonds, the bonds would be tax exempt. If a private company uses the proceeds from the bonds, the bonds become taxable bonds.
		<ul style="list-style-type: none"> • A revenue bond is paid for only by the interest on the revenue from the project. A general obligation bond would have the full faith and credit of the state behind it.
424	Jason Cody	Reviews section-by-section analysis (EXHIBIT F) of the SB 622-5 amendments (EXHIBIT G).
Tape 79, A		
024	Cody	Continues review of the SB 622-5 amendments (EXHIBIT F, page 2).
066	Cody	Continues review of the SB 622-5 amendments (EXHIBIT F, page 3).
100	Cody	Continues review of the SB 622-5 amendments (EXHIBIT F, page 4).
115	Chair Hill	Explains the difference between the SB 622-5 and -6 amendments is that the -6 amendments contain language related to the Universal Service Fund (USF). It allows wireless companies to opt into the USF. The -5 amendments allow the wireless companies to opt out.
129	Larry Huss	Vice President, U S West for Oregon. Explains that discussions were held with the Governor's office and Joan Smith of the PUC; Joan Smith represented herself, not the commission. Submits and paraphrases statement (EXHIBIT H).
194	Chair Hill	Asks what the timeframe is for imposition of penalties.
221	Huss	Continues comments on division and use of funds.
249	Chair Hill	Asks if the investments required by U S West will meet the obligations in the rural areas.
	Huss	Responds affirmatively. Comments on connectivity needs by schools.
304	Rep. Rosenbaum	Asks why it makes sense to loosen the standards below what they are now.
309	Huss	Explains that the current standards are not administered in a fashion in which they result in automatic fines. The standards are targets and definitive of superior service. If the standards are missed, the telecommunication utility does not necessarily take a fine. If there is a trend in missing the target, the PUC wants to talk to the utility. If the complaints are indicative of the service quality

		worsening, then the PUC wants a plan to fix it and will set mileposts and penalties. If the problem is not resolved, then they go to court and fines are imposed.
342	Rep. Deckert	Asks how Mr. Huss responds to the argument that an incumbent could use the Telecommunication Infrastructure Account (TIA) to fund existing projects on their books.
352	Huss	Responds that no project can be credited against those accounts until Oregon Economic Development (OEDD) signs off that the project is acceptable.
368	Chair Hill	Comments that there is a board for the Connecting Oregon Communities Fund (COCF), a subgroup of the Economic Development Commission that will make recommendations and the Economic Development Commission establishes the rules and makes the determination.
376	Huss	Comments that the administration will not start with U S West; it will start with the communities. Comments further on his vision of how the process will work.
406	Chair Hill	Asks what happens if U S West fails to live up to the obligations that are established by the OEDD and the COC board.
410	Huss	Responds that if U S West fails to abide by the commitments made to the projects approved by OEDD, U S West forfeits the balance of the funds and the funds will be moved to the state account to be used by the educational communities.
401	Rep. King	Comments he has concerns about opting out of the regulations. Wonders if there is some process or lower level of fine to maintain the current level of quality service.
441	Huss	Responds he is not sure how to do that. Explains they are trying to avoid converting an existing system, with some of the highest standards in the US, to a system with automatic fines. Would rather stay under the existing system and fine levels and deal with the commission's current method of administration.
TAPE 78, B		
023	Bob Jenks	Citizens Utility Board (CUB). Informs members he is limiting his remarks to the SB 622 amendments (EXHIBIT G):
		<ul style="list-style-type: none"> • Comments he is disappointed with the amendments.
		<ul style="list-style-type: none"> • Was told several things would be a part of the compromise: the rate case

		would be taken out; residential customer would be protected; that service quality would be strengthened; that the price cap would be adjustable and there would be price caps on new services.
		<ul style="list-style-type: none"> The rate case is still in the bill. Comments on questions relating to the outcome of the rate case. Does not believe the legislature has the right to take away the right to appeal the decision.
092	Chair Hill	Asks if U S West has taken some action with the commission to settle the case.
094	Jenks	Responds he has heard reports and has been told by commission staff there have been preliminary discussions to settle the rate case. Comments on his concerns of settling the rate case.
105	Jenks	Continues comments on the ñ5 amendments:
		<ul style="list-style-type: none"> The rates of residential customers would not be protected. There is no price cap on basic local service. Once price caps are set up on everything else, they get adjusted downward to any increase in residential rates. U S West will then have an incentive to push for as high a benchmark rate as possible and turn it into a rate rebalancing proceeding. Believes the benchmark rate will be set below the cost of local service in urban areas.
142	Rep. Witt	Comments that Mr. Jenks is saying the ñ5 amendments remove the cap on basic service and it is fundamentally different than the bill that came out of the Senate.
149	Jenks	Agrees. Explains that on page 4 of the ñ5 amendments (EXHIBIT G), (3) establishes the new benchmark rate; the previous bill said it is capped at the current rate or what comes out of the rate case. This says it will be capped at some unknown rate that will be determined through the universal service proceeding. Believes this sets up some incentive for the universal service proceeding to become a rate rebalancing proceeding
160	Chair Hill	Asks if Mr. Jenks is arguing we cannot trust the commission.
182	Jenks	Responds he believes it will increase rates. Questions what the effect of the Universal Service Fund will be.
220	Chair Hill	Asks if Mr. Jenks would argue that the present system is a barrier to entry for competitors in the residential field.
233	Jenks	Responds negatively. Comments that he believes the current rates in urban areas are above the cost of service. Believes there are structural barriers, marketing barriers, and geographical barriers to entry. They will target the areas that are most concentrated.

268	Chair Hill	Asks if Mr. Jenks is arguing for a two-tiered system for rural areas where the cost will be higher because of lower density and they should bear a different cost than urban areas.
275	Jenks	Responds he is skeptical there will be the political will to charge the kind of universal service fee that drives rural areas down to the cost of urban areas. The federal act establishes a new affordability and said the rural areas should get the affordability rate, but it does not say to the point of urban cost of service.
287	Jenks	Adds that he is concerned that the price caps are not adjustable. Believes there should be a way to adjust the price caps over time, either up or down.
331	Rep. Witt	Comments Mr. Jenks seems to be advocating for continuing rate of return.
337	Jenks	Comments on the theory of price caps. Suggests if prices are declining over time and customers are still subject to monopoly, those customers deserve some benefit of that declining cost.
374	Rep. Witt	Asks how one separates out a utility's efficiency leading to higher profits from an industry with declining prices.
392	Jenks	Suggest the customers will see price reduction through efficiencies. Concerned about customers where the service remains a monopoly.
TAPE 79, B		
003	Rep. Witt	Asks if the competition would not keep the prices down.
009	Jenks	Suggests they can cut their prices in response to the market share.
023	Chair Hill	Recesses meeting for Call of the House at 2:45 p.m.
023	Chair Hill	Reconvenes the meeting at 3:45 p.m. Present are Rasmussen, Montgomery, Rosenbaum and Chair Hill.
025	Bob Jenks	Citizens Utility Board. Continues statements on concerns about costs and standards of service. Under the bill, a company is allowed to bundle services and there is no price cap for those bundled products or requirement that the company notify the commission. They should be required to file those bundled products and prices with the commission.
041	Jenks	Comments that the service quality section in the 5 amendments is a significant retreat from the current service quality rules. Disagrees that they are targets, thinks they are minimum standards. Concerned they would not have an

		obligation to get to the minimum standards. The new service quality standards sunset in four years even though the companies' ability to over earn continues on forever and we will be left with standards even worse than the current standards. The commission authority over service quality beyond the four years is weakened by the 5 amendments whereas the price caps and benefits for U S West go on forever.
086	Chair Hill	Advises Mr. Crean that during testimony it was suggested that Section 48 of the 5 amendments is unconstitutional and ask that he address the suggestion.
090	Chris Crean	Deputy Legislative Counsel. Responds that Legislative Counsel has looked at the question extensively and they do not believe that Section 48 by itself is unconstitutional or renders the bill unconstitutional.
098	Crean	Explains that the essence of the argument is that the agreement between U S West and the PUC constitutes a contract between U S West and U S West ratepayers with the PUC standing in the shoes of the ratepayers. Therefore, it is a contract between private parties, U S West and its ratepayers, and the legislature could not retroactively change the terms of a contract between private parties without impairing contract. Legislative Counsel does not believe the agreement between U S West and the PUC constitutes a contract between private parties.
108	Rep. Rosenbaum	Comments that the concern in the testimony was that this language makes the decision binding on all parties.
118	Crean	Responds he did hear that. The language is "a final judgment in the case or a negotiated settlement between the telecommunications carrier and the Public Utilities Commission shall be binding on all parties." The "negotiated settlement" language is problematic. If the PUC and U S West decide they are going to arrive at an agreement and present that to the court and the court finds it acceptable, the court could enter an order dismissing the case based on the settlement. Adds that he has not looked at whether that scenario would unconstitutionally impair the rights of a third party that was not included in a negotiated settlement. Finds it hard to believe if the Citizens Utility Board is a named party in the case that the court would approve a settlement that did not include the Citizen Utility Board or any other named party to the case.
130	Gail Gary	MCI, WorldCom. Comments they are not opposed to replacing rate of return regulation with a price cap plan, but the safeguards that are necessary to protect consumers and to promote competition are still missing from the 5 amendments. While the amendments do give the incumbent local exchange provider pricing flexibility and while it does give some short-term funding for infrastructure development, it does nothing to promote competition. Competition is the best way to ensure that everyone has access to advanced telecommunication services at the best possible price.
160	Gary	Submits and presents comments on the SB 622 5 amendments (EXHIBIT I).
220	Gary	Continues presentation of comments on the 5 amendments.

262	Chair Hill	Asks if Utah has a Universal Service Fund.
262	Gary	Responds affirmatively.
265	Chair Hill	Asks if Utah has looked at the USF as a mechanism to adjust what they may feel is inappropriate compensation.
279	Gary	Responds that universal service is a separate issue in terms of basic rates.
300	Chair Hill	Comments he views the USF as a mechanism that will be an inducement for MCI to jump in and compete for local dial tone services.
327	Gary	Comments she agrees that universal service is a key to bringing competition into the basic residential market place. Comments the ñ5 amendments do nothing to the market place. Suggest the committee consider adding language that deals with the issue of carrier-to-carrier service quality standard. Comments that Section 50 of the ñ5 amendments attempts to address the quality standard. Comments that whether the language is in the bill or not, the federal act applies. Explains that the federal act standards are very general and basic. Encourages committee to require PUC to set standards of how the providers communicate among each other.
420	Gary	Adds that the language on page 9, (d)(A) of the ñ5 amendments departs from the purpose of the USF. The concern is it drives up the cost of the universal service fund that drives up the costs the customers are going to pay as the surcharge for the USF.
TAPE 80, A		
015	Paul Romain	Comments the ñ5 amendments have been put forth by some as a compromise. Explains that they begged the Senate committee to allow them to be part of a work group to work through the language of the bill. Adds that the system can go to price caps and it is about time, but it cannot be done with the ñ5 amendments.
050	Chair Hill	Comments on the process of negotiations and preparation of amendments to SB 622.
066	Romain	Commends Chair Hill for his efforts and cautions that additional work needs to be done.
072	Rep. Deckert	Asks which states have language in statute strong enough to foster competition.
076	Gary	Responds MCI will continue to provide language to address the issues. Utah, Iowa and Minnesota and other states have approached the issue.

086	Rep. Deckert	Asks if those states are under price caps.
086	Gary	Responds that Utah and Iowa are and she is not sure about Minnesota.
092	Joanne Hugi	Director, Computer Center, University of Oregon. Submits and paraphrases a prepared statement (EXHIBIT J) in support of the ñ5 amendments.
131	Kevin Campbell	Management Consultant, Canyon City, Oregon. Testifies in support of available telecommunications infrastructure in rural areas.
181	Rep. Witt	Asks why metro area legislators should potentially put their constituents at risk for the purposes of investment by a private, unregulated company into rural infrastructure.
184	Campbell	Responds that the real issue is how to invest so the entire state of Oregon moves forward, who can make the investment and who can most afford to make the investment.
220	Bruce Shaull	Sprint. Submits and paraphrases prepared statement (EXHIBIT K).
270	Shaull	Continues presentation (EXHIBIT K).
334	Chair Hill	Comments he would be concerned if Sprint would argue that the commission may impose such a standard that in and of itself becomes a barrier to entry by competitors.
366	Shaull	Responds that he would think most of the competition is in the business market and hopefully they have gone out for an RFP from a provider.
393	Chair Hill	Asks if the service quality standards will be the same as today.
402	Shaull	Responds he believes the service quality standards today are applied as the customer expects and as included in the RFP, not those set by the commission.
420		Discussion continues on quality of service.
TAPE 81, A		
030	Chair Hill	States that one section of the bill is for incumbents that opt in and then for everyone else for whom the commission would establish criteria.
034	Shaull	Responds that if Sprint were to opt into the plan, they would hold themselves up to meeting those standards.

067	Rep. Montgomery	Asks how many more amendments will be presented.
068	Chair Hill	Responds that he will be submitting one more set of amendments that include the technical changes.
070	Rep. King	Advises that he is submitting the SB 622-7 and SB 622-8 amendments.
070	John Glascock	American Association of Retired Persons (AARP). Submits prepared statement (EXHIBIT L) .
096	Glascock	Paraphrases prepared statement in opposition to the 5 amendments.
150	Glascock	Continues presentation.
186	Curt Pederson	Associate Provost, Information Services, Oregon State University. Supports the SB 622-5 amendments. Speaks in favor of providing greater access to people with disabilities, on-line teacher certification anywhere anytime, virtually enhanced degree programs for Oregon tribes, digital library initiatives, and county information extension offices. Was asked to prioritize the list of item. He has chosen as number one priority access to those with disabilities.
227	Ron Stewart	Technology Access Coordinator, Oregon State University. Explains his role is to provide access to technologies to individuals with disabilities. Ninety-five percent of the currently delivered web page construction is inaccessible to those with disabilities. Explains they would use the funding to provide statewide training and coordinate research in the university. Adds that most of their customers who receive educational services do not have access to those technologies. They would like to move the technologies out to provide distant medium instruction and service delivery.
245	Chair Hill	Asks if they see using real audio to create mechanisms for visually impaired persons and whether would they set standards.
256	John Gardner	Professor of Physics, Oregon State University. Responds he has a major research group working on the questions. His view is that that is the wrong way to go about making access. Explains that making the information better and making it universally accessible so that an author simply has to author something that is elegant provides access and anybody can use it. Supports universal access, not just for the handicapped.
275		Discussion continues on development of technologies.
322	Pederson	Comments he was pleased to find the million-dollar match that potentially would be available from the Public Access Fund to endow a telecommunications chair for research and development.
324	Tom Cook	Director, Oregon Public Education Network (OPEN). Testifies in support of

		Section 54 of the SB 622-5 amendments (EXHIBIT G, pages 20 ñ23). Reviews the allocations and purposes in Section 54.
TAPE 80, B		
030	Cook	Continues review of the allocations and purposes in Section 54.
051	Chair	Clarifies that the intent of the language on page 22, lines 17-22, is that the Department of Administrative Services (DAS) will deliver the central server because the terrestrial based system would deliver services for many different agencies, not just K-12.
056	Cook	Responds that is correct.
066	Cook	Continues presentation.
090	Chair Hill	Comments that one of the requirements for the schools to receive the money is that a school district must apply for federal e-rate funding.
106	Cook	Oregon has been awarded over nine million dollars in e-rate funding and it will be significantly higher in the second year. They look forward to receiving the funds to augment those in Section 54.
123	Fred Pederson	Executive Director, Telecommunications Ratepayers Association for Cost Base and Equitable Rates (TRACER). Comments on the SB 622-5 amendments:
		<ul style="list-style-type: none"> On page 6, line 8, questions whether "deaverage" involves price caps and when it would take place.
		<ul style="list-style-type: none"> On page 6, line 21, is the contentious area about the rate case. Encourages the committee to not do anything that will cause delays.
		<ul style="list-style-type: none"> Page 11, line 6, prescribes how the USF will be applied. It impacts large users. Would like to see USF applied on a per-line basis. Believes a per-line basis is a more stable funding source. Identification and forecasting of the number of lines in the state is more readily achievable by using lines instead of types of service.
185		<ul style="list-style-type: none"> The use of a per-line charge would also provide a comparable use of access to the public network basis to determine contribution and what access is being subsidized.
		<ul style="list-style-type: none"> Promotion of advanced services is presumably part of the legislative intent but the use a sales-tax type basis works in opposition. In this case the more advanced services you have, the more you pay.

194	Chair Hill	Asks if they are in favor of percent of pay since the feds are doing it that way.
195	Pederson	Responds yes, they believe the way the FTC is doing it would be a better approach because it is fundamentally on an access line basis.
201	Pederson	Comments that on page 11 line 29 talks about who is included. Services are listed but not local exchange carriers.
231	Chair Hill	Notes that the language relates to wireless communications.
240	Pederson	Comments that service quality, Section 50, applies to those who do not opt for the alternative form of regulation. Service quality standards apply to all retail services. In Section 51, which applies to the opting carriers, the standards seem to be very carefully narrowed to primary basis telephone service. They would prefer to use the new standards for primary basic telephone service.
263	Chair Hill	Asks for examples of members of TRACER.
264	Pederson	Gives examples.
278	Chair Hill	Asks if they see this as a mechanism that will encourage investment by the carriers back into the network if they are given the opportunity to make as much money as they want delivering service and protecting consumers by having service quality standards.
291	Pederson	Responds they are fine with the legislation as long as there are good service quality considerations. Adds there is much of the state that does not have competition and price caps are important and they need to be set reasonably.
321	Gary Bauer	Oregon Telecommunications Association. Comments he is not speaking on behalf of all members of their association, but is speaking on behalf of the small independent companies. They have concerns about the universal service section because the FCC has not completed their work. The FCC has decided not to identify and look at a cost model approach for rural carriers for probably a couple of years. Adds that he wants to be on the record that they are trying to work with that and will report back to the committee tomorrow.
345	Chair Hill	Asks if Mr. Bauer is working with Joan Smith as a person and not a member of the commission.
345	Bauer	Responds affirmatively. Adds that he has not talked with Mr. Shaull on service quality, but may want to add some words about competition in the industry.
349	Larry Huss	U S West for Oregon. Comments that many of the changes that were criticized were done in the context of discussions with Joan Smith and the Governor's office. The service quality standard matrix was put in at their request. They changed the funding mechanism on the USF to provide for a phase in and now it

		seems everybody likes the concept of the USF as long as they do not have to pay into it. Price caps have been put back on and the PUC is given the same authority they have today over basic exchange service.
		Adds that he is not sure you can please everybody. He as great empathy for rural Oregon to move on this now. He also recognizes that no decision is final and we will be back in 2001 talking about telecommunication issues, the state of the industry and adjustments that need to be made in regard to whatever we do this year.
423	Huss	Urges the committee to give consideration to the ñ5 amendments. Explains that he is not particularly concerned about the mechanism for the wireless community.
441	Chair Hill	Suggests that interested parties meet to talk about the price cap floor issue of competing costs.
459	Chair Hill	Closes the work session on SB 622 and adjourns meeting at 5:35 p.m.

Submitted By, Reviewed By,

Annetta Mullins, Jason Cody,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 622, prepared statement, Gary Bauer, 5 pp

B ñ SB 622, SB 622-4 amendments, Gary Bauer, 3 pp

C ñ SB 622, SB 622-1 amendments, Mike Dewey, 3 pp

D ñ SB 622, SB 622-3 amendments, Tom O'Connor, 2 pp

E ñ SB 622, SB 622-2 amendments, Rep. King, 9 pp

F ñ SB 622, section-by-section analysis of ñ5 amendments, staff, 4 pp

G ñ SB 622-5, SB 622-5 amendments, Rep. Hill, 27 pp

H ñ SB 622, prepared statement, Larry Huss, 1 p

I ñ SB 622, prepared statement, Gail Gary, 3 pp

J ñ SB 622, prepared statement, Joanne Hugi, 2 pp

K ñ SB 622, prepared statement, Bruce Shaull, 2 pp

L ñ SB 622, prepared statement, John Glascock, 6 pp