

**HOUSE COMMITTEE ON COMMERCE**  
**SUBCOMMITTEE ON TRADE AND ECONOMIC DEVELOPMENT**

April 07, 1999 Hearing Room 350

1:00 p.m. Tapes 35 - 36

**MEMBERS PRESENT:** Rep. Jerry Krummel, Chair

Rep. Ryan Deckert

Rep. Bob Montgomery

Rep. Diane Rosenbaum

**STAFF PRESENT:** Jason Cody, Administrator

Annetta Mullins, Administrative Support

**MEASURE/ISSUES HEARD:**

HB 2248 ñ Work Session

HB 2749 ñ Public Hearing

HB 3242 ñ Public Hearing

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
<b>TAPE 35, A</b>		
003	Chair Krummel	Calls meeting to order at 1:12 p.m. and announces that additional work needs to be done on HB 2248 and will be rescheduled at a later date.
022	Chair Krummel	Opens the work session on HB 2248.
<b><u>HB 2248 ñ WORK SESSION</u></b>		

030	David Elliott	States he is here to answer questions about the effect of the law and will come back at a later meeting.
034	Rep. Montgomery	Asks if games are being played and why enterprise zones are being discussed.
038	Elliott	Responds it is his understanding that a couple of things are intended to be accomplished. One is that the long-term rural enterprise zone exemption and related income tax credit passed in the 1997 session has some technical difficulties. Other portions of the bill expand the applicability of the exemptions in more parts of the state to more businesses.
049	Rep. Montgomery	Asks if this is the bill about allowing the location of a doctor's office in Astoria.
047	Elliott	Responds HB 2248 does expand the eligibility of the enterprise zone to include health care facilities in certain limited circumstances.
051	Rep. Montgomery	States he hopes the chair does not need his vote to get the bill out of committee.
052	Jason Cody	Administrator. Explains that this committee has not adopted the amendment referred to by Rep. Montgomery.
057	Rep. Deckert	Comments that it is his understanding that medical facilities are not included in the bill.
061	Elliott	State that he may be mistaken but has seen draft provisions that would provide an exemption for health care facilities.
068	Art Fish	Enterprise Zone Coordinator, Oregon Economic Development Department (OEDD). States he will correct Elliott's thought about the health care facilities. There is no amendment on health care facilities. Adds that the department, with Elliott's help, has drafted language that could be used for an amendment. It was prepared on behalf of Senators Lim and Dukes but was never put into a Legislative Counsel amendment for the bill. SB 1146 that would allow health care facilities in enterprise zones is in the Senate.
084	Rep. Deckert	Asks if the meeting is to further explore health care facilities.
091	Fish	Responds that the meeting is to address concerns associated with Nucor Corporation, the major component of legislation last session.
100	Chair Krummel	Asks that OEDD continue to work with representatives of Nucor and other interested parties.
105	Rep. Rosenbaum	Asks if the HB 2248-7 amendments ( <b>EXHIBIT A</b> ) include the -1-4 and -6 amendments.

110	Cody	Responds affirmatively. Explains that the subcommittee adopted the ñ1, -2, -3 and ñ6 amendments and they have been compiled into the ñ7 amendments.
117	Chair Krummel	Closes the work session on HB 2248 and opens a public Hearing on HB 2749.
<b><u>HB 2749 ñ WORK SESSION</u></b>		
120	Cody	Reviews HB 2749.
135	Joan Smith	Public Utility Commissioner. Submits and paraphrases a prepared statement <b>(EXHIBIT B)</b> .
185	Smith	Explains why the PUC is holding up taking action <b>(EXHIBIT B, page 2)</b> .
200	Smith	Continues presentation of statement <b>(EXHIBIT B, page 3)</b> .
222	Rep. Montgomery	Comments that legally the commissioners' compensation could not be withheld.
238	Smith	Agrees.
238	Rep. Montgomery	Requests that Smith have their attorney general write a letter telling the committee whether HB 2749 is legal, i. e. Section 2, lines 12, 13 and 14.
248	Rep. Rosenbaum	Asks if "universal service" is synonymous with basic service.
258	Smith	Responds that it is their understanding the references in each piece of legislation is to the commission's definition of basic service.
263	Chair Krummel	Comments he believes the subcommittee's work should be focused on Section 1 as opposed to Section 2.
283	Chair Krummel	Comments there is a lot of discussion on "universal service" and will appoint a work group of industry people. Over the next couple of weeks the work group will bring back ideas of what the industry feels about who should pay and what the fund should accomplish.
317	Chair Krummel	Closes the public hearing on HB 2749.
309	Chair Krummel	Announces he will not be here next Wednesday and the subcommittee will not meet. Requests that staff get a report from the HB 2749 work group on the progress and distribute a memo to committee members.

340	Chair Krummel	Opens a public hearing on HB 3242.
<b><u>HB 3242 ñ PUBLIC HEARING</u></b>		
346	Jason Cody	Reviews HB 3242.
349	Dick Wanderscheid	Administrative Services Director, City of Ashland. Submits and reads a prepared statement in opposition to HB 3242 ( <b>EXHIBIT C</b> ).
400	Wanderscheid	Continues reading statement ( <b>EXHIBIT C</b> ).
<b>TAPE 36, A</b>		
030	Wanderscheid	Continues reading statement ( <b>EXHIBIT C</b> ).
055	Tom OiConnor	Oregon Municipal Electric Utilities. Submits and presents statement in opposition to HB 3242 ( <b>EXHIBIT D</b> ).
090	OiConnor	Continues presentation of statement ( <b>EXHIBIT D</b> ).
104	OiConnor	Adds that they believe the regulatory structure is sufficient to protect the public interest and encourage the growth of telecommunications in small towns in rural areas.
108	Rep. Montgomery	Asks how many municipalities are in the state.
112	OiConnor	Responds there are 11 municipal electric utilities.
113	Rep. Montgomery	Asks if the municipal utilities are subject to the authority of the PUC and whether can they set their own rates.
115	OiConnor	Responds that if they are going to provide telecommunication services, they must get a certificate from the PUC as a competitive service provider. Competitive service providers, whether they are public or private, are not regulated in terms of rates but are in terms of the certificate and the conditions under which they operate.
128	Rep. Montgomery	Referring to Section 3, asks if all city information is considered public records.
132	OiConnor	States they would be subject to the public records and open meetings laws.
135	Rep. Montgomery	Asks if municipalities are neutral and whether they discriminate.

136	O'Connor	Responds he would guess the language in the bill is parallel to language in the federal act. They are required under the federal act to act under that manner. Adds that any competitor can go to the PUC to raise a complaint administratively or they can go to court and raise a complaint under the federal act or the PUC can take up the issues on its own motion.
143	Rep. Deckert	Asks if the Ashland Fiber Network (AFN) would have a favorable tax status.
152	Wanderscheid	Responds the only taxing by the city would be the franchise or right of way fees. As far as revenue to the city, it should be the same whether the service is purchased from AFN or another service provider.
175	O'Connor	Responds that AFN would not be paying the same taxes as a private provider. A municipal does not pay income tax. The same criteria apply to co-ops and other non-profit entities in the business.
201	Rep. Deckert	Comments that the best environment would be one that is totally neutral and allows for innovative investments. Asks why someone with perhaps a better tax status should have a favorable tax status especially in a competitive environment.
203	O'Connor	Suggests Rep. Deckert may want to address the question to Commissioner Smith. The idea is to make the certificate apply as equally as possible.
225	Chair Krummel	Asks if they can use public funds to subsidize their operations.
228	O'Connor	Responds affirmatively. Explains that the city could, as a public entity, use its revenues to operate an enterprise. In the case of the electric utility a special enterprise fund is created. The electric utility, as an enterprise fund, operates with the revenues from that electric utility. The revenues flow back to the general fund. In this case, the city is establishing the Ashland Fiber Network as an enterprise fund that will operate as a separate fund distinct from the general fund of the city. There was an initial loan from the electric department as the fiber was being laid. It will be repaid by the private sector financing.
255	Chair Krummel	Asks if they can use the utility fund to support the general fund.
259	Wanderscheid	Responds they can do either. In Ashland, the electric utility does a transfer to the general fund that helps pay some of the bills. It is not the intent of the city council or in their business plan to do anything like that. This is a stand-alone business that should be self-sufficient and they do not intend to subsidize the operation. Adds that the city is not in the business to make money. They think it is good for the city and citizens to have this service.
288	Chair Krummel	Asks if the municipal utility can condemn a company.
303	Paul Nolte	City Attorney, City of Ashland. Responds that the city could not condemn a private company unless it is going to be used for public use.

318	Chair Krummel	Asks if AFN would constitute a public use since it is a public enterprise directly related to the city government.
323	Nolte	Responds that in his opinion it is not. A municipal government has the right to do things in the public interest and for the public purpose, but it cannot use its condemnation powers for public purpose. It is only for public use. A municipality could not condemn a private enterprise.
332	Chair Krummel	Gives example of condemnation for public use.
361	Nolte	Comments there are private uses in public rights-of ways and the municipality cannot discriminate as to who uses those public rights of way, although they can charge for the use.
371	Chair Krummel	States he is trying to distinguish between a use and purpose.
373	Nolte	Gives example of Oakland, California, condemning one of the sports team. States that in Oregon a municipality could not condemn a sports team and operate the sports team as a municipal use.
369	O'Connor	Comments they are operating under the requirements of the federal act. Expects they would be charged really quickly with "barrier to entry" and they would be in violation of their PUC certificate.
414	Rep. Montgomery	Asks if they ever plan to go to other cities.
423	Jim Deason	Special Council for telecommunications matters for the City of Ashland. States the network as designed now will be operating in the city limits of Ashland but will be interconnecting with a network. Adds that part of the PUC certification process is to gain the right to exchange traffic and to make the system useful.
448	Rep. Montgomery	Asks if they will be able to go to Medford and sell services
447	Deason	States the status of the certificate authorizes them to provide telecommunication services in the Phoenix, Talent and Ashland exchanges. If they desire to provide services or exchange traffic outside those geographic exchanges, they will need to go back to the PUC and make application to amend their certificate to expand it. The PUC would determine whether that would be in the public interest.
<b>TAPE 35, B</b>		
033	Wanderscheid	States their business plan does not envision selling services to anybody outside the city. Adds that they have a point of presence in Medford where they will jump on the main infrastructure to move the data around. Adds that some internet service providers working in Medford may want to utilize AFN to serve their customers. All the retail customers will be residents or businesses in Ashland.

041	Rep. Montgomery	States he assumes that is a no. "Ashland is not going to be selling anything to Medford or any other city with the intent for Ashland to make a profit at it." Needs a yes or no answer.
050	O'Connor	Responds they are trying to make sure they are not being misleading. The service that is provided in the city has to be interconnected to the outside world so a business in Ashland can transfer the data from the Ashland system to the outside world. Adds that the conditions of the certificate ensure that the data from the business in Ashland can be transferred within Ashland but also be transferred in commerce over the transmission lines.
061	Nolte	States they will be serving customers physically located within the city of Ashland, providing the service means taking data out and bringing it back in. They will not be serving customers physically located outside the city. They will provide those customers telecommunication services which means moving data and forth outside the city boundary.
088	Rep. Deckert	Asks why a municipality would not have to abide by the same rules as a telecommunications firm.
090	O'Connor	Responds it is the same certificate and they must operate the same. The PUC has the authority to jump in.
168	Wanderscheid	Comments they are not going to skim and will give everybody a choice. The local incumbent phone and cable companies are not going to be driven out of business by AFN. Thinks people are going to get better service and possibly better rates.
183	Rep. Rosenbaum	Asks if AFN would be able to continue if they were subject to regulations of this bill.
186	Wanderscheid	Responds there are some things in the bill that would make it much more difficult for AFN.
197	Chair Krummel	Asks why Ashland was the only network that responded to the Ashland School District RFP.
210	Wanderscheid	Responds he does not know why others did not respond.
228	Schelly Jensen	GTE, Regulatory and Governmental Affairs Manager. Submits and reads a prepared statement ( <b>EXHIBIT E</b> ).
270	Rep. Montgomery	Asks if there is a record where a municipality has charged a seven percent franchise fee to others and not to themselves.
274	Jensen	States not that she is aware of.

276	Joan Smith	Public Utility Commissioner. Submits and reads a prepared statement in opposition to HB 3242 <b>(EXHIBIT F)</b> .
321	Smith	Continues reading statement <b>(EXHIBIT F)</b> .
372	Rep. Rosenbaum	Asks Smith to comment on the distinction between the types of providers.
384	Smith	States the payment of taxes is a semi-bogus issue. Monopolies pass their taxes on to the ratepayers. Many competitors pay no taxes because they are not making a profit, and others do pay income and property taxes. No two groups are treated the same for taxation.
414	Smith	Comments there is no regulation of services in terms of rates or prices unless the monopoly itself chooses to be regulated. Explains how competition can exist. The key issue for public policy is whether or not the state should decide who should be in the market place or if the customer should decide and choose a provider.
<b>TAPE 36, B</b>		
015	Rep. Deckert	States he thinks the state should provide a framework that will induce competition.
025	Smith	Explains differences between competitive providers and those operated for the public interest.
047	Beth Vargas-Duncan	League of Oregon Cities. Speaks in opposition to HB 3242. Believes it would make it almost impossible for cities to provide services the City of Ashland is currently considering. Believes competition can be a good thing. Would hate to see legislation created that would have such a deterring effect on municipalities. States that what citizens create, citizens can destroy. The community will be paying attention to what is going on and if they do not like what is happening they will have input into what happens.
071	Mike Dewey	Oregon Cable Telecommunications Association. Comments they support the bill but Section 2 goes too far and should be deleted or reworked. Comments that Falcon Cable is putting in high-speed data service. Falcon Cable intended to bid on the Ashland School District project missed the due date.
097	Dewey	States the AFN people want to be in the cable television business. Their association does not have problems with the competition but they do have concerns about the competition. Reviews their concerns:
		<ul style="list-style-type: none"> <li>Falcon Cable received a cease and desist order from the City of Ashland when putting up their fiber.</li> </ul>
		<ul style="list-style-type: none"> <li>The City of Ashland owns the poles.</li> </ul>



		<ul style="list-style-type: none"> <li>• One gets concerned about the city that owns the poles, charges the various rates, and perform inspections</li> </ul>
		<ul style="list-style-type: none"> <li>• The city can require the company to provide their business plan</li> </ul>
		<ul style="list-style-type: none"> <li>• Suggest there needs to be some parameters because there are opportunities they could take to be anti-competitive.</li> </ul>
		<ul style="list-style-type: none"> <li>• Questions how Ashland will offer services while providing service to connect utilities.</li> </ul>
		<ul style="list-style-type: none"> <li>• Does not think the bill is onerous. It says they cannot cross subsidize.</li> </ul>
		<ul style="list-style-type: none"> <li>• Cities that get into telecommunications are those that own the electric company.</li> </ul>
		<ul style="list-style-type: none"> <li>• Does not want to be the private entity left standing.</li> </ul>
199	Rep. Rosenbaum	Asks if Dewey is not supportive of Section 2.
201	Dewey	Responds he does not believe that any municipality will have a monopoly and they should not be regulated by the PUC.
209	Rep. Rosenbaum	Asks if there should be some controls but not regulated by PUC.
220	Dewey	Agrees, and agrees with Ms. Jensen's testimony that it is difficult.
234	Bruce Shaw	Sprint. Testifies in support of HB 3242. Concern has as to do with condemnation. Sprint is a member of the Oregon Telecommunication Association and they have been in discussions with the public utility districts over their desire to enter into the telecommunications business. Condemnation has been a sticking point in their discussions. Suggests there be some clarity around condemnation if the bill moves forward.
265	Chair Krummel	Comments he believes rural Oregon must be able to provide the needs. Closes the public hearing and adjourns meeting at 2:50 p.m.

Submitted By, Reviewed By,

Annetta Mullins, Jason Cody,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A ñ HB 2248, HB 2248-7 amendments, staff, 8 pp**

**B ñ HB 2749, prepared statement, Joan Smith, 4 pp**

**C ñ HB 3242, prepared statement, Dick Wanderscheid, 3 pp**

**D ñ HB 3242, prepared statement, Tom OíConnor, 1 p**

**E ñ HB 3242, prepared statement, Schelly Jensen, 1 p**

**F ñ HB 3242, prepared statement, Joan Smith, 1 p**