

**HOUSE COMMITTEE ON COMMERCE**

**SUBCOMMITTEE ON TELECOMMUNICATIONS AND TRADE**

March 21, 1997 Hearing Room 343

8:30 AM Tapes 28 - 29

**MEMBERS PRESENT:**

Rep. Jim Hill, Chair

Rep. Ron Adams

Rep. Eldon Johnson

Rep. Tom Whelan

Rep. Cynthia Wooten

**STAFF PRESENT:**

Julie Neburka, Administrator

Coben Tistadt, Administrative Support

**MEASURE/ISSUES HEARD:**

HB 3021- 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.

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 28, A</b>		
<b>003</b>	<b>Chair Hill</b>	<b>Opens meeting at 8:35 AM. Opens public hearing on HB 3021. Refers to section-by-section analysis (EXHIBIT A).</b>
<b><u>HB 3021 - PUBLIC HEARING</u></b>		
<b>022</b>	<b>Julie Neburka</b>	<b>Begins discussing EXHIBIT A.</b>
<b>039</b>	<b>Benny Won</b>	<b>Assistant Attorney General with the Oregon Department of Justice, representing the Oregon Public Utilities Commission.</b>
<b>044</b>		

	Oren Floyd	Representing Sprint. Asks if his proposal will be included in the discussion (EXHIBIT B).
047	Neburka	Answers that his proposal has been submitted to Legislative Counsel but that it hasn't been drafted yet.
055	Floyd	States that his proposal recommends changing some definitions found in section 2.
060	Chair Hill	Assures Mr. Floyd that his problems with the definitions will be noted.
062	Rep. Johnson	Asks who prepared EXHIBIT A.
064	Chair Hill	Answers staff. Explains the two blank columns in the document.
077	Neburka	Continues discussion of EXHIBIT A.
091	Chair Hill	Asks Roger Hamilton if he has any problems with section 1.
093	Roger Hamilton	Public Utilities Commission. Emphasizes the significance of the repeals.
104	Neburka	Begins discussing section two and its definitions.
112	Ginny Lang	Representing US West. Mentions their attempt to match definitions with the definitions found in the Federal Telecommunications Act of 1996. Points out that the carrier definitions are important.
138	Chair Hill	Asks if there are state statutes limiting definitions.
140	Eric Ruona	Committee Counsel. Answers that limiting definitions is the responsibility of the courts.
148	Rep. Whelan	Asks if this is seen elsewhere.
150	Ruona	Answers yes but that it is not common.
152	Rep. Whelan	Asks if it has an exceptional legal effect.
153	Ruona	Answers no.
158	Rep. Adams	Refers to section two, line five. Remarks that arriving at an understanding of the definitions will be the crux of their dealings with the bill.
177	Hamilton	Interjects that narrow definitions impede adaptation in an environment of frequent changes.
183	Ruona	State that he will investigate the courts' interpretations thus far.
188	Chair Hill	Refers to section two, subsection one. Asks if anyone takes issue with the definition of "affiliate."
194	Lang	Notes that the definition was taken from the federal act.
195	Chair Hill	Refers to subsection two. Asks if there is an issue with the definition of "basic local exchange service."
197	Hamilton	States that telecommunications carrier isn't defined, which could impair the deployment of advanced local exchange services.
200	Chair Hill	Asks if high-cap services are covered.

203	Hamilton	Answers that according to his interpretation they are not.
205	Lang	States that the definition attempted to determine the necessary level of service required for universal service funding.
223	Chair Hill	Mentions high cost services eligible under the federal act for universal service funding. Asks if the bill's definition is in this case "at odds" with the federal act.
241	Lang	Opines that the definition would simply apply to the functions of the bill.
247	Chair Hill	Begins discussion of the definition for cost of service.
253	Lang	Emphasizes that this is a critical area. Cites discussions with various parties regarding this definition, and that it is "a work in progress."
265	Hamilton	States that the bill's definition looks at embedded costs and not forward-looking costs. Cites a pending case dealing with the federal act's definition of cost of service.
274	Won	Notes that the definition in HB 3021 is different than the definition in the federal act, and that the federal act's definition doesn't include embedded costs.
305	Chair Hill	Asks for suggestions on how to define cost of service.
309	Won	Recommends that it be defined consistent with the federal act.
318	Rep. Adams	Asks for a definition of forward-looking costs.
323	Hamilton	Answers that forward-looking costs are those necessary to install a service.
335	Rep. Adams	Remarks that the exclusive use of either forward-looking costs or embedded costs would not accurately reflect the "real world."
346	Lang	Discusses a methodology which could determine "common costs."
366	Won	Notes that "forward-looking costs" is an economic term which isn't legally defined. Adds that this is a critical and contentious element to determine prices for unbundled elements.
378	Chair Hill	Remarks that the federal act's definition isn't clearly understood.
399	Lang	Suggests moving this issue to a workshop venue.
410	Hamilton	Refers to UM-351, a six-year effort to come up with a pricing methodology, and that it came up with a synthesis agreed to by all parties. Adds that it was an open process.
TAPE 29, A		
022	Chair Hill	Remarks that audience participation is welcome and that the committee could use all available assistance to understand the issues.
031	Pat Hickey	Representing AT&T. Suggests that present law is sufficient to deal with the problem. Warns against rushing to resolve an immensely complex issue.
045	Rep. Adams	Suggests that there are "other people" who are more qualified to deal with these issues than the committee members.

049	Hickey	Remarks that the members are competent in understanding general issues but that the issues at hand are very specific and very difficult to understand.
065	Chair Hill	Asks the commission if defining cost of service in statute would be a help or a hindrance to their work.
070	Hamilton	Answers that it would be a hindrance
072	Rep. Wooten	Expresses an interest in looking at PUC's methodology in determining prices of unbundled elements.
077	Hamilton	Responds that that could be helpful, but notes that assumptions are critical. Cites the work already done with the UM-351.
088	Rep. Wooten	Asks when the docket will be finished and if they expect a change in their \$17.20 rate.
092	Hamilton	Notes that it is an open docket. Defers to Mr. Won.
101	Won	Answers referring to the commission's last order in docket 351 which mandated that incumbents file tariffs or rates.
106	Hamilton	States that this is a "moving target."
108	David Booth	PUC staff. Mentions that the commission shortly will resolve issues relating to filing and pricing. Notes that the commission is waiting on revised cost estimates.
131	Rep. Wooten	Asks if the commission expects to have a permanent pricing structure shortly. Notes the range between the commission's published rate and US West's published rate, asking if the prices will remain in that range.
140	Booth	Answers that he thinks they will.
142	Rep. Wooten	Restates earlier question of whether the commission expects to have a permanent pricing structure in a couple months.
153	Booth	Answers that they do, adding that there may be tariffs requiring negotiations and contracts.
151	Rep. Wooten	Asks if negotiations and contracts will be based on the permanent pricing structure.
153	Booth	Answers yes.
155	Rep. Adams	Mentions personal experience in the area. Expresses confidence in the PUC. Warns of the difficulty in redefining the telecommunications world.
181	Lang	Announces her willingness to work with the commission, committee staff, and to use UM 351 to create a list of elements to define cost of service.
207	Chair Hill	Asks how the commission can enforce the federal act when such authority is not in statute.
221	Won	Agrees that the legislature must decide who implements the functions of the federal act. Comments that the commission's proposal in HB 2093 contains changes in definitions which aren't nearly as extensive as those found in HB 3021.

253	Fred Logan	Representing GTE. Mentions controversy surrounding the federal act's use of a hypothetical cost model. States that in their business companies must determine actual costs, and that the federal act underprices those costs by some 50%. Admonishes the committee that the federal model would encourage resale of services while discouraging investment in facilities..
309	Hamilton	Notes that the commission has the responsibility of determining whether presented costs are reasonable. Reiterates that embedded costs are not allowed by the federal act. States that this issue will have a large impact in high cost, rural areas. Warns that any legislation taking away the authority of the commission would have devastating results.
352	Rep. Adams	Addressing Mr. Logan states that the classic business procedure which including accumulated costs in pricing is not appropriate in this instance, noting that consumers cannot reject these prices.
378	Logan	Responds that he didn't mean to suggest including embedded costs nor taking away the authority of the commission. States that his prices were based on investment costs.
411	John Glascock	American Association of Retired Persons. Interjects that the federal act calls for just and reasonable rates. States that the commission is the only body which can assure that.
TAPE 28, B		
028	Rep. Wooten	Notes that no state has come up with a permanent rate above \$22. Asks Mr. Logan how his company can expect a higher rate in Oregon.
046	Logan	Responds that the bill allows the commission to determine prices and removes subsidies. Expresses his company's desire for the prices to reflect real business considerations and not simply a hypothetical model.
069	Rep. Johnson	Asks if there is a legal definition for embedded costs.
075	Lang	Answers no, that it is a "term of art."
077	Hamilton	Notes that in HB 3021 books of account are considered embedded costs.
079	Lang	Restates her willingness to work with the commission and staff on these issues..
085	Chair Hill	Asks if the definition for forward-looking costs is not in the federal act.
087	Hamilton	Answers that it is not.
090	Chair Hill	Announces that there is a need to find a middle ground which will allow some flexibility but with a permanent structure. Asks for the relationship between cost of service and universal service.
102	Hamilton	Answers that there is a relationship, noting that one could define cost of service to affect universal service funding.
108	Won	

		<b>Suggests authorizing the commission to carry out the requirements of the federal act.</b>
<b>118</b>	<b>Glascock</b>	<b>Disagrees with the use of the term "implicit subsidies."</b>
<b>130</b>	<b>Chair Hill</b>	<b>Continues discussing definitions contained in the bill.</b>
<b>138</b>	<b>Oren Floyd</b>	<b>Sprint. Recommends that the definition of "eligible telecommunication carrier" be consistent with the federal act.</b>
<b>150</b>	<b>Wahn</b>	<b>Discusses differences in the definition of eligible telecommunication carrier in HB 3021 and that found in the federal act.</b>
<b>170</b>	<b>Lang</b>	<b>Offers that the word "predominantly" could be extracted.</b>
<b>175</b>	<b>Chair Hill</b>	<b>Asks if that is the effect of Sprint's proposal.</b>
<b>177</b>	<b>Floyd</b>	<b>Answers that it is.</b>
<b>180</b>	<b>Booth</b>	<b>Adds that Sprint's proposal removes the reference to a specific geographic area in which a carrier must provide service.</b>
<b>197</b>	<b>Rep. Wooten</b>	<b>Refers to a similar definition being thrown out in a case in Texas.</b>
<b>204</b>	<b>Lang</b>	<b>States that she is not familiar with the case. Discusses the relationship between the definition and universal service funding.</b>
<b>219</b>	<b>Chair Hill</b>	<b>Asks for a hypothetical example.</b>
<b>223</b>	<b>Lang</b>	<b>Responds that if a carrier wanted access to the universal service fund mechanism, they would have to make service available to all customers.</b>
<b>229</b>	<b>Chair Hill</b>	<b>Asks about issues relating to regions.</b>
<b>233</b>	<b>Floyd</b>	<b>States that in his definition the eligible telecommunications carrier would offer services to the same customer base as the incumbent.</b>
<b>237</b>	<b>Booth</b>	<b>Remarks that the bill's definition requires service to all customers in an exchange, and that it is a very difficult requirement.</b>
<b>254</b>	<b>Chair Hill</b>	<b>Asks for a clarification of what an exchange is.</b>
<b>261</b>	<b>Lang</b>	<b>Refers to maps which show exchange boundaries.</b>
<b>268</b>	<b>Hamilton</b>	<b>Reiterates that the bill doesn't give the commission sufficient flexibility to adjust universal service designations within an exchange.</b>
<b>272</b>	<b>Chair Hill</b>	<b>Asks for amendments which would address those concerns.</b>
<b>277</b>	<b>Rep. Johnson</b>	<b>Remarks that the commission should prepare amendments similar to the other parties.</b>
<b>281</b>	<b>Hamilton</b>	<b>Notes that that is a large task.</b>
<b>285</b>	<b>Chair Hill</b>	<b>Expresses his intention to identify common ground. Continues discussing definitions.</b>
<b>295</b>	<b>Hamilton</b>	<b>States that the definition of incumbent local exchange carrier does not include assessors.</b>
<b>303</b>	<b>Chair Hill</b>	<b>Continues discussing definitions.</b>
<b>306</b>	<b>Hamilton</b>	

		Questions the status of someone who qualifies as both an interexchange carrier and a local exchange telecommunications carrier.
314	Lang	States that the term was included because it was used elsewhere in the bill.
321	Hickey	States that it covers a broad base of carriers.
329	Chair Hill	States that they will revisit the term in the context of the bill. Continues discussing definitions.
338	Hamilton	Mentions that the federal act excludes cellular providers from local exchange carriers
345	Rep. Wooten	Asks if wireless carriers would be considered a local exchange carrier by the federal act.
355	Booth	Notes that there are many uses for wireless technology.
368	Chair Hill	Asks if AT&T's idea of attaching a box to their customers' houses in order to provide local exchange service would be considered competition with the local exchange service.
370	Booth	Answers that it would.
371	Rep. Wooten	Questions if it would if it was wireless.
372	Hamilton	Believes that it would.
375	Rep. Wooten	Suggests including wireless providers in every discussion relating to the bill.
380	Lang	States that they should exclude CRMS. Suggests establishing a registration process in order to raise funds.
388	Booth	Believes that a CRMS wouldn't qualify for universal service funds.
395	Chair Hill	Asks that they deal simply with definitions for now.
397	Booth	Counters that all the issues "tie in together."
400	Rep. Wooten	Asks PUC for a local exchange carrier definition that will include wireless providers.
410	Gary Bauer	Oregon Independent Telephone Association, commenting on behalf of the Cooperative Telephone Companies. States that the definition exempts cooperative companies, as they are in most cases outside the purview of the PUC. Suggests adding a section specifying when PUC has authority over cooperative companies.
425	Chair Hill	Asks if that authority is specified in statute.
430	Bauer	Answers that he will provide language that will make that authority fit with the bill.
TAPE 29, B		
009	Chair Hill	Continues discussing definitions, noting that Sprint suggests deleting the word "voice" from the definition of long exchange service.
012	Lang	Agrees.
013	Hamilton	Questions how the definition relates to the definition of telephone exchange service.

017	Lang	Answers that telephone exchange service relates to the definition of rural telephone company.
027	Chair Hill	Asks for further comments.
029	Booth	Suggests that the drafters reconsider their definition of local calling area.
038	Chair Hill	Asks about the service extending a calling area and how it relates to the definition of local calling area.
043	Booth	Answers that for that service there is no toll, but rather a different pay schedule. Adds that in the bill the entire Portland metro area would be considered a local exchange.
054	Lang	States a willingness to work with Mr. Booth to clarify the issue.
057	Chair Hill	Broaches the definition "network element."
058	Hamilton	States that the federal act does not exclude customer service equipment, as does the bill. Talks of the bill excluding dark fiber.
065	Chair Hill	Asks what impact that exclusion of customer premise equipment would have on competitors.
070	Hamilton	Answers that it would negatively impact a competitor's ability to purchase such equipment.
080	Hickey	Agrees with Mr. Hamilton.
082	Chair Hill	Encourages the witnesses to go over the definitions with each other. Discusses upcoming agendas. Adjourns meeting at 10:15 AM.

Submitted By, Reviewed By,

Coben Tistadt, Julie Neburka,

Administrative Support Administrator

**EXHIBIT SUMMARY**

A - HB 3021, section-by-section analysis, staff, 13 pp.

B - HB 3021, conceptual amendments and written materials, Oren Floyd, 6 pp.