

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND TRADE

March 25, 1997 Hearing Room 343

8:30 AM Tapes 30 - 32

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 2060 - 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
Tape 30, A		
004	Chair Hill	Opens meeting at 8:35 AM. Opens public hearing on HB 2060.
<u>HB 2060 - PUBLIC HEARING'</u>		
012	Julie Neburka	Explains handouts provided by the League of Oregon Cities (EXHIBITS A and B).
026	Chair Hill	Asks if rates listed in column 4 of EXHIBIT B are determined through franchise agreements.
030	Neburka	

		Answers that in statute a portion of the franchise fees can be recovered through rates, and that that portion would not show on the bill. Continues discussing EXHIBIT B.
041	Chair Hill	Asks if this information was provided by the league.
042	Neburka	Answers that it was.
047	Mike Jordan	City Administrator for the City of Canby. Mentions small cities which do not charge franchise fees. Talks of great diversity among cities in the state regarding franchise fees. Reports that most cities place the revenues into their general fund, and that some use these revenues for street management.
101	Jordan	Continues presentation discussing the 1996 Federal Telecommunications Act and the responsibility of the cities to manage rights of way. Notes that they have explored "franchise fee options." Discusses major issues facing municipalities concerning franchise fees due to deregulation. States that a franchise fee is rent for the extraordinary use of a right of way. Mentions franchise fees' centrality in city budgets.
142	Rep. Johnson	States that there are utility providers who deal with private property owners exclusively, and that residents are paying this "bill." Opines that citizens don't know this.
164	Rep. Wooten	Asks which cities have been assisted by the model ordinance franchise fee structure.
170	Jordan	Answers that there have been "scores" assisted.
178	Rep. Wooten	Asks about new telecommunications ordinances.
182	Sarah Hackett	League of Oregon Cities. Discusses efforts to develop a model ordinance since the passage of the federal act.
194	Dave McPhall	Mayor of Eagle Point. Cites tremendous growth in his city. States that franchise fees, which meet a variety of service needs, is an important source of revenue. States that franchise fees in Eagle Point constitute 11% of the general fund, and that with Measure 47 revenue reductions that number will increase to 16%.
223	Rep. Johnson	Asks if those percentages represent total revenue.
227	McPhall	Answers yes. Continues that his city doesn't require a fee until a utility cuts into the road. Reports on his city's use of the funds, noting that a large percentage goes to the police department. Mentions the large percentage of general funds made up by franchise fees in smaller cities.
274	Rep. Adams	Asks if property taxes cover the police department in Eagle Point.
281	McPhall	Mentions Eagle Point's efficient use of tax money.
291	Rep. Adams	Asks if his citizens understand that they are paying franchise fees.

296	McPhall	Answers yes.
299	Rep. Adams	Asks if they know they are paying for the police this way.
302	McPhall	Mentions that his city's council has had a consistent membership.
309	Rep. Johnson	States that Eagle Point's stability is unusual. Asks if they know they are paying four times the posted rate.
325	McPhall	Responds that he doesn't know. Emphasizes that he is careful with taxpayer money.
342	Rep. Johnson	Expresses dissatisfaction with paying for something he doesn't get.
350	McPhall	Notes that 63% of his citizens are low-to-middle income, and that everyone pays property taxes for city operations.
360	Rep. Johnson	States that that is a good response.
364	Jordan	Asks how money from Rep. Johnson's utility bill goes to Eagle Point.
366	Rep. Johnson	Answers that it is "socialized" in the rates.
372	Jordan	Cites cities' efforts to publish the costs of certain services. Cites analogous situations where fees for specific services fund different services.
402	Rep. Johnson	States that there are problems with "interrelated taxes."
409	Chair Hill	Asks Mr. Jordan if cities charge fees in proportion to the immediate service.
415	Jordan	Answers that in general they are proportionate, but notes that some would argue that in general they aren't.
420	Chair Hill	Asks if this is a revenue issue or a right of way management issue.
429	McPhall	Answers that it is a right of way management issue. Talks of various water and sewer projects funded through franchise fees.
TAPE 31, A		
010	Lance Scolley	Finance Director for Roseburg. Notes that franchise fees are more important for the smaller cities. Reports that there isn't a lot of competition in his city. Mentions cities which charge the maximum amount allowed, noting that some cities can't charge the maximum amount due to contract agreements. Talks about revenue reductions due to decreasing property taxes. Mentions that there has been public discussions in Roseburg on this issue.
067	Rep. Wooten	Notes the state of Washington's uniform utility sales tax, stating that such a tax isn't mutually exclusive to cities' management of rights of way. Asks if they would be satisfied with such an option if revenues and local management of rights of way are preserved.
087	Scolley	Replies that he prefers preserving the status quo. States that people don't understand that the fees fund local governments.

102	Chair Hill	Asks how they spend franchise fees.
104	Scolley	Answers on right of way maintenance.
108	Rep. Wooten	Asks if they are imposing permit fees.
110	Scolley	Answers that in some cases they cannot charge for permits.
115	Rep. Wooten	Asks why.
117	Scolley	Answers that it is a part of franchise agreements.
118	Rep. Wooten	Again asks how franchise fee revenue is used.
120	Scolley	Answers managing, maintenance, and improvement of the right of ways.
123	Rep. Johnson	Notes that counties cannot charge for permits.
130	Chair Hill	Asks about Roseburg's franchise fee agreements with Sprint and US West.
136	Scolley	Answers that US West pays a percentage and that Sprint pays a flat fee based on the lineal foot of line.
139	Chair Hill	Asks if that structure is competitively neutral, noting that the federal act requires neutrality. Asks about possible complaints from Sprint.
143	Scolley	Answers that Sprint doesn't provide local service. Cites intensive negotiations with Sprint on that issue.
146	Chair Hill	Asks if the agreement was negotiated prior to the federal act.
148	Scolley	Answers that it was negotiated "in the midst" of the federal act.
150	Chair Hill	Asks for Sprint's flat fee per lineal foot.
152	Scolley	Answers that it is a dollar per lineal foot.
155	Rep. Adams	Interjects that franchise fees are generally imposed as rent, and that the primary purpose is to generate revenue.
170	Scolley	Notes that in Roseburg there has been an effort to use franchise fee revenue to fund transportation systems.
180	Rep. Adams	Asks if there are intergovernmental charges to water companies.
184	Scolley	Answers yes, that they are based on administrative costs and that there is an additional in lieu of tax to make it level with the franchise fees paid by utilities.
187	Gary Marks	City Manager for Heppner. Requests that changes should not result in revenue reductions. Cites a 45% reduction in his city's general funds due to Measure 5, noting his city's opposition to the measure. Talks about the struggle to maintain services. States that local rights of way would be managed neutrally.

252	Marks	Talks about an innovative design for rights of way which would include a utility strip.
267	Chair Hill	Asks if the telephone network is above ground in Heppner.
272	Marks	Answers that some of it is above ground, and some of it below ground.
279	Chair Hill	Asks if they are requiring the move to the utility strip in the franchise agreement.
283	Marks	Answers yes.
284	Rep. Johnson	Asks if the utility pays the costs of the utility strip.
293	Marks	Answers that the city funded the construction of the sidewalk, and that the utilities paid for relocation of their facilities.
302	Chair Hill	Asks if sewer and water would be included in the strip.
308	Marks	Answers that there is no need, that they would be too big.
310	Chair Hill	Asks if street cuts have been mostly from sewer and water companies.
312	Marks	Answers yes.
313	Chair Hill	Asks if this strip will have more impact in the future than it will have had in the past.
327	Marks	Answers yes, and that they are trying to be proactive.
331	Rep. Wooten	Asks if they have considered master use permits, referring to Bellevue, Washington as an example.
347	Marks	Answers that his city has a small number of street projects.
358	Glen Goodwin	Analyst in Public Works Department of the City of Springfield. Answers that master use permits have been his city's standard practice.
366	Chair Hill	Asks if they prohibit cuts after "that."
370	Goodwin	Answers no, that there would be an encroachment permit fee.
379	Rep. Wooten	Asks if they notify all the utilities when they cut a road.
389	Goodwin	States that recent cuts occurred before telecommunications providers were interested, but that in the future all parties will be informed.
TAPE 30, B		
002	Rep. Adams	Asks what they do when it is necessary to "go in."
008	Rep. Wooten	Mentions various ways of mitigating damage done to a street.
013	Goodwin	Cites efforts to mitigate damage done to the streets.

024	Rep. Johnson	Mentions utilities' complaints regarding the negotiations of franchise agreements, noting that they haven't been "timely."
033	Goodwin	Responds that the large number of competitors is a new phenomenon. States that cities need time "to come up to speed."
056	Rep. Wooten	Asks for a description of a competitive franchise agreement.
058	Goodwin	States that they don't have one.
060	Rep. Wooten	Asks when such an agreement was requested.
063	Goodwin	Answers some time last year.
065	Rep. Wooten	Asks if it costs \$5,000 to discuss terms for a franchise agreement in Portland.
067	David Olsen	Cable and Franchise Management Office for the City of Portland. Answers that there is an application fee.
071	Rep. Wooten	Mentions attempts to provide universal service in Springfield and that the city hasn't responded. Notes that in a year and a half they haven't come to a conclusion.
089	Chair Hill	Asks what would happen to the cities' revenues if this committee did notion, and in the event of power deregulation.
093	Rep. Johnson	States that it is the committee's obligation to avoid "that." Asks how the city of Portland justifies the \$5,000 fee.
096	Olsen	Answers that staffing and external consulting are required by negotiations. Adds that the fee hasn't been a burden.
110	Marks	Continues presentation. States that cities should be compensated for extraordinary use of right of ways. Notes that a significant portion of his town's population has had direct dealings with the budget. States that compensation should reflect the value of the right of way, and that the fee should not be passed on to the consumer.
157	Chair Hill	Asks if they have required that utilities pay a franchise fee when purchasing an easement on private property.
160	Marks	Answers that that has not occurred in his tenure.
162	Chair Hill	Asks if they would give consideration in such a case.
170	Marks	Responds that he doesn't know.
176	Rep. Johnson	Mentions wholesalers who don't deliver to the customer. Warns of taxing wholesale transactions because it would create a double tax passed on to the customer.
192	Marks	Agrees.
193	Rep. Adams	Asks if there is an ordinance in Heppner relating to competitive providers of telecommunications equipment.
200	Marks	Answers that they haven't had any applications.
203	Rep. Adams	Mentions the differences between Portland and Heppner. Suggests that "one size doesn't fit all."

215	McPhall	Notes that many cities are under 5000 in population.
227	Chair Hill	Asks why they didn't charge five percent.
234	Marks	Answers that they are small and remote and that electric rates are already high. States that franchise fees get passed to the consumer. Assures that they will deal with Measure 47 separate from franchise fee "hikes." Wants the ability to deal indiscriminately with utilities.
274	Goodwin	States that even if revenues were preserved at present levels he would be concerned. Refers to the cross-section of street in EXHIBIT A, p. 5, stating that it doesn't accurately reflect streets in Oregon. Notes the long histories behind streets, and that the streets aren't orderly.
317	Chair Hill	Asks for the percentage of utilities in Springfield located below ground.
323	Goodwin	Answers: 100% of sewer, water, and natural gas utilities, less than 50% of electric and telephone utilities, and 60-70% of cable utilities. Cites new requirements that all utilities be placed below ground.
336	Rep. Johnson	Asks if they would allow a utility to run their own line.
342	Goodwin	Answers that they would be subject to the same procedures.
352	Rep. Johnson	Asks if they impede competition other than the lengthy permit application process.
370	Goodwin	Responds that in most cases it doesn't take a long time to get a permit. Cites new technology which allow placing utilities without cutting into streets.
377	Chair Hill	Asks if there would be compensation for the use of that technology.
387	Goodwin	Answers no because franchise fees aren't strictly for repair or replacement of rights of way.
407	Rep. Wooten	Asks if the contract with Sprint contains a standard fee.
TAPE 31, B		
004	Goodwin	Answers that it does not, and that it is a contractual agreement.
005	Rep. Wooten	Asks if it was adopted through ordinance.
006	Goodwin	Answers no.
007	Rep. Wooten	Asks if "through transmission issues" are applicable to telecommunication franchise fee ordinances.
049	Goodwin	Answers that there would be no difference
051	Rep. Wooten	Asks if through transmission is on poles.
053	Goodwin	Believes that it is underground.
055	Scolley	States that in Roseburg it is underground.

056	Rep. Wooten	Asks if the rate per foot is based on value of the property.
058	Goodwin	Believes that it was a negotiated rate.
060	Rep. Wooten	Asks if the city charges when through transmission is conducted on wires attached to poles.
062	Goodwin	Asks for clarification of the question.
063	Rep. Wooten	Clarifies the question, asking if there would be a double tax.
064	Goodwin	Answers that in some cases they use such revenues for general purposes.
065	Chair Hill	Questions if cellular towers should be subject to franchise fees.
068	Goodwin	Answers that towers have a connection to the telephone system, and that they should be subject.
071	Chair Hill	Asks about a situation where they are purchasing service from a telecommunications provider already paying a franchise fee.
075	Goodwin	Assures that the city would make sure it received compensation only once for the use of that right of way.
080	Chair Hill	Asks if the same principle would apply when a number of companies use the same poles.
089	Goodwin	Responds that they would most likely collect from all parties.
104	Rep. Johnson	Talks about doubling-up fees.
117	Goodwin	States that it is a complicated issue.
123	Rep. Adams	Mentions that multi-providers pay a single franchise fee while single-providers pay the same fee, noting competitive neutrality implications. States that his priority is to promote competition.
144	Goodwin	Answers that multi-providers would pay two franchise fees.
150	Rep. Wooten	Interjects that the discussion demonstrates why a consistent franchise fee structure makes sense.
169	Rep. Johnson	Notes that wireless isn't taxed.
173	Chair Hill	Notes that wireless is having problems with their towers.
198	Olsen	Submits written testimony (EXHIBIT C). Emphasizes "keeping cities whole" while insuring nondiscriminatory treatment.
250	Chair Hill	Asks if his proposal is drafted.
255	Olsen	Answers that it will be within the next couple days. Continues testimony, stating that HB 2060 would in essence create a sales tax imposed on the customer.
283	Chair Hill	Asks if the witness would oppose the committee changing the existing franchise fee structure.

286	Olsen	Supports the present system where the PUC allocates "a portion in rate base and a portion in pass through to customers," adding that the bill proposes a 100% pass through.
287	Chair Hill	Asks for clarification.
290	Olsen	States that his request is based on the principle that franchise fees are rent, and that it is not fair to pass on costs to the customer.
297	Chair Hill	States that customers are paying for it in rates whether they know it or not.
300	Olsen	Discusses the total costs of utilities. Mentions power deregulation factors and his city's goals met by the bill. Suggests amendments.
325	Rep. Johnson	Mentions the possible inclusion of solid waste.
331	Olsen	Answers that there are some issues relating to the bill's inclusiveness. States that electricity and telecommunications can be treated differently in statute.
352	Chair Hill	Asks what they are proposing concerning wireless.
355	Olsen	Answers that compensation methods should be extended to include wireless' indirect use of right of ways. States that the fees shouldn't affect the customer's preference regarding technology.
374	Chair Hill	Notes that the witness' request for neutrality is reflected in compensation levels.
376	Olsen	Responds that compensation levels differ depending on the location.
380	Chair Hill	Expresses concern over companies paying rent for nothing.
392	Olsen	States that the fee heretofore has been based on use. States that wireless indirectly uses the right of way.
TAPE 32, A		
004	Chair Hill	Asks if the witness wants the committee to discuss satellites.
006	Olsen	Points out that local governments cannot tax satellite services under the federal act.
009	Rep. Johnson	Announces that these issues might ultimately end up in two bills.
014	Olsen	Expresses his appreciation of the committee's work.
016	Rep. Adams	Asks if cable is deregulated.
017	Olsen	Answers no.
018	Rep. Adams	Asks if there is anticipation that it will be.
019	Olsen	States that cable rates have been subject to regulation and re-regulation over the years based on local government decisions.

024	Rep. Adams	Asks if television cable in Portland is used for data transmission.
030	Olsen	Answers yes.
032	Rep. Adams	Asks if the witness' office in Portland helps sell capacity.
034	Olsen	Answers no, that the city is simply a user of that capacity.
036	Rep. Adams	Asks if the cable company pays a franchise fee for that capacity.
039	Olsen	Answers that up until the federal act they were subject to franchise fees, but that currently such telecommunication revenue cannot be assessed using the franchise fee format.
044	Rep. Adams	Asks if the cable company charges the city like any other consumer.
047	Olsen	Notes that schools use cable. Answers that the city has negotiated a unique agreement.
058	Rep. Adams	Asks if competitors would pay a franchise fee based on charges.
070	Olsen	Answers that the primary user is the city. Notes that they haven't heard of any complaints concerning competitive disadvantage
079	Rep. Adams	Adds that he has had calls asking if Marylhurst College would be interested in "participating," noting that apparently its a petition for business over the cable line. Refers to EXHIBIT A, p. 10, noting increasing difficulties in managing right of ways
105	Rep. Johnson	Asks if they charge cable access providers 8%.
109	Olsen	Refers to the maximum rate being set at 5% by the federal government, while allowing for additional usage by schools. States that the additional 3% was a negotiated figure for public use.
114	Rep. Johnson	Asks if they bargained for the 3% for public use.
117	Olsen	Answers yes, reiterating that it is authorized by the federal act.
118	Rep. Wooten	Asks about terms of franchise agreements concerning "in kind use." Asks what the city requires in addition to a percentage of costs.
123	Olsen	Answers that they typically charge a 5% franchise fee as well as in kind benefits. Mentions different agreements.
139	Rep. Wooten	Asks if that is an unregulated "pass through cost" to ratepayers.
142	Olsen	Answers that telecommunications providers normally serve businesses. Agrees that in kind services is a cost of business but that it is very small.
160	Chair Hill	Asks if there are any franchise agreements with telecommunications providers without in kind benefits.
163	Olsen	Answers no.

166	Chair Hill	Asks what the city gives in such situations.
168	Olsen	Mentions some possibilities.
172	Rep. Wooten	Asks what proportion of in kind infrastructure is used by the city.
178	Olsen	Notes that the franchise agreements have been recently negotiated. States that he could return with the information.
183	Chair Hill	Requests an example of a franchise agreement.
188	Rep. Adams	Suggests that the handout (EXHIBIT B) has inaccurate figures.
192	Chair Hill	Adjourns meeting at 10:40 AM.

Submitted By, Reviewed By,

Coben Tistadt, Julie Neburka,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2060, written materials, the League of Oregon Cities, 12 pp.

B - HB 2060, charts, the League of Oregon Cities, 5 pp.

C - HB 2060, written testimony, David Olsen, 7 pp.