

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

SENATE COMMITTEE ON
TELECOMMUNICATIONS AND CONSUMER AFFAIRS

May 14, 1991Hearing Room B
1:00 p.m.Tape 56 - 57

MEMBERS PRESENT:Senator Jolin, Chair
Senator Otto, Vice-Chair
Senator Kenemer
Senator Bunn
Senator Shoemaker

STAFF PRESENT: Cherie Copeland, Committee Administrator
Apryl Poff, Committee Assistant

MEASURES HEARD: SB 901 Approval of telecommunications contracts, WS.
SB 1208 State telecommunications policy, WS.
SB 1213 Telecommunications privacy policy, WS.
SB 902 Optometric practice, PUB and WS.

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

PUBLIC HEARING AND WORK SESSIONS.
TAPE 56, SIDE A

005 CHAIR JOLIN: Calls the hearing to order at 1:14 p.m.

SB 901, APPROVAL OF TELECOMMUNICATIONS CONTRACTS, WS.
Witnesses: Gary Wilhelms, US WEST Communications.
Ron Eachus, Public Utility Commission.
Pat McCormick, Electric Lightwave Inc.
Beth Kaye, MCI.
Paul Graham, Assistant Attorney General.
Chuck Leonard, US WEST Communications.
Mark Trincherro, TRACER.
Mike Kane, Public Utility Commission.

017 GARY WILHELMS: Submits and summarizes proposed US WEST Communications amendments (EXHIBIT B). The original bill was introduced as a vehicle only. The amendments proposed by US WEST include many amendments to the original proposal that we made based on working group meetings with various representatives from different interest groups in the industry. We have had a significant number of the parties concerned sign off on these amendments.

040 CHERIE COPELAND: The amendments that Gary Wilhelms is speaking about are the SB 901-1 amendments. The SB 901-2 amendments are the same as the SB 901-1 amendments with the exception of Section 3.

045 GARY WILHELMS: I believe that our latest version includes all of the PUC proposed revisions with the exception of the addition of Section 3. On page 4 sub 5 line 11 the Department of General Services has suggested, and we concur, that you delete the words "service or". This is reflected in the

new US WEST amendments. In subsection 6 line 3 the Department of General Services also would suggest that we delete the word "other".

072 RON EACHUS: The PUC and US WEST have agreed on the SB 901 amendments with the exception of section 3. The PUC wants to add section 3 to the bill because of the uncertainties that are involved in this legislation. The PUC believes that section 3 is necessary. I am speaking to what is noted as the SB 901-2 amendments. Section 3 allows the Commission to conduct an investigation into the contracts filed under section 2. If we find that the contracts have resulted in unjust price discrimination or they have created an unreasonable number of classes of customers or that the contracts are otherwise in the public interest we could prevent or restrict the utility from filing contracts in the future and require them to file them under ORS 759175.

The reason we want this section is under the bill the company is able to come in and if there is a new customer or a new service with limited availability, the company can file a special contract. The PUC can decide if a tariff is necessary because a tariff may be more appropriate. Section 3 gives the PUC more comfort with this legislation and some unknown's that may arise.

187 GARY WILHELMS: We believe that section 3 isn't necessary because the PUC has adequate review available to them under the existing statutes. The PUC can likely accomplish what they want to accomplish without the addition of this section.

208 CHAIR JOLIN: Aside from the issue of section 3 would you agree on this bill?

200 RON EACHUS: Yes. The law as we interpret it currently allows the Commission to require a tariff. However, the requirement of the tariff doesn't put a stop to the filing of the special contracts nor would we intend it to. Currently we aren't allowed to say the special contracts have gone to far.

253 PAT MCCORMICK: Submits SB 901-3 amendments (EXHIBIT C). The SB 901-2 amendments leaves one area we would like to clarify in terms of the definition of competition. The SB 901-3 amendments deal with a amendment that is added at the tail end of Section 2 (4) (a) where in the SB 901-2 amendments the language reads "in making the determination of whether a service is subject to competition the Commission shall consider whether the customer might reasonably chosen a alternative to the telecommunication utility service." We have added on "substantially similar in function and technology and available from a alternative provider in the relative marketplace under comparable rates, terms, and conditions."

Our belief is that this helps assure that what we are talking about is affective competition, that an alternative in its broadest sense could be any alternative that a customer could choose including not to add a service. We want to be able to make certain that there is genuine competition available when they're contracting for services in those areas.

301 GARY WILHELMS: Gives testimony in opposition of the McCormick amendments (Exhibit C). The language would make it difficult for the PUC to make a determination or open up a lot more questions thus clouding the approval process for contracts.

320 CHUCK LEONARD: The additional language introduces additional questions for the Commission to consider in terms of determining what is substantially similar. The intent we have in terms of introducing this bill is to eliminate uncertainty around whether contracts

will or won't be approved.

350 GARY WILHELMS: Using the word technology where it says "substantially similar in function and technology" I don't know that you would want to lock something like that in statute anyway because technology is what's driving the marketplace today and technology changes.

360 SENATOR BUNN: Do the SB -3 amendments incorporate both the PUC amendments and your proposed amendments.

365 PAT MCCORMICK: They just deal with the changes we proposed. Section 2 is the same in both the SB 901-1 and 901-2 amendments so it would really incorporate whichever of those -1 or -2 versions you choose. We would support the -2 amendments with the Section 3 from the PUC.

388 CHAIR JOLIN: Pat McCormick's amendments are noted as SB 901-3 amendments. The PUC is noted as SB 901-2 amendments. The major difference between -2 and those noted as US WEST is that the -2 include the inclusion of Section 3 US WEST doesn't.

433 SENATOR SHOEMAKER: In the -2 amendments there is a subsection 10 of Section that doesn't appear in the SB 901-1 which says that "nothing in the Section shall restrict the Commission from subsequent screwy of the reasonableness of contracts filed under the section for the purposes of determining just reasonable utility rates." Do you have any problem with that?

445 PAT MCCORMICK: No.

450 SENATOR SHOEMAKER: Do any of your clients have a position on Section 3?

453 PAT MCCORMICK: We support Section 3.

455 SENATOR SHOEMAKER: How strongly do you feel about retaining the words "and technology" in the US WEST and the PUC amendments?

490 PAT MCCORMICK: We aren't intending with this language change to do anything that slows up the process. It's our view that this language rather than confusing helps clarify.

TAPE 57 SIDE A

055 BETH KAYE: MCI supports SB 901-2 as proposed by the Commission. We also support the SB 901 -3 amendments proposed by ELI. The Commission's change provides a safety net. ELI's change is appropriate because we want to keep special contracts. Section 2 (6) I feel is a right that belongs to the customer but I don't think it's a right that belongs to the telecommunications utility. I would propose ending the sentence after "customer" and striking the last four words "and the telecommunications utility."

110 GARY WILHELMS: By deleting the term "and the telecommunications utility" we feel that puts us at a competitive disadvantage. We then wouldn't be able to block what we consider to be proprietary information being disclosed to our competitors.

120 SENATOR SHOEMAKER: I'm wondering how effective that deletion would be. I would imagine that in your contract that your customer wouldn't consent.

137 GARY WILHELMS: On page 4 line 7 we would suggest on behalf of General Services that you delete the words "of service." The other change we would suggest is that on page 4 line 11 there was

concern over the phrase "the Commission shall not disclose the identity of a customer or any other customer proprietary information." General Services suggested that we drop the word "other."

155 PAUL GRAHAM: This wording is based on another statute ORS 756515 Sub 5. I don't know why General Services is proposing the change perhaps they don't understand what service means. This legal buzz words. What we are talking about when we say service is not getting service from the phone companies, we are talking about being served legal documents. Within 15 days after you get the order in your hand that's when you make your request for a hearing.

171 MARK TRINCHERO: I spoke with General Services and they said that it was a typo. The word "or" instead of "of" confused General Services this deletion isn't necessary.

175 CHAIR JOLIN: On line 7 because it has "of service" in there those words don't have to be deleted. So it would read "15 days after the date of service of the order."

MOTION: Moves that General Services changed be accepted.

VOTE: There being no objection the motion carries.

205 PAUL GRAHAM: I would like to propose a couple of changes to HB 290 3-A. In line 26 strike the wording before the comma after 1993 so it says "on or after October 1, 1993." The section would then begin with "The Commission may." The reason for the change is because when we first drafted the bill we assumed that the Commission would have a 2 year waiting period. The Commission discussed it and decided that they didn't want to be bound by the 2 year waiting period, it would like to act right away. The second change on page 29 would be to strike the word "price" and the word "unjust should be put in there.

237 CHAIR JOLIN: In eliminating the "on or after October 1993", haven't you gone back in time to where we stand today where once a contract is entered the PUC can intervene at any time?

250 PAUL GRAHAM: Section 3 is designed to say that prospectively if the Commission determines that the problems that are enumerated in Section 3 are found to exist, then the Commission can prospectively restrict the ability of a telecommunications utility to use the SB 901 procedure.

285 CHUCK LEONARD: We feel that section 3 isn't necessary in this bill because we think that the incentives are there for the company to behave in a prudent matter. The down side as we see it is that it introduces the opportunity for more proceedings before the Commission in order to examine this.

320 CHAIR JOLIN: We need to come to some conclusions on Section 3. What is the committee's view?

325 SENATOR BUNN: I don't feel that Section is needed. Why would we want the Commission to wait until October of 1993 when we will be looking at January? I think that there is a real incentive not to abuse the rights granted through the bill because we will be back looking at it in 2 years if that happens.

343 SENATOR SHOEMAKER: I am in favor of Section 3. We are venturing on new ground and it's appropriate that we keep a hand on it and that the hand is exercised heavily.

MOTION: Senator Bunn moves to delete Section 3.

VOTE: In a roll call vote the motion carries with Senators Jolin, Bunn, and Otto voting "AYE." Senator Shoemaker votes "NAY." Senator Kennemer is excused.

360 SENATOR SHOEMAKER: The law firm that I'm with represents TRACER and therefore I am disclosing a potential conflict.

365 Senator Kennemer arrives at 2:07p.m.

377 BETH KAYE: I propose striking the words "and the telecommunication utility" from Section 2 (6) on the grounds that only the customer should have the right to control it's proprietary information.

392 GARY WILHELMS: We believe that if you delete that language it would give our competitors and potential competitors access to information we would consider to be proprietary.

400 CHAIR JOLIN: Asks if there is a motion to delete "and the telecommunication utility" and there is none.

MOTION: Senator Shoemaker moves the SB 901-3 amendments.

445 CHUCK LEONARD: Our concern with respect to the amendment is the uncertainty it introduces. When you get words such as substantially, similar, and comperable you introduce a lot of judgement into a process in a bill in which we are trying to provide certainty so we can communicate to the customers that we have met the standard required in order to get the Commission's approval.

TAPE 56 SIDE B

038 VOTE: In a roll call vote the motion fails with Senator's Jolin, Bunn, Kennemer, and Otto voting "NAY." Senator Shoemaker voting "AYE."

040 GARY WILHELMS: On page 4 of the SB 901-2 amendments line 25 we would suggest that the whole line be deleted and have the line read "Contracts filed under this Section for ratemaking purposes." We believe that it means the same thing just stated more clearly.

052 MOTION: Chair Jolin moves on page 4 line 25 that we delete "the purposes of determining just and reasonable utility rates." And in leu of that add the words "ratemaking purposes."

VOTE: There being no objections the motion carries.

076 MARK TRINCHERO: We have one issue with the bill that involves Section 2 (5) which deals with the timing of filing the contracts and the review period that the Commission would have on these contracts. One of TRACER's primary concerns with this bill as initially drafted was that it allowed the company to file the contacts up to 90 days following the effective date of the contract. TRACER sought to have some language added to the bill which was added in Section 2. TRACER would like a amendment to Section 5 line 1 so that the effective date would be 60 days. We would be willing to settle for changing the 30 days in Subsection 2 to 60 days. And change the 90 days in Subsection 5 to 60 days.

113 MIKE KANE: In Subsection 5 ordinarily 60 days would be an adequate amount of time but this is contingent upon US WEST filing adequate information. The 90 days is to ensure that we don't have to go through the process again because of the Commission and because of lack of information. Sub 5 of subsection.

139 SENATOR BUNN: Is there anything that prevents a customer from stipulating that the effective date would come after the 90 days has expired with the PUC.

145 MARK TRINCHERO: The problem with that is that the Commission has 90 days in which to review the contract. The customer agrees with the company to not have it's service to come on line until the Commission acts.

176 SENATOR SHOEMAKER: Is it possible to find a compromise where the PUC would have to act within 60 days unless within that time it requests additional data not supplied in which case it would have an additional 30 days?

183 MARK TRINCHERO: This would be agreeable to TRACER.

185 CHAIR JOLIN: I think that would require a lot of language to address that appropriately. I'm willing to pursue that issue on the House side.

187 SENATOR SHOEMAKER: Could we adopt this in concept and pass the bill the language would then be provided by LC.

190 CHAIR JOLIN: We could do that but your not always guaranteed that this is going to get you where you want to go.

195 SENATOR BUNN: The issue doesn't seem to be critical to the base premise of the bill. I would like to get this bill out today and if they want to deal with this in the House then so be it. I don't think that it needs to happen to make the bill work and I'm not comfortable tacking that on and hoping that it will work.

MOTION: Chair Jolin moves SB 901-2 as further amended.

VOTE: There being no objections the motion carries.

MOTION: Chair Jolin moves SB 901 as amended to floor with a Do Pass recommendation.

VOTE: In a roll call vote the motion carries with all members voting "AYE."

240 Senator Bunn will carry the bill.

SB 1213 TELECOMMUNICATIONS PRIVACY POLICY, WS.

Witnesses: Ginny Lang, US WEST Communications.
Mike Kane, Public Utility Commission.
Maurice Astley, Oregon Independent Telephone Association.

260 CHERIE COPELAND: Submits and summarizes SB 1213-4 hand-engrossed amendments (EXHIBIT D). The amendments are a substitution of some simpler language that was worked on by a working group. Section 2 was deleted completely and a new Section was created.

285 GINNY LANG: US WEST has no problems with the changes in the SB 1213-4 amendments.

310 MIKE KANE: The Commission suggests that in line 4 that you delete the word "issues" and

replace it with "issue."

325 SENATOR KENNEMER: How much would this bill change the way the Commission operates?

327 MIKE KANE: We don't envision that this will change how the Commission operates. Currently we are having an investigation of caller ID which privacy is a important issue in that docket.

365 SENATOR SHOEMAKER: Is the industry as a whole is comfortable with this?

375 MAURICE ASTLEY: We feel that the language is redundant to the Commissions own current capabilities. They already have a privacy docket. We don't feel that privacy should be in statute.

397 SENATOR SHOEMAKER: Does having this policy in statute give you anything that you don't already have?

403 MIKE KANE: We don't absolutely need this legislation. The Commission thinks that this would be helpful to have some kind of guidance from the legislature in some kind of a policy statement.

MOTION: (By inference) Chair Jolin moves SB 1208 as amended.

VOTE: In a roll call vote the motion fails with a members voting "NAY."

SB 1208, STATE TELECOMMUNICATIONS POLICY, WS.

483 CHERIE COPELAND: Submits and summarizes the SB 1208-1. The first 3 pages of the bill remain the same. Section 2 of the amended bill outlines the legislative goals for a integrated private and public telecommunications infrastructure that provides voice data an image information services.

TAPE 57 SIDE B

035 CHERIE COPELAND: It also instructs the Economic Development Department to conduct research and development of recommendations for a strategic telecommunications infrastructure plan for the state. Section 3 of the proposed legislation instructs the State Executive Department to do a survey of telecommunications equipment that the state has and to provide maps of locations and descriptions and the types of equipment. They would give all of this information to the Economic Development Department which would use it in formulating its recommendation to the Trade and Economic Development Committee.

In Section 4 the Trade and Economic Development Committee would use the recommendations developed by the Economic Development Department for making legislation for the 1993 session. Section 5 would make SB 1210, if enacted into law, comply with the policy in SB 1208. Section 6 sets forth the funding of this project. Section 7 has a space where we can fill in how much money is to be given to the project.

089 CHAIR JOLIN: I have agreement from the Senate President and the Senate Majority Leader that we may be permitted to send this bill across the Senate floor to the Business and Consumer Affairs Committee and then down to Ways and Means to get it running through the process. We have a \$200,000 commitment from lottery dollars under the key industries provisions of the lottery allocation bill.

101 CHERIE COPELAND: Under the amended bill the Economic Development

would handle
functions outlined for the PUC.

MOTION: Senator Kennemer moves the SB 1208-1 amendments.

VOTE: There being no objections the motion carries.

MOTION: Chair Jolin moves SB 1208 as amended to the floor with a
Do Pass recommendation.

VOTE: In a roll call vote the motion carries with all member
voting "AYE."

Senator Jolin and Senator Duff will carry the bill.

SB 902, OPTOMETRIC PRACTICE, PUB AND WORK SESSION.

Witnesses: Charles Radebaugh, Oregon Optometric Association.
Robert Ford, Pacific Cataract and Laser Institute.
Charles Hikes, Eyecare Northwest.

145 CHARLES RADEBAUGH: Submits and summarizes written testimony in favor
to SB 902
(EXHIBIT G). The purpose of this legislation is to increase the scope of
practice of optometry to
include therapeutic medications to treat eye diseases that optometrists now
diagnose. The purpose of this
bill is to provide greater access to eye care in Oregon and maintain the
public's right to choose their
provider of eye care. SB 902 requires every optometrist to pass an
examination. No "grandfathering"
is allowed. SB 902 doesn't permit invasive surgery, injectable drugs, or
schedule 1 or 2 controlled
substances. It allows removal of superficial foreign bodies. The Oregon
Board of Optometry will
establish procedures and pharmaceutical agents with the advice and guidance
of the Board of Medical
Examiners.

207 ROBERT FORD: Submits and summarizes written testimony in favor to SB
902 (EXHIBIT H).
Relations between ophthalmology and optometry in general are frequently
dominated by competition and
turf issues. Optometry as a profession has grown progressively more
sophisticated and capable. The
most frequent argument used has been that patients will suffer when
practitioners practice beyond their
training. The real issue of public safety lies with the morality, honesty,
and faithfulness of each person
using their own judgement to manage only things for which they are
qualified, and to get consultation
or make referrals when necessary. My experience with optometry is that
they are as a whole, above
average in their commitment to providing quality care to their patients and
requesting assistance or
making referrals whenever a particular case is beyond their knowledge or
training.

265 CHARLES HIKES: Submits and summarizes written testimony in favor to
SB 902 (EXHIBIT I).
My experience with optometrists indicates to me that Oregon optometrists
are qualified and capable of
using therapeutics safely. I have been impressed with the willingness and
judgment of optometrists to
seek further consultation for those patients with medical problems that are
beyond their capabilities. I
have every reason to believe that the same attitude would carry over to the
use of therapeutics.
Optometrists are trying to provide primary eye care to the people in their
communities but without the
ability to use necessary therapeutics for patients who require them. This
means that the optometrist must
refer the patient to an ophthalmologist elsewhere or to the local family
physician. I feel that strongly that
the average optometrist is better equipped by training and experience to
diagnose and treat eye disease

than the average physician. My eye training in medical school consisted of 3 weeks. I think my experience is common, medical schools spend very little time teaching eye pathology and therapeutics.

325 SENATOR KENNEMER: Would you elaborate briefly on why an optomologist's office is better equipped to detect almost any eye disease?

332 CHARLES HIKES: Ophthalmologists and optometrists use specific instruments to look at the eye mainly under magnification to see if their are foreign bodies embedded in the cornea or if their are certain diseases. Those instruments aren't available in a general medical office nor are they available in a hospital. For that reason, on occasion family physicians make therapeutic decisions that are inappropriate.

346 VICE-CHAIR OTTO: I object to this bill because it's being gut and stuffed.

370 MOTION: Senator Bunn moves the SB 902-1 amendments.

VOTE: The motion carries with Senators Jolin, Bunn, Kennemer, and Shoemaker voting "AYE." Senator Otto voting "NAY."

MOTION: Senator Bunn moves SB 902 as amended to the floor with a Do Pass recommendation.

VOTE: In a roll call vote the motion carries with Senators Jolin, Bunn, Kennemer, and Senator Shoemaker voting "AYE." Senator Otto voting "NAY."

Senator Kennemer will carry the bill.

420 CHAIR JOLIN: Adjourns hearing at 3:10 p.m.

Submitted by: Reviewed by:

Apryl Poff Cherie Copeland
Committee Assistant Committee Administrator

EXHIBIT LOG:

- A - SB 901-2 hand-engrossed amendments submitted by staff, 4 pages.
- B - SB 901 amendments submitted by US WEST Communications, 5 pages.
- C - SB 901-3 amendments submitted by Pat McCormick, 2 pages.
- D - SB 1213-4 hand-engrossed amendments submitted by staff, 2 pages.
- E - SB 1208-1 hand-engrossed amendments submitted by staff, 6 pages.
- F - SB 902 hand-engrossed amendments submitted by staff, 5 pages.
- G - Written testimony submitted by Charles Radebaugh, 19 pages.
- H - Written testimony submitted by Robert Ford, 1 page.
- I - Written testimony submitted by Charles Hikes, 2 pages.