

TELECOMMUNICATIONS

Telecommunications

Telecommunications Overview

The most notable item in telecom was what didn't happen. For the past several legislative sessions, cities have had to fend off attempts by the telecom industry to eliminate or restrict our existing franchise fee authority, this session the issue shifted from the legislature to the courts. There are two relevant cases pending, the first is before the Federal Appeals Court where Qwest has appealed the Federal District Court ruling in favor of city franchise authority in the Qwest Portland case. The second case is *Qwest v Eugene*, pending before the Oregon Supreme Court, a case where Qwest is yet again appealing a lower court ruling in supporting city taxing authority.

There was an early skirmish on legislation sponsored by the Oregon Cable Telecommunications Association (HB 2442 & HB 2443) to restrict local government's ability to provide telecom services. This bill could stifle efforts to bring advanced telecom/broadband services to underserved areas of the state. A coalition of groups spearheaded by the League and including the Oregon Municipal Electric Utilities, the Association of Oregon Counties, the Oregon Peoples Utility Districts and the Eugene Water and Electric Board was effective in marshalling legislator's opposition to the preemption.

Toward the end of the session, AT&T Long Distance asked legislators to set up an interim committee address the "Eugene" situation on franchise fees. Finally, what we determined that meant was that AT&T Long Distance is concerned that franchise fees for Incumbent Local Exchange Commission: i.e. Dial Tone Previsions are spelled out in the statutes and that is not true for competitive providers. The company has also expressed concern over an additional tax that Eugene levy's on all telecom providers that have facilities in the city, including wireless providers. Many of the claims AT& T Long Distance makes about unfairness are at the heart of two court cases in Oregon. Neither cities nor much of the industry is interested in pursuing these issues until the court cases are disposed of. Many stakeholders have no interest in the type of "Ground Hog Day" type task force that met through 1999-2000 interim ago. The Senate president's office is evaluating the AT&T request for an interim group in light of other requests and priorities.

Finally, the 2001 Legislature passed SB 765, creating the Oregon Telecommunications Coordinating Council, a 12-member interim task force, which includes city officials. The Council was charged with studying approaches to provide coordinated statewide, regional, and local telecommunication services, including providing services to unserved or underserved areas

of the state. The council also studied the manner in which telecommunication investments can be coordinated to facilitate partnerships between the public and private sectors and between state and local governments. The council championed several bills two of which we describe below.

◆◆◆TELECOMMUNICATIONS - PASSED BILLS◆◆◆

HB 2230: Slamming

Effective Date: January 1, 2004

Chapter 642

This bill allows the Public Utilities Commission to assume primary responsibility for resolving consumer complaints relating to unauthorized changes in telecommunication carriers in violation of federal laws, popularly referred to as “slamming”. It is the practice of changing a consumer’s telephone service without permission. Currently the Federal Communications Commission has primary responsibility and this would allow the PUC to take on that responsibility.

HB 2304: Oregon Broadband Policy

Effective Date: January 1, 2004

Chapter 556

This bill was introduced at the council’s request. HB 2304 is designed to encourage a policy for, and implementation of, broadband telecommunication service in Oregon where it does not already exist in order to ensure sufficient infrastructure for public safety agencies.

The bill requires the Director of the Office of Emergency Management to make rules to administer the policy and to provide for and staff the emergency operations center to aid the governor and department in performing duties related to homeland security protections and emergency communications.

HB 2577: Oregon Telecommunications Coordinating Council (OTCC)

Effective Date: September 17, 2003

Chapter 775

The 2001 Legislature created the Oregon Telecommunication Coordinating Council, a 12-member interim task force as discussed in the introduction to this section.

HB 2577 modifies name, membership, and duties of Oregon Telecommunications Coordinating Council (OTTC) and changes the council sunset date from January 2, 2004 to January 2, 2006. The council will grow to 19 members with increased membership from geographic areas, cities, one additional industry representative and several representatives of education at all levels. The bill sets state policy on broadband services including education providers “to provide broadband access for the surrounding community.”

The bill contained a curious provision that directs the Public Utility Commission (PUC) to include in its annual report the number of public bodies providing basic telecommunications

infrastructure so that private entities (customers) may use the information to provide advanced information and communications services. That “private entities” are customers was clarified on the record by Senator David Nelson (R-Pendleton) at the request of the League and the city of Portland. Cities will receive a survey from the PUC.

The OTCC is directed by the bill to work with health care education providers and the health care industry to develop a plan that uses existing resources to connect education and health care communities for health care education throughout the state. The bill allows the Economic and Community Development Department to seek federal or private funds to implement the plan.

❖❖❖TELECOMMUNICATIONS - FAILED BILLS❖❖❖

HB 2359: All Franchise Fees on Bill

This bill would have required that all privilege taxes charged by cities for use of streets, alleys or highways by telecommunications utilities and some others be charged pro rata to customers of the telecommunications companies. It would have had the effect of converting those charges into a sales tax on city residents. And it would have provided special treatment for telecommunication companies. In addition, Qwest could not be required to reduce its rates to take out the amount that they could now charge on top of rates providing a multi-million dollar windfall. It did not get a hearing at the legislature.

The PUC did discuss the bill. The Commissioners were very familiar with the issue. They agreed that they were opposed to the windfall for Qwest that would result.

HB 2442/HB 2443: Public Sector Network Restrictions

These bills are a reprise of HB 2680 from the 2001 legislative session. They attempted to place anti-competitive restrictions on the public sector and municipal telecommunications networks formed to provide service to third parties. These third parties include schools, other governments and public safety entities. Some of the elements of these proposed restrictions included requiring elections and imputing of indirect costs. The bills were designed to create a hostile environment for municipal networks.

When it became clear that the same coalition of rural, urban, consumer, public power and municipal representatives would oppose these bills and that there were not enough votes to pass them on the House floor, the bills died in committee.

HB 2443: Public Sector Network Restrictions

See HB 2442 above.

HB 3190: Community Right to Serve

This bill was introduced at the suggestion of the coalition that formed during the defeat of HB 2680 in the 2001 Session. It would have provided a statutory right to cities and counties to provide telecommunications or cable television services in their community.

HB 3260: Customer “Bill of Rights”

This was another bill introduced at the suggestion of the coalition that had opposed HB 2680 in the last session and would provide a comprehensive set of consumer rights. It was an effort to educate the legislature on the current situation in telecommunications.

HB 3447: Fees on Satellite Companies

This bill would have required the city to impose any fees, other than franchise fees, that it imposes on cable television providers on direct broadcast satellite (DBS) providers. This would have created many problems and litigation. Federal law prohibits local governments from taxing DBS. Fees are imposed for service, such as permit fees. Some fees that are logically applicable to those in the right of way are not logically applicable to a satellite dish.

A proposal to amend this bill to find a franchise fee type of mechanism to “level the field” between cable and DBS was not discussed by the cable industry.