

September 30, 2002

Oregon Telecommunications Coordinating Council
c/o Mr. Bill Penhollow
Association of Oregon Counties
PO Box 12729
Salem, OR 97309

Re: Request from the Oregon Telecommunications Coordinating Council (ORTCC) for
Consultation with the Commission

Pat McLarney recently contacted Phil Nyegaard of our staff seeking help with two matters being considered by the ORTCC. The first is a group of proposed telecommunications benchmarks included as part of a report to the Legislature and Governor. We have reviewed the proposed benchmarks. Our information on most of the benchmarks is quite limited because they are primarily concerned with services over which we have little or no jurisdiction. States do not have regulatory authority over Internet services, and our authority over broadband services is also limited. States used to have authority over Digital Subscriber Line service, for example, but the Federal Communications Commission preempted that authority several years ago. The only data we have concerning the benchmarks relates to benchmarks a2, which concerns plain old telephone service, and a7, which concerns custom calling features. The rest of the required data is probably only available on a voluntary basis from the companies that provide the services.

Pat also asked for our thoughts concerning draft legislation that would permit us to take into account the economic development impacts of our decisions. If such legislation is introduced, it must include clear recognition of the legal framework under which we operate. That is, obligations imposed by federal and state law, as well as legal precedent, must be recognized. We would be happy to discuss these constraints in more detail if it would help. The requirements of the Telecommunications Act of 1996 require us to make certain decisions that might be perceived by some as being antithetical to economic development. In addition, the requirements of ORS 756.040, as amended in 2001, and the Hope decision of the United States Supreme Court greatly limit regulatory freedom to make decisions based upon a desire to promote economic development. This is not to say that we would oppose such legislation. We are only asking that it recognize the totality of our responsibilities.

If we can be of further assistance to the ORTCC, please feel free to contact us.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan Smith
Commissioner