

**RURAL TELECOMMUNICATIONS PUBLIC POLICY ISSUES
(Comments at the Eastern Oregon Telecommunications Forum)**

by
Edwin B. Parker

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The Mission Statement of the Oregon Telecommunications Coordinating Council (ORTCC) says,

“Provide all Oregonians with affordable access to broadband digital applications that will improve the Oregon economy, improve the quality of life in Oregon communities and reduce the economic gap between well-served and underserved Oregon communities for present and future generations.”

That mission statement provides a good general summary of the telecommunications policy goal recommended by rural Oregonians for the entire state. A number of specific public policy issues should be addressed to reach that lofty goal.

1. Legislate New Authority for Oregon Public Utility Commission (PUC)

Previous Oregon PUC commissioners have said, on advice of counsel, that under current Oregon law, the PUC has no authority to take into account the impact of PUC decisions on the Oregon economy, rural or urban. They have said that, in effect, the PUC is restricted by Oregon law to protecting consumers. However, in practice, rural consumers typically have no voice in PUC proceedings and the result has been more of a focus on protecting urban consumers. If new legislation is needed to give the PUC authority to take into account the effect of its decisions on the economy of Oregon in general and the rural economy in particular, then let us join together to create such legislation. The Oregon Telecommunications Coordinating Council is prepared to recommend such legislation. PUC decisions on telecommunications policy that are made without taking into account the effects on telecommunications infrastructure investments that are critical to the future of the Oregon economy could cause serious harm to rural Oregon and to the state economy as a whole.

We understand that State and Federal law will continue to prohibit the PUC from requiring private sector businesses to make investments that they believe will not provide a sufficient return on investment. Nevertheless, the PUC could be given broader authority to ensure that its decisions do not have negative impacts on the Oregon economy. The PUC could provide regulatory incentives for carriers to assist in the transition from analog telephony monopolies to a competitive digital broadband world. The key issue today is NOT “what is the price of local phone service?” nor “how can we keep carriers from charging too much?” Competitive pressures will help to keep rates reasonable. The key issue today is how to provide incentives for investment and incentives for public-private partnerships to speed the transition to the

new digital broadband infrastructure that will be essential for the 21st Century economy in all communities.

2. A PUC Should Facilitate Public-Private Partnerships

Whether or not there is new Oregon legislation on the role of the PUC in the Oregon economy, the PUC should work cooperatively with carriers and local governments to create public-private partnerships to invest in rural telecommunications infrastructure in locations where private sector funds are not available because the projected return on investment is insufficient. We need to find a way to stimulate joint public-private investments instead of wasting both private and public sector funds in needless legal, political and regulatory battles over the right of local governments to invest in essential infrastructure. Competition can work in urban settings. To solve problems in rural Oregon we need to cooperate. We need to protect the right of local governments to invest in essential infrastructure when the private sector is unable or unwilling to invest. But, more importantly, we should focus on ways to combine private sector and public sector investment in public-private partnerships to build essential infrastructure that is uneconomic for the private sector alone. The Oregon PUC can play a key role in sponsoring and supporting that public-private dialog.

Someone once said, “Those who do not learn from the mistakes of history are doomed to repeat them.” That is true, but too pessimistic. I would rather restate the aphorism to say, “Those who do not learn from the successes of history are doomed to miss future opportunities.” The great success story in rural telecommunications in Oregon is the Qwest investment in high-capacity self-healing fiber optic rings, voicemail, broadband Digital Subscriber Line services (DSL), Asynchronous Transfer Mode (ATM) switches, and other rural investments requested by rural communities in a process established by SB622 several legislative sessions ago. Without that program, many rural Oregon communities would not have reliable broadband inter-exchange capacity, voicemail, DSL, fiber spurs to industrial parks and other infrastructure that local communities deemed important to their economic future. None of those investments met the carrier’s normal return on investment requirements to get into their capital budgeting process. That success was due to a three-way partnership: the PUC, Qwest and a group of rural Oregonians representing a broad range of community and economic development interests. Without the PUC rate case pressure on Qwest (then US WEST), it would have been difficult to achieve a political compromise between Qwest and rural interests to get the legislation passed and the rural infrastructure in place. That was a successful public-private partnership on a large scale and was a win-win proposition for all parties.

The most serious telecommunications infrastructure investment needs in rural Oregon are now in territories of telephone carriers other than Qwest. Let’s start a three-way dialog among the PUC, the carriers and representatives of rural communities to find out what it will take to fix the problems and facilitate the transition to a new digital broadband world for the rest of rural Oregon. Let us first get the parties to the table so we can figure out how to cooperate. With enough goodwill, and clear understanding

by all parties that telecommunications carriers have a fiduciary responsibility to their shareholders not to make uneconomic investments, we should be able to find mutually satisfactory arrangements that meet the needs of all parties, just as was done with Qwest.

3. Federal Initiatives to Stimulate the Transition to Broadband

Many, if not most, of the telecommunications policy decisions affecting the economy and quality of life in rural Oregon will be made in Washington, DC, not in Salem, Oregon. It will not be easy for the Federal Communications Commission (FCC) (with or without additional legislative guidance) to finish the task of unscrambling the convoluted flow of funds in the telecommunications industry that developed over nearly a century of regulation. Since access charges, inter-carrier compensation and universal services fund issues are all inter-related, it may be difficult to deal with any one of these complex policy issues without dealing with others at the same time. We have a complex system in which changes in one part impact other parts. If we try to make changes that merely reallocate a fixed amount of resources there will be winners and losers, with a lot of regulatory and legal gridlock as parties try to win the most they can or delay any negative consequences within the old regulatory structure. While that gridlock continues, the available pool of funds will decrease, as customers turn to unregulated or less regulated alternatives, such as wireless or Internet telephony. Instead, we may need to relax some constraints on the current system and create incentives for transition to more advanced networks with a lower underlying cost structure.

Instead of using Federal policy to try to keep local telephone rates artificially low for everyone we should let local telephone rates rise to competitive market prices and use universal service funds to protect the truly needy. Instead of subsidizing local telephone rates for the 95 percent of Americans who already have telephone service, we should subsidize the five percent who do not have service and the 10 to 15 percent who may need assistance if local analog telephone rates go too high before we complete the transition to a lower-cost multi-application digital network. Keeping local rates low for analog telephone service for everyone was for many years a major policy goal. That is the goal we should give up as we focus on stimulating the transition to a new broadband digital world. Artificially low local telephone rates inhibit the competition that Federal telecommunications policy is supposedly promoting. Let the market decide local telephone rates for those people and locations not in need of subsidy. One change needed will be to eliminate subsidies based on per minute long distance calling and replace them with subsidies that more accurately correspond to the real costs of providing access to long distance service, namely peak load capacity. A subsidy scheme that causes expensive fixed capacity to go unused for artificial reasons is an economic waste.

We will also need to reform the high cost fund portion of universal service funds (the portion that helps rural telephone carriers) so that local rural telephone rates do not

greatly exceed rates in urban locations. Indefinite continuation of high cost fund subsidy of rural analog telephony will harm rural consumers and businesses by delaying the transition to multi-application broadband digital networks. Instead, regulators might consider transitional alternatives, such as continuation of support for analog telephony only networks for a limited period (for example, seven years). During that transitional time accelerated depreciation could be used to expense current equipment. During and after the transition, other subsidies could be directed to new broadband multi-function digital networks. That would be more responsive to the Federal legislative mandate to promote “advanced services,” a mandate that has been largely ignored for the past decade.

Voice over Internet Protocol (VoIP) will be a key application that could stimulate universal access to broadband digital infrastructure and the myriad of other new applications such infrastructure will permit. Subjecting VoIP to the full regulation of current wireline telephony would be harmful to rural communities, because it would delay that transition. The underlying cost structure for voice telephony and many other applications will be much lower once we get through the difficult transition.

The rural goal in this process should be clear: Protect rural communities and rural people from becoming victims in the transition from an age of narrow-band analog telephone monopolies to an age of broadband digital multi-media telecommunications competition, using networks with a lower underlying cost structure and more advanced services capabilities. We do not want rural communities to be stuck with only old technologies when their urban competitors have modern telecommunications services. And we certainly do not want rural communities to lose services or pay extremely high monopoly prices if a policy of letting competitive market forces determine outcomes fails in small rural markets.

4. Oregon PUC Should Expand Local Calling Areas

The Portland metropolitan area has a multi-county Extended Area Service (EAS) local calling area. Beginning in October, Southern Oregon will have a multi-county EAS. Rural counties outside the I-5 corridor do not have multi-county EAS. Instead, they have high intra-county toll rates that sometimes make local in-county calling costs higher than calling New York. High intrastate toll rates are the result of an historical subsidy system that was aided and abetted by the PUC to keep local telephone service rates low for urban consumers. It is, and always was, a perverse subsidy that harmed rural Oregonians in order to benefit urban Oregonians. Intrastate toll rates were kept substantially above cost in order to keep “local” rates low. Rural Oregonians, on average, have lower incomes than urban Oregonians, but are more dependent on long distance calls for most services than urban Oregonians. Long distance charges are a much higher percentage of total telephone bills for rural Oregonians than they are for urban Oregonians. These artificially high intra-state toll rates harmed rural businesses in two ways. They created higher costs for rural businesses (compared to urban businesses) and they created a high economic and psychological cost for potential urban customers to contact rural businesses.

You might well ask, “What does that ancient history have to do with us now that intrastate toll is a competitive deregulated service?” I suggest that the PUC has regulatory tools to deal with the issue. The issue is not what competitive long distance carriers charge their customers, but what local telephone carriers charge long distance carriers per minute of access. The PUC has a legislative mandate to promote competition. Undoing an old implicit subsidy program aimed at all local telephone users and replacing it with explicit subsidies targeted only to needy people and needy communities would better promote those competition goals. Failure to act could create worse problems for rural carriers that depend on the current subsidy mechanism, because those revenues will be lost as consumers find competitive alternatives. Not acting will also create pressures on the state universal service fund that may make that already serious problem nearly impossible to solve. Long distance tolls are going to disappear in any event, to be replaced with flat rate calling plans, no matter what regulators do. Traffic will inexorably be diverted to wireless carriers that offer rates that are independent of distance and that do not pay into the universal service fund to support rural carriers. Traffic will also be diverted to Voice over Internet Protocol (VoIP) providers that offer unlimited nation-wide calling for a flat rate of about \$30 per month. If any of you think VoIP is not coming soon to rural Oregon, think again. And ask Wasco County, which has already converted to VoIP to meet tight budget requirements in tough economic times. VoIP providers do not pay into the universal service fund, nor do they pay terminating long distance access charges to local phone companies. Sustaining the present system in that environment will be impossible. Attempting to regulate VoIP at the state level will be an exercise in futility because it would only lead to legal cases in which the courts will uphold Federal Communications Commission pre-emption.

I have a radical suggestion: For the sake of the Oregon economy, create a state-wide EAS local calling area. The result would be a gigantic stimulus for the entire Oregon economy and would be particularly helpful for rural communities. It would undo the perverse effects of past policy and save rural telephone carriers in Oregon from the immediate economic risk of losing essential revenues. The PUC would basically be removing the per minute long distance call fees now paid to local providers and replacing it with a capacity fee that is not traffic sensitive. As a consequence the PUC would make Oregon an ideal state in which to do business in the Internet age and would truly level the playing field between rural and urban businesses.

The PUC will hear objections that this will raise local rates and jeopardize the policy goal of universal service. My answer is that most Oregonians do not need an artificial subsidy to keep local rates low. We should not subsidize the 95 percent of Oregonians who already have telephone service in the name of “universal service.” Instead we should direct targeted subsidy programs to the 5 percent who do not have service and to the 10 to 15 percent who might need additional help if basic local rates were higher. We should keep the metered rate option available for those in need of it. But we should not let past rate distortions get in the way of the transition to the new broadband digital world with distance-insensitive rates. If the PUC acts sooner, rather

than later when the toll revenues have all vanished to providers they cannot regulate, the PUC will be better able to keep telephone service affordable for all Oregonians, rural and urban, and will better smooth the transition to the new broadband digital networks that are economically inevitable, but that could seriously harm rural communities in the transition if the PUC does not intervene.

The PUC will hear objections that this will require Federal Communications Commission approval. FCC-mandated Local Access and Transport Area (LATA) boundaries will automatically go away in less than three years. If the PUC were able to implement a state-wide local calling policy quicker than that, a temporary FCC waiver could be requested. Alternately, the PUC, on its own authority, could implement LATA-wide local calling areas.

As a practical matter, I do not think the PUC, at this time, has the broad political support that will be needed to implement the radical proposal I have just made for a state-wide local calling area. We will need broad public discussion and more detailed economic analysis before a statewide EAS plan could be politically feasible. I urge all of you to begin that dialog and analysis. The goal should be to help bridge the gap between the two Oregons (rural and urban) by making it easier to talk to each other.

5. Rural Regions Request Expanded EAS

I have an additional proposal to make to rural community leaders. Let us not wait for the PUC to have its discussions about statewide EAS. Just as folks in southern Oregon successfully petitioned the PUC to create a multi-county EAS in their region, so should rural folks in the rest of Oregon petition for wider EAS in their regions. At a minimum, each rural county in Oregon should have a county-wide local calling area. This way of expanding local calling areas would not require any new policy at the PUC, but would be merely an implementation of existing policy using procedures that are already well established. To my fellow Oregon rural residents, I say, let us not wait for the PUC to do it for us on their initiative. Let us take the initiative and organize the petitions for wider rural local calling areas ourselves.