

SB 17 Telecommunications Law Revision Task Force
ORTCC comments
March 24, 2006

ORTCC has been asked to make a presentation to the Oregon Communications Law Revision Task Force created by Senate Bill 17 in the 2005 legislative session. SB 17 was one of the bills in the package of legislation proposed by the ORTCC in the legislative session. Telecommunications laws in Oregon are codified in the Oregon Revised Statutes (ORS) chapter 759. There are two areas of possible change in ORS 759 about which the ORTCC wishes to comment: (1) universal service fund collection and distribution, and (2) incentives for broadband infrastructure investment and access.

Oregon Universal Service Fund laws

Current Oregon law restricts the Oregon Universal Service Fund to support for basic service. The same definition of basic service is used currently for both the price cap regulation section of the laws and the universal service section. Changes in the definition would therefore affect both sections. In order to make possible changes in the Oregon Universal Service Fund without causing unintended consequences for price cap regulation, ORTCC recommends that the definitions used for these two different purposes be uncoupled so that changes for one purpose would not create complications elsewhere. The Oregon Public Utility Commission should be given delegated authority to change the definition used for universal service fund purposes without affecting price cap legislation.

Changes in Federal universal service fund legislation or regulation now appear likely. Many of the changes that need to be made in universal service fund collections and disbursements will have to happen in the Federal jurisdiction and Oregon law may need to be adjusted to fit changes in Federal regulations. Rather than wait until Federal laws and/or regulations are revised, Oregon can move now to implement recommendations that will make it easier to accommodate the anticipated changes in the Federal jurisdiction. We can establish in Oregon law the principle that Oregon telecommunications regulation will accommodate changes in Federal telecommunications regulation, just as Oregon's income tax laws are accommodated to changes in Federal income tax laws.

For example, we could change Oregon law to say that all entities providing telecommunications service in Oregon should pay into, and be eligible to receive from, the Oregon universal fund if they would have such rights and obligations were the same service provided in the Federal jurisdiction. The current impact of such a change would be to bring wireless providers into the Oregon Universal Service Fund, since they do pay into and receive benefits from the Federal fund. A potential future impact could be that if broadband service providers are brought into the Federal universal service fund program, they could then be brought into the Oregon Universal Service Fund program without additional Oregon legislation.

Incentives for Broadband Infrastructure Investment and Access

Current Oregon law with respect to broadband is codified in ORS 759.016, which is copied below:

“759.016 Legislative findings on broadband services. The Legislative Assembly finds and declares:

(1) That it is the goal of this state to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not, for both present and future generations; and

(2) That the goal set forth in subsection (1) of this section may be achieved by:

(a) Expanding broadband and other telecommunications services;

(b) Creating incentives to establish and expand broadband and other telecommunications services;

(c) Undertaking telecommunications planning at the local, regional and state levels that includes participants from both the public and the private sectors;

(d) Removing barriers to the full deployment of broadband digital applications and services and providing incentives for the removal of those barriers; and

(e) Removing barriers to public-private partnerships in areas where the private sector cannot justify investments.”

The ORTCC supports these principles and proposes that the Oregon PUC be given more authority to implement them. One positive move in that direction occurred in the 2005 legislative session with the passage of Senate Bill 13, which required that the PUC report periodically to the legislature, “The availability of broadband services, the rates charged for broadband services and the usage of broadband services.” This reporting requirement is important because achieving the goals specified in this section of the legislation will require that progress toward the goals be monitored. It was appropriate that this legislation did not add additional reporting burdens on entities regulated by the PUC because much of the available broadband service in Oregon is provided by entities not regulated by the PUC and it is important to not unfairly burden one set of competitors in a competitive industry.

Monitoring progress is necessary, but not sufficient. We need to do more. Significant progress toward increasing the availability of broadband services in Oregon was as a result of Senate Bill 622 from the 1999 legislature codified in ORS 759.405, 410, 430, 435, 440, and 445. That legislation created an economic incentive for

telecommunications service providers to invest in infrastructure improvements throughout the state. Qwest (then U S WEST) was the only carrier to take advantage of that legislation, but the result was a significant boost to the Oregon economy in general and broadband availability in particular. It is now unlikely that the incentives in that legislation will persuade any other provider to elect to be bound by its provisions. Many of those SB 622 provisions could now be removed from the Oregon statutes and replaced with new provisions tailored to providing appropriate incentives for the state's telecommunications carriers to further expand the availability and performance of broadband services. Revisions to the current SB 622 law should provide incentives for large and small telecommunications providers in Oregon to make new investments, particularly in their rural properties in Oregon. No incentives appear to be needed for carriers to make significant investments in broadband infrastructure for their urban properties in Oregon. However, the estimated return on investment appears to be too low to justify comparable investments in rural service territories.

Further discussion with carriers and others will be required before we can make any specific proposals for new incentives. The ORTCC believes that public-private partnerships may be appropriate when private sector investment does not appear to be sufficient to meet the needs of local communities. The ORTCC hopes to stimulate discussions among telecommunications providers and local governments that can perhaps lead to more specific legislative proposals. We suggest that the SB 17 task force invite input from carriers with respect to what incentives or public participation would be useful to stimulate investment in rural infrastructure.

At a later time, when Federal universal service fund regulations are revised to support broadband services, it is likely to be appropriate also to use Oregon universal service funds to promote broadband development within a structure that does not favor one competitor or one technology over another. As indicated in the universal service fund discussion above, it would be useful to amend Oregon laws now to permit that possibility when the Federal issues have been resolved.