

Oregon Telecommunications Coordinating Council
Minutes
April 28, 2005

Attendees:

Council Members: John Irwin, Dan Bartlett, Pam Berrian, Agnes Box, Cathy Britain, Betty Dickson, Lylla Gaebel, Ed Parker, Curt Pederson, Sal Sahme, Mark Shrives, Dan Erickson, and Kim Hoffman.

Staff: Chris Tamarin Oregon Economic and Community Development Department, Bill Penhollow Association of Oregon Counties, and Debbie Bryant-Macartney Department of Administrative Services

Others: Ginny Lang of Qwest, Andy Margeson of Oregon Public Utility Commission, Catherine Webber Department of Administrative Services, Doug Cooley of Century Tel, Norman Gillies of Columbia Broadband, Richard Schuman of LS Networks, Larry Harker of Association of Oregon Counties, Jerry Haynes Technology Attorney in Medford, David Barenberg of League of Oregon Cities, and John Slocum of Tahoma Telecom.

Remote videoconference locations included Astoria, Eugene, Klamath Falls, Medford, and Gleneden Beach.

Public Input:

Ginny Lang of Qwest provided a high level overview of SB1030 as printed. Ginny noted that no changes have been made to Oregon law in this area since 1989 and the Bill provides an opportunity to discuss important issues. Qwest has been in informal discussions with the League of Oregon Cities and this Bill was drafted before issues were resolved in order to meet the timeline requirements of the legislative session for the submission and assignment of Bills to committee. SB 1030 was created as a starting point for discussion and to be available as a vehicle for any resulting legislative proposals. The area of interest is where the revenue generating authority of cities related to the use of rights of way and telecommunications providers and their customers come together recognizing that much has changed in the telecommunications industry since 1989. Ginny Lang stepped through the sections of the Bill.

Section One: Policy comments

Section Two: Definitions

Section Three: Temporary definition of intrastate telecommunications services allowing a five percent tax but excluding Voice over Internet Protocol (VoIP) services through December 31, 2009

Section Four: Addresses use of public highways and right of ways

Section Five: Maintains cities' authority and control over the use of right of ways

Section Six: Creates a cost-based right of way construction fee and separates it from the telecommunications tax. The objective is that access to rights of way be nondiscriminatory and competitively neutral as well as technology neutral.

Section Seven: Provides details on construction permit fees

Section Eight: Provides details on the five percent telecommunications tax and prescribes consistent administrative processes

Section Nine: Provides details regarding city boundaries and annexations

Section Ten, Eleven, and Twelve: Provides details on how taxes are to be collected

Section Thirteen: Presents provisions regarding the relocation of facilities

Section Fourteen and Fifteen: Provides for the implementation of the law and the effect on pre-existing agreements

Section Sixteen: Provides for the placement of the new language in ORS Chapter 759

Section Seventeen and Eighteen: Provides details on the impact of the legislation on the PUC

Section Nineteen through Twenty Six: Provides details on the impact of the legislation on existing statutes to be amended including sunset provisions

Cathy Britain said that she appreciates the approach of having open discussions, working together, and sharing information on issues of concern. It is helpful to her understanding of these complex issues and her ability to respond to questions the Council receives from around the state. Dave Barenberg said that he views the Bill as printed to be an opening position from the telephone company with the intent of finding mutually acceptable solutions by working together. He noted there are many telecommunications service providers and cities in Oregon with different interests and positions to be considered and the issues are complex. John Irwin asked if it was necessary to combine the many issues in a single Bill? Ginny replied that she was not sure. Dave said that it was also possible to address individual issues separately. Cathy asked how SB1030 relates to HB3353? Ginny observed that HB3353 leaves in place existing taxes on telecommunications services and right of ways and limits new taxes and fees that may be imposed by local governments. Dave noted that franchise fees are dropping at a dramatic rate and that he has concerns with the Bill. He further noted that Oregon currently has relatively low tax rates for wireless telecommunications services compared with other states. He observed that these low rates resulted in virtually no difference in the market penetration of these services as compared to other areas of the country with much higher tax rates. Bill Penhollow added that HB 3353 enters into the cable television arena, the management of rights of way and is very broad as currently written. Pam Berrian noted that HB3353 would change the revenue base to a very thin stream called local exchange. Pam expressed the concern that the vast majority of right of way users are not in the local exchange business and that potentially all the revenue from these other services would be lost to municipalities. She also dislikes the wireless preemption included in HB3353. Doug Cooley noted that telephone companies like Century Tel that serve rural areas of the state are concerned that many new taxes and fees are being introduced. Doug would like to see some predictability and fairness in the tax structure so that telephone companies are not used as an easy billing target and source of new taxes.

John Irwin added that there is much work ahead on this complex issue. SB1030 has been assigned to the Senate Revenue Committee and has not yet been scheduled for a hearing. The full text of SB1030 may be found at the following URL:
<http://landru.leg.state.or.us/05reg/measures/sb1000.html>.

John Irwin noted that the report, "Achieving the Oregon Shines Vision: The 2005 Benchmark Performance Report" is now available. It may be found at the following URL: <http://egov.oregon.gov/DAS/OPB/>. The report provides an analysis of the state's progress in achieving benchmarks in the areas of economy, education, civic engagement, social well-being, public safety, community development and environment. John recommended that Council members look at the reported information on computer usage and Internet usage.

John Irwin reported that a "Distance Education Summit on the Coast" has been scheduled on Friday, May 13, 2005 at Southwestern Oregon Communication College in Coos Bay. John indicated that he, Link Shadley and Onno Husing are planning to attend the summit. Information may be obtained from Karen Helland, Director of Distance and Community Education Southwestern Oregon Community College, khelland@socc.edu , 541 888-7212.

Reports, Discussions and Decisions:

John Irwin recognized the support and contributions of Deborah Bryant-Macartney to the Oregon Telecommunications Coordinating Council. He presented her with a certificate of appreciation. He advised that Debbie is leaving the Oregon Department of Administrative Services and will be missed by the Council.

Action Item:

It was moved by Cathy Britain that the March 24, 2005 minutes be approved as distributed. Dan Erickson seconded the motion. The Council approved the minutes as distributed.

Open Seat Status:

John Irwin reported that Art Hill of Blue Mountain Community College has officially been appointed to fill the seat representing Education – Community Colleges. John noted that nominees are needed for the following three open Council seats: Eastern Oregon Telecommunications Consortium, South Coast Telecommunications Task Force, and one seat representing Industry. He indicated that information on how to apply for service on state boards and commissions may be found at the following URL:
<http://governor.oregon.gov/Gov/boards.shtml>.

Presentation

John Irwin welcomed Richard Schuman of LS Networks www.lsnetworks.net to talk about the recent changes at NoaNet Oregon. Richard reported that earlier this month LS Networks announced the acquisition of the assets of NoaNet Oregon. He indicated that NoaNet's objective of providing cost effective telecommunications services to the rural areas of the state will not change under LS Networks. Richard noted that NoaNet Oregon was primarily debt financed as a non-profit entity through its members and that a cooperative generally receives its income from its members. In the case of NoaNet Oregon, significant revenues were being contributed by non-member sources outside member service areas. The recent change in organization structure was undertaken to strengthen the balance sheet, make LS Networks a more financially stable entity, and to improve its access to funding sources as a privately held for-profit corporation. The previous non-profit cooperative organization structure proved to be a barrier to obtaining financing needed to expand the network. The new entity is LightSpeed Networks, Incorporated doing business in Oregon as LS Networks. This change is also intended to stimulate the deployment of new local fiber distribution infrastructure. Key objectives of LS Networks are to complete the network ring architecture around the state and strengthen the company's competitive position. Richard reported that additional equipment has been purchased and will be installed to increase network capacity. LS Networks will continue to use Bonneville Power Administration fiber facilities in its backbone and will stay within BPA's guidelines for its use. He said that the company's offices will be consolidated into one location at the Pittock Block in Portland. Work is continuing to resolve outstanding transition issues from the NoaNet Oregon organization to LS Networks. Leif Hansen remains as Director of Network Engineering and Development and Warren Miller is the Chief Executive Officer. Dan Erickson asked about the capacity of the network and planned upgrades. Richard responded that the capacity of the network is being increased and that LS Networks is also interested in expanding its network services to new areas on the coast. Cathy Britain asked what will differentiate LS Networks from other providers. Richard indicated that LS Networks will be both a service provider and competitor to the other telecommunications companies in the state. He said that LS Networks is smaller and plans to be "nimble" in its operations. John Irwin recommended attention to communication between the new company and concerned communities and constituencies in the state.

Presentation

John Irwin welcomed David Kroft of the Oregon Department of State Lands (ODSL) <http://www.oregonstatelands.us/> to talk about the role of this Department in bringing undersea fiber cables on shore in Oregon. David Kroft indicated that the Oregon Department of State Lands is the administrative arm of the State Land Board which consists of the Governor, the Secretary of State, and the State Treasurer. ODSL has two functions, a regulatory function and propriety function. As a regulator, ODSL administers the Oregon Removal-Fill Law which applies to the placement of cable in the ground in state managed lands including forest land, range land, agricultural land, submerged and submersible lands under navigable rivers, lakes, estuaries, and the

Territorial Sea (shore line out to three miles). In its proprietary management role, ODSL is responsible for the Common School Fund. Revenue derived from the regulation of state lands through easements, licenses, permits and fees flows to the Common School Fund, which currently has about \$900 Million. Proceeds are distributed twice a year, about \$20 Million in this year's January distribution. ODSL is under a mandate to generate revenue from trust lands for the benefit of the school children of Oregon. ODSL issues leases, licenses, temporary-use permits and registrations for uses of state-owned submerged and submersible land. ODSL has also issued permits for thirteen communications sites on state lands. OAR 141-083-0800 through 141-083-0860 covers the issuing of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea. Jeff noted that the Ocean Policy Advisory Council was enlisted to help develop policies. Easements for undersea cables provide a twenty-year lease with an available twenty-year renewal. There are currently eleven easements in place. Current State law ORS 758.010 prohibits ODSL from charging compensation for fiber optic and other cables in the Territorial Sea unless they are within the limits of a city. Jeff recounted how the administrative rules were developed and how a cooperative relationship developed between the state, the undersea cable companies and the Oregon fishing industry as cables began to come onshore beginning in 1991. Oregon has established a very effective process and easements have been issued in as little as ninety days. Pam Berrian asked if there were any joint trenching notification programs. Jeff replied no, however, any applications for new undersea cables are announced to all interested parties. Pam shared that in Eugene there is a joint notification process to reduce the number of times that streets need to be cut and has worked well for all. Cathy Britain noted that Council member Onno Husing and Scott McMullen of the Oregon Fishermen's Cable Committee have both been appointed to the Ocean Policy Advisory Council www.oregonocean.org, which is dedicated to protecting the marine environment.

Jeff passed around samples of undersea fiber cable for Council members to examine.

For additional information:

See "TRANS-PACIFIC FIBER OPTIC CABLES LANDING IN OREGON" posted on the ORTCC reports page.

See "Fiber Optic Cables: The Oregon Experience or Things Look Different Here" posted on the ORTCC reports page.

See "Come Ashore in Oregon: Undersea cable information" posted on the OECD website <http://www.econ.state.or.us/telecom/comeashore.htm>.

Committee Reports:

Oregon Tier One Peering Point

John Irwin asked for an update regarding an Oregon Tier One Peering Point. Chris Tamarin reported that in last month's meeting, Ed Parker discussed the concept of an Oregon Tier One Peering Point, the subject of a presentation that was delivered to the Council in 2004 by Jere Retzer, Director of Northwest Access Exchange (NWAX). The Council approved a motion to draft and send a letter to Marty Brantley, Director of the Oregon Economic and Community Development Department to promote this opportunity and to propose that the OECDD take the lead on a project to develop a strategy for establishing an Oregon Tier One Peering Point. The letter was drafted and delivered. Chris reported that Marty Brantley is intrigued by the concept and has shared the letter with the Governor's office. Marty has not yet taken any action on the proposal to date pending conclusion of the Department's budget process, which has been ongoing this month. John Irwin circulated the letter through a list serve, which resulted in both positive and some strong negative reactions. Ed Parker suggested that we think in terms of a peering ring rather than point. Chris suggested that the concept needs to be refined and, as the letter proposes, a strategy developed.

Legislative Committee Report

Cathy Britain reviewed the current status of several of the Bills introduced by the Council.

- SB13 – To extend and expand reporting on telecommunications and broadband by the Public Utility Commission. The Bill was passed by the Senate and is now in the House Business Labor and Consumer Affairs Committee. No hearings are scheduled.
- SB15 – To extend the sunset date for ORTCC. The Bill was passed by the Senate and is now in the House Business Labor and Consumer Affairs Committee. No hearings are scheduled.
- SB17 – To create a Telecommunications Task Force to do a comprehensive review of ORS 759, Laws relating to telecommunications. The Bill was passed by the Senate and is now in the House Business Labor and Consumer Affairs Committee. No hearings are scheduled.

Cathy Britain reviewed the current status of several of the Bills being followed by the Legislative Committee.

- SB541 - Creates Task Force on Electronic Medical Records. Directs task force to study and make recommendations for standards for transfer and exchange of electronic medical records and health-related data. The Bill was amended with the help of the Telehealth Alliance of Oregon. No hearing scheduled.
- SB794 - Directs Public Utility Commission to replace all intrastate, interexchange toll routes with statewide flat rate interexchange service. Establishes Toll-free Calling Fund. Appropriates moneys from fund to commission for payment to telecommunications providers for costs incurred in providing toll-free calling within state. No hearing scheduled. Ed Parker reported that the Oregon PUC has

developed an estimate of a statewide Extended Area Service monthly subscriber fee, which is between \$6.60 and \$7.27. Ed reported that a PUC workshop has been scheduled for June 16, 2005. Prospective alternative options of large regional or LATA-wide EAS possibly including Vancouver, WA were discussed for possible presentation to the June workshop.

Cathy reported that the legislative committee will continue to monitor and track these and other telecommunications related Bills through the legislative session. There was discussion of whether or not specific Bills should be actively supported or opposed by the Council or whether the Council's best role is that of a facilitator that brings parties together to discuss the issues. The Legislative committee will have further discussions on this question.

Conference Planning Committee Report

Chris Tamarin reported on planning activities for the 2005 Oregon Connections Telecommunications Conference scheduled for Thursday, September 29 and Friday September 30, 2005, at the Mt. Bachelor Village in Bend. The conference web site has been launched: www.cotel.org/conf2005.htm. An e-mail campaign began this month with a staggered broadcast mailing to different list serves. A postcard outreach campaign will begin next week. To date, there are commitments for sponsorships totaling approximately \$9,500 due to the efforts of Ron Trullinger effectively meeting the planning committee's goal. The Planning Committee is soliciting articles, artifacts, and other information related to the "Accomplishments and Technological Achievements of the Past 10 Years" in keeping with the theme of the conference. Visual displays are planned to showcase the activities and achievements of the past ten years. The program is still being developed. A track is planned to showcase current projects around the state entitled "The future arrives everyday." A session on regulation is planned with representatives from the Oregon PUC and the FCC. Sessions are planned on legislative outcomes, on applications, on technologies of interest such as WiMax and Voice over IP, as well as a session on current initiatives such as statewide EAS, an Oregon Broadband Partnership, and an Oregon Tier One Peering Ring. Pam Berrian recommended that a link to the conference website be included on the ORTCC website.

Reports from Consortia:

Klamath Falls Telecommunications Task Force – No Report

Eastern Oregon Telecommunications Consortium - Cathy Britain reported that EOTC is working on the nomination of a new representative.

Regional Fiber Consortium – No Report

North Coast Telecommunications Consortium – No Report

Gorge Teleconsortium – No Report

Frontier TeleNet – No Report

Fiber South Consortium – Pam Berrian reported that the Consortium is scheduled to meet on April 29.

Oregon CoastNet – No Report

Oregon Tribes – Sal Sahme reported that he has obtained a commitment from the National Native Network Center in Washington D.C. to attend and participate in the Oregon Connections Telecommunications Conference in September. Topics to be addressed could include revisions to the Telecommunications Act of 1996 and the Native Connectivity Act, or seven Tribal Government Telcos. Sal will follow up with the conference planning committee.

Central Oregon Telecommunications Council – No Report

Southern Oregon Telecommunications and Technology Council (SOTTC) – John Irwin reported that the May 10 educational forum on telecommunications and technology issues will be on Voice over Internet Protocol featuring a speaker from Qwest.

Telehealth Alliance of Oregon (TAO) - Cathy Britain reported that in addition to its work on SB541, TAO met with representatives of the Oregon Association of Hospital and Health Systems. They will be working to develop a request for proposal to develop an Oregon Healthcare Network.

New Business

Debbie Bryant suggested that a speaker be invited to brief the Council on the new state data center.

Pam Berrian suggested a speaker from the Eugene Water and Electric Board to discuss Broadband over Power Line technologies.

Cathy Britain noted that there is a Healthcare network in Florida that may be of interest.

Meeting Schedule:

The next meeting of ORTCC is scheduled on Thursday, May 26, 2005 in Salem. John Irwin adjourned the Oregon Telecommunications Coordinating Council meeting at 12:25 PM.

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