



Oregon Citizens' Utility Board

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HB 3065 - COLR Public Proceeding
Workshop #5 - 08/06/2020

Oregon Citizens' Utility Board (“CUB”) is grateful for the opportunity to submit additional comments within the context of the Oregon Public Utility Commission (“Commission”) public process instructed by Oregon HB 3065, which the Oregon Legislature passed in 2019. CUB submits these comments in lieu of responses to the Workshop #5 questions seeking input from stakeholders regarding “what the PUC should include in its HB 3065 Report to the legislature.”¹

CUB supported HB 3065 in recognition of the fact that a dynamic telecommunications landscape – both in terms of evolving consumer preferences and related provider oversight requirements – may require revisiting existing telecommunications utility Carrier of Last Resort (“COLR”) obligations to ensure fair and affordable access to telecommunications services for all residential customers.

Yet the potential implications of adjusting COLR requirements must be considered carefully before contemplating any policy changes. This is captured in the law, directing the Commission to *first* initiate a public process “for the purpose of investigating the continuing relevance of the carrier of last resort obligations provided for under ORS 759.500 to 759.570” *and then* “...investigate changes to the existing regulatory system and incentives that could accommodate developing industry trends and support new policy objectives without compromising residential customers’ access to reliable and safe service at just and reasonable prices in an adequate and nondiscriminatory manner.”²

As of August 6, 2020, the Commission has held four productive public workshops as a part of the process directed by HB 3065. A fifth workshop is scheduled for August 13, 2020. CUB understands that Workshop #5 may represent the end of the public process outlined in Section 1, subsection (1) of HB 3065. However, what is not clear at this time is if Workshop #5 may also represent the end of the Commission-led investigations outlined in Section 1, subsection (2) of the bill.

CUB hopes that the answer to the latter question is decidedly “no.”

By CUB’s reading, Section 1, subsection (5) of HB 3065 clearly implies that the Commission-led investigations – while indeed an essential “...part of the public process established under [Section 1] subsection (1)...” – do not need to be completed before the statutory deadline of September 15,

¹ <https://www.oregon.gov/puc/utilities/Documents/COLR-Agenda5-08132020.pdf>

² <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3065/Enrolled>

2020 for the Commission to “...submit a report on the findings of the public process established under [Section 1] subsection (1)...”

Section 1, subsection (5) goes on to state “...and the progress of investigations conducted under [Section 1] subsection (2)...” This should only be read as indicating that the length of Commission-led investigations shall not be limited to the Commission’s deadline for submitting a report to the Oregon Legislature. Put another way, in CUB’s view, the Commission-led investigations into COLR obligations should continue after the report to the Legislature.

The legislative intent is clear: The Commission shall submit a report on ***both*** the findings of the public process ***and*** the “progress” of investigations that ***may*** extend beyond the September report deadline. Put another way: Progress is not synonymous with completeness.

To CUB, the investigations required of the Commission under Section 1, subsection (2) are, at this stage, incomplete. The public process that began in January of 2020 has, indeed, shone a bright and helpful light on many policy issues relevant to a diversity of stakeholders – from the large and small incumbent local exchange carriers and other providers, to local government entities, CUB and other advocates, and individual community members. While essential, this represents the initial discovery phase toward identifying how best to shape investigations that – as is further spelled out in Section 1, subsection (2) “...shall specifically focus on:

- (a) Customers whose individual circumstances and needs may impact their access to and usage of telecommunications services, including low-income customers;
- (b) Residential customers with access at their domicile to fewer than two of the following terrestrial-based service alternatives:
 - (A) Telecommunications services provided by a facilities-based competitive local exchange carrier;
 - (B) Voice service offered via interconnected Voice over Internet Protocol; or
 - (C) Voice service offered by a cellular communications service; and
- (c) The comparability of voice service offered by wireless Internet service providers and satellite providers.”

To be clear: CUB understands and deeply appreciates the significant time and effort Commission Staff have allocated within the context of public workshops #1 through #4 and appreciates the hard work submitted by telecommunications utilities and other stakeholders. Commission Staff have both solicited and received meaningful feedback from workshop participants and the public regarding the above criteria directing the investigations.

Yet three core questions remain unanswered and, therefore, deserve ongoing consideration and analysis from the Commission:

1. What, if any, Oregon-based analysis can or does identify both the number and geographic location(s) of customers whose individual circumstance and needs may impact their access to and usage of telecommunications services?
2. What, if any, Oregon-based analysis can or does identify both the number and geographic location(s) of residential customers with access at their domicile to fewer than two of the terrestrial-based service alternatives noted above?
3. What validated, third-party analysis can speak to the comparability of voice service offered by wireless Internet service providers and satellite providers?

As stated in both CUB's public Workshop #3³ and Workshop #4⁴ comments, the "Oregon Statewide Broadband Assessment and Best Practices Study" prepared for Oregon Business Development Department⁵ is the nearest approximation of a recent, Oregon-based analysis that comes anywhere close to answering questions 1 and 2. CUB is not aware of a valid resource to better inform our analysis regarding question 3.

Therefore, CUB's primary concern is that as long as these three questions remain unanswered, the Commission is not in the best position to reasonably fulfill the statutory obligation – set forth in Section 1, subsection (3) – requiring determination that any "...changes to the existing regulatory system and incentives would be in the interest of residential customers and the public generally..."

Furthermore, without definitively answering the questions above, among others, the Commission is similarly not in the best position to – as is further indicated in Section 1, subsection (3) – "develop plans to administratively implement changes to the regulatory system and incentives within its existing statutory authority [or] make recommendations to the Legislative Assembly for the purpose of legislatively implementing changes to the regulatory system and incentives."

While CUB's written comments for Workshop #3 and Workshop #4 do outline policy positions regarding the "continuing relevance of the carrier of last resort obligations", the following high-level points are indeed worth reiterating:

- Consumer telecommunication needs have evolved steadily – particularly over the past two decades – as a direct result of industry-wide technological innovation. This will always be the case, suggesting that public policy must evolve to ensure adequate consumer protections and reasonable oversight of telecommunications providers.
- Industry-wide technological innovation and evolving consumer telecommunication needs affect telecommunications providers in different ways. This will always be the case, similarly suggesting that public policy must evolve in lock-step.

³ <https://www.oregon.gov/puc/utilities/Documents/COLR3-ConsumerGroup.pdf>

⁴ <https://www.oregon.gov/puc/utilities/Documents/COLR-WS4-Responses-CUB.pdf>

⁵ <https://www.oregon4biz.com/assets/docs/SNGStudy2020.pdf>

- Industry-wide technological innovation, evolving consumer telecommunication needs, geography, income, race, age, availability of training and education resources, digital device access, and a range of other social determinants affect customers in different ways.
- Fair, reasonable, safe, and affordable access to telecommunications is necessary for social interaction, civic participation, medical care, entertainment, and the unbiased provision of public safety – particularly during a once-in-a-century public health and economic disaster.

Finally, in addition the three “core questions” noted earlier, CUB recommends consideration from the Commission regarding on the following:

- The Oregon Universal Service Fund (OUSF), which serves as the focal source of state-based support for telecommunications providers with COLR requirements, should remain solvent for the foreseeable future due to the recent passage of SB 1603⁶.
 - How does this significant public policy development implicate this public process and future COLR-related investigations?
- Sherry Lichtenberg, Ph.D. Principal Researcher, Telecommunications National Regulatory Research Institute, authored “Carrier of Last Resort: Anachronism or Necessity?”⁷ in July of 2016. This lauded report highlights the varying degree to which states have maintained or, at least as of July 2016, had plans to maintain or dismantle COLR or COLR-like requirements for telecommunications providers. While much of the report remains relevant, some of the state-based findings are now out of date.
 - How do or should current public policies in other states regarding COLR or COLR-like requirements for telecommunications providers implicate this public process and future COLR-related investigations?

This concludes our comments. CUB thanks the Commission for their hard and thoughtful work.

Sincerely,

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⁶ <https://olis.oregonlegislature.gov/liz/2020S1/Downloads/MeasureDocument/SB1603>

⁷ <https://www.oregon.gov/puc/utilities/Documents/COLR-NRRI-White-Paper.pdf>