HB 2331

Testimony before the Revenue Committee of the Oregon House of Representatives

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Good Afternoon, Madame Chair Nathanson, Vice Chairs Pham and Reschke and Members of the Revenue Committee. Thank you for convening this hearing on House Bill 2331, a measure that is very important to the broadcasters of the State of Oregon.

I am Matt McCormick of the law firm Fletcher, Heald & Hildreth, P.L.C. Together with my colleague Christopher Robinson of CKR Law Group. P.C., we have been advising the Oregon Association of Broadcasters regarding the impact that central assessment would have on local broadcasters.

The purpose of HB 2331 is to make sure that Oregon broadcast stations are locally assessed – as they have been since the advent of broadcasting in Oregon nearly 100 years ago – rather than being centrally assessed as the Department of Revenue currently intends. Central assessment is anticipated to significantly increase the tax burden on broadcast stations because of the inclusion of intangible property in a station's assessed value.   Such an increase could be devastating to broadcast stations.

Let me explain as briefly as I can how we got here. Since 1909, Oregon has had a central assessment system for property operated as a network over a large geographic area. Properties subject to central assessment included that of railroad, telegraph, telephone and pipeline companies. Also covered were public utility-type companies, but only if the utilities did business as one system across state or county lines.

Over the years, the Oregon central assessment statutes went through changes and reorganization. For our purposes, the key change occurred in 1973. The 1973 legislation included "communications" among the industries to be centrally assessed. The term "communications" was defined in the statute to include telephone communications, telegraph communications and "data transmission services by whatever means provided." That last phrase was intended to bring the microwave network MCI was then constructing from Seattle to San Diego within scope of central assessment.

Roughly 36 years later, beginning with the 2009-2010 tax year, the Oregon Department of Revenue asserted that cable television and internet access services should be treated as "communications" services subject to central assessment. Comcast challenged that conclusion. The case eventually came before the Oregon Supreme Court, which held in the 2014 *Comcast Corporation v. Department of Revenue* decision that the phrase "data transmission services" is defined as a

service that provides the means to transmit data "from one computer or computer-like device to another across a transmission network" and that Comcast was thus within the scope of the central assessment statute.

Among the arguments Comcast advanced was that if its cable television and internet services were to be centrally assessed, it would be impermissibly discriminatory not to also centrally assess the over-the-air broadcast industry. The Supreme Court did not decide the issue. But it did observe that over-the-air television and radio involved a means of communications that differs in significant ways from cable and internet services. The Court noted that, among other things, no subscriptions or fees are required. Nor does the broadcaster control who listens to or views its programming.

The Supreme Court remanded the case to the Tax Court to deal with other issues presented. On remand, Comcast continued to argue that it was impermissibly discriminatory not to also centrally assess over-the-air broadcasting. No licensee of an Oregon broadcast station was a party to that litigation.

Eventually, the Department of Revenue gave in and told the Tax Court that DOR would commence centrally assessing broadcast stations.

And that central assessment process has begun. DOR is now seeking to gather information and is planning to centrally assess all broadcast stations, regardless of their size, with the 2021-2022 tax year.

OAB urges the legislature to step back from the fray and look at the core purpose of central assessment. From the beginning, central assessment was intended to cover property operated as a network over a large geographic area, like a telephone system or a railroad. But each broadcast station essentially is a stand-alone facility covering the limited area dictated by the facilities the FCC has authorized and not a part of a transmission network.

Accordingly, local assessment is still the appropriate methodology to be used for over-the-air broadcast stations, just as it has been for the 48 years since the phrase "data transmission system" was added to the central assessment statute. It is telling that our research has found no other state centrally assesses over-the-air broadcasting.

OAB urges the adoption of HB 2331, a simple measure designed only to preserve the status quo with respect to the local assessment of broadcast stations.

Thank you for your consideration.