



Comments of the Oregon Telecommunications Association
HB 3201 and HB 3249
House Committee on Economic Development and Small Business
February 21, 2023
Brant Wolf

The Oregon Telecommunications Association (OTA) represents traditional and competitive providers of broadband and telecommunications services. Our members provide these services throughout rural and remote Oregon. The OTA recognizes and appreciates the efforts of the Oregon Broadband Office (OBO) to date but has concerns with the internal processes and policies of the OBO, to the extent there are any.

The OTA was deeply involved in drafting the statutory language that is the subject of both pieces of legislation noted above. The OTA supports HB 3249 and does not support HB 3201. We offer the following reasons for our position on these bills.

HB 3201 – Oppose

The OTA is opposed to this bill. HB 3201 would codify as a *preference* the provision of high speed internet access in unserved and underserved areas of Oregon. Offering this service in places where it is not currently available should be a *priority*, not simply a preference.

Additionally, HB 3201 grants far-reaching rulemaking authority to the (OBO). It has been our experience that the OBO has not demonstrated the necessary capacity or competence in this area. As support for this assertion we point to the simple fact that no rules currently exist to govern the OBO or its administration of the funding it has already awarded to infrastructure projects. It is appropriate to note that the OBO does have draft rules that were published in late 2022. However, draft rules are not rules. In any event, no action has been taken on these draft rules since they were published.

Regarding our opposition to removing the challenge process and right of first refusal language, the OTA offers the following comments.

On two separate occasions, the OBO has either directly awarded millions of dollars to broadband infrastructure projects or approved such projects for consideration of federal funding. Both times without rules or policies in place. Without casting aspersions on any individual or project, these actions require the OTA to oppose removing the only language affording any type of oversight in this area.

Attached as an exhibit to these comments are email exchanges sent to the Ways and Means Committee in September of 2021. The bottom line is this: the OBO supported and sent to the National Telecommunications and Information Administration (NTIA) four projects for funding. One of these projects would have very plainly built over existing broadband capable network infrastructure. When this fact was brought to the attention of the OBO, no action was taken and the application was submitted with the flawed project in place.

An additional reason for our opposition to eliminating the existing 'sideboard' language is the fact that the OTA had to file a public records request in order to get any information at all about the NTIA application. This was expensive, bureaucratic and does not give our members comfort about the OBO or its transparency about these matters.

Finally, regarding the Right of First Refusal language, some have indicated it is anti competitive. It is not. Any entity can compete freely in the broadband space in any given area, without restraint. This language does afford our members the ability to ensure that their existing facilities are not built over using the public's funds. If used appropriately, it would also ensure that an approved project could be brought online in 12 months time or less.

Regarding the CARES Act funds the OBO awarded in 2020, this activity demonstrates to the OTA that in fact the OBO can move with astonishing speed and flexibility when it wants to. Regardless of whatever vetting process and policies used to determine which projects were funded, this situation clearly points to the fact the since this period of time, the OBO has not been interested in speed or efficiency.

In summary, the OTA opposes HB 3201 because it should be a priority to provide broadband access to unserved and underserved Oregon. The OBO still has work to do regarding its rulemaking responsibilities and safeguarding the public's funds.

HB 3249 – Support

This bill leaves in place the language protecting public funds and existing network infrastructure.

By leaving in place the right of first refusal language as well as establishing appropriate challenge processes, entities seeking to build over networks that are capable of providing broadband service would have to do so with their own funds. This is a perfectly acceptable and normal occurrence in the highly competitive broadband space. OTA members compete with other terrestrial providers as well as wireless and satellite providers.

Additionally, HB 3249 corrects statutory language and aligns broadband speed requirements with Oregon policy. This small fix will help Oregon's programs conform with the federal funding programs the OBO is engaged with.

Finally, HB 3249 removes sunset language and other prioritization language that may have inhibited broadband infrastructure investment.

Oregon Telecommunications Association
House Committee on Economic Development and Small Business

February 21, 2023

Exhibit 'A'

From: Brant Wolf <bwolf@ota-telecom.org>

Sent: Tuesday, September 21, 2021 12:17 PM

To: Sen Lieber <Sen.KateLieber@oregonlegislature.gov>; Rep Nosse
<Rep.RobNosse@oregonlegislature.gov>

Cc: Sen Gelser <Sen.SaraGelser@oregonlegislature.gov>; Rep Williams
<Rep.AnnaWilliams@oregonlegislature.gov>; Sen Knopp <Sen.TimKnopp@oregonlegislature.gov>; Rep
Campos <Rep.WInsveyCampos@oregonlegislature.gov>; Rep Hayden
<Rep.CedricHayden@oregonlegislature.gov>; Rep Stark <Rep.DuaneStark@oregonlegislature.gov>; Sen
Johnson <Sen.BetsyJohnson@oregonlegislature.gov>; sen.steinerheyward@oregonlegislature.gov; Rep
Rayfield <Rep.DanRayfield@oregonlegislature.gov>

Subject: RE: Ways and Means Subcommittee on Human Services

Representative Nosse –

Thank you for the conversation earlier today, I appreciate your interest in this issue.

I will not repeat anything said in the email message I sent to the sub committee and others earlier. However, I would like to stress that we have requested that the Oregon Broadband Office determine if they can remove the Alyrica project from the NTIA application this sub committee is being asked to support.

I would like to press that point here with you and the sub committee. The specific request is that the sub committee determine how or if there is a way to proceed with the NTIA application absent the Alyrica project. Regardless, the OTA and our members urge the sub committee not approve the NTIA application if the Alyrica project is included. The OTA feels it is bad public policy to award federal or state tax funds to areas that already have access to high speed internet service. In particular, if the areas in question have access to high speed internet service because federal and state tax funds have already been spent there.

The OTA believes this is classic overbuilding and should not be accommodated by an affirmative vote from the sub committee.

Regards,

Brant Wolf

503.871.0479

From: Brant Wolf <bwolf@ota-telecom.org>

Sent: Monday, September 20, 2021 2:10 PM

Subject: Ways and Means Subcommittee on Human Services

Co Chair Lieber and Co Chair Nosse –

My name is Brant Wolf with the Oregon Telecommunications Association (OTA). I noticed an agenda item scheduled for action at the September 22 meeting of the Human Services Subcommittee. The item is noted as #15 Oregon Business Development Department – Broadband Infrastructure.

I am forwarding to you and the entire subcommittee an email regarding item #15 I sent to Daniel Holbrook, the Manager of the Oregon Broadband Office in the OBDD. I have also copied the full Ways and Means Committee Co Chairs. The OTA has two members who plan to challenge one of the proposed projects included in item #15.

The reasons our members must challenge the project are detailed below. I am sending this to you in the interest of disclosure and so you are better informed about an item you appear to have scheduled for a vote. These are serious issues that need to be addressed before the Legislature gives any approval to the application in item #15.

The OTA and our members look forward to working with the Oregon Broadband Office to address these concerns. As you can see in the email, we specifically request that the Alyrica project be excluded from the application this subcommittee is asked to approve.

I want to be clear that the OTA does not believe that Alyrica acted in a deliberately misleading manner. However, at a minimum, clarification regarding the details of the application must occur and be made available.

Thank you for your attention to this email. Please contact me at the number below my name if you want to discuss this further.

Brant Wolf

503.871.0479

From: Brant Wolf <bwolf@ota-telecom.org>

Sent: Thursday, September 16, 2021 2:22 PM

To: 'HOLBROOK Daniel L * BIZ' <Daniel.L.Holbrook@oregon.gov>

Cc: 'Dave Mills' <dave@monroetel.com>; James Rennard, CPA <JamesRennard@pioneerconnect.net>

Subject: Alyrica NTIA Grant Project

Hello Daniel –

I want to alert you to a situation involving the NTIA application your office has submitted. Two of our members, Monroe Telephone Co. and Pioneer Connect (Pioneer Telephone Cooperative) have reviewed the information received from the public records request. Unfortunately, that review clearly indicates that the project submitted by Alyrica will result in federal funds being used to overbuild existing facilities that provide broadband speeds of 25/3 or greater in the census blocks included in the Alyrica project. Alyrica claims that all the locations in the census blocks are unserved and our members can offer specific information that refutes the claim.

In support of this assertion, the companies offer the following facts:

In 2009 Monroe Telephone Co. was awarded a federal BIP loan in the amount of \$1,413,684 and BIP grant in the amount of \$4,241,050. That award was used to deploy facilities in large parts of the census tracts in the Alyrica project. Currently, 241 locations are passed with the federally financed BIP fiber. The fiber also provides service to the Muddy Creek Charter School, the headquarters of the Finley National Wildlife Refuge and the Greenberry Water District. The water district uses the fiber to provide connectivity to remote pump sites servicing approximately 12 farms.

Monroe Telephone Co. has deployed facilities including fiber in it's service area within the census blocks that provides broadband speeds of 25/3 or greater. This infrastructure passes 872 locations in Monroe and is used by anchor institutions such as the Monroe School District to serve both the High School and Grade School and the Monroe Rural Fire Department. The City of Monroe uses the facilities to provide

broadband service to City Hall, the water treatment plant and water storage tank as well as the Legion Hall. Several of these locations were incorrectly claimed by Alyrica as unserved anchor institutions.

Finally, in 2020, Monroe Telephone Co. was awarded CARES Act funds in the amount of \$199,610 which was used to provide fiber to the home to 57 locations.

Pioneer Connect passes 1,905 locations with fiber in the census blocks Alyrica claims are unserved with access to broadband speeds of 25/3 or higher.

CARES Act funds were also utilized in Pioneer Connect's service area as well. Funds in the amount of \$361,082 resulted in 114 locations passed with fiber.

Additionally, Pioneer Connect can serve the following anchor institutions claimed as unserved in Alyrica's application with broadband speeds of 25/3 and in most cases with speeds of 100/20:

Hoskins-Kings Valley Rural Fire Protection District

Blodgett-Summit Rural Fire Protection District Station 1

Blodgett-Summit Rural Fire Protection District Station 2

Philomath Fire and Rescue Station 202

Alsea Rural Fire Protection District

Kings Valley Elementary School

Alsea Elementary School

Blodgett Elementary School

Bellfountain Cornerstone Christian School

Alsea Rural Health Care

Not to put too fine a point on this but, that totals \$6,215,426 of state and federal dollars awarded to the census blocks Alyrica claims are unserved. There are thousands of locations and anchor institutions passed with access to high speed broadband.

For these reasons, the companies feel they have no choice but to formally challenge the NTIA application filed by the Oregon Broadband Office (OBO). I am sending this email to give you a heads up about this situation and ask if you would like to meet to discuss this further.

The OTA and its members support the mission of the OBO and want to help ensure that all funds awarded to provide access to broadband are used appropriately. The OTA and our members do not believe that awarding Alyrica funds to overbuild existing fiber is the highest and best use of those funds. In fact, Monroe Telephone Co. is *still repaying the federal BIP loan* it received to deploy fiber in the same area Alyrica alleges is unserved. The OBO should not support any project that results in this kind of situation.

The specific request that our members have is that the OBO reject the Alyrica project and move ahead with the NTIA application without including it.

Thank you in advance for any consideration you give this note. Please let me know if you would like to meet to discuss.

Brant

503.871.0479