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- Weather
- Classified
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- How To Guide
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Qwest ordered to pay city fees

Federal appeals court rules against phone company's challenge to millions in fees to Oregon cities, including Medford and Ashland

Staff and wire reports

A federal appeals court ruled Tuesday that Qwest Communications International Inc. must pay millions of dollars in fees levied by Oregon cities for use of public rights of way.

The 9th U.S. Circuit Court of Appeals rejected Qwest's challenge to the fees. The 10 cities that sued Qwest, including Portland and Ashland, are charging the Denver-based regional telephone company 7 percent of revenue earned within the cities in exchange for the right to operate its equipment and lay wire in the public right of way. Qwest customers actually pay the fees and the levy is detailed on bills.

Portland led a legal battle against Qwest over whether the Federal Telecommunications Act of 1996 prevents cities from charging fees based on revenue. The League of Oregon Cities also took part, filing as a "friend of the court" on behalf of the scores of other cities that levy the fees, including Medford.

U.S. Magistrate John Jelderks ruled in March 2002 the cities could charge Qwest the fees, and the appeals court upheld his ruling.

Pam Beery, one of the attorneys representing the cities, praised the decision.

"We're delighted with the opinion obviously," Beery said.

Qwest has been paying the cities on a regular basis pending the appeal

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after Jelderks rejected an initial move by Qwest that asked him to order the cities to wait until the appeals court ruled before imposing the fees, Beery said.

Qwest officials were reviewing Tuesday's ruling and also were not immediately available.

Besides Portland and Ashland, cities included in the suit are Eugene, Happy Valley, Keizer, North Plains, Pendleton, Redmond, Salem and Springfield. But the decision has a statewide impact since many cities count on the fees as a significant portion of city revenues.

Mike Franell, Ashland's city attorney, said Qwest has been paying the fees and the city has been spending the revenue as part of general fund expenditures for basic city services.

Medford Finance Director and Deputy City Manager Jef Faw said Medford has kept the franchise fees Qwest has paid for the last three years in reserve in case the company won the case. The account totaled \$1.8 million as of June 30, Faw said. City officials need to analyze the ruling's impact for Medford.

"Maybe that can be money now that can be (budgeted)," he said.

The City Council would decide how the money will be spent, said City Manager Mike Dyal. The city has many projects and needs but no set plans for the money, he said.

Faw was not counting his chickens on Tuesday.

"We don't know that it can't be appealed," he said.

Qwest's only remaining appeal would be to the U.S. Supreme Court.

The 9th Circuit Court also ordered District Court Judge Jelderks to review a separate legal issue in his ruling by comparing individual ordinances in the plaintiff cities to make sure there was no conflict with the telecommunications act.

Judge Johnnie B. Rawlinson said in the 17-page opinion that the mandate of the 1996 act "is clear — certain aspects of telecommunications regulation are uniquely the province of the federal government, and Congress has narrowly circumscribed the role of state and local governments in this arena."

But Rawlinson noted that, "based on the record before us, there is no indication that Portland or the other cities ... have passed ordinances

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that are specific to the telecommunications process. ..."

Beery said the appeals court simply wants Jelderks to provide more details on his decision regarding the individual cities "rather than subjecting the ordinances to new scrutiny."

Franell said any clarification by the district court would at most require the city to rework its franchise agreement with Qwest, which would have incentive to approve the changes since Oregon law allows cities to seize Qwest's equipment in the public right of way (poles, lines, etc.) if the franchise fees are not paid.



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