

Qwest loses to cities in court

The 9th U.S. Circuit panel's decision for Oregon municipalities' franchise fees is a relief to Portland officials

By **MIKE ROGOWAY**
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Portland and nine other Oregon cities won a significant victory Tuesday when the 9th U.S. Circuit Court of Ap-

peals upheld a ruling that the cities are entitled to collect millions of dollars in franchise fees from Qwest Communications International Inc.

Franchise fees are Oregon cities' second-largest source of revenue. The long-awaited decision was a particular relief to officials in Portland, which already has spent the money Qwest argued the city wasn't entitled to. Other Oregon cities had set aside reserves in case the courts ruled they couldn't collect the fees.

The three-judge panel left some legal questions unanswered, and the decision might face further challenges. It might have implications beyond Oregon, as local governments nationwide fight with phone companies over the kinds of fees they can assess.

Oregon cities collect more than \$25 million annually in "right-of-way" fees from Qwest and other local phone companies. Oregon law allows them to charge a tax of as much as 7 percent on revenue the carriers receive from basic

phone service.

Qwest and its predecessor, US West Communications Inc., have spent years challenging those fees in state and federal court. Qwest argued that the Oregon cities' revenue-based fees violate federal law.

In November, the 9th Circuit Court heard an appeal of an earlier ruling from the U.S. District Court in Oregon, which ruled cities do have the authority to collect right-of-way fees. After

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considering the case for almost a year, the 9th Circuit panel Tuesday upheld that ruling but sent back for further review a decision on the specific mechanism by which rights of way are administered.

Qwest issued a statement praising the court's decision on the rules for administering franchises but did not comment on the court's ruling in favor of franchise fees, which was the key question for Oregon cities.

"We are very pleased with the

ruling, especially in regards to the question of franchise fees. It is a significant level of funding for cities," said David Barenberg, legislative director for the League of Oregon Cities. Franchise fees are assessed by cities in exchange for use of the public right of way, Barenberg said.

In Portland, fees from Qwest will provide \$4.9 million in the current fiscal year for the city's \$387 million general fund. City officials feared a ruling in Qwest's favor would have precipitated challenges from other utilities, costing more money.

"It was a huge relief for the city, and I think for the citizens, because I don't know how we would make ends meet" without that revenue, said Mary Volm, Portland communications director.

Most Oregon cities had set aside reserves in case the court struck down the franchise fees, according

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MARY VOLM,

PORTLAND COMMUNICATIONS DIRECTOR

to the League of Oregon Cities. Portland chose not to, Volm said, because it would have meant an immediate cut in services that could last as long as the issue was before the courts.

Tuesday's decision will have larger implications as telecommunications companies continue to resist local authorities' efforts to tax them, said Brad Ramsay, general counsel for the National Associa-

tion of Regulatory Utility Commissioners, which was not involved in the case. He said it will make challenges to such fees more difficult.

"If you're attacking regulatory fees in other municipalities, this is another nail in the coffin for that attack," Ramsay said.

Qwest could still challenge Tuesday's ruling by seeking review of the decision by the full 9th Circuit or by asking for review by the U.S. Supreme Court. Qwest wouldn't comment on its plans, but others said it is too soon to know how future court rulings or legislative decisions might change the picture.

"I wish that this was the final decision in this, but I doubt that it is," said Ken Strobeck, executive director of the League of Oregon Cities.

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