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**Court Upholds City Authority to Manage Public Rights of Way
City Regulations are Lawful**

SALEM - In a victory for Oregon's cities, the United States District Court for the District of Oregon granted motions for summary judgment filed by nine Oregon cities. This ruling lets stand city regulations that govern the use of city streets by telecommunications companies.

"This decision represents a significant legal victory for cities in Oregon and throughout the country. The Court today recognized the importance of the public's investment in city streets and the need for cities to be able to manage and protect this significant public asset," said Pamela J. Beery, legal counsel for eight Oregon cities that were parties to the litigation.

Qwest Refused to Pay

Qwest instigated this litigation five years ago by refusing to pay the city of Portland and 80 other Oregon cities any franchise fees for the use of city streets. In response, the League of Oregon Cities coordinated the successful intervention of eight other cities (Ashland, Happy Valley, Keizer, North Plains, Pendleton, Redmond, Salem, and Springfield) into the lawsuit. The city of Eugene also independently intervened. In May of 2002, Portland and the intervening cities won at the United States District Court for the District of Oregon. Qwest was ordered by Magistrate Judge John Jelderks to honor its contracts with the cities and pay for its use of public property. Qwest then appealed to the Ninth Circuit, which upheld the ruling in favor of the cities and protected millions of dollars in funds that Qwest had withheld.

The intervening cities all had signed contracts with Qwest and represented a broad cross-section of small and medium sized communities from all over the state.

"This decision is a great victory for local control," said La Grande Mayor Colleen Johnson, a member of the LOC Telecommunications Committee. "What many people don't realize is that franchise fees represent a major source of revenue for cities. Beyond the revenue impact, the ability of local governments to manage their public infrastructure is critical in maintaining the

quality of life and managing economic development opportunities in our communities. This decision protects those interests.”

Oregon Court Decides the Final Issues in the Litigation

Once the case was returned to the Oregon District Court for an examination of how the cities issue permits, regulate construction in city streets, and document the location of the myriad of utility lines buried in those streets. In ruling in favor of the cities, the court noted that penalty provisions for Qwest’s violation of City regulations are lawful under Section 253 of the Telecommunications Act of 1996, the law which was the basis of Qwest’s challenges. The Court stated: “Section 253 does not authorize telecommunications providers to violate a City’s lawful requirements with impunity.”

The Court’s Decision Supports Good Government

“Cities have and continue to make substantial investments in their streets,” said LOC Executive Director Mike McCauley. “This public investment of tax payer dollars requires protection through regulation of the use of rights of way by private for profit utilities to minimize disruption and damage. City regulation benefits the general public and adjacent property owners who would not be in a position to individually require private utilities to live up to their responsibilities to responsibly use rights of way. The court's decision affirms the ability of cities to protect the taxpayer’s investment in its roadways and recover costs associated with private utility use of publicly acquired rights of way.”

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