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**Court to Qwest: Pay Oregon Cities for Use of Public Property.**

SALEM - In a victory for Oregon's cities, the Ninth Circuit Court of Appeals decided in the case of *Qwest v. Portland* today affirmed that cities may continue to receive a fair price for the use of city streets by Qwest.

"This decision represents a significant legal victory for cities in Oregon, said Pamela J. Beery, legal counsel for eight Oregon cities who were parties to the litigation. "Although the Court has ordered the lower Court to make more detailed findings concerning some aspects of local ordinances to determine whether or not they comply with requirements of federal law, the Court has left intact the right to impose revenue based fees. The scope of the upcoming review by the lower Court has also been narrowed significantly."

Jim Randall, Salem City Councilor and Chair of the League of Oregon Cities Telecommunications Committee, realizes the impact this decision will have on local communities, "This decision upholds a longstanding principle that private users of city streets must pay fair compensation for the privilege of using public property. City management of streets is vital because citizens and businesses need safe, reliable access to city streets to conduct commerce."

**Qwest Refused to Pay**

Qwest instigated this litigation almost four 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.

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. "The cooperation of all cities in

Oregon through the efforts of the League of Oregon Cities helped present a clear and unified picture to the Court. The result is gratifying – and proof-positive of the ability of Oregon’s local governments to mobilize in defense of the interests of their citizens,” noted Mayor Eugene L. Grant of Happy Valley, one of the participating cities.

### **More than Money at Stake**

At stake in this litigation was not only fair compensation for the private corporate use of public property, but also the cities’ duty to safely manage traffic flow and protect the right of way. These areas can become crowded with utility infrastructure such as gas and sewer lines and telecommunications cable. The 9<sup>th</sup> Circuit’s decision means there will be further findings prepared by the lower court concerning limited aspect of each of the city ordinances.

“It is disappointing to see the Courts subject cities to additional legal expense to justify our requirements to protect the interests of our citizens in safe and efficient streets,” Springfield Mayor Sid Leiken said. “We are charged with the duty of keeping that property in safe, working order,” said Kaiser City Manager Chris Eppley.

### **Decision Leaves Issues Unresolved**

League of Oregon Cities Executive Director Ken Strobeck expressed concern that the decision of the Ninth Circuit, “leaves Oregon cities uncertain about the future.” “While it says that Qwest must pay for its use of public property, it leaves uncertainty about whether locally-elected city leaders are empowered to establish safety regulations regarding the public right of way. We will review with our attorneys whether the cities should seek further court review of some of those legal questions.”

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