SUPREME COURT OF OREGON

US West Communications, Inc. v. City of Eugene, 336 Or. 181

81 P.3d 702 (2003) · No. SC S49254 · Decided December 18, 2003

SUMMARY

The Oregon Supreme Court held that ORS 221.515 does not prohibit the City of Eugene from imposing a two-percent telecommunications registration fee in addition to a seven-percent privilege or franchise fee, provided the registration fee is based on nonexchange access-service revenues. The court declined to decide whether Oregon telecommunications statutes preempted several city code provisions because that issue was not ripe for adjudication. The Court of Appeals decision was affirmed in part and vacated in part, and the circuit court judgment was reversed in part and vacated in part.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Kistler, J.
JURISDICTION	Oregon
DECIDED	December 18, 2003
DOCKET	SC S49254
DISPOSITION	other
PROCEDURAL POSTURE	U.S. West sought declaratory and injunctive relief concerning Eugene's telecommunications registration and license fees and the alleged preemptive effect of Oregon telecommunications statutes. On cross-motions for summary judgment, the circuit court ruled that ORS 221.515 barred the city from collecting both the two-percent registration fee and the seven-percent franchise fee. The Court of Appeals reversed, and the Supreme Court of Oregon reviewed the decision.
STANDARD OF REVIEW	Independent review of statutory text and context; justiciability was determined under the declaratory judgment statute.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Oregon, decided en banc.
PARTIES	US West Communications, Inc. v. City of Eugene

TOPICS

municipal law | municipal finance | statutory interpretation | home rule | ripeness

PRACTICE AREAS

municipal law | telecommunications regulation | taxation | administrative law | appellate procedure

QUESTIONS PRESENTED

1. Whether ORS 221.515 prohibits Eugene from collecting a two-percent registration fee in addition to a seven-percent privilege or franchise fee.
2. Whether Oregon statutes governing the Public Utility Commission preempt the challenged Eugene telecommunications regulations.
3. Whether U.S. West's preemption challenge presented a ripe controversy for declaratory relief.

HOLDINGS

1. ORS 221.515 does not prohibit Eugene from recovering an additional registration fee from telecommunications carriers when the fee is for activity other than use of public rights-of-way and is based solely on revenue derived from nonexchange access services.
2. The preemption claim was not ripe for adjudication because it depended on contingent future events and did not involve present facts affecting U.S. West's rights or threatening those rights.

KEY QUOTATIONS

> *"By its plain terms, ORS 221.515(3) prohibits a city from recovering more than a seven-percent tax or fee from a telecommunications carrier for the privilege of using the public rights-of-way."* (336 Or. at 185; 81 P.3d at 704)

> *"We cannot adopt the interpretation of ORS 221.515 that U.S. West urges without rewriting the statute's terms, a task that we cannot undertake."* (336 Or. at 186; 81 P.3d at 705)

> *"As the legislature's use of the present tense phrase "are affected" implies, the controversy must involve a dispute based on present facts rather than on contingent or hypothetical events."* (336 Or. at 190; 81 P.3d at 707)

> *"Because U.S. West's claim that ORS chapter 759 preempts various city code provisions is not ripe for adjudication, we vacate the portion of the Court of Appeals' decision addressing that claim."* (336 Or. at 191; 81 P.3d at 708)

FACTUAL BACKGROUND

U.S. West, now known as Qwest, provided telecommunications services within Eugene under a franchise agreement requiring payment of seven percent of specified exchange-access revenues. Eugene later amended its code to impose a two-percent annual registration fee on telecommunications activity and a seven-percent license fee for facilities using public rights-of-way. The city sought to collect the two-percent registration fee in addition to the franchise fee, and U.S. West also challenged several telecommunications regulations as preempted by state law.

PROCEDURAL HISTORY

The circuit court entered judgment for U.S. West on the fee issue. The Court of Appeals reversed, holding that the registration fee did not violate ORS 221.515. The Supreme Court affirmed the Court of Appeals' resolution of the fee issue but vacated its decision reaching the separate preemption issue because that claim was not ripe; it also reversed and vacated portions of the circuit court judgment.

DISPOSITION

other

REMAND INSTRUCTIONS

The Court of Appeals decision was affirmed in part and vacated in part. The circuit court judgment was reversed in part and vacated in part. The opinion does not state additional remand instructions.

CASES CITED

- US West Communications v. City of Eugene, 177 Or. App. 424, 431-32, 37 P.3d 1001 (2001)
- AT & T Communications v. City of Eugene, 177 Or. App. 379, 390-91, 35 P.3d 1029 (2001), rev. den., 334 Or. 491, 52 P.3d 1056 (2002)
- Jarvill v. City of Eugene, 289 Or. 157, 169, 613 P.2d 1 (1980)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 611, 859 P.2d 1143 (1993)
- Eugene Theatre et al. v. Eugene et al., 194 Or. 603, 617, 243 P.2d 1060 (1952)
- Oregon Medical Association v. Rawls, 281 Or. 293, 296, 574 P.2d 1103 (1978)
- Budget Rent-A-Car v. Multnomah Co., 287 Or. 93, 95, 597 P.2d 1232 (1979)
- Leo v. Keisling, 327 Or. 556, 560, 964 P.2d 1023 (1998)
- TVKO v. Howland, 335 Or. 527, 534, 73 P.3d 905 (2003)
- Brown v. Oregon State Bar, 293 Or. 446, 449, 648 P.2d 1289 (1982)
- Cummings Constr. v. School Dist. No. 9, 242 Or. 106, 110, 408 P.2d 80 (1965)