

Appeals court cuts cities' authority to license cable TV

SAN FRANCISCO (UPI) — A federal appeals court has declared that it is a violation of free speech rights for a city to award cable television contracts to the highest bidder.

In a decision that could liberalize cable television licensing in hundreds of cities across the nation, the 9th U.S. Circuit Court of Appeals Friday struck down a portion of the Los Angeles cable TV franchise law.

"The city may not solicit 'bids' from prospective speakers and deny access to its facilities to all save the highest 'bidder' in each region," Judge Joseph Sneed wrote for the court.

"This is probably the most definitive decision in the country now affecting cable licensing," said Preferred Communications Inc. attorney Harold Farrow.

Farrow called it the most important decision affecting cable TV in several years and said it could influence "hundreds of cases around the country."

Deputy City Attorney Edward Perez said he did not consider the decision a defeat and in fact declared the ruling a virtual "victory" for the city because the court rejected the cable firm's claim that the city violated antitrust laws.

"I am very happy we won on the antitrust issue. Now we have a chance to go back to the district court and present evidence that we were not violating the first amendment."

Perez said the city would ask for a rehearing by the 9th Circuit Court and "carefully review" a possible appeal to the U.S. Supreme Court.

Cable operator PCI asked for space on utility poles and underground conduits of Los Angeles Water and Power Co. to string cable lines for several hundred thousand people in southwest Los Angeles. But it

was ordered to first get a franchise license through the city auction process.

In a unanimous ruling, the three-judge panel said cities have the power to regulate cable television but that "is quite different from restricting access," as Los Angeles attempted to do.

The court ordered the PCI suit returned to a lower court for trial.

Under the challenged city law, cable franchises are awarded through an auction that requires up to \$70,000 paid prior to a franchise even being awarded.

The city also requires bidders to submit to a laundry list of rules that include giving the city control of pricing, surrender of two channels to government, two for educational use and two for the general public out of 52 channels available.

The court side-stepped the issue of the legality of ordering channels given to government. It also rejected the PCI claim that Los Angeles violated anti-trust laws with the auction.

But Farrow said the ruling still provides an important protection against the confiscation of equipment and loss of the cable investment.

Cities "place an ungodly load (of regulation) on cable television" Farrow said. It appears under the court ruling the business can't be "put out of town" for challenging the rules.

The court said cable's need for undergrounding lines does justify some government regulation. But Judge Sneed said, while the city may regulate "reasonable time, place and manner" rules "it may not limit access."

Sneed compared the limites imposed on PCI as similar to a city trying to limit newspaper sales on public streets only to the paper that "the government believes best serves the community."