

FCC Local and State Government Advisory Committee
Advisory Recommendation Number 6
Western PCS I Preemption Request
WTB/POL 96-3

1. State taxation is essential to state sovereignty. The foundation of state and local government's ability to raise revenue is its authority to assess ad valorem property taxes.
2. The Telecommunications Act of 1996 did not change or impair any state or local government authority to tax telecommunications providers, so long as the tax is imposed in a non-discriminatory manner. To the contrary, Congress reenforced state and local taxation authority in the Act's tax savings provision. Section 602(c)(2) of the Act states ". . . nothing in this act . . . shall be construed to modify, impair, supersede, or authorize a modification, impairment, or supersession of any state or local law pertaining to taxation. . ." In this section of the Act, Congress respected state and local government rights with regard to taxation, and made no effort to restrict or impair state or local taxing authority. Any Commission conclusion to the contrary would be contrary to Section 602(c)(2).
3. In this proceeding before the Commission, Western's complaint is really with the level of valuation, and therefore the amount of taxation. State courts are the proper forum to address disputes about the method and process of state taxation. As with other tax disputes, if it is determined that the level of valuation is too high, or the tax is not uniform or proportional, there will be a remedy fashioned by a state court.
4. State courts have the necessary expertise to address issues of taxation disputes on a case by case basis. States typically have administrative bodies whose sole function is to ensure equalization of property taxation. This is a state responsibility which the Commission should leave to the states to perform. Even if Section 602(c)(2) did not preclude Western's preemption request, the LSGAC respectfully suggests that the Commission is not equipped to evaluate every state and local tax issue. Preemption of state property taxing authority relating to wireless companies will lead to claims for taxation preemption from other telecommunications providers. For example, would the Commission want to consider whether a state tax on a manufacturer of equipment utilized by a telecommunications provider, is a barrier to entry? If the Commission starts down the slippery slope of preempting state taxation of one category of provider, the industry demands for state and local taxation preemption will multiply.

RECOMMENDATION: For the foregoing reasons, it is recommended that the Commission let the State of Oregon perform its duty and settle this tax dispute based upon its non-discriminatory application of its tax law.

Adopted by the LSGAC on September 5, 1997

Kenneth S. Fellman
Chairman, LSGAC