
TELECOM - NEVADA

City of Reno v. Netflix, Inc.

United States Court of Appeals, Ninth Circuit - October 28, 2022 - F.4th - 2022 WL 15579803

City brought action against digital content service providers, alleging providers failed to pay franchise fees under Nevada's Video Service Law (VSL) and seeking declaration pursuant to federal Declaratory Judgment Act.

The United States District Court for the District of Nevada dismissed action. City appealed.

The Court of Appeals held that:

- Under Nevada law as predicated by the Court of Appeals, the Video Service Law (VSL), permitting local governments to impose franchise fees that do not exceed five percent of a video service provider's gross annual revenue from subscribers within the local government's jurisdiction, does not impliedly create a private right of action for cities to sue for unpaid franchise fees;
- The Declaratory Judgment Act does not provide a cause of action when a party lacks a cause of action under a separate statute and seeks to use the Act to obtain affirmative relief; and
- City's action was offensive, not defensive, and thus city could not obtain relief pursuant to Declaratory Judgment Act in absence of an independent cause of action against providers.

Court of Appeals would exercise its discretion to forgive city's forfeiture of issue of whether Declaratory Judgment Act provided an independent right of action, on city's appeal of dismissal, for failure to state claim, of its action against digital content service providers alleging providers failed to pay franchise fees under Nevada's Video Service Law (VSL) and seeking declaration pursuant to federal Declaratory Judgment Act; issue was pure question of law, and because Court of Appeals would ultimately affirm district court's dismissal, there was no risk that providers would suffer prejudice.

Under Nevada law as predicated by the Court of Appeals, the Video Service Law (VSL), permitting local governments to impose franchise fees that do not exceed five percent of a video service provider's gross annual revenue from subscribers within the local government's jurisdiction, does not impliedly create a private right of action for cities to sue for unpaid franchise fees.

City's action against digital content service providers, alleging providers failed to pay franchise fees under Nevada's Video Service Law (VSL), was offensive, not defensive, and thus city could not obtain relief pursuant to Declaratory Judgment Act in absence of an independent cause of action against providers.

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