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TELECOM - GEORGIA

Gwinnett County v. Netflix, Inc.

Court of Appeals of Georgia - March 8, 2023 - S.E.2d - 2023 WL 2398217

County, city, and unified government consisting of former county and city brought putative class action against video-streaming service providers alleging providers violated Consumer Choice for Television Act and local ordinances by providing streaming services without obtaining franchises and paying franchise fees to local governments, asserting unjust enrichment claims, and seeking declaratory relief, accounting of all monies owed, and injunctive relief.

Following removal and remand, one provider asserted counterclaim under § 1983 alleging imposition of franchise fees would violate its civil and constitutional rights. The Superior Court granted defendants' motions to dismiss for failure to state a claim and conditionally dismissed counterclaim. Plaintiffs appealed.

The Court of Appeals held that:

- Plaintiffs did not have express right of action under the Act;
- Plaintiffs did not have implied right of action under the Act;
- Amendments to the Act rendered declaratory judgment claim moot;
- Lack of any private right of action under the Act precluded declaratory judgment claim; and
- Providers were not unjustly enriched by their failure to pay franchise fees.

Express right of action under Consumer Choice for Television Act provided to an affected local governing authority seeking to recover additional amount of franchise fee alleged to be due after performing an audit of business records or by a franchise holder seeking refund of alleged overpayment did not apply to allow county, city, and unified government consisting of former county and city to bring action against video-streaming service providers alleging they provided streaming services without obtaining franchises and paying franchise fees to local governments, where plaintiffs did not allege that providers were franchise holders or that plaintiffs conducted any audits of providers' business records.

Express right of action under Consumer Choice for Television Act provided to local governing authorities if mediation failed to resolve complaint by residential subscribers who believed they were being denied access based on low-income status did not apply to allow county, city, and unified government consisting of former county and city to bring action against video-streaming service providers alleging they provided streaming services without obtaining franchises and paying franchise fees to local governments, since enforcement powers granted to local governing authorities under such provision did not extend to a service provider's failure to obtain or apply for a franchise.

County, city, and unified government consisting of former county and city did not have implied right of action under Consumer Choice for Television Act to bring action against video-streaming service providers alleging they provided streaming services without obtaining franchises and paying franchise fees to local governments; by terms of Act's definition of franchise, obligation to obtain

franchise was triggered only where a cable or video service provider constructed or operated a network in public rights of way, which providers of video-streaming services did not do, and Act's franchise fee obligation arose only in connection with issuance of a state franchise, over which municipalities and counties had no authority.

Amendments to Consumer Choice for Television Act rendered moot claim by county, city, and unified government consisting of former county and city seeking declaratory judgment that video-streaming service providers offered "video service" within meaning of the Act, failed to comply with the Act, and owed franchise fees; change to Act's definition of "video service" expressly excluded streaming video, and any debt for past-due fees did not arise under any contract or unclear judgment that was subject to prior definition.

Lack of any private right of action by county, city, and unified government consisting of former county and city to bring action under Consumer Choice for Television Act against video-streaming service providers for failure to pay franchise fees precluded claim by county, city, and unified government for declaratory judgment that providers owed franchise fees; Declaratory Judgment Act merely created procedural device for declaration of rights between parties, and Consumer Choice for Television Act was sole basis for any obligation on part of providers to pay franchise fees, as county, city, and unified government failed to produce for the record local ordinances that purportedly required payment of franchise fees.

Video-streaming service providers were not unjustly enriched by their failure to pay franchise fees to county, city, or unified government consisting of former county and city, since providers were not obligated under Consumer Choice for Television Act to pay such fees, as they were not franchise holders.

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