
TELECOM - LOUISIANA

City of Kenner v. Netflix, Inc.

Court of Appeal of Louisiana, Fifth Circuit - May 3, 2023 - So.3d - 2023 WL 3216197 - 22-466 (La.App. 5 Cir. 5/3/23)

City brought putative class action on behalf of itself and all of Louisiana's political subdivisions similarly situated against video streaming platforms seeking to collect franchise fees under Consumer Choice for Television Act (CCTA).

The District Court sustained platforms' exceptions of no cause of action and no right of action, and dismissed city's claims against platforms with prejudice. City appealed.

The Court of Appeal held that:

- City had no right of action to enforce CCTA provisions against platforms that did not hold franchise certificates, and
- Video streaming platforms were not "video service providers" within meaning of the CCTA, and thus platforms were not required to obtain certificates of franchise from Secretary of State, so that city had no cause of action against platforms.

City had no right of action to enforce provisions of Consumer Choice for Television Act (CCTA) requiring franchise certificate holders to pay franchise fees against video streaming platforms that did not hold franchise certificates; CCTA did not grant local governmental subdivisions right to enforce its provisions by filing suit against non-holders of certificates.

Video streaming platforms were not "video service providers" within the meaning of the Consumer Choice for Television Act (CCTA), in that the platforms did not operate or maintain their own wire line facilities in the public right of way, and thus platforms were not required to obtain certificates of franchise from Secretary of State under CCTA, so that city had no cause of action to seek franchise fees from platforms under CCTA; platforms' customers accessed video services through customers' own devices via an internet connection provided by a third-party internet service provider (ISP), and platforms were not ISPs.

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