

Bond Case Briefs

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TELECOM - CALIFORNIA

City of Lancaster v. Netflix, Inc.

Court of Appeal, Second District, Division 3, California - February 22, 2024 - Cal.Rptr.3d - 2024 WL 725166

City brought putative class action on behalf of itself and other local governments against video streaming services seeking unpaid past franchise fees for video services under the Digital Infrastructure and Video Competition Act and declaratory relief compelling providers to obtain state franchises and pay franchise fees going forward.

The Superior Court sustained providers' demurrer to the complaint without leave to amend, and entered judgment. City appealed.

The Court of Appeal held that:

- Act did not expressly create a private right of action for local governments against non-franchise holders;
- Act did not contain an implied private right of action for local governments against non-franchise holders; and
- Trial court appropriately preserved Public Utilities Commission's jurisdiction.

Private right of action created by the Digital Infrastructure and Video Competition Act, which required video service providers to obtain a franchise from the Public Utilities Commission and pay franchise fees to local governments in exchange for use of public rights-of-way to operate video service networks, did not expressly create a private right of action for city and local government entities against streaming services that were non-franchise holders for unpaid video service provider fees; Act made clear that fees to be collected from video service providers operating within local government's jurisdiction were franchise fees, and that only "holders" of a state franchise were obligated to pay the required fees.

Digital Infrastructure and Video Competition Act, which required video service providers to obtain a franchise from the Public Utilities Commission and pay franchise fees to local governments in exchange for use of public rights-of-way to operate video service networks, did not contain an implied private right of action for local governments against non-franchise holders for collection of video service provider fees; structure of the Act indicated it was legislative intent for Commission, not local governments, to be responsible for enforcement issues relating to state franchise requirement, as it provided for Commission to bring suit on its own against video service providers that failed to obtain state franchise, while the Act's legislative history made no mention of private right of action against non-franchise holders.

Trial court appropriately preserved Public Utilities Commission's jurisdiction by sustaining demurrer to city's declaratory relief claim against video streaming services seeking judicial declaration that services must obtain state-issued franchises through the Commission, where claim was wholly derivative of city's claim asserting private cause of action under the Digital Infrastructure and Video Competition Act seeking past due video service provider fees allegedly owed by providers, which

was meritless because the Act granted enforcement authority to Commission and not local governments, and further, city's claim was essentially a thinly veiled request that court order the Commission to issue franchises to providers or to institute enforcement action against them.