SUPREME COURT OF ILLINOIS

City of Chicago v. Comcast Cable Holdings, L.L.C.

231 Ill. 2d 399 (2008) · No. Nos. 105342, 105348, 105349 cons. · Decided November 20, 2008

SUMMARY

The Illinois Supreme Court held that federal law preempted Chicago franchise-agreement provisions requiring cable operators to include cable modem service revenues in calculating a 5% franchise fee. The court concluded that section 542 of the Communications Act, as interpreted by the FCC, excluded cable modem revenues from the franchise-fee calculation and rejected the City's home-rule and savings-clause arguments. The court reversed the appellate court and affirmed dismissal of the City's complaint.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Kilbride; Chief Justice Fitzgerald; Justice Freeman; Justice Thomas; Justice Garman; Justice Karmeier; Justice Burke
JURISDICTION	Illinois
DECIDED	November 20, 2008
DOCKET	Nos. 105342, 105348, 105349 cons.
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendants appealed the appellate court's reversal of the circuit court's dismissal of Chicago's declaratory-relief complaint concerning cable franchise fees. The Illinois Supreme Court allowed and consolidated the defendants' petitions for leave to appeal.
STANDARD OF REVIEW	De novo review applies to federal-preemption questions and to an order granting a motion to dismiss.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential.
PARTIES	Comcast Cable Holdings, L.L.C., Comcast of Chicago, Inc., Comcast of Illinois III, Inc., Comcast of South Chicago, Inc., Comcast of Florida/Illinois/Michigan, Inc., RCN Cable TV of Chicago, Inc., Wideopenwest Illinois, Inc. v. The City of Chicago

TOPICS

municipal law · public utilities · federalism · statutory interpretation · contract interpretation

PRACTICE AREAS

municipal law · communications law · federal preemption · administrative law · contracts

QUESTIONS PRESENTED

1. Whether section 542(b) of the Communications Act preempts the portion of Chicago's contractual franchise-fee provision that includes cable modem service revenues in the five-percent fee calculation.
2. Whether Chicago could impose the disputed fee under its independent state-law home-rule authority despite federal preemption and the absence of a separate contractual provision authorizing a fee on cable modem revenues.
3. Whether the Communications Act's savings clause in section 541(d)(2) preserved Chicago's authority to impose the disputed fee.

HOLDINGS

1. Section 542(b), as interpreted by the FCC in its 2002 ruling, preempts the portion of the parties' franchise agreement that includes cable modem service revenues in calculating Chicago's five-percent franchise fee.
2. Chicago had no authority, home-rule or otherwise, to require payment of a five-percent fee on cable modem service revenues because the agreement contained no separate provision authorizing that fee and expressly required interpretation consistent with section 542.

KEY QUOTATIONS

> *"We hold that the FCC's 2002 ruling that "revenue from cable modem service would not be included in the calculation of gross revenues from which the franchise fee ceiling is determined" (FCC Ruling, 17 F.C.C.R. at 4851, ¶105) preempts the portion of the parties' agreement the City relies on to impose a 5% franchise fee on the cable operators' cable modem service revenues."* (at -15)

> *"Appellate court judgment reversed; circuit court judgment affirmed."* (at -15)

FACTUAL BACKGROUND

Chicago's cable franchise renewal agreements required the operators to pay a five-percent franchise fee based on annual gross revenues. After the FCC classified cable modem service as an interstate information service rather than a cable service, the operators stopped paying the portion of the fee calculated from cable modem revenues. The agreements incorporated Chicago's Cable Ordinance, whose broad definition of gross revenues included auxiliary services such as data and electronic transmission services. Chicago sought declaratory and related relief to enforce the disputed fee provision.

PROCEDURAL HISTORY

Chicago sued seven cable-system operators for allegedly breaching franchise renewal agreements by refusing to pay the portion of a five-percent franchise fee calculated from cable modem service revenues. The defendants removed the action to federal court, which dismissed the complaint; the Seventh Circuit vacated that judgment and remanded for lack of federal jurisdiction. On remand, the Cook County circuit court dismissed the complaint on federal-preemption grounds. The Illinois Appellate Court reversed, concluding that the fee was not clearly preempted and could be supported by Chicago's home-rule authority. The Illinois Supreme Court reversed the appellate court and affirmed the circuit court's dismissal.

DISPOSITION

reversed

CASES CITED

- Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 541 (2001)
- Kinkel v. Cingular Wireless, LLC, 223 Ill. 2d 1, 15 (2006)
- Karas v. Strevell, 227 Ill. 2d 440, 451 (2008)
- Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992)
- National Cable & Telecommunications Ass’n v. Brand X Internet Services, 545 U.S. 967, 999-1000 (2005)
- Bowman v. American River Transportation Co., 217 Ill. 2d 75, 91 (2005)
- Parish of Jefferson v. Cox Communications Louisiana, LLC, No. 02-334 (E.D. La. July 3, 2003)
- Time Warner Cable-Rochester v. City of Rochester, No. 03-CV-6257 (W.D.N.Y. Dec. 12, 2003)
- City of Minneapolis v. Time Warner Cable, Inc., No. 05-994 (D. Minn. Nov. 10, 2005)
- U.S. Bank National Ass’n v. Clark, 216 Ill. 2d 334, 352 (2005)
- City of Chicago v. Comcast Cable Holdings, L.L.C., 384 F.3d 901 (7th Cir. 2004)