SUPREME COURT OF ILLINOIS

Primeco Personal Communications, L.P. v. Illinois Commerce Commission

196 Ill. 2d 70 (Ill. 2001) · No. Nos. 89075, 89084 · Decided March 29, 2001

SUMMARY

The Illinois Supreme Court considered whether the municipal infrastructure maintenance fee imposed under the Telecommunications Municipal Infrastructure Maintenance Fee Act violated the Illinois Constitution's uniformity clause. The court held that the fee was unconstitutional as applied to wireless telecommunications providers that did not use public rights-of-way, but declined to invalidate the statute facially. The court partially affirmed the circuit court's judgment and did not address the plaintiffs' remaining claims.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Thomas; Thomas; Freeman; McMorrow
JURISDICTION	Illinois
DECIDED	March 29, 2001
DOCKET	Nos. 89075, 89084
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal and consolidated cross-appeals from an order granting summary judgment to wireless telecommunications retailers on their uniformity-clause challenge to the municipal infrastructure maintenance fee and granting summary judgment to defendants on the plaintiffs' other claims.
STANDARD OF REVIEW	De novo review of the circuit court's resolution of the legal uniformity-clause question; summary judgment was reviewed under the standard applicable when no genuine issue of material fact exists.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Illinois Commerce Commission, City of Chicago v. Primeco Personal Communications, L.P., Illinois RSA # 3, Inc., USCOC of Illinois RSA # 4, Inc., Davenport Cellular Telephone Co., USCOC of Illinois RSA # 1, Inc., National Cellular Communications, Inc.

TOPICS

constitutional law · state and local tax · tax · municipal law · administrative law

PRACTICE AREAS

constitutional law · state and local taxation · municipal law · telecommunications regulation · administrative law

QUESTIONS PRESENTED

1. Whether imposing the municipal infrastructure maintenance fee on wireless telecommunications retailers that do not own, operate, or maintain infrastructure in public rights-of-way creates an unreasonable classification under article IX, section 2, of the Illinois Constitution.
2. Whether the municipal infrastructure maintenance fee was facially invalid rather than invalid only as applied to the wireless plaintiffs.
3. Whether the court should reach the plaintiffs' separate uniformity-clause challenge concerning PBX and Centrex entities or their vagueness challenge to section 13-511 of the Public Utilities Act.

HOLDINGS

1. The municipal infrastructure maintenance fee violates article IX, section 2, of the Illinois Constitution as applied to telecommunications retailers that do not own, operate, or maintain infrastructure in public rights-of-way.
2. The municipal infrastructure maintenance fee is not facially invalid; it is invalid only to the extent that it applies to telecommunications retailers that do not own, operate, or maintain infrastructure in public rights-of-way.
3. The court declined to address the plaintiffs' cross-appeal concerning counts II and III because the resolution of those issues could not affect the disposition of the controversy before the court.

KEY QUOTATIONS

> *"If, as we have already established, the object of the municipal IMF is to replace franchise fees and establish a uniform system for allowing telecommunications providers to access the public rights-of-way in exchange for the payment of a fee, it would be absurd to impose such a fee on wireless providers who do not own, operate, or maintain any equipment within the public rights-of-way."* (216-17)

> *"Rather, we find that the municipal IMF violates the uniformity clause only to the extent that it applies to telecommunications retailers who do not own, operate, or maintain any part of their infrastructure within the public rights-of-way."* (219)

FACTUAL BACKGROUND

The plaintiffs were wireless telecommunications retailers whose infrastructure was located on private property; they did not own, operate, or maintain equipment in public rights-of-way. Illinois replaced prior invested-capital taxes and municipal franchise fees with the Telecommunications Municipal Infrastructure Maintenance Fee Act, which authorized municipalities to impose a percentage fee on telecommunications retailers' gross charges. Chicago adopted the maximum two-percent municipal fee, and the wireless providers challenged the fee as an unreasonable tax classification under the Illinois Constitution's uniformity clause.

PROCEDURAL HISTORY

Wireless telecommunications retailers filed an action for declaratory and injunctive relief challenging the municipal infrastructure maintenance fee under the Illinois Constitution's uniformity clause and challenging a separate statute as unconstitutionally vague. The circuit court granted plaintiffs summary judgment on count I, finding the fee classification unreasonable, but granted defendants summary judgment on counts II and III. Because the circuit court invalidated an Illinois statute, the parties appealed directly to the Illinois Supreme Court. The Supreme Court affirmed count I in part, limiting the invalidity to application against telecommunications retailers that do not own, operate, or maintain infrastructure in public rights-of-way, and declined to address counts II and III.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No specific remand instruction was stated. The judgment was affirmed as to count I, with the municipal infrastructure maintenance fee invalid only as applied to the wireless plaintiffs; the remaining claims were not addressed.

CASES CITED

- City of Springfield v. Inter-State Independent Telephone & Telegraph Co., 279 Ill. 324, 116 N.E. 631 (1917)
- Milwaukee Safeguard Insurance Co. v. Selcke, 179 Ill. 2d 94, 688 N.E.2d 68 (1997)
- Allegro Services, Ltd. v. Metropolitan Pier & Exposition Authority, 172 Ill. 2d 243, 665 N.E.2d 1246 (1996)
- Searle Pharmaceuticals, Inc. v. Department of Revenue, 117 Ill. 2d 454, 512 N.E.2d 1240 (1987)
- Geja's Cafe v. Metropolitan Pier & Exposition Authority, 153 Ill. 2d 239, 606 N.E.2d 1212 (1992)
- Triple A Services, Inc. v. Rice, 131 Ill. 2d 217, 545 N.E.2d 706 (1989)
- Brown v. Kirk, 64 Ill. 2d 144, 355 N.E.2d 12 (1976)
- Atkins v. Deere & Co., 177 Ill. 2d 222, 685 N.E.2d 342 (1997)
- Edwards v. Pope, 4 Ill. 465 (1842)
- Michigan Avenue National Bank v. County of Cook, 191 Ill. 2d 493, 732 N.E.2d 528 (2000)
- Lulay v. Lulay, 193 Ill. 2d 455, 739 N.E.2d 521 (2000)
- American Telephone & Telegraph Co. v. Village of Arlington Heights, 156 Ill. 2d 399, 620 N.E.2d 1040 (1993)
- Village of West City v. Illinois Commercial Telephone Co., 372 Ill. 493, 24 N.E.2d 352 (1939)
- United States v. Salerno, 481 U.S. 739 (1987)

- In re C.E., 161 Ill. 2d 200, 641 N.E.2d 345 (1994)
- City of Chicago Heights v. Public Service Co., 408 Ill. 310, 97 N.E.2d 268 (1951)
- People ex rel. Partee v. Murphy, 133 Ill. 2d 402, 550 N.E.2d 998 (1990)
- People ex rel. Black v. Dukes, 96 Ill. 2d 273, 449 N.E.2d 856 (1983)
- In re Marriage of Wright, 89 Ill. 2d 498, 434 N.E.2d 293 (1982)
- Segers v. Industrial Commission, 191 Ill. 2d 421, 732 N.E.2d 488 (2000)
- In re Barbara H., 183 Ill. 2d 482, 702 N.E.2d 555 (1998)