

Satellite TV industry: Ohio tax hurts all viewers

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(AP) -- The Ohio Supreme Court has upheld a state sales tax for satellite TV providers that cable competitors don't have to pay, rejecting arguments from the satellite industry that the tax is unfair while maintaining a source of tens of millions of dollars in revenue for the financially struggling state.

In the 5-2 decision released Monday, the state's highest court ruled that the 2003 tax does not violate the U.S. Constitution's Commerce Clause because the tax is based on differences between the nature of the businesses and does not favor in-state interests at the expense of out-of-state interests.

Satellite companies had argued that subjecting them and not their cable rivals to the tax violates their rights to interstate commerce because their companies operate between states while cable companies operate within them.

But writing for the majority, Justice Terrence O'Donnell said the justices concluded that Ohio lawmakers "imposed a sales tax that makes no distinction between local and interstate commerce, but rather distinguishes based on the mode of distributing television programming."

The 5.5 percent sales tax on satellite TV imposed as part of a budget-balancing tax package in 2003 generated about \$54 million for the state in the fiscal year that ended June 30, John Kohlstrand, a spokesman for the Ohio Department of Taxation, said Monday.

The Legislature chose not to apply the tax to cable operators, which pay local franchise fees that range from 2 percent to 5 percent.

The lawsuit that reached the state Supreme Court was brought by DirecTV Inc. and Dish Network Corp., and the decision affirms an earlier ruling from a state appeals court.

The satellite industry has challenged similar tax discrepancies in other states but has been on the losing side of court rulings in North Carolina and Kentucky, meaning the Ohio high court ruling was no major surprise, Kohlstrand said.

Had Monday's decision gone the other way, Ohio could have been looking at the possibility of more than \$300 million in refund claims for satellite TV sales tax collected in past years, Kohlstrand said.

When the case was argued before the Ohio Supreme Court in October, attorney E. Joshua Rosenkranz, who represented DirecTV and Dish Network, said the satellite operators were not looking for a refund but for fair competition with cable. The industry's attorneys had indicated that a ruling either way would likely be appealed to the U.S. Supreme Court.

El Segundo, Calif.-based DirecTV Inc. and Englewood, Colo.-based Dish Network Corp. said in a statement they were disappointed by the decision.

"This decision will directly affect the wallets of Ohio consumers who will now have no way to combat ever-increasing cable prices," the companies said.

They also said Ohio loses millions in revenue because it doesn't apply the tax to both satellite and cable TV industries.

Ohio Attorney General Richard Cordray said in an interview the decision ended the satellite TV industry's unfair advantage when it came to taxes in Ohio.

"In essence, they were enjoying a loophole in Ohio's structure of its tax laws and this leveled the playing field as we see it," Cordray said.

In a dissenting opinion joined by Justice Paul Pfeifer, outgoing Ohio Chief Justice Eric Brown said flatly that the sales tax was indeed unconstitutional.

"It treats sellers of the same service differently. That's discrimination," Brown wrote.

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