THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

DIRECTV, INC. and ECHOSTAR SATELLITE, L.L.C., n/k/a DISH NETWORK, LLC

Plaintiffs,

vs.

STATE OF FLORIDA, DEPARTMENT OF REVENUE AND THE FLORIDA CABLE TELCOMMUNICATIONS ASSOCIATION,

Defendants.
_____/

CASE NO. 05-CA-1037
GENERAL CIVIL DIVISION

(Consolidated)

MARCUS and PATRICIA OGBORN, on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

JIM ZINGALE, acting in his official capacity as the Director of the FLORIDA DEPARTMENT OF REVENUE,

Defendant.
_____/

CASE NO. 05-CA-1354
GENERAL CIVIL DIVISION

SUMMARY FINAL JUDGMENT FOR DEFENDANTS

THIS CASE is before me on cross motions for summary judgment submitted by DirecTV and Dish Network ("Satellite Providers"), the Florida Cable Telecommunications Association ("FCTA"), and the Department of Revenue ("DOR"). The Plaintiffs have brought a facial challenge to section 202.12(1)(b), Florida Statutes, arguing that it violates the Commerce Clause and the Equal

Protection Clause of the U.S. Constitution. The DOR and FCTA respond that the Legislature had a rational basis for treating Satellite Service and Cable Service differently and that the statutes do not discriminate against interstate commerce.

It appears that the material facts are not in dispute and summary judgment is appropriate. Because I find the legislation constitutionally sound, I deny the Plaintiffs' motion and grant summary judgment in favor of DOR and FCTA. Counsel for the parties have done an excellent job of briefing and arguing the motions. I will not discuss at length the authorities cited or arguments advance, but will set forth briefly my reasoning or analysis.

I start with the accepted principle of construction that I must presume a statute to be constitutional and that those who bring a facial challenge to the statute bear the heavy burden of demonstrating that no set of circumstances exist under which the statute would be valid. At the core of the Plaintiffs' attempt to do this is their complaint that under the taxing scheme of section 202.12, Fla. Stat., they are charged a higher rate for the state-wide communications services tax (CST) than the cable companies. They argue that this runs afoul of the Equal Protection Clause and the Commerce Clause because there is no rational basis for the distinction and because it discriminates against interstate commerce. I cannot agree with them, however, for several reasons.

First, the Legislature had a rational basis to classify Satellite Service and Cable Service differently, because they are different. They are organized differently, have different modes of operation, use different technologies in providing their services, and they provide different services. Satellite Service only permits one-way

transmissions of programming from satellites to customers. All Satellite Service customers in the same viewing area receive the same transmissions at the same time; Cable Service, in contrast, permits two-way interactive communications over fiber optic cable networks, by which Cable customers can transmit information and receive unique programming that is not simultaneously transmitted to other customers in the same viewing area.

They are also different because, unlike cable companies, satellite companies are exempt from the local CST. The stated legislative intent for the integrated and comprehensive taxing scheme in section 202.105 was to embrace "a competitively neutral tax policy that will free consumers to choose a provider based on tax-neutral considerations," and simplify "an extremely complicated state and local tax and fee system." Section 202.105(1), Fla. Stat.

The result was a taxing scheme that, rather than discriminating against interstate commerce or Plaintiffs, created a roughly level playing field for the two industries. Indeed, on average, it appears that the Plaintiffs pay less total tax under the statute. The Plaintiffs argue that each component of tax in the law must be viewed independently and parity must be obtained in each in order to comply with the Commerce Clause. I disagree, finding that the taxing scheme in the law, which balances the state-wide and local CST so that the total CST rate is roughly equal, is properly considered as a whole.

The law is on its face neutral as to in-state versus interstate business. The tax applies regardless of the location of a Satellite Service or Cable Service provider or the point of origin of Satellite Service or Cable Service. It does not reward in-state

companies or punish out of state companies. Indeed, the undisputed facts show that both the satellite companies and the major cable companies are interstate companies. The cable companies may have more of a presence in the state because of the nature of the technology they utilize in providing their services, but the satellite companies have a significant presence in the state as well.

Accordingly, it is **Ordered and Adjudged** as follows:

The Amended Motion for Summary Final Judgment submitted by the DOR and the Motion for Summary Judgment submitted by FCTA are **GRANTED**. The Motion for Summary Judgment submitted by Plaintiffs is **DENIED**.

Final Judgment is hereby entered in favor of the DOR and FCTA and against the Plaintiffs, determining that Florida's Communications Services Tax is facially constitutional and that it does not violate the Commerce Clause or Equal Protection Clause. The Court reserves jurisdiction over any collateral matters, including the issues of taxable costs.

ORDERED and ADJUDGED in chambers, in Tallahassee, Leon County, Florida 32301, this 9 day of October, 2013.

By _____
Circuit Court Judge

Copies furnished by e-mail to all counsel