

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
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Granted Appeal Summary

Case

COXCOM, LLC, D/B/A COX COMMUNICATIONS NORTHERN VIRGINIA v. FAIRFAX COUNTY, ET AL.

(Record Number 210568)

From

The Circuit Court of Fairfax County; Grace Burke Carroll, Judge.

Counsel

Matthew O. Gatewood, Eric S. Tresh, and Alla Raykin (Eversheds Sutherland LLP) for appellant.

Elizabeth D. Teare and Daniel Robinson (Office of the County Attorney) for appellees.

Assignments of Error

1. The trial court erred in concluding that the Fairfax County Business, Professional and Occupational License (“BPOL”) tax qualifies for the grandfather clause exemption to the federal Internet Tax Freedom Act’s prohibition against taxes on Internet access.
2. The trial court erred in concluding that the Fairfax County BPOL ordinance constitutes a “rule or other public proclamation made by the appropriate administrative agency” under Section 1104(a)(1)(B)(i) of the federal Internet Tax Freedom Act.
3. The trial court erred in concluding that the Fairfax County ordinances governing its BPOL tax prior to October 1, 1998 gave providers of Internet access services “a reasonable opportunity to know that the BPOL tax has been interpreted and applied by the appropriate administrative agency to apply to Internet access” to qualify for the grandfather clause under Section 1104(a)(1)(B)(i) of the federal Internet Tax Freedom Act.

Assignments of Cross-Error

1. The trial court erred when it ruled in its June 19, 2020, Order that ITFA preempts the Virginia BPOL tax, by granting Cox’s Motion for Partial Summary Judgment on that issue, and by denying the County’s Motion for Summary Judgment on that issue.

2. The trial court erred when it ruled in its June 19, 2020, Order that the burden of proving whether the County was subject to the protections of ITFA's grandfather clause shifted to the County and by granting Cox's Motion for Partial Summary Judgment on that issue.

3. The trial court erred when it ruled in its March 17, 2021, Order that the County did not prove that it "generally collected" the BPOL tax on Internet access services prior to October 1, 1998, when the evidence at trial established that prior to October 1, 1998, the County assessed and collected its BPOL tax on the only Internet service provider with a taxable situs in Fairfax County.