

Dallas Gets Green Light For Netflix, Hulu Franchise Fee Suit

By **Abraham Gross and Asha Glover**

Law360 (February 26, 2021, 3:47 PM EST) -- The city of Dallas will pursue legal action against streaming service providers like Netflix and Hulu to pay the city's 5% franchise fee, including on more than 13 years of receipts, under a resolution unanimously approved by the City Council.

The Dallas City Council voted Wednesday to authorize a suit against Netflix, Hulu and Disney for failure to apply for a state-issued certificate of franchise authority under state law and pay the franchise fee to Dallas, spokespeople for the city confirmed in a statement sent to Law360 on Thursday. The story was first reported by The Dallas Morning News.

The vote empowers the city attorney to pursue monetary damages, declaratory relief and other legal remedies from the three companies and other video service providers, including recovery of fees based on receipts extending to 2007, according to the resolution and related documents.

The resolution states that the providers "deliver video programming to their customers via broadband internet through wireline facilities located at least partially in the public right of way" and "do not pay franchise fees to the city" as required under state law.

The suit would mark at least the fourth active suit in which municipalities are seeking to collect similar fees from streaming giants. Netflix, Hulu, Disney and DirecTV are seeking federal court review of a proposed class-action suit in Indiana after a federal judge returned the suit to state court, rejecting the companies' claims that federal law took priority.

DirecTV and Dish Network are also requesting a federal review of their dispute with a proposed class of Missouri municipalities after the case was remanded to state court in 2019 along with a dispute against Netflix and Hulu, which is still ongoing.

The disputes largely center on whether streaming providers like Netflix and Hulu meet a statutory definition of a video service that uses wireline services in the public right-of-way, or along public roads — but not the public internet — to show their content to subscribers.

In those cases, the companies have argued that their services don't meet the definition of video programming under each state's video services providers law authorizing the municipal franchise fees, and that the fees are discriminatory under the federal Internet Tax Freedom Act.

The Dallas city attorney will seek consent from the state Attorney General's Office to retain outside counsel to pursue the matter on a contingency fee basis, the statement from the city said. The city is seeking representation from McKool Smith PC, Ashcroft Sutton Reyes LLC and Korein Tillery LLC, according to the resolution.

Steve Berezney, an attorney for Korein Tillery LLC representing the municipalities in the Missouri and Indiana suits, declined to comment on the Dallas resolution.

Spokespeople for Netflix, Hulu, Disney, McKool Smith, Ashcroft Sutton Reyes and the state Attorney General's Office did not immediately respond to requests for comment on Friday.

--Additional reporting by James Nani. Editing by Tim Ruel.