Regulatory Review

Satellite Taxes—Balance Or Burden?

by Gerry Oberst

What is it about satellite broadcasting that attracts politicians with taxes on their minds? Tax proposals continue to bubble up in both the United States and in Europe with alarming frequency.

In the last few months, the industry watched and debated proposed taxes on satellite TV in Utah, Arkansas, Kentucky and Arizona. Reportedly, by mid-2003, the District of Columbia and 19 U.S. states applied sales taxes "equally" to satellite and cable TV. Legal actions were brought against tax regulations in at least three states, however, where satellite broadcasting customers were taxed without similar or any taxes for cable viewers.

California fended off plans to impose satellite taxes the last two years in a close call for the industry. In late 2002, the satellite industry successfully dodged a California proposal for the 2002-03 fiscal year budget to impose a five percent tax on satellite television service.

In the meantime, California established a commission on "Tax Policy in the New Economy." This commission worked throughout a two-year period, held 17 hearings and heard 140 speakers. Throughout that period, it considered whether to impose as much as an eight percent tax on direct broadcast television service to approximate the tax and fee burden of the cable sector. After two interim reports, the commission issued its final report in December 2003, which contained another narrow escape for the satellite television industry.

The commission ultimately decided not to consider any new telecommunications taxes, because the industry is changing rapidly and the topic is extremely complex. Apparently there was a "lively debate," in the words of the commission, in particular regarding the fairness, simplicity and efficiency of any tax on satellite services.

The commission said that taxing satellite services was an effort to balance the burden on cable systems, but through an incremental effort to add taxes to one side of a less-than-perfect system. It recognized that cable systems use public rights of way that satellite operators do not and conversely, that satellite networks pay substantial fees to the Federal Communications Commission and for the orbital locations on which they depend, in addition to risky investments in building and launching expensive satellites.

The tax syndrome is of course not limited to the United States. The Irish Presidency of the European Council, which rotates among the European Union member states, announced during the first few days of January this year that it wants to change laws to regulate satellite broadcasters in each country where they provide service—and incidentally charge regulatory fees.

This scheme is a transparent effort to raise national revenues. The current regulatory structure in Europe is called "Television Without Frontiers," because it is based on a system under which a satellite broadcaster is regulated only from the country in which the broadcaster is established. By avoiding duplicative and inconsistent regulations, this system is credited with the rapid spread of cross-border television in Europe, including new digital services that are the precursor of broadband and multimedia applications.

The European Commission conducted a wide-ranging consultation finishing in mid-2003 on a variety of issues connected with this directive. Ireland's comments agreed with many others that each broadcast service should be subject to only one set of national regulations, as "a necessary condition for the creation of a free market." Nevertheless, Ireland argued that jurisdiction should be based on the country at which that broadcast service is primarily targeted, rather than under the current rules that regulate a broadcaster based on its headquarter location.

How this approach would work with channel feeds in the tens and hundreds is not totally apparent. Nor is it clear what criteria could be used. The interesting development, however, is that Ireland argued it should have jurisdiction over only some targeted services. It subsequently wrote national rules, however, to charge a new tax over the entire satellite broadcasting feed transmitted across its borders, not solely the services targeted at its market.

Ireland's proposals are not the first effort in Europe to impose such fees. A Belgian community lost an important court case in 2001 when it sought to impose fees on satellite reception but not cable distribution. The United Kingdom is exploring ways to charge "voluntary" fees for downlink spectrum. All European countries charge a full set of fees for uplinks and satellite licenses, plus the equivalent of sales taxes (called value-added taxes).

Initial proceedings on this Irish proposal will likely kick off this month. Ireland already tried to require operators to pay new reception fees, and this will continue to be a hot topic. The writing is on the wall that satellite broadcasting will continue to attract the eye of governments with holes in their budgets and regulations on their minds. ❖

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