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## Wireless World: A ruling on wireless taxes

By Gene J. Koprowski

Chicago, IL, Mar. 4 (UPI) -- A case making its way through the courts may determine whether mobile-phone users pay onerous local taxes -- or receive future wireless bills up to 20 percent less expensive than they are today.

Late last fall, the major wireless carriers T-Mobile, Verizon Wireless, Sprint and Cingular began administrative proceedings seeking to have local mobile-phone taxes refunded by the City of Baltimore and by Montgomery County, Md., in suburban Washington, D.C. Both municipal governments denied the requests for refunds, so the companies have now sued them in state tax court, seeking to have the wireless taxes declared illegal, and to have the money refunded to customers.

"We filed four cases in the Maryland Tax Court on Feb. 14 against the City of Baltimore," said Kenneth Silverberg, a partner in the law firm Nixon Peabody LLP. "One for each of the wireless carriers. I've just been in touch with the city attorney for Baltimore. They are going to file a motion to consolidate the cases. We're just now preparing to file four more cases against Montgomery County and will include a motion to consolidate all four of those cases with the Baltimore case."

Silverberg said the case will be heard in the Maryland Tax Court, which is located in Baltimore, but no judge has been assigned yet.

The facts of the case are relatively straightforward, he said, adding that the judge will only have to examine whether the law was broken by Baltimore and Montgomery County officials.

"We're saying that under Maryland state law, there are two fatal flaws with the tax," Silverberg told UPI's Wireless World. "The way they've set up the tax is a sales tax in disguise. Localities don't have the power to do that. The second issue is one of geographic location. We believe that (the local governments) are only allowed to tax activity and transactions within their city and county limits."

For example, Silverberg said, "even though we disagree, you can understand why the Montgomery County Council or the Baltimore City Council might legitimately believe their citizens should pay cellphone taxes when they are at or near their homes or offices, but if they spend a week at the beach in Delaware, there is no way the county or city government should tax any of those calls."

A former state tax official disagreed, however, recalling a similar case from Illinois.

"Going back a number of years, back to the 1980s, there was a case (Goldberg vs. Sweet) over the Illinois telephone excise tax," said Keith Staats, former general counsel to the Illinois Department of Revenue. "That had to do with the sourcing of phone calls, too. It went all the way to the Supreme Court. It had to do with whether or not in Illinois it was valid to track who got charged what tax, and when."

Staats, who today directs the local and state practice of the consultancy Grant Thornton LLP in Chicago, said local taxes should apply to the individual, wherever he or she is, because the billing is based on his or her home or business address, not the individual's physical location at any given time.

"If I am in Missouri and I make a call to my family in Arkansas, I still get billed at my address in Illinois," Staats explained. "State and local taxes are applied. That's what a lot of states are doing."

Another law that may come into play is one passed by the Congress earlier this decade concerning local mobile telecommunications sourcing. In that law, the "primary place of use (for a mobile phone) is defined as the residential or business address of the user," said Diana DiBello, director of tax consulting at Vertex Inc., a tax software and services provider in Berwyn, Pa. "Where the phone is primarily used is supposed to be up to the user. They identify that address when they sign up for the service."

Others disagree, and argue that the law applies only to federal taxes on mobile telecommunications. They regard the Maryland case, and others like it, as a matter of simple fairness on the local level.

"The local governments are singling out wireless subscribers because there are a lot of them," said John Walls, vice president of CTIA, The Wireless Association, in Washington D.C. "This is arbitrary and discriminatory. It is a grossly unfair burden on consumers. They are putting the brakes on a significant driver on the economy."

A recent study by a think tank affiliated with George Mason University in Fairfax, Va., confirms the drastic economic impact of telecom taxes. "These kinds of taxes raise the price of wireless services and, as a result, consumers use the services less than they otherwise would," said Jerry Ellig, a senior research fellow at GMU's Mercatus Center. "Wireless consumers are very price sensitive. There are a lot of economic consequences for these regulations and taxes."

The study, "Costs and Consequences of Federal Telecommunications and Broadband Regulations," which was released Feb. 16, estimates the impact of taxes on telecom nationally is some \$105 billion per year. A summary of the study is available at [mercatus.org/regulatorystudies/article/php/1074.html](http://mercatus.org/regulatorystudies/article/php/1074.html).

Silverberg said he thinks his case will be set for trial within a month or two, and the trial will be held before the end of this year. The final decision will come shortly after that, he said.

"Sometimes, I've gotten decisions from that court in two months -- sometimes it takes longer though," he said. "If the court agrees with us, there will be refunds of about \$15 million for consumers for taxes paid through November of last year. We're also continuing to pay taxes of about \$1.5 million a month, so the numbers are clocking up there."