LAW360®

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Charter Can't Dodge Cable Royalties In Texas, 5th Circ. Rules

By **Christopher Cole**

Law360 (September 17, 2025, 7:25 PM EDT) -- Charter Communications cannot avoid paying a 3% royalty for the use of cable permits in three Texas cities' rights of way, regardless of a change in state permitting law, the Fifth Circuit ruled Wednesday.

In an unpublished opinion that overruled a lower court, a three-judge panel said Charter, through Time Warner Cable Texas, still has to pay the royalties to the family of W.A. Prewitt Jr., who sold the cable giant the permits for cable systems in Waco, Temple, and McGregor in the mid-1960s.

A Texas federal court had ruled that Charter no longer owed royalties to the seller because a state law replaced city-issued permits for building and operating cable systems in public rights-of-way with state-issued permits.

The appeals court panel disagreed, saying that the contract's savings clause requires Charter to "continue paying royalties so long as it continues to operate the cable networks in the cities" despite the change in state law. The circuit said its decision relied not only on the Texas Supreme Court's view of contract law, but also its statutory interpretation.

Prewitt Management Inc. has argued that the savings clause required that, as a condition of Charter's state-issued certificate of franchise authority, Charter must "continue paying royalties in the same manner as if the city-issued permits remained in effect," court papers say.

The dispute grew out of Prewitt's agreement to sell permits he obtained in 1963 and 1964 that allowed him to construct, maintain and operate cable systems in the three Texas cities. At the time, he sold them to Ameco Inc., and they were later acquired by Time Warner Cable Texas LLC — now an indirect subsidiary of Charter.

The deal called for Prewitt to form at least one Texas corporation, to be owned or run by Charter, and he would then lease his city permits to them. Charter agreed to pay Prewitt an initial lump sum and 3% of the gross revenue from the operation of the cable TV systems in the cities during the lease term.

Charter could also buy the permits but would still have to pay 3% royalties on the gross revenues generated by the cable systems, including from "any new permits." Charter later exercised that option.

The phrase in the contract on "any new permits" was key to the litigation. The 2005 Texas Cable Act replaced the city-based permitting scheme, so that when a cable provider's permit from a city expired, the company had to obtain a state-issued certificate of franchise authority.

Charter received a state permit and amended it to include all three cities. The permits issued by each city were terminated, but Charter continued to pay royalties to Prewitt, court documents say. But in October 2016, it paid them "under protest" and then stopped altogether, but continues to operate cable systems in all three cities, according to the opinion.

Charter sued in December 2016 for a declaratory judgment that the agreement had ended, and Prewitt counterclaimed, looking to preserve the agreement and damages for unpaid royalties. The district court ruled in Charter's favor in April 2023.

The circuit court on Wednesday said that "all in all, reading the agreement's provisions as a whole contextualizes the parties' references to 'permit' and evidences their intent to refer to city-issued permits." While Prewitt said the words "any new permit" do not refer to city-issued permits because the agreement elsewhere refers explicitly to city-issued ones, "this argument does not sufficiently consider the agreement's plain text," the court said.

Still, even though the district court did not err by concluding the parties entered into the contract presuming that the city permits would continue to exist, "that does not end our analysis," the appeals court said.

"Prewitt assigned the city-issued permits for the cities to Charter in exchange for a royalty of 3% of gross revenues earned on the permits," and Charter had agreed to honor all pre-existing royalties, the court said. "The savings clause saves Charter's royalty-payment obligation to Prewitt."

Representatives for the parties did not immediately respond to requests for comment on Wednesday.

Circuit Judges Priscilla Richman, Andrew S. Oldham and Irma Carrillo Ramirez sat for the Fifth Circuit panel.

Charter is represented by Paul Werner, Imad Matini and Abraham Shanedling of Sheppard Mullin Richter & Hampton LLP and B. Russell Horton of George Brothers Kincaid & Horton LLP.

Prewitt is represented by Jane Webre of Scott Douglass & McConnico LLP and Roy Lee Barrett of Naman Howell Smith & Lee PLLC.

The case is Charter Communications Inc. et al. v. Prewitt Management Inc. et al., case number 23-50419, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Vaqas Asghar.

All Content © 2003-2025, Portfolio Media, Inc.