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The companies argued in their petitions that the Supreme Court should review the cases because lower courts have contributed to a growing and entrenched split on what it means to be "similarly situated" for dormant commerce clause purposes.

However, Massachusetts Attorney General Maura Healey (D), who filed a Sept. 23 brief opposing review of the Massachusetts case, argued that the federal courts and state courts of last resort have "uniformly rejected petitioners' claims, in decisions consistent with the [Supreme] Court's dormant Commerce Clause precedents. There is thus no conflict for this court to resolve" (188 DTR K-3, 9/29/15).

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However, other state courts "have upheld the protectionist taxes," he said, adding that DISH will continue to challenge these taxes, including in litigation in Utah and Florida. "The U.S. Supreme Court's review is needed to restore uniformity and protect consumers from discrimination. We hope that it will do so in the near future."

A spokesperson for DirecTV said the company declined to comment.

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According to Jones, the Massachusetts high court held that the different treatment of satellite companies versus cable companies was valid "because of the different nature of the two types of businesses, and that the concept of discrimination assumes a comparison of substantially similar entities." He explained that state courts have also noted that such taxes don't discriminate against interstate commerce because they aren't based on the location of a business' activities; they apply equally to in-state and out-of-state satellite companies.

Like Dodge, Jones contrasted the recent Florida intermediate appellate court decision, which he said "went against the grain" in finding that cable and satellite businesses were substantially similar, "despite the differences in technology use, need for local infrastructure or additional services offered."

With assistance from Andrew Ballard in Raleigh, N.C.

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