

1 AN ACT concerning municipalities.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Municipal Code is amended by
5 changing Section 11-42-11 as follows:

6 (65 ILCS 5/11-42-11) (from Ch. 24, par. 11-42-11)

7 Sec. 11-42-11. Community antenna television systems;
8 satellite transmitted television programming.

9 (a) The corporate authorities of each municipality may
10 license, franchise and tax the business of operating a
11 community antenna television system as hereinafter defined.
12 In municipalities with less than 2,000,000 inhabitants, the
13 corporate authorities may, under the limited circumstances
14 set forth in this Section, own (or lease as lessee) and
15 operate a community antenna television system; provided that
16 a municipality may not acquire, construct, own, or operate a
17 community antenna television system for the use or benefit of
18 private consumers or users, and may not charge a fee for that
19 consumption or use, unless the proposition to acquire,
20 construct, own, or operate a cable antenna television system
21 has been submitted to and approved by the electors of the
22 municipality in accordance with subsection (f). Before
23 acquiring, constructing, or commencing operation of a
24 community antenna television system, the municipality shall
25 comply with the following:

26 (1) Give written notice to the owner or operator of
27 any other community antenna television system franchised
28 to serve all or any portion of the territorial area to be
29 served by the municipality's community antenna television
30 system, specifying the date, time, and place at which the
31 municipality shall conduct public hearings to consider

1 and determine whether the municipality should acquire,
2 construct, or commence operation of a community antenna
3 television system. The public hearings shall be
4 conducted at least 14 days after this notice is given.

5 (2) Publish a notice of the hearing in 2 or more
6 newspapers published in the county, city, village,
7 incorporated town, or town, as the case may be. If there
8 is no such newspaper, then notice shall be published in
9 any 2 or more newspapers published in the county and
10 having a general circulation throughout the community.
11 The public hearings shall be conducted at least 14 days
12 after this notice is given.

13 (3) Conduct a public hearing to determine the means
14 by which construction, maintenance, and operation of the
15 system will be financed, including whether the use of tax
16 revenues or other fees will be required.

17 (b) The words "community antenna television system"
18 shall mean any facility which is constructed in whole or in
19 part in, on, under or over any highway or other public place
20 and which is operated to perform for hire the service of
21 receiving and amplifying the signals broadcast by one or more
22 television stations and redistributing such signals by wire,
23 cable or other means to members of the public who subscribe
24 to such service; except that such definition shall not
25 include (i) any system which serves fewer than fifty
26 subscribers, or (ii) any system which serves only the
27 residents of one or more apartment dwellings under common
28 ownership, control or management, and commercial
29 establishments located on the premises of such dwellings.

30 (c) The authority hereby granted does not include
31 authority to license, franchise or tax telephone companies
32 subject to jurisdiction of the Illinois Commerce Commission
33 or the Federal Communications Commission in connection with
34 the furnishing of circuits, wires, cables, and other

1 facilities to the operator of a community antenna television
2 system.

3 The corporate authorities of each municipality may, in
4 the course of franchising such community antenna television
5 system, grant to such franchisee the authority and the right
6 and permission to use all public streets, rights of way,
7 alleys, ways for public service facilities, parks,
8 playgrounds, school grounds, or other public grounds, in
9 which such municipality may have an interest, for the
10 construction, installation, operation, maintenance,
11 alteration, addition, extension or improvement of a community
12 antenna television system.

13 Any charge imposed by a community antenna television
14 system franchised pursuant to this Section for the raising or
15 removal of cables or lines to permit passage on, to or from a
16 street shall not exceed the reasonable costs of work
17 reasonably necessary to safely permit such passage. Pursuant
18 to subsections (h) and (i) of Section 6 of Article VII of the
19 Constitution of the State of Illinois, the General Assembly
20 declares the regulation of charges which may be imposed by
21 community antenna television systems for the raising or
22 removal of cables or lines to permit passage on, to or from
23 streets is a power or function to be exercised exclusively by
24 the State and not to be exercised or performed concurrently
25 with the State by any unit of local government, including any
26 home rule unit.

27 The municipality may, upon written request by the
28 franchisee of a community antenna television system, exercise
29 its right of eminent domain solely for the purpose of
30 granting an easement right no greater than 8 feet in width,
31 extending no greater than 8 feet from any lot line for the
32 purpose of extending cable across any parcel of property in
33 the manner provided by the law of eminent domain, provided,
34 however, such franchisee deposits with the municipality

1 sufficient security to pay all costs incurred by the
2 municipality in the exercise of its right of eminent domain.

3 If any franchise agreement or ordinance requires a
4 community antenna television franchisee to set aside or
5 otherwise provide channel capacity for public, educational,
6 or government programming, then the franchise agreement or
7 ordinance shall be subject to all applicable federal laws
8 relating to the provision of this programming. Beyond the
9 franchise fees otherwise payable, the community antenna
10 television franchisee shall not be required to pay or
11 reimburse the franchising authority or any other party for
12 the costs or expenses incurred in providing this programming,
13 regardless of whether the channel capacity for public,
14 educational, or governmental programming is required by the
15 franchising authority or is provided voluntarily by the
16 franchisee. Any operating costs paid by the franchisee in
17 connection with the provision of public, educational, or
18 government programming shall be deductible from the franchise
19 fees otherwise payable.

20 (d) The General Assembly finds and declares that
21 satellite-transmitted television programming should be
22 available to those who desire to subscribe to such
23 programming and that decoding devices should be obtainable at
24 reasonable prices by those who are unable to obtain
25 satellite-transmitted television programming through duly
26 franchised community antenna television systems.

27 In any instance in which a person is unable to obtain
28 satellite-transmitted television programming through a duly
29 franchised community antenna television system either because
30 the municipality and county in which such person resides has
31 not granted a franchise to operate and maintain a community
32 antenna television system, or because the duly franchised
33 community antenna television system operator does not make
34 cable television services available to such person, any

1 programming company that delivers satellite-transmitted
2 television programming in scrambled or encrypted form shall
3 ensure that devices for description of such programming are
4 made available to such person, through the local community
5 antenna television operator or directly, for purchase or
6 lease at prices reasonably related to the cost of manufacture
7 and distribution of such devices.

8 (e) The General Assembly finds and declares that, in
9 order to ensure that community antenna television services
10 are provided in an orderly, competitive and economically
11 sound manner, the best interests of the public will be served
12 by the establishment of certain minimum standards and
13 procedures for the granting of additional cable television
14 franchises.

15 Subject to the provisions of this subsection, the
16 authority granted under subsection (a) hereof shall include
17 the authority to license, franchise and tax more than one
18 cable operator to provide community antenna television
19 services within the corporate limits of a single franchising
20 authority. For purposes of this subsection (e), the term:

21 (i) "Existing cable television franchise" means a
22 community antenna television franchise granted by a
23 municipality which is in use at the time such
24 municipality receives an application or request by
25 another cable operator for a franchise to provide cable
26 antenna television services within all or any portion of
27 the territorial area which is or may be served under the
28 existing cable television franchise.

29 (ii) "Additional cable television franchise" means
30 a franchise pursuant to which community antenna
31 television services may be provided within the
32 territorial areas, or any portion thereof, which may be
33 served under an existing cable television franchise.

34 (iii) "Franchising Authority" is defined as that

1 term is defined under Section 602(9) of the Cable
2 Communications Policy Act of 1984, Public Law 98-549, but
3 does not include any municipality with a population of
4 1,000,000 or more.

5 (iv) "Cable operator" is defined as that term is
6 defined under Section 602(4) of the Cable Communications
7 Policy Act of 1984, Public Law 98-549.

8 Before granting an additional cable television franchise,
9 the franchising authority shall:

10 (1) Give written notice to the owner or operator of
11 any other community antenna television system franchised
12 to serve all or any portion of the territorial area to be
13 served by such additional cable television franchise,
14 identifying the applicant for such additional franchise
15 and specifying the date, time and place at which the
16 franchising authority shall conduct public hearings to
17 consider and determine whether such additional cable
18 television franchise should be granted.

19 (2) Conduct a public hearing to determine the
20 public need for such additional cable television
21 franchise, the capacity of public rights-of-way to
22 accommodate such additional community antenna television
23 services, the potential disruption to existing users of
24 public rights-of-way to be used by such additional
25 franchise applicant to complete construction and to
26 provide cable television services within the proposed
27 franchise area, the long term economic impact of such
28 additional cable television system within the community,
29 and such other factors as the franchising authority shall
30 deem appropriate.

31 (3) Determine, based upon the foregoing factors,
32 whether it is in the best interest of the municipality to
33 grant such additional cable television franchise.

34 (4) If the franchising authority shall determine

1 that it is in the best interest of the municipality to do
2 so, it may grant the additional cable television
3 franchise. Except as provided in paragraph (5) of this
4 subsection (e), no such additional cable television
5 franchise shall be granted under terms or conditions more
6 favorable or less burdensome to the applicant than those
7 required under the existing cable television franchise,
8 including but not limited to terms and conditions
9 pertaining to the territorial extent of the franchise,
10 system design, technical performance standards,
11 construction schedules, performance bonds, standards for
12 construction and installation of cable television
13 facilities, service to subscribers, public educational
14 and governmental access channels and programming,
15 production assistance, liability and indemnification, and
16 franchise fees.

17 (5) Unless the existing cable television franchise
18 provides that any additional cable television franchise
19 shall be subject to the same terms or substantially
20 equivalent terms and conditions as those of the existing
21 cable television franchise, the franchising authority may
22 grant an additional cable television franchise under
23 different terms and conditions than those of the existing
24 franchise, in which event the franchising authority shall
25 enter into good faith negotiations with the existing
26 franchisee and shall, within 120 days after the effective
27 date of the additional cable television franchise, modify
28 the existing cable television franchise in a manner and
29 to the extent necessary to ensure that neither the
30 existing cable television franchise nor the additional
31 cable television franchise, each considered in its
32 entirety, provides a competitive advantage over the
33 other, provided that prior to modifying the existing
34 cable television franchise, the franchising authority

1 shall have conducted a public hearing to consider the
2 proposed modification. No modification in the terms and
3 conditions of the existing cable television franchise
4 shall oblige the existing cable television franchisee (1)
5 to make any additional payment to the franchising
6 authority, including the payment of any additional
7 franchise fee, (2) to engage in any additional
8 construction of the existing cable television system or,
9 (3) to modify the specifications or design of the
10 existing cable television system; and the inclusion of
11 the factors identified in items (2) and (3) shall not be
12 considered in determining whether either franchise
13 considered in its entirety, has a competitive advantage
14 over the other except to the extent that the additional
15 franchisee provides additional video or data services or
16 the equipment or facilities necessary to generate and or
17 carry such service. No modification in the terms and
18 conditions of the existing cable television franchise
19 shall be made if the existing cable television franchisee
20 elects to continue to operate under all terms and
21 conditions of the existing franchise.

22 If within the 120 day period the franchising
23 authority and the existing cable television franchisee
24 are unable to reach agreement on modifications to the
25 existing cable television franchise, then the franchising
26 authority shall modify the existing cable television
27 franchise, effective 45 days thereafter, in a manner, and
28 only to the extent, that the terms and conditions of the
29 existing cable television franchise shall no longer
30 impose any duty or obligation on the existing franchisee
31 which is not also imposed under the additional cable
32 television franchise; however, if by the modification the
33 existing cable television franchisee is relieved of
34 duties or obligations not imposed under the additional

1 cable television franchise, then within the same 45 days
2 and following a public hearing concerning modification of
3 the additional cable television franchise within that 45
4 day period, the franchising authority shall modify the
5 additional cable television franchise to the extent
6 necessary to insure that neither the existing cable
7 television franchise nor the additional cable television
8 franchise, each considered in its entirety, shall have a
9 competitive advantage over the other.

10 No municipality shall be subject to suit for damages
11 based upon the municipality's determination to grant or its
12 refusal to grant an additional cable television franchise,
13 provided that a public hearing as herein provided has been
14 held and the franchising authority has determined that it is
15 in the best interest of the municipality to grant or refuse
16 to grant such additional franchise, as the case may be.

17 It is declared to be the law of this State, pursuant to
18 paragraphs (h) and (i) of Section 6 of Article VII of the
19 Illinois Constitution, that the establishment of minimum
20 standards and procedures for the granting of additional cable
21 television franchises by municipalities with a population
22 less than 1,000,000 as provided in this subsection (e) is an
23 exclusive State power and function that may not be exercised
24 concurrently by a home rule unit.

25 (f) No municipality may acquire, construct, own, or
26 operate a community antenna television system unless the
27 corporate authorities adopt an ordinance. The ordinance must
28 set forth the action proposed; describe the plant, equipment,
29 and property to be acquired or constructed; and specifically
30 describe the manner in which the construction, acquisition,
31 and operation of the system will be financed.

32 The ordinance may not take effect until the question of
33 acquiring, construction, owning, or operating a community
34 antenna television system has been submitted to the electors

1 of the municipality at a regular election and approved by a
2 majority of the electors voting on the question. The
3 corporate authorities must certify the question to the proper
4 election authority, which must submit the question at an
5 election in accordance with the Election Code.

6 The question must be submitted in substantially the
7 following form:

8 Shall the ordinance authorizing the municipality to
9 (insert action authorized by ordinance) take effect?

10 The votes must be recorded as "Yes" or "No".

11 If a majority of electors voting on the question vote in
12 the affirmative, the ordinance shall take effect.

13 Not more than 30 or less than 15 days before the date of
14 the referendum, the municipal clerk must publish the
15 ordinance at least once in one or more newspapers published
16 in the municipality or, if no newspaper is published in the
17 municipality, in one or more newspapers of general
18 circulation within the municipality.

19 (Source: P.A. 90-285, eff. 7-31-97; 91-648, eff. 1-1-00.)