



Rep. Susana A Mendoza

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09500HB2302ham001

LRB095 01488 MJR 35174 a

1 AMENDMENT TO HOUSE BILL 2302

2 AMENDMENT NO. _____. Amend House Bill 2302 by replacing
3 everything after the enacting clause with the following:

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. In
12 municipalities with less than 2,000,000 inhabitants, the
13 corporate authorities may, under the limited circumstances set
14 forth in this Section, own (or lease as lessee) and operate a
15 community antenna television system; provided that a
16 municipality may not acquire, construct, own, or operate a

1 community antenna television system for the use or benefit of
2 private consumers or users, and may not charge a fee for that
3 consumption or use, unless the proposition to acquire,
4 construct, own, or operate a cable antenna television system
5 has been submitted to and approved by the electors of the
6 municipality in accordance with subsection (f). Before
7 acquiring, constructing, or commencing operation of a
8 community antenna television system, the municipality shall
9 comply with the following:

10 (1) Give written notice to the owner or operator of any
11 other community antenna television system franchised to
12 serve all or any portion of the territorial area to be
13 served by the municipality's community antenna television
14 system, specifying the date, time, and place at which the
15 municipality shall conduct public hearings to consider and
16 determine whether the municipality should acquire,
17 construct, or commence operation of a community antenna
18 television system. The public hearings shall be conducted
19 at least 14 days after this notice is given.

20 (2) Publish a notice of the hearing in 2 or more
21 newspapers published in the county, city, village,
22 incorporated town, or town, as the case may be. If there is
23 no such newspaper, then notice shall be published in any 2
24 or more newspapers published in the county and having a
25 general circulation throughout the community. The public
26 hearings shall be conducted at least 14 days after this

1 notice is given.

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

6 (b) The words "community antenna television system" shall
7 mean any facility which is constructed in whole or in part in,
8 on, under or over any highway or other public place and which
9 is operated to perform for hire the service of receiving and
10 amplifying the signals broadcast by one or more television
11 stations and redistributing such signals by wire, cable or
12 other means to members of the public who subscribe to such
13 service; except that such definition shall not include (i) any
14 system which serves fewer than fifty subscribers, or (ii) any
15 system which serves only the residents of one or more apartment
16 dwellings under common ownership, control or management, and
17 commercial establishments located on the premises of such
18 dwellings.

19 (c) The authority hereby granted does not include authority
20 to license, franchise or tax telephone companies subject to
21 jurisdiction of the Illinois Commerce Commission or the Federal
22 Communications Commission in connection with the furnishing of
23 circuits, wires, cables, and other facilities to the operator
24 of a community antenna television system.

25 The corporate authorities of each municipality may, in the
26 course of franchising such community antenna television

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

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

23 The municipality may, upon written request by the
24 franchisee of a community antenna television system, exercise
25 its right of eminent domain solely for the purpose of granting
26 an easement right no greater than 8 feet in width, extending no

1 greater than 8 feet from any lot line for the purpose of
2 extending cable across any parcel of property in the manner
3 provided by the law of eminent domain, provided, however, such
4 franchisee deposits with the municipality sufficient security
5 to pay all costs incurred by the municipality in the exercise
6 of its right of eminent domain.

7 (d) The General Assembly finds and declares that
8 satellite-transmitted television programming should be
9 available to those who desire to subscribe to such programming
10 and that decoding devices should be obtainable at reasonable
11 prices by those who are unable to obtain satellite-transmitted
12 television programming through duly franchised community
13 antenna television systems.

14 In any instance in which a person is unable to obtain
15 satellite-transmitted television programming through a duly
16 franchised community antenna television system either because
17 the municipality and county in which such person resides has
18 not granted a franchise to operate and maintain a community
19 antenna television system, or because the duly franchised
20 community antenna television system operator does not make
21 cable television services available to such person, any
22 programming company that delivers satellite-transmitted
23 television programming in scrambled or encrypted form shall
24 ensure that devices for description of such programming are
25 made available to such person, through the local community
26 antenna television operator or directly, for purchase or lease

1 at prices reasonably related to the cost of manufacture and
2 distribution of such devices.

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

9 Subject to the provisions of this subsection, the authority
10 granted under subsection (a) hereof shall include the authority
11 to license, franchise and tax more than one cable operator to
12 provide community antenna television services within the
13 corporate limits of a single franchising authority. For
14 purposes of this subsection (e), the term:

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

23 (ii) "Additional cable television franchise" means a
24 franchise pursuant to which community antenna television
25 services may be provided within the territorial areas, or
26 any portion thereof, which may be served under an existing

1 cable television franchise.

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

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

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

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

20 (2) Conduct a public hearing to determine the public
21 need for such additional cable television franchise, the
22 capacity of public rights-of-way to accommodate such
23 additional community antenna television services, the
24 potential disruption to existing users of public
25 rights-of-way to be used by such additional franchise
26 applicant to complete construction and to provide cable

1 television services within the proposed franchise area,
2 the long term economic impact of such additional cable
3 television system within the community, and such other
4 factors as the franchising authority shall deem
5 appropriate.

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

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

25 (5) The franchising authority shall not grant an
26 additional cable television franchise under terms or

1 conditions more favorable or less burdensome to the
2 applicant than those required under the existing cable
3 television franchise unless it satisfies the following
4 criteria:

5 (A) Prohibition against redlining. The franchising
6 authority shall not grant an additional cable
7 television franchise for a territorial area of a lesser
8 extent than the territorial area of the existing cable
9 television franchise unless the applicant can
10 establish just and reasonable cause that a franchise of
11 a lesser territorial extent is in the public interest.
12 The burden of proof for establishing a just and
13 reasonable cause that a franchise of a lesser
14 territorial extent is in the public interest shall rest
15 on the applicant. Where the applicant is offering
16 through its own existing facilities either local
17 exchange telecommunications services, as defined in
18 Article XIII of the Public Utilities Act, or advanced
19 services, defined as the transmission of data, in at
20 least one direction, at a speed in excess of 200
21 kilobits per second (kbps) to the network demarcation
22 point at the subscriber's premises, in no instance
23 shall the franchise for a territorial area be less than
24 the smaller area of either (a) the area served by the
25 existing cable television franchise, or (b) the area
26 defined as the total area that is served by the

1 applicant's existing facilities for any or all of the
2 applicant's telecommunications services or advanced
3 services.

4 The applicant must offer all products and services
5 uniformly throughout the franchise territory except
6 where an exception has been made for the existing cable
7 television franchise, in which case the applicant may
8 receive a similar exception.

9 (B) Construction. Where the franchising authority
10 required the existing cable television franchisee a
11 specified amount of time in which to construct a
12 community antenna television system, the franchising
13 authority may grant the applicant up to an additional
14 50% of time in which to construct its community antenna
15 television system.

16 (6) Uniform terms for the existing cable television
17 franchise. ~~(5)~~ Unless the existing cable television
18 franchise provides that any additional cable television
19 franchise shall be subject to the same terms or
20 substantially equivalent terms and conditions as those of
21 the existing cable television franchise, the franchising
22 authority may grant an additional cable television
23 franchise under different terms and conditions than those
24 of the existing franchise, in which event the franchising
25 authority shall enter into good faith negotiations with the
26 existing franchisee and shall, within 120 days after the

1 effective date of the additional cable television
2 franchise, modify the existing cable television franchise
3 in a manner and to the extent necessary to ensure that
4 neither the existing cable television franchise nor the
5 additional cable television franchise, each considered in
6 its entirety, provides a competitive advantage over the
7 other, provided that prior to modifying the existing cable
8 television franchise, the franchising authority shall have
9 conducted a public hearing to consider the proposed
10 modification. No modification in the terms and conditions
11 of the existing cable television franchise shall oblige the
12 existing cable television franchisee (1) to make any
13 additional payment to the franchising authority, including
14 the payment of any additional franchise fee, (2) to engage
15 in any additional construction of the existing cable
16 television system or, (3) to modify the specifications or
17 design of the existing cable television system; and the
18 inclusion of the factors identified in items (2) and (3)
19 shall not be considered in determining whether either
20 franchise considered in its entirety, has a competitive
21 advantage over the other except to the extent that the
22 additional franchisee provides additional video or data
23 services or the equipment or facilities necessary to
24 generate and or carry such service. No modification in the
25 terms and conditions of the existing cable television
26 franchise shall be made if the existing cable television

1 franchisee elects to continue to operate under all terms
2 and conditions of the existing franchise.

3 If within the 120 day period the franchising authority
4 and the existing cable television franchisee are unable to
5 reach agreement on modifications to the existing cable
6 television franchise, then the franchising authority shall
7 modify the existing cable television franchise, effective
8 45 days thereafter, in a manner, and only to the extent,
9 that the terms and conditions of the existing cable
10 television franchise shall no longer impose any duty or
11 obligation on the existing franchisee which is not also
12 imposed under the additional cable television franchise;
13 however, if by the modification the existing cable
14 television franchisee is relieved of duties or obligations
15 not imposed under the additional cable television
16 franchise, then within the same 45 days and following a
17 public hearing concerning modification of the additional
18 cable television franchise within that 45 day period, the
19 franchising authority shall modify the additional cable
20 television franchise to the extent necessary to insure that
21 neither the existing cable television franchise nor the
22 additional cable television franchise, each considered in
23 its entirety, shall have a competitive advantage over the
24 other.

25 No municipality shall be subject to suit for damages based
26 upon the municipality's determination to grant or its refusal

1 to grant an additional cable television franchise, provided
2 that a public hearing as herein provided has been held and the
3 franchising authority has determined that it is in the best
4 interest of the municipality to grant or refuse to grant such
5 additional franchise, as the case may be.

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

14 (f) No municipality may acquire, construct, own, or operate
15 a community antenna television system unless the corporate
16 authorities adopt an ordinance. The ordinance must set forth
17 the action proposed; describe the plant, equipment, and
18 property to be acquired or constructed; and specifically
19 describe the manner in which the construction, acquisition, and
20 operation of the system will be financed.

21 The ordinance may not take effect until the question of
22 acquiring, construction, owning, or operating a community
23 antenna television system has been submitted to the electors of
24 the municipality at a regular election and approved by a
25 majority of the electors voting on the question. The corporate
26 authorities must certify the question to the proper election

1 authority, which must submit the question at an election in
2 accordance with the Election Code.

3 The question must be submitted in substantially the
4 following form:

5 Shall the ordinance authorizing the municipality to
6 (insert action authorized by ordinance) take effect?

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

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

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

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