



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1873

Introduced 1/10/2008, by Sen. James F. Clayborne, Jr. - Dale E. Risinger

SYNOPSIS AS INTRODUCED:

220 ILCS 5/21-1150 new

Amends the Cable and Video Competition Law of 2007 in the Public Utilities Act. Provides that a vertically integrated cable operator that carries, on its extended basic service a programming channel that it owns has a duty to treat, in a fair, reasonable, and nondiscriminatory manner, a cable programming channel that competes in the same programming category with the programming channel that the vertically integrated cable operator owns. Provides that, if an independent programmer has reason to believe that it has not been treated in a fair, reasonable, and nondiscriminatory manner concerning carriage of a competing programming channel, then it may submit a request for commercial arbitration with the vertically integrated cable operator over the terms and conditions of carriage within 90 days after a first-time request for carriage or renewal of a carriage agreement. Provides that if the dispute remains unresolved 10 days after submission of the request for arbitration, then either party may file with the American Arbitration Association a formal demand for arbitration and shall include a final offer with the filing. Provides that the AAA shall notify the other party of the demand for arbitration and submit to the other party the final offer submitted by the initiating party, and that within 5 days after receipt of that notice from the AAA, the other party shall submit its responses on price, but not terms and conditions, to the AAA. Contains provisions concerning the manner in which arbitration proceedings shall be conducted. Effective immediately.

LRB095 14326 MJR 40222 b

1 AN ACT concerning regulation.

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

4 Section 5. The Public Utilities Act is amended by adding
5 Section 21-1150 as follows:

6 (220 ILCS 5/21-1150 new)

7 Sec. 21-1150. Program carriage dispute resolution.

8 (a) For purposes of this Section:

9 "AAA" means the American Arbitration Association.

10 "Affiliated" means (1) controlling, controlled by, or
11 under common ownership or control with a cable operator, (2)
12 with any ownership interest, voting or non-voting, in an entity
13 held by a cable operator in a cable programming channel, and
14 any debt or other instrument that is convertible to an
15 ownership interest, or (3) with any financial interest that
16 enables a cable operator to benefit from the financial
17 performance of the cable programming channel.

18 "Cable operator" includes (1) any multichannel video
19 programming distributor, as that term is defined at 47 U.S.C.
20 522, and (2) any affiliate or subsidiary of the cable operator
21 or multichannel video programming distributor.

22 "Extended basic service" means a category of cable service
23 provided by a cable operator that is immediately superior, in

1 terms of price and number of channels, to an offering of basic
2 cable service, as that term is defined at 47 U.S.C. 522.

3 "Final offer" means a submission in the form of a contract
4 for carriage of the programming for a period of at least 3
5 years.

6 "Independent programmer" means a person engaged in the
7 production, creation, or wholesale distribution of video
8 programming that is not affiliated with a vertically integrated
9 cable operator and that offers a cable programming channel that
10 competes in the same programming category as a cable
11 programming channel owned by a vertically integrated cable
12 operator.

13 "Programming category" means programming that contains of
14 the following:

15 (i) sports;

16 (ii) news and public affairs;

17 (iii) entertainment; or

18 (iv) any additional category that the arbitrator may
19 identify.

20 "Programming channel" means a channel with programming
21 generally considered comparable in terms of signal quality and
22 other features to programming provided by a television
23 broadcast station.

24 "Vertically integrated cable operator" means a cable
25 system franchisee (1) to which more than 50% of the television
26 households in its franchise area subscribe for video service,

1 and (2) that, through one or more companies controlling,
2 controlled by, or under common control with the cable system
3 franchisee, acts as both a distributor of content, as well as a
4 producer of content for its own and other cable systems. For
5 purposes of clarification but not limitation, in a vertically
6 integrated cable operator there is common ownership between the
7 cable system franchisee and certain cable networks that are
8 carried by the cable system franchisee.

9 (b) A vertically integrated cable operator that carries, on
10 its extended basic service, a programming channel that it owns
11 has a duty to treat, in a fair, reasonable, and
12 nondiscriminatory manner, an independent programming channel
13 that competes in the same programming category with the
14 programming channel that the vertically integrated cable
15 operator owns.

16 (c) If an independent programmer has reason to believe that
17 it has not been treated in a fair, reasonable, and
18 nondiscriminatory manner concerning carriage of a competing
19 programming channel, then it may submit a request for
20 commercial arbitration with the vertically integrated cable
21 operator over the terms and conditions of carriage within 90
22 days after a first-time request for carriage or renewal of a
23 carriage agreement. If the dispute remains unresolved 10 days
24 after submission of the request for arbitration, then either
25 party may file with the AAA a formal demand for arbitration and
26 shall include a final offer with the AAA filing. The AAA shall

1 notify the other party of the demand for arbitration and submit
2 to the other party the final offer submitted by the initiating
3 party. Within 5 days after receipt of that notice from the AAA,
4 the other party shall submit its responses on price, but not
5 terms and conditions, to the AAA.

6 (d) Arbitration proceedings shall be conducted in the
7 following manner:

8 (1) The arbitration shall be decided by a single
9 arbitrator under the expedited procedures of the
10 commercial arbitration rules of the AAA that are in effect
11 at the time of arbitration. The arbitrator shall conduct a
12 baseball-style arbitration, in which the arbitrator shall
13 choose the cash price (no other consideration may be
14 considered) of the party that most closely approximates the
15 fair market value of the programming carriage rights at
16 issue and shall use the terms and conditions and form of
17 the contract of the initiating party.

18 (2) In order to determine fair market value, the
19 arbitrator may consider any relevant evidence and may
20 require the parties to submit, on a confidential basis,
21 such evidence to the extent that it is in their actual
22 possession or control, including, but not limited to, the
23 following:

24 (A) current or previous contracts between the
25 independent programmer and other cable operators in
26 which the vertically integrated cable operator does

1 and does not have an interest, as well as offers made
2 in such negotiations;

3 (B) current or previous contracts for the
4 affiliated channel with other cable operators,
5 including related and integrated carriage or other
6 arrangements for the affiliated programming channel;

7 (C) price, terms, and conditions that the
8 independent programmer has for carriage with other
9 cable operators;

10 (D) evidence of the relative value, including
11 without limitation ratings and advertising rates, of
12 the independent programming compared to the affiliated
13 programming channel being carried by the vertically
14 integrated cable operator;

15 (E) the extent of national carriage of the
16 independent programmer's competing cable programming;

17 (F) other evidence of the value of independent
18 programming;

19 (G) whether the independent programmer and any
20 company controlled by, controlling, or under common
21 control by the vertically integrated cable operator
22 have pursued the same programming from third parties in
23 the past 5 years; and

24 The arbitrator may not consider offers prior to the
25 arbitration made by the independent programmer or the
26 vertically integrated cable operator in the course of their

1 negotiations.

2 (e) A judgment upon an award by the arbitrator may be
3 entered by any court having competent jurisdiction over the
4 matter. If the arbitrator finds that one party's conduct during
5 the course of the arbitration has been unreasonable, then the
6 arbitrator may assess all or a portion of the other party's
7 costs and expenses, including attorney fees, against the
8 offending party.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.