



Sen. James F. Clayborne Jr.

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09500SB1873sam001

LRB095 14326 MJR 48078 a

1 AMENDMENT TO SENATE BILL 1873

2 AMENDMENT NO. _____. Amend Senate Bill 1873 by replacing
3 everything after the enacting clause with the following:

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" with a cable operator means, with respect to a
11 cable programming channel, that the channel is owned or
12 operated by a person or entity (1) that is controlling,
13 controlled by, or under common ownership or control with a
14 cable operator, (2) in which any ownership interest, voting or
15 non-voting, or any debt or other instrument that is convertible
16 to an ownership interest, is held by a cable operator, or (3)

1 in which any financial interest that enables a person or entity
2 to benefit from the financial performance of the cable
3 programming channel is held by a cable operator.

4 "Cable operator" includes (1) any multichannel video
5 programming distributor, as that term is defined at 47 U.S.C.
6 522, and (2) any affiliate or subsidiary of the cable operator
7 or multichannel video programming distributor.

8 "Extended basic service" means a category of cable service
9 provided by a cable operator that is immediately superior, in
10 terms of price and number of channels, to an offering of basic
11 cable service, as that term is defined at 47 U.S.C. 522.

12 "Final offer" means a submission in the form of (1) a
13 contract for carriage of the programming for a period of at
14 least 3 years, which is certified by the party making such
15 final offer to reflect terms and conditions, other than price
16 and carriage tier, actually agreed to by an unaffiliated third
17 party in a carriage contract covering at least 100,000 homes,
18 and (2) a related price and distribution tier based on such
19 certified form of contract.

20 "Independent programmer" means a person (1) that is engaged
21 in the production, creation, or wholesale distribution of video
22 programming, and (2) that is not affiliated with a vertically
23 integrated cable operator and (3) that offers a cable
24 programming channel that competes in the same programming
25 genre, or targets the same demographic or advertiser base, or
26 competes to acquire the same programming as a cable programming

1 channel owned by a vertically integrated cable operator.

2 "Programming genre" means a channel whose programming
3 principally consists of the following:

4 (i) sports;

5 (ii) news and public affairs;

6 (iii) entertainment; or

7 (iv) any additional or more specific genre that the
8 arbitrator may identify.

9 "Programming channel" means a channel with programming
10 generally considered comparable in terms of signal quality and
11 other features to programming provided by a television
12 broadcast station or a widely available cable programming
13 service, including, but not limited to, ESPN, TBS, TruTV, and
14 E! Entertainment Television.

15 "Vertically integrated cable operator" means a cable
16 system franchisee (1) to which more than 50% of the television
17 households in its franchise area subscribe for video service,
18 and (2) that, through one or more companies controlling,
19 controlled by, or under common control with the cable system
20 franchisee, acts as both a distributor of content, as well as a
21 producer of content for its own and other cable systems. For
22 purposes of clarification but not limitation, in a vertically
23 integrated cable operator there is common direct or indirect
24 ownership between the cable system franchisee and certain cable
25 networks that are carried by the cable system franchisee.

26 (b) A vertically integrated cable operator that carries, on

1 its extended basic service, a programming channel that it owns
2 has a duty to treat, in a fair, reasonable, and
3 nondiscriminatory manner, an independent programming channel
4 that competes in the same programming genre with the
5 programming channel that the vertically integrated cable
6 operator owns.

7 (c) If an independent programmer whose programming channel
8 is available in at least 100,000 homes within the United States
9 has reason to believe that it has not been treated in a fair,
10 reasonable, and nondiscriminatory manner by a vertically
11 integrated cable operator concerning carriage of a competing
12 programming channel, then it may submit a request for
13 commercial arbitration with the vertically integrated cable
14 operator over the terms and conditions of carriage within 90
15 days after a first-time request for carriage or renewal of a
16 carriage agreement. If the dispute remains unresolved 10 days
17 after submission of the request for arbitration, then either
18 party may file with the AAA a formal demand for arbitration and
19 shall include a final offer with the AAA filing. The AAA shall
20 notify the other party of the demand for arbitration. Within 15
21 business days after receipt of that notice from the AAA, the
22 other party shall submit its final offer to the AAA.
23 Immediately after receipt of the responding party's final
24 offer, the AAA shall provide to each party the other party's
25 final offer.

26 (d) Arbitration proceedings shall be conducted in the

1 following manner:

2 (1) The arbitration shall be decided by a single
3 arbitrator under the expedited procedures of the
4 commercial arbitration rules of the AAA that are in effect
5 at the time of arbitration. The arbitrator shall conduct a
6 baseball-style arbitration, in which the arbitrator shall
7 choose the final offer of the party that most closely
8 approximates the fair market value of and market demand for
9 the programming carriage rights at issue.

10 (2) In order to determine fair market value and market
11 demand, the arbitrator may consider any relevant evidence
12 and may require the parties to submit, on a confidential
13 basis, such evidence to the extent that it is in their
14 actual possession or control, including, but not limited
15 to, the following:

16 (A) current or previous contracts between the
17 independent programmer and other cable operators in
18 which the vertically integrated cable operator does
19 and does not have an interest, as well as offers made
20 in such negotiations;

21 (B) current or previous contracts for the
22 affiliated channel with other cable operators,
23 including related and integrated carriage or other
24 arrangements for the affiliated programming channel;

25 (C) price, terms, and conditions that the
26 independent programmer has for carriage with other

1 cable operators;

2 (D) evidence of the relative value, including
3 without limitation ratings and advertising rates, of
4 the independent programming compared to the affiliated
5 programming channel being carried by the vertically
6 integrated cable operator;

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

9 (F) other evidence of the value of independent
10 programming;

11 (G) whether the independent programmer and any
12 company controlled by, controlling, or under common
13 control by the vertically integrated cable operator
14 have pursued the same programming from third parties in
15 the past 5 years; and

16 The arbitrator may not consider offers prior to the
17 arbitration made by the independent programmer or the
18 vertically integrated cable operator in the course of their
19 negotiations.

20 (e) A judgment upon an award by the arbitrator may be
21 entered by any court having competent jurisdiction over the
22 matter. If the arbitrator finds that one party's conduct during
23 the course of the arbitration has been unreasonable, then the
24 arbitrator may assess all or a portion of the other party's
25 costs and expenses, including attorney fees, against the
26 offending party."