



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB4169

by Rep. Robert S. Molaro

#### 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 14310 MJR 40198 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.