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TELECOM - ILLINOIS

City of East St. Louis v. Netflix, Inc.

United States District Court, S.D. Illinois - September 23, 2022 - F.Supp.3d - 2022 WL 4448868

City brought putative class action in diversity against video streaming platforms, alleging ongoing violations of the Illinois Cable and Video Competition Law (CVCL), and also asserting claims for trespass and violation of city ordinance requiring city's and operating franchise company's prior written consent and approval to resell cable communication signals or service within the city.

Platforms moved to dismiss.

The District Court held that:

- As a matter of first impression, CVCL did not provide an express private right of action;
- City did not have right of action based on home rule authority;
- CVCL did not imply a private right of action;
- City failed to state a claim for trespass;
- City ordinance did not provide an express right of action;
- City did not plausibly allege that platforms were violating the ordinance at issue; and
- Implying a private right of action was not warranted since ordinance provided an adequate remedy.

Illinois' Cable and Video Competition Law (CVCL), which required video service providers to obtain authorization from the state to provide services and pay service provider fees to local units of government, did not provide an express private right of action to city to bring lawsuit and collect service fees from video streaming platforms; CVCL clearly provided an express right of action to the state's Attorney General to institute a lawsuit for violations of CVCL and did not state that local units of government could do the same, nor did it affirmatively delegate any sort of power to local units of government when it came to enforcing its provisions.

City failed to establish that it had right of action based on home rule authority to bring lawsuit against video streaming platforms under the Illinois Cable and Video Competition Law (CVCL) to collect requisite provider fees, where CVCL only authorized the state's Attorney General to bring suit and city did not show that home rule authority operated to allow it to step into the Attorney General's shoes and file the lawsuit, and further, CVCL limited ability of local governments to act because it explicitly stated that its provisions were a limitation of home rule powers under the state constitution.

Illinois' Cable and Video Competition Law (CVCL), which required video service providers to obtain authorization from the state to provide services and pay service provider fees to local units of government, did not imply a private right of action for city to bring lawsuit and collect service fees from video streaming platforms, where CVCL provided an adequate remedy through enforcement framework which granted authority to the state's Attorney General to investigate, penalize, and remedy violations of the statute, and implying a private right of action for local governments was not

consistent with statute's underlying purpose, which was to implement a state authorization process and uniform standards and procedures for cable franchising.

Content provided through the internet by video streaming platforms did not cause a physical intrusion or interfere with city's possessory rights in its property, and thus, the alleged unlawful entry of platforms' content on city's property, delivered to subscribers via wireline facilities located at least partially in public rights-of-way without compensating city for use of the public rights-of-way, did not give rise to an actionable trespass claim under Illinois law; video content transmitted through the internet did not take up physical space that could conceivably interfere with city's exclusive possession of public rights-of-way or subtract from city's use of the rights-of-way, and any actual physical intrusion was by the internet wirelines, which platforms did not install, operator, or maintain.

Section of municipal code requiring city's and operating franchise company's prior written consent and approval to resell cable communication signals or service within the city, did not provide an express private right of action under Illinois law to remedy a violation, in city's lawsuit against video streaming platforms alleging that platforms owed it a service fee for using its public rights-of-way to transmit content to subscribers; instead, the municipal code provided for administrative enforcement and punishment for violations as a misdemeanor with a fine and imprisonment.

Implying a private right of action under section of municipal code requiring city's and operating franchise company's prior written consent and approval to resell cable communication signals or service within the city was not warranted under Illinois law, in city's lawsuit against video streaming platforms alleging that platforms owed it a service fee for using its public rights-of-way to transmit content to subscribers, where city's allegations regarding platforms' peering agreements with internet service providers did not lead to plausible conclusion that platforms were even reselling cable in violation of the ordinance.

Municipal code provided adequate remedy for section requiring city's and operating franchise company's prior written consent and approval to resell cable communication signals or service within the city, and thus, implying a private right of action was not warranted under Illinois law, in city's lawsuit against video streaming platforms alleging that platforms owed it a service fee for using its public rights-of-way to transmit content to subscribers; municipal code established a framework for administrative enforcement and remediation of ordinance violations, which city did not argue was inadequate to deter violations.