

HOUSE BILL No. 1138

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-37.

Synopsis: Cable programming arbitration. Provides that an independent cable programmer may request arbitration if it believes that a vertically integrated cable operator that owns a competing programming channel has discriminated against it. Specifies the remedies that the attorney general may seek against a vertically integrated cable operator that engages in a pattern of discrimination against independent cable programmers.

Effective: July 1, 2008.

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January 8, 2008, read first time and referred to Committee on Interstate and International Cooperation.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1138



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]:

4 **Chapter 37. Program Carriage Dispute Resolution**

5 **Sec. 1. As used in this chapter, "affiliated" means any of the**
6 **following:**

7 (1) **Controlling, controlled by, or under common ownership or**
8 **control with a cable operator.**

9 (2) **Having an ownership interest in an entity held by a cable**
10 **operator in a cable programming channel, including a debt or**
11 **other instrument that is convertible to an ownership interest.**

12 (3) **Having a financial interest that enables a cable operator to**
13 **benefit from the financial performance of a cable**
14 **programming channel.**

15 **Sec. 2. As used in this chapter, "cable operator" has the**
16 **meaning set forth in 47 U.S.C. 522(5). The term includes:**

17 (1) **a multichannel video programming distributor (as defined**



1 in 47 U.S.C. 522(13)); and
 2 (2) an affiliate or a subsidiary of the cable operator or
 3 multichannel video programming distributor.
 4 Sec. 3. As used in this chapter, "extended basic service" means
 5 a category of cable service provided by a cable operator that is
 6 immediately superior (in terms of price and number of channels)
 7 to basic cable service (as defined in 47 U.S.C. 522(3)).
 8 Sec. 4. As used in this chapter, "final offer" means an offer to
 9 contract for carriage of programming for a period of at least three
 10 (3) years.
 11 Sec. 5. As used in this chapter, "independent programmer"
 12 means a person that:
 13 (1) is engaged in the production, creation, or wholesale
 14 distribution of video programming that is not affiliated with
 15 a vertically integrated cable operator; and
 16 (2) offers a cable programming channel that competes in the
 17 same programming category as a cable programming channel
 18 operated by a vertically integrated cable operator.
 19 Sec. 6. As used in this chapter, "programming category" means
 20 programming that predominantly contains one (1) of the following
 21 types of information:
 22 (1) Sports.
 23 (2) News and public affairs.
 24 (3) Entertainment.
 25 (4) Any other category identified by the American Arbitration
 26 Association.
 27 Sec. 7. As used in this chapter, "programming channel" means
 28 a channel with programming generally considered comparable in
 29 terms of signal quality and other features to programming
 30 provided by a television broadcast station.
 31 Sec. 8. As used in this chapter, "vertically integrated cable
 32 operator" means a cable system franchisee:
 33 (1) to which more than fifty percent (50%) of the television
 34 households in its franchise area subscribe for video service;
 35 and
 36 (2) that, through a company affiliated with the cable system
 37 franchisee, acts as:
 38 (A) a distributor; and
 39 (B) a producer;
 40 of content for its own and other cable systems.
 41 Sec. 9. A vertically integrated cable operator that carries on its
 42 extended basic service a programming channel that it owns has a

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1 duty to treat in a fair, reasonable, and nondiscriminatory manner
2 an independent programmer concerning carriage of any cable
3 programming channel owned by the independent programmer that
4 competes in the same programming category with a programming
5 channel that the vertically integrated cable operator owns.

6 Sec. 10. (a) If an independent programmer believes that a
7 vertically integrated cable operator has not treated it in a fair,
8 reasonable, and nondiscriminatory manner concerning carriage of
9 a competing programming channel, the independent programmer
10 may request arbitration with the vertically integrated cable
11 operator over the terms and conditions of carriage not more than
12 ninety (90) days after:

- 13 (1) a first time request for carriage of the competing
14 programming channel; or
- 15 (2) the renewal of a carriage agreement involving the
16 competing programming channel.

17 (b) If a dispute described in subsection (a) remains unresolved
18 ten (10) days after submission of the request for arbitration, either
19 the independent programmer or the vertically integrated cable
20 operator may file with the American Arbitration Association a
21 formal demand for arbitration. The formal demand must include
22 a final offer. The American Arbitration Association shall notify the
23 responding party of the demand for arbitration and provide a copy
24 of the final offer. Not more than five (5) days after receiving the
25 notice from the American Arbitration Association, the responding
26 party shall submit its responses on price (but not terms and
27 conditions) to the American Arbitration Association.

28 Sec. 11. (a) The arbitration must be decided by a single
29 arbitrator under the applicable expedited procedures of the
30 commercial arbitration rules of the American Arbitration
31 Association. The arbitrator shall use the:

- 32 (1) cash price that most closely approximates the fair market
33 value of the disputed programming carriage rights, whether
34 submitted by the initiating or responding party; and
- 35 (2) terms, conditions, and form of the contract submitted by
36 the initiating party.

37 (b) The arbitrator may consider any relevant evidence to
38 determine the fair market value of the disputed programming
39 carriage rights, including the following:

- 40 (1) Current or previous contracts between the independent
41 programmer and other cable operators, including offers made
42 in negotiations relating to the contracts.

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- 1 **(2) Current or previous contracts with other cable operators**
- 2 **for the affiliated programming channel carried by the**
- 3 **vertically integrated cable operator, including related and**
- 4 **integrated carriage or other arrangements for the affiliated**
- 5 **programming channel.**
- 6 **(3) Price, terms, and conditions that the independent**
- 7 **programmer has for programming carriage with other cable**
- 8 **operators.**
- 9 **(4) Evidence of the relative value of the independent**
- 10 **programmer's competing programming channel compared to**
- 11 **the affiliated programming channel being carried by the**
- 12 **vertically integrated cable operator. For purposes of this**
- 13 **subdivision, evidence includes ratings and advertising rates.**
- 14 **(5) The extent of national carriage of the independent**
- 15 **programmer's competing programming channel.**
- 16 **(6) Other evidence of the value of the independent**
- 17 **programmer's competing programming channel.**
- 18 **(7) Whether the independent programmer and any company**
- 19 **affiliated with the vertically integrated cable operator have,**
- 20 **in the past five (5) years, pursued the same programming**
- 21 **from third parties.**

22 **However, the arbitrator may not consider offers made by the**
 23 **independent programmer or the vertically integrated cable**
 24 **operator in the course of negotiations before the arbitration.**

25 **(c) The arbitrator may require the parties to confidentially**
 26 **submit evidence that is in their possession or control.**

27 **Sec. 12. A court may enter judgment upon an award by the**
 28 **arbitrator. If the arbitrator finds that a party's conduct during the**
 29 **course of the arbitration has been unreasonable, the arbitrator**
 30 **may assess all or a portion of the other party's costs and expenses,**
 31 **including attorney's fees, against the unreasonable party.**

32 **Sec. 13. If a vertically integrated cable operator engages in a**
 33 **pattern of discrimination against an independent programmer that**
 34 **competes with programming channels owned or operated by the**
 35 **vertically integrated cable operator, the attorney general may seek**
 36 **any or all of the following:**

- 37 **(1) Injunctive relief.**
- 38 **(2) Restitution.**
- 39 **(3) Monetary damages.**
- 40 **(4) Civil penalties not to exceed one hundred thousand dollars**
- 41 **(\$100,000) per violation.**

42 **The attorney general may seek a remedy under this section in**

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1 **addition to any other remedy provided under this chapter.**

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