

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CITY OF EAST ST. LOUIS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NETFLIX, INC., DISNEY STREAMING
SERVICES, LLC, APPLE INC., HULU, LLC,
HOME BOX OFFICE, INC., AMAZON.COM
SERVICES, LLC, CBS ENTERTAINMENT, LLC,
YOUTUBE, INC., CURIOSITYSTREAM, INC,
PEACOCK TV, LLC, DIRECTV
CORPORATION, and DISH NETWORK
SERVICE, LLC

Defendants.

Case No.: 3:21-cv-561

**DEFENDANT NETFLIX, INC.'S MOTION TO DISMISS AND REQUEST FOR ORAL
ARGUMENT**

Defendant Netflix, Inc. (“Netflix”), pursuant to Federal Rule of Civil Procedure 12(b)(6), moves to dismiss Plaintiff City of East St. Louis’ Amended Complaint with prejudice. Netflix respectfully requests that that the Court schedule an oral argument on this Motion to Dismiss.

In support of its Motion to Dismiss, Netflix states Plaintiff’s Amended Complaint is fatally deficient as a matter of law for the following separate and independently sufficient reasons:

1. Illinois’s Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 *et. seq.*) (the “CVCL”) does not grant Plaintiff a private right of action.
2. By its terms, the CVCL does not extend to Netflix’s online streaming service because: (1) only franchise “holders” are liable for franchise fees and Netflix is not a “holder;”

(2) Netflix does not construct, install, or operate any infrastructure in any public rights-of-way or otherwise use or occupy any public rights-of-way; (3) Netflix's content is not "video programming;" (4) Netflix does not operate a "video system;" and (5) Netflix's content is offered over the public Internet.

3. The imposition of state or local franchise fees on Netflix is inconsistent with, and preempted by, the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.* and long-standing Federal Communications Commission precedent.

4. Application of the CVCL to Netflix would violate the Internet Tax Freedom Act.

5. Application of the CVCL to Netflix would violate the First Amendment of the United States Constitution and Article I, Section 4 of the Illinois Constitution.

6. Application of the CVCL to Netflix would violate the Uniformity Clause of the Illinois Constitution.

7. Netflix has not trespassed upon Plaintiff's property.

8. Netflix has not unjustly enriched itself by use of the Plaintiff's public rights-of-way because Netflix does not construct, install, or operate any infrastructure in Plaintiff's public rights-of-way.

9. Netflix has not resold cable signals or service.

Therefore, as set forth more fully in the attached Memorandum of Law In Support of this Motion, the Court should dismiss Plaintiff's Amended Complaint with prejudice because it fails to state a claim upon which relief can be granted.

Dated: January 26, 2022

Respectfully submitted,

/s/ Mary Rose Alexander

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Counsel for Defendant Netflix, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on January 28, 2022, a copy of the foregoing was filed electronically and sent to all counsel of record by operation of the Court's CM/ECF System.

/s/ Mary Rose Alexander

Mary Rose Alexander
Counsel for Defendant Netflix, Inc.