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

VILLAGE OF SHILOH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 3:21-CV-807-MAB**
	)	
NETFLIX, INC.,	)	
DIRECTV, LLC,	)	
DISH NETWORK CORP.,	)	
DISH NETWORK, LLC,	)	
HULU, LLC, and	)	
DISNEY PLATFORM DISTRIBUTION, INC.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

BEATTY, Magistrate Judge:

This case is currently before the Court on a motion to remand filed by Plaintiff, the Village of Shiloh, Illinois (Doc. 45). Defendants filed a response in opposition to the motion (Doc. 58). The Village of Shiloh did not file a reply. For the reasons explained in this Order, the motion is granted.

BACKGROUND

The Illinois Cable and Video Competition Law of 2007, 220 ILL. COMP. STAT. 5/21-100, *et seq*. ("the Act" or the "Illinois law"), requires providers of "cable service or video service" to obtain authorization to provide their services and pay fees to the local cities, villages, towns, and counties in which they do business and whose public rights-of-way the providers utilize in delivering their services. Many states have similar laws, and the

question being posed to courts across the country is whether streaming platforms, such as Netflix and Hulu, which came into being after the laws were enacted are subject to the laws and should be paying a fair share of fees.[1]

On June 9, 2021, the City of East St. Louis, Illinois filed an original action in this district against a number of streaming platforms alleging they provide "video service" within the meaning of the Act but have failed to comply with its requirements, namely that they pay the required fees to local governments. *City of East St. Louis v. Netflix, Inc., et al.*, SDIL Case No. 21-cv-561-MAB, Doc. 1. The City of East St. Louis seeks declaratory and injunctive relief and damages relating to Defendants' failure to pay fees under the Act on behalf of a putative class of all local units of government in which Defendants provide video service.

Five days later, the Village of Shiloh, Illinois filed a substantially similar putative class action in the Circuit Court for the Twentieth Judicial Circuit in St. Clair County, Illinois (Doc. 1-1). Defendant Netflix removed the case to this district on July 15, 2021, asserting jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d) ("CAFA") (Doc. 1). All other Defendants have since joined in or consented to removal (Docs. 6, 7,

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[1] *See, e.g., City of Fishers v. Netflix, Inc.*, 5 F.4th 750 (7th Cir. 2021) (Indiana's Video Service Franchises Act, Ind. Code §§ 8-1-34-1, *et seq*); *City of New Boston v. Netflix, Inc.*, No. 5:20-CV-00135-RWS, - F.Supp.3d - , 2021 WL 4771537 (E.D. Tex. Sept. 30, 2021) (Texas Video Services Providers Act); *City of Ashdown v. Netflix, Inc.*, No. 4:20-cv-4113, 2021 WL 4497855 (W.D. Ark. Sept. 30, 2021) (Arkansas Video Service Act); *City of Lancaster v. Netflix*, No. 21STCV01881, 2021 WL 4470939, at *1 (Cal. Super. Ct. Sep. 20, 2021) (California Digital Infrastructure and Video Competition Act of 2006); *City of Reno, Nevada v. Netflix, Inc.*, No. 320-CV-9499-MMD-WGC, 2021 WL 4037491, at *1 (D. Nev. Sept. 3, 2021) (Nevada Video Service Law, NEV. REV. STAT. §§ 711.020, *et seq.*); *Gwinnett Cty., Georgia v. Netflix, Inc.*, No. 1:21-CV-21-MLB, 2021 WL 3418083, at *1 (N.D. Ga. Aug. 5, 2021) (Georgia Consumer Choice for Television Act, GA. CODE ANN. § 36-76-1, *et seq.*); *City of Creve Coeur v. DIRECTV, LLC*, No. 4:18cv1453, 2019 WL 3604631 (E.D. Mo. Aug. 6, 2019) (Missouri Video Services Providers Act, MO. REV. STAT. § 67.2675, *et seq.*);

11). Like the East St. Louis case, here the Village alleges that Defendants offer "video service" within the meaning of the Act but have failed to pay the required fees to local governments (Doc. 1-1). The Village seeks declaratory and injunctive relief and damages relating to Defendants' failure to pay the fees under the Act on behalf of a putative class of all local units of government in which Defendants provide video service (Doc. 1-1).

The Village timely filed the motion to remand that is presently before the Court (Doc. 45, Doc. 46). The Village does not dispute that the elements necessary for removal under CAFA are satisfied (the amount in controversy exceeds $5 million, there is minimal diversity of citizenship, and there are more than 100 putative class members) or that this Court's subject matter jurisdiction over the case is secure (*see* Docs. 45, 46). 28 U.S.C. § 1332(d). The Village instead argues that the Court should remand this case because under comity principles, this matter is more appropriately decided by the Illinois state courts (Doc. 45, Doc. 46).

LEGAL STANDARD

"Federal courts have a 'virtually unflagging obligation' to exercise the jurisdiction given them." *City of Fishers, Indiana v. DIRECTV*, 5 F.4th 750, 752–53 (7th Cir. 2021) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). "Because a decision to abstain pushes against this obligation, '[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.'" *City of Fishers*, 5 F.4th at 753 (quoting *Colo. River*, 424 U.S. at 813).

A judicially created doctrine known as comity abstention "counsels lower federal courts to resist engagement in certain cases falling within their jurisdiction," particularly

cases challenging matters of "state taxation of commercial activity" and "revenue collection," which are understood to be core functions of state governments. *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 421 (2010); *City of Fishers*, 5 F.4th at 753, 759. The comity doctrine reflects "proper respect for state functions" and a "proper reluctance to interfere by prevention with the fiscal operations of the state governments . . . in all cases where the federal rights of the persons could otherwise be preserved unimpaired." *Levin*, 560 U.S. at 421, 422 (citations omitted); *City of Fishers*, 5 F.4th at 753, 754.

This principle was partially codified by the Tax Injunction Act ("TIA"), which provides that a district court "shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341; *Levin*, 560 U.S. at 424 (citation omitted). But alongside the TIA sits the "more embracive" doctrine of comity, which "restrains federal courts from entertaining claims for relief that risk disrupting state tax administration," has "continuing sway . . . independent of the [TIA]," and bars some cases not barred by the TIA. *Levin*, 560 U.S. at 417, 423-24; *see also A.F. Moore & Assocs., Inc. v. Pappas*, 948 F.3d 889, 896 (7th Cir.), *cert. denied sub nom. Kaegi v. A.F. Moore & Assocs., Inc.*, 141 S. Ct. 865 (2020), *and cert. denied*, 141 S. Ct. 866 (2020) ("Comity is a doctrine of abstention, rather than a jurisdictional bar, but in the state-taxation context it operates similarly to the Tax Injunction Act.").

"[C]omity-based abstention enjoys deep roots in the Supreme Court's jurisprudence"—for over 150 years, the Supreme Court has underscored the need for federal courts to avoid interfering with state and municipal fiscal operations. *City of*

Fishers, 5 F.4th at 753 (citing *Dows v. City of Chicago*, 78 U.S. 108, 110 (1870); *Boise Artesian Hot & Cold-Water Co. v. Boise City*, 213 U.S. 276, 282, 29 S. Ct. 426, 428 (1909) ("An examination of the decisions of this court shows that a proper reluctance to interfere by prevention with the fiscal operations of the state governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired."); *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 116 (1981)).

In *Levin v. Commerce Energy, Inc.*, the Supreme Court made clear that the comity doctrine serves to "restrain[ ] federal courts from entertaining claims for relief that risk disrupting state tax administration." 560 U.S. at 417, 130 S. Ct. 2323. The Court reasoned that "it is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible." *Id.* at 421-22, 130 S. Ct. 2323 (quoting *Dows*, 11 Wall. 108, 110, 20 L.Ed. 65 (1871) (alterations omitted)). The Court cited a "confluence of factors" in reaching its decision that comity warranted abstention under the facts before it. *Levin*, 560 U.S. at 431, 130 S. Ct. at 2336.

The first factor is whether the subject of an action is one over which a state enjoys "wide regulatory latitude." *City of Fishers*, 5 F.4th at 756 (citing *Levin*, 560 U.S. at 431–32). The second factor is whether a party is seeking federal aid to improve their competitive position. *City of Fishers*, 5 F.4th at 756 (citing *Levin*, 560 U.S. at 431–32). And the third factor is whether a state court is better positioned to resolve the dispute due to familiarity with

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