UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

CITY OF KNOXVILLE, TENNESSEE,	)	
	)	
Plaintiff,	)	3:20-CV-00544-DCLC-DCP
	)	
vs.	)	
	)	
NETFLIX, INC. and HULU, LLC,	)	
	)	
Defendants.	)	

ORDER

Plaintiff, the City of Knoxville, Tennessee ("the City"), initiated this action, individually and on behalf of other Tennessee municipalities and counties, seeking to require Defendants Netflix, Inc. ("Netflix") and Hulu, LLC ("Hulu") to obtain franchises and pay fees due to their provision of video services throughout Tennessee, under the Competitive Cable and Video Services Act ("CCVSA" or "the Act"), Tenn. Code Ann. § 7-59-301, *et seq*. [Doc. 1]. Netflix and Hulu subsequently moved to dismiss the City's Class Action Complaint pursuant to Fed.R.Civ.P. 12(b)(6), arguing, in relevant part, that they are not subject to the requirements of the Act because they do not provide "video service[s]" within the meaning of the Act [Docs. 31, 35].

The Court, finding the question of whether Netflix's and Hulu's services fall within the CCVSA's definition of "video service" to be novel and determinative of the cause, certified the following question to the Tennessee Supreme Court:

> Whether Netflix and Hulu are video service providers, as that term is defined in the relevant provision of the CCVSA, Tenn. Code Ann. § 7-59-303(19).

[Doc. 70, pg. 4]. In light of the certification, the Court held the motions to dismiss in abeyance and stayed the matter pending an answer from the Tennessee Supreme Court [*Id*.].

On November 22, 2022, the Tennessee Supreme Court issued an Opinion and Judgment answering the certified question in the negative—i.e., "Netflix and Hulu do not provide 'video service' within the meaning of the Act and thus do not qualify as 'video service providers.'" [Doc. 74, pg. 1]. Considering the City's claims are wholly contingent on the assertion that Netflix and Hulu are video service providers, "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). Therefore, dismissal under Fed.R.Civ.P. 12(b)(6) is appropriate.

Accordingly, Defendants' Motions to Dismiss [Docs. 31, 35] are **GRANTED**, and the City's Complaint is **DISMISSED WITH PREJUDICE**. A separate judgment shall enter.

SO ORDERED:

s/ Clifton L. Corker
United States District Judge