# ILLINOIS OFFICIAL REPORTS

**Appellate Court**


***County of Jackson v. Mediacom Illinois, LLC*, 2012 IL App (5th) 110350**

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| Appellate Court Caption | THE COUNTY OF JACKSON and THE CITY OF CARBONDALE, Plaintiffs-Appellees, v. MEDIACOM ILLINOIS, LLC, Defendant-Appellant. |
| District & No. | Fifth District<br>Docket No. 5-11-0350 |
| Filed | June 25, 2012 |
| Held<br>(*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*) | Defendant cable television provider was required to maintain a customer service center in plaintiff city in order to comply with its franchise agreements with the city and county and the applicable statutes, since the adoption of defendant's argument that the maintenance of a service center was only one of several alternative means of complying with the applicable statutes would frustrate the fundamental principles of contract law and statutory construction. |
| Decision Under Review | Appeal from the Circuit Court of Jackson County, No. 10-MR-153; the Hon. Christy Solverson, Judge, presiding. |
| Judgment | Affirmed. |

Counsel on Appeal

Christopher Cody Cinnamon, Heidi I. Schmid, Adriana L. Kissel, and Jacob E. Baldwin, all of Cinnamon Mueller, of Chicago, for appellant.

Michael L. Wepsiec, State's Attorney, of Murphysboro (Daniel Brenner, Assistant State's Attorney, of counsel), for appellee County of Jackson.

P. Michael Kimmel, of Carbondale, for appellee City of Carbondale.

Panel

JUSTICE WEXSTTEN delivered the judgment of the court, with opinion.

Justices Spomer and Stewart concurred in the judgment and opinion.

## OPINION

¶ 1 On cross-motions for summary judgment arising from a dispute regarding the operation of the defendant's customer service center in Carbondale, the circuit court entered judgment against the defendant, Mediacom Illinois, LLC (Mediacom), and in favor of the plaintiffs, the County of Jackson (the County) and the City of Carbondale (the City). Mediacom appeals, and for the reasons that follow, we affirm.

¶ 2 FACTS

¶ 3 In January 2007, following the expiration of a franchise agreement through which Mediacom had provided cable television services to residents of the City, the City and Mediacom entered into a similar franchise agreement for a term of seven years. See 65 ILCS 5/11-42-11 (West 2006) (granting municipalities the authority to enter into franchise agreements with cable operators). Among other things, the franchise agreement specifically provided that Mediacom would "maintain an office in the City which shall be open to the general public during normal business hours." Although the record on appeal does not indicate when Mediacom opened its customer service center in Carbondale, it does indicate that for some time, the office was located on North U.S. Route 51.

¶ 4 In June 2007, the General Assembly enacted Public Act 95-9, which, *inter alia*, added the Cable and Video Customer Protection Law as article XXII of the Public Utilities Act (220 ILCS 5/1-101 to 20-120 (West 2006)). Pub. Act 95-9 (eff. June 30, 2007) (adding 220 ILCS 5/70-501 to 70-503). Public Act 95-9 also amended the Counties Code (55 ILCS 5/1-1001 to 7-1001 (West 2006)) and the Illinois Municipal Code (65 ILCS 5/1-1-1 to 11-152-4 (West 2006)) to reflect the implementation of article XXII. Pub. Act 95-9 (eff. June 30, 2007) (adding 55 ILCS 5/5-1095(c-1) and 65 ILCS 5/11-42-11(c-1)).

¶ 5 In May 2009, following the expiration of a franchise agreement through which Mediacom had provided cable television services to residents of several unincorporated areas of the County, the County and Mediacom entered into a similar franchise agreement for a term of 10 years. See 55 ILCS 5/5-1095 (West 2008) (granting county boards the authority to enter into franchise agreements with cable operators). Among other things, the franchise agreement specifically provided that Mediacom would continue to operate its local customer service center in Carbondale.

¶ 6 In January 2010, after giving notice of its intent to do so, Mediacom closed its customer service center in Carbondale. Thereafter, the City and the County filed suit against Mediacom, alleging that it had violated its obligations under its existing franchise agreements. Cross-motions for summary judgment followed, and in June 2011, the cause proceeded to a hearing.

¶ 7 In July 2011, the circuit court entered an order granting summary judgment against Mediacom and in favor of the plaintiffs. Rejecting Mediacom's argument that because article XXII's regulatory provisions did not require Mediacom to maintain a local customer service center, it was not obligated to do so despite its existing franchise agreements, the circuit court concluded, "The City, the County, and Mediacom mutually agreed to contracts both valid at the time of their formation and valid after the enactment of the customer service and privacy protection standards of [article XXII]." The circuit court thus held that Mediacom had a contractual duty to maintain its customer service center in Carbondale. The court subsequently denied Mediacom's motion for stay pending the present appeal.

¶ 8 ANALYSIS

¶ 9 Mediacom argues that the circuit court's summary judgment ruling should be reversed because the court misconstrued the legislative intent behind article XXII and its attendant amendments to the Counties Code and the Illinois Municipal Code. The plaintiffs counter that the court rightly upheld the validity of the parties' franchise agreements and that Mediacom's proposed interpretation of the statutes at issue would frustrate fundamental principles of contract law and statutory construction.

¶ 10 Summary judgment is proper where the material facts are not at issue and the movant is entitled to judgment as a matter of law. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004). Rulings on motions for summary judgment and issues involving the interpretation of statutes or contracts are "questions of law that are reviewed *de novo*." *Founders Insurance Co. v. American Country Insurance Co.*, 366 Ill. App. 3d 64, 69 (2006). "Whether a provision in a contract, insurance policy, or other agreement is invalid because it violates public policy is [also] a question of law, which we review *de novo.*" *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 54 (2011).

¶ 11 "The law and the public policy of Illinois permit and require that competent parties be free to contract with one another" (*Liccardi v. Stolt Terminals, Inc.*, 178 Ill. 2d 540, 549 (1997)), and "[e]very contract contains an implied promise of good faith and fair dealing between the contracting parties" (*St. Mary's Hospital, Decatur v. Health Personnel Options Corp.*, 309 Ill. App. 3d 464, 469 (1999)). "Parties to a contract are free to include any terms

they choose, as long as those terms are not against public policy and do not contravene some positive rule of law." *Green v. Safeco Life Insurance Co.*, 312 Ill. App. 3d 577, 581 (2000). "Such a contract is binding on both parties, and it is the duty of the court to construe it and enforce the contract as made." *Id.* A court may declare an otherwise valid contract "void as against public policy," but the power to do so is "exercised sparingly." *Progressive Universal Insurance Co. v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 129 (2005). "An agreement will not be invalidated on public policy grounds unless it is clearly contrary to what the constitution, the statutes or the decisions of the courts have declared to be the public policy or unless it is manifestly injurious to the public welfare." *Id.* at 129-30. "Those seeking to have an agreement invalidated carry a 'heavy burden' of demonstrating a violation of public policy." *Rosen*, 242 Ill. 2d at 55 (quoting *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 65 (2006)).

¶ 12 "The fundamental rule of statutory construction is to give effect to the intent of the legislature," and "[t]he best evidence of legislative intent is the language used in the statute, which must be given its plain and ordinary meaning." *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 429 (2005). When determining legislative intent, "courts presume that the General Assembly, in the enactment of legislation, did not intend absurdity, inconvenience, or injustice." *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000). "We must also construe statutes so that they may be applied in a practical and commonsense manner" (*Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 328 (1999)), keeping in mind "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute[s] one way or another" (*People v. Gutman*, 2011 IL 110338, ¶ 12).

¶ 13 Article XXII applies to all video or cable providers operating in the State of Illinois, "including but not limited to *** those operating under authorization pursuant to Section 11-42-11 of the Illinois Municipal Code" and "those operating under authorization pursuant to Section 5-1095 of the Counties Code." 220 ILCS 5/22-501(u) (West 2008); see also 220 ILCS 5/22-501 (West 2008) (" 'Cable or video provider' means any person or entity providing cable service or video service pursuant to authorization under *** Section 11-42-11 of the Illinois Municipal Code *** [or] Section 5-1095 of the Counties Code ***."). As a regulatory scheme, article XXII establishes minimum "customer service requirements and privacy protections" with which "[a]ll cable or video providers in this State shall comply." 220 ILCS 5/22-501 (West 2008) (renumbered and amended by Pub. Act 95-876 (eff. Aug. 21, 2008)). Article XXII further provides penalties for violations of its statutory mandates and gives units of local government and the Attorney General the concurrent power to enforce its customer service standards. 220 ILCS 5/22-501(r), (s) (West 2008). Article XXII and Public Act 95-9's amendments to the Counties Code and the Illinois Municipal Code also make clear the legislative intent that those standards not be preempted by different or additional standards and penalties that might be imposed by local authorities. See *Neri Brothers Construction v. Village of Evergreen Park*, 363 Ill. App. 3d 113, 118-19 (2005).

¶ 14 Section 22-501(a) of article XXII sets forth "[g]eneral customer service standards," and section 22-501(b) sets forth "[g]eneral customer service obligations." 220 ILCS 5/22-501(a), (b) (West 2008). Section 22-501(b)(3) specifically states:

"The cable or video providers shall: (i) maintain a customer service facility within the boundaries of a local unit of government staffed by customer service representatives that have the capacity to accept payment, adjust bills, and respond to repair, installation, reconnection, disconnection, or other service calls and distribute or receive converter boxes, remote control units, digital stereo units, or other equipment related to the provision of cable or video service; (ii) provide customers with bill payment facilities through retail, financial, or other commercial institutions located within the boundaries of a local unit of government; (iii) provide an address, toll-free telephone number or electronic address to accept bill payments and correspondence and provide secure collection boxes for the receipt of bill payments and the return of equipment, provided that if a cable or video provider provides secure collection boxes, it shall provide a printed receipt when items are deposited; or (iv) provide an address, toll-free telephone number, or electronic address to accept bill payments and correspondence and provide a method for customers to return equipment to the cable or video provider at no cost to the customer." 220 ILCS 5/22-501(b)(3) (West 2008).

¶ 15 As amended by Public Act 95-9, the Counties Code and the Illinois Municipal Code each contain a provision providing:

"Each franchise entered into by [a county or municipality and a cable or video provider] shall include the customer service and privacy standards and protections contained in Article XXII of the Public Utilities Act. A franchise may not contain different penalties or consumer service and privacy standards and protections. Each franchise entered into by [a county or municipality and a cable or video provider] before June 30, 2007 (the effective date of Public Act 95-9) shall be amended by this Section to incorporate the penalty provisions and customer service and privacy standards and protections contained in Article XXII of the Public Utilities Act." 55 ILCS 5/5-1095(c-1) (West 2008); 65 ILCS 5/11-42-11(c-1) (West 2008).

See also 220 ILCS 5/22-501(r) (West 2008) (expressly prohibiting a city or county from adopting or seeking to enforce customer service or performance standards "additional" to or "different" than article XXII's).

¶ 16 Mediacom suggests, as it did below, that because maintaining a customer service center is not required under article XXII and is but one of four permissible service obligations listed in section 22-501(b)(3), it should be allowed to unilaterally modify its franchise agreements with the plaintiffs to reflect "the legislature's intent to have the listed standards serve as alternative methods of complying with the statute." Referencing Public Act 95-9's amendments to the Counties Code and the Illinois Municipal Code, Mediacom insists that because the amendatory provisions explicitly direct that all county and municipal franchise agreements "shall include the customer service and privacy standards and protections contained in Article XXII" and "may not contain different penalties or consumer service and privacy standards and protections," when read in conjunction with section 22-501(b)(3), the statutes establish the "legislature's intent to exclude local franchise authorities from the decision of which customer service alternative the cable operator must comply with under Article XXII" and to "assign to cable providers the task of choosing among the alternatives." Mediacom thus reasons that with respect to its existing franchise agreements with the

plaintiffs, its only "contractual duty is to comply with one of the customer service alternatives provided in Article XXII." We disagree.

¶ 17 By maintaining a customer service center in Carbondale, Mediacom is in compliance with the general customer service obligations specifically enumerated in section 22-501(b)(3). See 220 ILCS 5/22-501(b)(3)(i) (West 2008). Moreover, because Mediacom's contractual obligation to maintain the service center is not a "different" customer service standard than those "contained in Article XXII" (55 ILCS 5/5-1095(c-1) (West 2008); 65 ILCS 5/11-42-11(c-1) (West 2008)), the relevant terms of the parties' franchise agreements do not conflict with the applicable statutes and are, in fact, consistent with their purpose and requirements. Accordingly, Mediacom's contention that the relevant provisions of its franchise agreements with the plaintiffs must be invalidated on public policy grounds is without merit.

¶ 18 We recognize that section 22-501(b)(3)'s use of the word "or" connotes "different alternatives" (*Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 145 (2006)), and we agree with Mediacom that "maintaining a local office is just one of four ways a cable operator can comply with its customer service obligations." We further recognize that when enacting Public Act 95-9, the legislature intended that all then-existing county and municipal franchise agreements be amended to "incorporate the penalty provisions and customer service and privacy standards and protections contained in Article XXII" (55 ILCS 5/5-1095(c-1) (West 2008); 65 ILCS 5/11-42-11(c-1) (West 2008)). Nevertheless, to interpret the statutes as allowing Mediacom to unilaterally modify its existing contracts to substitute its operation of its customer service center with one of section 22-501(b)(3)'s other alternatives would require us to impermissibly "read into the statute[s] words that are not found therein either by express inclusion or by fair implication." *Indian Valley Golf Club, Inc. v. Village of Long Grove*, 135 Ill. App. 3d 543, 552 (1985). Moreover, Mediacom's assertion that the legislature intended to "exclude local franchise authorities from the decision of which customer service alternative the cable operator must comply with under Article XXII" ignores that the only limiting expression set forth in article XXII and the amendments to the Counties Code and the Illinois Municipal Code is that each franchise entered into by a county or municipality and a cable or video provider must include the customer service and privacy standards and protections contained in article XXII and may not contain different or additional penalties or consumer service and privacy standards and protections. 55 ILCS 5/5-1095(c-1) (West 2008); 65 ILCS 5/11-42-11(c-1) (West 2008); 220 ILCS 5/22-501(r) (West 2008).

¶ 19 We lastly note that as the County observes, if we were to adopt Mediacom's interpretation of the law, "Mediacom could freely switch among any or all of the four options anytime it wanted," notwithstanding its customer obligations under the franchise agreements. Article XXII is a customer protection law that gives units of local government the power to enforce the standards set forth in section 22-501(b)(3) (220 ILCS 5/22-501(r) (West 2008)), and it is illogical to presume that the legislature intended to confer such a benefit to cable and video providers.

¶ 20 CONCLUSION

¶ 21 The circuit court correctly concluded that the plaintiffs and Mediacom "mutually agreed to contracts both valid at the time of their formation and valid after the enactment of the customer service and privacy protection standards of [article XXII]." Accordingly, the circuit court's grant of summary judgment against Mediacom and in favor of the plaintiffs is hereby affirmed.

¶ 22 Affirmed.