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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

May 26, 1989

The Honorable John I. Rogers, III
Member, House of Representatives
506 Blatt Building
Columbia, South Carolina 29211

Dear Representative Rogers:

In a recent letter you inquire whether a proposed amendment to House Bill 3161 of 1989 will infringe upon the rights of cities and counties to enter into franchise agreements with cable TV operations. The proposed amendment reads:

When federal law permits, the Public Service Commission may regulate service and rates for cable television.

In construing a legislative provision, the intent of the General Assembly should prevail, Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980), and this intent must be discovered by a reasonable reading of the language chosen by the General Assembly. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). A fair reading of the proposed amendment reflects an intent to vest the Public Service Commission with the authority and jurisdiction to regulate the service and rates of cable television operators, provided the regulation is consistent with federal law.

Title 58, Chap. 12, South Carolina Code Ann. (1976 and 1988 Cum. Supp.), provides authority that enables cities and counties "to regulate the operation of any cable television system which serves customers within its territorial limits by the issuance of franchise licenses...." Section 58-12-30(a).

The question thus becomes whether the placement of the authority and jurisdiction to regulate the service and rates of cable TV operations with the Public Service Commission repeals the existing authority of local subdivisions to regulate cable

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TV operations by the issuance of franchise licenses. Of course, since the proposed amendment to H.3161 does not expressly repeal Section 58-12-30(a), the provision must be examined to determine if the earlier provision is repealed by implication. As a general rule, repeal of a statute by implication is not favored and will not be indulged unless no other reasonable construction can be applied. In Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980). Moreover, repeal by implication occurs only where there is clearly an irreconcilable conflict and all other means of interpretation have been exhausted. City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 (1953).

Clearly, the proposed amendment does not supplant in all respects the authority of local political subdivisions to regulate and issue franchise licenses for cable operations. A fair reading of the proposed amendment, together with Chap. 58, Title 12, reveals a potential conflict only with regard to the regulation of the service and the rates of cable TV operations. Thus, I believe that local political subdivisions could continue to regulate cable TV operations in other areas by the issuance of franchise licenses pursuant to Section 58-12-20, et seq.

In a telephone conversation, you additionally asked whether the proposed amendment is consistent with the Cable Communications Policy Act of 1984 [47 U.S.C. § 521, et seq.] (hereinafter CCPA) insofar as the proposed amendment provides for the regulation of the service and rates of cable operations by the Public Service Commission. I believe that the amendment likely presents a conflict with the CCPA and, thus, may be preempted. 47 U.S.C. § 543(a) generally proscribes the regulation of rates for the provision of cable services by a state except in very limited and defined circumstances.¹ On the other hand, the CCPA generally permits a franchising authority to regulate rates for the provision of cable services consistent with standards identified in the federal Act. See also, 47 CFR § 76.33 ("... a franchising authority may regulate the rates of a cable system...") Of course, under the South Carolina statutory scheme, the Public Service Commission, unlike a local political subdivision, is not a franchising authority as that term is defined in the CCPA (47 U.S.C. § 522(9)) since it does not enter into franchise arrangements with cable operations and, thus, the Public Service Commission is generally prohibited by federal law from

1. These exceptions to the general prohibition are not here applicable. For example, a state may prohibit rate discrimination by cable operators. 47 U.S.C. § 543(f).

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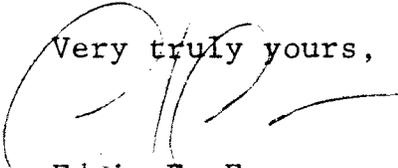
the regulation of rates for the provision of cable services.²

With regard to the Public Service Commission's regulation of service by cable operations, there most probably exists similar constraints imposed by the federal Act, although the conclusion is not as clear as with the regulation of rates by a state agency. See 47 U.S.C. § 544.

In conclusion, I advise:

1. The proposed amendment to House Bill 3161 most probably does not repeal by implication the authority of local subdivisions to regulate cable TV operations by the issuance of a franchise license pursuant to Title 58, Chap. 12, South Carolina Code Ann. (1976 and 1988 Cum. Supp.); however, it does appear that the proposed amendment would move the jurisdiction and authority to regulate services and fees to the Public Service Commission.
2. The regulation of rates for the provision of cable services by the Public Service Commission as contemplated by the proposed amendment is likely preempted and superseded by the Cable Communications Policy Act of 1984 (47 U.S.C. § 521, et seq.). A similar conclusion is likely with regard to the regulation of services by the Public Service Commission.

Very truly yours,

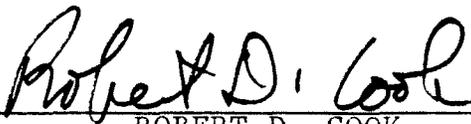

Edwin E. Evans
Chief Deputy Attorney General

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2. If the state functions as a franchising authority, the state may regulate rates consistent with the standards prescribed in the federal Act. Housatonic Cable Vision v. Department of Public Utility, 622 F. Supp. 798 (D.C. Conn. 1985).

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REVIEWED AND APPROVED:



ROBERT D. COOK
Executive Assistant for Opinions