S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 01-067

Inability of Telephone Coop to Operate Cable Television or Video Programming Systems

QUESTION

Does the definition of "telephone service" set forth in Tenn. Code Ann. § 65-29-103(4), as amended by § 3, Chapter 307 of the Public Acts of 1999 (effective May 29, 1999), permit a telephone cooperative to operate a cable television or video programming system?

OPINION

It is the opinion of this Office that § 3, Chapter 307 of the Public Acts of 1999 did not work a sufficient change in the definition of "telephone service" under Tenn. Code Ann. § 65-29-103(4) to grant telephone cooperatives the power or legal authority to operate cable television or video programming systems.

ANALYSIS

The question of whether the definition of "telephone service" set forth in Tenn. Code Ann. § 65-29-103(4) is broad enough to permit a telephone cooperative to operate a cable television or video programming system was addressed by this Office in Opinion No. 92-65 (October 19, 1992) (copy attached), in which this Office stated: "It is the opinion of this office that a telephone cooperative does not have the legal authority or power to establish and operate single or two-way cable television systems." An analysis of the definition of the term "telephone service" is required because, unlike the Rural Electric and Community Services Cooperative Act that contains provisions that expressly regulate the sale of cable programming by electric cooperatives,[1] the Telephone Cooperative Act does not expressly permit or

[1] See, *e.g.*, Tenn. Code Ann. § 65-25-227, which states: "No cooperative shall sell any cable programming to any users serviced or serviceable by a franchised cable company on April 7, 1988." See also Tenn. Code Ann. § 65-25-202(3), which provides that "community utility services"

> includes telecommunication services, including but not limited to, television communication services of any kind and by any means, television programming and decryption services, selling, leasing, both as a lessor and lessee, servicing and repairing related equipment, including TV antenna dishes, and the furnishing for any purpose to itself or to others, including other cooperatives, information and data relative to its or their other purposes, including, if such is the case, the primary purpose; provided, that "community utility services" does not include the furnishing of telephone service, either local or long distance, leased lines or equipment for the vocal or written transmission of messages, or any related services for which a charge is made, nor shall such services include the transmission, transportation, distribution, delivery, or sale of natural gas.

prohibit a telephone cooperative from providing cable television service but merely permits the cooperative to provide "telephone services." Because of the reasons set forth below, this Office finds that § 3, Chapter 307 of the Public Acts of 1999 does not substantively change the definition of "telephone service" under Tenn. Code Ann. § 65-29-103(4) to permit a telephone cooperative to operate a cable television or video programming system.

The current definition of "telephone service" set forth in Tenn. Code Ann. § 65-29-103(4), as amended by § 3, Chapter 307 of the Tennessee Public Acts of 1999, provides as follows:

> "Telephone service" means any communication service whereby communication through the electric or electronic transmission of impulses by or through any media such as wireless technology, wires, cables, microwaves, radio waves, light waves, or any combination of such media or any other future transmission technology which may become available to improve communication services, is the principal intended use thereof, and includes all telephone lines, facilities or systems used in the rendition of such service.

Prior to the enactment of the 1999 amendment, Tenn. Code Ann. § 65-29-103(4) defined "telephone service" as follows:

> "Telephone service" means any communication service whereby communication through the use of electricity is the principal intended use thereof, and includes all telephone lines, facilities or systems used in the rendition of such service.

While the 1999 amendment enumerates certain methods by which communications services may be delivered and makes clear that a cooperative may use all modern means of communication by transmission of electronic impulses, the overall impact of the statutory provision does not change the basic nature or purpose of telephone cooperatives. Ignoring the subclause relating to the distribution of communication service, both the old and new definitions have exactly the same operative structure: a "telephone service" is any "communication service" in which "communication" is "the principal intended use thereof." While the enumeration of the methods by which telephone services may be offered does expand this definition to permit, for example, wireless communication services and fiber optic cable, it does not expressly expand the definition to include "cable television," a term clearly defined by the Federal Communication Commission (the "FCC")[2] and by the Tennessee Code[3] at the time of the amendment of Tenn. Code Ann.

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[2]The FCC defines "television" as: "[a] form of telecommunication for the transmission of transient images of fixed or moving objects." 47 C.F.R. § 2.1.

[3] Tenn. Code Ann. § 7-59-201(1) defines a "cable service" as:

(A) The one-way transmission to subscribers of video programming or other programming service; and
(B) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

§ 65-29-103(4).

It is essential to our analysis that the term being defined is "telephone service." While the definition of this term under Tenn. Code Ann. § 65-29-103(4) might, on its face, be construed broadly, the construction of this term must be made in context of the term itself and must give effect to the intent and purpose of the Legislature. The FCC defines "telephony" as "[a] form of telecommunication set up for the transmission of speech or, in some cases, other sounds." 47 C.F.R. § 2.1. Because this definition of "telephony" was published and generally accepted in 1999 when the term "telephone service" was amended by the Legislature, it is reasonable to construe the term "telephone service" narrowly as relating to telephony, which construction is consistent with the interpretation of the term expressed in Opinion No. 92-65 and reflects the historical reasons for the creation of telephone cooperatives and the manner in which they are organized in various geographical areas.

The canons of statutory construction applied by Tennessee courts support a sensible interpretation of "telephone services" that recognizes the generally accepted meaning of the term defined. Tennessee courts give effect to the Legislature's intent and purposes. *See, e.g., Ganzevoort v. Russell,* 949 S.W.2d 293, *reh. den*. (Tenn. 1997); *Carson Creek Vacation Resorts, Inc. v. Department of Revenue*, 865 S.W.2d 1 (Tenn. 1993). They determine legislative intent by reading statutes as a whole. *See, e.g., State v. Levandowski*, 955 S.W.2d 603 (Tenn. 1997). Courts construe statutes sensibly to avoid absurd results or constructions. *See, e.g., Fletcher v. State,* 951 S.W.2d (Tenn. 1997); *Loftis v. Langdon*, 813 S.W.2d 475 (Tenn. App. 1991). These rules suggest that, unless the definition clearly indicates otherwise, the definition of "telephone service" should be limited to the generally accepted meaning of "telephony" and should not be expanded to include other classes of telecommunication services not contemplated by the common use of the term.

For the reasons expressed above, this Office hereby affirms the interpretation of "telephone services" under Tenn. Code Ann. § 65-29-103(4) set forth in Opinion No. 92-65 and, accordingly, finds that even with this definition, as amended, telephone cooperatives lack authority to provide cable television and video programming services.

Tenn. Code Ann. § 7-59-201(2) defines a "cable television system" as:

> a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers in the community...

Tenn. Code Ann. § 7-59-201(6) defines a "video programming" as:

> programming provided by, or generally considered comparable to programming provided by, a television broadcast system or cable system.

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