S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

August 15, 2006

Opinion No. 06-129

Confidentiality of Pole Attachment Rate Information

QUESTION

Whether the release of pole attachment rates received by the Tennessee Advisory Commission on Intergovernmental Relations would violate any state or federal law?

OPINION

No.

ANALYSIS

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has been directed by the General Assembly to study Senate Bill 668/House Bill 1832, which among other things, limits the rate that a municipally or cooperatively owned utility may charge telecommunications companies for attaching lines to poles owned by the utility companies. In order to study the bill as directed, it is necessary for TACIR to examine the current pole attachment rates charged by these utilities. Upon completion of the study, TACIR will release a report that will be made available to the general public. You have asked whether TACIR may also publicly release information showing the pole attachment rates charged by municipally or cooperatively owned utilities or would the release of such information violate any federal or state law.

Tennessee's Public Records Act states:

> Except as provided in § 10-7-504(f), all state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

Tenn. Code Ann. § 10-7-503(a). The Tennessee Supreme Court has held that the proper test for determining whether a document is a public record is "whether it was made or received pursuant to

law or ordinance or in connection with the transaction of official business by any governmental agency." *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991).

TACIR is an intergovernmental body created by the General Assembly to study and report on:

> (1) The current pattern of local governmental structure and its viability;
> (2) The powers and functions of local governments, including their fiscal powers;
> (3) The existing, necessary and desirable relationships between and among local governments and the state;
> (4) The existing, necessary and desirable allocation of state and local fiscal resources;
> (5) The existing, necessary and desirable roles of the state as the creator of the local governmental system;
> (6) The special problems in interstate areas facing their general local governments, intrastate regional units, and areawide bodies, such studies where possible to be conducted in conjunction with those of a pertinent sister state commission; and
> (7) Any constitutional amendments and statutory enactments required to implement appropriate commission recommendations.

Tenn. Code Ann. §§ 4-10-101 and 102. In addition, TACIR is charged with annually compiling and maintaining an inventory of needed infrastructure within the state and presenting such inventory to the General Assembly as its next regular annual session following completion of the inventory each year. Tenn. Code Ann. § 4-10-109. TACIR is required to meet quarterly and at such other times as it deems necessary, and all such meetings at which public business is discussed or formal action is taken are required to conform to the requirements of Tennessee's Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, *et seq*. *See* Tenn. Code Ann. § 4-10-105(a) and (e).

Clearly, any information received by TACIR, including pole attachment rates, would be received in connection with the transaction of official business by a governmental agency and, therefore, would constitute public records, unless a state law provides otherwise. We are not aware of any provision in state law that would make information received by TACIR confidential. Rather, Tenn. Code Ann. § 4-10-105(b) requires that "[e]ach officer, board, commission, council, department or agency of state government and each political subdivision of the state, shall make available all facts, records, information and data requested by the commission," but specifically does not provide that any such facts, records, information and data received by the TACIR shall be confidential. Accordingly, it is our opinion that the release of pole attachment rates received by TACIR would not violate any provision of state law.

You have also asked whether the release of such information would violate any provision of federal law. The Telecommunications Act of 1996 specifically authorizes the Federal

Communications Commission ("FCC") to regulate the rates, terms and conditions for pole attachments to provide that such rates, terms and conditions are just and reasonable, except where a state has certified to the FCC that it regulates such rates, terms and conditions for pole attachments. 47 U.S.C. § 224(b)(1) and (c). We have not found any provision in that Act that would make pole attachment rates of utilities confidential. Indeed, pursuant to the authority granted under that Act, the FCC has adopted regulations which require utilities regulated under the Act to disclose, among other things: (1) the gross investment by the utility for pole lines; (2) investment in crossarms and other items which do not reflect the cost of owning and maintaining poles; (3) depreciation reserve from the gross pole line investment; (4) depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles; (5) total number of poles owned and/or controlled or used by the utility; (6) the annual carrying charges attributable to the cost of owning a pole; (7) the rate of return authorized for the utility for intrastate service; and (8) reimbursements received from CATV operators and telecommunications carriers for non-recurring costs. See 47 C.F.R. § 1.1404. These regulations further require the utility to disclose this information not only to the FCC, but to any cable television operator or telecommunications carrier that has filed a complaint with the FCC concerning the utility's pole attachment rates. In light of these regulations, it is our opinion that release of pole attachment rates received by TACIR would not violate any provision of federal law.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

JANET M. KLEINFELTER
Senior Counsel

Requested by:

Harry A. Green
Executive Director
Suite 508, 226 Capitol Blvd. Building
Nashville, TN 37243-3012