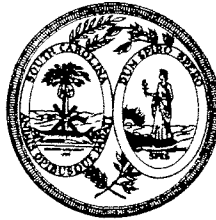


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

March 21, 2002

The Honorable Ronald P. Townsend
Member, House of Representatives
P.O. Box 11867
Columbia, South Carolina 29211

Re: Your Letter of January 9, 2002

Dear Representative Townsend:

In your above-referenced letter, you request an informal opinion from this Office regarding the legality of a "Customer Agreement" between DIRECTV, Inc. and one of your constituents. You attached a copy of the agreement in question and indicate that the "constituent received ... the ... agreement in the mail several months ago ... [and the] ... document appears to change the terms of the agreement without requiring the constituent to sign a new contract.

One of the terms of the agreement you provided is titled "Changes in Contract Terms" and provides in pertinent part as follows:

Due to the evolving nature of the multi-channel video programming distribution industry, its competition and the requirements and costs of programming suppliers, we must reserve the right to change our programming and the terms on which we offer Service from time to time, as we believe appropriate, including our fees and charges. If we make any such changes, we will send you a notice describing them and their effective date.

Generally, American courts take the view that "competent adults may make contracts on their own terms, provided they are neither illegal nor contrary to public policy and, in the absence of fraud, mistake, or duress, that a party who has fairly and voluntarily entered into such a contract is bound thereby, notwithstanding that it was unwise or disadvantageous to that party." See Metropolitan Life Ins. Co. v. Strnad, 876 P.2d 1362 (1994). Courts will, however, impose limitations on the enforcement of certain contracts. One such instance involves the enforcement of an adhesion contract "when a contract or provision [thereof] does not fall within the reasonable expectations of the weaker ... party." Southern Atlantic Financial Services, Inc. v. Middleton, (2002 WL 264888 (S.C.App.)).

Re: your letter.

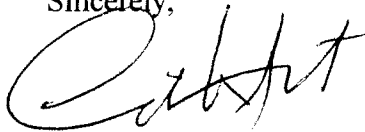
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An adhesion contract is a standard form contract offered on a take-it or leave-it basis with terms that are not negotiable. Munoz v. Green Tree Financial Corp., 343 S.C. 531, 542 S.E.2d 360 (2001). Under state law, an adhesion contract is not per se unconscionable. Id. To be unconscionable, there must be the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. Lackey v. Green Tree Fin. Corp., 330 S.C. 388, 498 S.E.2d 898 (Ct.App.1998).

A Federal District Court recently considered a "Customer Agreement" from DIRECTV and held it to be an adhesion contract. See Bischoff v. DIRECTV, Inc., 180 F. Supp.2d 1097 (C.D. Calif. 2002). The Bischoff Court noted, however, that "[p]ractical business realities make it unrealistic to expect DIRECTV, or any television programming service provider for that matter, to negotiate all of the terms of their customer contracts ... with each customer before initiating service." Accordingly, even though the "Customer Agreement" may be considered an adhesion contract, it is a question of fact as to whether the agreement or any particular provision thereof is unenforceable. This Office cannot comment on questions of fact. See OP. ATTY. GEN. (Dated August, 5, 1992).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an