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February 28, 1995

The Honorable Robert W. Hayes, Jr.  
Senator, District No. 15  
504 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Hayes:

You have asked a number of questions regarding the "Theft of Cable Television Service Act", codified in Section 16-11-820 et seq. Particularly, you have asked the following questions:

1. Does this defense of paying the amount billed apply only to Section 16-11-820 or does it apply to Sections 16-11-820 through 16-11-845?
2. Is the defense of paying the amount billed limited to situations where the customer receives premium services which were made available to the customer through the cable company's error or inadvertence? In other words, the customer did nothing affirmative to receive the premium service without payment.
3. Does this defense of paying the amount billed allow a customer to order and pay basic cable service, then obtain and install an unauthorized converter/descrambler box thereby receiving all premium channels without payment and avoid any penalties under the "Theft of Cable Television Service Act"?

The Honorable Robert W. Hayes, Jr.

Page 2

February 28, 1995

Section 16-11-820, which is part of the "Theft of Cable Television Service Act" of 1984, as amended, provides as follows:

It is unlawful for any person knowingly to obtain or use television service without the authorization of, or payment to, the operator of the service. It is permissible to infer that the existence of any connection, wire, conductor or other device whatsoever, between facilities of a cable television system or closed circuit coaxial cable communication system and the premises occupied by the person which makes possible the use of cable television service by any person without that use being specifically authorized by, or compensation paid to, the operator of cable television service indicates that the occupant of the premises has violated this section. If any person pays the amount charged for service provided by the operator of the cable television system, whether or not the amount billed is in conformity with the established charges for the service, the person is not guilty of any offense hereunder by reason of the use of the service. (emphasis added).

Sections 16-11-825 et seq. prohibit the unauthorized connection or use of devices to a cable television system, the sale, lease or advertising of equipment for avoidance of a cable system charge and other offenses related to the theft of cable television service. Section 16-11-855 makes it a misdemeanor for violation of any section of the Act, punishable by fine or imprisonment.

In construing any statute, the cardinal rule is to ascertain and effectuate legislative intent, whenever possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Moreover, any criminal statute must be strictly construed. Lund v. Gray Line Water Tours, Inc., 277 S.C. 447, 289 S.E.2d 404 (1982). With these principles of construction in mind, we turn to each of your questions.

#### Question 1

Does the defense of paying the amount billed apply only to Section 16-11-820 or to Sections 16-11-820 through 16-11-845?

The defense of paying the amount billed applies only to Section 16-11-820. Section 16-11-820 provides that "[i]f any person pays the amount charged for service

The Honorable Robert W. Hayes, Jr.

Page 3

February 28, 1995

provided by the operator of the cable system, whether the amount billed is in conformity with the established charges for the service, the person is not guilty of any offense hereunder by reason of the use of the service." (emphasis added).

It is evident that the Legislature intended that this defense apply only to Section 16-11-820. The language authorizing this defense is contained in Section -820 only. Moreover, Section -820 refers to the "use of the service" in the specific context of the "amount charged" by the cable company. In our judgment, this defense is designed merely to protect a customer paying the "amount charged" by the company even though that amount does not comport with the company's "established charge," i.e. typically, where the company has made a mistake or error in billing that customer. Such a defense is consistent with the generally accepted legal principle that a statute is not "knowingly" violated where acceptance of certain goods and services in a manner which would otherwise be unlawful is made pursuant to the bona fide belief that such acceptance is not unlawful. Perkins on Criminal Law, p. 935 (2d ed.).

On the other hand, it would be inconsistent with the purpose of the defense, as well as unreasonable, for the Legislature to have intended the defense to apply to other Sections of the Act. Sections -825 et seq. relate to offenses where an affirmative act was taken to intercept or receive television signals without authorization, the aiding or abetting of another in so doing, or the selling of devices used for such purpose. This conclusion is in accord with the well-recognized rule that Section 16-11-820 should be construed not in isolation, but together with the remainder of the Act in light of its manifest purpose. City of Cola. v. Niagara Fire Ins. Co., 249 S.C. 388, 154 S.E.2d 674 (1967). In short, it would literally eviscerate the statute to accept the defense of the "amount charged," contained only in Section -820, even where an individual has acted affirmatively to engage in the "theft" of cable services in violation of other sections of the Act.

## Question 2

Is the defense of paying the amount billed limited to situations where the customer receives premium services which were made available to the customer through the company's error or inadvertence? In other words, the customer did nothing affirmatively to receive the premium service without payment.

Section 16-11-820 proscribes conduct in which a person "knowingly" obtains or uses cable television service without authorization thereof or payment to the operator of the service. While the meaning of the word "knowingly" depends upon the specific context in which it is used, the term as generally employed in the criminal context, means

"with knowledge" or "awareness of the nature of the conduct." Black's Law Dictionary, "Knowingly", p. 872 (6th ed.); see also, Moser v. State, 433 N.E.2d 68, 69 (Ind. 1982) [obtaining cable television without authorization].

As stated above, the defense of paying the "amount charged" could be used where the customer received services, but was incorrectly billed for them through no fault of his or her own, such as where premium services were ordered by the customer but not included in the bill. Moreover, if a customer receives a bill from the cable company, pays it as billed, and has taken no action nor done anything affirmatively to receive cable services without authorization, such would not be a "knowing" violation of the Act.<sup>1</sup> Thus, the defense of payment of the "amount charged" is not applicable where the person has taken affirmative steps or action to receive cable services without payment or authorization. Compare, Moser, supra. (defendant affirmatively hooked cable wire to television set, used the signal, knew it was cable television and that it was probably illegal). This is in accord with our response to Question 1.

### Question 3

Does this defense of paying the amount billed allow a customer to order and pay basic cable service, then obtain and install an unauthorized converter/descrambler box thereby receiving all premium channels without payment and avoid any penalties under the "Theft of Cable Television Services Act"?

No. This question has been discussed in our answers to Question 1 and 2. A person cannot pay the bill for basic cable service and then "immunize" himself from

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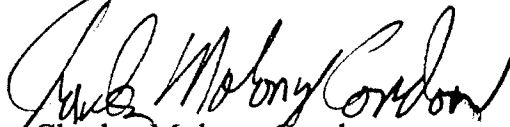
<sup>1</sup>This interpretation is supported by the permissible inference contained in Section 16-11-820 that "the existence of any connection, wire, conductor, or other device whatsoever, between facilities of a cable television system or closed circuit coaxial cable communication system and the premises occupied by the person which makes possible the use of cable television service by any person without that use being specifically authorized by, or compensation paid to, the operator of cable television service indicates the occupant of the premises has violated this section." (emphasis added). This inference focuses entirely upon affirmative action taken by the occupant. While we cannot say that in every conceivable case, an affirmative act is required for Section -820 to be violated, it is apparent to us that the "amount charged" defense provided in that Section is applicable only to those instances described above.

The Honorable Robert W. Hayes, Jr.  
Page 5  
February 28, 1995

prosecution for installation of an unauthorized converter/descrambler box, thereby receiving premium channels without payment.

With kind regards,

Very truly yours,



Charles Molony Condon  
Attorney General

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