



ALAN WILSON  
ATTORNEY GENERAL

May 13, 2020

John J. Fantry, Jr.  
102 Marion Ave.  
Winnsboro, South Carolina 29180

Dear Mr. Fantry:

We understand from your letter you are the Special Utility Counsel for the Town of Winnsboro (the "Town") and would like to request an opinion of this Office concerning a dispute between the Town and Fairfield Communications, Inc. d/b/a TruVista ("TruVista"). In your letter you explain as follows:

Prior to the adoption of Title 59 Chapter 12 of the South Carolina Code ("South Carolina Competitive Cable Services Act"), TruVista had a Franchise for Cable Television from the Town of Winnsboro. This franchise included provision 16.5 requiring TruVista to activate the educational channel and furnish and maintain the equipment, "Grantee shall furnish and maintain all equipment necessary for transmitting signals from one location to the headend for each such channel."

When the Town Franchise expired TruVista applied and received a State Issued Certificate of Franchise Authority which was granted on February 7, 2014. TruVista has offered to donate to Winnsboro a new character generator for Channel 3. However, while the first Character Generator was supplied at no cost to the Town, the new Character Generator, after the first year, will have an Annual Maintenance Fee of \$742.50. TruVista alleges that the state law governing TruVista's franchise clearly provides that TruVista's obligation is limited to providing access (i.e., connectivity) to a PEG channel.

Based on this information, you ask "[i]s the annual maintenance fee proposed by TruVista allowed under the State Franchise?"

#### Law/Analysis

As you mentioned in your letter, the South Carolina Competitive Cable Services Act (the "Act") governs all cable and video service franchises. S.C. Code Ann. §§ 58-12-5 et seq. (2015).

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According to section 58-12-5(B), “[a]fter the effective date of this act, no municipality or county may issue a cable franchise pursuant to Section 58-12-30. A municipality or county may continue to enforce existing cable franchises until they expire or are terminated pursuant to Section 58-12-325.” Further, section 58-12-5(C) provides “[t]his chapter occupies the entire field of franchising or otherwise regulating cable and video service and preempts any ordinance, resolution, or similar matter adopted by a municipality or county that purports to address franchising or otherwise regulating cable or video service.” We understand from your letter that the Town and TruVista previously operated under a franchise agreement until it expired, but their relationship is now governed under the Act.

Section 58-12-370 of the South Carolina Code (2015) requires holders of a state-issued certificate of franchise authority to provide a municipality or county requesting it with the right to use public, educational, and governmental (PEG) access channels for noncommercial programming. S.C. Code Ann. § 58-12-370(A). Section 58-12-370 further explains the responsibilities of municipalities and certificate holders:

(E) The operation of any PEG access channel provided pursuant to this section is the responsibility of the municipality, the county, or the Educational Television Commission receiving the benefit of the channel, and the holder of a state-issued certificate of franchise authority bears only the responsibility for the transmission of the channel. The holder of a state-issued certificate of franchise authority must be responsible for providing the connectivity to each PEG access channel distribution point up to the first two hundred feet.

(F) The municipality, the county, or the Educational Television Commission shall ensure that all transmissions of content and programming provided by or arranged by them to be transmitted over a PEG channel by a holder of a state-issued certificate of franchise authority are provided and submitted to the cable or video service provider in a manner or form that is capable of being accepted and transmitted by the provider over its network without further alteration or change in the content or transmission signal, and which is compatible with the technology or protocol utilized by the cable or video service provider to deliver its cable or video services.

According to these provisions, the answer to your question depends on whether a character generator, and more specifically the annual maintenance fee, relates to the connectivity or transmission of the PEG access channel or whether it relates to the operation of the PEG access channel. We are not aware of the exact function a character generator performs, but if it is related to the connectivity or transmission of the PEG access channel, it would be TruVista’s responsibility as the certificate holder. Conversely, if the character generator is used in the operation of the PEG access channel, then the Town would be responsible for it and its maintenance. The function a character generator involves the determination of facts, which is beyond the scope of an opinion of this Office. See Op. Att’y Gen., 2015 WL 4497734 (S.C.A.G.

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July 2, 2015) (stating “as we have cautioned in numerous opinions, this Office does not have the jurisdiction of a court to investigate and determine facts.”). Therefore, we cannot make a conclusive determination as to whether the character generator is the responsibility of the Town or TruVista. However, we hope this opinion will assist you in making the correct determination.

**Conclusion**

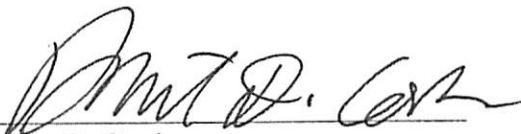
According to the South Carolina Competitive Cable Services Act, the responsibility for a character generator and more specifically its maintenance depends on whether it is used in ensuring connectivity to and transmission of the Town’s PEG access channel. If so, section 58-12-370 places the responsibility for it on the certificate holder, which in this case would be TruVista. However, if the character generator and its maintenance relate to the operation of the Town’s PEG access channel, section 58-12-370 places responsibility for this expense on the Town.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General