STATE ETHICS COMMISSION
ADVISORY OPINION
S.E.C. 2010-10

QUESTION ONE

Whether telecommunications companies whose retail rates are not regulated by the Public Service Commission and persons acting on behalf of such companies are prohibited from making contributions to political campaigns.

Robert Highsmith of the law firm Holland & Knight on behalf of several telecommunication clients has requested the above advisory opinion from the Ethics Commission. Mr. Highsmith requests that the Commission advise that telecommunication companies which have chosen alternative regulation are no longer governed by § 21-5-30(f) of the Ethics in Government Act (the "Act"). Mr. Highsmith reasons that because telecommunication companies have been so significantly deregulated as a result of alternative regulation of telephone retail rates under Georgia law that O.C.G.A. § 21-5-30(f) no longer applies to them. The Commission disagrees.

O.C.G.A. § 21-5-30(f) states:

> A person acting on behalf of a public utility corporation regulated by the Public Service Commission shall not make, directly or indirectly, any contribution to a political campaign. This subsection shall not apply to motor carriers whose rates are not regulated by the Public Service Commission. Any person who knowingly violates this subsection with respect to a member of the Public Service Commission, a candidate for the Public Service Commission, or the campaign committee of a candidate for the Public Service Commission shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years or by a fine not to exceed $10,000.00, or both; and any person who knowingly violates this subsection with respect to any other public officer, a candidate for such other public office, or the campaign committee of a candidate for such other public office shall be guilty of a misdemeanor.

As a result of the concern for corruption or the appearance of corruption, the Georgia Legislature prohibits any public utility company regulated by the Public Service Commission from making campaign donations to candidates. Mr. Highsmith is correct in his assumption that a public utility corporation no longer regulated by the Public Service Commission would be exempt from the prohibition regarding campaign donations. In Advisory Opinion 2006-01, the Commission determined that because railroad companies were no longer regulated by the Public Service Commission, the campaign prohibition under § 21-5-30(f) no longer applied to railroad companies. However as stated in AO 2006-01, in 1995 Congress passed the ICC Termination Act which preempted state jurisdiction over railroads. The same has not occurred in this instance.

While telecom companies may choose alternative regulation, that is, they may choose to set their own retail rates, the PSC retains regulatory authority over much of the telecom business. First, the PSC maintains regulatory authority over wholesale rates charged by telecom companies. Wholesale rates represent the charges that telecom companies charge each other for connection to another company's systems. While alternatively regulated companies may negotiate wholesale rates among themselves, the PSC has authority to determine wholesale rates when the companies fail to reach agreement (O.C.G.A. § 46-5-164). The PSC retains this rate making authority to ensure that no local exchange company or telecommunications company gains an unfair market position by attempting to thwart competition through unreasonable wholesale rates.

In addition to the power to regulate wholesale rates, a telecom company must receive a certificate of authority from the PSC to conduct business in Georgia (O.C.G.A. § 46-5-163; wireless services excepted). In order to receive a certificate of authority, the telecom company must demonstrate to the PSC that is has sufficient technical capacity as well as financial strength in order to properly serve the community in which it operates. Under subsection (d) of § 46-5-163, the Commission has the authority to revoke, suspend or adjust a certificate of authority "where the commission finds upon complaint and hearing that a local exchange company has engaged in unfair competition or has abused its market position."

Lastly O.C.G.A. § 46-5-168 grants the following powers to the Commission:

> (b) The commission's jurisdiction shall include the authority to:
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> (1) Adopt reasonable rules governing certification of local exchange companies;
> (2) Grant, modify, impose conditions upon, or revoke a certificate;
> (3) Establish and administer the Universal Access Fund including modifications to the maximum allowable charge for basic local exchange service;
> (4) Adopt reasonable rules governing service quality;
> (5) Resolve complaints against a local exchange company regarding that company's service;
> (6) Require a telecommunications company electing alternative regulation under this article to comply with the rate adjustment provisions of this article;
> (7) Approve and if necessary revise, suspend, or deny tariffs in accordance with the provisions of this article;
> (8) If necessary, elect another comparable measurement of inflation calculated by the United States Department of Commerce;
> (9) Establish reasonable rules and methodologies for performing cost allocations among the services provided by a telecommunications company; and
> (10) Direct telecommunications companies to make investments and modifications necessary to enable portability.

Based on the above regulatory framework maintained by the PSC over alternatively regulated telecom companies, the Commission declines to advise that alternatively regulated telecom companies are exempt from the prohibitions under O.C.G.A. § 21-5-30(f).

QUESTION TWO

Whether public utility corporations, and persons acting on behalf of such corporations, are prohibited from providing logistical support to employee sponsored political action committees ("PACs").

To respond to this question, the Commission refers to its recently issued Advisory Opinion 2010-04. In AO 2010-04, the Commission determined that a PAC established by a regulated entity (as defined under O.C.G.A. §21-5-30.1) which receives administrative or logistical support of any kind from the regulated entity, may not contribute to the campaign of an Elected Executive Officer. The prohibition is based on subsection (b) of §21-5-30.1 which prohibits a regulated entity or any person or political action committee acting on behalf of a regulated entity from making contributions to an Elected Executive Officer regulating the entity.

Although the prohibition under §21-5-30.1 applies to an entity regulated by an Elected Executive Officer and not the PSC, the basis for our decision in AO 2010-04 is the same as the one we make here. The definition of contribution under the Act is "a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or ***anything of value*** conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office …" (§21-5-3(7)). Logistical support provided to an employee sponsored PAC constitutes a contribution because it is something of value.

In its opinion on the same topic in 1983, the Attorney General determined that a corporation providing logistical assistance to a campaign was making a contribution to the political campaign as defined by the Georgia Act (Atty. Gen. Op. 83-1). The Attorney General determined that services provided to a campaign by the compensated employees of the corporation were considered a contribution under the Georgia Act because the compensated employees were providing "something of value" to the campaign. Additionally, any of the following supplied by the corporation to the campaign would be considered a contribution: supplies, office space, IT services and assistance for overhead.

Therefore, it is the opinion of the Commission that O.C.G.A. §21-5-30.1 prohibits a public utility corporation from providing logistical support to employee sponsored PACs.

Prepared by Stacey Kalberman, Executive Secretary
November 17, 2010

Holland & Knight

AO 2010-10

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Re: Advisory Opinion Request

Dear Commissioners:

We write to request that the State Ethics Commission issue an advisory opinion under O.C.G.A. § 21-5-6(b)(13). We represent several telecommunications companies in Georgia. For aid in the advice and counsel we provide our clients, we request an advisory opinion by the State Ethics Commission that:

> Telecommunications companies whose retail rates are not regulated by the Public Service Commission, and persons acting on behalf of such companies, are not governed by O.C.G.A. § 21-5-30(f) and are, therefore, not prohibited from making contributions to political campaigns.

In addition, or in the alternative, we request an advisory opinion that:

> Public utility corporations, and persons acting on behalf of such corporations, are not prohibited from providing logistical support to employee-sponsored political action committees ("PACs").

Analysis and Argument

The provision of the Ethics in Government Act (the "Act") at issue in this request is O.C.G.A. § 21-5-30(f), which provides:

> A person acting on behalf of a public utility corporation **regulated by the Public Service Commission** shall not make, directly or indirectly, any contribution to a political campaign. This subsection shall not apply to motor carriers **whose rates are not regulated by the Public Service Commission**. Any person who knowingly violates this subsection with respect to a member of the Public Service Commission, a candidate for the Public Service Commission, or the campaign committee of a candidate for the Public Service Commission shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years or by a fine not to exceed $10,000.00, or both; and any person who knowingly violates this subsection with respect to any other public officer, a candidate for such other public office, or the campaign committee of a candidate for such other public office shall be guilty of a misdemeanor.

O.C.G.A. § 21-5-30(f) (emphasis added).

I. O.C.G.A. § 21-5-30(f) does not apply to telecommunication companies whose rate-of-return and retail rates are unregulated.

A. Alternatively regulated telecommunications companies in Georgia have been significantly deregulated; those with an unregulated rate-of-return and unregulated retail rates are no longer governed by O.C.G.A. § 21-5-30(f).

The law surrounding alternatively regulated telecommunications companies has changed, and many such companies have experienced significant deregulation. In the mid-1990s, Georgia law changed to provide for alternative regulation of some telecommunications companies, which allowed such companies to elect not to be rate-of-return regulated.[1] More recently, House Bill 168, passed in 2010, provided that retail rates for such alternatively regulaged telecommunications companies would no longer be regulated by the Public Service Commission.[2] These changes to Georgia law necessarily rendered moot a number of rules as inapplicable to a telecommunications company whose retail rates are no longer regulated by the Public Service Commission.[3] Additionally, under House Bill 168, preexisting statutory

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[1] *See* S.B. 137, 1995 Gen. Assem., Reg. Sess. (Ga. 1995); *see* O.C.G.A. § 46-5-165.

[2] *See* H.B. 168, 2010 Gen. Assem., Reg. Sess. (Ga. 2010); *see* O.C.G.A. § 46-5-251.

[3] *See the following rules which previously regulated some aspect of retail:* Rule 515-3-1-.05, Free Service Forbidden, Rule 515-3-1-.07, No Change in Rates, Charges, Classifications or Service, Rule 515-12-1-.02, Records and Reports, Rule 515-12-1-.04, Customer Relations, Rule 515-12-1-.05, Customer Deposits for communications Services, Rule 515-12-1-.06, Reasons for Denying Service, Rule 515-12-1-.07, Insufficient Reasons for Denying Service, Rule 515-12-1-.09, Voluntary Suspension, Rule 515-12-1.10, Directories; Rule 515-12-1-.15, Inspections and Tests, Rule 515-12-1-.16, Service Interruptions, Rule 515-12-1-.17, Quality of Service – General, Rule 515-12-1-.18, Service Objectives and Surveillance Levels, Rule 515-12-1-.23, Customer Trouble Reports.

provisions and rules that relate to the setting of retail rates or the terms and conditions of retail service have been repealed and no longer apply to telecommunications companies that have not elected to be rate or return regulated. Because such companies have been so significantly deregulated, we urge the Commission to opine that telecommunications companies whose retail rates are unregulated are no longer governed by O.C.G.A. § 21-5-30(f).

Today, the Public Service Commission's authority concerning telecommunications companies is nothing like it was when O.C.G.A. § 21-5-30(f) was first enacted. When O.C.G.A. § 21-5-30(f) was first enacted, the Public Service Commission regulated a telecommunications company's rate-of-return and retail rates. Today, an alternatively regulated telecommunications company can elect to have its rate-of-return unregulated, and its retail rates have recently been deregulated as well. Concerning alternatively regulated telecommunications companies that have elected not to be rate-of-return regulated, the Public Service Commission retains only vestigial functions.[4]

The statute says that it applies to those "acting on behalf of a public utility corporation **regulated** by the Public Service Commission." O.C.G.A. § 21-5-30(f) (emphasis added). Although the Public Service Commission retains some vestigial functions (see n. 4) concerning alternatively regulated telecommunications companies, those utilities that are no longer generally regulated, that have an unregulated rate-of-return and unregulated retail rates, should be deemed not "regulated" under the O.C.G.A. § 21-5-30(f). In determining that O.C.G.A. § 21-5-30(f) no longer applied to railroad companies, the Commission cited the fact that the "Public Service Commission . . . no longer holds jurisdiction over railroad companies except for certain vestigial functions." Op. State Ethics Comm'n 2006-01 (October, 23, 2007). The same is true in this instance. Thus, the Commission should interpret the word "regulated" narrowly, and opine that O.C.G.A. § 21-5-30(f) does not apply to those telecommunications companies that have elected to have an unregulated rate-of return and whose retail rates are no longer regulated by the Public Service Commission. This narrow interpretation of the statute is supported by the major deregulation that has occurred in the last several decades.

B. Precluding a telecommunications company whose retail rates are no longer regulated by the Public Service Commission from contributing to political campaigns is an unconstitutional infringement upon the company's right of free expression.

When possible, statutory provisions should be construed to avoid unconstitutionality. *See Bd. of Public Educ. for Savannah v. Hair*, 276 Ga. 575, 576, 581 S.E.2d 28, 30 (2003). The constitutionality of O.C.G.A. § 21-5-30(f) is in question unless it is narrowly construed, thereby providing a constitutional interpretation. If the Commission interprets the word "regulated"

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[4] *Compare* O.C.G.A. 46-5-222 *with* O.C.G.A. 46-5-251. The Georgia Public Service Commission has the same level of authority over a telecommunications company not subject to rate of return regulation that it has over wireless and VoIP providers.

broadly to encompass any utility that is regulated in any way by the Public Service Commission, the statute may well be unconstitutional; however, by narrowly construing the statute and interpreting the word "regulated" to include only those utilities that are still "regulated" in its traditional rate-of-return sense by the Public Service Commission, the Commission will have adopted an interpretation that ensures the statute's continued viability. Thus, the Commission should narrowly construe the statute and find that, although it may apply to traditionally "regulated" public utility corporations, it does not apply to telecommunications companies whose rate-of-return and retail rates are no longer regulated.

The United States Supreme Court has recognized that the regulated status of a utility, even when it is a privately owned but governmentally regulated corporate monopoly, does not preclude its assertion of First Amendment rights. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 100 S. Ct. 2343 (1980). It is axiomatic "that a major purpose of the First Amendment [is] to protect the free discussion of governmental affairs." *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 776-77, 98 S. Ct. 1407, 1416 (1978). Additionally, the Supreme Court has held that "[t]he inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." *Bellotti*, 435 U.S. at 777, 98 S. Ct. at 1416; *see Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 913 (2010). Thus, the corporate status of a telecommunications company whose retail rates are unregulated is irrelevant to its right to participate in the political process.

"Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Citizens United*, 130 S. Ct. at 898 (citation omitted) (holding that a ban on corporate independent expenditures was unconstitutional). The government has expressed its "compelling interest" in precluding utilities from contributing to political campaigns to limit "the actuality and appearance of corruption." Ga. Op. Att'y Gen. 82-56 (1982); *see also Gwinn v. State Ethics Comm'n*, 262 Ga. 855, 857, 426 S.E.2d 890, 892 (1993) ("[T]he prevention of corruption or the appearance of corruption through campaign contributions is a legitimate and compelling governmental interest that permits the absolute prohibition of campaign contributions from a regulated entity to the regulator or a candidate for the office of regulator.") (citing *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 110 S. Ct. 1391 (1990), *overruled by Citizens United*, 130 S. Ct. 876.). Several changes have occurred since these opinions were published that require the Commission to look again at whether its interpretation satisfies the compelling interest standard. First, the legislature has completely revised the Act on several occasions. Second, alternatively regulated telecommunications companies can now elect to have an unregulated rate-of-return. Third, the retail rates for these companies are no longer regulated by the Public Service Commission. Fourth, the Supreme Court overruled *Austin*, the case cited by the Supreme Court of Georgia in *Gwinn v. State Ethics Comm'n* above, and held that "the Government may not suppress political speech on the basis of the speaker's corporate identity," and "[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." *Citizens United*, 130 S. Ct. at 913. Thus, the constitutionality of the

interpretation of O.C.G.A. § 21-5-30(f), which, as applied, prohibits some "regulated" corporations from contributing to political campaigns, is now in doubt.

As mentioned above, the Supreme Court of the United States recently overruled *Austin*, 494 U.S. 652, 110 S. Ct. 1391 (which upheld a corporate independent expenditure restriction) and held, "the Government may not suppress political speech on the basis of the speaker's corporate identity" under the First Amendment. *Citizens United*, 130 S. Ct. at 913 (2010). "Political speech is 'indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation.'" *Id.* at 883 (citing *Bellotti*, 435 U.S. at 777, 98 S. Ct. at 1416.). The Supreme Court noted, "The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether." *Id.* at 886. The Court added, "First Amendment standards . . . 'must give the benefit of any doubt to protecting rather than stifling speech.'" *Id.* at 891.

As discussed above, when possible, statutory provisions should be construed to avoid unconstitutionality. *See Bd. of Public Educ. for Savannah v. Hair*, 276 Ga. 575, 576, 581 S.E.2d 28, 30 (2003). The constitutionality of O.C.G.A. § 21-5-30(f) is in question unless it is narrowly construed, thereby providing a constitutional interpretation. The "compelling interest" previously asserted by the State to restrict contributions by public utility corporations simply is not compelling when applied to telecommunications companies whose rate-of-return and retail rates are unregulated. Thus, the Commission should narrowly construe the statute and find that, although it may apply to public utility corporations that continue to be "regulated" in its traditional sense, it does not apply to telecommunications companies whose rate-of-return and retail rates are no longer regulated.

C. The differential treatment in allowing other corporations and individuals to make contributions to political campaigns while prohibiting telecommunications companies whose rate-of-return and retail rates are unregulated from engaging in the same protected conduct is unfair and a violation of equal protection.

Finally, it is a cardinal rule of statutory construction that if a statutory interpretation "results in absurdity or injustice or would lead to contradictions," or an unreasonable result, "the meaning of general language may be restrained by the spirit or reason of the statute." *Sirams v. Sirams*, 222 Ga. 202, 203, 149 S.E.2d 101, 102 (1966) (citations omitted); *Barton v. Atkinson*, 228 Ga. 733, 738-9, 187 S.E.2d 835, 840-41 (1972). If the Commission interprets O.C.G.A. § 21-5-30(f) to preclude wireline telecommunications companies whose rate-of-return and retail rates are unregulated from making contributions to political campaigns, the opinion would lead to an unjust and unfair result. Such companies would be precluded from participating in the political process while other corporations (for example competitors, such as unregulated VoIP and wireless companies, motor carriers and railroads whose rates are not regulated by the Public Service Commission) and individuals could fully participate in the political process.

Moreover, the distinction in the application of O.C.G.A. § 21-5-30(f) to telecommunications companies not subject to rate-of-return or retail rate regulation and to other unregulated or less regulated utilities implicates equal protection concerns. Both the Georgia Constitution and the United States Constitution require that the State treat similarly situated individuals in a similar manner. *City of Atlanta v. Watson*, 267 Ga. 185, 187, 475 S.E.2d 896, 899 (1996). And a private corporation is a "person" within the meaning of the equal protection clause. *Caldwell v. Hosp. Auth. of Charlton County*, 248 Ga. 887, 888, 287 S.E.2d 15, 17 (1982). "If the State's classification . . . impedes the exercise of a fundamental right [like freedom of speech], it is tested under a standard of strict judicial scrutiny." *Watson*, 267 Ga. at 187, 475 S.E.2d at 899. Hence, the General Assembly may not arbitrarily distinguish between telecommunications companies not subject to rate-of-return or retail rate regulation and other corporations (such as motor carriers and railroads whose rates are not regulated by the Public Service Commission) in prohibiting the right to make contributions to political campaigns. Accordingly, the Commission should adopt an interpretation of O.C.G.A. § 21-5-30(f) that avoids any equal protection violations that could result from such arbitrary distinctions and adopt an interpretation that O.C.G.A. § 21-5-30(f) does not apply to telecommunications companies that are not subject to rate-of-return or retail rate regulation.

II. Even if O.C.G.A. § 21-5-30(f) does apply to a telecommunications company whose rate-of-return and retail rates are unregulated, such a company may still provide logistical support to an employee-sponsored PAC that makes contributions to political campaigns governed by the Act.

The State Ethics Commission is an independent commission with its own statutory mandate to provide advice, interpret, and enforce the Act. *See* O.C.G.A. § 21-5-6(b)(13) ("No liability shall be imposed under this chapter for any act or omission made in conformity with a written advisory opinion issued by the commission that is valid at the time of the act or omission."). Attorney General Opinion 83-1, issued on January 3, 1983, provides that a public utility corporation regulated by the Public Service Commission is "prohibited under the Campaign and Finance Disclosure Act from rendering logistical assistance, including utility-compensated employee services of any kind," to employees wishing to make contributions to political campaigns governed by the Act. Ga. Op. Att'y Gen. 83-1 (1983). At the time this Opinion was published, telecommunications companies were rate-of-return regulated, retail rate regulated, and *Citizens United* had not yet been published. Additionally, since the Attorney General opinion was published, the legislature has completely revised the Act on several occasions. Therefore, it is now appropriate for the Commission to take a fresh look at whether O.C.G.A. § 21-5-30(f) prohibits a public utility corporation regulated by the Public Service Commission from providing logistical assistance to an employee-sponsored PAC that makes contributions to political campaigns governed by the Act.

We only ask that a public utility corporation be allowed to provide logistical assistance to an employee PAC. Corporations that provide logistical support to an employee PAC do not provide indirect contributions to candidates because no corporate funds ever reach a candidate.

Individuals, not corporations, contribute money to an employee PAC, and these individual employees contribute **voluntarily**. They contribute because it is an easy way for these employees to give money to politicians who support policies that are good for their employer. We request that if you leave in place the prohibition on direct contributions of corporate funds, at least opine that corporations may provide logistical assistance to an employee-sponsored PAC that makes contributions to political campaigns governed by the Act. This interpretation will allow those funds voluntarily given from employees to be used as intended to support political campaigns governed by the Act.

The Ethics in Government Act is modeled after the Federal Election Campaign Act of 1971 as amended, and the text of the federal provisions is similar to that in the state provisions. Thus, it is appropriate for the State Ethics Commission to look to the federal interpretation for guidance in interpreting similar language in State law. The United States Code provides

> It is **unlawful** for any national bank, or any **corporation** organized by authority of any law of Congress, **to make a contribution or expenditure** in connection with any election to any political office . . . .

2 U.S.C. § 441b(a) (emphasis added). The United States Code defines contribution or expenditure as

> . . . any **direct or indirect** payment, distribution, loan, advance, deposit, or gift of money, or any services, or **anything of value** . . . to any candidate, campaign committee, or political party or organization, in connection with any election . . .

2 U.S.C. § 441b(b)(2) (emphasis added).

> O.C.G.A. § 21-5-30(f) provides:
>
> A person acting on behalf of a public utility **corporation** regulated by the Public Service Commission **shall not** make, **directly or indirectly, any contribution** to a political campaign . . . .

O.C.G.A. § 21-5-30(f) (emphasis added). The Act defines "contribution" as

> . . . a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or **anything of value** conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office . . .

O.C.G.A. § 21-5-3(7) (emphasis added).

Federal courts have consistently held that the language in the federal statute permits corporations to participate in the "electoral process by allowing them to establish **and pay the administrative expenses** of 'separate segregated funds,' which may be 'utilized for political purposes.'" *See Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197, 201, 103 S. Ct. 552, 556 (1982)

(emphasis added). This interpretation has existed for almost thirty years, and during that time, it has proven workable within the federal elections process. We ask that the Commission adopt the federal interpretation and find that a public utility corporation regulated by the Public Service Commission may provide logistical assistance to an employee-sponsored PAC that makes contributions to political campaigns governed by the Act.

Conclusion

For the foregoing reasons, we urge the Commission to opine that O.C.G.A. § 21-5-30(f) does not apply to telecommunications companies whose retail rate is unregulated or persons acting on behalf of such corporations. Additionally, or in the alternative, we request that the Commission opine that even if O.C.G.A. § 21-5-30(f) does apply to such companies, O.C.G.A. § 21-5-30(f) does not prohibit a public utility corporation from providing logistical support to an employee PAC.

We appreciate your thoughtful consideration.

Sincerely yours,

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25 October 2010

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Re: Advisory Opinion Request

Dear Ms. Kalberman:

We are writing to follow up on your inquiry concerning the deregulation of telecommunication companies. With the passage of House Bill 168, all unregulated telecommunications companies are governed in the same way and should be treated equally. Let us explain further.

Immediately before 1995, a number of telecommunications companies each served a portion of the state of Georgia. Those companies provided local service, or dial tone, to the people that lived within their serving territories. Customers had a local company that provided dial tone and could choose a long distance company of their choice.[1]

In 1995, the Georgia General Assembly passed Senate Bill 137, which opened the local market to competition by allowing other carriers to provide local service. New and existing companies could serve in whatever area of the state they so desired.[2] Companies could also elect

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[1] *See United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982) (In this decision – also known as the Modification of Final Judgment – the Court approved the break-up of AT&T leading to widespread long distance competition. Essentially, the court chose to deregulate long distance. At page 134, n. 172 the Court noted that competition was introduced in the long distance or interexchange market in 1978.).

[2] *See* O.C.G.A. § 46-5-163(b) ("The commission shall have the authority to issue multiple certificates of authority for local exchange services . . . ."); *see* O.C.G.A. § 46-5-163(c) ("A showing of public convenience and necessity is not a condition for issuing a competing certificate of authority.").

alternative forms of regulation, which meant that the rates for services were chosen by the companies,[3] with the exception of the rates for basic local exchange service.[4]

In 2010, the Georgia General Assembly passed House Bill 168. House Bill 168 eliminated Commission regulation of basic local exchange rates.[5] In addition, House Bill 168 made clear that the Georgia Public Service Commission "shall not have any jurisdiction, right, power, authority, or duty to impose or enforce any requirement, regulation, or rule relating to the setting of rates or terms and conditions for the offering of retail telecommunications service by a telecommunications company not subject to rate of return regulation."[6]

Importantly, the language relating to the Georgia Public Service Commission in House Bill 168 (which relates specifically to telecommunications companies) mirrors language at O.C.G.A. § 46-5-222 relating to VoIP and wireless service – which the GPSC does not regulate. In essence, the General Assembly deregulated the wireline telecommunications industry so that the wireline telecommunications industry is on the same footing as competing companies that provide VoIP or wireless service. And, wireless and VoIP companies make direct contributions to Georgia political campaigns.[7]

Finally, in no event would the Commission need to make a case by case assessment of which companies are regulated. Under Senate Bill 137, companies had to make a filing to elect alternative regulation.[8] Those companies that did not do so are rate of return regulated. In

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[3] *See* O.C.G.A. § 46-5-165(a)-(b) (providing that Tier 1 and Tier 2 local exchange companies may elect to have "rates, terms, and conditions for its services determined pursuant to the alternative regulation described in [that] article").

[4] *See* O.C.G.A. § 46-5-166 (as it existed prior to HB 168, specifically, subsections (a)–(d) specifying the manner in which the rates for basic local exchange services would be determined and adjusted).

[5] *See* H.B. 168, 2010 Gen. Assem., Reg. Sess. § 3 (Ga. 2010) (showing strikethrough of the basic local exchange rate regulatory provisions), *available at* http://www.legis.state.ga.us/legis/2009_10/pdf/hb168.pdf; *see* O.C.G.A. § 46-5-166 (current version).

[6] *See* H.B. 168, 2010 Gen. Assem., Reg. Sess. § 6 (Ga. 2010), *available at* http://www.legis.state.ga.us/legis/2009_10/pdf/hb168.pdf.

[7] *See Campaign Reports - Contribution Search Results (T-Mobile)*, STATE ETHICS COMMISSION OF GEORGIA, http://www.ethics.ga.gov/Reports/Campaign/Campaign_ByContributionsearchresults.aspx?Contributor=T-Mobile&Zip=&City=&ContTypeID=0&PAC=&Employer=&Occupation=&From=&To=&Cash=&InK=&Filer=&Candidate=&Committee= (last visited Oct. 21, 2010); *see also Campaign Reports - Contribution Search Results (Comcast)*, STATE ETHICS COMMISSION OF GEORGIA, http://www.ethics.ga.gov/Reports/Campaign/Campaign_ByContributionsearchresults.aspx?Contributor=comcast&Zip=&City=&ContTypeID=0&PAC=&Employer=&Occupation=&From=&To=&Cash=&InK=&Filer=&Candidate=&Committee= (last visited Oct. 21, 2010); *see also Campaign Reports - Contribution Search Results (Verizon Wireless)*, STATE ETHICS COMMISSION OF GEORGIA, http://www.ethics.ga.gov/Reports/Campaign/Campaign_ByContributionsearchresults.aspx?Contributor=verizon&Zip=&City=&ContTypeID=0&PAC=&Employer=&Occupation=&From=&To=&Cash=&InK=&Filer=&Candidate=&Committee= (last visited Oct. 21, 2010).

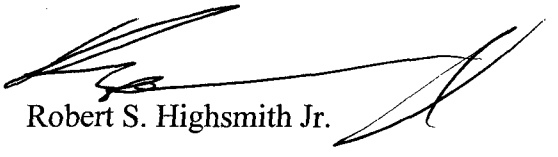
[8] *See* O.C.G.A. § 46-5-165(a)-(b) (providing that Tier 1 and Tier 2 local exchange companies may elect to have "rates, terms, and conditions for its services determined pursuant to the alternative regulation described in [that] article").

addition, under House Bill 168, by December 31, 2010, any Tier 2 company that had previously elected alternative regulation can elect to return to rate of return regulation.[9] Thus, it will be quite clear which telecommunications companies are regulated.

Please let us know if you require any additional information. We appreciate your thoughtful consideration of our inquiry.

Sincerely yours,

HOLLAND & KNIGHT, LLP



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[9] *See* H.B. 168, 2010 Gen. Assem., Reg. Sess. § 3, lines 82-85 (Ga. 2010), *available at* http://www.legis.state.ga.us/legis/2009_10/pdf/hb168.pdf.