



Commission on State Emergency Communications

May 4, 2000

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0229-JC
FILE # ML-41409-00
I.D. # 41409

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OPINION COMMITTEE

Re: Request for Attorney General Opinion Regarding Effect of Amendments to Health & Safety Code § 771.077

Attention: Elizabeth Robinson, Chair, Opinions Committee

Dear General Cornyn:

The Commission on State Emergency Communications ("Commission") and the Comptroller of Public Accounts ("Comptroller") jointly request your formal opinion on an application of law issue that is currently pending before both agencies.

As you may be aware, the Commission is the state agency charged by the Legislature through the Health & Safety Code chapter 771 with the responsibility for administering the state-wide 9-1-1 program. Commensurate with this duty, the Commission assesses and receives certain fees and surcharges that are collected from end users by telecommunications service providers. See generally, TEX. HEALTH & SAFETY CODE §§ 771.071, .0711, .072, .073, .076 and .077. Prior to September 1, 1999, the Commission was specifically authorized by statute to conduct audits of telecommunications service providers and to initiate collection efforts when the Commission determined that a provider had failed to timely deliver fees and surcharges to the Commission. TEX. HEALTH & SAFETY CODE §§ 771.076 and .077. The language of section 771.077 specifically provides the telecommunications provider with a right to a contested case hearing if it does not agree with the amount the Commission asserts is delinquent.

However, effective September 1, 1999, the Legislature shifted responsibility for collecting delinquent fees and surcharges from the Commission to the Comptroller. See TEX. HEALTH & SAFETY CODE § 771.077 as amended by Tex. H.B. 1983, 76th Leg., R.S. (1999).

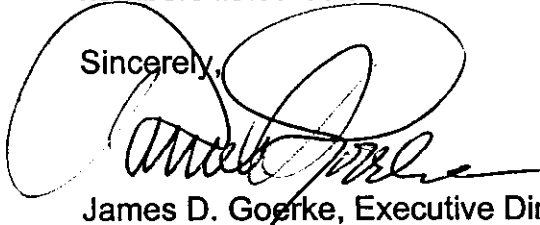


A question has been raised in the context of a specific case whether the Commission or the Comptroller is the agency authorized to initiate a contested case hearing to collect delinquent amounts. In this case, the delinquency was revealed in the course of an audit that covered the years 1992 through 1997. The Commission initiated informal discussions with the provider in 1998 regarding the delinquency, and in the course of these conversations the provider indicated that it wished to avail itself of the hearing procedure. However, before any pleadings were filed or any formal contested case procedure was initiated the statute was amended as described above.

Under these circumstances all parties, including the provider, desire a definitive statement from the Office of the Attorney General regarding which agency now has the authority to initiate formal, contested case collection efforts against the provider.

Thank you for your attention to this request. If you or your staff require any additional information, please do not hesitate to contact either one of us at the numbers listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Goerke", written over a large, loopy flourish that extends to the left and loops back under the signature.

James D. Goerke, Executive Director
Commission on State Emergency Communications
Tel. 305-6920
Fax 305 -6937



CAROLE KEETON RYLANDER
Comptroller

COMPTROLLER OF PUBLIC ACCOUNTS

P.O. BOX 13528
AUSTIN, TX 78711-3528

June 8, 2000

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RQ-0229-JC

OPINION COMMITTEE

Ms. Elizabeth Robinson
Chair, Opinion Committee
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

FILE # RQ-0229-JC
I.D. # 41461

Re: Attorney General Opinion Request No. 0229-JC

Dear Ms. Robinson:

Our office is in receipt of the Attorney General Opinion request filed by Mr. James D. Goerke, the Executive Director of the Commission on State Emergency Communications, dated May 4, 2000. We also have received your letter dated May 9, 2000, requesting the filing of amicus briefs in this matter from all interested parties by June 9, 2000.

We agree that both our agencies are in need of guidance on the issues outlined in the Commission's opinion request. The opinion will be particularly helpful in providing direction to all parties in the processing of one audit that is currently pending. The Comptroller's Office joins in the Commission's opinion request.

We feel that the request fully lays before you all of the questions that need to be addressed. Our agency will not be filing an amicus brief since we are joining in the request itself.

Thank you for your assistance in this matter.

Sincerely,


Richard Munisteri
General Counsel