

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-84(26)S
Sales Tax
October 15, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820504A

On May 4, 1982 a Petition for Advisory Opinion was received from Satellite Signals Unlimited, Inc., 2077 Elmwood Avenue, Buffalo, New York 14207.

The issue raised is the sales tax status of the service provided by a common carrier of television programs and signals, and of the equipment utilized to provide such service.

Petitioner describes its operation as follows: "Satellite Signals is a common carrier of TV programs and signals. Virtually all of the services performed by Satellite Signals are for delivery outside of New York State and/or for resale. Signals are transmitted to and received from satellites. Occasionally, television signals are received on ground lines and up-linked to a satellite. The originator of a signal or the recipient of a signal pays Satellite Signals a fee for the up-linking or down-linking services. Assume, for example, that a particular customer wants to receive a particular signal. Satellite Signals has down-linking equipment which it uses to pick up the signal from the satellite. Satellite Signals charges its customer a fee for these services."

Section 1105(b) of the Tax Law imposes a sales tax upon: "The receipts from every sale, other than sales for resale . . . of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service."

Section 1115(a)(12) of the Tax Law provides for an exemption from sales and use taxes with respect to "telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in received at destination or initiating and switching telephone or telegraph communication."

The Sales and Use Tax Regulations define the term "telephony and telegraphy" to include "use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals." 20 NYCRR 527.(d)(2). The term does not apply to a service which is essentially something other than telephony and telegraphy, although telephony and telegraphy may figure as an incidental element of the service. 20 NYCRR 527.2(d)(4). The tax on the sale of telephony and telegraphy is thus not applicable to the receipts of cable television companies, because, while as an incident to the service provided there may be telegraphic or telephonic transmission of a signal, the essential object of the service is to provide "entertainment or enjoyment." Cable TV v. Tax Comm of N.Y., 88 Misc. 2d 601, aff'd 59 AD 2d 81. (It is to be noted that in the discussion of cable television in 20 NYCRR 527.2(d)(3), the reference to the exempt distribution of cable television programs is a reference to distribution to the ultimate consumer.)

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As suggested by the regulation provision cited above, the essence of telephony and telegraphy is the transmission of "intelligence to a distant point by means of electricity." 74 AM Jur 2d, Telecommunications §1. Also critical to the concept is the role of the purveyor of telephony and telegraphy as "a mere conduit, transmitting to third-party recipients messages given it by various originators." Quotron Systems v. Gallman, 39 N.Y. 2d 428; Technical Services Bureau Memorandum, TSB-M-80(18)S. Further, it makes no difference to the question whether the sender or receiver of the transmission purchases the service. Mtr. of N.Y. Quotation Co. v. Bragalini, 7 AD 2d 586.

A common carrier of television signals, such as Petitioner, is engaged in the transmission of intelligence from one point to another, acting in this role as a mere conduit, and its services therefore constitute the sale of "telephony or telegraphy" within the meaning of the statute. The receipts from such service are subject to tax except where the service is purchased for resale or where the service is performed on an interstate or international basis. It is to be noted that where the service is purchased, for example, by a cable TV company which thus acquires programming which it delivers to its customers, such purchase would not be one for resale inasmuch as the service of intermediary transmission is not being resold.

With respect to Petitioner's equipment purchases, the following applies:

Telephone and telegraph central office equipment and station apparatus, used directly and predominantly in receiving at destination, initiating or switching telephone and telegraph communication is exempt, when such equipment and apparatus is purchased or leased by the vendor of such service for sale. 20 NYCRR 528.13(f)(1)

DATED: April 16, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.