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January 12, 1990

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ATTORNEY GENERAL OPINION NO. 90- 6

The Honorable Tim Shallenburger
State Representative, First District
State Capitol, Room 175-W
Topeka, Kansas 66612

Re: Public Utilities--Powers of State Corporation
Commission; Telecommunications Public
Utilities--Permit to Transact Business Required;
Exceptions; Limitations on Commission's Authority
and Jurisdiction

Synopsis: A telecommunication public utility's closing of
collection offices, being a management decision,
does not amount to a change in telephone service
contrary to a proposal submitted by the utility and
approved by the KCC in accordance with K.S.A.
66-131. The KCC can, on its own motion, reconsider
the matter if in their judgment the closing of
future collection offices affects the sufficiency
of the service being provided. Cited herein:
K.S.A. 66-131; 66-1,187; K.S.A. 1989 Supp.
66-1,189, 66-1,192; K.S.A. 66-1,195.

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Dear Representative Shallenburger:

As State Representative for the First District you inquire
whether the closing of collection points by United Telephone
(United) amounts to a "change in the operation of telephone
service" contrary to the proposal to transfer filed with the
Kansas Corporation Commission (KCC) in accordance with K.S.A.

66-131. You also inquire whether it is possible to have United file again and a hearing be held.

You indicate that the KCC sent letters to all customers of the Kansas State Telephone Company notifying them of a proposal to transfer the authority to provide telephone service to the United Telephone Company of Missouri dba, United Telephone Company of Southeast Kansas. The notice indicated that United proposed no rate increases or change in the operation of telephone service in the area. Shortly after the transfer, United Telephone closed the offices and collection points in Cherokee County. In accordance with K.S.A. 66-131 (requiring common carriers and public utilities to obtain a certificate from the KCC that public convenience will be promoted by the transaction of their business) the KCC found that the transfer of authority to provide telephone service from Kansas State Telephone to United Telephone Company promoted the public convenience. The proposal for the transfer of authority was approved by the KCC (June 30, 1989) and resulted in a decrease in telephone service rates. Under the Telecommunications Public Utility Act, K.S.A. 66-1,187 et seq. the KCC retains the authority to require that United furnish reasonably efficient and sufficient service and facilities. K.S.A. 1989 Supp. 66-1,189.

In our judgment, however, the number and location of collection offices does not directly relate to the determination of whether United is first, promoting public convenience by having the authority to provide telephone service, nor at this time, in the KCC's judgment does closing some collection offices relate to or affect how reasonably efficient a service is provided by the telecommunications utility. The closing of some collection offices relates to the general power of management, and as a business decision is incident to ownership. Because the power of the state is limited by the consideration that it is not the owner of the property, or clothed with the general power of management incident to ownership, 73B C.J.S. Public Utilities § 12, the KCC has determined the closings to be management decisions, and we agree. See generally, Community of Woodston v. State Corporation Commission, 186 Kan. 747 (1960) (the Court agreed with the Commission that it was the prerogative of management to arrange the hours of service of any agent at a station and to designate the base station, subject to the condition that the service provided met public convenience and necessity); Missouri Pacific Rld. Co. v. State Corporation Commission, 192 Kan. 575, 578 (1964) ("[i]n the absence of any question of convenience

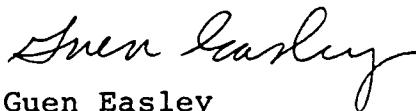
or necessity, the manner or method of rendering service should be left to the discretion of the management without interference by the Commission.") Thus in our opinion the closing of collection offices, being in the KCC's judgment a management decision, does not amount to a change in telephone service contrary to the proposal submitted by United and approved by the KCC in accordance with K.S.A. 66-131.

Your second question regarding United's refiling and the setting of a hearing involves K.S.A. 1989 Supp. 66-1,192 and K.S.A. 66-1,195. The KCC has the power to investigate, upon a complaint or on its own motion, any act or service performed by the public utility that is in any respect unreasonable, unfair, unreasonably inefficient, or inadequate. K.S.A. 1989 Supp. 66-1,192. Additionally, the commission can from time to time examine and inspect the manner of its conduct and its management with reference to the public safety and convenience. K.S.A. 66-1,195. Accordingly, the KCC on its own motion can reconsider the matter if in their judgment the closing of collection offices at some future time affects or relates to the adequacy of service that United is providing. Thus in our opinion, until the KCC determines that closing collection offices affects the sufficiency of the service being provided, there is no basis for refiling or requiring a hearing on the matter.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
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