nswered by Letter
Klaffenbach

January 22, 1970

OPINION LETTER NO. 134

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Honorable L. Edward Stone, Jr.
State Senator
District No. 26
Chesterfield, Missouri 63017

Dear Senator Stone:

This letter is in response to your opinion request and also the opinion request of State Representative Fred W. Meyer in which you ask whether the Public Service Commission violates its Rule of Practice and Procedure No. 5.02(d) and Section 392.260, RSMo 1959, if it grants a public utility such as a telephone company a rate increase when said company has failed to obtain franchises in cities in which such utility operates.

Section 392.260, RSMo 1959, provides in full as follows:

> "No telegraph corporation or telephone corporation hereafter formed shall begin construction of its telegraph line or telephone line without first having obtained the permission and approval of the commission and its certificate of public convenience and necessity, after a hearing had upon such notice as the commission may prescribe. Before any such certificate shall be issued there must be filed in the office of the commission by the applicant therefor a verified statement showing that the required consent of the proper municipal authorities has been obtained. The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void."

Rule 5.02 of the Rules of the Public Service Commission provides in full as follows:

> "Applications for a certificate of public convenience and necessity by a gas, electric, water, heating, telephone, railroad, or street railroad corporation shall comply with Rules 2.01 through 2.05 and 4.01. In addition, such applications shall contain the following:
>
> (a) Description of the area to be served.
>
> (b) The route of any construction involved, with a list of all utilities which such construction will cross or with which it is likely to compete.
>
> (c) The manner in which such construction is to be financed.
>
> (d) The granting of consent by franchise by city or county, when such is required, by including a certified copy of document containing such consent or franchise, or statutory affidavit of company officials that such consent has been acquired.
>
> (e) The facts showing that the granting of the application is required by the public convenience and necessity."

It is noteworthy that both Section 392.260 and Rule 5.02 apply to certificates of convenience and necessity and not to applications for rate changes.

Rule 6.01 applies to applications for authority to change rates and states:

> "This rule applies to applications for authority to change any rate, fare or charge. Such applications shall comply with Rules 2.01 through 2.05 and 4.01. In addition, such applications shall contain the following data, either in the body of the application or in exhibits attached thereto.
>
> (a) Financial statement (see Rule 4.02), and pro forma statement giving effect to the proposed increase.

(b) A statement of the presently effective rates, fares, or charges which are proposed to be changed. Such statement need not be in tariff form.

(c) A statement of the proposed changes. Such statement need not be in tariff form, but shall set forth the proposed rate structure with reasonable clarity."

There is no requirement under Rule 6.01 that the Commission inquire into the question of whether the utility has such franchises. Further, there is no statute or rule of law which imposes such a duty on the Commission when application is made for rate changes.

The answer to your question is, therefore, that the Commission by granting the increases to such a company is not in violation of either its Rules or the statutes.

Yours very truly,

JOHN C. DANFORTH
Attorney General