

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

|                                          |   |                              |
|------------------------------------------|---|------------------------------|
| In the Matter of a notice of Election of | ) |                              |
| MoKan Dial Inc. for Waiver of            | ) | <b>Case No. IE-2009-0158</b> |
| Commission Rules and Statutes            | ) |                              |
| Pursuant to Section 392.420, RSMo.       | ) |                              |

**Staff Recommendation**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its recommendation states as follows:

1. On October 28, 2008, MoKan Dial Inc. ("MoKan" or "Company") filed notification with the Missouri Public Service Commission ("Commission") that MoKan had elected to waive certain Commission rules and statutory provisions pursuant to RSMo Section 392.420.

2. MoKan's reference to RSMo Section 392.420 refers to the statute as revised by the passage of House Bill 1779, which became effective August 28, 2008.

3. Section 392.420, as amended by House Bill 1779, states in relevant part:

In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, *where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected.*

(Emphasis added).

4. MoKan is an incumbent local exchange telecommunications company as that term is used in Section 392.420. Furthermore, in the attached Memorandum, labeled as Appendix A, Staff states its position that prior Commission cases, along with the most recent annual reports submitted by companies, adequately demonstrate that alternative local exchange telecommunications companies are authorized to provide service in the Company's territory, although there is no evidence that any are currently providing service in the Company's territory.

5. MoKan is currently compliant in obligations relating to Commission assessment, Missouri Universal Service Fund, Relay Missouri, and the submission of an annual report.

WHEREFORE, Staff recommends that the Commission acknowledge MoKan's election to opt into the waivers listed in its Notice of Election for Waivers and direct MoKan to file tariff pages in compliance with the waivers that designate the rules and statutes waived.

Respectfully submitted,

/s/ Sarah Kliethermes  
Sarah L. Kliethermes  
Legal Counsel  
Missouri Bar No. 60024

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-6726 (Telephone)  
(573) 751-9285 (Fax)  
sarah.kliethermes@psc.mo.gov

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mailed to all counsel of record this 13<sup>th</sup> day of November, 2008.

/s/ Sarah L. Kliethermes

# MEMORANDUM

**To:** Missouri Public Service Commission Official Case File  
Case No. IE-2009-0158  
MoKan Dial Inc.

**From:** William Voight

**Subject:** Staff response to Order Directing Recommendation

**Date:** November 13, 2008

On October 28, 2008 MoKan Dial Inc. (MoKan) notified the Commission of its election of certain rule and statutory waivers pursuant to 392.420 RSMo, as amended by House Bill 1779. MoKan states at least two alternative local exchange carriers are authorized to provide local exchange service in its authorized area and at least two Voice over Internet Protocol (VoIP) telephone companies are registered to provide service in its area.

In Case No. TA-2009-0083, Verizon Access Transmission Services (Verizon) obtained authority to expand its certificated area to provide service in all Missouri exchanges, including those of MoKan. In Case No. TA-2009-0108, XO Communications Services, Inc. (XO) obtained authority to expand its certificated area to provide service in all Missouri exchanges, including those of MoKan. Although both Verizon and XO were granted statewide authority, Staff notes that neither carrier has filed the necessary tariffs to effectuate its certificate and neither carrier has indicated the presence of customers in MoKan's service area.

In Case No. DA-2009-0096, Verizon Business Services was issued a VoIP registration to provide service statewide. In Case No. DA-2009-0107, XO was issued a VoIP registration to provide service statewide. Although these VoIP telephone companies have been granted authority to provide service in MoKan's area, Staff notes that none of these companies have as yet indicated the presence of customers in MoKan's service area.

Based on the registrations of the alternative and VoIP telephone companies, MoKan requests the Commission waive the following:

- 4 CSR 240-3.550 (4) and (5) (A)
- 4 CSR 240-32.060
- 4 CSR 240-32.070
- 4 CSR 240-32.080
- 4 CSR 240-33.040(1) through (3) and (5) through (10)
- 4 CSR 240-33.045

392.290

392.300

392.310

392.320

392.330

392.340

Section 392.420 RSMo describes a process for obtaining waivers of these Commission rules and statutes. Specifically this statute states, "...where an interconnected voice over Internet protocol service provider is registered to provide service in an incumbent local exchange telecommunications company's authorized service area under section 392.550, the incumbent local exchange telecommunications company may opt into all or some of the above listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected...." The specific wording of this statute suggests an interconnected voice over Internet protocol service provider simply has to be authorized within the incumbent's area and does not actually need to be providing service. In this regard, Staff has little discretion but to recommend the Commission recognize that MoKan has elected to opt into the above listed statutory and Commission rule waivers. If approved the company should be directed to file a tariff filing identifying the waivers listed above.

Staff wishes to note Case No.'s IE-2009-0156 and 0157, in which Choctaw and Northeast Missouri Telephone Companies have requested identical waivers. Staff anticipates other, if not all, incumbent local telecommunications carriers may make identical filings with the Commission. Section 392.420 RSMo does provide a provision whereby the Commission may reimpose its rules; however the practicality of this provision allows the incumbent company to avoid any reimposition of rules if it remedies any deficiencies in a reasonable amount of time. Other than these matters, the Staff is unaware of any other matter that may affect this case.

The Staff has no objections to a recognition that MoKan has elected to discontinue adherence to the Commission's service quality and billing standards. Staff wishes to note Case No.'s IE-2009-0157 and 0156, in which Northeast Missouri and Choctaw Telephone Companies have requested identical waivers. Other than these matters, the Staff is unaware of any other matter that may affect this case.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

)  
)  
Case No. IE-2009-0158

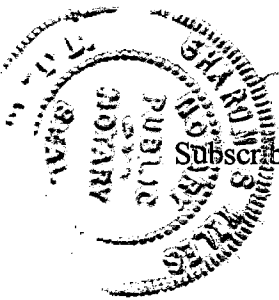
AFFIDAVIT OF William Voight

STATE OF MISSOURI )  
) ss:  
COUNTY OF COLE )

William Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he/she has participated in preparing the accompanying recommendation, and that the facts therein are true and correct to the best of his/her knowledge and belief.

*Bill Voight*

\_\_\_\_\_  
WILLIAM VOIGHT



Subscribed and affirmed before me this 13th day of November 2008

*Sharon S. Wiles*  
\_\_\_\_\_  
NOTARY PUBLIC

SHARON S. WILES  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: October 23, 2010  
Commission Number: 06429091