

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

In the Matter of the Revised Tariff Filing     )  
of MoKan Dial, Inc.                                 )

File No. TR-2012-0299

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE**

COMES NOW the Office of the Public Counsel (Public Counsel or OPC) and for its Response states as follows:

1. On March 29, 2012, MoKan Dial, Inc. (Company) filed Suggestions in Opposition to OPC's Objection and Motion to Suspend. On March 30, 2012, the Missouri Small Telephone Company Group filed its Suggestions in Opposition to OPC's Objection and Motion to Suspend, FairPoint Communications Missouri, Inc. d/b/a FairPoint Communications filed its Response in Opposition to OPC's Objection and Motion to Suspend, and the Staff of the Missouri Public Service Commission (Staff) filed its Response and Recommendation.

2. One of the common arguments all the respondents raise is that the Company has elected to waive intrastate rate of return regulation and therefore is no longer subject to the just and reasonable rates review sought by Public Counsel. Until the mid-1990s, telecommunications companies were regulated in much the same way as the other public utilities identified in Section 386.020(42). A series of changes to Chapter 392 began in the 1990s in response to increasing competition in the telecommunications industry. These changes to Chapter 392 create two new categories of telecommunications companies in addition to traditionally-regulated telephone companies: competitive companies and price cap companies. A company in either of these two new categories is somewhat more lightly regulated than a traditionally-regulated company. It is important to note that the Company is not, and does not claim to be, either a competitive

company or a price cap company. Instead, the Company claims that – solely by virtue of waiving the applicability of Section 392.240.1 – it is subject to less rate regulation than either competitive companies or price cap companies. In fact, the Company does not suggest any standard by which the Commission can conduct an examination of the reasonableness of the proposed new rates.

3. An earnings review as a condition of potential local rate increases is a reasonable alternative to the consequences of electing price cap regulation or receiving competitive classification. If the Company were to elect price cap regulation, local rates would be capped. If the Company receives competitive classification it will lose regulatory protection of its service area and assurance of the opportunity to earn a reasonable return. Instead they just simply say they are no longer rate of return regulated. What Company seems to want to be is something else – under some circumstances a completely unregulated entity not answerable to its customers or the Commission, under other circumstances a protected monopoly assured the option of seeking rate increases through regulatory mandate.

4. The respondents erroneously argue that Section 392.420, RSMo allows for waiver of just and reasonable rates in this situation. As discussed above, there is no provision which allows Company to automatically waive the requirement for just and reasonable rates under Section 392.200.1. Section 392.420, RSMo Cum. Supp. 2010 states:

The commission is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange service authority or the modification of a certificate of public convenience and necessity for interexchange or local exchange telecommunications service, to entertain a petition to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter. 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. ...

Company's revised tariff filing is not "in connection with the issuance or modification of a certificate," therefore the Commission is not authorized to entertain a petition to suspend or modify the application of Section 392.200.1. Additionally, Section 392.200.1 is not specifically named in the list of statutes the Commission must waive if requested to do so. Therefore, Section 392.200.1 and the requirement for just and reasonable rates remains firmly in effect.

5. The respondents seem to claim that even if just and reasonable rates are required, an earnings review cannot be used to determine whether the rates are just and reasonable. The respondents argue that the Company has exercised its option to be exempt from certain statutory and rule provisions, including Section 392.240.1 and therefore the Commission has no authority to conduct an earnings review to ensure that rates are just and reasonable. The respondents erroneously assume that waiving 392.240.1 removes the requirement for an earnings review in this case. As Staff states in its filing, Section 392.240.1 provides, in relevant part:

Whenever the commission shall be of the opinion, **after a hearing ... or upon a complaint**, that the rates ... demanded ... by any telecommunications company ... are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of law, ... the commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, ... and shall fix the same by order to be served upon all telecommunications companies by which such rates, charges and rentals are thereafter to be observed, and thereafter no increase in any rate, charge or rental so fixed shall be made without the consent of the commission. [Emphasis added]

However, this statute does not apply to the situation in this case. There has been no hearing or complaint as contemplated by this statute. In this case it is the Company that seeks rate

increases. Moreover, the waiver of the provisions of Section 392.240.1 does not change in any way the requirements of Section 392.200 that rates be “just and reasonable” and “not more than allowed by law or by order or decision of the commission.” The Commission cannot just assume that an increase in basic local rates will result in just and reasonable rates; it must conduct an investigation, and come to a conclusion based upon an objective analysis of the proposed rate increase. Neither the Company nor any of the other respondents has identified an objective standard to substitute for an earnings review. The Commission continues to have authority and the responsibility to conduct an earnings review to ensure that the proposed rates will be just and reasonable in this case.

6. Additionally, Staff asks that the Commission clarify that the Company’s earnings are irrelevant to its determination of the justness and reasonableness of the Company’s proposed rates. Staff makes no offering of what is relevant to just and reasonable rates, they apparently just don’t think the Company’s earnings should be relevant. Long standing precedent supports an earnings review as the method of ensuring just and reasonable rates. A rate-of-return regulated company is allowed to recover its revenue requirement by setting rates on its various products and services so that it has the opportunity to earn a reasonable return, taking into account expenses, existing revenues and a fair return on its investments. These considerations protect the company by ensuring that rates are at levels sufficient for the opportunity of a reasonable return consistent with alternative investment opportunities and protect consumers by ensuring that rates are no more than necessary to provide the opportunity of a reasonable return.

7. The information Public Counsel has requested is hardly unreasonable or onerous. Public Counsel has been in contact for several months with Staff and the attorneys for the affected telecommunications companies about what information would be required for an appropriate

earnings review. The information Public Counsel required was discussed with and requested from the Company long before this case was filed and official data requests were sent. (See Attachment A) Public Counsel continues to support working with Staff and the companies to determine a stream-lined process for receipt and review of the information Public Counsel needs to review in determining just and reasonable rates.

WHEREFORE, Public Counsel respectfully submits its Response.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By: \_\_\_\_\_

Christina L. Baker (#58303)

Senior Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

christina.baker@ded.mo.gov

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 9<sup>th</sup> day of April 2012:

**Missouri Public Service Commission**

Cully Dale  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
cully.dale@psc.mo.gov

**Missouri Public Service Commission**

Office General Counsel  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
GenCounsel@psc.mo.gov

**MoKan Dial, Inc.**

Craig S Johnson  
304 E. High Street, Ste. 200  
P.O. Box 1670  
Jefferson City, MO 65102  
cj@cjaslaw.com

**/s/ Christina L. Baker**

---

## Baker, Christina

---

**From:** Robertson, Ted  
**Sent:** Friday, March 09, 2012 9:56 AM  
**To:** Baker, Christina  
**Subject:** FW: OPC Information Requests Discussed Today  
**Attachments:** Information Requested By OPC.doc

Ted Robertson CPA

-----Original Message-----

**From:** Robertson, Ted  
**Sent:** Monday, February 27, 2012 4:31 PM  
**To:** Dietrich, Natelle\*; [cj@cjaslaw.com](mailto:cj@cjaslaw.com); 'Trip England'  
**Subject:** OPC Information Requests Discussed Today

Attached.

Thanks,

Ted Robertson CPA

Information Requested By OPC  
February 27, 2012

1. Detailed General Ledger for calendar year 2011.
2. Recurring Financial and Operating Reports listing for calendar year 2011 and 2012.
3. All Monthly (Quarterly if Monthly not produced) Balance Sheet and Income Statement for calendar year 2011.
4. All Tax Returns for calendar year 2010 and 2011 (i.e. Federal and State income (as available), FICA, FUTA, SUTA, property tax, etc.)
5. Support for analysis provided earlier by Craig Johnson if not based on calendar year 2011.
6. Unregulated services listing and revenues for each service for calendar year 2011.
7. Unregulated services costs allocation between intrastate and interstate, and within intrastate only, if applicable, associated with revenues identified in #6.
8. Chart of Accounts (including detailed description of items booked to each account including identifying regulated versus non-regulated accounts).
9. USF formula/calculations/recovery for calendar years 2009 through 2011.
10. Annual Shareholder's Report for calendar year 2010 and 2011 (as available).
11. Standard Journal Entries listing with descriptions as utilized in calendar year 2011.
12. Detailed Organizational Chart of Company.
13. Outside Auditor's Report (and workpapers if available) for calendar year 2010 and 2011 (as available).
14. Listing of Policy/Procedures Manuals maintained by Company.
15. Annual and 5-year financial and construction budgets for calendar year 2011 and 2012.
16. Continuing Property Records account balance listing for each plant account, both regulated and non-regulated, at December 31, 2011, and including accumulated depreciation balance associated with each plant account as of December 31, 2011.