

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

In the Matter of the Revised Tariff Filing)	File No. TR-2012-_____
of MoKan Dial, Inc.)	Tariff No. JI-2012-0442

**THE OFFICE OF THE PUBLIC COUNSEL’S OBJECTION
AND MOTION TO SUSPEND**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Objection and Motion to Suspend states as follows:

1. On March 14, 2012, MoKan Dial, Inc. (Company) filed revised tariff sheets with the Missouri Public Service Commission (Commission) for the purpose of changing its approved charges for telephone services rendered. Among other changes, Company’s proposed tariff would increase the residential basic local rate by more than 166% over the current rate and reduce charges for Optional Metropolitan Calling Area service. Company offers no evidence that the charges reflected in the proposed revised tariffs are just and reasonable.
2. Section 392.200.1 of the Missouri Revised Statutes (RSMo) Cum. Supp. 2010, requires that rates be just and reasonable, and not more than allowed by law or by order or decision of the Commission:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

3. Company is a non-competitive incumbent local exchange telecommunications company (ILEC) as defined by Section 386.020.22 RSMo Cum. Supp. 2010. Unlike a competitive telecommunication company where Section 392.500 RSMo Cum. Supp. 2010 states that a review of rates under the “just and reasonable” provision of Section 392.200.1 is not required,¹ the Commission must review Company’s rates for justness and reasonableness.

4. 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.

¹ *State of Missouri, ex rel. Public Counsel v. Public Service Commission of the State of Missouri, et al.*, 259 S.W.3d 23, Mo. App. WD (2008)

5. Public Counsel has been in discussions with Company, and Company has provided some very cursory information about its current earnings and some very limited projections about what its earnings might be if the Commission approved its requested rate increase. But Public Counsel has been unable to verify the source or accuracy of some of the data, and Company has been unwilling to respond to requests for additional information. Company is a rate-of-return regulated telecommunications company. As such, a review of the proposed tariff revisions must include an earnings review in order to determine if the proposed rates are just and reasonable per Section 392.200.1.

6. The Commission should suspend the pending tariffs in order to investigate whether the changes they propose would result in just and reasonable rates. Section 392.230.5 RSMo Cum. Supp. 2010 provides that the Commission may suspend the tariffs at issue for a period of 150 days beyond their stated effective date. In order to allow for adequate time for the Commission to determine whether the proposed charges are just and reasonable, the Commission should suspend the proposed revised tariffs for the maximum period to complete as thorough an earnings review as is possible within the time allowed.

WHEREFORE, Public Counsel respectfully submits its Objection and Motion to Suspend.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 16th day of March 2012:

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