

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 15th day
of April, 2009.

In the Matter of the Tariff Filing by MoKan	)	
Dial, Inc., to Establish a 15-day Due Date	)	<u>File No. IT-2009-0368</u>
for Bills	)	Tariff No. JI-2009-0656

ORDER REGARDING MOTION TO SUSPEND

Issue Date April 15, 2009

Effective Date: April 25, 2009

On March 16, 2009, MoKan Dial, Inc., submitted a revised tariff sheet designed to reduce the due date for a subscriber's bill from 21 to 15 days after the bill is rendered. The effective date of the revised tariff sheet is April 16, 2009. The Staff of the Commission has filed a motion to suspend the tariff and MoKan opposes the motion. Also, the Public Counsel filed suggestions in support of the motion.

Staff's Motion

On April 8, 2009, the Staff filed a motion to suspend the tariff sheet. Staff points out that Commission rule 4 CSR 240-33.040(5) provides in part that "if a telecommunications company does not expressly offer a preferred payment date plan, a customer shall have at least 21 days from the rendition of the bill to pay the charges stated." Staff, however, also points out that MoKan elected to waive this Commission rule under Missouri law.¹

Nevertheless, Staff states that Sections 392.200, RSMo Cum. Supp. 2008, and 392.240.2, RSMo 2000, require that a telecommunications company's instrumentalities,

¹ Section 392.420 RSMo, Cum Supp. 2008.

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facilities, charges, regulations and practices shall be just and reasonable. Staff indicates that these sections are not included in the list of statutes subject to waiver under Section 392.420. Staff finally opines that the change in MoKan's billing cycle is unjust and unreasonable. For this reason, Staff moves the Commission to suspend the tariff and enter into a hearing.

Mo-Kan's Suggestions in Opposition

MoKan points out that the Commission acknowledged the presence of competitors thereby justifying the waiver of certain rules including 4 CSR 240-33.040(5), the 21-day rule. MoKan further states that tariff number JI-2009-0436, which became effective on January 11, 2009, contains a list of waived rules, including the 21-day rule.

MoKan goes on to opine that the change from 21 to 15 days is reasonable considering the time line for delinquent notices, disconnection periods and reconnection charges. MoKan also notes that a number of companies and other states use a 15-day billing period and that its bill for electric service is due in 15 days.

Discussion

Section 392.420, RSMo Cum. Supp. 2008, states in 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 [certain statutes]. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, where an alternative local exchange telecommunications company is authorized to provide . . . services in an incumbent . . . company's authorized service area, the incumbent company may opt into all or some of the above-listed . . . waivers by filing notice of election with the commission . . . [.]

Commission rule 4 CSR 240-33.040(5), the 21-day rule, is included in the Commission's billing standards rules. On November 19, 2008, the Commission issued an

Order Concerning Election of Waivers,² in which the Commission acknowledged that MoKan opted to waive 4 CSR 240-33.040(5). The Commission also directed that news outlets and legislatures be notified that the Commission no longer has jurisdiction to process complaints regarding billing rules.

The legislature has allowed companies such as MoKan to opt into waiving the Commission's 21-day rule. The Commission acknowledged that MoKan has opted to waive the rule and in doing so specifically stated that the Commission does not have jurisdiction over complaints under the rule. In light of this discussion, the Commission must deny Staff's motion to suspend.

THE COMMISSION ORDERS THAT:

1. The Staff of the Commission's Motion to Suspend MoKan Dial, Inc.'s tariff, Tariff File No. JI-2009-0656, is denied.
2. This order shall become effective April 25, 2009.
3. This case shall be closed on April 26, 2009.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Murray, Davis, Jarrett, and Gunn, CC., concur.
Clayton, Chm., dissents.

Jones, Senior Regulatory Law Judge

² See *Commission Case No. IE-2009-0158*.