

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

In the Matter of the Revised Tariff Filing of	)	File No. TR-2012-0299
MoKan Dial, Inc.	)	Tariff No. JI-2012-0442

MoKan Dial Inc. Reply to OPC Response of April 9, 2012
Regarding Motion to Suspend

Comes now MoKan Dial Inc. (“Company”), for its Reply to OPC’s Response of April 9, 2012, and states as follows:

1. The Company is caught between the rock and the hard place.
2. On one hand the FCC has determined that residential local rates below \$10 per month are not just or reasonable after July 1, 2012. To accentuate its point, the FCC will penalize the Company by reducing its federal USF support—dollar for dollar—for every month every customer’s bill is below \$10 per month. Permitting this to happen is not in the public interest. It would mean loss of USF to the Company, which supports the network upon which Company serves its customer. While this loss is ongoing, the Company and its customer would continue to pay their full tribute to the USF.
3. On the other hand OPC insists upon conducting an earnings review before allowing the increases. OPC has asked for that the local rate increase tariffs, proposed to be effective July 1, 2012, be suspended for the maximum 150 day period beyond July 1, 2012 so OPC can conduct an earnings review of the Company.¹ The Company can’t do that without losing USF.

¹ OPC March 16, 2012 Objection and Motion to Suspend, paragraph 6.

4. The only solution to this dilemma was to elect waiver of rate of return regulation imposed by § 392.240.1 RSMo, thereby obviating earnings reviews, which the Company did.

5. Now OPC asks that this waiver, which the Commission has acknowledged to be effective, be ignored, and to subject the Company to an earnings review despite the waiver. OPC argues that the words “just and reasonable” of § 392.200.1 RSMo permits this Commission to allow a § 392.240.1 RSMo rate of return based earnings review, notwithstanding the fact that § 392.240.1 is no longer applicable to the company.

6. The Commission has previously held that the words “just and reasonable” of § 392.200.1 cannot operate to re-impose a regulation that has been waived. In IT-2009-0368 Staff argued that the words “just and reasonable” could be read to prevent a departure from the Commission’s billing rules where the Company had elected waiver of those billing rules. The Commission held:

“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.”

7. The same logic pertains here. MoKan has waived rate of return regulation. The words “just and reasonable” of § 392.200 do not operate to supplant the Company’s waiver or rate of return regulation. The Commission has no jurisdiction to allow OPC’s request to conduct an earnings review.

8. The Company’s waiver of rate of return regulation is reasonable. Rate of return regulation was designed for a monopoly provider environment. Rate of return regulation works when it can be used to increase rates when more revenues are needed, or to decrease rates when

less revenues are needed. But the FCC Order sets minimum levels for local rates, and it sets (declining) maximum levels for inter-carrier compensation rates. If the Commission/Company cannot disturb these minimums and maximums, rate of return regulation is no longer workable. The FCC has eviscerated Missouri's use of rate of return regulation to set just and reasonable rates.

9. OPC complains it does not know if Company is now considered traditionally regulated, price cap regulated, or competitive. This lack of a pigeonhole does not justify ignoring a waiver established by statute. This Commission, as well as OPC and the Company, are bound by whatever classifications the Missouri legislature chooses to establish, or chooses not to establish. The point of the election of waivers process conducted in TE-2012-0073 is to specify what waivers each Missouri telecommunications company has elected, regardless of their traditional classification. The Company is simply subject to the regulatory statutes and rules that the legislature has not permitted to be waived. The Company is also subject to any regulations subject to being waived, but from which the Company has not elected waiver. But it is indisputable that the Company is not subject to a regulatory requirement that has been waived pursuant to statutory authorization.

10. The legislature recognized that unregulated wireless and VoIP competition exists for Company, and that Company has lost local customers due to this competition. For the past 20 years incumbent basic local telecommunications subscriber base has been lost to wireless, CLEC, and VoIP providers who are not subject to rate of return regulation. The legislature's response was to permit ILECs such as Company to opt out of rate of return regulation in order to meet this competition. This is not new. Missouri has recognized the need to relinquish rate of

return regulation since price cap and competitive classifications were established decades ago. If § 392.200.1 RSMO's "just and reasonable" rate language permitted §392.240.1 RSMO earnings reviews regardless of statutory waivers and classifications, why hasn't the Commission conducted earnings reviews of AT&T and CenturyLink as a condition of their many local rate increases?

12. The proposed tariffs cannot be suspended for an earnings investigation, as the Commission no longer has jurisdiction to conduct an earnings review under 392.240.1.

13. In its March 29, 2012 Suggestions in Opposition to OPC's Objection and Motion to Suspend, at paragraphs 3(g) and 26 through 33, the Company suggests a plethora of reasons why the proposed local rates are just and reasonable. OPC in its April 9 Response does not express any disagreement or dispute with any of the reasons proffered as to why the proposed rates are just and reasonable. Instead OPC simply clings to its request to be permitted to engage in an earnings review.

14. But to what end? Besides all of the justifications for the conclusion that a \$10 rate is just and reasonable, the Company's tariffs will reduce MCA rates at the same time local rates are increased. The Company has proposed decreases in MCA revenues that will offset the local rate increases. The Company will not earn more revenue after the local rate increases/MCA decreases than it would have had the FCC not issued its Order. The Company's customers, as a whole, will not be paying more revenues to the Company than they would have had the FCC not issued its Order.

15. The Company is willing to engage in the type of dialogue the Commission deems necessary to determine if the proposed rates are just and reasonable. That dialogue can be

completed by the proposed effective date. The Company opposes suspension of the tariffs for 150 days beyond July 1. The Company opposes an earnings review.

WHEREFORE, the Company respectfully requests that the Commission overrule OPC's Objection to the proposed tariffs, deny OPC's Motion to Suspend, and permit the tariffs to become effective on July 1, 2012.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was electronically mailed this 13th day of April, 2012 to PSC Staff, the Office of the Public Counsel, Larry Dority, WR England III, and Brian McCartney.

/s/Craig S. Johnson
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