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

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| In the Matter of the Revised Tariff Filing of Choctaw Telephone Company | ) ) | File No. TR-2012-0298 Tariff No. JI-2012-0441 |
| In the Matter of the Revised Tariff Filing of MoKan Dial, Inc. | ) ) | File No. TR-2012-0299 Tariff No. JI-2012-0442 |

**The Missouri Small Telephone Company Group's**
**Suggestions in Opposition to OPC's Objection and Motion to Suspend**

Comes now the Missouri Small Telephone Company Group ("STCG")(see attachment A), and for its Suggestions in Opposition to the Office of Public Counsel's (OPC) Amended Objection and Motion to Suspend the proposed tariffs at issue in the above-captioned cases, states to the Missouri Public Service Commission ("Commission" or "PSC") as follows:

## Introduction and Summary

1. The Missouri Small Telephone Company Group consists of small rural incumbent local exchange carriers (ILECs, sometimes also referred to as RLECs) providing telecommunications services in high cost, low density areas of the state. These companies are experiencing a regulatory sea change in the wake of a Federal Communications Commission (FCC) USF/ICC Transformation Order issued on November 18, 2011 (FCC *Order*).[1] Specifically, the FCC *Order*:

[1] *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 et al., FCC 11-161.

(a) established a $10.00 local rate floor for residential service that all ILECs must meet by July 1, 2012 or lose federal High Cost Loop (HCL) Universal Service Fund (USF) support in the amount by which the rate floors exceed the company's local rates;

(b) capped ILECs' intra-state access rates <u>and</u> required the ILECs to lower their intra-state access rates by 50% of the difference between the ILECs' inter-state access rates, also by July 1, 2012;

(c) requires ILECs to cease charging their Commission-approved rates for intra-MTA wireless traffic and move to a bill-and-keep regime (*i.e*. $0.00) for this wireless traffic as of July 1, 2012; and

(d) requires ILECs to begin charging inter-state access rates (typically lower than intra-state access rates) for <u>all</u> VOIP traffic on July 1, 2012, including intrastate toll VOIP traffic.

These looming changes mandated by the FCC will have immediate and substantial impacts on the STCG companies' businesses and their ability to continue providing high quality broadband and telecommunications service in rural Missouri.

2. At the January 25, 2012 PSC Agenda Meeting, the Commission's Staff briefed the Commission on the FCC *Order's* requirement to raise local rates or lose federal USF support.

3. At the February 22, 2012 PSC Agenda Meeting, a group of Missouri small telephone companies provided similar information and informed the Commission that local rate tariff filings from small ILECs were expected in response to the FCC *Order*.

4. In March of 2012, as authorized by Section 392.420 RSMo., nearly all of Missouri's small telephone companies elected to waive the Commission rules and statutes allowed in Case No. TE-2012-0073, including Section 392.240.1, commonly referred to as the "rate of return regulation" statute for telephone companies. As a result, these companies are no longer subject to traditional earnings investigations under rate of return regulation.

5. On March 14, 2012, Choctaw Telephone Company and MoKan Dial, Inc. ("the Companies") filed tariffs with the Commission designed to increase rates in response to the FCC's urban local rate floor.

6. On March 16, 2012, the Office of Public Counsel filed a motion to suspend the tariffs and investigate whether the proposed tariffs were just and reasonable.

7. On March 20, 2012, the Commission issued an order allowing any interested party the opportunity to respond to Public Counsel's objection and motion no later than March 30, 2012.

8. Many STCG members currently have local rates that are below the FCC's $10.00 urban local rate floor and anticipate filing (or already have filed) revised tariffs designed to meet the FCC's July 1, 2012 deadline for meeting the $10.00 urban local rate floor.

9. For the reasons detailed below, the STCG believes that the Commission should find that the local rate tariffs filed by the Companies are just and reasonable and therefore be approved or allowed to go into effect.

## Discussion

10. Missouri's rural ILECs have experienced increased competition from a variety of other providers over the last ten years, including wireless carriers and voice over Internet protocol (VOIP) providers. As a result, the RLECs have seen a substantial reduction in revenues due to a reduction in the number of access lines (*i.e*. line loss) as well as access minutes of use. The FCC's *Order* has further altered the landscape for the STCG companies by mandating significant changes to the USF and drastic reductions in intercarrier compensation (ICC) rates.

11. The FCC's *Order* also observed that "there are a number of carriers with local rates that are significantly <u>lower</u> than rates that urban consumers pay" (¶235)(emphasis original) and established a local rate floor of $10.00 that carriers must meet by July 1, 2012 or lose a portion of their federal HCL USF support.

12. In response to the FCC's *Order*, a number of Missouri's subscriber-owned telephone cooperatives have already filed tariffs to raise their rates and adopt the FCC's $10.00 local rate floor. *See e.g*. Grand River Mutual Telephone Company, Tariff Filing No. JI-2012-0409 (raising rates to $10.00, effective April 1, 2012); Mark Twain Rural Telephone Company, Tariff Filing No. JI-2012-0400 (raising rates to $10.00, effective April 1, 2012). As telephone cooperatives, these small rural companies establish their own local service rates and are not subject to the Commission's local rate jurisdiction. *See e.g*. §392.220.2 RSMo.

13. The Missouri Commission's Staff has met numerous times with Missouri's small ILECs and has shown a willingness to work with the industry to comply with the

FCC's *Order*. During its January 25, 2012 presentation to the Commission, Staff indicated that it did not plan on objecting to local rate increase tariffs filed by Missouri's small telephone companies so long as they were designed to meet the FCC's $10.00 minimum floor. Staff observed that the companies would lose federal USF support on a dollar-for-dollar basis if the new local rates were not in effect by July 1, 2012. Staff also explained that the small ILECs would be making significant decreases in their access rates and other ICC rates as a result of the FCC's *Order*.

14. The Office of Public Counsel has taken a different position on tariff filings to increase rates to the FCC's $10.00 urban local rate floor. During a February 27, 2012 conference at OPC's offices, OPC stated its intention to request suspension and conduct an earnings review prior to the rate tariffs becoming effective. OPC also presented counsel for the STCG with a list of extensive information requests, including a request to be provided with general ledger entries.

15. In short, OPC appears intent on conducting a full-scale earnings review in response to any tariffs designed to meet the FCC *Order's* July 1, 2012 deadline for carriers to meet the $10.00 local rate benchmark.

16. Most of the STCG companies have rates below the $10.00 benchmark and comparatively high intrastate access rates. The FCC's *Order* has: (a) determined that local rates must meet the $10.00 floor to maintain HCL USF support; and (b) forced drastic reductions to ICC rates (including <u>intra</u>-state access rates) that have traditionally allowed the STCG companies to provide high quality service in Missouri. Thus, the FCC's *Order* has forced changes to rates traditionally regulated by the states. Indeed

the FCC states, “In this Order, we explicitly supersede the traditional access charge regime and, subject to the mechanism we outline below, regulate terminating access traffic in accordance with the section 251(b)(5) framework . . .” (¶764)

17. Although some STCG companies are subscriber-owned cooperatives that can make these local rate changes without PSC oversight, the majority of STCG companies are not cooperatives. Thus, OPC’s proposal to conduct earnings reviews would prevent the companies from meeting the FCC’s July 1, 2012 deadline and result in dollar-for-dollar losses of federal HCL USF support. To make matters worse, traditional earnings reviews would result in tens of thousands of dollars of rate case expenses, creating a triple-whammy of (a) lost HCL USF support, (b) decreased ICC revenues, and (c) increased expenses. Faced with this prospect, in March of 2012 nearly all of Missouri’s small telephone companies elected to waive the Commission rules and statutes allowed in Case No. TE-2012-0073, including Section 392.240.1, commonly referred to as the “rate of return regulation” statute for telephone companies. Thus, the STCG companies are no longer subject to the earnings reviews proposed by OPC, and the Commission’s analysis is now streamlined to the “just and reasonable” review allowed by Section 392.200 RSMo.

18. **“Just and Reasonable” Rates under Section 392. 200**. As authorized by §392.420 RSMo., the Companies filing the tariffs in the instant case elected to waive “rate-of-return” regulation on March 12, 2012, and the Commission has acknowledged this waiver. The Companies’ local rate tariffs were filed after this waiver. As a result, an earnings review under the rate-of-return regime is no longer a basis for determining

whether the Companies' tariffs are just and reasonable. This only makes sense because telephone companies now face constant competition from wireless carriers and VoIP providers that are essentially unregulated by the Commission.

19. **<u>Suspension of the Tariffs Is Not Required</u>**. To the extent this Commission has jurisdiction to determine whether the proposed local rate increases are "just and reasonable", the Commission can make that determination without suspension of the tariffs. Under the "file and suspend" method, the Commission may either suspend rates pending further investigation or permit those rates to go into effect without further action. *State ex rel. Jackson County v. Public Service Comm'n*, 532 S.W.2d 20, 31 (Mo. banc 1975); *State of Missouri ex rel. Acting Public Counsel v. Public Service Comm'n*, 121 S.W.3d 534, 539 (Mo. App. W.D. 2003)("To accept [OPC's] argument would be to grant a right of hearing in all 'file and suspend' cases, a result inconsistent with other cases which clearly hold that the decision of whether to suspend a tariff and hold a hearing is a matter for the sound discretion of the Commission.")

20. **<u>Federal, Regional, and Missouri Statewide Average Local Rates</u>**. Examination of the Companies' rates in light of data from the FCC and this Commission demonstrate that the Companies' proposed tariffs are just and reasonable:

a. **<u>$15.62 National Average Local Rate.</u>** The FCC's *Order* determined that RLEC local rates that are significantly less than the rates urban customers pay do not meet the "reasonably comparable" standard of 47 USC 254(b). The FCC's *Order* cites a 2008 national average local rate of $15.62. (¶236) The FCC's *Order* adopted the $10.00 rate floor to avoid USF subsidizing “artificially low” local rates.  Specifically, the FCC stated “there are a number of carriers with local rates that are significantly <u>lower</u> than rates that urban customers pay. . . . We do not believe that Congress intended to create a regime in which universal service subsidizes artificially low local rates in rural areas…” (¶235)

b. **<u>$16.25, $19.95, and $20.39 Regional Rural Rates in the States of Kansas, Nebraska, and Illinois</u>**.  The FCC’s order cites regional rural rates that are higher than the national average.  “[S]ome parties have submitted information into the record indicating that the local rates are higher than this $15.62 figure in a number of states.  For example, Kansas has increased its affordable residential rates for rural incumbent LECs to $16.25 per month, and Nebraska has conditioned state USF eligibility upon carriers increasing local rates to its adopted rate floor of $17.95 in urban areas and $19.95 in rural areas.”  ¶243, fn 386.  <u>Over ten years ago</u>, the Illinois Commerce Commission established $20.39 as the “affordable rate” for purposes of its state USF.[2]

c. **<u>$17.11 Missouri Average Local Rate</u>.**  This Commission examined statewide average rates in File No. TO-2011-0073, *In the Matter of the Determination of the Weighted, Statewide Average Rate of Nonwireless*

[2] *Illinois Independent Telephone Ass’n Petition for Initiation of an Investigation into the Necessity of a Universal Service Support Fund*, Consolidated Docket Nos. 00-0233 and 00-0335, 202 Ill. PUC LEXIS 286, *Second Interim Order on Rehearing*, issued March 13, 2002, Ordered ¶D (“The Verizon adjusted rate of $20.39 is adopted as the ‘affordable rate’ for purposes of the Fund.”)

*Basic Local Telecommunications Services*. In a Revised Report filed on January 28, 2011, the PSC's Staff found that Missouri's 2010 statewide average residential local rate was $17.11 (PSC Staff Report, p.1), and that the 2010 statewide average residential local rate was $16.36 for ILECs (PSC Staff Report, p. 4).

d. **<u>$10.00 Missouri Member-Owned Telephone Cooperative Rate</u>**. Some of Missouri's small telephone companies are member-owned telephone cooperatives. As such, these cooperative establish their local service rates without the oversight of the Missouri PSC. *See e.g*. §392.220.2 RSMo. In response to the FCC's order, most of these Missouri telephone cooperatives have raised or intend to raise their local rates to meet the FCC's rate floor. *See e.g*. Grand River Mutual Telephone, Tariff Filing No. JI-2012-0409 (raising rates to $10.00, effective April 1, 2012); Mark Twain Rural Telephone Company, Tariff Filing No. JI-2012-0400 (raising rates to $10.00, effective April 1, 2012). Thus, these subscriber-owned cooperatives have adopted the FCC's $10.00 rate floor.

e. **<u>MoKan's $5.25 Rate</u>**. MoKan's present local rate of $5.25 is <u>over $10.00 below the national average of $15.62</u>, far below the regional rural rates of $16.25, $19.95, and $20.39 in Kansas, Nebraska, and Illinois, respectively, and far below the 2010 Missouri average of $17.11. It is well below the rate that urban customers in St. Louis, Kansas City, and

Springfield pay for landline service. MoKan's $5.25 local rate has been in effect since January 1, 1983, over 28 years.

f. **<u>Choctaw's $8.75/$9.90 Rates</u>**. Choctaw's present local rate is $8.75 for rotary dial service and $9.90 for touchtone service. These rates are below the national average of $15.62, well below the regional rural rates of $16.25, $19.95, and $20.39 in Kansas, Nebraska, and Illinois, respectively, and also below the 2010 Missouri average of $17.11. Choctaw's $9.90 local rate has been in effect since January 1, 1988, over 23 years.

21. **<u>The FCC has found that $10.00 rates are just and reasonable</u>**. The FCC's *Order* determines that its $10.00 rate floor will help "further the statutory goals of ensuring (1) quality services at 'just, reasonable, and affordable rates,' and (2) 'equitable and non-discriminatory' contributions such that [USF] support is 'sufficient' to meet section 254 of the [federal Telecommunications] Act." (¶194) By mandating minimum local rate levels which must be charged in order to continue receiving full federal HCL USF support, the FCC has effectively concluded that local rates below the $10.00 rate floor are <u>not</u> just and reasonable.

22. **<u>OPC's Request for an Earnings Review in These Circumstances Is Unreasonable</u>**. First, OPC's request for a full-scale earnings review cannot be implemented within the limited time available before the FCC's July 1, 2012 deadline for companies to meet the $10.00 urban local rate floor. Second, the Companies have waived rate of return regulation and are no longer subject to the traditional earnings

review envisioned by OPC. Moreover, even if the Companies were subject to such a review, the Companies' historical rate of return revenue structure will not be representative of the Companies' future earnings after July 1, 2012 due to the FCC's significant changes in ICC. Specifically, on July 1, the FCC's *Order* will require Company to: (1) lower intrastate access rates by 50% of the difference between its interstate access rates; (2) cease charging Company's approved rates for intraMTA wireless traffic; and (3) begin charging the lower interstate access rates for all VOIP traffic. Finally, OPC's quest to conduct an earnings review for such small Companies with only a few hundred customers is unfair and unreasonable to both the Companies and their customers because the costs of such a case, which would be in the tens of thousands of dollars and which the Companies are allowed to recover from their customers, would easily exceed the rate increases necessary to meet the FCC's urban floors. Thus, the costs of a rate case to the Companies and their few hundred customers would exceed the proposed rate increases.

23. The Companies are no longer regulated under the traditional rate-of-return regulatory regime. Therefore, the Commission may determine that the proposed rates are "just and reasonable" without suspension of the tariffs. After review of the local rate information above and in light of the circumstances presented by the FCC's *Order*, the Commission should determine that the proposed tariffs are just and reasonable and either allow the tariffs to go into effect by operation of law or issue an order approving the tariffs based on the evidence in the PSC's own statewide rate investigation and the FCC's *Order*.

WHEREFORE, the STCG respectfully requests that the Commission overrule OPC's objections to the proposed tariffs, deny OPC's Motion to Suspend, determine that the rate increases are just and reasonable, and approve or allow the tariffs to become effective without suspension or further review.

Respectfully submitted,

By: ***/s/ Trip England***

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the above and foregoing document were sent by electronic mail, or hand-delivered, on this 30th day of March, 2012, to:

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## ATTACHMENT A

BPS Telephone Company
Citizens Telephone Company of Higginsville, Mo.
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corporation
Green Hills Telephone Corporation
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
K.L.M. Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
Mark Twain Rural Telephone Company
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