

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of MoKan Dial Co., Inc., to file tariffs )  
to provide community optional service and recover actual ) CASE NO. TR-91-87  
net revenue loss associated with provision of service )  
to customers in Company's service area. )

APPEARANCES: Craig S. Johnson, Attorney at Law, Stockard, Andereck, Hauck,  
Sharp & Evans, 301 East McCarty Street, P. O. Box 1208,  
Jefferson City, Missouri 65102-1280, for Applicant.

Thomas A. Grimaldi, Senior Attorney, 5454 West 110th Street,  
Overland Park, Kansas 66211, for United Telephone Company  
of Missouri.

Randy Bakewell and Douglas E. Micheel, Assistants Public Counsel,  
P. O. Box 7800, Jefferson City, Missouri 65102, for the Office  
of the Public Counsel and the Public.

Robert J. Hack, Assistant General Counsel, P. O. Box 360,  
Jefferson City, Missouri 65102, for the Staff of the  
Missouri Public Service Commission.

Hearing  
Examiner: C. Gene Fee

7-91

REPORT AND ORDER

Procedural History

On August 30, 1990, MoKan Dial Co., Inc. (Company) filed tariffs proposing a surcharge on all local exchange access lines for the purpose of maintaining revenue neutrality and recovery of lost toll and access charges resulting from providing community optional service (COS). The proposed tariffs contain surcharges of \$6.16 and \$12.31 per month for residential and business access lines, respectively.

By order issued September 28, 1990, the proposed tariffs were suspended for one hundred twenty (120) days to January 28, 1991. By order issued October 3, 1990, the Commission stayed its previous order which had directed the provision of COS between the Company's Freeman exchange and United Telephone Company of Missouri's

(United) Harrisonville exchange and Southwestern Bell Telephone Company's (SWB) Kansas City Metropolitan exchange by October 18, 1990.

By order issued on January 18, 1991, the Company's tariffs were further suspended to July 28, 1991, and a procedural schedule was established culminating with a hearing on June 12, 1991. The Commission had previously denied SWB's motion to intervene.

On June 6, 1991, United filed an Application To Intervene reciting its action resulted from the contents of a Staff witness' testimony which proposes two options for Commission consideration in meeting the revenue requirement of the Company which, if adopted, would affect the revenues and customers of United as the provider of local exchange service in one of the target exchanges. By order issued June 7, 1991, the Application To Intervene was denied and United was given permission to participate without intervention and was authorized to appear at the hearing and cross-examine the Staff witness on the issue of options and to file a brief limited to that issue.

Briefs and reply briefs have been filed by all parties and participant United, and have been considered in this Report and Order.

#### Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

COS is a form of extraexchange telephone calling to designated exchanges known as target exchanges for a fixed rate per month in lieu of the previously rendered toll charges. COS was established by the Commission's Report and Order dated December 29, 1989, in Case No. TO-87-131. The Report and Order also directed local exchange companies to implement COS between exchanges in which communities of interest have been established by previous traffic studies, and established statewide

rates for the provision of COS. The Report and Order also directed the parties to propose an intercompany compensation plan to govern the division of revenues between the companies cooperating in the provision of COS.

By Report and Order issued April 18, 1990, in Case No. TO-90-232, the Commission adopted the Revenue Sharing Plan (RSP) proposed by ALLTEL Missouri, Inc., et al.

By orders issued to numerous companies the Commission directed the filing of tariffs to surcharge all local exchange customers for the recovery of lost revenues not accounted for by the fixed COS rates. The revenue recovery tariffs were to maintain the relationship of business to residential customers of approximately two to one. By an order issued in Case No. TO-90-232 on November 30, 1990, the Commission approved the Revised Revenue Sharing Plan (RRSP) which remains the current method prescribing the division of revenues between cooperating local exchange companies. The tariffs at issue herein were filed by the Company in purported compliance with the orders in the foregoing described series of related dockets.

The Company offered little evidence in support of the suspended tariff described by its witness as having been filed in response to a Commission order to do so, and representing charges for a service which the Company is unwilling to provide. The Company has estimated its loss of toll and access revenues on the two COS routes to be \$46,870 which will be offset by COS revenues of approximately \$16,000 and long-term support, under the RRSP, of \$1,100.

In addition to lost revenues the Company raises the issue of additional costs which it should be allowed to recover as being caused directly by the provision of COS. Significant among those costs are amounts expended in 1990 and 1991 for legal and consulting fees necessitated by the many COS related dockets in which, according to the Company, involuntary participation has been required. In recognition of those costs the Company, on April 25, 1991, filed tariffs as

substitutes for the original tariffs at issue, which raised the proposed surcharge to \$9.03 and \$18.06 per month for residential and business access lines respectively. By order issued May 15, 1991, the Commission granted the Motion To Strike filed by the Office of Public Counsel (OPC) concerning those tariffs. Although the related expenses are outside the 1991 test year in this matter, and were filed after the filing of direct testimony, the charges do represent potential legitimate COS expenses not covered by the tariffs under suspension.

Another substantial loss claimed by the Company is the shift of expenses from the interstate to the intrastate jurisdiction which will be caused by the stimulation of traffic in the intrastate jurisdiction when the involved calling is transferred from toll to local service. Cost separation factors are developed on the basis of actual use, and when the use is stimulated in one jurisdiction the reallocation of cost factors must follow proportionately to use. Through a rather complex series of calculations the Company's consultant estimated the unrecovered shift of cost to the intrastate jurisdiction to be approximately \$10,400. Although it is conceded by the Company's witness that the shift caused by stimulation of COS cannot be accurately measured until it actually occurs, the Commission finds it reasonable that a substantial amount of COS related costs would not be recovered by the suspended tariffs. Staff and OPC do not dispute the existence of costs in addition to the loss of toll and access charges, but contend that those amounts should be recovered in a general rate proceeding.

Although the Company witness contends its revenue loss reflected by the surcharge tariffs have accurately been calculated according to the RRSP, it never intended the Commission to approve the tariffs as filed because of the size of the surcharge. The Commission finds it reasonable to infer, therefore, that the Company should have less enthusiasm for approval of its later proposed tariffs increasing the surcharge by approximately 50 percent.

Instead of supporting the tariff the Company devoted most of its efforts to advocating a High Loss Fund which would be funded by a surcharge on every local ratepayer in the state and administered by the Commission until sufficient funds were accumulated to justify an outside operator. The proposed purpose of the High Loss Fund would be the source of reimbursement for Companies experiencing high loss as a result of providing COS, such as MoKan Dial in the instant proceedings.

The Commission has previously stated, and reiterates, that consideration of a High Loss Fund is beyond any possible remedy in this matter because it would affect the rates of every Missouri subscriber and every local exchange without notice or opportunity to be heard.

As a result of all of the foregoing, the Commission finds no Company support for the suspended tariffs which, to the contrary, although conceived by the Company to be too high are still not calculated to recover all of the COS related costs. In that regard the Commission is persuaded by the Company's evidence that it faces substantial COS related costs not covered by the tariffs. Although the amount of those costs is unquantified in the instant record, the Commission is of the opinion and finds that the amount is likely to be significant for a Company the size of MoKan Dial.

Both the Commission Staff and the OPC oppose the suspended tariffs as being much higher than any surcharge approved to date. In an attempt to find alternatives to the suspended tariffs the Commission Staff has performed an audit of the Company's earnings to explore the possible existence of excess earnings which might be the source of at least partial offset of the COS related costs. On April 18, 1991, the Staff and the Company filed a Nonunanimous Stipulation and Agreement in which the Staff concedes that the Company's projection of approximately \$46,870 in net revenue losses associated with the provision of COS is reasonable assuming the rates charged for COS are in accordance with the Commission's previous orders. The Commission

Staff also conceded that the Company's earnings based on the 1989 test year were reasonable. On April 19, 1991, OPC filed a Statement Of Agreement in which it concedes that, based on the investigation undertaken by the Staff and OPC, the Company's 1989 revenues, expenses, and rate base were reasonable.

Both the Staff and OPC have proposed other alternatives to the suspended surcharge tariffs. Their positions are similar in proposing recovery of a portion of the COS related losses by increasing the Company's rates for miscellaneous services. OPC had no specific rate design proposal and bases its position that an additional \$10,000 could be generated by using a rate comparison showing the Company's charges for installation and miscellaneous services to be much lower than those of other local exchange carriers. The only example cited by the OPC witness was the Company's charge for initial service orders and line connection of \$2.35 compared to similar charges by SWB and United in excess of \$35.

The Staff's proposal concerning miscellaneous rates and charges, although more comprehensive, was also based on a comparison of the rates of six other local exchange carriers. Three of the companies selected were small independent companies similar in size to MoKan Dial and three of the other companies were large companies with exchanges close to MoKan Dial's. The Staff's proposal would generate approximately \$4,548.60 in additional annual revenue through late payment charges and nonpublished number charges which the Company presently does not impose. Under the Staff's proposal the Company would impose rates for those services similar to the ones imposed on the Kansas subscribers. The Staff also criticized the low level of the Company's charges of \$1.05 for line connection fee, \$1.35 for an initial service order fee, and a reconnect service order fee of \$2.40. The Staff's proposal to raise those charges to \$10.15 and \$15.00 respectively would generate \$5,520.90 in additional annual revenues.

The Company strongly opposes redesigning its other rates to accommodate increased costs and losses occasioned by the provision of an unrelated service. It is contended by the Company that its existing rates are presumed lawful and reasonable until found otherwise in a proceeding for such purpose and contends that someone other than the Company has the burden of proving that the existing rates are unreasonable. It is the position of the Company that in any such proceeding, all financial factors are to be considered, not just a simple rate comparison. The Company is further critical of Staff and OPC's recommendation because there has been no allegation or testimony that existing rates are unlawful or unreasonable.

The proposals of Staff and OPC also both include a rate additive which would only be charged to the COS subscribers to recover the revenues needed beyond those generated by miscellaneous rates and charges. Under both proposals the COS additives would be retained by the Company. Both proposals are based on the principal that the cost causer - in this case the COS subscriber - should pay. The amount of the proposed additives are very much dissimilar, however, because of the differing opinions between Staff and OPC as to the correctness of the Company's estimated revenue loss. The Staff concedes the correctness of the Company's calculation of its revenue loss in accordance with the uniform COS rates and the RRSP. Staff is of the opinion that the Company should be allowed to charge, on an interim basis subject to refund, rates to recover its maximum possible loss. The Staff is proposing to defer until a later rate case costs that are not directly attributable to the implementation of COS, those costs that have not been audited and those costs that cannot be audited at this time. Under the Staff's proposal, the residential rate for one-way COS between the Freeman exchange and the Missouri portion only of the Kansas City metropolitan exchanges would be \$23.95. To the entire Kansas City area would require a one-way rate of \$32.45. COS to Harrisonville would be at an additional rate of \$10 for one-way residential service.

The Staff concedes three points concerning its proposal. It is acknowledged that the proposal, in effect, is a change in the statewide COS rate previously prescribed by the Commission. It is also acknowledged that the increase in the rate is intended to depress the level of subscription or "buy up" of COS thereby reducing the Company's revenue loss. It is the Staff's contention that its proposal would lower the Company's revenue loss to approximately \$10,000 per year. Staff also concedes that its proposal is only practical if it is determined that retention of all of the additive by the Company is not in violation of the RRSP.

The OPC's proposed total COS rate from the Freeman exchange to Metropolitan Kansas City is \$24 for one-way service. From Freeman to Harrisonville the charge would be \$8 for residential one-way service. As an alternative OPC proposes an access line surcharge for all residential and business customers, whether or not they take COS, of \$.72 and \$1.44 respectively.

The OPC's proposals are based on the assumption that the Company's actual revenue loss from providing COS will be only one-third to one-half of its projection. The OPC witness acknowledges that in order to estimate revenue losses it is necessary to make an assumption about the level of customer subscription to COS or the buy up. It is also assumed that as the rate increases the buy up will decrease. OPC describes the Company's estimate of the COS loss as being based on the assumption that all customers whose monthly toll bill for the route exceeds the one-way COS rate will subscribe and that no customer whose toll bill is less than the COS rate will subscribe. OPC contends, however, that it is reasonable to expect that some customers whose bills do not exceed the COS price will, for whatever reasons, subscribe.

OPC also criticized the Company's estimate because it does not consider two-way subscription. At the same time, it was conceded that the Company would not have data available from the target exchange of Metropolitan Kansas City served by



SWB. It was also acknowledged that, even if available, the estimate of two-way data based strictly on past toll usage is likely to be much less reliable than the one-way estimate. Although OPC has no projections of the two-way buy up for the Company, it is contended that experience on other COS routes indicates that two-way buy up will equal or exceed the level of one-way subscription. This conclusion was based largely on the interpretation of testimony presented in Case No. TO-90-232 by Staff Witness Edson. OPC's witness states that the Staff witness in Case No. TO-90-232 reported that actual net revenue losses for several routes studied averaged only one-third (1/3) of the projected amount. As a result of that Staff testimony, OPC, in this case, proposes to base the Company's rates on an assumed over-estimation of net COS revenue losses.

With that development, the position of the Staff and OPC parted company. In rebuttal testimony, the Staff witness contends that the OPC's interpretation of testimony of Witness Edson in Case No. TO-90-232 contains several flaws. First, it is pointed out that Edson's study was based on only four (4) month's data, which is hardly a suitable basis for attempting to set permanent rates. In the second place, while it is acknowledged that the average revenue loss turned out to be less than projected, some of the companies projected their revenue losses very accurately. As such, it is improper to strike an average and apply it to MoKan Dial. It is the Staff's contention that, in the event MoKan Dial's estimates are as accurate as some of the companies contained in Edson's study, Public Counsel's proposal would almost amount to confiscation since the company would never have an opportunity to earn its revenue loss and could never be made whole. To the contrary, the Staff's proposal of allowing the maximum possible revenue loss to be recovered subject to refund presents an opportunity for the Company's customers to be made whole in the event any over-recovery would present an opportunity for refund plus interest.

The Company joined in the Staff's criticism of OPC's proposal in that regard and the Commission is of the opinion and finds that the analysis is based too much on speculation to be the basis of a permanent rate. It is acknowledged in OPC's brief that its proposed additive would produce revenues equal to 82.2% of the maximum possible toll loss from COS. It is contended by OPC that that presents a reasonable opportunity to achieve a fair return on its investment because it is very unlikely that the maximum possible loss will be incurred. In the Commission's opinion the flaw of that argument is that if that event does occur, the Company will be harmed by being unable to recover its full revenue loss. The same rationale supports the Public Counsel's alternate proposal of a much lower surcharge tariff. As such, the proposal is also too speculative to be the basis of permanent rates, however attractive it may appear to be.

In addition to the perceived flaws in the OPC's revenue loss estimate, the Company attacks the proposals of both OPC and the Staff on the basis of being contrary to several established principles and prior Commission orders. United filed its belated Application to Intervene on the basis of similar objections formed for the first time after the filing of the Staff's testimony in this matter. MoKan Dial and United both attack the proposed COS additive, regardless of amount, as being inconsistent with the concept of a statewide rate for statewide service. It is acknowledged by both Staff and Public Counsel that their proposals result in a charge for COS to the customers of MoKan Dial different from the charges so far rendered to COS subscribers of other companies. Staff's justification for a variation in rates is based partly in the statement contained in the Report and Order in Case No. TO-87-131, at page 28, ". . . the Commission will entertain requests for waivers from the application of the COS program adopted herein." Based on that statement, the Staff is of the opinion that the Commission envisioned that the COS program might be different for some companies or exchanges. Staff also relies on a statement in a

later Report and Order issued in Case No. TO-90-232 on October 30, 1990, where the Commission stated, on page 9, that: "There may be additional costs sought to be passed on by LECs as a result of implementation of the routes to be addressed at the technical conference. The Commission, in considering any additional costs associated with these routes, may elect another method of recovering those costs, such as an increase in the rates paid by COS customers." The Staff relies on that statement for the opinion that the Commission clearly indicated it would consider higher rates for future COS routes. MoKan Dial and United disagree with the Staff's interpretation of the orders. More specifically, as pointed out in United's brief, it is believed that the additional costs referred to by the Commission were costs associated with implementing the Billing System Adjustment in place of Remote Call Forwarding. In the Commission's opinion, the Staff's interpretation of those orders presents a mixing of concepts. In the instant case, the Staff is recommending that additional costs be deferred to a later rate case and its proposed COS additive is only for the purpose of recovering the estimated loss in revenues. In the Commission's opinion, the criticism by MoKan Dial and United is correct and although the Commission certainly has the power to order higher COS rates for MoKan's customers, it should only vary from the prescribed statewide rate in a proceeding with that possibility in mind and the subject of notice and opportunity to be heard by other potentially interested parties.

The Company also objects to the proposal wherein the COS additive would be retained in its entirety by the originating carrier. Company contends that its retention of the COS additive would be contrary to the terms of the RRSP and would be challenged by the connecting carriers classifying the additive as revenue to be shared under the RRSP. Staff and OPC are of the opinion that their proposed treatment of the COS additive is clearly consistent with the intent of the RRSP.

Both sides of the controversy rely for their opinion on paragraph 2 of the RRSP which states in its entirety as follows:

All COS revenues including the basic COS rates for one-way, two-way, or usage sensitive service, any Extended Area Service (EAS) additives (including any rate differentials for expanded calling scopes) and non-contiguous exchange/tier charges, but excluding any non-recurring charges, will be divided among the local exchange companies (LECs) providing facilities between the petitioning and target exchange on an equal basis (i.e. 50% to each if there are two companies on the route, 33 1/3% each if there are three companies on the route, etc.). This division will only be based on the route between the specific petitioning and target exchange and will not take into account any additional exchanges which may be within the expanded calling scope of the target exchange.

United joins in the criticism of the plan as being violative of the RRSP and reminds us in its brief that the plan was adopted after extensive negotiations by the industry as a way to equitably divide COS revenues and one key goal of the RRSP was to prevent a telephone company from profiting from the provision of COS on a particular route if another telephone company was suffering COS-related losses on that route (See Report and Order in Case No. TO-90-232, April 18, 1990, at page 10). As a corollary, United raises two related issues, one of which is that the COS surcharges have been assessed all customers of a telephone company offering COS. It is United's contention that while the surcharges have been retained by the companies offering the service, it can be strongly argued that the surcharge was not part of the COS rate, thus, did not affect the buy up for the service. United has also pointed to its potential dilemma in attempting to explain to its customers, who are not COS subscribers, why they are being treated differently than the non-COS subscribers in an adjacent exchange who pay no surcharge.

United is also seriously concerned about whether the Staff and OPC proposal will result in revenue gain or losses for United as a connecting carrier. As pointed out in its brief, more troubling to United is the fact that the Staff does not know the answers to the questions and has not considered the effect of the proposal on

United. The record does establish that no parties to this proceeding have considered any potential affect on United.

In the Commission's opinion, the Staff and OPC's proposal violates the quoted portion of the RRSP. Although the Staff draws a number of comparisons of its proposed COS additive to the surcharges presently retained by COS providing companies, the Commission perceives one significant difference. Both the prescribed uniform statewide COS rate and the proposed COS additive can be avoided by any customer of a local exchange company by declining or terminating COS. In contrast, the surcharge could only be eliminated by the drastic measure of terminating all telephone service, and is not in any way dependent on subscribing to COS. Since the COS additive appears to be a COS revenue, the Commission agrees with the companies that the proposed treatment would present great potential for successful challenge by connecting companies. The Commission is also of the opinion that the proposal would present a fertile field for the raising of claims of discrimination. It has already been indicated why United thinks its customers not subscribing to COS would raise the questions of discrimination because the absence of a surcharge in adjacent exchanges. As a reverse of that situation, MoKan Dial has raised the criticism of the inequity of charging its subscribers a different rate for COS than the one they expect, the same rate prescribed for all other companies to date. For all of these reasons, the Commission is of the opinion and finds that the proposed COS additive, regardless of which amount is selected, is not a satisfactory solution to the dilemma presented in this docket.

The Commission finds itself without any suitable alternative for the pricing of COS service in MoKan Dial's Freeman exchange. We have previously described the lack of any support for the tariffs suspended herein and we agree with the various parties that this particular surcharge represents an unacceptably high

rate when compared with the surcharges approved previously. We have no choice but to disallow the tariffs as hereinafter ordered.

For procedural reasons, the Commission does not have available to it the Company's preferred option of employing a high loss fund. The instant record is inadequate for the creation or implementation of such a fund which should only be undertaken after extensive notice to persons who could be affected, including present and future subscribers to COS.

Other possible remedies suggested by this record include the imposition of a higher statewide prescribed rate for COS or the authorization of variable rates for COS. Those possible remedies should only result in a proceeding held with that result as one of the announced possible purposes. Since either of those alternatives would be at odds with the current widespread use of uniform rates and surcharges of all subscribers adoption of either should be after a notice to that effect rather than as an after-thought in a case involving the suspension of a specific tariff.

The Commission also notes that it has a task force at work for the purpose of investigating more comprehensive alternatives to addressing extraexchange calling. Pending any results of that task force, the Commission has under suspension numerous COS routes that have qualified for implementation by demonstrating a community of interest. A final possibility is the granting of a waiver from the provision of COS as requested by the Company in an attachment to its brief. Because of the many problems in the implementation of COS created by the unique nature of the Company, the Commission is of the opinion that it is a logical candidate for a waiver if one exists. In the Commission's opinion, implementation of COS in the Freeman exchange of MoKan Dial should be stayed, at least temporarily, until a better reasoned result can be fashioned than is presented by the instant docket.

Because of the result reached herein, the Commission is of the opinion and finds that it is unnecessary to address the issues raised by the Company during the course of the proceedings but not pursued in its brief.

#### Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

The Company is a Telecommunications company pursuant to Section 386.020, RSMo Supp. 1989 and is subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo.

The tariffs at issue in this matter were suspended pursuant to Section 392.230, RSMo Supp. 1989. Upon the finding that a proposed tariff is unreasonable, unjust or not in the public interest, the tariffs should be disallowed. As in the instant case, when the tariff provides for a new service, the provision of the new service must be stayed pending the determination of a reasonable alternative to the disallowed tariff.

In any proceeding before the Commission, the burden of proof is on the party seeking to change any rate fixed by the Commission to show by clear and satisfactory evidence that such rate is unreasonable or unlawful. Section 386.430, RSMo 1986.

In the instant case, the Staff and OPC proposals would result in the provision of COS for the involved routes under substantially different conditions and rates than service over COS routes implemented to date. The rates and conditions of service connected with what has been considered a statewide service at uniform rates with substantial variation should only be approved in a proceeding with notice to potentially interested parties of that possibility. As an example of that substantial variation, participant United objected to the Staff and OPC's alternate proposals to provide COS only to the Kansas City, Missouri portion, the Kansas City

Metropolitan exchange. Since United's COS customers were not given any option on the service offering to the Kansas City Metropolitan area, the proposal is objected to as a variation in statewide service without notice, and potentially discriminatory.

For all of the foregoing reasons, the tariffs at issue should be disallowed and the provision of COS from MoKan Dial Company, Inc.'s Freeman exchange should be stayed, until further order of the Commission.

IT IS THEREFORE ORDERED:

1. That all tariff sheets filed herein by MoKan Dial Company, Inc. for the purpose of establishing rates, charges or surcharges associated with providing COS between its Freeman exchange and the Kansas City Metropolitan exchanges of Southwestern Bell Telephone Company and the Harrisonville exchange served by United Telephone Company be disallowed.

2. That the provision of COS by MoKan Dial Company, Inc. shall be stayed until further order of this Commission.

3. That this Report and Order shall become effective on July 28, 1991.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch,  
McClure and Perkins, CC., Concur  
and certify compliance with the  
provisions of Section 536.080,  
RSMo 1986.

Dated at Jefferson City, Missouri,  
on this 17th day of July, 1991.