

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

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

STAFF RESPONSE AND RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its response and recommendation states:

1. On March 14, 2012, MoKan Dial, Inc. ("the Company") filed tariff sheets that would change its rates for local telephone service, a retail service to end user customers. The Office of the Public Counsel filed a motion on March 16, asking the Commission to suspend that tariff to allow time to investigate whether the revised rates proposed by the Company will be just and reasonable.

2. The Staff recommends that the tariff be approved without suspension or further proceedings in this matter (See attached Staff Memorandum). The Staff believes that the proposed rates are both just and reasonable, that the Public Counsel's opposition is unreasonable and that its opposition is based in inapplicable law.

3. Section 392.420 RSMo Supp 2008 states in relevant 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 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. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, ... where an interconnected voice over Internet protocol [IVoIP] service provider is registered to provide service in an incumbent local exchange telecommunications company's authorized service area under section 392.550, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected. [Emphasis added]

4. Section 392.240.1. provides, in relevant part:

Whenever the commission shall be of the opinion, after a hearing ... or upon a complaint, that the rates ... demanded ... by any telecommunications company ... are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of law, ... the commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, ... and shall fix the same by order to be served upon all telecommunications companies by which such rates, charges and rentals are thereafter to be observed, and thereafter no increase in any rate, charge or rental so fixed shall be made without the consent of the commission.

5. The Company has exercised its option to be exempt from certain statutory and rule provisions, including §392.240.1., although it does maintain tariffs with the Commission. The Commission has formally recognized the Company's Notices of Election, in File Nos. IN-2009-0157 and TE-2012-0073.

6. The Public Counsel's Objection and Motion states, in Paragraph 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. [Emphasis added]

7. The Commission's authority to conduct an earnings review is contained in §392.240.1., which as the Staff has noted, shall be waived for incumbent local exchange telecommunications companies in whose exchanges an IVoIP provider is registered. Therefore, the Staff concludes that, although the Commission does have continuing authority to determine just and reasonable rates, it cannot base its determination on whether the company is under-earning or over-earning.

8. In the present instance, the change in rates was precipitated by a change in federal policy that requires carriers who receive federal Universal Service Fund ("USF") support to adhere to a minimum rate of \$10 monthly or have their USF support reduced dollar-for-dollar for rates under that amount. The FCC specified that the rate was to be the base monthly service rate, which could include certain things but excluded other things. The Company reconfigured its rates, as more fully explained in the Staff's attached Memorandum, and established a rate that is higher than the \$10 minimum, although that does not result in an increase in the total amount billed for the vast majority of the Company's end-users. It is the Staff's opinion that an increase of basic local rates to \$10 is inherently reasonable for Companies that receive USF support. Companies that increase to a rate higher than the minimum must demonstrate that the reconfiguration results in a rate that is not a significant increase to the majority of the Company's customers. As the Staff's Memorandum indicates, the Company has met that standard. The Staff concludes that the proposed rates are just

and reasonable and should be either approved or permitted to take effect by operation of law.

9. Although an earnings review is precluded, assuming *arguendo* that one is permitted, the Staff believes that the Public Counsel's request for one at this time is unreasonable. The same FCC Order that established the minimum rates for basic local service required that local exchange telecommunications companies reduce their access rates. If an earnings review were to be done, it would be unfair to do it when the Company appears to be raising rates, but not when it will reduce rates. If an earnings review were permitted, the Public Counsel's request would be premature, and should be postponed until all of the increases and reductions ordered by the FCC are completed.

10. Finally, the Public Counsel has propounded numerous Data Requests to the Company that seek to gather information about the Company's earnings. The Staff asks that the Commission clarify that the Company's earnings are irrelevant to its determination of the justness and reasonableness of the Company's proposed rates.

WHEREFORE, the Staff recommends that the Commission either approve the tariffs on file in this matter by finding them just and reasonable or allow them to take effect by operation of law, but clarifying in the interim that review of the Company's earnings is not relevant to a determination of "just and reasonable" rates.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30th day of March, 2012.



MEMORANDUM

To: Missouri Public Service Commission Official Case File
Tariff File No. JI-2012-0442
Case No. TR-2012-0299
MoKan Dial, Inc.

From: William Voight
Supervisor, Telecommunications Rates and Tariffs

Subject: Staff's Recommendation to Approve Tariff Sheets and Reject the Office
of Public Counsel's Motion to Suspend

Date: March 30, 2012

Synopsis: This memorandum recommends approval of MoKan Dial, Inc. (MoKan's) proposal to raise base telephone rates for business and residential customers while simultaneously decreasing rates for an expanded local calling offering known as Metropolitan Calling Area (MCA) service. The proposal will result in no additional annual revenue to the company.

Summary Background of MoKan Dial, Inc. Telephone Company: MoKan is a traditional incumbent rural telephone company providing service in portions of Cass County. MoKan serves 639 telephone access lines whose Missouri property is the single exchange of Freeman. MoKan's current residential rate of \$5.90 monthly has not been increased since 1983. MoKan does not currently have any complaints pending against it before the Missouri Public Service Commission (Commission). MoKan is current in all respects in reports, filings and submittals to the Commission.

Background of Tariff Filing: On March 14, 2012 MoKan filed tariff sheets in accordance with a Federal Communications Communication (FCC) Report and Order and Further Notice of Proposed Rulemaking DA/FCC Number 11-161: *RE: Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board WC Docket No. 10-90 et. al. ("The FCC's Order")*

One of the many items addressed by the FCC's order concerned the price paid by residential and business customers of local telephone service. In its Order, the FCC established a financial limit on federal high-cost support payments to companies such as MoKan, which currently charge base rates below the FCC's newly established benchmark levels. The following paragraphs represent relevant portions of the FCC's order:

235. Discussion. We now adopt a rule to limit high-cost support where end-user rates do not meet a specified rate floor ... Section 254 obligates states to share in the responsibility of ensuring universal service. We recognize some state commissions may not have examined local rates in many years, and carriers may lack incentives to pursue a rate increase where federal universal service support is available. Based on evidence in the record, however, there are a number of carriers with local rates that are significantly lower than rates that urban consumers pay ... There are local rates paid by customers of universal service recipients as low as \$5 in some areas of the country ... We do not believe that Congress intended to create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in section 254(b); rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly higher than in urban areas (emphasis in original).

238. Based on the forgoing, and as described below, we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban floor representing the national average of local rates plus such state regulated fees. Our calculation of this urban rate floor does not include federal SLCs, as the purposes of this rule change are to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level (emphasis in original).

239. We will phase in this rate floor in three steps, beginning with an initial rate floor of \$10.00 for the period July 1, 2012 through June 30, 2013 and \$14.00 for the period July 1, 2013 through June 30, 2014...

240. To the extent end-user rates do not meet the rate floor, USAC will make appropriate reductions in HCLS [High Cost Loop Support] support.

Public Counsel's Motion: On March 16th, the Missouri Office of Public Counsel (Public Counsel) filed a Motion requesting the Commission to suspend the Company's proposal for 150 days and investigate whether the changes would result in just and reasonable rates. Public Counsel states that under Missouri law, MoKan is a rate-of-return regulated telecommunications company and a review of the proposal "must include an earnings review"....pursuant to §392.200.1 RSMo. Staff notes that suspension of 150 days will place MoKan in jeopardy of losing the federal high cost support since the July 1, 2012

effective date for rates established by the FCC will be missed. Further, Staff respectfully reminds the Commission that the FCC is also requiring reductions to company exchange access rates, so any “earnings review” should not be completed in a vacuum, but would necessarily require a review of earnings related to the decrease in access rate revenues (see for example, Staff’s Motion to Open Case in TT-2012-0317).

An Excel spreadsheet is attached which details the customer and company impacts of MoKan’s proposal. The Telecommunications Staff (Staff) has examined MoKan proposal and the Staff finds the changes reasonable, especially when cast in the light of the FCC’s Order, which unambiguously threatens to disrupt federal support payments to MoKan if the benchmark is not met. The Staff opposes Public Counsel’s position in this matter, and Staff recommends rejection of both its Motion to suspend and its notion as to the necessity of an earnings review. Staff recommends the Commission approve MoKan’s filing to be effective July 1, 2012. Alternatively, the Commission should simply permit the tariff sheets to take effect by operation of law on that date.

Impact of Proposed Changes and Support for Just and Reasonableness: The attached spreadsheet addresses the following significant events occurring to MoKan and its customer base:

- (1) Changes to customers’ base rates and MCA rates are occurring in two stages referred to as Phase 1 and Phase 2. Phase 1 is set to begin on July 1, 2012 and Phase 2 is set to begin on July 1, 2013. These dates are consistent with the FCC’s ordered mandate and approval of these tariff sheets set forth in motion both Phases.
- (2) The revenue impact of MoKan’s local rate increases are offset by reductions in MCA service. The combined impact results in an overall revenue loss to MoKan in the amount of \$8.64 annually.
- (3) Changes to residential base rates: As is shown in the Excel spreadsheet attached to my memorandum, Phase 1 will see residential rates increased to the monthly benchmark of \$10.00 (a 69% increase), and Phase 2 will see residential rates increase to the benchmark of \$14.00 monthly (a 40% increase).
- (4) Changes to business base rates: As is shown in the Excel spreadsheet, the current business rate is \$9.15 and it will increase to \$10.00 with Phase 1 (a 9% increase). Phase 2 will see the base business rate increase from \$10.00 to \$14.00 (40%).
- (5) Changes to Metropolitan Calling Area (MCA) rates: As is shown in Excel, residential rates for MCA will be reduced in Phase 1 by \$6.91 monthly (-21%) and by \$6.75 monthly (-26%) during Phase 2. Overall, residential MCA rates will decline from the current \$32.50 to a proposed \$18.84 (-42%). For business customers, overall MCA rates will decline from the current \$70.70 to \$51.51, which represents a 27% decrease.

- (6) Customer Notice: MoKan has provided copies of notices of rate increases that have been provided to its customers. Staff has examined the notifications and finds them adequate.

Conclusion and Summary of Recommendation: The Staff has further examined MoKan's entire proposal in light of the FCC's Order and relevant Missouri law. Staff finds the company's proposal reasonable and recommends approval. The Staff is aware of Case No. TR-2012-0298 in which Choctaw Telephone Company has proposed similar increases to local rates along with decreases to rates for MCA service. The Staff expects other local telephone companies to make other proposals in conformance with the FCC's Order. For example, Mark Twain Rural Telephone Company (Tariff File No. JI-2012-0400) and Kingdom Telephone Company (Tariff File No. JI-2012-0558) have made similar filings to MoKan's; however, those companies are cooperatives whose local rates are not subject to the same just and reasonableness standards pertaining to MoKan, such as those found in §392.200.1 RSMo. Other than those matters, the Staff is unaware of any other matter that affects, or that would be affected by, this matter.

MoKan Dial, Inc. (MO)**Data as of 12/31/2011****Phase 1:**

	Access Lines	Current Rate *	Proposed Rate	Per Line Increase	% Increase	Annual Rev Increase
R-1	548	\$ 5.90	\$ 10.00	\$ 4.10	69%	\$ 26,961.60
B-1	91	\$ 9.15	\$ 10.00	\$ 0.85	9%	\$ 928.20

Total Increase to Basic Local Service Revenue	<u><u>\$ 27,889.80</u></u>
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MCA Plan:

Residence	325	\$ 32.50	\$ 25.59	\$ (6.91)	-21%	\$ (26,949.00)
Business	23	\$ 70.70	\$ 67.34	\$ (3.36)	-5%	\$ (927.36)

Total Decrease to MCA Revenue	<u><u>\$ (27,876.36)</u></u>
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Phase 2:

	Access Lines	Current Rate	Proposed Rate	Per Line Increase	% Increase	Annual Rev Increase
R-1	548	\$ 10.00	\$ 14.00	\$ 4.00	40%	\$ 26,304.00
B-1	91	\$ 10.00	\$ 14.00	\$ 4.00	40%	\$ 4,368.00

Total Increase to Basic Local Service Revenue	<u><u>\$ 30,672.00</u></u>
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MCA Plan:

Residence	325	\$ 25.59	\$ 18.84	\$ (6.75)	-26%	\$ (26,325.00)
Business	23	\$ 67.34	\$ 51.51	\$ (15.83)	-24%	\$ (4,369.08)

Total Decrease to MCA Revenue	<u><u>\$ (30,694.08)</u></u>
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Total Increases from Phase 1 and 2 of Local Rate Increases	\$ 58,561.80
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Total Decreases to MCA Plan Revenue	\$ (58,570.44)
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Difference	<u><u>\$ (8.64)</u></u>
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* Includes TT Charge

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of MoKan Dial, Inc.

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Case No. TR-2012-0299

AFFIDAVIT OF WILLIAM M. VOIGHT

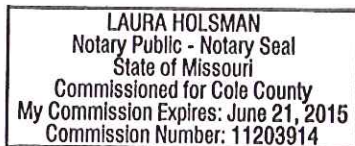
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

William M. Voight, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.

Bill Voight

William M. Voight

Subscribed and sworn to before me this 30th day of March, 2012.



Laura Holzman

Notary Public