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**Missouri Public  
Service Commission**

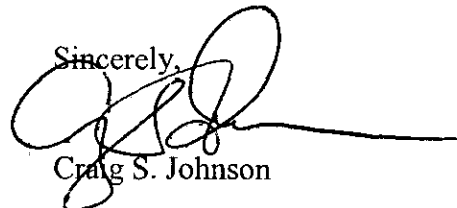
**Re: Case No. TO-2001-391, MCA Proceedings**

Dear Secretary Roberts

Enclosed for filing please find an original and five (5) copies of Statement of Position of MoKan Dial, Inc. and Choctaw Telephone Company.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:tr

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED<sup>3</sup>

MAY 19 2003

Missouri Public  
Service Commission

In the Matter of a Further Investigation     )  
of the Metropolitan Calling Area Service     )  
After the Passage and Implementation of     )     Case No. TO-2001-391  
the Telecommunications Act of 1996.     )

**STATEMENT OF POSITION**  
**MoKan Dial Inc and Choctaw Telephone Company**

Come Now MoKan Dial, Inc. ("MoKan") and Choctaw Telephone Company ("Choctaw"), pursuant to the Commission's Orders of April 7, 2003 and May 5, 2003, and for their Statement of Position, state to the Commission as follows:

**1. Based on the instant record, is it necessary or appropriate to modify or alter the existing MCA plan?**

The MCA plan should be modified to remove wireless NXXs from the MCA calling scope.

The Commission Order creating MCA service included wireless NXXs resident in mandatory MCA tiers in the MCA calling scope. That same Order did not allow wireless carriers to offer MCA service due to their larger calling scopes. This was done prior to the local competition reciprocal compensation provisions of the 1996 Telecommunications Act. Under that Act the FCC has established Major Trading Areas (MTAs) as the geographic area for local calling involving wireless traffic. The MTAs are larger than the MCAs. The wireless carriers have cited the Commission-mandated wireline to wireless bill and keep compensation mechanism as justification for *MTA* wide bill and keep, regardless of carrier costs or traffic balances.

This has interfered with the development of MTA-wide interconnection agreements containing reciprocal compensation arrangements, and has left much traffic uncompensated. In order to eliminate this interference the MCA plan should be modified to remove wireless NXXs from the MCA calling scope. Since the implementation of the 1996 Telecommunications Act, interconnection agreements have become the authorization for local calling between LECs and wireless carriers. The proper place for reciprocal compensation arrangements is in interconnection agreements, not Commission mandated ILEC calling plans. Wireless carrier NXX codes should not be dialable as a local call from optional tier MCA customers, even when the wireless NXX code is located within the mandatory tiers of the MCA, unless that subscriber's LEC has an interconnection agreement with the wireless carrier authorizing it.

Subject to the above, the evidence in this case does not otherwise compel a finding that it is necessary or appropriate to modify or alter the existing MCA plan. There is insufficient information in the record, especially with respect to pricing issues, to determine how the increased cost of any alteration of the MCA plan would be allocated, and whether such increased prices to customers are offset by customer interest in such alteration or expansion of the MCA plan. There is insufficient information in the record to enable the Commission to alter or expand the MCA plan at this time.

Choctaw and MoKan point out that now, unlike in 1992 when the MCA plan was created, there is no collaborative PTC Plan providing a source of inter-carrier compensation or revenues from which to recover losses associated with modifying the existing calling plan. Any changes would or could require additional revenues which would have to be provided either from end users or another source such as the Missouri Universal Service Fund.

**2. If so, what specific modifications or alterations are necessary or appropriate given the record in this case?**

Other than removing wireless NXXs from the MCA calling scope, MoKan and Choctaw do not believe that any modifications or alterations are necessary or appropriate given the record in this case.

**a. Does the Commission have the authority to modify the MCA Plan?**

Yes, within the limits of Missouri statutes and case law. Any modification must be on a revenue neutral basis and supported by competent and substantial evidence that such modification is necessary and appropriate in light of customer needs.

**1. If the Commission has the authority to modify the MCA Plan, is it necessary or appropriate to do so?**

See response to issue 1 above.

**2. If the Commission has the authority to modify the MCA Plan and it is necessary and appropriate to do so, should the Commission order implementation of MCA-2?**

No. MCA-2 should not be implemented without its effects being synthesized with rural calling scopes, service pricing, and the MoUSF docket in order to ensure parity of local calling scopes, rates, and in order to utilize the most equitable revenue replacement mechanism.

**3. If the Commission orders implementation of MCA-2, what carriers would be subject to the Commission's order?**

All ILECs will be subject to the Commission's order as well as those CLECs who offer MCA service. Wireless carriers will not be subject to the Commission's order, even though currently their customers enjoy being included within the MCA calling scope.

**b. If the Commission orders implementation of MCA-2, what are the appropriate rates?**

There is insufficient evidence in the record to determine appropriate rates.

**c. Is revenue neutrality required or appropriate for all carriers (i.e. price cap carriers, rate of return regulated carriers, competitive carriers, etc.) if the Commission implements revenue impacting changes to the MCA, such as MCA-2?**

Revenue neutrality is required and appropriate for all rate-of-return regulated carriers such as MoKan and Choctaw. Revenue neutrality is a principle or mechanism which allows the Commission to enter generic orders disturbing the revenues of a rate of return regulated telecommunications company without first engaging in a rate case. The principle is founded upon the regulatory concept that rate of return utilities are **rate** regulated. Once their rates are established, after an analysis of all financial factors, those rates are thereafter lawful. The revenues resulting therefrom are the property right of the utility. The Cole County Circuit Court has stated in consolidated Case Nos. 19V019901082 and Case No. 19V019901098:

Relators' tariffed access and billing and collection rates and revenues are *prima facie* lawful and reasonable until found otherwise in a suit brought for that purpose. § 386.270 RSMo. In any such proceeding, 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 and unlawful. § 386.430 RSMo.

In three previous decisions (Judgments in Case Nos. CV190-190CC, CV193-66CC, and CV198-666CC) [none of which have been appealed by the Commission], this Court has ruled that the Commission may not direct a change in Relators' revenues and expense structure without a proper proceeding challenging them, and without findings of unlawfulness or reasonableness. This Court has held that when a Commission decision may subject a public utility to a substantial revenue reduction, a Commission invitation for the utility to file a rate case is an unlawful shifting of the burden of proof. This Court has directed that in such a situation, the Commission must provide the utility, at the utility's election, with revenue neutrality (i.e. keep them whole).

MoKan and Choctaw take no position on revenue neutrality for other types of carriers.

**1. If revenue neutrality is required or appropriate, how should revenue neutrality be implemented?**

The record does not contain sufficient evidence about the proper mechanism for revenue neutrality.

**2. Are implementation costs required or appropriately included as a part of revenue neutrality?**

Yes. The parties are entitled to the implementation costs as part of the revenue neutrality adjustment.

**d. Are there additional financial impacts to consider if the MCA is modified?**

No position at this time.

**e. Should wireless carriers be allowed to fully participate in the MCA plan?**

No. The Commission has no regulatory jurisdiction over the wireless carriers and thus is unable to ensure that the wireless companies will provide service pursuant to the same regulatory regime established for LECs. Furthermore, wireless carrier NXX codes should not be dialable as a local call from optional tier MCA customers, even when the wireless NXX code is located within the mandatory tiers of the MCA, unless that subscriber's LEC has an interconnection agreement with the wireless carrier authorizing it. Since the implementation of the 1996 Telecommunications Act, interconnection agreements have become the authorization for local calling between LECs and wireless carriers. See response to issue 1 above.

**1. Is revenue neutrality required or appropriate for all carriers (i.e. price cap carriers, rate of return carriers, competitive carriers, etc.) if wireless carriers are allowed to fully participate in the MCA plan?**

Revenue Neutrality is required and appropriate for all rate-of-return regulated carriers. MoKan and Choctaw take no position at this time as to other carriers.

**f. Should MCA be available to pay phones, resellers, and aggregators?**

No. There is no compelling record evidence that it is necessary or appropriate to include these types of carriers in the MCA at this time.

**1. Is revenue neutrality required or appropriate for all carriers (i.e. price cap carriers, rate of return carriers, competitive carriers, etc.) if MCA service is made available to pay phones, resellers, and aggregators?**

Revenue Neutrality is required and appropriate for all rate-of-return regulated carriers. MoKan and Choctaw take no position at this time as to other carriers.

**g. Does the Commission have the authority to make tier 3 (or any optional tier) of the current MCA mandatory?**

The Commission appears to have such authority, but may be limited by the requirements of Section 392.200.9 RSMo which require the Commission to make an appropriate finding that such is in the public interest and to obtain approval of the affected companies pursuant to Section 392.200.9 RSMo.

**1. if so, should tier 3 of the current MCA be made mandatory?**

No. There is insufficient evidence of what it will cost customers to have tier 3 made mandatory, or that the customers in tier 3 want the MCA to be made mandatory.

**h. Should MCA subscribers in the optional MCA tiers be allowed to call all telephone numbers in the mandatory MCA areas, regardless of the type of service offered in the mandatory tier?**

Yes, when calling a *LEC*. However, in contravention of the current practice, wireless carrier NXX codes should not be dialable as a local call from optional tier MCA customers, even when the wireless NXX code is located within the mandatory tiers of the MCA, unless that subscriber's LEC has an interconnection agreement with the wireless carrier authorizing it. Since implementation of the 1996 Telecommunications Act, interconnection agreements have become the authorization for local calling between LECs and wireless carriers. Continuation of the inclusion of wireless NXXs in the MCA calling scope has and will continue to disincent interconnection agreements, as today wireless carriers are utilizing the 1992 MCA Order as a basis to claim they are entitled to reciprocal bill and keep, in the absence of an approved interconnection agreement, and regardless of traffic balances.

**i. Should the current MCA be expanded to include a tier 6 MCA area (or tier 3 in Springfield)?**

No. There is insufficient evidence in the record of what geographic area a tier 6 MCA (or tier 3) would encompass, that the customers in a tier 6 MCA (or tier 3) want to be included in the MCA, or the price that new or existing customers would be charged to have the MCA expanded to include a tier 6 MCA (or tier 3).

**3. Is the LERG an appropriate mechanism to identify the MCA NXX codes in the future?**

No. There is currently insufficient oversight over the LERG for it to be a reliable source for the purpose of identifying the MCA NXX codes. For example, wireless carriers are misrepresenting NXXs as MCA NXXs even when the NXX is actually in a different local calling scope, a different local exchange and /or a different Metropolitan Trading Area (MTA). Carriers are also failing to properly maintain and update the LERG. As a consequence, some wireless to



landline calling is misrepresented by the LERG as landline to landline calling. Instead of utilizing the LERG, which is susceptible to such inaccuracies, the Commission's staff should administer the MCA NXXs.

**a. Should LERG "J" codes be used as the proper optional MCA NXX identifier?**

No. The LERG "J" codes are not used in the same consistent manner by each carrier, causing confusion with respect to the use of LERG "J" codes as an MCA NXX identifier.

**b. Should LERG "J" codes be used to designate NXX codes in the mandatory MCA areas?**

No, for the same reasons stated in response to 3b above.

**4. If the Commission does not change the way NXX codes are currently allocated for MCA service, what if any action should the Commission take regarding the NANPA's denial of MCA NXX codes to local exchange carriers?**

A LEC that is denied MCA NXX codes should be permitted to petition the Commission for support to override NANPA's denial of the NXX codes.


**5. Should MCA traffic be carried on separate trunk groups?**

Definitely. MCA traffic should be segregated on to separate trunk groups, as LECs have failed to provide traffic reports distinguishing "non-billable" MCA traffic from other compensable traffic that is currently being delivered over the common trunk.

**6. At present, OPC has requests for public hearings pending in response to requests to expand or modify MCA for (A) Lee's Summit/Greenwood, (B) Wright City/Innsbrook, (C) Lexington, and (D) Ozark/Christian County. Should the Commission schedule public hearings for these areas to obtain current customer sentiment for MCA?**

Not at this time. There is insufficient evidence in the record to provide residents of these communities with information as to the geographic area that would be involved, pricing, and/or calling scope proposals. While MoKan and Choctaw are not opposed to determining the scope of customer sentiment, they do not believe there is sufficient information upon which these customers can make a more complete or different record with respect to their interest and desire in having the MCA plan expanded to their communities.

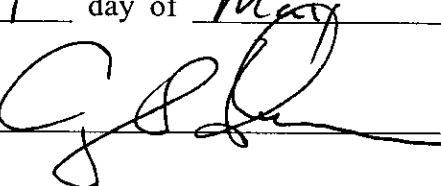
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**ATTORNEYS FOR MoKan and Choctaw**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, U.S. Mail, postage pre-paid, this 19 day of May, 2003, to all attorneys of record.

  
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