

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

In the Matter of Northeast Missouri Rural )  
Telephone Company Request for Waiver )  
of Compliance with the Requirement of 4 )  
CSR 240-31.065(1). )  
)

Case No. IE-2005-0347

**STAFF RECOMMENDATION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and states:

1. On April 1, 2005, Northeast Missouri Rural Telephone Company (“Northeast”) filed revised tariff sheets and an application for a waiver of compliance from the requirements of 4 CSR 240-31.065(1). Rule 4 CSR 240-31.065(1) states:

- (1) All applicable carriers shall place on each retail end-user customer’s bill, a surcharge equal to the percentage assessment ordered by the commission.

Northeast requests that the Commission waive the requirement to collect the Missouri Universal Service Fund (“MoUSF”) surcharge from its end-users.

2. The Commission’s March 21, 2002 Report and Order Establishing Low-Income/Disabled Fund (“*Report and Order*”) issued findings of fact regarding the surcharge. The Commission determined “that eligible carriers shall recover their assessments from the Missouri Universal Service Fund through an explicit surcharge on bills to end users.”<sup>1</sup> The Commission found:

If the Commission did not allow a surcharge, market distortions would result and implicit subsidies would be created. In the absence of a surcharge, a multitude of

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<sup>1</sup> *In the Matter of an Investigation into Various Issues Related to the Missouri Universal Service Fund*, Case No. TO-98-329, *Report and Order*, March 21, 2002, (“*Report and Order*”) p. 13.

advantages, disadvantages and preferences would be created. Three different types of companies would all be treated differently.

...

Because of these differences, any funding mechanism that is not based on a surcharge will necessarily create competitive advantages and disadvantages for different companies. Accordingly the Commission will mandate an explicit end-user surcharge.<sup>2</sup>

The Commission also concluded that adopting a mechanism for recovery other than an explicit end user surcharge would be inconsistent with a decision of the Fifth Circuit, the Telecommunications Act of 1996, the FCC's rules, and Section 392.248.2 RSMo 2000.<sup>3</sup> Section 392.248.2 RSMo 2000 states:

The Commission shall adopt and enforce rules to be implemented by the universal service board, governing the system of funding and disbursing funds from the universal service fund in a manner that does not grant a preference or competitive advantage to any telecommunications company or subject a telecommunications company to prejudice or disadvantage.

The Commission concluded that the "only manner" in which the Commission can comply with Section 392.248.2 RSMo 2000 is to establish an end-user surcharge. A mandatory surcharge, the Commission found, will be competitively neutral:

Because the assessment is not a cost of doing business and cannot be treated as a common cost, allowing carriers to recover their assessments in their rates will result in market distortions. Customers will not base their decisions to purchase an optional service on the actual cost of that service, but rather on the cost of that service plus the portion of the Missouri Universal Service Fund assessment that that provider has added to the rate for that service. This is, by definition, a distortion of the market. A mandatory Missouri Universal Service Fund surcharge will be competitively neutral since all carriers would apply the same Missouri Universal Service Fund assessment rate in the same manner.<sup>4</sup>

3. The application states that Northeast's "management has determined that the administrative cost and burden of passing through the surcharge to their customers is greater than

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<sup>2</sup> *Report and Order*, at p. 19.

<sup>3</sup> *Report and Order*, at pp. 17-20.

<sup>4</sup> *Report and Order*, at p. 19.

the amount likely to be collected from its customers.” Northeast wishes to collect its MoUSF assessment directly from its revenue. Where the cost of implementing the MoUSF surcharge exceeds the benefits of implementing the surcharge, the Staff believes a waiver of CSR 240-31.065(1) does not grant a preference or competitive advantage to any telecommunications company or subject a telecommunications company to prejudice or disadvantage and is consistent with Section 392.248.2 RSMo 2000. In the attached Staff Recommendation, labeled “Appendix A,” the Staff recommends that the Commission grant Northeast its request to waive 4 CSR 240-31.065(1) for good cause. The Staff also recommends that the Commission approve the tariff pages effective May 1, 2005.

WHEREFORE, the Staff respectfully offers this recommendation to approve the waiver of 4 CSR 240-31.065(1) and to approve the tariff pages.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Marc Poston**

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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 19<sup>th</sup> day of April 2005.

**/s/ Marc Poston**

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