

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

In the Matter of the Petition of TON)
Services, Inc., for a Waiver of Portions)
of Rule 4 CSR 240-31.065 Requiring)
a Billing Surcharge for the Universal)
Service Fund Assessment)

Case No. XE-2005-0373

CONCURRING OPINION OF COMMISSIONER STEVE GAW

In its Order Granting Waiver, the majority approves TON Services, Inc.'s request to forego collection of a USF surcharge from its end-use customers and, instead, pay the USF assessment from its revenues. I have consistently maintained in previous cases that I believe that the collection of a USF surcharge from residential customers is contrary to the law. As such, recognizing that the majority's order prevents the placement of such a surcharge on the customer's bill, I concur in the majority's decision.

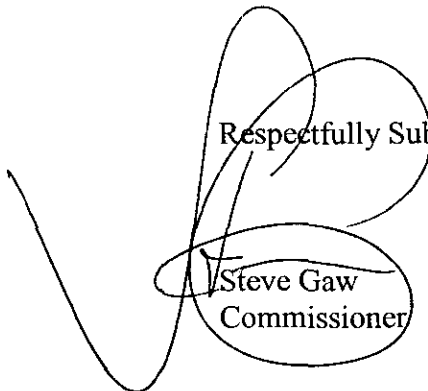
Section 392.248.3 provides:

The universal service fund shall be funded through assessments on all telecommunications companies in the state which shall be based on Missouri jurisdictional telecommunications services revenue and other nondiscriminatory factors as determined by the commission. Such assessments shall be paid to the universal service fund board. A telecommunications company regulated under §392.245 may, upon providing written notice to the commission, increase the maximum allowable prices for any or all of its telecommunications services except residential basic local telecommunications services above those maximum allowable prices otherwise established in §392.245 by an amount not to exceed the amount required to recover fifty percent of its assessment under this section. (Emphasis added).

This statute indicates two things. First, the General Assembly envisioned that any assessment should be on the company not the consumer. Second, the statute precludes the reimbursement to the Company of a universal service fund assessment from residential customers of price cap companies.

I believe the intention of the legislature was to allow rate base regulated companies to recover costs, including any USF assessment, by rolling them into rates if they so chose, but not allowing any of this burden to be reflected in the rates to residential customers of price cap companies. These incumbent companies were being allowed less regulation than existed prior to the legislation in 1996 and the legislature was very conscious of any increases in rates for residential customers.¹

The Commission has previously directed that rates rise for local basic customers, including residential customers, by creating and mandating a surcharge for the USF. The Commission has issued rules to that effect despite the fact that no surcharge is authorized in the statute and the statute specifically precludes raising local basic rates for customers of price cap companies. As such, the Commission should not merely waive the rule in this case; it should suspend the portion of the rule that violates the intent of the statute and start a proceeding to revoke the rule.



Respectfully Submitted,

Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 2nd day of May, 2005.

¹ Section 392.245.4(1) RSMo 2000. provides specific direction as to the amount of increase or decrease to local basic rates.