

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

In the Matter of the Petition of T-Netix     )  
Telecommunications 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-2005-0396

**STAFF RECOMMENDATION**

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

1. On May 2, 2005, T-Netix Telecommunications Service, Inc. (T-Netix) filed an application requesting an expedited waiver of compliance from the requirement of Rule 4 CSR 240-31.065 that carriers bill a surcharge for the Missouri Universal Service Fund. Rule 4 CSR 240-31.065 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.
- (2) The surcharge shall appear as a separate line item detailed as "Missouri Universal Service Fund."
- (3) The surcharge percentage shall be applied to each customer's total charges equating to the applicable carrier's net jurisdictional revenue.
- (4) All applicable carriers shall remit to the Fund Administrator the funds received as a result of the application of the MoUSF surcharge. The remittance of all funds shall constitute full satisfaction of a carrier's annual percentage assessment.
- (5) No carrier may recover its Universal Service Fund (USF) assessment in any way other than through this surcharge.

T-Netix requests that the Commission waive the requirement to collect the Missouri Universal Service Fund ("MoUSF") surcharge from its end-users. T-Netix states that it will remit its

assessment directly to the fund administrator from “collected revenues derived from its base rates.”

2. The Commission’s March 21, 2002 *Report and Order Establishing Low-Income/Disabled Fund* 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 stated that “any funding mechanism that is not based on a surcharge will necessarily create competitive advantages and disadvantages for different companies.”<sup>2</sup> Using an explicit end user surcharge, the Commission held, is consistent with federal law 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 also concluded that the “only manner” in which the Commission can comply with Section 392.248.2 RSMo 2000 is to establish a competitively neutral end-user surcharge.<sup>4</sup>

3. The application states that the cost to add an additional line for the MoUSF on each applicable end-user would cost T-Netix more than the USF assessment itself. 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 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

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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.

<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.

Staff Memorandum, labeled "Appendix A," the Staff recommends that the Commission grant T-Netix its request to waive 4 CSR 240-31.065 for good cause.

WHEREFORE, the Staff respectfully offers this recommendation to approve the application for a waiver of 4 CSR 240-31.065.

Respectfully submitted,

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/s/ William K. Haas

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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 5<sup>th</sup> day of May 2005.

/s/ William K. Haas