

**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

STAFF RECOMMENDATION

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

1. On April 15 2005, TON Services, Inc. ("TON") filed an application for a waiver of compliance from the 4 CSR 240-31.065 requirement 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 fund received as a result of the application of the MoUSF surcharge 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.

TON requests that the Commission waive the requirement to collect the Missouri Universal Service Fund ("MoUSF") surcharge from its end-users, and allow TON to remit its MoUSF assessment 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.”¹ The Commission stated that “any funding mechanism that is not based on a surcharge will necessarily create competitive advantages and disadvantages for different companies.”² Using an explicit end user surcharge, the Commission held, is consistent with federal law and Section 392.248.2 RSMo 2000.³ 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.⁴

3. TON states that it is a long distance service provider through the sale of prepaid debit cards only and “cannot bill or otherwise assess a particular customer for the Missouri USF.” The Staff believes TON has demonstrated good cause for waiving 4 CSR 240-31.065. The Staff does not believe approving the application will 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 TON its request to waive 4 CSR 240-31.065.

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

¹ *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.

² *Report and Order*, at p. 19.

³ *Report and Order*, at pp. 17-20.

⁴ *Report and Order*, at p. 19.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Marc Poston

Marc Poston
Senior Counsel
Missouri Bar No. 45722

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)
marc.poston@psc.mo.gov

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 21st day of April 2005.

/s/ Marc Poston
