THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Audit of Consumer Cellular, Incorporated by the Kansas Universal Service Fund (KUSF) Administrator Pursuant to K.S.A. 2014 Supp. 66-2010(b) for KUSF Operating Year 18, Fiscal Year March 2014-February 2015.	)	Docket No. 16-CSCZ-035-KSF

ORDER ACCEPTING AND ADOPTING GVNW's COMPLIANCE REPORT, ADDENDUM, AND RECOMMENDATIONS; APPROVING USE OF TRAFFIC STUDY METHODOLOGY AND TRAFFIC FACTORS FOR CONSUMER CELLULAR INCORPORATED; AND ASSESSING PENALTIES

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and record, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On July 30, 2015, the Commission directed GVNW Consulting, Inc. (GVNW) to perform an audit of Consumer Cellular, Incorporated (Consumer Cellular) for Kansas Universal Service Fund (KUSF) purposes.

2. On August 2, 2016, GVNW filed its Audit Report for Consumer Cellular identifying four reporting deficiencies. Audit Finding No. 2 of GVNW's Audit Report indicated that since September 2014, Consumer Cellular has used a company-specific traffic study to determine the identification of intrastate and interstate revenues. The company had not submitted a pleading advising the Commission of this methodology, nor had it filed annual updates as required by the Commission's January 24, 2012 and February 1, 2012 Orders, issued in Docket No. 12-GIMT-168-GIT. In ordering paragraph C of its August 18, 2016 Order accepting and adopting GVNW's Audit Report and recommendations, the Commission directed

Consumer Cellular to submit to this docket, within thirty (30) days from the date of the Commission's Order, a pleading accompanied by an affidavit from an officer of the company requesting to use the traffic study methodology for KUSF purposes and stating that the company will apply the inverse of the Federal Universal Service Fund (FUSF) factor for KUSF reporting purposes. Consumer Cellular's pleading and affidavit were to be filed by September 17, 2016. In ordering paragraphs B, D, and E of its August 18, 2016 Order, the Commission directed Consumer Cellular to submit Audit True-ups to correct the reporting deficiencies described in GVNW's Audit Finding Nos. 1, 3, and 4. The required Audit True-ups were to be submitted by October 17, 2016, sixty (60) days from the date of the Commission's August 18, 2016 Order. Upon Consumer Cellular's submission of the required True-ups, GVNW was directed to file a Compliance Report with the Commission. Consumer Cellular submitted the required Audit True-ups on October 13, 2016.

3. On November 9, 2016, GVNW filed its First Compliance Report (Compliance Report) under date of November 8, 2016, and on December 7, 2016, GVNW filed its First Compliance Report Addendum (Addendum). GVNW states that it submitted its Addendum in order to clarify that the amounts contained in GVNW's August 2, 2016 Audit Report reflected the period of March 2014 through March 2016, in contrast with the Compliance Report which reflected amounts for the period of March 2014 through July 2016. GVNW's Addendum further clarifies the following:

(1). Consumer Cellular's Audit True-ups for March 2014 – July 2016 show the company owed an additional $226.73 of assessments to the KUSF and reflects the following with regard to Finding Nos. 1, 3, and 4 of GVNW's August 2, 2016 Audit Report:

a. Finding No. 1: Consumer Cellular had applied, and collected, the KUSF surcharge to the Federal USF surcharge and FCC regulatory fees and reported

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the associated revenues to the KUSF; thus over-collecting $9,693.08 from its customers.

b. Finding No. 3: Consumer Cellular reported calculated revenue instead of its actual revenue to the KUSF and under-paid $7,633.39 of assessments to the KUSF; and

c. Finding No. 4: Consumer Cellular reported revenues to the KUSF after deducting customer discounts; thereby under-paying $2,286.42 in assessments to the KUSF.

(2). Consumer Cellular filed a pleading and an affidavit signed by Ms. Jill Leonetti, Treasurer of Consumer Cellular, verifying that Consumer Cellular uses the traffic study methodology to allocate revenue for both KUSF and Federal USF purposes.

4. GVNW states that for March 2014 through July 2016, Consumer Cellular owed a net total of $226.73 to the KUSF, which the company paid. Consumer Cellular stopped applying and collecting the KUSF surcharge on Federal surcharge and FCC fees and began reporting actual revenue to the KUSF effective with the August 2016 data reported in September 2016.[1] K.S.A. 66-2008 authorizes a company to collect an amount equal to or less than its assessment from customers. GVNW states that discussions between GVNW, the Commission Staff, and Consumer Cellular, in combination with a more detailed review of company data indicated that the majority of the amount related to Finding No. 3 arises from recent periods. Therefore, the parties recognized that this unique company-specific circumstance would allow for the audit adjustments arising from Findings Nos. 1 and 3 to be netted together resulting in the amount of over-collection by the company to be reduced to $2,059.69. Consequently, GVNW recommends that Consumer Cellular be required to refund $2,059.69 to its customers through one-time, equal billing credits.[2]

5. On October 20, 2016, Consumer Cellular filed its Notice of Traffic Study (Notice), together with the Affidavit of Ms. Jill Leonetti, Treasurer of Consumer Cellular,

[1] First Compliance Addendum, page 2
[2] Id.

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confirming that Consumer Cellular's allocation methodology for KUSF purposes is based on a company-specific traffic report. Consumer Cellular further confirmed that the company-specific traffic report is used for both FUSF and KUSF purposes, and is based on actual call origination and termination minutes of use (MOU) data obtained from the company's call detail records, which are classified as interstate, intrastate or international. Consumer Cellular derives the percentage of interstate/international MOU by dividing the number of interstate and international MOU into total MOU. This percentage is accepted by the Federal Communications Commission (FCC) for FUSF purposes. Consumer Cellular uses the inverse of the federal percentage to calculate the percentage for KUSF reporting purposes. Consumer Cellular applies the KUSF percentage to its Kansas retail revenues to determine the amount the company remits to the KUSF. Ms. Leonetti states that Consumer Cellular has used and continues to use, the same methodology described in her Affidavit at all times since 2014, 2015, and 2016.[3] The Commission finds that Consumer Cellular should be granted authority to use the Traffic Study methodology as described in its filed Notice and Affidavit. The Commission also finds that Consumer Cellular should be authorized to use its updated traffic factors as identified in the company's Affidavit.

6. K.S.A. 2015 Supp. 66-138 provides that telecommunications public utilities that fail to perform a duty required by the Commission shall forfeit and pay a sum of not less than $100 and not more than $1,000 for such offense. The Commission finds that Consumer Cellular has used a company-specific traffic study since September 2014 and failed to submit a proper pleading and affidavit advising the Commission of its methodology and has failed to file annual updates as required by the Commission's January 24, 2012 and February 1, 2012 Orders issued in Docket No. 12-GIMT-168-GIT. Consequently, the Commission determines that Consumer

[3] Leonetti Affidavit.

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Cellular should be assessed a monetary penalty of $300 per offense for its failure, during KUSF Operating Years 18, 19, and 20, to submit a proper pleading and affidavit advising the Commission of its methodology, as well as its failure to file annual updates as required by the Commission's January 24, 2012 and February 1, 2012 Orders issued in Docket No. 12-GIMT-168-GIT. Consumer Cellular filed its Notice of Traffic Study and Affidavit on October 20, 2016, which was 33 days beyond September 17, 2016, the deadline established under ordering paragraph C of the Commission's August 18, 2016 Order. Therefore, the Commission determines that Consumer Cellular should also be assessed a monetary penalty of $300 for the company's failure to file its Notice and Affidavit within the 30-day period prescribed by the Commission's August 18, 2016 Order.

7. The Commission finds that it should accept and adopt GVNW's Compliance Report, Addendum, and recommendations and that Consumer Cellular should be granted authority to use the traffic study methodology, as submitted October 20, 2016, for KUSF purposes and be authorized to use its updated traffic factors as identified in the company's Affidavit. The Commission further finds that a total monetary penalty of $1,200 should be assessed to Consumer Cellular for: (i) the company's failure to advise the Commission, during KUSF Operating Years 18, 19, and 20, of its use of a traffic study methodology and to provide and update its traffic factors with the Commission in accordance with the Commission's January 24, 2012 and February 1, 2012 Orders issued in Docket No. 12-GIMT-168-GIT ($900) and (ii) Consumer Cellular's failure to file the required pleading and affidavit within the time prescribed under ordering paragraph C of the Commission's August 18, 2016 Order ($300). The Commission also finds that Consumer Cellular should be ordered to refund to its current

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customers through one-time, equal billing credits, the sum of $2,059.69 over-collected from customers.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission accepts and adopts GVNW Consulting, Inc.'s First Compliance Report filed November 9, 2016, its First Compliance Report Addendum filed December 7, 2016, and the recommendations contained therein.

B. Consumer Cellular, Incorporated is granted authority to use the traffic study methodology presented in its Notice and Affidavit filed October 20, 2016, and is further authorized to use the updated traffic factors as identified in the company's Affidavit for KUSF purposes.

C. Pursuant to K.S.A. 2015 Supp. 66-138, Consumer Cellular is assessed and ordered to pay the total sum of $1,200 to the Commission for the company's failure, during KUSF Operating Years 18, 19, and 20, to advise the Commission of its use of a traffic study methodology and its failure to provide and update its traffic factors in accordance with the Commission's January 24, 2012 and February 1, 2012 Orders issued in Docket No. 12-GIMT-168-GIT; and the company's failure to submit its Notice, Affidavit, and traffic study methodology within the time period prescribed under ordering paragraph C of the Commission's August 18, 2016 Order issued in the above-captioned docket. Consumer Cellular's monetary penalty payment shall reference this Docket No. 16-CSCZ-035-KSF, be made out to the Commission, and mailed to the Commission's Fiscal Office, 1500 SW Arrowhead Road, Topeka, Kansas 66604-4027, no later than thirty (30) days from the date of this Order.

D. Consumer Cellular shall, within sixty (60) days from the date of this Order, issue the amount of $2,059.69 in refunds to its current customers through one-time equal bill credits.

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In the event Consumer Cellular is unable to complete the refund within the 60-day period, it shall file in this docket an explanation disclosing why the company was unable to comply with the 60-day refund requirement and providing a timeframe within which the company anticipates completion of the refund. Upon completion of the refund, Consumer Cellular shall provide GVNW with an affidavit executed by an officer of the company attesting to completion of the refund and provide copies of customer bills to substantiate that the company has issued the refunds. Once GVNW has reviewed and verified the refunds, it is directed to provide the Commission with a Compliance Report.

E. Consumer Cellular's failure to comply with the requirements of ordering paragraphs C and D above could result in the assessment of additional monetary penalties.

F. The parties have fifteen (15) days, plus (3) days if service of this Order is by mail, from the date this Order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2015 Supp. 77-529(a)(1).

G. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such additional orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: _____

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Amy L. Green
Secretary to the Commission

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