

in the amount of \$1,856.35, some seventeen months after it was due.²

3. The Audit Report also highlights Ionex's repeated failure to comply with its KUSF obligations, including the timely submission of CRWs, assessment payments and the Company's annual Identification and Operation form. In response to these violations, GVNW's Administrative Division has assessed multiple penalties for Ionex, based on past Commission Orders for KUSF compliance. Ionex paid late payment and filing penalties in the amount of \$315.59³ for the Year 20 accounting period. The Audit Report further recommends an additional penalty under K.S.A. 2017 Supp. 66-138 for Ionex's failure to report its December 2016 revenue and to pay the corresponding KUSF assessment in a timely manner. Because of the numerous filing deficiencies Ionex has experienced in Operating Year 20 and other operating periods, GVNW also recommended Staff be directed by the Commission to initiate show cause proceedings in the event Ionex continues not to meet its statutory and regulatory KUSF obligation to submit timely reports and assessment payments. In addition, GVNW took issue with Ionex claiming confidentiality for all the information submitted to GVNW as part of the audit process. GVNW correspondingly urged disclosure of information it did not regard as a trade secret or confidential commercial information, and in which the Commission has not been inclined to give a confidential designation under its Protective Orders or in a disclosure analysis under K.S.A. 2017 Supp. 66-1220a.⁴

4. Ionex filed a response to the GVNW Audit Report on July 12, 2018, within the thirteen day period authorized for submitting a reply.⁵ Ionex accepted Audit Finding No. 2

² *Ibid* at 1 and 2.

³ Ionex was subject to \$309.84 in penalties, but overpaid by \$5.74.

⁴ *See*, Ionex – Request for Confidential Treatment and GVNW letter dated June 28, 2018.

⁵ Ionex Telecom of Kansas, LLC's Response to GVNW Audit Report.

associated with its failure to report intrastate revenue for December 2016 and to pay a timely assessment, but indicated no additional penalty should be ordered for the delinquency.⁶ Ionex stated the deficiency occurred as a result of a data processing error. Ionex submitted it timely corrected the error when apprised of it, the deficiency only covered a one-month reporting period, it reported the revenue in a revised report and paid the KUSF assessment. Ionex also indicated it had already paid significant fines and penalties related to the reporting and underpayment. In regard to a directive to have Staff initiate a show cause proceeding in the event of future deficiencies, Ionex stated it was unnecessary⁷ and stressed the seriousness to which it takes its reporting and other regulatory obligations. Ionex also indicated it had changed its reporting procedures to eliminate late filings that had occurred as a result of a misunderstanding of the due date and going forward was minimizing the number of delinquent filings. Finally, Ionex agreed to waive certain confidentiality designations it had made to information in Attachments C, E and F to the Audit Report, which it stated did not need to be treated as confidential.⁸

5. On August 17, 2018, GVNW submitted a letter to clarify it had determined Ionex owed \$1,856.36 to the KUSF based on the December 2016 revised CRW the Company submitted on June 8, 2018. However, the revised December 2016 CRW showed the Company owed an assessment of \$1,822.61 to the KUSF. In the letter, GVNW also states Ionex submitted a second revised December 2016 CRW on August 6, 2018 to correct the calculation of the assessment owed to the KUSF and paid \$1,856.35 to the KUSF, not \$1,822.61, and also paid \$315.59 in administratively assessed penalties; not \$349.33.

⁶ *Ibid* at 2.

⁷ *Ibid*.

⁸ *Ibid* at 3.

6. The Commission finds the GVNW Audit Report to be thorough and complete and accepts it as filed and updated. The Commission also accepts GVNW's letter dated August 17, 2018, stating the correct amount of assessment owed and paid to the KUSF, along with the assessed penalties. Ionex does not dispute the audit finding related to the reporting deficiency, but it does take issue with GVNW's recommendations for penalties under K.S.A. 2017 Supp. 66-138 and the proposed directive to Commission Staff regarding the initiation of a show cause proceeding in the event of future filing delinquencies by Ionex. The Commission will now address the GVNW recommendations and the confidentiality designations that Ionex has agreed to waive.

7. Audit Finding No. 1 confirms that Ionex met its responsibilities in reporting intrastate revenue to the KUSF by computing the total amount of KUSF collected from customers and dividing it by the KUSF assessment rate. GVNW performed additional audit testing to establish that Ionex applied its KUSF assessment rate to total assessable revenue derived from recurring and non-recurring service plans. With respect to the methodology used by Ionex, GVNW recommends no further action. The Audit Report does advise Ionex in fulfilling its KUSF obligation to submit Quarterly True-up Reports to reflect material changes, billing errors or corrections, or changing circumstances affecting its reported revenue and KUSF assessment. The Commission reminds Ionex that it is obligated to report its intrastate net retail revenue for KUSF purposes and is responsible for ensuring it meets its KUSF obligations. Therefore, Ionex is directed to take steps to ensure this methodology ensures it meets those obligations and submit Quarterly and/or Annual True-Ups, as appropriate, if at any time this methodology would result in Ionex not meeting its KUSF obligations.

8. Audit Finding No. 2 encapsulates Ionex's failure to properly report its December 2016 intrastate retail revenue and KUSF assessments. Ionex reported no intrastate revenue (\$0.00)

for December 2016, but collected \$1,856.37 in KUSF assessments. It made two certified filings to the KUSF Administrator reflecting no revenue. GVNW and Commission Staff contacted Ionex repeatedly about the anomaly of reporting no revenue, but failed to reach a satisfactory resolution. Ionex indicates the December 2016 revenue was not reported as a result of a data processing error and represents it attempted to correct the problem in January 2017, but apparently was unsuccessful in correcting the error. On June 8, 2018, Ionex submitted a revised December 2016 CRW and remitted payment of \$2,171.94, consisting of \$1,822.61 of assessments and \$349.33 of penalties. However, pursuant to the Audit Report and numerous reporting errors, Ionex submitted a revised December 2016 CRW on August 6, 2018 that reflected the total assessment owed to the KUSF to be \$1,856.35. Based on this reporting revision, GVNW updated its audit report on August 17, 2018, to indicate that Ionex had filed a revised December 2016 CRW showing it owed \$1,856.35 in KUSF assessments for December 2016. This amount was paid along with a payment of \$315.59 in Administration assessed penalties for a total reimbursement of \$2,171.94. These amounts were determined based on actual revenue collected by Ionex, rather than the calculated methodology referred to above in paragraph no. 6.

9. In conjunction with Ionex's failure to report its December 2016 revenue, GVNW recommends the Commission consider assessing penalties under K.S.A. 2017 Supp. 66-138 for non-compliance with Commission Orders. Ionex's failure to provide its intrastate retail revenue and the corresponding KUSF assessment payment of \$1,856.35 violates not only Commission Orders but also statutory authority to make contributions to the KUSF on a fair and equitable basis.⁹ Ionex was obligated to report monthly intrastate revenue for December 2016 and to remit the \$1,856.35 collected from customers, but did not do so for seventeen months and further revised

⁹ K.S.A. 2017 Supp. 66-2008 (a).

with a submission to GVNW on August 6, 2018. It also falsely verified an inaccurate CRW stating that it had no revenue for the month and falsely reaffirmed this inaccurate revenue in its annual KUSF assessment True-up for the March 2016 – February 2017 fiscal year. Although it was contacted numerous times by the KUSF Administrator and Staff regarding the apparent deficiency in its reporting and its assessment, Ionex failed to correct the problem in a timely manner.

9. The Commission concludes that the assessment of a penalty under K.S.A. 2017 Supp. 66-138 is an appropriate remedy for submitting inaccurate reports for December 2016, not remitting payment of the assessment collected from subscribers, not correcting the reports in a reasonable time period after numerous inquiries by the KUSF Administrator and Staff, and not taking more affirmative action to correct an error that resulted in an underpayment to the KUSF in the amount of \$1,856.35. The assessment of a penalty under K.S.A. 2017 Supp. 66-138 is not duplicative of other penalties assessed against Ionex for late payment, late filing and delinquent penalty balances established by Commission Orders involving the KUSF. KUSF penalties have not been established for the more serious infractions of failing to report revenue, pay assessments or filing incorrect verified reports. Accordingly, in this instance, the Commission has decided to institute K.S.A. 66-138 penalties. K.S.A. 66-138 provides a range of penalties between \$100 and \$5,000 for each violation occurring under the Public Utilities Act. The penalty for reporting revenue late is the greater of \$100.00 or 1% of the assessment owed for each late filing.¹⁰ In making its determination, the Commission elects to institute a penalty of \$100 for each outstanding month revenue was not reported and payment not made for the 17-month period. The Commission assesses a penalty of \$1,700.

¹⁰ Order, Docket No. 06-GIMT-332-GIT, January 23, 2006.

10. As part of the Audit Report, GVNW attached a memorandum listing multiple reporting delinquencies that establish a pattern of KUSF non-compliance, which have resulted in the assessment of KUSF penalties. These infractions relate to late CRW reporting and assessment payments, as well as late filings of the Company Identification and Operations form. Because of the frequency of late filings and payments, GVNW has requested the Commission to direct Commission Staff to initiate show cause proceedings against Ionex, if the filing and payment delinquencies continue. Given the number of filing and payment delinquencies, the Commission directs the Commission Staff to initiate show cause proceedings when it is apprised of continued delinquencies on behalf of Ionex. K.A.R. 82-1-237 provides that the Commission may commence show cause proceedings when it is informed of a carrier's violation of law or any of its orders. This is the standard practice of the Commission, and the Commission is concerned about Ionex's history of non-compliance with its KUSF obligations. Ionex, therefore, may be subject to the Commission levying additional penalties for any non-compliance with its KUSF obligations in the future.

11. The Commission has determined that when a proceeding is conducted involving confidential commercial information involving the KUSF, the disclosure of this information is governed by K.S.A. 2017 Supp. 66-1220a and may be provided if the various factors in the statute warrant review. K.S.A. 2017 Supp. 66-1220a, however, only relates to trade secrets and confidential commercial information. There are considerable amounts of information in a regulatory proceeding that are neither a trade secret nor confidential and should be publicly disclosed. To distinguish between confidential and non-confidential information, the Commission has consistently defined confidential information to include: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information;

(3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information. In this docket, GVNW requested Ionex to disclose certain information that was not confidential. GVNW requested Exhibits C, E and F be publicly disclosed as non-confidential. Ionex agreed to waive confidentiality designations to Exhibits C, E and F. Accordingly, the information should be made public in an updated Audit Report.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission accepts and adopts GVNW Consulting, Inc.'s Audit Report filed June 29, 2018 and the letter dated August 17, 2018.

B. Ionex Communications, LLC is to pay \$1,700 in accordance with K.S.A. 2017 Supp. 66-138 (a) (1) as set forth in paragraph no. 10 of the Order. The payment shall reference Docket No. 18-BTKT-033-KSF, be made out to the Commission's Fiscal Office, 1500 SW Arrowhead Road, Topeka, Kansas 66604-4027, and submitted no later than thirty (30) days from the date of this Order.

C. GVNW Consulting Inc. is directed to file an updated Audit Report to remove the previously designated confidential sections within 10 days of the issuance of this Order. GVNW Consulting, Inc. is also directed to file a Compliance Report within 60-days of the issuance of this Order.

D. The Commission directs Staff to initiate a show cause proceeding if Ionex Communications, LLC becomes delinquent in its KUSF obligations.

E. The Commission retains jurisdiction over Ionex Communications, LLC and the subject matter of this Docket for the purpose of issuing such additional orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 09/13/2018



Lynn M. Retz
Secretary to the Commission

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CERTIFICATE OF SERVICE

18-ICIT-041-KSF

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 09/14/2018.

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