

to 2012 per GVNW's recommendation and as previously requested by Staff as a late-filed pleading are acceptable; and (3) Comcast IP Phone, LLC's recovery of KUSF on bills for VoIP service does not require modification.²

4. As noted above, the Audit Report resulted in three particular findings and recommendations.

5. Audit Finding No. 1:

Standard: Carriers are to report gross revenues prior to recognizing any customer discounts for KUSF reporting purposes through June 30, 2016.³ Effective July 1, 2016, companies are authorized to report revenues to the KUSF net of customer discounts.

Finding: Comcast reported revenues to the KUSF after deducting discounts to customers for the period of March through June 2016. Due to the manner in which the Company maintains its books and records, the Company was unable to provide the actual discounted revenues. Instead, Comcast Phone provided an estimate based on the full subscriber rate for its residential subscribers, indicating the Company under-paid its KUSF assessments by \$33,972.66. Based on the information provided to GVNW, the additional assessment owed to the KUSF is a reasonable approximation for purposes of this Docket.

Recommendation: The Company should be directed to submit Audit True-ups for the period of March through June 2016 and pay the additional \$33,972.66 of assessments to the KUSF within thirty (30) days of the Commission's issuance of an Order in this Docket.

6. Comcast Phone argued in response that "its books and records and billing system recognize revenue actually earned, which is necessarily revenue net of discount, not gross revenue."⁴ Comcast Phone stated that it uses Generally Accepted Accounting Principles (GAAP) for its bookkeeping and billing, and thus, reporting gross revenues "would be inconsistent with GAAP's revenue recognition standards."⁵ Comcast Phone further argued that requiring it to report gross revenues would be inequitable and unreasonably complex, and thus, Comcast Phone asserted

² Response of Comcast Phone of Kansas, LLC to Audit Report, pp. 6-7 (May 29, 2018) (Response).

³ *Order Adopting KUSF Assessment Rate for Year Eighteen of KUSF Operations*, 14-GIMT-105-GIT (Jan. 23, 2014) and *Order Closing Docket* (July 19, 2016).

⁴ Audit Report, Attachment D, p. 1.

⁵ Audit Report, Attachment D, p. 1.

that the Kansas legislature intended carriers “to pay on revenues net of discount.”⁶ In addition to the above arguments, Comcast Phone’s Response noted an alternative whereby Comcast Phone collaborated with GVNW “to develop a methodology that would allow it to determine estimated gross revenues from March 1, 2016 until the enactment of K.S.A. 66-2008(a) on July 1, 2016 on which the attendant KUSF assessment could be based.”⁷

7. The Commission disagrees with Comcast Phone’s response to GVNW’s Audit Finding No. 1. There are no exceptions to the Commission’s finding in Docket No. 14-GIMT-105-GIT, which applied to the period of March through June 2016: “Carriers contributing to the KUSF are reminded to report gross revenues, prior to any service discounts, for KUSF purposes. Failure to do so is a violation of Commission order and may warrant penalties or a show cause proceeding.”⁸ However, Comcast Phone worked with GVNW to develop an alternative methodology to estimate its gross revenues for the period of March through June 2016.⁹ This methodology results in the Company owing \$33,972.66 to the KUSF.¹⁰ Thus, the Commission adopts GVNW’s Audit Finding No. 1, as well as its recommendation regarding the Finding.

8. Audit Finding No. 2:

Standard: VoIP providers are to report their revenues to the KUSF Administrator using the same revenue identification methodology as that used for Federal USF purposes.¹¹ If a company identifies revenue using either a traffic study or direct assignment, the company is to submit a pleading, updated at least annually, advising the Commission of the methodology; provide the intrastate factor, if applicable, and relevant time period(s) for each factor; and verify this same methodology is used for federal and KUSF purposes. An affidavit, signed by an officer of the company is to accompany the pleading.

⁶ Audit Report, Attachment D, p. 1.

⁷ Response, ¶ 6.

⁸ *Order Adopting KUSF Assessment Rate for Year Eighteen of KUSF Operations*, Ordering Clause D (Jan. 23, 2014).

⁹ Response, ¶ 6.

¹⁰ Audit Report, Finding 1.

¹¹ Docket No. 07-GIMT-432-GIT, *Implementation Order Adopting Staff Report and Recommendation and Requiring VoIP Providers Operating in Kansas to Report and Remit to the Kansas Universal Service Fund by January 15, 2009*, ¶¶ 3, 12, 14 (Sept. 22, 2008) (07-432 Order); Docket No. 12-GIMT-168-GIT, *Amended Order Setting the Kansas Universal Service Fund Assessment Rate for Year Sixteen and Cancelling Hearing* (Feb. 1, 2012) (12-168 Amended Order).

Finding: Comcast Phone has used a company-specific methodology to identify local, intrastate and interstate revenues, but did not submit the required pleading to the KCC until February 2018. Comcast Phone has filed a Notice of Allocation Methodology Utilized by Comcast Phone of Kansas, LLC in Docket No. 17-GIMT-008-GIT (17-008 Notice) and an affidavit. However, Staff has advised GVNW that it has requested the Company to submit an amended or revised pleading and/or affidavit to comply with all Commission-directed requirements.

Recommendation: The Commission should direct the Company to submit a corrected pleading and/or affidavit, as applicable, to include the required information and submit annual updates in accordance with Commission Orders. The Commission may wish to consider the assessment of fines pursuant to K.S.A. 66-138 for non-compliance with Commission Orders.

9. Comcast Phone stated in response that its failure to submit the required pleading was an inadvertent oversight.¹² Comcast Phone stated that it “confirmed that it has used the same methodology for both the FUSF and the KUSF since 2012” and it will make the necessary updated filing “as soon as practicable.”¹³

10. The Commission disagrees with Comcast Phone’s response to GVNW’s Audit Finding No. 2. Notwithstanding Comcast Phone’s professed administrative oversight and inadvertence in failing to report its contribution methodology since 2012, Comcast Phone was required to submit the reports pursuant to the Commission’s Orders cited in footnote 11 above. Comcast Phone’s welcome efforts to provide the required certifications of its contribution methodology for the past reporting periods do not excuse the Company’s noncompliance with the referenced Commission Orders. Thus, the Commission adopts GVNW’s Audit Finding No. 2, as well as its recommendation regarding the Finding. The Commission also assesses Comcast Phone a \$300.00 per year penalty pursuant to K.S.A. 66-138 for each year it failed to comply with the Commission’s Orders, for a total penalty of \$2,100.

¹² Audit Report, Attachment D, p. 1.

¹³ Response, ¶ 7.

11. Audit Finding No. 3

Standard: Any federal, state, local government and/or regulatory taxes, fees and/or surcharges, shall be itemized on a subscriber's bill and be clearly identified.¹⁴

Finding: Comcast Phone has not clearly identified the KUSF surcharge on its subscriber's bills. The KUSF surcharge is included in the billing category entitled "Regulatory Recovery Fee" that also includes other federal regulatory fees.¹⁵ Billing fees and surcharges are to be detailed and plainly listed on a customer's bill. The Company is unaware of any obligation applying to its affiliate's VoIP services.¹⁶

Recommendation: GVNW recommends that the KCC direct Comcast Phone to clearly identify the KUSF surcharge as a separate line item on a subscriber's bill and provide ten (10) copies of customer bills to GVNW that clearly demonstrate the KUSF surcharge as a separate line item. Once GVNW has received and reviewed the sample customer bills, GVNW will submit a Compliance Report to the Commission.

Comcast Phone's response to Audit Finding No. 3 indicates that Comcast IP Phone, LLC is the responsible company for ensuring that the subscriber invoice separately identifies the KUSF surcharge. Alternatively, the Company suggests that the Comcast Xfinity Voice Residential Pricing List effective March 1, 2018 adequately addresses this finding. (Attachment C, page 3 of 3). Since Comcast Phone reports to the KUSF on behalf of these entities, GVNW is required to identify this finding to the Commission.

12. Comcast Phone responded by asserting that it includes the referenced line item on subscriber bills for retail voice over internet protocol (VoIP) service issued by Comcast IP Phone, LLC, which is an affiliate of Comcast Phone.¹⁷ Comcast Phone stated that it "does not serve or invoice retail customers."¹⁸ Regarding the application of 47 C.F.R. 64.2401(b), Comcast phone questioned GVNW's alleged assumption that the Commission is permitted to enforce a federal

¹⁴ Second Report and Order Declaratory Ruling and Second Further Notice of Proposed Rulemaking, Federal Communications Commission (FCC), CC Docket No. 98-170, CG Docket No. 04-208, March 10, 2005 (FCC Second Order). The FCC removed the exemption of Commercial Mobile Radio Service from its Truth In Billing Standards (47 CFR 64.2401). Section 64.2401(b) states, in part, "Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading plain language description of the service or services rendered."

¹⁵ See Comcast Phone response to GVNW Data Request No. 24 (Attachment C to Audit Report). The Regulatory Fee is a Comcast service charge imposed on voice services to recover Comcast's contributions for federal, state and municipal regulatory programs and assessments, including, without limitation, universal service.

¹⁶ *Id.*

¹⁷ Audit Report, Attachment D, p. 2. See Response, ¶ 9.

¹⁸ Audit Report, Attachment D, p. 2. See Response, ¶ 9.

rule.¹⁹ Nonetheless, Comcast Phone argued that “[t]o the extent that section 64.2401(b) of the FCC’s rules applies to bills for VoIP service, Comcast IP Phone, LLC’s method of collecting the KUSF surcharge as part of the Regulatory Recovery Fee is in compliance with that rule.”²⁰ Thus, “Comcast Phone of Kansas, LLC believes that Comcast IP Phone, LLC is not required to modify its billing practices with regard to the recovery of KUSF.”²¹

13. The Commission disagrees with Comcast Phone’s response to GVNW’s Audit Finding No. 3. 47 C.F.R. 64.2400(a) states that the truth-in-billing rules “are . . . intended to aid customers in understanding their telecommunications bills.” Subsection (b) states: “These rules shall apply to all telecommunications common carriers and to all bills containing charges for intrastate or interstate services.”²² 47 C.F.R. 64.2401(b) provides that: “Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.” GVNW determined that the billing category entitled “Regulatory Recovery Fee” proffered by Comcast Phone under the Comcast Xfinity Voice Service Residential Pricing List (Effective: March 01, 2018) does not meet the foregoing billing criteria established under 47 C.F.R. 64.2401(b). The Commission concurs with GVNW’s assessment. Thus, the Commission adopts GVNW’s Audit Finding No. 3, as well as its recommendation regarding the Finding.

¹⁹ Response, ¶ 10.

²⁰ Audit Report, Attachment D, p. 2. *See* Response, ¶ 11.

²¹ Audit Report, Attachment D, p. 2. *See* Response, ¶ 11.

²² 64.2400(b) contains exceptions for subsections of 64.2401 other than 64.2401(b), which is at issue here. Moreover, 64.2400(c) states that “[t]he requirements contained in this subpart are not intended to preempt the adoption or enforcement of consistent truth-in-billing requirements by the states.” Nothing in this statement prevents states from enforcing the requirements provided in 64.2401(b).

14. Having reviewed GVNW's KUSF Audit Report filed in this matter on May 16, 2018, the Commission adopts the Audit Report and the recommendations contained therein.

THEREFORE, THE COMMISSION ORDERS:

A. GVNW Consulting, Inc.'s Audit Report and recommendations filed in this matter on May 16, 2016, are adopted.

B. Regarding Audit Finding No. 1, Comcast Phone is directed to submit Audit true-ups for the period of March through June 2016 and to pay the additional assessment of \$33,972.66 to the KUSF for the period of March through June 2016, with the submission of true-ups and payment to be completed within thirty (30) days from the date of this Order. Upon GVNW's receipt, review, and acceptance of Comcast Phone's true-up and Comcast Phone's payment of \$33,972.66 to the KUSF, GVNW is directed to submit a Compliance Report to the Commission.

C. Regarding Audit Finding No. 2, Comcast Phone is directed to submit to the Commission, within thirty (30) days from the date of this Order, a corrected pleading and/or affidavit, as applicable, to include the required information and submit annual updates in accordance with Docket Nos. 07-GIMT-432-GIT and 12-GIMT-168-GIT. For Comcast Phone's failure to submit a pleading and/or affidavit advising the Commission of its revenue identification methodology and verifying that the same methodology is used for Federal and KUSF purposes, Comcast Phone is assessed a monetary penalty of \$300 per year for each of the unreported seven (7) years, 2012-2018, for a total monetary penalty of \$2,100.²³ Comcast Phone's payment shall reference this docket, 18-CPKT-035-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.

²³ K.S.A. 2016 Supp. 66-138.

D. Regarding Audit Finding No. 3, Comcast Phone is directed to clearly identify the KUSF surcharge as a separate line item on subscriber bills and provide ten (10) copies of customer bills to GVNW that clearly show the KUSF surcharge as a separate line item. Submission of the required copies shall be made within sixty (60) days from the date of this Order. If Comcast Phone is unable to submit the required copies within sixty (60) days from the date of this Order, the Company should file a Motion in this docket requesting an extension of time. Upon GVNW's receipt, review, and acceptance of the customer bills, GVNW is directed to submit a Compliance Report to the Commission.

E. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²⁴

F. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 07/12/2018



Lynn M. Retz
Secretary to the Commission

MJD

²⁴ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-CPKT-035-KSF

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 07/12/2018.

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