

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Audit of Comcast Phone of)
Kansas, LLC by the Kansas Universal Service)
Fund (KUSF) Administrator Pursuant to K.S.A.) Docket No. 18-CPKT-035-KSF
2016 Supp. 66-2010(b) for KUSF Operating Year)
20, Fiscal Year March 2016-February 2017.)

RESPONSE OF COMCAST PHONE OF KANSAS, LLC TO AUDIT REPORT

COMES NOW Comcast Phone of Kansas, LLC ("Comcast" or "Company"), by and through its undersigned counsel, and submits its Response to the Audit Report filed by GVNW Consulting, Inc. ("GVNW") on May 16, 2018.

I. Background

1. On August 1, 2017, the State Corporation Commission of the State of Kansas ("Commission") issued its *Order to Kansas Universal Service Fund Administrator to Commence Audit of Comcast Phone of Kansas, LLC and Order Setting Procedural Schedule* ("Order") in the instant docket. In its Order, the Commission explained that, pursuant to K.S.A. 2012 Supp. 66-2010(b), Comcast is subject to audit for Kansas Universal Service Fund ("KUSF") purposes at least every four years. Comcast was selected as a Group Three carrier subject to audit for KUSF Operating Year 20.¹ Order at 2-3. The Commission further explained that the purpose of the periodic audit of all carriers is to verify that carriers are reporting revenue information in a manner consistent with K.S.A. 2012 Supp. 66-2010(b). Order at 2.

2. The Commission also stated that GVNW shall file its audit report and recommendations no later than Friday, June 29, 2018, and Comcast shall file its response, if any, to the report no later than 13 days from the date on which GVNW files the audit report with the Commission. Order at 3.

¹ Docket No. 16-GIMT-067-GIT.

3. GVNW filed its Kansas Universal Service Fund Audit Report ("Audit Report") on May 16, 2018. In its Audit Report, GVNW made three distinct findings:

- Finding No. 1: Comcast Phone reported revenues to the KUSF net of discounts for the period of March through June 2016 and underpaid \$33,972.66 in KUSF assessments.
- Finding No. 2: The Company failed to file a pleading advising the Commission of the allocation methodology it uses to report intrastate revenues for its Voice over Internet Protocol (VoIP) traffic, an affidavit from an officer of Comcast Phone, to verify that the Company is using this same methodology for both Federal Universal Service Fund ("FUSF") and KUSF purposes, since 2012, and the intrastate factors used and the applicable time periods.
- Finding No. 3: The KUSF surcharge collected from customers was not separately identified, but included in a single line item charge identified as "Regulatory Recovery Fee."

Audit Report at 1-2. GVNW recommends *inter alia* that the Commission adopt the above audit findings and direct Comcast to: submit audit true-ups for KUSF assessments and pay the associated \$33,972.66 of assessments to the KUSF; submit an appropriate notice of allocation methodology, including confidential affidavit, dating back to 2012; separately identify the KUSF surcharge on the customers' bills; and provide ten customers' bills to GVNW to demonstrate the KUSF surcharge is a separate line item.

4. As allowed by the Commission in its Order, Comcast makes the following Response to GVNW's Audit Report.

II. Response to Audit Report

A. Audit Finding No. 1

5. With regard to Finding No. 1, GVNW found that Comcast reported revenues to the KUSF net of discounts for the period of March through June 2016² and underpaid \$33,972.66 in KUSF assessments.³ While Comcast understands that the Commission issued an order in Docket No. 14-GIMT-105-GIT reminding carriers to report gross revenues for KUSF purposes, Comcast respectfully submits that its books and records and billing system recognize revenue actually earned, which is necessarily revenue net of discount and allocated proportionally among the various services, not gross revenues prior to recognizing any customer discounts. As a public company, Comcast maintains its books and records, as well as its billing systems, consistent with Generally Accepted Accounting Principles ("GAAP"). Consequently, requiring that intrastate VoIP telephony revenues not be discounted for KUSF purposes would be inconsistent with GAAP's revenue recognition standards, which require the application of service discounts proportionally to each service. In addition, Comcast does not believe this finding is equitable since it would disproportionately assign greater service discounts to other products. Finally, given that legislation specifically allowing for the reporting of revenue net of discount was signed by the Kansas Governor on April 6, 2016, and became effective on July 1, 2016, it would be an unreasonably complex and inefficient use of resources for Comcast to operationalize its

² To refresh the Commission's recollection, the issue of carriers reporting revenues net of discounts was the subject of a general investigation in Docket No. 14-GIMT-105-GIT ("14-105 Docket"). In the 14-105 Docket, the Commission instigated an examination of its KUSF contribution policies, to which Comcast was an active participant. In its October 20, 2015 Order Determining KUSF Contribution Methodology, the Commission determined that carriers should report gross revenues. The order was appealed, and during the pendency of the appeal, the Kansas Legislature enacted legislation providing that KUSF contributions were to be based on carriers' net revenues. See K.S.A. 66-2008(a). Such legislation became effective on July 1, 2016, approximately four months after the start of KUSF Year 20.

³ See Comcast's response to GVNW's Data Request No. 23, attached hereto as Confidential Attachment B to GVNW's Audit Report, setting out Comcast's estimated gross revenues prior to recognizing any customer discounts for the period of March through June 2016 and associated assessments.

billing system to bill discounted telephony services while simultaneously recovering KUSF on the undiscounted rate from subscribers for such a limited time frame. Therefore, Comcast respectfully requests that KUSF not be applied on gross intrastate telephony revenues from March 2016 through June 2016. We believe the Kansas Legislature's actions effective July 2016 evidences the intention for carriers to pay on revenues net of discount.

6. Alternatively, because Comcast reports revenues actually collected -- that is, net revenues -- and not gross revenues, the Company worked with GVNW to develop a methodology that would allow it to determine estimated gross revenues from March 1, 2106 until the enactment of K.S.A. 66-2008(a) on July 1, 2016 on which the attendant KUSF assessment could be based.

B. Audit Finding No. 2

7. With regard to Finding No. 2, GVNW found that the Company failed to file a pleading advising the Commission of the allocation methodology it uses to report intrastate revenues for its VoIP traffic, an affidavit from an officer of Comcast Phone to verify that the Company is using this same methodology for both FUSF and KUSF purposes since 2012, and the intrastate factors used and the applicable time periods. As explained in response to GVNW's Data Request No. 15, attached as Attachment A to GVNW's Audit Report, and Comcast's response to GVNW's Audit Report, attached as Attachment D to the Audit Report, although KUSF remittances were made, it does not appear that pleadings were filed to advise the Commission of the contribution methodology. This administrative oversight was inadvertent. Comcast filed its KUSF Year 21 Notice of Allocation Method and affidavit on February 28, 2018. In its allocation methodology filing, Comcast confirmed that it has used the same methodology for both the FUSF and the KUSF since 2012. Comcast is in the process of

preparing its notice of allocation methodology and confidential affidavit setting out the intrastate factors used dating back to 2012 per GVNW's recommendation and as previously requested by Staff. Such updated filing will be made as soon as practicable.

C. Audit Finding No. 3

8. With regard to Finding No. 3, GVNW found that the KUSF surcharge collected from customers was not separately identified, but included in a single line item charge identified as "Regulatory Recovery Fee." GVNW recommends that the Commission order Comcast to separately identify the KUSF surcharge on the customers' bills and provide ten customers' bills to GVNW to demonstrate the KUSF surcharge is a separate line item.

9. As Comcast has previously explained to GVNW,⁴ the "Regulatory Recovery Fee" is included on subscriber bills for retail VoIP service provided by Comcast IP Phone, LLC, an unregulated affiliate of Comcast Phone of Kansas, LLC that is not subject to the Commission's billing regulation.⁵ As a regulated competitive local exchange carrier, Comcast Phone of Kansas, LLC provides interconnection to the Public Switched Telephone Network and other network services to enable Comcast IP Phone, LLC's VoIP offering, but it does not serve or invoice retail customers. Instead, for KUSF remittance purposes, Comcast Phone of Kansas, LLC reports VoIP revenues and remits on behalf of Comcast IP Phone, LLC.

10. In spite of this threshold issue, GVNW supports its finding and recommendations by citing Section 64.2401(b) of the Federal Communications Commission's ("FCC") rules, which requires charges contained on "telephone bills" to be "accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered." It is not clear why

⁴ See Attachments C and D to GVNW's Audit Report.

⁵ See K.S.A. 66-2017.

GVNW assumes that the Commission is permitted to enforce a federal rule.⁶ Even if the Commission could enforce the FCC's rule, it is important to note that the FCC has not applied Section 64.2401(b) to bills for VoIP service.⁷

11. Moreover, even if Section 64.2401(b) of the FCC's rules did apply to bills for VoIP service, Comcast IP Phone, LLC's method of collecting the KUSF surcharge as part of the Regulatory Recovery Fee would be in compliance with that rule. Specifically, Comcast IP Phone, LLC's pricing list expressly states that the Regulatory Recovery Fee is "neither government mandated nor a tax, but is assessed by Comcast to recover the costs of certain federal, state and local impositions related to voice services." In addition, the posted price list ("Kansas_pricing_list.pdf") for Xfinity Voice service in Kansas describes the Regulatory Recovery Fee as "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."⁸ The Kansas price list goes on to identify a percentage of the Regulatory Recovery Fee as recovering Comcast's contribution to the state universal service fund. Therefore, 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.

WHEREFORE, Comcast Phone of Kansas, LLC, submits the above and foregoing Response to GVNW's Audit Report filed herein on May 16, 2018. Comcast specifically requests an order from Commission as follows: (a) finding that KUSF not be applied on gross intrastate

⁶ See 47 C.F.R. § 64.2400(c) (noting that a state could adopt and then enforce a consistent truth-in-billing requirement).

⁷ See, e.g., In the Matter of Protecting Consumers from Unauthorized Carrier Changes & Related Unauthorized Charges, 32 F.C.C. Rcd. 6022, ¶ 13 (2017); In the Matter of Consumer Info. & Disclosure Truth-in-Billing & Billing Format IP-Enabled Servs., 24 F.C.C. Rcd. 11380, ¶ 12 (2009).

⁸ The price list is also available at www.xfinity.com/tariffs.

telephony revenues from March 2016 through June 2016;⁹ (b) accepting Comcast's notice of allocation methodology and confidential affidavit setting out the intrastate factors used dating back to 2012 per GVNW's recommendation and as previously requested by Staff as a late-filed pleading; and (c) recognizing that Comcast IP Phone, LLC's recovery of KUSF on bills for VoIP service does not require modification.

Respectfully submitted,

/s/ Susan B. Cunningham

Susan B. Cunningham, KS #14083
Dentons US LLP
7028 SW 69th Street
Auburn, KS 66402
Direct: (816) 460-2441
Cell: (785) 817-1864
Fax: (816) 531-7545
Email: susan.cunningham@dentons.com

Attorney for Comcast Phone of Kansas, LLC

⁹ Alternatively, the Company worked with GVNW to develop a methodology that would allow it to determine estimated gross revenues from March 1, 2106 until the enactment of K.S.A. 66-2008(a) on July 1, 2016 on which the attendant KUSF assessment could be based.

VERIFICATION

K.S.A. 53-601

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

I, Susan B. Cunningham, verify under penalty of perjury that I have caused the foregoing Response of Comcast Phone of Kansas, LLC, to Audit Report to be prepared on behalf of Comcast Phone of Kansas, LLC, and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

/s/ Susan B. Cunningham

Susan B. Cunningham

May 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Response of Comcast Phone of Kansas, LLC, to Audit Report was served via electronic mail, U.S. mail or hand-delivered this 28th day of May, 2018, to the parties appearing on the Commission's service list, as last modified on January 22, 2018.

/s/ Susan B. Cunningham

Susan B. Cunningham