

3. Staff submitted a Report and Recommendation (Staff's R&R) regarding Granite's request on October 26, 2021, filed in this Docket on October 27, 2021. Staff states that Granite's filing included a copy of its check, which shows it was dated July 14, 2021, one day prior to the due date. However, the bank did not receive the payment prior to the due date of July 15, 2021. Staff stated that for KUSF purposes, "the date of receipt, not mailing or post mark date, is the date upon which penalties are based...if Granite wanted to ensure that its payment was received the next day, it could have used overnight delivery or electronically remitted the payment."³ VPS assessed Granite three Delinquent penalties, with the second and third penalties totaling \$1.03.

4. The KUSF Administrator has been authorized to levy penalties since 1997.⁴ The Commission most recently modified the penalties in September 2018.⁵ The Commission requires VPS to levy the following penalties to providers that fail to timely register, file reports, and/or pay their KUSF contributions by the due date:

a. Late Filing Penalty is assessed when a company registers with the KUSF after the April 15th due date or reports revenue after the 15th of the month (or next business day if the 15th is a weekend or holiday). The Late Filing Penalty for registering with the KUSF after the due date is \$100 per month and the Late Filing Penalty for reporting revenue after the due date is 1% per month (12% annum) or \$100, whichever is greater.

b. Late Payment Penalty, assessed at 1% per month (12% annum) of the amount due to the KUSF, is levied when payment is received by the KUSF bank after the due date.

c. Delinquent Balance Penalty is assessed at 1% per month (12% annum) of the total outstanding KUSF balance, including assessment principle and penalties, as of the last day of the month.⁶

³ Staff's R&R at p 2.

⁴ Order Authorizing KUSF Administrator to Assess Late Payment Fee, Docket No. 190-492-U (94-GIMT-478-GIT), Feb. 19, 1997.

⁵ Order Modifying KUSF Penalties, Sept. 27, 2018, and Order Granting Petition of Southwestern Bell Telephone Company for Clarification and/or Reconsideration of Order Modifying Kansas Universal Service Fund Penalties, Docket No. 18-GIMT-084-GIT, Oct. 30, 2018.

⁶ Staff's R&R, p. 2-3.

5. In order to determine if a penalty reduction is appropriate, Staff looked to the Commission's penalty guidelines adopted in Docket No. 20-GIMT-086-GIT,⁷ and discussed the Commission's guidelines for imposing penalties when a carrier fails to comply with KUSF obligations. The Commission considers a violation to have occurred on a monthly basis, unless the Commission determines a different treatment is warranted.⁸

6. Staff states the guidelines discussed above would be appropriate for evaluating the conduct of Granite in this Docket where Granite failed to comply with its KUSF requirements. As such, Staff utilized the guidelines in considering whether it would be appropriate for the Commission to reduce the KUSF administrative penalties assessed to Granite. Staff's evaluation recognized the following:

a. Granite mailed its assessment contribution on July 14, 2021, and it was received after the due date of July 15, 2021. Granite continues to owe \$51.22 in Delinquent Balance penalties.

b. Granite's actions did not result in substantial harm to the KUSF and/or contributors to the KUSF, including subscribers and did not result in substantial economic gain to the Company.

c. The Company also has a history of overall compliance.⁹

7. Based on the circumstances, Staff recommends the Commission deny Granite's request to waive all of its Delinquent Balance penalties and, instead, direct Granite to pay the \$50.19 Delinquent Balance penalty within 21 days of an Order. Staff also recommends the

⁷ Order Clarifying and Adopting KUSF Election Criteria and KUSF Administrative Penalties, Docket No. 20-GIMT-086 (Mar. 3, 2020).

⁸ Staff's R&R, p. 2-3.

⁹ Staff's R&R, p. 3.

Commission waive the September and October Delinquent Balance penalties for a total of \$1.03.¹⁰

8. The Commission adopts Staff's analysis, as stated in its Report and Recommendation, filed October 27, 2021, and finds Granite's KUSF penalties should be reduced as recommended.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Granite Inc.'s request to waive all KUSF penalties is denied.

B. Granite Inc. is granted a reduction in KUSF penalties. The penalties owed by the Company are reduced from \$51.22 to \$50.19.

C. Granite Inc. shall submit payment of the \$50.19 to the KUSF within twenty-one (21) days of this Order. If the Company fails to remit payment all penalties will be reinstated. VPS is directed to write-off the \$1.03 of additional Delinquent penalties.

D. 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).¹¹

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 11/23/2021



Lynn M. Retz
Executive Director

¹⁰ *Id.*

¹¹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

22-GR TT-168-KSF

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/23/2021.

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