

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of an Investigation to Determine)
the Assessment Rate for the Twenty-Second)
Year of the Kansas Universal Service Fund,) Docket No. 18-GIMT-084-GIT
Effective March 1, 2018.)

**ORDER GRANTING PETITION OF SOUTHWESTERN BELL TELEPHONE
COMPANY FOR CLARIFICATION AND/OR RECONSIDERATION OF ORDER
MODIFYING KANSAS UNIVERSAL SERVICE FUND PENALTIES**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records, the Commission makes the following findings:

1. On July 31, 2018, in the 18-BTKT-033-KSF Docket (18-033 Docket), the Commission issued an Order adopting GVNW Consulting, Inc.'s (GVNW) Audit Report, expressing its concerns about relying on a company's verification of its KUSF data when: (1) the reported information is incorrect; or (2) a company has failed to comply with its obligation to correct past filings or remit payment of assessments collected from subscribers in a timely manner.¹ Thus, the Order directed Staff to file a Report and Recommendation (R&R) in the present Docket by August 31, 2018, to propose both a process for and the appropriate penalties to be levied for failure to timely submit corrections of previously reported data and/or pay monies collected from subscribers for Kansas Universal Service Fund (KUSF) purposes.²

¹ Order Adopting Audit Report, Docket No. 18-BTKT-033-KSF (18-033 Order), July 31, 2018, ¶ 12.

² *Id.*

2. On August 24, 2018, the Commission's Staff submitted its R&R, recommending the Commission issue an order modifying the KUSF penalties, effective the start of the first full month after the order is issued.

3. On September 27, 2018, the Commission issued its Order Modifying KUSF Penalties, replacing the late Carrier Remittance Worksheet (CRW) penalty with a new Late Filing Penalty (LFP). The LFP is assessed at 1% per month (12% per annum) of the assessment due or \$100.00, whichever is greater. The LFP for the Carrier Identification and Operations form is \$100.00 per month.³ The order adopted two exceptions to the LFP: first, for wireless or Voice over Internet Protocol (VoIP) service providers who, when registering with the KUSF, state on their Carrier Identification and Operations form they do not generate any Kansas intrastate retail revenue; and second, when a late filing does not deprive the KUSF of funds or results in a credit owed to the provider. The Commission adopted a due date for a revised CRW or True-up as 30 calendar days from the date a company receives written notification from GVNW that a variance or other concern with a filing exists and a revision may need to be filed. The LFP is based on the date received by GVNW, not postmarked or sent.

4. Additionally, the Order Modifying KUSF Penalties directed GVNW to provide written notification to a company to resolve the issue and file a revision, within 30 calendar days, and specifying the due date.

5. Finally, the Order Modifying KUSF Penalties amended the Late Payment Penalty (LPP) to apply the LPP whenever an additional assessment is due to the KUSF. The LPP will continue to be assessed at 1% per month (12% per annum) of any assessment due to the KUSF.

³ Every company required to report to the KUSF must file the Company Operations and Identification form, referred to as "Attachment B", annually. A company may submit multiple forms during a KUSF Year to ensure its information is correct. *See* Order Setting the Kansas Universal Service Fund Assessment Rate for Year Ten and Establishing Reporting Requirements, Docket No. 06-GIMIT-332-GIT, Jan. 23, 2006.

6. On October 11, 2018, Southwestern Bell Telephone Company d/b/a AT&T Kansas; AT&T Corp.; Teleport Communications America, LLC; SBC Long Distance, LLC; New Cingular Wireless PCS, LLC d/b/a AT&T Mobility; and, Cricket Wireless, LLC (collectively AT&T) filed its Petition of Southwestern Bell Telephone Company for Clarification and/or Reconsideration of Order Modifying Kansas Universal Service Fund Penalties. The Petition claimed the Commission's Order was not clear regarding whether the Late Filing Penalty would apply to a revision filed by the 30-calendar day due date and whether the LFP should apply when a company self-identifies and self-reports an error. Accordingly, AT&T requested the Commission: (1) clarify when the LFP should be applied; and (2) establish a third exception to the LFP when companies self-identify and self-report errors.

7. On October 16, 2018, Staff filed its Response to AT&T's Petition for Clarification and/or Reconsideration of Order Modifying Kansas Universal Service Fund Penalties, supporting AT&T's request to clarify the Order Modifying Kansas Universal Service Fund Penalties to explain that the Late Filing Penalty does not apply when the KUSF Administrator receives a requested revision within the 30 calendar days. Staff also requested the Commission clarify that once the KUSF Administrator provides written notice to a carrier regarding a revision, the LFP will only be applied if payment of additional monies owed to the KUSF are not received by the bank within 30-calendar days. Finally, Staff recommended the Commission clarify the LFP will not apply when a company self-reports and self-corrects an error. However, Staff believes the Commission should direct the KUSF Administrator to notify Staff if the Administrator observes a trend in a particular company of submitting revisions due to errors.

8. After reviewing the record, the Commission amends its Order Modifying KUSF Penalties to reflect the Late Filing Penalty will not apply when the KUSF Administrator receives

a requested revision within the 30 calendar days and the Late Payment Penalty will not be applied if the bank receives the additional monies owed to the KUSF within 30-calendar days. Additionally, the Commission clarifies that although the Late Filing Penalty will not apply when a company self-reports and self-corrects an error, the KUSF Administrator is directed to notify Staff if a company develops a trend of submitting revisions and claiming the revisions are due to errors to determine whether further action needs to be taken.

THEREFORE, THE COMMISSION ORDERS:

A. Southwestern Bell Telephone Company's Petition for Clarification of Order Modifying Kansas Universal Service Fund Penalties, as supplemented by Staff's Response, is granted.

B. The Late Filing Penalty will not apply when the KUSF Administrator receives a requested revision within 30-calendar days of the KUSF Administrator's written notice regarding a revision.

C. The Late Payment Penalty will not be applied if the bank receives the additional monies owed to the KUSF within 30-calendar days, as identified in the written notice from the KUSF Administrator.

D. The Late Filing Penalty will not apply when a company self-reports and self-corrects an error, however, the KUSF Administrator is directed to notify Staff if a company develops a trend of submitting revisions due to errors.

E. The parties have fifteen (15) days from the date this Order, plus (3) if served by mail to petition for reconsideration.⁴

⁴ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

F. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chairman; Emler, Commissioner; Keen, Commissioner

Dated: 10/30/2018



Lynn M. Retz
Secretary to the Commission

CERTIFICATE OF SERVICE

18-GIMT-084-GIT

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 10/30/2018.

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