

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of a General Investigation for)
Access Point, Inc. to Show Cause Why This)
Commission Should Not Initiate Sanctions and) Docket No. 18-APTC-159-SHO
Fines and any Certificate of Convenience and)
Authority the Carrier Holds Be Canceled,)
Suspended, or Revoked for Non-Compliance)
with Commission Orders and Kansas Statutes.)

ORDER TO SHOW CAUSE

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. Pursuant to Commission Orders dated October 7, 1997,¹ and May 1, 2008,² Access Point Inc. (Access Point) holds Certificates of Convenience and Authority to provide both interexchange (IXC) and competitive local exchange (CLEC) services in Kansas.

2. Kansas statutes impose specific duties on businesses and telecommunications public utilities operating within the state.³ K.S.A. 17-7931(a) requires foreign corporations to obtain authority from the Kansas Secretary of State before engaging in business in Kansas. K.S.A. 66-1503 requires all public utilities and common carriers to pay assessments to the Commission. K.S.A. 66-123 requires public utilities to file Annual Reports with the Commission. K.S.A. 66-2008 requires all telecommunications public utilities to contribute to the

¹Docket No. 98-APTC-014-COC.

²Docket No. 08-APTC-705-COC.

³Note that in addition to its specific jurisdiction under Chapter 66, the Commission has general supervisory authority to inquire into neglect or violations of any laws of the state pursuant to K.S.A. 66-1,195.

Kansas Universal Service Fund (KUSF) on an equitable and nondiscriminatory basis. K.S.A. 79-5a02 requires every public utility in the state to file a form with the Kansas Department of Revenue by March 20 each year describing its property so that the director of property valuation may appraise and apportion the values of said public utility property. This is not an exhaustive list.

3. Commission Staff (Staff) submitted a Report and Recommendation (R&R) to the Commissioners on October 9, 2017, attached hereto and made a part hereof by reference.

4. Staff explained that Access Point is delinquent with respect to K.S.A. 66-2008 and K.S.A. 79-5a02.

5. With respect to K.S.A. 66-2008, Staff explained that Access Point owes \$901.44 in KUSF assessments for the period of March 1, 2016, through February 28, 2017 (KUSF Year 20), and \$45.68 in accrued late penalties, for a total delinquency of \$947.60. Staff received this information from GVNW Consulting, Inc. (GVNW), the current KUSF administrator, in a Memorandum dated October 9, 2017, attached to Staff's R&R.

6. With respect to K.S.A. 79-5a02, Staff indicates that it was contacted by the Kansas Department of Revenue, Division of Property Valuation, and informed that Access Point has not remitted its property tax return due on or before March 20, 2017.

7. Staff recommended the Commission issue an Order opening a new proceeding to require Access Point to show cause why it should not be subject to penalties, sanctions, fines, or Certificate revocation or suspension for failure to comply with its Kansas statutory obligations.

8. The Commission finds Staff's findings and recommendation to be reasonable and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Access Point shall show cause, within thirty (30) days of receipt of this Order, why it should not be subject to sanctions, fines, penalties, or authority suspension or revocation for failing to maintain compliance with its Kansas statutory obligations.

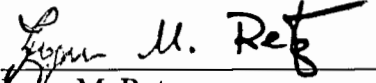
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: OCT 17 2017



Lynn M. Retz
Secretary to the Commission

MRN

Order Mailed Date

OCT 18 2017

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Sandy Reams, Assistant Chief of Telecommunications
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: October 9, 2017

SUBJECT: Docket No. 18-APTC-~~159~~-SHO
In the Matter of a General Investigation for Access Point, Inc. to Show Cause Why this Commission Should Not Initiate Sanctions and Fines and any Certificate of Convenience and Authority the Carrier Holds Be Canceled, Suspended or Revoked for Non-Compliance with Commission Orders and Kansas Statutes.

EXECUTIVE SUMMARY:

Access Point, Inc. (Access Point) is non-compliant with Commission Orders and K.S.A. 66-2008(a) regarding its Kansas Universal Service Fund (KUSF) obligations and K.S.A. 79-5a02 regarding its property tax return. Access Point, headquartered in Cary, North Carolina,¹ offers interexchange carrier (IXC)² and competitive local exchange carrier (CLEC)³ services in Kansas.

Staff recommends the Commission issue an Order to open a new proceeding and require Access Point to show cause why it should not be subject to penalties, sanctions or fines and/or any Certificate and Authority the Carrier holds be canceled, suspended or revoked for failure to comply with its Kansas obligations.

BACKGROUND:

K.S.A. 66-2008(a), as amended effective July 1, 2016, states:

¹ Access Point locations, last viewed Oct. 9, 2017, at: <http://www.accesspointinc.com/contact.htm>.

² Docket No. 98-APTC-014-COC, Oct. 7, 1997 Order and Certificate (Docket 98-014 Order).

³ Docket No. 08-APTC-705-COC, May 1, 2008 Order (Docket 08-705 Order).

The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by 47 C.F.R. 9.3, to contribute to the KUSF based upon the provider's intrastate telecommunications services net retail revenues on an equitable and nondiscriminatory basis. The commission shall not require any provider to contribute to the KUSF under a different contribution methodology than such provider uses for purposes of the federal universal service fund, including for bundled offerings. Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

Access Point was granted a Certificate of Convenience and Authority (COC) to provide IXC services in Kansas on October 7, 1997.⁴ The Company was granted a COC to provide CLEC services in Kansas on May 1, 2008.⁵

In an October 9, 2017 Memorandum, GVNW Consulting, Inc. (GVNW), the KUSF Administrator, advised that Access Point has not remitted payment of \$947.60 of KUSF assessments and penalties. GVNW explained that Access Point registered with the KUSF and has reported its revenues and paid the related assessments to the KUSF on a monthly basis, effective September 2000. GVNW further explained that Access Point is current with its KUSF reporting and payment obligations, with the exception of remitting payment of \$901.44 in KUSF assessments for the period of March 1, 2016, through February 28, 2017, (KUSF Year 20) and \$45.68 of accrued penalties.⁶ The delinquent balance owed by Access Point arises from the Company remitting an annual True-up for KUSF Year 20 to report that it earned more Kansas intrastate retail revenues than it originally reported and, therefore, owed an additional \$901.44 of assessments to the KUSF. GVNW's Memorandum is attached.

GVNW has sent Access Point monthly delinquent notices, however, the Company has not responded to GVNW or remitted payment of the outstanding balance.

Staff was notified by the Kansas Department of Revenue, Division of Property Valuation, that Access Point has not remitted its property tax return as required by K.S.A. 79-5a02, which was due on or before March 20, 2017. K.S.A. 79-5a02 states,

Every public utility with property in this state shall through its owner, officer or agent having control of its affairs, before March 20 each year, make a return in writing to the director of property valuation on forms prescribed by the director showing all the information that the director shall require and deem necessary for

⁴ Docket 98-014 Order.

⁵ Docket 08-705 Order.

⁶ Docket No. 94-GIMT-478-GIT, Feb. 19, 1997 Order; Docket No. 06-GIMT-332-GIT, Jan. 23, 2006 Order; and Docket No. 10-GIMT-188-GIT, Jan. 23, 2010 Order.

the appraisal and apportionment of values of said property. If any public utility shall fail to provide the information as required, the director of property valuation shall advise the attorney general of such noncompliance and the attorney general shall proceed against such utility to enforce compliance herewith.

Furthermore, pursuant to K.S.A. 66-1,195, the Commission has supervision of:

all telecommunications public utilities over which the commission has control and shall inquire into any neglect or violations *of the laws of this state* by any such telecommunications public utility or by the officers, agents or employees thereof. From time to time, the commission shall carefully examine and inspect the condition of each such telecommunications public utility, its equipment, the manner of its conduct and its management with reference to the public safety and convenience. Nothing in this section shall be construed as relieving any telecommunications public utility from its responsibility or liability for damage to person or property. (Emphasis added).

ANALYSIS:

Access Point owes an additional \$901.44 of assessments to the KUSF as a result of earning additional revenue during KUSF Year 20 than it originally reported to the KUSF and, in accordance with Commission Orders, GVNW has assessed penalties to Access Point. Access Point has failed to pay the additional KUSF Year 20 assessments due or any of the related penalties. Access Point will continue to be assessed the Delinquent Balance Penalty until its delinquent balance is paid. As of October 1, 2017, Access Point owes \$947.12 to the KUSF.

When the Commission granted Access Point its COCs, the Commission determined it was in the public interest to do so. K.S.A. 66-1,195 authorizes the Commission to review Access Point's compliance with any Kansas laws to which it is subject. Access Point's failure to comply with its statutory and regulatory obligations reflect negatively on whether the Company's authority to provide service in Kansas remains in the public interest.

RECOMMENDATION:

Staff recommends that the Commission issue an Order to open a new proceeding and require Access Point to show cause why it should not be subject to penalties, sanctions, or fines and/or any Certificate and Authority the Company holds be canceled, suspended or revoked for failure to comply with its Kansas statutory and regulatory obligations.



CONSULTING

KUSF MEMO

Date: October 9, 2017
To: Sandy Reams
From: Nicole Stephens, KUSF Compliance Administrator
RE: Access Point Inc. – KUSF Account KS004914

BACKGROUND

This Memorandum provides KUSF reporting information to the Kansas Corporation Commission (Commission) for Access Point Inc. ("Access Point"), KUSF Account No. KS004914, for the March 2016 – February 2017, KUSF Fiscal Year 20 (FY 20) period.

Access Point has been registered with the KUSF since 2001 and has reported on a monthly basis to the KUSF for the period of September 2000 through August 2017. Access Point continues to report to the KUSF on a monthly basis for March 1, 2017 – February 28, 2018, KUSF FY 21, and except for the delinquent balance on its KUSF account, is otherwise current with its reporting and payment obligations.

As of October 1, 2017, Access Point has an outstanding balance on its KUSF account in the amount of \$947.12. Of this balance, \$901.44 is related to the Company remitting a True-up for KUSF FY 20 on March 30, 2017. The remainder of the past due balance is related to monthly delinquent balance penalties.

Access Point has been sent monthly delinquent letters in regard to the past due balance since June 2017. The company has not yet responded to the delinquent letters. The company continues to incur a 1% delinquent balance penalty each month on the balance remaining at the end of the month.

CERTIFICATE OF SERVICE

18-APTC-159-SHO

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 OCT 17 2017.

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dwinter@gvnw.com

/s/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date
OCT 18 2017