

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

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

In the Matter of the Audit of TAG Mobile,)
LLC by the Kansas Universal Service Fund)
(KUSF) Administrator Pursuant to K.S.A.) Docket No. 17-TAGC-029-KSF
2015 Supp. 66-2010(b) for KUSF Operating)
Year 19, Fiscal Year March 2015-February)
2016.)

ORDER DENYING TAG MOBILE, LLC'S PETITION FOR RECONSIDERATION

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

1. On August 2, 2016, the Commission directed GVNW Consulting, Inc. (GVNW) to conduct an annual audit of TAG Mobile, LLC (TAG) pursuant to K.S.A. 66-2010(b) and to file its Audit Report by June 30, 2017.

2. On June 1, 2017, GVNW filed its Audit Report identifying four KUSF reporting issues, resulting in TAG owing an additional \$149,898.84 to the Kansas Universal Service Fund (KUSF).¹

3. On June 29, 2017, the Commission issued an Order Accepting and Adopting GVNW Consulting, Inc.'s Audit Report and Recommendations (Order). In relevant part, the Commission, with respect to Audit Finding #3 directed TAG to submit audit true-ups for the period of March 2015-January 2016, and repay \$97,925.31 of Kansas Lifeline (KLSP) credits to

¹ Kansas Universal Service Fund Audit Report (Audit Report), June 1, 2017, p. 1.

the KUSF within 30 days.² As to Audit Finding #4, the Commission directed TAG to: (1) submit an affidavit verifying when it began offering 600 minutes and global messaging to its Kansas subscribers; and (2) provide a written copy of its internal process and procedures for updating its accounting and billing systems within 30 days.³

4. In addressing Audit Finding #4, the Commission explained, “[a]ny issues involving TAG’s alleged provision of conflicting and contradictory information regarding the company’s Lifeline plan pricing and offerings to subscribers, as well as issues already identified for consideration in Docket No. 16-TAGC-323-SHO, will not be addressed in this Order, but are deferred for the Commission’s consideration in Docket No. 16-TAGC-323-SHO.”⁴

5. On July 14, 2017, TAG filed its Petition for Reconsideration of the Order. TAG seeks reconsideration of the Commission’s adoption of Audit Findings #3 and #4. As to Audit Finding #3, TAG alleges the Commission erred by: (1) ignoring TAG’s ownership of a switch during part of the audit period and (2) requiring TAG to repay \$97,925.31 within 30 days, when the audit recommended a 60 day repayment period.⁵ With regard to Audit Finding #4, TAG alleges: (1) there was no evidence that TAG provided conflicting and contradictory information to GVNW or intended to deceive GVNW and (2) the findings will prejudice TAG in the pending 16-TAGC-323-SHO Docket.⁶

² Order, June 29, 2017, Ordering Clause D.

³ *Id.*, Ordering Clause E.

⁴ *Id.* In the 16-TAGC-323-SHO Docket, TAG is responsible for showing cause why the Commission should not impose sanctions and fines, including canceling TAG’s ETC designation for TAG’s failure to comply with K.S.A. 66-2008, 47 U.S.C. 214(e)(1), and the Commission’s Order granting TAG Lifeline-Only ETC status in the 12-TAGC-843-ETC Docket.

⁵ Petition of TAG Mobile, LLC for Reconsideration of the Order Accepting and Adopting GVNW Consulting, Inc.’s Audit Report and Recommendations (PFR), July 14, 2017, p. 1.

⁶ *Id.*, pp. 1-2.

6. To be eligible for KLSP credits, an ETC is required to offer service using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁷ As part of Audit Finding #3, GVNW found TAG did not provide Lifeline services through its own facilities from March 2015 through January 2016.⁸ As a result, TAG overcollected \$97,925.31 in KLSP credits.⁹

7. In TAG's response, which is incorporated into GVNW's Audit Report, TAG agrees to pay the \$97,925.31, subject to verification of the exact amount due.¹⁰

8. In its Petition for Reconsideration, TAG argues the Commission failed to take into account TAG's ownership of a switch during part of the audit period.¹¹ Finding #3 is limited to the services provided by Selectel, and "TAG has acknowledged that from April, 2015 to January, 2016, the Selectel traffic was not routed through TAG's switch."¹² Therefore, the issue of TAG's ownership of a switch for other, non-Selectel traffic is irrelevant and has no bearing on it overcollecting KLSP credits from the Selectel traffic.

9. TAG fails to allege any harm resulting from its claim that "the audit finding failed to take into account TAG's ownership of a switch during at least part of the audit period."¹³ Similarly, TAG has not explained how the Commission's alleged failure to consider the issue of TAG's ownership of a switch during part of the audit period is unlawful or unreasonable as required in a petition for reconsideration.¹⁴ Accordingly, TAG's first claim is denied.

⁷ Audit Report, p. 5.

⁸ *Id.*

⁹ *Id.*, p. 6.

¹⁰ *Id.*, p. 7.

¹¹ PFR, p. 1.

¹² Audit Report, Attachment N, p. 1 (May 26, 2016 email from Rick Hird to David Winter).

¹³ *See* PFR, p. 1.

¹⁴ *Peoples Natural Gas Div. of Northern Natural Gas v. Kansas Corp. Comm'n*, 7 Kan. App. 2d 519, 526, *rev. denied* 231 Kan. 801 (1982).

10. In Audit Finding #3, GVNW recommends “[t]he Commission should direct TAG to submit Audit True-ups for the period of March 2015 through January 2016 to correct this audit deficiency and repay \$97,925.31 of KLSP credits to the KUSF within 60 days of the issuance of an Order.”¹⁵ In its Order, the Commission directed TAG to “submit Audit True-ups for the period of March 2015 through January 2016 to correct this Audit deficiency and repay \$97,925.31 of KLSP credits to the KUSF within thirty (30) days from the date of this Order.”¹⁶ TAG requests reconsideration of the Commission’s decision to require TAG to repay the \$97,925.31 in 30 days, rather than the 60 days recommended by GVNW.

11. GVNW’s recommendation to the Commission is not binding on the Commission. TAG has not presented authority to the contrary. Therefore, TAG has not alleged the Commission’s adoption of 30 day period to repay the overcollected KLSP credits is unlawful or unreasonable. Absent such an allegation, the Commission has no choice but to deny reconsideration.

12. TAG next argues the Commission’s adoption of Audit Finding #4 should be reconsidered because there is no evidence to find that TAG provided conflicting and contradictory information to GVNW or intended to deceive GVNW.

13. TAG’s assertion that there is no evidence to find it provided conflicting and contradictory information to GVNW is untrue. A review of the Audit Report demonstrates GVNW presented abundant evidence that TAG supplied conflicting and contradictory information to GVNW. In January 2016, in response to Data Request (DR) 5-3, TAG provided screen shots of customer bills to demonstrate how it calculates the KUSF surcharge collected

¹⁵ Audit Report, p. 6.

¹⁶ Order, Ordering Clause D.

from its customers.¹⁷ While those screen shots reflected a plan with 500 voice minutes and unlimited international messaging priced at \$12.75 per month,¹⁸ TAG claimed it paid its KUSF assessment based on a price of \$20.00 per month, per customer. On December 19, 2016, TAG admitted the screen shots it provided in January were inaccurate.¹⁹ On January 26, 2017, TAG revised the screen shots once again.²⁰

14. As GVNW's Audit Report explained,

Throughout the audit, TAG has provided inconsistent and contradictory customer information to GVNW:

- The plan price was changed from \$12.75 to \$20.00;
- The initial bill images did not reflect the \$7.77 KLSP credit; however, the Company modified its systems to reflect the \$7.77 credit;
- Original screen images did not contain a TAG contribution amount, however, the modified screen images do; and
- The number of minutes and messaging service provides to subscribers varied on the screen images as follows:
 - For May and August 2015, TAG claimed its Kansas Lifeline plan included 500 voice minutes and 500 text messages;
 - TAG's December 2015 revised Lifeline plan filing with the Commission indicates its base plan included 500 MOU and unlimited texting, effective January 2016; however, the Company's response to DR No. 9 states the plan filed was incorrect;
 - TAG's response to DR No. 9, dated December 19, 2016, claims that KLSP subscribers were offered 600 voice minutes and global messaging, effective January 2016; and

¹⁷ Audit Report, Attachment H (TAG's Response to DR 5).

¹⁸ *Id.*, Attachment H, pp. 3-7.

¹⁹ Audit Report, p. 8.

²⁰ *Id.*, p. 8.

○ TAG's response to DR No. 47 represents the Company implemented the 600 voice minutes of use and global texting plan for its Kansas subscribers in June 2016. However, the February and July 2016 screen images do not support this assertion.²¹

15. The record supports the Commission's adoption of GVNW's Audit Finding that TAG provided conflicting and contradictory information to GVNW. Therefore, there is no prejudicial effect in the 16-TAGC-323-SHO Docket. The Commission denies TAG's request for reconsideration of the Commission's adoption of Audit Finding #4.

16. TAG's Petition for Reconsideration is denied.

THEREFORE, THE COMMISSION ORDERS:

A. TAG's Petition for Reconsideration is denied.

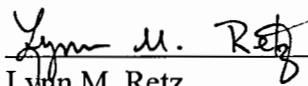
B. To the extent this Order constitutes final agency action as defined by K.S.A. 77-607(b)(1), Lynn M. Retz, Secretary to the Commission, is the agency officer designated to receive service of a petition for judicial review of behalf of the agency.²²

C. 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.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: AUG 03 2017



Lynn M. Retz
Secretary to the Commission

BGF

Order Mailed Date

AUG 04 2017

²¹ *Id.*, pp. 9-10.

²² K.S.A. 77-529(d).

CERTIFICATE OF SERVICE

17-TAGC-029-KSF

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 **AUG 03 2017** .

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