

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

Before the Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

In the Matter of a General Investigation for)
UniTel Voice, LLC to Show Cause Why this)
Commission Should Not Initiate Sanctions and) Docket No. 20-UNTV-525-SHO
Fines for Non-Compliance with Commission)
Orders and Kansas Statutes.)

ORDER DENYING REQUEST FOR WAIVER OF ADMINISTRATIVE PENALTIES

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its pleadings and records, the Commission finds and concludes as follows:

1. On June 30, 2020, the Commission ordered UniTel Voice, LLC (UniTel) to show cause within 30 days of receipt of the order, why UniTel should not be subject to fines, or penalties for failing to maintain compliance with its Kansas statutory and regulatory obligations.¹ The Commission also ordered UniTel to: “(1) register with the [Kansas Universal Service Fund (KUSF)] for FY 23 and FY 24; (2) report all revenue and pay the related KUSF contributions for March 2018 through June 2020; and (3) pay all penalties owed to the KUSF within 30 days of issuance of this Order.”²

2. On July 15, 2020, UniTel President, Doug McCabe, sent the Commission a letter requesting additional time to file the delinquent reports. Mr. McCabe stated UniTel would provide

¹ Order to Show Cause, ¶ A (Jun. 30, 2020).

² *Id.* at ¶ B.

the missing reports by August 30, 2020. Mr. McCabe further described the penalties as “excessive” and requested the Commission waive or reduce the penalties.³

3. On August 7, 2020, Commission Staff (Staff) responded to Mr. McCabe’s letter.⁴ Staff asked the Commission to deny the request for additional time to file the missing reports. Staff argued that UniTel was first notified of its delinquencies in 2017. Staff also stated the penalties assessed against UniTel were appropriate.

4. On September 3, 2020, Staff filed a Report and Recommendation (R&R). Staff stated UniTel sent an email to Staff and GVNW Consulting, Inc. (GVNW) on August 27, 2020, advising that UniTel mailed certain items to the KUSF bank.⁵ As of August 31, 2020, GVNW confirmed it received UniTel’s FY 23 and FY 24 registrations and its FY 22 and FY 23 Carrier Remittance Worksheets (CRWs) to report its revenues. GVNW, however, had not received UniTel’s contribution payments for FY 22 or FY 23, the FY 24 CRW, or the FY 24 contribution payment.⁶ UniTel remained delinquent with its KUSF obligations and GVNW assessed additional KUSF penalties, bringing the total penalties as of August 31, 2020, to \$7,831.61.⁷

5. UniTel did not file a response to Staff’s R&R.

6. On September 24, 2020, the Commission issued its final order. The Commission found UniTel failed to show cause why it should not be subject to penalties and provided no support for its request that the Commission waive or reduce the penalties.⁸ The Commission further found UniTel ignored its own requested deadline of August 30, 2020, to come into compliance

³ See UniTel’s letter dated July 15, 2020, mislabeled as UniTel Voice Response Regarding Penalties (Jul. 15, 2020).

⁴ See Staff’s Reply to the Response of UniTel Voice, LLC to the Commission’s Order to Show Cause (Aug. 7, 2020).

⁵ Notice of Filing of Staff’s Report and Recommendation, p. 2 (second R&R) (Sept. 3, 2020).

⁶ *Id.*

⁷ See *id.* at 3; GVNW KUSF Memo.

⁸ Order, ¶ 15 (Sept. 24, 2020).

with the KUSF.⁹ Finally, the Commission found the administrative penalty assessment of \$7,831.61 was appropriate and ordered UniTel to pay this amount; to make its contribution payments for FY 22 (March 2018 – February 2019), FY 23 (March 2019 – February 2020), and FY 24 (March 2020 – February 2021); and to report all revenue to the KUSF for FY 24.¹⁰ The Commission further provided, “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

7. On October 2, 2020, a letter from UniTel was filed. The letter is dated September 28, 2020, is addressed to Staff, and is signed by Mr. Bob Blumberg. Mr. Blumberg states that UniTel did not file a formal response in the docket because it was communicating with GVNW. Mr. Blumberg says, “We now realize this was our error,” and “Our hope is that this letter will be used as the formal response to be used in the Docket.”¹² Mr. Blumberg further provides a list of outstanding amounts UniTel paid, with the exception of penalties, and provides the dates the payments cleared UniTel’s account. Mr. Blumberg also states UniTel filed all outstanding documentation and claims “delays with US Mail” as the reason UniTel’s payments and documents were not received until early September. Finally, UniTel states its “liability to KUSF over these 3 years of reports totaled less than \$300, excluding the penalties and fees. We respectfully ask that you waive these penalties due to the extreme amount compared to the amount actually owed.”¹³

8. On October 12, 2020, Staff filed a response to Mr. Blumberg’s letter with an additional R&R.¹⁴ Staff recommends the Commission find UniTel is in compliance with its KUSF obligations as of September 14, 2020, with the exception of paying administrative penalties. Staff

⁹ *Id.*

¹⁰ *Id.* at ¶¶ A-B.

¹¹ *Id.* at ¶ C.

¹² UniTel’s letter dated Sept. 28, 2020 (Oct. 2, 2020).

¹³ *Id.*

¹⁴ *See Notice of Filing Staff’s Report and Recommendation* (Oct. 12, 2020).

agrees, “GVNW appropriately levied administrative penalties to Uni[T]el[.]” Staff further states, the administrative penalties assessed are “consistent with the Commission’s statement” in Docket No. 06-GIMT-332-GIT.¹⁵ Staff cannot support a waiver because “Uni[T]el failed to comply with its KUSF obligations when due and failed to comply with its obligations after the Commission directed it to do so.” Staff explains it is “sympathetic to Uni[T]el’s situation, however the Company did not come into compliance with its KSUF obligations until September 14, 2020.” Staff states UniTel reported its revenue, paid its contributions, and paid \$300 of administrative penalties to the KUSF. Staff also states UniTel “continues to owe \$7,786.57 to the KUSF and the Delinquent Balance Penalty of 1% per month will continue to be applied to the outstanding balance.”¹⁶

9. Staff recommends the Commission find UniTel is in compliance with its KUSF obligations as of September 14, 2020, and that the Commission reduce the KUSF administrative penalties assessed to UniTel “to no less than \$751.56, an amount equal to twice the contributions owed by the Company for KUSF FY 21-24.” Staff believes this amount is sufficient to encourage UniTel to comply with its KUSF obligations going forward. Because UniTel has paid \$300, Staff recommends UniTel pay \$451.46. Staff also recommends the reduction to \$751.56 be contingent upon UniTel paying the remaining \$451.46 within 21 days of a Commission order. But, if UniTel fails to make this payment, Staff recommends the Commission reinstate the total of \$7,786.57 of KUSF of administrative penalties.¹⁷

Analysis

10. The Commission issued its final order on September 24, 2020. “A final order is one which terminates litigation on the merits and leaves nothing to be done except to enforce the result.

¹⁵ See *id.* at 3.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4. The Commission notes there is a typo regarding the figures, resulting in a \$0.10 discrepancy. Additionally, it is not clear to the Commission how Staff calculated the \$7,786.57 figure as penalties owed.

In an agency setting, a final order needs to be more than a mere procedural ruling.”¹⁸ The Commission’s September 24, 2020 Order provided separately stated findings of fact and conclusions of law and informed the parties they may file a petition for reconsideration under the requirements and time limits provided by K.S.A. 77-529(a)(1).¹⁹

11. The purpose of requiring matters to be raised in a petition for reconsideration is to inform the Commission and other parties “where mistakes of law and fact were made in the order.”²⁰ A petition for reconsideration must state the specific grounds upon which relief is requested.²¹ When a party fails to raise specific grounds for relief in the petition for reconsideration, that argument is not properly preserved for judicial review.²² “As a general rule, a party may not raise a new argument in a motion for reconsideration. But some courts recognize an exception when the arguments could not have been presented earlier.”²³

12. Mr. Blumberg’s letter to Commission Staff is not a petition for reconsideration. Rather, it is a letter from UniTel informing Staff of its compliance with its KUSF obligations and requesting a waiver of administrative penalties after a final order. UniTel’s delinquent status began in 2017 when GVNW performed its review in October 2017 and mailed UniTel the March 2017 – February 2018 (FY 21) instructions and forms. GVNW did not receive a response from UniTel and GVNW mailed the delinquent letters to the company.²⁴ On June 30, 2020, the Commission ordered UniTel to come into compliance with its KUSF obligations. UniTel requested until August

¹⁸ *Kansas Pipeline Partnership v Kansas Corporation Comm’n*, 22 Kan. App. 2d 410, Syl. ¶ 9, rev. denied 260 Kan. 994 (1996).

¹⁹ See K.S.A. 77-526(c).

²⁰ See *Citizens’ Utility Ratepayer Bd. v. Kansas Corporation Comm’n*, 24 Kan. App. 2d 222, 228 (1997), *aff’d in part, rev’d in part* 264 Kan. 363 (1998).

²¹ K.S.A. 77-529(a)(1).

²² *Kansas Industrial Consumers v. State Corp. Comm’n*, 30 Kan. App. 2d 332, Syl. ¶ 4 (2002) (“An issue not presented to the Kansas Corporation Commission in a petition for reconsideration cannot be decided on appeal.”).

²³ *Sierra Club v. Moiser*, 305 Kan. 1090, 1122 (2017).

²⁴ See GVNW Memo, p. 1.

30, 2020. As of August 31, 2020, UniTel remained delinquent. It was not until after the Commission issued its final order on September 24, 2020, that UniTel sent the letter notifying the Commission it was in compliance, as of September 14, 2020.

13. Even if the Commission liberally construed Mr. Blumberg's letter as a petition for reconsideration, and it explicitly does not, the letter fails to comply with the requirements of K.S.A. 77-529(a)(1). Mr. Blumberg fails to notify the Commission or Staff "where mistakes of law and fact were made in the order."²⁵ Mr. Blumberg does not assert that the Commission made a mistake as to any of the facts, rather, Mr. Blumberg provides the Commission with new information—UniTel's compliance as of September 14, 2020, and that its liability to the KUSF over 3 years totaled less than \$300, excluding penalties and fees.

14. As described above, Mr. Blumberg's new argument and factual statements are not properly before the Commission. Additionally, UniTel could have presented this information prior to the Commission's final order. Mr. McCabe's July 15, 2020, letter made no mention of the amount of its KUSF obligation. Instead Mr. McCabe made a general statement that the penalties were "excessive" and asked the Commission to waive or reduce the penalties without further support for the request. UniTel did not file anything else in the docket, and did not notify the Commission that it mailed the required reports and KUSF payments by its own deadline of August 30, 2020. Finally, UniTel did not file a response to Staff's September 3, 2020, R&R notifying the Commission of UniTel's continued noncompliance and the total penalty assessment of \$7,831.61.

15. "The purpose of the penalty is to encourage companies to submit their worksheets on time in order to ensure the efficient operation of the KUSF. It is necessary that the penalty be

²⁵ See *Citizens' Utility*, 24 Kan. App. 2d at 228 (1997).

set high enough to catch a company's attention and assure timely submission."²⁶ UniTel's compliance issues began in 2017 and were not resolved until September 14, 2020. UniTel was assessed the \$7,831.61 administrative penalty for its continued delinquency.

16. In its R&R, Staff also states it reviewed the KUSF penalty guidelines adopted by the Commission in Docket No. 20-GIMT-086-GIT (20-086 Docket), where the Commission concluded a KUSF penalty may be reduced if: "(i) the violation is minor; (ii) the carrier acted in good faith or self-reported; (iii) the carrier has a history of overall compliance; and/or (iv) the carrier is determined to have an inability to pay."²⁷ Here, Staff's recommendation for the reduction is not due to any of these factors. Instead, Staff asks the Commission to consider that UniTel's noncompliance "did not substantially harm the KUSF or contributors, including subscribers"; that UniTel reported all revenue, paid its contributions, and paid \$300 of administrative penalties owed to the KUSF by September 14, 2020; and that UniTel did not realize a substantial economic gain. Staff's recommendations do not meet the factors set forth in the 20-086 Docket and do not warrant a reduction in penalties.

17. UniTel's letter dated September 28, 2020, requesting the Commission waive the KUSF administrative penalties, is denied. For the reasons set forth herein, Mr. Blumberg's letter does not constitute a petition for reconsideration. Regardless, UniTel failed to state specific grounds upon which relief is requested and failed to demonstrate that the Commission's September 24, 2020 Order was premised on mistaken law or mistaken fact. Accordingly, the requests contained therein are denied.

²⁶ *Order Setting the Kansas Universal Service Fund Assessment Rate for the Year Ten and Establishing Reporting Requirements*, ¶¶ 11, C, Docket No. 06-GIMT-332-GIT (Jan. 32, 2006).

²⁷ *Order Clarifying and Adopting KUSF Election Criteria and KUSF Administrative Penalties*, ¶ C(5) (Mar. 3, 2020).

THEREFORE, THE COMMISSION ORDERS:

A. UniTel Voice, LLC's request in its September 28, 2020 letter to waive the penalties is denied, and the Commission's September 24, 2020 Order is affirmed.

B. Lynn M. Retz, KCC Executive Director, is designated by the Commission to receive service of any petition for judicial review.²⁸

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 10/29/2020 _____



Lynn M. Retz
Executive Director

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²⁸ K.S.A. 77-529(d); *see also* K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

20-UNTV-525-SHO

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
electronic service on 10/29/2020.

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