

**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 the Audit of )  
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Birch Telecom of Kansas, Inc. )  
 )  
by the Kansas Universal Service Fund (KUSF) )  
Administrator Pursuant to K.S.A. 2016 Supp. ) Docket No. 18-BTKT-033-KUSF  
66-2010(b) for KUSF Operating Year 20, )  
Fiscal Year March 2016-February 2017 )  
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**BIRCH TELECOM OF KANSAS, LLC RESPONSE TO GVNW AUDIT REPORT**

Pursuant to the Kansas Corporation Commission (“Commission”) August 1, 2017 procedural order in this matter,<sup>1</sup> Birch Telecom of Kansas, LLC (“Birch”) respectfully submits this Response to the Kansas Universal Service Fund Audit Report (“Report”) filed by GVNW Consulting, Inc. (“GVNW”) in the above-referenced docket on June 29, 2018 (dated June 28, 2018). Birch responds as follows:

1. Birch is a competitive local exchange carrier and interexchange carrier providing telecommunications services in Kansas. Effective December 30, 2017, Birch converted from a corporation to a limited liability company, and is now known as Birch Telecom of Kansas, LLC d/b/a Birch Communications. The Kansas Corporation Commission approved this change on June 7, 2018 in Docket No. 18-BTKT-452-CCN.

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<sup>1</sup> Docket No. 18-BTKT-033-KSF, *Audit of Birch Telecom of Kansas, Inc. by the Kansas Universal Service Fund (KUSF) Administrator Pursuant to K.S.A. 2016 Supp. 66-2010(b) for KUSF Operating Year 20, Fiscal Year March 2016-February 2017*, Order to Kansas Universal Service Fund Administrator to Commence Audit of Birch Telecom of Kansas, Inc. and Order Setting Procedural Schedule (Aug. 1, 2017). The procedural order states Birch may file a response to the Report no later than thirteen (13) calendar days from the date the Report is filed with the Commission.

2. GVNW made three findings with respect to Birch's Kansas Universal Service Fund ("KUSF") reporting, and two of these findings effect Birch's KUSF contribution obligations.

3. Specifically, Audit Finding No. 1 determined Birch incorrectly reported revenues to the KUSF net discounts. This inadvertent error in reporting occurred over a very short period of time (March 2016 to June 2016) and resulted in a minimal underpayment of KUSF assessments during that timeframe. Birch corrected its error in reporting, and agrees with Audit Finding No. 1 that the additional KUSF assessment identified by GVNW should be paid.

4. Audit Finding No. 3 found Birch incorrectly reported its intrastate retail revenues to the KUSF for the month of December 2016. As noted in the Report, however, Birch rectified this error in reporting, and has paid the outstanding KUSF amounts due, including the associated penalties. The December 2016 reporting issue was due to a data processing error, and was corrected as soon as Birch was made aware of the issue.

5. Birch submits an additional fine is unnecessary and unjustified. Penalties are assessed to deter the same behavior in the future or future non-compliance.<sup>2</sup> Birch corrected the error as soon as it was aware. The error concerned one (1) month of KUSF reporting, and Birch has paid significant penalties in connection with this reporting error, including 17 months of interest.

6. The Report also claims Birch has not complied with its KUSF reporting obligations in the past, and recommends Commission staff initiate a show cause proceeding if Birch becomes delinquent with its KUSF obligations in the future.

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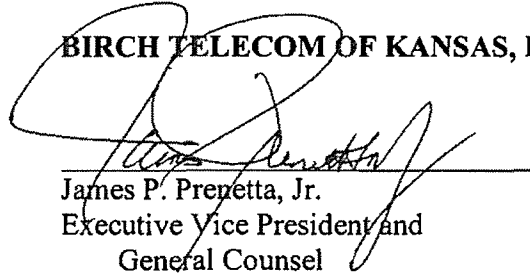
<sup>2</sup> See, e.g., Docket No. 14-GIMT-105-GIT, *Investigation to Determine the Assessment Rate for the Eighteenth Year of the Kansas Universal Service Fund, Effective March 1, 2014*, Order Assessing Penalties Against Southwestern Bell Telephone Company (July 14, 2015); Docket No. 98-GEVIG-542-GIG, *Investigation of Burnett Construction in Violation of the Underground Utility Damage Prevention Act, K.S.A. 66-1801, et seq.*, Order Adjudicating Complaint and Assessing Fine (Sept. 22, 1999).

7. Birch takes its regulatory reporting obligations seriously, and regrets any prior delay in filing reports or responding to inquiries. As explained in the Report, many of the delays were due to a misunderstanding of the filing deadlines for the monthly remittance filings. Since that time, Birch has implemented changes in its regulatory reporting, and there have been no late monthly remittance filings. Birch believes these changes are reflected in the information provided in Attachment A of the Report for FY 21 and FY 22, which show a significant reduction in delinquent filings. Birch therefore disagrees with GVNW's recommendation regarding the initiation of a show cause proceeding.

8. Finally, GVNW notes in its cover letter that certain materials submitted by Birch should not be treated as confidential by the Commission. Due to an oversight, Birch did not respond to GVNW regarding the confidentiality designations before the Report was filed. Birch agrees with GVNW that certain portions of Attachment D, Attachment E, and Attachment F to the Report should not be treated as confidential. Birch maintains that Attachment B, Attachment G, and the referenced portions of Attachment D to the Report should be treated as confidential pursuant to its request for confidential treatment included in the Report.

Respectfully submitted,

**BIRCH TELECOM OF KANSAS, LLC**

A handwritten signature in black ink, appearing to read "James P. Prenetta, Jr.", is written over a horizontal line. The signature is stylized with a large, looping initial "J".

James P. Prenetta, Jr.  
Executive Vice President and  
General Counsel

420 Lexington Avenue, Suite 1718  
New York, New York, 10170  
212-201-2425 (telephone)  
jprenetta@fusionconnect.com

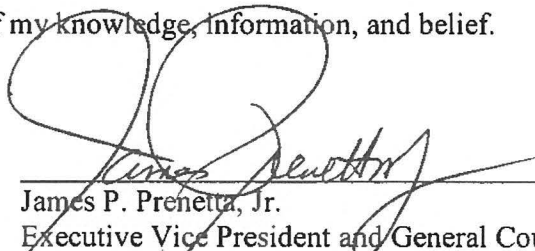
Dated: July 12, 2018

**VERIFICATION**

STATE OF NEW YORK  
COUNTY OF NEW YORK

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I, James P. Prenetta, Jr., state that I am the Executive Vice President and General Counsel for Birch Telecom of Kansas, LLC ("Birch"); that I am authorized to make this Verification on behalf of Birch; that I have read the foregoing document; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

  
James P. Prenetta, Jr.  
Executive Vice President and General Counsel  
Birch Telecom of Kansas, LLC

Sworn and subscribed to before me this 12 day of July 2018.

My appointment expires 02/27/2018.

  
NOTARY PUBLIC

LAURA V NADAL UCEDA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01NA6256571  
My Commission Expires 02/27/2018

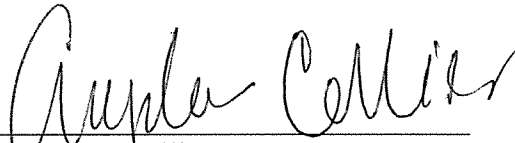
**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of July 2018, the above Comments were e-filed with the Kansas Corporation Commission and a copy was sent via electronic mail to:

Otto Newton, Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604  
Email: [o.newton@kcc.ks.gov](mailto:o.newton@kcc.ks.gov)

Nicole Stephens, KUSF Administrator Manager  
GVNW Consulting, Inc.  
2930 Montvale Drive, Ste. B  
Springfield, IL 62704  
Email: [nstephens@gvnw.com](mailto:nstephens@gvnw.com)

David Winter  
GVNW Consulting, Inc.  
2270 La Montana Way, #100  
Colorado Springs, CO 80918  
Email: [dwinter@gvnw.com](mailto:dwinter@gvnw.com)

  
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Angela F. Collins