

**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 Tempo Telecom, LLC )  
by the Kansas Universal Service Fund (KUSF)        )  
Administrator Pursuant to K.S.A. 2016 Supp.        ) Docket No. 18-TEMT-043-KSF  
66-2010(b) for KUSF Operating Year 20, Fiscal       )  
Year March 2016-February 2017.                       )

**ORDER ADOPTING AUDIT REPORT**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and record, and being duly advised in the premises, the Commission finds and concludes as follows:

1.        On August 1, 2017, the Commission directed GVNW Consulting, Inc. (GVNW) to perform an audit of Tempo Telecom, LLC (Tempo) for Kansas Universal Service Fund (KUSF) purposes.

2.        On June 29, 2018, GVNW filed its Audit Report, dated June 28, 2018, making two reporting findings for Tempo in Operating Year 20.<sup>1</sup> The GVNW Audit Report findings are as follows:

**Audit Finding No. 1:**

Tempo reported calculated revenues to the KUSF based on assessments collected from subscribers and recorded as a KUSF liability. The aggregate monthly KUSF liability was divided by the assessment rate to determine revenue reported in its monthly reports. This would have been an accurate way to determine the Tempo KUSF obligation, except for the fact that it did not report all revenue as noted in Finding No. 2.

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<sup>1</sup> Kansas Universal Service Fund Audit Report, Docket No. 18-TEMT-043-KSF (July 13, 2018).

Audit Finding No. 2:

Tempo did not report revenue it received from the federal lifeline program to the KUSF for the period July 2016 through March 2018. This deficiency gives rise to Tempo owing an additional \$3,810.16, and Tempo should be required to submit Audit True-up Reports for the months of July 2016 through March 2018.

3. Tempo is a prepaid wireless service provider and is designated as an Eligible Telecommunication Carrier (ETC). In addition to the audit findings made above, the Audit Report also highlights Tempo's repeated failure to comply with its KUSF obligations, including the timely submission of CRWs, assessment payments and the Company's annual Identification and Operation form. In response to these violations, the GVNW Administrator has assessed multiple penalties for Tempo, based on past Commission Orders for KUSF compliance. Because of the numerous filing deficiencies Tempo has experienced in Operating Year 20 and other operating periods, GVNW also recommended Staff be directed by the Commission to initiate show cause proceedings in the event Tempo continues not to meet its statutory and regulatory KUSF obligation to submit timely reports and assessment payments. Moreover, GVNW took issue with Tempo claiming confidentiality for all the information submitted to GVNW as part of the audit process. GVNW correspondingly urged disclosure of information it did not regard as a trade secret or confidential commercial information, and in which the Commission has not been inclined to give a confidential designation under its Protective Orders or in a disclosure analysis under K.S.A. 2017 Supp. 66-1220a.<sup>2</sup>

4. Tempo filed a response to the GVNW Audit Report on July 12, 2018, within the thirteen day period authorized for submitting a reply.<sup>3</sup> In the response, Tempo accepted Audit Finding No. 2 related to underpayment for not reporting revenue from the federal Lifeline program

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<sup>2</sup> See, Tempo – Request for Confidential Treatment and GVNW letter dated June 28, 2018.

<sup>3</sup> Tempo Telecom, LLC's Response to GVNW Audit Report.

to the KUSF during the period July 2016 through March 2018. Tempo indicated it rectified this error in its May 2018 CRW and agreed that it should pay \$3,810.16 to the KUSF. In regard to a directive to have Staff initiate a show cause proceeding in the event of future deficiencies, Tempo stated it was unnecessary and stressed the seriousness to which it takes its reporting and other regulatory obligations. Tempo submitted its delays were due to employee departures and internal company reorganization. Tempo also indicated it had changed its reporting procedures to eliminate late filings and was in the process of contacting a third-party contractor to assist with its multi-state regulatory reporting process. Finally, Tempo agreed to waive certain confidentiality designations it had made to information in a portion of Attachment D, Attachment E and Attachment F to the Audit Report, which it stated did not need to be treated as confidential.

5. The Commission finds the GVNW Audit Report to be thorough and complete and accepts it as filed and updated. Tempo does not dispute the audit findings related to it owing \$3,810.16 for not reporting revenue recovered from the federal Lifeline program and other reporting deficiencies, but it does take issue with GVNW's recommendation regarding the proposed directive to Commission Staff for the initiation of a show cause proceeding in the event of future filing delinquencies by Tempo. The Commission will now address Tempo's reporting responsibilities, the GVNW recommendation for a show cause directive, and the confidentiality designations that Tempo has agreed to waive.

6. Audit Finding No. 1 confirms that Tempo met its responsibilities in reporting intrastate revenue to the KUSF by computing the total amount of KUSF collected from customers and dividing it by the KUSF assessment rate. GVNW performed additional audit testing to establish that Tempo applied its KUSF assessment rate to total assessable revenue derived from recurring and non-recurring service plans. With respect to the methodology used by Tempo,

GVNW recommends no further action regarding the methodology used to report revenue to the KUSF, except as identified in Audit Finding No. 2, related to reporting revenue from the federal Lifeline program. The Audit Report does advise Tempo in fulfilling its KUSF obligation to submit Quarterly True-up Reports to reflect material changes, billing errors or corrections, or changing circumstances affecting its reported revenue and KUSF assessment. The Commission reminds Tempo that it is obligated to report its intrastate net retail revenue for KUSF purposes and is responsible for ensuring it meets its KUSF obligations. Therefore, Tempo is directed to take steps to ensure this methodology ensures it meets those obligations and submit Quarterly and/or Annual True-Ups, as appropriate, if at any time this methodology would result in Tempo not meeting its KUSF obligations.

7. As part of the Audit Report, GVNW attached a memorandum listing multiple reporting delinquencies that establish a pattern of KUSF non-compliance by Tempo and resulted in the assessment of KUSF penalties. These infractions relate to late CRW reporting and assessment payments, as well as late filings of the Company Identification and Operations form. Because of the frequency of late filings and payments, GVNW has requested the Commission to direct Commission Staff to initiate show cause proceedings against Tempo, if the filing and payment delinquencies continue. Given the number of filing and payment delinquencies, the Commission directs the Commission Staff to initiate show cause proceedings when it is apprised of continued delinquencies on behalf of Tempo. K.A.R. 82-1-237 provides that the Commission may commence show cause proceedings when it is apprised of a carrier's violation of law or any of its orders. This is the standard practice of the Commission, and the Commission is concerned about Tempo's history of non-compliance with its KUSF obligations and its oversight in the management

of its filings. Tempo may also be subject to the Commission levying additional penalties for any non-compliance with its KUSF obligations in the future.

8. The Commission has determined that when a proceeding is conducted involving confidential commercial information involving the KUSF, the disclosure of this information is governed by K.S.A. 2017 Supp. 66-1220a and may be provided if the various factors in the statute warrant review. K.S.A. 2017 Supp. 66-1220a, however, only relates to trade secrets and confidential commercial information. There are considerable amounts of information in a regulatory proceeding that are neither a trade secret nor confidential and should be publicly disclosed. To distinguish between confidential and non-confidential information, the Commission has consistently defined confidential information to include: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information. In this docket, GVNW requested Tempo to disclose certain information that was not confidential. GVNW requested Exhibits D, E and F be publicly disclosed as non-confidential. Tempo agreed to waive confidentiality designations to Exhibits D, E and F. Accordingly, the information should be made public in an updated Audit Report.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Commission accepts and adopts GVNW Consulting, Inc.'s Audit Report filed June 29, 2018.

B. Tempo Telecom, LLC, is to submit KUSF True-up audit reports for the period of July 2016 through March and make additional payment of \$2,508 to the KUSF within 30-days of the issuance of this Order.

C. GVNW Consulting Inc. is directed to file a Compliance Report within 60-days of the issuance of this Order and an updated Audit Report.

D. The Commission directs Staff to initiate a show cause proceeding if Tempo becomes delinquent in its KUSF obligations.

E. 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).<sup>4</sup>

F. The Commission retains jurisdiction over Tempo Telecom, LLC, and the subject matter of this Docket for the purpose of issuing such additional orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 07/26/2018



Lynn M. Retz  
Secretary to the Commission

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<sup>4</sup> K.S.A. 66-118b; K.S.A. 77-503 (c) and K.S.A. 77-531(b).

## CERTIFICATE OF SERVICE

18-TEMT-043-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 07/27/2018.

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/S/ DeeAnn Shupe  
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