

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

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.                       )

**NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION**

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby files its Report and Recommendation dated October 8, 2020, in this docket. Staff recommends the Commission issue an order finding Unitel Voice, LLC (Unitel) is in compliance with its KUSF obligation as of September 14, 2020. Staff further recommends the Commission reduce the KUSF administrative penalties levied to the Company to no less than \$751.56, an amount equal to twice the contributions owed by the Company for KUSF FY 21- 24. This amount should be reduced by the \$300.00 of penalties Unitel has paid, resulting in Unitel owing \$451.46 of penalties. Staff further recommends the reduction of the KUSF administrative penalties be contingent on Unitel paying the \$451.46 to the KUSF within 21 days of a Commission Order and, if Unitel fails to do so, the Commission should reinstate the total \$7,786.57 of KUSF administrative penalties.

WHEREFORE, Staff respectfully submits its Report & Recommendation for Commission consideration.

Respectfully Submitted,

*/s/ Ahsan Latif*

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Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

## **REPORT AND RECOMMENDATION UTILITIES DIVISION**

**TO:** Chair Susan Duffy  
Commissioner Dwight D. Keen  
Commissioner Andrew J. French

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

**DATE:** October 8, 2020

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

### **EXECUTIVE SUMMARY**

The Commission opened this Docket on June 30, 2020 to address Unitel Voice, LLC's (Unitel) failure to comply with its Kansas Universal Service Fund (KUSF) obligations.<sup>1</sup> On October 2, 2020, the Commission received a letter from Unitel identifying the actions it took to come into compliance with the Commission's Orders and requesting reconsideration of the KUSF administrative penalties it was ordered to pay to the KUSF.

Staff recommends the Commission find Unitel is in compliance with its KUSF obligations as of September 14, 2020, as stated in GVNW Consulting, Inc.'s (GVNW) Memorandum attached to this Report and Recommendation (R&R). Staff also recommends the Commission consider a reduction in the amount of KUSF administrative penalties and require the Company to pay, in total, \$751.56 in administrative penalties. This amount should be reduced by the \$300.00 of penalties Unitel has paid, resulting in Unitel owing \$451.46 of penalties. Staff further recommends the KUSF administrative penalty reduction be contingent on Unitel paying the \$451.46 to the KUSF within 21 days of a Commission Order and, if Unitel fails to do so, the Commission should reinstate the total \$7,786.57 of KUSF administrative penalties assessed to Unitel.

### **BACKGROUND**

Staff's R&R dated June 17, 2020 (June R&R) explained Unitel was delinquent with the following KUSF obligations: (1) reporting its revenue and paying its contributions for the March 2018 -

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<sup>1</sup> *Order to Show Cause*, Docket No. 20-UNTV-525-SHO, June 30, 2020 (Show Cause Order).

February 2019 Fiscal Year (FY 22); (2) registering, reporting revenue, and paying its KUSF contributions for March 2019 - February 2020 (FY 23); and (3) registering, reporting revenue, and paying its KUSF contributions for March 2020 - February 2021 (FY 24). Staff explained that GVNW had assessed \$5,464.21 of KUSF administrative penalties to Unitel as of June 1, 2020, which Unitel did not pay.

On June 30, 2020, the Commission issued the Show Cause Order and directed Unitel to: (1) register with the KUSF for FY 23 and FY 24; (2) report all revenue and pay all contributions to the KUSF for FY 22 - FY 24; and (3) pay the KUSF administrative penalties to the KUSF within 30 days of issuance of the Order.<sup>2</sup>

In response to the Show Cause Order, Unitel filed a letter stating its business was disrupted by the COVID-19 Pandemic.<sup>3</sup> Unitel requested the Commission to allow it to file its delinquent KUSF reports by August 30, 2020, and also requested the Commission waive or reduce its KUSF administrative penalties.

On August 7, 2020, Staff filed a reply to Unitel and recommended the Commission deny Unitel's request for an extension of time.<sup>4</sup> Staff also recommended the Commission hold its determination on whether to waive or reduce the KUSF administrative penalties in abeyance until after Unitel was in compliance with its KUSF obligations.

On August 27, 2020, Unitel sent an email to Staff and GVNW advising the Company mailed the following to the KUSF: (1) the FY 22 registration, Carrier Remittance Worksheet (CRW) reporting its revenues, and contribution payment; (2) the FY 23 registration, CRW, and contribution payment; and (3) the FY 24 registration.<sup>5</sup>

On September 1, 2020, Staff submitted a second R&R in the Docket (September R&R) and attached a Memorandum from GVNW to advise the Commission that, as of August 31, 2020, GVNW had received Unitel's FY 22 - 24 registrations and FY 22 and FY 23 CRWs. GVNW had not received Unitel's FY 24 CRW or its contribution payments for FY 22 - FY 24. Unitel was assessed additional KUSF administrative penalties, resulting in the Company being assessed, in total, \$7,831.61 of penalties. Staff recommended the Commission direct Unitel to come into compliance with its KUSF obligations within 21 days of issuance of a Commission Order and hold all penalties in abeyance until Unitel came into compliance with its KUSF obligations to ensure the total KUSF administrative penalties are known.

In its September 24, 2020, Order, the Commission found Unitel remained delinquent with its KUSF obligations (September Order). The Commission directed Unitel to report all of its revenue, pay all contributions, and pay the entire \$7,831.61 of administrative penalties to the KUSF within 21 days of the Order.<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Letter from Doug McCabe, President of Unitel, to the Commission, July 15, 2020.

<sup>4</sup> *Reply to the Response of Unitel Voice, LLC to the Commission's Order to Show Cause*, Aug. 7, 2020.

<sup>5</sup> Email from Bob B., Unitel, to Ann Murphy, Sandy Reams, and Ahsan Latif, Commission, and Nicole Stephens, GVNW, Aug. 27, 2020.

<sup>6</sup> Order, Sept. 24, 2020.

On September 24, 2020, Unitel sent an email to Staff and GVNW requesting confirmation of receipt of all of Unitel's KUSF documents and contribution payments.<sup>7</sup> Unitel also asked why the September Order stated Unitel did not respond to the Show Cause Order or Staff's September R&R since the Company sent a letter requesting additional time to submit its KUSF documents and subsequently submitted all of its documents and paid its contributions.

GVNW's response to Unitel confirmed receipt of all KUSF documents and contribution payments for FY 22 - FY 23, as well as payment of the related Late Filing Penalties. Specifically, GVNW received the FY 22 and FY 23 contribution and Late Filing Penalty payments on September 1, 2020; the FY 24 CRW on September 4, 2020; and the FY 24 contribution and Late Filing Penalty payments on September 14, 2020. Staff also responded to Unitel to explain the Company had not addressed the Commission's directive for Unitel to show cause why it should not be subject to penalties, sanctions, or fines and that Staff's September R&R addressed the Company's KUSF status as of August 31, 2020. Staff further explained that Unitel could file a response to the Commission's Orders in the Docket.

Staff requested GVNW provide a Memorandum identifying each document and payment received after August 31, 2020, and the date each was received. On September 29, 2020, GVNW provided Staff with the Memorandum and explained that Unitel owed \$375.78 in total contributions to the KUSF for FY 21 - FY 24, which it paid. GVNW also explained it had assessed Unitel a \$100 Late Filing Penalty per annual CRW for FY 22 – FY 24, for a total of \$300.00, which Unitel also paid. GVNW stated Unitel has a \$7,786.57 outstanding administrative penalty balance and that it will continue to assess the Delinquent Balance Penalty (1% per month) on the outstanding balance.

On October 2, 2020, the Commission received a letter from Unitel stating the Company submitted all required documents and contribution payments to the KUSF and had paid related Late Filing Penalties. Unitel also requested the Commission reconsider the amount of KUSF administrative penalties the Commission had ordered the Company to pay.

## **ANALYSIS**

Unitel is a small company that has elected to report its revenue and pay its KUSF contributions on an annual basis.<sup>8</sup> Unitel is in compliance with its KUSF obligations, with the exception of paying administrative penalties, as of September 14, 2020. GVNW appropriately levied administrative penalties to Unitel, consistent with the Commission's statement that,

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 set high enough to catch a company's attention and assure timely submission.<sup>9</sup>

Unitel 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, therefore, cannot support a waiver of

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<sup>7</sup> Email from Bob B., Unitel, to Nicole Stephens and Catherine Mitchell, GVNW; and Sandy Reams, Ahsan Latif, DeeAnn Shupe, Lauren Laushman, Vicki Jacobsen, Linda Berry, Ann Murphy, and Paula Murray, Commission, Sept. 24, 2020.

<sup>8</sup> *Order Setting the Kansas Universal Service Fund Assessment Rate for the Year Ten and Establishing Reporting Requirements*, ¶ 12, Ordering ¶ C, Docket No. 06-GIMT-332-GIT, Jan. 23, 2006.

<sup>9</sup> *Id.*, ¶ 11.

all KUSF administrative penalties levied to Unitel.

To determine if reduction in the penalties is appropriate, Staff reviewed the KUSF penalty guidelines adopted by the Commission in Docket No. 20-GIMT-086-GIT.<sup>10</sup> The guidelines require a carrier to report all revenue and pay all contributions and penalties to the KUSF. The guidelines also state each violation is determined on a monthly basis, unless the Commission believes the situation warrants different treatment. The Commission determined a penalty may be increased based on: (a) egregious misconduct; (b) the carrier's assets and whether the assets are significant enough that a larger disincentive is necessary; (c) the carrier's violation was intentional; (d) the violation resulted in substantial harm to the KUSF and/or contributors to the KUSF, including subscribers; (e) the company previously violated Commission requirements; (f) the violation resulted in substantial economic gain to the carrier; and/or (g) the carrier has repeated or continuous violations for the same or a similar issue. The Commission also determined that a penalty may be reduced if the violation is minor, the carrier acted in good faith or volunteered disclosure, the carrier has a history of overall compliance, or has an inability to pay.

Staff is sympathetic to Unitel's situation, however, the Company did not come into compliance with its KUSF obligations until September 14, 2020. Unitel has reported all revenue, paid its contributions, and paid \$300.00 of administrative penalties to the KUSF. The Company 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.

Staff recommends the Commission consider reducing the administrative penalties Unitel should pay to the KUSF. Unitel's actions did not substantially harm the KUSF or contributors, including subscribers, to the KUSF. Staff suggests that since Unitel's contributions to the KUSF for FY 21 – FY 24 totaled \$375.78, Unitel did not realize a substantial economic gain. Staff believes a reduction to the administrative penalties to an amount equal to twice Unitel's contribution liability is sufficient to encourage Unitel to comply with its KUSF obligations on a going-forward basis and is high enough to catch the Company's attention. This means Unitel's total administrative penalties would be reduced to \$751.56. Unitel has paid \$300.00 of the administrative penalties, meaning the Company would owe an additional \$451.46 to the KUSF. Staff also recommends the penalty reduction be contingent on Unitel paying the \$451.46 of penalties to the KUSF within 21 days of receipt of the Commission's Order. If Unitel fails to pay this amount to the KUSF within the 21 days, Staff recommends the Commission reinstate the \$7,786.57 penalty balance.

### **RECOMMENDATION**

Staff recommends the Commission find Unitel is in compliance with its KUSF obligations as of September 14, 2020. Staff further recommends the Commission reduce the KUSF administrative penalties levied to the Company to no less than \$751.56, an amount equal to twice the contributions owed by the Company for KUSF FY 21- 24. Staff further recommends the reduction of the KUSF administrative penalties be contingent on Unitel paying the \$451.46 to the KUSF within 21 days of a Commission Order and, if Unitel fails to do so, the Commission should reinstate the total \$7,786.57 of KUSF administrative penalties.

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<sup>10</sup> *Order Clarifying and Adopting KUSF Election Criteria and KUSF Administrative Penalties*, Docket No. 20-GIMT-086-GIT, March 3, 2020.

## CERTIFICATE OF SERVICE

20-UNTV-525-SHO

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was served electronically this 12th day of October, 2020, to the following:

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