

**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 a General Investigation for Ionex)
Communications, LLC to Show Cause Why)
This Commission Should Not Initiate Sanctions)
and Fines and/or All Certificates of Convenience) Docket No. 19-ICIT-179-SHO
and Authority the Company Holds be Suspended,)
Canceled, or Revoked for Non-Compliance)
With Kansas Statutes and Commission Orders.)

ORDER TO SHOW CAUSE

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. The Commission has broad supervisory authority over all telecommunications public utilities in the state of Kansas and has duty to inquire into any violation of law by a telecommunications public utility and its officers, agents and employees.¹

2. Ionex Communications, LLC (Ionex) has its corporate headquarters in Atlanta, Georgia,² and holds Certificates of Convenience and Authority to operate as a competitive local exchange carrier (CLEC) and interexchange carrier in Kansas (IXC).³ Recently, Ionex was the subject of a Kansas Universal Service Fund (KUSF) audit as part of the Commission's carrier review process for the fiscal year March 1, 2016 through February 28, 2017 (KUSF Operating

¹ K.S.A. 2017 Supp. 66-1,195.

² FCC Form 499 Filer Database (last reviewed October 12, 2018).

³ Docket No. 00-ICIT-758-COC, March 20, 2000 (00-758 Order) and Docket No. 00-ICIC-759-COC, March 20, 2000 (00-759 Order).

Year 20).⁴ In the Commission's Order of September 13, 2018, in Docket No. 18-ICIT-041-KSF, it was noted in reference to the Audit Report prepared by KUSF Administrator GVNW Consulting, Inc. (GVNW), that Ionex had numerous filing deficiencies over the past several years for failing to submit monthly Carrier Remittance Worksheets (CRWs), make timely KUSF assessment payments and provide annual Company Identification and Operations forms, leading to multiple penalties.⁵ To address any future filing and payment delinquencies, the Commission directed its Staff to initiate show cause proceedings in the event of continued violations of Ionex's KUSF obligations.⁶

3. GVNW supplemented its previous Audit Report with a Memorandum to the Commission Staff on October 17, 2018, which updated the most recent Ionex filing delinquencies.⁷ GVNW reported that Ionex had not reported its revenue for the months of May, June, July, August and September 2018 nor made corresponding assessment payments to the KUSF.⁸ Filings and payments for May, June, July, August and September 2018 would have been respectively due on June 15, July 16, August 15, September 17 and October 15, 2018. GVNW also said that Ionex failed to timely file CRWs and make assessment payments for October 2013, January 2014, April 2016, May 2016, and June 2016.⁹ GVNW noted Ionex had failed to remit penalty assessments on time.¹⁰ According to GVNW, Ionex was late in filing Company Identification and Operations Forms for fiscal years 18, 19, 20, 21 and 22.¹¹ The Commission Staff in support of the GVNW Memorandum also listed various amounts due for assessments levied by the Commission pursuant

⁴ See, Order Adopting Audit Report, Docket No. 18-ICIT-041-KSF, September 13, 2018 (18-043 Order).

⁵ Kansas Universal Service Fund Audit Report, Docket No. 18-ICIT-041-KSF, at 2.

⁶ 18-403 Order at 5-6 and 8.

⁷ GVNW KUSF Memo, Attachment to Staff Report and Recommendation, Docket No. 19-ICIT-179-SHO, October 17, 2018.

⁸ *Id.* at 2.

⁹ *Id.* at 1 and 2.

¹⁰ *Id.*

¹¹ *Id.*

to K.S.A. 66-1502 and 1503 and indicated that Ionex assessment invoices outstanding through October 15, 2018, were \$888.49.¹² Staff further indicated that penalty assessments levied against Ionex for failing to submit accurate reports for its December 2016 revenue as set forth in the Commission's Order of September 13, 2018 in Docket No. 18-ICIT-041-KSF were not timely remitted as due on October 15, 2018, but instead were paid on October 17, 2018.

4. K.S.A. 2017 Supp. 66-2008 (a) authorizes the Commission to require carriers, including wireless telecommunications service providers, to contribute to the KUSF on an equitable and non-discriminatory basis. The Commission has issued orders under its statutory mandate to provide registration, timely reporting and assessment payments. Ionex has consistently failed to make timely contributions to the KUSF and to meet its reporting and payment obligations. It is therefore in violation of K.S.A. 2017 Supp. 66-2008 (a). As part of this investigation, Ionex needs to Show Cause Why it should not be subject to additional penalties and sanctions.

5. K.S.A. 2017 Supp. 66-138 (a) (2) provides the Commission with authority to levy fines and penalties against a telecommunications carrier for violating statutes under which the Commission has a duty to act, refusing to comply or obey any lawful Commission requirement and failing to abide by any Commission order. A sum not less than \$100 and no more than \$5,000 may be assessed against a violator for each offense. The statutory penalties for violating Commission statutes, orders and rules and regulation may be applicable to Ionex and it is determined that Ionex should Show Cause Why penalties and fines should not be assessed for its repeated violation of KUSF requirements.

¹² Staff Report and Recommendation in Docket NO. 19-ICIT-179-SHO, at 3 (October 17, 2018). Staff did indicate that out of the \$888.49 invoiced, \$252.12 was not delinquent as having been invoiced on October 15, 2018.

IT IS THEREFORE, BY THE COMMISSION ORDRED THAT:

A. Ionex Communications, LLC shall show cause, within thirty (30) days of receipt of this Order, why it should not be subject to sanctions and fines and its ETC designation should not be cancelled, suspended and/or revoked.

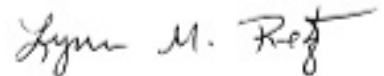
B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹³

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/06/2018



Lynn M. Retz
Secretary to the Commission

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¹³ K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

STATE OF KANSAS



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REPORT AND RECOMMENDATION UTILITIES DIVISION

To: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Dwight Keen

From: Sandy Reams, Assistant Chief of Telecommunications
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

Date: October 17, 2018

Re: Docket No. 19-ICIT-____-SHO
In the Matter of a General Investigation for Ionex Communications, LLC to Show Cause Why this Commission Should Not Initiate Sanctions and Fines and/or all Certificates of Convenience and Authority the Company Holds be Suspended, Canceled, or Revoked for Non-Compliance with Kansas Statutes and Commission Orders.

EXECUTIVE SUMMARY

Ionex Communications, LLC (Ionex), headquartered in Atlanta, Georgia,¹ holds Certificates of Convenience and Authority (COC) to operate as a competitive local exchange carrier (CLEC)² and interexchange carrier (IXC)³ in Kansas. Ionex has failed to comply with its KUSF obligations and remit payment of Commission assessments and penalties and, therefore, is non-compliant with K.S.A. 66-2008(a), K.S.A. 66-1502-1503, and Commission Orders.

Pursuant to Commission Order,⁴ Staff recommends that the Commission issue an Order to open a proceeding and require Ionex to show cause why it should not be subject to penalties, sanctions or fines and/or its COCs to operate in Kansas be suspended, canceled, or revoked for failure to comply with its Kansas statutory obligations.

BACKGROUND

K.S.A. 66-2008(a) requires every telecommunications carrier, telecommunications public utility,

¹ FCC Form 499 Filer Database, <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=815376>, last viewed October 12, 2018.

² *Order and Certificate*; Docket No. 00-ICIT-758-COC; March 20, 2000 (00-758 Order).

³ *Order and Certificate*; Docket No. 00-ICIC-759-COC; March 20, 2000 (00-759 Order).

⁴ *Order Adopting Audit Report and Closing Docket*; Docket No. 18-ICIT-041-KSF; September 13, 2018 (Audit Order).

wireless telecommunications service provider, and interconnected VoIP service to contribute to the KUSF based on its intrastate telecommunications services net retail revenues.

Ionex was granted COCs to provide CLEC and IXC services in March 2000.⁵ Ionex first registered for KUSF purposes for the March 1, 1999, through February 28, 2000, fiscal year.

On August 1, 2017, the Commission opened Docket No. 18-ICIT-041-KSF and directed GVNW Consulting, Inc. (GVNW), the KUSF Administrator, to conduct an audit of Ionex for KUSF purposes for the KUSF Fiscal Year (FY) of March 1, 2016, through February 28, 2017.⁶

In its June 29, 2018, Audit Report, GVNW identified two audit findings: (1) the Company reported revenue to the KUSF based on the amount of its KUSF assessment collected from subscribers, divided by the KUSF assessment rate; and (2) Ionex did not report its December 2016 revenues or pay the related assessment, which it had collected from its subscribers, to the KUSF until June 2018.⁷ GVNW also addressed Ionex's continued failure to comply with its KUSF obligations, detailed in a Memorandum included as Attachment A to the Audit Report. Attachment A addressed Ionex's delinquent status with its KUSF obligations for the period of March 2015 through April 2018. GVNW recommended that the Commission issue an Order directing Ionex to cure its KUSF obligation deficiencies and to direct Staff "to initiate a show cause proceeding if the Company becomes delinquent with its KUSF obligations in the future."⁸

In its July 12, 2018, *Ionex Communications, LLC Response to GVNW Audit Report*, Ionex stated that it "takes its regulatory reporting obligations seriously,"⁹ that it was delinquent with its KUSF obligations due to its misunderstanding of the KUSF filing due dates and that it changed its regulatory processes. Ionex further stated that since it changed its processes, "there have been no late monthly remittance filings."¹⁰

In its July 26, 2018, *Order Adopting Audit Report* (Audit Order), the Commission directed Staff to initiate a show cause proceeding for Ionex if the Company continued to be delinquent with its KUSF obligations. The Commission also assessed a \$1,700 penalty to Ionex, to be paid within 30 days of the Order's issuance.

On October 17, 2018, GVNW submitted a Memorandum to Staff addressing Ionex's repeated delinquencies with its KUSF obligations for the period of March 2013 through September 2018. GVNW's Memorandum, included as Attachment 1 to this R&R, states Ionex is currently delinquent with filing its monthly Carrier Remittance Worksheets (CRWs) and paying the related assessments to the KUSF for the months of May through September 2018.

Staff requested that GVNW provide a chart identifying each of Ionex's KUSF delinquencies, the date the obligation was due, and the date Ionex came into compliance with the obligation for the period of March 2013 through September 2018. Staff also requested that the chart include

⁵ 00-758 Order and 00-759 Order.

⁶ *Order to Kansas Universal Service Fund Administrator to Commence Audit of Ionex Communications, Inc. and Order Setting Procedural Schedule*; Docket No. 18-ICIT-041-KSF; August 1, 2017 (18-041 Order).

⁷ *Kansas Universal Service Fund Audit Report*, pp. 1-2; Docket No. 18-ICIT-041-KSF; June 29, 2018 (Audit Report).

⁸ *Id.*, p. 2.

⁹ *Ionex Communications, LLC Response to GVNW Audit Report* (Response), ¶ 6; Docket 18-041.

¹⁰ *Id.*

information pertaining to the party to which GVNW mailed each delinquent notice.¹¹ The chart, included as Attachment 2, lists seventeen (17) times Ionex has been delinquent with its KUSF obligations since March 2013, however, many of the 17 times include two separate KUSF obligation violations - the remittance of its Carrier Remittance Worksheet (CRW) and payment of its KUSF assessment - raising the number of violations to twenty-seven (27). GVNW will assess all applicable penalties pursuant to Commission Order once the Company files its delinquent CRWs and the KUSF assessments are paid.¹²

In addition, Ionex is delinquent with payment of its assessments levied by the Commission pursuant to K.S.A. 66-1502 and 1503. Specifically, Table 1 includes a list of the assessments levied by the Commission:

Table 1

Invoice Date	Invoice Amount	Cumulative Balance
May 15, 2018	\$ 174.00	\$ 174.00
July 16, 2018	227.25	401.25
July 16, 2018	25.00	426.25
August 15, 2018	210.12	636.37
October 15, 2018	227.12	863.49
October 15, 2018	25.00	888.49

The assessment invoices for October 15, 2018, are not yet due, however, the total amount Ionex now owes is \$888.49.

In addition, Ionex was levied a \$1,700 penalty for failure to timely submit an accurate CRW and paying the assessment that it had collected from subscribers to the KUSF. The penalty was due within 30 days of the issuance of the Audit Order, or October 15, 2018.¹³ On October 15, 2018, Ionex's consultant advised the \$1,700 penalty payment would be remitted via FedEx, with delivery on Wednesday, October 17, 2018. The payment was received on October 17, 2018.

ANALYSIS

Ionex is non-compliant with its Kansas statutory and regulatory obligations regardless of the fact that the Commission directed Staff to initiate a show cause proceeding if the Company remained non-compliant with its KUSF obligations.¹⁴ Ionex remitted payment of the \$1,700 penalty payment after the due date and is delinquent in \$888.49 of assessments levied by the Commission.

Ionex has been subject to KUSF penalties levied by GVNW and a \$1,700 penalty levied by the Commission. These penalties have not ensured Ionex's compliance with its obligations. The

¹¹ The chart in Attachment 1 identifies correspondence sent via US Postal Service and does not include correspondence sent via email.

¹² *Order Modifying Kansas Universal Service Fund Penalties*; Docket No. 18-GIMT-084-GIT; September 27, 2018.

¹³ The penalty was due October 13, 2018, a Saturday, therefore, the penalty due date is the following business day - Monday, October 15, 2018.

¹⁴ Audit Order, ¶ 10.

Commission may wish to assess additional penalties pursuant to K.S.A. 66-138 against the Company for its continued failure to comply with the statute and Commission Orders.

RECOMMENDATION

Based on the information provided in this R&R and GVNW's Memorandum, Staff recommends that the Commission issue an Order to open a proceeding and require Ionex to show cause why it should not be subject to penalties, sanctions, or fines and/or its CLEC and IXC COCs suspended, canceled, or revoked for failure to comply with its Kansas statutory and regulatory obligations.

CERTIFICATE OF SERVICE

19-ICIT-179-SHO

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 and electronic service on 11/07/2018.

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