

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 Pix )  
Wireless, LLC. to Show Cause Why this )  
Commission Should Not Initiate Sanctions and ) Docket No. 18-PIXZ-383-SHO  
Fines and/or Refer the Company to the )  
Attorney General's Office for Non- )  
Compliance with Commission Orders and )  
Kansas Statutes. )

**ORDER FINDING NON-COMPLIANCE; PENALTY ASSESSMENT**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On March 13, 2018, the Commission issued an *Order to Show Cause* (Order to Show Cause) in this proceeding. The Order to Show Cause required Pix Wireless, LLC (Pix) to respond within thirty (30) days to show cause why it should not be subject to sanctions and/or be referred to the Attorney General's Office for non-compliance with its Kansas statutory and regulatory obligations.
2. Pix did not respond as ordered.
3. Commission Staff (Staff) submitted a Report and Recommendation (R&R) to the Commissioners dated May 4, 2018, attached hereto and made a part hereof by reference.
4. Staff explained that since the issuance of the Order to Show Cause, Pix has failed or neglected to come into compliance with its Kansas statutory and regulatory obligations.
5. Specifically, Pix remains delinquent for:

(1) Failure to file a required Annual True-Up to the KUSF Administrator to report its actual Kansas revenues and assessments for the March 2015 through February 2016 fiscal year (FY 19);

(2) Failure to register with the KUSF for the March 2016 through February 2017 fiscal year (FY 20);

(3) Failure to register with the KUSF for the March 2017 through February 2018 fiscal year (FY 21);

(4) Failure to register with the KUSF for the March 2018 through February 2019 Fiscal Year (FY 22);

(5) Failure to report revenue to the KUSF since January 2016. As a result, there is no balance on Pix's KUSF account and any amount owed to the KUSF cannot be determined; and

(6) Failure to designate a resident agent with the Kansas Secretary of State's Office, thereby forfeiting its "Active and in Good Standing" status to do business in Kansas.

6. Furthermore, because Pix remains delinquent with its KUSF obligations and failed to respond to the Commission's Show Cause Order, Staff recommends that the Commission issue penalties pursuant to K.S.A. 66-138(a)(2). Specifically, Staff recommends that the Commission assess the following penalties to Pix:

(1) \$100.00 for failure to file its annual True-Up for KUSF FY 19;

(2) \$300.00 for failure to file the annual registration, based on a \$100.00 penalty for KUSF FYs 20, 21 and 22; and

(3) \$2,600.00 for failure to remit a CRW for the months of February 2016 through March 2018, comprised of a \$100.00 penalty per carrier remittance worksheet due.

7. Staff recommends a total fine of no less than \$3,000.00.

8. The Commission finds Staff's findings and recommendation to be reasonable and hereby adopts the same.

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

A. The Commission finds that Pix Wireless, LLC is delinquent with its KUSF and Kansas statutory obligations, as noted in paragraph 5, above.

B. The Commission finds that penalties pursuant to K.S.A. 66-138(a)(2) are warranted in this case. Under the provisions of K.S.A. 66-138(a)(2), Pix would ordinarily be penalized for \$100 to \$5,000 per day of violation. However, both K.S.A. 66-1,142c and K.S.A. 66-1,152 authorize the Commission to compromise any civil penalty, taking into consideration the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance. Therefore, the Commission adopts Staff's recommendation, and Pix is hereby specifically assessed a \$3,000.00 penalty. Pix may be subject to further penalties unless full compliance is achieved, and the Commission will issue further orders as necessary. If Pix does come into compliance, Staff shall notify the Commission in this docket.

A. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 77-529(a)(1).

B. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

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

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/17/2018



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Lynn M. Retz  
Secretary to the Commission

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# STATE OF KANSAS



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SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

## REPORT AND RECOMMENDATION UTILITIES DIVISION

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

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

**Date:** May 4, 2018

**Re:** Docket No. 18-PIXZ-383-SHO  
*In the Matter of a General Investigation for Pix Wireless, LLC to Show Cause Why this Commission Should Not Initiate Sanctions and Fines and/or Refer the Company to the Attorney General's Office for Non-Compliance with Commission Orders and Kansas Statutes.*

### EXECUTIVE SUMMARY

On March 13, 2018, the Commission issued an Order opening this Docket and requiring Pix Wireless, LLC (Pix) to show cause why it should not be subject to sanctions and fines and/or be referred to the Attorney General's Office for non-compliance with its Kansas statutory and regulatory obligations (Show Cause Order). The Commission directed Pix to respond within thirty (30) days of receipt the Order.

Pix has not responded to the Show Cause Order or come into compliance with its Kansas statutory and regulatory obligations, however, Pix appears to be operating in Kansas.<sup>1</sup> Pix is subject to all Commission-approved Kansas Universal Service Fund (KUSF) penalties,<sup>2</sup> however, Staff recommends that the Commission assess Pix a penalty of not less than \$3,000 for failure to comply with its statutory and regulatory obligations. Staff will provide quarterly updates to the Commission regarding Pix's compliance and further recommendations.

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<sup>1</sup> Pix Wireless, LLC's website, Coverage, <https://www.pixwireless.com/coverage>, (Pix Coverage), last viewed May 4, 2018.

<sup>2</sup> Late Payment Penalties, Order, Docket No. 94-GIMT-478-GIT, Feb. 19, 1997; Late Carrier Remittance Worksheet (CRW) Penalties, Order, Docket No. 06-GIMT-332-GIT, Jan. 23, 2006; and Delinquent Balance Penalties, Order, Docket No. 10-GIMT-188-GIT, Jan. 23, 2010 Order.

## **BACKGROUND**

Pix initially registered with the KUSF for March 2014 through February 2015 Fiscal Year (FY 18) and reported on a monthly basis to the KUSF. Pix is delinquent with the following KUSF obligations: (1) remittance of its annual True-Up form to report its actual Kansas revenues and assessments for the March 2015 through February 2016 Fiscal Year (FY 19); (2) registration for the March 2016 through February 2017 Fiscal Year (FY 20); (3) registration for the March 2017 through February 2018 Fiscal Year (FY 21); (4) registration for the March 2018 through February 2019 Fiscal Year (FY 22); and (5) submitting Carrier Remittance Worksheets (CRWs) to report revenue and pay the related assessments for the months of February 2016 through March 2018.<sup>3</sup> No balance exists on Pix's KUSF account as a result of the Company's non-compliance with its KUSF obligations, meaning GVNW cannot determine the amount Pix owes to the KUSF.

Pix has been advised by GVNW that, if it is not operating in Kansas, it should submit a letter, signed by an officer of the Company, to GVNW and/or Staff, stating this information. Pix has not done so.

Pix is also in violation of K.S.A. 17-7934 for failure to maintain a registered agent in Kansas and forfeited its "Active and in Good Standing" status, effective February 2017.<sup>4</sup>

On March 13, 2018, the Commission issued the Show Cause Order, opened this Docket, and directed Pix to show cause why it should not be subject to sanctions and fines or referred to the Attorney General's office for failure to comply with its Kansas statutory and regulatory obligations within thirty (30) days of receipt the Order. Pix has not responded to the Show Cause Order or taken any action to come into compliance with its Kansas statutory or regulatory obligations.

## **ANALYSIS**

Pix appears to be operating in Kansas, but has failed or neglected to respond to the Show Cause Order. Pix remains in violation of K.S.A. 66-2008 and, specifically, the following KUSF obligations:

- reporting, via an annual True-Up, its actual Kansas revenues and assessments for FY 19;
- registering with the KUSF for FY 20; 21, and 22; and
- submitting CRWs to report revenues and paying the related KUSF assessments for February 2016 through March 2018.

K.S.A. 66-138 authorizes the Commission to levy fines or penalties, for each offense a common carrier or public utility violates a state statute or fails or neglects to obey a lawful requirement or order of the Commission or a final judgment or decree made by a court upon appeal, in the amount of:

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<sup>3</sup> Revenues earned in one month are reported to the KUSF in the following month. Thus, the revenues earned for February 2016 were due on or before March 15, 2016, and the revenue for March 2018 were due on or before April 16, 2018.

<sup>4</sup> Kansas Business Center, Business Entity Search, <https://www.kansas.gov/bess/flow/main;jsessionid=1B445BB3E2BEE5E3294B703073E98945.apcs03-inst0?execution=e1s5>, last viewed May 4, 2018.

(2) a sum not less than \$100 and not more than \$5,000 for such offense if the violator is any other common carrier or public utility.

K.S.A. 66-138 also provides that, for enforcement purposes,

any act, omission or failure of any officer, agent or other person acting for or employed by any such public utility or common carrier, while acting within the scope of such person's employment, shall in every case be deemed to be the act, omission or failure of such public utility or common carrier and every day during which any such public utility or common carrier or officer, agent or employee thereof, fails to comply with any order or direction of the commission, or to perform any duty required or enjoined by this act, shall constitute a separate and distinct violation of the provisions of this act. [Emphasis added].

Staff, therefore, recommends the Commission assess no less than the following penalties to Pix:

- \$100.00 for failure to file its annual True-Up for KUSF FY 19;
- \$300.00 for failure to file the annual registration, based on a \$100.00 penalty for KUSF FYs 20, 21, and 22; and
- \$2,600.00 for failure to remit a CRW for the months of February 2016 through March 2018, comprised of a \$100.00 penalty per CRW.<sup>5</sup>

In total, Staff recommends the Commission assess penalties of no less than \$3,000.

### **RECOMMENDATION**

Based on the information provided in this R&R, Staff recommends that the Commission assess a total penalty of not less than \$3,000.00 to Pix for failure to comply with its KUSF obligations. Staff will provide the Commission with quarterly updates regarding Pix's compliance with its Kansas obligations and any additional Staff recommendations.

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<sup>5</sup> Pix is delinquent in remitting 26 months' of CRWs, with the first violation occurring for the February 2016 CRW, due March 2016, and the most recent violation occurring for the March 2018 CRW, due April 2018.

**CERTIFICATE OF SERVICE**

18-PIXZ-383-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/hand delivered on 05/18/2018.

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/S/ DeeAnn Shupe  
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DeeAnn Shupe