

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

In the Matter of Granite Telecommunications,)
LLC Requesting Penalty Waiver.) Docket No. 22-GRTT-168-KSF

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby submits the attached Report and Recommendation (R&R) in the above captioned matter. Staff recommends the Commission deny Granite's request to waive all of its Delinquent Balance penalties and, instead, direct Granite to pay the \$50.19 Delinquent Balance penalty within 21 days of an Order. Staff also recommends the Commission waive the September and October Delinquent Balance penalties for a total of \$1.03.

WHEREFORE, Staff respectfully requests the Commission adopt its recommendations.

Respectfully Submitted,

/s/ Ahsan Latif

Ahsan Latif, S. Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3167

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Sandy Reams, Assistant Chief of Telecommunications
Brooke Tibbitts, Telecommunications Analyst
Jeff McClanahan, Director of Utilities

DATE: October 26, 2021

SUBJECT: Docket No. 22-GR TT-168-KSF
In the Matter of Granite Telecommunications, LLC Requesting Penalty Waiver

EXECUTIVE SUMMARY

On October 8, 2021, the Commission received a letter from Granite Telecommunications, LLC (Granite) requesting the Commission waive \$50.71 of Kansas Universal Service Fund (KUSF) penalties assessed by the KUSF Administrator, Vantage Point Solutions (VPS), for late payment of its assessment contribution due on July 15, 2021.¹

VPS assessed Granite three Delinquent Balance penalties, totaling \$51.22, as a result of non-payment of its additional KUSF assessment liability on or before July 15, 2021. Staff recommends the Commission deny Granite's request to waive all of the Delinquent Balance penalties and, instead, require Granite to pay the first Delinquent Balance penalty of \$50.19 within 21 days of issuance of an order and waive the remaining \$1.03 of the Delinquent Balance penalties.

BACKGROUND

K.S.A. 66-2008(a) requires every provider of intrastate telecommunications services to contribute to the KUSF based on its intrastate telecommunications services net retail revenues. Granite provides competitive local exchange carrier (CLEC)² and interexchange carrier (IXC)³ services in Kansas and is required to report its revenues and pay the related assessment contributions to the KUSF each month.

¹ Emails, dated April 27, 2021, between Sandy Reams, Commission Staff Assistant Chief of Telecommunications, and Mr. Eric Strauss, President, Unified Telecom, Inc.

² Order and Certificate, Docket No. 04-GR TT-281-COC, Dec. 1, 2003.

³ Order, Docket No. 04-GR TT-280-COC, Dec. 1, 2003.

KUSF penalties have been authorized since 1997,⁴ with Commission most recently modifying the KUSF penalties in September 2018.⁵ The KUSF penalties encourage carriers to submit KUSF reports and payments on time, as stated by the Commission:

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.⁶

The KUSF Administrator is required to levy the following penalties for failure to timely register, file reports, and/or pay KUSF contributions by the due date:

1. Late Filing Penalty is assessed when a company registers with the KUSF after the April 15th due date or reports revenue after the 15th of the month (or next business day if the 15th is a weekend or holiday). The Late Filing Penalty for registering with the KUSF after the due date is \$100 per month and the Late Filing Penalty for reporting revenue after the due date is 1% per month (12% annum) or \$100, whichever is greater.
2. Late Payment Penalty, assessed at 1% per month (12% annum) of the amount due to the KUSF, is levied when payment is received by the KUSF bank after the due date.
3. Delinquent Balance Penalty is assessed at 1% per month (12% annum) of the total outstanding KUSF balance, including assessment principle and penalties, as of the last day of the month.

Granite's Waiver stated it submitted a quarterly True-up for the second quarter (June – August) of the current KUSF Fiscal Year (FY), however, the True-up was actually for the first quarter (March – May 2021). Granite included a copy of the True-up, which shows the Company earned more revenue than originally reported, resulting in the Company owing an additional \$5,018.98 of assessments to the KUSF. Quarterly True-ups are due within 45 days of the end of a quarter, thus, the first quarter True-up was due July 15, 2021.⁷

Granite electronically filed its True-up on July 14, 2021, and mailed the check that same day. CoreFirst processed the payment on August 16, 2021. Since Granite's payment was not received by the July 15th due date, VPS levied a \$50.19 Delinquent Balance penalty (1% of the \$5,018.98 assessment liability) to Granite in August 2021. Granite did not pay the \$50.19 Delinquent Balance penalty, therefore, in September, VPS levied a second Delinquent Balance penalty to

⁴ Order Authorizing KUSF Administrator to Assess Late Payment Fee, Docket No. 190-492-U (94-GIMT-478-GIT), Feb. 19, 1997.

⁵ Order Modifying KUSF Penalties, Sept. 27, 2018, and Order Granting Petition of Southwestern Bell Telephone Company for Clarification and/or Reconsideration of Order Modifying Kansas Universal Service Fund Penalties, Docket No. 18-GIMT-084-GIT, Oct. 30, 2018.

⁶ Order Setting the Kansas Universal Service Fund Assessment Rate for the Year Ten and Establishing Reporting Requirements, ¶ 11, Docket No. 06-GIMT-332-GIT, Jan. 23, 2006.

⁷ KUSF Reporting & Payment Schedule, March 2021 – Feb. 2022, Attachment A, <https://www.vantagepnt.com/wp-content/uploads/2021/08/attachmenta-1.pdf>, last viewed Oct. 25, 2021.

Granite.⁸ VPS assessed a third Delinquent Balance penalty to Granite in October 2021, resulting in Granite owing \$51.22 of Delinquent Balance penalties to the KUSF.

The Commission's KUSF penalty guidelines for non-compliance with KUSF obligations require Granite to report all revenue and pay all assessment contributions and penalties to the KUSF.⁹ The Commission considers a violation to have occurred on a monthly basis, unless the Commission determines a different treatment is warranted.

ANALYSIS

Granite electronically filed its True-up and mailed the related assessment contribution payment check on July 14, 2021. Granite acknowledged it mailed the payment on July 14th, one day prior to the due date. CoreFirst did not receive the payment on July 15, 2021, due date. CoreFirst subsequently received the check and processed the check on August 16, 2021.

For KUSF purposes, the date of receipt, not mailing or post mark date, is the date upon which penalties are based. The Commission and CoreFirst do not have any control over the U.S. Postal Service's mail delivery schedule, however, a Postal Service user should not expect mail deliver to occur the following day. If Granite wanted to ensure that its payment was received the next day, it could have used overnight delivery or electronically remitted its payment.¹⁰ Once the Company was assessed the first Delinquent Balance penalty, Granite could have sought a waiver of the penalty, but it did not do so until it was assessed three Delinquent Balance penalties.

Thus, the \$50.19 Delinquent Balance penalty initially levied by VPS in accordance with Commission Orders should not be waived. Due to the lengthy delivery period, VPS assessed Granite two additional Delinquent Balance penalties – one in September and one in October - which Staff suggests be waived. The September and October penalties total \$1.03.

RECOMMENDATION

Staff recommends the Commission deny Granite's request to waive all of its Delinquent Balance penalties and, instead, direct Granite to pay the \$50.19 Delinquent Balance penalty within 21 days of an Order. Staff also recommends the Commission waive the September and October Delinquent Balance penalties for a total of \$1.03.

⁸ Staff notes the Company had a prior \$.01 balance that remained unpaid, resulting in the Delinquent Penalty balance varying by a few cents.

⁹ Order Clarifying and Adopting KUSF Election Criteria and KUSF Administrative Penalties, Docket No. 20-GIMT-086-GIT, March 3, 2020.

¹⁰ See Kansas Universal Service Fund March 2021 – February 2022 (FY 25), 02/04/21 KUSF Payment Submission Information, https://www.gvnwusf.com/Portals/5/Documents/Instructions/2021_2022/AttachmentC.pdf, last viewed Oct. 12, 2021.

CERTIFICATE OF SERVICE

22-GRTT-168-KSF

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served via electronic service this 27th day of October, 2021, to the following:

CALVIN NEZTSOSIE, TAX COMPLIANCE TEAM LEAD
GRANITE TELECOMMUNICATIONS, LLC
100 NEWPORT AVE EXT #1
QUINCY, MA 02171-1734
cneztosie@granitenet.com

JOHN PRINNER, CFO
GRANITE TELECOMMUNICATIONS, LLC
100 NEWPORT AVE EXT #1
QUINCY, MA 02171-1734
taxdept@granitenet.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.latif@kcc.ks.gov

NICOLE STEPHENS, KUSF ADMINISTRATOR MANAGER
VANTAGE POINT SOLUTIONS
2930 MONTVALE DRIVE SUITE B
SPRINGFIELD, IL 62704
nicole.stephens@vantagepnt.com

JUDI USHIO, MIDWEST DIVISION MANAGER
VANTAGE POINT SOLUTIONS
2930 MONTVALE DRIVE, SUITE B
SPRINGFIELD, IL 62704
judi.ushio@vantagepnt.com



Ann Murphy