

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

Before Commissioners: Dwight D. Keen, Chair,  
Shari Feist Albrecht  
Susan K. Duffy

In the Matter of a General Investigation for	)	
Vitcom, LLC to ShowCause Why this	)	
Commission Should Not Initiate Sanctions	)	
and Fines and/or Suspend, Cancel, or	)	Docket No. 20-VTMT-166-SHO
Revoke its Certificate of Convenience to	)	
Provide Interexchange Carrier and	)	
Competitive Local Exchange Carrier	)	
Services 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.<sup>1</sup>

2. Vitcom, LLC (Vitcom) has its corporate headquarters in Brooklyn, New York and offers Competitive Local Exchange Carrier and Interexchange Services in Kansas. It was issued a Certificate of Convenience and Authority in Docket No. 16-VTMT-152-COC.

3. On September 27, 2019, the Commission Staff submitted a Report and Recommendation dated September 26, 2019, which is attached and incorporated by reference, to the Commission. The Report and Recommendation sets forth an investigation of Vitcom and

<sup>1</sup> K.S.A. 2018 Supp. 66-1,195.

enumerates filing and payment delinquencies, including: (1) payment of Commission assessments; (2) filing an Annual Interrogatory; (3) payment of its Kansas Universal Service Fund (KUSF) assessments; (4) filing a Kansas property tax return and (5) maintaining its corporate authority with the Kansas Secretary of State. Based on its review, the Staff advised the Commission to open a proceeding for the purpose of directing Vitcom to show cause why it should not be subject to penalties, sanctions or fines in addition to having its interexchange authority suspended, canceled or revoked for failure to comply with its statutory and regulatory obligations.

4. K.S.A. 66-1503 establishes the assessment procedures for determining regulatory fees for all public utilities, including telecommunication public utilities. Vitcom is a telecommunications public utility under the Commission's jurisdiction. Assessments are to be paid within 15 days of the time a notice is mailed, and notice constitutes a demand for payment.<sup>2</sup> Vitcom is delinquent in paying its quarterly assessments and owes the Commission a balance of \$200.00. Accordingly, Vitcom is subject to fines and penalties for not paying its regulatory assessments and subject to possible suspension, cancellation or revocation of its operating authority.

5. The Commission has authority to assess costs and expenses to telecommunications carriers<sup>3</sup> and to request information from them<sup>4</sup> as part of its regulatory oversight. The Commission has established procedures for telecommunication carriers to file an Annual Interrogatory by May 1 for the preceding calendar year of business to determine assessments under K.S.A. 2018 Supp. 66-1503.<sup>5</sup> As a telecommunication carrier, Vitcom has failed to file its Annual Interrogatory for the calendar years ending December 31, 2017 and December 31, 2018. Vitcom

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<sup>2</sup> K.S.A. 2018 Supp. 66-1503(b).

<sup>3</sup> K.S.A. 2018 Supp. 66-2005(z)(3)(E).

<sup>4</sup> K.S.A. 2018 Supp. 66-3005(z)(3)(F).

<sup>5</sup> K.S.A. 66-123 and Commission Order, Docket No. 13-GIMT-736-GIT (December 3, 2013).

is, therefore, subject to fines and penalties for not filing the Annual Interrogatory and subject to possible suspension, cancellation or revocation of its operating authority as a result of not complying with Kansas statutes and Commission orders.

6. K.S.A. 2018 Supp. 66-2008(a) requires every telecommunication carrier to contribute to the KUSF based on its intrastate telecommunications services net retail revenue. The Commission has issued orders under its statutory mandate to provide registration and timely reporting and assessment payments. GVNW Consulting, Inc. reports that Vitcom has never reported revenue to the KUSF or registered with the KUSF for the March 2019 through February 2020 Fiscal Year (FY 23). Vitcom, therefore, is in violation of K.S.A. 2018 Supp. 66-2008(a) and needs to show cause why it should not be subject to fines, penalties and sanctions, as well as suspension, cancellation or revocation of its operating authority as a consequence of not reporting revenue and registering with the KUSF.

7. The Staff was also notified by the Kansas Department of Revenue, Division of Property Valuation that Vitcom did not submit its property tax return as required by K.S.A. 79-5a02 for 2017, 2018 and 2019. This failure would constitute another violation of state law that would give rise to showing cause why Vitcom should not be subject to fines, penalties and sanctions, as well as suspension, cancellation or revocation of its operating authority.

8. K.S.A. 17-7505(a) requires foreign corporations to file an Annual Report with the Kansas Secretary of State. Failure to file a report or to pay the associated fee within the statutory timeframe results in a foreign corporation having its authority to do business in the state forfeited.<sup>6</sup> According to the records of the Secretary of State, Vitcom had its corporate authority to do business forfeited in July 2019. This would also render Vitcom incapable of conducting the

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<sup>6</sup> K.S.A. 2018 Supp. 17-7510(b).

business of a Competitive Local Exchange and Interexchange carrier in Kansas, subjecting it to possible suspension, cancellation or revocation of its operating authority granted in Docket No. 16-VTMT-152-COC.

9. Based on the Staff analysis, the Commission finds the Staff's recommendation to open a proceeding to require Vitcom to show cause why this Commission should not initiate sanctions and fines and cancel, suspend or revoke its telecommunications authority is appropriate. Consequently, the Commission determines that a Show Cause Docket should be opened, and Vitcom be given the opportunity to respond to the Staff Report and Recommendation of September 26, 2019.

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

A. Vitcom, 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 Competitive Local Exchange and Interexchange Carrier authority 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).<sup>7</sup>

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.**

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 10/15/2019



Lynn M. Retz  
Executive Director

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<sup>7</sup> K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chair Dwight D. Keen  
Commissioner Shari Feist Albrecht  
Commissioner Susan K. Duffy

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

**DATE:** September 26, 2019

**SUBJECT:** Docket No. 20-VTMT-~~166~~-SHO  
In the Matter of a General Investigation for Vitcom, LLC to Show Cause Why this Commission Should Not Initiate Sanctions and Fines and/or Suspend, Cancel, or Revoke its Certificate of Convenience to Provide Interexchange Carrier and Competitive Local Exchange Carrier Services for Non-Compliance with Kansas Statutes and Commission Orders.

**EXECUTIVE SUMMARY:**

Vitcom, LLC (Vitcom), headquartered in Brooklyn, New York, holds a Certificate of Convenience and Authority (COC) to operate as a Competitive Local Exchange Carrier (CLEC) and an interexchange carrier (IXC)<sup>1</sup> in Kansas. Vitcom is delinquent with: (1) maintaining its standing with the Kansas Secretary of State's office to do business in Kansas;<sup>2</sup> (2) paying Commission assessments; (3) filing Annual Interrogatories; (4) paying its Kansas Universal Service Fund (KUSF) obligations; and (5) remitting Kansas property tax returns. Vitcom is, therefore, non-compliant with K.S.A. 17-7503, K.S.A. 66-1503, K.S.A. 66-2005(z)(3), K.S.A. 66-2008(a), K.S.A. 79-5a02, and Commission Orders.

Staff recommends that the Commission issue an Order opening a proceeding and requiring Vitcom to show cause why it should not be subject to penalties, sanctions, or fines and/or its CLEC and IXC COCs should not be suspended, canceled, or revoked for failure to comply with its Kansas obligations. Staff also recommends Vitcom be directed to cure all deficiencies within 30 days of issuance of an Order.

<sup>1</sup> Order and Certificate, Docket No. 16-VTMT-152-COC, Dec. 15, 2015.

<sup>2</sup> <https://www.kansas.gov/bess/flow/main?execution=e1s5>, last viewed Sept. 26, 2019.

## **BACKGROUND:**

K.S.A. 17-7503 requires a foreign covered entity to file an Annual Report with the Kansas Secretary of State. Vitcom most recently filed an Annual Report with the Secretary of State for the year ended December 2017. Consistent with K.S.A. 17-7510(b), the Company forfeited its authority to do business in Kansas in July 2019.

K.S.A. 66-1503 authorizes the Commission to assess each public utility or common carrier for expenses it incurs during a fiscal quarter, with the company required to remit payment within fifteen days after notice mailing to pay the assessment. Vitcom owes \$200 of Commission assessments.

K.S.A. 66-2005(z)(3)(E) authorizes the Commission to assess costs and expenses to telecommunications carriers and K.S.A. 66-2005(z)(3)(F) authorizes the Commission to request information from the carriers. The Commission, therefore, requires telecommunications carriers to file an Annual Interrogatory for the proceeding calendar year with the Commission by May 1 of the following year.<sup>3</sup> Vitcom has not filed an Annual Interrogatory for the calendar year ended December 31, 2017, or December 31, 2018.

K.S.A. 66-2008(a) requires every provider of intrastate telecommunications services, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the KUSF based on its intrastate telecommunications services net retail revenues. As discussed in the attached Memorandum from GVNW Consulting, Inc. (GVNW), Vitcom has never reported revenue to the KUSF and has not registered with the KUSF for the March 2019 through February 2020 Fiscal Year (FY 23).

Staff was notified by the Kansas Department of Revenue (KDOR), Division of Property Valuation, that Vitcom did not remit its property tax returns for 2017, 2018, and 2019, as required by K.S.A. 79-5a02.

## **ANALYSIS**

Vitcom is required to comply with Kansas statutes and Commission Orders. Vitcom has not done so and, as of July 2019, forfeited its authority to do business in Kansas with the Kansas Secretary of State's office. Additionally, the Company owes \$200 of assessments to the Commission and has not filed an Annual Interrogatory for the calendar years ended December 31, 2017, and December 31, 2018. Vitcom is delinquent in registering with the KUSF for FY 23 and has not filed three years' of property tax returns.

## **RECOMMENDATION:**

Staff recommends that the Commission issue an Order to open a proceeding and direct Vitcom to show cause why it should not be subject to penalties, sanctions, or fines and/or its CLEC and IXC COC suspended, canceled, or revoked for failure to comply with its Kansas obligations. Staff also recommends Vitcom be directed to cure all deficiencies within 30 days of issuance of an Order.

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<sup>3</sup> Order, Docket No. 13-GIMT-736-GIT, Dec. 3, 2013.



CONSULTING

## KUSF MEMO

Date: September 24, 2019  
To: Sandy Reams, Assistant Chief of Telecommunications  
From: Nicole Stephens, KUSF Compliance Manager  
RE: Vitcom LLC – KUSF Account KS006389

### **BACKGROUND**

This Memorandum provides KUSF reporting information to the Kansas Corporation Commission (Commission) for Vitcom LLC ("Vitcom"), KUSF Account No. KS006389.

Vitcom has been registered with the KUSF since May 2016 as a CLEC. Vitcom has never reported revenue to the KUSF and last registered with the KUSF for the March 2018–February 2019 (FY 22) fiscal year and elected to continue to report on a "Not Generating Kansas Intrastate Retail Revenue" basis.

As of September 2019, Vitcom is delinquent in submitting the Company Identification and Operations forms (Attachment B) to register for the March 1, 2019, through February 29, 2020 (FY 23) fiscal year. Vitcom currently has a zero balance on its KUSF account.

Vitcom has been sent monthly delinquent letters in regard to its past due obligations. The Company has not responded to the delinquent letters.

## CERTIFICATE OF SERVICE

20-VTMT-166-SHO

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 10/15/2019.

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/S/ DeeAnn Shupe  
DeeAnn Shupe