

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of a General Investigation for)
Dow Management Company, Inc. d/b/a Avoxi,)
Inc. to Show Cause Why this Commission) Docket No. 18-DMCV-012-SHO
Should Not Initiate Sanctions and Fines and/or)
refer to the Attorney General's Office for Non-)
Compliance with Commission Orders and)
Kansas Statutes.)

ORDER TO SHOW CAUSE

NOW, 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. Dow Management Company, Inc. d/b/a Avoxi, Inc. (Avoxi) is an interconnected Voice over Internet Protocol (VoIP) provider in Kansas headquartered in Atlanta, Georgia.
2. As an interconnected VoIP provider, Avoxi is required to comply with K.S.A. 66-2008(a) regarding contributions to the Kansas Universal Service Fund (KUSF). Avoxi is also required to comply with K.S.A. 17-7931 pertaining to business registration with the Kansas Secretary of State's Office.
3. Commission Staff (Staff) submitted a Report and Recommendation (R&R) to the Commissioners on July 11, 2017, attached hereto and made a part hereof by reference.
4. Staff explained that in a memorandum dated July 7, 2017, GVNW Consulting, Inc. (GVNW), the current KUSF administrator, indicated that Avoxi has the following delinquencies pertaining to its compliance with K.S.A. 66-2008(a) and the KUSF:

(1) As of July 1, 2017, Avoxi owes \$243.60 in outstanding penalties due to late Carrier Remittance Worksheet (CRW) filings and late KUSF assessment payments. Avoxi's April 15, 2015, CRW and KUSF assessment payments were made on April 21, 2015, resulting in Avoxi being assessed a Late CRW Penalty and a Late Payment Penalty. Avoxi's April 16, 2016, CRW and KUSF assessment payments were made May 24, 2016, and June 1, 2016, respectively, resulting in Avoxi being assessed a Late CRW Penalty and Late Payment Penalty. Avoxi has not paid these penalties and continues to be assessed Delinquent Balance Penalties.

5. Staff noted that Avoxi does not appear to be registered with the Kansas Secretary of State's Office, a possible violation of K.S.A. 17-7931. Furthermore, GVNW has sent Avoxi monthly delinquent notices, as well as e-mails, but Avoxi has not responded to GVNW.

6. Staff recommends that the Commission issue an Order to open a new proceeding and require Avoxi to show cause why it should not be subject to penalties, sanctions, or fines and/or referred to the Kansas Attorney General's Office for failure to comply with Commission Orders and its Kansas statutory obligations.

7. 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. Avoxi shall show cause, within thirty (30) days of receipt of this Order, why it should not be subject to penalties, sanctions, or fines and/or referred to the Kansas Attorney General's Office for failure to comply with Commission Orders and its Kansas statutory obligations.

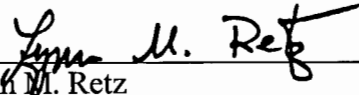
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 77-529(a)(1).

C. 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.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: JUL 25 2017



Lynn M. Retz
Secretary to the Commission

MRN

Order Mailed Date

JUL 26 2017

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

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

DATE: July 11, 2017

SUBJECT: Docket No. 18-~~MCY~~-012-SHO
In the Matter of a General Investigation for Dow Management Company, Inc. d/b/a Avoxi, Inc. to Show Cause Why this Commission Should Not Initiate Sanctions and Fines and/or refer to the Attorney General's Office for Non-Compliance with Commission Orders and Kansas Statutes.

EXECUTIVE SUMMARY:

Dow Management Company, Inc. d/b/a Avoxi, Inc. (Avoxi) is non-compliant with Commission Orders and K.S.A. 66-2008(a) regarding its Kansas Universal Service Fund (KUSF) obligations. Avoxi also appears to be in non-compliance with K.S.A. 17-7931 since it has not registered with the Kansas Secretary of State's Office before doing business in the state of Kansas.¹ Avoxi, headquartered in Atlanta, Georgia,² offers interconnected Voice over Internet Protocol (VoIP) services in Kansas.³

Staff recommends the Commission issue an Order to open a new proceeding and require Avoxi to show cause why it should not be subject to penalties, sanctions or fines and/or referred to the Attorney General's Office for failure to comply with its Kansas obligations.

¹ Kansas Business Center, last viewed July 10, 2017, at: <https://www.kansas.gov/bess/flow/main;jsessionid=45411745051564F2D2F63ABBF24FCB17.apths03-inst0?execution=els4> and <https://www.kansas.gov/bess/flow/main?execution=els4>.

² Avoxi Office Locations, last viewed July 10, 2017, at: <https://www.avoxi.com/office-locations/>.

³ Federal Communications Commission's Form 499 Filer Database, last viewed July 10, 2017, at: <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=821968>.

BACKGROUND:

K.S.A. 66-2008(a), as amended effective July 1, 2016, states:

The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by 47 C.F.R. 9.3, to contribute to the KUSF based upon the provider's intrastate telecommunications services net retail revenues on an equitable and nondiscriminatory basis. The commission shall not require any provider to contribute to the KUSF under a different contribution methodology than such provider uses for purposes of the federal universal service fund, including for bundled offerings. Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer. The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by 47 C.F.R. § 9.3 (October 1, 2005), to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

The Commission implemented KUSF obligations for interconnected VoIP providers in Docket No. 07-GIMT-432-GIT,⁴ effective January 2009. Any provider with Kansas intrastate retail telecommunications revenue is required to register with and report to the KUSF.⁵

In a memorandum dated July 7, 2017, GVNW Consulting, Inc. (GVNW), the KUSF Administrator, advised Staff that Avoxi remains delinquent with its KUSF obligations and, specifically, Avoxi has not remitted payment of \$243.60 of penalties assessed to the Company. GVNW's Memorandum is attached.

GVNW explained that in April 2013, Avoxi registered with the KUSF for the March 2013 through February 2014 and March 2014 through February 2015 Fiscal Years, stating it was not generating any Kansas intrastate retail revenue. For March 2015 through February 2016, Avoxi

⁴ *In the Matter of the Investigation to Address Obligations of VoIP Providers With Respect to KUSF*, Docket No. 07-GIMT-432-GIT, Sept. 22, 2008 Implementation Order Adopting Staff Report and Recommendation and Requiring VoIP Providers Operating in Kansas to Report and Remit to the Kansas Universal Service Fund by January 15, 2009.

⁵ *In the Matter of the Investigation to Determine the March 1, 2006 Assessment for the Tenth Kansas Universal Service Fund*, Docket No. 06-GIMT-332-GIT, Jan. 23, 2006 Order.

stated it qualified to report revenue and pay assessments on an annual basis. GVNW received Avoxi's annual Carrier Remittance Worksheet (CRW) and assessment payment on April 21, 2015, after the April 15, 2015 due date, resulting in Avoxi being assessed a Late CRW Penalty⁶ and a Late Payment Penalty.⁷ GVNW received Avoxi's annual CRW for the March 2016 through February 2017 Fiscal Year on May 24, 2016, and the KUSF assessment payment on June 1, 2016. GVNW assessed Avoxi a Late CRW Penalty and Late Payment Penalty since both the annual CRW and assessment payment were received after the April 15, 2016 due date.

GVNW noted that Avoxi timely submitted its annual CRW and assessment payment for the March 2017 through February 2018 Fiscal Year. Avoxi, however, has not paid any of the penalties GVNW has assessed in accordance with Commission Orders and continues to be assessed Delinquent Balance Penalties.⁸ As of July 1, 2017, Avoxi owes the KUSF \$243.60.

GVNW has sent Avoxi monthly delinquent notices, as well as emails. The Company has not responded to GVNW.

ANALYSIS:

GVNW has assessed penalties to Avoxi in accordance with Commission Orders; however, Avoxi has failed to pay any of the penalties. Avoxi will remain subject to the assessment of the Delinquent Balance Penalty until it pays its delinquent balance. As of July 1, 2017, Avoxi owes the KUSF \$243.60.

RECOMMENDATION:

Staff recommends that the Commission issue an Order to open a new proceeding and require Avoxi to show cause why it should not be subject to penalties, sanctions, or fines and/or referred to the Kansas Attorney General's Office for failure to comply with Commission Orders and its Kansas statutory obligations.

⁶ Id.

⁷ Docket No. 94-GIMT-478-GIT, Feb. 19, 1997 Order.

⁸ Docket No. 10-GIMT-188-GIT, Jan. 23, 2010 Order.



CONSULTING

KUSF MEMO

Date: July 7, 2017
To: Sandy Reams
From: Nicole Stephens, KUSF Compliance Administrator
RE: Dow Management Company, Inc. d/b/a Avoxi, Account KS006345

BACKGROUND

This memorandum provides KUSF reporting information to the Kansas Corporation Commission (Commission) for Dow Management Company, Inc. d/b/a Avoxi ("Avoxi"), KUSF Account No. KS006345, for the March 2013 – February 2014 (FY17) through the March 2016 – February 2017 (FY20) periods.

In April 2013, Avoxi registered with the KUSF, and indicated on its March 2013 – February 2014 (FY 17) Attachment B form that it was not generating Kansas intrastate retail revenue. The company continued to report "not generating Kansas intrastate retail revenue" on its March 2014 – February 2015 (FY 18) Attachment B form.

Effective with the March 2015 – February 2016 (FY 19) plan year, the company indicated that it would report on an Annual basis to the KUSF. The company submitted its FY 19 Annual worksheet on April 21, 2015, which was due by April 15, 2015, therefore it was past due and was assessed a \$100 late worksheet penalty in accordance with Commission Order. The company remitted payment for the FY 19 Annual KUSF assessment on April 21, 2015 and a late payment penalty was assessed for a total of \$100.03 in late penalties. The company has not yet remitted payment for the FY 19 penalties, therefore the company has been subject to delinquent balance penalties assessed in accordance with Commission Order.

For the March 2016 – February 2017 (FY 20) plan year, the company elected to report and pay on an Annual basis and submitted its FY 20 Annual worksheet on May 24, 2016. The related KUSF assessment payment was not remitted until June 1, 2016. Both the FY 20 worksheet and assessment payment were due on April 15, 2016 and, therefore, Avoxi was assessed late worksheet and late payment penalties.

Avoxi continues to report on an Annual basis to the KUSF for the March 2017 – February 2018 (FY 21) plan year, and its FY 21 worksheet and assessment were submitted on April 10, 2017 and April 13, 2017 respectively. Avoxi was not assessed any penalties since its worksheet and payment were on time.

To date, the company has not remitted payment for the late worksheet, late payment and delinquent balance penalties assessed for the FY 19 and FY 20 annual worksheets and assessment payments.

Avoxi has been sent monthly delinquent letters in regard to the past due balances since June 2015. On June 30, 2017, GVNW sent an email to Mr. Weston Edmonds with Avoxi, with copy to Sandy Reams (KCC) and Michael Neely (KCC), detailing the past due balance and requesting response no later than July 5, 2017. The company has not responded to GVNW's request.

As of July 1, 2017, the company has not filed a pleading with the Commission requesting waiver of the penalties nor has it remitted payment for the late penalties assessed. Avoxi has been delinquent for more than 720 days and continues to incur a 1% delinquent balance penalty each month on the balance remaining at the end of the month. The company continues to receive monthly delinquent letters from GVNW. The company's delinquent balance, as of July 1, 2017 is \$243.60.

CERTIFICATE OF SERVICE

18-DMCV-012-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 JUL 25 2017.

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weston@avoxi.com

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dwinter@gvnw.com

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

JUL 26 2017