

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)
Chit Chat Holdings, LLC d/b/a Chit Chat)
Mobile to Show Cause Why this Commission) Docket No. 18-CHCZ-013-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 FINDING NON-COMPLIANCE; PENALTY ASSESSMENT

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. On July 25, 2017, the Commission issued an *Order to Show Cause* (Order to Show Cause) in this proceeding. The Order to Show Cause required Chit Chat Holdings, LLC d/b/a Chit Chat Mobile (Chit Chat)¹ to respond within thirty (30) days to the allegations of GVNW Consulting, Inc. (GVNW)² regarding non-payment of Kansas Universal Service Fund (KUSF) obligations under K.S.A. 66-2008(a), and associated filing delinquencies.

2. Chit Chat did not respond as ordered.

3. Commission Staff (Staff) submitted a Report and Recommendation (R&R) to the Commissioners on September 21, 2017, attached hereto and made a part hereof by reference.

¹Chit Chat Holdings, LLC d/b/a Chit Chat Mobile (Chit Chat) is a wireless telecommunications service provider headquartered in Wichita, Kansas.

²The current Kansas Universal Service Fund administrator. See K.S.A. 66-2010.

4. Staff explained that since the issuance of the Order to Show Cause, Staff has been in contact with Chit Chat; however, Chit Chat has failed to come into compliance with its KUSF obligations.

5. Specifically, Chit Chat remains delinquent for:

(1) Remittance of the Company Identification and Operations form for the March 2017 through February 2018 Fiscal Year, due by April 15, 2017;

(2) Remittance of all Carrier Remittance Worksheets (CRWs) through August 2017, with each month's CRW due by the 15th of the following month;

(3) Payment of the KUSF assessments for the months of June 2016 through August 2017, with payment of each month's assessment due by the 15th of the following month; and

(4) Payment of all Late CRW, Late Payment, and Delinquent Balance Penalties for March 2016 through August 2017, with payment of each penalty due by the last day of the month in which the invoice is issued.

6. Staff states that as of September 1, 2017, Chit Chat's total delinquent balance was \$1,660.40. Staff recommends that the Commission find that this amount is owed by the company. Additionally, Staff notes that this balance is subject to change as Late CRW, Late Payment, and Delinquent Balance Penalties will continue to accrue until such time as Chit Chat comes into compliance.

7. Furthermore, because Chit Chat 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 the Commission issue a \$100 per month penalty until full compliance is achieved. The penalties will begin from the date of Chit Chat's first violation, July 16, 2016, and continuing until full compliance is achieved.

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

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission finds that Chit Chat is delinquent with its KUSF obligations, as noted in paragraph 5, above. Chit Chat owes \$1,660.40 to the KUSF as of September 1, 2017. Such amount will continue to accrue Late CRW, Late Payment, and Delinquent Balance Penalties until Chit Chat remits payment of all outstanding assessments and penalties.

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), Chit Chat 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. Given that Chit Chat currently owes \$1,660.40, the Commission considers a \$100 to \$5,000 per day penalty to be onerous given the gravity of the violation. Therefore, the Commission adopts Staff's recommendation, and Chit Chat is hereby assessed a \$100 per month penalty stemming from its first violation on July 16, 2016. As of the date of issuance of this Order, the penalties total \$1,400. Therefore, this Order specifically assesses a \$1,400 penalty. Chit Chat will be subject to further penalties unless full compliance is achieved, and the Commission will issue further orders as necessary. If Chit Chat does come into compliance, Staff shall notify the Commission in this docket.


C. 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).

D. 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: OCT 10 2017


Lynn M. Retz
Secretary to the Commission

MRN

Order Mailed Date

OCT 11 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: September 21, 2017

SUBJECT: Docket No. 18-CHCZ-013-SHO
In the Matter of a General Investigation for Chit Chat Holdings, LLC d/b/a Chit Chat Mobile 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:

On July 25, 2017, the Commission issued an Order opening this Docket and directing Chit Chat Holdings, LLC d/b/a Chit Chat Mobile (Chit Chat) 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 Universal Service Fund (KUSF) obligations (Show Cause Order).

Staff has been in contact with Chit Chat; however, the Company has failed to come into compliance with its Kansas obligations. Staff recommends that the Commission find that Chit Chat failed to comply with its KUSF obligations for the period of June 2016 through August 2017 and owes \$1,660.45 of assessments and penalties to the KUSF. Staff further recommends that the Commission assess Chit Chat an additional penalty of \$100 per violation pursuant to K.S.A. 66-138(a)(2) for failure to comply with its KUSF obligations.

BACKGROUND:

On July 25, 2017, the Commission issued an Order opening this Docket to address the following delinquent KUSF obligations of the Company:

1. Chit Chat did not pay its KUSF assessments for the months of June 2016 through January 2017 and was assessed Late Carrier Remittance Worksheet (CRW) Penalties¹ for March through June, August through October, and November 2016. The Company has also been assessed Delinquent Balance Penalties.² As of July 1, 2017, Chit Chat owed \$1,627.73 to the KUSF and, due to the continued accrual of penalties, the balance as of September 1, 2017, is \$1,660.45. This balance is subject to change as Late Payment Penalties³ will accrue until the Company remits payment of the past due assessments; and
2. Chit Chat has not registered with the KUSF for the March 2017 through February 2018 Fiscal Year (FY 21) and has not reported any revenues or paid any assessments for FY 21. Thus, Chit Chat is delinquent in reporting its revenues and paying the related KUSF assessments for the months of February through July 2017.⁴

On August 28, 2017, Staff sent an email to Chit Chat's owner, Mr. John Hennessey, and the Company's general support email.⁵ Since that time, Staff has corresponded with Mr. Hennessey via email. Mr. Hennessey stated that he called the Commission on July 31st to inform the Commission that Chit Chat ceased operations in Kansas as of February 2017.⁶ A review of the Kansas Secretary of State's Business Center shows that Chit Chat is current with K.S.A. 17-7931, and maintains an "Active and in Good Standing" designation, with Mr. Hennessey identified as the owner.⁷ The Federal Communications Commission's (FCC) service registration database shows Chit Chat last registered with the FCC in 2016.⁸

ANALYSIS:

On August 28, 2017, Mr. Hennessey advised Staff that he ceased operating Chit Chat as of February 28, 2017, however Chit Chat has failed to come into compliance with its KUSF obligations and is liable for its delinquent KUSF obligations, as follows:

1. remittance of the Company Identification and Operations form for the March 2017 through February 2018 Fiscal Year, due by April 15, 2017;⁹
2. remittance of all CRWs through August 2017, with each month's CRW due by the 15th of the following month;
3. payment of the KUSF assessments for the months of June 2016 through August 2017, with payment of each month's assessment due by the 15th of the following month; and

¹ Docket No. 06-GIMT-332-GIT, Jan. 23, 2006 Order.

² Docket No. 10-GIMT-188-GIT, Jan. 23, 2010 Order.

³ Docket No. 94-GIMT-478-GIT, Feb. 19, 1997 Order.

⁴ At the time the Commission issued its Order, Chit Chat's July 2017 CRW was not yet due, therefore, the Order refers to the months of February through June 2017.

⁵ Aug. 28, 2017, email from Sandy Reams to John Hennessey and support@chitchatmobile.com.

⁶ Aug. 28, 2017, email from John Hennessey to Sandy Reams.

⁷ Kansas Business Center, Chit Chat Holdings, LLC's 2016 Annual Report, last viewed Sept. 19, 2017, at: <https://www.kansas.gov/bess/flow/main?execution=e1s5>. Chit Chat Mobile's 2016 Annual Report, last viewed Aug. 28, 2017, at: <https://www.kansas.gov/bess/flow/main?execution=e1s6>.

⁸ FCC Form 499 Filer Database, last viewed Sept. 19, 2017 at: <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829351>.

⁹ All forms and payments for a month are due by the 15th of the following month, unless the 15th falls on a weekend or holiday; in which case, the due date is the next business date.

4. payment of all Late CRW, Late Payment, and Delinquent Balance Penalties for March 2016 through August 2017, with payment of each penalty due by the last day of the month in which the invoice is issued.

As of July 1, 2017, Chit Chat owed \$1,627.73 to the KUSF. Due to the accrual of continued penalties, the balance was \$1,660.40 as of September 1, 2017. The balance is subject to change as Late Payment Penalties¹⁰ will continue to accrue until such time as the Company remits payment of the past due assessments and penalties.

Chit Chat remains delinquent with its KUSF obligations and has not responded to the Commission's Show Cause Order. Pursuant to K.S.A. 66-138(a)(2), the Commission is authorized to assess Chit Chat penalties for failure to perform its legal and/or Commission ordered obligations, as follows:

- (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. Upon receipt of any such sum, the state treasurer shall credit the entire amount thereof to the public service regulation fund or the motor carrier license fee fund, as the case requires.

Chit Chat's first violations began July 16, 2016, the day following the July 15, 2016, due date for the June 2016 CRW. Staff recommends a penalty be assessed against Chit Chat based on the number of months the Company failed to comply with its KUSF obligations and continue until such time that Chit Chat remits all required filings and payment of all of the assessments and penalties owed to the KUSF.

Chit Chat remains subject to all Commission-ordered KUSF related penalties; therefore, Staff recommends that the Commission assess Chit Chat a \$100 penalty per month the Company remains non-compliant with its KUSF obligations, pursuant to K.S.A. 66-138(a)(2).

RECOMMENDATION:

Staff recommends that the Commission issue an Order finding Chit Chat has failed to comply with its KUSF obligations for the period of June 2016 through August 2017 and owes \$1,660.45 in assessments and penalties to the KUSF as of September 1, 2017. Staff further recommends that the Commission assess Chit Chat additional penalties of \$100 per month for each month Chit Chat remains non-compliant with its obligations, pursuant to K.S.A. 66-138(a)(2).

¹⁰ Docket No. 94-GIMT-478-GIT, Feb. 19, 1997 Order.

CERTIFICATE OF SERVICE

18-CHCZ-013-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 OCT 10 2017.

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/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date

OCT 11 2017