

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

In the Matter of a General Investigation for Tru)
Mobility, Inc. to Show Cause Why this) Docket No. 21-TMIV-449-SHO
Commission Should Not Levy Sanctions,)
Penalties, and Fines for Non-Compliance with)
Kansas Statutes and Commission Orders)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby submits its Report and Recommendation (R&R) dated April 7, 2022. Staff recommends the Commission find Tru Mobility, Inc. (Tru) is non-compliant with the Commission's prior Show Cause Order issued June 10, 2021, and K.S.A. 66-2008(a). Staff further recommends the Commission find that Tru owes \$4,274.37 of assessment contributions and \$13,495.66 of penalties to the Kansas Universal Service Fund (KUSF) and deny Tru's requests to remit monthly payments and waive or reduce its KUSF penalties. Staff further recommends the Commission direct Vantage Point Solutions (VPS), the KUSF administrator, to stop accruing additional penalties for Tru. Staff also recommends that the Commission provide Tru 45 days from the issuance of an Order to pay its delinquent KUSF balance and, if the Company fails to do so, the Commission initiate collection actions against the Company.

WHEREFORE, Staff respectfully requests that the Commission issue an order adopting its recommendations.

Respectfully Submitted,

/s/ Michael Neeley
Michael Neeley, S. Ct. #25027
Senior Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Dwight D. Keen, Chair
Susan K. Duffy, Commissioner
Andrew J. French, Commissioner

FROM: Sandy Reams, Assistant Chief of Telecommunications
Bryan Seamans, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: April 7, 2022

SUBJECT: Docket No 21-TMIV-449-SHO

In the Matter of a General Investigation for Tru Mobility, Inc. to Show Cause Why this Commission Should Not Levy Sanctions, Penalties, and Fines for Non-Compliance with Kansas Statutes and Commission Orders.

EXECUTIVE SUMMARY

On June 10, 2021, the Commission issued an Order to Show Cause (Show Cause Order) to open this Docket and address Tru Mobility, Inc.'s (Tru) non-compliance with its Kansas Universal Service Fund (KUSF) obligations. The Commission directed Tru to respond as to why it should not be subject to penalties and fines for failing to fulfill its statutory obligations, report its January and February 2018 revenues, pay \$5,679.26 of assessment contributions, and pay \$11,076.71 of penalties to the KUSF within 30 days of the Order.

In response, Tru requested the Commission waive all KUSF penalties and allow Tru to remit monthly payments of \$1,000 towards its delinquent KUSF balance¹ or reduce the KUSF penalties.²

Staff recommends the Commission find Tru is non-compliant with the Commission's Order and K.S.A 66-2008(a). Staff further recommends the Commission find that Tru currently owes \$4,274.37 of assessment contributions and \$13,495.66 of penalties to the KUSF and deny Tru's requests to remit monthly payments and waive or reduce its KUSF penalties. Staff further recommends the Commission direct Vantage Point Solutions (VPS), the KUSF Administrator, to stop accruing additional penalties for Tru as of April 1, 2022. Staff also recommends that the Commission provide Tru 45 days from issuance of an Order to pay its delinquent KUSF balance and, if the Company fails to do so, the Commission initiate collection actions against the Company.

¹ Tru Mobility's Show Cause Response, June 28, 2021 (June 2021 Response).

² Tru Mobility, Inc.'s Show Cause Follow-up Response, July 22, 2021 (July 2021 Response).

BACKGROUND

Tru, headquartered in Vero Beach, Florida,³ provides cellular service in Kansas. Tru is registered with the Kansas Secretary of State's Office, with an "Active and in Good Standing" status. Tru is registered with the Federal Communications Commission (FCC) to provide service in Kansas.⁴ Tru is required to comply with K.S.A. 66-2008 and Commission orders.

In a Report and Recommendation (R & R) dated June 2, 2021, Staff recommended the Commission open a proceeding for Tru to show cause why it should not be subject to penalties, sanctions, or fines, pursuant to K.S.A. 66-138, for failure to comply with its KUSF obligations. Attached to Staff's R & R was a Memorandum from VPS detailing Tru's KUSF reporting and payment history. Staff explained the Company did not timely register for the KUSF Fiscal Years (FY) of March 2017 – February 2018 (FY 21), March 2018 – February 2019 (FY 22), and March 2019 – February 2020 (FY 23), failed to report its revenues and pay the related assessment contributions for January and February 2018, and owed \$8,679.26 of contributions to KUSF FYs 21 – 23. Staff further explained Tru paid \$3,000 of assessment contributions, reducing its FY 21 – 23 KUSF assessment liability to \$5,679.26. Staff further explained that Tru owed \$11,076.71 of administrative penalties, consisting of: (1) \$5,400 of Late Attachment B Penalties for registering with the KUSF after the due date; (2) \$3,224.52 of Late Filing Penalties; (2) \$765.82 of Late Payment Penalties; and \$1,686.37 of Delinquent Balance Penalties.

On June 10, 2021, the Commission opened this Docket to address Tru's delinquent KUSF status. The Commission directed Tru to respond, within 30 days of the Order's issuance, why it should not be subject to penalties and fines for failing to fulfill its Kansas obligations. The Commission also directed Tru to come into compliance with its KUSF obligations, to include reporting its January and February 2018 revenues and paying the related assessment contributions. The Commission also directed Tru to pay \$5,678.26 of outstanding assessment contributions and the \$11,076.71 in KUSF penalties to the KUSF. Tru was directed to come into compliance with its KUSF obligations within thirty (30) days of the Order's issuance.

On June 28, 2021, Tru filed a response to the Show Cause Order and explained the impact the Covid-19 Pandemic had to the Company and that the Company's limited resources were also addressing a KUSF audit. Tru, therefore, requested the Commission allow the Company to make monthly payments of \$1,000 towards its delinquent assessment contribution balance and waive all KUSF penalties.⁵ On July 13, 2021, Tru explained that it had filed the required reports with the KUSF and requested the Commission reduce its KUSF penalties.⁶

Staff and VPS have continued to work with Tru to bring the Company into compliance with its KUSF obligations, with limited success. Staff, therefore, requested VPS to provide an updated Memorandum addressing Tru's compliance with its KUSF obligations. VPS' Memorandum is attached to this R&R as Exhibit 1. As explained by VPS, it received a \$1,500.00 payment from

³ Kansas Secretary of State, Business Entity Search, Tru Mobility, Inc., <https://www.kansas.gov/bess/flow/main?execution=e1s5>, last viewed April 4, 2022.

⁴ FCC Form 499 Filer Database, Tru Mobility, Inc., <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829025>, last viewed April 4, 2022.

⁵ June 2021 Response.

⁶ 2July 2021 Response.

Tru on March 28, 2022, thus, Tru owes the KUSF \$17,770.03, consisting of \$4,274.37 assessment contributions, \$5,500 of Late Attachment B Penalties, \$3,724.52 of Late Filing Penalties, \$765.82 of Late Payment Penalties, and \$3,505.32 of Delinquent Balance Penalties.

To determine when Tru anticipated paying its KUSF assessment balance, on April 4, 2022, Staff sent an email to Tru, asking it to provide a date by when it would pay its KUSF assessment contribution liability. Tru responded that while it understood the Commission had not approved a payment plan, it would remit another payment in April 2022.⁷

ANALYSIS

Tru's June 2021 Response to the Show Cause Order indicated the Company would remit a \$1,000 monthly payment towards its outstanding KUSF balance. The Company's July 2021 Response sought a reduction in the KUSF penalties. Tru did not remit payment towards any of its KUSF balance until March 2022, when it paid \$1,500.00 towards its outstanding KUSF assessment contribution liability.

Staff and VPS' attempts to assist Tru to come into compliance with its KUSF obligations have included sufficient time – from July 2021 through March 2022 – for the Company to pay its KUSF assessment contribution liability. VPS also continues to send monthly Delinquent Notices to the Company. However, VPS has only received three payments from the Company - \$1,000 on June 18, 2020; \$2,000 on August 27, 2020; and \$1,500 on March 28, 2022, with the Company stating it will remit another payment in April 2022.

Staff believes the Commission should only grant a reduction in KUSF penalties when a company makes a good-faith effort to come into compliance with its KUSF obligations, which Tru has not done. Thus, Staff does not believe the Commission should waive or reduce the KUSF penalties levied to Tru. The Commission could, however, direct VPS to stop accruing any additional KUSF penalties to assist the Company in bringing its KUSF account current.

RECOMMENDATION

Staff recommends the Commission find Tru is non-compliant with the Commission's Order and K.S.A 66-2008(a). Staff further recommends the Commission find that Tru owes \$4,274.37 of assessment contributions and \$13,495.66 of penalties to the KUSF and deny Tru's requests to remit monthly payments and waive or reduce its KUSF penalties. Staff further recommends the Commission direct Vantage Point Solutions (VPS), the KUSF Administrator, to stop accruing additional penalties for Tru. Staff also recommends that the Commission provide Tru 45 days from issuance of an Order to pay its delinquent KUSF balance and, if the Company fails to do so, the Commission initiate collection actions against the Company.

⁷ April 4, 2022, email from Yvonne Rokaw, Tru Mobility, Inc. to Sandy Reams, KCC Staff, and Nicole Stephens, VPS State USF Manager.

KUSF MEMO

Date: April 4, 2022
To: Sandy Reams, Assistant Chief of Telecommunications
From: Nicole Stephens, KUSF Compliance Manager
RE: Tru Mobility, Inc. – KUSF Account KS006449

BACKGROUND

This Memorandum provides updated KUSF reporting information to the Kansas Corporation Commission (Commission) for Tru Mobility, Inc (“Tru Mobility”), KUSF Account No. KS006449, as an update to its previous memo dated March 14, 2022.

Tru Mobility has been registered with the KUSF since October 23, 2019. Tru Mobility’s Company Identification and Operations (Attachment B) forms for the March 2017 – February 2018 Fiscal Year (FY 21), March 2018 – February 2019 (FY 22), and March 2019 – February 2020 (FY 23) contained an election to report and pay contributions to the KUSF on a monthly basis.

The Company did not submit its FY 21, FY 22, and FY 23 monthly Carrier Remittance Worksheets (CRWS). Vantage Point Solutions (VPS) received the FY 23 monthly CRWs on February 19, 2020, and, on April 24, 2020, VPS received the FY 21 and 22 monthly CRWs. Tru did not remit payments for any of the related assessments, resulting in \$8,679.26 of total KUSF assessment contributions due for FY 21 – 23.

In March 2020, Tru Mobility registered for the March 2020 – February 2021 Fiscal Year (FY 24), electing to report on an Annual basis for FY 24, but did not submit its FY 24 Annual CRW or assessment payment. In January 2021, Tru Mobility submitted a Revised FY 24 Attachment B registration, stating it would not report annually since it was not generating any Kansas Intrastate retail revenue.

In March 2021, Tru Mobility registered for the March 2021 – February 2022 KUSF Fiscal Year (FY 25), elected to report on an Annual basis for FY 25, but did not submit the related FY 25 Annual CRW or assessment payment.

In July 2021, Tru Mobility submitted a 3rd Revised FY 24 Attachment B, changing its prior registration election from not generating Kansas Intrastate retail revenue to an Annual reporting basis.

The FY 24 and FY 25 Annual CRWs, received in July 2021, reflected total assessment contributions of \$58.52 for both FY 24 - 25.

Tru Mobility owed \$8,679.26 of assessments for FYs 21 -23 and paid \$1,000 on June 18, 2020, and \$2,000 on August 27, 2020, resulting in the Company owing \$5,679.26 of assessments for FY 21 – FY 23. Tru Mobility owes \$58.52 for FYs 24 and 25, resulting in the Company owing \$5,737.78 of total assessments to the KUSF.

Consistent with Commission Orders,¹ a total of \$3,724.52 in Late Filing Penalties (1% per month, 12% APR cumulative of the assessment due or \$100 per CRW) were assessed for the months of March 2017 – February 2020, and for FYs 24 and 25. Late Payment Penalties, assessed at 1% per month of the contribution owed, total \$765.82. VPS also assessed a total of \$2,402.66 in Delinquent Balance Penalties (1% of the balance owed at the end of each month), for February 2020 through September 2021. VPS also assessed a total of \$5,400 of Late Attachment B Penalties, assessed at \$100 per month, and a \$100 Change Election Fee for the 3rd Revised FY 24 Attachment B. In total, VPS was assessed \$12,393.00 of KUSF penalties as of September 30, 2021.

On October 21, 2021, Tru Mobility submitted FY 23 and FY 24 annual True-ups, as directed by the Commission in the Company's KUSF Audit in Docket No. 21-TMIV-069-KSF. The audit True-ups resulted in a net a credit of \$125.39, to the Company. This credit has been applied to the Company's KUSF balance. No penalties are assessed on audit true-ups.

On March 28, 2022, Tru Mobility paid \$1,500 towards its outstanding assessment balance. As of April 4, 2022, Tru Mobility's total current outstanding balance is \$17,770.03, comprised of \$4,274.37 of assessments and \$13,495.66 of KUSF penalties.

VPS continues to mail monthly Delinquent Notices to Tru Mobility in regard to its past due KUSF obligations. The Company has not responded to the Delinquent Notices.

¹ Order Modifying Kansas Universal Service Fund 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, Oct. 30, 2018, Docket No. 18-GIMT-084-GIT.

CERTIFICATE OF SERVICE

21-TMIV-449-SHO

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 8th day of April, 2022, to the following:

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