

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

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

In the Matter of the Audit of TracFone)
Wireless, Inc by the Kansas Universal)
Service Fund (KUSF) Administrator) Docket No. 20-TFWZ-054-KSF
Pursuant to K.S.A. 2017 Supp. 66-2010(b))
for KUSF Operating Year 22, Fiscal Year)
March 2018-February 2019.)

ORDER ON RESPONSES TO DATA REQUESTS

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

1. On August 15, 2019, the Commission issued an Order to KUSF Administrator to Commence Audit of TracFone Wireless, Inc. (TracFone) by GVNW Consulting, Inc. (GVNW). The Order to KUSF Administrator to Commence Audit directed GVNW to file its audit report and recommendations by June 30, 2020.¹

2. On August 19, 2019, GVNW sent TracFone audit correspondence with instructions, standard Data Requests and confidentiality information. GVNW granted a six-week extension from August 28, 2019, for TracFone to respond to the standard Data Requests.²

3. On December 9, 2019, Staff filed a Motion to Compel, explaining that TracFone did not provide all of the requested information, forcing GVNW to issue additional Data Requests.³ Staff contends the requested information is necessary to conduct a proper and thorough audit,

¹ Order to KUSF Administrator to Commence Audit, Aug. 15, 2019, ¶ A.

² Staff's Motion to Compel, Dec. 9, 2019, ¶ 4.

³ *Id.*

which is jeopardized by a delay in furnishing the information until after the field audit.⁴ The delay also violates the KUSF Audit Procedures approved on August 8, 2019, and further delineated in the Audit Packet sent to TracFone on August 19, 2019.⁵ Therefore, Staff sought an Order compelling Tracfone to answer Data Requests 17-19 by December 20, 2019.⁶

4. On December 26, 2019, Staff filed its Notice of Data Request Responses, advising the Commission that TracFone provided full responses to Data Requests 17-19 by the December 20, 2019 deadline, but requesting a ruling on TracFone's position that it needs 30 days to respond to all GVNW Data Requests.⁷

5. In Docket No. 18-GIMT-084-GIT, the Commission approved the Kansas Universal Service Fund Carrier Audit Procedures, March 1, 2018, through February 28, 2019 (FY 22) on August 8, 2019.⁸ In relevant part, the Audit Procedures provide:

Extensions of Time: the DR process Information (Initial Audit Packet - Attachment A) must advise that if requested information cannot be provided by the due date, the Company must request, in writing, an extension from the auditor. The request for extension must include: identification of information that cannot be provided, an explanation of why the information cannot be provided, and the additional number of days the Company is seeking an extension for. An Extension of Time should not exceed seven (7) business days. The Company must be advised that if it fails to meet the due date and does not request a second Extension of Time, the auditor may file a Motion to Compel with the Commission.

Note: *No more than two (2) extensions should be provided, absent approval from Commission Staff and/or the Commission.*

⁴ *Id.*, ¶ 5.

⁵ *Id.*

⁶ *Id.*, p. 6.

⁷ Staff's Notice of Data Request Response, Dec. 26, 2019, ¶ 4.

⁸ See Order Accepting GVNW'S KUSF Year 22 Audit Selections, Docket No. 18-GIMT-084-GIT, Aug. 8, 2019, Attachment 2, p. 4.

6. The uncontroverted evidence is that TracFone did not comply with the procedure outlined above. TracFone does not contest Staff's representation that TracFone failed to make a written objection to the Data Requests, as required by the Audit Procedures.⁹

7. On December 14, 2010, the Commission authorized TracFone to provide Lifeline services as an ETC only in some AT&T exchanges and throughout the study areas served by Columbus, Council Grove, Elkhart, LaHarpe, MoKan, Moundridge, Peoples, Wamego, Wheat State and Zenda.¹⁰ TracFone's Lifeline ETC designation was subsequently expanded.¹¹ As an ETC, TracFone has made itself subject to the Commission's jurisdiction.¹²

8. While the record indicates TracFone offered GVNW some justification for an initial 30-day extension, TracFone did not make a written objection to the Data Requests, as required by the Audit Procedures.¹³ Nor has TracFone made the required, written request for a second extension.

9. Furthermore, TracFone has not provided the Commission with any justification to support it receiving a 30-day response time for discovery instead of the standard 10-day response time.

10. Therefore, as requested by Staff, the Commission declares that TracFone is bound by the standard 10-day response time for discovery. Rather than being provided blanket relief, if TracFone believes it needs an extension, it should request an extension specific to that discovery. Pursuant to the Commission's approved Audit Procedures, a second extension of time may be

⁹ Staff's Motion to Compel, ¶ 6.

¹⁰ Order Granting in Part and Denying in Part Amended Application of Tracfone for Designation as ETC for the Limited Purpose of Offering Lifeline Services to Qualified Households, Docket No. 09-TFWZ-945-ETC, Dec. 14, 2010, ¶¶ B, C.

¹¹ See Docket Nos. 13-TFWZ-207-ETC, 14-TFWZ-325-ETC, and 15-TFWZ-312-ETC.

¹² Order Adopting Requirements for Designation of Eligible Telecommunications Carriers, Docket No. 06-GIMT-446-GIT, Oct. 2, 2006, ¶ 17.

¹³ Staff's Motion to Compel, ¶ 6.

requested. An extension of time should not exceed seven (7) business days.

THEREFORE, THE COMMISSION ORDERS:

A. TracFone is subject to the standard 10-day response time for discovery. If TracFone believes it needs an extension, it should request an extension specific to that discovery. Any requested extension shall comply with the Commission approved Audit Procedures.

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).¹⁴

C. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner.

Dated: 01/23/2020



Lynn M. Retz
Executive Director

BGF

¹⁴ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-TFWZ-054-KSF

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 01/23/2020.

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