



**GVNW CONSULTING, INC.**

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COLORADO SPRINGS, CO 80918  
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[www.gvnw.com](http://www.gvnw.com)

August 3, 2018

Ms. Lynn M. Retz  
Secretary to the Commission  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027

RE: Docket No. 18-BTKT-033-KSF  
*In the Matter of the Audit of Birch Telecom of Kansas, Inc. by the Kanas Universal Service Fund (KUSF) Administrator Pursuant to K.S.A 2015 Supp. 66-2010(b) for KUSF Operating Year 20, Fiscal Year March 2016-February 2017.*

Dear Ms. Retz:

On June 29, 2018, GVNW filed its Audit Report for Birch Telecom of Kansas, Inc. (Birch or Company). The Audit Reports do not contain any confidential material, however, Birch designated Attachments B, D, E, F and G as confidential. GVNW, therefore, filed both a confidential and public Audit Report with the Attachments treated accordingly.

GVNW stated its disagreement with the Company's confidential designation of Attachments D, E, and F. GVNW advised that it had requested Birch to withdraw its confidential designation of Attachments D, E, and F and that Tempo had not responded to GVNW's request.

On July 12, 2018, Birch filed its Response to GVNW's Audit Report and stated its agreement that Attachments D, E, and F should not be designated as confidential.

On July 31, 2018, the Commission issued its Order on GVNW's Audit Report and, among other issues, directed GVNW to file updated Audit Reports to reflect Birch's withdrawal of its confidential designation of the Attachments. Therefore, GVNW is filing the updated redacted and confidential Audit Reports to reflect Birch withdrew its confidential designation for Attachments D, E, and F. Attachments B and G remain confidential.

If you should have any questions or need additional information, please do not hesitate to contact me by email at [dwinter@gvnw.com](mailto:dwinter@gvnw.com) or by telephone at 719.594.5810.

Sincerely,

A handwritten signature in black ink, appearing to read "DW", with a stylized flourish extending from the end.

David Winter  
Senior Consultant

cc w/encl: Sandy Reams

## CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of August 2018, the above Kansas Universal Service Fund Audit Report was e-filed with the Kansas Corporation Commission and a copy was sent via electronic mail and/or U.S. Mail to:

Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, KS 66604

Ahsan Latif, Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604  
Email: [a.latif@kcc.ks.gov](mailto:a.latif@kcc.ks.gov)

Nicole Stephens, KUSF Administrator Manager  
GVNW Consulting, Inc.  
2930 Montvale Drive, Ste. B  
Springfield, IL 62704  
Email: [nstephens@gvnw.com](mailto:nstephens@gvnw.com)

Sharyl Fowler, Regulatory & Lifeline Compliance Manager  
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115 Gateway Dr  
Macon, GA 31210  
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Elena Thomasson, Transaction Taxes Manager  
320 Interstate North Parkway, SE  
Atlanta, GA 30339  
Email: [elena.thomasson@birch.com](mailto:elena.thomasson@birch.com)



David G. Winter

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

In the Matter of the Audit of Birch )  
Telecom of Kansas, Inc. by the Kansas )  
Universal Service Fund (KUSF) ) Docket No. 18-BTKT-033-KSF  
Administrator Pursuant to K.S.A. 2016 )  
Supp. 66-2010(b) for KUSF Operating )  
Year 20, Fiscal Year March 2016- )  
February 2017. )

**KANSAS UNIVERSAL SERVICE FUND AUDIT REPORT**

**Prepared By:** David Winter  
Blake Young  
GVNW Consulting, Inc.

**Company Representatives:** Sharyl Fowler – Manager, Regulatory Administration  
Elena Thomasson – Transaction Taxes Manager

**Date of On-Site Visit:** February 6 - 7, 2018

**Date Submitted to Company:** June 13, 2018

**Audit Summary**

Based on the Kansas Universal Service Fund (KUSF) Carrier Review Procedures for Operating Year 20,<sup>1</sup> GVNW Consulting, Inc. (GVNW) identified three (3) reporting deficiencies regarding Birch Telecom of Kansas, Inc.<sup>2</sup> (Birch or Company) with a net impact of \$30,412.13 due to the KUSF:

- Finding No. 1: Birch reported revenues to the KUSF net of discounts for the period March through June 2016 and underpaid \$2,508 in KUSF assessments.
- Finding No. 2: The Company reports calculated revenues to the KUSF based on the KUSF assessment collected from subscribers and recorded as a KUSF liability. The aggregate monthly KUSF liability is divided by the assessment rate to determine the revenues reported in the monthly report. Based on additional audit testing, GVNW concludes Birch has met its KUSF obligations for revenue represented by the calculated revenue; however, as discussed in Finding No. 3, the Company did not report all revenue.

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<sup>1</sup> Order Accepting GVNW's KUSF Year 20 Audit Selections, Proposed Revisions to Selection Criteria and Audit Review Procedures, Docket No. 16-GIMT-067-GIT, July 25, 2017 (16-067 Order).

<sup>2</sup> The Company now operates as Birch Telecom of Kansas, LLC d/b/a Birch Communications. The Kansas Corporation Commission approved this change on June 7, 2018, in Docket No. 18-BTKT-452-CCN.

- Finding No. 3: Birch failed to report its December 2016 revenues or pay the related assessments to the KUSF, even though the Company collected the KUSF surcharge from its subscribers. On June 8, 2018, the Company submitted a Revised December 2016 Carrier Remittance Worksheet (CRW) and revenues to the KUSF Administrator and, on June 11, 2018, remitted payment of \$27,904.13 in assessments.<sup>3</sup>

GVNW recommends that the Kansas Corporation Commission (KCC or Commission) issue an Order to: (1) adopt the findings and recommendations of this Audit Report; and (2) direct Birch to submit Audit True-ups for the period of March through June 2016 and to pay additional KUSF assessments of \$2,508 within 30-days of a Commission Order. GVNW will file a Compliance Report within 60-days of the issuance of an Order.

GVNW also recommends, based on Birch's history of failing to comply with its statutory and regulatory KUSF obligations, as detailed in this Report and Attachment A, the Commission Staff be directed to initiate a show cause proceeding if the Company becomes delinquent with its KUSF obligations in the future.

### **Current KUSF Obligations**

As detailed in GVNW's Administrative Division's Memorandum, included as Attachment A, Birch has repeatedly failed to comply with its KUSF obligations; including failing to submit monthly CRW and assessment payments and its annual Company Identification and Operations form.<sup>4</sup> GVNW Administration has assessed multiple penalties to Birch, consistent with Commission Orders for failure to comply with its KUSF obligations.

### **Birch Response**

Birch takes its regulatory reporting obligations seriously, and regrets any prior delay in filing reports or responding to inquiries. The late filings for the Carrier Remittance Worksheet were due to misunderstandings of the due date of filings. The three late CRW reports (April, May, and June 2016) were postmarked by the US Postal Service on the 15<sup>th</sup> of the following month which was the third-party preparer's understanding of the due date. When we received notices of late filings, we realized that the due date was actually the date of receipt of the report. Birch immediately implemented changes to correct this issue for future filings and as of July 2016 began online filings and making payment via

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<sup>3</sup> The Company is subject to \$4,744.92 in Commission approved late payment penalties of which \$4,548.50 has been paid. KUSF penalties include: Late Payment Penalties, Order, Docket No. 94-GIMT-478-GIT, Feb. 19, 1997; Late Carrier Remittance Worksheet (CRW) Penalties, Order, Docket No. 06-GIMT-332-GIT, Jan. 23, 2006; and Delinquent Balance Penalties, Order, Docket No. 10-GIMT-188-GIT, Jan. 23, 2010 Order.

<sup>4</sup> The Company Identification and Operations form includes information about the company and company contacts for KUSF purposes and must be filed yearly by April 15<sup>th</sup>. See Order Setting the Kansas Universal Service Fund Assessment Rate for Year Ten and Establishing Reporting Requirements, Docket No. 06-GIMT-332-GIT, January 23, 2006 (06-332 Order).

electronic funds transfers instead of mailed paper copies and checks. Birch had no late filings since this came to our attention.

### **Background**

Birch is a competitive local exchange carrier (CLEC) and interexchange (IXC) service provider headquartered in Atlanta, Georgia. The Company is required to report its revenue and pay the related assessments to the KUSF on a monthly basis.<sup>5</sup> Birch is authorized to collect an amount equal to or less than its assessment from customers,<sup>6</sup> and does so. The Company has not been designated as an Eligible Telecommunications Carrier (ETC) in Kansas, therefore, it does not offer Lifeline service to its subscribers.

Birch bundles assessable and non-assessable services and reports total bundled revenues to the KUSF.<sup>7</sup> The revenues are reported net of discounts, meaning revenues are reduced to recognize customer discounts. Birch does not use the same bundled service methodology to identify, report, and allocate revenue to the KUSF and the Federal Universal Service Fund (Federal USF).<sup>8</sup> For Federal USF reporting purposes, Birch reports revenues from bundled telecommunications and CPE/enhanced services offering(s) based on the unbundled service offering prices.<sup>9</sup>

On August 1, 2017, the Commission issued Order No. 1 in Docket 18-033 directing GVNW to conduct an audit for KUSF purposes.

On May 4, 2018, Fusion Telecommunications International, Inc. (Fusion), a cloud service provider, merged with the cloud and business services of Birch Communications Holding, Inc. (Birch Communications). Birch represents that the merger will not affect Birch's operations or KUSF reporting.<sup>10</sup>

### **Audit Finding No. 1**

**Standard:** Carriers contributing to the KUSF are to report gross revenues prior to recognizing any customer discounts for KUSF reporting purposes through June 30, 2016.<sup>11</sup> Effective July 1, 2016, companies are authorized to report revenues to the KUSF net of customer discounts.

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<sup>5</sup> Order Setting the Kansas Universal Service Fund Assessment Rate for Year Ten and Establishing Reporting Requirements, Docket No. 06-GIMT-332-GIT, January 23, 2006 (06-332 Order).

<sup>6</sup> K.S.A. 66-2008.

<sup>7</sup> Source: Birch response to DR No. 7 (Confidential Attachment B).

<sup>8</sup> Effective July 1, 2016, pursuant to K.S.A. 66-2008(a): "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."

<sup>9</sup> *Ibid.* Footnote 6.

<sup>10</sup> Source: Birch response to DR No. 23 (Attachment C).

<sup>11</sup> Order Adopting KUSF Assessment Rate for Year Eighteen of KUSF Operations, Docket No. 14-GIMT-105-GIT, January 23, 2014, and Order Closing Docket, July 19, 2016.

**Finding:** Birch reported revenues to the KUSF after deducting discounts to customers.<sup>12</sup> The discounts reduced Birch's Kansas intrastate revenues reported to the KUSF, resulting in the Company under-paying its KUSF assessments by \$2,508 for the period of March through June 2016.

**Recommendation:** The Company should be directed to submit Audit True-ups for the period March through June 2016 and pay the additional \$2,508 to the KUSF within 30-days of the Commission's issuance of an Order in this Docket. After GVNW reviews the submission and Birch pays the additional assessment to the KUSF, GVNW will submit a Compliance Report.

### **Audit Finding No. 2**

**Standard:** Carriers are required to report actual intrastate retail revenues and may report uncollectible revenue written off, to the KUSF to determine their KUSF assessment obligation.<sup>13</sup>

**Finding:** Birch reported revenue based on the "total KUSF collected from customers"<sup>14</sup> and "dividing by the KUSF rate to arrive to reportable revenues."<sup>15</sup> The KUSF surcharge collected from its subscribers is "recorded in an accounts payable sub-ledger account."<sup>16</sup> The Company reports to the KUSF based on its monthly billing reports that provides detailed data broken-down by "taxing jurisdictions, exemptions, and taxable services."<sup>17</sup>

For revenue represented by the calculated revenue, GVNW performed additional testing and determined that, based on Birch's assessment methodology, the KUSF assessment was properly applied to its subscribers' total assessable revenues derived from its various recurring and non-recurring service plans (e.g. unlimited local and unlimited toll calling, call hunting, call forwarding, speed calling, etc.).

GVNW expanded its audit testing to include: (1) tracing the KUSF assessments collected from subscribers to the monthly KUSF revenue and expense accounts per the general ledger; (2) verification of monthly subscriber KUSF assessment collections; and (3) tracing the monthly KUSF gross assessment collections to the revenue reported on each respective Carrier Remittance Worksheet (CRW); and (4) verifying, for the test months, revenues reported to the KUSF were equal to or exceeded revenue recorded in Birch's general ledger. The results of GVNW's testing for the audit period confirms that Birch has met its KUSF obligations.

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<sup>12</sup> Source: Birch response to DR No. 15. (Attachment D).

<sup>13</sup> See K.S.A. 66-2008(a), and Order, ¶ 108-110, Dec. 27, 1996; Order and Attachment, Feb. 3, 1997; Order, ¶ 9, 31, 56, March 25, 1999, Docket No. 94-GIMT-478-GIT. See *also* Order, Docket No. 16-GIMT-517-GIT, Feb. 17, 2017.

<sup>14</sup> Source: Birch response to DR No. 13 (Attachment E).

<sup>15</sup> *Ibid.*

<sup>16</sup> Source: Birch response to DR No. 16 (Attachment F).

<sup>17</sup> *Ibid.*

**Recommendation:** GVNW does not recommend any further actions at this time. However, Birch should be reminded that it is required to ensure it meets its KUSF obligations and to submit Quarterly True-ups if there are material changes, billing errors or corrections, or changed circumstance that would result in a correction to its reported revenue or KUSF assessment obligation.

### **Audit Finding No. 3**

**Standard:** Carriers are required to report actual intrastate retail revenues, and may report uncollectible revenue written off, to the KUSF to determine their KUSF assessment obligation.<sup>18</sup>

**Finding:** Birch reported zero (\$0.00) Kansas intrastate retail revenues to the KUSF for the month of December 2016, but collected \$27,904.13 in KUSF assessments from its subscribers.<sup>19</sup> The Company provided two (2)<sup>20</sup> *certified*<sup>21</sup> filings to the KUSF Administrator to confirm it had *zero (\$0.00)* Kansas retail revenue for KUSF reporting purposes for the month (*emphasis added*). The KUSF Administrator and KCC Staff made numerous inquiries regarding this reporting anomaly without resolution.<sup>22</sup> Birch represents that the Company did not report December 2016 revenues due to a data processing error to its third-party tax preparer.<sup>23</sup> And, it tried to correct this reporting error in January 2017, but was unaware until recently that the December 2016 reporting error had not been corrected.<sup>24</sup>

On June 8, 2018, Birch submitted to the KUSF Administrator a revised December 2016 CRW and, on June 11, 2018, remitted payment of \$32,452.63, consisting of \$27,911.31 of assessments and \$4,541.32 of penalties.

### **Birch Response**

The December 2016 reporting issue was due to a data processing error, and was corrected as soon as Birch was made aware of the issue. The error concerned one (1) month of KUSF reporting, and Birch has paid the fines under K.S.A 66-138 and included

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<sup>18</sup> *Ibid.* Footnote 12.

<sup>19</sup> Source: Birch response to DR No. 21 (Attachment G).

<sup>20</sup> Kansas Universal Service Fund Annual KUSF Assessment True-up Mar 2016 – Feb 2017 Fiscal Year filed with the KUSF Administrator on April 12, 2017 and December 2016 CRW filed with the KUSF Administrator on May 20, 2016.

<sup>21</sup> An officer of the company is required to “certify that I have examined this report and to the best of my knowledge and it is true, correct and complete.”

<sup>22</sup> KUSF Administrator’s Past Due Notice of Kansas Universal Service Fund Obligations to Birch dated May 25, 2017; KUSF Administrator emails to Birch’s third-party tax preparer dated June 21 and 26, 2017; KCC Staff emails to Birch dated July 7, 13 and 14, 2017.

<sup>23</sup> *Ibid.* Footnote 18.

<sup>24</sup> *Ibid.*

17 months of interest on the payment in connection with this reporting error. Birch submits an additional fine is unnecessary and unjustified.

**Recommendation:** Birch incorrectly interpreted the late penalties it was assessed, pursuant to Commission Orders governing the KUSF, with penalties applied pursuant to K.S.A 66-138. Furthermore, the December 2016 filing was a revision and, therefore, no late penalties were assessed to the Company. GVNW and Staff contacted Birch regarding the December 2016 filing, to no avail. Since Birch is not subject to any KUSF-penalties for failure to report its December 2016 revenues or pay the assessments, GVNW recommends that the Commission consider whether it is appropriate to assess fines pursuant to K.S.A. 66-138 for non-compliance with Commission Orders.



### **BIRCH - Request for Confidential Treatment**

- On Attachment B, pages 1 and 2 – Birch requests that its responses to the audit inquiries be redacted for the reasons set forth below.
- On Attachment D, page 1 – Birch requests that its responses to the audit inquiries be redacted for the reasons set forth below.
- On Attachment G, pages 1 and 2 – Birch requests that its responses to the audit inquiries be redacted for the reasons set forth below.

For the following reasons, Birch Telecom of Kansas, LLC (“Birch” or the “Company”) respectfully requests confidential treatment for the items listed above, which are the Company’s responses to the audit inquiries issued by GVNW Consulting, Inc. (“GVNW”). The Company provides this explanation in accordance with the requirements of K.A.R. 82-1-221a.

K.S.A. 66-2010(c) states “[a]ny information made available or received by the administrator from carriers, utilities or providers receiving funds from or providing funds to the KUSF shall not be subject to any provisions of the Kansas open records act and shall be considered confidential and proprietary.” The Kansas Corporation Commission has stated “[t]here is no dispute that information received from the telecommunications carriers, public utilities and wireless service providers, and in the hands of the fund administrator is not subject to release under [the Kansas Open Records Act].<sup>1</sup> In addition, the Company’s responses also are protected from public disclosure under K.S.A. 66-1220a, which states the Commission “shall not disclose to or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, any information which is a trade secret under the uniform trade secrets act (K.S.A. 60-3320 et seq., and amendments thereto) or any confidential commercial information of a corporation.”

Birch is not publicly traded, and its responses contain data regarding the Company’s financial status, operations, and internal policies and procedures. The information contained in the responses is not routinely made available for public disclosure, and the Company takes efforts to maintain its confidentiality. The responses contain proprietary, sensitive, commercial, and financial information that is not publicly available and, if released, could be used by the Company’s competitors to cause competitive harm. The potential harm to Company is substantial, and the need for proprietary protection of this information outweighs any need for public disclosure at this time. As such, the Company’s responses fall within K.S.A. 66-1220a, are “trade secrets” as defined in K.S.A. 60-3320, and therefore are exempt from public disclosure.

In the event it is determined the Company’s responses should be made available to the public, the Company respectfully requests notice of that determination and an opportunity to appeal that determination prior the responses being made available for public inspection.



C O N S U L T I N G

## KUSF MEMO

Date: June 26, 2018  
To: David Winter, KUSF Auditor  
From: Nicole Stephens, KUSF Compliance Administrator  
RE: Birch Telecom of Kansas, Inc. – KUSF Account KS004210

### **BACKGROUND**

This Memorandum provides KUSF reporting information for Birch Telecom of Kansas, Inc. ("Birch"), KUSF Account No. KS004210, for the March 2015 – February 2016 (FY 19), March 2016 – February 2017 (FY 20), March 2017 – February 2018 (FY 21) and March 2018 – February 2019 (FY 22) fiscal years (FY).

For FY 19, Birch was delinquent with the following KUSF obligation:

- FY 19 Company Identification and Operations form, referred to as Attachment B, was due on April 15, 2015. Birch's FY 19 Attachment B was received on May 20, 2015.

For FY 20, Birch's KUSF delinquencies include the following:

- FY 20 Attachment B, due April 15, 2016, was received on May 10, 2016;
- April 2016 CRW and assessment payment, due May 16, 2016, were received May 20, 2016, therefore, Birch was assessed Late Worksheet<sup>1</sup> and Late Payment<sup>2</sup> penalties totaling \$593.26;
- May 2016 CRW and assessment payment, due June 15<sup>th</sup>, were received June 20, 2016, with the Company assessed Late Worksheet and Late Payment penalties totaling \$589.23; and
- June 2016 CRW and assessment payment, due July 15, 2016, were received July 18, 2016. Birch was assessed Late Worksheet and Late Payment penalties totaling \$595.32.
- December 2016 CRW, due January 15, 2017, was received on June 21, 2017. Birch was assessed a Late Worksheet penalty totaling \$100. However, the December 2016 CRW reported \$0.00 revenue for the period. Both GVNW and Staff sent numerous emails to the Company, beginning in January 2017, requesting that the Company submit a Revised December 2016 CRW to report the actual revenue for the period and pay the related assessment. On June 8, 2018, the Revised

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<sup>1</sup> Order, Docket No. 06-GIMT-332-GIT, 1/23/2006.

<sup>2</sup> Order, Docket No. 190-492-U (94-GIMT-478-GIT), 2/19/1997.

December 2016 CRW was submitted and, on June 11, 2018, the related assessment was paid. Late Payment penalties were assessed in accordance with Commission Order.

Non-payment of the total penalties (\$1,777.81) resulted in the Company being assessed a monthly Delinquent Balance<sup>3</sup> penalty of 1.0% of the total balance each month. Although the Company was sent monthly Delinquent Notices, it did not pay the accrued penalties of \$1,868.51 until January 11, 2017.

For FY 21, Birch is current with its reporting and payment obligations.

For FY 22, Birch was delinquent in submitting its Company Identification and Operations (Attachment B), which was due on April 16, 2018. Birch submitted its FY 22 Company Identification and Operations (Attachment B) Form on June 4, 2018.

In addition, Birch has been sent numerous notifications from both the Kansas Corporation Commission Staff (Staff) and GVNW in regard to its delinquent status and that the Company may be subject to a show cause proceeding. Furthermore, GVNW and Staff have notified Birch numerous times about concerns related to the Company's method of reporting revenues. Specifically, the amount of KUSF Assessments Collected from Customers each month is equal to the Company's monthly Net KUSF Assessment due to the Fund, indicating the Company may derive its intrastate revenue by dividing the reported KUSF assessment collected from end-users by the KUSF assessment rate.

KPMG submits KUSF reports on behalf of Birch. Both Staff and GVNW have contacted Birch requesting that the Company review the revenue and of the assessments collected from customers to verify their accuracy and provide an explanation of its process that results in assessments owed and assessments collected from customers being equal. Despite numerous requests, neither Staff nor GVNW has received a response. This was addressed in GVNW's Audit Finding # 2.

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<sup>3</sup> Order, Docket No. 10-GIMT-188-GIT, 1/13/2010.

Utilities Division  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027



Phone: 785-271-3220  
Fax: 785-271-3357  
<http://kcc.ks.gov/>

Pat Apple, Chairman  
Shari Feist Albrecht, Commissioner  
Jay Scott Emler, Commissioner

Sam Brownback, Governor

March 2, 2017

Angela Hoke, Manager  
Birch Telecom of Kansas Inc  
2323 Grand Blvd Ste 925  
Kansas City, MO 64108-2670

Dear Ms. Hoke:

Birch Telecom of Kansas Inc Company Identification Operations and Form identified KPMG, LLC (KPMG) as an agent for Kansas Universal Service Fund (KUSF) purposes. GVNW Consulting, Inc. (GVNW), the KUSF administrator, has advised Kansas Corporation Commission Staff (Commission and Staff, respectively) that the Company may not be in compliance with KUSF requirements. Specifically, a company is required to report its actual intrastate retail revenue and pay the related assessments for KUSF purposes; however, there is a concern that the Company may be reporting calculated intrastate retail revenue based on dividing the assessments collected from customers by the KUSF assessment rate.

Enclosed is a copy of Staff's letter to KPMG. We request the Company, and if applicable, KPMG, review the reporting procedures used for KUSF purposes to ensure compliance with Kansas statute and Commission policies. Such review should also ensure revenue reported for prior KUSF years reflect the Company's actual intrastate retail revenue to ensure the Company's KUSF records reflect actual intrastate retail revenue and the related KUSF assessments. Please contact Nicole Stephens, GVNW, at [nstephens@gvnw.com](mailto:nstephens@gvnw.com) or (217) 862-1510 if a revision to the reported revenues is necessary.

The Commission has authority to ensure a provider reports to the KUSF consistent with Kansas statute and Commission policies. K.S.A. 66-2010 requires GVNW to audit providers to ensure a provider is in compliance with its KUSF obligations. A provider may be recommended for an audit and/or a show cause proceeding to determine compliance with its KUSF obligations and/or if the assessment of sanctions or fines for failure to comply with Kansas statute and Commission orders, are warranted.

Your attention to this matter is appreciated.

Sincerely,

Sandy Reams  
Assistant Chief of Telecommunications  
Utilities Division  
Kansas Corporation Commission  
(785) 271-3130

Enc.

cc: Nicole Stephens





Utilities Division  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027

Phone: 785-271-3220  
Fax: 785-271-3357  
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Jay Scott Emler, Chairman  
Shari Feist Albrecht, Commissioner  
Pat Apple, Commissioner

Sam Brownback, Governor

March 2, 2017

Karen Wilkins, Tax Manager  
KPMG, LLP  
1050 Crown Pointe Parkway, Suite 1500  
Atlanta, GA 30338

Ms. Wilkins,

This letter requests that KPMG, LLP (KPMG) review its and its clients' Kansas Universal Service Fund (KUSF) reporting procedures to ensure compliance with Kansas statute and the Kansas Corporation Commission's (Commission) policies to ensure each client fulfills its KUSF obligations. GVNW Consulting, Inc. (GVNW), the KUSF administrator, has advised Commission Staff that KPMG and/or some of its clients' rely on KUSF processes to report revenue to the KUSF. The revenue reported, however, is calculated by dividing the assessment collected from end-user customers by the KUSF assessment rate; not the actual intrastate retail revenue of the provider.

K.S.A. 66-2008(a) requires all providers to report actual Kansas intrastate retail revenue and pay the related assessments to the KUSF. Effective July 1, 2016, K.S.A. 66-2008(a) was amended to allow a provider to report net intrastate retail revenue consistent with its contribution methodology for Federal Universal Service Fund (FUSF) purposes; however, the requirement to report intrastate retail revenue was not modified.<sup>1</sup>

In 2016, GVNW began to send reminders to providers and agents reiterating the requirement to report actual intrastate retail revenue to the KUSF. This requirement is also detailed in the KUSF Instructions. Although K.S.A. 66-2008(a) authorizes providers to collect an amount equal to or less than their KUSF assessment obligation from end-user customers, the assessment collected from customers should not be used to calculate the revenue reported to the KUSF. Block C, entitled "KUSF Assessments Collected from Customers," is included on the Carrier Remittance Worksheet to provide a mechanism for GVNW and the provider to ensure it collects no more than its KUSF assessment obligation from customers.

Commission policies require a provider to submit a True-up within 45 days after the end of a reporting period if estimated revenue was reported.<sup>2</sup> Several of KPMG's clients have remitted True-ups to report actual revenue; however, not all clients have done so.

<sup>1</sup> The Commission implemented the amendments to Kansas statute in Docket No. 17-GIMT-517-GIT. Commission Orders and industry pleadings may be viewed at: <http://estar.kcc.ks.gov/estar/portal/kscs/page/docket-docs/PSC/DocketDetails.aspx?DocketId=ab6aebe-771c-4545-9fc8-0a5733a02938>.

<sup>2</sup> January 13, 2010 Order, Docket No. 10-GIMT-188-GIT.

The Commission has authority to ensure each provider reports and pays contributions to the KUSF consistent with Kansas statute and Commission policies. K.S.A. 66-2010 requires GVNW to audit providers to ensure they report consistent with Kansas statute and Commission policies. Any provider may be recommended for a KUSF audit and/or assessment of sanctions or fines for failure to comply with Kansas statute and Commission orders.

Staff, therefore, requests a review of the procedures relied on for KUSF reporting processes to ensure each client fulfills its KUSF obligations. Such a review should also include revenue reported for the past several years to ensure all KUSF records reflect actual intrastate retail revenue and the related assessments. Please contact Nicole Stephens, GVNW, at [nstephens@gvnw.com](mailto:nstephens@gvnw.com) or (217) 862-1510 if a client needs to submit a revenue revision.

Your attention to this matter is appreciated.

Sincerely,



Sandy Reams  
Assistant Chief of Telecommunications  
Utilities Division  
Kansas Corporation Commission  
(785) 271-3130  
[s.reams@kcc.ks.gov](mailto:s.reams@kcc.ks.gov)

cc:	Nicole Stephens	Stephen Blair	Jerald Blakeney	Jennifer Cole
	Barbara Gibson	William Harris	Shantel James	Debbie Long
	Andy Mao	Fatou Mbenga	Noel Reynolds	Tracey Sawyer

Docket No. 18-BTKT-033-KSF

CONFIDENTIAL

Attachment B

To Kansas USF Audit Report

Dated 6/28/2018



Attachment B-Confidential  
Docket No. 18-BTKT-033-KSF  
Page 1 of 2

**Birch Telecom of Kansas, Inc. Follow Up Responses to  
KUSF Carrier Audit Information Request**

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**Request No. 7**

**RE:** Contribution Methodology\

Please provide the following information:

- a Provide the Company's internal KUSF reporting policies or procedures, including, but not limited to how the Company identifies and reports revenues derived from Lifeline subscribers, discounts and promotional service revenues, and bundled services to the KUSF.

**RESPONSE:** [REDACTED]

- b. If your Company offers assessable and non-assessable services in a bundle, does your Company report revenues to the KUSF based on the:
1. Unbundled service price of the assessable service;
  2. The total price of the bundle containing the service; or
  3. An alternative methodology. If the Company uses an alternative methodology to allocate bundled service revenue to the assessable services in a bundle, please provide a detailed description of the allocation methodology, including an example calculation.

**RESPONSE:** [REDACTED]

- c. If your company recognizes any end-user, promotional, or other discounts in the revenue reported to the KUSF, please provide:
1. A detailed listing of the types of discounts provided;

**Response:** [REDACTED]

2. A detailed explanation regarding *how the discounts are assigned to assessable and non-assessable services if the Company offers bundled services*;

**RESPONSE:** [REDACTED]

[REDACTED]

[REDACTED]



- d. Are the methodologies to identify, report, and allocate revenue from bundled services and discounts the same for both KUSF and FUSF purposes (Yes/No)? If yes, provide a copy of the Company's internal Federal USF and associated KUSF reporting policies or procedures that supports the Company's KUSF contribution methodology is consistent with its Federal USF contribution methodology. If no, please explain the differences between the methodologies and why the Company uses separate practices.

**RESPONSE:**

[REDACTED]

[REDACTED]

#### **Verification of Response**

I have read the foregoing Data Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to GVNW's auditor any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.

Signed: /s/ Elena Thomasson

Date: 6/12/2018

**KUSF Carrier Audit Information Request**

**Submitted By:** David Winter  
**Submitted To:** Sharyl Fowler  
Elena Thomasson  
**Company Name:** Birch Telecom of Kansas Inc.  
**Docket Number:** 18-BTKT-033-KSF  
**Request Date:** May 23, 2018  
**Date Information Needed:** June 1, 2018

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**Request No. 23**

RE: Fusion Merger

- a. Explain how Birch's operations and KUSF reporting will change due to the merger with Fusion.

**NOTE:** If for some reason, the above information cannot be provided by the date requested, please submit a Request for Additional Time (see Attachment A).

**BIRCH RESPONSE:**

(a) Birch's operations and KUSF reporting will not change due to the merger transaction between Birch Communications, Inc. and Fusion Telecommunications International, Inc. ("Fusion"), which was consummated on May 4, 2018. As explained in the notice filed with the Kansas Corporation Commission, Birch become an indirect, wholly-owned subsidiary of Fusion with the existing shareholders of Birch Communications, Inc. holding a majority interest in Fusion. This *pro forma* change has no effect on Birch's current operations and or its KUSF reporting.

**Verification of Response – Data Request No. 23**

I have read the foregoing Data Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to GVNW's auditor any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.

Signed: /s/ Sharyl D. Fowler

Date: May 31, 2018

Docket No. 18-BTKT-033-KSF

CONFIDENTIAL

Attachment D

To Kansas USF Audit Report

Dated 6/28/2018

**KUSF Carrier Audit Information Request**

**Submitted By:** David Winter  
**Submitted To:** Sharyl Fowler  
**Company Name:** Birch Telecom of Kansas Inc.  
**Docket Number:** 18-BTKT-033-KSF  
**Request Date:** November 27, 2017  
**Date Information Needed:** December 11, 2017

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**Request No. 15**

**RE:** Discounts.

a. Confirm whether Birch reported revenues to the KUSF net of discounts, i.e. deducts Preferred Customer and Price Protection Plan Term discounts from revenues reported to the KUSF.

**Response.- The revenue reported in net of discount.**

b. If Birch did report revenue net discounts to the KUSF: provide, by month for period March 2016 through June 2016, the revenues associated with the discounts not reported to the KUSF

**Response.- Report in is process..**

c. Does Birch offer 90-day promotional discounts? If yes, were these discounts "netted" against KUSF reportable revenues only for the initial 90-day period, after which, the full service revenue were reported?

**Response.- Birch does not offer 90 day promotional discounts**

**NOTE:** If for some reason, the above information cannot be provided by the date requested, please submit a Request for Additional Time (see Attachment A, provided in the initial audit packet).

**Verification of Response**

I have read the foregoing Data Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to GVNW's auditor any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.

Signed: *Aena Thomasson*

Date: January 10, 2018

State	Kansas
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	Column Labels									
	201603					201604				
Row Labels	PCDPM	PCDRC	PM	RC	Total	PCDPM	PCDRC	PM	RC	Total
Birch Telecom of Kansas, Inc.										
Ionex Communications North, Inc.										
Grand Total										

201605					201606					Total PCDPM	Total PCDRC	Total PM
PCDPM	PCDRC	PM	RC	Total	PCDPM	PCDRC	PM	RC	Total			

Total RC	Total Total



**KUSF Carrier Audit Information Request**

**Submitted By:** David Winter  
**Submitted To:** Sharyl Fowler  
**Company Name:** Birch Telecom of Kansas Inc.  
**Docket Number:** 18-BTKT-033-KSF  
**Request Date:** November 27, 2017  
**Date Information Needed:** December 11, 2017

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**Request No. 13**

**RE:** Revenues Reported to the KUSF.



KS Birch KUSF - FY  
20 DR No. 3 Revenue

- Please explain the source of the revenues reported to the KUSF, *i.e.* General Ledger, billing system, calculated (the KUSF assessment collected from subscribers and dividing by the assessment rate to arrive at reportable revenues), etc.  
**Response.- Birch of Kansas reports the KUSF based on billed revenue from the monthly billing system. The total KUSF collected from customers is dividing by the KUSF rate to arrive to reportable revenue.**
- Please provide copies any work papers, spreadsheets, memorandum, etc. that supports the revenues reported per the attached to the KUSF for the test months of April, July and September 2016.
- **See attachment. Tab from the revenue billing report sort by tax category assign to USF tax category number 26 and then sort by state, attach is also the summary for the KUSF**
- Please provide the total *actual* KUSF surcharge collected from the Company's subscriber's for the test months of April, July, and September 2016.
- **Response .-Actual collections is the same as reported on the billings reports, with the exception of not deducting the bad debt.**
- 

**NOTE:** If for some reason, the above information cannot be provided by the date requested, please submit a Request for Additional Time (see Attachment A, provided in the initial audit packet).

**Verification of Response**

I have read the foregoing Data Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to GVNW's auditor any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.



**KUSF Carrier Audit Information Request**

Attachment E  
Docket No. 18-BTKT-033-KSF  
Page 2 of 2

Signed: Elena Thomasson

Date: January 10, 2018

## KUSF Carrier Audit Information Request

Attachment F  
Docket No. 18-BTKT-033-KSF  
Page 1 of 2

**Submitted By:** David Winter  
**Submitted To:** Sharyl Fowler  
Elena Thomasson  
**Company Name:** Birch Telecom of Kansas Inc.  
**Docket Number:** 18-BTKT-033-KSF  
**Request Date:** February 7, 2018  
**Date Information Needed:** February 21, 2018

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### Request No. 16

**RE:** KUSF Reporting

Please provide the following information:

- Confirm whether Birch reports revenues to the KUSF by dividing the KUSF assessments collected from the Company's subscribers by the KUSF assessment rate to produce the actual intrastate revenue reported to the KUSF.  
**Response.** Yes, revenues reported during the audit period were calculated by dividing the KUSF collections by the KUSF rate of 6.53% to arrive to assessable revenue.
- Verify whether Birch's reporting methodology reflects the Kansas intrastate revenue on which the Company assessed the KUSF surcharge.  
**Response.** Birch is applying the KUSF rate to the entire number of bundle packages on invoice. This approach is very conservative, and it appears the KS intrastate revenue is overstated; however, Birch is remitting all KUSF collected on the monthly reports.
- Confirm whether Birch's revenue is not broken down in the general ledger or other reporting systems in sufficient detail to determine taxing jurisdiction, exemptions, taxable service, etc.  
**Response.** The breakdown for taxing jurisdictions, exemptions and taxable services is detailed on the billings reports. I have included the sample months on Schedule DR 20 No 3 under tab "billed report". The report details the tax collected by tax type and exempt sales should have a zero-tax collection. The state universal service fund is assigned tax type number 26. The report determines the taxing jurisdiction by state, county, and city with the assignation of the corresponding geocode.
- Are Birch's billing systems setup to identify actual Kansas intrastate retail revenue on which KUSF amounts are billed and/or calculated?  
**Response.** The billing system is setup to calculate the KUSF base on total price of the bundle package.

# KUSF Carrier Audit Information Request

- Confirm that Birch's calculated and reported revenue to the KUSF is based upon actual amounts identified by its billing systems, billed and owed.

**Response.** Yes, Birch has calculated and reported KUSF based on the actual amount collected. Included under Schedule DR No 3 is the three-month sample schedule of the Billed Report and summary to demonstrate that reportable revenue base for backing off the tax to arrive to assessable revenue.

- Are the KUSF assessment amounts recorded in Birch's books and records and reconciled to its remittances to the KUSF.
- Response.** Yes, the KUSF collection amounts are recorded in an Account Payable sub-ledger account with each corresponding jurisdiction and tax type. See attached Schedule DR No 3 under tab Sub-ledger TLAR (tax liability analysis report) details as follow:

Filing	Beginning	Current	Tax	Rounding	Current	Vendor's	Tax	Taxes	Net	Ending
Freq	Tax Balance	Tax Imported	Adjustments	Adjustments	Tax Due	Comp	Credits	Prepaid	Liability	Tax Balance

I am including a copy of the sub-ledger for each of the three-month sample periods selected. This is under the tab of Sub-ledger TLAR on the DR No 3 attachment. Please note the amount collected is the amount remitted on monthly returns.

- Please provide any detailed work papers, calculations, memorandum, etc. that ties to the revenue reported to the KUSF for the test months of April, July and September 2016.

**Response.** Included on the DR No 3 are for each test month the following schedules::

- ✓ Billing Report. Details billing reports according to each tax type
- ✓ Summary. Summary of the billing report and computation of assessable revenue
- ✓ Sub-ledger-TLAR. detail collection and reconciliation per month, tax type and entity
- ✓ Tax Return. Filed and paid base on the Sub-ledger net liability data.

**NOTE:** If for some reason, the above information cannot be provided by the date requested, please submit a Request for Additional Time (see Attachment A).

## Verification of Response – Data Request No. 16

I have read the foregoing Data Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to GVNW's auditor any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.

Signed: Elena Thomasson

Date: 2/28/2018

Docket No. 18-BTKT-033-KSF

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Attachment G

To Kansas USF Audit Report

Dated 6/28/2018



KUSF Carrier Audit Information Request

**Submitted By:** David Winter  
**Submitted To:** Sharyl Fowler  
Elena Thomasson  
**Company Name:** Birch of Kansas , Inc.  
**Docket Number:** 18-BTKT-033-KSF  
**Request Date:** May 23, 2018  
**Date Information Needed:** June 1, 2018

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**Request No. 21**

RE: December 2016 Revenues



RE: December 2016 Revenues

- Confirm that the FY 20 Annual True-up and the individual December 2016 Carrier Remittance Worksheet filed on June 21, 2017 (both attached) indicates no KUSF reportable revenues for December 2016. Explain why there were no reportable Kansas intrastate revenues for December 2016.
- **Response.-** The Annual true up is prepared by KPMG, our 3<sup>rd</sup> party tax preparer with the data uploaded from the billing reports. The December 2016 was sent in error on an older version of Excel 2007 (XLS) which had a limitation on the number of rows. This schedule cut off the last part of the file which included KS USF tax type 26. KPMG received the file and without any data for KS USF filed zero report. We became aware of the error on the upload toward the end of the month and provided the KS\_USF Correction Ionx and Birch of Kansas report to KPMG on January 30, 2017 to prepare the correction. However recently realize the schedule was not uploaded on the system to correct the December 2016 report.

Name	Date modified	Type	Size
Sourabh	04/05/2018 12:51 AM	File folder	
2016-12 Keying Spreadsheet (for KPMG)	02/01/2017 8:58 PM	Microsoft Excel Worksheet	14 KB
122016 Birch data files	16/03/2018 12:03 PM	Compressed (zipped) Folder	10,404 KB
Backup of 2016-12 Keying Spreadsheet (for KPMG)	02/01/2017 8:58 PM	Microsoft Excel Backup File	0 KB
December Monthly Wireless Subscribers by State_8	02/01/2017 7:58 PM	Microsoft Excel Worksheet	148 KB
KS-USF correction Ionex and Birch of Kansas	30/01/2017 10:58 AM	Microsoft Excel Worksheet	2,705 KB

**KUSF Carrier Audit Information Request**

- Confirm that the attached spreadsheet shows approximately [REDACTED] in Kansas intrastate revenues and \$27,911.00 in associated KUSF surcharge collected from its customers. Please confirm that these revenues should have been reported to the KUSF. If the amounts are different please provide the correct amounts. If Birch of Kansas cannot make this confirmation, please explain why.
- **Response.-** Yes the collection for KS USF should have been reported to the KS USF and the collection are collections from the billing reports.
- Please explain why Birch of Kansas did not report KUSF assessable revenues to the KUSF for December 2016 when in fact it appears that the Company indeed had reportable revenues.  
**Response.-** Birch of Kansas did not report KUSF due to an error on using an older version of Excel in which had limitation on the number of rows for this type of file. The failure to report the KSUSF was not with intention of not reporting the revenue to the Kansas Public Service Commission.

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**NOTE:** If for some reason, the above information cannot be provided by the date requested, please submit a Request for Additional Time (see Attachment A).

**Verification of Response – Data Request No. 21**

I have read the foregoing Data Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to GVNW's auditor any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Data Request.

Signed: ELNA THOMASSON

Date: June 5 2018