

BEFORE THE STATE CORPORATION COMMISSION
 OF THE STATE OF KANSAS

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

In the Matter of Certification of Compliance)	
with Section 254(e) of the Federal)	
Telecommunications Act of 1996 and)	Docket No. 19-GIMT-399-GIT
Certification of Appropriate Use of Kansas)	
Universal Service Fund Support		

**SEPARATE RESPONSE OF TOTAH COMMUNICATIONS, INC. TO STAFF
 REPORT AND RECOMMENDATION REGARDING ADDITIONAL PENALTIES**

Comes now Totah Communications, Inc. (“Totah” or “company”) and submits its separate Response to the October 8, 2019 Report and Recommendation of Commission Staff (“Staff”) herein. Regarding the propriety of assessing penalties generally against small rate of return rural telephone companies, and the apparent suggested basis for determining such penalties, Totah adopts by reference the response of the Independent Telecommunications Group, Columbus *et al.*, (“Columbus”) filed herein. This Response additionally addresses the apparent Staff recommendation for a penalty specific to Totah.

1. Totah submitted a timely initial filing June 28, 2019 pursuant to the Commission’s Order of April 11, 2019. The company first became aware of Staff questions regarding that filing through an email from Christine Aarnes to the company thereafter on August 1, 2019. The error asserted by Staff was claimed to be a failure to answer questions 2 and 3 of Attachment 6, asking respectively for the number of

requests for service unfilled and the number of customer complaints per 1,000 customers.

2. During the year subject to the report Totah had no request from customers for local telecommunications service within its service area. During that year Totah received no customer complaints. There was no positive number that could be accurately provided in response to either question. The only “error” asserted was Totah’s intentionally submitting a blank response, rather than stating the answer to each question was zero. In other words, there was no information that, if provided, would adversely affect the issue of Totah’s recertification as an Eligible Telecommunications Carrier (“ETC”) and no information that would have affected a Commission determination whether the company had appropriately utilized its state and/or federal universal service support.

3. In addition to its attention to blank responses, Staff’s August 1 communication made reference to Totah’s receipt of federal A-CAM support. The communication included a specific information request regarding that revenue and its reporting by Totah. A-CAM support to a rural telephone company ETC is a recent development, and some questions about appropriate reporting of this revenue remain unresolved by definitive regulatory Order. Accordingly, Totah promptly forwarded Staff’s information request to its outside cost consultant specialists for assistance in developing an appropriate response. Rather than provide piecemeal responses to Staff’s inquiry the company deferred submission of only corrected responses to questions 2 and 3 in Attachment 6, even though the responses to both questions would be zero.

4. At no time was Totah put on notice that a brief delay in providing its “zero” responses to questions, in order to provide a single comprehensive response to Staff’s inquiries, would place the company in jeopardy of being subjected to a penalty.

Had the company been afforded such specific information the “zero” responses could have been provided separately and immediately.

5. Staff’s Report and Recommendation states the date Totah’s filing was “complete after correction of errors” [sic] was August 13, 2019, less than two weeks after receipt of notice from Staff asserting errors and requesting additional A-CAM information. The assertion of a period of 43 days between the deadline for Totah’s original filing (which filing preceded the deadline by four days) and the final “corrected” filing is accurate but an arbitrary period for determination of any penalty that might be ordered.

6. The Report and Recommendation cites only the blank answers to questions 2 and 3 as “issues,” indicating Staff takes no exception to the A-CAM information provided in response to Staff’s inquiry, which issue delayed submission of a single response to Staff.

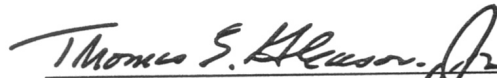
7. Totah received no subsequent assertion from Staff of errors in its filing.

8. It would be unreasonable, arbitrary and capricious to impose a penalty for a period during which neither Totah nor Staff was aware of concern over the blank response to questions for which the accurate response was zero. That claimed “error,” readily clarified, posed no material impediment to staff’s performance of its responsibilities in this Docket.

9. Under the foregoing circumstances it is evident a period of less than two weeks elapsed during which Totah referred Staff’s A-CAP query to consultants and then provided a satisfactory response to a novel question. That response, together with a “completed” filing was reasonable and not an appropriate event to be addressed by a penalty order.

WHEREFORE Totah prays that the Commission not impose any penalty against the company for provision in a reasonable time, on due notice, of a "corrected" form acceptable to Staff. Further, the Commission should reject as unreasonable and inappropriate any proposal for a penalty based on any interval during which neither the company nor Staff demonstrated awareness of any issue with the company's timely June 28 filing.

Respectfully Submitted,



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VERIFICATION

STATE OF KANSAS, DOUGLAS COUNTY, ss:

Thomas E. Gleason, Jr., of lawful age, being first duly sworn, on his oath states: He is the attorney for Totah Communications, Inc.; that he has read the above and foregoing Response; that the statements, allegations and matters contained therein are true and correct.



Thomas E. Gleason, Jr.

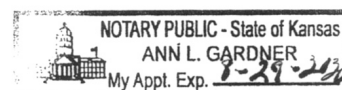
Subscribed and sworn to before me this 11th day of October, 2019.



Ann L. Gardner
Notary Public

My Appointment Expires:

8-29-2020



CERTIFICATE OF SERVICE

Thomas E. Gleason, Jr., hereby certifies that a true and correct copy of the above and foregoing Response was served electronically on the following on this 11th day of October, 2019:

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