

Secretary of State. Staff also discovered Westel had not paid quarterly assessments to the Commission, filed its Annual Interrogatory to determine its payment obligations, filed KUSF Carrier Remittance Worksheets (CRWs) or registered with the KUSF for fiscal Operating Years 22 and 23. Based on its review, the Staff submitted a Report and Recommendation dated June 13, 2019, to the Commission on June 17, 2019, and advised the Commission to open a proceeding for the purpose of directing Westel to show cause why it should not be subject to penalties, sanctions or fines in addition to having its interexchange authority suspended, canceled or revoked for failure to comply with its statutory and regulatory obligations.

3. K.S.A. 17-7505(a) requires foreign corporations to file an Annual Report with the Kansas Secretary of State. Failure to file a report or to pay the associated fee within the statutory timeframe results in a foreign corporation having its authority to do business in the state forfeited.² According to the records of the Secretary of State, Westel had its corporate authority to do business forfeited on July 15, 2017. This would also render Westel incapable of conducting the business of an interexchange carrier in Kansas, subjecting it to possible suspension, cancellation or revocation of its operating authority granted in Docket No. 93-WELC-051-COC.

4. K.S.A. 66-1503 establishes the assessment procedures for determining regulatory fees for all public utilities, including telecommunication public utilities. Westel is a telecommunications public utility under the Commission's jurisdiction. Westel is delinquent in paying its quarterly assessments for the periods from July 2017 through April 2019 and owes the Commission a balance of \$200.00. Accordingly, Westel is subject to fines and penalties for not paying its regulatory assessments and subject to possible suspension, cancellation or revocation of its operating authority.

² K.S.A. 2018 Supp. 17-7510(b).

5. The Commission has authority to assess costs and expenses to telecommunications carriers³ and to request information from them⁴ as part of its regulatory oversight. The Commission has established procedures for telecommunication carriers to file an Annual Interrogatory by May 1 for the preceding calendar year of business to determine assessments under K.S.A. 2018 Supp. 66-1503.⁵ As an interexchange carrier, Westel has failed to file its Annual Interrogatory for the calendar year ending December 31, 2018. Westel is, therefore, subject to fines and penalties for not filing the Annual Interrogatory and subject to possible suspension, cancellation or revocation of its operating authority as a result of not complying with Kansas statutes and Commission orders.

6. K.S.A. 2018 Supp. 66-2008(a) requires every telecommunication carrier to contribute to the KUSF based on its intrastate telecommunications services net retail revenue. The Commission has issued orders under its statutory mandate to provide registration and timely reporting and assessment payments. Westel has not filed its CRWs for the months of September 2017 through June 17, 2019. Westel did not register with the KUSF for the Fiscal Years of March 1, 2018, through February 28, 2019 (FY 22), and March 1, 2019 through February 29, 2020 (FY 23). Westel, therefore, is in violation of K.S.A. 2018 Supp. 66-2008(a) and needs to show cause why it should not be subject to fines, penalties and sanctions, as well as suspension, cancellation or revocation of its operating authority as a consequence of not registering, filing CRWs and making associated payments as may be deemed appropriate for KUSF compliance.

³ K.S.A. 2018 Supp. 66-2005(z)(3)(E).

⁴ K.S.A. 2018 Supp. 66-3005(z) (3)(E).

⁵ K.S.A. 66-123 and Commission Order, Docket No. 13-GIMT-736-GIT (December 3, 2013).

7. GVNW has indicated it has sent out monthly delinquent letters with regard to KUSF past due obligations. To date, Westel has not responded to the letters or provided any explanation for its failure to comply with statutory and regulatory obligations.

8. Based on the Staff analysis and GVNW reporting, the Commission finds the Staff recommendation to open a proceeding to require Westel to show cause why this Commission should not initiate sanctions and fines and cancel, suspend or revoke its telecommunications authority is appropriate. Consequently, the Commission determines that a Show Cause Docket should be opened, and Westel be given the opportunity to respond to the Staff Report and Recommendation of June 13, 2019, which is attached and incorporated by reference.

IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Westel, Inc. shall show cause, within thirty (30) days of receipt of this Order, why it should not be subject to sanctions and fines and its interexchange authority should not be cancelled, suspended and/or revoked.

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).⁶

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 06/25/2019



Lynn M. Retz
Secretary to the Commission

⁶ K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

Dwight D. Keen, Chair
Shari Feist Albrecht, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Dwight D. Keen
Commissioner Shari Feist Albrecht
Commissioner Susan K. Duffy

FROM: Sandy Reams, Assistant Chief of Telecommunications
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: June 13, 2019

SUBJECT: Docket No. 19-WELC-518-SHO
In the Matter of a General Investigation for Westel, Inc. to Show Cause Why this Commission Should Not Initiate Sanctions and Fines and/or its Certificate of Convenience to Provide Interexchange Carrier Service be Suspended, Canceled, or Revoked for Non-Compliance with Kansas Statutes and Commission Orders.

EXECUTIVE SUMMARY:

Westel, Inc. (Westel), headquartered in Austin, Texas, holds a Certificate of Convenience and Authority (COC) to operate as an interexchange carrier (IXC)¹ in Kansas. Westel has forfeited its "Active and in Good Standing" status with the Kansas Secretary of State Office. Westel is delinquent in remitting payment of Commission assessments and filing its Annual Interrogatory with the Commission. Westel is also delinquent with its Kansas Universal Service Fund (KUSF) obligations. Westel is, therefore, non-compliant with K.S.A. 17-7505, K.S.A. 66-1503, K.S.A. 66-2005(z)(3), K.S.A. 66-2008(a), and Commission Orders.

Staff recommends that the Commission issue an Order to open a proceeding and require Westel to show cause why it should not be subject to penalties, sanctions or fines and/or its COC to operate in Kansas be suspended, canceled, or revoked for failure to comply with its Kansas statutory obligations.

BACKGROUND:

K.S.A. 17-7505 requires a foreign covered entity to file an Annual Report with the Kansas Secretary of State. Westel's most recently filed an Annual Report with the Secretary of State for

¹ Docket No. 93-WELC-0518-COC, 1992.

the year ended December 2015. Consistent with K.S.A. 17-7510(b), the Company forfeited its authority to do business in Kansas in July 2017.²

K.S.A. 66-1503 authorizes the Commission to assess each public utility or common carrier for expenses it and the Citizens' Utility Ratepayer Board incur during a fiscal quarter. The public utility or common carrier has fifteen days after notice mailing to pay the assessment. Westel owes \$200.00 of Commission quarterly assessments, effective for the quarters of July 2017 through April 2019.

K.S.A. 66-2005(z)(3)(E) authorizes the Commission to assess costs and expenses to telecommunications carriers and K.S.A. 66-2005(z)(3)(F) authorizes the Commission to request information from telecommunications carriers. To ensure the Commission can meet its obligations as provided for in K.S.A. 66-1503, the Commission requires telecommunications carriers to file an Annual Interrogatory for the proceeding calendar year with the Commission by May 1 of the following year.³ Westel has not filed its Annual Interrogatory for the calendar year ended December 31, 2018.

K.S.A. 66-2008(a) requires every telecommunications carrier, telecommunications public utility, wireless telecommunications service provider, and interconnected VoIP service to contribute to the KUSF based on its intrastate telecommunications services net retail revenues. Westel has not filed its KUSF Carrier Remittance Worksheets (CRWs) for the months of September 2017 through April 2019. The May 2019 CRW is due no later than June 17, 2019. Westel has not registered with the KUSF for the Fiscal Years of March 1, 2018, through February 28, 2019 (FY 22), and March 1, 2019, through February 29, 2020, as discussed in GVNW Consulting, Inc.'s Memorandum attached to this Report and Recommendation.

ANALYSIS

Westel forfeited its authority to do business in Kansas effective July 2017. The Company owes \$200.00 in assessments to the Commission and has not filed its Annual Interrogatory for the calendar year ended December 31, 2018. Westel has not filed its KUSF CRWs for the months of September 2017 through April 2019, and has not registered with the KUSF for FYs 22 and 23.

RECOMMENDATION:

Based on the information provided in this R&R and GVNW's Memorandum, Staff recommends that the Commission issue an Order to open a proceeding and direct Westel to show cause why it should not be subject to penalties, sanctions, or fines and/or its IXC COC suspended, canceled, or revoked for failure to comply with its Kansas obligations.

² Kansas Secretary of State, Business Center, <https://www.kansas.gov/bess/flow/main?execution=els5>, last viewed June 12, 2019.

³ Order, Docket No. 13-GIMT-736-GIT, Dec. 3, 2013.

CERTIFICATE OF SERVICE

19-WELC-518-SHO

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 06/25/2019.

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/S/ DeeAnn Shupe

DeeAnn Shupe