

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

In the Matter of a General Investigation for)
Unitel Voice, LLC to Show Cause Why This)
Commission Should Not Initiate Sanctions and) Docket No. 20-UNTV-525-SHO
Fines for Non-Compliance with Commission)
Orders and Kansas Statutes.)

**STAFF'S REPLY TO THE RESPONSE OF UNITEL VOICE, LLC TO THE
COMMISSION'S ORDER TO SHOW CAUSE**

The Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), hereby files its reply to the letter response of Unitel Voice, LLC (Unitel) to the Commission's *Order to Show Cause* in this matter. As discussed in greater detail below, Staff recommends the Commission deny Unitel's request for an extension of time, and hold in abeyance any determination of whether to modify the KUSF penalties pending the Company's compliance with its KUSF obligations.

I. BACKGROUND

1. On June 30, 2020, the Commission issued an *Order to Show Cause* and directed Unitel to: (a) show cause, within thirty days of receipt of the Order, why it should not be subject to sanctions, fines, or penalties; (b) register with the KUSF for FY 23 and FY 24; (c) report all revenue and pay the related KUSF contributions for March 2018 through June 2020; and (d) pay the penalties owed to the KUSF within 30 days of issuance of the Order.¹

2. The Commission's Order was based on a Staff Report and Recommendation (R&R) dated June 17, 2020, indicating that Unitel was delinquent in its Kansas Universal Service Fund (KUSF) obligations, by not: (1) reporting its revenue and paying the related KUSF assessments

¹ Order to Show Cause, Docket No. 20-UNTV-525-SHO (Jun. 30, 2020).

failure to register, report revenues, or pay assessments.⁴ GVNW first notified Unitel of its KUSF obligations in October 2017⁵ and Staff has directly corresponded with Unitel since October 2019. Unitel's failure to timely respond to GVNW and Staff over the course of several years, and its failure to timely submit its registrations and revenues over that same timeframe is what resulted in the penalties currently assessed against the Company.

6. As previously discussed, Unitel was first notified of its delinquencies in 2017 – well before the existence of COVID-19 and Unitel remains delinquent with the numerous regulatory obligations cited above in paragraph 2.

Request for Elimination or Reduction in Penalties Should be Temporarily Held in Abeyance

7. With regard to Unitel's request for the Commission to eliminate or reduce the \$5,464.21 of KUSF currently assessed penalties to a "more reasonable amount," the Commission has previously stated:

The purpose of the penalty is to encourage companies to submit their worksheets on time in order to ensure the efficient operation of the KUSF. It is necessary that the penalty be set high enough to catch a company's attention and assure timely submission.⁶

Additionally, in Docket No. 20-GIMT-086-GIT (20-086 Docket), the Commission affirmed it "will levy KUSF administrative penalties on its own on a case-by-case basis, factoring in the impact a company's actions have had on the KUSF and contributors to the KUSF."⁷ The Commission also adopted clarifying guidelines for penalties levied by the Commission pursuant

⁴ Docket No. 18-GIMT-084-GIT, In the Matter of An Investigation to Determine the Assessment Rate for the Twenty-Second Year of the Kansas Universal Service Fund, Effective March 1, 2018, *Order Modifying Kansas Universal Service Fund Penalties*, Ordering Clauses A-D, p. 4-5, 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*, Ordering Clauses A-D, p. 4, Oct. 30, 2018,

⁵ See Staff R&R, Attachment 1, GVNW Memorandum to Staff, p. 1, as attached to the Commission's Order to Show Cause.

⁶ Order Setting the Kansas Universal Service Fund Assessment Rate for the Year Ten and Establishing Reporting Requirements, ¶ 11, Docket No. 06-GIMT-332-GIT, Jan. 23, 2006.

⁷ Order Clarifying and Adopting KUSF Election Criteria and KUSF Administrative Penalties, Docket No. 20-GIMT-086-GIT, March 3, 2020, p. 4-5.

to K.S.A. 66-138 against a carrier for failure to comply with its KUSF obligations.⁸ The guidelines pertaining to carriers such as Unitel are: (a) the carrier is required to report all revenue and pay all assessments and levied penalties to the KUSF; and (b) each violation is determined on a monthly basis, unless the Commission believes the situation warrants different treatment.⁹ The Commission found that a penalty may be increased based on: (a) egregious misconduct; (b) the carrier's assets and whether the assets are significant enough that a larger disincentive is necessary; (c) the carrier's violation was intentional; (d) the violation resulted in substantial harm to the KUSF and/or contributors to the KUSF, including subscribers; (e) the company previously violated Commission requirements; (f) the violation resulted in substantial economic gain to the carrier; and/or (g) the carrier has repeated or continuous violations for the same or a similar issue.¹⁰ The Commission also determined that a fine may be reduced if the violation is minor, the carrier acted in good faith or volunteered disclosure, has a history of overall compliance, and/or an inability to pay.¹¹

8. In evaluating Unitel's allegation that the current assessments are unreasonable, Staff evaluated the GVNW proposed assessments under the guidelines adopted by the Commission in the 20-086 Docket. Based on that review, it is Staff's position that the penalties currently assessed against Unitel are appropriate. Staff's evaluation recognized the following:

- a) Unitel reported revenue and paid its assessments obligations for FY 21, but is delinquent in reporting revenue and paying its assessments for KUSF FY 22, 23, and 24;
- b) Unitel has not registered with the KUSF for FY 23 and 24;

⁸ *Id* at 6-7.

⁹ *Id* at 3.

¹⁰ *Id* at 3-4.

¹¹ *Id* at 4.

- c) GVNW assessed penalties to Unitel pursuant to Commission Orders;
- d) Unitel's FY 21 and 22 KUSF registrations verify it is a small business with less than \$10,000 in annual revenue, indicating its non-compliance may not result in substantial harm to the KUSF and/or contributors to the KUSF, including subscribers or result in a substantial economic gain to the Company; and
- e) the \$5,464.21 of penalties assessed to Unitel by GVNW consists of \$5,200 of Late Filing Penalties and \$264.21 of Delinquent Balance Penalties;¹²
- f) the total penalties assessed to United by GVNW are likely to be substantially larger than the contributions Unitel owes the KUSF; and
- g) United is subject to additional KUSF administration penalties for failure to timely: (1) register with the KUSF for FY 23 and 24; (2) report its revenues for FY 22, 23, and 24; and (3) pay its contributions for FY 22, 23, and 24.
- h) However, based on the facts in this docket, and Unitel's ongoing compliance issues that may result in either a mitigation or increase in assessments, Staff recommends the Commission temporarily hold in abeyance any determination of whether to modify the KUSF penalties. Once Unitel complies with its obligations, Staff will advise the Commission of the total KUSF administrative penalties recommended to be assessed against Unitel.

WHEREFORE, for the reasons stated above, Staff respectfully requests the Commission issue an Order denying Unitel's request for an extension to comply with its KUSF obligations, and hold in abeyance any consideration of whether to modify the KUSF administrative penalties

¹² Staff Report and Recommendation, p. 2, dated July 14, 2020, and GVNW's Memorandum attached to Staff's Report.

assessed to Unitel until after the Company comes into compliance with its KUSF obligations and the total KUSF administrative penalties are known, as well as any other relief that the Commission may deem necessary.

Respectfully Submitted,

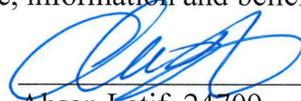


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STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

VERIFICATION

Ahsan Latif, being duly sworn upon his oath deposes and states that he is a Litigation Counsel for Litigation Counsel of the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Response*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Ahsan Latif, 24709
Litigation Counsel
Kansas Corporation Commission

Subscribed and sworn to before me this 7th day of August, 2020.



STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

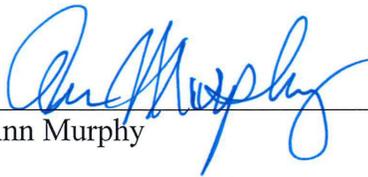
VERIFICATION

Sandy Reams, being duly sworn upon her oath deposes and states that she is an Assistant Chief of Telecommunications for the Utilities Division of the Kansas Corporation Commission of the State of Kansas, that she has read and is familiar with the foregoing *Staff's Response To The Petition of Unitel Voice, LLC For Extension Of Time and Waiver Of Penalties*, and attests that the statements contained therein are true and correct to the best of her knowledge, information and belief.



Sandy Reams
Assistant Chief of Telecommunications
State Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 7th day of August, 20.



Ann Murphy

My Appointment Expires: 4-28-21



CERTIFICATE OF SERVICE

20-UNTV-525-SHO

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Reply To The Response Of Unitel Voice, LLC To The Commission's Order To Show Cause was served via electronic service this 7th day of August, 2020, to the following:

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