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*Attorneys for New Cingular Wireless PCS, LLC*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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<b>In the Matter of Overpayment of New Cingular Wireless PCS, LLC Into the Utah Universal Service Support Fund</b>	§ § § § § §	<b>Docket No. 24-087-02  VERIFIED REQUEST FOR RECOVERY OF OVERPAYMENT TO UUSF</b>
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New Cingular Wireless PCS, LLC (“Company”) respectfully requests that the Commission approve recovery of Company’s excess surcharge remittances, or overpayments, to the Utah Universal Public Telecommunications Service Support Fund (“UUSF”) from July 2021 to June 2023. In support of this request, Company shows the following:

1. New Cingular Wireless PCS, LLC, an AT&T company, provides wireless telephone services in Utah.

2. Under UTAH CODE ANN. § 54-8b-15(8)(a) and UTAH ADMIN. CODE R. 746-8-301, Company is required to remit to the Commission an “explicit charge,” also referred to as the UUSF surcharge, set by the Commission on each telecommunication access line or connection that has a place of primary use in Utah (not including mobile prepaid wireless services). From July 2021 through July 2023, regulation provided that Company “shall remit to the Commission \$0.36 per month per access line.” Utah Admin. Code R. 746-8-301(1)(a), (e) (2021).

3. As required, Company collected from its end-user customers and remitted UUSF surcharges for the period July 2021 through July 2023. During this period, however, Company inadvertently collected and remitted more than the explicit charge set by the Commission under UTAH CODE ANN. § 54-8b-15(9) and UTAH ADMIN. CODE R. 746-8-301(1)(a) (2021).

4. In June 2021, the Commission reduced the UUSF surcharge effective July 2021 from \$0.54 to \$0.36. Company entered the new, lower Commission-set rate in its internal legislative and regulatory compliance portal (known as “LTRAC”) per established internal compliance process. The impacted business units were notified and instructed to effectuate the regulatory change. In implementing the change, however, Company updated the rate change in its mobility billing system on an obsolete tax/surcharge billing code rather than on the proper, active code for the flat-rate surcharge. Thus, for the period of July 2021 through July 2023, the Company’s biller continued to assess the UUSF surcharge at the higher \$0.54 rate instead of the then-correct rate of \$0.36. Company became aware of this issue in late July 2023 and promptly corrected this issue.<sup>1</sup>

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<sup>1</sup> Because Company was aware of the issue in July 2023 but had already invoiced customers at the \$0.54 rate, Company corrected its remittal statement for July 2023 to remit the amount actually owed for that month at the \$0.36 rate. Company issued credits to impacted customers for July 2023.

5. This billing issue was limited to the Company's (New Cingular Wireless PCS, LLC) billing system which bills Company wireless customers in Utah. Other AT&T companies providing telecommunications services in Utah utilized a different biller and thus did not experience this issue and, where applicable, properly updated the UUSF surcharge rate change in July 2021.<sup>2</sup>

6. The resulting total overpayment is \$2,263,407.04, which represents the difference between the rate that should have been collected and remitted (\$0.36 per access line) versus the rate that was actually collected and remitted (\$0.54 per access line) for this time period between July 2021 through June 2023.

7. Beginning in October 2023, Company issued credits to its impacted customers for the amount of the over-collection. That is, Company credited impacted active customers an amount equal to the surcharge actually billed during the July 2021 through July 2023 time period minus the lower amount which should have been charged.

8. Soon after discovering and correcting these issues, in early November 2023, Company contacted Commission staff to discuss recovery of the overpayment. Company subsequently provided additional information related to its request for recovery of the overpayment and was advised in early March 2024 to submit a formal filing with the Commission seeking the requested relief.

9. In support of this request, Company asserts the following:

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<sup>2</sup> In addition to Company, the following AT&T affiliate companies provide telecommunication services to customers in Utah: AT&T Corp. (operating as a CLEC); SBCLD (an IXC); Teleport Communications America, LLC (a CLEC); and Cricket Wireless LLC (mobility services). As stated, these other AT&T affiliate companies did not utilize the same biller as Company and thus did not incorrectly assess the UUSF surcharge.

a. Company is required under law only to remit payments to the UUSF at the “explicit rate” set by the Commission. UTAH CODE ANN. § 54-8b-15(9); UTAH ADMIN. CODE R. 746-8-301. Here, although the Commission lowered the UUSF rate effective July 2021 from \$0.54 to \$0.36, Company inadvertently maintained the previous, higher rate. Thus, Company continued to collect and remit contributions at a rate in excess of the applicable explicit rate set by the Commission. The total amount of Company’s excess remittances, or overpayment, for the applicable time period is: \$2,263,407.04.

b. Upon discovery of the excess collections and remittances, Company promptly corrected the issue in its billing systems and collected and remitted the correct explicit rate of \$0.36 per access line beginning in August 2023.

c. Soon after, beginning in or about October 2023, Company issued credits to impacted Customers in Utah to account for the excess UUSF surcharge between July 2021 and July 2023. Company issued such credits to impacted customers in the total amount of \$2,369,273.40.<sup>3</sup> Accordingly, impacted customers have been made whole to reflect the then-applicable Commission-set surcharge rate; yet Company remitted into the UUSF more than required by law for the applicable time period.

d. The excess collection and remittances were the result of an inadvertent administrative error and did not arise out of any bad faith. Company did not benefit from the error as the

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<sup>3</sup> For a small number of impacted customers with inactive accounts, attempts to credit the extra \$0.18 per month excess of the UUSF surcharge were rejected. The total amount of rejected credits is \$1,873.08 (representing 121 accounts). These rejected adjustments remain posted to the inactive accounts until the account is removed from Company’s system. Then, refunds are mailed to the inactive customer or moved to the escheat process. Further, the total amount of credits issued is greater than the total amount of excess remittances because Company submitted the correct UUSF remittance for July 2023 but issued credits to impacted customers for the overcharge for July 2023.

excess amounts collected were not retained but were remitted to the UUSF each month. Company's customers were not damaged because Company promptly credited to their accounts an amount equal to the excess contribution.

e. The UUSF received excess remittances as a result of Company's administrative error in inadvertently collecting and remitting the \$0.54 UUSF surcharge rate in effect through July 2021 through Company's correction of the issue in August 2023. Under the circumstances, it would be unjust for Company to be denied recovery of the excess remittances, after Company's reimbursement to impacted customers.

f. Company promptly notified the Commission of the issue and diligently pursued its request for recovery of the overpayment.

g. There is no legal or regulatory barrier or prohibition preventing Company from seeking recovery of these excess payments. There are also no legal or regulatory grounds for the UUSF to retain such excess funds contributed by a carrier, particularly where the carrier demonstrates a good faith attempt to accurately charge and remit the UUSF explicit rate, promptly issues refunds/credits to impacted customers, and promptly notifies the Commission of the issue.

h. In fact, the Commission previously granted relief to Company under similar circumstances.<sup>4</sup>

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<sup>4</sup> See *In the Matter of Overpayment of New Cingular Wireless PCS, LLC Into the Utah Universal Service Support Fund*, Docket No. 15-999-13 (granting, by Order issued January 7, 2016, movant's request for a refund for overpayments to UUSF).

i. Accordingly, because the UUSF retains contributions from Company made in excess of the explicit rate set by the Commission, this request for recovery of the overpayment is justified and in the public interest.

10. **CONFIDENTIAL Exhibit.** CONFIDENTIAL Exhibit A, attached in support of this request, is Company's spreadsheet which demonstrates its calculations of UUSF surcharge payments Company made in excess of the explicit rate set by the Commission from July 2021 through June 2023 and calculations of adjustments.

- Table 1 represents the actual amount collected for each month at issue.<sup>5</sup> Column B states the number of eligible access lines subject to the UUSF surcharge; Column C represents the \$0.54 surcharge rate actually billed to the access lines.<sup>6</sup> The "total remitted" in Column F is the amount Company actually remitted to the UUSF based on the \$0.54 rate.
- Table 2 represents the numbers that should have been collected and reported at the proper \$0.36 surcharge rate. Column K is the amount Company should have collected at the then-effective \$0.36 rate; Column M is the amount Company should have remitted for each month at issue.
- Column O provides for the adjustment applicable to each month based on the overpayment with the sum of each impacted month at the bottom.

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<sup>5</sup> As explained in footnote 1, Company remitted the correct amount to the UUSF for July 2023 after becoming aware of the issue. Thus, there is not a row for July 2023; however, Company credited to customers the excess surcharge amount collected for that month.

<sup>6</sup> The Company's UUSF remittal statements for each month inaccurately report the number of eligible access lines because the number in the statement was calculated based on the total amount collected (at the \$.54 surcharge rate) but divided by the \$0.36 rate that should have been collected.

11. **Request for Recovery.** Based on the statement and exhibit provided in this request, Company requests recovery for a total of \$2,263,405.04 in excess UUSF surcharge payments remitted to the fund from July 2021 through June 2023. Company requests that the Commission issue findings and order that granting this requested recovery is justified, in the public interest and should be granted. Company request such other relief to which the Commission finds Company is entitled.

RESPECTFULLY SUBMITTED: April 10, 2024

/s/ Trey LaMair

Edward (Trey) LaMair  
AT&T Services, Inc.

Phillip J. Russell (10445)  
JAMES DODGE RUSSELL & STEPHENS, P.C.

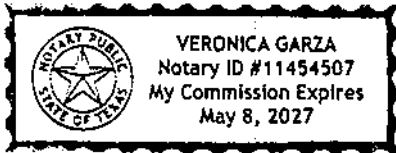
**ATTORNEYS FOR NEW CINGULAR  
WIRELESS PCS, LLC**


VERIFICATION

STATE OF TEXAS

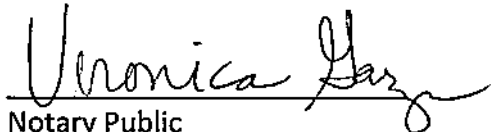
COUNT OF DALLAS

The undersigned, Randy E. Phoenix, Jr., being duly sworn upon oath, deposes and states: he is Director in the AT&T Tax department; he has personal knowledge of the matters addressed in this "In the Matter of Overpayment of New Cingular Wireless PCS, LLC Into the Utah Universal Service Support Fund" and its Exhibit; and that the statements and information contained herein are true and accurate, to the best of his knowledge and belief.



  
Randy E. Phoenix, Jr.  
Director—Tax, AT&T Services, Inc.

Subscribed and sworn to me on this 10<sup>th</sup> day of April 2024.

  
Notary Public



Certificate of Service  
**Docket No. 24-087-02**

I hereby certify that a true and correct copy of the foregoing was served by email this 10th day of April 2024 on the following:

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/s/ Phillip J. Russell