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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Overpayment of New Cingular Wireless PCS, LLC Into the Utah Universal Service Support Fund	Docket No. 24-087-02
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DIRECT TESTIMONY

OF

RANDY E. PHOENIX

On Behalf of

New Cingular Wireless PCS, LLC

May 24, 2024

1 **Q: Please state your name, your position with AT&T and your business address.**

2 A: My full name is Randy E. Phoenix, Jr. I am employed by AT&T as Director – Tax. My
3 business address is: 208 S. Akard St. Dallas, TX 75202

4 **Q. On whose behalf do you offer testimony in this proceeding?**

5 A. My testimony is submitted on behalf of New Cingular Wireless PSC, LLC (“Company”),
6 which is a wholly owned affiliate of AT&T, Inc.

7 **Q: Please describe your educational background and professional experience prior to**
8 **coming to work for AT&T.**

9 A: Prior to my work at AT&T, I worked as a tax audit manager/analyst for an oil and gas
10 company for 7 years. Prior to that, I was a tax auditor with the State of Texas for 7 years.
11 Prior to working with the State, I attended Texas A&M – Kingsville (4 years). I graduated
12 in 2000 with a Bachelor of Business Administration (BBA) in Accounting and a minor in
13 Computer Information Systems.

14 **Q: Please describe your work experience.**

15 A: I have been employed by AT&T since 2011. I began as a Lead Tax Accountant; promoted
16 to an Associate Director – Tax; and then to my current position as Director-Tax. In each of
17 these roles, my duties and responsibilities have been the management of state and local
18 transaction tax audits with an emphasis on mobility entities.

19 **Q: Please describe your current duties and responsibilities with AT&T as Director-Tax.**

20 A: My current duties and responsibilities include managing state and local transaction tax
21 mobility audits and refunds. I train my team on the audit process and procedures. I oversee
22 and offer guidance for audits. I analyze compliance tax returns and tax summary reports

23 for audit purposes and requests. I research tax laws and advise leadership on tax related
24 opportunities. I work with internal organizations and department on resolving tax
25 controversies and problem solve for accurate resolutions.

26 **Q: Have you testified previously in federal or state regulatory proceedings on**
27 **telecommunications issues?**

28 A: No.

29 **Q: What is the purpose of your testimony?**

30 A: My testimony, combined with the Verified Request for Overpayment to UUSF filed with
31 the Commission on April 20, 2024 (the “Request”) and the direct testimony of my
32 colleague, Janet Tolley, supports the Company’s request for recovery of excess surcharge
33 remittances, or overpayments, to the Utah Universal Public Telecommunications Service
34 Support Fund (“UUSF”) from July 2021 to June 2023. The facts stated in this testimony
35 are true of my own personal knowledge.

36 As I testify below, the total amount of the Company’s excess remittances for the
37 time period at issue is \$2,263,407.04. This request for recovery is justified and should be
38 approved.

39 **Q: Do you verify the statements and facts made in the Request and exhibit attached to**
40 **the Request?**

41 A: I do. I signed the Verified Request filed in this proceeding on April 10, 2024. I do not
42 repeat the statements and facts set forth in the Verified Request, but I incorporate them into
43 my direct testimony as though fully set forth herein.

44

45 **Q: Do you have personal knowledge about the Company's excess remittances to the**
46 **UUSF from July 2021 through June 2023 which are the subject of this proceeding?**

47 A: Yes. During this time period, the Company inadvertently collected and remitted more than
48 the explicit charge set by the Commission. The total amount of the Company's excess
49 remittances, or overpayments, for this time period is \$2,263,407.04.

50 **Q: Please explain how the Company calculated the amount of excess remittances.**

51 A: I prepared and verified Confidential Exhibit A attached to the Company's Request. This
52 Excel document provides data in two tables. Table 1 represents surcharge collections at the
53 \$0.54 per access line rate. The total amount actually collected for each month is set forth
54 in Column D. The total amount remitted is set forth in Column F. Column B shows the
55 corrected access line counts which, as my colleague Janet Tolley discusses in her direct
56 testimony, should have been reported on the remittal statements. The total amount the
57 Company remitted for this time period at the \$0.54 per line rate is \$6,786,361.05.

58 Table 2 of Confidential Exhibit A attached to the Company's Request represents
59 data for amended UUSF remittal statements for the time period July 2021 through June
60 2023. Table 2 reflects the amounts the Company should have collected from customers
61 each month during this period at the \$0.36 per access line rate (Column K) and the amount
62 by month the Company should have remitted to the UUSF at the \$0.36 per access line rate
63 (Column M). The total amount the Company should have remitted for this time period at
64 the \$0.36 rate is \$4,522,954.01.

65

66

67 **Q: Based on the data in Confidential Exhibit A, what is the total excess remittance or**
68 **overpayment?**

69 A: Column O of Confidential Exhibit A itemizes each excess remittance by month from July
70 2021 through June 2023. The total amount of the Company's excess remittances, or
71 overpayments, for this time period is \$2,262,407.04. The Company seeks recovery of this
72 amount.

73 **Q: Why is July 2023 not reflected in Confidential Exhibit A?**

74 A: The Company became aware of the error in late July 2023 and remitted the correct amount
75 to the UUSF for July 2023 based on the \$0.36 surcharge rate. That is, while the Company
76 billed its customers using the incorrect UUSF surcharge from July 2021 through July 2023,
77 it corrected the remittance to the UUSF for July 2023 so that the incorrect UUSF
78 remittances occurred for the months of July 2021 through June of 2023. In August 2023,
79 the Company corrected the surcharge rate in its invoices to customers and collected and
80 remitted the correct \$0.36 per access line in all bills going forward from that point.

81 **Q: Were credits issued to impacted customers?**

82 A: Yes. The Company began the process of issuing credits to impacted customers soon after
83 becoming aware of the issue in late July 2023. Beginning in September 2023, impacted
84 Utah customers were issued an \$0.18 per access line credit for each month billed in excess
85 of the Commission-set \$0.36 rate. Customer invoices stated the credit adjustment as
86 "Wireless – Tax and Surcharge Adjustments."

87 **Q: What was the total amount of credits issued to impacted customers?**

88 A: The Company issued credits to impacted customers in the total amount of \$2,369,273.40.

89 **Q: How did the Company calculate this total amount?**

90 A: I prepared Confidential Exhibit NCW REP-1, which was previously submitted as
91 Confidential Attachment 1.1-3 in response to DPU data request 1.3, and which is submitted
92 with my direct testimony. This exhibit includes data in three columns: Column A is the last
93 4 digits of the Company customers' billing account number (BAN); Column B is the
94 amount of UUSF surcharge invoiced to the customers' BAN in excess of the \$0.36 per
95 access line charge set by the Commission; Column C is the amount of credit refunded to
96 the customers' BAN. Most credit amounts for a BAN are \$4.50 or less (\$4.50 representing
97 a typical scenario of 1 access line for a BAN multiplied by the \$0.18 credit for 25 months).
98 BANs with larger credit amounts represent BANs with multiple access lines, particularly
99 business customers that may have many lines. The total amount of credits issued,
100 represented by the total sum of all the credits in Column C, is \$2,371,146.48.

101 **Q: Why is the total amount credited to customers different from the amount for which**
102 **the Company seeks recovery for the excess remittances?**

103 A: The excess amount collected from customers is slightly different from the excess amount
104 remitted to the UUSF. The Company identified the UUSF surcharge error after billing
105 customers using the wrong surcharge in July of 2023 but prior to submitting its UUSF
106 remittal statement for that month. The Company remitted the correct UUSF amount for
107 July 2023 and issued credits to impacted customers for the month.

108 In addition, for a small number of impacted customers with inactive accounts,
109 attempts to credit the extra \$0.18 per month excess of the UUSF surcharge have been
110 rejected. The total amount of rejected credits is \$1,873.08 (representing 121 accounts).

111 These rejected adjustments remain posted to the inactive accounts until the account is
112 removed from the Company's system. Once the account is removed from the Company's
113 system, refunds are mailed to the inactive customer or moved to the escheat process.

114 **Q: When did Company notify the Commission of this issue?**

115 A: The Company communicated with Commission staff soon after discovery of the issue in
116 late July 2023 and diligently pursued its request for recovery of the overpayment. In
117 February 2023 Commission staff ultimately advised the Company to initiate a formal
118 administrative proceeding.

119 **Q. What remedy does the Company seek in this proceeding?**

120 A. The Company requests that the Commission refund to the Company an amount equal to
121 the \$2,263,407.04 that the Company overpaid to the UUSF. Granting this remedy would
122 result in the UUSF retaining the remittance amount it would have received from the
123 Company had the Company remitted the correct UUSF surcharge from July 2021 through
124 July 2023.

125 **Q. Is the Company's requested remedy in the public interest?**

126 A. Yes. The Company made a mistake that resulted in an overpayment of \$2,263,407.04 to
127 the UUSF. In administering the UUSF and setting the explicit charge for UUSF
128 remittances, the Commission balances competing interests to ensure that the UUSF has
129 sufficient funds to satisfy its policy objectives while not overburdening providers. For
130 example, when the Commission reduced the UUSF charge from \$0.54 to \$0.36 per access
131 line in 2001 it sought to "ensure the UUSF remains at a manageable level to meet the fund's
132 statutory obligations and does not accrue unreasonable balances beyond those

133 obligations.”¹ The Company’s overpayment to the UUSF represents a substantial infusion
134 of funds beyond those intended to be recovered.

135 Moreover, failure to refund the overpayment would ultimately result in the
136 Company paying a UUSF surcharge of \$0.54 during a time when the applicable surcharge
137 was \$0.36. Imposing a higher charge on the Company than on all other providers during
138 this period is contrary to requirements that the UUSF explicit charge be imposed in a
139 manner that is non-discriminatory and competitively neutral.²

140 **Q: What is your recommendation to the Commission in this proceeding?**

141 A: Based on the testimony and evidence in this proceeding, I recommend and request that the
142 Commission grant the Company a refund for the excess UUSF surcharge payments
143 remitted to the UUSF from July 2021 through June 2023 in the total amount of
144 \$2,263,407.04. The Company promptly issued refund credits to impacted customers in an
145 amount greater than the recovery sought. My testimony and the evidence in this proceeding
146 demonstrates good cause to allow this recovery, that the Company acted in good faith to
147 promptly issue refunds to impacted customers and notified the Commission of the issue,
148 and that recovery is consistent with the public interest.

149 **Q: Does this conclude you pre-filed direct testimony?**

150 A: Yes.

¹ See Exhibit NCW REP-2 (Notice of UUSF Rate Change).

² See Utah Code § 54-8b-15(9).