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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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EXHIBIT NCW REP-2

to the

DIRECT TESTIMONY

OF

RANDY E. PHOENIX

On Behalf of

New Cingular Wireless PCS, LLC

May 24, 2024

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R746-8-301	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Public Service Commission	
Agency:	Public Service Commission	
Room no.:		
Building:	Heber M. Wells Building	
Street address:	160 E 300 S, 4 th Floor	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state, zip:	Salt Lake City, UT 84114-4558	
Contact person(s):		
Name:	Phone:	Email:
Yvonne Hogle	801-530-6709	yhogle@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Calculation and Application of UUSF Surcharge
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The purpose of this rule amendment is to decrease the monthly Utah Universal Public Telecommunications Service Support Fund (UUSF) remittal amount from \$0.54 to \$0.36 per access line to ensure the UUSF remains at a manageable level to meet the fund's statutory obligations and does not accrue unreasonable balances beyond those obligations. The PSC expresses appreciation to the Division of Public Utilities in the Department of Commerce for providing the analysis necessary to consider and implement this rule amendment.
4. Summary of the new rule or change:
This amendment decreases the monthly UUSF surcharge from \$0.54 to \$0.36 per access line. The amendment makes three textual edits, revising the rule's three references to the \$0.54 surcharge to reflect the new \$0.36 surcharge. As explained in response to Question 3, the decrease in the surcharge is necessary to ensure the UUSF can meet statutory obligations while remaining within policy norms. The amendment also makes two non-substantive corrections to a subheading and to an internal cross-reference. Unless public comment convinces the PSC to alter its plans, the PSC anticipates making this rule amendment effective on July 1, 2021.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This surcharge change will reduce the balance accruing in the UUSF, helping maintain the performance objective set by the Utah Legislature to maintain at least three months' worth of fund distributions without accruing an unreasonable balance above that amount. The only other impact on the state budget is the impact on state offices that are telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.

B) Local governments:

The only impact on local governments will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.

C) Small businesses ("small business" means a business employing 1-49 persons):

The only impact on small businesses will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The only impact on non-small businesses will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Affected - All customers who are billed for an access line presently pay \$0.54 per month per access line for the UUSF surcharge. Under the new \$0.36 rate, all such customers will pay \$0.18 less per month per access line. Presently, an average of 3,404,736.67 access lines are assessed the surcharge every month. At the current rate, this results in approximately \$1,838,557.80 being collected from such customers to fund the UUSF on a monthly basis. Under the new rate, these customers will cumulatively pay approximately \$1,225,705.20 per month, generating approximately \$14,708,462.40 per year and \$1,225,705.20 per month as compared to the current rate to fund the UUSF. While the proposed reduction in the rate will result in a reduction of \$612,852.60 per month, or \$7,354,231.21 per year in the balance of the UUSF, as compared to the current rate to fund the UUSF, this has no fiscal impact on any group. No group will experience a fiscal "benefit" or "savings" because the funds collected or funds saved are specifically earmarked for UUSF spending. The PSC presently does not have access to the commercially sensitive information that would be necessary to determine what portion of the access lines paying the surcharge are small businesses, larger businesses, or individuals. However, this decrease should affect all customers and customer classes equally on a per access line basis.

F) Compliance costs for affected persons:

All telecommunications customers currently paying this surcharge will experience a reduction of \$0.18 in their monthly bill.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$7,354,231.21	\$0	\$0
Total Fiscal Benefits	\$7,354,231.21	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
*While the proposed reduction in the rate will result in reduced surcharge collections of \$612,852.60 per month, or \$7,354,231.21 per year, as compared to the current rate to fund the UUSF, this has no real impact to the "Other Persons" group in this Table. No "benefit" or "savings" will be experienced because the funds collected or funds saved are specifically earmarked for the UUSF.			

H) Department head approval of regulatory impact analysis:

PSC Chair Thad LeVar has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

All telecommunications customers in Utah will experience a reduction of \$0.18 in their monthly telecommunications bill. This will better align the Utah Universal Service Fund with the performance goal of maintaining a sufficient balance in the fund to pay three months' worth of disbursements, without accruing an unnecessary balance above that threshold. I appreciate the detailed analysis done by the Division of Public Utilities in the Department of Commerce that provided the PSC the necessary information to consider and implement this surcharge reduction.

B) Name and title of department head commenting on the fiscal impacts:

Thad LeVar, PSC Chair

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 54-3-1	Section 54-4-1	Section 54-8b-10
Section 54-8b-15		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; if none, leave blank):

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; if none, leave blank):

	Second Incorporation

Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the *Utah State Bulletin*. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 06/14/2021

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

10. This rule change MAY become effective on (mm/dd/yyyy): 06/21/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

Agency head or designee, and title:	Thad LeVar, PSC Chair	Date (mm/dd/yyyy):	04/28/2021
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R746. Public Service Commission, Administration.**R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).****R746-8-301. Calculation and Application of UUSF Surcharge.**

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission ~~[\$0.54]~~\$0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c) A provider may collect the surcharge:

(i) as an explicit charge to each end-user; or

(ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e)(i) Except as provided in Subsection R746-8-301(1)(e)(ii):

(A) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission ~~[\$0.54]~~\$0.36 per month per access line for such service, such as new access lines or connections, or recharges for existing lines or connections, purchased on or after January 1, 2018.

(B) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).

(C) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.

(ii) The charge described in Subsection R746-8-301(1)~~[(e)(2)]~~[(a)] does not apply to a prepaid wireless telecommunications service, as defined in Section 69-2-405, that is subject to the service charge described in Subsection 69-2-405(2)(b).

~~[(iii) \$0.54]~~[(iii) \$0.36] per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

- (i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge;
 - (ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services; or
 - (iii) subject to Subsection R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.
- (b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:
- (i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and
 - (ii) consent to any audit of the documentation requested by the:
 - (A) Commission; or
 - (B) Division of Public Utilities.
 - (c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to each Subsection R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology

Date of Enactment or Last Substantive Amendment: November 23, 2020

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15; 54-8b-10