

Kira M. Slawson (7081)  
BLACKBURN & STOLL, LC  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111  
Telephone (801) 521-7900  
[kslawson@blackburn-stoll.com](mailto:kslawson@blackburn-stoll.com)

Attorneys for Utah Rural Telecom Association

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
In the Matter of Overpayment of New Cingular Wireless PCS, LLC Into the Utah Universal Services Support Fund	UTAH RURAL TELECOM ASSOCIATION’S BRIEF ON THE PUBLIC SERVICE COMMISSION’S JURISDICTION AND LEGAL AUTHORITY TO ADDRESS NEW CINGULAR’S REQUEST  DOCKET NO. 24-087-02

The Utah Rural Telecom Association (“URTA”), on behalf of itself and URTA members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, E Fiber Moab, LLC, E Fiber San Juan, LLC, Emery Telephone, Gunnison Telephone Company, Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications, Inc. dba Strata Networks, and Union Telephone Company (“Members” or “URTA Members”) hereby files briefing on the following issues:

- In paragraph 11 of the Verified Request for Recovery of Overpayment to UUSF (“Petition”), New Cingular Wireless PCS, LLC (“New Cingular”) requests recovery of \$2,263,405.04 in excess UUSF surcharge payments remitted to the Utah Public Telecommunications Service Support Fund (“UUSF”) from July 2021 through June 2023.
  - a. What specific legal authority grants the Utah Public Service Commission (the “Commission”) jurisdiction to resolve these issues?

- b. What specific legal authority provides substantial support for New Cingular's request, and how does that legal authority provide such support?

**I. ARGUMENT**

New Cingular provides wireless telephone service in Utah. Under Utah Code Ann. §54-8b-15(8)(a) and Utah Admin. Code R746-8-301, New Cingular is required to contribute to the UUSF through an explicit charge assessed by the Commission on the access line or connection providers.<sup>1</sup>

In this docket, New Cingular has indicated that they made an error in calculating the amount they owed for the UUSF charge and they submitted the incorrect amount. New Cingular is asking the Commission to approve a refund from the UUSF. The Commission has asked parties to brief whether there is legal authority for the Commission to consider New Cingular's request. Although the Commission has identified two separate questions for briefing, URTA submits that the legal authority that permits the Commission to exercise jurisdiction over this matter is the same legal authority that authorizes, and requires, the Commission to resolve New Cingular's request. Specifically, Utah Code Ann. Section 54-8b-15 expressly grants the Commission statutory authority to administer the UUSF, including a specific directive to develop rules, policies and procedures to govern the administration of the UUSF.<sup>2</sup> This statutorily granted authority includes calculating the amount of each explicit charge using a method developed by the Commission by rule.<sup>3</sup> Finally, Utah Code grants the Commission the authority to assess penalties to a person that fails to make a required contribution to the UUSF or that fails to comply with a Commission directive concerning the person's books, records or other information required by the Commission to administer the UUSF.<sup>4</sup> In short, the legislature has granted the Commission

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<sup>1</sup> U.C.A. §54-8b-15(8)(a)

<sup>2</sup> U.C.A. §54-8b-15(2)(c)

<sup>3</sup> U.C.A. §54-8b-15(9)

<sup>4</sup> U.C.A. §54-8b-15(13)

jurisdiction over the determination of the explicit UUSF charge, collection of the explicit UUSF charge, and disbursement of the UUSF.<sup>5</sup>

The Commission is authorized to oversee remittance of the UUSF from providers and was charged with promulgating rules to govern the administration of the fund. The Commission promulgated R746-8 which sets forth the rules for administration of the UUSF. Under Utah Code 54-8b-15 and R746-8-302, providers are required to remit surcharge assessments to the Commission. The amount of remission is the number of access lines and connects times the explicit charge determined by the Commission on a monthly basis. Commission rules, promulgated at the explicit direction of the legislature provide that the explicit charge as determined by the Commission is the maximum and minimum amount of remittance necessary for any single access line. This demonstrates that the Commission has jurisdiction, and therefore, the legal authority to ensure that the proper amount of remittance is made by each provider. If New Cingular had failed to make any remittance, the Commission is expressly authorized to impose a penalty against a provider. This statutory authority, similarly, implies that the Commission is authorized to determine and ensure the accuracy of the remittance.

According to the Utah Supreme Court, “Utah Code Ann. §54-4-1 vests the PSC with exclusive jurisdiction to adjudicate claims over matters which are delegated to the PSC by statute and for which the PSC can give appropriate relief.” *Atkin Wright & Miles v. The Mountain States Telephone and Telegraph Co.*, 709 P.2d 330, 333 (1985).<sup>6</sup> In this instance, the legislature has delegated to the Commission, by statute, the authority to administer the UUSF remittance and disbursement, and therefore, the Commission is uniquely qualified and in the best position to address and give the appropriate relief to New Cingular’s request for a refund. Similarly, under *Basin Flying Service v. Public Service*

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<sup>5</sup> U.C.A. §54-8b-15

<sup>6</sup> Citing *Mountain States Telephone and Telegraph Co. v. Atkin, Wright & Miles*, Utah, 681 P.2d 1258 (1984) (Mountain States I); *North Salt Lake v. St. Joseph Water & Irrigation Co.*, 118 Utah 600, 223 P.2d 577 (1950); *Provo City v. Department of Business Regulation*, 118 Utah 1, 218 P.2d 675 (1950).

*Commission*, 531 P.2d 1303, 1305 (1975)<sup>7</sup>, the Commission has the regulatory powers expressly granted to it, or those which are clearly implied as necessary to the discharge of the duties or responsibilities imposed on it. The ability to address and/or adjudicate underpayments and overpayments into the UUSF are “clearly implied as necessary” to the Commission’s duties to administer the UUSF.

## II. CONCLUSION

Based on the foregoing, URТА believes that the Commission is vested with the legal authority and jurisdiction to resolve New Cingular’s claims for relief.

DATED this 30<sup>th</sup> day of May, 2024.

BLACKBURN & STOLL, LC



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Kira M. Slawson  
Attorneys for Utah Rural Telecom Association

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<sup>7</sup> Citing *Williams v. Public Service Commission*, 21 Utah 2d 155, 442 P.2d 920; *State v. Dept. of Public Service*, 21 Wash.2d 201, 150 P.2d 709; 64 Am.Jur.2d, Public Utilities s 232.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of UTAH RURAL TELECOM ASSOCIATION'S BRIEF ON THE PUBLIC SERVICE COMMISSION'S JURISDICTION AND LEGAL AUTHORITY TO ADDRESS NEW CINGULAR'S REQUEST, Docket 24-087-02, was served the 30<sup>th</sup> day of May, 2024 as follows:

DIVISION OF PUBLIC UTILITIES (by email)

Patricia Schmid  
[pschmid@agutah.gov](mailto:pschmid@agutah.gov)

Patrick Grecu  
[pgrecu@agutah.gov](mailto:pgrecu@agutah.gov)

Chris Parker  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)

Brenda Salter  
[bsalter@utah.gov](mailto:bsalter@utah.gov)

New Cingular Wireless PCS, LLC

Trey LaMair  
[lamair@att.com](mailto:lamair@att.com)

Phillip J. Russell  
[prussell@jdrsllaw.com](mailto:prussell@jdrsllaw.com)



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Kira M. Slawson