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<b>BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH</b>	
Overpayment of New Cingular Wireless PCS, LLC, an AT&T Company, into the Utah Universal Service Support Fund	Docket No. 24-087-02  Division of Public Utilities' Legal Brief

Pursuant to Utah Code section 54-4a-1, Utah Administrative Code R746-1, and the Public Service Commission of Utah's ("Commission") Request for Legal Briefing and Notice of Second Virtual Scheduling Conference ("Request for Legal Briefing"), the Division of Public Utilities ("Division") submits its requested legal briefing of the two specific topics relating to New Cingular Wireless PCS, LLC's ("New Cingular" or the "Company") Verified Request for Recovery of Overpayment into the Utah Universal Service Support Fund ("UUSF") ("Request").

#### BACKGROUND

On April 10, 2024, New Cingular filed with the Commission its Request seeking recovery of its overpayment into the UUSF for the period of July 2021 to June 2023.<sup>1</sup> New Cingular states that its excess surcharge remittances resulted from an inadvertent billing issue that occurred after the Commission reduced the UUSF surcharge from \$0.54 per month per

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<sup>1</sup> New Cingular Request at 1.

access line to \$0.36 beginning in July 2021.<sup>2</sup> During this period, New Cingular claims that it unintentionally collected and remitted more than the Commission-set UUSF rate by charging the \$0.54 rate instead of the \$0.36 rate in effect during that period.<sup>3</sup> Upon discovering the error, it states that it promptly corrected the billing issue and issued credits to impacted customers.<sup>4</sup> The Company seeks recovery of its overpayment of \$2,263,405.04 into the UUSF.<sup>5</sup>

During the first scheduling conference for this docket, the Commission “requested the participants to provide legal briefing on two specific topics relating to [New Cingular’s Request].” In its Request for Legal Briefing, the Commission requested the parties brief the following issues:

1. What specific legal authority grants the Commission jurisdiction to resolve the legal issues presented in this docket? How does it do so?
2. What specific legal authority provides substantive support for New Cingular’s request for recovery of its overpayment into the UUSF? How does it provide that support?

## DISCUSSION

### **I. Utah Code section 54-8b-15 grants the Commission jurisdiction to resolve the legal issues presented in this docket**

Utah Code section 54-4-1 “vests the [Commission] with exclusive jurisdiction to adjudicate claims over matters which are delegated to the [Commission] by statute and for which the [Commission] can give appropriate relief.”<sup>6</sup> The Commission’s general jurisdiction is “broad and sweeping in scope,”<sup>7</sup> and “courts are prohibited from exercising the powers properly

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<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 3-4.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Atkin Wright & Miles v. Mountain States Tel. & Tel. Co.*, 709 P.2d 330, 333 (Utah 1985).

<sup>7</sup> *Beaver v. Qwest*, 2001 UT 81, ¶ 10, 31 P.3d 1147, 1149 (citing *Utah Power & Light Co. v. Pub. Serv. Comm’n*, 152 P.2d 542, 555 (Utah 1944)).

belonging to the [Commission], which is an arm of the legislative branch of government.”<sup>8</sup> However, “[a]ll powers retained by the [Commission] are derived from and created by statute. The [Commission] has no inherent regulatory powers and can only assert those which are expressly granted or clearly implied as necessary to the discharge of the duties and responsibilities imposed upon it.”<sup>9</sup> For the Commission, “[e]xplicit or implied statutory authority for any regulatory action must exist.”<sup>10</sup>

The Utah Legislature enacted Utah Code section 54-8b-15 to establish the Universal Public Telecommunications Service Support Fund (“UUSF”) which funds: certain public telecommunication companies’ deployment and management of networks capable of providing access lines, connections, or wholesale broadband internet access service; the hearing and speech impaired program; and the lifeline program.<sup>11</sup> Under this section and Commission-made Utah Administrative Code R746-8-301, New Cingular, as an access line provider in Utah, is required to remit to the Commission an “explicit charge” that is set by the Commission.<sup>12</sup>

In this case, the Commission has express jurisdiction over the management of the UUSF. Subsection 54-8b-15(2)(c) provides that “[t]he [C]ommission shall develop, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and procedures to govern the administration of the fund.” When interpreting a statute, the Commission looks “first to the plain language of the statute.”<sup>13</sup> This language expressly directs the Commission to make rules regarding the administration of the UUSF, which

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<sup>8</sup> *Id.*

<sup>9</sup> *Hi-Country Estates Homeowners Ass’n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (quoting *Williams v. Pub. Serv. Comm’n*, 754 P.2d 41, 50 (Utah 1988); see also *Heber Light & Power Co. v. Utah Pub. Serv. Comm’n*, 2010 UT 27, ¶ 17, 231 P.3d 1203, 1208.

<sup>10</sup> *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm’n*, 754 P.2d 928, 930 (Utah 1988).

<sup>11</sup> Utah Code Ann. § 54-8b-15(2)(b), (3).

<sup>12</sup> Utah Code Ann. § 54-8b-15(8), (9); Utah Admin. Code R746-8-301. See also New Cingular Request at 2.

<sup>13</sup> *Savage v. Utah Youth Village*, 2004 UT 102, ¶ 18, 104 P.3d 1242, 1248.

would encompass all aspects of managing the fund.<sup>14</sup> This provision provides the Commission explicit statutory authority and, therefore, jurisdiction in this matter.

## **II. Utah Code section 54-8b-15 also provides substantive support for New Cingular’s request to recover its overpayment into the UUSF**

In addition to establishing Commission jurisdiction, Utah Code section 54-8b-15 also provides substantive support for New Cingular’s request for reimbursement of its overpayment into the UUSF. Section 54-8b-15 requires each access line provider and connection provider to “contribute to the [UUSF] through an explicit charge assessed by the [C]ommission on the access line provider or connection provider.”<sup>15</sup>

When the Legislature enacted section 54-8b-15, it established the UUSF and, among other things, made the Commission responsible for managing the UUSF. Subsection 54-8b-15(2)(c) provides that the Commission “shall develop, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and procedures to govern the administration of the fund.” This unequivocally tasks the Commission with administering the UUSF.<sup>16</sup>

In fact, under this section 54-8b-15 rulemaking authority, the Commission has implemented Utah Administrative Code R746-8,<sup>17</sup> which “governs the methods, practices, and procedures by which: the UUSF is created, maintained, and funded; and funds are disbursed from the UUSF to qualifying access line providers.”<sup>18</sup> The Commission has made rules addressing: the calculation and application of the UUSF surcharge;<sup>19</sup> UUSF surcharge

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<sup>14</sup> See *Adminster*, Black’s Law Dictionary (11th ed. 2019) (“1. To manage (work or money) for a business or organization”).

<sup>15</sup> Utah Code Ann. § 54-8b-15(8)(a).

<sup>16</sup> See Utah Code Ann. § 68-3-12(1)(j) (“‘Shall’ means that an action is required or mandatory.”).

<sup>17</sup> See Utah Admin. Code R746-8-100(1).

<sup>18</sup> Utah Admin. Code R746-8-100(2).

<sup>19</sup> Utah Admin. Code R746-8-301.

remittances;<sup>20</sup> UUSF distributions;<sup>21</sup> eligibility rules for rate-of-return regulated providers<sup>22</sup> and non-rate-of-return regulated providers;<sup>23</sup> lifeline support;<sup>24</sup> one-time UUSF distribution;<sup>25</sup> and UUSF support for deaf, hard of hearing, or severely speech impaired persons.<sup>26</sup>

Although the Commission is charged with “develop[ing], by rule . . . policies and procedures to govern the administration of the fund[.]”<sup>27</sup> it has yet to create a rule developing policies and procedures regarding an access line provider’s reimbursement of its excess UUSF surcharge remittances. Because managing the reimbursement of overpayment into the UUSF falls within the ambit of administering the fund,<sup>28</sup> the Commission is responsible for setting the policies and procedures for managing UUSF reimbursement.<sup>29</sup> Despite the fact that the Commission has yet to make a rule addressing reimbursement of an access line or connection provider’s overpayment into the UUSF, given this statutory rulemaking directive, the Commission has the mandate to conduct rulemaking in accordance with the Utah Administrative Rulemaking Act to establish the policies and procedures for such reimbursement.<sup>30</sup> Therefore, section 54-8b-15 is legal authority that provides substantive support for New Cingular’s Request in this docket and gives the Commission express statutory authority to take action to resolve the issues presented by the Company’s Request.

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<sup>20</sup> Utah Admin. Code R746-8-302.

<sup>21</sup> Utah Admin. Code R746-8-400.

<sup>22</sup> Utah Admin. Code R746-8-401.

<sup>23</sup> Utah Admin. Code R746-8-402.

<sup>24</sup> Utah Admin. Code R746-8-403.

<sup>25</sup> Utah Admin. Code R746-8-404.

<sup>26</sup> Utah Admin. Code R746-8-405.

<sup>27</sup> Utah Code Ann. § 54-8b-15.

<sup>28</sup> *See Adminster*, Black’s Law Dictionary, *supra* note 14.

<sup>29</sup> The Commission has previously granted similar relief to the Company for its overpayment into the UUSF. *See The Overpayment of New Cingular Wireless PCS, LLC into the Utah Universal Service Support Fund*, Docket No. 15-999-13, Order (Jan. 7, 2016) (approving a refund amount of \$38,796.03 to be credited against future payment into the UUSF).

<sup>30</sup> The use of “shall” in the statute directs the Commission to take the prescribed action. *See* Utah Code Ann. § 68-3-12(1)(j); *Williams v. Mountain States Tel. & Tel. Co.*, 763 P.2d 796, 799-800 (Utah 1988).

## CONCLUSION

Because Utah law provides the Commission explicit statutory authority to take regulatory action in this docket, it has jurisdiction over this matter. In addition, section 54-8b-15 provides substantive support for jurisdiction over the Company's Request and gives the Commission legal authority to resolve the issues in this docket. The questions of what appropriate relief can or ought to be granted given a utility's fault in paying the wrong amount and the fund's capacity to reimburse any amounts paid in error are separate questions of fact and policy the Commission may consider in other stages of this docket.

Respectfully submitted this 30th day of May, 2024.

*/s/ Patrick Grecu* \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I certify that on May 30, 2024, I caused a true and correct copy of the foregoing to be filed with the Public Service Commission and served by the Utah Division of Public Utilities to the following in Utah Docket No. 24-087-02 as indicated below:

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