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INTRODUCTION

Q. Please state your name and employer.

A. My name is Gary Smith. I am employed by the Utah Division of Public Utilities (Division), State of Utah.

Q. What is your business address?

A. My business address is 160 East 300 South, Salt Lake City, UT 84114.

Q. Briefly outline your educational background and occupation.

A. I received a Bachelor of Science degree in Economics from the University of Utah. I am a Technical Consultant for the Division and have testified before the Public Service Commission of Utah (Commission) on energy, telecommunications, and water related matters.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of the Division.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to summarize the Division’s review and recommendations related to New Cingular Wireless PCS, LLC’s an AT&T company (AT&T, or Company) request for recovery of excess surcharge overpayments made to the Utah Universal Service Fund (UUSF or Fund) for the period of July 2021 through June 2023.

BACKGROUND

Q. Please summarize the events related to this docket.

A. On February 21, 2024, AT&T sent a letter to the Commission requesting a refund for its excess contributions made to the Fund during the period from July 2021 through

24 June 2023. AT&T explained that it collected and remitted UUSF surcharges at a rate
25 of \$0.54 per connection instead of the correct rate of \$0.36.¹

26 On March 5, 2024, the Commission issued an Action Request under related Docket
27 No. 24-999-08 requesting the Division's review of AT&T's letter and its request for
28 recovery. In its research the Division learned that although AT&T collected UUSF
29 surcharges from customers at the incorrect rate of \$0.54 per connection it reported a
30 collection rate of \$0.36 per connection in its monthly remittance report to the
31 Commission. In addition to remitting the incorrect amount of UUSF surcharges,
32 AT&T also overstated its number of connections by dividing the increased dollars
33 collected (collected at \$0.54) by the \$0.36 surcharge rate. In Docket No. 24-999-08
34 the Division recommended that the UUSF surcharge rate be increased due in part to
35 AT&T's overstated connections and remittals, that once corrected in August 2024,
36 decreased the Fund due to decreases in the Company's remittances to the UUSF.

37 On April 10, 2024, the Company filed a Request with the Commission in this docket
38 seeking recovery of its overpayment to the UUSF for July 2021 through July 2023
39 (remittal period of August 2021 to August 2023).² The Company informed the
40 Commission that its excess surcharge remittances originated from a billing issue that
41 occurred after the Commission reduced the monthly UUSF surcharge from \$0.54 per
42 access line to \$0.36 in July 2021. The Company charged its Utah customers the
43 \$0.54 rate instead of the correct rate of \$0.36 rate through July 2023. The Company
44 states that upon discovering the error, the Company corrected the billing issue and
45 soon after issued credits to affected customers beginning in September 2023. The
46 Company requests recovery of its overpayment to the Fund in the amount of
47 \$2,263,407.04.

¹ 24-999-08 Utah Public Service Commission, Action Request, March 5, 2024.

² Utah Public Service Commission, Action Request, April 10, 2024.

48 During the May 3, 2024, scheduling conference the Commission requested
49 participants provide legal briefing on the following issues:³

50 What specific legal authority grants the Commission jurisdiction to resolve the
51 legal issues presented in this docket? How does it do so?

52 What specific legal authority provides substantive support for New Cingular's
53 request for recovery of its overpayment into the UUSF? How does it provide
54 that support?

55 On May 30, 2024, the Division filed its briefing addressing the Commission's
56 questions. The Division concluded that Utah law provides the Commission statutory
57 authority to take regulatory action in this docket. Utah Code Section 54-8b-15
58 provides support for jurisdiction over the Company's Request and gives the
59 Commission legal authority to resolve the issues in this docket.⁴

60 Pursuant to the scheduling order, on May 24, 2024, the Company filed its direct
61 testimony and exhibits supporting its request for reimbursement from the Fund.⁵

62 **ISSUES**

63 **Q. Does the Division agree with the Company's requested overpayment amount**
64 **of \$2,263,407.04?**

65 **A.** No, the Division found an error in a number that was incorrectly hard coded as
66 3,860.06 in the Company's Confidential Exhibit A, Table 2, Period Nov-22 as shown
67 in abbreviate form below with the Division's corrections.
68

³ Utah Public Service Commission, Request for Legal Briefing, May 3, 2024.

⁴ Utah Division of Public Utilities, Legal Brief, May 30, 2024.

⁵ New Cingular Wireless, LLC, Direct Testimony of Randy E. Phoenix, May 24, 2024, Line 37.

69 **CONFIDENTIAL Exhibit A – UUSF Surcharge Payments Calculations 4-10-2024**

TABLE 2: AMENDED RETURN FILING WITH \$0.36 RATE					
PERIOD	ACCESS_LINES	Correct Billed Rate	AMOUNT_COLL	VENDORS_COMP	TOTAL_REMITTED
Nov-22					
Amount that Should Have Been Remitted					4,524,240.70

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This incorrect number, 3,860.06, should be corrected to 2,573.38 to allow a correct evaluation of the Company’s remittance amounts. Correcting this number changes the amount of the Company’s overpayment to \$2,262,120. The Division independently calculated the overpayments in DPU Confidential Exhibit 1, and a summary of this information is included in DPU Table 1 below.

DPU TABLE 1

New Singular Actual Vs. Correction - Summary

	Access Lines subject to surcharge	Collections	Admin Fee	Remittance (Collections - Admin Fee)
TOTAL Corrected			\$	\$ 4,524,241
TOTAL Actual			\$	\$ 6,786,361
DIFFERENCE	(6,367,076)	(\$2,292,147.48)	(\$30,027)	(\$2,262,120)

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In response to the Division’s data request 2.5, the Company confirmed agreement with the corrected amount of \$2,262,120.

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Q. Does the Division have concerns with the Company’s repayments to Utah customers?

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A. Yes, the Division’s calculations indicate that \$16,378.16 in credits to Utah customers most likely remains to be issued by the Company. The Division calculated the amount of overcharges to Utah customers at \$2,387,525.16 as provided in DPU

85 Confidential Exhibit 1 and summarized below in DPU Table 2. The Division's
 86 calculated refund amount is \$16,378.68 more than the \$2,369,273.40 of credits
 87 AT&T has issued to Utah customers. The Division's calculation is based on the
 88 Company's reported corrected Utah Customer access line counts.

89 **Q. Why is AT&T's credit to Utah customers greater than AT&T's overpayments to**
 90 **the UUSF?**

91 **A.** The total amount of credits that AT&T has issued to customers (\$2,369,273.40) is
 92 greater than the total excess remitted to the Fund (\$2,262,120) because the
 93 Company issued credits to customers for its July 2023 overcharge but remitted the
 94 correct amount to the Fund for July 2023 (remitted to the Fund in August 2023).

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DPU TABLE 2

AT&T Customer Credit - Summary

	Access Lines subject to surcharge	Collections	Calculated Customer Credit @ .18
TOTAL Corrected			\$ 2,387,525.16
TOTAL Actual			
DIFFERENCE	(6,632,014)	(\$2,387,525.16)	(\$2,387,525.16)
	\$0.36		
	(\$2,387,525.16)		
Reported Credit to Customers	\$2,369,273.40	\$2,369,273.40	\$2,369,273.40
Rejected Credits	\$1,873.08	\$1,873.08	\$1,873.08
DIFFERENCE (Uncredited)	(\$16,378.68)	(\$16,378.68)	(\$16,378.68)

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97 **Q. What information has the Company provided to explain its billing issue and**
98 **method of calculating connections that resulted in the overpayments and**
99 **overstatements?**

100 **A.** The Company utilizes a different billing system than other AT&T affiliate companies.
101 The Company relied on a system in which its staff were charged with manually
102 updating surcharge information. The billing issue arose when Company staff did not
103 properly effectuate the UUSF surcharge rate change for the Company. The billing
104 issue was magnified by the Company's process of dividing the monthly collections
105 by the surcharge rate to report its number of access lines. This method effectively
106 cloaked the billing error from discovery and is the predominate reason the
107 overpayments were allowed to continue unnoticed for two years as the Company's
108 reports documented its surcharge rate collection amount as \$0.32.

109 **Q. What has the Company done to fix its billing issue that caused the**
110 **overpayments and overstatements?**

111 **A.** In the Direct Testimony of Janet Tolley, the Company detailed that it has
112 implemented a tool that compares all monthly tax rate updates across all billers and
113 compares to the source documents that contain the surcharge rates to be updated.
114 This new automated comparison tool will not rely on an analyst's manual review
115 process. Instead, the resulting spreadsheet will clearly display any discrepancies
116 and any missing updates.⁶

117 **Q. Does the Company maintain a written procedure to bill, collect, and remit**
118 **UUSF?**

119 **A.** No, the Company does not maintain a written procedure to bill, collect, and remit
120 UUSF as reported by the Company in its response to the Division's data request 1.7,
121 included as DPU Exhibit 4.

⁶ New Cingular Wireless, LLC, Direct Testimony of Janet Tolley, May 24, 2024, Lines 167 - 174.

122 **Q. Are there other regulatory reporting issues that the Company has not**
123 **sufficiently addressed?**

124 **A.** Yes. In addition to the Company's lack of a written procedure to ensure correct
125 collections, reports, and remittals, the Company lacks a process to directly count and
126 audit its access line count. The following is the Company's response to the Division's
127 data request 1.6 regarding its established method of counting customer connections:

128 1.6 Please provide the company's method of counting, tracking and certifying
129 customer connections subject to UUSF (if available, provide a copy of the written
130 procedure).

131
132 **RESPONSE:** Company does not maintain access line count by state and by
133 month in its billing system and data files. For regulatory compliance purposes,
134 Company states on its UUSF Surcharge Remittal Statement each month the total
135 amount of UUSF surcharge collected for customers subject to the UUSF
136 surcharge. Company then divides that number by the monthly surcharge rate to
137 calculate the monthly number of access lines in the state.
138

139 The Division is concerned that the Company does not have a direct method of
140 determining its customer connections. The Division recommends the Company
141 establish an auditable method of counting and certifying its customer access lines to
142 ensure that problems like those created by using its surcharge collection amounts to
143 calculate its access lines will not occur. If the Company had utilized an established
144 direct method of calculating connections, it would not have overstated its
145 connections as it did, and the use of an incorrect surcharge rate would have either
146 not occurred or would likely have been more easily discovered. The Division
147 recommends the Company establish written procedures, including an audit
148 procedure, to establish and maintain fundamentally important information (like
149 customer access line counts and surcharge collections), to avoid future billing and
150 reporting issues.

151 **Q. How have AT&T's overstatements and overpayments affected the Fund?**

152 **A.** AT&T's incorrect method of calculation, collection, and remittance affected the fund
153 by:

154 1) Collecting UUSF at \$0.18 more per connection than the required surcharge
155 from Utah customers. AT&T has credited \$2,369,273.40 to its affected
156 customers to correct this overcollection and is now requesting reimbursement
157 from the Fund. The fact that the overcollection occurred over two years
158 compounded these issues.

159
160 2) Decreasing anticipated UUSF revenues. Once AT&T made the correction,
161 monthly revenues decreased, resulting in a lower-than-expected end-of-month
162 fund balances. The Division has estimated the unrealized revenues at
163 approximately \$1.9 Million.⁷

164 3) Overstating total connections subject to surcharge. AT&T misrepresented its
165 total monthly connections to the Commission. This Company derived its
166 connection numbers based on its overcollection amounts.

167 4) Inflating access line counts resulting in an insufficient UUSF surcharge
168 adopted in 2023 (\$0.71) based on historic reported incorrect revenues and
169 connections. The Division forecasted the UUSF activities, assuming the growth
170 in the number of access lines and the average costs of the Fund would be
171 similar to those of the previous years (2021-2023).

172 5) Decreasing future UUSF revenues if AT&T receives recovery credit for its
173 overcollections.

174 The Division estimates that the Fund has decreased by an estimated \$4.2 million
175 due to the Company's overstatements and overpayments as estimated in DPU
176 Confidential Exhibit 2 and in DPU Table 3 below.

⁷ Utah Division of Public Utilities, Direct Testimony of Gary Smith, DPU Exhibit 2.

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DPU Table 3

Estimated Decrease in UUSF

\$	1,969,928	Estimated Reduction in UUSF Remittals Aug 23 - Jul 24
\$	2,262,120	Calculated Overpayment Aug 21- Jul 23

<hr/>		Total UUSF Reduction due to Overstatements and Errors - Estimated
\$	4,232,048	

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Q. Does the Fund have a sufficient balance to credit the Company for its overpayment?

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A. Not currently. The Fund is subject to a legislative performance goal of maintaining a sufficient fund balance to pay three months' worth of disbursements and obligations. This goal enables the Fund to meet its statutory mandate to provide a funding mechanism for Utah's qualifying regulated telecommunications carriers without incurring a deficit. The Division forecast the Fund's anticipated receipts and obligations and determined that the earliest opportunity to repay the overcharge with a sufficient Fund balance is estimated to be January 2026 with the recently established surcharge rate of \$0.98 effective July 1, 2024. The Division's method of estimation is included in DPU Confidential Exhibit 3.

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CONCLUSION

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Q. Please provide your conclusions and recommendations.

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A. AT&T has shown that it lacks fundamental processes and procedures to maintain, audit, and report important, yet simple, regulatory information. The Company's resulting deficiencies created an environment that allowed simple reporting of access lines and surcharge collections to be incorrect for two years before discovery.

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The Division recommends that credits to the Company be conditioned on the Company establishing sufficiently effective procedures to ensure that the

201 Commission can administer the UUSF effectively and meet the statutory objectives
202 of the UUSF without a deficit.⁸ The Division specifically recommends that the
203 Company adopt written procedures, including audit procedures, that enable the
204 Company to directly count and certify its number of access lines without the need to
205 derive it from its surcharge collection amounts to avoid issues like those that caused
206 the Company's recent misstatements of connections and collections. If the Company
207 had utilized an established direct method of calculating connections, it would not
208 have overstated its connections in its UUSF reports as it did, and the Company's use
209 of an incorrect surcharge rate would likely not have occurred or would likely have
210 been more easily discovered.

211 With these conditions, the Division recommends that the Company be refunded its
212 overpayments made to the Fund during the UUSF collection period of July 2021
213 through July 2023, totaling no more than \$2,262,120. The Division recommends that
214 the overpayments be issued as monthly credits to AT&T to begin when the Fund
215 could allow these credits without further compromising the UUSF's goals and
216 objectives. The Division estimates that the Fund's current compromised balance
217 may not allow these credits to commence until January 2026.

218 The Division also recommends that the Company refund an additional \$16,378.16 in
219 calculated uncredited overcharges to its affected Utah customers or explain why it is
220 not required to make these additional credits to make customers whole.

221 **Q. Does this conclude your testimony?**

222 **A.** Yes.

⁸ UUSF performance objective set by the Utah Legislature to maintain at least three months' worth of fund distributions without incurring a deficit.