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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Overpayment of New Cingular

Wireless PCS, LLC, an AT&T

Company, into the Utah Universal

Service Support Fund

Docket No.

24-087-02

HEARING

Taken September 19, 2024

Commencing at 9:00 a.m. MDT

John E. Delaney, Presiding Officer

REPORTED BY: CHRISTA A. REESER, RPR, CRR, CRC

1 REMOTE HEARING taken on Thursday,
2 September 19, 2024, commencing at 9:00 a.m. MDT, before
3 Christa A. Reeser, Registered Professional Reporter,
4 Certified Realtime Reporter, Certified Realtime
5 Captioner, and Notary Public of and for the State of
6 Minnesota.

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APPEARANCES

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ON BEHALF OF THE APPLICANT:

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(APPEARANCES continued on next page)

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APPEARANCES (continued)

ON BEHALF OF THE DIVISION OF PUBLIC UTILITY:

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1 THE COURT: Good morning, everybody. My
2 name is John Delaney, and I am the Commission's
3 designated presiding officer for this hearing. Today
4 is September 19, 2024. It's approximately 9:00 a.m.
5 Not according to that clock. And this is the date and
6 time that's scheduled for the hearing in docket
7 24-087-02 in the matter of the Overpayment of New
8 Cingular Wireless PCS, LLC, an AT&T Company, into the
9 Utah Universal Service Support Fund. And we're here to
10 consider the settlement stipulation filed by the
11 parties, correct?

12 MR. RUSSELL: Yes, sir.

13 THE COURT: Great. Why don't we start
14 with appearances. For the applicant?

15 MR. RUSSELL: Thank you. On behalf of New
16 Cingular Wireless PCS, LLC, my name is Philip Russell.
17 Sitting to my right, we have the Company's witness,
18 Scott Adams. And two seats to my right is inhouse
19 counsel for the Company, Trey LaMair.

20 THE COURT: Thank you. Great.

21 And for the Division?

22 MR. GRECU: Patrick Grecu, Assistant
23 Attorney General for the Division of Public Utility.
24 The Division's witness today is Gary Smith.

25 THE COURT: Thank you very much.

1 And I don't see anybody from OTS here. I know
2 there's been some representations that they're not
3 participating. And they're an active participant. So
4 we're not expecting anybody else, correct?

5 MR. RUSSELL: I am not.

6 THE COURT: Okay. Okay, great.

7 Okay. I have a preliminary matter. Do you all
8 have any preliminary matters you want to air first?

9 Mr. Grecu?

10 MR. GRECU: I do not.

11 MR. RUSSELL: No.

12 THE COURT: Okay. So mine is because of
13 various logistical issues, our court reporter, Christa,
14 is doing this hearing remotely. So please make sure
15 that you speak as directly as you can into the
16 microphone in front of you, that your microphone is on,
17 and that you speak as clearly as you can. And because
18 we want this transcript to be as clear as possible, I
19 have asked Christa to interrupt any person, including
20 and especially me, if she's having a hard time catching
21 everything so that she can get the clarity that she
22 needs. Okay? How she's going to do that will be by
23 raising her hand, I guess, electronically, and then
24 Melissa will -- this isn't Melissa -- Melissa will do
25 something and we'll just kind of slow things down. But

1 you all are going to follow those rules so there will
2 be no problems. So great.

3 All right. Why don't we get going. Please
4 call your first witness for the Applicant.

5 MR. RUSSELL: Yes. The Applicant calls
6 Mr. Scott Adams.

7 THE COURT: Good morning, Mr. Adams.

8 THE WITNESS: Good morning.

9 THE COURT: Do you swear to tell the
10 truth?

11 THE WITNESS: I do.

12 THE COURT: Thank you. You're sworn in.

13 Before we begin, Mr. Russel, is co-counsel
14 testifying or just -- this is your only witness,
15 correct?

16 MR. RUSSELL: We just have the one
17 witness.

18 THE COURT: Okay.

19 MR. RUSSELL: He's here to help me through
20 this.

21 THE COURT: Thank you. Go ahead. Thank
22 you.

23

24

25

EXAMINATION

1
2 BY MR. RUSSELL:

3 Q. Good morning, Mr. Adams. Can you state and
4 spell your name for the record, please?

5 A. Yes. My name is Scott Adams, S-c-o-t-t,
6 A-d-a-m-s.

7 Q. And on whose behalf do you offer testimony in
8 this proceeding today?

9 A. On behalf of New Cingular Wireless PCS, LLC.

10 Q. And what is your position with the Company?

11 A. I am an assistant vice president in the tax
12 group.

13 Q. And are you aware that pre-filed testimony has
14 been filed on behalf of the Company presented on behalf
15 of Janet Tolley and Randy Phoenix?

16 A. Yes.

17 Q. Can you tell us who they are?

18 A. Randy Phoenix is a director on my team. He
19 works audits and refunds for the group. Janet Tolley,
20 that's T-o-l-l-e-y, she is a director in the research
21 and planning group. My co-worker is her supervisor, so
22 we're in the same transaction tax group.

23 Q. Thank you.

24 And have you reviewed the testimony and
25 exhibits that each of those two witnesses, Ms. Tolley,

1 and Mr. Phoenix, have filed in this docket?

2 A. Yes, I have.

3 Q. And I'll just quickly identify that testimony.
4 It was the direct testimony of Janet Tolley filed on
5 May 24, 2024, the direct testimony of Randy Phoenix
6 also on May 24, 2024, along with Conditional Exhibit
7 NCW REP 1 and Exhibit NCW REP 2; is that right?

8 A. Yes, that's correct.

9 Q. And Mr. Phoenix also signed the verified
10 application in this docket; is that your understanding?

11 A. Yes.

12 Q. And in his direct testimony, did he incorporate
13 that verified application as part of his testimony?

14 A. Yes, he did.

15 Q. Okay. The verified application also included a
16 Confidential Exhibit A; is that correct?

17 A. Yes.

18 Q. Okay. Are there any corrections that you would
19 make to the testimony filed either by Ms. Tolley or by
20 Mr. Phoenix or to the verified application?

21 A. No. With one exception -- I'm sorry, yes,
22 there is a change in the amounts, an immaterial change
23 on the dollar amount.

24 Q. And do you have -- we have prepared a sheet for
25 you. Did I give that to you before you walked up

1 there?

2 A. No.

3 MR. RUSSELL: Okay. May I approach?

4 THE COURT: Yes.

5 BY MR. RUSSELL:

6 Q. Okay. You mentioned that there was a change in
7 the amount. Can you identify -- starting with
8 Ms. Tolley's testimony, can you identify where that
9 change to the testimony is and what the change should
10 be?

11 A. Yes. In Janet Tolley's testimony there are
12 four places where there is a change. The change, first
13 of all, is in the amounts. The amount that Janet
14 testified to for the refund was \$2,263,407.04, and it
15 should be \$2,262,120 even. That occurred in four
16 places, as I mentioned: Line 5, line 33, line 135, and
17 line 179.

18 Continuing on to --

19 Q. Before you leave Ms. Tolley's testimony, the
20 amount -- the corrected amount, that doesn't appear
21 on -- my understanding is that doesn't appear on line
22 5; the correction on line 5 was to a typographical
23 error?

24 A. Yes.

25 Q. Perhaps a typographical error that was -- your

1 counsel's responsible for.

2 A. We'll call that a spellcheck error. Yes, line
3 5 did have an issue and that was on the spelling of the
4 Company. It was listed as New Cingular Wireless PSC,
5 which is a common acronym for this group, and it should
6 have been New Cingular Wireless PCS, LLC. So line 5
7 had that name error, the other three had the dollar
8 error that I mentioned.

9 Q. And those were on lines 33, 135 and 179?

10 A. Correct.

11 Q. Okay. And then if you want to go on to
12 Mr. Phoenix's testimony?

13 A. Yes. Randy Phoenix, same thing on line 5, the
14 spelling on the Company should have read PCS instead of
15 PSC. And then he had the same issue on the dollar
16 amounts. The \$2,263,407.04 should have been
17 \$2,262,120. That occurred in five places: Line 37,
18 line 49, line 121, line 126, and line 144.

19 Q. Okay. Thank you. I'll give everybody a chance
20 to catch up.

21 And then was there also a correction on
22 Confidential Exhibit A to the verified request?

23 A. Yes, there was one correction.

24 Q. Okay. Why don't you walk us through what that
25 is?

1 A. The cell L19 had the incorrect amounts. The
2 amount in the cell was \$3,860.06. And it should have
3 been \$2,573.38.

4 Q. And how does that change affect the overall
5 dollar amount?

6 A. This correction changes the total overpayment
7 amount in cell 027 from the \$2,263,407.04 to
8 \$2,262,120.35.

9 Q. Okay. Thank you.

10 Other than those corrections that we have just
11 discussed, if you are asked the same questions today
12 that were posed in the pre-filed testimony of
13 Ms. Tolley and Mr. Phoenix, would you provide the same
14 answers?

15 A. Yes, I would.

16 Q. Do you adopt the testimony of Janet Tolley and
17 Randy Phoenix as your own?

18 A. Yes, I do.

19 MR. RUSSELL: Okay. At this point I'm
20 going to move for the admission of the testimony of
21 Janet Tolley and Randy Phoenix as well as the verified
22 application and all associated exhibits.

23 THE COURT: Any objection, Mr. Grecu?

24 MR. GRECU: No objection.

25 THE COURT: Okay. Thank you.

1 The motion is granted.

2 MR. RUSSELL: Thank you.

3 BY MR. RUSSELL:

4 Q. After that testimony was filed, did you and
5 others on behalf of the Company engage in settlement
6 discussions with the Division of Public Utilities and
7 the Utah Rural Telecom Association?

8 A. Yes.

9 Q. Did those discussions culminate in an agreement
10 between the parties?

11 A. Yes.

12 Q. Is the agreement that was reached between the
13 parties accurately reflected in the settlement
14 stipulation that was filed with the Commission on
15 September 6, 2024?

16 A. Yes.

17 Q. In addition to adopting the testimony of your
18 colleagues, do you appear here today to offer support
19 for the settlement stipulation?

20 A. Yes.

21 Q. Okay. I'm going to move for the admission of
22 the settlement stipulation before I forget to do that.

23 MR. GRECU: No objection.

24 THE COURT: It's admitted. Thank you.

25 BY MR. RUSSELL:

1 Q. Mr. Adams, have you prepared a summary of the
2 pre-filed testimony in the settlement stipulation for
3 us today?

4 A. Yes.

5 Q. Okay. Please proceed.

6 A. Good morning, Your Honor. I appreciate the
7 opportunity to appear before you today. I will provide
8 a summary of the direct testimony regarding an error in
9 the Utah USF surcharge billing by New Cingular Wireless
10 PCS, LLC, a wholly owned affiliate of AT&T,
11 Incorporated. The error at issue resulted in customers
12 being overcharged from July of 2021 to July of 2023 and
13 New Cingular over remitting to the Utah USF from July
14 of 2021 through June of 2023. I will also discuss the
15 settlement stipulation reached by the Company and the
16 Division of Public Utilities as to how to address the
17 error.

18 Just as background, New Cingular provides
19 wireless telephone services to customers in Utah and
20 other states. Each month, New Cingular remits to the
21 Commission the Utah USF surcharge for its post-paid
22 wireless access lines that have a place of primary use
23 in Utah. This surcharge is passed through to customers
24 as a line item on their monthly invoices.

25 As for the error itself, prior to July of 2021,

1 the Commission-set Utah USF surcharge rate was 54 cents
2 per access line per month. In June of 2021, the
3 Commission reduced this rate to 36 cents per access
4 line, which was effective July of 2021. Our AT&T tax
5 update team received notification of this change from
6 our company's regulatory tracking system in late June
7 of 2021. We communicated the Utah USF surcharge rate
8 change to our IT team for data entry into the billing
9 system; however, an error occurred during this process.

10 We have two different tax types that we use for
11 state USF surcharges: One for states like Utah where
12 the surcharge is based on a per-access-line rate,
13 that's tax type 40 in our system, and one for states
14 where the surcharge is based on the provider's
15 intrastate telecom revenues for our system, that's tax
16 type 36. So we have 40 and we have 36.

17 In June of 2021, the tax rate update team
18 submitted the correct Utah USF surcharge rate of 36
19 cents per access line, but mistakenly used the obsolete
20 tax type 36 for Utah instead of the 40 that it should
21 have used. The IT team executed this incorrect update
22 resulting in the new lower Utah USF rate not being
23 implemented on customer bills. So the impact of the
24 error as a result of New Cingular customers -- as a
25 result, sorry, New Cingular customers were invoiced 18

1 cents per access line per month more than the
2 Commission-set rate from July of 2021 until July of
3 2023. The Company collected and remitted at the
4 54-cent rate during this period, resulting in an
5 overpayment to the Utah USF totaling \$2,262,120. This
6 error also led to our tax team to overreport the number
7 of access lines in its monthly Utah USF remittance
8 reports.

9 We became aware of this issue in late July
10 2023, and we promptly corrected it by updating the
11 correct tax type in our billing system. We issued
12 credits to impacted Utah customers for the excess Utah
13 USF surcharge bill starting in September of 2023.
14 These credits amounted to 18 cents per access line for
15 each month billed in excess to the Commission-set rate.

16 In conclusion, the Company did not benefit from
17 this error as the excess collections were remitted to
18 the Utah USF each month. Our customers were not
19 damaged because we promptly credited their accounts for
20 the excess contributions. Since issuing these refunds,
21 New Cingular is out of pocket for the total amount of
22 excess contributions. To address an issue which led to
23 the data entry error, we have implemented an automated
24 tool that compares all of our monthly tax rate updates
25 across all billers with source documents containing the

1 rates to be updated. This tool will not rely on manual
2 review processes but will clearly display discrepancies
3 and/or missing rate updates. The application in this
4 docket requests that the Company receive a refund of
5 the amount it overpaid to the Utah USF.

6 Am I going at a good speed for the court
7 reporter? Okay. I still got about halfway there.

8 So in regards to the settlement stipulation,
9 after testimony was filed in this docket, we engaged in
10 settlement discussions with the Division of Public
11 Utilities and the Utah Rural Telecom Association.
12 Those discussions ultimately culminated in a settlement
13 stipulation between the Company and the Division. URTA
14 does not oppose the settlement. The settlement
15 stipulation has been filed with the Commission, but
16 I'll briefly describe the substance here.

17 The settlement addresses two issues: The
18 mechanics of a repayment to the Company and changes to
19 the Company's access line reporting. I'll address each
20 of these in turn. As for the repayment, first, the
21 stipulation addresses a mechanism pursuant to which the
22 overpayment amount of \$2,262,120 will be reimbursed to
23 the Company. The reimbursement payments will begin in
24 February of 2025 provided that the Company has complied
25 with certain obligations relating to access line

1 accounting and reporting that I'll discuss shortly.

2 During our negotiations, we discussed the
3 concern raised by the Division and by the Commission at
4 the technical conference regarding legislative
5 reporting requirements and the need for the Utah USF to
6 maintain a certain minimum balance and the desire not
7 to constantly modify the Utah USF rates. We have
8 attempted to address those concerns by limiting the
9 amount of any payment to New Cingular in several ways.
10 During the period in which the refund does not have a
11 balance estimated to match three months of
12 disbursements, a reimbursement to New Cingular is made
13 only in the months which the fund -- in which the fund
14 grows, and the amount of the reimbursement payment is
15 limited to five percent of that growth. When the fund
16 reaches the target balance, the payment amount
17 increases. The intent here is to ensure the fund
18 continues to grow and be healthy during the period of
19 repayment. Finally, I'll note that the overpayment
20 amount does not accrue interest during the period of
21 repayment. We're only seeking the return of the
22 principal amount.

23 As for the second item, the access line
24 accounting and reporting, I mentioned that the
25 repayments would be conditioned on the Company

1 satisfying certain obligations relating to access line
2 reporting. Those obligations are as follows: First,
3 the Company is implementing software changes to allow
4 it to perform a direct query of its applicable billing
5 system files to identify active non-exempt customers
6 with a Utah place of primary use at the end of the
7 month. The Company will utilize that mechanism
8 beginning next month, October of 2024, for the November
9 2024 Utah USF surcharge remittal statements.

10 Second, the Company's tax compliance team will
11 multiply the monthly access line account by the
12 applicable Utah USF surcharge rate that is populated in
13 the Utah USF remittal statement. This will arrive at
14 the total amount collected reflected on the remittal
15 statement.

16 Third, the Company will reconcile that total
17 amount collected reported in the Utah USF remittal
18 statement back to the amount of Utah USF surcharge that
19 we invoiced to customers during the relevant reporting
20 month. In addition, the Company will maintain written
21 remittance procedures that reflect its current
22 remittance procedures and upon request will make those
23 procedures available to the Division and to the
24 Commission.

25 In conclusion, we're pleased to have reached --

1 sorry, start that again. We're pleased to have
2 resolved this matter with the Division. This
3 resolution was reached after extensive discussions and
4 we're confident that this negotiated resolution is the
5 best path forward for us and for the fund. Thank you.

6 MR. RUSSELL: Mr. Adams is now available
7 for cross-examination and Commission questions.

8 THE COURT: Thank you. Mr. Grecu?

9 MR. GRECU: I don't have any questions.

10 THE COURT: Okay.

11 Mr. Adams, I do have a few questions. Thank
12 you for your testimony. That latter part on the
13 mechanics of the settlement agreement was helpful, but
14 I want to make sure I understand it, and I'll ask the
15 same questions of the Division. So I want to start
16 with what I'll just characterize as predicates.
17 Paragraph -- and I'm going to be using the settlement
18 agreement itself. So if you don't have a copy of it,
19 counsel, could you provide him one?

20 Are you really familiar with this document
21 or -- okay, because it will take some time for you to
22 digest the information, because these questions are
23 based just on the face of the document so we understand
24 as a Commission exactly what the parties' intentions
25 are as memorialized in this document. And to the

1 extent we need to flush anything out or clarify
2 anything, we can do that on the record today and have
3 the order reflect that clarification.

4 So I want to begin with, again, what I call the
5 predicates. And what I'm referring to is paragraph 15
6 and paragraph 22. And I refer to the predicates,
7 pardon me, because our understanding is that not being
8 relative to the settlement agreement is going to occur
9 until that which is set forth in paragraphs 15 and 22
10 has occurred. Is that an accurate understanding?

11 THE WITNESS: Yes.

12 THE COURT: Okay. So I'm not seeing this
13 spelled out in the settlement document. I could be
14 missing it. So help me understand how is the
15 Commission going to know that -- and let's just take it
16 from the top -- that the predicates in paragraph 15
17 have been satisfied?

18 THE WITNESS: I'll just take a minute to
19 read through 15 real quick.

20 THE COURT: Yeah, no, please, take all the
21 time you need. And specifically, it's really 15b.

22 THE WITNESS: Right.

23 I think my interpretation of that is this:
24 We're signing an agreement that we will continue -- we
25 will remit all of the Utah USF surcharge assessments

1 that we owe based on the calculations that we went
2 through. So it's -- I don't see a -- can you
3 rephrase -- or can you repeat your question
4 specifically for that?

5 THE COURT: Sure. Yeah. And what it is,
6 is I'm not seeing in this document how it is that the
7 Commission will know that one of the predicates that we
8 just established as necessary for this even to begin
9 paying out has been satisfied, specifically 15b. How
10 will the Commission know that that's been satisfied
11 such that payout may occur?

12 THE WITNESS: I really can't answer that
13 on the Commission side. I can just say on our side,
14 taking the steps that we are planning to take will
15 ensure that what we're -- we're remitting everything
16 that is appropriate for the Utah USF. So that's the
17 only side I can really speak to is from AT&T's side.

18 THE COURT: Okay. That's fine. And I'll
19 ask the Division the same question.

20 So same question though with respect to the
21 predicates in paragraph 22 which are far more detailed.
22 And in the agreement itself, it's got the subparts. 22
23 in and of itself appears to be a predicate that the
24 Company is going to utilize something different. And
25 then subsections A through E, which really it's A

1 through D, seem like action items to this predicate.
2 How will the Commission know that those predicates have
3 been satisfied?

4 THE WITNESS: The initial response would
5 be that we would provide those -- the written -- the
6 written guidance on how we are going to implement the
7 change, what we're actually doing on a month-to-month
8 basis. Just generally speaking, you know, I also am
9 responsible for all audits across the state and across
10 the country. We have about 400 active audits at AT&T,
11 and generally that's the mechanism for reviewing
12 internal records. We'll make available what is in E,
13 the written documentation, and answer any questions in
14 regards to changes in line counts, changes in reporting
15 amount, looking at trending and saying, you know, three
16 months ago -- or the last three months you reported X
17 and now you're reporting Y, can you explain. So we're
18 available to provide any answers or documentation to
19 support that we are meeting the requirements of this
20 agreement.

21 THE COURT: Okay. And I'll pose the same
22 question to DPU. But I guess what I'm hearing your
23 testimony on this particular question is that for us to
24 know that the predicates have been met relative to
25 paragraph 22, we look at paragraph E, which we have to

1 make a request to understand that these predicates have
2 been met.

3 THE WITNESS: Correct.

4 THE COURT: So the only way we find out is
5 if we ask.

6 THE WITNESS: Correct.

7 THE COURT: Okay. Thanks.

8 Let's go on to a couple other questions I have.
9 Again, I'm going to ask these same questions generally
10 of the other side because I'm trying to understand the
11 intention of the parties here. And we have a document
12 in front of us that reflects the intention of the
13 parties, and I want to make sure that we're clear on
14 some of these finer points.

15 I want to talk about paragraph 16 and 17. And
16 I just call it the payout provisions for shorthand.
17 And you can take the time you need to when I ask you
18 the questions. So I want to understand the
19 relationship between paragraph 16 and 17 and how their
20 work together -- because it's unclear to me as written
21 in the document. Your testimony was helpful, and I
22 want to get a finer point on the testimony because I
23 think that clarified some things I'm just not seeing in
24 the agreement itself. So let me ask you these
25 questions. And for these questions, just assume that

1 everything of the predicates of 15 and 22 have already
2 been satisfied and notwithstanding the discretion
3 that's granted in 16 and 17 that the Commission --
4 ignore that for now.

5 THE WITNESS: Okay.

6 THE COURT: So, I guess -- this is going
7 to be probably a really long question, and we can break
8 it up, but let me just give it to you long.

9 THE WITNESS: Okay.

10 THE COURT: And that is do the parties
11 intend that the payment addressed in paragraph 16, that
12 that occurs beginning February 2025, which is paragraph
13 16, subject to the limitations including the growth
14 issue, so we begin that payment in February 2025
15 assuming that there is growth; is that correct?

16 THE WITNESS: Okay.

17 THE COURT: Okay. And then paragraph 17
18 fits in only if and when the legislative performance
19 measures are met or exceeded; is that correct?

20 THE WITNESS: Yes.

21 THE COURT: Okay. That's not -- that's
22 not clear in the document to me, but if you can
23 represent that it's kind of a step one, that is the
24 payment does begin assuming all predicates are met and
25 that the conditions of growth are there, that paragraph

1 16 starts February 2025. Then and only then does
2 paragraph 17 kick in, which has its own requirements,
3 which is meeting or exceeding the legislative measures,
4 correct?

5 THE WITNESS: Yes.

6 THE COURT: And then the payment amount
7 then would be that which is in excess of the
8 legislative measures 4, for lack of a better phrase; is
9 that right?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Let me give you a
12 hypothetical. What happens if the fund's excess
13 balance in a particular month, with respect to
14 paragraph 17, is \$1, but there was a five percent
15 growth in 16 that equalled \$1,000? Based on your
16 testimony as I understand it and as best as I can
17 determine from the written document, the remittance
18 would be -- the payout would be \$1.

19 THE WITNESS: My understanding is it would
20 be both the growth and the excess, the \$1,001. I could
21 be mistaken, but that's my understanding. Like you
22 mentioned, paragraph 16 is first, so if there is a five
23 percent -- if there is growth, then the refund will be
24 five percent of that growth. So in your example, that
25 was \$1,000. And then in addition to that, at the end

1 of the analysis that there is -- the requirements of 17
2 are met, if there's a dollar left over, that would be
3 an additional payout. So it would be \$1,001 in your
4 example. That's my understanding of the agreement.

5 THE COURT: Okay. That is really helpful.
6 Thank you.

7 Where is that intention specifically expressed
8 in the agreement? Please take your time on this
9 question. So the question is where is what you just
10 said expressly stated in the agreement? Take a minute
11 if you need.

12 THE WITNESS: To the best of my
13 understanding, each of the paragraphs were intended to
14 read on their own. So paragraph 16 is its own analysis
15 and determination on how much the payout would be, so
16 the amount of the check to be distributed for that
17 section is by itself, the five percent is by itself.
18 And then the beginning of 17 is the beginning of a new
19 measuring stick for additional payouts. So 17 would be
20 taken in its entirety on its own. So in the event that
21 the Utah USF in any month maintains a balance equal to
22 that, then everything that follows after that would
23 apply. So they're not -- I don't see a place in the
24 document, and Phil can correct me on it, where the two
25 are put together, but they're each handled

1 independently and given parameters to operate within,
2 if that makes sense.

3 THE COURT: That makes perfect sense.

4 And if the answer to my question was there
5 isn't, that's fine.

6 THE WITNESS: Okay. I'm sorry.

7 THE COURT: No, that's okay. Don't worry
8 about it. That's okay.

9 MR. RUSSELL: Your Honor, do you mind if
10 we confer with the witness quickly? I want to make
11 sure we're not diverging in our understanding of what
12 the document says.

13 THE COURT: Yeah, we'll take a break in
14 just a minute. I want to summarize I think exactly
15 what I understand at this point, that is this is not an
16 either -- 16 and 17 are not either/or propositions,
17 they are stacked propositions. And that is paragraph
18 16, if those metrics are met within 16, they're the
19 payout, and that will always happen as long as those
20 metrics are met. Then, pursuant to 17, if and only if
21 there is -- the balance meets or exceeds, then there's
22 an additional payment in any given month. That's my
23 understanding at this point.

24 We'll take a break and you can confer. Five
25 minutes?

1 MR. RUSSELL: That should do it, yeah.

2 THE COURT: Okay. By this clock, ten
3 minutes to one.

4 MR. RUSSELL: All right. Thank you.

5 THE COURT: Thanks.

6 (A break was taken at 9:35 a.m. MDT)

7 THE COURT: We had taken a break just to
8 kind of circle back on a discussion concerning
9 paragraphs 16 and 17 based on questions I had asked.

10 Is there anything that you'd like to say,
11 coming back from the break, Mr. Adams?

12 THE WITNESS: No change in how I
13 testified, just that there will be further
14 clarification between the parties and adding additional
15 language to make it more clear. That's the plan. But
16 no change in the mechanism that I discussed where we're
17 first calculating the five percent growth and the five
18 percent payout, and then once that's done moving to 17
19 and looking at it on its own merit.

20 THE COURT: Okay. So you used the phrase
21 "it." You were referring to the mechanics -- I mean,
22 you were referring to the settlement agreement when you
23 said "it"?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. Well, I've got to ask

1 you this, how are these further discussions going to be
2 reflected and communicated to the Commission relative
3 to a settlement agreement that is part of an order
4 granting an application? By way of supplement to the
5 settlement agreement? An addenda? Do you know?

6 THE WITNESS: I don't know.

7 THE COURT: Okay. I may recall you to see
8 if you know later.

9 THE WITNESS: Your Honor, just to -- when
10 I read this, then I just read each section because
11 there wasn't a connection. So as I mentioned earlier,
12 that was -- you know, the way that I understood it and
13 I believe the way both parties are agreeing to it is to
14 handle them independently, and they can be handled
15 independently and the order in which they are in the
16 agreement. So if we can't clarify it, I'm comfortable
17 signing it with that as the backdrop.

18 THE COURT: Okay. Thank you.

19 And so let me circle back then to where I left
20 it with my articulation of what I understood before the
21 break, which is this is my term, this is that, which is
22 paragraph 16. As long as all the predicates are met
23 and then the conditions of 16 are met, that payout will
24 begin and that is contemplated to continue to be paid
25 as long as the growth, for example, occurs, correct?

1 THE WITNESS: Yes, sir.

2 THE COURT: And then and only then, if
3 with respect to paragraph 17, the legislative
4 performance measure is met or exceeded in any given
5 month that that occurs -- of course subject to the
6 discretion otherwise allowed in that paragraph -- an
7 additional payout amount will be issued on top of that
8 which was issued pursuant to paragraph 16. Is that
9 your understanding?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Okay. So I think that's a
12 pretty good articulation of some mechanics that might
13 fill the bill.

14 Okay. Do you have anything else that you
15 wanted to mention about paragraph 15, 22, 16 or 17,
16 which are the areas that we've covered so far?

17 THE WITNESS: No, Your Honor.

18 THE COURT: Okay. Couple other questions.
19 You adopted some pre-filed written testimony of
20 Mr. Phoenix and Ms. Tolley, both of which in that
21 testimony had asserted that they believe that a refund
22 of the overpayment was in the public interest. And you
23 adopted that testimony, so I'm assuming that now. Is
24 that correct?

25 THE WITNESS: Yes.

1 THE COURT: What is your position --
2 Ms. Tolley and Mr. Phoenix did not testify about this.
3 What is your position with respect to the settlement
4 stipulation? Do you believe that the settlement
5 stipulation is in the public interest?

6 THE WITNESS: Yes, I do.

7 THE COURT: Okay. And do you believe that
8 the settlement stipulation is also a just and
9 reasonable end result?

10 THE WITNESS: Yes, I do.

11 THE COURT: Okay. I don't have anything
12 else. Thank you very much.

13 No further witnesses, correct, Mr. Russell?

14 MR. RUSSELL: That is correct.

15 THE COURT: Thank you very much.

16 For the Division? Let's turn it over to you.

17 MR. GRECU: The Division would like to
18 call Mr. Gary Smith.

19 THE COURT: Good morning, Mr. Smith.

20 THE WITNESS: Good morning.

21 THE COURT: Do you swear to tell the
22 truth?

23 THE WITNESS: I do.

24 THE COURT: Thank you.

25 Please proceed.

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EXAMINATION

BY MR. GRECU:

Q. Mr. Smith, could you please state and spell your name for the record?

A. Gary Smith, G-a-r-y, S-m-i-t-h.

Q. By whom you are employed?

A. The Division of Public Utilities.

Q. And what is your business address?

A. It is 160 East 300 South, Salt Lake City, Utah.

Q. And what is your position at the Division?

A. I am a utility technical consultant.

Q. Have you participated in this docket on behalf of the Division?

A. I have.

Q. Did you prepare and cause -- excuse me.

Did you review the Company's verified application, supporting exhibits and pre-filed direct testimony filed in this docket?

A. I did.

Q. Did you prepare and cause to be filed your direct testimony on behalf of the Division filed on June 21, 2024?

A. Yes.

Q. And did you have any changes or corrections to

1 that?

2 A. I do have one. On page 6 of my testimony, line
3 108, I incorrectly reported a 32-cent surcharge rate,
4 and that was a typo. It should be 36.

5 Q. And no further corrections?

6 A. No further.

7 Q. Did you participate in settlement negotiations
8 in this docket?

9 A. I did.

10 Q. Did you review the settlement stipulation filed
11 with the Commission?

12 A. Yes.

13 Q. And is it the Division's position that the
14 settlement stipulation is a just and reasonable end
15 result?

16 A. Yes.

17 Q. Based upon your review, would approval of the
18 settlement stipulation be just and reasonable and in
19 the public interest?

20 A. Yes.

21 MR. GRECU: I would like to move to admit
22 Mr. Smith's direct testimony filed on behalf of the
23 Division and the DPU Exhibits 1 through 4 that were
24 filed on June 21, 2024.

25 THE COURT: Thank you.

1 Any objection, Mr. Russell?

2 MR. RUSSELL: No objection.

3 THE COURT: Okay. Motion is granted.

4 MR. GRECU: Thank you.

5 BY MR. GRECU:

6 Q. And, Mr. Smith, do you have a summary to share
7 that provides the Division's support of the settlement
8 stipulation?

9 A. Yes, I do.

10 Q. Please proceed.

11 A. On February 21, 2024, New Cingular Wireless
12 PCS, LLC, an AT&T Company, or AT&T, sent a letter to
13 the Commission requesting a refund for excess
14 contributions it made to the Universal Service Fund of
15 Utah or UUSF. During the period from July 21st through
16 June 2023, AT&T explained that it collected and
17 remitted UUSF surcharges at an incorrect rate of 54
18 cents per connection instead of the correct rate of 36
19 cents. On March 5, 2024, the Commission issued an
20 action request under docket 24-999-08 requesting the
21 Division's review of AT&T's letter and its request for
22 recovery.

23 In the Division's research, the Division
24 learned that although AT&T collected UUSF surcharges
25 from customers at an incorrect rate of 54 cents per

1 connection, it reported a collection rate of 36 cents
2 per connection in its monthly remittance report to the
3 Commission. The Company utilized a method of
4 indirectly calculating its Utah customer connections by
5 dividing its surcharges from Utah customers collected
6 at 54 cents by the 36-cent surcharge rate. This
7 incorrect method created an overstatement of the
8 Company's Utah customer connections subject to
9 surcharge and an unexpected reduction in UUSF
10 remittances once corrected. In docket number 24-99-08,
11 the Division recommended that the UUSF surcharge rate
12 be increased due in part to AT&T's overstated
13 connection and reduction in its remittals.

14 On April 10, 2024, the Company filed a request
15 with the Commission in this docket requesting
16 reimbursement for its overpayment to the UUSF that
17 occurred from July 2021 through July 2023 in the amount
18 of \$2,263,407.04. During a scheduling conference held
19 May 3, 2024, the Commission requested participants
20 provide legal briefing on the following issues: What
21 specific authority grants the Commission jurisdiction
22 to resolve the legal issues presented in this docket,
23 how does it do so, what specific authority provides
24 substantial support for the new -- for New Cingular's
25 request for recovery of its overpayment into the UUSF,

1 how does it provide that support?

2 On May 30, 2024, the Division filed its
3 briefing addressing the Commission's questions. The
4 Division concluded that the Utah -- that Utah law
5 provides the Commission statutory authority to take
6 regulatory action in this docket. Utah Code Section
7 54-8B-15 provides support for jurisdiction over the
8 Company's request and gives the Commission legal
9 authority to resolve the issues in this docket.

10 Pursuant to the scheduling order on May 24,
11 2024, the Company filed its direct testimony and
12 exhibits supporting its request for reimbursement from
13 the fund. On June 21, 2024, the Division filed direct
14 testimony recommending that reimbursement to the
15 Company be conditioned on the Company establishing
16 sufficient effective procedures to ensure the Company's
17 ability to file correct reports and remittances to the
18 Commission, including the ability to directly count and
19 certify its number of access lines without needing to
20 derive it from its surcharge collection amount.

21 The Division also recommended that the Company
22 refund an additional 16,378 in calculated uncredited
23 overcharges to its affected Utah customers or explain
24 why it is not required to make these additional credits
25 to Utah customers.

1 The Division and the Utah Rural Telecom
2 Association, or URTA, have engaged in good-faith
3 negotiations with the Company. During these
4 negotiations, relevant issues were discussed, including
5 the Company's remittal processes and procedures and
6 possible reimbursement options and timing.

7 In addition, the Division sought to understand
8 the calculated difference of 16,378 in customer
9 overcharges noted in the Division's June 21, 2024
10 direct testimony. During discussions, the Company
11 provided that the 16,378 calculated variance was
12 expected due to the differences in the Company's
13 invoice billing date and the journal date that all
14 corresponding invoices are completed and booked into
15 its general ledger. The Division accepts this
16 explanation for this difference in the Company's credit
17 to Utah customers.

18 The parties to this docket have reached an
19 agreement, and I would like to highlight a few key
20 provisions of the settlement stipulation. Based on the
21 evidence submitted by the Company, the Division and the
22 Company agree for purposes of settlement that the
23 Company is entitled to recover 2,262,120 for its
24 overpayment into the UUSF from July 21, 2021 through
25 June 2023. This amount is lower than the amount the

1 Company initially requested due to a correction
2 identified by the Division and explained in the
3 Division's direct testimony dated June 21, 2024.

4 Beginning with the November 2024 UUSF surcharge
5 remittal statement, the Company will utilize a new
6 methodology to report its monthly UUSF remittances and
7 allow for direct calculation of its access line.

8 Beginning February 2025 and subject to conditions and
9 considerations including a UUSF balance increase in
10 each immediately preceding month, the Commission will
11 return to the Company not less than five percent of the
12 previous month fund growth. In months where stipulated
13 conditions and considerations are met and the UUSF
14 balance is equal to or above the UUSF's performance
15 measures, repayment to the Company shall be at a total
16 amount of the balance above the performance measures of
17 that month. So long as determined by the Commission,
18 paying this amount would not preclude the UUSF from
19 satisfying legislative performance measures. The
20 Company will maintain written remittance procedures
21 that reflect its current procedures and upon request
22 make available to the Commission and the DPU the
23 Company's reconciliation reports and procedures.

24 Upon approval and subject to its condition and
25 considerations, the settlement stipulation should

1 provide for the Company's repayment as soon as
2 conditions allow while accommodating UUSF fund growth.
3 In addition, the agreement requires that the -- the
4 Company to create a process for directly accounting
5 access lines and maintain written billing and
6 remittance procedures to avoid this issue from
7 occurring in the future. URTA does not oppose the
8 settlement of these issues as set forth in the
9 settlement stipulation.

10 The Division recommends that the Commission
11 approve the stipulation as a whole if it's just and
12 reasonable end result and in the public interest.

13 That concludes my . . .

14 MR. GRECU: Thank you.

15 The witness is now available for
16 cross-examination and questions from the hearing
17 officer.

18 THE COURT: Thank you very much.

19 Mr. Russell, any questions from this witness?

20 MR. RUSSELL: No questions. Thank you.

21 THE COURT: Thank you.

22 Mr. Smith, I do have some questions for you.
23 Thank you for your testimony. I found it also helpful
24 in illuminating a few things. But you were in the room
25 while you heard earlier testimony on the topics I'm

1 going to ask you the same -- roughly the same questions
2 on now. And I want to begin with paragraphs 15 and 22.
3 In previous testimony, I had asked the witness or the
4 applicant whether the requirements of paragraph 15 and
5 22 had to be satisfied before the agreement in effect
6 started paying out, and the answer was yes, that was
7 his understanding. Is that the DPU's understanding?

8 THE WITNESS: Yes, that is our
9 understanding.

10 THE COURT: Okay. Thank you.

11 Given that that's everybody's understanding at
12 this point, with respect to paragraph 15B -- do you
13 have the document in front of you?

14 THE WITNESS: I do.

15 THE COURT: Okay. So with respect to
16 paragraph 15B, how is it that the Commission will be --
17 will know that that condition has been satisfied?

18 THE WITNESS: Well, we do envision
19 creating something to our report, and we could make
20 that clear in the report, the monthly report, to the
21 Commission where the -- if the previous month's
22 remittals had been received. And so we could create
23 something that we could give to the Commission that
24 might help with that. Of course, that assumes that
25 what we receive is accurate and giving what the Company

1 has said they will have in place at that time, we're
2 pretty confident that what we will get is correct.

3 THE COURT: Okay. So if I can restate
4 what I just heard and put it in my words: The document
5 as it is presented, the settlement agreement, it
6 doesn't provide a mechanism currently for how it is
7 that the Commission will understand that 15B has been
8 satisfied, correct?

9 THE WITNESS: Correct.

10 THE COURT: But, based on your testimony
11 today, you believe that the Division can create some
12 way to notify the Commission that 15B has been
13 satisfied?

14 THE WITNESS: Yes, I believe we can.

15 THE COURT: Okay. And you believe that
16 the DPU taking on that responsibility is part of the
17 intention of the parties in this settlement agreement?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Thank you.

20 Okay, now the same questions as to paragraph
21 22, because, again, if it is a predicate to the
22 agreement being effective and payout occurring, how is
23 it that the Commission will know that the predicates
24 outlined in paragraph 22 and all of its subparts up to
25 E, so A through D, have been satisfied?

1 THE WITNESS: We intend to have good
2 communication with the Company, and we will put into
3 place some things that will allow us to evaluate their
4 situation and, you know, determine whether or not those
5 things are really happening.

6 THE COURT: Okay. So if I can do here
7 what I just did with paragraph 15B and restate what I
8 think I just heard and what my understanding is, is
9 that it's the intention of the parties with respect to
10 the requirements or predicates in paragraph 22 and its
11 subparts that the Division will undertake the
12 obligation to communicate to the Commission that in
13 fact those requirements have been met?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 THE WITNESS: Yes. And we would try to
17 make that as clear as possible with the Commission.

18 THE COURT: Yeah, and I think if we need
19 to fall on these predicates which everybody has, these
20 need to be made clear to us before the I think it's
21 February 2025 deadline. And it seems that 22
22 contemplates a run up because it's going to begin in
23 October, November-ish.

24 THE WITNESS: Exactly.

25 THE COURT: Okay. So as long as it's that

1 the intent of the parties is as you just testified,
2 thank you, that's what I needed to hear.

3 THE WITNESS: Okay.

4 THE COURT: Now I want to talk about
5 paragraphs 16 and 17. I understood your testimony just
6 fine. I just want to clarify kind of the -- my
7 synopsis of the relationship of these, as I did with
8 Mr. Adams, and see if you agree that that is in fact
9 the intent of the DPU on this. That is that paragraph
10 16 will pay out subject to the requirement of paragraph
11 16, and then and only then, once the legislative
12 performance measures are met or exceeded, will
13 paragraph 17, subject to other discretionary issues
14 built into it, will then 17 pay out in addition to the
15 payment on paragraph 16.

16 THE WITNESS: Yes.

17 THE COURT: Okay. So it's stacked. Okay.

18 THE WITNESS: Correct.

19 THE COURT: But in no way is it going to
20 be more than the excess, right.

21 THE WITNESS: Yes.

22 THE COURT: Okay. So in my hypothetical,
23 and let me just give you the hypothetical and ask you
24 yes or no: The payout in paragraph 16 has been going
25 on because all the conditions have been met, and then

1 in four months paragraph 16 -- pardon me -- paragraph
2 17 comes into play because the performance -- the
3 legislative performance measures have been exceeded.
4 And so in my hypothetical, they've been exceeded in
5 paragraph 17 by a dollar. The remittance or the payout
6 pursuant to this settlement agreement would be the
7 \$1 -- I forgot to tell you, paragraph 16 is operative
8 because there was a growth -- there was a five percent
9 growth. There was a growth, and the five percent was
10 \$1,000. Okay. So we've got that condition and now
11 we're in paragraph 17 and the legislative performance
12 measures have been exceeded by \$1. The payout for that
13 particular period would be \$1001, is that your
14 understanding?

15 THE WITNESS: I believe that's my
16 understanding.

17 THE COURT: Okay.

18 THE WITNESS: One thing to note though is
19 it could be that given how the USF actually pays out,
20 you could see a fluctuation of a time when the
21 performance measure is exceeded and then say the
22 following month it could be lower. I'm guessing you
23 probably envision that as well. It kind of floats
24 around possibly for a while.

25 THE COURT: Yeah.

1 THE WITNESS: Okay.

2 THE COURT: Yeah, that's -- I mean, that's
3 my understanding of the mechanics the way the money
4 comes in and goes out.

5 But by confirming my hypothetical, you
6 confirmed what Mr. Adams had testified about, which is
7 it's not an either/or, it's a both, if a trigger of
8 paragraph 17 is effectuated. And I think the record
9 should be clear on that and the order can -- the
10 written order can reflect this understanding as part of
11 the settlement agreement.

12 THE WITNESS: I would agree with that.

13 THE COURT: Okay. I have nothing for you,
14 thank you.

15 THE WITNESS: Thank you.

16 THE COURT: No additional witnesses,
17 Mr. Grecu, correct?

18 MR. GRECU: We do not.

19 THE COURT: Okay. Okay. I have nothing
20 further. Is there anything anybody else wants to talk
21 about or bring up or present? I think we got as clean
22 as we're going to get. Do you want to take a minute?

23 MR. RUSSELL: No, nothing further. I just
24 wanted to check with my client on something really
25 quickly. We're good. Thank you.

1 THE COURT: Mr. Grecu, you're okay?

2 MR. GRECU: We're good.

3 THE COURT: Okay. Well, thanks everybody
4 for all your preparation getting us to this point and
5 then for your presentation today and being patient with
6 my questions. I thought it was fruitful though. Thank
7 you for the clarification, the Commissioners will
8 appreciate it.

9 All right. We're adjourned. Thank you.

10 MR. RUSSELL: Thank you.

11

12 (The hearing was concluded at 10:06 MDT)

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[query - repayment]

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Utah Rules of Civil Procedure
Part V. Depositions and Discovery

Rule 30

(E) Submission to Witness; Changes; Signing.

Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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