

- 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

ORDER

ISSUED: October 16, 2024

SYNOPSIS

The Public Service Commission (PSC) approves the settlement stipulation ("Settlement") and grants New Cingular Wireless PCS, LLC ("New Cingular") a refund of \$2,262,120.00, subject to the terms of the Settlement and to this Order.

BACKGROUND

1. On April 10, 2024, New Cingular filed a Verified Request for Recovery of Overpayment of UUSF seeking to recover \$2,263,407.04 of its Utah Universal Service Fund ("UUSF") payments ("Petition"). New Cingular explained it had been incorrectly calculating the amount due since approximately July 2021.

2. On May 1, 2024, the PSC held a virtual scheduling conference.

3. On May 3, 2024, the PSC issued a Request for Legal Briefing and Notice of Second Virtual Scheduling Conference, directing New Cingular, the Division of Public Utilities (DPU), and the Utah Rural Telecom Association (URTA) to submit legal briefs (a) addressing whether the PSC has jurisdiction to resolve the issues raised in the Petition, and (b) providing the legal authority either supporting or not supporting the relief sought in the Petition.

4. On May 10, 2024, a second scheduling conference was held and on May 14, 2024, a Scheduling Order and Notice of Hearing was issued establishing the deadlines in this docket.

5. On May 24, 2024, New Cingular filed the direct testimony of Janet Tolley and Randy Phoenix, which included attached exhibits. This testimony explains, among other things, different aspects of New Cingular's internal processes that led to its overpayment into the UUSF and its overreporting the number of its access lines.

6. On May 30, 2024, New Cingular, DPU, and URTA (collectively, the "Parties") filed legal briefs, all of which (a) concluded the PSC has jurisdiction to resolve the issues raised in the Petition and (b) provided the legal authority that could support the relief sought in the Petition.

7. On June 21, 2024, DPU filed the direct testimony of Gary Smith, which included attached exhibits. This testimony explains, among other things, the impact of New Cingular's overpayments on the UUSF, discusses various perceived internal inadequacies in New Cingular's regulatory reporting relating to the UUSF, and identifies that the correct amount of New Cingular's overpayment into the UUSF fund is \$2,262,210.00, not \$2,263,407.04, as asserted in the Petition.

8. On June 28, 2024, URTA filed a Petition to Intervene, which was granted on July 16, 2024.

9. On July 10, 2024, New Cingular, supported by DPU and URTA, filed a Stipulated Motion to Suspend Deadlines in the Scheduling Order, which was granted that same day.

10. On July 30, 2024, at the request of the Parties, a technical conference was held for the Parties “to share information regarding [UUSF] capacity and constraints related to performance goals and reimbursement from the UUSF.”¹

11. On August 8, 2024, DPU filed a Stipulated Motion to Continue Hearing, which was granted on August 9, 2024.

12. On September 6, 2024, the Parties filed the Settlement.

13. On September 19, 2024, the PSC held an evidentiary hearing to consider the Settlement during which witnesses for New Cingular and DPU provided sworn testimony supporting the Settlement.

14. Other than URTA, there were no intervenors in this docket.

THE SETTLEMENT

In the Settlement, DPU and New Cingular² stipulate and agree that, among other things, New Cingular is entitled to a refund of \$2,262,120.00 for its overpayment of that same amount into the UUSF. The Parties also agree that New Cingular will

¹ *Overpayment of New Cingular Wireless PCS, LLC, an AT&T Company, into the Utah Universal Service Support Fund*, Docket No. 24-087-02, Joint Request for Technical Conference filed July 19, 2024 at 1.

² While a signatory to the Settlement, “URTA does not take a position on whether [New Cingular] is entitled to a refund, and if so, how much [New Cingular] is entitled to receive, but URTA does not oppose the settlement of the issues as set forth in [the Settlement].” Settlement at 3-4.

implement certain policies and procedures governing its future conduct and the reporting of its monthly number of access lines subject to the UUSF charge.³ The Settlement provides that New Cingular will receive monthly refunds beginning in February 2025, subject to New Cingular meeting specific obligations defined in paragraphs 15 and 22 and subject to the existence of certain metrics identified in paragraphs 16 and 17, both of which include the PSC's discretion.

HEARING

New Cingular witness Scott Adams adopted the prefiled written testimony and exhibits of Janet Tolley and Randy Phoenix.⁴ Mr. Adams also corrected the requested refund amount presented in that testimony from \$2,263,407.04 to \$2,262,120.00, and testified that this amount will not accrue interest. Consistent with the testimony of Ms. Tolley and Mr. Phoenix, Mr. Adams also testified about different aspects of New Cingular's internal processes that led to its errors of overpayment into the UUSF and its overreporting the number of its access lines. In this regard, Mr. Adams described in detail the actions New Cingular will now implement to prevent the same type of errors from reoccurring.⁵ Mr. Adams further testified about the Settlement terms that

³ See Settlement at ¶¶ 20-22.

⁴ See September 19, 2024, hearing transcript at pages 7-11. The prefiled testimony and exhibits of Ms. Tolley and Mr. Phoenix, the Petition and its exhibits, and the Settlement were all admitted into evidence. See *id.* at 11-12.

⁵ See *id.* at 15-16 (overpayment issue) and 17-18 (overreporting issue).

outline the refund process.⁶ Mr. Adams testified that the Settlement is just, reasonable in result, and in the public interest.

DPU witness Gary Smith testified about the background of how New Cingular overpaid into the UUSF, the consequences of that overpayment, and other regulatory reporting errors by New Cingular during the same extended time-period.⁷ Mr. Smith also testified about the Settlement requiring New Cingular to use a different methodology in calculating and reporting the correct amount of its UUSF remittances and the correct number of its access lines.⁸ Mr. Smith further testified about the Settlement terms that outline the refund process.⁹ Mr. Smith recommended the PSC approve the Settlement and concluded it is just, reasonable in result, and in the public interest.

In response to questions from the presiding officer, witnesses from both New Cingular and DPU provided clarifications regarding certain aspects of the Settlement. First, both New Cingular and DPU testified they understand that paragraphs 15 and 22 of the Settlement are mandatory predicates to the issuance of any refund repayment.¹⁰ Thus, unless and until all predicates in both of those paragraphs are met, no refund repayment shall be issued.

⁶ *See id.* at 16-17.

⁷ *See id.* at 34-35. The prefiled testimony and exhibits of Mr. Smith were admitted into evidence. *See id.* at 33-34.

⁸ *See id.* at 38.

⁹ *See id.*

¹⁰ *See id.* at 20 & 40.

Second, although not expressly provided in the Settlement, Mr. Smith testified that DPU shall notify the PSC when the predicates of paragraphs 15 and 22 of the Settlement have been met.¹¹

Third, New Cingular and DPU clarified the relationship between paragraphs 16 and 17 of the Settlement, testifying that the refund payment provision of paragraph 17 is in addition to the payment provision in paragraph 16.¹² For example, assuming the predicates of paragraphs 15 and 22 have been met, and that the specific metrics in paragraph 16 exist, subject to the PSC's discretion set forth therein, a refund amount pursuant to paragraph 16 would be issued beginning in February 2025. Then, and in addition, assuming the predicates of paragraphs 15 and 22 have been met and that the specific metrics in paragraph 16 exist, subject to the PSC's discretion set forth therein, an additional refund payment pursuant to paragraph 17 would be made only if the specific metrics in paragraph 17 also exist, subject to the PSC's discretion as stated in paragraph 17.¹³

Based on the PSC's review of the Petition, Settlement, and other evidence of record, and considering there is no opposition, in addition to the above discussion, the PSC enters the following Findings of Fact, Conclusions of Law, and Order.

¹¹ *See id.* at 40-42.

¹² *See id.* at 24-26 & 43-44.

¹³ *See id.* at 29-30 & 43-44. Because of the specific obligations and metrics identified in paragraphs 15 and 22, and 16 and 17 of the Settlement, New Cingular is therefore not guaranteed a monthly refund check.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Settlements of matters before the PSC are statutorily encouraged. To approve a settlement, the PSC must consider the interests of the public and other affected persons and find the settlement is just and reasonable in result.¹⁴ Based on our consideration of the Petition, the prefiled written testimony and exhibits, the testimony at hearing, the Settlement, and the lack of opposition, the PSC finds and concludes that the record evidence supports that the Settlement and its terms are just and reasonable in result and in the public interest.

The PSC approves the Settlement and grants the Petition, as conditioned and supplemented by the Settlement and the PSC's understanding of the Settlement as discussed above.

DATED at Salt Lake City, Utah, October 16, 2024.

/s/ John E. Delaney
Presiding Officer

¹⁴ See Utah Code Ann. § 54-7-1.

Approved and Confirmed October 16, 2024 as the Order of the Public Service
Commission of Utah.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#335965

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on October 16, 2024, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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