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October 16, 2017

Ms. Lynn M. Retz
Secretary to the Commission
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Re: KCC Docket No. 17-WSLC-019-KSF

Dear Ms. Retz:

Attached you will find the Response of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility to Kansas Universal Service Fund Audit Report; Request for Oral Argument or Evidentiary Hearing for electronic filing in the above referenced docket.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce A. Ney", followed by a large checkmark.

Bruce A. Ney
AVP - Senior Legal Counsel

Attachment

cc: Parties of Record

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Audit of New Cingular Wireless)	
PCS, LLC d/b/a AT&T Mobility by the Kansas)	
Universal Service Fund (KUSF) Administrator)	Docket No. 17-WSLC-019-KSF
Pursuant to K.S.A. 2015 Supp. 66-2010(b) for KUSF)	
Operating Year 19, Fiscal Year March 2015 –)	
February 2016.)	

**RESPONSE OF NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T MOBILITY
TO KANSAS UNIVERSAL SERVICE FUND AUDIT REPORT;
REQUEST FOR ORAL ARGUMENT OR EVIDENTIARY HEARING**

COMES NOW New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (“AT&T Mobility”), pursuant to the Order on Petition for Reconsideration issued in the above captioned proceeding on October 10, 2017, and in response to the Kansas Universal Service Fund Audit Report filed in the above captioned matter on August 25, 2017. For its response, AT&T Mobility shows the Commission as follows:

BACKGROUND

1. On August 2, 2016, the Commission issued its Order in the above captioned proceeding directing the Kansas Universal Service Fund (“KUSF”) administrator, GVNW Consulting, Inc. (“GVNW”), to commence an audit of AT&T Mobility for KUSF Year 19.¹
2. The *Audit Order* directed AT&T Mobility to “assemble the information requested by GVNW so that GVNW may complete the audit and file its Audit Report

¹ Order to Kansas Universal Service Fund Administrator to Commence Audit of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility and Order Setting Procedural Schedule, Docket No. 17-WSLC-019-KSF, dated Aug. 2, 2016 at ¶ 7 (hereinafter “*Audit Order*”).

with the Commission by Friday, June 30, 2017. *Audit Order* ¶ 7. Following the filing of the Audit Report, AT&T Mobility was allowed 13 days to file a response to the Audit Report and request a hearing if deemed necessary. *Id.* ¶ 8.

3. On June 6, 2017, AT&T Mobility filed a motion for enlargement of the time allowed for the completion of the audit and requested the Commission amend the procedural schedule accordingly, including to allow AT&T Mobility to file a response to the Audit Report and request a hearing, if the report is disputed, no later than 13 days from the date GVNW filed the report with the Commission.²

4. On June 13, 2017, the Commission issued its Order Granting Motion for Enlargement of Time, extending the date for completion of the audit to August 29, 2017.³ The Order also provided for “AT&T Mobility’s response and request for a hearing, if the Audit Report is disputed, to be filed no later than thirteen (13) days from the date GVNW files its Audit Report.”⁴

5. On August 25, 2017, GVNW filed its Kansas Universal Service Fund Audit Report for AT&T Mobility with the Commission.⁵ The Audit Report, in addition to finding that AT&T Mobility is current with its KUSF obligations, identified three “reporting issues” that had “no revenue impact to the KUSF.”⁶

² Motion of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for Enlargement of Time and Amended Procedural Schedule, Docket No. 17-WSLC-019-KSF, filed June 6, 2017 at ¶3.

³ Order Granting Motion for Enlargement of Time, Docket No. 17-WSLC-019-KSF, June 13, 2017 (hereinafter “*Enlargement Order*”).

⁴ *Id.* at Ordering Paragraph A.

⁵ Kansas Universal Fund Audit Report, Docket No. 17-WSLC-019-KSF, filed Aug. 25, 2017 (hereinafter the “*Audit Report*”).

⁶ *Id.* at pp. 1-2.

6. Included in the “reporting issues” identified in the *Audit Report* is Audit Finding No. 2, concerning a requirement that carriers report actual revenues.⁷ The *Audit Report* states that:

AT&T Mobility did not report actual intrastate revenues on its monthly CRWs. Instead, the Company reported calculated revenues by dividing the total KUSF surcharge billed to customers by the approved KUSF assessment rate. The Company did not file Quarterly True-ups, but did file an Annual True-up for Operating Year 19 that showed no changes to the revenues reported to the KUSF. This practice is inconsistent with the Commission’s directive that the Company is to file Quarterly True-ups to report actual revenues.⁸

As a result, the *Audit Report* recommends:

AT&T Mobility should be directed that, as a monthly filer that reports estimated revenue, it is required to report its actual revenue by a Quarterly True-up within 45 days after the end of each KUSF fiscal year quarter. The Company should also be reminded that while it reports calculated revenue, AT&T Mobility is responsible for ensuring that the assessment owed and paid to the KUSF is no less than it would be if the Company reported its actual Kansas-specific revenues.⁹

7. In addition to the Audit Finding and Recommendation, the *Audit Report* notes AT&T Mobility’s disagreement with and dispute of the proposed Audit Finding:

AT&T Mobility disagrees with this finding as the compliance process employed by the Company results in the reporting of actual intrastate revenue on its monthly filing. Quarterly true ups are filed only when an adjustment is necessary.¹⁰

⁷ *Id.* at pp. 3-4.

⁸ *Id.* at p. 4. (Footnotes omitted).

⁹ *Audit Report* at p. 3.

¹⁰ *Id.*

AT&T MOBILITY'S RESPONSE

8. AT&T Mobility disagrees with and disputes Audit Finding No. 2. The Audit Finding mischaracterizes both the nature of the intrastate revenues reported to the KUSF on AT&T Mobility's Carrier Remittance Worksheets ("CRWs"), as well as the methodology by which those numbers are derived from AT&T Mobility's billing systems, recorded into AT&T Mobility's books and calculated for reporting purposes.

A. AT&T Mobility Reports Actual Intrastate Revenue.

9. AT&T Mobility does not dispute that Kansas law requires "wireless telecommunications service provider[s] that provide[] intrastate telecommunications services . . . **to contribute to the KUSF on an equitable and nondiscriminatory basis.**"¹¹ The statute is otherwise quiet on how the Commission shall require that contribution to be made.

10. In 1999, in what has become known as the "Competition Docket"¹², the Commission concluded that for wireless providers "85 percent **of revenues billed** to Kansas addresses, including roaming charges, should be included in the KUSF assessment calculation or the company can substantiate a different intrastate revenue amount."¹³

¹¹ K.S.A. 2015 Supp. 66-2008(a). (Emphasis added).

¹² *In the Matter of a General Investigation into Competition within the Telecommunications Industry in the State of Kansas*, Docket No. 94-GIMT-478-GIT (190,492-U).

¹³ Order on Issue of Uncollectible Revenue and Additional KUSF Revenue Reporting Issues, Docket No. 94-GIMT-478-GIT (190,492-U), dated Aug. 13, 1999 at ¶13. (Emphasis added). The Commission specifically ordered that for wireless providers: "(1) Intrastate revenues reported to the KUSF Administrator for assessment purposes **shall be calculated** on revenue net of uncollectible amounts... (2) Wireless providers shall report 85 percent of **total revenues** as intrastate revenues for KUSF purposes. ..." *Id.* at Ordering Paragraphs (1) & (2). (Emphasis added). The Ordering language itself clearly contemplates a necessary calculation to arrive at the reportable revenue amounts. The Order does not discuss or employ the term "actual revenue" or "calculated revenue".

11. Audit Finding No. 2 wrongfully asserts that AT&T Mobility “did not report actual intrastate revenues on its monthly CRWs.”¹⁴ The Audit Finding goes on to state that “instead” of reporting actual revenues AT&T Mobility reported “calculated” revenues.¹⁵ The *Audit Report*’s characterization of AT&T Mobility’s reported revenues misrepresents both the reporting methodology and the nature of the revenue information itself. There is no Commission precedent or evidence in the record to support the Audit Finding’s conclusion that AT&T Mobility did not report “actual” revenue. In fact, the contrary is true.

12. In its response to Audit Information Request No. 10, which is relied upon for the *Audit Report*,¹⁶ AT&T Mobility affirmatively stated and verified that **it does** in fact report actual intrastate revenue and described the methodology it employs for reporting purposes. That methodology includes the identification of **“actual [Kansas] intrastate retail revenue on which KUSF amounts are billed and/or calculated”**¹⁷ which is then used to report that revenue.

[T]he actual intrastate revenue reported is derived by dividing the sum of 1) KUSF amounts billed to the customer and 2) KUSF amounts owed that are not billed to the customer, divided by the KUSF assessment rate.¹⁸

¹⁴ *Audit Report* at p. 3. For the record, it must be noted that source of authority relied upon by the Auditor for the proposition that “actual revenues” must be reported, the Commission’s January 13th Order in Docket No. 10- GIMT-188-GIT, never mentions the term “actual revenues” anywhere in the body of the Order or the Ordering language. In various places the Order references “intrastate retail revenues” or “KUSF-assessable revenues”, but it never employs the term “actual revenues”. Notwithstanding the 10-188 Order’s silence on the issue of “actual revenues”, there is simply no evidence or any other basis on which AT&T Mobility’s assertion that it reports “actual intrastate revenues” can reasonably be refuted or denied.

¹⁵ *Audit Report* at p. 3.

¹⁶ *Id.* at fn. 10.

¹⁷ *Audit Report* Attachment B, letter filing, Docket No. 17-WSLC-019-KSF, filed Sept. 19, 2017 (KUSF Carrier Audit Information Request No. 10) at ¶b (hereinafter “*Audit Report* Att. B”).

¹⁸ *Id.* at ¶a.

AT&T Mobility then further explained how the methodology/calculation employs actual revenue numbers.

Each of AT&T Mobility's upstream billing systems are set up to identify actual KS intrastate retail revenue on which KUSF amounts are billed and/or calculated.

These KUSF assessment amounts are recorded in the books and records and are reconciled to tax remittances. Therefore, dividing the KUSF amounts by the KUSF assessment rate produces the actual intrastate retail revenue identified in the upstream systems.¹⁹

Unlike an "estimated" amount, which may be nothing more than a projection or even an educated guess, AT&T Mobility's calculated and reported revenue is based upon **actual** amounts **identified by its billing systems, billed and owed**. AT&T Mobility's reporting methodology is fundamentally founded in the Commission's 1999 Competition Docket Order requiring wireless carrier to report on the basis of actual "revenues billed" to Kansas consumers.²¹

13. The AT&T Mobility CRW reported revenue amounts are not "estimated".

The filed *Audit Report*, despite characterizing the reported revenue as "estimated", shows that when tested by the auditor, using **actual** customer billing records,

the revenue of AT&T Mobility for the audit test months and the ratio of reported revenue versus the actual revenue recorded on the Company's books ratio was .0096 percent: meaning AT&T reported more revenue to the KUSF than that recorded on its books and records. GVNW attributes this variance to **normal** billing system adjustments/churn

¹⁹ *Id.* at ¶1b. (Emphasis added).

²⁰ BLACK'S LAW DICTIONARY 34 (6TH ed. 1990) (defining the term "actual"). "Actual. Real; substantial; existing presently in fact; having a valid objective existence as opposed to that which is merely theoretical or possible. Opposed to potential, possible, virtual, theoretical, hypothetical or nominal. Something real, in opposition to constructive or speculative; something existing in act." *Id.*

²¹ See, *supra*, fn. 13.

and rounding differences. Tests of subscriber bills and other work related to this issue noted **no discrepancies**.²²

Upon receiving an audit request, AT&T Mobility generates the requested audit report from its data warehouses of customer level detail activity in order that billed transactions (revenue and associated tax/fee amounts) can be verified by the auditor for accuracy. For example, the audit report provided to GVNW contained a report of Kansas customers who were assessed the KUSF surcharge and the associated revenue on which the KUSF surcharge was assessed. As is typical with audits of transaction taxes/fees, GVNW tested such transactions to the actual invoices to ensure that there were no errors in billing (over or under reporting). As a result of the testing and reconciliation GVNW found no such errors.

14. ***The existence of any alleged differences/variances between a generated audit report and the monthly CRW does not render either of them inaccurate.*** Revenue amounts on the filed monthly CRWs represent actual intrastate revenue billed during the respective periods. ***AT&T Mobility experiences some timing differences when creating and generating audit reports upon request years later, as capturing the exact historic accounting period can be problematic for various reasons;*** for example, when some customer bills overlap into a previous or following month. In other words, there are times when a customer bill is held due to a particular issue and actually bills in the following month. This can be seen with the slight ups and downs in the remittance amounts on a monthly basis while on average

²² Audit Report, Audit Finding No. 2, at p.3. (Emphasis added).

amounts are reasonably consistent. Auditors generally understand the issue (audit report discrepancy or limitation) and through the testing of the detailed transactions, become comfortable with the accuracy reflected on the filings. Again, the auditor tested such transactions to the actual invoices to ensure that there were no errors in billing (over or under reporting). As a result of the testing and reconciliation the auditor found no such errors. ***Therefore, the actual intrastate revenue amounts on the monthly CRWs are actual and any variance in revenue reported on the generated audit report is explainable as varying due to the timing differences mentioned above versus an actual error in reported revenue.***

15. There is no substantial, competent or uncontroverted evidence on which the Commission can rely to conclude that AT&T Mobility's reported revenue was not "actual" intrastate revenue. As is evidenced by both AT&T Mobility's explanation of its methodology and the quoted *Audit Report* statement, the only variances found by the auditor were the result of normal operations and there were no discrepancies.

16. By definition, an audit is the "[s]ystematic inspection of accounting records involving analyses, tests and confirmations."²³ The auditor, by its own admission, through the audit process inspected, analyzed, tested and confirmed AT&T Mobility's reported actual intrastate revenue data with no revenue impact on the KUSF having been identified.²⁴ As a result, characterization of AT&T Mobility's reported intrastate revenue as anything but actual revenue is inaccurate and misleading. The Commission can only conclude that AT&T Mobility reports actual intrastate revenue.

²³ BLACK'S LAW DICTIONARY 130 (6TH ed. 1990).

²⁴ *Audit Report*, pp. 1-4.

17. Similarly, the *Audit Report's* characterization of AT&T Mobility's reported revenue as "calculated" does not make it "estimated". This is particularly true when, in fact, the report is based upon actual revenue and billing information that is testable, verifiable and auditable. It is indisputable that to some degree, all revenue is "calculated", whether actual or estimated. "Estimated revenue" can be accounted for or defined in two ways:

In accrual basis accounting it signifies the revenue **projected** to accrue during an accounting period, whether or not all of it is to be collected during that period. In cash basis accounting it signifies the amount **projected** to be collected during an accounting period.²⁵

In either case, an estimated amount is a mere "**projection**". An estimate *is necessarily always* a rough or approximate calculation, without actually weighing, measuring or similar activities.²⁶ For the purpose of reporting its monthly KUSF-assessable intrastate revenue, as described above, AT&T Mobility **does not** engage in making estimates, projections or rough or approximate calculations.

18. The *Audit Report* employs the term "calculated revenue" to negatively characterize the reporting methodology used by AT&T Mobility. As used, it clearly implies the auditor does not treat or consider "calculated revenue" to be "actual revenue".²⁷ The *Audit Report* offers no support for such treatment or any Commission authority sanctioning such a proposition or defining "calculated revenue". This distinct, unjustifiable treatment is important, because to the extent AT&T Mobility's filings are

²⁵ BusinessDictionary, <http://www.businessdictionary.com/definition/estimated-revenue.html> (last visited Oct. 15, 2017). (Emphasis added).

²⁶ BLACK'S LAW DICTIONARY 550 (6TH ed. 1990) (defining the term "estimate").

²⁷ *Audit Report*, Audit Finding No. 2 at p.3.

treated as “estimated” revenue, the quarterly true-up filing comes into play. Contrary to the assertion of Audit Finding No. 2, AT&T Mobility contends that the reporting methodology it employs results in the filing of CRWs reflecting its Kansas “actual intrastate revenue” on which the KUSF surcharge has been properly assessed. As a result, quarterly true-up filings, absent a material change or billing error correction, are unnecessary and would produce no substantively different change in revenue numbers, while triggering a significant, additional and unnecessary compliance burden.

B. The Quarterly True-Up Requirement is intended as a Penalty.

19. The *Audit Report* states that the purpose of the recommended quarterly true-up filing is for AT&T Mobility to report “actual revenue.”²⁸ To assert such an additional filing is necessary to eliminate differences the auditor previously characterized as “normal”²⁹ is what appears to be out of the norm. The true-up requirement appears to be purely related to the methodology/calculation employed by AT&T Mobility to report its actual intrastate revenues.

AT&T Mobility should be directed that, as a monthly filer that reports **estimated** revenue, it is **required to report its actual revenue** by a Quarterly True-up within 45-days after the end of the each KUSF fiscal quarter. The Company should also be reminded that **while it reports calculated revenue**, AT&T Mobility is responsible for ensuring that the assessment owed and paid to the KUSF is no less than it would be **if the Company reported its actual Kansas-specific revenues**.³⁰

²⁸ *Id.* at pp. 3-4.

²⁹ *Id.* at p. 3. “GVNW attributes this variance to **normal** billing system adjustments/churn and rounding differences. Tests of subscriber bills and other work related to this issue noted no discrepancies.” *Id.* (Emphasis added).

³⁰ *Id.* at p. 4.

The auditor's recommendation concerning the need for the quarterly true-up based on the mischaracterization of "calculated revenue" simply ignores the process described in AT&T Mobility's response to Audit Data Request 10:

Each of AT&T Mobility's upstream billing systems are set up to **identify actual KS intrastate retail revenue** on which KUSF amounts are billed and/or calculated. **These KUSF assessment amounts are recorded in the books and records and are reconciled to tax remittances.** Therefore, dividing the KUSF amounts by the KUSF assessment rate **produces the actual intrastate retail revenue identified** in the upstream systems.³¹

20. AT&T Mobility has demonstrated that, on a monthly basis, it reports "actual" intrastate revenue for KUSF purposes. In fact, the *Audit Report* correctly notes that "[t]he Company ... did file an Annual True-up for Operating Year 19 that showed **no changes** to the revenues reported to the KUSF."³² Neither the annual true-up nor the Commission-ordered KUSF Audit found any discrepancies with the actual revenues AT&T Mobility had reported throughout the year.³³

³¹ *Audit Report* Att. B at ¶1b. (Emphasis added).

³² *Audit Report* at p.3. (Emphasis added).

³³ See, supra, fn. 29. The quarterly true-up process arose as a result of several issues that are not in play in the case of AT&T Mobility. In the Direct Testimony of Sandra K. Reams on behalf of the Kansas Corporation Commission Staff, Ms. Reams testified that:

The annual true-up process is not meant to be a catch-all under which every carrier is allowed to report estimated revenue throughout the year and then report actual revenue after the end of the year. Through several carrier audits, the Commission became aware that several large carriers required to report and pay its KUSF assessments on a monthly basis were instead reporting revenue and assessments one or more months in arrears. The companies did not remit monthly revisions to report the correct revenue and assessments; instead they reported the correct revenue in April through the annual true-up process. This allowed a company to technically claim that it had reported its actual revenue during the year to the administrator, provided the annual true-up was received by April 15. However, the difference between the revenue reported each month and that reported via the annual true-up is significant for many of the large

21. It is clear from the language of the *Audit Report*, that the quarterly true-up is being imposed because of the incorrect perception or characterization of AT&T Mobility's revenue numbers as "calculated" or "estimated". If AT&T Mobility learned of any changed circumstance, rate/billing error or other event that caused a need for filing a quarterly true-up, AT&T Mobility would prepare and make such a filing. But, to the extent a "true-up" requirement is arbitrarily imposed simply to require AT&T Mobility to employ or use different accounting methodologies/calculations and incur unnecessary time and expense in preparing a true-up that will not produce substantively different results when no changed circumstances or known billing-related error exists, it is a penalty.

companies. ... Since the quarterly true-up process could affect other carriers, the Commission directed Staff to include this issue in the next KUSF assessment docket.

Direct Testimony of Sandra K. Reams on behalf of the Kansas Corporation Commission Staff, Docket No. 10- GIMT- 188-GIT, filed Dec. 23, 2009, at pp. 30-31, ls. 16-14. (Footnotes omitted). There is no allegation or finding in the *Audit Report* that AT&T Mobility is reporting its revenue and assessments in arrears. Similarly, there is no audit allegation or finding that AT&T Mobility used the annual true-up process in the manner Ms. Reams described to "technically" claim to report actual revenue. The only allegation relied upon by the *Audit Report* to justify the imposition of a quarterly true-up requirement on AT&T Mobility is the mischaracterization of reporting "calculated revenue" and Ms. Reams never discussed that in her testimony. The Commission adopted Ms. Reams reasoning in its Order and also never discussed "calculated revenue" as a basis for imposing a quarterly-true up requirement. See, Order Setting the Kansas Universal Service Fund Assessment Rate for Year Fourteen and Canceling January 20, 2010 Technical Hearing, Docket No. 10-GIMT-188-GIT, dated Jan. 14, 2010, at ¶17. There is simply no basis for requiring AT&T Mobility to file quarterly true-ups.

CONCLUSION

22. With respect to Audit Findings No. 1 and No. 3, AT&T Mobility concurs with the *Audit Report*.

23. AT&T Mobility disputes Audit Finding No. 2, for each and every of the above and foregoing reasons and respectfully requests and urges the Commission to find and conclude that: 1) through the process described in response to Audit Information Request No. 10, AT&T Mobility reports actual intrastate revenues for KUSF assessment purposes; and, 2) as a monthly filer of actual intrastate revenues the quarterly true-up process is not applicable to AT&T Mobility unless changed events or circumstances necessitate such a filing.

24. AT&T Mobility requests a hearing and/or oral argument with regard to its dispute of Audit Finding No. 2.

WHEREFORE, AT&T Mobility respectfully requests an Order of the Commission accepting and adopting AT&T Mobility's response to the *Audit Report*.

Respectfully submitted,



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Attorney for New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility

VERIFICATION

I, Janet L. Arnold, of lawful age, and being first duly sworn, now state: I am Area Manager-External Affairs, and have read Response of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility to Kansas Universal Service Fund Audit Report; Request for Oral Argument or Evidentiary Hearing, and verify the statements contained herein to be true and correct to the best of my knowledge and belief.


Janet L. Arnold

Subscribed and sworn to before me on this 16th day of October 2017.


Notary Public

My appointment expires:



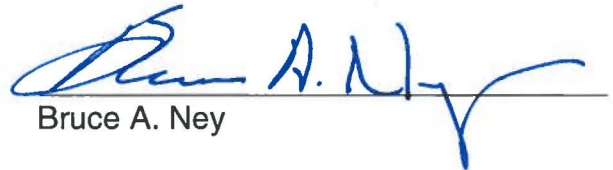
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Response of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility to Kansas Universal Service Fund Audit Report; Request for Oral Argument or Evidentiary Hearing, was sent via electronic mail on this 16th day of October 2017 to:

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