



Bruce A. Ney
AVP – Senior Legal Counsel

20170915101217
Filed Date: 09/15/2017
State Corporation Commission
of Kansas
AT&T Kansas
816 Congress Avenue
Suite 1100
Austin, Texas 78701
T: 512.457.2311
F: 512.870.3420
bruce.ney@att.com

September 15, 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 Petition of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for Reconsideration of Order Accepting and Adopting Audit Report and Closing Docket, for electronic filing in the above referenced docket.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce A. Ney".

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.)	

**PETITION OF NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T MOBILITY
FOR RECONSIDERATION OF ORDER ACCEPTING AND ADOPTING
AUDIT REPORT AND CLOSING DOCKET**

COMES NOW New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T Mobility"), pursuant to K.S.A. 66-118b, K.S.A. 2016 Supp. 77-529(a)(1) and K.A.R. 82-1-235, and hereby petitions the Kansas Corporation Commission ("KCC" or "Commission") for reconsideration of that part of its August 31, 2017 Order Accepting and Adopting Audit Report and Closing Docket in the above captioned proceeding wherein the Commission adopted Audit Finding No. 2 of the Audit Report. In support of its Petition, 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

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*").

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 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

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 ¶13.

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*”).

that AT&T Mobility is current with its KUSF obligations, identified three “reporting issues” that had “no revenue impact to the KUSF.”⁶

6. Included in the “reporting issues” identified in the Audit Report was Audit Finding No. 2, concerning a requirement that carriers are required to report actual revenues.⁷ The Audit Report stated 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 recommended:

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 noted AT&T Mobility’s disagreement with and dispute of the proposed Audit Finding:

⁶ *Id.* at pp. 1-2.

⁷ *Id.* at pp. 3-4.

⁸ *Id.* at p. 3. (Footnotes omitted).

⁹ *Audit Report* at p. 3.

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

8. On August 31, 2017, six days after the Audit Report was filed, the Commission issued its Order Accepting and Adopting Audit Report and Closing Docket.¹¹ The *Audit Report Order* adopts all of the Audit Report recommendations and findings, including everything concerning Audit Finding No. 2 and directs AT&T Mobility “to report its actual revenue by Quarterly True-up within forty-five (45) days after the end of each KUSF fiscal year quarter.”¹² The *Audit Report Order* makes no mention of AT&T Mobility’s dispute of Audit Finding No. 2 in the Audit Report.

REQUEST FOR RECONSIDERATION

A. The *Audit Report Order* denied AT&T Mobility the opportunity to dispute the Audit Report.

9. As was previously noted above, both the Commission’s *Audit Order* and the subsequent *Enlargement Order* provide for a 13-day window from the date GVNW filed the Audit Report with the Commission in which AT&T Mobility was to be allowed to file a formal, written response to the Audit Report and request a hearing, if the report was disputed.¹³ As the Audit Report reflects, AT&T Mobility disagreed with and disputed the auditor’s Audit Finding No. 2.¹⁴

¹⁰ *Id.* at p. 4.

¹¹ Order Accepting and Adopting Audit Report and Closing Docket, Docket No. 17-WSLC-019-KSF, dated Aug. 31, 2017 (hereinafter the “*Audit Report Order*”).

¹² *Id.* at ¶4; Ordering Paragraph B.

¹³ See, *supra*, ¶¶ 3-4.

¹⁴ See, *supra*, ¶ 7.

10. Under the *Audit Order*, AT&T Mobility's 13-day response period was not contingent upon the existence of a disputed audit finding. The language of the subsequent *Enlargement Order* could be read to make the opening of the 13-day window contingent upon the existence of an audit dispute and such a dispute/disagreement exists in this proceeding. Accordingly, under either Commission order, depending on how the Commission chose to count the 13-day time period pursuant to K.A.R. 82-1-217, AT&T Mobility had until at least September 6, 2017, to file a formal, written response to the Audit Report and request a hearing concerning the same. AT&T Mobility did, in fact, intend to file a formal, written response disputing Audit Finding No. 2 and request a hearing on the issue it presented.

11. The Commission's decision on August 31, 2017, to formally accept the Audit Report, just six (6) days after it was filed by the auditor, and close the audit docket, as is memorialized by the *Audit Report Order*, abruptly and without notice, improperly cut-off AT&T Mobility's previously granted right to file a formal response to the Audit Report and request a hearing on the disputed issues. As a result, AT&T Mobility has been denied the process guaranteed to it by the prior Orders in the instant proceeding; it has been effectively prevented from presenting its arguments and being heard on the disputed issue raised by Audit Finding No. 2; and, it has been prevented from making a timely request for a hearing on the disputed issue raised by Audit Finding No. 2.

12. For the reasons set forth above, the *Audit Report Order* is arbitrary and capricious, it violates the Commission's prior orders in this proceeding; denies AT&T Mobility the process and rights it was guaranteed by those prior orders; and, imposes

upon AT&T Mobility a filing “penalty” with which it disagrees, all as a direct result of the procedural and substantive violations of the prior orders by the Commission.

Accordingly, the Commission must reconsider the *Audit Report Order* as requested by AT&T Mobility.

B. The *Audit Report Order*, specifically Audit Finding No. 2, is arbitrary and capricious, not supported by substantial, competent evidence and, contains no supportable findings of fact or conclusions of law.

13. The problems with the *Audit Report Order* are cumulative and build directly upon its premature issuance and violation of the procedural and substantive rights guaranteed to AT&T Mobility by the prior orders establishing the conduct of the instant proceeding.

14. There is simply no evidence in the record to support the Commission’s adoption of Audit Finding No. 2, which was disputed by AT&T Mobility in the Audit Report. The *Audit Report Order* completely ignores and makes no mention of AT&T Mobility’s dispute of the Audit Finding. AT&T Mobility contends, had it been given the opportunity, it would have shown the Commission that it does in fact report actual intrastate revenue in compliance with KUSF requirements.

15. The auditor’s suggestion/representation in the proposed finding is nothing more than an untested characterization of AT&T Mobility’s reporting methodology that does not rise to the level of substantial, competent evidence. The Audit Report characterization misrepresents both the reporting methodology and the nature of the revenue information it reports. There is simply no evidence in the record to support the *Audit Report Order’s* conclusion that AT&T Mobility does not report actual intrastate revenues. In response to audit Data Request No. 10, which is relied upon in the Audit

Report,¹⁵ AT&T Mobility affirmatively stated that **it does** in fact report actual intrastate revenue and described the methodology, which includes the identification of “actual [Kansas] intrastate retail revenue on which KUSF amounts are billed and/or calculated” and which it uses to report that revenue. The reported amounts are not “estimated”. The filed Audit Report, despite characterizing the reported revenue as “estimated”, shows that when tested by the auditor

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 and rounding differences. Tests of subscriber bills and other work related to this issue noted **no discrepancies**.¹⁶

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 the quoted statement, the only variances found by the auditor were the result of normal operations and there were no discrepancies. The Commission’s record is insufficient to support the *Audit Report Order* when, as shown and discussed above, AT&T Mobility’s rights to challenge the Audit Report and its characterizations were cut off by the issuance of the Order itself.

16. The *Audit Report Order*, in adopting Audit Finding No. 2, imposes upon AT&T Mobility a “penalty” insofar as it determines the revenue AT&T Mobility reports to be “estimated” and seeks to remedy that by requiring the filing of Quarterly true-ups. Absent an extraordinary event or change of some underlying circumstance, AT&T

¹⁵ Audit Report at fn. 10.

¹⁶ Audit Report, Audit Finding No. 2, Finding at p.3.

Mobility would not need to make a true-up filing. Arbitrarily requiring Quarterly true-up filings, in the absence of a changed circumstance or event for AT&T Mobility, will not lead to a substantively different result. The arbitrary imposition of this unnecessary, burdensome Quarterly filing “penalty” is a direct result of a record that was not fully developed due to AT&T Mobility’s response and hearing rights having been improperly cut-off. AT&T Mobility must be allowed the opportunity to be fully heard on why such a “penalty” is not only inappropriate, but unnecessary.

17. Finally, the *Audit Report Order* and its adoption of Audit Finding No. 2 are not supported by any findings of fact or conclusions of law. The Commission never found or concluded that, as a matter of law, AT&T Mobility is not reporting actual intrastate revenue as it has no basis on which to make that determination in light of violation of the procedural and substantive rights guaranteed to AT&T Mobility by the prior orders establishing the conduct of the instant proceeding. AT&T Mobility contends the only evidence before the Commission supports a contrary finding – which is it is current with its KUSF obligations and there were no deficiencies in the revenue it reported. Accordingly, the Commission must reconsider the *Audit Report Order* as requested by AT&T Mobility.

WHEREFORE, AT&T Mobility respectfully requests an Order of the Commission granting its petition for reconsideration of that part of the Commission’s August 31, 2017 Order Accepting and Adopting Audit Report and Closing Docket in the above captioned proceeding adopting Audit Finding No. 2 of the Audit Report.

FURTHER, AT&T Mobility requests the Commission reopen the proceeding, establish a time frame for the filing of a formal, written response to the Audit Report's Audit Finding No. 2 and allow a request for hearing on the disputed issue.

Respectfully submitted,



BRUCE A. NEY (KS#15554)
AT&T Services, Inc.
816 Congress Ave., Suite 1100
Austin, Texas 78701
(512) 457-2311 (office-direct)
(512) 870-3420 (facsimile)
bruce.ney@att.com

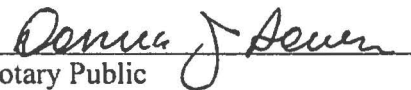
Attorney for New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility

VERIFICATION

I, Janet L. Arnold, of lawful age, and being first duly sworn, now state: I am Area Manager-External Affairs, and have read the Petition of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for Reconsideration of Order Accepting and Adopting Audit Report and Closing Docket, 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 15th day of September, 2017.


Notary Public

My appointment expires:

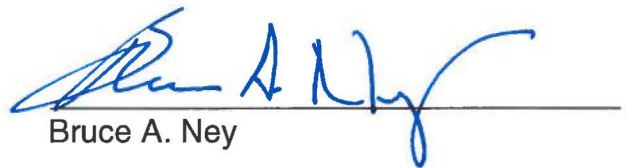


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petition of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for Reconsideration of Order Accepting and Adopting Audit Report and Closing Docket, was sent via electronic mail on this 15th day of September 2017 to:

Otto Newton, Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
o.newton@kcc.ks.gov

David G. Winter, Senior Consultant
GVNW Consulting, Inc.
2270 La Montana Way, Ste. 200
Colorado Springs, CO 80918
dwinter@gvnw.com



Bruce A. Ney