

authorized to value and assess the operating property of public utilities, which are defined to include wireless telecommunications providers like T-Mobile. *See Utah Code Ann. § 59-2-102(32)*. In this case, however, asserts T-Mobile, the issue is whether the Commission is authorized to value and assess the non-operating property of a non-utility finance company and a non-utility reinsurance company that are wholly owned by T-Mobile. In 2017, the Property Tax Division of the Commission included the non-operating income and property of the finance and reinsurance subsidiaries as part of T-Mobile's operating property. T-Mobile argues that, under Utah law, the Commission does not have statutory authority to assess the subsidiaries' non-operating property because such property is not necessary to T-Mobile providing wireless telecommunications services. Thus T-Mobile requests that the Court enter an order granting summary judgment in T-Mobile's favor and ruling that, in 2018 and future years, the Commission may not value or assess the non-operating income or property of the finance company or the reinsurance company.

The Commission's Cross-Motion for Summary Judgment

In opposition to the Motion, and in support of its Cross-Motion for Summary Judgment, the Commission notes that while T-Mobile objects to the Tax Commission's inclusion of two of its subsidiaries, TMUS Assurance and T-Mobile Financial, in valuations and assessments, T-Mobile has not pursued these issues in a valuation appeal and instead seeks declaratory relief from this Court. According to the Commission, whether TMUS Assurance and T-Mobile Financial are appropriately included in the unit cannot be decided as a matter of law. Instead, it is a fact intensive appraisal methodology question. As a result, argues the Commission, T-Mobile has failed to exhaust its administrative remedies by not pursuing a valuation appeal at the Tax Commission.

Even if it had exhausted its administrative remedies, the Commission contends there are numerous questions of material fact that require T-Mobile's Motion for Summary Judgment to be denied. Further, the Commission notes that T-Mobile asks this Court to decide as to 2019 and future year assessments on facts that do not yet exist and as a result, this aspect of T-Mobile's Motion is not ripe. Accordingly, the Commission asks this Court to deny T-Mobile's Motion and grant the Commission's accompanying Cross-Motion for Summary Judgment because, until T-Mobile exhausts its administrative remedies and limits its requests to non-hypothetical claims, this Court lacks subject matter jurisdiction.

THRESHOLD ISSUE: JURISDICTION

The Commission raises the threshold issue of jurisdiction, arguing that this Court lacks jurisdiction because T-Mobile has failed to exhaust its administrative remedies. This Court agrees that a "parties must exhaust applicable administrative remedies as a prerequisite to seeking judicial review." *Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶ 14, 34 P.3d 180 (internal quotations omitted). "The basic purpose underlying the doctrine of exhaustion of administrative remedies is to allow an administrative agency to perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies." *Western Water, LLC v. Olds*, 2008 UT 18, ¶ 18, 184 P.3d 578 (internal quotations omitted).

The rule of exhaustion applies except "in unusual circumstances where it appears that there is a likelihood that some oppression or injustice is occurring such that it would be unconscionable not to review the alleged grievance or where it appears that exhaustion would serve no useful purpose." *Nebeker*, 2001 UT 74, ¶ 14 (citation omitted).

Here, T-Mobile raises on appeal the exact issue that was raised before the Commission. It

is undisputed that T-Mobile previously filed a Petition for Declaratory Order at the Tax Commission seeking the same declaratory relief that it seeks from this Court, namely a determination whether the Commission has the statutory authority under Utah Code Ann. § 59-2-201 to assess and value T-Mobile's wholly owned non-utility subsidiaries. The Commission denied T-Mobile's request for relief, declining to determine the narrow issue of its statutory authority. The Commission reasoned that an order on its statutory authority would not completely resolve the controversy giving rise to the petition. Instead, the Commission insisted that that T-Mobile would be required to subject itself to the long and expensive process of pursuing a full valuation appeal under Utah Code § 59-2-1007 in order to determine the more narrow issue of the Commission's authority to assess the two T-Mobile subsidiaries under Utah Code Ann. § 59-2-201.

Thus, T-Mobile exhausted its administrative remedies because it is now seeking on appeal the specific relief the Commission denied through the administrative process.

T-Mobile raises a specific legal issue about statutory authority involving only two of its subsidiaries. It would be unjust and oppressive to require T-Mobile to subject itself to a complete valuation appeal of its full range of operations in order to obtain a specific determination of whether the Commission has the statutory authority to value and assess just two of its non-utility subsidiaries. On the record before this Court, it would be unconscionable not to allow T-Mobile to be able to raise the important, but more narrow issue as to the Commission's statutory authority under Utah Code Ann. § 59-2-201. *See Nebeker*, 2001 UT 74, ¶ 14.

Thus, this Court has subject matter jurisdiction over the issue raised by T-Mobile. T-Mobile properly filed the instant case as an independent declaratory judgment action in this Court under Utah Code sections 78A-5102(a) and 78B-6-401(1).

At the same time, the legal issue before the Court is ripe. The Commission admits that the income and property of TMUS Assurance and T-Mobile Financial were included in the valuation of T-Mobile's property for years prior to 2018. T-Mobile argues that such income and property should not be included in the valuation under Utah Code Ann. § 59-2-201. Under Utah law, either the Commission may include the income and property of TMUS Assurance and T-Mobile Financial, or it may not. Accordingly, there is a case in controversy and the legal question is ripe for this Court's determination.²

THE COMMISSION'S STATUTORY AUTHORITY UNDER UTAH CODE § 59-2-201
TO ASSESS TMUS ASSUANCE AND T-MOBILE FINANCIAL

As to the merits of the motion, T-Mobile argues that as a matter of law the Commission lacks statutory authority to assess TMUS Assurance and T-Mobile Financial, because they are a reinsurance company and a finance company—not public utilities or phone companies. Specifically, T-Mobile contends under Utah Code Ann. § 59-2-201, the Commission is not authorized to assess the income and property of an insurance or finance company. In support of their position, T-Mobile first contends it is not enough to merely “contribute to the income of the business,” as argued by the Commission, because virtually any asset or investment could “contribute to the income of the business,” even though a particular asset would undisputedly not be centrally assessed. Further, T-Mobile argues that the statutory language indicates that property shall be locally assessed if it is not “necessary to the conduct of *the business*” and does “not contribute to the income of *the business*.” Utah Code Ann. § 59-2-201(7) (emphasis added).

In response, the Commission argues that there is a material factual dispute about these

² The Commission also argues that any request for determination as to future years is not ripe. This raises a question about the proper scope and effect of a potential decision that the Court may issue in this case. Having determined that the underlying issue of the Commission's statutory authority is ripe, the Court defers a ruling about the proper scope and effect of any ultimate decision in this case. The Court declines to resolve this issue until after receiving and weighing all the evidence in this case.

issues, based (at least in part) on T-Mobile's own public admissions.

T-Mobile's Statement of Facts and the Commission's Responses

The following facts submitted by T-Mobile are undisputed, except as the Commission's response is noted below:

1. T-Mobile is a wireless telecommunications provider offering wireless telecommunications services throughout the United States. *See* Declaration of Dmitriy Matsyshen ("Matsyshen Decl.") ¶ 1.

2. T-Mobile started operating under the name of VoiceStream Wireless PCS in 1994. *Id.* ¶ 2.

3. T-Mobile's taxable, tangible operating property is centrally-assessed by the Commission for ad valorem taxation purposes in the State of Utah. *Id.* ¶ 3. In particular, the Division, as part of its delegated duties from the Commission, values T-Mobile's tangible operating property using a cost approach and an income approach and apportions the value to the counties in which T-Mobile operates. *Id.* The individual counties then assess property tax and collect the tax. *Id.*

Response: The Commission notes that it may consider a market approach, but in recent years has weighted only the cost and income approaches.

4. T-Mobile's customers, like any wireless company customers, have the option to purchase insurance for their handsets (mobile phones) through third-party insurance companies. *Id.* ¶ 4.

5. Similar to other insurance policies, these policies are often reinsured by a reinsurance company (so the insurance risk is diversified among more than one insurance company). *Id.* ¶ 5.

6. Prior to 2010, any such reinsurance for handsets where T-Mobile provides wireless

telecommunications services was provided by third-party reinsurance companies unrelated to T-Mobile. *Id.* ¶ 6.

7. Beginning in 2010, T-Mobile formed TMUS Assurance to give third-party insurers another option for reinsurance, in competition with other third-party reinsurers. *Id.* ¶ 7. TMUS Assurance provides reinsurance to third-party insurers who provide insurance for handsets where T-Mobile provides wireless telecommunications services. *Id.* TMUS Assurance does not provide any insurance coverage directly to any wireless customers for their handsets. *Id.*

8. TMUS Assurance was organized and incorporated in the State of Hawaii. *Id.* ¶ 8.

9. Prior to 2014, if T-Mobile's customers chose to finance the purchase of a handset, they were able to obtain financing for their purchase through third-party finance companies or banks unrelated to T-Mobile. *Id.* ¶ 9.

Response: The Commission responds by asserting that T-Mobile customers, as well as other cell phone providers, also had the option to obtain financing for handsets through T-Mobile.

10. Beginning in 2014, T-Mobile formed T-Mobile Financial to give customers another option to finance the purchase of handsets in competition with other third-party finance companies. *Id.* ¶ 10. T-Mobile Financial provides financing to customers for the purchase of handsets where T-Mobile provides wireless telecommunications services. *Id.*

Response: The Commission points out statements by T-Mobile in its 10-K Forms (discussed below) stating that T-Mobile and its subsidiaries operate as a single operating unit.

11. T-Mobile Financial was organized and incorporated in the State of Delaware. *Id.* ¶ 11.

12. Neither TMUS Assurance nor T-Mobile Financial has registered with any state or governmental agency as a public utility. *Id.* ¶ 12. TMUS Assurance and T-Mobile Financial

provide no services to customers other than reinsurance and financing for handsets. *Id.*

Response: The Commission points to the 10-K statements of T-Mobile (discussed below) suggesting that it and its subsidiaries operate as a single operating unit.

13. In the 2017 assessment, the Division included the property and income of TMUS Assurance and T-Mobile Financial into the assessment of T-Mobile's operating property by using the consolidated property and income numbers reported in T-Mobile's 2016 10-K. *Id.* ¶ 13. The 2016 T-Mobile 10-K property and income numbers include TMUS Assurance and T-Mobile Financial *Id.* For example, in its 2016 10-K, T-Mobile reported operating income of [REDACTED] *Id.* This amount included income from TMUS Assurance of [REDACTED] and T-Mobile Financial of [REDACTED] *Id.*

Response: The Commission agrees that it used the T-Mobile operating revenue and expenses reported in its 10-K's, and that this would have included all of the property and income of the subsidiaries identified in Exhibit 21.1 of the 10-K. Whether the [REDACTED] figure included the income of TMUS Assurance and T-Mobile financial, asserts the Commission, depends on whether intercompany transactions resulted in some of the income being washed out when consolidated in the 10-K.

14. Rather than using [REDACTED] in operating income as reported by T-Mobile, the Division used [REDACTED] *Id.* ¶ 14. The difference between the T-Mobile reported operating income and the operating income used by the Division was [REDACTED], which is the sum of the in the TMUS Assurance and T-Mobile Financial operating income. *Id.*

Response: The Commission agrees that it used T-Mobile's operating revenue and expenses from the 10-K's, but that the contributory value from non-Utah property was removed through the Utah allocation factor and not represented in the Utah assessed value.

15. For property, the Division used the total property and equipment and accumulated depreciation and amortization reported in T-Mobile's 2016 10-K with the only adjustment to use the present value of construction work in progress. *Id.* ¶ 15. While the amounts were de minimis, TMUS Assurance and T-Mobile Financial property was included in the 2017 assessment. *Id.*

Response: The Commission agrees that it used property figures for T-Mobile as a whole, but that non-Utah property was removed through the Utah allocation factor and was not represented in the Utah assessed value.

16. TMUS Assurance and T-Mobile Financial can legally reinsure and finance mobile handsets that operate under wireless plans of other wireless companies. *Id.* ¶ 16.

Response: The Commission asserts that it is not clear that this is correct, but does not explain why.

17. TMUS Assurance and T-Mobile Financial have provided reinsurance and financing with respect to mobile handset purchases from both T-Mobile retail outlets, and from independent, third-party retailers who sell T-Mobile wireless service. *Id.* ¶ 17.

18. The taxable, tangible property of TMUS Assurance and T-Mobile Financial consists of office equipment such as computers and desks. *Id.* ¶ 18. TMUS Assurance and T-Mobile Financial do not own or use real or personal property in Utah. *Id.*

19. The taxable, tangible properties of TMUS Assurance and T-Mobile Financial are subject to applicable property taxes in the states where such properties are physically located. *Id.* ¶ 19.

20. None of the tangible property owned by TMUS Assurance and T-Mobile Financial is necessary for the provision of wireless telecommunications services that is provided by the wireless telecommunications utility T-Mobile. *Id.* ¶ 20.

Response: The Commission states that T-Mobile and its subsidiaries have elected to operate as an integrated business, and its subsidiaries facilitate its provision of telecommunication services. Further, the Commission claims that property is used to generate operating revenue and expenses that are included in T-Mobile US, Inc.'s operating income

21. T-Mobile has substantial property that is necessary to the operation of its business as a telephone corporation and cellular telephone provider, including towers, switches, radio equipment, antennas and cabling. *Id.* ¶ 21.

22. Prior to 2010 and 2014, the years of formation for TMUS Assurance and Finance Co., respectively, T-Mobile operated its business as a telephone corporation and cellular telephone provider without the property of TMUS Assurance or T-Mobile Financial being included within the T-Mobile corporate umbrella, and does not now use such property in its business as a telephone corporation and cellular telephone provider. *Id.* ¶ 22.

Response: The Commission asserts that TMUS Assurance and T-Mobile Financial are a part of an integrated business and facilitate T-Mobile's provision of telecommunication services. Also, the later addition of these entities under the T-Mobile umbrella does not suggest that such entities are not necessary to provide telecommunications service, but rather that such entities have become necessary to stay competitive in the provision of telecommunications services.

23. TMUS Assurance and T-Mobile Financial are separate and independent from T-Mobile's operations in providing telecommunications services and operating as a telephone corporation. *Id.* ¶ 23.

Response: The Commission states that TMUS Assurance and T-Mobile Financial are a part of an integrated business that presents itself as operating as a single operating segment. And, "the balances and results of operations of T-Mobile and our consolidated subsidiaries" are

consolidated in their publicly available financial statements. Miles Decl., Exh. A (T-Mobile US, Inc., Annual Report (Form 10-K), p. 54 (Feb. 14, 2017)).

24. If it chose to, as it did prior to 2010 and 2014, T-Mobile could continue to function as a telephone corporation and cellular telephone provider with its customers obtaining any desired handset financing solely through third-party companies, and the third-party insurance companies obtaining any desired reinsurance through third-party reinsurers. Matsyshen Decl. ¶ 24. In this respect, TMUS Assurance and T-Mobile Financial are not necessary to T-Mobile's provision of telecommunications services to customers. *Id.*

Response: The Commission references its prior responses about evidence that T-Mobile and its subsidiaries operate as an integrated unit.

Factual Dispute about T-Mobile's Relationship with Its Subsidiaries

As suggested by the responses to T-Mobile's statement of facts (particularly ¶¶ 10, 13, 20, 22, 23 and 24), the Commission raises a material factual dispute about whether TMUS Assurance and T-Mobile Financial can be valued and assessed as public utilities under Utah Code Ann. § 59-2-201. T-Mobile's own 10-K statements contain admissions about the integrated nature of T-Mobile and its affiliates that, at a minimum, raise a material question of fact about whether TMUS Assurance and T-Mobile Financial are an integrated part of a phone company.

T-Mobile's 10-K characterizes the subsidiaries as being an integrated part of its operations:

T-Mobile US, Inc. ('T-Mobile,' 'we,' 'our,' 'us,' or the 'Company') together with its consolidated subsidiaries, is a leading provider of mobile communication services, including voice, messaging and data, under its flagship brands, T-Mobile and MetroPCS in the United States ("U.S."), Puerto Rico and the U.S. Virgin Islands.

...

The consolidated financial statements include the balances and results of operations of T-Mobile and our consolidated subsidiaries. We operate as a

single operating segment.

Miles Decl., (T-Mobile US, Inc., Annual Report (Form 10-K), p. 54 (Feb. 14, 2017)).

Thus, T-Mobile's own 10-K statements raise a material factual dispute barring summary judgment.

ORDER

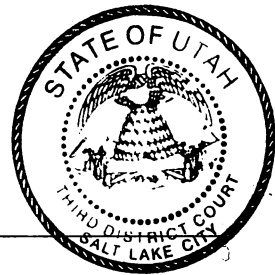
Based upon the foregoing, IT IS HEREBY ORDERED that both T-Mobile's and the Commission's cross-motions for summary judgment are DENIED.³

DATED *as of* July 26, 2018, *nunc pro tunc*.

BY THE COURT:



KEITH A. KELLY
DISTRICT COURT JUDGE



³ This Memorandum Decision constitutes the Order regarding the matters addressed herein. No further order is required under Utah R. Civ. P. 7.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 180900300 by the method and on the date specified.

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11/21/2018

/s/ DENICE RICHARDS

Date: _____

Deputy Court Clerk