

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T-17542
November 10, 2016**

RESOLUTION

Resolution T-17542. Approval of the Mobile Telephony Services surcharge rates to be assessed on the total sales price of prepaid wireless telephone service effective January 1, 2017.

SUMMARY

This resolution adopts the 2017 prepaid Mobile Telephony Services (“MTS”) surcharge rates to recover the California Public Utilities Commission’s (“Commission” or “CPUC”) Public Purpose Program Surcharges and User Fee, as well as the costs associated with the administration of the prepaid Mobile Telephony Services surcharge. These new rates are effective January 1, 2017 through December 31, 2017. They are to be assessed on the total sales price of prepaid wireless telephone service and collected from end-users in California. The aggregate of these rates, the Commission’s prepaid Mobile Telephony Services surcharge intrastate adjusted rate, is 5.15%. The 2016 MTS adopted rate was 8.51%.

BACKGROUND

Public Purpose Program Surcharges and User Fee

There are numerous surcharges, taxes, and fees assessed on telecommunications services by the State of California, city and county governments, and federal agencies. These charges are collected from end-use customers by telecommunications carriers who then must remit these funds to the appropriate authorities.

This Commission is responsible for the administration of the State’s Public Purpose Program Surcharges and the Commission’s User Fee, both of which are required to be assessed on intrastate telecommunications services sold in California.

There are presently six Commission mandated telecommunications all-end-user surcharges supporting various telecommunications public purpose programs in California. The all-end-user surcharge rates vary from program to program and are adjusted periodically based on the forecasted demand of the programs. These surcharges are generally assessed by carriers as a percentage of a customer's bill. After collection by the carrier, the surcharges are remitted to the Commission.

The Commission's Public Purpose Program Surcharges are set forth in Public Utilities Code Sections 270 to 281¹ and includes the following six programs:

- **Universal Lifeline Telephone Service (ULTS):** provides discounted home phone and cell phone services to qualified households.
- **Deaf and Disabled Telecommunications Program (DDTP):** provides telecommunications devices to deaf or hearing impaired consumers.
- **California High Cost Fund-A (CHCF-A):** provides subsidies to 13 small local exchange carriers (LECs) for providing telephone service to residential customers in rural high-cost areas.
- **California High Cost Fund-B (CHCF-B):** provides subsidies to carriers of last resort (COLRs) for providing telephone service to residential customers in rural high-cost areas.
- **California Teleconnect Fund (CTF):** provides a discount on select communications services to schools, libraries, hospitals, and other non-profit organizations.
- **California Advanced Services Fund (CASF):** supports the deployment of broadband facilities and adoption of broadband services in unserved and underserved areas through project specific grant funding.

Article 3, Sections 431 to 435 set forth the User Fee, also collected from end-use customers by telecommunications carriers, which the Commission is authorized to assess on intrastate telecommunications services. The CPUC collects the annually-established user fee from all telephone corporations providing services to end users within California. Revenues collected in the form of this fee fund the Public Utilities Commission Utilities Reimbursement Account, which provides the Commission's operating budget. The amount to be paid by each telecommunications corporation is

¹ All section references hereafter are to the Public Utilities Code unless otherwise stated.

determined by multiplying the User Fee factor by end-user intrastate telecommunications service revenues.

Assembly Bill 1717

The *Prepaid Mobile Telephony Services Surcharge Collection Act* (“The Act”) was enacted by Assembly Bill 1717 (Chapter 885, Statutes 2014, Perea).² The Act requires an entirely separate point-of-sale mechanism for the collection and remittance of the taxes and fees assessed on prepaid wireless telephone service.³ This mechanism collects the following charges:

- Commission Public Purpose Program Surcharges,
- Commission User Fee,
- Emergency Telephone Users (911) Surcharge, and
- Local Charges (e.g. UUT)

The Act aggregates the surcharges, taxes and fee listed above and creates the prepaid Mobile Telephony Services (MTS) surcharge⁴ that is required to be imposed on prepaid wireless telephone services in lieu of the individual fees. The Act became effective January 1, 2016 and remains in effect until January 1, 2020.

For those sales defined as “**indirect**,”⁵ or sales transacted by a third party retailer, the Act directs a specific collection, reporting, and remittance process. That process requires the prepaid MTS surcharge to be collected at the point of sale by the third party retailer, rather than by the telephone corporation, as previously required. The retailer then must report and remit those monies collected from customers to the Board of Equalization (BOE), less 2% of the MTS surcharge revenue the retailer collected. The Act authorizes this 2% hold back to compensate the retailer for its duties to collect, report, and remit the MTS surcharge to the BOE.

² The Act added § 319 to the Public Utilities Code and added and/or modified multiple sections of the Revenue and Taxation Code relating to telecommunications.

³ AB1717 refers to these services as “prepaid mobile telephony services.”

⁴ “Prepaid MTS surcharge,” “MTS surcharge,” “prepaid Mobile Telephony Services surcharge,” and “MTS” all have the same meaning.

⁵ An indirect sale includes, any sale made at a third party retailer not affiliated with or acting as an agent of the, telephone corporation or VoIP provider.

The Act also permits the BOE to recover its costs of administration and collection of the MTS surcharge from the agencies and localities for which it has collected revenues. The BOE allocates those expenses, on a pro-rata basis, dependent on the amount of fee revenue it has collected for that agency. Lastly, the BOE is required to remit the resulting funds to the appropriate agency or local jurisdiction for whom they were collected.

For those monies due to the Commission, the BOE is required to deposit funds into the Prepaid MTS PUC Account. The Commission is then responsible to disperse those monies to the individual public purpose program and user fee accounts that it administers.

The Act requires the MTS surcharge to be assessed on intrastate prepaid wireless services subject to surcharge. For those sales that are “**direct**,”⁶ or sales transacted directly with the prepaid wireless carrier, these telephone corporations must continue to collect and remit the individual fees to the appropriate state agency or locality as has been required. For example, prepaid wireless telephone corporations will continue to remit the Emergency Telephone Users (911) Surcharge to the Board of Equalization and the local charges to the local jurisdiction.

The telephone corporation providing prepaid wireless service will directly remit to the Commission the public purpose program surcharges and user fee at MTS rates (e.g., 5.15% for 2017). More specifically, the Act requires a carrier to report to the Commission its direct prepaid wireless intrastate revenue subject to surcharge and remit the accompanying fees and to additionally report its total prepaid wireless service revenue.⁷ It also provides the Commission with authority to require any other reporting it determines is necessary.⁸ The required mechanism for reporting and remitting surcharges and user fees to the CPUC is through the Telecommunications and User Fee Filing System (TUFFS).⁹

⁶ A direct sale is one made by the provider, or its agent, to the end user. This would include online sales, sales through a telephone corporation or VoIP provider’s Interactive Voice Response or customer service channel, sales over an enabled handset, or sales at a retail location owned or controlled by the telephone corporation or VoIP provider, or the agent of same.

⁷ § 319(g)

⁸ *Ibid.*

⁹ <http://www.cpuc.ca.gov/surcharges/>. TUFFS requires wireless carriers to report separately the following revenues subject to surcharge: total postpaid revenue, direct prepaid revenue and indirect prepaid revenue.

Prepaid Wireless Market

The Act does not apply to the sale of wireline, VoIP, post-paid wireless, or any other type of telecommunications services sold in California. Therefore, only being applicable to prepaid wireless telephone services, the new prepaid MTS surcharge will be applied to about 14.07% of the telecommunications service revenue subject to State surcharges and fees, according to the Commission’s most recent data.

As shown in Chart 1 below, 62.82% of prepaid wireless sales are transacted via a direct sale from the telephone corporation which provides the services.¹⁰ This means that the vast majority of prepaid customers likely purchase their services by automatic billing, online, over the phone or by another means that is administered by the telephone corporation.

The remaining 37.18% of prepaid wireless customers in California are purchasing prepaid wireless phone cards at a third party retailer to procure services. See Chart 1. This is the market segment that the MTS surcharge collection and remittance process was designed to collect from. According to 2016 data reflected in Chart 1, indirect sales annually account for about 5.23% of those surcharges and fees collected by the Commission from wireless telephone corporations.

Chart 1: California Telecommunications Market by Service and Sales Type

Market Percentage by Service Type		
Service	% of market segment	% of all Telco
All Telco	100.00%	100.00%
Non Wireless	45.81%	45.81%
Wireless	54.19%	54.19%
% of wireless- Postpaid	74.03%	40.12%
% of wireless- Prepaid	25.97%	14.07%
% of Prepaid-Direct Sale	62.82%	8.84%
% of Prepaid-Indirect Sale	37.18%	5.23%

¹⁰ Data derived from the CPUC’s TUFFS, User Fee Filing System and wireless carrier data requests.

DISCUSSION

Calculating the MTS Surcharge

The Act requires the Commission to start the calculation of the new prepaid MTS surcharge rates, which became effective on January 1, 2016, and to notify the BOE and Office of Emergency Services of the rates, as well as the method used for calculation. The Commission starts the annual calculation of the MTS surcharge rates by October 1st and posts notice by October 8th, until the Act becomes inoperative in 2020.

The Act directs the Commission to prepare a resolution, or other public document, to provide public notice of the proposed MTS rates and to adopt the proposed rates. In response to this requirement, this resolution provides the methodology and specific calculations used to arrive at the new prepaid MTS surcharge rates for 2017, which is 5.15%. The proposed rates are to be assessed on the total sale price of prepaid wireless telephone services in California.

Although the Act shifts certain surcharge collection activities to the BOE, due to the bifurcation of the collection and remittance process for surcharges and user fees between prepaid wireless services and all other services, the Act has resulted in increased costs and administrative activity for the Commission. The State legislature authorized the CPUC to hire additional staff and develop new systems and business processes for the special MTS surcharge. This includes, but is not limited to, eight staff persons and at least two new processes, one for those fees required to be remitted directly by prepaid wireless carriers and another for those funds collected by the BOE.

The prepaid MTS surcharge rates are inevitably different from the public purpose program and user fee rates, as they are authorized to also recover the current program costs, as well as the additional cost to administer the MTS surcharge. These additional costs include both the BOE and Commission related expenses incurred in administering the new MTS surcharge, as well as compensation to third party retailers.

MTS Expenses Subject to Recovery

The Commission implemented the first MTS surcharge rates on January 1, 2016 to recover the California Public Utilities Commission's Public Purpose Program Surcharges and User Fees, as well those costs associated with the implementation and administration of Assembly Bill 1717. The Commission's expenses recovered in the 2016 MTS surcharge are approximately \$4.4 million.

The Commission’s ongoing administrative costs subject to recovery through the 2017 prepaid MTS surcharge are approximately \$838,161. The decrease in recoverable costs is the result of the Commission completing program implementation and only needing to recover ongoing administrative expenses.

As previously discussed, for the indirect sale of prepaid wireless services, retailers are responsible to report and remit the MTS surcharges collected to the BOE. The BOE is then responsible to remit those monies to the appropriate state and local agency for whom they have been collected. Those agencies for which the BOE collects fees and surcharges under the new MTS process include the Commission for its surcharges and user fee, the Office of Emergency Services for the Emergency Telephone Users (911) Surcharge and local governments for their local charges. The BOE’s expenses related to this collection are allocated to each agency for which the BOE collects the MTS surcharge, based on each agency’s pro-rata share of the MTS revenues.

As identified in its Budget Change Proposal for Fiscal Year 2015/2016¹¹ the BOE estimates its total MTS surcharge administration and collection expenses will be \$2.6 million in FY 2016-17. As shown in Chart 2, based on 2016 year to date surcharge and fee revenue collected by BOE through the MTS surcharge (from indirect sales at third party retailers), the Commission estimates its pro-rata share of BOE’s administrative expenses at present rates to be 43.27%,¹² for a total of \$1,125,020 as shown in Chart 3.

Chart 2: Projected MTS Surcharge Revenue Collected by the BOE¹³

Prepaid Wireless Fee Revenue -from indirect sales		
Agency and Fees	Fee Revenue	Percentage
Emergency Telephone Users (911) Surcharge	\$3,000,000	3.70%
CPUC Public Purpose Program Surcharges and User Fee	\$35,079,000	43.27%
Local utility user taxes (UUT)s	\$43,000,000	53.03%
Total	\$81,079,000	100.00%

The last expense item the Commission’s MTS surcharge rates must recover is the retailer compensation. The Act compensates those third party retailers who sell prepaid wireless telephone services. The Act provides that a retailer may retain 2% of the MTS surcharge revenues collected as compensation for collecting, reporting, and remitting

¹¹ BOE MTS Budget Change Proposal for Fiscal Year 2015-2016.

¹² This is the addition of surcharges and user fees that are the CPUC’s percentage of BOE’s expenses.

¹³ BOE data in Chart 2 represents two quarters for 2016 estimated to reach annualized 2016 totals.

the MTS surcharge to the BOE. Direct sales are not subject to the 2% retailer compensation. Based on reporting from BOE, the Commission estimates its share of the third party retailer compensation for those services sold via an indirect sale will total approximately \$715,984¹⁴ or 2% of the \$35,079,000¹⁵ in CPUC fee revenue collected. The Commission therefore estimates that the total expense it will incur for administration of the prepaid MTS surcharge in 2017 will be \$2,679,165, as shown in Chart 3 below. This is the amount subject to recovery in the 2017 MTS surcharge rates. As stated, this is the cost to collect only prepaid wireless service revenues, or 13% of those fees which are collected within the current mechanism. This translates to a cost of collection, specifically for the prepaid MTS surcharge, of approximately 0.04 cents per dollar collected, as compared to the cost of .002 cents per dollar collected, for all other surcharges and fees.

Chart 3: Expenses Subject to Recovery in the Commission’s MTS Surcharge rates¹⁶

MTS Surcharge Expenses	
Source	Amount
	\$1,125,020

Prepaid Wireless Billing Base

Establishing the Commission’s telecommunications public purpose program surcharge and user fee rates has traditionally only required the identification of California’s total intrastate billing base from which surcharges are to be assessed. However, unlike the standard surcharge and user fee rates, the MTS surcharge is only to be assessed on the total sales price of prepaid wireless telephone service. Therefore, in establishing the billing base subject to the MTS surcharge, the Commission identifies the sub-set of the intrastate telecommunications market that represents pre-paid wireless revenues subject to surcharge in California. As identified in Chart 4 below, in 2016 prepaid

¹⁴ Estimated total of surcharge expenses collected by BOE , may not be exactly 2% of \$35,079,000.

¹⁵ Estimated total of revenue collected by BOE on behalf of the CPUC at the current surcharge and user fee rates. The percentage assessed at the current rates is 8.51%.

¹⁶ BOE and Retailer data in Chart 3 represents two quarters for 2016 estimated to reach annualized 2016 totals.

wireless accounted for \$1,762,454,332 of the California telecommunications market revenue subject to surcharge.

Chart 4: California Intrastate Telecommunications Revenue Subject to Surcharge

Telco Revenue by Service Type	
Service	Revenue
All Telco	\$12,524,473,726
Non Wireless	\$5,737,594,001
Wireless	\$6,786,879,725
Postpaid Wireless	\$5,024,425,393
Prepaid Wireless	\$1,762,454,332
Direct Sale-Prepaid wireless	\$1,107,192,471
Indirect Sale-Prepaid Wireless	\$655,261,861

The prepaid wireless billing base estimate is derived from 2016 surcharge payment and revenue reporting data collected by the Commission through TUFFS and the reporting of MTS remittances to the CPUC by BOE.

MTS Surcharge Rates

The current rates of the six public purpose program surcharges and user fee are listed in Chart 5, column (b), below. The surcharge rates vary from program to program, and are adjusted periodically in response to over or under collection, changes in program demand, or projected changes in expenses or revenues. These rates do not include recovery of the expenses related to administration of the MTS surcharge. The resolutions approving these surcharge rates¹⁷ and the user fee¹⁸ can be found on the Commission's website.

The MTS rates shown below in column (c) of Chart 5 reflect the adjustments to the standard surcharge rates and user fee. These adjustments to the standard rates are necessary to recover the additional \$2,679,165 expense directly related to administration of the new prepaid MTS surcharge. To arrive at the additional MTS increment per program, the MTS costs were allocated based on the Commission adopted program budgets for each of the public purpose programs and the user fee.

¹⁷ <http://www.cpuc.ca.gov/general.aspx?id=1124>

¹⁸ <http://www.cpuc.ca.gov/General.aspx?id=11120>

In an effort to ensure that all customers purchasing prepaid wireless telephone services are assessed the MTS surcharge in an equitable manner, the Commission has modified the MTS rates for 2017. For 2017, the MTS surcharge is to be assessed on the total sales price rather than only the intrastate portion, as the rate has now been pre-adjusted by an intrastate allocation factor. Therefore, regardless of the purchase method, location, or seller type, the customer will pay one universal rate.

The 2017 prepaid MTS surcharge and user fee rates listed below in column (d) shall be assessed on the total sales price of prepaid wireless telephone service subject to surcharge in California from January 1, 2017 through December 31, 2017.¹⁹ The aggregate of these rates, the Commission's MTS intrastate adjusted surcharge rate, is 5.15%. This rate does not include either the Emergency Telephone Users (911) Surcharge or the local charges, which must also be assessed as part of the greater MTS surcharge. The total MTS surcharge will be calculated and posted by the BOE prior to January 1, 2017.

The Commission's proposed 2017 MTS rate of 5.15% is less than the 2016 adopted rate of 8.51% due to three factors. First, program implementation costs were included in the 2016 rate, which by the end of the year will have been fully recovered. Second, the newly proposed rate has been adjusted by an intrastate factor of 72.75%²⁰ which allows it to be applied to the entire sales price of prepaid wireless services. Finally, the reduced underlying surcharge rates of two public programs, ULTS and CASF, have been reduced since the MTS rates were set for 2016.

¹⁹ See Revenue and Taxation Code § 42018 (a), which states: "Except as provided in subdivisions (b) and (c), if prepaid mobile telephony services are sold in combination with mobile data services or any other services or products for a single price, then the prepaid MTS surcharge and local charges shall apply to the entire price."

²⁰ The California intrastate factor for prepaid wireless services was calculated to represent that portion of prepaid wireless service revenue subject to the MTS surcharge. This therefore excludes interstate, international, and non-jurisdictional revenues.

Chart 5: California Telecommunications Surcharge and User Fee Rates

2017 CPUC MTS Surcharge and User Fee Rates										
CPUC Program		Base Rates 1/1/2017		Additional Increment for MTS		MTS Rates 2016		Intrastate Factor		Adjusted Percentage
(a)		(b)	+	(c)	=	(d)				
Universal Lifeline Telephone Service (ULTS)		4.75%	+	0.1206%	=	4.8706%	*	72.75%	=	3.54%
Deaf and Disabled Telecommunications Program (DDTP)		0.50%	+	0.0127%	=	0.5127%	*	72.75%	=	0.37%
California High Cost Fund-A (CHCF-A)		0.35%	+	0.0089%	=	0.3589%	*	72.75%	=	0.26%
California High Cost Fund-B (CHCF-B)		0.00%	+	0.0000%	=	0.0000%	*	72.75%	=	0.00%
California Teleconnect Fund (CTF)		1.08%	+	0.0274%	=	1.1074%	*	72.75%	=	0.81%
California Advanced Services Fund (CASF)		0.00%	+	0.0000%	=	0.0000%	*	72.75%	=	0.00%
California Public Utilities Commission User Fee		0.23%	+	0.0058%	=	0.2358%	*	72.75%	=	0.17%
Total		6.91%	+	0.1754%	=	7.0854%	*	72.75%	=	5.15%

MTS Surcharge Reporting and Remittance for Direct Sales

The MTS surcharge monies from direct sales are due in accordance with the Commissions surcharge and user fee reporting and remittance rules. Therefore, reporting and remittance schedules, late payment fees, reporting and remittance methods and any other rules that specify these and/or other requirements of how, when, and where to remit and report surcharges and user fees will apply to all prepaid MTS surcharges and user fees due directly to the Commission.

Furthermore, the Act makes explicit the obligations of telephone corporations offering prepaid wireless telephone services. It directs carriers to report direct prepaid wireless intrastate revenue subject to surcharge and then remit the accompanying fees to the Commission. The Act also requires carriers to report total prepaid wireless service revenue to the Commission²¹ and authorizes the Commission to specify those reports it may require.²²

²¹ Pub. Util. Code § 319 (5) (f-h).

²² Revenue and Taxation Code § 42010.

Therefore, in accordance with Commission Decision 98-01-023 and General Order 153 (11.4), surcharge monies must be reported and remitted no later than 40 days following the close of the reporting period. Carriers that report and/or remit directly the surcharge monies after the due date will be assessed a penalty equal to an annual interest rate of 10%. The penalty is to be assessed on the surcharge amount due, including any adjustments, starting from the 41st day after the close of the reporting period to the date that the carrier reports or surcharge monies are remitted, whichever is later. Additional instructions regarding how to use the online system to report and remit payments can be found in the TUFFS and EFT payment system user guides located on the Commission's website.²³

The User Fee amounts due as part of the MTS surcharge will continue to follow the reporting and remittance rules as established in Section 405. Therefore, telephone corporations providing prepaid wireless telephone services are required to remit the User Fee amount due on a quarterly basis by the 15th of April, July, October, and January. User Fees remitted later than 30 days after the reporting period continue to be subject to a penalty of up to 25% of the unremitted amount.

All reporting and remittances are subject to audit verification by the Commission or Commission designee(s).²⁴ Carriers are expected to maintain data for at least five (5) calendar years, unless otherwise specifically authorized by a CPUC order or a director's letter. Carriers that are 90 days or more in arrears in reporting and remitting surcharges, or 30 days for user fees, may be subject to administrative or judicial collection actions and/or revocation of their authority to operate in California.

Customer Disclosure

Pursuant to the Act, specifically Rev. and Tax. Code § 42010(i), "[t]he amount of the combined prepaid MTS surcharge and local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile telephony services by the seller, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction." We interpret this to mean that disclosure of the prepaid MTS surcharge/taxes/fees by a prepaid wireless telephone corporation must occur at the time payment is received for any prepaid wireless service sold in California that is subject to the MTS surcharge. In other words, each purchase

²³ <http://www.cpuc.ca.gov/surcharges/>

²⁴ See Pub. Util. Code § 274 which states, "commission may on its own order, whenever it determines it to be necessary, conduct financial audits."

by the customer constitutes a prepaid mobile telephony service “retail transaction” because that is when the customer has paid in advance for the right to utilize a particular prepaid wireless service plan.²⁵

Implementation Issues

Pursuant to Pub. Util. Code Section 319(g), carriers are required to report their intrastate revenues as directed by the Commission.²⁶ For example, carriers must report their “total state mobile telephony service revenue.”²⁷ The Commission therefore requires that carriers provide both their prepaid and non-prepaid mobile telephony service revenues, in addition to their direct and indirect prepaid mobile telephony service revenues.

We remind carriers that they are required to adhere to all requirements of statute and directions of the Commission as they relate to the assessment, collection, remittance, and reporting of the MTS surcharge. For those carriers who have failed to implement the surcharge in a timely manner, have failed to properly disclose the surcharge to their customers, and/or have failed to report MTS revenues to the Commission, they may be subject to penalties.

We intend to issue a separate resolution that will address specific fees and penalties related to carrier noncompliance with the Act, including Commission resolutions implementing the Act. We further remind carriers that they remain subject to the penalty provisions of Pub. Util. Code sections 2107 and 2108 for non-compliance with the Public Utilities Code, this Commission’s rules, decisions, and orders, and any other applicable laws affecting public utilities where enforcement is not specifically vested in another officer or tribunal.²⁸

²⁵ Revenue and Taxation Code § 42004(o) defines a “retail transaction” to mean “the purchase of prepaid mobile telephony services, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a ‘purchase’ means any transfer of title or possession, exchange, or barter, conditional or otherwise.” R&T Code § 42004(k) defines “Prepaid mobile telephony services” to mean “the right to utilize a mobile device for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars.”

²⁶ Pub. Util. Code § 319(g)(1) and (2).

²⁷ Pub. Util. Code § 319(g)(2).

²⁸ Pub. Util. Code §§ 2107, 2108; *see also* Pub. Util. Code § 2101, which states: “The commission shall see that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that

Chart 6: Indirect Revenue Reporting of the MTS surcharge

Indirect Revenue Reporting			
Reported for 2016	CPUC (TUFFS)	BOE	Difference of CPUC and BOE report
MTS - Indirect Revenue	\$655,261,860.70	\$419,859,102.78	\$235,402,757.92
MTS- Surcharges	\$55,762,784.35	\$31,492,950.68	\$24,269,833.67

As previously discussed, for the indirect sale of prepaid wireless services, third party retailers are responsible to report and remit the MTS surcharge to the BOE. However, data in Chart 6 highlights a serious potential collection issue. According to new reports provided by the BOE to the CPUC, for those MTS surcharges it collects on behalf of the CPUC, it appears that third party retailers may be failing to comply with the Act. A comparison of indirect reporting data shows that third party retailers will have under reported more than \$235 million in revenue subject to the MTS surcharge and BOE will have collected \$24 million less in MTS surcharges in 2016 when compared to that information reported to the CPUC by prepaid wireless telephone corporations for which the third party retailers are selling services. Although we make no adjustments to the 2017 rate in response to the identified issue, this shortfall, may require an adjustment in future MTS rates.

COMMENTS

Public Utilities Code section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today’s resolution was distributed for comment to all telephone corporations and other interested parties on October 7, 2016.

On October 31, 2016, the Communications Division received two sets of comments, the first set submitted by AT&T California and New Cingular Wireless PCS, LLC (AT&T) Cellco Partnership dba Verizon Wireless, T-mobile West LLC dba T-mobile, MetroPCS California, LLC dba MetroPCS, and Sprint, and (collectively “Joint Wireless Carriers”) and the second set submitted by Belmont Telecoms, Inc., d/b/a OneSimCard.com, seller and carrier of International SIM Card Roaming Services.

violations thereof are promptly prosecuted and penalties due the State therefore recovered and collected, and to this end it may sue in the name of the people of the State of California.”

Joint Wireless Carriers' comments raise several issues to which we respond below. First, they assert that the intrastate factor should be an optional "safe harbor" for direct sellers and mandatory for indirect sellers.²⁹ In other words, they would have the Resolution's intrastate adjusted MTS Surcharge rate be applied to the total sales price of prepaid wireless telephone services sold by indirect sellers, but "direct sellers should be able to use that same rate as a 'safety factor' or to otherwise adjust the aggregate base rate by an auditable, carrier-specific intrastate factor."³⁰

Response: Because our goal is to ensure all prepaid wireless customers are treated equally and assessed the MTS surcharge in the same manner, we do not authorize the use of the intrastate factor as an optional "safe harbor" only for direct sellers. The intrastate factor has been applied to assure that all prepaid wireless customers are assessed the MTS surcharge equally regardless of where they purchase their prepaid wireless service(s). As the Act requires, the MTS is to be calculated and adjusted so that it can be applied to the total sales price.³¹ Indeed, Joint Carriers agree that the adoption of an intrastate factor in calculating the MTS Surcharge rate is consistent with the Act, in that "adjusting the surcharge rate by an intrastate factor promotes the equitable treatment of wireless consumers regardless of whether they purchase prepaid services from direct or indirect sellers and regardless of whether they are prepaid or postpaid consumers."³² Allowing carriers the option to potentially assess an amount for the MTS surcharge that is greater than or less than the amount being assessed on all other customers of indirect sellers would be inconsistent with the Act.

Second, Joint Carriers disagree with the Resolution's interpretation of when disclosure of the MTS surcharge must be made, which pursuant to the Act is required "at the time of the retail transaction." A "retail transaction" is defined as "the purchase of prepaid mobile telephony services" and "[f]or these purposes a 'purchase' means any transfer of title or possession, exchange, or barter, conditional or otherwise." Joint Carriers argue, "[i]n determining when that purchase occurs, and thus when notice is required, the key concept in the context of prepaid wireless service is *identifying the time when a customer*

²⁹ Joint Wireless Carriers' Comments, at p.4.

³⁰ *Id.*, at 5.

³¹ Pub. Util. Code § 319(b).

³² Joint Wireless Carriers' Comments, at p. 4.

takes possession of the service, because this is when the retail transaction occurs.”³³ They cite to cases “addressing sales tax issues” to support their position.³⁴

Response: As an initial matter, the MTS surcharge is not a sales tax and therefore, cases interpreting a “purchase” in the context of a sales tax are not dispositive. We, however, think it would be useful to clarify our interpretation of when “the purchase of prepaid mobile telephony services” has occurred. We are not redefining statutory terms as the Joint Wireless Carriers contend. Our interpretation focuses on what the customer is purchasing – “prepaid mobile telephony services,” which is defined as “the right to utilize a mobile device for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars.”³⁵ The determinative (and distinguishing) factor in “the purchase of prepaid mobile telephony service” is that it “must be purchased in advance of usage in predetermined units or dollars.” Therefore, in our view, it is the payment by a customer that triggers the right to utilize prepaid mobile service.

Third, as with the previous Resolution, Joint Wireless Carriers again argue that the Commission should exclude the MTS increment to recover the Commission’s administrative expenses from the MTS surcharge.³⁶

Response: The previous Resolution addressed this issue and therefore, we will not repeat the response here. Moreover, CTIA had filed a rehearing application on the previous Resolution which also raised this issue and that matter is still pending.

Fourth, Joint Wireless Carriers state that the MTS surcharge rate is calculated incorrectly.³⁷

Response: The Commission has recalculated the MTS rate upon receipt from BOE of updated fee revenue and percentage for indirect sales in Chart 2, and revised Chart 3 for expenses allocated to CPUC for both BOE and third party retailers. Therefore, the

³³ *Id.*, at p. 8.

³⁴ *Id.*, at pp. 8-10.

³⁵ Revenue & Taxation Code § 42004(k).

³⁶ Joint Wireless Carriers’ Comments, at p. 11.

³⁷ Joint Wireless Carriers’ Comments, at p. 11.

resulting new MTS Surcharge rate for 2017 is 5.15%.³⁸ We note the Joint Wireless Carriers' proposed rate is 5.14%.

Lastly, Joint Wireless Carriers claim direct sellers under the MTS Act are not obligated to report their indirect prepaid wireless revenues subject to the MTS surcharge.³⁹

Response: The Joint Wireless Carriers' are correct in their assertion that the Act does not include a specific provision requiring the separate reporting of indirect revenue to the Commission. However, the Act does explicitly require carriers to report to the Commission their total prepaid wireless revenues. The Commission has therefore required Carriers to identify that portion of their revenue that is from direct sales in addition to that portion that is from indirect sales. The combination of these two separately reported amounts therefore provides the Commission with the prepaid wireless sellers total revenue amount as required by the Act.⁴⁰ We do, however, clarify that, we are not requiring prepaid wireless carriers to estimate the revenue a retailer may have generated, but to identify the revenue the prepaid wireless company has received for the sale of its services from third party retailers. In this way, the carrier should not be estimating, but should be reporting to the Commission the actual revenue it has generated from the sale of prepaid wireless telephone services in California.

Comments received from Belmont Telecom argue that Resolution T-17542 fails to identify and make explicit that some services such as International SIM Card Roaming Services, that are classified as interstate or international and therefore are not subject to California's intrastate service surcharges such as the MTS surcharge, even when sold in California.

Response: The Commission agrees with Belmont Telecom that, service, which has been classified as interstate and/or international are not subject to California's intrastate service surcharges. Therefore, the purchase of prepaid wireless services should not be assessed the MTS surcharge if the services in question are exclusively interstate and/or international and are not bundled with other services that are classified as intrastate. We have, in response, modified the resolution to identify this distinction.

³⁸ See Appendix A in Resolution T-17542.

³⁹ Joint Wireless Carriers' Comments, at p. 13.

⁴⁰ Pub. Util. Code § 319(g)(1) and (2).

FINDINGS

1. There are a number of surcharges, taxes, and fees assessed on telecommunications services by the State of California, city and county governments, and federal agencies.
2. These surcharges charges, taxes, and fees are collected from end-use customers by telecommunications carriers, who then must remit these funds as directed to the appropriate authorities.
3. The California Public Utilities Commission (Commission or CPUC) is responsible for the administration of the State's Public Purpose Program Surcharges and the California Public Utilities Commission User Fee, with each required to be assessed on intrastate telecommunications services sold in California.
4. We find that interstate and international services that are sold independently of any intrastate or bundled services are not subject to the MTS surcharge. However, if services are bundled then, the adjusted intrastate factor is applied to calculate the MTS Surcharge.
5. Assembly Bill 1717 enacted *The Prepaid Mobile Telephony Services Surcharge Collection Act* ("The Act") and added Public Utilities Code Section 319 and other sections to the Taxation and Revenue Code.
6. The Act became effective January 1, 2016, and will remain in effect until January 1, 2020.
7. The Act requires a new point-of-sale collection and remittance system for the surcharges, taxes, and fees assessed on prepaid wireless telephone service.
8. The Act aggregates the California Public Utilities Commission Public Purpose Program Surcharges, California Public Utilities Commission User Fee, Emergency Telephone Users (911) Surcharge and local charges and creates the new Mobile Telephony Service (MTS) surcharge that is required to be imposed on prepaid wireless service in lieu of the individual fees.
9. The Act requires the Commission to calculate the new prepaid MTS surcharge rates, which became effective on January 1, 2016, and to be calculated annually thereafter.

10. The CPUC-calculated 2016 MTS surcharge rate was 8.51%.
11. The new intrastate adjusted MTS Surcharge rate for 2017 is 5.15%.
12. The Commission finds that the intrastate adjusted factor of 72.75% is reasonable to calculate the 2017 MTS surcharge rate.
13. The Commission is required to post notice of the proposed rates by October 8, 2016, and annually thereafter until January 1, 2020, and to notify the Board of Equalization and Office of Emergency Services of the rates, as well as the method used for calculation.
14. The Commission is required to prepare a resolution or other public document to provide public notice and adopt the proposed rates.
15. The proposed prepaid MTS surcharge rates are reasonable and reflect the additional costs to the Commission of collection and administration of the MTS surcharge.
16. MTS Surcharges are to be assessed on the total sales price of prepaid wireless telephone service and collected from end-users in California.
17. We find that interstate and international services that are sold independently of any intrastate or bundled services are not subject to the MTS surcharge.
18. The MTS surcharge and user fee monies from the direct sale of prepaid wireless telephone services are due in accordance with the Commission's surcharge and user fee reporting and remittance rules.
19. The Act makes explicit the obligations of telephone corporations offering prepaid wireless telephone services to report direct prepaid wireless intrastate revenue subject to surcharge and remit the accompanying surcharges and fees to the Commission.
20. Beginning January 1, 2017, all transactions for the purchase of prepaid wireless telephone service should include the assessment and explicit disclosure of the MTS surcharge as a separately stated line item at the newly adopted rates.

THEREFORE, IT IS ORDERED that:

1. The California Public Utilities Commission's Mobile Telephony Service surcharge rates for 2017, in Appendix A, are adopted and shall become effective January 1, 2017.
2. All telephone corporations shall, beginning January 1, 2017, assess the adopted Mobile Telephony Service surcharge on the total sales price of prepaid wireless telephone service subject to surcharge and collected from end-users in California.
3. All telephone corporations offering prepaid wireless telephone services shall report prepaid wireless intrastate revenue subject to surcharge and remit the accompanying surcharges and fees as directed by the California Public Utilities Commission, in accordance with the surcharge and user fee reporting and remittance rules.
4. All telephone corporations shall, beginning January 1, 2017, assure that all transactions for the purchase of prepaid wireless telephone service include the assessment on the total sales price of the Mobile Telephony Service surcharge and shall disclose it as a separately stated line item at the time of purchase.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 10, 2016, the following Commissioners voting favorable thereon:

/s/ Timothy J. Sullivan
TIMOTHY J. SULLIVAN
Executive Director

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners

APPENDIX A

APPENDIX A

2017 CPUC MTS Surcharge and User Fee Rates										
CPUC Program		Base Rates 1/1/2017		Additional Increment for MTS		MTS Rates 2016		Intrastate Factor		Adjusted Percentage
(a)		(b)	+	(c)	=	(d)				
Universal Lifeline Telephone Service (ULTS)		4.75%	+	0.1206%	=	4.8706%	*	72.75%	=	3.54%
Deaf and Disabled Telecommunications Program (DDTP)		0.50%	+	0.0127%	=	0.5127%	*	72.75%	=	0.37%
California High Cost Fund-A (CHCF-A)		0.35%	+	0.0089%	=	0.3589%	*	72.75%	=	0.26%
California High Cost Fund-B (CHCF-B)		0.00%	+	0.0000%	=	0.0000%	*	72.75%	=	0.00%
California Teleconnect Fund (CTF)		1.08%	+	0.0274%	=	1.1074%	*	72.75%	=	0.81%
California Advanced Services Fund (CASF)		0.00%	+	0.0000%	=	0.0000%	*	72.75%	=	0.00%
California Public Utilities Commission User Fee		0.23%	+	0.0058%	=	0.2358%	*	72.75%	=	0.17%
Total		6.91%	+	0.1754%	=	7.0854%	*	72.75%	=	5.15%