

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T-17579
November 09, 2017**

RESOLUTION

Resolution T-17579. Approval of the California Public Utilities Commission's user fee rate and telecommunications public purpose programs surcharge rates as required by Public Utilities Code Section 319, for the calculation of the prepaid Mobile Telephony Services surcharge rate, which must be imposed on the sales price of each prepaid wireless telephone service retail transaction occurring in California, effective January 1, 2018.

SUMMARY

This resolution adopts, for the year 2018, the California Public Utilities Commission's User Fee rate and telecommunications Public Purpose Programs surcharges rates applicable to prepaid wireless telephone service sales in California pursuant to the requirements set forth in the Prepaid Mobile Telephony Services Surcharge and Collection Act.

Commencing in 2015 until 2020, each year the Commission is required by statute to compute as a percentage of the sales price for prepaid wireless service: (a) a reimbursement fee (otherwise known as the Commission's User Fee) and (b) the individual and cumulative amounts of the six telecommunications universal service surcharges (otherwise known as Public Purpose Program surcharges). These rates are then used by the California Department of Tax and Fee Administration to calculate the state prepaid Mobile Telephony Services surcharge rate, which must be imposed by a seller of prepaid wireless telephone service as a percentage of the sales price of each retail transaction in California and collected from a prepaid consumer at the point of sale.

The Commission's portion of the prepaid Mobile Telephony Services surcharge rate is used to recover the California Public Utilities Commission's Public Purpose Program surcharges and User Fee, as well as the costs associated with the Commission's administration of the prepaid Mobile Telephony Services surcharge, including coordinating with the California Department of Tax and Fee Administration and overseeing prepaid wireless carriers' collection and remittance of this surcharge.

Effective January 1, 2018 through December 31, 2018, the Commission's portion of the prepaid Mobile Telephony Services surcharge rate adopted by this resolution is 5.55%. The new rate is slightly higher than the previous rate of 5.15% for 2017.

BACKGROUND

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,¹ both of which are required to be assessed on intrastate telecommunications services sold in California.²

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 281³, which include the following six programs:

¹ The Commission's user fee and California's Public Purpose Program surcharges are referred to in the Prepaid Mobile Telephony Service Surcharge Collection Act as the "reimbursement fee" and "telecommunications universal service surcharges," respectively.

² See Pub. Util. Code § 285; see also Rev. & Tax. Code § 41020.

³ All section references hereafter are to the Public Utilities Code unless otherwise stated.

- **Universal Lifeline Telephone Service (ULTS):** provides discounted home phone and cellular phone services to qualifying households.
- **Deaf and Disabled Telecommunications Program (DDTP):** provides telecommunications devices to deaf or hearing impaired consumers.
- **California High Cost Fund-A (CHCF-A):** provides subsidy to 13 small local exchange carriers (LECs) who provide telephone service to residential customers in rural high-cost areas.
- **California High Cost Fund-B (CHCF-B):** provides subsidy to carriers of last resort (COLRs) who provide 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 broadband services adoption 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 corporations, 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 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* ("Act") was enacted by Assembly Bill 1717 (Chapter 885, Statutes 2014, Perea).⁴ The Act became effective on January 1, 2016, and it remains in effect until January 1, 2020. To ensure that all prepaid wireless consumers pay taxes, fees, and surcharges for intrastate telecommunications services as is required of all other telecommunications consumers, e.g., post-paid

⁴ The Act added § 319, among others, to the Public Utilities Code and added and/or modified multiple sections of the Revenue and Taxation Code relating to telecommunications.

wireless consumers and wireline consumers, the Act finds and declares that “there should be “standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services.”⁵

Pursuant to the Act, all sellers of prepaid wireless service are required to collect the prepaid MTS surcharge at the time of the retail transaction.⁶ The Act defines a “seller” as “a person that sells prepaid mobile telephony service to a person in a retail transaction.”⁷ The Act further defines a “direct seller” as a “prepaid MTS provider or service supplier”, which is the carrier providing the wireless service.⁸ A seller that is not a direct seller is known as an indirect seller, which is a third party retailer (e.g., Target or a convenience store) that sells prepaid wireless service.⁹

The Act requires an entirely separate point-of-sale mechanism for the collection and remittance of the taxes, fees, and surcharges assessed on prepaid wireless telephone service.¹⁰ This mechanism collects the following charges, aggregated as one surcharge defined as the “prepaid Mobile Telephony Services (MTS) surcharge”¹¹:

- Commission Public Purpose Program Surcharges
- Commission User Fee
- Emergency Telephone Users (911) Surcharge
- Local Charges (e.g. UUT)¹²

The Act requires the Board of Equalization (BOE), now known as the California Department of Tax and Fee Administration (CDTFA), to annually calculate and post the

⁵ Rev. & Tax. Code § 42002(e).

⁶ Rev. & Tax. Code § 42010(a); see also § 42002(0) [defines “retail transaction”].

⁷ Rev. & Tax. Code § 42002(p).

⁸ Rev. & Tax. Code § 42002(b)(1) [defines “direct seller”].

⁹ See Rev. & Tax. Code §§ 42002(p) and 42010(e). An indirect seller includes a third party retailer not affiliated with or acting as an agent of the telephone corporation or VoIP provider.

¹⁰ AB1717 refers to these services as “prepaid mobile telephony services”. See Rev. & Tax. Code § 42004 [defines “prepaid mobile telephony services”].

¹¹ See Rev. & Tax. Code § 42010(b) [“The prepaid MTS surcharge shall be annually calculated by the board...]; see also § 42004(m) [defines “Prepaid MTS surcharge” to mean “the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Section 42010, that is required to be collected by a seller from a prepaid consumer.”]

¹² When applicable, local charges (e.g., UUT) are to be added to the prepaid MTS surcharge. See Rev. & Tax. Code § 42010(c)(1).

prepaid MTS surcharge, and applicable local charges, on its Internet Web site.¹³ The Act requires direct sellers to utilize the amounts posted by the CDTFA when determining what amounts to remit to the Public Utilities Commission, the board, and each local jurisdiction or local agency.¹⁴ Indirect sellers remit to the CDTFA.¹⁵ The Act requires direct sellers to report to the Commission,¹⁶ whereas indirect sellers must report to the CDTFA.¹⁷

The Act specifies how the prepaid MTS surcharge is to be imposed by all sellers for each sale of prepaid wireless service, stating in Rev. Tax. Code section 42010:

(a)(1) On and after January 1, 2016, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge shall be imposed as a percentage of the sales price of each retail transaction that occurs in this state.

(2) The prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

The Act further specifies that when prepaid wireless service is sold in combination with mobile data services or any other services for a single price, “then the prepaid MTS surcharge and local charges shall apply to the entire price.”¹⁸

The Act permits indirect sellers to withhold “2% of the amounts that are collected by the seller from prepaid consumers for the prepaid MTS surcharge and local charges.”¹⁹

¹³ As used in this resolution, “Prepaid MTS surcharge,” “MTS surcharge,” “prepaid Mobile Telephony Services surcharge,” and “MTS” all refer to the prepaid MTS surcharge created by the Act.

¹⁴ Rev. & Tax. Code §§ 42010 (f) and (g).

¹⁵ See Rev. & Tax. Code § 42010(d).

¹⁶ See Rev. & Tax. Code § 42010(f); see also Pub. Util. Code § 319.

¹⁷ See Rev. & Tax. Code § 42020(b)(1).

¹⁸ See Rev. & Tax. Code § 42018(a). See also Rev. & Tax. 42018(b)[prepaid wireless service sold with a mobile device] and (c)[prepaid wireless service sold for minimal amount].

¹⁹ Rev. & Tax. Code § 42010(e).

This 2% hold back is to compensate the retailer for its duties to collect, report, and remit the prepaid MTS surcharge to the CDTFA.

The Act also permits the CDTFA to recover its costs of administration and collection of the prepaid MTS surcharge from the agencies and localities for which it has collected. The CDTFA allocates those expenses, on a pro-rata basis, dependent on the amount of fee revenue it has collected for that agency. Lastly, the CDTFA 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 CDTFA 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 direct sellers to continue to remit the individual fees to the appropriate state agency or locality as has been historically required. For example, prepaid wireless telephone corporations will continue to remit the Emergency Telephone Users (911) Surcharge to the CDTFA, the local charges to the local jurisdiction, and the Commission's Public Purpose Program surcharges and User Fee to the Commission (i.e., 5.55% of prepaid MTS surcharge revenue for 2018 to the Commission). According to the Act, the Commission has enforcement authority to ensure the proper remittances over retail transactions of direct sellers.²⁰

With respect to reporting to the Commission, the Act specifically requires carriers, as direct sellers, to continue to report to the Commission "prepaid mobile telephony service revenues to the commission in a manner prescribed by the commission."²¹ This reporting shall include "the intrastate revenue portion subject to the reimbursement fee and the telecommunications universal service surcharges, as well as the total state mobile telephony service revenue."²² The required mechanism for reporting and remitting surcharges and user fees to the CPUC is through the Telecommunications and User Fee Filing System (TUFFS).²³

²⁰ Pub. Util. Code § 319(e).

²¹ Pub. Util. Code § 319(g)(1).

²² Pub. Util. Code § 319(g)(2).

²³ See <http://www.cpuc.ca.gov/surcharges/>. TUFFS requires prepaid 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, which is applicable only to prepaid wireless telephone service, does not apply to the sale of wireline, VoIP, post-paid wireless, or any other telecommunications service sold in California. Therefore, the 2018 prepaid MTS surcharge will be applied to about 19.25% 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, 72.49% of prepaid wireless sales are transacted via a direct sale from the telephone corporation that provides the service.²⁴ This means that the vast majority of prepaid customers purchase their service by automatic billing, online, over the phone or by another means that is administered by the telephone corporation.

The remaining 27.51% of prepaid wireless customers in California are purchasing prepaid wireless service indirectly from a third party retailer. See Chart 1. This is the market segment that the MTS surcharge collection and remittance process was designed to collect from. According to 2017 data reflected in Chart 1, indirect sales annually account for about 5.30% of those surcharges and fees collected by the Commission from wireless telephone corporations.

Chart 1: California Telecommunications Market by Service and Sales Type

2017 Market Percentage by Service Type		
Service	% of market segment	% of all Telco
All Telco	100.00%	100.00%
Non Wireless	44.54%	44.54%
Wireless	55.46%	55.46%
% of wireless - Postpaid	65.29%	36.21%
% of wireless - Prepaid	34.71%	19.25%
% of Prepaid - Direct Sale	72.49%	13.95%
% of Prepaid - Indirect Sale	27.51%	5.30%

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²⁴ Data derived from the CPUC’s TUFFS, User Fee Filing System and wireless carrier data requests.

²⁵ Market percentage is based on carriers’ intrastate revenue reporting to the CPUC.

DISCUSSION

Calculating the CPUC's Portion of the Prepaid MTS Surcharge

As the Act requires, the Commission starts its annual calculation of its portion of the new prepaid MTS surcharge rate by October 1st, posts notice by October 8th, and provides notice to the CDTFA and the Office of Emergency Services ("OES") of the rate, as well as the method used for calculation of the CPUC's Public Purpose Program surcharges and User Fee.

The Act directs the Commission to prepare a resolution, or other public document, to provide public notice of the CPUC's portion of the prepaid MTS surcharge rate that the Commission intends to adopt for the upcoming year.²⁶ In response to this requirement, this resolution provides the methodology and specific calculations used to arrive at the CPUC's portion of the prepaid MTS surcharge rate for 2018, which is 5.55%.

As discussed, the Act requires the state prepaid MTS surcharge posted by the CDTFA to be imposed on the sales price of prepaid wireless telephone services sold in California, and if the prepaid service is sold in combination with other services for a single price, then the prepaid MTS surcharge is to be applied to the entire price.

Although the Act shifts some fee administration from the CPUC to the CDTFA, 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 continues to result in increased costs and administrative activity for the Commission. For example, it was necessary for the Commission to hire additional staff and develop new systems and business processes for the new prepaid 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 CDTFA. Therefore, the prepaid MTS surcharge rate is inevitably different than the standard Public Purpose Program surcharges and User Fee rates for other telecommunications services. Here, the Commission is authorized to recover the current program costs, as well as the additional cost to administer the prepaid MTS surcharge.²⁷

²⁶ Pub. Util. Code § 319(d)(5).

²⁷ See D. 16-12-029, Order Modifying Resolution T-17504, and Denying Rehearing of Resolution T-17504, as Modified [affirming the Commission's authority to recover its own costs associated with administering the prepaid MTS surcharge].

These additional costs, authorized by the State legislature, include both the CDTFA and Commission related expenses incurred in administering the new prepaid MTS surcharge, as well as compensation to third party retailers.²⁸

MTS Expenses Subject to Recovery

The Commission first implemented the Commission's portion of the prepaid MTS surcharge rate on January 1, 2016 to recover the Commission's Public Purpose Program Surcharges and User Fee, as well as those new costs associated with implementation and administration of the Act. The Commission's ongoing administrative costs recovered through the 2018 prepaid MTS surcharge total approximately \$838,161.

As discussed, for indirect sales of prepaid wireless services, third party retailers are responsible to report and remit the prepaid MTS surcharges collected to the CDTFA. CDTFA then remits those monies to the appropriate state and local agencies for whom they were collected: (1) the Commission, for its Public Purpose Program surcharges and User Fee, (2) the OES, for the Emergency Telephone Users (911) Surcharge, and (3) local governments, for their local charges. The CDTFA's expenses related to this collection are allocated to each agency for which the CDTFA collects the MTS surcharge, based on each agency's pro-rata share of the prepaid MTS revenue reported to CDTFA.

The estimated expense for CDTFA for prepaid MTS surcharge administration and collection will be \$1.9 million in FY 2017-18. As shown in Chart 2, based on 2016 year to date surcharge and fee revenue collected by CDTFA through the prepaid MTS surcharge (from indirect sales), the Commission estimates its pro-rata share of CDTFA's administrative expenses at present rates to be 28.90%,²⁹ for a total of \$2,462,631 as shown in Chart 3.

²⁸ *Ibid*; see also Rev. & Tax. Code § 42023(a); see also Rev. & Tax. Code § 42010(e).

²⁹ This is the addition of surcharges and user fees that are the CPUC's percentage of CDTFA's expenses.

Chart 2: Projected MTS Surcharge Revenue Collected by the CDTFA³⁰

2017 Prepaid Wireless Fee Revenue - from indirect sales		
Agency and Fees	Fee Revenue	Percentage
Emergency Telephone Users (911) Surcharge	\$2,700,000	4.85%
CPUC Public Purpose Program Surcharges and User Fee	\$16,095,000	28.90%
Local utility user taxes (UUT)s	\$36,900,000	66.25%
Total	\$55,695,000	100.00%

The last expense item that the Commission’s portion of the prepaid MTS surcharge rate must recover is the retailer compensation. The Act provides that a retailer may retain 2% of the prepaid MTS surcharge revenue collected as compensation for collecting, reporting, and remitting the MTS surcharge to the CDTFA.³¹ Direct sales are not subject to the 2% retailer compensation. Based on reporting from CDTFA, the Commission estimates its share of the third party retailer compensation for indirect sales will total approximately \$321,900³² or 2% of the \$16,095,000³³ in CPUC fee revenue collected.

The Commission therefore estimates that the total expense it will incur for administration of the prepaid MTS surcharge in 2018 will be \$3,622,692, as shown in Chart 3 below. This is the amount subject to recovery in the 2018 prepaid MTS surcharge rate. This is the cost to collect only prepaid wireless service revenues, or 19% of those fees which are collected to fund the Commission’s programs.

Chart 3: Expenses Subject to Recovery in the Commission’s MTS Surcharge rates³⁴

2017 MTS Surcharge Expenses	
Source	Amount
CPUC	\$838,161
CDTFA	\$2,462,631
Retailer	\$321,900
Total	\$3,622,692

³⁰ CDTFA data in Chart 2 represents two quarters for 2017 estimated to reach annualized 2017 totals.

³¹ Rev. & Tax. Code § 42010(e).

³² Estimated total of surcharge expenses collected by CDTFA may not be exactly 2% of \$16,095,000.

³³ Estimated total of revenue collected by CDTFA on behalf of the CPUC at the current surcharge and user fee rates. The percentage assessed at the current rates is 5.15%.

³⁴ CDTFA and Retailer data in Chart 3 represents first quarter of 2017 estimated to reach annualized 2017 totals.

Impacts from 2016 Prepaid MTS Surcharge Collections

In evaluating “all impacts from prepaid MTS surcharge collections,”³⁵ the Commission identified a potentially significant under-collection issue in the Commission’s portion of the 2017 prepaid MTS surcharge rate, as adopted in T-17542.³⁶ Based on CDTFA and CPUC reports available at that time for 2016, the Commission estimated that indirect surcharges could be under-remitted by as much as \$24 million by the end of 2016. According to the now complete reporting for 2016, the Commission has identified a shortfall on surcharge remittances of about \$18.6 million to CDTFA. It appears that third party retailers have failed to fully comply with the Act and have under-remitted by more than 36%.

A comparison of 2016 reporting shows that third party retailers failed to report more than \$180 million in revenue subject to the prepaid MTS surcharge. This figure is based on CDTFA’s report compared with information reported to the CPUC by prepaid wireless telephone corporations for their indirect sales revenue received from third party retailers. While undertaking this review, the Commission also found a small over-collection on direct sales of about \$645,000. We are therefore including an adjustment of \$17,995,753 to the 2018 rate in response to the identified shortfall in 2016.

Chart 4: 2016 MTS Collections

2016 MTS Collections		
Surcharges and User Fee	Reported	Remitted
Direct	\$96,862,750	\$97,507,783
Indirect	\$51,392,191	\$32,751,405
Total	\$148,254,940	\$130,259,187
Undercollection		\$17,995,753

However, based on to-date-reporting in 2017, this shortfall could become even greater in subsequent years. The Commission’s most recently available reporting shows that indirect revenues could be underreported by as much as \$258 million in 2017. With ongoing administrative expenses, continuing and increasing losses, staff estimates that the prepaid MTS surcharge could lose more than \$19 million while ultimately collecting only \$97.1 million in fees.

³⁵ See Pub. Util. Code § 319 (d)(5)(C).

The ULTS and CASF program surcharge rates were reduced in November and December of 2016 respectively. This rate reduction resulted in an over-collection of prepaid MTS surcharges from customers in those months. We are therefore including in the 2018 prepaid MTS surcharge rate an adjustment of \$1.1 million as shown in the chart below.

Chart 5: 2016 Surcharge Rate Impact

2016 Surcharge Rate Impact			
Period	Program	Surcharge	
November	Universal Lifeline Telephone Services (ULTS)	Collected Amount	\$7,229,165
		Amount at Correct Rate	\$6,752,133
		Overcollection	\$477,032
December	Universal Lifeline Telephone Services (ULTS)	Collected Amount	\$7,395,737
		Amount at Correct Rate	\$7,341,994
		Overcollection	\$53,743
	California Advanced Services Fund (CASF)	Collected Amount	\$651,034
		Amount at Correct Rate	\$59,570
		Overcollection	\$591,464
Total Overcollected Amount		\$1,122,239	

CPUC User Fee Under-Collection in 2017

The Commission increased its telecommunications User Fee rate effective January 1, 2017³⁷, from .23% to .30%. The CPUC’s portion of the prepaid MTS surcharge rate was adopted on November 10, 2016, applicable for 2017, and therefore it did not reflect the new User Fee rate. Pub. Util. Code section 319 (d)(2) states, “the Commission shall adjust the fees and surcharges to account for any past over-collections or under-collections of fees or surcharges from prepaid consumers resulting from a reduction or increase in the surcharge made subsequent to December 31 of the previous year.”

³⁷ Resolution M-4830, Adopting Public Utilities Commission Utilities Reimbursement Account User Fees.

Accordingly, the CPUC’s portion of the 2018 prepaid MTS surcharge rate has been adjusted to account for the 2017 under-collection of the User Fee. The Commission calculates the under-collection amount will be \$1.5 million based on 2017 year-to-date reporting of intrastate prepaid wireless revenue. To avoid under collecting the User Fee in 2018 the proposed 2018 prepaid MTS surcharge rate reflects the newly proposed 2018 User Fee rate of .33% as identified in Resolution M-4832.

Chart 6: User Fee Rate Impact

2017 User Fee Rate Impact		
2017 Total Prepaid Wireless Intrastate Revenue	\$2,270,416,785	
2016 User Fee Rate	0.23%	
Collected Amount		\$5,221,959
2017 Total Prepaid Wireless Intrastate Revenue	\$2,270,416,785	
2017 User Fee Rate	0.30%	
Amount at Correct Rate		\$6,811,250
Total Undercollected Amount		\$1,589,292

Chart 7: Total of all adjustments and expenses

2018 Total Adjustments and Expenses	
2018 MTS Surcharge Expenses	\$3,622,692
2017 User Fee Rate Impact	\$1,589,292
2016 MTS Collections	\$16,873,514
Total	\$22,085,498

Prepaid Wireless Billing Base

Establishing the Commission’s telecommunications Public Purpose Program surcharges and User Fee rates has traditionally utilized California’s total intrastate billing base from which surcharges are to be assessed. However, unlike the standard surcharges and User Fee rates, the prepaid MTS surcharge is only assessed on prepaid wireless telephone service. Therefore, in establishing the billing base subject to the prepaid MTS surcharge, the Commission identifies the subset of the intrastate telecommunications market that represents pre-paid wireless revenues subject to surcharge in California. As identified in Chart 8 below, staff estimates that prepaid wireless revenue will account for \$2.2 billion of California’s telecommunications revenue subject to surcharge in 2017.

Chart 8: California Intrastate Telecommunications Revenue Subject to Surcharge

2017 Telco Revenue by Service Type	
Service	Revenue
All Telco	\$11,794,508,836
Non Wireless	\$5,253,100,894
Wireless	\$6,541,407,942
Postpaid Wireless	\$4,270,991,157
Prepaid Wireless	\$2,270,416,785
Direct Sale-Prepaid Wireless	\$1,645,764,927
Indirect Sale-Prepaid Wireless	\$624,651,858

The prepaid wireless billing base estimate is derived from 2017 year-to-date surcharge payment and revenue reporting data collected by the Commission through TUFFS and the CDTFA's reporting of prepaid MTS remittances to the CPUC.

We note a significant increase in the reported revenue for direct sales as compared to that reported to the CPUC in 2016, \$1.1 billion in 2016 versus \$1.6 billion in 2017, with a corresponding decrease in reported revenues for postpaid wireless services, of \$5 billion in 2016 versus \$4.2 billion in 2017. It appears that customers continue to purchase their telecommunications services directly from carriers, but an increasing number of wireless customers are choosing to purchase via a prepaid plan. We see only a marginal difference in those revenues attributed to indirect prepaid wireless service, based on carrier reporting.

Public Purpose Program Surcharges and User Fee Rates

The current rates of the six Public Purpose Program surcharges and User Fee are listed in Chart 10, column (a), 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 the impact of prepaid MTS surcharge collections. The resolutions approving these surcharge rates³⁸ and the User Fee³⁹ can be found on the Commission's website.

Prepaid MTS Surcharge Increment

The MTS rates shown below in column (b) of Chart 10, on page 18, reflect the adjustments to the standard surcharge rates and User Fee. These adjustments to the standard rates are necessary to recover the additional \$3,622,692 expense directly related to administration of the prepaid MTS surcharge as well as other impacts from prepaid MTS surcharge collections such as the indirect sales losses of \$17,995,753, over-collection of \$1,122,239 and under-collection of User Fees of \$1,589,292, for a total of \$22,085,498 to be recovered in the 2018 prepaid MTS surcharge rate through the proposed .98% MTS surcharge increment. To determine 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.

Prepaid Wireless Intrastate Allocation Factor

a. Intrastate Surcharge Applicable to the Entire Price of Prepaid Wireless Service

The Act specifically requires that “[o]n and after January 1, 2016, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge shall be imposed as a percentage of the sales price of each retail transaction that occurs in this state.”⁴⁰ The Act further directs that “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.”⁴¹

³⁸ <http://www.cpuc.ca.gov/general.aspx?id=1124>

³⁹ <http://www.cpuc.ca.gov/General.aspx?id=11120>

⁴⁰ Rev. and Tax. Code § 42010(a)(1).

⁴¹ Rev. and Tax. Code § 42018(a).

The Act also makes clear that the prepaid MTS surcharge is an intrastate surcharge.⁴² The Commission and the OES calculate surcharges and fees that “are applicable to the intrastate portion of prepaid mobile telephony services.”⁴³ Thus, consistent with the Act, we must calculate the CPUC’s portion of the prepaid MTS surcharge rate so that the prepaid MTS surcharge rate posted by the CDTFA can be applied to the entire price of prepaid service sold in combination with mobile data services or any other services or products for a single price, while at the same time ensuring that the prepaid MTS surcharge is assessed only on intrastate prepaid wireless telephone service revenue.

In order to create a rate that meets these statutory requirements, the Commission has calculated an intrastate allocation factor to adjust the Commission’s portion of the prepaid MTS surcharge so that the final surcharge rate posted by the CDTFA can be applied in the same manner by both direct and indirect sellers, as the Act requires.⁴⁴ In that way, as T-17542 explains, by applying the 2017 MTS rate, “regardless of the purchase method, location, or seller type, the customer will pay one universal rate, consistent with the Act.”⁴⁵

b. Intrastate Allocation Factor Calculation

To calculate the Commission’s 2018 intrastate allocation factor, staff first identified those prepaid wireless telephone corporations operating in California in 2017 via revenue reports from the TUFFS. 43 carriers were identified through TUFFS as having reported prepaid wireless telephone service revenue to the Commission from January 1, 2017 through June 31, 2017.

On July 27, 2017, staff sent those carriers identified a data request seeking information about their jurisdictional and revenue allocation practices for services sold in California. Staff also requested that carriers furnish the Commission with a copy of their most recent Form 499-A⁴⁶ filed with the Federal Communications Commission.

⁴² Rev. and Tax. Code § 41020(a)(1)(A) and (B).

⁴³ See e.g., Rev. and Tax. Code § 41030 (b)(2).

⁴⁴ See T-17542, pp. 9-10. The Commission could not pre-adjust the 2016 CPUC MTS surcharge rate of 8.51% because it was the first year the Act was implemented and the Commission did not have the requisite prepaid MTS revenue data from carriers to calculate an intrastate allocation factor for that year.

⁴⁵ T-17542, p. 10.

⁴⁶ Federal Communications Commission Form 499-A is a multi-purpose form used to report revenues for the purposes of federal Universal Service Fund (USF), federal Telecommunications Relay Services Fund (TRS), North American Numbering Plan (NANPA), Local Number Portability Administration (LNPA)

The 2018 intrastate allocation factor was calculated by taking the average of five categories of information provided by carriers; these categories are further explained below and shown in Chart 9. The first four categories are the average of various data points received in response to staff's most recent data request. Although the Commission received a 100% response rate, some responses were incomplete or unusable.⁴⁷ Carriers providing usable data represent 99.74%⁴⁸ of the reported prepaid wireless revenues in the first half 2017.

- The first line is the average percentage of prepaid wireless service revenue assigned to services California considers to be intrastate.
- The second line is the average of the intrastate allocation factor for prepaid wireless services that carriers represented using for federal reporting purposes.
- Lines three and four are the averages of prepaid wireless carriers' intrastate allocation as derived from their most recently filed 2017 FCC Form 499-A⁴⁹. The Commission determined the intrastate figures by taking the reciprocal of what was reported as interstate and international services on the form's mobile services lines 409 and 410 respectively.
- Line five is the present 2017 intrastate factor which was based on carriers' responses to staff's 2016 data request.

The final line, the average of the five categories, represents the intrastate allocation factor utilized in the calculating the CPUC's portion of the 2018 prepaid MTS surcharge rate.

and Interstate Telecommunications Service Provider (ITSP). With very limited exceptions, all intrastate, interstate and international providers of telecommunications in the United States are required to file this worksheet on an annual or as needed basis.

⁴⁷ The Commission's 2017 Data Request yielded a 100% response rate, however, Flat West Wireless, Inc. and Connectto World, Inc. did not provide copies of their FCC Form 499-A. Therefore, computations on figures taken from FCC Form 499-A do not reflect the mentioned carriers. In addition, Flat West Wireless' response did not contain usable data and they were therefore excluded from other computations as well.

⁴⁸ Combined revenue of carriers who responded to the data request with usable data/ Total revenue reported for January through June 2017 (\$820,721,475.14 / \$822,882,463.71)

Chart 9: Intrastate Allocation Factor Calculation

2018 Intrastate Factor		
Input		
1	Average of Service Revenue Assignment	69.59%
2	Average of Jurisdictional Allocation	67.00%
3	Average of FCC Form 499-A (line item 409)	75.00%
4	Average of FCC Form 499-A (line item 410)	62.89%
5	2017 Intrastate Factor	72.75%
	2018 Intrastate Factor	69.45%

The 2018 intrastate allocation factor of 69.45% results in a slight reduction to the intrastate portion as compared to the 2017 factor of 72.75%.

Final Rate for the CPUC's Portion of the Prepaid MTS Surcharge Rate

The CPUC's portion of the 2018 prepaid MTS surcharge rate is 5.55%, as itemized by each universal service surcharge and the CPUC User Fee in column (e) of Chart 10 below. The CDTFA will utilize this rate to calculate the prepaid MTS surcharge rate for 2018, which shall be imposed on sales of prepaid wireless telephone service in California from January 1, 2018 through December 31, 2018.⁵⁰

⁵⁰ See Rev. and Tax. Code §§ 42010 and 42018 (a).

Chart 10: California Telecommunications Surcharge and User Fee Rates

2018 CPUC MTS Surcharge and User Fee Rates									
CPUC Program	Base Rates 1/1/2018		MTS Increment		MTS Base Rates		Intrastate Factor		2018 MTS Rates
	(a)	+	(b)	=	(c)	*	(d)	=	(e)
Universal Lifeline Telephone Services (ULTS)	4.75%	+	0.66%	=	5.41%	*	69.45%	=	3.76%
Telecommunications Program (DDTP)	0.50%	+	0.07%	=	0.57%	*	69.45%	=	0.40%
California High Cost Fund - A (CHCF-A)	0.35%	+	0.05%	=	0.40%	*	69.45%	=	0.28%
California High Cost Fund - B (CHCF-B)	0.00%	+	0.00%	=	0.00%	*	0.00%	=	0.00%
California Teleconnect Fund (CTF)	1.08%	+	0.15%	=	1.23%	*	69.45%	=	0.85%
California Advanced Services Fund (CASF)	0.00%	+	0.00%	=	0.00%	*	0.00%	=	0.00%
California Public Utilities Commission User Fee	0.33%	+	0.05%	=	0.38%	*	69.45%	=	0.26%
Total	6.98%	+	0.98%	=	7.96%	*	69.45%	=	5.55%

Prepaid MTS Surcharge Reporting and Remittance

Pursuant to Pub. Util. Code Section 319(g), as discussed, carriers are required to report their intrastate revenues as directed by the Commission.⁵¹ The Act also requires carriers to report total prepaid wireless service revenue to the Commission⁵² and authorizes the Commission to specify those reports it may require.⁵³ In T-17542, the Commission requires carriers, when reporting through TUFFS, to identify that portion of their revenue that was derived from direct sales, in addition to that portion derived from indirect sales. The combination of these two separately reported amounts provides the Commission with the prepaid wireless carriers total revenue amount, as the Act requires.

We clarify that we are not requiring prepaid wireless carriers to estimate the revenue a retailer may have generated from selling a carrier's prepaid service. Rather, carriers are

⁵¹ Pub. Util. Code § 319(g)(1).

⁵² Pub. Util. Code § 319 (g)(2).

⁵³ Rev. and Tax. Code § 42010(f)(1).

required to identify the actual revenue they received for the sale of their services through third party retailers.

Compliance with the Act

We remind carriers that they are required to adhere to all provisions of the Act, as well as the requirements set forth by the Commission as they relate to the assessment, collection, remittance, and reporting of the MTS surcharge. For instance, carriers who have failed to implement the surcharge in a timely manner, failed to properly disclose the surcharge to their customers, and/or failed to remit or report to the Commission the proper amount of prepaid MTS revenues may be subject to penalties pursuant to Pub. Util. Code sections 2107 and 2108 or other action the Commission deems necessary.⁵⁴ Carriers are subject to audit for all prepaid MTS surcharge collections.

Safety Impact

The funding of Public Purpose Programs increases access to communication services to customers in California, thereby promoting public safety.

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 6, 2016.

Comments on Draft Resolution

On October 26, 2017, the Commission received two sets of comments, one submitted by T-Mobile West LLC dba T-Mobile ("T-Mobile") and the other submitted by MetroPCS California, LLC dba MetroPCS ("MetroPCS").⁵⁵ T-Mobile and MetroPCS are jointly owned by T-Mobile US, Inc.

Both sets of comments primarily reiterate arguments these parties had raised in previous comments on Resolutions T-17542 and T-17568, wherein they claimed the

⁵⁴ See Pub. Util. Code §§ 319 (e), 2107, 2108; see also § 2101.

⁵⁵ MetroPCS submitted a confidential and public version of its comments.

Commission violated federal law by utilizing an average intrastate allocation factor in calculating its portion of the prepaid MTS surcharge and then requiring direct sellers to assess the prepaid MTS surcharge on the entire price of bundled service.⁵⁶ We reject these arguments for the same reasons articulated in Resolutions T-17542 and T-17568. Accordingly, we hereby incorporate by reference the discussions in those resolutions that respond to these same arguments.⁵⁷ We find no basis, nor does the Commission have discretion as T-Mobile claims, to revise this Resolution to create two different requirements for indirect and direct sellers concerning the assessment of the prepaid MTS surcharge.

As we previously explained, the Act requires all sellers to assess the prepaid MTS surcharge in the same manner – on the sales price of prepaid mobile telephony service sold in a retail transaction or on the entire price of prepaid mobile telephony service sold in a retail transaction involving a bundle.⁵⁸ The plain language of Revenue and Tax Code sections 42010 and 42018 makes these obligations explicit, without exception or exemption for direct sellers.

A “TBD” Prepaid MTS Surcharge Rate for the CPUC’s Portion is Unlawful

We reject as unlawful T-Mobile’s and MetroPCS’s joint request to modify this Resolution to have the CPUC’s portion of the prepaid MTS surcharge “tbd” [to be determined] at some later unknown date. In other words, as reflected in these commenters’ jointly proposed redlines to this Resolution, they would have the Commission not adopt any rates for the CPUC’s Public Purpose Programs or CPUC User Fee at this time.⁵⁹ These revisions contravene the Act. As each prepaid MTS surcharge resolution has identified, the Act mandates that the Commission “shall...compute a reimbursement fee as a percentage of the sales price for prepaid

⁵⁶ See T-Mobile Comments on Draft Res. T-17579 (October 26, 2017), pp 2-5 (“Like Resolutions T-17542 and T-17568, the Draft Resolution appears to rest on the misconception that the Commission does not have the discretion to grant the relief requested by the Joint Carriers under the California Prepaid Mobile Telephony Services Surcharge Collection Act of 2014..., including in particular the language codified at California Revenue & Tax Code § 42018(a).”); see also MetroPCS Comments on Draft Res. T-17579 (October 26, 2017), pp. 1-5 (“In brief, the Draft Resolution suffers from the same flaws as Resolutions T-17542 and T-17568...”); see also T-Mobile Comments on Draft Res. T-17568 (Sept. 4, 2017) and Amended Application, pp. 3, 9-12; see also MetroPCS Comments on Draft Res. T-17568 (Sept. 4, 2017) and Amended Application, at pp. 7-9; see also Joint Wireless Carriers Comments on Draft Resolution T-17542 (Oct. 31, 2016), pp. 3-7.

⁵⁷ See Res. T-17542, pp. 14-20; see also Res. T-17568, pp. 5-18.

⁵⁸ See Resolutions T-17542 and T-17568.

⁵⁹ See T-Mobile Comments on Draft Res. T-17579 (October 26, 2017), Exhibit A.

mobile telephony services to be effective on January 1 of the following year” and “shall...compute the individual and cumulative amounts of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year....”⁶⁰ The Act does not permit the Commission to deviate from these explicit requirements.

Federal Mobile Telecommunications Sourcing Act

We also reject MetroPCS’s claim that section 123(b) of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. sections 116-126, “grants wireless carriers the right to use individualized revenues allocations for the wireless voice component of their bundled plans when they have ‘books and records that are kept in the regular course of business’.”⁶¹ By its terms, the Mobile Telecommunications Sourcing Act does “not apply to the determination of the taxing situs of prepaid telephone calling services.”⁶² Thus, it is inapposite here.

2016 ULTS and CASF Rate Changes

T-Mobile identifies in its comments that the Resolution does not, but should include an adjustment for the ULTS and CASF surcharge rate reductions in November and December of 2016, respectively.⁶³ We agree that these items should be included in the calculation of the CPUC’s portion of the prepaid MTS surcharge rate for 2018. We therefore have modified the Resolution to account for these additional factors and adjusted the CPUC’s portion of the 2018 MTS surcharge rate accordingly.

2018 CPUC User Fee Rate

The Commission has also modified the Resolution to account for the newly proposed 2018 telecommunications User Fee rate increase from .30% to .33% effective January 1, 2018, as identified in Resolution M-4832. By adopting the proposed rate we avoid having to adjust the 2019 MTS rate to account for any under-collection resulting from the rate change as was required this year.

⁶⁰ Pub. Util. Code § 319 (b) and (c); see also Rev. & Tax. Code § 42010(b) [“The prepaid MTS surcharge shall be annually calculated by the board by no later than November 1 of each year commencing November 1, 2015...”]

⁶¹ MetroPCS Comments on Draft Res. T-17579 (October 26, 2017), p. 2.

⁶² 4 U.S.C. § 116(c)(1).

⁶³ See T-Mobile Comments on Draft Res. T-17579 (October 26, 2017), p. 5.

As a result of the adjustments discussed above the CPUC's portion of the 2018 prepaid MTS surcharge rate will now be 5.55%.

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, 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. Assembly Bill 1717 enacted *The Prepaid Mobile Telephony Services Surcharge Collection Act* ("The Act") and added Public Utilities Code Section 319, among others, and added or amended other sections to the Taxation and Revenue Code.
5. The Act created a new surcharge for prepaid wireless service defined as the prepaid Mobile Telephony Services (MTS) surcharge, which became effective January 1, 2016, and will remain in effect until January 1, 2020.
6. The Act requires a new point-of-sale collection and remittance system for the surcharges, taxes, and fees assessed on prepaid wireless telephone service.
7. The Act requires the Board of Equalization, now known as the California Department of Tax and Fee Administration ("CDTFA"), to annually calculate and post the prepaid MTS surcharge, which is calculated by adding the California Public Utilities Commission Public Purpose Program Surcharges (universal service surcharges), California Public Utilities Commission User Fee (reimbursement fee), Emergency Telephone Users (911) Surcharge, and local charges, when applicable.

8. The Act requires the prepaid MTS surcharge to be imposed on prepaid wireless service in lieu of the individual surcharges, taxes, and fees imposed upon other intrastate telecommunications services.
9. The Act requires all sellers of prepaid wireless service to impose the prepaid MTS surcharge posted by the CDTFA on the sales price of prepaid wireless service at the time of purchase, and if prepaid wireless service is sold in combination with mobile data service or other services for a single price, then the prepaid MTS surcharge is to be applied to the entire price.
10. The Act requires all sellers of prepaid wireless service to collect the prepaid MTS surcharge from end-users at the time of purchase of prepaid wireless service.
11. The Act requires the Commission to annually calculate the CPUC portion of the prepaid MTS surcharge rate, consisting of the CPUC Public Purpose Program surcharges (universal service surcharges) and CPUC User Fee (reimbursement fee), and to provide this calculation to the CDTFA.
12. The Commission finds that the prepaid MTS surcharge is an intrastate surcharge.
13. The Commission finds that it is necessary to utilize an intrastate allocation factor in calculating the CPUC portion of the prepaid MTS surcharge to ensure that when the prepaid MTS surcharge is applied to the entire price of prepaid wireless service that includes other services, only that portion of the sales price that is jurisdictionally intrastate is assessed the prepaid MTS surcharge.
14. The Commission finds that the intrastate adjustment factor of 69.45% is reasonable to calculate the CPUC portion of the 2018 prepaid MTS surcharge rate because it is based on information provided by carriers comprising approximately 99% of the prepaid wireless market.
15. The CPUC portion of the prepaid MTS surcharge rate for 2018 is 5.55%, which consists of the CPUC Public Purpose Program surcharges rate of 5.29% and the CPUC User Fee rate of .26%.

16. The Commission is required to post notice of its proposed individual rates comprising the CPUC portion of the prepaid MTS surcharge by October 8, 2015, and annually thereafter until January 1, 2020, and to notify the CDTFA and Office of Emergency Services of the CPUC rates and the method used for calculating those rates.
17. The Commission is required to prepare a resolution or other public document to provide public notice and to adopt the proposed rates for the CPUC portion of the prepaid MTS surcharge.
18. The proposed individual rates comprising the CPUC portion of the prepaid MTS surcharge are reasonable and reflect the additional costs to the Commission for the collection and administration of the prepaid MTS surcharge, as well as other impacts from prepaid MTS surcharge collections discussed in this resolution.
19. The Act makes explicit the obligations of telephone corporations offering prepaid wireless telephone services to report and remit those reports required by the Commission.
20. The Act requires that all transactions for the purchase of prepaid wireless telephone service must include the assessment and explicit disclosure of the prepaid MTS surcharge as a separately stated line item.

THEREFORE, IT IS ORDERED that:

1. The California Public Utilities Commission's portion of the prepaid Mobile Telephony Service surcharge rate for 2018, as reflected in Appendix A, is adopted and shall become effective January 1, 2018.
2. All telephone corporations shall, beginning January 1, 2018, assess the prepaid Mobile Telephony Service (MTS) surcharge, which includes the CPUC rate of 5.55%, on the sales price of prepaid wireless service at the time of purchase, and if prepaid wireless service is sold in combination with mobile data service or other services for a single price, then the prepaid MTS surcharge is to be applied to the entire price.
3. All telephone corporations offering prepaid wireless telephone services shall report prepaid wireless intrastate revenue and remit the accompanying surcharges and fees as directed by the California Public Utilities Commission.

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 09, 2017 the following Commissioners voting favorable thereon:

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

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners

Resolution T-17579
CD/DSC

APPENDIX A

APPENDIX A

2018 CPUC MTS Surcharge and User Fee Rates	
CPUC Program	2018 MTS Rates
Universal Lifeline Telephone Services (ULTS/MTS)	3.76%
Deaf and Disabled Telecommunications Program (DDTP/MTS)	0.40%
California High Cost Fund - A (CHCF-A/MTS)	0.28%
California High Cost Fund - B (CHCF-B/MTS)	0.00%
California Teleconnect Fund (CTF/MTS)	0.85%
California Advanced Services Fund (CASF/MTS)	0.00%
California Public Utilities Commission User Fee (User Fee/MTS)	0.26%
Total	5.55%