

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17470
May 21, 2015**

RESOLUTION

RESOLUTION T-17470. This resolution adopts the \$11,521,595 proposed payment by Verizon Wireless, Inc. LLC, to the California Public Utilities Commission for the sum of past unpaid public purpose program surcharges and user fees, plus interest, from the sale of prepaid wireless service prior to February 2012.

SUMMARY

By this Resolution, the Commission adopts a proposal by Verizon Wireless, Inc. LLC (Verizon) to resolve past unpaid public purpose program surcharges and user fees owed prior to February 2012. In its proposal, Verizon has agreed to pay the Commission \$11,521,595 as the sum of past unpaid surcharges and user fees owed, plus interest, from the sale of prepaid wireless services prior to February 2012. More specifically, Verizon has agreed to pay the full amount of all surcharges and user fees owed prior to February 2012 (\$10,545,989), as well as to provide interest on the amount owed calculated at a simple 10 percent interest rate (\$975,606). Approving Verizon's proposal satisfies any claim that the Commission may have against Verizon for unpaid surcharges and user fees prior to February 2012. The Communication Division recommends the Commission adopts this Resolution.

BACKGROUND

The Commission collects and distributes funds to support six public purpose programs for the benefit of California ratepayers. These programs are mandated by Public Utilities (P.U.) Code §§ 270-278.5 and §§ 280-281. Funds to support these programs are collected from end users (ratepayers) as surcharges based on intrastate revenue, and remitted by carriers to the Commission through its Telecommunications User Fees Filing System (TUFFS). The Commission requires all pre- and postpaid landline, cellular, Voice over Internet Protocol and reseller carriers authorized to conduct business in California to collect and remit surcharges. The six programs are:

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- California High-Cost Fund A (CHCF-A): This program provides a source of supplemental revenue to small local exchange carriers (LECs) for the purpose of minimizing any basic telephone service rate disparity between rural and metropolitan areas;
- California High-Cost Fund B (CHCF-B): This program provides subsidies to carriers of last resort (COLRs) for providing basic local telephone service to residential customers in high-cost areas;
- Universal Lifeline Telephone Service (ULTS): This program provides discounted home wireline phone and wireless phone services to qualified households;
- Deaf and Disabled Telecommunications Program (DDTP): This program provides telecommunications devices to deaf or hearing-impaired consumers;
- California Teleconnect Fund (CTF): This program provides a 50% discount on selected communications services to schools, libraries, hospitals, and other non-profit organizations; and
- California Advanced Services Fund (CASF): This program supports the deployment of broadband facilities and adoption of broadband services in unserved and underserved areas of the state through project-specific grant funding.

Additionally, the Commission collects funds as authorized by P.U. Code §§ 401 and 402 as Public Utilities Commission Reimbursement Fees (user fees), providing the authority to collect these user fees from customers through the carriers' billings.¹ Revenues collected in the form of this fee fund the Commission's operating budget, which allows it to regulate telecommunications utilities.

On August 13, 2008, the Utility Audit, Finance, and Compliance Branch (UAFCB) of the Commission's Division of Water and Audits issued a Report on the Regulatory Compliance Audit of the Public Programs Surcharges and Claims and User Fees by Verizon for the year ending December 31, 2006. The audit report found that Verizon had not paid surcharges and user fees on revenues collected from prepaid wireless service.² On September 15, 2008, Verizon disputed this audit finding by responding

¹ VoIP providers are not required to collect and remit CPUC user fees. See P.U. Code § 285.

² This includes several Verizon-owned companies authorized by the CPUC to conduct business in California: California RSA No. 4 Limited Partnership (U-3001-C); Fresno MSA Limited Partnership (U-3005-C); GTE Mobilnet of California Limited Partnership (U-3002-C); GTE Mobilnet of Santa Barbara Partnership (U-3011-C); Los Angeles SMSA Limited Partnership (U-3003-C); Modoc RSA Limited Partnership (U-3032-C); Sacramento Valley Limited Partnership (U-3004-C), Verizon Wireless (VAW) LLC (U-3029-C) and WWC License L.L.C. (U-3025-C).

that prepaid wireless services were not taxable. Two weeks later, on September 29th, UAFCB issued its Final Report of Regulatory Compliance, stating that it respectfully disagreed with Verizon and reasserted that all communication services are subject to surcharges unless explicitly exempted.

On January 28, 2009, CD's then-Director Jack Leutza issued a letter citing the UAFCB Regulatory Compliance Audit Report, requesting that Verizon remit \$386,685 for underpayments of surcharges, and applicable interest. The letter also stated that Verizon "is a telephone corporation that is under the jurisdiction of the Commission and is required to assess CPUC User Fees and public purpose program surcharges based on intrastate revenues, with certain explicit exemptions. At this time, prepaid wireless service has not been exempted from the CPUC user fees and public purpose program surcharges."

On April 17, 2009, CD sent a follow-up email to Verizon reiterating the Commission's position that surcharges must be paid on the intrastate portion of prepaid wireless service, and recommended that payment be made to avoid the potential for additional interest and/or penalty assessment. The CD Director followed with a May 1, 2009 letter, stating "[f]ailure to comply with this directive will result in this matter being referred to the Commission's Consumer Protection and Safety Division's Enforcement Branch to open an Order to Show Cause as to why Verizon should not pay the amount due for the unpaid surcharges."

On May 8, 2009, Verizon remitted \$44,957 of the \$386,685 in unpaid surcharges, stating that amount "represents payment for a portion of the current regulatory compliance audit findings for calendar years 2003 through 2007. Specifically, these payments related to exempt customer findings, which VZW concedes. Please accept these partial payments as VZW's good-faith attempt to significantly narrow the scope of the audit controversy." Although Verizon submitted a partial payment in response to the audit findings, Verizon refused to pay the unpaid surcharges for its prepaid wireless services. Verizon continued to maintain that prepaid wireless services were exempt from surcharges as concluded by the UAFCB Audit and CD and Verizon formally asked the Commission in 2009 to open a proceeding to resolve this dispute. The Commission declined Verizon's request, as instead focusing its resources on a review of another prepaid wireless provider, TracFone Wireless, Inc. (U-4321-C), which had refused to collect and remit surcharges and user fees.

On December 17, 2009, the Commission opened an Order Instituting Investigation (OII) into the alleged failure of TracFone Wireless, Inc. (U-4321-C) to collect and remit public purpose program surcharges and user fees on intrastate revenue earned from its sale of prepaid wireless services to California consumers. The Commission held evidentiary hearings in February, 2011, with opening and reply briefs submitted in March and April

2011, respectively. The Commission subsequently issued Decision (D.) 12-02-032 on February 16, 2012, affirming that TracFone is a telephone corporation, and that telephone corporations are obligated to collect and remit surcharges and user fees for intrastate revenues earned on prepaid wireless services. The decision ruled that TracFone acted unlawfully – violating statutes and Commission decisions – by failing to pay surcharges and user fees on sale of prepaid wireless services.

Although D. 12-02-032 was directed to TracFone specifically, the decision reinforced the Commission staff position that telephone corporations, like Verizon, are obligated to collect and remit surcharges and user fees on their prepaid wireless services. Accordingly, Verizon soon thereafter became compliant and began paying surcharges and user fees to include its prepaid wireless services beginning in February 2012.³ As of January 2014, Verizon continues to pay surcharges and user fees to include prepaid wireless services.

DISCUSSION

Although Verizon has been compliant going forward in paying surcharges and user fees on prepaid wireless services since February 2012, Verizon has an outstanding obligation of owed surcharges and user fees covering the period prior to February 2012.

In the fall of 2013, Verizon initiated meetings with CD staff to discuss ways to determine the amount owed and to resolve the outstanding obligation. To determine the amount owed, CD requested that Verizon research its financial records to ascertain the extent of prepaid wireless service revenues accrued in California during the period prior to February 2012. After researching its records, Verizon reported that it had uncovered revenue information going back to August 2005, showing intrastate revenues from prepaid wireless services for a multi-year period totaling in excess of \$365 million. Finding no other financial data to show that Verizon engaged in the prepaid wireless business before August 2005, CD concluded that Verizon made a good faith effort to determine the amount earned. After applying associated public purpose surcharge and user fee rates in effect over that period, Verizon and CD then determined that the total past due obligation for owed surcharges was \$9,974,691 and for owed user fees, \$571,298.

Following a series of meetings and written communications during 2014, Verizon submitted a proposal to CD in December 2014 that offered to pay \$10,545,989 for all past unpaid surcharges (\$9,974,691) and user fees (\$571,298). This proposal covers the period from when Verizon began recording prepaid wireless revenues (August 2005) to the month before the company became complaint (January 2012). In addition,

³ A court challenge of D.12-02-032, as affirmed by D.12-10-018, was denied on March 13, 2013, and thus, D.12-02-032 is final.

Verizon's proposal included a provision for interest, as the company proposed to use one-half of the average 90-Day AA Financial Commercial Paper Interest Rate for the years 2005 through 2014,⁴ These years were selected because they covered the span beginning with the month and date that prepaid wireless service began to be recorded in Verizon's Prepaid Financial System and extending through the calendar year 2014, while interest accrued on the unpaid amount. The interest calculation from this methodology totaled \$645,367. As Verizon has proposed that no penalties be applied, Verizon's total proposal to resolve its unpaid obligation was to make a payment to the Commission of \$11,191,356.

Following CD's review of Verizon's proposal, CD mailed a draft resolution on February 6th, recommending that the Commission adopt Verizon's proposal as a fair and reasonable offer to resolve the outstanding obligation for the following reasons:

1. **Principal:** The proposal would provide 100% of all unpaid surcharges and user fees based on accrued revenue from prepaid wireless services Verizon during the period when Verizon excluded this revenue in its surcharge and user fee remittance calculations. Accordingly, Verizon would fully pay all past surcharges and user fees owed during this period from prepaid wireless services.
2. **Interest:** The proposal would provide an increment for interest to recognize the time value of money from not receiving the surcharges and user fees on a monthly basis in prior years.

CD researched various Commission citations and authorities to determine an appropriate methodology or mechanism establishing an interest amount to be added to the unpaid surcharge and user fees. Although General Order 153 at Section 9.8.6 sets forth a 10% interest rate for late remittances, that same General Order in Section 14 establishes a waiver process by which the CD Director may approve a lower interest rate or no interest at all. Specifically, Section 14.4 *Requests for waiver of California Lifeline Administrative Requirements* states in relevant part:

If a waiver involves the payment of money to or from a California LifeLine Service Provider, CD may determine what rate of interest, if any, should apply to the payments(s) subject to the waiver.

CD staff found that General Order 153 also authorizes the use of the three-month (i.e. 90 days) Commercial Paper Rate as a means to pay carriers when the Commission is late in paying claims. Given that this interest

⁴ Source: Website for the Board of Governors of the Federal Reserve, <http://www.federalreserve.gov>.

rate has been used to compensate for the time value of money from late payments, we believe that the proposal by Verizon based on the 90-day Commercial Paper Rate index is a fair and reasonable attempt to address the company's delinquency in paying surcharges and user fees.

3. **Penalties:** Verizon's proposal does not include penalties. However, CD is not advocating an assessment for penalties here given the following factors:
 - a) Verizon has voluntarily come forward in good faith to resolve its unpaid obligations;
 - b) Verizon had formally petitioned to resolve this matter in 2009;
 - c) Verizon immediately complied with the findings in D. 12-02-032 and submitted surcharges and user fees covering prepaid wireless service beginning in February 2012.

4. **Litigation Avoidance:** Because Verizon has agreed to pay all the principal of unpaid surcharges and user fees, and has included an increment for interest at a simple rate of 10%, CD supports resolving this matter via this Resolution and thereby avoiding litigation.

CD recommends that the Commission should direct Verizon to submit payment within 30 days of the effective date of this resolution by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Cashiering Unit, San Francisco, CA 94102. Verizon should write on the face of the check or money order the following: "For deposit to Commission program budgets as set forth in Resolution T-17470."

After receipt of the payment, the Commission's Fiscal Office should confer with CD staff to credit the following program funds for the payment received: Universal Lifeline Telephone Service, Deaf and Disabled Telecommunications Program, California High Cost Fund-A, California High Cost Fund-B, California Teleconnect Fund, the California Advanced Services Fund, and the Public Utilities Commission Utility Reimbursement Account.

SAFETY CONSIDERATIONS

This resolution bears no significant impact on safety issues. However, the additional surcharge and user fee revenue paid to support Commission programs positively impacts the provision of access to quality telecommunications service which supports public safety.

COMMENTS

Public Utilities Code § 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. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on February 6, 2015, informing Verizon Wireless, of the availability of this draft resolution for comments, as well as the availability of the conformed resolution, if adopted by the Commission, on the Commission's website <http://www.cpuc.ca.gov>.

On March 2, 2015, Verizon filed comments in support of the draft resolution. Verizon's comments proposed two minor clarifying text changes to reflect that principal and interest payment is being made for unpaid surcharges and user fees prior to February 2012, and to clarify that Verizon began recording prepaid wireless service revenue in its Prepaid Financial System in August 2005. CD agrees, and has reflected this clarifying text in the Resolution.

On March 2, 2015, the Office of Ratepayer Advocates (ORA) also filed comments on the draft resolution. ORA recommends that the Commission adopt the interest requirements for late payments consistent with General Order 153, and require Verizon to pay an annual simple interest rate of 10 percent on both past unpaid public purpose programs surcharges and unpaid user fees amounts, with the interest rate on unpaid user fees capped at 25 percent.

In making this recommendation, ORA provided numbers based on calculations it performed, recommending that in addition to the principal amount of \$9,974,691 for unpaid surcharges and \$571,298 in unpaid user fees – which totals \$10,545,989 – the Commission add a combined interest amount for surcharges and user fees of \$975,606, which is \$330,239 greater than that proposed by Verizon. This recalculated total incorporating the principal amount of \$10,545,989 and the greater interest amount of \$975,606 recommended by ORA equals a total payment by Verizon of \$11,521,595. ORA underscores this recommendation by stating that use of a 10 percent simple interest rate is what the Commission has used in prior Decisions related to unpaid surcharges and user fees.

On March 5, 2015, Verizon replied to ORA's comments that propose to increase the interest amount by \$330,239 to \$975,606 for a total principal and interest amount of \$11,521,595, stating that it did not agree with ORA's reasoning. However, Verizon further stated that to fully resolve this matter, it would agree to increase the interest component of the payment as requested by ORA and to revise its proposal to pay \$11,521,595 in principal and interest.

Accordingly CD has modified the interest amount by \$330,239 from \$645,367 to \$975,606, to accommodate the proposal to incorporate a simple 10 percent interest rate,

summing to a total principal and interest amount of \$11,521,595. All subsequent findings and orders in this resolution have been modified to reflect these changes, and CD recommends that the Commission approve this resolution.

FINDINGS

1. The Commission collects and distributes funds to support six public purpose programs for the benefit of California ratepayers. These programs are mandated by Public Utilities Code §§ 270-278.5 and §§ 280-281.
2. The Commission collects funds as authorized by P.U.C. §§ 401 and 402 as Public Utilities Commission Reimbursement Fees (user fees), providing the authority to collect these user fees from customers through the carriers' billings. Revenues collected in the form of this fee fund the operating budget of the Commission, which allows it to regulate telecommunications utilities.
3. On August 13, 2008, the Utility Audit, Finance, and Compliance Branch of the Commission's Division of Water and Audits issued a Final Report on the Regulatory Compliance Audit of the Public Programs Surcharges and Claims and User Fees for the year ending December 31, 2006, identifying Verizon as not paying surcharges and user fees on revenues collected for prepaid wireless service.
4. The Communications Division Director issued a letter citing the audit report on January 28, 2009, stating that Verizon owed \$386,685 in unpaid surcharges, user fees, and interest.
5. On May 8, 2009, Verizon Wireless, Inc. LLC (Verizon) remitted \$44,957 of the \$386,685 in unpaid surcharges. This letter was accompanied by a summary of audit findings, itemizing various exceptions (referred to as "exempt customer issues") that Verizon claimed in justifying the lower payment, summing to \$44,957.
6. The Commission issued Phase 1 Decision (D.) 12-02-032, affirming that TracFone is a telephone corporation and that telephone corporations are obligated to collect and remit surcharges and user fees on prepaid wireless services. The decision ruled that TracFone acted unlawfully – violating statutes and Commission decisions – by failing to pay surcharges and user fees earned from prepaid wireless services.
7. Since the issuance of D. 12-02-032, Verizon has been compliant going forward in paying surcharges and fees on prepaid wireless services since February 1,

- 2012, but it has an outstanding obligation of owed surcharge and user fees covering the period prior to February 2012.
8. In the fall of 2013, Verizon initiated meetings with CD staff to discuss ways to determine the amount owed and to resolve the outstanding obligation from not paying surcharges and user fees from prepaid wireless service revenue.
 9. Revenue reported by Verizon and accepted by CD for the period August 2005 through January 2012 associated with prepaid wireless service is in excess of \$365 million. After applying public purpose surcharge and user fee rates in effect over the period, Verizon and CD determined that the total past due obligation for owed surcharges was \$9,974,691, and for owed user fees, \$571,298. The total past unpaid surcharges and user fees are \$10,545,989.
 10. Verizon proposed an interest rate based on one-half of the average 90-Day AA Financial Commercial Paper Interest Rate for the years 2005 through 2014. The proposed interest calculation based on this methodology totals \$645,367.00.
 11. The proposal would provide 100% of all unpaid surcharges and user fees from Verizon prepaid wireless service revenue incurred during the period when Verizon did not include this amount in its remittances.
 12. General Order 153 at 14.4 establishes a waiver process by which the CD Director may approve a lower interest rate or no interest at all.
 13. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on February 6, 2015 informing Verizon Wireless, of the availability of this draft resolution for comments, as well as the availability of the conformed resolution, if adopted by the Commission, on the Commission's website <http://www.cpuc.ca.gov>.
 14. On March 2, 2015, Verizon submitted filed comments in support of the draft resolution.
 15. On March 2, 2015, the Office of Ratepayer Advocates (ORA) also filed comments on the draft resolution, recommending that the Commission require Verizon to pay an annual simple interest rate of 10 percent on both past unpaid public purpose programs surcharges and unpaid user fees amounts.
 16. Based on ORA's calculations the combined interest amount for surcharges and user fees equals \$975,606, which is \$330,239 greater than that proposed by Verizon. This recalculated total incorporating the principal amount of \$10,545,989 and the greater interest amount of \$975,606 recommended by ORA equals a total payment by Verizon of \$11,521,595.
 17. On March 5, 2015 Verizon replied to ORA's comments, stating that it did not agree with ORA's reasoning. However, Verizon further stated that to fully resolve this matter, it would agree to increase the interest component of the

payment by \$330,239 and to revise its proposal to pay \$11,521, 595 in principal and interest.

18. CD supports the Commission adoption of Verizon proposal to pay \$11,521,595 to the Commission to settle all claims relating to the payment of all public purpose program surcharges and user fees for prepaid wireless services for the period prior to February 1, 2012.
19. The Commission should direct Verizon to submit the \$11,521,595 payment within 30 days of the effective date of this resolution by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Cashiering Unit, San Francisco, CA 94102. Verizon should write on the face of the check or money order "For deposit to Commission program budgets as set forth in Resolution T-17470".

THEREFORE, IT IS ORDERED that:

1. The Commission approves a payment by Verizon Wireless Inc. LLC of \$10,545,989 million in unpaid surcharges and \$975,606 million in interest calculated at a simple 10 percent interest rate, for the period prior to February 1 2012. The total payment equals \$11,521,595.
2. As payment for public purpose program surcharges under Public Utilities Code Sections 270-278.5 and 280-281, and user fees under Public Utilities Code Sections 401-402, accrued from August 2005 through January 2012, including interest, Verizon Wireless Inc. LLC shall pay \$11,521,595 within 30 days of the effective date of this resolution by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Cashiering Unit, San Francisco, CA 94102. Verizon Wireless, Inc. must write on the face of the check or money order "For deposit to Commission program budgets as set forth in Resolution T-17470.
3. The payment made by Verizon Wireless Inc. LLC, pursuant to Ordering Paragraph 1, shall be credited to the following program funds: Universal Lifeline Telephone Service, Deaf and Disabled Telecommunications Program, California High Cost Fund-A, California High Cost Fund-B, California Teleconnect Fund, and the California Advanced Services Fund, and the Public Utilities Commission Utility Reimbursement Account.

