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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution T-17504. Approval of the Mobile Telephony Services surcharge rates to be assessed on prepaid wireless telephone service effective January 1, 2016.	A.15-12-019 (Filed December 23, 2015)

ORDER MODIFYING RESOLUTION T-17504, AND DENYING REHEARING OF RESOLUTION T-17504, AS MODIFIED

I. INTRODUCTION

In this Order, we dispose of the Application for Rehearing of Resolution T-17504[1] filed by CTIA – The Wireless Association® ("CTIA")[2], for reasons discussed below.

Resolution T-17504 ("Resolution") adopted the 2016 prepaid Mobile Telephony Services ("MTS") surcharge, pursuant to Assembly Bill ("AB") 1717 (Stats. 2014, ch. 885) (or "the Act").[3] These charges are assessed on those intrastate revenues from prepaid wireless telephone service subject to surcharge, and are collected from prepaid end-users in California. The Resolution adopted the Prepaid MTS surcharge at 8.51%, and this charge is effective January 1, 2016 through December 31, 2016.[4]

[1] Citations to resolutions are to the official pdf version on the Commission's website at: http://docs.cpuc.ca.gov/ResolutionSearchForm.aspx.

[2] According to the Application for Rehearing, Resolution T-17504 ("Rhg. App."), CTIA is an international nonprofit membership organization that has represented the wireless communications industry since 1984. (Rhg. App., p. 1.)

[3] Bill effective date September 30, 2014, repealed by its own provisions, January 1, 2020.

[4] ResolutionT-17504, p. 1.

All intrastate telecommunication services are charged with numerous surcharges, taxes and fees as assessed by the State of California, city and county governments, and federal agencies. All telecommunication carriers or service providers (collectively, "service providers") are required to remit these funds to the appropriate authorities, regardless of the form of service provided (i.e., wireline versus wireless.)

Service providers pass these charges on to end-use consumers through monthly billing statements, if the consumer pays for the telecommunication services after the charges are incurred ("postpaid consumer"). An increasing number of consumers, however, are purchasing prepaid mobile telecommunication services at retail locations, without the standard monthly billing process.[5]

These charges include six "Public Purpose Program Surcharges" or "universal service surcharges"[6] and the "Commission's User Fee" or reimbursement fee"[7], as administered by the Commission. Charges also include the Emergency Telephone User's surcharge ("911 surcharge") as administered by the Office of Emergency Services (OES) and the Board of Equalization ("BOE").[8]

Prior to AB 1717, service providers contended that they were unable to recoup the cost of surcharges and fees from these prepaid mobile consumers. CTIA, the

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[5] For purposes of this Order, unless otherwise noted, references to telecommunication service or "telephony" service will refer only to mobile or wireless service with California (or "intrastate").

[6] The Resolution uses the term "Public Purpose Program Surcharges." The Act defines these same charges alternatively as "Universal service surcharge" (Pub. Util. Code, § 319, subd. (a)(3)), or "telecommunications universal service surcharges" (Pub.Util. Code § 319, subd. (c); Rev. & Tax. Code, § 42010, subd. (b)(2).) In all cases, the definition of these charges conforms to Public Utilities Code section 319 (a)(3), which states: "any charge imposed by the commission to support programs funded through one of the state's universal service funds created pursuant to Chap. 1.5 (commencing with Section 270)" of the Public Utilities Code. In this Order, we refer to these charges as "universal service surcharges."

[7] The Resolution refers to these charges as the "Commission's User Fee." The Act refers to these charges as "Reimbursement fee." (Pub. Util. Code, § 319, subd. (a)(2).) In both cases, the definition of these charges conforms to Public Utilities Code section 319(a)(2), which states: "a charge imposed by the commission pursuant to Chapter 2.5 (commencing with Section 401)" of the Public Utilities Code. In this Order, we refer to these charges as "reimbursement fees."

[8] Rev. & Tax. Code, §§ 41020, subd. (a)(1)(B) & 41030.

Rehearing Applicant in this case, sponsored AB 1717 on behalf of telecommunication providers to create a new "point-of-sale" mechanism for the collection and remittance of these charges from prepaid mobile consumers.

With the passage of AB 1717, consumers of prepaid intrastate wireless service are now assessed a new surcharge, while all nonprepaid intrastate service providers remain subject to the existing fee and surcharge structure as described above.

In implementing AB 1717, Resolution T-17504 itemized those charges attributable to the implementation and administration of the new prepaid MTS surcharge program as the "Additional Increment for MTS"[9] or "MTS Increment."[10] This MTS Increment is added to the universal service surcharges and reimbursement fees as part of the *prepaid MTS surcharge only*. In assessing fees in this manner, the cost of the prepaid MTS surcharge program is charged solely to prepaid consumers -- as the only consumers subject to this new surcharge.

The Commission adopted Resolution T-17504 on November 19, 2015. CTIA timely filed an application for rehearing of Resolution T-17504. The allegations of error raised in the rehearing application focus on the legality of the MTS Increment. Specifically, CTIA claims that the Resolution is in violation of both AB 1717 and the Commission's own precedent, and beyond the scope of the Commission's authority. In particular, they note that the Act explicitly provides for BOE and retail providers to recover their costs of implementing the prepaid MTS surcharge program, but contains no comparable language for the Commission.

In addition, CTIA claims that the Resolution's assessment of the MTS Increment on prepaid customers only constitutes a violation of the legislative intent of Public Utilities Code section 319(d)(4), which requires that fees and surcharges be applied, "as much as possible, in a competitively neutral manner."

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[9] Resolution, pp. 9-10.

[10] Rhg. App., p. 2.

We have carefully considered the arguments raised in the Application for Rehearing, and are of the opinion that the Resolution should be modified to correct technical errors and further clarify our response to comments and findings regarding the prepaid MTS surcharge. Further, the Resolution should be modified to replace the terms "Public Purpose Program Surcharges" and "Commission's User Fee" with the terms "universal service surcharges" and "reimbursement fees," respectively, as these terms are set forth in the Act. The modifications are set forth in the ordering paragraphs below.

With these modifications, we do not find good cause for granting rehearing. Accordingly, we deny the application for rehearing of Resolution T-17504, as modified, because no legal error has been shown.

II. DISCUSSION

A. The Commission did not violate AB 1717 in its implementation, administration and cost recovery costs for the prepaid MTS surcharge program from only prepaid MTS surcharge consumers.

1. Pursuant to AB 1717, the Commission has the authority to recover its own costs.

In its Rehearing Application, CTIA alleges that AB 1717 does not allow the Commission to recover its costs in implementing the new prepaid MTS surcharge program. (Rehg. App., p. 6.) This allegation has no merit.

Generally, the Commission has the authority to assess reimbursement fees (See Public Utilities Code, chapter 2.5 (commencing with Section 401).) With respect to the MTS surcharge, under AB 1717, the Commission has the authority to calculate a new reimbursement fee to recover its costs. Public Utilities Code section 319(b) states:

> The Commission shall annually, on or before October 1 of each year, commencing October 1, 2015, compute a reimbursement fee as a percentage of the sales price for prepaid mobile telephony services … to be collected and remitted pursuant to [the Act].

The Act defines "reimbursement fee" to include the Commission's existing authority,[11] and then adds the new MTS fee to the Commission's authority.[12] Moreover, the Commission's authority provides broad discretion in establishing "different and distinct methods of assessing fees" if the revenues generated reflect the Commission's workload associated with the utility being assessed. [13]

The fact that the Legislature provided the Commission with the authority to recover its costs *in a different manner* than that afforded BOE under the Act in no way diminishes the Commission's grant of authority. Therefore, CTIA's assertion that the Commission lacked authority and exceeded its authority by adding the MTS Increment to the MTS Surcharge has no merit.[14]

2. Resolution T-17504 does not read Public Utilities Code section 319(d)(4) out of the Act or otherwise render it superfluous.

CTIA alleges that the Resolution ignored or read out Public Utilities Code section 319 (d)(4) of the Act by adding the MTS Increment to only prepaid consumers. (Rehg. App., pp. 6-7.) This statutory provision states:

> It is the intent of the Legislature that reimbursement fees and universal service surcharges be applied, as much as possible, in a competitively neutral manner that does not favor either

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[11] "Reimbursement fee" means a charge imposed by the Commission pursuant to Chapter 2.5 (commencing with Section 401)." (Pub. Util. Code, § 319, subd. (a)(2).)

[12] Public Utilities Code section 431 states:

> The commission shall annually determine a fee to be paid by every … telephone … corporation, and every other public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission other than railroad … *and as otherwise provided in Section 319, for a prepaid MTS provider, as defined in Section 42004 of the Revenue and Tax Code.*

(Pub. Util. Code § 431, subd. (a), emphasis added.)

[13] Pub. Util. Code, § 432, subd. (b).

[14] CTIA cites to several cases to argue that the Commission lacked authority: *Gikas v. Zolin* (1993) 6 Cal.4th 841; and *Assembly v. Public Utilities Commission* (1995) 12 Cal.4th 87.(See Rehg. App., p. 5.) Since the Act provided the Commission with the requisite authority as properly exercised in the Resolution, these cases are not applicable, and CTIA's reliance on these decisions is misplaced.

> prepaid or postpaid payment for mobile telephony services, and that, over time, collections of state charges from prepaid and postpaid consumers balance out so that neither pay a disproportionate amount.

(Pub. Util. Code, §319, subd. (d)(4).)

Specifically, CTIA argues that by imposing the costs on only prepaid consumers, the Commission has failed to follow Public Utilities Code section 319(d)(4) which makes reference to both prepaid and postpaid consumers. CTIA is wrong for a number of reasons.

First, CTIA's argument is flawed because it presumes that the only way to comply with Public Utilities Code section 319(d)(4) is to impose the costs associated with the MTS Increment on both prepaid and postpaid consumers. This is simply not the case. The Commission's reimbursement fee is a fixed amount each year based on the costs associated with regulating the utility being assessed. The Commission has already committed to leveling out its costs associated with the prepaid MTS surcharge after the initial prepaid MTS surcharge start-up costs.[15]

This approach is consistent with the language in the statute which states, " . . . and that, *over time*, collections of state charges from prepaid and postpaid consumers balance out so that neither pay a disproportionate amount." (Pub. Util. Code, § 319, subd.(d)(4), emphasis added.) The Resolution does not preclude the Commission from adjusting its costs; and thereby, the MTS Increment can be adjusted over time, as mandated by this statutory provision.

In addition, the language of Public Utilities Code section 319(d)(4) must be construed in the context of the Act overall, which is centered around, and designed for,

[15] In the legislative history, the fiscal impact on the Commission is discussed as follows: "$630,000 for the first two years of implementation and $350,00 thereafter from the [Commission's] Utilities Reimbursement Account (special) to set the MTS and track MTS revenues." (Assem. Floor Analysis, Concurrence with Senate Amendments, Assem. Bill No 1717 (2013 -2014 Reg. Sess.) as amended August 22, 2014, p. 3.)

prepaid wireless consumers."[16] For example, "prepaid consumer" itself is a defined term.[17] Postpaid consumer is not so defined. The Act outlines specific elements of this new surcharge program, repeatedly specifying that the program is intended for the prepaid consumer market.[18]

In particular, the Act states that every *prepaid* consumer of mobile telephony services in this state is *liable for the prepaid MTS surcharge and any local charges* until they have been paid to the state, unless a seller relieves the *prepaid* consumer from further liability for the these charges.[19]

In addition, in annually computing the reimbursement fees and universal service surcharges, the Commission shall adjust the fees and surcharges to account for any past overcollection or undercollection of fees or surcharges from *prepaid* consumers resulting from a reduction or increase in the surcharges made subsequent to December 31st of the previous year. (Pub. Util. Code, § 319, subd. (d)(2).) Again, the Commission had the authority to just focus on the costs as applied to prepaid consumers.

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[16] The Act itself is entitled "*Prepaid* Mobile Telephony Services Surcharge Collection Act." (Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as chaptered, § 8.) The Legislative findings indicate that, to ensure equitable contribution from prepaid and postpaid consumers of wireless telephony services, a standardized method must be used to collect communications taxes, fees and surcharges from end-use consumers of *prepaid* mobile telephony services. (Rev. & Tax. Code, § 42002, subd. (e).) The Legislative findings also state that collecting taxes, fees and surcharges from *prepaid consumers* of mobile telephony services *at the time of the retail transaction* is necessary and the most efficient and *competitively neutral* means of collection. (Rev. & Tax. Code, § 42002, subd. (f).)

[17] Rev. & Tax. Code, § 42004, subd. (j).

[18] Indirect sellers are permitted to deduct and retain an amount equal to 2 percent of the amounts that are collected by the seller from *prepaid* consumers for the prepaid MTS surcharge. (Rev. & Tax. Code, § 42010, subd. (e).) A seller must provide a *prepaid* consumer an invoice, receipt or other similar document which separately states the amount of the combined prepaid MTS surcharge and local charges, or otherwise disclose this information electronically to the *prepaid* consumer, at the time of the retail transaction. (Rev. & Tax. Code, § 42010, subd. (i).) If a seller collects an excess prepaid MTS surcharge amount and does not return it to the *prepaid* consumer, this overage constitutes a debt owed by the seller to the state. (Rev. & Tax. Code, § 42010, subd. (j).) A seller that has collected any amount of prepaid MTS surcharge in excess of what is due from a *prepaid* consumer, may refund that amount to the *prepaid* consumer. (Rev. & Tax. Code, § 42010, subd. (k).)

[19] Rev. & Tax. Code, § 42010, subd. (l)(1).

Overall, the Act's statutory scheme shows an intention to limit the statutory provisions of AB 1717 to prepaid consumers unless the statute explicitly states otherwise. Thus, CTIA's assertion that the plain language of Public Utilities Code section 319(d)(4) mandates that the Commission apply the costs associated with the "MTS Increment" to all telecommunication consumers has no merit. Therefore, for the reasons cited above, the Commission has not read Public Utilities Code section 319(d)(4) out of AB 1717.

However, because there may be ambiguity regarding our compliance with Public Utilities Code section 319(d)(4), we will modify the Resolution to make clearer our reasoning and findings. These modifications are set forth in the ordering paragraphs below.

B. Resolution T-17504 adheres to the statutory requirements of AB 1717 and is consistent with Commission precedent.

CTIA claims that the Commission failed to follow its own precedent in the form of the existing universal service surcharges and reimbursement fees when it did not impose the costs of the prepaid MTS surcharge program on all telecommunication consumers. (Rehg. App., pp. 9-10.) This claim has no merit.

Under AB 1717, the Commission was required to impose a new MTS surcharge on prepaid consumers and to develop a new and separate collection system. Legislative findings for AB 1717 explicitly identify the collection of funds from *prepaid* consumers as a founding premise of the Act:

> To ensure equitable contributions from end-use consumers of postpaid and prepaid mobile telephony services in this state, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges for end-use consumers of *prepaid* mobile telephony services.

(Rev. & Tax. Code, § 42002, subd. (e), emphasis added.)

AB 1717 expressly mandates that the Commission calculate new universal service surcharges and reimbursement fees for prepaid mobile telephony services,[20] and requires that these new surcharges and fees, along with a new 911 surcharge adopted by the Office of Emergency Services[21] be imposed *in lieu* of the existing fees imposed under these programs.[22]

The Resolution outlines the increased costs and administrative activities required as a result of the Act.[23] Legislative history indicates that these new processes and associated new costs were acknowledged and accepted as fiscal impacts associated with the passage of the bill.[24] In particular, legislative history contains detailed discussions on the administrative implications for the Commission regarding the need to accommodate a new and parallel point-of-sale collection system.[25]

Upon passage of the bill, the funding to create this new collection program was reviewed and approved by both the Department of Finance and ultimately the Legislature.[26] Legislative history indicates clearly that the Legislature knew that the collection processes for prepaid were now bifurcated from, but did not replace, the existing collection system for all other telecommunication services.[27]

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[20] Pub. Util. Code § 319, subd. (b) & (c).

[21] Rev. & Tax. Code, § 41030.

[22] Rev. & Tax. Code, § 42010, subd. (a)(2).

[23] Resolution T-17504, pp. 6-8.

[24] See footnote 15, *supra*.

[25] See Assem. Com. on Utilities and Commerce, Analysis of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended April 2, 2014, p. 7, stating:

> How does this bill impact the key parties involved: … [The Commission] may be disadvantaged by this bill proposal as it would bifurcate the workload for staff by requiring creation of a new unit to interface with the new BOE collection mechanism and the prepaid account, and integrate the BOE collected revenue data on prepaid services with the [Commission] collected revenue for postpaid services in order to accurately determine the fee and surcharge percentages applicable to prepaid service.

[26] Resolution T-17504, p. 6.

[27] The legislative history provides the following regarding administrative costs:

(*footnote continued on next page*)

Therefore, both the language of the statute and legislative history indicate that prepaid consumers were intentionally separated out from existing universal service surcharges and reimbursement fees established in previous Commission resolutions.[28]

In addition, an overarching public purpose distinguishes the universal service surcharge programs from the prepaid MTS surcharge. In particular, the Legislature enacted these universal service surcharge programs in the context of public safety, and thereby consistent with, and in furtherance of, the overall public interest.[29]

There is essentially no comparable "public interest" involving consumer benefits underlying the prepaid MTS surcharge program. This program primarily benefits service providers by creating a point-of-sale mechanism to pass on the universal service surcharges and the Commission's reimbursement fees to prepaid consumers.[30]

(*footnote continued from previous page*)

> BOE and [Commission] currently incur $2.6 million in administrative costs under the existing system. These costs are ongoing and are likely to continue unchanged by this bill as this system will need to continue to operate to receive surcharges from landline, postpaid wireless, and direct sales of prepaid wireless.

(Sen. Appropriations Com., Fiscal Summary of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended July 2, 2014, p. 7.)

[28] The California High-Cost Fund –A surcharge was set by Resolution T-17453, effective date January 1, 2015; the California High-Cost Fund-B surcharge was set by Resolution T-17311, effective date May 1, 2011; the Deaf and Disabled Telecommunications surcharge was set by Resolution T-17458, effective date February 1, 2015; the California Teleconnect surcharge was set by Resolution T-17471, effective date June 1, 2015; the California Advanced Services Fund was set by Resolution T-17434; effective date April 1, 2014; the Moore Universal Telephone Service ("Lifeline") surcharge was set by T-17486,effective date October 1, 2015; and the Commission's Reimbursement fee was set by Resolution M-4828, effective date January 1, 2016.

[29] Stats. 1999, ch. 677 (SB 669 Polanco).

[30] The legislative history states:

> What would this bill do? . . . . Essentially, prepaid MTS providers would no longer be required to remit surcharges and fees out of their existing (largely wholesale) revenue streams. Instead, carriers would be able to keep their existing revenue streams whole, by passing the surcharge and fee costs directly on to prepaid MTS consumers.

(Assem. Com. on Rev. and Tax., Analysis of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended April 2, 2014, p. 6.)

For the reasons cited above, the universal service surcharges are not applicable or binding as precedent in formulating the prepaid MTS surcharge. Therefore, Resolution T-17504 does not contain legal error since it is not inconsistent with Commission precedents.

C. Resolution T-17504 adheres to the Act's overall statutory scheme.

CTIA claims that the Act dictates that the Commission impose the prepaid MTS surcharge on all telecommunication consumers.[31] (Rehg. App., pp. 1-2.) CTIA is wrong for reasons discussed below.

1. Legislative history indicates that AB 1717 was designed to "level the playing field" for postpaid consumers, not increase their costs with the prepaid MTS surcharge.

AB 1717 created a new point-of-sale mechanism for service providers to collect surcharges from prepaid consumers. The need for this mechanism was based on service providers' claims that they were unable to recoup the surcharges in question from prepaid consumers, leaving postpaid consumers to pay all of the charges.

Early on, AB 1717 was couched as "leveling the playing field"[32] for *postpaid consumers* by *charging prepaid consumers* through the new point-of-sale mechanism. The bill was cast as providing "greater accountability and transparency"[33] which, along with fairness and equity, were recurring themes promoted throughout the

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[31] CTIA also argues that public policy dictates that the Commission should impose the surcharge on all consumers. This public policy argument does not constitute a claim of legal error, and thus, is rejected for failing to comply with the requirements in Public Utilities Code section 1732. (See also, *Pacific Gas and Electric Co.*[D.15-07-045] (2015) at p. 7 [Allegation regarding violation of a policy statement fails to meet the requirements of section 1732 and Rule 16.1(c) as no legal error is demonstrated].)

Citations to Commission decisions are to the official pdf versions found on the Commission's website at http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

[32] The legislative history states: "The prepaid consumer will now be required to pay an additional amount on top of the cost of prepaid service, which arguable levels the playing field for postpaid consumers who are currently paying the fees, taxes and surcharges." (Assem. Com. on Utilities and Commerce, Analysis of Assem. Bill No. 1717 (2103-2014 Reg. Sess.) as amended April 2, 2014, p. 7.)

[33] (Assem. Com. on Utilities and Commerce, Analysis of Assem. Bill No. 1717 (2103-2014 Reg. Sess.) as amended April 2, 2014, p. 8.)

Act's legislative history.[34] To the extent postpaid consumers were discussed at all, they were generally characterized as benefitting from the Act.[35]

In spite of this clear legislative agenda, CTIA now asserts that the Legislature intended *both* prepaid *and postpaid* be charged with the costs of the prepaid MTS surcharge.

To support its position, CTIA cites the following language in AB 1717's Senate Appropriation Committee Fiscal Summary:

> According to the author's office, the intent is that the MTS fee rate would simply be the sum of all of the surcharge rates meaning that all customers will bear the increased administrative costs of the state and the indirect sellers.[36]

CTIA's reliance on legislative history regarding "author's intent" is misplaced. In particular, references indicating the motive or understanding of a bill's author "are entitled to no weight 'unless they reiterate legislative discussion and events leading up to the bill's passage.'"[37]

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[34] "AB 1717 ensures tax fairness and equity while also generating stable revenue for 911 systems, local governments and other public purpose programs . . . AB 1717 will create a transparent and predictable source of funding for critical 911 services. . . . Industry asserts that a point-of-sale system provides transparency not currently available in any other method of collection." (Assem. Com. on Revenue and Taxation, Analysis of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended April 2, 2014, pp. 5 & 7.)

[35] In discussing who would benefit, the legislative history notes:

> Who Benefits From This Bill? . . . Customers of all postpaid and prepaid landline, wireless and VoIP communications service who pay all the surcharges will benefit if the [BOE] net revenue estimates hold true for the long-term. If they do not, all customers will need to pay increased surcharges or receive reduced benefits from the programs these surcharges support.

(Sen. Energy, Utilities and Communications Com., Analysis of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended May 28, 2014, p. 6.)

[36] Rhg. App., p. 8, footnote 27, quoting Sen. Appropriations Com., Fiscal Summary of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended July 2, 2014, p. 8.

[37] *San Diego Housing Commission v Public Employment Relations Board* (2016) 246, Cal.App.4th 1, 16 (quoting *Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 348.)

The isolated narrative noted above is the only reference in legislative history indicating that postpaid consumers may be charged for administration of the prepaid MTS surcharge program. As such, the author's intention as cited by CTIA is countered by the other legislative history involving "legislative discussion and events leading up to the bill's passage," and thus, is not persuasive in ascertaining legislative intent. Accordingly, and as discussed above, the Act's legislative history overall demonstrates a different legislative intent than the one advocated by CTIA.

Moreover, it seems incongruent to find legislative intent to "level the playing field" for postpaid consumers, and then presume the Legislature intended to *raise the costs* for postpaid consumers in order to achieve it.

In summary, the Resolution is supported by legislative history, which highlights the Act's impact on prepaid consumers and contains no substantive discussion of imposing the costs of the prepaid MTS surcharge onto non-prepaid consumers.

2. Differential treatment of prepaid consumers is inherent in the Act itself, as discussed in the legislative history of AB 1717.

CTIA challenges the validity of the Resolution as having a disproportionate impact on prepaid consumers, including low-income consumers. (Rehg. App., p. 10.) This challenge to the Resolution is without merit.

As discussed above, the Act itself, *as sponsored by CTIA,* expressly and intentionally separates out prepaid wireless consumers by creating a new point-of-sale collection mechanism and requiring that an entirely new and separate charge be created for prepaid wireless service.

Moreover, legislative history makes clear that the effect of AB 1717 would be to benefit service providers, leaving low-income customers to bear the burden.[38]

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[38] The legislative history notes the following:

> 7. Who Benefits From this Bill? … Service providers benefit because they will no longer be required to pay surcharges out of profits, and prepaid customers will instead pay the surcharges on top of the price for service. . .

(*footnote continued on next page*)

Therefore, it is the AB 1717 itself, as sponsored by CTIA, that singles out prepaid consumers by mandating a new and separate collection process for the purpose of providing a benefit to service providers.[39]

For the reasons cited above, Resolution T-17504 does not contain legal error for disproportionate impact on prepaid consumers. However, the Resolution contains technical errors, in the form of improper citations in various sections, which will be corrected. The specific corrections are set forth in the ordering paragraphs below.

III. CONCLUSION

As discussed above, Resolution T-17504 should be modified to correct specified errors and to clarify the Commission's reasoning and findings in support of the Resolution. Rehearing of Resolution T-17504, as modified, should be denied as no legal error has been shown.

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> 8. Will Low-Income Customers Bear the Burden? The group that definitely not benefit from this bill are customers of prepaid service because they will be required to pay an additional amount on top of the price of service, which they do not currently pay. . . this will especially affect low-income people who are a significant portion of the prepaid market. . . .

(Sen. Energy, Utilities and Communications Com., Analysis of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended May 28, 2014, pp. 6-7.)

[39] The legislative history discusses the shifting of risks as follows:

> Sellers of prepaid wireless services currently pay the fees and charges that AB 1717 would shift to consumers when they buy prepaid services. Currently, carriers pay these fees, and then seek to pass along these costs to consumers, but usually sell these products in nationwide markets. AB 1717 explicitly shifts this responsibility to consumers of prepaid services by having the seller with the direct contact with consumer collect the MTS fee, and compensates third-party retailers for their costs. However, while carriers don't like paying the fees, they're clearly capable, so why reassign this burden to prepaid customers, who are often low-income? *The Committee may wish to consider the merits of explicitly reassigning the burden of paying fees and charges from sophisticated service providers to consumers.*

(Sen. Governance and Finance Com., Analysis of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended May 28, 2014, p. 8, emphasis in original.)

THEREFORE, **IT IS ORDERED** that:

1. Resolution T-17504 is modified to correct the following errors:

   a. In the last paragraph of page 2, "Article 3" should be replaced with "Chapter 2.5".

   b. Footnote 14 on page 11, should read "Pub. Util. Code, § 319, subd. (g)."

   c. Footnote 15 on page 11, should read "Rev. & Tax. Code, § 42010, subd. (f)(1)."

   d. Footnote 27 on page 16 - text should be struck and replaced with the following:

      "Joint Wireless Carriers' Comments, at p. 7, footnote 22, citing Sen. Appropriations Com., Fiscal Summary of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended July 2, 2014, p. 8."

   e. Footnote 28 on page 16 - text should be struck and replaced with the following:

      "Sen. Appropriations Com., Fiscal Summary of Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as amended July 2, 2014, p. 8."

   f. Footnote 29 on page 17 – text should be struck and replaced with the following:

      "Sen. Appropriations Com., Fiscal Summary of Assem. Bill 1717 (2013-2014 Reg. Sess.) as amended July 2, 2014, p. 7."

2. For purposes of clarification, Resolution T-17504 is modified as follows:

   a. To conform to the Act, on page 1, paragraph 1, strike all of the first sentence and replace with the following:

      "This resolution adopts the 2016 prepaid Mobile Telephony Services surcharge to recover the California Public Utilities Commission's Universal Service Surcharges (universal service surcharge(s)) and Reimbursement Fee (reimbursement fee(s)), as well as the costs associated with the implementation and

administration of Assembly Bill 1717 (AB 1717 or "the Act")."

b. To conform to the Act, in all cases, strike the term "Public Purpose Program surcharge(s)" and replace it with "universal service surcharge(s)."

c. To conform to the Act, in all cases, strike the term "User Fee(s)" and replace it with "reimbursement fee(s)."

d. New narrative should be inserted on 16, before the first full paragraph, as follows (with corresponding renumbering of Resolution's footnotes):

"AB 1717's statutory language must be construed in the context of the Act overall, which is centered around, and designed for, prepaid wireless consumers.[28] "Prepaid consumer" itself is a defined term.[29] Postpaid consumer is not so defined. The Act outlines specific elements of this new surcharge program, repeatedly specifying that the program is intended for the prepaid consumer market.[30]

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[28] The Act itself is entitled "*Prepaid* Mobile Telephony Services Surcharge Collection Act." (Assem. Bill No. 1717 (2013-2014 Reg. Sess.) as chaptered, § 8.) The Legislative findings indicate that, to ensure equitable contribution from prepaid and postpaid consumers of wireless telephony services, a standardized method must be used to collect communications taxes, fees and surcharges from end-use consumers of *prepaid* mobile telephony services. (Rev. & Tax. Code, § 42002, subd. (e).) The Legislative findings also state that collecting taxes, fees and surcharges from *prepaid consumers* of mobile telephony services *at the time of the retail transaction* is necessary and the most efficient and *competitively neutral* means of collection. (Rev. & Tax. Code, § 42002, subd. (f).)

[29] Rev. & Tax. Code, § 42004, subd. (j).

[30] Indirect sellers are permitted to deduct and retain an amount equal to 2 percent of the amounts that are collected by the seller from *prepaid* consumers for the prepaid MTS surcharge. (Rev. & Tax. Code, § 42010, subd. (e).) A seller must provide a *prepaid* consumer an invoice, receipt or other similar document which separately states the amount of the combined prepaid MTS surcharge and local charges, or otherwise disclose this information electronically to the *prepaid* consumer, at the time of the retail transaction. (Rev. & Tax. Code, § 42010, subd. (i).) If a seller collects an excess prepaid MTS surcharge amount and does not return it to the *prepaid* consumer, this overage constitutes a debt owed by the seller to the state. (Rev. & Tax. Code,

(*footnote continued on next page*)

In particular, the Act states that every *prepaid* consumer of mobile telephony services in this state is *liable for the prepaid MTS surcharge and any local charges* until they have been paid to the state, unless a seller relieves the *prepaid* consumer from further liability for the these charges.[31]

In addition, in annually computing the reimbursement fees and universal service surcharges, the Commission shall adjust the fees and surcharges to account for any past overcollection or undercollection of fees or surcharges from *prepaid* consumers resulting from a reduction or increase in the surcharges made subsequent to December 31st of the previous year. (Pub. Util. Code, § 319, subd. (d)(2).) Again, the Commission had the authority to just focus on the costs as it applied to prepaid consumers.

Overall, the Act's statutory scheme shows an intention to limit the statutory provisions of AB 1717 to prepaid consumers unless the statute explicitly states otherwise."

e. In the first full paragraph on page 16, "Rather" is replaced with "In addition".

f. A new finding of fact is added as 16., with the following language:

"This new point-of-sale collection and remittance system adds significant new expenses over and above the Commission's cost of administering the existing California Public Utilities Commission's universal service surcharges and reimbursement fee programs."

(*footnote continued from previous page*)

§ 42010, subd. (j).) A seller that has collected any amount of prepaid MTS surcharge in excess of what is due from a *prepaid* consumer, may refund that amount to the *prepaid* consumer. (Rev. & Tax. Code, § 42010, subd. (k).)

[31] Rev. & Tax. Code, § 42010, subd. (l)(1).

g. A new finding of fact is added as 17., with the following language:

"The Commission gave due consideration to Public Utilities Code, section 319(d)(4) in development of the prepaid MTS surcharge, and this surcharge was adopted in conformance with this section."

3. Rehearing of Resolution T-17504, as modified, is hereby denied.

4. Application 15-12-019 is hereby closed.

This order is effective today.

Dated December 1, 2016, at San Francisco, California.

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