

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division  
Carrier Oversight and Programs Branch**

**RESOLUTION T-17568  
September 14, 2017**

**RESOLUTION**

**Resolution T-17568. Denying Amended Application for Modification of Resolution T-17542 Submitted by MetroPCS California, LLC dba MetroPCS, and T-Mobile West LLC dba T-Mobile.**

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**SUMMARY**

This resolution denies the Amended Application for Modification of Resolution T-17542, submitted on January 24, 2017, by MetroPCS California, LLC, and T-Mobile West LLC.

In T-17542, issued November 16, 2016, the California Public Utilities Commission adopted its 2017 prepaid mobile telephony services surcharge rate of 5.15%, effective January 1, 2017 through December 31, 2017. The surcharge is to recover the California Public Utilities Commission's Public Purpose Program Surcharges and User Fee, as well as the costs of administering the *Prepaid Mobile Telephony Services Surcharge Collection Act* (enacted by Assembly Bill 1717).

In T-17542, the Commission pre-adjusted the rate utilizing a prepaid wireless telephone service intrastate revenue allocation factor of 72.75%. This pre-adjusted rate enables all prepaid wireless telephone service sellers to assess the prepaid mobile telephony services surcharge on the *entire sales price* of each retail transaction without assessing it on those revenues that are not intrastate.

In the Amended Application, MetroPCS California, LLC, and T-Mobile West LLC request that the Commission modify T-17542 to allow prepaid wireless telephone corporations the discretion (1) to assess the prepaid mobile telephony services surcharge in the manner prescribed by T-17542, or alternatively, (2) to utilize carrier-specific methodologies to assess the unadjusted surcharge rate of 7.0854% on intrastate revenue the carriers determine to be subject to the prepaid mobile telephony services

surcharge. This request rests on the unsubstantiated claim that the adopted intrastate allocation factor of 72.75% overstates the percentage of intrastate revenue that is derived from prepaid wireless telephone service sales, and that the statute does not require each carrier, as a direct seller, to utilize the same rate and method of assessment as an indirect seller.

We deny the Amended Application of MetroPCS California, LLC and T-Mobile West LLC because it is inconsistent with the Act, which requires one prepaid mobile telephony services surcharge rate to be applied in the same manner by all sellers of prepaid mobile telephony services. Even if the Act permitted this type of disparate treatment by sellers (which it does not), the Amended Application fails to demonstrate that the intrastate allocation factor utilized in T-17542 is not reasonable.

## **BACKGROUND**

The *Prepaid Mobile Telephony Services Surcharge Collection Act* (“Act”) was enacted by Assembly Bill 1717 (Chapter 885, Statutes 2014, Perea) to standardize the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services (“MTS”).<sup>1</sup> In enacting AB 1717, the Legislature found that “[p]repaid mobile telephony services are frequently sold by a third-party retailer that is not the provider of mobile telephony services, and 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.”<sup>2</sup>

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.”<sup>3</sup> 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.”<sup>4</sup>

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<sup>1</sup> The Act added § 319 to the Public Utilities Code and added and/or modified multiple sections of the Revenue and Taxation Code relating to telecommunications.

<sup>2</sup> Rev. and Tax. Code § 42002(f).

<sup>3</sup> Rev. and Tax. Code § 42010(a)(1).

<sup>4</sup> Rev. and Tax Code § 42018(a).

The Act defines sellers of prepaid mobile telephony services as either a “direct seller” or “a seller that is not a direct seller,” otherwise known as an indirect seller.<sup>5</sup> A direct seller is the provider of prepaid mobile telephony service, such as MetroPCS. An indirect seller sells prepaid mobile telephony service to a person in a retail transaction, but is not the service provider.<sup>6</sup> Indirect sellers are third-party retailers, such as Walmart or convenience stores.

For purposes of remitting the MTS surcharge that sellers are mandated to collect from customers at the time of the retail transaction, the Act requires direct sellers to report and remit the MTS surcharge to the California Public Utilities Commission (“Commission” or “CPUC”),<sup>7</sup> whereas indirect sellers report and remit the MTS surcharge to the Board of Equalization (“BOE”).

### Resolution T-17542

As directed by the Act, in T-17542, the Commission adopted its portion of the state’s 2017 MTS surcharge rate at 5.15% to be effective January 1, 2017 through December 31, 2017.<sup>8</sup>

The Commission calculated its total rate, inclusive of all telecommunications public purpose program surcharges and the CPUC User Fee to be 7.0854%. It then adjusted that rate utilizing an intrastate allocation factor of 72.75%, to arrive at its adopted rate of 5.15%. This rate, with its applied *intrastate* allocation factor, excludes interstate, international, and non-jurisdictional revenues.<sup>9</sup>

The intrastate allocation factor allows for the prepaid MTS surcharge to be applied in the same manner by both direct and indirect sellers to the entire sales price when prepaid wireless telephone services are sold in combination with mobile data services

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<sup>5</sup> The Act defines a “direct seller” to mean “a prepaid MTS provider or service supplier...that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited, to any of the following: (A) A telephone corporation, as defined by Section 234 of the Public Utilities Code. (B) An interconnected Voice over Internet Protocol (VoIP) service, as defined in Section 285 of the Public Utilities Code. (C) A retailer...that is a member of the same commonly controlled group...or that is a member of the same combined reporting group...as an entity described in subparagraph (A) or (B).” See Rev. and Tax. Code § 42004(b)(1).

<sup>6</sup> See Rev. and Tax. Code § 42004(p); see also § 42010(e).

<sup>7</sup> Rev. and Tax. Code § 42010(e) governs indirect sellers’ obligations to report and remit the prepaid MTS surcharge to the Board of Equalization, whereas, Rev. and Tax Code § 42010(f) governs direct sellers’ obligations to report and remit the MTS surcharge to the CPUC.

<sup>8</sup> See Pub. Util. Code § 319.

<sup>9</sup> See T-17542, p. 10.

or any other services or products for a single price, as the Act requires.<sup>10</sup> 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.”<sup>11</sup>

#### Comments from Joint Wireless Carriers on Resolution T-17542

On October 31, 2016, the Commission’s Communications Division (CD) received joint comments from T-Mobile West LLC dba T-Mobile, MetroPCS California, LLC dba MetroPCS, Sprint, AT&T California and New Cingular Wireless PCS, LLC (AT&T), Cellco Partnership dba Verizon Wireless (collectively referred to as “Joint Wireless Carriers”), which raised similar issues to those raised in the Amended Application for Modification of T-17542 submitted by MetroPCS California, LLC dba Metro PCS and T-Mobile West LLC dba T-Mobile (“MetroPCS/T-Mobile”).<sup>12</sup> Of significance here is that the Commission already addressed MetroPCS/T-Mobile’s issues in Resolution T-17542 in direct response to Joint Wireless Carriers’ comments on T-17542.<sup>13</sup>

The Joint Wireless Carriers, which included MetroPCS and T-Mobile, had asserted in comments that the intrastate factor the Commission had used in its calculation of the CPUC MTS surcharge rate should be an optional “safe harbor” for direct sellers and mandatory for indirect sellers.<sup>14</sup> In other words, they would apply the Resolution’s intrastate-adjusted MTS Surcharge rate to the total sales price of prepaid wireless telephone services sold by indirect sellers, but “direct sellers should be able to use that same rate as a ‘safety factor’ or to otherwise adjust the aggregate base rate by an auditable, carrier-specific intrastate factor.”<sup>15</sup> The Commission disagreed, and issued T-17542 on November 16, 2016, which contained the following explanation:

Because our goal is to ensure all prepaid wireless customers are treated equally and assessed the MTS surcharge in the same manner, we do not authorize the use of the intrastate

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<sup>10</sup> 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.

<sup>11</sup> T-17542, p. 10.

<sup>12</sup> In their Amended Application, MetroPCS and T-Mobile refer to themselves collectively as “Joint Prepaid Carriers.” In this resolution, to avoid confusion with reference to the “Joint Wireless Carriers,” we will refer to these Applicants MetroPCS and T-Mobile collectively as “MetroPCS/T-Mobile.”

<sup>13</sup> See Resolution T-17542, pp. 14-17.

<sup>14</sup> Joint Wireless Carriers’ Comments, p.4.

<sup>15</sup> *Id.*, at 5.

factor as an optional “safe harbor” only for direct sellers. The intrastate factor has been applied to assure that all prepaid wireless customers are assessed the MTS surcharge equally regardless of where they purchase their prepaid wireless service(s). As the Act requires, the MTS is to be calculated and adjusted so that it can be applied to the total sales price.<sup>16</sup> Indeed, Joint Carriers agree that the adoption of an intrastate factor in calculating the MTS Surcharge rate is consistent with the Act, in that “adjusting the surcharge rate by an intrastate factor promotes the equitable treatment of wireless consumers regardless of whether they purchase prepaid services from direct or indirect sellers and regardless of whether they are prepaid or postpaid consumers.”<sup>17</sup> Allowing carriers the option to potentially assess an amount for the MTS surcharge that is greater than or less than the amount being assessed on all other customers of indirect sellers would be inconsistent with the Act.<sup>18</sup>

On January 24, 2017, MetroPCS/T-Mobile filed the instant Amended Application for Modification of T-17542 seeking similar relief to those sought by the original Joint Wireless Carriers, in their comments.<sup>19</sup>

## DISCUSSION

### MetroPCS/T-Mobile’s Request to Allow Direct Sellers to Assess the MTS Surcharge Differently than Indirect Sellers Contravenes the Act

MetroPCS/T-Mobile’s Amended Application for Modification of T-17542 specifically requests that the Commission modify T-17542’s Ordering Paragraph 2 to state: “All indirect sellers shall, beginning January 1, 2017, assess the adopted Mobile Telephony Service surcharge on the total sales price of prepaid wireless telephone service subject to surcharge and collected from end-users in California. Telephone corporations [direct sellers] may choose to use the intrastate adjusted rate in Appendix A as a safe harbor or

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<sup>16</sup> Pub. Util. Code § 319(b).

<sup>17</sup> Joint Wireless Carriers’ Comments, at p. 4.

<sup>18</sup> Resolution T-17452, p.15.

<sup>19</sup> Compare Amended Application, Appendix C, p. 21 (proposed redline to ordering paragraphs) with Joint Wireless Carriers’ Comments, Exhibit C, p. 16 (proposed redline to ordering paragraphs).

utilize a carrier-specific traffic study, and/or books and records, to assess the MTS Surcharge on intrastate revenues.”<sup>20</sup>

As seen by the language of their proposed modification to the Resolution’s ordering paragraph 2, Applicants are requesting that the Commission modify the Order to allow for disparate treatment of customers by indirect and direct sellers. However, nothing in the Act permits sellers the discretion to assess the prepaid MTS surcharge in the manner of their choosing, as MetroPCS/T-Mobile request. To the contrary, the Act specifies one manner in which the MTS surcharge is to be assessed by “a seller,” without regard to whether it is a direct or indirect seller, by stating unambiguously:

“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.”<sup>21</sup>

The Act further states:

[I]f 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.<sup>22</sup>

The plain language in these provisions demonstrates that the Act does not allow for the seller to determine the treatment of revenues subject to the surcharge. To the contrary, it mandates the same application of the prepaid MTS surcharge by direct and indirect sellers. If the legislature had intended for sellers to have the discretion that MetroPCS/T-Mobile seek, it would have stated so in the Act.

Moreover, as T-17542 explained, MetroPCS/T-Mobile’s request would improperly result in disparate treatment among prepaid customers.<sup>23</sup> For example, those customers who purchase prepaid wireless telephone service bundled with other services for a single price from an indirect seller, such as Walmart, would be assessed the prepaid MTS

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<sup>20</sup> Amended Application, Appendix C, p. 21 (proposed redlines to T-17542’s ordering paragraph 2).

<sup>21</sup> Rev. and Tax. Code § 42010(a)(1) (emphasis added).

<sup>22</sup> Rev. and Tax Code § 42018(a).

<sup>23</sup> See e.g., T-17542, p. 15.

surcharge on the entire sales price as required by the statute. Whereas, those customers who purchase *the same prepaid wireless telephone service bundle* from a direct seller, such as T-Mobile, could pay a prepaid MTS surcharge rate that is less than that amount if the telephone corporation self-determines its intrastate allocation factor to be less than 72.75%.

Nonetheless, MetroPCS/T-Mobile claim, citing to Rev. & Taxation Code section 42002(e), that the Act has no requirement to ensure equitable treatment among prepaid MTS customers,<sup>24</sup> arguing the Legislature only intended “to focus on a much broader goal” of ensuring equitable contributions as between post-paid wireless customers and pre-paid wireless customers.” MetroPCS/T-Mobile misread this provision.

Rev. and Taxation code section 42002(e) states: “To ensure equitable contributions from end-use customers 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 from end-use consumers of prepaid mobile telephony services.*”<sup>25</sup> As seen by the plain language of the second (emphasized) phrase of this provision, the Act’s intended standardization relates to the method of collecting the MTS surcharge as between prepaid customers, and not as MetroPCS/T-Mobile claim, as between postpaid and prepaid customers. MetroPCS/T-Mobile’s comparison of postpaid customers and prepaid customers while interpreting an Act that established a surcharge applicable *only to prepaid customers* is inapposite.

In short, MetroPCS/T-Mobile’s request to treat direct sellers differently from indirect sellers, which in turn would allow for disparate treatment among prepaid customers, contravenes the Act.

#### MetroPCS/T-Mobile Fail to Demonstrate that T-17542’s Intrastate Allocation Factor of 72.75% Does Not Accurately Account for Intrastate Revenue

To justify the relief requested in the Amended Application, MetroPCS/T-Mobile attempt to undermine the 72.75% intrastate allocation factor utilized in T-17542 to calculate the CPUC MTS surcharge rate of 5.15%. MetroPCS/T-Mobile present an analysis of several postpaid and prepaid wireless invoices or statements to support their claim that the Resolution’s intrastate allocation factor is overstated.<sup>26</sup> They argue that the CPUC pre-

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<sup>24</sup> See Amended Application, p. 11 (arguing no requirement in the Act that requires ensuring equitable treatment for direct and indirect prepaid wireless services).

<sup>25</sup> Rev. & Taxation Code § 42002(e)(emphasis added).

<sup>26</sup> Amended Application, pp. 8-11.

adjusted rate of 5.15% “imposes CPUC surcharges on non-surchageable revenue, including but not limited to revenue attributable to mobile broadband services and interstate telephone services.”<sup>27</sup> We disagree with MetroPCS/T-Mobile’s claims.

As discussed *supra*, MetroPCS/T-Mobile’s request is inconsistent with the Act. Even assuming arguendo that the Act permitted sellers to apply the prepaid MTS surcharge differently, we find T-17542’s intrastate allocation factor of 72.75% to be reasonable. As explained below, it is based upon objective revenue and allocation information obtained directly from 29 prepaid wireless telephone corporations that comprise 99.87% of the intrastate prepaid wireless revenue reported to the CPUC. We are not persuaded by MetroPCS/T-Mobile’s arguments that T-17542’s intrastate allocation factor is overstated.

First, MetroPCS/T-Mobile’s Amended Application states that indirect sellers should be mandated to assess the prepaid MTS surcharge as ordered in T-17542, which necessarily implies that the 72.75% intrastate allocation factor that T-17542 utilized is reasonable.<sup>28</sup> Yet, at the same time, MetroPCS/T-Mobile argue that the Resolution’s 72.75% intrastate allocation factor is improper when applied to direct sellers in the same manner as indirect sellers. MetroPCS/T-Mobile justify this contrary treatment with a claim that “the adjustment factor substantially overstates the relative intrastate portion of any prepaid wireless plan and is otherwise not supported by any evidence or analysis.”<sup>29</sup> We find these arguments inconsistent and unpersuasive. However, we believe it would be helpful to provide further explanation as to how the Commission’s Communications Division (CD) derived T-17542’s intrastate allocation factor of 72.75%.

The Act requires, as explained above, all prepaid wireless sellers to assess the prepaid MTS surcharge in the same manner, i.e., on the entire sale price of a prepaid MTS retail transaction. That is precisely why the CPUC’s 2017 prepaid MTS surcharge rate is pre-adjusted by an intrastate allocation factor.<sup>30</sup> When the MTS surcharge is applied to any prepaid service retail transaction involving bundles, only the intrastate portion of that sale will be assessed the MTS surcharge because use of the intrastate allocation factor excludes revenue that is interstate, international, or otherwise non-surchageable.

As MetroPCS/T-Mobile acknowledge, “[t]he Resolution attempted to adjust the MTS Surcharge so that it applies only to intrastate revenue while being ‘assessed’ on the total

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<sup>27</sup> Amended Application, p. 5

<sup>28</sup> See Amended Application, p.

<sup>29</sup> Amended Application, pp. 2-3.

<sup>30</sup> Information necessary to calculate an appropriate intrastate allocation factor was not available in 2016, when the prepaid MTS surcharge was first implemented.



bundled service prices. It did so by adjusting the aggregated rate of 7.0854% (for all surcharges and the user fee) by an intrastate adjustment factor of 72.75% to create a rate of 5.15% (the 'Adjusted Rate')."<sup>31</sup> T-17542 explains that the 2017 CPUC prepaid MTS surcharge rate was calculated from "2016 surcharge payment and revenue reporting data collected by the Commission through [the CPUC's Telecommunications and User Fee Filing System] TUFFS and the reporting of MTS remittances to the CPUC by BOE."<sup>32</sup> The Commission generally treats carrier-specific revenue data as confidential, and thus T-17542 does not disclose the individual carrier revenue and service allocation data it has collected to calculate the 72.75% intrastate allocation factor. That does not mean, however, as MetroPCS/T-Mobile contend, that there is no factual and evidentiary basis to support it.

To the contrary, T-17542's 72.75% intrastate allocation factor was based on extensive revenue and reporting information that the CD had obtained from the TUFFS' database and through data requests to prepaid wireless telephone corporations.<sup>33</sup> The CD utilized TUFFS to first identify those prepaid wireless telephone corporations operating in California in 2016, which were those who had reported any prepaid wireless telephone service revenue to the Commission. In this effort, the CD identified 45 prepaid wireless telephone corporations, which included the affiliates and subsidiaries of all the major wireless carriers.

#### A. Prepaid Wireless Revenue Reporting and Data Requests

On August 5, 2016, the CD sent those 45 carriers, including T-Mobile and its affiliates, a data request seeking information about their jurisdictional and revenue allocations practices for those services sold in California for the period of January 1, 2016 through June 30, 2016. A copy of the data request is attached to this Resolution as Appendix A. The data request specifically directed each prepaid wireless telephone corporation to provide their "jurisdictional allocations," the methodology used to assign revenue to the appropriate jurisdiction (i.e., intrastate, interstate, international or non-

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<sup>31</sup> Amended Application, p. 2.

<sup>32</sup> T-17542, p. 9. T-17542, p. 9. The Telecommunications and User Fee Filing System (TUFFS) is where wireless carriers report, separately, the following revenues subject to surcharge: total postpaid revenue, direct prepaid revenue and indirect prepaid revenue. Information about TUFFS can be found at <http://www.cpuc.ca.gov/surcharges/>.

<sup>33</sup> Specific revenue information gathered from TUFFS is confidential and thus are not disclosed in T-17542, or in this Resolution. Similarly, data responses from prepaid MTS telephone corporations were submitted as confidential pursuant to Pub. Util. Code section 583 and General Order 583 and thus are not disclosed in T-17542 or here.

jurisdictional) and the percentages of each assignment.<sup>34</sup> The data request further asked whether carriers used the same methodology for postpaid wireless service and requested copies of carriers' most recent Form 499-A filed with the Federal Communications Commission.<sup>35</sup> Additionally, the CD's data request required carriers to provide their "service allocations," including the percentages of revenue derived from the following services: voice, text messaging, data/internet, and other. For each of these service types, carriers were asked to indicate the jurisdictional allocation and corresponding revenue percentage.<sup>36</sup>

Of the 45 prepaid wireless telephone corporations that received the data request, 29 carriers provided sufficient responses to be included in the sample from which the CD derived the 72.75% intrastate allocation factor.<sup>37</sup> As stated above, this sample represents 99.87% of the prepaid wireless intrastate revenue reported to the CPUC in 2016.<sup>38</sup>

### B. Determining the Intrastate Allocation Factor

In determining the intrastate allocation factor applicable to the prepaid MTS surcharge rate, staff used the intrastate jurisdiction percentage assignments for four categories: voice, text messaging, data/internet and other services. These assignments were then used to determine the average percentage for all 29 prepaid MTS telephone corporations in the sample, which resulted in an intrastate allocation factor of 72.75%. Next, the CD used the disaggregated information from the revenue percentage for jurisdictional and service allocations (voice, text, data/internet and other) to validate if the total intrastate factor of 72.75% was representative of carrier practice. Accordingly, T-17542's intrastate allocation factor of 72.75% accurately represents that portion of prepaid wireless telephone service revenue that is intrastate and therefore subject to the prepaid MTS surcharge.<sup>39</sup>

We are not persuaded by MetroPCS/T-Mobile's hypotheticals and analysis of eight post-paid plans and six prepaid statements and invoices used to support the claim that

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<sup>34</sup> See Appendix A, Staff Data Request, p. 2.

<sup>35</sup> See *id.*, Staff Data Request, p. 2.

<sup>36</sup> See *id.*, Staff Data Request, p.3.

<sup>37</sup> CD adjusted the sample by excluding responses from non-responsive carriers or those who provided insufficient information that could not be used for calculating an intrastate allocation factor.

<sup>38</sup> Total Revenue to the Commission in 2016 was \$827,025,149.73 and the 29 sample carriers represent \$825,985,360.35.

<sup>39</sup> We need not to address the legal arguments raised in MetroPCS/T-Mobile's Amended Application concerning federal preemption of interstate surcharges because as explained, the CPUC MTS rate is an intrastate surcharge. We do not disagree that the CPUC may not impose a state surcharge on interstate or non-surchageable services.

the intrastate allocation factor is overstated.<sup>40</sup> First, MetroPCS/T-Mobile's comparison of postpaid bills, which notably are not provided in the Amended Application, is inappropriate. As discussed above, the primary purpose of the Act is to standardize the manner in which the MTS surcharge is collected from prepaid customers. Second, MetroPCS/T-Mobile's sample size is insignificant, consisting of 10 invoices or statements with each reflecting only 1 month of usage by a particular customer. Thus, MetroPCS/T-Mobile's sample is not reliable.

In contrast, T-17542's 72.75% intrastate allocation factor was derived using 6 months (January 1, 2016 through June 31, 2016) of revenue information gathered from 29 prepaid telephone corporations comprising 99.87% of the prepaid wireless market in California. The CD estimates this would represent hundreds of thousands of billing records, as opposed to the 10 invoices or statements that MetroPCS/T-Mobile provided in the Amended Application.

Nor are we persuaded by MetroPCS/T-Mobile's contention, based on its same hypotheticals and analysis, that "the Resolution would impose a surcharge burden on prepaid services that is significantly higher than the surcharge burden on equivalent postpaid services or that was imposed on the same prepaid services by carriers like MetroPCS prior to the adoption of the Resolution."<sup>41</sup> This argument is a red herring.

First, as explained, the focus on postpaid invoices is misplaced. Second, whether MetroPCS's own customers would purportedly see a surcharge increase does not invalidate T-17542's intrastate allocation factor because other prepaid MTS carriers' customers could at the same time see a surcharge decrease with implementation of T-17542. For instance, the CD is aware of prepaid carriers who were assessing last year's prepaid MTS surcharge rate utilizing an intrastate allocation factor of 100%. Thus, with this year's 2017 intrastate allocation factor of 72.75%, those customers' surcharge burden is reduced by nearly 30%.

The purpose of the CPUC prepaid MTS surcharge is to recover the California Public Utilities Commission's Public Purpose Program Surcharges and User Fee, as well as the costs associated with implementing the Act; it is not, as MetroPCS/T-Mobile suggest, to achieve the lowest surcharge burden for its customers.

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<sup>40</sup> Amended Application, pp. 8-9.

<sup>41</sup> Amended Application, pp. 9-10.

### **Compliance with Resolution T-17542**

Pursuant to Rule 16.4(h), the filing of a petition for modification does not stay or excuse compliance with the order of the decision proposed to be modified. The decision remains in effect until the effective date of any decision modifying the decision. In this instance, MetroPCS/T-Mobile should have been remitting the prepaid MTS surcharge in accordance with the orders set forth in T-17542, as of January 1, 2017. Consistent with this Resolution's denial of MetroPCS/T-Mobile's Application for Modification of T-17542, Metro PCS/T-Mobile shall remit all 2017 prepaid MTS surcharges due to the Commission in accordance with T-17542 and the Commission's surcharge and user fee reporting rules, including interest, as penalties, on amounts overdue.<sup>42</sup>

### **Conclusion**

MetroPCS/T-Mobile's request to modify T-17542 to allow direct sellers discretion with the manner in which they assess the 2017 prepaid MTS surcharge is inconsistent with the *Prepaid Mobile Telephony Services Surcharge Act*, which was enacted with the express purpose of standardizing how sellers are to collect the prepaid MTS surcharge from prepaid customers. We find the intrastate allocation factor of 72.75% utilized in T-17542 to calculate the CPUC prepaid MTS surcharge rate of 5.15% to be reasonable. Accordingly, we deny MetroPCS/T-Mobile's Amended Application for Modification of T-17542.

### **FINDINGS**

1. MetroPCS/T-Mobile's request for direct and indirect sellers to assess the prepaid mobile telephony services (MTS) surcharge utilizing different methods is inconsistent with the *Prepaid Mobile Telephony Services Surcharge Collection Act*.
2. MetroPCS/T-Mobile's request for direct and indirect sellers to assess the prepaid MTS surcharge utilizing different methods is not reasonable for the reasons stated in this Resolution.
3. The Commission's Communications Division's methodology for calculating the intrastate allocation factor of 72.75% in T-17542 is based on data received from 29 prepaid wireless telephone corporations operating in California, who represent 99.87% of the prepaid wireless industry in California.

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<sup>42</sup> See T-17542, pp. 11-12

4. Communications Division's methodology for calculating the intrastate allocation factor of 72.75% in T-17542 is based upon jurisdictional and service allocation data provided by a majority of prepaid wireless telephone corporations operating in California.
5. Communications Division's methodology for calculating the intrastate allocation factor of 72.75% in T-17542 is reasonable.
6. The 2017 CPUC MTS Surcharge rate is an intrastate surcharge.
7. MetroPCS and T-Mobile are required to report and remit all 2017 prepaid MTS surcharges in accordance with Resolution T-17542.

**THEREFORE, IT IS ORDERED** that:

1. The Amended Application for Modification of Resolution T-17452 submitted on January 24, 2017, by Metro PCS California, LLC dba Metro PCS, and T-Mobile West LLC dba T-Mobile is denied for the reasons stated herein.
2. MetroPCS and T-Mobile shall report and remit all prepaid Mobile Telephony Service surcharges due beginning January 1, 2017 pursuant to the orders set forth in Resolution T-17542 and within 30 days of adoption of this Resolution T-17568.
3. Resolution T-17542 is affirmed.

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 \_\_\_\_\_, the following Commissioners voting favorable thereon:

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TIMOTHY J. SULLIVAN  
Executive Director



# Appendix A

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**DATA REQUEST**

Date: August 5, 2016

To: [REDACTED]

From: Communications Division, CPUC

Subject: Prepaid Wireless Telephone Service Revenue

The Prepaid Mobile Telephony Service Surcharge Collection Act directs the California Public Utilities Commission (CPUC) in Public Utilities Code Section 319 (3)(b)(c) to calculate the CPUC's portion of the Mobile Telephony Service (MTS) surcharge as a percentage of the sales price of prepaid wireless telephone services.

In an effort to calculate the 2017 MTS surcharge the CPUC is collecting data from those wireless telephone corporations who have reported prepaid wireless telephone service revenues. The information being requested here will allow the CPUC to develop a revised MTS surcharge rate that may be equitably applied to the entire purchase price of both direct and indirect prepaid wireless telephone service sales.

Responses are to be submitted to Devla Singh of the CPUC at [dsc@cpuc.ca.gov](mailto:dsc@cpuc.ca.gov) on or before August 26, 2016. If you have any questions please contact Ms. Singh at (415) 703-5581.

The data request questions and an area to provide your response is attached on page two and three.

Sincerely,

Eric Van Wambeke, Supervisor  
Communications Division



**MTS Data Request**

Due 8/26/16

**Unless otherwise indicated all responses are to be based on those operations and associated prepaid wireless revenues generated between January 1, 2016 and June 30, 2016 in California.**

Jurisdictional Allocation

1. Please indicate the methodology used to assign **prepaid** wireless service revenues to the appropriate jurisdiction i.e. intrastate, interstate, international or non-jurisdictional.

- a. Traffic study [       ]
- b. Books and records [       ]
- c. FCC safe harbor [       ]
- d. Other [       ]

Please explain \_\_\_\_\_

2. Please provide the individual percentage assignment for each jurisdiction resulting from the methodology indicated above

- e. Intrastate [       ]
- f. Interstate [       ]
- g. International [       ]
- h. Non-jurisdictional or non-surchageable [       ]

3. Does the utility use the same methodology to assign revenues for **postpaid** wireless services? If not please also provide the above requested information for postpaid wireless revenues.

Yes [       ] No [       ]

4. Please provide a copy of your most recently filed 2016 Federal Communications Commission form 499-A which was due April 1, 2016 for reporting 2015 revenues.

Service Allocation

1. Please indicate what percentage of your revenue was derived from the following services.

- |                   |   |   |
|-------------------|---|---|
| i. Voice          | [ | ] |
| j. Text messaging | [ | ] |
| k. Data/Internet  | [ | ] |
| l. Other          | [ | ] |

2. Please indicate the jurisdictional allocation and corresponding percentage for that revenue derived from each of the services listed below?

- |  |   |   |
|--|---|---|
| m. Voice                               |   |   |
| Intrastate                             | [ | ] |
| Interstate                             | [ | ] |
| International                          | [ | ] |
| Non-jurisdictional or non-surchageable | [ | ] |
| n. Text messaging                      |   |   |
| Intrastate                             | [ | ] |
| Interstate                             | [ | ] |
| International                          | [ | ] |
| Non-jurisdictional or non-surchageable | [ | ] |
| o. Data/Internet                       |   |   |
| Intrastate                             | [ | ] |
| Interstate                             | [ | ] |
| International                          | [ | ] |
| Non-jurisdictional or non-surchageable | [ | ] |
| p. Other                               |   |   |
| Intrastate                             | [ | ] |
| Interstate                             | [ | ] |
| International                          | [ | ] |
| Non-jurisdictional or non-surchageable | [ | ] |