

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division
Carrier Oversight and Programs Branch

RESOLUTION T-17641
December 13, 2018

RESOLUTION

Resolution T-17641. Guidelines on the Collection, Reporting and Remittance of California Public Utilities Commission Public Purpose Program Surcharges and User Fees for Prepaid Wireless Services Sold in California, Effective January 1, 2019.

SUMMARY

As a follow up to Resolution L-574, which rescinded Resolution T-17632 (establishing the 2019 CPUC prepaid Mobile Telephony Services surcharge rate), this resolution provides further guidance to wireless telecommunications carriers offering prepaid wireless services in California. For the year 2019, and unless and until the Commission issues a subsequent order, prepaid wireless carriers shall collect, report, and remit the California Public Utilities Commission's Public Purpose Programs surcharges and User Fee to the Commission in the same manner as required of all other wireless carriers.

Effective January 1, 2019, telephone corporations providing prepaid wireless telecommunications services sold in California shall collect surcharges and User Fee rates applicable to all intrastate telecommunications services. This will be consistent with the universal surcharge mechanism applicable to all telecommunications carriers in existence prior to the enactment of the Prepaid Mobile Telephony Services Surcharge Collection Act, including the method of calculating the rates, requirement of revenue reports, and the collection of surcharges and user fees. Prepaid wireless services, however, will continue to be reported separately from postpaid wireless services and all other telecommunications services. It is important to maintain the Commission's current reporting system for tracking, compliance, and auditing purposes, as well as to inform the Commission of industry trends.

This resolution addresses the collection, reporting, and remittance for 2019 and the years going forward, unless modified by a subsequent Commission order. A separate resolution will follow to address issues related to the implementation of the Prepaid

Mobile Telephony Services Surcharge Collection Act in the previous years 2016 through 2018.

BACKGROUND

Assembly Bill 1717 (Chapter 885, Statutes 2014, Perea) enacted the Prepaid Mobile Telephony Services Surcharge Collection Act (“Prepaid Collection Act” or “Act”), which became effective on January 1, 2016 and was to remain in effect until January 1, 2020.¹ The Act required an entirely separate point-of-sale mechanism for the collection and remittance of the taxes, fees, and surcharges assessed on prepaid wireless telephone service.² This mechanism collected the following charges, aggregated as one surcharge defined as the “prepaid Mobile Telephony Services (MTS) surcharge:”³

- Commission Public Purpose Program Surcharges
- Commission User Fee
- Emergency Telephone Users (911) Surcharge
- Local Charges (e.g. UUT)⁴

The Act added section 319 to the Public Utilities Code, which set forth the Commission’s responsibilities in implementing the Act, including overseeing prepaid wireless providers’ collection, reporting, and remittance of the prepaid MTS surcharge. In addition, the Act required the Commission to annually compute (a) a reimbursement fee (i.e., CPUC User Fee) and (b) individual amounts of the six telecommunications universal service surcharges (i.e., Public Purpose Program (PPP) surcharges) as a percentage of the sales price of prepaid wireless services. Cal. Pub. Util. Code §§ 319(b), (c). The Commission has issued four annual resolutions adopting the CPUC’s portion of the prepaid MTS surcharge rate: T-17504 (establishing the 2016 CPUC MTS rate);

¹ The Act added § 319 to the Public Utilities Code and modified Pub. Util. Code § 431, as well as modified multiple sections of the Revenue and Taxation Code pertaining to telecommunications services.

² AB1717 refers to these services as “prepaid mobile telephony services.” See Rev. & Tax. Code § 42004 [defines “prepaid mobile telephony services”].

³ See Rev. & Tax. Code § 42010(b) [“The prepaid MTS surcharge shall be annually calculated by the board...]; see also § 42004(m) [defines “Prepaid MTS surcharge” to mean “the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Section 42010, that is required to be collected by a seller from a prepaid consumer.”]

⁴ When applicable, local charges (e.g., UUT) are to be added to the prepaid MTS surcharge. See Rev. & Tax. Code § 42010(c)(1).

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T-17542 (establishing the 2017 CPUC MTS rate; affirmed by T-17568); T-17579 (establishing the 2018 CPUC MTS rate); and T-17632 (establishing the 2019 CPUC MTS rate).

In 2017, MetroPCS California, LLC (“MetroPCS”) filed a federal lawsuit in the Northern District of California challenging CPUC Resolutions T-17542 (2017), T-17568 (affirming T-17542), and T-17579 (2018). MetroPCS asked the Court to declare unlawful, and enjoin enforcement of, these three resolutions on the basis that these resolutions violate federal law in requiring carriers to collect and remit the prepaid MTS surcharge utilizing a mandatory intrastate allocation factor calculated by the CPUC. The CPUC argued to the Court that the Act required the CPUC to utilize a mandatory intrastate allocation factor in its calculation, so that the prepaid MTS surcharge could be applied as a percentage of the sales price, as the Act requires.

On November 5, 2018, the Court issued its Order Re: Cross Motions for Summary Judgment granting MetroPCS’s Motion (“Summary Judgment Order”).⁵ In interpreting three Federal Communications Commission orders, the Court found that “the usage of a mandatory intrastate allocation factor conflicts with federal law because it deprives carriers of the ability to treat as intrastate for universal service purposes the same revenues that they treat as intrastate for federal USF contributions.” Summary Judgment Order (Dkt No. 88), at 17.

The Court, however, agreed with the CPUC “that the language and structure of the Act require the usage of an intrastate allocation factor, and thus that the Court must declare both the Act and the Contested Resolutions as preempted by federal law.” Summary Judgment Order (Dkt. 88), at 21. The Court further agreed with the CPUC “that because the Prepaid Collection Act imposes the surcharge on both direct and indirect sales, the Court cannot interpret the statute to require that the surcharge only apply to indirect sellers and sales,” as MetroPCS had argued. *Id.*, at 22. Accordingly, the Court declared that “the Prepaid Collection Act and the Contested Resolutions conflict with federal law and are therefore preempted and unconstitutional.” *Id.*, at 23.

⁵ See Resolution L-574, Appendix A, for the Court’s November 5, 2018 Court Order Re: Cross Motions for Summary Judgment (Summary Judgment Order).

On November 16, 2018, the Court issued an Injunction Order⁶ that “enjoins the CPUC and any other state agency or authority or local jurisdiction in California from enforcing the Prepaid Collection Act and any of the CPUC resolutions or orders implementing the Prepaid Collection Act, including but not limited to the Contested Resolutions.” Injunction Order, at 1. Concurrently with the Injunction Order, the Court issued a judgment in favor of MetroPCS.⁷

Based on the Federal Court’s Injunction Order, the CPUC can no longer implement the Act through the resolutions it has adopted, including T-17632 (establishing the 2019 CPUC MTS rate) which was set to become effective January 1, 2019. The Commission, at its November 29, 2018 business meeting, adopted Resolution L-574, rescinding T-17632 consistent with the Federal Court’s orders.

Resolution L-574 states that the Commission will issue a separate resolution “providing further guidance concerning the collection and remittance of universal service surcharges and fees applicable to prepaid wireless telephone corporations.”⁸ This resolution explains how prepaid wireless carriers should proceed going forward from the date of the Federal Court’s November 16, 2018 Injunction Order.

DISCUSSION

Prior to enactment of the Act, all telephone corporations, regardless of carrier type, reported intrastate service revenues in the same manner. More specifically, for PPP surcharges and User Fee collecting, reporting, and remittance purposes, the Commission did not have separate or distinct requirements for prepaid or postpaid wireless services, as created with the Act. If a wireless carrier sold both postpaid and prepaid wireless service, the Commission required that carrier to report and remit based on its total intrastate wireless revenue amount, which included both prepaid and postpaid wireless revenues. That carrier was required to remit the resulting surcharges and user fees on intrastate wireless revenue based on the same PPP surcharges and CPUC User Fee rates applicable to all other carriers. The required mechanism for

⁶ See Resolution L-574, Appendix B, for the Court’s November 15, 2018 Joint Order Granting Plaintiff’s Motion for Summary Judgment, Denying Defendants’ Motion for Summary Judgment, and Issuing Declaration and Permanent Injunction (Injunction Order).

⁷ See Resolution L-574, Appendix C for the Court’s November 15, 2018 MetroPCS California, LLC’s Judgment.

⁸ Resolution L-574, p. 4.

reporting and remitting surcharges and user fees to the CPUC was and continues to be through the Commission's Telecommunications and User Fee Filing System (TUFFS).⁹

However, starting January 1, 2016 and through December 31, 2019, the Act created a separate reporting and remitting mechanism for prepaid wireless services, and imposed a different surcharge (i.e., prepaid MTS surcharge) that was distinct from postpaid wireless telecommunications services. The Act further bifurcated the process of reporting and remitting prepaid wireless services and resulting surcharges between direct sales and indirect sales.

Pursuant to the Act, prepaid wireless carriers, known as direct sellers, continued to be responsible for collecting the state's universal service surcharges (i.e., Public Purpose Program surcharges) and CPUC reimbursement fee (i.e., CPUC User Fee) on their direct sales and then remitting the resulting collections to the Commission through TUFFS. The Act had relieved prepaid wireless carriers from collecting and remitting to the Commission PPP surcharges and the CPUC User Fee for their indirect sales of prepaid wireless service; instead the Act imposed this responsibility on the indirect sellers or third-party retailers (retailers) that are not telecommunications carriers, who, in turn, were required to remit the prepaid MTS surcharge to the California Department of Tax and Fee Administration ("CDTFA"). The CDTFA would then remit to the CPUC the portion of the prepaid MTS surcharge consisting of the universal service surcharges and CPUC User Fee from the indirect sales.

As explained above, however, the federal court orders prohibit the CPUC and any other state agency or authority or local jurisdiction in California from enforcing the Act and any of the CPUC resolutions or orders implementing the Act. But, as the Commission states in L-574, in rescinding T-17632, the Commission does "not relieve prepaid wireless telephone corporations from the responsibility to collect and remit universal service surcharges and the CPUC User Fee pursuant to existing state laws and CPUC decisions and orders."¹⁰

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

¹⁰ *Ibid*, citing Cal. Pub. Util. Code §§ 270-281 (Public Purpose Program surcharges); see also *id.*, at § 431-435 (CPUC User Fee); see also e.g., D.12-02-032, as affirmed by D.12-10-018.

Prior to the enactment of the Prepaid MTS Act, in Decision (D.) 12-02-032, the Commission had concluded that prepaid wireless carriers were responsible for remitting universal service surcharges and the CPUC User Fee, as required of all other telephone corporations. Thus, in light of the federal court orders, as of the effective date of the federal court's November 16, 2018 Injunction Order, prepaid wireless carriers will again be subject to these existing state laws and Commission decisions and orders with respect to their responsibilities to collect, report, and remit PPP surcharges and the CPUC User Fee.

A. Prepaid Wireless Carriers are Subject to Existing State Laws and Commission Decisions in light of the Federal Court Orders Enjoining Enforcement or Implementation of the Prepaid Collection Act.

As discussed further below, all telecommunications carriers, including prepaid wireless carriers, are subject to existing state laws, which include but are not limited to the universal services surcharges set forth in Public Utilities Code sections 270-281 and the CPUC User Fee set forth in Public Utilities Code sections 431-435.

California law charges the CPUC with administering California's universal service programs. See Cal. Pub. Util. Code §§ 270 et. seq, 275-278, 280, 281, 739.3, 879, 2881. California has six such programs and each has a separate account in the State Treasury funded by an all end-user surcharge.¹¹ CPUC rules require all telecommunications carriers to collect the appropriate surcharges from end users of telecommunications services,¹² and to remit the surcharges to the CPUC.¹³ The CPUC also requires telecommunications carriers to collect from customers and remit the CPUC User Fee.¹⁴ See Pub. Util. Code §§ 401-410, 431-435. Both the CPUC User Fee and universal service

¹¹ The California High-Cost Fund-A Administrative Committee Fund, the California High-Cost Fund-B Administrative Committee Fund, the Universal Lifeline Telephone Service Trust Administrative Committee Fund, the Deaf and Disabled Telecommunications Program Administrative Committee Fund, the California Teleconnect Fund Administrative Committee Fund, and the California Advanced Services Fund. See Cal. Pub. Util. Code § 270(a).

¹² CPUC Decision (D.) 96-10-066, Appendix A, p. 7, 1996 Cal. PUC LEXIS 1046 *; 68 CPUC2d 524.

¹³ See CPUC Decision (D.) 96-10-066, 1996 Cal. PUC LEXIS 1046 *; 68 CPUC2d 524; see also D.14-01-0.37, pp. 18-19.

¹⁴ See Cal. Pub. Util. Code §§ 401-410, 431-435. The California Legislature authorized this fee as a means of ensuring the CPUC is adequately staffed and funded.

surcharges are percentages which the Commission sets and applies to the telecommunications carrier's intrastate telecommunications revenues.¹⁵

The Commission has already determined that prepaid wireless carriers are subject to the same surcharge and User Fee requirements as all other telecommunications carriers. In 2012, as part of Investigation (I.) 09-12-016, the CPUC issued D.12-02-032, affirmed in D.12-10-018, which concluded that the intrastate telecommunications revenues of TracFone Wireless Inc. (TracFone), a prepaid wireless service provider operating in California, were subject to universal service surcharges and the CPUC User Fee.¹⁶ The CPUC rejected TracFone's claim that the surcharges should not be applied to its prepaid mobile telephony service because its services were sold at third-party retailers and its customers were not billed subsequent to use.¹⁷

The CPUC found that TracFone's prepaid wireless service includes a telephone number and must be used with a TracFone handset, making it "equivalent to a dial tone access and a full service telephone offering."¹⁸ The CPUC concluded that TracFone, and not the third-party retailer, the CPUC, or TracFone's customers, was ultimately responsible for collecting and remitting the surcharges and user fees.¹⁹

In rejecting TracFone's appeal of D.12-02-032, the CPUC affirmed that TracFone, as a provider of prepaid mobile telephony services, is a public utility telephone corporation subject to the rules that apply to all telephone corporations, including the obligation to collect and remit surcharges and the User Fee. The CPUC reasoned that exempting TracFone from paying the surcharges and the CPUC User Fee would afford TracFone an unfair advantage over other wireless carriers. Subsequently, in D.14-01-037, issued in 2014, the CPUC ordered TracFone to pay the universal service surcharges and CPUC User Fee, plus interest, that TracFone had failed to remit.²⁰

¹⁵ See D.14-01-037, p. 6, 18-20.

¹⁶ See D.12-02-032, pp. 47-54, Conclusion of Law Nos. 4-6, 8, 10-14, 16, 17, 19, 28, 30, 31-68.

¹⁷ See D.12-02-032.

¹⁸ D.12-02-032, pp. 30-31.

¹⁹ See D.12-02-032, pp. 31-41.

²⁰ D.14-01-037.

B. Staff's Recommendation

As a result of the Federal Court orders described above, staff recommends that telephone corporations providing prepaid wireless services sold in California collect, report, and remit surcharges and user fees like all other telecommunications carriers. We agree, based on the existing state laws and Commission decisions discussed above.

Accordingly, commencing January 1, 2019, prepaid wireless carriers are responsible for collecting, reporting and remitting to the Commission the surcharges and user fees assessed on all sales of prepaid wireless services, *including both direct and indirect sales*, in California, consistent with the processes set forth prior to January 1, 2016, when the Act became effective.²¹ We clarify here that prepaid wireless carriers retain ultimate responsibility for collecting, reporting, and remitting PPP surcharges and user fee resulting from all sales of their prepaid wireless service in California, as we require for all other intrastate telecommunications services.

This requirement is consistent with the requirement for all other wireless carriers who must assess the PPP surcharges and User Fee on all of their intrastate telecommunications service revenue. For purposes of consistency and accuracy of surcharge and User Fee reporting, staff provides existing guidelines on the collection and reporting of surcharges and user fees in Appendix A.

C. Implementation requirements

The following rates should be used for the six universal funds and the Commission User Fee for 2019:

- **ULTS** - 4.750% as adopted by Resolution T-17519
- **DDTP** - .500% as adopted in Resolution T-17458
- **CHCF-A** - .350% as adopted in Resolution T-17453
- **CHCF-B** - .000% as adopted in Resolution T-17417
- **CTF** - .780% as adopted in Resolution T-17606
- **CASF** - .560% as adopted in Resolution T-17593
- **User Fee** - .330% as adopted in Resolution M-4832

²¹ D.12-02-032 (“Regardless of how the ... surcharges are calculated, collected, and remitted, the telecommunications carrier, ... is ultimately responsible for the payment of the surcharges.”).

These rates are subject to adjustment as the CPUC periodically conducts an analysis to determine changes in budget demands and expense forecasts for each program.

With respect to prepaid wireless service revenues, carriers are required to:

- For sales made directly to a prepaid customer other than resale - continue reporting monthly revenues or sales in the regular course of business under “Direct Intrastate Prepaid Wireless Revenue subject to surcharge” in TUFFS.
- For sales of prepaid services to retailers – continue to report monthly revenues or sales of prepaid services to retailers under “Indirect Intrastate Prepaid Wireless Revenue subject to surcharge” in TUFFS.
- For purposes of accurate reporting, intrastate prepaid wireless revenues should continue to be separately reported from postpaid wireless revenues or “Non-prepaid Intrastate Wireless Revenue subject to surcharge” and all other telecommunications services in TUFFS.

When remitting and reporting, prepaid wireless carriers should observe the following guidelines:

- Telecommunications carriers are required to report surcharges on a monthly basis except those that qualify as de-minimis, who are permitted to report on a semi-annual basis but are required to submit individual reports and remittances of monthly amounts.²² Monthly reports and remittances are due within 40 days after closing of the reporting period.
- Telecommunications carriers with annual gross intrastate revenues in excess of \$750,000 shall remit user fees on a quarterly basis by the 15th of April, July, October, and January. Telecommunications carriers with annual gross

²² De minimis carriers are carriers whose average intrastate billings are equal to or less than \$60,000 in a six-month period.

intrastate revenues of \$750,000 or less shall remit the fee on an annual basis on or before January 15.²³

Further, telecommunications carriers offering prepaid wireless services should notify their customers of this change in surcharge collection. In addition, carriers should remove any reference to the prepaid MTS surcharge on billing statements and invoices.

Starting January 1, 2019, carriers are required to revert to the notification process set in place before enactment of the Prepaid MTS Act. Carriers shall itemize each universal service fund and User Fee charge on the invoices and assess the rates as described in this Resolution.

All instructions described above are consistent with the Commission's implementation of one universal mechanism applicable to all telecommunications carriers, similar to the long-standing surcharge mechanism used prior to the Prepaid Collection Act. Failure to timely or properly execute these directives shall subject prepaid wireless carriers to potential interests on surcharges, penalties on user fees, and other action the Commission may deem necessary.²⁴ Surcharges and User Fee remittances are subject to financial audits pursuant to Public Utilities Code section 274.

The Commission understands that carriers require sufficient time to implement changes to their billing systems. For this reason, we are providing carriers 45 days from the adoption of this Resolution to implement the collection, billing, and remittance of surcharges as a result of the federal court orders enjoining the CPUC from implementing the Prepaid Collection Act. However, once the mechanisms are set in place, carriers are required to reconcile their revenues, surcharges, and user fees reported and remitted to the Commission to reflect the correct amounts.

A separate resolution will follow to address implications of the Federal Court orders on prepaid wireless carriers' collection and remittance of the prepaid MTS surcharge for prior years 2016 through 2018.

SAFETY IMPACT

²³ See Pub. Util. Code § 433.

²⁴ See G.O. 153, D. 98-01-023, D98-06-065, D. 14-01-037; see also Pub. Util. Code §§ 405, 2107, and 2108.

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

COMMENTS

Public Utilities Code section 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. Section 311(g)(3) provides that this 30-day period may be reduced or waived by Commission adopted rule.

In this instance, the 30-day comment period was reduced to 5 days pursuant to Rule 14.6 (a)(7) of the Commission's Rules of Practice and Procedure, which allows for reduction of the 30-day period for an "unforeseen emergency situation," including "[d]eadlines for Commission action imposed by ...courts...". Comments on this draft resolution were due on or before December 5, 2018.

On December 5, 2018, Tracfone Wireless, Inc. ("Tracfone"), Cellco Partnership dba Verizon Wireless ("Verizon"), and AT&T²⁵ submitted comments to the Commission. We address each set of comments below.

TracFone's Comments

TracFone's comments object to the Resolution's order stating that prepaid carriers must comply with state laws in existence prior to the Prepaid Collection Act, which made prepaid carriers ultimately responsible for remitting PPP surcharges and the User Fee on all of their intrastate sales, including both direct and indirect sales.²⁶ TracFone bases its objection on two grounds. First, TracFone claims that this resolution, if adopted, "leaves prepaid providers that use indirect sales channels in the same untenable position they were before passage of the Prepaid Collection Act."²⁷ Second, TracFone "notes a conflict with a separate federal law," the Wireless Telecommunications Tax

²⁵ "AT&T" includes New Cingular Wireless, PCS, LLC, AT&T Mobility Wireless Operations Holding, Inc., Santa Barbara Cellular Systems, Ltd., and AT&T Mobility Wireless Operations Holdings, LLC.

²⁶ TracFone Comments, pp. 2-3.

²⁷ TracFone Comments, p. 3.

and Fee Collection Fairness Act, 47 U.S.C. § 1510 (“Wireless Collection Act”) passed by Congress in March 2018.²⁸ As explained below, neither of these arguments have merit.

A. Operational Problems Do Not Relieve Carriers of the Ultimate Responsibility to Remit PPP Surcharges and the CPUC User Fee on All Intrastate Telecommunications Revenue, Derived from Direct and Indirect Sales

TracFone states that “[f]or indirect sales, TracFone relied on the Prepaid Collection Act as a mechanism for consumers to pay for PPP surcharges and user fees for remission to the Commission through the Point-of-Sale mechanism.”²⁹ TracFone states that “under the Court’s recent actions, this mechanism is no longer available” and “if Resolution T-17641 is adopted as drafted, the Commission will revert to the ‘carrier pays’ on indirect sales approach.”³⁰ TracFone filed comments to “stress to the Commission that this presents serious operational problems and unreasonably abandons a carefully crafted mechanism to address indirect sales.”³¹

First, the Federal Court invalidated this industry-sponsored mechanism. Thus, by operation of law, prepaid wireless carriers are subject to laws in existence prior to the Act, which were unaffected by the Federal Court orders. As explained, prior to the Act, the Commission had concluded in (I.) 09-12-016 that TracFone was responsible for surcharges and User Fee remittances for its indirect sales. TracFone appears to be relitigating its past position, which the Commission has already rejected, and we do so again here.

Staff disagrees with TracFone’s contention that the resolution should “contemplate any other actions that the Commission could take such as seeking legislative changes in the Prepaid Collection Act to address the allocation factor issue raised by MetroPCS in the federal court action.”³² As TracFone is aware, the Prepaid Collection Act’s legislative history shows that the Commission and the other implementing state agency, the CDTFEA, opposed on numerous operational and legal grounds the prepaid MTS surcharge mechanism that TracFone champions, which relieved TracFone and other

²⁸ TracFone Comments, p. 3.

²⁹ TracFone Comments, p. 3.

³⁰ TracFone Comments, p. 3.

³¹ TracFone Comments, p. 3.

³² TracFone Comments, pp. 2-3.

prepaid wireless providers of the responsibility to remit surcharges and user fees on their indirect sales.

In contrast to TracFone's complaints about "serious operational problems," comments from AT&T and Verizon demonstrate that these other large prepaid wireless providers are able to remit PPP surcharges and user fees on their indirect sales without such problems.³³ Staff is aware that prepaid wireless carriers utilize third-party intermediaries or vendors to facilitate the transfer of funds from third-party retailers, such as Wal-Mart or Target, to the prepaid wireless carrier. These relationships are governed by contracts sometimes known as Transaction Processing Agreements. Nothing prevents TracFone or any other prepaid wireless carrier from collecting the appropriate PPP surcharges and User Fee amounts from the third-party retailer through these intermediaries, since they are already directly collecting from these intermediaries the indirect revenue collected by the third-party retailers.³⁴

Even if there is not a direct contractual relationship between carrier (direct seller) and third-party retailer (indirect seller) in the prepaid wireless context, common sense and good business practices dictate that accurate records must exist for reconciliation purposes of all monies collected from customers. Thus, the argument that a prepaid carrier lacks direct access to information regarding indirect sales of actual revenue received for the sale of its service is untenable.

Staff finds no compelling reason why TracFone cannot figure out a solution to remit surcharges and user fees on its indirect sales revenue, as do other carriers. Regardless, we concur with staff that existing state law and Commission decisions described herein

³³ See AT&T Comments, p. 2 ("AT&T will be able to apply the Commission-adopted surcharge and user fee rates on prepaid intrastate services sold in California starting January 1, 2019 and will be able to remit the amounts collected on prepaid intrastate services to the individual universal service programs and User Fee in the CPUC's TUFFs system."); see also Verizon Comments, p. 4 ("Again, Verizon Wireless recognizes and accepts that, with the demise of the PPP surcharges and User Fee aspects of the Prepaid MTS Act, the responsibility for remitting PPP Surcharges and User Fees has been shifted from indirect sellers of prepaid wireless service back to carriers.")

³⁴ In the context of third-party charges on a telephone bill, there is a sophisticated system involving the electronic transfer of funds back and forth from customer-carrier-billing agent-third party provider. This third-party billing ecosystem represents how payments from customers find their way back to the third-party provider, as well as how refunds are issued from the third-party provider back to the customer. While this ecosystem for third-party charges does not create a direct contractual relationship between a carrier and a third-party provider, we know that the billing agent provides the direct link between the two entities. We also know that there are billing records that track all payments and refunds.

require TracFone to remit surcharges and user fees based on *all* intrastate telecommunications revenue.

B. The Resolution Does Not Conflict with the Wireless Telecommunications Tax and Fee Collection Fairness Act, 47 U.S.C. § 1510

Citing section (c)(1) of the Wireless Collection Act, TracFone argues that this section preempts the Commission from requiring prepaid wireless providers to remit PPP surcharges and user fees on their indirect sales revenue. TracFone argues that the Wireless Collection Act requires that there be a “financial transaction” between the end-use customer and the provider, and TracFone claims that for indirect sales, there is no “financial transaction” between the customer and TracFone. Staff disagrees.

Section (c)(1) states: “A State, or a local jurisdiction of a State, may not require a person who is neither a resident of such State or local jurisdiction nor an entity having its principal place of business in such State or local jurisdiction to collect from, or remit on behalf of, any other person a State or local tax, fee, or surcharge imposed on a purchaser or user with respect to the purchase or use of any wireless telecommunications service within the State unless the collection or remittance is in connection with a financial transaction.” Section (b)(1) broadly defines a “financial transaction” to mean “a transaction in which the purchaser or user of a wireless telecommunications service upon whom a tax, fee, or surcharge is imposed gives cash, credit, or any other exchange of monetary value or consideration to the person who is required to collect or remit the tax, fee, or surcharge.”

Contrary to TracFone’s claim that there is no “financial transaction” between the prepaid carrier and the end-use customer in an indirect sale, staff notes that a financial transaction indeed occurs between the carrier and customer at the time the customer contacts the prepaid wireless carrier to replenish his or her account with the value, either in units of dollars, minutes, or other denomination, of the prepaid calling card purchased from a third-party retailer. For example, assume a customer purchases a \$50 prepaid calling card from Target for a carrier’s prepaid wireless service. The customer exchanges \$50 with Target, and in return Target activates the carrier’s prepaid calling card so that it now has a value of \$50 (less any associated fees) that can be used to purchase service from only that carrier. This is the first financial transaction.

Prior to the customer paying the \$50 to Target, that carrier’s prepaid calling card had no value. After activation (i.e., the first financial transaction), however, the \$50 prepaid

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calling card can now be used by the customer like a debit card with the carrier for its wireless service. Significantly, the customer cannot use the carrier's service until the customer has contacted the carrier (e.g., via phone, online, or in person) and exchanges with the carrier a certain value (e.g., dollars or minutes) from that specific prepaid calling card to the customer's account or phone number obtained from the prepaid wireless carrier. This is the second financial transaction, wherein the purchaser or user exchanges monetary value or consideration from the \$50 prepaid calling card to the carrier in exchange for the carrier providing that purchaser with its wireless service.

We agree with staff that the second transaction between the purchaser and the prepaid wireless carrier meets the definition of a "financial transaction" based on its plain language. Accordingly, we find the Resolution to be consistent with the Wireless Collection Act.

Verizon's and AT&T's Comments

A. Line Item Requirement for PPP Surcharges and CPUC User Fee

Verizon claims that “the requirement ... to itemize each PPP surcharge and the User Fee does not revert to the practice prior to the Prepaid MTS Act and instead would impose new requirements that do not work in the context of prepaid service.”³⁵ Verizon argues that providers should be given the flexibility to “(a) display each PPP Surcharge and the User Fee as a separate line item, (b) display all PPP Surcharges and the User Fee collectively as a single line item, or (c) not display any PPP Surcharge or User Fee line items.”³⁶ Staff disagrees. This requirement is not a new requirement for prepaid wireless carriers in that this was the requirement in existence prior to the Prepaid Collection Act and it was applicable to all telecommunications carriers, including prepaid wireless carriers.

Existing California law requires telephone corporations to identify on subscribers' bills the amount and nature of the surcharge for the Deaf and Disabled Telecommunications Program (“DDTP”), which is one of the CPUC's six universal service programs for which telephone corporations are required to remit surcharges. Pub. Util. Code section 2881 (g) states “[t]he commission shall require that the programs implemented under this section be identified on subscribers' bills.” In D.96-10-066, the Commission extended this requirement to other surcharges.³⁷ We agree with staff that requiring line-itemization of each PPP surcharge and the CPUC User Fee is not a new requirement. As prepaid wireless providers were subject to the same existing state laws and

³⁵ Verizon Comments, p. 2.

³⁶ Verizon Comments p. 4.

³⁷ See *Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643; Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643*, D.96-10-066, 1996 Cal. PUC LEXIS 1046, *404 (Conclusion of Law 48: “The California Teleconnect Fund surcharge shall appear as a separate line item on each customer's bill beginning with the billing cycle that begins on February 1, 1997.”); *290, *416 (Because CHCF-A and CHCF-B uses the same billing base they may appear on the same line item; Conclusion of Law 126: “For purposes of collecting the funds for the CHCF-B, the CHCF-B may appear next to the CHCF-A as a single line item on each customer's bill beginning with the billing cycle that begins on February 1, 1997.”); *453, Appendix B (Definitions: “A. All End User Surcharge (AEUS): A funding mechanism used to collect money for Commission-mandated programs. The AEUS is applicable to all telecommunications carriers, with the exception of one-way paging companies. The surcharge is a percentage of the customers' total expenditures on telecommunications services. The surcharge is visible on customers' bills as a line item charge.”)

Commissions decisions and orders as other telephone corporations, we find that they should now revert to the same disclosure requirement(s) that they were or should have been following.

B. Local Charges

Verizon states that the Commission should modify Ordering Paragraph (OP) 7 to clarify that “this ordering paragraph applies only to the portion of the prepaid MTS surcharge that collects PPP Surcharges and User Fees.”³⁸ Verizon argues that “while prepaid wireless providers must stop collecting the portion of the prepaid MTS surcharge that reflects PPP Surcharges, User Fees, and state 911 tax, the portion that reflects local utility user taxes and local 911 taxes may be unaffected by the Injunction Order.”³⁹ Verizon appears to misread OP 7. The reference to the “prepaid MTS surcharge” in OP 7 does not need to specify that it excludes local charges because as defined in the Prepaid Collection Act, the “prepaid MTS surcharge” means “the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Section 42010.”⁴⁰ Local charges are matters for the CDTFA and local jurisdictions to address and this Resolution does not purport to address those matters.

C. Customer Notice

Verizon argues that customer notification is unreasonable, unnecessary, and may create customer confusion.⁴¹ Staff disagrees. When the prepaid MTS surcharge was implemented, prepaid wireless carriers were required to provide notice to customers pursuant to the Act, which stated that “[p]repaid wireless telephone service providers shall ... notify customers ... of the new MTS surcharge rates.”⁴² This notice requirement included, at a minimum, (a) an explanation of the prepaid MTS surcharge, (b) a direct link to a carrier webpage providing additional information regarding the prepaid MTS surcharge, and (c) a customer service number to call to request more information and calculation of the prepaid MTS surcharge.

³⁸ Verizon Comments, pp. 4-5.

³⁹ Verizon Comments, pp. 1-2.

⁴⁰ Rev. & Tax. Code § 42004(m).

⁴¹ Verizon Comments p. 5.

⁴² Resolution T-17504.

With the Federal Court orders enjoining the CPUC from enforcing the Prepaid Collection Act and any of the CPUC resolutions or orders implementing the Prepaid Collection Act, customers' surcharge liability have changed, as did their liability change when the Act became effective. Therefore, staff believes it is reasonable to require similar notice requirements to customers now that the law applicable to surcharges and user fees, for which the customer must pay, has again reverted to prior existing requirements. Contrary to Verizon's claims, a customer who sees new surcharges on a bill or other payment documentation could also be confused without proper notice. Thus, we agree with staff and reject Verizon's request not to be required to notify customers as set forth in this Resolution.

D. Extension of Time to Comply with Existing State Laws

Verizon and AT&T claim that implementation will require more than the 45 days provided in the draft Resolution. Verizon requests that carriers be allowed "until July 1, 2019 ... to modify their processes, procedures, and systems."⁴³ AT&T "requests that the date for implementing detailed itemization of the surcharges and User Fee be extended to October 1, 2019."⁴⁴ While staff understands that carriers will be required to make certain changes to their billing systems, staff does not believe that these requested timeframes to comply with already existing state laws are reasonable for the following reasons:

- In the first CPUC Resolution implementing the Prepaid Collection Act, Res. T-17504, the Commission provided prepaid wireless carriers less than 45 days to get their billing systems in place to assess and disclose the prepaid MTS surcharge;
- Prepaid wireless carriers were already subject to existing state laws and therefore in implementing these existing state laws, prepaid wireless carriers should have already had such billing systems in place; and
- Prepaid wireless carriers have been put on notice as early as November 16, 2018, when the Federal Court issued its Injunction Order that enjoined the CPUC from enforcing the Prepaid Collection Act.⁴⁵

⁴³ Verizon Comments p. 5.

⁴⁴ AT&T Comments p. 2.

⁴⁵ This gave carriers 27 days until the adoption of this Resolution on December 13, 2019 plus the additional 45 days provided in this Resolution, which total 72 days to implement existing state laws.

We clarify that carriers providing prepaid wireless services have 45 days from the issuance date of this Resolution to implement the changes necessary to implement existing state laws and Commission decisions and orders as discussed herein.

The Commission's Rules of Practice and Procedure, Rule 16.6, provides a mechanism for carriers who are not able to meet this deadline to file a request for an extension of time to comply with this Resolution.

CONCLUSION

We find reasonable Staff's recommendation to revert to the collection mechanism for universal service surcharges and the CPUC User Fee that existed before enactment of the Prepaid Collection Act. We remind carriers that we require them to adhere to all provisions set forth in Commission Rules, Decisions, General Orders, and statutes as they relate to the assessment, collection, remittance, and reporting of surcharges and user fees; failure to do so could subject carriers to penalties or other sanctions, including but not limited to those set forth in Pub. Util. Code sections 2107 and 2108.

FINDINGS

1. The November 16, 2018 order from the Federal Court in *MetroPCS v. Picker, et al.*, Case No. 3:17-cv-05959-SI declared the Prepaid Mobile Telephony Services Surcharge Collection Act ("Act") preempted and unconstitutional, and in turn, the CPUC resolutions implementing the Act are preempted.
2. Pursuant to the Federal Court orders in *MetroPCS v. Picker, et al.*, Case No. 3:17-cv-05959-SI, the Commission is enjoined from implementing or enforcing the Act, including Public Utilities Code Section 319.
3. This Resolution is necessary to provide guidance to prepaid wireless carriers regarding their responsibility to collect, report, and remit universal service surcharges and the CPUC User Fee commencing January 1, 2019, as a result of Resolution L-574, which rescinded Resolution T-17632 (establishing the 2019

Even assuming some carriers were unaware of the federal court order, the draft Resolution L-574, which was released on November 20, 2018, put carriers on notice that they would be subject to existing state laws. This gives those carriers a total of 68 implementation days.

CPUC prepaid MTS surcharge rate) in accordance with the federal court orders in *MetroPCS v. Picker, et al.*, Case No. 3:17-cv-05959-SI .

4. Telecommunications carriers offering prepaid wireless services in California continue to be subject to the collection and remittance of universal service surcharges and CPUC user fees set forth in Public Utilities Code sections 270-281 and 431-435.
5. As a result of the federal court orders in *MetroPCS v. Picker, et al.*, Case No. 3:17-cv-05959-SI, third-party retailers and the California Department of Tax and Fee Administration are no longer responsible to collect, remit and administer the universal service surcharges and CPUC user fees assessed on prepaid wireless services sold in California.
6. As a result of the federal court orders in *MetroPCS v. Picker, et al.*, Case No. 3:17-cv-05959-SI, the Commission must require prepaid wireless carriers to comply with the previous universal service surcharges and User Fee requirements applicable to all California telecommunications carriers that were in existence prior to enactment of the Act.
7. Prepaid wireless carriers are ultimately responsible for PPP surcharges and CPUC User Fee collections and must report and remit them to the Commission in accordance with the same provisions applicable to all other intrastate telecommunications services.
8. Appendix A provides a summary of existing surcharge and User Fee collection and reporting directives.
9. Beginning January 1, 2019, intrastate prepaid wireless revenues will be assessed the same surcharge and User Fee rates that are assessed on all other intrastate telecommunications service revenues.
10. Requiring carriers offering prepaid wireless service in California to continue to report monthly “Direct Intrastate Prepaid Wireless Revenue subject to surcharge” and “Indirect Intrastate Prepaid Wireless Revenue subject to surcharge” separate from postpaid wireless revenues or “Non-prepaid Intrastate Wireless Revenue subject to surcharge” and all other intrastate

telecommunications service revenues is important for tracking, compliance, and auditing purposes, as well as to inform the Commission of industry trends.

11. Beginning January 1, 2019 telecommunications carriers are responsible for collecting and remitting universal service surcharges and CPUC user fees on sales of prepaid wireless services to non-telecommunications carrier retailers.
12. Prepaid wireless carriers are required to notify their customers of the change in surcharge collection as a result of the federal court orders described in this resolution.
13. Commencing January 1, 2019, billing statements and invoices should remove all reference to the prepaid MTS surcharge and shall be subject to the disclosure requirements set forth for all other telecommunications services, with each universal service being itemized per surcharge program.
14. All instructions provided are consistent with the universal mechanism applicable to all telecommunications carriers, which existed prior to enactment of the Act.
15. Telecommunications carriers who fail to timely or properly execute these directives could be subject to interests, penalties and other sanctions or actions the Commission may deem necessary.
16. Surcharges and user fees remitted to the Commission are subject to audit.
17. Providing carriers with a 45-day period, commencing from the date of issuance of this Resolution, to implement the necessary changes to their billing systems to comply with the orders in this Resolution is reasonable for the reasons set forth in this Resolution.
18. Prepaid wireless carriers are required to reconcile their reported revenue, surcharges, and user fees to reflect the correct amounts once the proper mechanisms are put in place.

THEREFORE, IT IS ORDERED that:

1. All telecommunications carriers offering prepaid wireless services that were subject to the Prepaid Collection Act, beginning January 1, 2019, shall now

collect, report and remit surcharges and user fees assessed on intrastate telecommunications services sold in California, utilizing the same Commission adopted surcharge and User fee rates pursuant to Public Utilities Code sections 270-281 and 431-435, and Commission decisions and orders as set forth in this Resolution.

2. Prepaid wireless carriers shall remain ultimately responsible for the surcharges and user fees collected based on all sales of prepaid wireless service, including both direct and indirect sales, consistent with the discussions in this Resolution
3. Prepaid wireless carriers shall report and remit applicable PPP surcharges and user fees to the Commission in accordance with the same provisions that apply to all other intrastate telecommunications services, as discussed in this Resolution.
4. Prepaid wireless carriers shall continue to report to the Commission both "Direct Intrastate Prepaid Wireless Revenues" and "Indirect Intrastate Prepaid Wireless Revenues" separately.
5. Beginning January 1, 2019, prepaid wireless intrastate telecommunications services shall be assessed the same surcharge and User Fee rates as applicable to all other intrastate telecommunications services, including postpaid wireless service; these rates are subject to change, per program, on a periodic basis.
6. Prepaid wireless carriers shall notify customers of the new applicable surcharges and User Fee rates beginning January 1, 2019, as a result of the federal court orders enjoining the CPUC from enforcing and implementing the Prepaid Mobile Telephony Services Surcharge Collection Act.
7. Beginning January 1, 2019, telecommunications carriers offering prepaid wireless service in California shall remove all reference to the prepaid MTS surcharge on billing statements and invoices and shall itemize the universal service surcharges and User Fee assessed per program.
8. Telecommunications carriers offering prepaid wireless service in California who fail to timely or properly execute these directives are subject to interests, penalties and other sanctions or actions the Commission may deem necessary.

This resolution is effective today.

I certify that the foregoing resolution was adopted by the California Public Utilities Commission at its regular meeting of December 13, 2018 and the following Commissioners approved favorably thereon:

s/s ALICE STEBBINS

Alice Stebbins
Executive Director

MICHAEL PICKER
President

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

Resolution T-17641
CD/NNE

APPENDIX A

Existing guidelines on revenues subject to surcharges and User Fee

Resolution T-17641
CD/NNE

“Intrastate” means a telecommunications service that originates and terminates within California. These include, but are not limited to, residential or business lines and any associated services such as:

- a) Custom calling features
- b) 2-way messaging
- c) Private line service
- d) 800/900 service, and
- e) Non-recurring charges (installation and connection charges, etc.)

Some intrastate telecommunications services, however, are not subject to surcharges and User Fee.⁴⁶ They include the following services:

- a) Discounted services under the Universal Lifeline Telephone Service (ULTS) program
- b) Charges to other certified carriers for services that are to be resold
- c) public phone coin in box and telephone debit cards
- d) contracts effective before 9/15/94
- e) usage charges to coin operated pay telephones
- f) directory advertising, and
- g) one-way radio paging

The Commission does not prescribe a specific methodology for a carrier to determine its intrastate revenues subject to the telecommunications surcharges and User Fee collection requirement. However, a carrier may employ one of a few methodologies,⁴⁷ including the following:

- a) Federal Communications Commission (FCC) Safe Harbor Percentage – carriers may apply the inverse of the Federal Interstate Safe Harbor percentage adopted by the FCC to their California revenues.
- b) Traffic Study – the carrier may develop a jurisdictional allocation factor representing the average usage patterns of the carrier’s own customers, and apply the factor to their California revenues.
- c) Books and Records – A carrier may calculate its intrastate revenues subject to surcharge based on books and records kept in the regular course of business or other purposes.

⁴⁶ D. 94-09-065; D. 95-02-050; G.O. 153

⁴⁷ Public Utilities Code § 285; AB 841