

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**Resolution T-17553
February 21, 2019**

RESOLUTION

Resolution T-17553. Approval of partial refund for overpayments of Public Purpose Program surcharges and the Commission's user fees by Santa Barbara Cellular Systems, LLC, AT&T Mobility Wireless Operations Holdings, Inc., and New Cingular Wireless PCS, LLC filed via Advice Letter Nos. 166, 161, and 8, respectively, totaling \$924,249.86.

Summary

This Resolution partially approves the requests for refund or credit of overpayments of California Public Purpose Program (PPP) surcharges and user fees administered by the California Public Utilities Commission (CPUC or Commission) as submitted by Santa Barbara Cellular Systems, LLC (U-3015-C), AT&T Mobility Wireless Operations Holdings, Inc. (U-3021-C), and New Cingular Wireless PCS, LLC (U-3060-C), (hereafter referred to collectively as AT&T, AT&T Mobility or AT&T Mobility companies) via Advice Letter Nos. 166, 161, and 8, respectively. These overpayments were the result of those companies erroneously submitting surcharges and user fees on intrastate data revenues. The refund amounts recommended to be approved are as follows:

1. Santa Barbara Cellular Systems' refund amounts - \$15,606.67 for PPP surcharges and \$551.75 for user fees.
2. AT&T Mobility Wireless Operations Holdings' refund amounts - \$11,560.68 for PPP surcharges and \$408 for user fees; and
3. New Cingular Wireless PCS' refund amounts - \$865,518.41 for PPP surcharges and \$30,603.58 for user fees;

In total, the surcharges and user fees approved to be refunded by this Resolution amount to \$924,249.86. The amount is subject to audit. The Communications Division will coordinate with the Commission's Utility Audit, Finance and Compliance Branch to conduct an audit of the AT&T companies to verify the accuracy of these amounts and determine if AT&T shall issue refunds to their respective customers. Subject to the audit

findings, the Administrative Service Division's Fiscal Office shall transmit the funds to the AT&T Mobility Companies.

Background

The AT&T Mobility companies provide both prepaid and postpaid wireless telephone services in California. As registered cellular providers in California, the three AT&T Mobility companies are required to collect, report and remit Public Purpose Program surcharges (surcharges) and user fees to the Commission. Surcharges and user fees, further discussed below, are assessed on a carrier's intrastate revenues. These charges are computed as a percentage of intrastate prepaid and postpaid wireless service revenues subject to surcharge. Internet access or data services are categorized as interstate information services and, therefore, not subject to the Commission's surcharges and User Fee.¹

On January 26, 2016, the AT&T Mobility companies sent a letter to the Acting Director of the Commission's Communications Division explaining that, from January 2013 through September 2015, the AT&T Mobility companies overpaid their Public Purpose Program surcharges (surcharges) and user fees by erroneously including prepaid data and text messaging (text) revenues in reporting their intrastate telecommunications revenues to the Commission. The AT&T Mobility companies claim that these services should not have been included in the intrastate revenues because, they assert, surcharging these services violates federal law.

In February 2016, staff advised the AT&T Mobility companies to file advice letters to formally request the recovery of alleged overpayments to the Commission. In addition, staff advised the AT&T Mobility companies that there was a limit to the period allowed for the recovery of surcharges and user fees resulting from carrier's reporting errors. In addition, staff told AT&T that text messaging revenues were subject to California surcharges and User Fee. Hence, the requested refund amounts should be limited to a one-year period prior to the date on which the Commission was notified and should pertain to only the portion involving data.

On August 15, 2016, the AT&T Mobility companies submitted Advice Letter (AL) Nos. 166, 161, and 8. In these ALs, the AT&T Mobility companies requested refunds or credits for overpayments of surcharges and user fees that they erroneously made for prepaid

¹ FCC 1998 Stevens Report.

services from January 2013 through September 2015. AT&T revised their claims to reflect a refund for only data or Internet access service.

The requested refund amounts total \$50,387.00 for Santa Barbara Cellular Systems, LLC; \$27,922.00 for AT&T Mobility Wireless Operations Holdings, Inc.; and \$2,100,265.00 for New Cingular Wireless PCS, LLC. The amounts are further detailed in Table 3 of this Resolution.

The Commission did not receive any protest to these advice letters.

Suspension of Advice Letters

On September 14, 2016 and January 23, 2017, staff suspended AT&T Mobility companies' AL Nos. 166, 161, and 8 to allow for adequate time to collect and analyze the data in preparation of this Resolution.

The ALs were further delayed because staff found irregularities in the AT&T Mobility companies' remittance history. During the review of the ALs, staff discovered that the AT&T Mobility companies' monthly remittances were generally erroneous. Underpayments and overpayments occurred for numerous reporting periods from 2011 to 2017. This finding was relayed to AT&T, along with spreadsheets detailing the amounts of underpayments and overpayments per period, and is currently being handled outside of this Resolution. AT&T records and remittances have also shown marked improvements since relaying this issue to the carrier.

Reporting and Remitting Responsibility

Carriers bear the responsibility to report the revenues and remit the resulting surcharges and user fees to the Commission.² This responsibility includes verifying the timeliness, correctness and accuracy of the reports and remittances.

The public purpose program surcharges and User Fee are discussed in detail in Appendix A of this Resolution.

Discussion

² PU Code Sections 275-281; 423.

In their respective ALs, the three AT&T Mobility companies claim that, in reporting intrastate revenues to the Commission from January 1, 2013 through September 30, 2015, they erroneously included intrastate prepaid wireless data service revenue, which is not subject to Public Purpose Program surcharges or the CPUC User Fee. AT&T asserts that the inadvertent overstatement of revenues resulted in overpayments for the said periods.

AT&T states that prior to January 1, 2016, surcharges and user fees were not collected from end-users. Hence, AT&T requested that the refund amounts be issued to the AT&T Mobility companies and not to their customers.

In December 2016, AT&T Mobility provided jurisdictional allocation percentages, i.e. intrastate, interstate and international, for the periods of January 2013 through March 2016. According to AT&T, these jurisdictional allocation percentages are results of their quarterly-conducted traffic studies and are used to establish and report intrastate revenues to the Commission. All three companies discussed in this Resolution utilize the same jurisdictional allocation percentages.

Along with their traffic studies, AT&T Mobility also provided their summarized service allocation percentages for the periods of January 2013 through March 2016, i.e. voice, text and data service allocations, which are derived from their marketing studies. The summarized results illustrate monthly shifts in the service allocation percentages. However, based on their response to staff's data request, they stated that "the 3rd quarter 2013 marketing study continued to be used until it was updated in 2015." AT&T further explains that in 2015, "there was a shift from AT&T offering stand-alone plans to bundled plans." Hence, the marketing study was updated.³

According to AT&T Mobility, similar to traffic studies, all three companies discussed in this Resolution utilize the service allocation factors derived from the same marketing studies.

The AT&T Mobility companies also presented their calculations for the claimed overpayments of surcharges and user fees in Excel spreadsheets provided to staff. Tables 1 and 2 illustrate AT&T Mobility's spreadsheets by detailing the column headers and formulas as shown below.⁴

³ Based on the spreadsheets provided to staff, the analysis to update the marketing study took place on June 15, 2015.

⁴ Staff deemed these tables as most appropriate for illustration purposes. AT&T Mobility spreadsheets do not appear exactly as illustrated.

The spreadsheets detailed the AT&T Mobility companies’ monthly total intrastate revenues as reported in TUFFS(B)⁵ and total monthly prepaid revenues(C).⁶ The total monthly prepaid revenues was allocated between services (i.e. voice (D), text (E), and data (F)) using factors or percentage rates derived from the marketing studies as discussed above.⁷ AT&T Mobility then multiplied their prepaid data revenue (F) by the intrastate factor derived from their traffic studies (G), also discussed above, to arrive at the monthly intrastate prepaid revenues attributed to data (H). These are the amounts which AT&T claims were inadvertently included in the reports to the Commission, thus resulting in overpayment of surcharges and user fees.

AT&T provided the “correct” revenue amount (I) by subtracting the intrastate prepaid data revenues (H) from the total intrastate revenues originally reported in TUFFS(B).

Table 1

Reporting Period	Original Reported Amount	Prepaid Revenue	Prepaid Voice	Prepaid SMS	Prepaid Data	Intrastate Factor	Inrtastate Prepaid Data	Correct Revenue Amount
(A)	(B)	(C)	(D) = (C * %)	(E) = (C * %)	(F) = (C * %)	(G)	(H) = (F * G)	(I) = (B - H)

In the same spreadsheets, to illustrate the dollar amounts of surcharges and user fees overpaid to the Commission (Q,R...W), AT&T multiplied the intrastate prepaid data revenues (H) by each individual program’s rates effective for the corresponding time periods (J,K...P).

Table 2

ULTS Rate	DDTP Rate	...	User Fee Rate	ULTS Overpaid Amount	DDTP Overpaid Amount	...	User Fee Overpaid Amount
(J)	(K)	...	(P)	(Q) = (H * J)	(R)= (H * K)	...	(W) = (H * P)

The total amounts requested by AT&T Mobility companies to be refunded are summarized below.

⁵ The total intrastate revenues include both postpaid and prepaid wireless revenues.

⁶ The total monthly prepaid revenues identified by AT&T in their spreadsheets encompass intrastate as well as interstate, and international services. Prior to 2016, prepaid revenues were not required to be separately reported from postpaid revenues. Further, interstate, international and non-jurisdictional services are beyond the Commission’s jurisdiction. Hence, the total monthly prepaid revenues are not available on TUFFS.

⁷ Percentage rates derived from AT&T’s marketing studies are illustrated using “%” symbols in the table.

Table 3

Requested Refund Amounts			
Carrier	Surcharges	User Fees	Total
Santa Barbara Cellular (U-3015-C)	\$47,731.00	\$2,656.00	\$50,387.00
AT&T Mobility Wireless (U-3021-C)	\$26,549.00	\$1,373.00	\$27,922.00
New Cingular Wireless (U-3060-C)	\$1,996,821.00	\$103,444.00	\$2,100,265.00
Total	\$2,071,101.00	\$107,473.00	\$2,178,574.00

Staff believes that AT&T’s methodology is generally reasonable. However, staff adjusted the calculation to reflect only service allocation figures supported by documented marketing studies. Only three marketing studies were conducted from January 2013 through September 2015, the last of which was conducted in the 3rd quarter of 2013.⁸ After that, the shift from stand-alone to bundled services in mid-June 2015 is the only proof of a change in service allocations provided to the Commission. For this reason, staff disregards the service allocation figures reflected from the 1st quarter of 2014 through the 2nd quarter of 2015. Instead, staff relied on the documented figures presented for the 4th quarter of 2013 to compute the overpayments for the first half of 2015. Staff then utilized the AT&T’s provided service allocation figures for July through September 2015 for the corresponding periods.

In addition to disallowing the adjustments to service allocations discussed above, the Government Claims Act requires claims for refunds to be submitted within one year of the accrual of the claim. (See Gov. Code, § 911.2.) Consistent with the Act, the Commission may only allow for the reimbursement of overages remitted for the periods of January through September 2015. Since notification first occurred in January 2016, staff excludes the 2013 and 2014 portions of the refunds requested.

In their AL filings, AT&T Mobility had sought to include 2013 and 2014, noting that, at the time of their discovery, staff had published instructions that stated adjustments in TUFFS could be made within 36 months of the originally reported date. However, these specific instructions were removed by staff from the Commission’s website some time before these ALs were filed in August 2016, to be consistent with the Government Claims Act.

Finally, staff raises concerns about the validity of AT&T assertion that these surcharges and user fees were not collected from end-users (i.e. customers). Because the surcharges and User Fee are normally end-use charges by nature⁹, staff deems AT&T

⁸ Staff believes that this marketing study can be appropriately applied to the 4th quarter of 2013.

⁹ General Order 153, D.96-10-066

to have collected these monies from customers unless otherwise proven by documentation. Staff requested AT&T to provide any proof of their claim that surcharges and user fees were not collected from customers. AT&T, however, responded that they have no records of bills or invoices that would prove such claim. To address this issue further, the Commission’s Utility Audit, Finance and Compliance Branch (UAFCB) should conduct an audit of AT&T to determine the validity of AT&T’s claim. AT&T must meet the burden of proving that they are entitled to the relief sought in this Resolution, and they have the burden of affirmatively establishing the reasonableness of all aspects of their request.

Resulting Overpayment Claims

Staff performed the calculations of the claimed overpayments for 2015 using the methodology presented by AT&T in their spreadsheets.¹⁰ Table 4 shows the amount of \$924,249.86 broken down into \$892,685.77 for surcharges and \$31,564.09 for user fees to be refunded to the AT&T Mobility companies, with detailed amounts shown for Santa Barbara Cellular (U-3015-C), AT&T Mobility Wireless (U-3021-C) and New Cingular Wireless (U-3060-C).¹¹

Table 4

Approved Refund Amounts			
Carrier	Surcharges	User Fees	Total
Santa Barbara Cellular (U-3015-C)	\$15,606.67	\$551.75	\$16,158.42
AT&T Mobility Wireless (U-3021-C)	\$11,560.68	\$408.77	\$11,969.45
New Cingular Wireless (U-3060-C)	\$865,518.41	\$30,603.58	\$896,121.99
Total	\$892,685.77	\$31,564.09	\$924,249.86

The UAFCB should also verify the accuracy of these figures and if AT&T collected these amounts from customers in 2015 during its audit. These figures are subject to adjustments based on audit findings and in the event that the audit discovers these amounts to have been collected from customers, the Commission shall direct AT&T to issue the refund to customers.

¹⁰ In verifying the revenues detailed in the spreadsheets, it was found that New Cingular Wireless’ revenue for August 2015 was understated by \$3,000. The revenue reported in TUFFS is greater and assumed correct. No other errors were found in the spreadsheet.

¹¹ As described, staff utilized AT&T’s service allocation figures for the period of December 2013 and applied it to January through June of 2015. AT&T’s provided service allocation figures for July through September 2015 were utilized for the corresponding periods.

Safety Considerations

There are no specific safety issues raised in this Resolution.

Comments on Proposed Resolution

In compliance with P.U. Code § 311(g), a notice letter was emailed on January 17, 2019 informing interested parties of the availability of the draft of this Resolution for public comments at the Commission's website <http://cpuc.ca.gov>. This letter also informed parties that the final Resolution adopted by the Commission will be posted and will be available at the same website.

Conclusion

Subject to the audit, staff recommends partial approval of the three AT&T Mobility companies' requests for refund of the amounts of overpayments of surcharges and user fees resulting from their erroneous inclusion of intrastate data revenue in their revenue reports to the Commission. In accordance with Government Code section 911.2, the recommended refund period covers one year prior to AT&T's notification of the overpayment, in January 2016, instead of the thirty-three-month period requested by the AT&T Mobility companies.

The UAFCB shall conduct an examination of the AT&T Mobility companies to determine the accuracy of the figures and the validity of AT&T's claim that these amounts were not collected from customers in 2015. The figures recommended to be approved in this Resolution are subject to adjustment based on audit findings.

Upon completion of the audit, the Administrative Service Division's Fiscal Office will issue these amounts to refund the respective AT&T companies. In addition, should the audit discover that the surcharges and user fees were collected from customers, the Commission should direct the AT&T Mobility companies to issue the refunds to their customers.

Lastly, we remind the AT&T Mobility companies and all other carriers providing services in California to be mindful of their responsibility of submitting timely and accurate reports of surcharges and User Fee remittances.

Findings

1. On January 2016, Santa Barbara Cellular Systems (U-3015-C), AT&T Mobility Wireless Operations Holdings, Inc. (U-3021-C) and New Cingular Wireless PCS, LLC (U-3060-C), collectively referred to as AT&T Mobility Companies, notified the Commission's Communications Division staff of their erroneous inclusion of prepaid Internet access (data) services in their reported intrastate revenues from January 2013 through September 2015. The companies claim that this error resulted in overpayments of Public Purpose Program surcharges (surcharges) and user fees for the period of January 2013 through September 2015.
2. On February 2016, staff advised the AT&T Mobility companies to file Tier 3 Advice Letters (ALs) to request a refund for any overpayment of surcharges and user fees. Staff advised AT&T Mobility that the recovery would be limited to a one-year period prior to the date on which AT&T Mobility first reported the overpayments to the Commission. As a result, the refund period in this case would be January 2015 through December 2015.
3. On August 15, 2016, the AT&T Mobility companies submitted ALs 166 (U-3015-C Santa Barbara Cellular Systems), 161 (U-3021-C AT&T Mobility Wireless Operations Holdings, Inc.), and 8 (U-3060-C New Cingular Wireless PCS, LLC) to request for the recovery of overpaid surcharges and user fees of the said companies from January 2013 through September 2015.
4. AT&T Mobility companies, as with all other telephone corporations subject to the Commission's jurisdiction, are responsible for submitting timely and accurate reports and surcharges and User Fee remittances.
5. Appendix A of this Resolution provides background information on surcharges and User Fee.
6. The AT&T Mobility companies state that surcharges and user fees were not collected from customers prior to 2016 but could not provide proof of this claim. Hence, this claim is subject to verification by the Commission's Utility Audit, Finance and Compliance Branch (UAFCB).
7. The AT&T Mobility companies state that they conduct quarterly traffic studies for jurisdictional allocation. They provided the Commission with summarized results which are shown as percentage rates for the periods of January 2013 through March

2016. AT&T Mobility companies allocate their revenues between intrastate, interstate and international jurisdiction according to these percentage rates.
8. The AT&T Mobility companies state that they conduct quarterly market analysis for service allocation. They provided the Commission with summarized results which are shown as percentage rates for the periods of January 2013 through March 2016. AT&T Mobility companies allocate their revenues between voice, text, and data services according to these percentage rates.
 9. AT&T Mobility companies provided staff with spreadsheets that illustrate their calculations of surcharge and user fee overpayments. With the exception of service allocation rates utilized, staff deems their methodology reasonable.
 10. AT&T Mobility companies request refunds for a total of \$2,178,574.00 in surcharges and user fees for the period of January 2013 through September 2015 as follows: \$50,387.00 for Santa Barbara Cellular; \$27,922.00 for AT&T Mobility Wireless; and \$2,100,265.00 for New Cingular Wireless.
 11. Based on documents and statements AT&T Mobility provided to staff, AT&T Mobility did not conduct a marketing study from the 4th quarter of 2013 through the 2nd quarter of 2015. In late June of 2015, AT&T Mobility updated the last conducted marketing study due to the shift of offering standalone plans to bundled services. For this reason, staff disregards the adjustments in service allocations from January 2014 through June 2015.
 12. In accordance with Government Code Section 911.2, the request for refund of surcharges and user fees should apply only to overpayments made from January 2015, which is one year prior to when AT&T Mobility first notified the CPUC of the overpayment issue.
 13. Staff performed calculations to determine the overpaid surcharge and user fee amounts by reviewing the revenue figures AT&T Mobility had provided and utilizing AT&T Mobility's methodology. Staff utilized service allocations based on the companies' documented market study and found only one numerical error.
 14. Subject to audit, staff recommends that \$924,249.86 should be refunded to the three AT&T Mobility companies for the periods of January 1, 2015 through September 30, 2015. The amounts applicable to each company are detailed in Table 4 of this Resolution.

15. Staff recommends that the UAFCB conduct an examination of the AT&T Mobility companies to verify the accuracy of these figures.
16. The Administrative Service Division's Fiscal Office, per instructions from the Communications Division, will issue the AT&T companies their respective refund amounts after the completion of the audit.
17. The Commission should order AT&T Mobility companies to issue the refunded surcharges and user fees to their respective customers if the audit finds that these amounts were charged to customers.

THEREFORE, IT IS ORDERED that:

1. The Commission's Utility Audit, Finance and Compliance Branch shall conduct an examination of the AT&T Mobility companies subject to this Resolution to verify the accuracy of the figures recommended to be approved.
2. Subject to adjustments based on audit findings, the Communications Division, in concert with the Administrative Service Division's Fiscal Office, shall issue a refund of \$16,158.42 to Santa Barbara Cellular Systems, LLC's (U-3015-C) for overpaid surcharges and user fees from January through September 2015.
3. Subject to adjustments based on audit findings, the Communications Division, in concert with the Administrative Service Division's Fiscal Office, shall issue a refund of \$11,969.45 to AT&T Mobility Wireless Operations Holdings, Inc.'s (U-3021-C) for overpaid surcharges and user fees from January through September 2015.
4. Subject to adjustments based on audit findings, the Communications Division, in concert with the Administrative Service Division's Fiscal Office, shall issue a refund of \$896,121.99 to New Cingular Wireless PCS, LLC 's (U-3060-C) for overpaid surcharges and user fees from January through September 2015.
5. In the event that the examination finds that the AT&T Mobility Companies collected surcharges and user fees from customers in 2015, the AT&T Mobility companies shall issue refunds to their respective customers.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on _____. The following Commissioners adopted it:

Alice Stebbins
Executive Director

Appendix A

Public Purpose Program Surcharges

The Public Purpose Program surcharges are assessed on revenues collected from end-use intrastate telecommunications services¹². Carriers report and remit the PPP surcharges revenues and user fees through the Commission's proprietary Telecommunications User Fee Filing System (TUFFS). The surcharges collected fund the six universal service funds administered by the Commission, set forth in Public Utilities Code Sections 275 through 281. They are as follows:

- **Universal Lifeline Telephone Service (ULTS):** provides discounted home phone and cellular phone services to qualifying low-income households.
- **Deaf and Disabled Telecommunications Program (DDTP):** provides telecommunications devices to deaf or hearing-impaired consumers.
- **California High Cost Fund-A (CHCF-A):** provides subsidy to small local exchange carriers for providing telephone service to residential customers in rural high-cost areas.
- **California High Cost Fund-B (CHCF-B):** provides subsidy to carriers of last resort for providing telephone service to residential customers in rural high-cost areas.
- **California Teleconnect Fund (CTF):** provides a discount on select communications services to schools, libraries, hospitals, and other non-profit organizations.
- **California Advanced Services Fund (CASF):** supports the deployment of broadband facilities and broadband services adoption in unserved and underserved areas through project specific grant funding.

¹² General Order 153; D. 96-10-066

The surcharge rates vary for each program discussed above and are adjusted periodically based on forecasted budget. The following table reflects the effective surcharge rates from January 1, 2013 through September 30, 2015. The adjustments made for each rate are highlighted for reference.

Effective Date	ULTS	DDTP	CHCF-A	CHCF-B	CTF	CASF
12/01/12	1.150%	0.200%	0.400%	0.300%	0.590%	0.140%
04/01/13	1.150%	0.200%	0.400%	0.300%	0.590%	0.164%
10/01/13	1.150%	0.200%	0.180%	0.300%	0.590%	0.164%
02/01/14	1.150%	0.200%	0.180%	0.000%	0.590%	0.164%
04/01/14	1.150%	0.200%	0.180%	0.000%	0.590%	0.464%
10/01/14	1.150%	0.200%	0.180%	0.000%	0.930%	0.464%
01/01/15	2.400%	0.200%	0.350%	0.000%	0.930%	0.464%
02/01/15	2.400%	0.500%	0.350%	0.000%	0.930%	0.464%
06/01/15	2.400%	0.500%	0.350%	0.000%	1.080%	0.464%
08/01/15	3.800%	0.500%	0.350%	0.000%	1.080%	0.464%

The surcharge rates on August 1, 2015 remained effective through September 2015.

CPUC User Fee

Public Utilities Code Sections 431 through 435 sets forth the User Fee requirements. The monies collected as user fees are deposited into the Public Utilities Commission Utilities Reimbursement Account and finance the Commission's annual operating budget.

The Commission annually determines the User Fee rate which is to be assessed on all CPUC regulated entities. For telecommunication carriers, the fee is assessed on intrastate telecommunications revenues. For carriers with reported annual intrastate revenues of \$750,000 or more, the User Fee rate was .18% (.0018) from January 1, 2013 through September 30, 2015. These carriers are required to remit user fees quarterly, by the 15th of January, April, July, and October.¹³

Prior to January 1, 2016, carriers submitted hardcopy reports and actual checks to the Commission for User Fee payments. Upon receiving the documents, Commission staff recorded the revenues and tracked the payments through an electronic filing system which was decommissioned in December 2015.¹⁴ As of January 2016, carriers submit revenue reports and user fee payments, along with surcharge revenue reports and payments, through the TUFFS database.

¹³ Carriers with reported intrastate revenues of less than \$750,000 annually, referred to as de minimis, are required to pay a flat \$100 annual fee on or before January 15 of each year.

¹⁴ The Commission continues to utilize the electronic system to track revenues and corresponding user fee information for periods prior to 2016.