

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

01-15-10  
04:59 PM

Petition to Adopt, Amend, or Repeal A  
Regulation Pursuant to Cal. Pub. Util.  
Code 1708.5 specifically To Review the  
Assessment of Surcharges for The  
Commission's Public Policy Programs  
With Respect to Prepaid Wireless  
Services.

P.09-12-018  
(Filed December 11, 2009)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES  
TO THE VERIZON WIRELESS PETITION FOR RULEMAKING**

SARAH R. THOMAS  
Staff Counsel for:  
Division of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-2310  
Facsimile: (415) 703-2262  
E-mail: [srt@cpuc.ca.gov](mailto:srt@cpuc.ca.gov)

SELENA HUANG  
ALIK LEE  
Staff Analysts for:  
Division of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-5247  
E-mail: [xsh@cpuc.ca.gov](mailto:xsh@cpuc.ca.gov)

January 15, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend, or Repeal A  
Regulation Pursuant to Cal. Pub. Util.  
Code 1708.5 specifically To Review the  
Assessment of Surcharges for The  
Commission's Public Policy Programs  
With Respect to Prepaid Wireless  
Services.

P.09-12-018  
(Filed December 11, 2009)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES  
TO THE VERIZON WIRELESS PETITION FOR RULEMAKING**

**I. INTRODUCTION**

Pursuant to Rule 6.3 of the California Public Utilities Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) responds to Verizon Wireless' Petition for Rulemaking to adopt, amend, or repeal a regulation pursuant to California Public Utilities Code Section 1708.5 (Petition). The Petition requests that the Commission initiate a rulemaking to amend General Order 153, Decision (D.) 94-09-065, D.09-10-066 and other relevant decisions to examine whether Public Purpose Program (PPP) surcharges should be applied to prepaid wireless services.

The Division of Ratepayer Advocates responds that the Petition should be denied. The Petition is a thinly-veiled attempt to rewrite Commission Resolution T-17235, which was pending in draft form at the time the Petition was submitted. In that Resolution, the Commission reaffirmed that California statutes require all California utility telecommunications carriers, including prepaid wireless service providers, to collect PPP surcharges from their customers; a Rulemaking on this topic is thus unnecessary. Verizon Wireless' attempted end-run around this prior determination should be seen for what it is – an attempt to delay and forestall the enforcement action(s) suggested by Resolution T-17235 – and dismissed out of hand.

## II. DISCUSSION

### A. The Commission has already found that prepaid wireless providers must assess PPP surcharges.

Although Verizon Wireless dresses up its Petition with a host of alleged difficulties in collecting and remitting public purpose surcharges and user fees, the central question it presents is *whether* prepaid wireless services are currently obliged to collect and remit *any* surcharges and fees. The Commission has answered that they are. In Resolution T-17235, the Commission reiterated settled state and federal law requiring that prepaid wireless carriers collect and remit all such charges, in discussing the failure of TracFone Wireless, Inc. (TracFone), one of Verizon Wireless' competitors, to do so. The Commission found that prepaid wireless providers like Verizon Wireless must collect and remit PPP surcharges:

The CPUC is authorized by State and Federal law to require telecommunications carriers in California to collect public purpose surcharges and user fees **from all end users** and to remit such sums to the CPUC in order to subsidize universal service in California. TracFone's failure to collect and remit such monies is a violation of such State and Federal law.<sup>1</sup>

The Commission enumerated the PPP surcharges and user fees affected, as follows, which mirror the surcharges Verizon Wireless seeks to have addressed in a Rulemaking<sup>2</sup>:

Regulatory Fee	Statute
California LifeLine Telephone Program (California LifeLine)	§§ 270 et seq., and 871 et seq.
Deaf and Disabled Telecommunications Program (DDTP)	§§ 270 et seq., and 2881
California High Cost Fund A (CHCF-A)	§§ 270 et seq., and 739.3
California High Cost Fund B (CHCF-B)	§§ 270 et seq., and 739.3
California Teleconnect Fund (CTF)	§§ 270 et seq.
California Advanced Services Fund (CASF)	§ 701
Calif. Public Utilities Commission User Fees	§§401-10, 431 - 435

<sup>1</sup> Resolution T-17235, Conclusion of Law 3 (emphasis added), available at [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_RESOLUTION/111397.htm](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/111397.htm).

<sup>2</sup> *Id.* at 12.

None of these statutes exclude wireless (or prepaid wireless), and none specify that the billing base is limited to postpaid or wireline service. All of them require, implicitly or explicitly, that public purpose program surcharge and user fee programs be implemented in a “competitively neutral” manner.<sup>3</sup> Verizon Wireless, however, apparently wants a special exemption from such programs.

The issue Verizon Wireless proposes for rulemaking is also settled under federal law, as the Resolution makes clear:

Every telecommunications carrier that provides intrastate telecommunications services **shall contribute, on an equitable and nondiscriminatory basis**, in a manner determined by the State to the preservation and advancement of universal service in that State.<sup>4</sup>

The reference here to “every telecommunications carrier” has been held to include wireless carriers.<sup>5</sup> As set forth below, California has consistently included “all end users of every LEC, IEC, cellular, and paging company” in the billing base for the universal service programs.<sup>6</sup>

Thus, there is no need for a Rulemaking, as it is already settled law that prepaid wireless carriers must remit PPP surcharges. As the Commission concluded in Resolution T-17235:

TracFone is a public utility and is subject to the California Public Utilities Code, including its public purpose program and user fee requirements. . . . [T]here is no conflict between State and Federal law in this regard, as Federal law authorizes complementary State and Federal universal service programs, and requires all telecommunications carriers to participate.

---

<sup>3</sup> See, e.g., P.U. Code § 739.3(c).

<sup>4</sup> 47 USC § 254(f); see also *WWC Holding Co. v. Sopkin*, 488 F.3d 1262, 1277 (10<sup>th</sup> Cir., 2007) (“The structure of Section 254 of the Telecommunications Act delineates a federal universal service program . . . and a state’s authority to create its own such program”) emphasis added; citations omitted).

<sup>5</sup> *Cellular Telecommunications Industry Assn. v. FCC*, 168 F.3d 1332, 1336 (D.C. Cir., 1999) (Federal statute is “strong support for the proposition that, consistent with federal law, states may require [universal service] contributions [from CMRS carriers]. Instead of preempting such laws, Congress endorsed them”).

<sup>6</sup> Resolution T-17235 at 14, citing D.96-10-066, Slip Op. at 288-89.

Verizon Wireless is in the same position as TracFone, and the same rules apply. No rulemaking is needed to "decide" this already decided issue.

**B. Verizon Wireless is attempting an end run around the Commission's enforcement process**

Verizon Wireless acknowledges the TracFone resolution in its Petition. Resolution T-17235 (and the Draft Resolution T-17235 seen by Verizon prior to its filing) made clear that an enforcement proceeding, to collect monies due and owing, was in the offing. An Order Instituting Investigation into TracFone's failure to collect and remit the identified surcharges and fees has in fact been issued by the Commission, in order to collect the outstanding sums.<sup>7</sup>

Verizon Wireless is apparently in the same position that TracFone was, i.e., it owes monies to the public purpose and user fee funds.<sup>8</sup> Knowing that a similar enforcement action against itself was probably on the way, Verizon Wireless filed this Petition in an attempt to stave off such an action.

Verizon Wireless should not be allowed to use the Petition for Rulemaking process to effect an end run around enforcement action. Verizon Wireless' approach is pure gamesmanship, and the Petition should be nipped in the bud.

**C. Verizon Wireless' claims about how complicated it is for a carrier without a billing relationship to assess surcharges have no merit**

Verizon Wireless works to create false complexity by discussing all the reasons it is allegedly impossible to assess surcharges if it does not have a billing relationship with the customer. Aside from being irrelevant in light of the clear statutory mandate for such surcharges, Verizon Wireless argument vastly overstates the complexity of surcharge collection.

---

<sup>7</sup>I.09-12-016.

<sup>8</sup>DRA is informed and believes that the Commission's Communications Division has twice written to Verizon Wireless, requesting immediate payment of delinquent surcharges and fees.

Many, if not most, retail services do not involve an ongoing billing relationship, and yet regulatory costs are built into the price. While some more recent Commission decisions have referred to “billed revenue,” such references are a relic of the past:

While the Commission has occasionally referred to “billed revenue” (in G.O. 153, for instance), this language stems from 1984, before the shift of significant portions of the telephone market to the prepaid model.<sup>9</sup>

For all the problems asserted by Verizon Wireless relating to the calculation of an intrastate revenue base from which to determine surcharge and fee amounts, it appears that many prepaid wireless providers in fact pay the surcharges and fees in question. Resolution T-17235 recites the fact that TracFone itself, despite similar protestations, has been able to pay *federal* surcharge amounts,<sup>10</sup> and DRA is informed and believes that other prepaid wireless providers have been able to calculate, collect, and remit to California surcharges and fees. Verizon Wireless' asserted "complexity" is purely illusory. Companies like Verizon Wireless and TracFone appear quite able to determine their total intrastate revenue.<sup>11</sup>

Verizon Wireless also resorts to illusion to awaken the impression that wireless prepaid services are somehow “exempt from paying the PPP surcharges.”<sup>12</sup> The statutes cited by Verizon Wireless – P.U. Code §§ 879(c) and 2881(d) – exempt LifeLine *service customers* from paying the surcharges. One might say they exempt surcharge programs from further surcharges, but they do not exempt a company like Verizon Wireless from paying surcharges and fees on its *non-subsidized* services and revenue.

---

<sup>9</sup> G.O. 153 was adopted in 1984, long before the 1996 Telecommunication Act’s creation of the current ETC regime, and even longer before the more recent advent of prepaid wireless service as a market phenomenon. There is no mention of prepaid services in either D.84-11-028, the Commission’s Decision adopting G.O. 153, or in Resolution T-17202 which updated the General Order in other respects. Nor is there any evidence that TracFone ever sought clarification from the Commission of its obligations under G.O. 153, its Wireless Registration Identification letter, or the statutes set out above.

<sup>10</sup> Resolution T-17235 at 15.

<sup>11</sup> I.09-12-016, at 3 (TracFone reported \$57-62 million in intrastate revenue over 3 years).

<sup>12</sup> Petition, at 2-3.

### III. CONCLUSION

DRA urges the Commission to deny Verizon Wireless' Petition to open a prepaid wireless service OIR. While there may be unresolved issues related to the *pay-out* of LifeLine and similar programs (e.g., should prepaid wireless companies, or any wireless company, be eligible for such funds), the *pay-in* (who is required to contribute) to public purpose programs is clear.

Respectfully submitted,

/s/ SARAH R. THOMAS

---

SARAH R. THOMAS  
Staff Counsel

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-2310  
Fax: (415) 703-2262  
E-mail: [srt@cpuc.ca.gov](mailto:srt@cpuc.ca.gov)

January 15, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES TO THE VERIZON WIRELESS PETITION FOR RULEMAKING**” to each party of record on the official service list in **P.09-12-018 and R.06-05-028** via electronic mail.

Parties who did not provide an electronic mail address, were served by U.S. mail with postage prepaid listed on the official service list.

Executed on **January 15, 2010** at San Francisco, California.

/s/ REBECCA ROJO  
\_\_\_\_\_  
Rebecca Rojo

**SERVICE LIST**  
**P.09-12-018 and R.06-05-028**

lgolinker@aol.com  
owein@nclcdc.org  
chabran@cctpg.org  
JDOLGONAS@CENIC.ORG  
philillini@aol.com  
jesus.g.roman@verizon.com  
esther.northrup@cox.com  
Michael.Bagley1@VerizonWireless.com  
hcv@cpuc.ca.gov  
jjw@cpuc.ca.gov  
ndw@cpuc.ca.gov  
cmailloux@turn.org  
rcosta@turn.org  
bnusbaum@turn.org  
anna.kapetanakos@att.com  
Kristin.L.Jacobson@sprint.com  
peter.hayes@att.com  
stephanie.holland@att.com  
thomas.selhorst@att.com  
stephen.h.kukta@sprint.com  
pcasciato@gmail.com  
foliveira@lif.org  
jarmstrong@gmssr.com  
mschreiber@cwclaw.com  
smalllecs@cwclaw.com  
sleeper@manatt.com  
mmattes@nossaman.com  
suzannetoller@dwt.com  
ens@loens.com  
douglas.garrett@cox.com  
annruth1@aol.com  
lmb@wblaw.net  
info@communicationsaccess.org  
tom@wid.org  
pucservice@dralegal.org  
jbellamy@bcoe.org  
beth.fujimoto@cingular.com  
cindy.manheim@cingular.com  
charak@nclc.org  
cdolesh@solixinc.com  
jdonova@solixinc.com  
khaith@solixinc.com  
rbuntrock@wcsr.com  
kevin.saville@frontiercorp.com

michaelanthony@adelphi.net  
don.eachus@verizon.com  
jacque.lopez@verizon.com  
phillip.cleverly@verizon.com  
lorraine.kocen@verizon.com  
marcie.evans@cox.com  
gilbert.deltoro@jitterbug.com  
lindab@stcg.net  
elaine.duncan@verizon.com  
david.discher@att.com  
michael.foreman@att.com  
marg@tobiaslo.com  
birdarby@yahoo.com  
gblack@cwclaw.com  
foliveira@lif.org  
katienselton@dwt.com  
StoverLaw@gmail.com  
John\_Gutierrez@cable.comcast.com  
anitataffrice@earthlink.net  
grs@calcable.org  
winson8@comcast.net  
samuelk@greenlining.org  
stephaniec@greenlining.org  
charlie.born@frontiercorp.com  
joe.chicoine@frontiercorp.com  
bstobbe@missionconsulting.com  
RegGreco@yahoo.com  
ajc@cpuc.ca.gov  
ayo@cpuc.ca.gov  
bda@cpuc.ca.gov  
bez@cpuc.ca.gov  
chr@cpuc.ca.gov  
trh@cpuc.ca.gov  
pod@cpuc.ca.gov  
fua@cpuc.ca.gov  
fnl@cpuc.ca.gov  
fvr@cpuc.ca.gov  
jl3@cpuc.ca.gov  
khy@cpuc.ca.gov  
mab@cpuc.ca.gov  
mki@cpuc.ca.gov  
nxb@cpuc.ca.gov  
nc2@cpuc.ca.gov  
psp@cpuc.ca.gov

rcm@cpuc.ca.gov  
rwh@cpuc.ca.gov  
rs2@cpuc.ca.gov  
sjy@cpuc.ca.gov  
wej@cpuc.ca.gov  
framirez@bos.lacounty.gov.  
bill.wallace@verizonwireless.com  
info@tobiaslo.com  
xsh@cpuc.ca.gov  
srt@cpuc.ca.gov