

Decision 10-07-028 July 29, 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.

Petition 09-12-018
(Filed December 11, 2009)

DECISION DENYING PETITION BY VERIZON WIRELESS TO REVIEW THE ASSESSMENT OF SURCHARGES FOR THE COMMISSION'S PUBLIC PURPOSE PROGRAMS WITH RESPECT TO WIRELESS SERVICES

On December 12, 2009, Verizon Wireless¹ filed a petition pursuant to § 1708.5 of the Pub. Util. Code requesting that, in conjunction with any declaration, ruling or decision that prepaid wireless intrastate telecommunications services are subject to the Commission's jurisdiction, the Commission also determine if the Public Purpose Program surcharges apply to prepaid wireless services and, if so, determine what methods for collecting such surcharges will meet the Commission's requirements for these programs. The

¹ The following entities are doing business as Verizon Wireless in California: Cellco Partnership, California RSA No. 4 Limited Partnership, Fresno MSA Limited Partnership, GTE Mobilnet of California Limited Partnership, GTE Mobilnet of Santa Barbara Limited Partnership, Los Angeles SMSA Limited Partnership, Modoc RSA Limited Partnership, Sacramento Valley Limited Partnership, and Verizon Wireless (VAW) LLC.

Commission intends to issue a rulemaking on its own motion in the near future on topics related to, but broader than, those set forth in the petition of Verizon Wireless. For this reason, the Commission denies without prejudice the petition of Verizon Wireless. This proceeding is closed.

Section 1708.5 Petition by Verizon Wireless

Section 1708.5 of the Pub. Util. Code provides, in pertinent part, as follows:

(a) The commission shall permit interested persons to petition the commission to adopt, amend, or repeal a regulation.

(b)(1) The commission shall consider a petition and, within six months from the date of receipt of the petition, either deny the petition or institute a proceeding to adopt, amend, or repeal the regulation.

As permitted by Pub. Util. Code § 1708.5, Verizon Wireless filed a petition requesting the Commission open a rulemaking to adopt, amend or repeal a regulation. Verizon Wireless filed the petition on December 11, 2009.

Specifically, Verizon Wireless requested the Commission initiate a rulemaking to amend General Order 153, Decision (D.) 94-09-065, D.96-10-066 and other relevant decisions to explain how, if at all, Public Purpose Program surcharges (also referred to as the PPP surcharges) should be applied to end-users of prepaid wireless services. (Petition at 10.)

Verizon Wireless noted that, at a minimum, the Commission should review and clarify the application of the PPP surcharges referred to as the California Universal Service Fund surcharge (ULTS) (Pub. Util. Code §§ 871-884.5), Deaf and Disabled Telecommunications Equipment and Service Program (DDPT) (Pub. Util. Code § 2881.4), California High Cost Fund-A (HCFA), California High Cost Fund-B (HCFB), California Teleconnect Fund (CTF), and California Advanced Services Fund (CASF). (Petition at 2-3.)

According to Verizon Wireless, the review of these PPP surcharges, as applied to prepaid wireless services, is needed because prepaid wireless services represent a growing and significant segment of the mobile services market and the “characteristics of prepaid wireless inherently conflict with the Commission’s existing guidelines for imposing the PPP surcharges on intrastate telecommunications service end users, which are based on the presence of an end-user bill and identifiable intrastate service.” (Petition at 2 and 4.)

Responses or comments to the petition were filed by the following parties: Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company (collectively “Small LECs”), AT&T Mobility LLC² and Pacific Bell Telephone Company d/b/a AT&T California (collectively “AT&T”), SureWest Telephone (SureWest), TracFone Wireless, Inc. (TracFone), Disability Rights Advocates (DisabRA), The Utility Reform Network (TURN), and the Division of Ratepayer Advocates (DRA). The position of each of these parties is described below. A prehearing conference was held on March 4, 2010. During the prehearing conference the petitioner and the parties held a detailed discussion of the issues presented to the Commission for consideration. For the

² AT&T Mobility refers to, collectively, New Cingular Wireless PSC, LLC (U 3060 C), Cagal Cellular Communications Corporation (U 3021 C), Santa Barbara Cellular Systems, Ltd. (U 3015 C), and Visalia Cellular Telephone Company (U 3014 C).

reasons discussed herein, the Commission denies the petition without prejudice. This proceeding is closed.

Position of Parties

The Small LECs and SureWest support the issuance of a rulemaking by the Commission to examine only the practical implementation issues identified in the petition but disagree with Verizon Wireless that nearly insurmountable difficulties exist in applying the PPP surcharges to prepaid wireless services because of the unique nature of the billing method associated with prepaid services.

AT&T supports Verizon Wireless' petition to the extent it seeks a rulemaking that explores processes for assessing surcharges, on a nondiscriminatory basis with post-paid wireless service, meaning services billed in a traditional manner, from intrastate revenues attributed to prepaid wireless services.

TracFone supports the petition for the specific purpose of determining whether, as a preliminary matter, the PPP surcharges are even applicable to prepaid wireless services. TracFone is the named respondent in a separate Commission proceeding, Investigation (I.) 09-12-016.³

DisabRA and TURN recognize the importance of some of the issues raised in Verizon Wireless' petition, but believe that it is inappropriate to address these

³ I.09-12-016, *Order Instituting Investigation on the Commission's own motion into the alleged failure of TracFone Wireless, Inc. (U-4321-C) to collect and remit public purpose program surcharges and user fees on revenue from its sale of intrastate telephone service to California consumers, in violation of the laws, rules and regulations of this State; Order to Show Cause why Respondent should not immediately be ordered to pay all such outstanding sums plus interest, and be subject to penalties for such violations.*

issues in isolation when it believes the Commission is already engaged in, what they describe as, a comprehensive review of the Public Purpose Programs in Rulemaking (R.) 06-05-028.⁴ DisabRA and TURN also separately filed timely notices of intent to claim intervenor compensation pursuant to § 1801 *et. seq.* which demonstrate compliance with certain preliminary requirements needed to request compensation in this proceeding.

DRA urges the Commission to dismiss the petition as unnecessary because, according to the DRA, existing law unambiguously requires all California utility telecommunications carriers, including prepaid wireless service providers, to collect PPP surcharges from their customers. As such, DRA contends that the questions posed by the petition are moot.

Several parties also filed reply comments which essentially restated arguments in their initial comments.

Denial of Petition

We have carefully considered the issues raised by the petition of Verizon Wireless. We have also reviewed the comments filed in support of and in opposition to the petition. We find that broad issues of industry-wide importance exist regarding prepaid wireless services that should be addressed. However, rather than address these issues in a piecemeal fashion, which would result if the petition is granted, we intend to issue a rulemaking on the Commission's own motion that will seek to incorporate the issues presented by the petition into a broader discussion of prepaid wireless service issues. For this reason, we deny the petition without prejudice.

⁴R.06-05-028, *Rulemaking on the Commission's Own Motion to review the telecommunications policy program.*

Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 14, 2010, and reply comments were filed on July 19, 2010 by Verizon, TracFone, DRA, TURN and DisabRA. In response to comments and reply comments, this decision addresses questions by parties regarding the scope of any rulemaking issued as a result of this decision. To be clear, today's decision makes no specific determinations on scope. As noted by Verizon, scope will be addressed in the future rulemaking. Contrary to TracFone's suggestions in comments, this rulemaking makes no representations on the specific issues to be addressed in any future rulemaking. Similarly, while TURN and DisabRA seek further details now, such information will be forthcoming in the future rulemaking. DRA and others urged the Commission to promptly consider the issues, which we intend to do.

Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Regina M. DeAngelis is the assigned ALJ in this proceeding.

Finding of Fact

The Commission intends to issue a rulemaking on its own motion in the near future on topics related to but broader than those set forth in the petition of Verizon Wireless.

Conclusion of Law

Based on the Commission's determination to issue a rulemaking on its own motion in the near future on topics related to but broader than those set

forth in the petition of Verizon Wireless, we find it reasonable to deny the petition without prejudice.

ORDER

Therefore, **IT IS ORDERED** that:

1. Petition (P.) 09-12-018 is denied without prejudice.
2. P.09-12-018 is closed.

This order is effective today.

Dated July 29, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners