



COM/DH7/mef 8/16/2022

**FILED**

08/16/22

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

11AM

12204005

Order Instituting Investigation on the  
Commission's Own Motion into  
MetroPCS California LLC (U3079C)  
Failure to Remit Prepaid Mobile  
Telephony Service Surcharges and  
User Fees.

Investigation 22-04-005

### **ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This Scoping Memo and Ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

#### **1. Procedural Background**

The California Public Utilities Commission (Commission) instituted this investigative proceeding to determine (1) whether Metro PCS California, LLC U3079C (MetroPCS) violated any provision(s) of the Prepaid Telephony Service Charges and User Fees and revenue reporting requirements pursuant to the Prepaid Mobile Telephony Services Surcharge Collect Act (Prepaid Act) for the 2017 and 2018 calendar years; and (2) whether MetroPCS violated any other statutes, Commission decisions and resolutions.

A prehearing conference (PHC) was held on July 25, 2022, to address MetroPCS' pending Motion to Dismiss Order Instituting Investigation (OII) Proceeding, Without Prejudice, Pending Federal Litigation (Motion to Dismiss), identify issues of law and fact, determine the need for hearing, set the schedule

for resolving the matter, and address other matters as necessary. After considering the following pleadings from this proceeding (*e.g.*, the OII and Attachment A thereto, MetroPCS' Response to the Preliminary Scoping Memo, the Reply Comments of the Consumer Protection and Enforcement Division (CPED) on MetroPCS' Response to the Preliminary Scoping Memo, MetroPCS' PHC Statement, CPED's PHC Statement, MetroPCS' Motion to Dismiss, Response of CPED to MetroPCS' Motion to Dismiss, MetroPCS' Reply to CPED's Response to MetroPCS' Motion to Dismiss) as well as various pleadings and opinions from the pending Federal Litigation (*e.g.*, Second Amended Complaint for Declaratory and Injunctive Relief; Joint Case Management Statement; *MetroPCS Cal., LLC v. Picker* (9<sup>th</sup> Cir. 2020) 970 F.3d 1106, and transcript from the May 12, 2022 Status Conference before Judge Donato) and discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this Scoping Memo. I have also determined that no environmental and social justice issues have been raised at this time.

## **2. Issues**

The issues will be divided into two tracks: track one consists of the issues that the Commission will resolve now as these issues are under our purview and are not implicated in the Federal Litigation. Track two consists of the issues that, while under our purview, the Commission will resolve later depending on the outcome of the Federal Litigation which is currently scheduled to begin trial on March 23, 2023. I have made this decision based on MetroPCS' claim that the Prepaid Act, along with the Commission Resolutions implementing the Prepaid Act, are preempted by federal law. If MetroPCS is successful in the Federal Litigation, there may not be a need to address and resolve the Track two issues.

**Track 1 issues:**

1. Did MetroPCS' November 4, 2021 Response to CPED's September 27, 2021 data request conform to or violate the requirements of Pub. Util. Code § 314 and Rule 1.1 of the Commission's Rules?
2. If the Commission finds that MetroPCS' November 4, 2021 Response to CPED's September 27, 2021 data request violated Pub. Util. Code § 314 and Rule 1.1 of the Commission's Rules, should the Commission fine or penalize MetroPCS pursuant to Pub. Util. Code § 2107 and Decision (D.) 98-12-075?
3. If the Commission determines that MetroPCS should be fined or penalized for its November 4, 2021 Response to CPED's September 27, 2021 data request, should the Commission determine that MetroPCS's conduct constitutes a continuing offense pursuant to Pub. Util. Code § 2108?
4. If the Commission finds that MetroPCS' November 4, 2021 Response to CPED's September 27, 2021 data request violated Pub. Util. Code § 314 and Rule 1.1 of the Commission's Rules, should the Commission impose any other obligations (*e.g.*, require MetroPCS to provide further responses to CPED's September 27, 2021 data request and any additional data requests covering the same subject matter), fines, penalties, or regulatory sanctions beyond what is provided by Pub. Util. Code §§ 2107 and 2108?

**Track 2 Issues:**

1. Did MetroPCS' 2017 and 2018 remittances for Public Purpose Program (PPP) Surcharges and Commission User Fee(s) violate the Prepaid Act, Pub. Util. Code § 319, Commission Resolutions T-17542 and T-17579, and any other applicable laws and regulations?
2. If violations are found, what additional amounts in surcharges, user fees, interest, and penalties should be paid by MetroPCS?

**3. Need for Evidentiary Hearing**

There are no issues of material disputed fact. Accordingly, while no evidentiary hearing is needed, I may schedule an oral argument where counsel and any persons who executed supporting declarations will be present to address the Track 1 issues.

**4. Schedule**

The following schedule is adopted here and may be modified by the Presiding Officer as required to promote the efficient and fair resolution of the investigation:

Event	Date
Simultaneous service and filing of Opening Briefs on Track 1 issues with any supporting declarations and exhibits, with copies of all supporting authorities placed in a three-ring binder, with the relevant portions of each authority highlighted, and delivered to the Presiding Officer via messenger at 505 Van Ness Avenue, San Francisco, CA 94102	30 Days after issuance of the Scoping Memo
Simultaneous service and filing of Reply Briefs	20 Days after filing of Opening Briefs
Oral Argument Hearing	Date to be determined
Presiding Officer’s Decision	<i>[no later than 90 days after conclusion of oral argument hearing]</i>

The Track 1 portion of this proceeding will stand submitted upon the conclusion of the oral argument hearing unless the Presiding Officer requires further evidence or argument. Based on this schedule, the Track 1 portion of this

proceeding will be resolved within 12 months as required by Pub. Util. Code Section 1701.2(i).

The Track 2 portion of this proceeding will not be completed within 12 months due to the pendency of the Federal Litigation and my decision finds it is appropriate to address the Track 2 issues after the outcome of the Federal Litigation. As such I will prepare an order extending statutory deadline for a Commission vote before the expiration of the 12-month statutory deadline.

#### **5. Alternative Dispute Resolution (ADR) Program and Settlements**

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses Administrative Law Judges (ALJs) who have been trained as neutrals. At the parties' request, the Presiding Officer can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.<sup>1</sup>

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

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<sup>1</sup> See D.07-05-062, Appendix A, § IV.O.

## **6. Category of Proceeding and *Ex Parte* Restrictions**

The Commission determined that this is an adjudicatory proceeding.<sup>2</sup> Accordingly, *ex parte* communications are prohibited pursuant to Article 8 of the Rules.

## **7. Public Outreach**

The Commission served the OII on MetroPCS.<sup>3</sup> As MetroPCS is the sole focus of this OII, no additional public outreach efforts are needed.

## **8. Intervenor Compensation**

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by 30 days after the issuance of this Scoping Memo.

## **9. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's

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<sup>2</sup> OII at 13, ¶ 11.

<sup>3</sup> OII at 13, ¶ 18: The Executive Director shall cause a copy of this Order the Confidential Consumer Protection and Enforcement Division's Investigation Report (Attachment A) to be served upon the Respondent MetroPCS California, LLC by certified mail and a hard copy to each person listed below:

MetroPCS California, LLC  
David A. Miller-Manager  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006.  
MetroPCS California, LLC  
Leon M. Bloomfield, Esq.  
1970 Broadway Ste 1200  
Oakland, CA 94612-2211

Public Advisor at 1-866-849-8390 or 1-866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **10. Filing, Service, and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4<sup>4</sup>.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

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<sup>4</sup> The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

#### **11. Receiving Electronic Service from the Commission**

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add "@cpuc.ca.gov" to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

#### **12. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Robert M. Mason III is the assigned ALJ and Presiding Officer for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is not needed.
4. The Presiding officer is Administrative Law Judge Robert M. Mason III.



5. The category of the proceeding is adjudicatory.

This order is effective today.

Dated August 16, 2022, at Sacramento, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck  
Assigned Commissioner