

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17685
May 7, 2020**

R E S O L U T I O N

RESOLUTION T-17685. Affirms Cox Communications LLC's Obligation to Remit Public Purpose Program Surcharges and CPUC User Fees for Directory Listings Service Intrastate Revenue Pursuant to Audit Findings for Fiscal Years 2012-2015.

SUMMARY

By this Resolution, the Commission affirms Cox Communications LLC's obligation to remit Public Purpose Program surcharges and CPUC User Fees associated with its directory listings service intrastate revenue, as set forth in the Commission's audits of Cox's Public Purpose Programs and User Fee compliance for fiscal years 2012-2015.

BACKGROUND

The California Public Utilities Commission ("Commission" or "CPUC") collects and distributes funds to support universal service through six Public Purpose Programs ("PPP") for the benefit of California ratepayers:¹

- California High-Cost Fund A ("CHCF-A"): This program provides a source of supplemental revenue to small local exchange carriers (LECs) for the purpose of minimizing any basic telephone service rate disparity between rural and metropolitan areas²;
- California High-Cost Fund B ("CHCF-B"): This program provides subsidies to carriers of last resort (COLRs) for providing basic local telephone service to residential customers in high-cost areas³;

¹ See Pub. Util. Code §§ 270-278.5 and 280-281.

² Pub. Util. Code § 275.

³ Pub. Util. Code § 276.

- Universal Lifeline Telephone Service (“ULTS”): This program provides discounted home wireline phone and wireless phone services to qualified households⁴;
- Deaf and Disabled Telecommunications Program (“DDTP”): This program provides telecommunications devices to deaf or hearing-impaired consumers⁵;
- California Teleconnect Fund (“CTF”): This program provides a 50% discount on selected communications services to schools, libraries, hospitals, and other non-profit organizations⁶; and
- California Advanced Services Fund (“CASF”): This program supports the deployment of broadband facilities and adoption of broadband services in unserved and underserved areas of the state through project-specific grant funding⁷.

Funds to support these programs are collected from end users (ratepayers) as surcharges applied to telephone corporations’ intrastate revenue and remitted by carriers to the Commission through its Telecommunications User Fees Filing System (“TUFFS”). All landline, cellular, Voice over Internet Protocol and reseller carriers authorized to provide service in California must collect and remit PPP surcharges.

The Commission also collects a CPUC User Fee to support the CPUC’s operating budget in regulating public utilities, which carriers collect via customer billings.⁸

The Commission conducts financial audits of the revenues required to be collected and submitted to the Commission for each of the PPP funds specified in Section 270 and the CPUC User Fee.⁹

The Commission’s Utility Audit, Finance and Compliance Branch (“UAFCB”)¹⁰ often performs utility audits, or the Commission may hire an audit contractor to conduct the

⁴ Pub. Util. Code § 277.

⁵ Pub. Util. Code § 278

⁶ Pub. Util. Code § 280

⁷ Pub. Util. Code § 281.

⁸ See Pub. Util. Code §§ 401, 402, and 405. The CPUC User Fee is deposited into the California Utilities Reimbursement Account. See Pub. Util. Code § 402. Pub. Util. Code § 285 obligates VoIP providers to collect and remit surcharges, but they are not required to collect and remit the CPUC User Fee.

⁹ See Pub. Util. Code § 274. The Commission must also “conduct a financial and compliance audit of program-related costs and activities at least once every three years.” *Ibid.* See also Pub. Util. Code § 314.5 (requires the Commission to inspect carriers’ books and records for regulatory purposes every 3 or five years and to post reports of the reviews and audits on the Commission’s internet website).

¹⁰ As of January 1, 2020, UACFB is known as the Utility Audits, Risk and Compliance Division (UARCD) and is a part of the Commission’s Executive Division.

audit on the Commission's behalf. For instance, the two audit reports at issue here were prepared by Crowe Horwath, LLP ("Crowe"), an audit contractor who worked with the UAFCB on the Cox audits for fiscal years (FYs) 2012-2013, 2013-2014, and 2014-2015.

The Commission's Communications Division ("CD") oversees compliance of telephone corporations. The Commission has specifically authorized CD to issue citations and levy penalties regarding noncompliance with certain requirements, including but not limited to, failure to report and remit surcharge payments, failure to obtain authority to operate in California, failure to submit financial reports, and failure to submit Service Quality reports as ordered in General Order (G.O.) 133-D.¹¹ Granting authority to staff to issue citations for certain violations listed in Res. T-17601, Appendix A, was necessary to ensure that telephone corporations comply with the Commission's resolutions, decisions, orders, and the Public Utilities Code. It provides staff with an additional tool to address noncompliance issues in a more efficient manner. The establishment of a citation program does not prevent the Commission from taking other remedial measures, including, but not limited to issuing an Order Instituting Investigation (OII) or revoking a carrier's Certificate of Public Convenience and Necessity and registration.¹²

THE COX AUDIT REPORTS

A. 2016 AUDIT REPORT, EXAMINATION PERIOD JULY 1, 2012 THROUGH JUNE 30, 2013

In 2016, the CPUC hired Crow Horwath LLP to conduct an audit of Cox's compliance with the assessment, collection, and remittance of PPP surcharges and CPUC user fees for the examination period of July 1, 2012 through June 30, 2013. In Crowe's Independent Accountant's Report, entitled *Examination Report: California Telecommunications Public Purpose Program (PPP) Surcharge and User Fee Compliance Examination of Cox Communications*, dated June 10, 2016, ("2016 Audit Report"), Crowe found that Cox in noncompliance on several matters.

Specifically, Finding 3 (related to directory listings service) stated that "Cox failed to demonstrate compliance with General Order 153, D.96-10-066, PUC Codes 275 to 280, and the CPUC's Telephone Surcharge Reporting and Payment Filing guidance (revised July 11, 2012); and PUC Code 433, D.13-05-035, D.10-09-017 and the *Instructions for User Fee Statement for PUC Utilities Reimbursement Account*" in that Cox failed to assess, collect, or remit PPP surcharges and CPUC user fees for revenues associated with

¹¹ See Res. T-17601, p.3 and Appendix A.

¹² *Ibid.* Pursuant to Pub. Util. Code § 234, the CPUC licenses "telephone corporations." However, the Commission also uses the term "telecommunications carrier" to refer to providers of communications services. For purposes of this resolution, we use the terms interchangeably.

“directory listing non-public service.”¹³ This failure resulted in over \$100,000 in underpayment of PPP surcharges and CPUC user fees.¹⁴

The 2016 Audit Report explained:

In the CPUC Decision D.96-10-066, “Access to a directory listing” is listed as one of the basic services telecommunications carriers must provide as a universal service. The spirit of D.96-10-066 is to assess PPP surcharges on basic services provided to paying intrastate customers and to subsidize universal services for disadvantaged areas and/or customers. In addition, Directory Listing was discussed throughout D.09-10-066 but never mentioned by the Commission as one of the elements excluded from the collection of the PPP surcharges.¹⁵

Cox disagreed with Finding 3, among other findings, and on May 12, 2016 provided Crowe a written response to a draft of the audit report, arguing:

Cox continues to disagree that the PPP surcharges and the User Fee apply to Directory Listing-related charges. As we explained during the review, our understanding is that CPUC Decision 96-10-066 establishes that the surcharges are a percentage of the customers’ total expenditures on telecommunications services. Directory Listings are charges incurred for either having a customer’s name, address and phone number included or excluded from a published telephone book. A published telephone book is not a ‘telecommunications service’....

Similarly, the FCC excludes revenues from published directory services from its calculation of federal Universal Service Fund charges. Specifically, the FCC’s Form 499 A establishes that FCC contributions to FUSF are based on end user telecommunications revenues. Line 418 of the 2016 form is entitled “Revenues other than US telecommunications revenues, including information

¹³ This is a Cox service that removes a customer’s telephone number from directory listing and the White Pages.

¹⁴ See *Examination Report: California Telecommunications Public Purpose Program (PPP) Surcharge and User Fee Compliance Examination of Cox Communications*, dated June 10, 2016 (2016 Audit Report), pp. 4, 17-19; see also *Id.*, Appendix B, Carrier Responses, dated May 12, 2016, pp. 32-33 (Cox Responses to Finding 3).

¹⁵ *Id.*, p. 17.

services, insider wiring maintenance, billing and collection, customer premises equipment, **published directory**, dark fiber, internet access,” Page 32 of the applicable instructions make clear that “Line 418 should include all non-telecommunications service revenues on the filer’s books, as well as some revenues that are derived from telecommunications-related functions, but that should not be included in the universal service or other fund contribution bases.” [Emphasis added.] Thus under the federal program, published directory revenues are not considered “telecommunications” and are not subject to federal surcharges.¹⁶

In the final version of the 2016 Audit Report, Crowe rejected Cox’s above contentions, and provided a further explanation regarding directory listings service:

Crowe consulted with the CPUC’s Water and Audits, Legal and Communication Divisions related to applicability of PPP surcharges and User Fees for Directory Listing services.

The CPUC provided guidance to Crowe that while Directory Listing service is discussed throughout D.09-10-066, Directory Listing is not mentioned by the Commission in this decision as one of the services excluded from the collection of PPP surcharges. Because Directory Listing (non-published) is not one of the services that the Commission has specifically exempted in D.96-10-066, the CPUC had indicated that service should be subject to PPP surcharges until the Commission orders otherwise.

The CPUC also indicates that in D.96-10-066, “Access to a directory listing” is one of the basic services listed that the Commission requires telecommunication carriers to provide as a universal service (page 152 of D.96-10-066). The CPUC indicates that the spirit of D.96-10-066 is to assess PPP surcharges on the basic services provided to paying intrastate customers and then use the PPP fund to subsidize universal services (the concept that basic service should be available to virtually everyone in California at affordable rates) provided to disadvantaged areas and/or customers.

¹⁶ *Id.*, Appendix B, p. 32.

In its response above, Cox cited USAC's Form 499 which exempts "published directory services" from federal universal service surcharges. The CPUC's Legal Division verified that the USAC does not require carriers to assess, collect and remit surcharge revenues on Directory Listing service (including Cox's "non-published service") because they do not believe this service meets the statutory definition of telecommunication service which is defined as a transmission of information between two or more points (47 USC Sec. 153 (50)). However, the CPUC Legal Division found that there is no formal FCC order or ruling adopting this interpretation and likewise no FCC order prohibiting California from assessing surcharges on Directory Listing (non-published) service.

Accordingly, the 2016 Audit Report maintained Finding 3.

On November 22, 2016, CD sent a demand letter seeking Cox's compliance with the 2016 Audit Report findings, including Finding 3.¹⁷

In December 2016, Cox submitted some of the disputed surcharges, user fees, interest and penalty amounts identified in the 2016 Audit Report for FY 2012-2013.¹⁸

B. 2017 ANALYSIS REPORT, EXAMINATION PERIOD JULY 1, 2013
THROUGH JUNE 30, 2014 AND JULY 1, 2014 THROUGH JUNE 30,
2015

On October 28, 2017, Crowe issued a second audit report entitled *California Telecommunications Public Purpose Program Surcharge and User Fee Analysis of Cox Communications For the Program Years Ended June 30, 2014 and June 30, 2015* (2017 Analysis Report).¹⁹ The purpose of this 2017 Analysis Report was to "analyze the impact of the two findings noted in an examination report dated June 10, 2016 on the subsequent two program years after the examination period (i.e., program years ended June 30, 2014 and June 30, 2015)."²⁰ The two findings examined from the first 2016

¹⁷ See CD Demand Letter to Cox Concerning 2016 Audit Report, November 22, 2016, available in A.19-01-014, Consumer Protection and Enforcement Division ("CPED") Protest, Attachment 2 <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=283492569> (last visited 3/19/20).

¹⁸ See CD Demand Letter to Cox Concerning 2016 Audit Report and 2017 Analysis Report, February 6, 2019, available in A.19-01-014, CPED Protest, Attachment 2 <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=283492569> (last visited 3/19/20).

¹⁹ *California Telecommunications Public Purpose Program Surcharge and User Fee Analysis of Cox Communications For the Program Years Ended June 30, 2014 and June 30, 2015* (2017 Analysis Report),

²⁰ 2017 Analysis Report, p. 1.

Audit Report were related to Cox's failure to remit surcharges and user fees related to Cox's (1) intrastate Primary Intrastate services and (2) directory listing non-public service.²¹ Crowe's objectives in analyzing these findings were to:

1. Determine the impact of findings from the examination report [2016 Audit Report] that had a monetary impact for the program years ended June 30, 2014 and June 30, 2015.
2. Calculate the interest and penalties applicable on any surcharge and/or User Fees amounts determined to be owed to the PPP and/or CPUC respectively.²²

In the 2017 Analysis Report, Finding 2, Crowe found that Cox did not assess, collect or remit PPP surcharges or the CPUC user fees for revenues received from directory listings (non-published) service for FYs 2013-2014 and 2014-2015. This failure resulted in over \$200,000 in underpayment of PPP surcharges and user fees. The 2017 Analysis Report also listed the associated interest and penalties for Cox's noncompliance.²³

On March 8, 2018, Cox submitted a letter to CD's Director in response to the 2017 Analysis Report.²⁴ Cox's letter reiterated its legal positions with respect to its surcharges and user fee obligations for revenue related to its provision of directory listings service.²⁵

On April 5, 2018, CD sent Cox a demand letter for the under-remitted and underreported surcharges and user fees and associated penalties related to Cox's directory listings service revenue, as set forth in the 2017 Analysis Report.²⁶

On May 2, 2018, Cox sent another letter disputing the audit findings and requesting reconsideration of CD's April 5, 2018 request for payment on the same previous argument that "Directory listings services are not services that the Commission may subject to PPP Surcharges and/or User Fees."²⁷ In this letter, Cox argued that "the 2017 Analysis is premised on findings and analyses included in the 2016 Audit Report" and "Cox disputes findings in the 2017 Analysis, as well as the same findings and underlying set forth in the 2016 Audit Report." In reiterating its position, Cox stated, "[s]ince 2016, Cox has disputed Crow[e] Howarth (sic) finding that directory listing

²¹ *Ibid.*

²² *Id.*, p.2.

²³ See *id.*, pp. 1, 5-7.

²⁴ Cox Response to 2017 Analysis Report, March 8, 2018.

²⁵ *Id.*, pp. 3-4.

²⁶ CD Demand Letter to Cox Concerning 2017 Analysis Report, April 5, 2018, available in A.19-01-014, CPED Protest, Attachment 2 <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=283492569> (last visited 3/19/20).

²⁷ Cox Request for Reconsideration of 2017 Analysis Report Letter, May 2, 2018, p. 1.

services are subject to PPP Surcharges and the User Fee since (a) such services are not telecommunications service; (b) Decision 96-10-066 does not authorize the imposition of PPP Surcharges and/or the User Fee on such services; and (c) the FCC does not subject such services to federal universal service contributions, and thereby, the Commission cannot adopt a rule inconsistent with that of the FCC.”²⁸ Cox also requested that CD delay pursuing payment until the Commission determines in Rulemaking (R.) 17-06-023, *Order Instituting Rulemaking to Consider Whether Text Messaging Services are Subject to Public Purpose Program Surcharges*, whether to add directory listings service as an issue to address.

On October 18, 2018, CD’s Deputy Director sent Cox a letter explaining that “absent an order from the FCC or federal or state laws that explicitly deem directory listings to be exempt from federal or state surcharges, CD concurs with the findings in the [2017] Compliance Examination report analysis.”²⁹ CD rejected Cox’s arguments and further explained that “Commission surcharge rules in D.96-10-066 require the assessment of surcharges on telecommunications services unless a specific service is explicitly exempt. The Commission has not identified directory listings as an exempt service.”³⁰ CD also rejected Cox’s proposal to delay payments pending consideration of directory listings service in R.17-06-023 because in that proceeding, the Commission intended only to address text messaging service. In addition, D.96-10-066 had made clear that directory listings service was a part of basic service, which is subject to surcharges and the CPUC user fee.³¹ In conclusion, CD directed Cox to release within 30 days the funds for directory listings that it had been holding in an escrow account.³²

On October 29, 2018 Cox submitted a clarifying letter to CD’s Director and the Commission’s General Counsel in response to CD’s October 18, 2018 response and demand letter.³³ Cox requested a meeting with them on the basis that CD’s letter did not address the FCC’s categorization of directory listings in the Form 499 instructions.³⁴ On November 28, 2018, the Commission’s General Counsel, the Director of Communications Division, and other Legal Division staff met with Cox representatives to provide Cox another opportunity to discuss Cox’s legal concerns regarding CD’s compliance demands for Cox to remit surcharges and user fees for its directory listings service revenue.

²⁸ *Id.*, p. 3.

²⁹ See CD Response and Demand Letter to Cox Request for Reconsideration of 2017 Analysis Report, October 8, 2018, available in A.19-01-014, CPED Protest, Attachment 2
<http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=283492569> (last visited 3/19/20).

³⁰ *Id.*, pp. 3-4, citing D.96-10-066.

³¹ *Ibid.*

³² *Id.*, p. 6.

³³ Cox Letter to CD Director and CPUC General Counsel, October 29, 2018.

³⁴ See *id.*, p. 2.

On December 7, 2018, Cox submitted a “Request for Extension of Time to Pay Surcharge Amounts” to the Commission’s Executive Director.³⁵ Repeating the same objections concerning directory listings service, Cox requested “that the Commission, in coordination with the Communications Division, extend the date by which Cox would be required to pay, if any, the amounts in dispute upon the Commission making a determination on the underlying issues in R.17-06-023.”³⁶ Cox anticipated that the Commission would take up the directory listings issue in the second phase of the proceeding, despite the Commission electing not to consider it in the initial phase.³⁷

On December 21, 2018, the CPUC’s Executive Director sent Cox a letter denying Cox’s specific extension request but granted Cox a 30-day extension (until January 22, 2019) to comply with the payment demand in CD’s October 18, 2018. The Executive Director found Cox’s arguments regarding directory listings service unpersuasive.³⁸

On January 29, 2019, Cox filed Application, A.19-01-014, *Requesting the Commission Not Require Cox to Pay Disputed Surcharge Amounts Identified in Audit Report*.³⁹ At that time, the disputed surcharge and user fee amounts for FY 2013-14 and FY 2014-15, which were the subject of the Application, remained in an escrow account that Cox established in 2018.⁴⁰

On February 6, 2019, CD’s Deputy Director sent a third and final notice to Cox, requiring Cox to remit to the CPUC by February 15, 2019 all outstanding surcharges and user fee amounts, including interest and penalties, related to its directory listings revenue for FY 2012-2013 (from 2016 Audit Report), FY 2013-2014 (from 2017 Analysis Report) and FY 2014-2015 (from 2017 Analysis Report). The final notice informed Cox that if the Commission did not receive payment by this due date, CD would refer this matter to the Commission’s Consumer Protection and Enforcement Division (“CPED”).⁴¹

On March 7, 2019, Cox paid those amounts demanded in CD’s February 6, 2019 notice, by submitting surcharges and interest via the Commission’s TUFFS system and by

³⁵ Cox Letter to Executive Director for Extension of Time to Pay Surcharge Amounts, December 7, 2018.

³⁶ *Id.*, p. 3

³⁷ *Ibid.*

³⁸ Executive Director Letter to Cox Denying Request for Extension of Time to Pay Surcharge Amounts, December 21, 2018.

³⁹ Cox Application (January 29, 2019), A.19-01-014, found at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M265/K820/265820389.PDF> (last visited 3/19/20).

⁴⁰ In this Application, A.19-01-014, Cox requests the Commission not require Cox to pay the disputed amounts for directory listings service identified in the 2017 Analysis Report for FY 2013-2014 and FY 2014-2015. On March 14, 2019, the Commission’s Consumer Protection and Enforcement Division (CPED) filed a protest to Cox’s Application. On March 18, 2019, The Utility Reform Network, Center for Accessible Technology, and The Greenlining Institute jointly filed a protest to Cox’s Application.

⁴¹ See CD Demand Letter to Cox Concerning 2016 Audit Report and 2017 Analysis Report, February 6, 2019.

sending checks to the Commission for the user fees and penalties.⁴² Cox complied in order to avoid further Commission enforcement action.⁴³

On April 19, 2019, Cox filed a Motion requesting the Commission hold its Application in A.19-01-014 in abeyance until such time that the Department of General Services (DGS) processed and decided a claim Cox intended to submit under the Government Claims Act (GCA).⁴⁴ The ALJ granted Cox's Motion on April 23, 2019.⁴⁵ DGS denied Cox's claim for a refund of the surcharges and user fee amounts Cox had remitted under protest to the CPUC for its directory listings service revenue for FYs 2013-2015.⁴⁶

On June 29, 2019, Cox filed an Amended Application in A.19-01-014.⁴⁷ The Amended Application requested that the Commission not require Cox to pay the surcharge amounts and user fees, and corresponding interest and penalty amounts, for directory listing services revenue for FYs 2013-2015, as identified in the 2017 Analysis Report, and "to allow Cox to offset future surcharge and user fee remittances against the amounts Cox has already paid."⁴⁸ On July 29, 2019, CPED and Joint Consumer Groups⁴⁹ filed separate protests to this Amended Application. This Amended Application is pending.

DISCUSSION

This resolution clarifies and affirms Cox's obligation to pay past Public Purpose Program surcharges and CPUC user fees associated with its directory listings service intrastate revenue, as set forth in the 2016 Audit Report and 2017 Analysis Report. In turn, we affirm CD's efforts to secure compliance with the audit findings related to Cox's directory listings service. Existing Commission decisions make clear that directory listings service revenue has long been subject to the Commission's universal service or PPP surcharges and CPUC User Fee obligations. We reject Cox's contention in its various letters and requests for reconsideration described herein that federal law

⁴² Cox Amended Application (June 29, 2019), A.19-01-014, found at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=309591818> (last visited 3/19/20).

⁴³ See Cox Application (January 29, 2019), A.19-01-014, p.

⁴⁴ Motion of Cox California Telecom, LLC (U-5684-C) To Hold Proceeding in Abeyance, April 19, 2019, A.19-01-014, found at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=283563009> (last visited 3/19/20).

⁴⁵ See ALJ Email Ruling Granting Motion to Hold Proceeding in Abeyance Pending Resolution of Cox California Telecom, LLC's Claim Under the Government Claims Act (April 23, 2019), A.19-01-014, p. 2 ("This Email Ruling grants Cox California Telecom, LLC's (Cox) motion, dated April 19, 2019, to hold this proceeding in abeyance pending resolution of Cox's claim appealing payment of disputed surcharges for directory listing services under the Government Claims Act (GCA). The proceeding schedule shall be held in abeyance until June 30, 2019. Cox's amended application shall be due by June 30, 2019.")

⁴⁶ See Cox Amended Application (June 29, 2019), A.19-01-014, found at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=309591818> (last visited 3/19/20).

⁴⁷ *Ibid.*

⁴⁸ See Cox Amended Application (June 29, 2019), A.19-01-014, p.1.

⁴⁹ Joint Consumer Groups consist of The Utility Reform Network, Center for Accessible Technology, and The Greenlining Institute.

or FCC rules prohibit this Commission from imposing state surcharges and user fees on Cox's intrastate directory listings service revenue.

**A. PAST COMMISSION DECISIONS ESTABLISH COX'S
OBLIGATION TO REMIT UNIVERSAL SERVICE (PUBLIC
PURPOSE PROGRAMS) SURCHARGES AND THE CPUC USER
FEE ON INTRASTATE DIRECTORY LISTINGS SERVICE**

Universal service in California means that a minimum level of telecommunications services is available to everyone in the state at a reasonable rate.⁵⁰ Universal service has evolved over time to keep pace with customer expectations of what communications technology is necessary to participate in society, also called basic service.⁵¹ Over time, the Commission adopted six Public Purpose Programs to implement California's universal service mandates.⁵²

The Commission employs the All End User Surcharge (AEUS) to collect surcharges to fund Public Purpose Programs. The AEUS, a historical funding mechanism established in 1994, requires all end users of telecommunications services to pay PPP surcharges,⁵³ with the exception of Universal Lifeline Telephone service billings, coin-sent paid calling, debit card messages, one-way radio paging, usage charges to coin operated paid telephones and customers receiving services under existing contracts that were executed on or before September 15, 1994, and directory advertising.⁵⁴

In D.96-10-066, the Commission adopted on a permanent basis the AEUS mechanism first established in D.94-09-065. As in D.94-09-065, the Commission deemed directory listings service and directory assistance service,⁵⁵ among other services, to be elements of basic voice service, which is clearly a telecommunications service and subject to surcharge.⁵⁶

⁵⁰ D.95-07-050, p. 8.

⁵¹ *Id.* at 21 (defining basic service as the minimum level of service customers have come to expect, or what services are essential to all residential telephone customers.)

⁵² See D.19-01-029, pp. 3-4.

⁵³ See D.94-09-065, in I.87-11-033, In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers and Related Matters, 1994 Cal. PUC LEXIS 681, *128-131.

⁵⁴ See D.94-09-065, 1994 Cal. PUC LEXIS 681; see also D.96-10-066, 1996 Cal. PUC LEXIS 1046.

⁵⁵ D.94-09-065, 1994 Cal. PUC LEXIS 681, *2 (updates classifications of telecommunications services into three categories, Category I, II, and III, as first established in (D.) 89-10-031. D.89-10-031 established the following categories: Category I - monopoly services for which no competition is authorized; Category II - discretionary or partially competitive services for which competition is authorized, with pricing flexibility between appropriate price ceilings and price floors; and Category III - fully competitive telecommunications services with full pricing flexibility and minimal tariff requirements. These three categories form the framework for the development and application of key pricing policies in this decision.); see also *id.* * 97-101 (classifying directory assistance and directory listings services as Category II telecommunications services.)

⁵⁶ See D.96-10-066, 1996 Cal. PUC LEXIS 1046, *45-46; see also *id.*, Appendix B, Rule 4.A-B (provides that all carriers that provide local exchange residential service shall provide all the service elements of basic service); see

In D.96-10-066, the Commission also listed services that were exempt from universal service surcharges. While the Commission explicitly exempted directory advertising,⁵⁷ the Commission did not explicitly exempt directory listings or directory assistance services, which were tariffed services subject to Commission regulation. These other types of directory services thus remained subject to surcharge as a component of basic service. Indeed, Cox acknowledges that directory assistance service is subject to surcharge and the CPUC User Fee.⁵⁸

We therefore find that Cox was obligated to collect and remit PPP surcharges and CPUC user fees for its directory listings service, as set forth in the 2016 Audit Report and 2017 Analysis Report.

B. FCC RULES DO NOT PROHIBIT STATES FROM SURCHARGING DIRECTORY LISTINGS SERVICES

We also reject Cox's contention that the Commission cannot subject directory listings to state universal service obligations because the FCC does not subject directory listings to federal universal service contributions. The FCC order that adopted the FCC Form 499, which Cox cites in support of its position, is inapposite here. The FCC's Form 499 instructions apply solely to carriers' calculations of their federal universal service obligations. Here, we are concerned with Cox's *state* universal service obligations and therefore are not bound by the FCC's Form 499 instructions.⁵⁹

Contrary to Cox's contention, the cited order does not contain an explicit FCC determination that directory listings service is not a telecommunications service, as the FCC has determined with text messaging or voicemail services, for instance. Absent a similar explicit finding from the FCC regarding the classification of directory listings service, the Commission's treatment of directory listings as set forth in D.96-10-066 and subsequent Commission decisions, continues to apply. Thus, the Commission's surcharge treatment for directory listings service is consistent with FCC orders.

CONCLUSION

also D12-12-038, Appendix A (updates definition of basic service, includes access to directory assistance and directory listings); see also D.94-09-065, pp. 290-292.

⁵⁷ See D.96-10-066, 1996 Cal. PUC LEXIS 1046, *289, *415-146 (Conclusion of Law 125).

⁵⁸ See Cox Supplemental Data Request Response to Data Request No. 1 (December 5, 2019), p 4 ("Cox's practice is to submit public policy program surcharges and user fees on directory assistance service revenues, and to the best of its knowledge, Cox submitted such remittances since 2012.")

⁵⁹ States may establish their own universal service programs and rules, subject to some general guidelines. *See* 47 U.S.C. § 254(f).

Based on the foregoing, we affirm the 2016 Audit Report and 2017 Analysis Report findings, collectively for fiscal years 2012-2013, 2013-2014, and 2014-2015 related to Cox's obligation to remit CPUC Public Purpose Programs surcharges and CPUC user fees for its directory listings service intrastate revenue. In turn, we also affirm CD's efforts to secure compliance with these findings. We reject Cox's claims that directory listings service is not a telecommunications service for purposes of the CPUC's Public Purpose Programs surcharges and CPUC User Fee remittances.

SAFETY CONSIDERATIONS

This resolution bears no significant impact on safety issues. However, the additional surcharge and user fee revenue paid to support Commission programs positively impacts the provision of access to quality telecommunications service which supports public safety.

COMMENTS

Public Utilities Code § 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. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on April 2, 2020, informing Cox Communications, LLC, and the service list in A.19-01-014 of the availability of this draft resolution for comments, as well as the availability of the conformed resolution, if adopted by the Commission, on the Commission's website <http://www.cpuc.ca.gov>.

FINDINGS

1. The Commission collects and distributes funds to support six Public Purpose Programs (PPP) for the benefit of California ratepayers. These programs are mandated by Public Utilities Code §§ 270-278.5 and 280-281.
2. The Commission collects funds as authorized by P.U.C. §§ 401, 402 and 405 as Public Utilities Commission Reimbursement Fees (CPUC User Fee), providing carriers the authority to collect these user fees from customers through carriers' billings. Revenues collected via this fee fund the operating budget of the Commission, which allows it to regulate public utilities, including telephone corporations.
3. The Commission's audits of Cox Communications LLC for fiscal years 2012-2013, 2013-2014, and 2014-2015, as detailed in this resolution, found that Cox failed to collect and remit PPP surcharges and CPUC user fees for Cox's directory listings service intrastate revenue in violation of Commission decisions, including but not limited to D.96-10-066, and Commission directives.

4. The Commission's Communications Division sent Cox notices regarding its noncompliance as set forth in the 2016 Audit Report described herein.
5. In letters submitted to the Communications Division, Cox disputed the 2016 Audit Report Findings regarding its noncompliance, including its obligation to collect and remit PPP surcharges and CPUC user fees for its directory listings service.
6. In December 2016, Cox submitted some of the disputed surcharges, user fees, interest and penalty amounts identified in the 2016 Audit Report for FY 2012-2013.
7. The Commission's Communications Division sent Cox notices regarding its noncompliance as set forth in the 2017 Analysis Report.
8. In various letters submitted to the Communications Division, Executive Director and Legal Division, Cox disputed the 2017 Analysis Report Findings regarding its noncompliance, including its obligation to collect and remit PPP surcharges and CPUC user fees for its directory listings service.
9. On March 7, 2019, Cox submitted the disputed surcharges, user fees, interest and penalty amounts identified in the 2017 Analysis Report.
10. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on April 2, 2020 informing Cox Communications, LLC and the service list in A.19-01-014 of the availability of this draft resolution for comments, as well as the availability of the conformed resolution, if adopted by the Commission, on the Commission's website <http://www.cpuc.ca.gov>.

CONCLUSIONS OF LAW:

1. Directory listings service is a component of basic telephone service.
2. The Commission has not exempted directory listings service from CPUC Public Purpose Programs surcharges and CPUC User Fee obligations.
3. As a component of basic telephone service, directory listings service is a telecommunications service for purposes of CPUC Public Purpose Program surcharges and CPUC User Fee obligations.
4. The 2016 Audit Report finding related to Cox's PPP surcharges and CPUC User Fee obligations were based on a correct application of Commission decisions, including but not limited to D.96-10-066.
5. The 2017 Analysis Report finding related to Cox's PPP surcharges and CPUC User Fee obligations were based on a correct application of Commission decisions, including but not limited to D.96-10-066.

6. Communications Division's compliance efforts, as described in this resolution, were reasonable.
7. Federal law does not preempt states from imposing state universal service surcharges and fees on a telecommunications carrier's or a telephone corporation's intrastate directory listings service intrastate revenue.
8. The Federal Communications Commission has not preempted states from imposing state universal service surcharges and fees on a telecommunications carrier's or a telephone corporation's intrastate directory listings service intrastate revenue.

ORDERING PARAGRAPHS:

1. Cox was obligated to collect and remit CPUC Public Purpose Programs surcharges and CPUC user fees on its intrastate directory listings service intrastate revenue for fiscal years 2012-2013, 2013-2014, and 2014-2015, as set forth in the 2016 Audit Report and 2017 Analysis Report.

THEREFORE, IT IS ORDERED that:

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorable thereon:

Alice Stebbins
Executive Director