

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

FILED
PUBLIC UTILITIES COMMISSION
April 21, 2022
SAN FRANCISCO OFFICE
I.22-04-005

ORDER INSTITUTING INVESTIGATION AND
ORDER TO SHOW CAUSE

I. INTRODUCTION AND STATEMENT OF PURPOSE

By this order, the California Public Utilities Commission (Commission) institutes a formal investigation to determine whether named Respondent, MetroPCS California, LLC - U-3079-C (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 (MTS) Surcharge Collection Act* (Prepaid Act) for the 2017 and 2018 calendar years and any other statutes and Commission decisions and resolutions.

The Prepaid Act was enacted by Assembly Bill 1717 with effective dates beginning in the 2016–17 fiscal year and ending with the 2018–19 fiscal year. As of September 30, 2014, the law added Public Utilities Code (Pub. Util. Code) Section (§) 319, amended and added to Pub. Util. Code § 431, as well as numerous Revenue and Taxation Code Sections.

This Order provides notice that the Commission will determine whether MetroPCS has violated the Prepaid Act, including Pub. Util. Code

§ 319,¹ as well as the Commission’s related decisions and resolutions. This Order also directs MetroPCS to show cause as to why the Commission should not impose penalties and/or other remedies for its failure to remit Prepaid Telephony Service Charges and User Fees, comply with revenue reporting requirements, and for imposing ongoing harm to the regulatory process.

This Order is in response to an investigation conducted by the Commission’s Consumer Protection and Enforcement Division’s (CPED) Utilities Enforcement Branch (UEB). After conducting its investigation, CPED staff developed a report: “Investigation of MetroPCS California LLC (U-3079-C) for Failure to Remit Prepaid Mobile Telephony Services Surcharge and User Fees” (Staff Report). The Staff Report details MetroPCS’s failure to comply with the revenue reporting and surcharge and user fee remittances subject to the Prepaid Act for the 2017 and 2018 calendar years.² Based on the Staff Report, the Commission finds good cause to commence a formal investigation to determine whether MetroPCS violated the provisions of the Prepaid Act and the associated Pub. Util. Codes, Commission decisions, resolutions, or other applicable rules or requirements.

The respondent, MetroPCS, is a brand of prepaid wireless service provider owned by T-Mobile US, Inc. MetroPCS operates and provides services and products in California, offering a selection of smartphones and data plans. Pursuant to Pub. Util. Code § 319 and Resolutions T-17542 and T-17579, wireless service providers, including MetroPCS, are to calculate and reimburse communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services. This investigation will assess MetroPCS’ compliance with these Commission mandates.

¹ Pub. Util. Code § 319 was enacted pursuant to Assembly Bill 1717 (Chapter 885, Statutes 2014, Perea). In accordance with the provisions of Assembly Bill 1717, Pub. Util. Code § 319 expired on January 1, 2020.

² A public version of the Staff Report is Attachment A to this OIL.

The Commission opens this Order Instituting Investigation (“OII” or “Order”) on its own motion pursuant to Commission Rules of Practice and Procedure (Rule) 5.1.

II. THE PREPAID ACT AND THE COMMISSION’S SUBSEQUENT IMPLEMENTING RESOLUTIONS

Pursuant to Pub. Util. Code § 319 and its implementing Commission Resolutions, the Prepaid Act requires a new mechanism for the collection and remittance of the taxes and fees assessed on prepaid wireless telephone service, and it is referred to as “prepaid mobile telephony services” (MTS).³ Assembly Bill 1717 grants the Commission the authority to ensure proper remittance of the MTS surcharge.⁴ MTS includes the following charges: Commission Public Purpose Program (PPP) Surcharges, Commission User Fee, Emergency Telephone Users (911) Surcharge, and Local Charges (Local Utility User Taxes or UUT).⁵

The Prepaid Act aggregates the surcharges, taxes and fees listed above and creates the prepaid MTS surcharge⁶ that is required to be imposed on prepaid wireless telephone services in lieu of the individual fees. The Prepaid Act became effective September 30, 2014 and remained in effect until January 1, 2020.⁷

On November 16, 2016, the Commission issued Resolution T-17542, approving the MTS surcharge rates to be assessed on prepaid wireless telephone service effective January 1, 2017.⁸ Resolution T-17542 also modified the MTS rates for 2017 to ensure that all customers purchasing prepaid wireless telephone services are assessed the MTS surcharge in an equitable manner.⁹ On October 13, 2017, the Commission issued

³ Staff Report, p. 3.

⁴ Staff Report, p. 3.

⁵ Staff Report, p. 3.

⁶ Staff Report, p. 3.

⁷ Staff Report, pp. 3-4.

⁸ Staff Report, p. 4.

⁹ Staff Report, p. 4.

Resolution T-17568¹⁰ which denied MetroPCS's Amended Application for Modification of Resolution T-17542. On November 16, 2017, the Commission issued Resolution T-17579, adopting the 2018 MTS surcharge rate which is calculated by the 2018 MTS base rate and adjusted for intrastate revenue.^{11 12 13}

In the 2017 and 2018 calendar years, all telephone corporations offering prepaid wireless telephone service, including MetroPCS, were required to report and remit MTS surcharges and fees in accordance with the rules set forth in Resolutions T-17542 and T-17579.¹⁴

III. CPED'S INVESTIGATION OF METROPCS

On March 6, 2018, the Commission's Utility, Audit, Finance and Compliance Branch (Utility Audits Branch) issued a data request seeking, among other things, information on MetroPCS' assessment, calculation, and remittance of its 2017 MTS surcharge remittances.¹⁵ Based on this information, the Commission's Communication Division (CD) found that MetroPCS did not use a bundled allocation methodology that the Federal Communication Commission determined to be reasonable. CD determined that for the years 2017 and 2018, MetroPCS did not remit the MTS surcharge on its total California mobile telephony service revenue amount, but on a significantly lower amount. MetroPCS' calculation of intrastate revenue base subject to PPP surcharges and the Commission User Fee excluded revenue from services that MetroPCS deemed to be interstate, and thus not subject to California surcharges and fees. By using this

¹⁰ Staff Report, p. 5.

¹¹ Staff Report, p. 6.

¹² Staff Report, pp. 8, 12; Resolution T-17632 issued on October 26, 2018, approved the CPUC's portion of the Prepaid Act's surcharge rate, to be effective January 1, 2019. Resolution T-17632 was later rescinded by Commission Resolution L-574 in response to the District Court opinion in favor of MetroPCS which was eventually overturned and remanded by the Ninth Circuit.

¹³ Staff Report, p. 12; On December 13, 2018, the Commission issued new directions in the form of Resolution T-17641, on the collection, reporting, and remittance of Commission PPP surcharges, and user fees for prepaid wireless services in California for the year 2019.

¹⁴ Staff Report, p. 9-10.

¹⁵ Staff Report, Attachment F.

methodology rather than the one adopted in Resolutions T-17542 and T-17579,¹⁶ MetroPCS improperly remitted a lower MTS surcharge and user fee for 2017 and 2018.

On October 16, 2020, CD issued a demand letter to MetroPCS seeking compliance with Commission Resolutions T-17542 and T-17579 by paying outstanding “California Telecommunications Public Purpose Program” (PPP) surcharges and user fees for years 2017 and 2018 (Demand Letter).¹⁷ In response, MetroPCS requested that CD withdraw its demand for payment due to the pending litigation in the Federal District Court for the Northern District of California (District Court).¹⁸ MetroPCS further challenged the alleged underpayment amount and the claim for interest . CD did not withdraw its Demand Letter and referred the matter to CPED for investigation on August 31, 2021.¹⁹ CPED issued a data request to MetroPCS on September 27, 2021, relevant to these issues. MetroPCS failed to respond to these requests even with an extended due date of November 4, 2021. As a result of MetroPCS’s failure to cooperate with CPED’s investigation, CPED prepared the attached Staff Report based on information provided by CD, the Utility Audits Branch, as well as publicly available information.

IV. SUMMARY OF ALLEGED VIOLATIONS

A. MetroPCS Excluded Text and Data Revenues from The Calculation of its Intrastate Revenue Base.

Resolutions T-17542 and T-17579 require that the MTS surcharge apply to the entire price if a prepaid wireless service is sold in combination with mobile data service

¹⁶ Staff Report, pp. 8, 10, 16-31, 36.

¹⁷ Staff Report, p. 8.

¹⁸ U.S. District Court California Northern District (San Francisco) CASE #: 3:17-cv-05959-JD. On October 17, 2017, MetroPCS filed a lawsuit in the Federal District Court for the Northern District of California (District Court) against the Commission alleging that the Prepaid Act and the Commission’s Resolution(s) T-17542, T-17568, and T-17579 were unlawful and the imposition of a surcharge on interstate voice and broadband data services conflicted with and was pre-empted by federal law. (Staff Report, pp. pp. 11, 15, 36, 37.) This case is currently awaiting a new trial date and is scheduled for a Case Management Conference on May 12, 2022. Staff Report, pp. 11-14.

¹⁹ Staff Report, pp. 10-11.

or other services for a single price.²⁰ However, MetroPCS failed to comply with the Commission MTS surcharge calculation directions and excluded text and data revenue from the calculation of its intrastate revenue base.²¹ As a result, MetroPCS' calculated MTS surcharge for the 2017 and 2018 calendar years are substantially lower than the MTS surcharge required by the Commission.²²

B. MetroPCS Failed to Apply Both the Commission Approved Intrastate Allocation Factors and MTS Surcharge Rates.

In calculating its MTS surcharge obligations, MetroPCS failed to apply both of the Commission's approved intrastate allocation factors in calculating its intrastate revenue and the Commission approved MTS surcharge rates (5.15% in 2017 and 5.55% in 2018). Instead, MetroPCS used an internally developed traffic factor as opposed to the Commission's "intrastate allocation factor".²³ MetroPCS failed to apply the MTS surcharge rate prescribed in Resolutions T-17542 [5.15% for 2017] and T-17579 [5.55% for 2018] to Total Sales to determine the applicable MTS surcharge.

Resolutions T-17542 and T-17579 require carriers to use Commission adopted MTS surcharge rates provided in Appendix A of the respective resolutions.²⁴

C. MetroPCS Misrepresented its Total Direct Intrastate Prepaid Wireless Revenue Subject to MTS.

MetroPCS misrepresented its revenue to the Commission by dividing its internally calculated MTS surcharge obligation by the Commission adopted MTS surcharge rates (5.15% for 2017 and 5.55% for 2018).²⁵ Because MetroPCS misrepresented its total prepaid wireless service and intrastate prepaid wireless revenues subject to MTS, CD had to estimate MetroPCS's 2017 and 2018 MTS surcharge based on data in the

²⁰ Staff Report, p. 5, 7, 19-20, 51.

²¹ Staff Report, pp. 7-8, 51.

²² Staff Report, pp. 19, 36, 51.

²³ Staff Report, pp. 7, 13.

²⁴ Staff Report, pp. 7, 51.

²⁵ Staff Report, pp. 18, 33, 47.

Commission's Telecommunications User Fee Filing System (TUFFS) and MetroPCS's data request responses to assess MetroPCS's 2017 and 2018 MTS surcharge obligations.²⁶ MetroPCS' reporting violates Commission directives on MTS surcharge remittance. Additionally, such misrepresentation violates Rule 1.1 (Ethics) and warrants the imposition of additional penalties pursuant to Pub. Util. Code §§ 2107 and 2108.

D. MetroPCS should pay a Late Payment Penalty on Commission User Fees.

Pursuant to Pub. Util. Code § 405,²⁷ MetroPCS is subject to late payment penalties for its failure to pay the fees under the Prepaid Act for 2017 and 2018.²⁸

E. MetroPCS Failed to Respond to its Discovery/Data Requests during CPED's Investigation.

MetroPCS failed to comply with CPED's discovery request for information related to its revenue allocation, MTS surcharge calculation method, audit reports, financial statements, and service plan details.²⁹ Specifically, MetroPCS objected to all the data request questions and its responses either failed to address the data request question, failed to provide documents as requested, or referred to source documents not available to CPED.³⁰ Pub. Util. Code § 314 grants Commission staff the right to inspect the accounts, books, papers, and documents of any public utility.³¹ MetroPCS's objection to these discovery requests and its challenge to CPED's right to discovery while conducting an investigation is a violation of Pub. Util. Code § 314

²⁶ Staff Report, pp. 36, 47, 52.

²⁷ Pub. Util. Code §405 states, in relevant part; If any person or corporation subject to this chapter is in default of the preparation and submission of any report or the payment of any fee required by this chapter for a period of 30 days or more, the commission may ... estimate from all available information the appropriate fee and may add to the amount of that estimated fee a penalty not to exceed 25 percent of the amount on account of the failure, refusal, or neglect to prepare and submit the report or to pay the fee, and the person or corporation shall be estopped to complain of the amount of the commission's estimate. Staff Report, p. 14.

²⁸ Staff Report, p. 14.

²⁹ Staff Report, p. 1.

³⁰ Staff Report, pp. 1, 39, 43, 48.

³¹ Staff Report, p. 43.

and calls for the imposition of additional penalties pursuant to Pub. Util. Code §§ 2107 and 2108.

V. INITIATION OF INVESTIGATION AND ORDER TO SHOW CAUSE

The Commission institutes this formal proceeding pursuant to Rule 5.1. We will consider the allegations in CPED's Staff Report to determine whether MetroPCS violated any provision(s) of the Pub. Util. Code, Commission decisions, resolutions, or other applicable rules or requirements pertaining to its obligations under the Prepaid Act. CPED's Staff Report provides us with sufficient evidence and good cause to commence a formal investigation to determine whether such violations have occurred and, if so, to consider the proper penalties and remedies for such violations. We will specifically consider whether monetary fines are warranted and, if so, the appropriate amount of monetary fines.

This OII places MetroPCS on notice and provides an opportunity for MetroPCS to be heard. MetroPCS may submit evidence, information, or documents on its behalf in this proceeding.

The Commission finds that good cause exists to order MetroPCS to appear and show cause why it should not be fined or have any other sanctions, remedies or corrective action imposed as a result of the alleged violations detailed in CPED's Staff Report. CPED staff satisfied its initial burden to show, by a preponderance of the evidence, that MetroPCS violated the Prepaid Act, and the other statutes, decisions and resolutions described herein and in the Staff Report.³² MetroPCS will maintain the burden in this proceeding to demonstrate that it has not committed the violations described above, and why it should not be fined as a result.

³² "The Commission has held that the standard of proof that [the Safety and Enforcement Division] must meet is that of a preponderance of evidence. Preponderance of the evidence usually is defined in terms of probability of truth, e.g., such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." D.16-08-020, p. 18, *citing* In the Matter of the Application of San Diego Gas & Electric Company for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project, D.0812-058, *citing* Witkin, Calif. Evidence, 4th Edition, Vol. 1, 184.

VI. PRELIMINARY SCOPING MEMO

Rule 7.1(c) provides that an OII shall attach a preliminary scoping memo. The following discussion meets this requirement.

A. Issues

The scope of the issues in this proceeding are preliminarily determined to be:

- (1) Did MetroPCS' 2017 and 2018 remittances for 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) Should the Commission impose an additional penalty for MetroPCS' failure to comply with the Pub. Util. Code § 314, and Rule 1.1?
- (4) In addition to monetary penalties, should the Commission impose other corrective measures and remedies on MetroPCS for its conduct during the Commission's investigation?

B. Category of Proceeding and Need for Hearing

Rule 7.1 (c) specifies that an "order instituting investigation shall determine the category of the proceeding [and] preliminarily determine the need for hearing." This investigation is categorized as adjudicatory as defined in Rule 1.3(a). We expect disputed issues of material fact and therefore preliminarily determine those evidentiary hearings will be necessary.

C. Schedule

Pursuant to Rule 7.6(a)(3), appeals of the categorization of this investigation, if any, are to be filed within 10 days of the date this OII is issued. Within 30 days of the mailing date of this OII, Respondent shall file and serve a response to the preliminary scoping memo.

Responses to this preliminary scoping memo may also be filed and served within 30 days of the date this OII is issued. Pursuant to Rule 5.2, responses shall state "any objections to the preliminary scoping memo regarding the need for hearing, issues

to be considered, or schedule.” Replies to responses may be filed and served within 10 days of the due date for responses.

Pursuant to Rule 7.2(a), the Assigned Commissioner shall set a prehearing conference for 45 to 60 days after the initiation of this proceeding or as soon as practicable after the Commission makes the assignment. The Assigned Commissioner shall also issue a scoping memo setting forth the scope of the proceeding and establishing a procedural schedule.

EVENT	DATE
Appeal of Categorization	10 days after issuance of this OII
MetroPCS response to Preliminary Scoping Memo	30 days after issuance of this OII
Replies to Comments on Preliminary Scoping Memo due	10 days after Responses on scope and issues in the Preliminary Scoping Memo are due
Prehearing Conference	To be scheduled by the assigned Administrative Law Judge
Commission Decision issued	To be determined in the final scoping Memo

VII. PARTIES AND SERVICE LIST

MetroPCS is named as a Respondent to this investigation. CPED is named as a party to this proceeding. The initial service list for this proceeding is set forth in an Ordering Paragraph and includes MetroPCS and CPED. The official service list may be updated with additional parties.

VIII. PUBLIC ADVISOR

Any person or entity interested in participating in this investigation who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor’s Office in San Francisco at (866) 849-8390, or email public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825. Written

communication may be sent to the Public Advisor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

IX. INTERVENOR COMPENSATION

A party that expects to request intervenor compensation for its participation in this investigation shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1.

X. EX PARTE COMMUNICATIONS PROHIBITED

Rule 8 applies to all communications with decision makers and advisors regarding the issues in this proceeding. This proceeding is categorized as adjudicatory, and Rule 8.3(b) prohibits all *ex parte* communications.

Therefore, **IT IS ORDERED** that:

1. In accordance with Rule 5.1, the Commission institutes this Order Instituting Investigation and Order to Show Cause on its own motion to determine whether MetroPCS California, LLC violated any provision of the Prepaid Act, Pub. Util. Code § 319, Commission decisions, resolutions, or other applicable standards, laws, rules, or regulations in connection with assessment and remittance of its Mobile Telephony Services surcharge and user fees.

2. MetroPCS California, LLC is ordered to appear and show cause why the Commission should not order it to:

- A. Make remittances for underpayment of Public Purpose Program Surcharges and Commission User Fee(s) pursuant to the Prepaid Act, Public Utilities Code § 319, Commission Resolutions T-17542 and T-17579, and any other applicable laws and regulations.
- B. Pay interest and additional interest accrued since October 16, 2020, the date of CD's Demand Letter.
- C. Pay penalties associated with late Commission User Fee payments.
- D. Pay a penalty for failing to comply with Pub. Util. Code § 314, and Rule 1.1.
- E. Be subject to additional remedies and corrective action for its conduct during the Commission's investigation.

3. MetroPCS California, LLC is a respondent to this Investigation and shall be subject to Commission orders in this matter.

4. MetroPCS California, LLC shall file and serve a response to the Preliminary Scoping memo within 30 days of the mailing date of this Order.

5. The Consumer Protection and Enforcement Division is a party to this Investigation.

6. A copy of the Consumer Protection and Enforcement Division's Staff Report entitled: "Investigation of MetroPCS California LLC (U-3079-C) For Failure to Remit Prepaid Mobile Telephony Service Surcharges and User Fees" is included as Attachment A of this OII.

7. MetroPCS maintains that certain information relating to the "revenue allocation, MTS surcharge calculation methodology, reported revenue and surcharges, and potential surcharge underpayment and fines in Attachments C, D, F, G, H, K, L, M, N, O, Q, R" are confidential and proprietary and requests confidential treatment in accordance with General Order 66-C. In addition, CPED/UEB Staff may submit under seal confidential information obtained from MetroPCS, or seek an order authorizing disclosure of confidential information from the assigned Administrative Law Judge pursuant to Public Utilities Code § 583 and/or General Order 66-D in the course of this proceeding

8. The preliminary scope of issues for this Investigation is as stated in the body of this Order.

9. MetroPCS California, LLC is hereby given notice that fines or other remedies may be imposed in this matter.

10. MetroPCS California, LLC is hereby given notice that the Commission may order the implementation of operational and policy measures designed to prevent future surcharge remittance and reporting practice violations.

11. This proceeding is classified as adjudicatory, as that term is defined in Rule 1.3(a). Under Rule 7.6, this Order is appealable only as to category no later than 10 days after the date of this Order.

12. Parties shall file responses on the scope and issues identified in the preliminary scoping memo within 30 days of the date this Order is issued.

13. Parties may file replies to responses on the scope and issues identified in the Preliminary Scoping Memo within 10 days of the date the responses are due.

14. The assigned Commissioner or Administrative Law Judge may adjust the schedule identified herein.

15. A party that expects to request intervenor compensation for its participation in this investigation shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1.

16. *Ex parte* communications are prohibited as set forth in Rule 8.2(b).

17. The service list for this proceeding is set forth below. This list includes the respondent MetroPCS California, LLC and the Consumer Protection and Enforcement Division. Persons may seek party status pursuant to Rule 1.4.

18. The Executive Director shall cause a copy of this Order and 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 38th Street
Bellevue, WA 98006

MetroPCS California, LLC
Leon M. Bloomfield, Esq.
1970 Broadway Ste 1200,
Oakland, CA 94612-2211
lmb@wblaw.net

Douglas Ito, Director
Consumer Protection and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Douglas.Ito@cpuc.ca.gov

Roderick D. Hill, Attorney
Consumer Protection and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Roderick.Hill@cpuc.ca.gov

Jeanette Lo, Branch Chief
Consumer Protection and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Jeanette.Lo@cpuc.ca.gov

This order is effective today

Dated April 21, 2022 at San Francisco, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN R.D. REYNOLDS
Commissioners