

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-C-1455 – Proceeding on Motion of the Commission to Examine the
Application of Taxes and Surcharges to Customer Bills by
Telecommunications Carriers.

ADVISORY NOTICE

(Issued November 6, 2006)

In 2005, a Department Staff team was formed to determine the extent to which the imposition of taxes and surcharges varies from company to company, and to determine if the identification of these items is clear and the application of each item is correct. As part of this effort, telephone bills from about 30 telecommunications providers in New York State were examined. The investigation revealed that nomenclature among companies is often inconsistent and/or erroneous, the application of taxes and surcharges is also inconsistent, and some charges have not been affirmatively approved by state or federal regulators. In view of Staff's finding, the Commission, on January 5, 2006, issued an Order in Case 05-C-1455 seeking comments on a Staff-prepared list of taxes and surcharges that have been affirmatively sanctioned and approved by governing bodies. In addition, the Commission sought comments on several Staff proposals concerning consumer information and bundling. As a result of the comments received and further Staff consideration presented to the Commission at the October 18, 2006 Session, we are hereby issuing this Advisory Notice regarding the application of telecommunications taxes and surcharges.

Nomenclature

While uniform nomenclature would be our preference, we believe that the results of uniformity can be achieved if items are adequately labeled. Therefore, we strongly recommend that companies review their billing procedures and be certain that taxes and surcharges are labeled correctly. For example, "Gross Revenue Tax Surcharge" should not be shown on a bill to be "Gross Revenue Tax" since a surcharge is not a tax. Likewise, the "Gross Revenue Tax Surcharge" should not be shown on a bill to be "Tax Surcharge" since that does not provide sufficient consumer information as to what

jurisdiction the surcharge applies. Also, a tax or surcharge permitted by the Federal Communications Commission that is applicable to interstate services should expressly so state.

Application/Computational Issues

Appendix 1 to this notice contains an all-inclusive list of telecommunications taxes and surcharges, a range of rates, how each is applied, and the statutory authority. Appendix 1 also shows several other line item charges that frequently appear on customers' bills. Any such line item appearing in a New York intra-state tariff must be specifically approved by the Commission. These charges, and others like them, should not appear in the "taxes and surcharges" portion of customers' bills, nor should they be represented on the bill as a tax or surcharge.

Customer Notice

We strongly recommend that companies include thorough and detailed descriptions of all taxes, surcharges and other fees on their web-sites, including the purpose of each item, and routinely remind customers (on bills or bill inserts) that this information is available. Additionally, companies may link to the Department's web-site, www.dps.state.ny.us where the Appendix to this notice has been posted.

Improper Tariffs

We have determined that some companies are improperly billing certain taxes and surcharges. We recommend that each carrier carefully evaluate the propriety of their individual billing charges based on this notice, and consider bundling any such tax or surcharge into basic rates. It is also suggested that companies contact Department Staff if there are any specific questions regarding the removal of any improper tariff items. In the future, Staff will be contacting those remaining noncompliant.

(SIGNED)

JACLYN A. BRILLING
Secretary

TAXES AND SURCHARGES

The charges shown below are applied to various services subscribed to by customers.

STATE AND LOCAL SALES TAX

a. Description: Taxes paid by consumers and directly submitted to appropriate state, county or city authorities. City school district taxes are also collected under sales tax law provisions.

b. Rate or Range of Rates: State Sales Tax rate is 4%; county sales tax rates are capped at 3%, but counties can seek legislative approval for higher rates. City school taxes are allowable up to 3%. An additional 0.375% MTA Tax Surcharge applies in the New York Metropolitan area and may be bundled with the State or Local Sales Tax. Calls to entertainment and information services, such as those dialed using 500, 700, 800 or 900 telephone numbers, are taxed at an additional 5%.

c. What it is applied to: All intrastate services, including all surcharges, except the E911 charge.

d. Statutory Authority: New York State Tax Law, §1101 et seq. (State Sales Tax and additional tax on entertainment/information services), §1201 et seq. (city school district taxes), §1109 et seq. (MTA Surcharge on Sales Tax).

FEDERAL EXCISE TAX

a. Description: The Federal Excise Tax was introduced in 1898 by the federal government as a temporary tax to support the nation's efforts in the Spanish-American War. The tax revenue from the Federal Excise Tax goes directly into the Federal General Fund.

b. Rate or Range of Rates: The tax rate is three percent.

c. What it is applied to: The Federal Excise Tax is applied to all local telecommunications services except installation charges, and is not applied to other taxes.

d. Statutory Authority: Internal Revenue Code §§4251-54.

E911 SURCHARGE

a. Description: 911 has been designated as the "Universal Emergency Number" for all citizens throughout the United States to request emergency assistance. The purpose of the fee is to "pay for" the cost of such systems. Consumers do not pay this fee in order to be provided with E911 service. A consumer has access to E911 whether or not the locality in

which the consumer lives has imposed the monthly charge. line that appears on their phone bill. There is no per-call charge for calling 911.

b. Rate or Range of Rates: Not to exceed thirty-five cents per access line per month on the consumers of every service provider within each municipality imposing the surcharge, other than the City of New York. The City is authorized to impose a monthly charge of up to \$1.00. No such surcharge shall be imposed upon more than seventy-five exchange access lines per customer per location. Lifeline customers, a public safety agency and any municipality which has enacted a local law pursuant to the provisions of this article shall be exempt from any fee/surcharge imposed under this article.

c. What it is applied to: This surcharge is a flat fee paid by the consumer. The surcharge required to be collected by the service provider shall be added to and stated separately in its billings to the customer.

d. Statutory Authority: Pursuant to authority under New York County Law §§301 through 307. This Order does not address the E911 surcharge that appears on wireless telecommunications service bills and imposed pursuant to County Law §308 and §309, and note that the authority for that surcharge is different from the authority granted to localities in County Law §303.

MUNICIPAL SURCHARGE

a. Description: This surcharge recovers telephone company expenses associated with municipal revenue taxes, which apply to calls originating and terminating within the village or municipality.

b. Rate or Range of Rates: Not to exceed 1% except in Buffalo, New York City and Yonkers, where the rate may not exceed 3%. Statements attached to tariff schedules indicate the surcharge percentage for each village or municipality.

c. What it is applied to: All local charges, LNP Surcharge, FCC Line Charge and Federal USF Surcharge.

d. Statutory Authority: General City Law, §20-b, Village Law, §5-530.

NEW YORK STATE GROSS REVENUE TAX SURCHARGE

a. Description: This surcharge recovers telephone company expenses associated with mandated New York State Transportation and Transmission Corporation Franchise Taxes (Section 184 Tax) and Excise Taxes on Telecommunications Services (Section 186E Tax).

b. Rate or Range of Rates: The Commission has previously established maximum rates for this surcharge, which vary according to the type of service provided and whether or

not the carrier is principally engaged in local telephone business. For telephone corporations, including resellers, principally engaged in local telephone business, the maximum rates¹ are as follows:

Services provided for resale – 0.3764%
 IntraLATA toll and Regional Calling – 2.8273%
 All other Services – 2.9405%

For telephone corporations, including resellers, not principally engaged in local telephone business, the maximum rate is 2.5641% and applies to all services.

c. What it is applied to: This surcharge is generally applied to all services except the E911 surcharge. Technically, companies are not required to pay Section 184 Taxes on interstate and international calls and services; however the surcharge is not bifurcated in this manner. Since the 184 Tax is very small compared to the 186E Tax, which is levied on interstate and international services, the amount of over-collection is minimal. Companies may file tariffs that provide for separate 184 and 186E Tax surcharges to more precisely collect the appropriate taxes.

d. Statutory Authority: New York State Tax Law, §184; §186-e.

FCC SUBSCRIBER LINE CHARGE (SLC)²

a. Description: The FCC instituted this charge as it developed its access charge regime after the break-up of AT&T in 1984, and caps the maximum price that a company may charge. This is not a government tax or surcharge, and it does not end up in the government's treasury. The SLC recovers some of the costs of the local network formerly recovered through interstate toll charges. While only ILECs are required to collect the SLC, the FCC explicitly affirmed the right of CLECs to impose a SLC on their customers. Thus, CLEC SLC rates are not capped in the same manner as ILEC SLCs.

b. Rate or Range of Rates: Subscriber Line Charge (SLC) for a primary residential line and a single-line business is capped at \$6.50 per month per line. The cap for non-primary residential lines is \$7.00 per month per line. Only one residential line is deemed to be the primary line. The cap of \$9.20 per month applies to multi-line business users. CLECs are not required to apply these rates.

¹ Companies are allowed higher surcharge levels upon showing their inability to recover their costs based on the established Commission-approved levels.

² Also known as FCC charge for Network Access, Federal Line Cost Charge, Interstate Access Charge, Federal Access Charge, Interstate Single Line Charge, Customer Line Charge.

c. What it is applied to: This surcharge is a flat fee. The surcharge required to be collected by the service supplier shall be added to and stated separately in its billings to the customer. All taxes and surcharges apply to this charge.

d. Statutory Authority: Interstate Charge Approved by FCC under §47 USC 201, Case # CC 80-286.

FEDERAL UNIVERSAL SERVICE FUND RECOVERY CHARGE

a. Description: The FCC, as directed by Congress developed the Federal Universal Service Fund (USF) which provides funding for low income services, schools and libraries, and high cost rural service. All telecommunications companies are required to pay a specific percentage of their interstate and international revenues into the USF.

b. Rate or Range of Rates: The FCC calculates the quarterly percentage of the interstate and international revenue (contribution factor) based on the ratio of total projected quarterly costs of the universal service support mechanism to contributors' total projected collected end-user interstate and international revenues, net of projected contributions. The percentage for the second quarter of 2005 is 11.1 percent. The quarterly percentage can be found on the FCC web site at www.fcc.gov.

c. What it is applied to: The USF charge is a flat fee on the interstate and international revenues on a customer bill which may not exceed the FCC quarterly percentage.

d. Statutory Authority: 47 C.F.R. §54.709(a)

MTA TAX SURCHARGE

a. Description: This surcharge recovers telephone company expenses associated with mandated New York State temporary metropolitan transportation business tax surcharge (Section 184-A Tax), and applies to customers located in the New York metro area only.

b. Rate or Range of Rates: The Commission has previously established maximum rates for this surcharge, which vary according to the type of service provided and whether or not the carrier is principally engaged in local telephone business. For telephone corporations, including resellers, principally engaged in local telephone business, the maximum rates are as follows:

Services provided for resale – 0.1277%

IntraLATA toll and Regional Calling – 0.6890%

All other Services – 0.73%

For telephone corporations, including resellers, not principally engaged in local telephone business, the maximum rate is 0.5986% and applies to all services.

c. What it is applied to: This surcharge is generally applied to all services except the E911 surcharge. Technically, companies are not required to pay Section 184-A Taxes on interstate and international calls and services; however the surcharge is not bifurcated in this manner. Since the 184-A Tax is very small, the amount of over-collection is minimal.

d. Statutory Authority: New York State Tax Law, §184-a.

LOCAL NUMBER PORTABILITY SURCHARGE (LNP)

a. Description: Local Number Portability (LNP) is a service that provides residential and business traditional (wired) telephone customers with the ability to retain, at the same location, their existing local telephone numbers when switching from one local telephone service provider to another. LNP was mandated by the Telecommunications Act of 1996. In July 1996, the FCC issued a ruling in CC Docket No. 95-116 that LNP must be in place nationwide by January 1, 1998. Since each state is responsible for implementation of LNP, timetables vary; the specifics of the implementation vary, as well. The FCC allows, but does not require, local telephone companies to pass certain costs of implementing and maintaining long-term number portability on to their customers. Additional information can be found on the FCC web site at www.fcc.gov.

b. Rate or Range of Rates: For a period of five years from the date of implementation, a local telephone company may recover their costs. The FCC allows ILECs to recover only costs directly related to providing long-term telephone number portability, which keeps the charges passed on to consumers, if any, as small as possible. Because the FCC neither regulates the rates nor dictates the maximum amount carriers can charge their customers, carriers may choose to recover their costs of providing long-term telephone number portability in any lawful manner consistent with their obligations under the Telecommunications Act of 1996.

c. What it is applied to: The LNP charge is a fee on a customer's bill that varies by ILEC. This fee is based upon the ILECs internal costs of implementing long-term telephone number portability.

d. Statutory Authority: 47 C.F.R. §52.33

OTHER COMMON CHARGES

The charges shown below are specific line items for services rendered but are not defined as a tax or surcharge. Therefore, they are taxable and may have surcharges applied to them. These charges **ARE NOT MANDATED** by state or federal authorities and are therefore not charged separately by all telephone companies. It should also be noted that some charges are specifically not allowed as a separate line item for the intrastate portion of bills, such as Regulatory Recovery Fees, but may be allowed as an interstate charge. Such items that we consider to be "uncommon" are not listed here.

PRESUBSCRIBED INTEREXCHANGE CARRIER (PIC) CHANGE CHARGES

The Presubscribed Interexchange Carrier Change Charge is a one-time charge imposed when customers presubscribe to their carrier of choice, which gives them the ability to make toll calls without having to dial an access code. The charge applies each time a customer requests a change, and separate charges may be imposed for changes to intraLATA and interLATA/interstate changes. Rates vary, but most are \$5 or less.

INTRASTATE ACCESS RECOVERY CHARGE

The Intrastate Access Recovery Charge recovers costs long distance carriers incur to connect to the local telephone network which are higher in New York State than the national average. The use of this charge allows long distance carriers the ability to offer uniform toll rates throughout the country. Rates vary from company to company as do the names given for this charge. The rates are included in New York intrastate tariffs.

CARRIER COST RECOVERY CHARGE

The Carrier Cost Recovery Charge recovers national costs associated with various federal regulatory fees and programs. Rates vary from company to company as do the names given for this charge. Similar charges to recover New York State costs are not allowed.