

in Section 170(b)(1)(A)(ii) of Title 26 of the United States Code, that is exempt from federal income tax under section 501(a) of Title 26 of the United States Code, including a school operated as an activity of an organization described in section 501(c)(3) of Title 26 of the United States Code that is exempt from federal income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

G. To prevent actual multiple taxation of Communications Services that are subject to tax under this section, any Service User, upon proof that the Service User owed and has paid a tax in another taxing jurisdiction on the Communications Services, shall be allowed a credit against the tax imposed in Subsection A to the extent of the amount of the tax properly due and paid in the other taxing jurisdiction. However, no credit may be allowed for any tax paid to another taxing jurisdiction on any Communications Services to the extent that the Communications Services may not, under the Constitution and statutes of the United States, be made the subject of taxation by the other taxing jurisdiction. Nor shall the amount of credit exceed the tax owed to the City under this section.

H. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this section, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the Communications User Tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any Communications Services used by a Person with a service or billing address in the City shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this section. For Communications Services for which there is no billing address or primary physical location for the provision of services, the service address shall mean the point of sale of the services.

I. Amendment or Repeal. The Communications User Tax imposed by this Section may be decreased, repealed or amended by the City Council, but may not be increased without a vote of the people as required in California Constitution Article XIII C and California Government Code Section 53750(h).

J. Audit of Communications User Tax. The City shall annually audit the Communications User Taxes imposed by this Section to verify that tax revenues have been properly expended in accordance with the law. The annual audit shall be performed under the direction of the Director of Finance by a qualified independent third party employing reasonable, cost-effective procedures.

SECTION 4

Section 3.32.040 of the Sacramento City Code is repealed.

SECTION 5

Low-Income Refund. This ordinance does not change the existing low-income citizen tax refund program as provided for under Section 3.32.170 of the Sacramento City Code.

SECTION 6

Severability. If any portion of this ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect. The people of the City of Sacramento hereby declare that they would have adopted each portion of this ordinance, notwithstanding the fact that any one or more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable. If this ordinance is declared to be invalid, then the provisions of Sections 3.32.030 and 3.32.040, as those Sections read on October 4, 2006, will become effective.

SECTION 7

Majority Approval; Effective Date. This ordinance shall be effective only if approved by a majority of the voters voting on this ordinance and shall go into effect ten days after the vote is declared by City Council.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

Ayes:

Noes:

Abstain:

Absent:

Mayor Heather Fargo

ATTEST:

Shirley Concolino, City Clerk

RESOLUTION NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON DATE OF _____

**APPROVING UTILITY USER TAX REDUCTION AND FAIRNESS
MEASURE TEXT TO BE SUBMITTED TO THE VOTERS.**

BACKGROUND

- A. The City of Sacramento established a Telephone User Tax in 1969 for charges on telephone services, extended that tax in 1993 to include cellular and wireless telephone service, and has levied and collected a Utility User Tax on those services, and the current tax rate is 7.5%.
- B. Telephony and related communications services have changed dramatically in recent decades; communications technology, telephone calling and marketing plans and state and federal legislation continue to evolve at a rapid pace.
- C. Updating the City's tax on communications services to include current and emerging technologies and reflect the realities of the current communications industry requires voter approval under the California Constitution.
- D. The City desires to treat users of communications services in a uniform and equitable manner, regardless of the means of transmission or technology used, so that users of communications services transmitted by traditional technologies (such as telephone land lines) do not bear a greater tax burden than users of communications services transmitted via newly developed technologies.
- E. The City desires to reduce the tax rate on communications services from 7.5% to 7% under the Communications User Tax.
- F. A measure is proposed for placement on the November 4, 2008 ballot that would give effect to an ordinance reducing the tax rate for the Utility User Tax on communications services and apply it fairly to all communications users.
- G. The Telephone User Tax contained refunds for low-income persons, and the City desires to continue those refunds in the Communications User Tax.
- H. The Communications User Tax will require annual financial audits of tax expenditures and will require voter approval of any rate increase to the Communications User Tax.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1: That the City Council approves for submittal to the voters at the General Municipal Election the following question:

UTILITY USER TAX REDUCTION AND FAIRNESS MEASURE. Shall the Utility User Tax ordinance be amended to reduce the tax rate on communications users from 7.5% to 7.0%; assure that users of current and future communications technologies be treated fairly; preserve funding for essential municipal services like police, fire protection and youth programs; continue providing tax refunds for low-income residents and requiring annual independent financial audits; and prohibit any tax-rate increase without voter approval?

YES _____

NO _____

Adopted by the City of Sacramento City Council on June 17, 2008 by the following vote:

Ayes:

Noes:

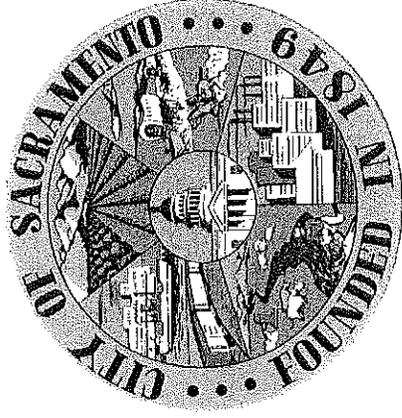
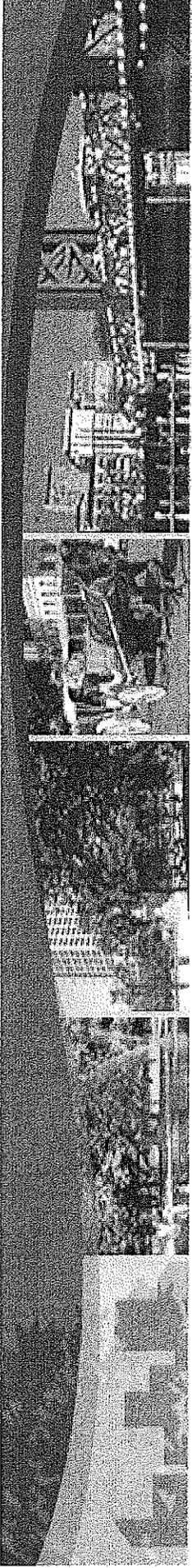
Abstain:

Absent:

Mayor Heather Fargo

ATTEST:

Shirley Concolino, City Clerk



City of Sacramento

Utility User Tax

UUT: What's At Issue?

- Since 2006, cities have been updating their Utility User Tax (UUT) on communications services due to changes in federal law, technological advances and legal challenges.
- The solution of choice among cities in modernizing their UUT is to make it technology-neutral, so the tax applies fairly to communications users regardless of the technology used.
- Out of 24 measures that have been placed on citywide ballots modernizing UUTs, 23 have been approved.
- The UUT constitutes an important source of General Fund revenue, especially in the current budget environment.

UUT Background

- Enacted in 1969, the City's UUT applied to electricity, gas and telephone service
- In subsequent years, UUT was updated to:
 - Apply to cable service
 - Apply to wireless telephone services
- Voters approved the current tax rate in 1988
- Voters rejected an initiative in 2002 that would have reduced the rate from 7.5% to 2.5%

How Circumstances Have Changed

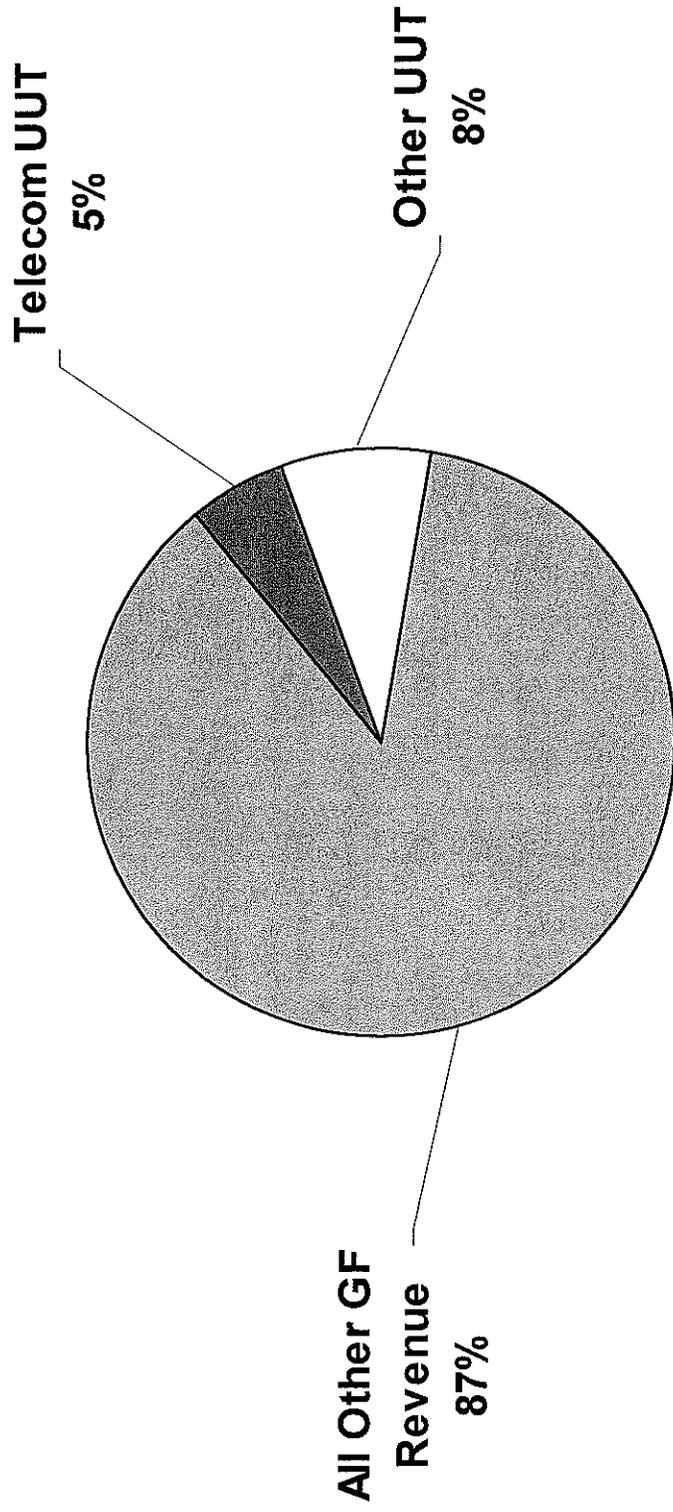
- Changing technology has created an inequity in the UUT.
- A change in federal law clarified how cities may tax the calling portion of wireless bills.
- Lawsuits are pending against cities challenging their right to continue collecting UUT revenue related to wireless services.

Modern Definition of “Communications Services”

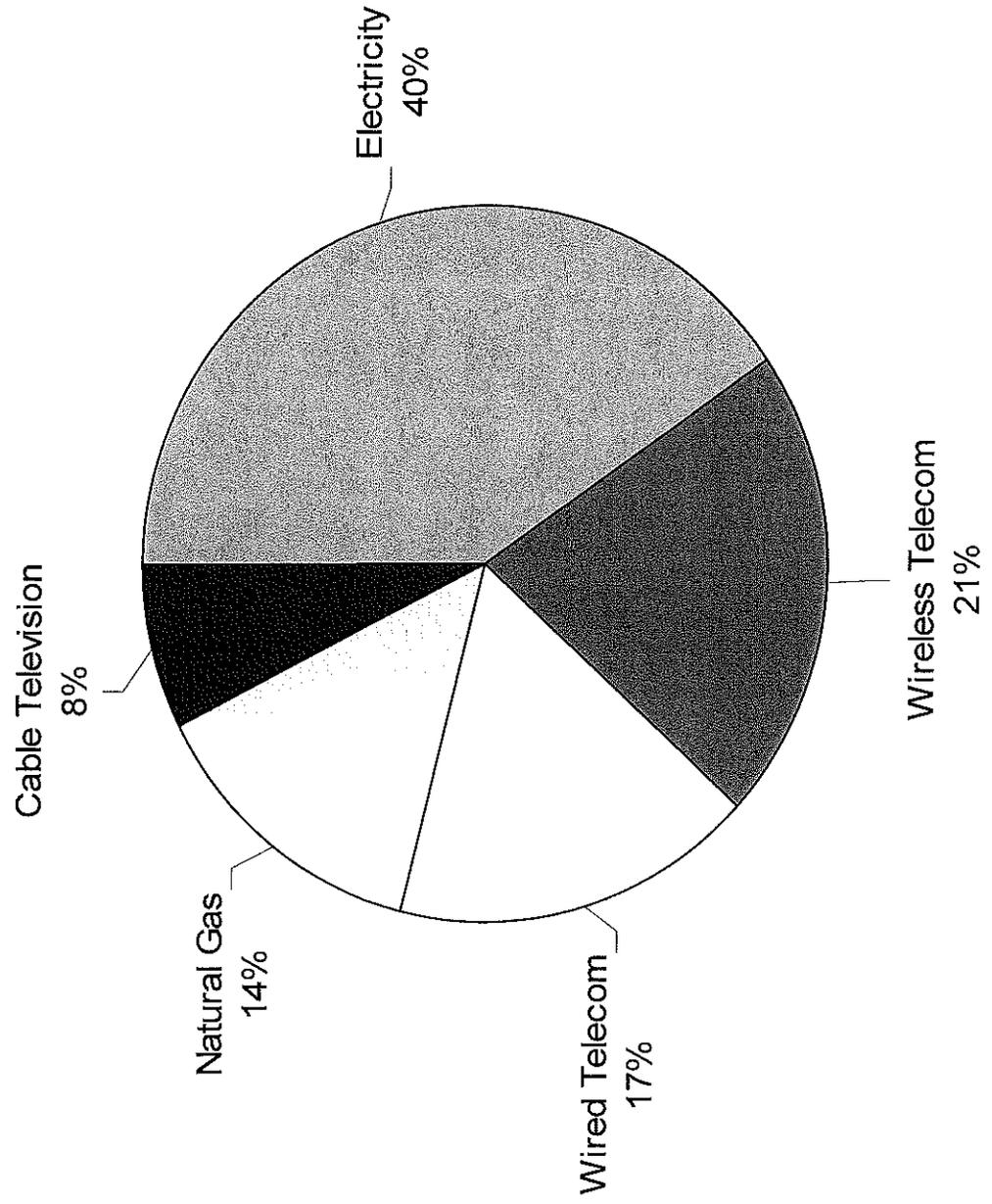
- Defined as the transmission of audio, video, data or any other communications information between points, whatever the technology used
- Definition applies regardless of how the information is transmitted (switched network, fiber optic, broadband, wireless, etc.)
- Does not include Internet access, digital downloads such as e-mail or digital books, music, ringtones, games and similar digital products

Share of General Fund

FY07 General Fund Revenue

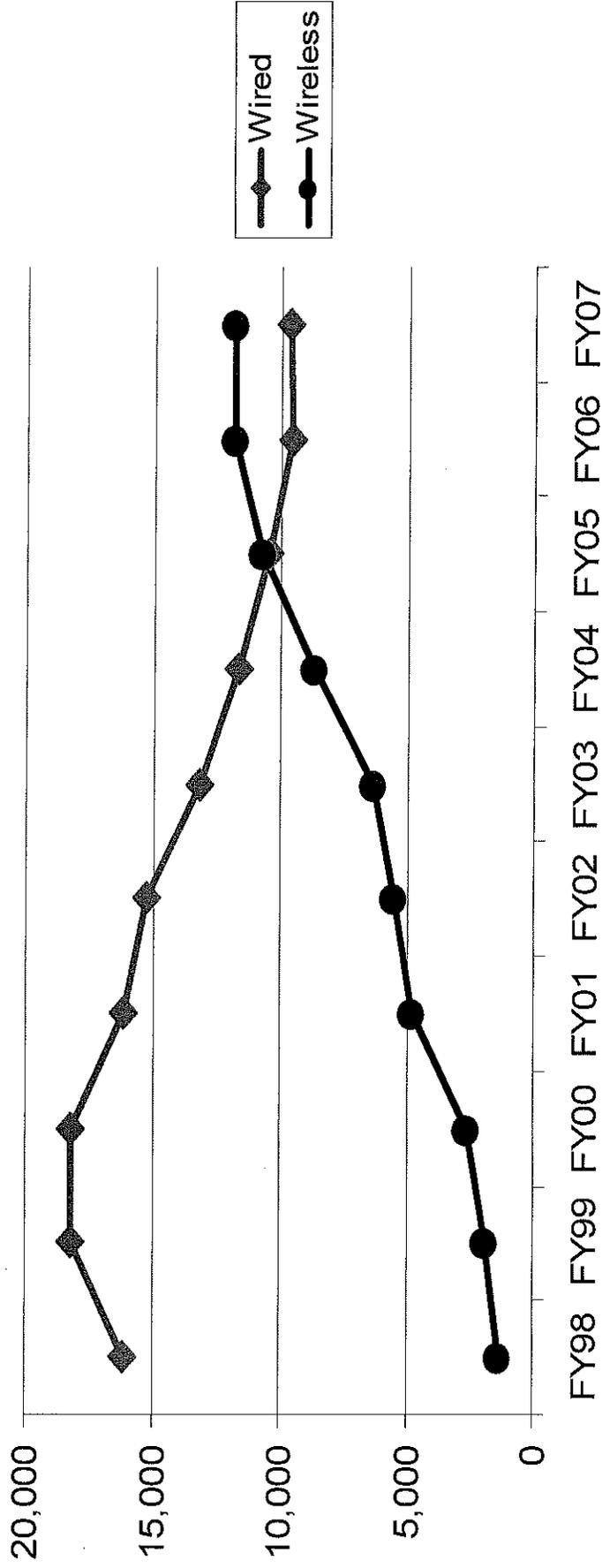


UUT Components



UUT Revenue Trends

Wired vs Wireless UUT Revenue (\$ in 000s)



What's At Risk?

- The voters, not the courts, should decide the fate of this revenue stream.
- Nearly \$12 million in annual revenue is at risk if telephone tax on wireless services is not collected.
- Inability to apply UUT to emerging technologies will lead to long-term reduction in revenue.

Recommendation

- Place a measure on the November 2008 ballot for voters to:
 - Update the UUT on communications services
 - Reduce the tax rate from 7.5% to 7%
 - Make the tax technology-neutral, so the tax applies to all communication users fairly
 - Continue providing tax refunds for low-income residents and requiring annual independent financial audits

