



# City of Sacramento City Council

4

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 11/29/2011

**Report Type:** Consent

**Title:** Subpoena to T-Mobile USA for Business Records

**Report ID:** 2011-00975

**Location:** Citywide

**Recommendation:** Adopt a Resolution authorizing the City Attorney to issue a subpoena to T-Mobile USA, Inc. requiring the production of records or witnesses necessary for a City communications user tax compliance audit.

**Contact:** Brad Wasson, Revenue Manager, (916) 808-5844, Leyne Milstein, Finance Director, (916)808-8491

**Presenter:** None

**Department:** Finance / City Attorney

**Division:** Revenue Administration

**Dept ID:** 06001211

**Attachments:**

---

1-Description/Analysis  
2-Resolution

---

**City Attorney Review**

Approved as to Form  
Marcos A. Kropf  
11/16/2011 4:57:11 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
11/9/2011 10:42:29 AM

**Approvals/Acknowledgements**

---

Department Director or Designee: Leyne Milstein - 11/16/2011 3:50:40 PM



## Description/Analysis

**Issue:** A comprehensive compliance audit of T-Mobile, a cellular provider, will be conducted to determine whether the City's communications utility user tax (a subset of the utility user tax) has been properly assessed and paid to the City by the provider. The review will also identify any reporting and payment errors to help ensure that the tax is properly reported and paid in the future. In order to conduct a comprehensive and thorough review, it is necessary that specific documents and business records be obtained from T-Mobile. To produce these records, T-Mobile requires the receipt of a subpoena ordering the production of such records.

**Policy Considerations:** The collection and recovery of tax revenues due the City is consistent with the City Council's policy of collecting funds for General Fund operations in order to provide essential City services.

**Environmental Considerations:** Under the California Environmental Quality Act (CEQA) Guidelines, this action does not constitute a project, as defined in section 15378, and is therefore exempt from review.

**Sustainability:** None.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** The compliance audit will test internal controls and accounting procedures related to T-Mobile's classification of products, plans and bundled services, exemptions and any other such services as they relate to the calculation of the City's utility user tax. This approach will ascertain that the taxes remitted are accounted for, calculated, and collected on a sound and consistent basis in compliance with the City's utility user tax ordinance.

Geo-code sampling will also be performed to verify the accuracy of the accounts coded within T-Mobile's systems by determining that customer accounts within the City boundaries and in the immediate vicinity are properly coded as assessed. Tests on customer addresses in "potentially vulnerable areas" of the City, such as annexed areas, overlapping zip codes, adjacent city boundary areas, etc. will be performed to verify T-Mobile's use of correct jurisdictional designations for customers within the City and in the immediate surrounding areas.

The compliance audit and testing can only be conducted if T-Mobile provides the City with customer account information in an electronic format for requested customer locations in the City and surrounding areas. T-Mobile has indicated that they cannot release customer personal identifying information without a subpoena.

**Financial Considerations:** The City will not incur any out-of-pocket costs associated with the audit of T-Mobile. The City's contracted audit consultant, MuniServices, LLC, will receive a 25% contingency fee on new revenue realized as a result of this audit. Based on the City's population and MuniServices' estimates, the City could potentially realize \$500,000 to \$700,000 in net new revenues after consultant costs.

**Emerging Small Business Development (ESBD):** Not applicable.

## **RESOLUTION NO.**

Adopted by the Sacramento City Council

### **AUTHORIZING THE CITY ATTORNEY TO ISSUE A SUBPOENA TO T-MOBILE USA, INC. REQUIRING THE PRODUCTION OF RECORDS OR WITNESSES NECESSARY FOR A CITY COMMUNICATIONS USER TAX COMPLIANCE AUDIT**

#### **BACKGROUND**

- A. The Sacramento City Code imposes a Communications User Tax on users of certain communication services, including mobile telecommunications services.
- B. The City Code requires Communication Service Suppliers to collect the Communications User Tax and remit the collected tax to the City. T-Mobile USA, Inc. (“T-Mobile”) is a Communication Service Supplier.
- C. As a Communication Service Supplier, T-Mobile is required under the City Code to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of Communication User Tax it may have been required to collect and remit to the City.
- D. The City, through the revenue division of the Department of Finance and its designated agents, desires to perform a Communications User Tax compliance audit of records maintained by T-Mobile.
- E. California Government Code, section 37104, empowers the City Council to authorize the issuance of a subpoena requiring the attendance of witnesses or production of documents in connection with a City Communication User Tax compliance audit.

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

- Section 1. The City Council authorizes the City Attorney, or her designee, to issue a subpoena to T-Mobile USA, Inc. requiring the production of witnesses or records necessary for the City to perform a Communications User Tax compliance audit.