Government Relations: 2019 Recap

MuniServices' Government Relations Team has garnered a reputation as a trusted and effective advisor. We not only educate our clients but stand side-by-side as a partner on issues. We are committed to integrity and open communication. The Government Relations department is a formal component of the Company's structure. Our team is face-to-face with industry advocates, stakeholders and, policymakers each day. We work in collaboration with clients' State and Federal represented lobbyists, our company external lobbyist and stakeholders, policy staff and members from the League of California Cities, California State Association of Counties, California Society of Municipal Finance Officers, the US Conference of Mayors, Government Finance Officers Association, and others.

STATE LEGISLATION AND POLICY DEVELOPMENTS

The following summarizes the legislative and legal developments monitored by MuniServices' Government Relations as part of helping protect your City's existing UUT revenues:

Prepaid Wireless Collection (AB 1717): MuniServices/ Avenu led the local government efforts for AB 1717 that became law in January 2016 which is landmark legislation that sets up a collection mechanism for prepaid wireless revenues. In 2018, MuniServices/ Avenu continued to assist clients in implementing AB 1717 and meeting the various contractual requirements of the CDTFA, all in a timely manner. For direct sellers, we monitor the monthly prepaid wireless payments and perform a comparative analysis with similar cities to determine accuracy and identify any potential discrepancies. Industry leaders reached out to our Government Relations team to commence conversations with respect to legislation to continue the program beyond the January 1, 2020 sunset. In 2019, MuniServices/Avenu worked with stakeholders to extend the local tax collection mechanism for prepaid wireless revenues until January 1, 2021. MuniServices/Avenu led the effort to pass SB 344 (McGuire) that will continue the program for an additional year until January 1, 2021. Due to nonrelated issues, a longer term solution could not be reached in 2019, however working with the wireless industry and Governor Newsom's staff, we were able to reach a short term fix that was signed into law, and with the understanding that stakeholders would work in 2020 to finalize a long term solution. . Clients should prepare to advocate including letter writing, contacting legislators and more in 2020 to achieve this goal Our thanks to our local government stakeholders and UUT client cities for their diligent efforts in 2019 via letter, phone calls and activation of local lobbyists to help build a strong coalition that worked very hard at the end of the legislative session to resolve this issue. We look forward to our continued collaboration in 2020 on this vital issue.

On November 15, 2018, the United States District Court for the Northern District of California issued a judgment in MetroPCS California, LLC, v. Michael Picker that could be interpreted to prohibit the collection of local UUTs under AB 1717. However, as will be explained below in the Legal Recap, that is neither the intended interpretation nor the appropriate interpretation. MuniServices/Avenu is working to ensure that the judgment is not applied to hinder the collection of local UUTs under AB 1717.

Prohibit UUT on OTT: AB 252 was stopped during the 2017 session but appeared on the calendar for a hearing in early 2018. The bill sets a precedent for cities and counties who have levied a UUT, and directly

impacts 88 jurisdictions with a "video" provision. Several local agencies with and without a UUT ordinance opposed this bill; AB 252 was introduced to overturn provisions of local voter approved UUT ordinances by prohibiting for 5 years a local UUT on OTT. MuniServices/Avenu is in regular contact with industry attorneys to review ordinances and to thwart legislative efforts similar to AB 252. Clients should review their respective UUT ordinances to ensure their language supports collection of revenues from (streaming) video services.

Over The Top (OTT) Working Group: The OTT Working Group formed in 2017 after stopping AB 252. This group was not activated in 2019 as legislative issues related to video programming at the state and federal level did not take place. During 2019 MuniServices representatives had monthly quarterly phone calls with industry representatives related to video programming. The goal was to try and build a stronger relationship with industry so that, as issues develop, we are in a better position to work from a collaborative rather then an adversarial posture when trying to resolve issues. It is expected that the OTT Working Group will need to meet and take action in 2020 to address issues related to video programming, because it is expected that legislation could be introduced, and we will need to work as a group to address the issues when or if they arise.. The OTT Working Group is comprised of volunteer representatives from California cities and MuniServices that are committed to working with local, state and national policy makers, and industry to ensure tax fairness with respect to this new technology and upholding local voter protection and decisions. Ultimately, the group has determined that OTT and certain other digital services are taxable, depending on the broadness of the language within the local Telecommunications/Communications Users' Tax ordinance.

MuniServices/Avenu is currently working with the firm McDermott, Will, & Emory to identify all cities which such inclusive ordinances so that various members of their coalition of clients can voluntarily comply for past and current periods.

Administrative Rulings: MuniServices in 2019 continued monitoring changes in technology, marketing, and billing practices (e.g., bundling), and the introduction of new services into the marketplace. The UUT program includes advising clients through updates and recommended tax application decisions or administrative rulings. Clients are encouraged to consult with Ben Fay, Esq., on issues pertaining to administrative rulings.

Wireless Taxes/ Digital Goods: For several years, the wireless industry has sought a moratorium on new wireless taxes. This law, as originally written, would affect cities that have not yet obtained voter approval of a modern telecom ordinance, and it would also affect a city with a modern ordinance that wished to go to the voters for a tax increase. MuniServices, as part of its 2019 Federal lobbying efforts, reminded members to be cautions of counter proposals that might adversely affect our local UUT.

South Dakota vs. Wayfair, Inc./ Impact on UUT: For several years, the wireless industry has sought a moratorium on new wireless taxes (content/ digital goods such as music downloads. One of the arguments made by the industry is that they cannot be compelled to collect UUT because they do not have sufficient contacts with the taxing jurisdiction -- no physical presence. That argument is now very weak. Wayfair does not address digital goods. More here on implementation.

2019 Legislative Recap Utility Users Tax (UUT) / Utilities

UUT Collection Mechanism: Prepaid Wireless: Provides a one-year sunset extension from January 1, 2020 to January 1, 2021 for AB 1717 (2014) which set up a mechanism to continue to capture UUT from prepaid wireless services. To-date 104 agencies participate in AB 1717 and have captured so far over $24 million in UUT revenue. MuniServices and the League of California Cities were lead stakeholders on the bill measure. Please contact Jonathan Gerth at jonathan.gerth@avenuinsights.com for further detail regarding implementation requirements. (SB 344 / McGuire) ***Signed***

UUT: Exemption: Clean Energy Resource: Extends the sunset on the exemption from local UUT for electricity generated by a clean energy resource located solely on the customer's premises for use only by that customer until January 1, 2027. As noted in a Committee analysis, the exemption that AB 1208 would extend favors the consumption of renewable electricity produced on-site over utility programs that allow customers to consume renewable energy transmitted through the grid. As a result, property owners with the means to deploy their own renewable energy generation could avoid paying UUTs for electricity from renewable sources but renters, who can't install on-site renewable generation, must pay the tax. The League opposed the bill. (AB 1208 / Ting) ***Signed***

Public Facilities: Water Agencies: Rate Reduction Bonds: Would expand the definition of a publicly owned utility to include certain utilities furnishing wastewater service to not less than 25,000 customers and would authorize the issue of rate reduction bonds to finance or refinance water or wastewater utility projects. Rate reduction bonds are asset-backed securities that are structured to minimize borrowing costs by qualifying for AAA credit ratings. AAA ratings allow a utility to borrow funds at an interest rate that is well below the rate that would otherwise apply to a utility's long-term debt. (AB 305 /Nazarian) ***Signed***

Telecommunications: Internet Services Providers (ISP): First Response Agencies: Prohibits ISPs from impairing or degrading the lawful Internet traffic of first response agencies during an emergency. This bill authorizes local agencies to request the removal of data restrictions when responding to an emergency and requires the agencies making these requests to notify their respective ISPs once they cease to respond to the emergency. (AB 1699 / Levine) ***Signed***

Community Isolation Outage: Notification: Requires telecommunication services providers to give notification to the California Office of Emergency Services if its telecommunications systems become unable to connect customers to 911 or deliver emergency notices within 60 minutes of the telecommunications service provider discovering the outage. (SB 670/ McGuire) ***Signed***

Upgrade to the State's 9-1-1 Emergency Operations System: Imposes a surcharge for prepaid mobile telephony services at the time of purchase. California now pays for the system with a fee on phone calls. The fund has been losing money as more people send text messages. The program will be administered by the CDTFA and authorizes the OES to impose a fee of as much as 80 cents per month, based on the number of phones used in the state. State officials expect the fee to be about 34 cents per month. In 2017, more than 28 million calls were placed to 9-1-1, representing approximately 77,000 calls per day, an increase of nearly 30 percent since 2010. https://www.cdtfa.ca.gov/industry/prepaid-mts-surcharge.htm. (SB 96 / Senate Budget) ***Signed***

Local Agency Utility Services: Service Extensions: This bill requires the estimated reasonable cost of labor and materials for installation of facilities associated with a water or sewer connection to bear a fair

or reasonable relationship to the payor's burdens on, or benefits received from, the water connection or sewer connection. (SB 646/ Morrell) ***Signed***

2018 Legal Development Recap

FCC Administrative Ruling 19-80

In essence, the FCC's Order which became effective as of September 26, 2019 could potentially serve to prohibit the levy of various Utility Users' Taxes ("UUT's") or any other license fee on revenues from wireless, broadband, VOIP[1], or basically anything other than "video services" (cable TV). Interpretations of the law by the highest officials charged with their administration are given great weight in legal challenges pursuant to Chevron USA, Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984)). While the FCC is indeed that authority here, we believe this third effort by them to prohibit all states and local taxation of any and all broadband-related "information services" at the state and local level will fail to fall within their purview, again, as such activities are being conducted purely intrastate and are levied on both cable operators and non-cable telecommunications providers alike. The purpose and authority of the FCC is limited to regulating interstate and foreign commerce in communication by wire and radio to make available, so far as possible, to all the people of the United States, without unjust discrimination. 47 U.S.C.A. § 151.

The FCC Order discusses in detail their interpretation of the conflict between the franchise rights granted to states and political subdivisions under 47 U.S.C.A. § 541 *et seq*., which are capped at 5% on "cable operators" and only applicable to "cable services," defined to include only "the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service." 47 U.S.C.A. § 522(6). Essentially, the FCC is declaring that any other tax, fee, franchise, or other regulation at the state or local level of cable operators (telecom) for non-cable services (wireless, broadband, etc.) is preempted by Federal law. They concluded that "any state or local law or legal requirement that obligates a cable operator franchised under Title VI to obtain a separate, additional franchise (or other authorization) or imposes requirements beyond those permitted by Title VI to provide cable or non-cable services, including telecommunications and information services, over its cable system conflicts with the Act and thus also is expressly preempted by section 636(c)." See Section 100 of FCC 19-80.

The ruling states in Section 98 that "[w]e exercise that authority (preemption) today by making clear that states, localities, and cable franchising authorities are preempted from charging franchised cable operators more than five percent of their gross revenue from cable services. This cap applies to any attempt to impose a "tax, fee, or assessment of any kind" that is not subject to one of the enumerated exemptions in section 622(g)(2) (none of which are applicable to UUT's) on a cable operator's non-cable services (from wireless, broadband, VOIP, or basically anything other than "video and landline telephone services.") or its ability to construct, manage, or operate its cable system in the rights-of-way."

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[1] "Non-cable" services offered by cable operators include telecommunications services and non-telecommunications services. Second FNPRM, 33 FCC Rcd at 8964-65, para. 25. Telecommunications services offered by cable operators include, for example, business data services, which enable dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections, and wireless telecommunications services. Id. Non-telecommunications services offered by cable operators include, but are not limited to, information services (such as broadband Internet access services), private carrier services (such as certain types of business data services), and Wi-Fi services. Id. ***Cable operators also may offer facilities-based interconnected Voice over Internet Protocol (VoIP) service, which the Commission has not classified as either a telecommunications service or an information service, but which is not a cable service. Id.*** FCC 19-80, p. 37 n. 257.

This is further reiterated in footnote 353: "Although a "franchise fee" does not include "any tax, fee, or assessment of general applicability," we note that this exception excludes a tax, fee, or assessment "which is unduly discriminatory against cable operators or cable subscribers." 47 U.S.C. § 542(g)(2)(A). Even if "telecommunications" fees such as those at issue in City of Eugene v. Comcast of Or. II, Inc., 375 P.3d 446 (Or. 2016) could reasonably be characterized as fees of general applicability by virtue of their application to providers other than cable operators, we find that such fees would be "unduly discriminatory" – and thus constitute "franchise fees" -- as applied to franchised cable operators.[2] This is because such fees are assessed on cable operators in addition to the five percent franchise fees such operators must pay for use of public rights-of-way. That is, cable operators must pay twice for access to rights-of-way (i.e., one fee for cable service and a second fee for non-cable service), whereas non-cable providers must pay only once for such access (i.e., for non-cable service). NCTA Mar. 13, 2019 Ex Parte at 13. We, therefore, conclude that interpreting the Act to preclude localities from assessing fees on cable operators' use of rights-of-way to provide non-cable services would be "competitively neutral and nondiscriminatory," contrary to the suggestion of some commenters. See, e.g., NATOA et al. July 24, 2019 Ex Parte at 9."

NOTABLY, THIS IS THE THIRD EFFORT BY THE FCC TO ATTEMPT TO PASS SUCH A BROAD EXEMPTION SUCH AS THIS FOR TELECOM. BOTH OF THE FIRST TWO EFFORTS, FCC - 17-30 & 15-90, WERE STRUCK DOWN BY THE FEDERAL COURTS AS ARBITRARY AND CAPRICIOUS. MONTGOMERY COUNTY, MARYLAND V. FCC, 863 F.3d 485 (6TH CIR. 2017).

Upon such a facial challenge by the FCC that locally levied UUT's and enabling state laws and local ordinances on "information services" which are purely conducted within their jurisdiction, both federal and state courts presume local tax ordinances to be constitutional and must uphold them "unless [their] unconstitutionality 'clearly, positively and unmistakably appears." Allen v. City of Sacramento, 234 Cal. App. 4th 41, 56, 183 Cal. Rptr. 3d 654, 668 (2015), as modified on denial of reh'g (Mar. 6, 2015).

The authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government. 47 U.S.C.A. § 253(c). The FCC broadly defines "the term 'franchise fee' to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such, 47 U.S.C.A § 542(g)(2)(D), however, the term "franchise fee" does **not** include "any tax, fee, or assessment of **general applicability** (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers.) Id. at § 542(g)(2)(A). We do not find that the FCC's broad attempt to preempt all state and local taxation of telecom services, nor their efforts to classify all broadband-based services as nontaxable "information services" preempted from taxation by the FCC, FCC 19-80 at 41, will be able to withstand scrutiny. Avenu does not believe it within their authority to preempt taxation of broadband-related services when such taxes are of general applicability and are levied in a non-discriminatory fashion. e.g. see Labell v. City of Chicago, 2019 IL App (1st) 181379, --- N.E.3d --- (Il. 2019) (upholding an amusement tax on video streaming service providers because it was a tax of general applicability and nondiscriminatory).

[2] A completely confounding and biased conclusion in favor of the telecom industry and the FCC's efforts to eliminate any taxation thereof which they see as an impediment toward advancements in the industry. (e.g. 5G implementation)

The FCC ruling was appealed by the City of Eugene, OR to the 9th Circuit Court of Appeals ON August 30th, 2019. City of Eugene, Or. v. F.C.C. *et al*, Case No. 19-72219 (9th Cir. 2019). State, local, and other entities nationwide are joining in the litigation and the Court continues to accept comments from additional entities.

GAS/ELECTRIC

California Industry Assistance Credit and Climate Credits.

The California Industry Assistance Credit provides an annual credit to eligible industrial facilities as part of California's greenhouse gas reduction program. The Climate Credit provides a biannual credit to residential and eligible small business electricity customers. These are a use of the proceeds of cap-and-trade auction proceeds under the State's greenhouse gas law to mitigate the impact of the law on power rates.

The amount of the credit is determined by the CPUC for each facility using emissions-efficiency benchmarks that reward businesses and help provide an incentive to make products in California in the most energy-efficient way possible (i.e. the less usage the higher the credit awarded).

This credit is part of a State program - the money is from the State, not from the utility, even though the utilities deliver the credit on the State's behalf. Most importantly, however, is that payments from customers in the form of "credits" still amounts to gross receipt or "charges" subject to local UUT levies under ***most*** local ordinances. However, it has been noted that certain providers are exempting payments via use of the credits – and we suspect many others are as well depending on the language within local ordinances. Climate credits are applied twice a year for Electric, and once a year in for Gas. These credits are taken in the months of April and October each year, and depending on the language within your local ordinance, may be lawfully exempt from local EUT's and GUT's, but it may not be depending on the expansiveness of your local ordinance.

Example "Model" provision which would encompass payments via credit:

"A. There is imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of six percent of the charges made for such energy and shall be paid by the person paying for such energy.

"Charges," as used in this section, shall include charges made for: (1) energy; (2) distribution and transmission; (3) metering; (4) stand-by reserves, firming, ramping, voltage support, regulation, emergency, or other similar services; (5) minimum charges for such services, including customer charges, service charges, demand charges, fuel or other cost adjustments, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public goods surcharge, franchise fee, franchise surcharge; and (6) all other annual and monthly charges or surcharges for electricity services or programs, which are authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges appear on a bundled or line item basis on the customer billing.

"Charges" shall also include the value of any other services, ***credits***, property, or other consideration provided by the service user in exchange for the energy or services related to the provision of such energy."

Scheduled power outages that are part of the providers' efforts towards fire prevention may also impact usage amounts and cause reductions in UUT revenues: fire season occurring between August through October, so we recommend anticipating reduced electric UUT revenues during that timeframe. This may also cause customers with solar panels installed whom also have switches to cut off grid access to solely power their home to do so, thus increasing tax exempt power usage.

ELETRIC

Clean Power Alliance (CPA) - https://cleanpowerexchange.org/california-community-choice/

Many cities and counties throughout the State of CA are now members of the CPA, the election into which was theoretically going to have the effect of increasing local revenues from electricity usage due to higher rates charged to customers for clean energy.

Cal. Rev. & Tax Code § 7284.5 exempts from "any utility user tax on the consumption of electricity, imposed by any local jurisdiction, a customer's consumption of electricity generated by a clean energy resource ***that is located on the customer's premises and used solely for the customer or the customer's tenants,***" but "does not exempt from any utility users tax imposed by any local jurisdiction any electricity or gas, not described in paragraph (1), that is provided to a customer by an electrical corporation, publicly owned utility, electrical cooperative, or irrigation district." That statutory exemption was would have sunset as of 12/31/19 but is now extended seven years through 1/1/2027 by the CA Legislature's passage and enactment of AB 1208 in the 2018 session.

Based upon various patterns of generation of clean energy provided and consumed within the City by the CPA, various revenues the power companies may be attributing to power generated by those with solar generation ability on their premises, which ultimately powers the entire grid absent a household having a switch installed to retain all power generated within their own premises, could be allocated in arbitrary manners by the CPA's which may impact local revenues. Avenu has seem substantial fluctuations on CPA returns filed for local EUT's which contain a line-item referring to "Pattern Adjustments." In some instances, the "Patterns Adjustments" have been a deduction from taxable gross charges of up to 80% of the "Gross Charges," while in other months we have seen where positive amounts are entered as a "Pattern Adjustment," thus increasing taxable revenues. Avenu has not been able at this point to pinpoint the nature and methodologies under which these adjustments are being calculated, but they certainly having a direct impact on local EUT's, whether positive or negative.

WIRED/WIRELESS

It is possible that localities in California may have seen underreporting in prepaid wireless UUT for indirect sales. On November 15, 2018, the United States District Court, Northern District of California (MetroPCS California, LLC v. Michael Picker, et al, 348 F.Supp.3d 948 (N.D. Ca. 2018), enjoined state agencies from enforcing the provisions of the Prepaid MTS Surcharge Collection Act because it conflicts with federal law. A notice of appeal of the district court's decision was filed on December 14, 2018, but a judicial stay of the injunction was not requested, thereby ending CDTFA's enforcement of the Prepaid MTS Surcharge Collection Act. However, the CDTFA will continue to administer the Local Prepaid MTS Collection Act, which is a separate act from the Prepaid MTS Surcharge Collection Act.

Notably, local charges are in addition to the prepaid MTS surcharge rate.

The prepaid MTS rate is comprised of; (1) the prepaid 911 surcharge rate as determined by the Office of Emergency Services (OES), 2) the California Public Utilities Commission's (CPUC) reimbursement fee

and telecommunications universal services fees, and 3) local charges, if applicable. The OES and CPUC charges are imposed under the Prepaid MTS Surcharge Collection Act, and due to the court's decision, sellers must no longer collect these charges on their sales of prepaid MTS. Please note that in the absence of the prepaid MTS surcharge, telecommunications service suppliers will report any applicable 911 surcharge and CPUC reimbursement fee and telecommunications universal fees on prepaid intrastate telephone communication service in this state. The local charges are imposed upon prepaid MTS under the Local Prepaid MTS Collection Act, *which is still in effect. Therefore, sellers of prepaid MTS are required to collect only the local charges, if applicable, on their sales of prepaid MTS*. Based upon confusion surrounding this ruling, many indirect sellers of prepaid wireless failed to properly collect and remit Local MTS surcharges resulting in gaps in compliance.

Avenu has also attributed certain decreases in telecom UUT revenues to decreases in residential landlines, increased usage of VOIP in commercial lines, bundled wireless savings (some of which are being diluted based upon the wireless providers apportioning various amounts to "data" charges and claiming exemptions based upon the Permanent Internet Tax Freedom Act (an arguable issue), and increased usage of online streaming services and over-the-top cable. Although, many courts have held otherwise: j2 Global Communications, Inc. v. City of Los Angeles, 218 Cal.App.4th 328 (Cal. App. 2013); Labell v. City of Chicago, 2019 IL App (1st) 181379, --- N.E.3d ---- (Ill. App. Ct. 2019).

Modernizing Ordinances for GUT's, EUT's, etc. to ensure surcharges are encompassed in "charges" subject thereto.

Avenu has noted that multiple law firms in the state have challenged various localities ability to subject certain surcharges to their UUT levies; and have been successful in some instances. This particular issue was addressed by the Superior Court of California, County of Los Angeles in 2014, Case No.: BC542245. The Los Angeles case specifically differentiated from limited scope ordinances whereby UUT's were merely levied on "charges for such gas," or "charges for such electricity," as opposed to slightly broader worded levies. The Los Angeles court focused heavily on the limited usage of the term "for such," absent some expansive terminology adding to the scope of the levy.

"In other words, the use of the phrase "for such" clearly limits the scope of the tax to that gas which is "delivered through mains or pipes." Had the Municipal Code contemplated a 10% tax for the "expense of obtaining, gaining, or acquiring gas," the phase "for such" would not have been used or, alternatively, the Municipal Code would have expressly stated same. Pioneer Express Co. v. Riley (1930) 208 Cal.677, 687 (sic). Thus, to the extent the City charges a tax on surcharges and regulatory fees imposed by the State, such interpretation is not supported the Municipal Code and, had the Municipal Code intended to tax same, the Code should have so stated as it does in the Communications User Tax and Electricity User Tax. Indeed, by comparison, the City of Burbank makes such a clear statement when it states in its gas utility tax ordinance:

Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing" are subject to the local GUT's and EUT's provided the municipal code makes such a clear statement when it states in its gas utility tax ordinance or electric utility tax evinces a clear intent to tax the same. Lavinsky v. City of Los Angeles, Case No.: BC542245."

When a specific definition is not provided, words used in ordinances are to be interpreted "according to the usual, ordinary import of the language employed in framing them." Metromedia, Inc. v. City of San Diego, 188, 649 P.2d 902, 907 (Ca. 1982). Webster's defines the "performance of "services" as: **(a):** to repair or provide maintenance for; **(b)** to meet interest and sinking fund payments on *service* government debt; or **(c) "***to perform any of the business functions auxiliary to production or distribution of*" providing any service. Obviously, it is part and parcel utilities' business model and functionality to charge auxiliary amounts of surcharges as a cost recovery or other regulatory compliance function in the provision of their services.

Moreover, one 'elementary rule' of statutory construction is that statutes in pari materia—that is, statutes relating to the same subject matter—should be construed together. Med. Bd. of California v. Superior Court, 88 Cal. App. 4th 1001, 1016, 106 Cal. Rptr. 2d 381, 391 (2001). Under the California Public Utilities Code, "[c]harges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 216.8, ***or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider***, regardless of whether individual transmissions originate or terminate within the licensed service area of a home service provider." Cal. Pub. Util. Code § 247.1 (emphasis added). Further supporting that these charges are subject to the City's EUT & GUT.

It is important for localities to update their ordinances accordingly in order to avoid such challenges that could lead to losses in revenue, or worse, large refund refunds.