



CITY OF SANTA BARBARA

CITY COUNCIL AGENDA REPORT

AGENDA DATE: October 9, 2012

TO: Mayor and Councilmembers

FROM: Treasury Division, Finance Department

SUBJECT: Subpoenas Of Records For Telecommunications Utility Users Tax (UUT) Audits

RECOMMENDATION:

That Council approve the issuance of Subpoenas to Sprint Telephony LLP, Level 3 Communications, and TW Telecom of California LP for Records in Connection with Telecommunications Utility Users Tax Audits.

DISCUSSION:

For many years, the City of Santa Barbara has contracted with MuniServices, LLP for a broad range of utility users' tax auditing services, including discovery and compliance services, legal guidance, legislative advocacy, and utility user tax revenue forecasts. In addition to these regular annual services, the City also participates in "city-specific audits" of individual telecommunications companies on an occasional basis. This year, the City of Santa Barbara has elected to participate in city-specific audits of Sprint Telephony PCS, Level 3 Communications and tw telecom of california [sic].

The city-specific audits of these three telecommunications companies will cover each provider's entire billing, tax calculation, and remittance process. It will include an extensive analysis of billing data at the individual customer level to determine that the proper amount of utility users' tax has been levied, collected and remitted to the City for customers located within the City limits.

In order to conduct the audit, telecommunications providers require several documents before they will release information on their billing and remittance processes and the proprietary customer information necessary to perform the detailed and specialized audit. These documents include: a Letter of Authorization from the City to each provider authorizing MuniServices to conduct the audit on behalf of the City of Santa Barbara (attached); a Non-Disclosure Agreement stating that the information used in the audit will be held as confidential by both the City and MuniServices; and, a Subpoena requiring that the proprietary customer information be given to MuniServices and determines the audit period. Proprietary customer information is protected by federal telecommunication customer privacy protection laws and can be released only by

subpoena order. In the City of Santa Barbara, subpoenas must be authorized and issued by a vote of the City Council.

ATTACHMENTS: Three Letters of Authorization to: Sprint Telephony PCS, Level 3 Communications, and tw telecom of california [sic]

EXHIBITS: Three Subpoena Duces Tecum to: Sprint Telephony PCS, Level 3 Communications, and tw telecom of california [sic]

PREPARED BY: Jill Taura, Treasury Manager

SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office



City of Santa Barbara

Finance Department

www.SantaBarbaraCA.gov

April 4, 2012

Administration

805.564.5334

Accounting

805.564.5340

License & Permits

805.564.5346

Payroll

805.564.5357

Risk Management

805.564.5347

Treasury

805.564.5528

Utility Billing

805.564.5343

Fax

805.897.1978

735 Anacapa St.

PO Box 1990

Santa Barbara, CA

93102-1990

Purchasing

805.564.5349

Warehouse

805.564.5354

Mailroom

805.564.5360

Fax

805.897.1977

310. E. Ortega St.

PO Box 1990

Santa Barbara, CA

93102-1990

Environmental Services

805.564-5631

Fax

805.564.5688

1221 Anacapa Street

PO Box 1990

Santa Barbara, CA

93102-1990

Sprint Telephony PCS, LP
Mr. Brett Parks
Supervisor Tax Accounting
Mailstop: KSOPHL0512-5A626
6500 Sprint Parkway
Overland Park, KS 66251

Re: City of Santa Barbara Telecommunication and Video Users Tax (TVUT)
Ordinance – Letter of Authorization

Please be advised that City of Santa Barbara, CA has authorized the firm of MuniServices, LLC to conduct an audit of compliance with the City's Telecommunication and Video Users Tax Ordinance. MuniServices may, during the course of the audit, utilize the legal firm of Donald H. Maynor. In that event, both firms are authorized to execute confidentiality/non-disclosure agreements, on the City's behalf, relative to the audit.

The audit will include a three year period from March 2009 through February 2012. Any information obtained in connection with this audit shall only be used by MuniServices and by the City, for purposes related to the verification of the TVUT Ordinance.

In order to facilitate the timely completion of the audit, please extend your full cooperation to MuniServices or Donald H. Maynor.

If you have any questions, related to the process of the audit, please contact MuniServices UUT Manager, Gary Grace, at 818-661-5520.

If there are questions, related to the City's authority to conduct such audits, please contact me at 805-564-5336.

Sincerely,

Robert Samario
Finance Director
City of Santa Barbara

CC: MuniServices LLC
Donald H. Maynor



City of Santa Barbara

Finance Department

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April 4, 2012

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1221 Anacapa Street

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Santa Barbara, CA

93102-1990

Level 3 Communications LLC
Mr. Kelly Moser
Tax Manager
1025 Eldorado Blvd.
Broomfield, CO 80021
Level 3 Communications LLC

Re: City of Santa Barbara Telecommunication and Video Users Tax (TVUT)
Ordinance – Letter of Authorization

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Sincerely,

Robert Samario
Finance Director
City of Santa Barbara

CC: MuniServices LLC
Donald H. Maynor



City of Santa Barbara

Finance Department

www.SantaBarbaraCA.gov

May 8, 2012

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1221 Anacapa Street

PO Box 1990

Santa Barbara, CA

93102-1990

tw telecom of california lp
Attn Rosi M. Boning, Tax Manager
10475 Park Meadows Dr.
Littleton, CO 80124

Re: City of Santa Barbara Telecommunication and Video Users Tax (TVUT)
Ordinance – Letter of Authorization

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Sincerely,

Robert Samario
Finance Director
City of Santa Barbara

CC: MuniServices LLC
Donald H. Maynor

CITY COUNCIL OF THE CITY OF SANTA BARBARA
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

In the Matter of the Investigation of)
Records of **SPRINT TELEPHONY PCS,**)
LP to determine possible delinquencies in) SUBPOENA DUCES TECUM
utilities users tax.)
_____)

TO SPRINT TELEPHONY PCS, LP:

You are hereby ordered to produce the following named documents and records to the City Finance Director at City Hall, 735 Anacapa Street, Santa Barbara, California no later than 60 days after the issuance of the subpoena, or 55 days after service, whichever is later. Reasonable costs of copying and postage are recoverable from the City. The records shall be accompanied by an affidavit of the custodian or other qualified witness stating in substance each of the following:

- a. the affiant is the duly authorized custodian of records or other qualified witness and has authority to certify the records;
- b. the copy is a true copy of all the records described in the subpoena;
- c. if **SPRINT TELEPHONY PCS, LP** has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and such records as are available; and,
- d. the City requests the records below on electronic media in any of the formats: SQL, Access, or Excel, and Text for complete descriptions of data/codes/fields, etc. Letters, directives, policies, notices, etc., may be presented in hard copy or in PDF format:

The records to be produced are as follows:

- a. Provide the Company's Chart of Accounts, with account descriptions, for all Revenue Accounts and any other accounts used in the calculation of Telecommunication and Video Utility Users' Tax for Telecommunication Services.
- b. Indicate which of the Revenue Accounts are applicable to Telecommunication and Video Utility Users' Tax (TV-UUT). For each account that is not applicable to TV-UUT please state the reason why not.

- c. Provide a Copy of the Profit and Loss Statement for operations in the City for the months of October 2009, June 2011 and March 2012.
- d. Provide a Copy of the G/L Trial Balance by G/L Account Number for operations in the City for each month during the period October 2009 through September 2012.
- e. Provide a description of all rate plans and services (digital format if possible) that were offered to your subscribers within the City during the audit period of October 2009 through September 2012.
- f. Provide detailed billing records, in electronic format, for all subscribers in the jurisdictional boundaries of the City for the sample reporting periods October 2009, June 2011 and March 2012. Each billing record should include (at a minimum but not limited to) Acct #, Phone #, Billing Period, Plan/Service Description (Feature/SOC Code), Service Address, Billing Address (if different from service address), Amount Charged for the Service, and Regulatory Fees and Surcharges detailing the Tax Type and Taxing Authority. Total of all billing records for each sample reporting period, with any adjustments, should reconcile to the TV-UUT Remittance Form filed by your company to the City for that reporting period.
- g. Provide a reconciliation of any difference between the total TV-UUT charged to customers in the billing records provided for item f, above, and the TV-UUT remitted to the City for each sample reporting period.
- h. Provide a reconciliation of any difference between the total Gross Revenue on the Profit and Loss Statements as provided for item 3, above, and the total Gross Revenue charged to customers in the billing records provided for item f, above, for each sample reporting period.
- i. Provide a detailed explanation of each adjustment as mentioned in item f above, with a description of the purpose of the adjustment and how it was calculated. Provide company work papers that support all such calculations.
- j. For each Rate/Service Plan described in item e, provide five actual invoice copies (in .pdf or paper copy) for each sample reporting month (October 2009, June 2011 and March 2012). The same five subscriber accounts should be used for all three reporting periods: if there are a total of 5 rate or services plans offered during the audit period then the same account number should be used for all three periods which would result in 75 invoices (5 rate/service plans x 5 invoices x 3 sample periods).

- k. To the extent that you apply TV-UUT to bundled taxable and non-taxable services under a single price, and you only tax the taxable services, please explain how you apportion the charges between the taxable and non taxable services.
- l. Provide your current tax matrix, as used in your customer billing system, which lists the services and charges for customer billing purposes (e.g., individual service charges, individual regulatory surcharges, late fees, activation fees, etc.), indicating whether the service or charge is deemed taxable or non-taxable under the City's Telecommunication and Video Users' Tax Ordinance. The tax matrix should include tax indicators for Federal, State and City jurisdictions.
- m. Provide the names and addresses of all customers within the City, which, according to your records, are designated as exempt from the City's TV-UUT. If these records are not included in item f, above, provide by customer the total exempted rate/service charges for each of the sample reporting periods (October 2009, June 2011 and March 2012).
- n. Provide a copy of the TV-UUT Remittance Form for each month during the audit period, October 2009 through September 2012.
- o. Provide a schedule showing the total amount of TV-UUT billed to all subscribers in the City during the audit period for each reporting month.
- p. Describe the method and the commercial product, if any, that your company uses to attach a local jurisdictional tax code to the customer's service address.
- q. Provide a subscriber list, including address, of subscribers in the following zip codes for Geo Code verification: 93101, 93103, 93105, 93108, 93109, 93110, 93117 and 93190.
- r. Please describe how you currently calculate or apportion bad debt for purposes of applying the City's TV-UUT to the net taxable revenues. Indicate any changes in methodology regarding the calculation of apportionment of bad debt since October 1, 2009, and provide any documents reflecting such change.

This subpoena duces tecum is issued pursuant to the authority set forth in Section 509 of the City Charter of the City of Santa Barbara and Section 37104 of the California Government Code.

WITNESS, the Mayor of the City of Santa Barbara, County of Santa Barbara, State of California, this ____ day of _____, 2012.

ATTEST:

CITY OF SANTA BARBARA,
a Municipal Corporation

Gwendolynn Peirce
City Clerk Services Manager

By _____
Mayor Helene Schneider

CITY COUNCIL OF THE CITY OF SANTA BARBARA

COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

In the Matter of the Investigation of)
 Records of **LEVEL 3 COMMUNICATIONS**)
 to determine possible delinquencies in) SUBPOENA DUCES TECUM
 utilities users tax.)
 _____)

TO LEVEL 3 COMMUNICATIONS:

You are hereby ordered to produce the following named documents and records to the City Finance Director at City Hall, 735 Anacapa Street, Santa Barbara, California no later than 60 days after the issuance of the subpoena, or 55 days after service, whichever is later. Reasonable costs of copying and postage are recoverable from the City. The records shall be accompanied by an affidavit of the custodian or other qualified witness stating in substance each of the following:

- a. the affiant is the duly authorized custodian of records or other qualified witness and has authority to certify the records;
- b. the copy is a true copy of all the records described in the subpoena;
- c. if **LEVEL 3 COMMUNICATIONS** has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and such records as are available; and,
- d. the City requests the records below on electronic media in any of the formats: SQL, Access, or Excel, and Text for complete descriptions of data/codes/fields, etc. Letters, directives, policies, notices, etc., may be presented in hard copy or in PDF format:

The records to be produced are as follows:

- a. Provide the Company's Chart of Accounts, with account descriptions, for all Revenue Accounts and any other accounts used in the calculation of Telecommunication and Video Utility Users' Tax for Telecommunication Services.
- b. Indicate which of the Revenue Accounts are applicable to Telecommunication and Video Utility Users' Tax (TV-UUT). For each account that is not applicable to TV-UUT please state the reason why not.

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- k. To the extent that you apply TV-UUT to bundled taxable and non-taxable services under a single price, and you only tax the taxable services, please explain how you apportion the charges between the taxable and non taxable services.
- l. Provide your current tax matrix, as used in your customer billing system, which lists the services and charges for customer billing purposes (e.g., individual service charges, individual regulatory surcharges, late fees, activation fees, etc.), indicating whether the service or charge is deemed taxable or non-taxable under the City's Telecommunication and Video Users' Tax Ordinance. The tax matrix should include tax indicators for Federal, State and City jurisdictions.
- m. Provide the names and addresses of all customers within the City, which, according to your records, are designated as exempt from the City's TV-UUT. If these records are not included in item f, above, provide by customer the total exempted rate/service charges for each of the sample reporting periods (October 2009, June 2011 and March 2012).
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WITNESS, the Mayor of the City of Santa Barbara, County of Santa Barbara, State of California, this ____ day of _____, 2012.

ATTEST:

CITY OF SANTA BARBARA,
a Municipal Corporation

Gwendolynn Peirce
City Clerk Services Manager

By _____
Mayor Helene Schneider

CITY COUNCIL OF THE CITY OF SANTA BARBARA

COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

In the Matter of the Investigation of)
 Records of **TW TELECOM OF**)
CALIFORNIA, LP to determine possible) SUBPOENA DUCES TECUM
 delinquencies in utilities users tax.)
 _____)

TO TW TELECOM OF CALIFORNIA, LP:

You are hereby ordered to produce the following named documents and records to the City Finance Director at City Hall, 735 Anacapa Street, Santa Barbara, California no later than 60 days after the issuance of the subpoena, or 55 days after service, whichever is later. Reasonable costs of copying and postage are recoverable from the City. The records shall be accompanied by an affidavit of the custodian or other qualified witness stating in substance each of the following:

- a. the affiant is the duly authorized custodian of records or other qualified witness and has authority to certify the records;
- b. the copy is a true copy of all the records described in the subpoena;
- c. if **TW TELECOM OF CALIFORNIA, LP** has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and such records as are available; and,
- d. the City requests the records below on electronic media in any of the formats: SQL, Access, or Excel, and Text for complete descriptions of data/codes/fields, etc. Letters, directives, policies, notices, etc., may be presented in hard copy or in PDF format:

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ATTEST:

CITY OF SANTA BARBARA,
a Municipal Corporation

Gwendolynn Peirce
City Clerk Services Manager

By _____
Mayor Helene Schneider