

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 2, 2013

**To:** The Commission  
(Meeting of April 4, 2013)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) – Sacramento

**Subject:** **AB 300 (Perea) – Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection. As introduced: February 12, 2013**

**RECOMMENDED POSITION:** OPPOSE

**SUMMARY OF BILL:**

This bill would replace the existing collection and remittance system for consumers of prepaid mobile telephony services (MTS) to contribute to the California Public Utilities Commission (CPUC) user fee, California's six universal service public purpose program (PPP) surcharges, the emergency telephone users (911) surcharge, and local utility user taxes (UUTs), and instead establish a point of sale system.

Carriers, such as TracFone, are currently collecting and remitting the fees as required. This bill proposes a new system. Specifically, this bill:

- Would enact the "Prepaid Mobile Telephony Surcharge and Collection Act" as Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code. The Act would mandate a "standardized collection mechanism" for retail sellers of prepaid mobile telephony services (generally in the form of airtime cards) to use in collecting the CPUC user fee, California's six universal service PPP surcharges, the 911 surcharge, and local UUTs. The bill would also add or amend sections of the Public Utilities Code to conform to the provisions of the Act.
- Would aggregate the CPUC user fee, California's six universal service PPP surcharges, and the 911 surcharge into one "prepaid MTS surcharge". All prepaid mobile telephony services would be included, both those sold through third party retailers and those sold directly by the carrier (online, over the phone, or otherwise). The bill would require that on and after January 1, 2015, the aggregated "prepaid MTS surcharge" be imposed on the "sales price" of each "retail transaction" of "prepaid mobile telephony service," as such terms are defined in a new Revenue

and Taxation Code Section 42004, and be collected by a retail seller from each prepaid consumer at the point of sale.

- Would require the CPUC to establish wireless prepaid surcharges as a “percentage of the sales price for mobile telephony services” (new Public Utilities Code Section 316 (b)) separately from the surcharges established for all other types of communications service. The bill would mandate how the surcharges and fee would have to be calculated, require the CPUC to determine the wireless prepaid surcharge percentage on or before October 1, 2014, post said surcharge percentage on its website, and notify the State Board of Equalization (BOE) of the surcharge percentage.
- Would apply the MTS surcharge rate against the “intrastate portion of charges for the prepaid mobile telecommunications services,” which in turn would be determined by “the inverse of the interstate wireless safe harbor percentage [of the total sales price] established by the FCC [Federal Communications Commission]” (amended Revenue and Taxation Code Section 41020 (a)(1) and new Revenue and Taxation Code Section 42010 (b)(2)).
- Would establish a “MTS Surcharge Fund” in the State Treasury which would consist of several accounts including a “Prepaid MTS PUC Account” into which the BOE would deposit the CPUC user fee and universal service PPP surcharges remitted by retailers to the BOE (new Revenue and Taxation Code Section 42023 (a)). New Revenue and Taxation Code Section 42023 (c) would allow the Legislature to appropriate funds from the Prepaid MTS PUC Account, but “only for the purposes for which the moneys were collected.”
- Would authorize the BOE to make software available to retail sellers to enable a seller to match the location of a retail transaction to the applicable prepaid MTS surcharge amount and local charges (new Revenue and Taxation Code Section 42014 (c)).
- Would make the prepaid customer liable for payment of all surcharges and UUTs, and third party retailers and the BOE responsible for the collection and remittance of those funds.
- Would include an urgency clause, necessitating a 2/3 supermajority vote of the Legislature for passage, on the grounds that the bill is necessary to permit “needed financial support for programs necessary to serve the public or telecommunications users”.

**CURRENT LAW:**

The law currently requires telephone corporations to collect and remit to the CPUC the CPUC user fee and California's universal service PPP surcharges. The BOE collects the 911 surcharge and local governments collect UUTs.

### State Law Impacts

- Sections 224.4; 275.6; 739.3; 280; 281 and 2881 of the Public Utilities Code.
- The Moore Universal Telephone Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code).
- User fee authorization, at Chapter 2.5 (commencing with Section 401) of Part 1, of Division 1 of the Public Utilities Code.
- The Fee Collections Procedure Law, Part 30 (commencing with Section 55001) of the Revenue and Taxation Code.
- Sections 41020, 41025 and 41030 of the Revenue and Taxation Code.

### Federal Law impacts

- 47 U.S.C. § 254 (f), authorizing state agencies to adopt universal service support programs "not inconsistent" with federal rules and statutes.
- *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, (1998) (*Wireless Safe Harbor Order*); *In the Matter of Universal Service Contribution Methodology*; *Federal-State Joint Board on Universal Service*, Report & Order, WC Docket No. 06-122, etc, 21 FCC Rcd 7518 (2006) (*Contribution Methodology Reform Order*).

### **AUTHOR'S PURPOSE:**

The author's stated purpose is to change the collection of the universal service public purpose program fees to a point of sale system. This recommendation is based on model legislation endorsed in 2009 by the National Conference of State Legislatures (NCSL). The author claims that no collection mechanism is currently in place for prepaid service and that AB 300 would result in more revenue and equitable share in the responsibility to contribute to the various surcharges, fees and taxes imposed on wireless telephone service customers.

### **DIVISION ANALYSIS (Communications Division):**

This bill is unnecessary. Carriers are currently collecting and remitting the required fees and surcharges as required by law.

This bill would set up a new process whereby the retail sellers of prepaid mobile services (e.g., Best Buy, Walmart, Target, etc.) would collect the CPUC user fee, California's universal service PPP surcharges, the 911 surcharge, and UUTs at the point of sale and then remit these monies, not to the carriers who are currently responsible for collecting and remitting these monies, but to the state Board of Equalization (BOE) pursuant to the state Fee Collection Procedure Law.

The bill will result in higher universal service contributions for consumers due to the added administrative processes and costs mandated by the bill. The bill is unnecessary, inefficient, and probably illegal (preempted by federal law), and it improves neither safety, reliability nor the viability of the CPUC's universal service PPPs.

The bill would essentially insert two middlemen in the process which now runs between the CPUC and the carriers. Currently, the carriers are directly responsible for the collection and remittance of these monies to the CPUC. By "splitting the rolls" for surcharge and user fee collection between postpaid and prepaid services, and making tens of thousands of California retailers responsible for collecting the latter (instead of 50 or fewer primarily prepaid carriers), the bill lessens the CPUC's comprehensive oversight over carriers and the universal service PPPs, creates inefficiencies and extra costs, and invites carrier arbitrage. The bill offers the illusion of simplicity, but does not track carrier operations in the real world.

A detailed summary of specific objections to the bill can be found below under the 'Summary of Supporting Arguments for Recommendation' section of this memo.

**SAFETY IMPACT:**

No known impact on safety.

**RELIABILITY IMPACT:**

No known impact on reliability.

**RATEPAYER IMPACT:**

Due to the multilayered and complex collection scheme envisioned by this bill, it is almost certain that all ratepayers, postpaid as well as prepaid, will see an increase in the surcharge amounts for the universal service surcharges to pay for the increased administrative expenses triggered by the bill. As noted above, in addition to complicating the administration of these program funds by adding two new layers of administration, the bill would also increase the costs of administration for both the user fee fund and the universal service programs because it would require payment to the retail sellers and the BOE for their costs of administration. The bill will require the Commission to "split the rolls" for purposes of calculation of wireless intrastate revenues between prepaid and postpaid services, with the former being collected by the BOE

under the bill and the latter continuing to be collected by the CPUC. (BOE will have to split its rolls in a similar fashion.) The inefficiencies and opportunities for confusion and arbitrage will be most acute where one carrier provides both types of service. These resulting increased costs will likely lead to higher surcharges on users of communications services.

### **FISCAL IMPACT:**

This bill will require an expansion of CPUC workload. Although the bill would shift certain collection activities to the BOE, CPUC staff will still be required to collect surcharges and fees on all postpaid carriers. In effect, staff will have two different processes where now it only has one. In addition to current surcharge and fee assessment and collection mechanisms, staff will have to develop mechanisms and operational flows for setting the MTS (a calculation not done now) and interfacing with the BOE. Enforcement against non-compliant carriers may be required to proceed on dual tracks: (1) the CPUC's investigatory and enforcement procedures as applied to postpaid services under Rule 5 of the Commission's Rules of Practice and Procedure and (2) whatever cooperative mechanisms develop as applied to prepaid services under the enforcement provisions of this bill. Audit procedures of carriers offering postpaid and prepaid service options (including the largest telecommunications carriers in the state) would also have to proceed on two tracks.

Because the procedures outlined in the bill are largely untried (as to California's universal service PPP surcharges and fee collection, in any event), it is difficult to anticipate precisely what costs will ultimately be involved. Staff's current estimate is that total fiscal impact will include four new permanent staff and two limited term staff at a cost of \$586,325 per year. For permanent staff only, the total cost is \$341,351 per year.

A break-down of staffing needs is as follows:

### **Communications Division**

- The CPUC's Communications Division estimates that oversight of the new program would need to be managed by one PURA IV. The PURA IV would need to coordinate collection efforts among the carriers currently funding the programs through the existing TUFFs system, and the collections from the BOE. The revenues from BOE would be tracked to ensure that 1) the surcharges are properly applied to the intrastate components of service, 2) the compliance level is high, and 3) the amounts are properly identified and recorded for the various programs.
- The PURA IV would need to forecast revenues in advance for incorporation in the recurring budget resolutions and to periodically review the surcharge levels so that sufficient resources are available to continue the programs without over collecting revenues.

- The PURA IV would calculate the annual surcharge rate to be used by the retailers (as a component of the MTS) and post it each December on the CPUC website.
- An outreach and education program targeted to customers and retailers would be needed so that consumers understand the new charges and retailers are aware of charges and their obligations. This effort would need to be coordinated with the BOE.

### **Division of Water and Audits**

- Additional compliance audits would be necessary followed by revenue tracking to estimate the effect of these revenues on the overall program. If the revenues are significant, the surcharge levels may need to be adjusted.
- One auditor (Public Utilities Financial Examiner IV) will be needed to conduct audits to ensure that the proper amounts are collected and there are no segments of the industry that avoid collection by mischaracterization of the sales or other errors.
- With any new program there will be some errors in application of the surcharges and these will need to be corrected. Even with the notices from the BOE, some sellers may not collect the surcharges. The bill does not have any discussion of enforcement.

### **CPUC Fiscal Office**

- The CPUC Fiscal Office will need two additional employees: one Accounting Officer (Specialist) and one Accountant Trainee.
- The Accounting Officer (Specialist) in the Financial Reporting area will provide monthly reconciliation reports of the collection of surcharges and fees as received in the MTS accounts, as well as of any BoE or other collection efforts vis-à-vis delinquent retail sellers. This position will also coordinate with the persons working on the other aspects of the universal service programs.
- One Accountant Trainee in the cashiering area will ensure retail sellers' surcharges are collected and properly recorded in the appropriate funds within the MTS account, timely transferred to the CPUC, and reintegrated with the Commission's existing accounts. This person would also track receivables and insure that they are recorded in the accounting records. Also, collection letters would be prepared in a timely manner, presumably in concert with the BoE.
- Some manner of enforcement for delinquent and non-complying vendors will need to be established based on data from the Fiscal Office, the BOE, forecasts from the PURA IV and Public Utilities Financial Examiner IV, and input from the Legal Division.

### **CPUC IT Branch**

- A limited term Systems Software Specialist would be needed to set up a new system to identify and track by carrier and by surcharge/fee, the monies deposited into the new Prepaid MTS PUC Account by BOE. A tracking system is necessary in order to identify and verify public program surcharges by carrier and determine the amounts owed. The TUFFS system currently does this function for the universal service surcharge contributions.

### **CPUC Legal Division**

- The CPUC Legal Division anticipates that .5 FTE of a limited term Staff Counsel III will be needed for at least the first two years of the program, with residual legal issues thereafter (all attributable to this bill). The AB 300 program will result in legal issues related to the new program in relation to other laws and statutes. The authority for auditing, enforcement and compliance would need to be established and delimited.

### **ECONOMIC IMPACT:**

By “splitting the rolls” and creating a bifurcated collection system for public purpose surcharges and user fees, costs for program administration will go up and these costs will ultimately be borne by consumers. Moreover, retailers would get 3 percent of the surcharge and user fee collection, when currently they get nothing. Finally, the BOE would receive an additional 2 percent of the surcharge and user fee collection, further attenuating the sums collected by the CPUC’s public purpose and utility reimbursement accounts. It is also likely that consumers will effectively pay for the amounts which retailers and the BOE deduct.

### **LEGAL IMPACT:**

#### **Verizon Wireless Petition for Rulemaking on Public Policy Program Surcharges and Prepaid Wireless Service (P.09-12-018)**

On December 11, 2009, Verizon Wireless filed a petition for rulemaking. Verizon Wireless requested that, in conjunction with any declaration, ruling or decision that prepaid wireless intrastate telecommunications services are subject to the CPUC’s jurisdiction and its universal service PPP surcharges, the CPUC determine what methods for collecting such surcharges will meet the CPUC’s requirements for these programs. The Verizon petition for rulemaking was dismissed without prejudice on the grounds that collection mechanisms are at the discretion of the wireless carrier and not to be decided by the CPUC. Verizon has not re-filed, but it did move to intervene in the TracFone OII at the briefing stage. That motion was denied.

#### **Pending TracFone OII (I.09-12-016)**

Phase I of this proceeding has been resolved, establishing that TracFone is a telephone corporation that is responsible for paying the CPUC user fee and universal service PPP

surcharges. The parties have now proceeded to a Phase II, directed wholly at the issue of what amounts TracFone owes in back surcharges and fees, interest, and (potentially) penalties. The CPUC held evidentiary hearings in December, 2012, the parties submitted briefs in February, 2013, and are now awaiting the Assigned ALJ's Proposed Decision in Phase II. Although Phase II was limited in scope, TracFone continued to raise all of the Phase I issues, including its allegations that it has no connection to the consumer and no way to collect the surcharges. The bill as written would undercut the CPUC's decision in Phase 1 of the TracFone OII because it inaccurately implies that surcharge collection for prepaid carriers is somehow impossible under current conditions. See below.

### **TracFone Petition for Writ at California Court of Appeal Denied**

On November 15, 2012, TracFone filed a petition for writ of review with the California Court of Appeal, arguing that the Commission's Phase I decisions erred in finding that TracFone could, and indeed was obligated to, collect and remit surcharges. *TracFone Wireless Inc. v Public Utilities Commission*, California Court of Appeal, Division 4, Case No. A137100. On March 13, 2013, the Court summarily denied TracFone's writ. The CPUC expects TracFone to continue to litigate this matter.

### **LEGISLATIVE HISTORY:**

- AB 1050 (Ma) from 2011-2012 Session. Similar to AB 300. Not enacted.
- AB 2545 (De La Torre), a similar bill introduced in the 2009-2010 Session of the Legislature that would have required, upon an appropriation being made for that purpose, the Board of Equalization (BOE) to convene a working group to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications taxes, fees, and surcharges from prepaid communications end-use customers. Not enacted.

### **PROGRAM BACKGROUND:**

Current law requires all telecommunications service providers operating in California to collect and remit percentage surcharges on their prepaid and postpaid intrastate revenues to fund the following communications programs:

- **The California LifeLine**, established in 1984, provides discounted basic telephone service to low-income households as a means to achieve universal service.
- **The California Teleconnect Fund (CTF)**, established in compliance with Assembly Bill (AB) 3643, provides discounts on selected telecommunications services to qualified entities –schools, libraries, CBOs, public health facilities.
- **The Deaf and Disabled Telecommunications Program (DDTP)** was originally created by CPUC decision and subsequently codified in Public Utilities Code



Section 2881 *et seq.* Other legislation was added to the Code, ultimately creating four components to address the needs of separate Californian constituencies who are deaf, hard-of-hearing, or otherwise disabled. The California Relay Service is one component of the DDTP.

- **The California High Cost Funds** provide a source of supplemental revenues to incumbent Local Exchange Carriers (LECs) who are Carriers of Last Resort, and whose basic exchange access line service rates would otherwise be increased to levels that would threaten universal service. In D.96-10-066, the Commission identified two programs for the purpose of determining universal service subsidy support;
  - **The California High-Cost Fund A (CHCF-A)** for the State's small Rate of Return ILECs,
  - **The California High-Cost Fund-B (CHCF-B)** for the mid-size and large ILECs.
- **The California Advance Services Fund (CASF)** supports the deployment of broadband facilities and service to unserved and underserved areas of the State. The Legislature codified the CASF in 2008.<sup>1</sup>

The CPUC has not instituted a proceeding to determine the methodology for prepaid phone service providers to contribute to California's universal service PPPs. It has been staff's position that no such determination need be made, as prepaid phone service providers already contribute at the federal level and the means of making a corollary contribution at the state level does not require a CPUC determination. The CPUC has not spoken specifically to the question of a methodology, other than to tell carriers it will accept any reasonable and accurate methods for the calculation and collection of surcharges, including the methods used by the FCC and BOE for allocation of revenues between intra- and interstate (books and records, traffic studies, safe harbor). (Neither the BOE nor the FCC currently has rules directing prepaid carriers how to collect surcharges at point of sale.)

### **End-User Billing Requirements**

CPUC Decision 96-10-066 and subsequent decisions sets forth rules for establishing the LifeLine (ULTS) program, CHCF A and B programs, and the CTF program, requiring the surcharges to be charged to end-users to pay for these programs. The CPUC may decide to update and clarify the requirements of D.96-10-066, but staff believes that prepaid carriers can and do operate today within the D.96-10-066 construct.

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<sup>1</sup> The Commission's Universal Service Public Programs are described at: <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/>.

Public Utilities Code Section 495.6 requires any city, county, or city and county that levies a utility user tax on the consumption of telephone services, including, but not limited to, the tax authorized by Section 7284.2 of the Revenue and Taxation Code, to provide to the CPUC the rate of the tax, the manner in which the tax is collected, and the frequency with which the tax is collected.

#### **OTHER STATES' INFORMATION:**

According to the industry sponsors of the bill, uniform methods of point of sale collection of taxes/surcharges on prepaid services have been adopted in at least 24 states. However, all of those states have 911 charges only and not the numerous fees and surcharges required in California. The NCSL Executive Committee Task Force on State and Local Taxation of Telecom and Electronic Services adopted point of sale model legislation in 2009. One carrier in particular, TracFone, has litigated this matter in multiple states, arguing that such legislation was necessary because surcharge remittance was allegedly impossible.

#### **SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

This bill should be opposed for the following reasons:

##### **(1) It is unnecessary**

Carriers are already collecting and remitting (or can collect and remit) surcharges and fees under the current system. The impetus for this bill is an industry position that currently no method exists for collecting communications taxes, fees, and surcharges from prepaid end-user consumers (the bill's final Section 9, for instance, implies an urgency clause is necessary because currently there is allegedly no means by which state and local charges can be collected from end-users of prepaid mobile telephony services).

Obviously, this assertion is inaccurate. All carriers are today complying with the CPUC requirement to collect and remit surcharges. (TracFone and Verizon Wireless recently began remitting surcharges and fees on their prepaid revenue.) In particular, staff's investigation has revealed that prepaid carriers today do (or can do) the following:

- Carriers use third party "point-of-sale" companies like Airtime Technologies to establish an electronic link between the carrier's computer systems and the retailer's cash register;<sup>2</sup>
- The airtime card or other medium is scanned at the point-of-sale, and that information is sent back to the carrier (thus transmitting sales

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<sup>2</sup> The reader may wish to search for the phrase "point of sale connectivity" to get an idea of the scope and variety of services found in this market niche.

- information and location of the sale back to the carrier and activating the card or other media in the carrier's system);
- The vendor collects full sales price from the customer, keeps the "retail margin percentage," and remits the remainder of the sales price to the carrier. Separately stated surcharges and fees may be similarly collected by the retailer and remitted to the carrier;
  - At the point of sale, the prepaid carrier knows from its analysis of its own traffic what the likely intrastate usage and revenue will be on any given sale of minutes, and can calculate and assess the surcharge and/or fee at point of sale based on the revenue from this intrastate usage;
  - For online or other sales directly between the carrier and the consumer, the point-of-sale scanning is unnecessary. TracFone, for example, separately calculates, assesses and states in its online sales screens a federal universal service charge (based on projected interstate usage and revenue);
  - The statutory and/or CPUC-mandated requirement that some surcharges be disclosed to the end-user can be fulfilled in a number of ways:
    - o Printed on the "airtime card" itself;
    - o Printed on the cash register receipt (the "document that is provided to the prepaid consumer ... by the seller" in the language of proposed Revenue and Taxation Code Section 42010 (f));
    - o Delivered to the end-user via text message, just as TracFone sends other text messages to the end-user;
    - o Displayed on the online purchase screen; or
    - o Communicated to consumers through the other channels (email, voicemail to the handset, etc.).

**(2) It harms ratepayers**

California ratepayers will not receive any benefits from this bill, and the state public purpose funds involved will not receive any additional revenue. Indeed, ratepayers and taxpayers will end up paying more. In fact, Californians are worse off because the bill simply raises the cost to ratepayers for the administration of surcharge collections. What is now accomplished by a single agency, the CPUC, would be accomplished by two agencies an annual increased cost of 5% of revenues (see next section), plus additional costs of \$341,351 for the CPUC. This additional cost is unnecessary and has no benefit to California.

Current law requires that surcharges and fees be collected on total intrastate revenue from telephone services, which has been interpreted to mean full retail sales revenue – see, for example, Public Utilities Code Section 432 (c)(3) (“gross intrastate revenues”); Public Utilities Code Section 2881(g) (surcharge “uniformly applied to a subscriber’s intrastate telephone service”); see *generally* D.96-10-066 (collected on “end-user” payments). Staff is currently examining remittances to ensure that all carriers are remitting surcharges and fees based on retail rather than wholesale rates.<sup>3</sup>

The proponents of the bill predict a revenue windfall because, they say, current remittances are based on wholesale sales revenue and the new system under the bill would collect surcharges based on retail sales revenue. This is incorrect, in that costs to the state outweigh new collections (see below) and extremely misleading in that carriers’ obligation is currently to remit based on retail sales. Because neither an increase in the surcharge base nor a decrease in the surcharge rate would affect the total amount collected, the notion of a revenue windfall is an illusion. The increase or decrease of the surchargeable base does not affect the total amounts to be collected from ratepayers. Over time, the ratepayers as a group will pay the same total amount regardless of the methodology or shape of the surcharge base.

Furthermore, new Revenue and Taxation Code Section 42010 (b)(2) would require CPUC-mandated surcharges to be applied to intrastate revenue defined as the “inverse of the interstate wireless safe harbor percentage established by the FCC.” Under current FCC law, the safe harbor for the intrastate/interstate allocation of revenue is 63/37.<sup>4</sup> Staff is aware, however, that one of the largest prepaid carriers has (and is currently remitting on) a “books and records” allocation of 82/18. Thus, for that carrier, the bill shrinks the surcharge base by approximately 20% (the delta between 82% and 63% of total California revenue). New Section 42010 (a) also apparently extends this 20% smaller surcharge base to carriers’ online, telephonic, or other direct sales (“each retail transaction for prepaid mobile telephone services in the state”), sales which do not involve a third party retailer (estimates for online and other direct sales run from 20-40% or more of total sales).

(3) **It creates an inequitable disparity between prepaid and postpaid consumers, thus disproportionately affecting low-income consumers and minorities**

Even assuming that the bill would promote the collection of surcharges on full retail price, any increase in revenues would be eaten up in the inefficiencies

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<sup>3</sup> Existing Revenue and Taxation Code Section 41020 (a) additionally requires that the 911 surcharge be assessed on “amounts paid by every person in the state for ... intrastate telephone communications service.”

<sup>4</sup> *Contribution Methodology Reform Order*, 21 FCC Rcd 7518, at ¶ 16 ff.

created by the bill. Most saliently, the bill would increase the costs of administration for both the user fee fund and the universal service programs because it would require payment of **3% of the total surcharges and fees collected** to the third party retailers and **2% of the total** to the BOE for its costs of administration. This 5% will ultimately be made up by prepaid consumers, the end result being prepaid consumers having to pay a higher percentage in surcharges than postpaid consumers.

Prepaid consumers are more likely than postpaid consumers to be low-income and from minority communities. According to the Minority Media and Telecommunications Council, “Prepaid plans are often available to people who otherwise face credit history challenges, ensuring connectivity for critical needs such as providing security in emergency situations, a “lifeline” for the homeless, and of utmost importance: employment. By prepaying, low-income customers do not have to pay for more services than needed, or worry about “bill shock” or enormous early termination fees or long-term, multi-year contracts.”<sup>5</sup>

By adding 5% in additional administrative expenses on top of the required program revenues, prepaid consumers will be burdened with paying for the additional and unnecessary administrative expenses associated with the bill.

#### (4) **It costs more money than it generates under current projections**

As explained above, the creation of separate processes for collecting surcharges on postpaid and prepaid revenue only increases the costs of collection, an increased cost that will be directly passed to consumers.

For example, under current projections, this bill would result in taxpayers and ratepayers losing a net \$5,545,573 annually based on current market conditions.

In 2012, the last year for which complete data is available, California wireless carriers reported \$9,100,000,000 in total intrastate revenues to the CPUC. According to data provided by CTIA to the Legislature in 2012, prepaid wireless represented 20% of overall wireless market penetration. If we assume that California’s prepaid market share mirrors the national average, as a dollar value of total intrastate revenues reported, a 20% prepaid market share equals \$1,820,000,000. California’s six universal service PPPs currently amount to 2.78% of customers’ total billed service. As a dollar value of total intrastate prepaid market share, 2.78% equals \$50,596,000 in surcharge revenues. California’s wireless carriers state that, despite a legal obligation to remit based on retail sales, their prepaid remittances to the CPUC are based on the wholesale rate that they charge the retailers who resell their airtime cards and other prepaid products at a markup. The CPUC is unaware of any carrier

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<sup>5</sup> <http://broadbandandsocialjustice.org/2011/04/a-lifeline-to-avoid-digital-divide/>

charging retailers less than a 90% wholesale rate for prepaid products. If we assume that the \$50,596,000 figure represents a 90% wholesale rate, then a 100% retail rate would be \$56,217,778. The difference between prepaid surcharge collections at the wholesale rate versus prepaid surcharge collections at the retail rate is thus \$5,621,778.

When compared to the total cost of implementing the bill, any potential benefits associated with the collection of an additional \$5,621,778 are negated. According to a December 2012 internal report from the BOE provided to the CPUC by TracFone as part of I.09-12-016, the total annual costs needed to administer and collect a new prepaid wireless services surcharge would be \$10,826,000 to that agency alone. Combined with the \$341,351 in additional permanent staff costs to the CPUC, total implementation costs would annually be \$11,167,351. Thus, the bill would cost taxpayers and ratepayers \$5,545,573 more annually than it would generate in additional surcharges based on the current prepaid wireless market.

(5) **It unnecessarily creates two separate collection and remittance processes for California universal service PPP surcharges and the CPUC user fee, increasing the risk of inefficiency and confusion, burdening consumers (particularly low-income consumers), and benefitting only the carriers and retailers**

The bill's "general provisions" (see new Revenue and Taxation Section 42002 (e) and (f)) suggest that the bill will provide a more "equitable" and "efficient and competitively neutral" means of collection. To the contrary, the bill would in effect require the CPUC to "split the rolls" for surcharge and fee collection between prepaid and postpaid services, with the former being collected by retailers and the BOE, and the latter continuing to be collected by the CPUC. Thus, the CPUC would be required to maintain its current systems for postpaid carriers, while creating a new interface with the BOE for purposes of administering the prepaid program, and then recombining revenues received (hopefully) from the BOE's "Prepaid MTS PUC Account" with the revenues from post-paid carriers in the CPUC's pre-existing accounts. The inefficiencies and opportunities for confusion and arbitrage are manifest, and will be most acute where one carrier provides both types of service.

Consumers will be burdened by AB 300 as follows:

- As administrative costs are ultimately borne by the public purpose programs, AB 300 will result in increased costs for these programs, and result in higher surcharges for users of communications services – not only the 5% paid to retailers and BOE, but also additional CPUC in-house costs.

- If these increased administrative costs are assessed only against the prepaid side of the carriers' operations, there will be a disproportionate impact on the low-income consumers who tend to use the prepaid products more.

This system benefits no one except the prepaid carriers (who under the bill may be able to avoid any duty to collect and remit), and the retailers who are currently collecting and remitting to the carriers (see above) without receiving an extra 3% of the surcharge.

**(6) It offers the illusion of simplicity but does not track carrier operations in the real world**

The bill offers the promise of a “standardized collection system” (see, e.g. Sec. 9), but there are numerous areas where the bill would clash with the existing business operations of the underlying carriers. For instance:

- The bill appears (at new Revenue and Taxation Section 42010 (b)(1)) to establish the FCC’s safe harbor percentage split between interstate and intrastate revenues (currently 63/37% for wireless) as *the sole method* for calculating the intrastate revenue base. Like the FCC, the CPUC now offers carriers the choice of methods that best fit their business model and result in an accurate determination of intrastate revenue: accounting books and records; traffic studies, or the safe harbor methodology.<sup>6</sup> Staff has evidence that at least some prepaid wireless carriers are remitting federal universal service “contributions” and 9-1-1 surcharges based not on “safe harbor” methodology, but on the “books and records” method, which can result in an allocation very different from the current 63/37 “safe harbor” split the FCC now uses for wireless carriers. The revenue ramifications of this discrepancy are described above.
- The new Revenue and Taxation Code Section 42014 (c)(1) states that the BOE “may make software available to sellers to enable a seller to match the location of a retail transaction to the applicable prepaid MTS surcharge amount and local charges.” The bill drafters appear unaware that carriers and retailers *currently use* third party software and connectivity to track the sales of prepaid airtime cards and the locations where they are sold, as described in part above. The bill

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<sup>6</sup> The FCC similarly allows for three different methods to make this allocation: books and records; traffic study; or “safe harbor.” With regard to VoIP, the California legislature endorsed these three methods of determining which revenues are subject to intrastate surcharges in the recently enacted AB 841 (see new Public Utilities Code Sec. 285 (e)). The BOE enabling statutes currently authorize “books and records” and traffic studies. See Revenue and Taxation Code Section 41020 (b)(1)(A) and (B) (which are not amended by this bill).

would thus authorize the state to pay for and provide the software which the carriers and retailers currently pay for and provide.

**(7) It shifts responsibility from carriers to retailers (and the BOE), contradicts federal law, and is likely preempted**

The bill appears inconsistent with federal law on at least two counts:

- Federal statute requires carriers to pay into the federal Universal Service Fund based on all interstate and international revenues, prepaid as well as postpaid, and indeed federal statute requires it. See 47 U.S.C. § 254 (f) (“Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State”). The bill would exempt carriers from this obligation as it relates to prepaid services, and shift this responsibility to third party retailers. The bill may thus be preempted by federal law.
- The bill also appears to conflict with 47 U.S.C. § 254 (f)’s provision that “A State may adopt regulations [for state universal service programs] not inconsistent with the Commission’s rules to preserve and advance universal service.” New Revenue and Taxation Code Section 42010 (b)(2) purports to limit the calculation of intrastate revenue to the “safe harbor” method (as discussed above), when federal law allows carriers to use “safe harbor,” traffic studies or books and records to establish an allocation of total in-state revenue to intrastate and interstate.<sup>7</sup> This inconsistency between federal and state law may allow carriers to use different and inconsistent methods for purposes of state and federal universal surcharge reporting, and raises the specter that carriers will use this discrepancy to avoid paying surcharges on a portion of their revenue (as suggested above).

**(8) It establishes a new and untried method for remittance of surcharges by prepaid MTS providers and is inappropriate for California**

The industry argues that this point of sale legislation has been adopted in a number of other states. Staff is informed and believes that this legislation has been adopted in other states only as applied to 911 surcharges, not the complex

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<sup>7</sup> See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, at ¶¶ 1, 10, 11, 17 *passim* (1998); *In the Matter of Universal Service Contribution Methodology*; *Federal-State Joint Board on Universal Service*, Report & Order, WC Docket No. 06-122, etc, 21 FCC Rcd 7518, at ¶¶ 2, 16, 29 (2006) (*Contribution Methodology Reform Order*).



of universal services state surcharges and user fees (to say nothing of the local) that exist in California.

The CPUC currently requires all telecommunications carriers to calculate and report universal service surcharges online using the Telecommunications & User Fees Filing System (TUFFS) and remit the owed monies through its link to the California State Agency EFT System. The TUFFS website allows any carrier prepaid or otherwise to calculate, report and remit surcharges via a web solution in a simple and easily manageable way. The CPUC spent substantial resources to develop this system; the bill requires that this system be largely abandoned for prepaid revenues.

(9) **It hampers CPUC ability to oversee and manage the collection of user fees and universal service PPP surcharges**

The bill would shift responsibility for collecting and remitting surcharges and fees from a limited number of telecommunications carriers operating in California, to tens of thousands of California retailers and the BOE (while leaving nominal liability for the payment of those surcharges and fees with the end user). The CPUC has no jurisdiction over individual customers or retailers (or the BOE), but does have jurisdiction over service providers, which is why the legal burden currently is on the provider to collect and remit (even if the ratepayer has the responsibility to pay). This change would have numerous undesirable effects:

- It would require the substantial rewrite of CPUC rules (e.g., G.O. 153) relating to surcharge and user fee collection;
- It would require retail sellers of prepaid mobile telephony services and the BOE to administer what are currently programs wholly under CPUC jurisdiction and oversight. This encroachment into CPUC jurisdiction would attenuate or obstruct the Commission's existing "regulatory privity" with prepaid carriers, hamper the Commission's ability to efficiently and properly administer its universal service programs, and vitiate the CPUC's independent authority to enforce collection of surcharges and fees from prepaid carriers.
- The bill could also affect the PUC's collection of surcharges on traditional postpaid services to the extent the carriers would move or purport to move minutes from the postpaid to the prepaid category.
- The bill's new Revenue and Taxation Code Section 42020 (a) would require that the audit and appeal procedures of the state Fee Collection Procedures Law (*id.* at §§ 55001 *et seq.*) govern any auditing of existing CPUC requirements, rather than the Commission's established procedures, leaving unclear whether the CPUC would

retain any independent or meaningful audit authority over the prepaid carriers' revenue.

(10) **It conflicts with current universal service PPP enabling statutes**

The bill's provisions would conflict with existing enabling statutes for the CPUC's universal service programs. For instance:

- New Revenue and Taxation Code Section 42018 (b) contemplates that, if minimal amount of prepaid service [defined as 10 minutes or less or \$5 dollars or less] is sold for a single, non-itemized price with a mobile telephony device, the seller would have the discretion to not collect the communications surcharge. The universal service and user fee statutes under which the CPUC mandates collection and remission of surcharges and fees contain no such exemption for a de minimus amount.
- At new Public Utilities Code Section 316, Revenue and Taxation Code Section 42004(l), Section 42010(f), and elsewhere throughout AB300, the bill purports to roll all of the Commission's public purpose surcharges (and user fee) into one MTS surcharge, contrary to the spirit, if not the letter, of Public Utilities Code Section 270 that commands that "moneys in the funds are the proceeds of rates and are held in trust ... [and] may not be transferred or otherwise diverted, to any fund or entity."
- The new ability of the Legislature to "appropriate" these funds under Section 42023 (c), even if for compatible purposes, would also violate Public Utilities Code Section 270.

(11) **It could interfere with the CPUC's ongoing investigation of TracFone Wireless**

In 2009, the CPUC began an investigation of TracFone Wireless. Legislation in the prepaid wireless space at this time runs the risk of interfering with that investigation. In D.12-02-032 (and in D.12-10-018 on rehearing), the CPUC determined that TracFone was required to collect and remit public purpose surcharges, and rejected TracFone's defense that collection was impossible. Phase II of that proceeding continues, where staff is seeking \$12-20 million in unpaid surcharges and fees, plus interest and penalties. (Hearings and briefing have concluded.) The strong implication (but not explicit statement) of this bill is that collection and remittance of surcharges is impossible at present, and would thus set up a possible defense for TracFone on appeal. As noted above, the bill would also vitiate or remove the Commission's authority to pursue such enforcement actions against prepaid carriers in the future.

(12) **Its amendments to current statutory terms and addition of new definitions create uncertainty and confusion**

The bill extends over 27 pages and amends or creates numerous code sections in both the Public Utilities Code and the Revenue and Taxation Code. In many of its provisions, the bill contains ambiguous terms, undefined terms, or terms that have different meanings in other telecommunications contexts (e.g., “access charges,” “MTS” charges, and the like).

Moreover, the definitions in the Public Utilities Code sections do not seem to match or be consistent with those in the Revenue and Taxation Code sections. For instance, “Mobile telephony service” is defined in a new Public Utilities Code Section 224.4 (d). The new Part 21 of the Revenue and Taxation Code, meanwhile, does not have a definition for “Mobile telephony service,” but does have one for “Prepaid mobile telephony services,” although the latter is defined with little similarity and no reference to the Public Utilities Code definition for “mobile telephony service.” (See new Revenue and Taxation Code Section 42004 (i) (p.13) of the bill).

The definition in Revenue and Taxation Code Section 42004 (i) also introduces for the first time the hitherto undefined concept of a “right to utilize a mobile device authorized by the Federal Communications Commission for mobile telephone services or information services, including the download of digital products delivered electronically, content and ancillary services ...” The proposed statute leaves unclear whether or not “information services” would now be surchargeable. The bill here appears to wade into deep water on several fronts (when and under what conditions a customer can use a handset to access mobile services of the customer’s choosing, and the dichotomy between telecommunications and information services, for instance), with no guide as to what the drafters intended to accomplish.

As written, the bill is expected to cause confusion as it authorizes a “safe harbor” method but does not amend or address the section of the Revenue and Taxation Code (Section 41020(b)) which allows carriers a choice of other calculation methods.

(13) **It is still a work in progress**

The legislation as currently drafted has missing values for the way in which the UUT collection mechanism would be calculated, as well as other key missing details. It would be inappropriate to move forward with such significant legislation that is still a work in progress, especially when carriers already have a system for collecting and remitting which is currently working.

**SUMMARY OF SUGGESTED AMENDMENTS:**

California's universal service PPPs and the collection of surcharges associated with those programs, as well as the collection of the CPUC user fee, should be eliminated from the bill.

**STATUS:**

AB 300 is pending hearing in the Assembly Utilities and Commerce Committee on April 8<sup>th</sup>, 2013.

**SUPPORT/OPPOSITION:**

None on file.

**VOTES:**

None yet.

**STAFF CONTACTS:**

Lynn Sadler, Director  
Nick Zanjani, Legislative Liaison  
Michael Minkus, Legislative Liaison

[ls1@cpuc.ca.gov](mailto:ls1@cpuc.ca.gov)  
[nkz@cpuc.ca.gov](mailto:nkz@cpuc.ca.gov)  
[min@cpuc.ca.gov](mailto:min@cpuc.ca.gov)

**BILL LANGUAGE:**

BILL NUMBER: AB 300      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Perea

FEBRUARY 12, 2013

An act to amend Sections 224.4 and 431 of, and to add Section 316 to, the Public Utilities Code, and to amend Sections 41020 and 41030 of, to add Part 21 (commencing with Section 42000) to, and to add Part 21.1 (commencing with Section 42100) to, Division 2, of the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 300, as introduced, Perea. Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection.

(1) The existing Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service to provide revenues sufficient to fund "911" emergency telephone system costs. Amounts are determined annually by the Department of Technology, and upon collection are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the "911" emergency telephone number system.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the PUC to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the PUC, except for a railroad corporation. The PUC is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized PUC budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state's telecommunications universal service programs and authorizes the PUC to impose charges for the purpose of funding those programs. Pursuant to this authority, the PUC has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge and Collection Act. The bill would establish a prepaid MTS

surcharge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined. The prepaid MTS surcharge would include the emergency telephone users surcharge, as defined, and PUC surcharges, as defined. The bill would require a seller, as defined, to collect the prepaid MTS surcharge, as provided, from a prepaid consumer, as defined, and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law. The bill would require the board, after deducting its administrative expenses, to deposit the amounts collected for the emergency telephone users surcharge into the Prepaid MTS 911 Account and to deposit the amounts collected for PUC surcharges into the Prepaid MTS PUC Account in the Prepaid Mobile Telephony Services Surcharge Fund, which the bill would establish in the State Treasury. The bill would require the PUC to annually compute the PUC's reimbursement fee and 6 universal service program fees, to post notice of those fees on its Internet Web site and to notify the State Board of Equalization of the amounts, which would be adjusted, as specified, and together would be the PUC surcharges. The bill would require the Department of Technology to annually compute, as specified, the intrastate portion of the 911 surcharge to be collected on prepaid mobile telephony services to post notice of those charges and to notify the State Board of Equalization of the amount, which would be the emergency telephone users surcharge. Local charges would be computed pursuant to the Local Prepaid Mobile Telephony Services Collection Act, discussed below.

Existing law defines mobile telephony services for purposes of the Public Utilities Code.

This bill would revise that definition and incorporate that definition for purposes of the Prepaid Mobile Telephony Service Surcharge and Collection Act.

(2) Existing law generally provides that the legislative body of any charter city may make and enforce all ordinances and regulations with respect to municipal affairs, as provided, including, but not limited to, a utility user tax in that municipality. Existing law generally provides that the legislative body of a city may levy any tax that may be levied by a charter city. Existing law further provides that the board of supervisors of any county may levy a utility user tax on the consumption of, among other things, telephone service, in the unincorporated area of the county.

This bill would, on and after January 1, 2015, and before \_\_\_\_\_, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid communications service at the rate specified in an ordinance adopted pursuant to existing law, and would instead state that the intent of the Legislature is to establish a tiered method for collection of the utility user rate tax. In addition, the bill would, on or after January 1, 2015, and before \_\_\_\_\_, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, on access to communication services or access to local "911" emergency telephone systems, in the city, county, or city and county at the rate as specified in an ordinance adopted pursuant to existing law, and would instead require the charge rate to be applied during that period under any ordinance to be at specified rates, to be collected

and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge and Collection Act. This bill would specify that a change in a utility user tax rate or access charge rate resulting from either the rate limitations or the end of the period of on and after January 1, 2015, and before \_\_\_\_ is not subject to voter approval under either statute or Article XIII C of the California Constitution. This bill would require these local charges imposed by a city, county, or a city and county be administered and collected by the State Board of Equalization and transmitted to the city, county, or a city and county.

(3) The Fee Collection Procedures Law makes a violation of any provision of the law, or of certain requirements imposed by the board pursuant to the law, a crime.

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 224.4 of the Public Utilities Code is amended to read:

224.4. (a) "Mobile data service" means the delivery of nonvoice information *over a radio band licensed by the Federal Communications Commission*, to a mobile device and includes nonvoice information communicated to a mobile telephony services handset, nonvoice information communicated to handheld personal digital assistant (PDA) devices and laptop computers, and mobile paging service carriers offering services on pagers and two-way messaging devices. *"Mobile data service" includes mobile broadband service offering connectivity over a radio band licensed by the Federal Communications Commission.* Unless specified *to the contrary*, "mobile data service" does not include nonvoice information communicated through a wireless local area network operating in the unlicensed radio bands, commonly known as a "Wi-Fi" network.

(b) "Mobile paging service" means the transmission of coded radio signals *over a radio band licensed by the Federal Communications Commission*, for the purpose of activating specific small radio receivers designed to be carried by a person and to give an aural, visual, or tactile indication when activated.

(c) "Mobile satellite telephone service" means voice communication to end users over a mobile satellite service involving the provision of commercial mobile radio service, pursuant to Parts 20 and 25 of Title 47 of the Code of Federal Regulations.

(d) "Mobile telephony service" means commercially available

interconnected mobile phone services that provide voice communication access to the public switched telephone network (PSTN) ~~via~~ by way of mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), ~~and~~ digital Specialized Mobile Radio (SMR), or another radio band licensed by the Federal Communications Commission. "Mobile telephony services" does not include mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

SEC. 2. Section 316 is added to the Public Utilities Code, to read:

316. (a) The commission shall annually, on or before October 1, of each year, commencing October 1, 2014, compute a reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Surcharge and Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code). On or before October 15 of each year, commencing October 15, 2014, the commission shall post notice of the reimbursement fee on its Internet Web site and notify the State Board of Equalization of this information.

(b) The commission shall annually, on or before October 1 of each year, commencing October 1, 2014, compute the cumulative of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Surcharge and Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code). On or before October 15 of each year, commencing October 15, 2014, the commission shall post notice of the cumulative surcharge on its Internet Web site and notify the State Board of Equalization of this information.

(c) (1) Nothing in this section restricts the commission's authority to adjust reimbursement fees or universal service fees or requires that they only be adjusted once annually.

(2) In annually computing reimbursement fees and universal service fees to be collected and remitted to the commission pursuant to this section, the commission shall adjust the fees to account for any past overcollection of fees from prepaid mobile telephony service customers resulting from a reduction in fees made subsequent to December 31 of the previous year.

(3) In annually computing reimbursement fees and universal service fees to be collected and remitted to the commission pursuant to this section, the commission may adjust the fees to account for any past undercollection of fees from prepaid mobile telephony service customers resulting from an increase in fees made subsequent to December 31 of the previous year.

(4) If both upward and downward adjustments are made to reimbursement fees and universal service fees subsequent to December 31, the commission may adjust how collections are deposited into the reimbursement and universal service accounts so that overcollections or undercollections are minimized.

(5) It is the intent of the Legislature that reimbursement fees and universal service fees be applied, as much as possible, in a



competitively neutral manner that does not favor either prepaid or postpaid payment for mobile telephony services, and that, over time, collections of state charges from prepaid and postpaid mobile telephony service customers balance out so that neither pay a disproportionate amount.

SEC. 3. Section 431 of the Public Utilities Code is amended to read:

431. (a) The commission shall annually determine a fee to be paid by every electrical, gas, telephone, telegraph, water, sewer system, and heat corporation and every other public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission other than a railroad, except as otherwise provided in Article 2 (commencing with Section 421) , *for common carriers and related businesses, and as otherwise provided in Section 316, for prepaid mobile telephony service providers* .

(b) The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to regulate public utilities less the amount to be paid from special accounts or funds pursuant to Section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

(c) This article shall not apply to any electrical cooperative as defined in Chapter 5 (commencing with Section 2776) of Part 2.

~~—On and after January 1, 1985, this article shall apply to radiotelephone utilities as defined in Section 4902 as those provisions read on December 31, 1984.~~

SEC. 4. Section 41020 of the Revenue and Taxation Code is amended to read:

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for both of the following:

(1) ~~Intrastate telephone communication service in this state commencing on July 1, 1977~~ . *The surcharge shall be applied to prepaid mobile telecommunications services pursuant to the Prepaid Mobile Telephony Surcharge and Collection Act (Part 21 (commencing with Section 42000)), and the calculation of the intrastate portion of charges for prepaid mobile telecommunications services shall be made pursuant to paragraph (1) of subdivision (b) of Section 42010.*

(2) VoIP service that provides access to the "911" emergency system by utilizing the digits 9-1-1 by any service user in this state commencing on January 1, 2009. The surcharge shall not apply to charges for VoIP service where any point of origin or destination is outside of this state.

(b) (1) Notwithstanding Section 41025, charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:

(A) Books and records kept in the regular course of business.

(B) Traffic or call pattern studies representative of the service

supplier's business within California.

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier's contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 through December 31, inclusive, of the next succeeding calendar year for purposes of this method. At such time as the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

(2) Any method chosen by a service supplier shall remain in effect for at least one calendar year.

(3) If a service supplier reasonably relies upon books and records kept in the regular course of business or any documentation that satisfies the reasonable and verifiable method, then the service supplier's determination of the portion of the billed amount attributable to services not subject to the surcharge shall be rebuttably presumed to be correct. The service supplier's choice of books and records or other method and surcharge billing practice shall also be rebuttably presumed to be fair and legal business practices.

(4) It is the intent of the Legislature that the provisions of subparagraph (C) shall not be considered to be a precedent for the application of the surcharge or any other tax or fee where a person is required to collect a tax or fee imposed upon another.

(c) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(d) The surcharge shall be paid by the service user as hereinafter provided.

(e) The surcharge imposed shall not apply to either of the following:

(1) In accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252), which is incorporated herein by reference, to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(2) To any charges for VoIP service billed to a customer where those services are provided to a customer whose place of primary use of VoIP service is outside this state.

(f) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, 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 the home service provider.

(2) "Customer" means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or with a VoIP service provider for VoIP service, or (B) if the end user of mobile telecommunications services or VoIP service is not the contracting party, the end user of the mobile telecommunications service or VoIP service. This paragraph applies only for the purpose of determining the place of primary use. The term "customer" does not include (A) a reseller of mobile telecommunications service or VoIP communication service, or (B) a serving carrier under an arrangement to serve the mobile customer outside the home service provider's licensed service area.

(3) "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) "Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service or VoIP service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) With respect to mobile telecommunications service, within the licensed service area of the home service provider.

(7) (A) "Reseller" means a provider who purchases telecommunications services or VoIP service from another telecommunications service provider or VoIP service and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service or VoIP service.

(B) "Reseller" does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(8) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed area.

(9) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(10) "VoIP service provider" means that provider of VoIP service

with whom the end user customer contracts for the provision of VoIP services for the customer's own use and not for resale.

~~(g) The amendments made to this section by the act that added this subdivision shall become operative upon the enactment of that act, except that subdivisions (a) and (b) of this section, as amended, shall become operative on January 1, 2009.~~

SEC. 5. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. (a) The ~~California~~ Department of Technology ~~Agency~~ shall determine annually, on or before October 1, to be effective on January 1 of the following year, a surcharge ~~rate~~ pursuant to subdivision (b) that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs.

(b) The surcharge ~~rate~~ shall be determined by dividing the costs (including incremental costs) the ~~California~~ Department of Technology ~~Agency~~ estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services, the interstate portion of prepaid mobile telecommunications services, and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent. In making its estimate of charges that are applicable to the intrastate portion of prepaid mobile telecommunications services, the Department of Technology shall multiply the surcharge by the inverse of the interstate safe harbor percentage established by the Federal Communications Commission for federal universal service contribution purposes, consistent with the methodology to be used by the board to calculate the prepaid MTS surcharge pursuant to paragraph (1) of subdivision (b) of Section 42010.

(c) The Department of Technology shall notify the board of the surcharge amount by October 15 of each year, commencing with October 15, 2014. The board shall utilize the surcharge amount to calculate the emergency telephone users surcharge component of the prepaid MTS surcharge pursuant to paragraph (1) of subdivision (b) and subdivision (d) of Section 42010.

SEC. 6. Part 21 (commencing with Section 42000) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. Prepaid Mobile Telephony Services Surcharge and Collection Act

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

42000. This part shall be known, and may be cited, as the Prepaid Mobile Telephony Services Surcharge and Collection Act.

42002. The Legislature finds and declares all of the following:

(a) Maintaining effective and efficient communications services, 911 emergency systems, communications-related public policy programs to promote universal service, and various local programs across the state benefits all persons with access to the telecommunications system.

(b) Providers of end-use communications services, including providers of mobile voice telecommunications services, which the Federal Communications Commission terms mobile telephony service, are required to collect and remit communications taxes, fees, and surcharges on various types of communication service revenues, as provided by existing state or local law.

(c) Consumers purchase prepaid mobile telephony services at a wide variety of retail locations and other distribution channels, as well as through service providers.

(d) Prepaid mobile telephony services are an important and growing segment of the communications industry. Prepaid mobile telephony services are often the only means by which persons with low incomes can obtain limited access to the telecommunications system.

(e) To ensure equitable contributions from end-use consumers of postpaid and prepaid mobile telephony services in this state, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services.

(f) Prepaid mobile telephony services are frequently sold by a third-party retailer that is not the provider of mobile telephony services, and collecting taxes, fees, and surcharges from prepaid consumers of mobile telephony services at the time of the retail transaction is necessary and the most efficient and competitively neutral means of collection.

(g) An equitable distribution mechanism is necessary to ensure that utility user taxes and other telecommunication charges are collected on behalf of cities and counties and are properly distributed to those jurisdictions.

42004. For purposes of this part, the following terms have the following meanings:

(a) "Board" means the State Board of Equalization.

(b) "Emergency telephone users surcharge" means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) to be billed and collected from prepaid consumers of mobile telephony services.

(c) "In this state" means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

(d) "Local charges" means those charges described in subdivision (a) of Section 42101.

(e) "Local jurisdiction" means a city, county, or city and county, which includes a charter city, county, or city and county.

(f) "Mobile telephony service" and "mobile data service" have the same meanings as defined in Section 224.4 of the Public Utilities Code.

(g) "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any city, county, city and county, municipality, district, or other political

subdivision of the state, or any other group or combination acting as a unit.

(h) "Prepaid consumer" means a person who purchases prepaid mobile telephony services in a retail transaction.

(i) "Prepaid mobile telephony services" means the right to utilize a mobile device authorized by the Federal Communications Commission for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that is purchased in advance of usage in predetermined units or dollars, with the right of usage declining in a known amount upon being used. For these purposes, "telecommunications service" and "information service" have the same meanings as defined in Section 153 of Title 47 of the United States Code.

(j) "Prepaid MTS provider" means a person that provides prepaid mobile telephony services pursuant to a license issued by the Federal Communications Commission.

(k) "Prepaid MTS surcharge" means a unitary surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Section 42010.

(l) "Public Utilities Commission surcharges" means surcharges authorized by the Public Utilities Commission to be billed and collected from end-use consumers of wireless communications services, and of which the commission provides the board with notice pursuant to Section 316 of the Public Utilities Code, including:

(1) The California High-Cost Fund-A Administrative Committee Fund program surcharge (Section 275.6 of the Public Utilities Code).

(2) The California High-Cost Fund-B Administrative Committee Fund program surcharge (Section 739.3 of the Public Utilities Code).

(3) The Deaf and Disabled Telecommunications Program Administrative Committee Fund surcharge (Section 2881 of the Public Utilities Code).

(4) The California Teleconnect Fund Administrative Committee Fund program surcharge (Section 280 of the Public Utilities Code).

(5) The California Advanced Services Fund program surcharge (Section 281 of the Public Utilities Code).

(6) The Moore Universal Telephone Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code).

(7) Public Utilities Commission reimbursement fees imposed pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.

(m) "Retail transaction" means the purchase of prepaid mobile telephony services, either alone or in combination with mobile data services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a "purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise.

(n) "Seller" means a person that sells prepaid mobile telephony service to a prepaid consumer.

CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES SURCHARGE

42010. (a) (1) On and after January 1, 2015, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction for prepaid mobile telephony services in the state. The prepaid MTS surcharge shall be collected as a percentage of the amount of each retail transaction that occurs in this state.

(2) The prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

(b) The prepaid MTS surcharge shall be annually calculated by the board by no later than November 1 of each year commencing November 1, 2014, by adding the following:

(1) The surcharge rate established pursuant to Section 41030 as of October 1 of each year, which shall be the surcharge rate established for intrastate telephone communication service in this state multiplied by the inverse of the interstate wireless safe harbor percentage established by the Federal Communications Commission for federal universal service contribution purposes, as these percentages may be revised from time to time.

(2) The Public Utilities Commission surcharges, established by the commission pursuant to Section 316 of the Public Utilities Code, as of October 1 of each year, multiplied by the inverse of the interstate wireless safe harbor percentage established by the Federal Communications Commission for federal universal service contribution purposes, as these percentages may be revised from time to time.

(c) The board shall post, for each local jurisdiction, the combined total of the rates of prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Section 42012, that each local jurisdiction has adopted, not later than November 15 of each year, on its Internet Web site. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning January 1 following the posting, except that if a local agency notifies the board pursuant to subdivision (b) of Section 42012 that it no longer imposes a local charge or local charges or that the rate of its

local charge or local charges has decreased since the previous October 1 calculation, the board shall promptly post a recalculated rate that is applicable to the jurisdiction of that local agency. A seller collecting the prepaid MTS surcharge and local charges pursuant to this part and Part 21.2 (commencing with Section 42100) may rely upon the accuracy of the information posted on the board's Internet Web site in collecting the state surcharge and local charges.

(d) Except for amounts retained pursuant to subdivision (e), all amounts of the prepaid MTS surcharge and local charges collected by sellers shall be remitted to the board pursuant to Chapter 3 (commencing with Section 42020).

(e) A seller shall be permitted to deduct and retain an amount equal to 3 percent of the amounts that are collected by the seller from prepaid consumers for the prepaid MTS surcharge and local charges.

(f) The amount of the combined prepaid MTS surcharge and local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile

telephony services by the seller, or otherwise disclosed to the prepaid consumer, at the time of the retail transaction.

(g) The prepaid MTS surcharge and any local charges are required to be collected by a seller and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the surcharge, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharge, constitute debts owed by the seller to this state.

(h) (1) Every prepaid consumer of mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until they have been paid to this state, except that payment to a seller registered under this part relieves the prepaid consumer from further liability for the surcharge and local charges. Any surcharge collected from a prepaid consumer that has not been remitted to the board shall be a debt owed to the state by the person required to collect and remit the surcharge. Nothing in this part shall impose any obligation upon a seller to take any legal action to enforce the collection of the surcharge imposed by this section and local charges.

(2) A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of mobile telephony services by this part to the extent that the prepaid consumer has paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

42012. (a) A local agency that has enacted a local charges shall provide the board with notice of the amount or level of charges that is applicable to prepaid mobile telephony service, expressed as a percentage of the sales price of prepaid mobile telephony services, on or before each October 15, commencing October 15, 2014. If any local charges are for a fixed amount for a specified period of time, the local agency shall notify the board of any such local charge that is applicable to prepaid mobile telephony services on or before October 15 of each year.

(b) A local agency that has enacted local charges shall immediately notify the board of any reduction or elimination of charges that are applicable to prepaid mobile telephony services.

42014. (a) For purposes of this part, a retail transaction occurs in the state under any of the following circumstances:

(1) The prepaid consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction).

(2) If paragraph (1) is not applicable, the prepaid consumer's address is in the state (known-address transaction). A known-address transaction occurs in the state under any of the following circumstances:

(A) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.

(B) The prepaid consumer is being billed for the retail transaction at an address in the state.

(C) If the prepaid consumer's address is known by the seller to be in the state, including if the seller's records maintained in the ordinary course of business, indicate that the prepaid consumer's



address is in the state and the records are not made or kept in bad faith.

(D) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the a payment instrument if no other address is available and the address is not given in bad faith.

(b) A retail transaction shall occur at only one location for purposes of determining local charges. If the retail transaction is a point-of-sale transaction, the consumption of, or access to, the prepaid mobile telephony service shall be presumed to be at that location. If the retail transaction is a known-address transaction, the location shall be as determined in descending order beginning with subparagraph (A) of paragraph (2), if subparagraph (A) is inapplicable, then pursuant to subparagraph (B), if both subparagraph (A) and (B) are inapplicable, then subparagraph (C), and if subparagraphs (A), (B), and (C) are inapplicable, then subparagraph (D).

(c) (1) The board may make software available to sellers to enable a seller to match the location of a retail transaction to the applicable prepaid MTS surcharge amount and local charges.

(2) A seller that relies in good faith on information provided by the board to match the location of a point-of-sale transaction to the applicable prepaid MTS surcharge amount and local charges, collects that amount from the prepaid consumer, and remits the amount to the board in compliance with this part, shall not be liable for any additional MTS surcharge or local charges and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer.

(3) For a known-address transaction, the seller may collect the prepaid MTS surcharge and local charges that corresponds to the five digit postal ZIP Code of the prepaid consumer's address. A seller that relies in good faith on information provided by the board to match the five digit postal ZIP Code of the prepaid consumer's address to the applicable prepaid MTS surcharge and local charges amount, collects that amount from the prepaid consumer, and remits the amount to the board in compliance with this part, shall not be liable for any additional MTS surcharge or local tax and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer. If the five digit postal ZIP Code of the prepaid consumer's address corresponds to more than one local charge and the amount collected and remitted to the board corresponds to one of the local charges that is applicable to that ZIP Code, the seller shall not be liable for any additional local charges and shall not be required to refund any local charges collected and paid to the board to the prepaid consumer.

42016. The prepaid MTS surcharge and local charges are imposed on the prepaid consumer of mobile telephony services and not on the seller or of any prepaid MTS provider, except that the seller shall collect and remit all of the prepaid MTS surcharges and local charges pursuant to this part and Part 21.1 (commencing with Section 42100).

42018. (a) If prepaid mobile telephony services are sold with one or more other products for a single, nonitemized price, then the prepaid MTS surcharge and local charges shall apply to the entire nonitemized price unless the seller elects to apply the surcharge and local charges to either of the following:

(1) If the purchase price for the prepaid mobile telephony services component of the bundled charge is disclosed to the prepaid consumer on a receipt, invoice, or other written documentation, the prepaid MTS surcharge and local charges may be calculated based upon that amount.

(2) If the seller can identify the portion of the bundled price that is attributable to supplying prepaid mobile telephony services by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including nontax purposes, the prepaid MTS surcharge and local charges may be calculated based upon that amount.

(b) If a minimal amount of prepaid mobile telephony service is sold for a single, nonitemized price with a mobile telephony service communications device, commonly termed a cellular telephone, the seller may elect not to apply the prepaid MTS surcharge or local charges to the transaction. For these purposes, a service allotment denominated as 10 minutes or less, or five dollars (\$5) or less, is a minimal amount.

### CHAPTER 3. ADMINISTRATION

42020. (a) The board shall administer the prepaid MTS surcharge imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the prepaid MTS surcharge imposed by this part, and references to "feepayer" shall include a person required to pay the surcharge imposed by this part, which includes the seller, who shall be required to register with the board. The audit, refund, and appeal procedures of the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)) shall apply to the collection and remittance of the prepaid MTS surcharge.

(b) (1) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(2) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(c) The board shall establish procedures to be utilized by a seller to document that a sale is not a retail transaction.

(d) The board shall establish procedures for sharing of information, other than information protected under Section 19542, related to the collection of the prepaid MTS surcharge upon the request of the Public Utilities Commission or the Department of Technology.

42021. (a) The prepaid MTS surcharge, minus the amount retained by the seller pursuant to subdivision (e) of Section 42010, is due and payable to the board quarterly on or before the last day of the

month next succeeding each quarterly period.

(b) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed using electronic media with the board.

(c) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

42022. Every seller shall register with the board. Every application for registration shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of its place or places of business, and such other information as the board may require. An application for an registration shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

42023. (a) The Prepaid Mobile Telephony Services Surcharge Fund is hereby created in the State Treasury. The Prepaid MTS 911 Account and the Prepaid MTS PUC Account are hereby created in the fund. The Prepaid Mobile Telephony Services Surcharge Fund shall consist of all surcharges, interest, penalties, and other amounts collected and paid to the board pursuant to this part, less a deduction in an amount not to exceed 2 percent of the collected amounts to refund and reimburse the board for expenses incurred in the administration and collection of the prepaid MTS surcharge.

(b) All moneys in the Prepaid Mobile Telephony Services Surcharge Fund attributable to the prepaid MTS surcharge shall be deposited as follows:

(1) That portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge shall be deposited into the Prepaid MTS 911 Account.

(2) That portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges shall be deposited into the Prepaid MTS PUC Account.

(c) Moneys in the Prepaid MTS 911 Account and the Prepaid MTS PUC Account may be appropriated by the Legislature only for the purposes for which the moneys were collected. All moneys collected pursuant to this part shall be allocated only to the entities specified in this section and shall not be used for any other purpose, including, but not limited to, loans, transfers, or uses for any other purpose, funds, or account.

SEC. 7. Part 21.1 (commencing with Section 42100) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21.1. Local Prepaid Mobile Telephony Services Collection Act

42100. (a) This part shall be known and may be cited as the Local Prepaid Mobile Telephony Services Collection Act.

(b) It is a matter of statewide concern that local prepaid mobile telephony services be collected in a uniform manner and for a limited number of rates in order for the collection be fair and uniform on a statewide basis.

42101. For purposes of this part, all of the following definitions shall apply:

(a) "Local charge" means the utility user taxes as described in Section 42102, and charges for access to communication services or to

local "911" emergency telephone systems, as described in Section 42103.

(b) "Prepaid mobile telephony services" has the same meaning as that term is defined in the Prepaid Mobile Telephony Services Surcharge and Collection Act (Part 21 (commencing with Section 42000)).

42101.5. On and after January 1, 2015, and before \_\_\_\_\_, a local charge imposed on the consumption of prepaid mobile telephony services shall be collected from the prepaid consumer at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with Section 42000), in lieu of collection of those local charges by the city, county, or city and county, including a charter city, county, or city and county.

42102. (a) Notwithstanding any other law, on and after January 1, 2015, and before \_\_\_\_\_, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a utility user tax rate on the consumption of prepaid mobile telephony service in the city, county, or city and county at the rate as specified in an ordinance authorized pursuant to Section 7284.2 or any other law is suspended, and it is the intent of the Legislature to create a tiered method for collection of the utility user tax rate.

(b) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any city, county, or city and county. A change in a utility user tax rate resulting from either the suspension of, or the termination of the suspension of, a utility user rate adopted by a city, county, or city and county set forth in subdivision (a) is not subject to voter approval under either statute or Article XIII C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a utility user tax at any rate on the consumption of communication services, including a utility user tax on the consumption of prepaid mobile telephony service, except that during the period on and after January 1, 2015, and before \_\_\_\_\_, any utility user tax rate on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

42102.5. (a) Notwithstanding any other law, on and after January 1, 2015, and before \_\_\_\_\_, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, for access to communication services or access to local "911" emergency telephone systems in the city, county, or city and county at the rate as specified in an ordinance is suspended, and the rate to be applied instead during that period under any ordinance as so adopted is the applicable of the following:

(1) In the case of a city, county, or city and county that has adopted an ordinance to impose a charge, that applies to prepaid mobile telephony service, for access to communication services or access to local "911" emergency telephone systems in the city, county, or city and county at the rate of less than \_\_\_\_\_ dollars (\$\_\_\_\_) per month per access line, including any adjustments for inflation, the rate shall be 0 percent.

(2) In the case of a city, county, or city and county that has adopted an ordinance to impose a charge, that applies to prepaid

mobile telephony service, for access to communication services or access to local "911" emergency telephone systems in the city, county, or city and county at the rate of \_\_\_\_ dollars (\$\_\_\_\_) per month per access line, including any adjustments for inflation, or more but less than \_\_\_\_ dollars (\$\_\_\_\_) per month per access line, including any adjustments for inflation, the rate shall be the percentage obtained by dividing \_\_\_\_ by fifty, rounded up to the nearest one-tenth of 1 percent.

(b) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any city, county, or city and county. A change in an access charge rate resulting from either the suspension of, or the termination of the suspension of, a charge adopted by a city, county, or city and county set forth in subdivision (a) is not subject to voter approval under either statute or Article XIII C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a charge at any rate, that applies to prepaid mobile telephony services, for access to communication services or access to local "911" emergency telephone systems in the city, county, or city and county, except that during the period on and after January 1, 2015, and before \_\_\_\_, any charge on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

42103. (a) The board shall perform all functions incident to the administration and collection of the local charges of a city, county, or a city and county, and shall collect and administer the local charges in the manner as prescribed for the collection and administration of the prepaid MTS surcharge in the Prepaid Mobile Telephony Services Surcharge and Collection Act (Part 21 (commencing with Section 42000)).

(b) All local charges imposed by a city, county, or city and county collected by the board may be deposited in the Prepaid Mobile Telephony Services Surcharge Fund, created by Section 42023, and may be drawn from that fund to make refunds, to compensate the board for its cost of administration of this part in an amount not to exceed 2 percent of the collected amounts, and shall be transmitted to the city, county, or city and county periodically as promptly as feasible. The transmittals required under this section shall be made at least once in each calendar quarter. The board shall furnish a statement indicating the amounts paid and withheld.

(c) The board shall prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

42105. (a) The city, county, or city and county shall reimburse the board for, and hold the board harmless from, any and all costs, losses, or refunds of any kind whatsoever.

(b) In the event that a legal action is commenced challenging the validity of the local charge in its entirety, as opposed to its application to an individual taxpayer, the city, county, or city and county shall place the local charge proceeds into an interest-bearing escrow account until the legality of the local charge is finally resolved by a final and nonappealable decision rendered by a court of competent jurisdiction. That provision shall be enforceable by any interested person in a proceeding for a writ of mandate.

(c) The city, county, or city and county shall be entitled to

indemnity for any and all costs, losses, or refunds from any entity, except the state, that participated in the imposition of the tax. For the purposes of this part, "participated" means any involvement in procuring the legislation that authorized the tax, or in enacting or administering the ordinance imposing the tax. Any organization that is a member of the legislative body of the district imposing the tax has participated in the imposition of the tax within the meaning of this section.

42106. (a) For purposes of this section:

(1) "Quarterly local charges" means the total amount of local charges transmitted by the board to a city, county, or city and county for a calendar quarter.

(2) "Refund" means the amount of local charges deducted by the board from a city's, county's, or city and county's quarterly local charges in order to pay the city's, county's, or city and county's share of a local charge refund due to one taxpayer.

(3) "Offset portion" means that portion of the refund which exceeds the greater of fifty thousand dollars (\$50,000) or 20 percent of the city's, county's, or city and county's quarterly local charges.

(b) Except as provided in subdivision (c), if the board has deducted a refund from a city's, county's, or city and county's quarterly local charges which includes an offset portion, then the following provisions apply:

(1) Within three months after the board has deducted an offset portion, the city, county, or city and county may request the board to transmit the offset portion to the city, county, or city and county.

(2) As promptly as feasible after the board receives the city's, county's, or city and county's request, the board shall transmit to the city, county, or city and county the offset portion as part of the board's periodic transmittal of local charges.

(3) The board shall thereafter deduct a pro rata share of the offset portion from future transmittals of local charges to the city, county, or city and county over a period to be determined by the board, but not less than two calendar quarters and not more than eight calendar quarters, until the entire amount of the offset portion has been deducted.

(c) The board shall not transmit the offset portion of the refund to the city, county, or city and county if that transmittal would reduce or delay either the board's payment of the refund to the taxpayer or the board's periodic transmittals of local charges to other cities, counties, or city and county.

42107. The city, county, or city and county shall pay to the board its costs of preparation to administer the collection of local charges. The city, county, or city and county shall pay such costs monthly as incurred and billed by the board. Such costs include all preparatory costs, including costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing of forms, developing instructions for the board's staff and for taxpayers, and other necessary preparatory costs which shall include the board's direct and indirect costs as specified by Section 11256 of the Government Code. Any disputes as to the amount of preparatory costs incurred shall be resolved by the Director of Finance, and his or her decision shall be final. The maximum amount of all preparatory costs to be paid by the

city, county, or city and county shall not, in any event, exceed \_\_\_\_\_ thousand dollars (\$\_\_\_\_\_).

42108. (a) There shall be no recovery from the state for the imposition of any unconstitutional or otherwise invalid local charge that is collected pursuant to this part.

(b) If a final and nonappealable decision of a court of competent jurisdiction determines that a local charge is unconstitutional or otherwise invalid, the city, the county, or the city and county, as the case may be, shall transfer to the board the revenues derived from the unconstitutional or invalid local charge necessary to reimburse claimants for the unconstitutional or invalid local charge paid, including interest allowed under Section 6907. The board shall deposit these revenues in a segregated impound account in the Prepaid Mobile Telephony Services Surcharge Fund, and shall administer any refunds necessitated in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)).

42109. The board shall annually prepare a report showing the amount of both reimbursed and unreimbursed costs incurred by it in administering the collection of local charges pursuant to this part.

42110. The board or any person authorized in writing by it may examine the books, papers, records, and equipment of any person selling prepaid mobile telephony services and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide a standardized collection mechanism as soon as possible by which state and local charges can be collected from end-users of prepaid mobile telephony services, thereby permitting needed financial support for programs necessary to serve the public or telecommunications users, it is necessary that this act take effect immediately.