

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 8, 2014

To: The Commission
(Meeting of April 10, 2014)

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

Subject: **AB 1717 (Perea) – Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection.**
As amended: April 2, 2014

SUMMARY OF BILL

*This proposed legislation is substantially identical to 2013 legislation, introduced as AB 300 and subsequently vetoed, with the exception of a few changed dates. **Note:** the bill was amended on April 2, 2014 to remove the sunset provision.*

Beginning January 1, 2016, AB 1717 would create entirely new collection and remittance systems for prepaid mobile telephony services (MTS). This bill would establish a point of sale mechanism to pay:

- California Public Utilities Commission (CPUC) user fee,
- California's six universal service public purpose program (PPP) surcharges,
- Emergency (911) surcharge collected by the Board of Equalization (BOE), and
- Local utility user taxes (UUTs).

The charges apply to postpaid and prepaid, as well as wireline and wireless, telephone services. Specifically, AB 1717 would:

- Enact the "Prepaid Mobile Telephony Surcharge and Collection Act" as Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code. The bill mandates a standardized collection mechanism for retail sellers of prepaid mobile telephony services (generally sold 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 also adds or amends sections of the Public Utilities Code to conform to the provisions of the Act.
- Aggregate the CPUC user fee, California's six universal service PPP surcharges, and the 911 surcharge into one "prepaid MTS surcharge". The prepaid MTS surcharge would be imposed on all prepaid mobile telephony services, both those sold through third party retailers and those sold directly by the carrier (online, over the phone, or otherwise).

- Require that on and after January 1, 2016, the aggregated “prepaid MTS surcharge” be imposed on the “sales price” of each “retail transaction” of “prepaid mobile telephony service,” as the 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.
- Require the CPUC to annually establish the wireless prepaid surcharges and user fee as a “percentage of the sales price for mobile telephony services” (new Public Utilities Code Section 319) separately from the surcharges established for all other types of communications service. The bill mandates how the surcharges and fee would be calculated, requires the CPUC to determine the wireless prepaid surcharge percentage on or before October 1, 2015, post said surcharge percentage on its website, and notify the State Board of Equalization (BOE) of the surcharge percentage.
- Apply the MTS surcharge as a percentage of the sales price of each retail transaction for prepaid mobile telecommunications services (Revenue and Taxation Code Section 41020 (a)(1).)
- Establish “The Prepaid 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) allows the Legislature to appropriate funds from the Prepaid MTS PUC Account, but “only for the purposes for which the moneys were collected.”
- Amend the Revenue & Taxation Code to include the 911 surcharge on prepaid revenue in the Prepaid MTS Surcharge Fund, under a Prepaid MTS 911 Account. The bill also preempts the collection methodology for local utility users taxes on telephone service (UUTs) in all local ordinances, so that the 911 surcharge and UUTs assessed on prepaid revenues can be collected and remitted in a process unique for prepaid wireless phone service (Revenue and Taxation Code Sections 41020 *et seq.*, and 42100(d)).
- Permit non-carrier retail sellers of prepaid mobile services to retain 2% of all charges collected from prepaid sales as compensation for facilitating the collection (Revenue and Taxation Code Sections 42010(e)).
- Require prepaid mobile telephony service providers to continue to remit the universal service surcharges and the user fee directly to the CPUC through Dec. 31, 2015. From January 1, 2016 forward the new MTS surcharge established by the bill would apply.
- Fix rates for UUT collections based on prevailing UUTs, never to exceed an amount approved by city and county voters.
- Make the prepaid customer liable for payment of all fees, surcharges, and UUTs.

- Make third-party retailers and the BOE responsible for the collection and remittance of taxes, surcharges, and fees.
- Require prepaid wireless telephone carriers to continue to remit the universal service surcharges and the CPUC user fee directly to the CPUC through Dec. 31, 2015. From January 1, 2015 through Dec. 31, 2017, the new MTS surcharge established by the Act would apply, resulting in one year of double payment.
- Allows the BOE to deduct the entirety of its costs to administer the Act from the sum of revenues received from retailers before distributing funds for programmatic purposes.
- The Act includes an urgency clause.

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 CPUC universal service public purpose program surcharges and user fee, the 911 surcharge, and local taxes on prepaid wireless service to a point of sale system. This recommendation is based on sample legislation endorsed in 2009 by the National Conference of State Legislatures (NCSL), related to E911 services (only). The author claims that no surcharge collection mechanism is currently in place for prepaid service and that AB 1717 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.

OTHER PERTINENT INFORMATION

On October 10, 2013, Governor Brown vetoed AB 300, stating “There is no question that the state needs an effective system for capturing local taxes related to the sale of prepaid phones. The solution, however, proposed by the bill is duplicative, complex, and will result in significant and unnecessary costs to the state. I encourage the author to partner with the local governments and State Agencies affected by these revenues and craft a bill with a more cost effective solution.”

The CPUC has stated it remains open to considering equitable and efficient alternatives to current practice, which would ensure that revenues resulting from the sale of prepaid cellular calling cards are properly tracked, that universal service surcharges and CPUC user fees are properly assessed on those fees, and that such surcharges and fees are remitted to the CPUC. The CPUC has also opined that any solution must be consistent with federal law and has solicited stakeholder participation in meeting the Governor’s stated objectives.

Carriers’ claims that they do not know who buys their cards, where they are sold, or what happens at point-of-sale and thus cannot collect surcharges from third-party sales of telephone services, are not credible. All major carriers are currently complying with the requirement to collect and remit surcharges.

EXPLANATION OF BILL’S IMPACT ON CPUC PROGRAMS, PRACTICE & POLICY

Division Analysis: This bill and the new collection system it proposes are unnecessary to carry out state policy. Carriers are currently collecting and remitting the required fees and surcharges as required by law.¹ The CPUC notes that these changes do not improve safety, reliability, affordability or the viability of service to California consumers.

Prepaid carriers have at least three points of contact with a customer, and necessarily know when a customer adds time to an existing prepaid account. Points of contact include:

- (1) *the point of activating the handset* and setting up an account – it appears that all or almost all carriers obtain from end-users the Zip Code of the primary place of use (needed to assign a telephone number), if not full address information, from the customer; the customer then selects a service plan;
- (2) *the point of sale*, where a direct electronic link to cash register is established between the retailer and the carrier, or the retailer and the carrier’s aggregator (necessary to activate cards on purchase);
- (3) at the *point where the newly purchased airtime card is “redeemed”* on the system, and minutes are associated with and credited to the account.

¹ Carriers will sometimes claim that, as to prepaid revenue, they have to pay the surcharges and fees “out of pocket,” because they cannot collect from the end-user. The CPUC notes all dollars currently remitted as surcharges or fees are ultimately derived from the end-user.

AB 1717 represents a significant shift in current policy. It would shift the legal responsibility to collect and remit surcharges from the carriers (telephone corporations and VoIP providers) to third-party retailers, for all sales of prepaid telephone service through those third-party retailers (if not all prepaid sales).

This bill sets up a new process whereby the third-party retailers 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). The BOE would then send the moneys to the CPUC. Consequently, the proposed legislation will ultimately result in higher universal service costs for consumers due to the added administrative processes and costs mandated by the bill.

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, the proposed legislation lessens the CPUC's comprehensive oversight over carriers and the universal service PPPs, creates inefficiencies and extra costs, and invites carrier arbitrage.

The bill does not track carrier regulations in the real world.

SAFETY IMPACT

AB 1717 does not improve safety. Further, first responders have raised concerns in their opposition letters that the SETNA fund (State Emergency Telephone Number Account) for 911 operations, has no mechanism to raise its fees should its costs increase. The costs will increase due to the new state process and system for collection. Therefore, this proposed legislation puts at risk an already declining 911 fund.

RELIABILITY IMPACT

Does not improve reliability.

RATEPAYER IMPACT

Due to the multilayered and complex collection scheme, and new administrative apparatus envisioned by this bill, it is probable that all ratepayers, postpaid as well as prepaid, will pay more. The bill provides for paying the retailers 2%, unspecified millions of dollars to the BOE for the new system and hundreds of thousands of dollars to the CPUC for new administrative processes.

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 divide the calculation of wireless intrastate revenues between prepaid and postpaid services, with the former being collected by the BOE and the latter continuing to be collected by the CPUC. (BOE will have to split its rolls in a similar fashion, between postpaid and at least the third-party retailer portion of prepaid.) Both CPUC and BoE

would be required to maintain their current systems for postpaid carriers, while creating new systems for prepaid customers. In the CPUC's case, this would mean a new interface with the BOE for purposes of administering the prepaid program, and then recombining revenues received 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 will be most acute where one carrier provides both types of service. The resulting increased costs point to higher surcharges on users of communications services.

The proponents of the bill erroneously 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 assertion is misleading, because revenue needed for public purpose programs and user fees is a fixed sum, independent of the means of collection. If the surcharge base is increased, the surcharge rate would decrease, because the revenue target would remain the same (except where additional dollars are needed to fund for the new systems and retailer fee described above).

Moreover, the bill **creates an inequitable disparity between prepaid and postpaid consumers, thus disproportionately affecting low-income consumers and minorities.** Additional costs will likely be made up by prepaid consumers, as the MTS surcharge would have to be set equivalently higher to pay for this fee to the retailers. Prepaid consumers are more likely than postpaid consumers to be low-income and from minority communities.

FISCAL IMPACT

This bill would increase the CPUC's workload. The total fiscal impact to the CPUC for the first two years after enactment is estimated at \$631,720.00, not counting any additional costs for litigation defense which cannot be accurately predicted at this time. After the first two years, the annual fiscal impact is estimated at \$366,844.00. The CPUC units impacted: the Communications Division, the Division of Water and Audits, the Fiscal Office, IT Branch, Legal Division, and Administrative Law Judge Division. The fiscal impact could become much larger if the yearly determination of a "mobile telephone surcharge" becomes contentious.

Current Mechanism for Comparison

The collection of carrier surcharges is currently overseen at the CPUC with the recently implemented, substantially automated TUFFS (Telecommunications and User Fee Filing System).

New Mechanism under AB 1717

A new CPUC staff unit would interface with the new BOE collection mechanism and the Prepaid MTS PUC Account, and integrate the BOE-collected revenue data on prepaid services with the CPUC-collected revenue on postpaid services, in order to calculate the fee and surcharge percentages applicable to prepaid services (see proposed Section 319).

In effect, staff would have two different processes to administer where there is now only one, and will have to meld those in a yearly procedure to set the CPUC prepaid percentages. Staff would have to develop mechanisms and operational flows for setting the "reimbursement fee" and the PPP surcharges "as a percentage of the sales price paid for prepaid mobile telephony services" (a calculation not done now), and do this every year.

Because the procedures outlined in the bill for the state public purpose programs are entirely new and untested, the additional costs to the ratepayer are based on estimates from CPUC staff, other state agencies and comments from carriers. Among other things, AB 1717 would likely require the CPUC to substantially rewrite its rules (in General Order 153, among other places) relating to surcharge and user fee collection.

Enforcement

The Act would shift responsibility for surcharge collection from a manageable number of carriers to hundreds of retailers with thousands of locations. This would likely complicate enforcement.

Enforcement against non-compliant carriers would also proceed on dual tracks: (1) the CPUC's existing investigatory and enforcement procedures as applied to postpaid services; and (2) through as yet unspecified cooperative mechanisms developed for application to prepaid services under the enforcement provisions of the Act. Audit procedures of carriers offering postpaid and prepaid service options (including the largest telecommunications carriers in the state) would also proceed on two tracks. If the third-party retailers remit surcharges in bulk to BOE under the Act, without distinctions between carriers, this would further attenuate the CPUC's ability to effectively audit these carriers.

Administration of Existing Programs

Under existing programs, the CPUC estimates each year the revenue surcharge base for the next year. In aid of this estimate, the CPUC asks carriers for forecasts of intrastate revenues. To set general surcharge rates, and the MTS under AB 1717, the CPUC would have to ask carriers to distinguish between postpaid and prepaid revenue, and between prepaid revenue from direct sales and prepaid revenue from third party retailers. It is unclear whether carriers would cooperate in providing the more complicated data sets needed for revenue projection under AB 1717.

ECONOMIC IMPACT

AB 1717 loses the state money. It is estimated to cost more money than it generates under current projections. BoE estimates a net \$1.7 million revenue loss per year if implemented. These costs to the BoE would come from the state General Fund.

AB 1717 loses local government money. The formulas contained in this proposed legislation result carriers owing a lesser amount of UUTs than they owe now.

AB 1717 costs the ratepayer money. By "splitting the rolls" and creating a bifurcated collection system for public purpose surcharges and user fees, this bill would raise administrative charges that are passed on to the consumer.

Retailers would receive 2 percent of the surcharge, user fee collection, and UUTs; currently they receive nothing. Some retailers have objected in their opposition letters that this reimbursement is not enough to cover their additional costs.

LEGAL IMPACT

- (1) The bill would shift responsibility from carriers to retailers (and the BOE), and therefore contradicts federal law and would likely be preempted by federal law.

- (2) AB 1717 may also be incompatible with federal statute, 47 USC § 254(f), which sets out the state's role in universal service:

State authority - A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. *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.*

- (3) AB 1717 may also be incompatible with section 254(f) in that the MTS surcharge assessed by the Commission under the bill will almost inevitably presume an interstate/intrastate split different than what a carrier reports to the federal collection authority (the Universal Service Advisory Corp., or USAC).
- (4) Additionally AB 1717 creates multiple litigation risks regarding:
- a. Differing and unequitable prepaid vs. postpaid costs;
 - b. CPUC offset to overpayments, calculation of sales price, verification of intrastate revenue, etc.; and
 - c. Creation of and posting of CPUC methodology for each program surcharge.
- (5) The bill's new Revenue and Taxation Code Section 42020(a) vests enforcement with the BoE, and would require that the audit and appeal procedures of the state Fee Collection Procedures Law (*id.* at §§ 55001 *et seq.*) apply, leaving unclear whether the CPUC would retain any independent or meaningful audit authority over the prepaid carriers' revenue.
- (6) AB 1717 conflicts with current universal service PPP enabling statutes:
- a. 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.
 - b. At new Public Utilities Code Section 319, Revenue and Taxation Code Section 42004(l), Section 42010(f), and elsewhere throughout AB 1717, the bill purports to roll all of the CPUC'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."
- (7) It would also be extremely difficult under the proposed point-of-sale mechanism to allow Lifeline customers to be exempt from the surcharges, as they are under General Order 153. This would require third-party retailers to verify whether or not a given customer at the cash register was a qualified Lifeline customer.

- (8) The bill amendments to current statutory terms and addition of new definitions create uncertainty and confusion:
- a. The bill extends over 43 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).
- (9) 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 currently defined in 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(j) of the Act).

- (10) The definition in Revenue and Taxation Code Section 42004(j) 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 telecommunications 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, including 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.
- (11) AB 1717 contains new language that incorrectly suggests that prepaid mobile telephony service providers are not common carriers. Proposed amended P.U. Code Section 431(a) by referencing a user fee “for common carriers and related businesses, and as otherwise provided in Section 319, for prepaid mobile telephony service providers,” suggests a difference in categories. Mobile telephony service carriers remain telephone corporations under California law, and telecommunications carriers – and thus common carriers – under federal law. See 47 U.S.C. §§ 153(11) and (51); *Verizon v. FCC*, DC Circuit Decision, January 14, 2014.

Current Proceedings impacted by AB 1717

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.

TracFone OII (I.09-12-016)

In Phase I of this proceeding D.12-02-032 established that TracFone is a telephone corporation that is responsible for paying the CPUC user fee and universal service PPP surcharges. In Phase II, D.14-01-037 ordered TracFone to pay approximately \$24.4 million in past-due surcharges and interest to the various Public Purpose Programs. This decision is currently under appeal. 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.

TracFone Payment of \$24.4 Million

On February 14, 2014 TracFone submitted a check under protest to the CPUC in the amount of approximately \$24.4 million as ordered in D. 14-01-037 for past due surcharges, user fees, and applicable interest.

TracFone Application for Rehearing of D.14-01-037

On February 21, 2014, TracFone filed an application for rehearing of D.14-01-037, alleging that the decision violates TracFone's rights under the U.S. Constitution and the California Constitution, and requesting that the approximately \$24.4 million amount paid by TracFone be refunded to the company. The bill as written would undercut the CPUC's decision in the TracFone OII because it inaccurately implies that surcharge collection for prepaid carriers is somehow impossible under current conditions.

NOTE: 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, where they are at liberty to collect the surcharges as a line item or not, and the means of making a corollary contribution at the state level does not require a CPUC determination. The CPUC has told 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.

Also, the bill would shift responsibility from a limited number of telecommunications carriers to tens of thousands of California retailers and leave enforcement with the BOE. 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 require the substantial rewrite of CPUC rules (e.g., G.O. 153) relating to surcharge and user fee collection; require third-party retailers and the BOE to administer what are currently programs wholly under CPUC jurisdiction and oversight, thus attenuating visibility into the totality of the carriers' operation.

LEGISLATIVE HISTORY

AB 300 (Perea) virtually identical to AB 1717. AB 300 was passed and vetoed in 2013.

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.

BACKGROUND INFORMATION ON IMPACTED PROGRAMS, PRACTICE OR POLICY

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;

- o The California High-Cost Fund A (CHCF-A) for the State's small Rate of Return LECs,
- o The California High-Cost Fund-B (CHCF-B) for the mid-size and large LECs.

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 2008.²

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, subject to audit, 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 (although the end-user pays the surcharge, the carriers are required to assess, collect, and remit). 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, 28/30 bills considered in those states have adopted point-of-sale methods for 911 charges only, and not the numerous fees and surcharges required in California, and not for UUTs. The NCSL Executive Committee Task Force on State and Local Taxation of Telecom and Electronic Services adopted point of sale model legislation in 2009, but only for 911 charges. One carrier in particular, TracFone, has litigated this matter in multiple states, arguing that such legislation was necessary because surcharge remittance was allegedly impossible. Its claims appear to have been repeatedly rejected.

SUMMARY OF SUGGESTED AMENDMENTS

Staff recommends an Oppose Unless Amended position.

In response to the Governor's veto of AB300 the CPUC has been working with stakeholders to develop a cost effective solution that addresses the point-of-sale collection issues asserted by providers of prepaid wireless services while at the same time creating a more flexible regulatory structure in California for telecommunications providers to collect and remit surcharges and fees. The goal of this is to move California closer to the federal surcharge collection regime, where the carrier may collect surcharges from end users as a separate line item, but is not required to do so.

At this time, the concept is specific to state programs and funding mechanisms, and does not address local utility user tax issues. (The local UUT issues revolve primarily around establishing presumptions about the location of the sale. Discussions on this issue are pending resolution of issues addressed here.)

The state telecommunications surcharges and fees are as follows:

² The Commission's Universal Service Public Programs are described at: <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/>.

- California Public Purpose Programs
 - Lifeline, DDTP, CTF, CASF, CHCF-A, CHCF-B
- CPUC User Fee
- Emergency Telephone Users Surcharge (911)

The proposed concepts are designed to avoid:

- additional state bureaucracy;
- new and additional costs for California taxpayers;
- a negative impact on state program funding; and
- the loss of oversight related to these programs.

The specific elements of staff's proposal are as follows:

Surcharge Obligation

1. End-users continue to pay surcharges and fees.
2. The provider (telephone carrier or VoIP provider) remains responsible for the collection and remittance of surcharges and user fees.

Surcharge Collection

3. The provider may elect to collect the universal service program surcharges and user fees from end-users as a separately stated charge or line item, at the point of sale, but is no longer required to do so.
4. When collected as a separate line item, surcharges and user fees may be identified in the aggregate as "California universal service and 911 surcharges and utility user fees."
5. When collected as part of a rate and not as a separate line item, customer disclosure must be provided in materials associated with the sale, indicating that the service being purchased includes California universal service and 911 surcharges and utility user fees. Such identification may also be made in any material associated with the sale or by another means to the consumer. As used herein, material associated with the sale includes but is not limited to the card, packaging, a cash register receipt, text message, email or similar notice.
6. Providers are allowed to collect at point of sale, or by decrementing the end user's account at time of the card redemption or use. If a decrement method is used, disclosure at the time of purchase must be provided indicating that this will occur.

7. Providers are allowed to use other methods that are consistent with the telephone corporation or VoIP provider's business practices as long as the method assures customer disclosure and the proper collection and remittance of surcharges and fees.

Surcharge Assessment

8. Surcharges would continue to be based on the retail price of communications services.
9. Providers may use one of three methods to determine the allocation between interstate and intrastate revenue, consistent with the method used by the provider to determine interstate revenue for federal universal service surcharge purposes.
 - a. Books & records
 - b. Traffic study
 - c. FCC safe harbor
10. In addition to the collection methods described above, providers may also assess surcharges and fees based on total revenues or gross receipts from the sale of the prepaid service.

Direct and Indirect Sales

11. A direct sale is one made by the provider, or its agent, to the end user. This would include online sales, sales through a telephone corporation or VoIP provider's Interactive Voice Response or customer service channel, sales over an enabled handset, or sales at a retail location owned or controlled by the telephone corporation or VoIP provider, or the agent of same.
12. An indirect sale includes any sale made at a third party retailer not affiliated with or acting as an agent of the telephone corporation or VoIP provider.
13. For indirect sales, the third party retailer is allowed to collect surcharges and fees on behalf of the provider, and may remit those monies to the provider at the same time the retailer remits revenue from the sale of services.

Surcharge Remittance

14. The provider continues to be responsible for remitting the universal service surcharges and fees to the CPUC and the 911 surcharge to BOE.
15. A provider may utilize an authorized agent to collect and remit surcharges and fees on its behalf.

VOTES

None yet. Set to be heard the first time by the Assembly Utilities & Commerce on April 21, 2014.

ATTACHMENTS

AB 1717, as amended April 2, 2014
Table: UUT Impact

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AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1717

Introduced by Assembly Member Perea

February 13, 2014

An act to ~~amend, repeal, and add~~ *amend* Sections 224.4 and 431 of, and to add and ~~repeal~~ Section 319 of, *to*, the Public Utilities Code, and to amend ~~Section 41020 of, to amend, repeal, and add~~ *Sections 41020 and* 41030 of, ~~to add~~ Section 41020.5 *to*, and to add and ~~repeal~~ Part 21 (commencing with Section 42001) and Part 21.1 (commencing with Section 42100) of Division 2 of, *to*, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1717, as amended, 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 Office of Emergency Services, 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 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 commission 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 commission, except for a railroad corporation. The commission 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 commission 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 commission to impose charges for the purpose of funding those programs. Pursuant to this authority, the commission has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge 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 commission to annually compute for prepaid mobile telephony services the commission's reimbursement fee and 6 universal service program surcharges, to post notice of those fees and surcharges on its Internet Web site, and to notify the State Board of Equalization and the Office of Emergency Services of the amounts and the computation method used to determine the amounts, which would be adjusted, as specified, and together would be the PUC surcharges.

The bill would require the commission, 30 days prior to adopting any adjustment to a reimbursement fee or universal service surcharge on both postpaid and prepaid intrastate service to prepare a prescribed resolution or other public document proposing the fee or surcharge adjustment and explaining the calculation of the new fee or surcharge, as specified, and would require the commission to make it available to the public and on the commission's Internet Web site.

The Moore Universal Telephone Service Act establishes the Universal Lifeline Telephone Service program in order to provide low-income households with access to affordable basic residential telephone service. Existing decisions of the commission exempt lifeline services from the commission's reimbursement fee and the 6 end-user surcharges that fund the state's 6 universal service programs.

This bill would exempt the purchase in a retail transaction in this state of prepaid mobile telephony services, either alone or in combination with mobile data or other services, by a consumer from the prepaid MTS surcharge and specified local charges if certain conditions are met, including that the prepaid consumer is certified as eligible for the state lifeline program or federal lifeline program.

The bill would require the Office of Emergency Services 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. The bill would require the Office of Emergency Services to prepare a prescribed summary of the calculation of the proposed 911 surcharge and make the summary available to the public and on its Internet Web site, as specified. 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 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~~, 2016, 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 require the utility user tax rate to be applied during that period under any ordinance to be at specified tiered rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. In addition, the bill would, on or after January 1, ~~2015~~, 2016, 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 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 suspension period 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, deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, which this bill would create, and transmitted to the city, county, or a city and county, as provided.

This bill would allow a consumer to rebut the presumed location of a retail transaction for purposes of the collection of the local charges by filing a claim and declaration under penalty of perjury.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

~~(3) The bill would repeal these provisions on January 1, 2019.~~

~~(4)~~

(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.

(5)

(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:

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

3 224.4. (a) "Mobile data service" means the delivery of
4 nonvoice information over a radio band licensed by the Federal
5 Communications Commission, to a mobile device and includes
6 nonvoice information communicated to a mobile telephony services
7 handset, nonvoice information communicated to handheld personal
8 digital assistant (PDA) devices and laptop computers, and mobile
9 paging service carriers offering services on pagers and two-way
10 messaging devices. "Mobile data service" includes mobile
11 broadband service offering connectivity over a radio band licensed
12 by the Federal Communications Commission. Unless specified to
13 the contrary, "mobile data service" does not include nonvoice
14 information communicated through a wireless local area network
15 operating in the unlicensed radio bands, commonly known as a
16 "Wi-Fi" network.

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

22 (c) "Mobile satellite telephone service" means voice
23 communication to end users over a mobile satellite service
24 involving the provision of commercial mobile radio service,

1 pursuant to Parts 20 and 25 of Title 47 of the Code of Federal
 2 Regulations.

3 (d) “Mobile telephony service” means commercially available
 4 interconnected mobile phone services that provide voice
 5 communication access to the public switched telephone network
 6 (PSTN), or a successor network, by way of mobile communication
 7 devices employing radiowave technology to transmit calls,
 8 including cellular radiotelephone, broadband Personal
 9 Communications Services (PCS), digital Specialized Mobile Radio
 10 (SMR), or another radio band licensed by the Federal
 11 Communications Commission. “Mobile telephony services” does
 12 not include mobile satellite telephone services or mobile data
 13 services used exclusively for the delivery of nonvoice information
 14 to a mobile device.

15 (e) ~~This section shall remain in effect only until January 1, 2019,~~
 16 ~~and as of that date is repealed, unless a later enacted statute, that~~
 17 ~~is enacted before January 1, 2019, deletes or extends that date.~~

18 SEC. 2. ~~Section 224.4 is added to the Public Utilities Code, to~~
 19 ~~read:~~

20 ~~224.4. (a) “Mobile data service” means the delivery of~~
 21 ~~nonvoice information to a mobile device and includes nonvoice~~
 22 ~~information communicated to a mobile telephony services handset,~~
 23 ~~nonvoice information communicated to handheld personal digital~~
 24 ~~assistant (PDA) devices and laptop computers, and mobile paging~~
 25 ~~service carriers offering services on pagers and two-way messaging~~
 26 ~~devices. Unless specified, “mobile data service” does not include~~
 27 ~~nonvoice information communicated through a wireless local area~~
 28 ~~network operating in the unlicensed radio bands, commonly known~~
 29 ~~as a “Wi-Fi” network.~~

30 (b) ~~“Mobile paging service” means the transmission of coded~~
 31 ~~radio signals for the purpose of activating specific small radio~~
 32 ~~receivers designed to be carried by a person and to give an aural,~~
 33 ~~visual, or tactile indication when activated.~~

34 (e) ~~“Mobile satellite telephone service” means voice~~
 35 ~~communication to end users over a mobile satellite service~~
 36 ~~involving the provision of commercial mobile radio service,~~
 37 ~~pursuant to Parts 20 and 25 of Title 47 of the Code of Federal~~
 38 ~~Regulations.~~

39 (d) ~~“Mobile telephony service” means commercially available~~
 40 ~~interconnected mobile phone services that provide access to the~~

1 public switched telephone network (PSTN), or a successor network,
2 via mobile communication devices employing radiowave
3 technology to transmit calls, including cellular radiotelephone,
4 broadband Personal Communications Services (PCS), and digital
5 Specialized Mobile Radio (SMR). “Mobile telephony service”
6 does not include mobile satellite telephone services or mobile data
7 services used exclusively for the delivery of nonvoice information
8 to a mobile device.

9 (e) ~~This section shall become operative on January 1, 2019.~~

10 ~~SEC. 3.~~

11 *SEC. 2.* Section 319 is added to the Public Utilities Code, to
12 read:

13 319. (a) The commission shall annually, on or before October
14 1 of each year, commencing October 1, 2015, compute a
15 reimbursement fee as a percentage of the sales price for prepaid
16 mobile telephony services, to be effective on January 1 of the
17 following year and to be collected and remitted pursuant to the
18 Prepaid Mobile Telephony Services Surcharge Collection Act (Part
19 21 (commencing with Section 42001) of Division 2 of the Revenue
20 and Taxation Code). On or before October 8 of each year,
21 commencing October 8, 2015, the commission shall post notice
22 of the reimbursement fee on its Internet Web site and notify both
23 the Office of Emergency Services and the State Board of
24 Equalization of this information as well as the computation method
25 used to determine the reimbursement fee.

26 (b) The commission shall annually, on or before October 1 of
27 each year, commencing October 1, 2015, compute the cumulative
28 amount of the telecommunications universal service surcharges
29 as a percentage of the sales price for prepaid mobile telephony
30 services, to be effective on January 1 of the following year and to
31 be collected and remitted pursuant to the Prepaid Mobile Telephony
32 Services Surcharge Collection Act (Part 21 (commencing with
33 Section 42001) of Division 2 of the Revenue and Taxation Code).
34 On or before October 8 of each year, commencing October 8, 2015,
35 the commission shall post notice of the cumulative surcharge on
36 its Internet Web site and notify both the Office of Emergency
37 Services and the State Board of Equalization of this information
38 as well as the computation method used to determine the
39 cumulative surcharge.

1 (c) (1) Except for the fees and surcharges computed pursuant
2 to subdivisions (a) and (b), this section neither restricts the
3 commission's authority to adjust reimbursement fees or universal
4 service surcharges nor requires that they only be adjusted once
5 annually.

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

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

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

25 (5) It is the intent of the Legislature that reimbursement fees
26 and universal service surcharges be applied, as much as possible,
27 in a competitively neutral manner that does not favor either prepaid
28 or postpaid payment for mobile telephony services, and that, over
29 time, collections of state charges from prepaid and postpaid mobile
30 telephony service customers balance out so that neither pay a
31 disproportionate amount.

32 (6) At least 30 days prior to adopting any adjustment to a
33 reimbursement fee or universal service surcharge to be collected
34 and remitted to the commission on both postpaid and prepaid
35 intrastate service, the commission shall prepare a resolution or
36 other public document proposing the fee or surcharge adjustment
37 and explaining the calculation of the fee or surcharge. The
38 commission shall make the resolution or other public document
39 available to the public and on the commission's Internet Web site
40 and it shall include all of the following:

1 (A) The prior year revenues from the fee or surcharge, including,
2 but not limited to, revenues from prepaid service.

3 (B) Projected expenses and revenues from all sources, including,
4 but not limited to, prepaid service, for the purposes of the fee or
5 surcharge.

6 (C) The rationale for adjustment to the reimbursement fee or
7 universal service surcharge, including, but not limited to, all
8 impacts from prepaid service surcharge collection.

9 (d) The commission shall have enforcement authority to ensure
10 the proper remittances over retail transactions, pursuant to the
11 Prepaid Mobile Telephony Services Surcharge Collection Act (Part
12 21 (commencing with Section 42001) of Division 2 of the Revenue
13 and Taxation Code), where the prepaid mobile telephony services
14 (prepaid MTS) provider is also the seller. The commission shall
15 collaborate with the State Board of Equalization in exercising its
16 enforcement authority pursuant to this subdivision.

17 (e) (1) ~~Notwithstanding any amounts collected and remitted to~~
18 ~~the State Board of Equalization pursuant to the Prepaid Mobile~~
19 ~~Telephony Services Surcharge Collection Act (Part 21~~
20 ~~(commencing with Section 42001) of Division 2 of the Revenue~~
21 ~~and Taxation Code), and deposited in the Prepaid MTS PUC~~
22 ~~Account created pursuant to Section 42023 of the Revenue and~~
23 ~~Taxation Code, carriers—Carriers providing prepaid mobile~~
24 ~~telephony service shall remit to the commission the fee established~~
25 ~~for telephone corporations pursuant to subdivision (a) of Section~~
26 ~~431 on the intrastate portion of the revenues received for prepaid~~
27 ~~mobile telephony service through December 31, 2016. 2015.~~

28 (2) ~~Notwithstanding any amounts collected and remitted to the~~
29 ~~State Board of Equalization pursuant to the Prepaid Mobile~~
30 ~~Telephony Services Surcharge Collection Act (Part 21~~
31 ~~(commencing with Section 42001) of Division 2 of the Revenue~~
32 ~~and Taxation Code), and deposited in the Prepaid MTS PUC~~
33 ~~Account created pursuant to Section 42023 of the Revenue and~~
34 ~~Taxation Code, carriers—Carriers providing prepaid mobile~~
35 ~~telephony service shall remit to the commission the~~
36 ~~telecommunications universal service surcharges established for~~
37 ~~telephone corporations on the intrastate portion of the revenues~~
38 ~~received for prepaid mobile telephony service through December~~
39 ~~31, 2016. 2015.~~

1 (f) (1) This section does not relieve carriers providing prepaid
2 mobile telephony service of their continuing obligation to report
3 prepaid mobile telephony service revenues to the commission in
4 a manner prescribed by the commission.

5 (2) When reporting prepaid mobile telephony service revenues
6 to the commission, carriers providing prepaid mobile telephony
7 service shall report the intrastate revenue portion subject to the
8 reimbursement fee and the telecommunications universal service
9 surcharges, as well as total state wireless revenue.

10 (3) Reports made pursuant to this subdivision are subject to
11 Section 583 and any related orders of the commission.

12 ~~(g) This section shall remain in effect only until January 1, 2019,~~
13 ~~and as of that date is repealed, unless a later enacted statute, that~~
14 ~~is enacted before January 1, 2019, deletes or extends that date.~~

15 ~~SEC. 4.~~

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

18 431. (a) The commission shall annually determine a fee to be
19 paid by every electrical, gas, telephone, telegraph, water, sewer
20 system, and heat corporation and every other public utility
21 providing service directly to customers or subscribers and subject
22 to the jurisdiction of the commission other than a railroad, except
23 as otherwise provided in Article 2 (commencing with Section 421),
24 for common carriers and related businesses, and as otherwise
25 provided in Section 319, for prepaid mobile telephony service
26 providers.

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

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

38 ~~(d) This section shall remain in effect only until January 1, 2019,~~
39 ~~and as of that date is repealed, unless a later enacted statute, that~~
40 ~~is enacted before January 1, 2019, deletes or extends that date.~~

1 ~~SEC. 5.~~ Section 431 is added to the Public Utilities Code, to read:

2 431. (a) ~~The commission shall annually determine a fee to be~~
3 ~~paid by every electrical, gas, telephone, telegraph, water, sewer~~
4 ~~system, and heat corporation and every other public utility~~
5 ~~providing service directly to customers or subscribers and subject~~
6 ~~to the jurisdiction of the commission other than a railroad, except~~
7 ~~as otherwise provided in Article 2 (commencing with Section 421).~~

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

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

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

22 (e) ~~This section shall become operative on January 1, 2019.~~

23 ~~SEC. 6.~~

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

26 41020. (a) A surcharge is hereby imposed on amounts paid
27 by every person in the state for both of the following:

28 (1) (A) Intrastate telephone communication service in this state.

29 (B) Notwithstanding subparagraph (A), on and after January 1,
30 ~~2017, and before January 1, 2019, 2016~~, in lieu of the surcharge
31 imposed under subparagraph (A), a surcharge shall be imposed on
32 amounts paid for prepaid mobile telephony services pursuant to
33 the Prepaid Mobile Telephony Services Surcharge Collection Act
34 (Part 21 (commencing with Section 42001)).

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

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

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

8 (B) Traffic or call pattern studies representative of the service
9 supplier's business within California.

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

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

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

1 shall also be rebuttably presumed to be fair and legal business
2 practices.

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

7 (c) The surcharge imposed shall be at the rate of one-half of 1
8 percent of the charges made for the services to and including
9 November 1, 1982, and thereafter at a rate fixed pursuant to Article
10 2 (commencing with Section 41030).

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

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

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

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

28 (f) For purposes of this section:

29 (1) "Charges for mobile telecommunications services" means
30 any charge for, or associated with, the provision of commercial
31 mobile radio service, as defined in Section 20.3 of Title 47 of the
32 Code of Federal Regulations, as in effect on June 1, 1999, or any
33 charge for, or associated with, a service provided as an adjunct to
34 a commercial mobile radio service, that is billed to the customer
35 by or for the customer's home service provider, regardless of
36 whether individual transmissions originate or terminate within the
37 licensed service area of the home service provider.

38 (2) "Customer" means (A) the person or entity that contracts
39 with the home service provider for mobile telecommunications
40 services, or with a VoIP service provider for VoIP service, or (B)

1 if the end user of mobile telecommunications services or VoIP
2 service is not the contracting party, the end user of the mobile
3 telecommunications service or VoIP service. This paragraph applies
4 only for the purpose of determining the place of primary use. The
5 term “customer” does not include (A) a reseller of mobile
6 telecommunications service or VoIP communication service, or
7 (B) a serving carrier under an arrangement to serve the mobile
8 customer outside the home service provider’s licensed service
9 area.

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

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

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

19 (6) “Place of primary use” means the street address
20 representative of where the customer’s use of the mobile
21 telecommunications service or VoIP service primarily occurs, that
22 must be:

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

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

27 (7) (A) “Reseller” means a provider who purchases
28 telecommunications services or VoIP service from another
29 telecommunications service provider or VoIP service and then
30 resells the services, or uses the services as a component part of,
31 or integrates the purchased services into, a mobile
32 telecommunications service or VoIP service.

33 (B) “Reseller” does not include a serving carrier with which a
34 home service provider arranges for the services to its customers
35 outside the home service provider’s licensed service area.

36 (8) “Serving carrier” means a facilities-based carrier providing
37 mobile telecommunications service to a customer outside a home
38 service provider’s or reseller’s licensed area.

39 (9) “Taxing jurisdiction” means any of the several states, the
40 District of Columbia, or any territory or possession of the United

1 States, any municipality, city, county, township, parish,
2 transportation district, or assessment jurisdiction, or any other
3 political subdivision within the territorial limits of the United States
4 with the authority to impose a tax, charge, or fee.

5 (10) “VoIP service provider” means that provider of VoIP
6 service with whom the end user customer contracts for the
7 provision of VoIP services for the customer’s own use and not for
8 resale.

9 (11) “Prepaid mobile telephony services” has the same meaning
10 as in subdivision (j) of Section 42004.

11 ~~SEC. 7. Section 41020.5 is added to the Revenue and Taxation~~
12 ~~Code, to read:~~

13 ~~41020.5. Notwithstanding any other provision of this part, on~~
14 ~~and after January 1, 2016, and before January 1, 2017, a service~~
15 ~~supplier shall not collect the surcharge imposed under this part on~~
16 ~~the intrastate portion of charges made for prepaid mobile telephony~~
17 ~~services, and the service supplier shall remit to the board an amount~~
18 ~~equal to the amount of the surcharge that would have otherwise~~
19 ~~been collected, reported, and remitted to the board under this part~~
20 ~~on the intrastate portion of the charges made for prepaid mobile~~
21 ~~telephony services.~~

22 ~~SEC. 8.~~

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

25 41030. (a) The Office of Emergency Services shall determine
26 annually, on or before October 1, to be effective on January 1 of
27 the following year, a surcharge pursuant to subdivision (b) that it
28 estimates will produce sufficient revenue to fund the current fiscal
29 year’s 911 costs.

30 (b) (1) Commencing with the calculation made on October 1,
31 2014, the surcharge rate shall be determined by dividing the costs
32 (including incremental costs) the Office of Emergency Services
33 estimates for the current fiscal year of 911 plans approved pursuant
34 to Section 53115 of the Government Code, less the available
35 balance in the State Emergency Telephone Number Account in
36 the General Fund, by its estimate of the charges for intrastate
37 telephone communications services and VoIP service to which the
38 surcharge will apply for the period of January 1, 2015, to December
39 31, 2015, inclusive, but in no event shall the surcharge rate in any

1 year be greater than three-quarters of 1 percent or less than one-half
2 of 1 percent.

3 (2) Commencing with the calculation made October 1, 2015,
4 to be effective January 1, 2016, the surcharge shall be determined
5 by dividing the costs (including incremental costs) the Office of
6 Emergency Services estimates for the current fiscal year of 911
7 plans approved pursuant to Section 53115 of the Government
8 Code, less the available balance in the State Emergency Telephone
9 Number Account in the General Fund, by its estimate of the charges
10 for intrastate telephone communications services, the intrastate
11 portion of prepaid mobile telephony services, and VoIP service to
12 which the surcharge will apply for the period of January 1 to
13 December 31, inclusive, of the next succeeding calendar year, but
14 in no event shall the surcharge rate in any year be greater than
15 three-quarters of 1 percent or less than one-half of 1 percent. In
16 making its computation of the charges that are applicable to the
17 intrastate portion of prepaid mobile telephony services, the Office
18 of Emergency Services shall use the computation method
19 developed by the Public Utilities Commission and reported to the
20 Office of Emergency Services pursuant to subdivisions (a) and (b)
21 of Section 319 of the Public Utilities Code.

22 (c) The Office of Emergency Services shall notify the board of
23 the surcharge amount collected pursuant to this part and the
24 surcharge amount applicable to prepaid mobile telephony services
25 by October 15 of each year.

26 (d) At least 30 days prior to determining the surcharge pursuant
27 to subdivision (a), the Office of Emergency Services shall prepare
28 a summary of the calculation of the proposed surcharge and make
29 it available to the public and on its Internet Web site. The summary
30 shall contain all of the following:

31 (1) The prior year revenues to fund 911 costs, including, but
32 not limited to, revenues from prepaid service.

33 (2) Projected expenses and revenues from all sources, including,
34 but not limited to, prepaid service to fund 911 costs.

35 (3) The rationale for adjustment to the surcharge determined
36 pursuant to subdivision (b), including, but not limited to, all
37 impacts from the surcharge collected pursuant to Part 21
38 (commencing with Section 42001).

1 ~~(e) This section shall remain in effect only until January 1, 2019,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2019, deletes or extends that date.~~

4 ~~SEC. 9. Section 41030 is added to the Revenue and Taxation~~
5 ~~Code, to read:~~

6 ~~41030. (a) The Office of Emergency Services shall determine~~
7 ~~annually, on or before October 1, a surcharge rate that it estimates~~
8 ~~will produce sufficient revenue to fund the current fiscal year's~~
9 ~~911 costs. The surcharge rate shall be determined by dividing the~~
10 ~~costs (including incremental costs) the Office of Emergency~~
11 ~~Services estimates for the current fiscal year of 911 plans approved~~
12 ~~pursuant to Section 53115 of the Government Code, less the~~
13 ~~available balance in the State Emergency Telephone Number~~
14 ~~Account in the General Fund, by its estimate of the charges for~~
15 ~~intrastate telephone communications services and VoIP service to~~
16 ~~which the surcharge will apply for the period of January 1 to~~
17 ~~December 31, inclusive, of the next succeeding calendar year, but~~
18 ~~in no event shall such surcharge rate in any year be greater than~~
19 ~~three-quarters of 1 percent or less than one-half of 1 percent.~~

20 ~~(b) At least 30 days prior to determining the surcharge pursuant~~
21 ~~to subdivision (a), the Office of Emergency Services shall prepare~~
22 ~~a summary of the calculation of the proposed surcharge and make~~
23 ~~it available to the public and on its Internet Web site. The summary~~
24 ~~shall contain all of the following:~~

- 25 ~~(1) The prior year's revenues to fund 911 costs.~~
- 26 ~~(2) Projected expenses and revenues from all sources.~~
- 27 ~~(3) The rationale for adjustment to the surcharge determined~~
28 ~~pursuant to subdivision (b), including, but not limited to, all~~
29 ~~impacts from the surcharge collected pursuant to Part 21~~
30 ~~(commencing with Section 42001) as it existed on December 31,~~
31 ~~2017.~~

32 ~~(e) This section shall become operative on January 1, 2019.~~

33 ~~SEC. 10.~~

34 ~~SEC. 6. Part 21 (commencing with Section 42001) is added to~~
35 ~~Division 2 of the Revenue and Taxation Code, to read:~~

1 PART 21. PREPAID MOBILE TELEPHONY SERVICES
2 SURCHARGE COLLECTION ACT

3
4 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS
5

6 42001. This part shall be known, and may be cited, as the
7 Prepaid Mobile Telephony Services Surcharge Collection Act.

8 42002. The Legislature finds and declares all of the following:

9 (a) Maintaining effective and efficient communications services,
10 911 emergency systems, communications-related public policy
11 programs to promote universal service, and various local programs
12 across the state benefits all persons with access to the
13 telecommunications system.

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

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

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

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

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

39 (g) An equitable distribution mechanism is necessary to ensure
40 that utility user taxes and other telecommunication charges are

1 collected on behalf of cities and counties and are properly
2 distributed to those jurisdictions.

3 42004. For purposes of this part, the following terms have the
4 following meanings:

5 (a) “Board” means the State Board of Equalization.

6 (b) “Emergency telephone users surcharge” means surcharges
7 authorized pursuant to the Emergency Telephone Users Surcharge
8 Act (Part 20 (commencing with Section 41001)) to be collected
9 from prepaid consumers of mobile telephony services.

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

13 (d) “Local charges” means those charges described in
14 subdivision (a) of Section 42101.

15 (e) “Local jurisdiction” or “local agency” means a city, county,
16 or city and county, which includes a charter city, county, or city
17 and county.

18 (f) “Mobile data service” has the same meaning as defined in
19 Section 224.4 of the Public Utilities Code.

20 (g) “Mobile telephony service” or “MTS” has the same meaning
21 as defined in Section 224.4 of the Public Utilities Code.

22 (h) “Person” includes any individual, firm, partnership, joint
23 venture, limited liability company, association, social club, fraternal
24 organization, corporation, estate, trust, business trust, receiver,
25 assignee for the benefit of creditors, trustee, trustee in bankruptcy,
26 syndicate, the United States, this state, any city, county, city and
27 county, municipality, district, or other political subdivision of the
28 state, or any other group or combination acting as a unit.

29 (i) “Prepaid consumer” or “consumer” means a person who
30 purchases prepaid mobile telephony services in a retail transaction.

31 (j) “Prepaid mobile telephony services” means the right to utilize
32 a mobile device authorized by the Federal Communications
33 Commission for mobile telecommunications services or
34 information services, including the download of digital products
35 delivered electronically, content, and ancillary services, or both
36 telecommunications services and information services, that must
37 be purchased in advance of usage in predetermined units or dollars.
38 For these purposes, “telecommunications service” and “information
39 service” have the same meanings as defined in Section 153 of Title
40 47 of the United States Code.

1 (k) “Prepaid MTS provider” means a person that provides
2 prepaid mobile telephony services pursuant to a license issued by
3 the Federal Communications Commission.

4 (l) “Prepaid MTS surcharge” means the surcharge that consists
5 of the emergency telephone users surcharge and the Public Utilities
6 Commission surcharges, as calculated pursuant to subdivision (b)
7 of Section 42010, that is required to be collected by a seller from
8 a prepaid consumer.

9 (m) “Public Utilities Commission surcharges” means surcharges
10 authorized by the Public Utilities Commission to be billed and
11 collected from end-use consumers of wireless communications
12 services, and of which the commission provides the board with
13 notice pursuant to Section 319 of the Public Utilities Code,
14 including:

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

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

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

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

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

28 (6) The Moore Universal Telephone Service Act (Article 8
29 commencing with Section 871) of Chapter 4 of Part 1 of Division
30 1 of the Public Utilities Code).

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

34 (n) “Retail transaction” means the purchase of prepaid mobile
35 telephony services, either alone or in combination with mobile
36 data or other services, from a seller for any purpose other than
37 resale in the regular course of business. For these purposes, a
38 “purchase” means any transfer of title or possession, exchange, or
39 barter, conditional or otherwise.

1 (o) “Seller” means a person that sells prepaid mobile telephony
2 service to a person in a retail transaction.

3
4 CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES
5 SURCHARGE
6

7 42010. (a) (1) On and after January 1, 2016, a prepaid MTS
8 surcharge shall be imposed on each prepaid consumer and shall
9 be collected by a seller from each prepaid consumer at the time of
10 each retail transaction in this state. The prepaid MTS surcharge
11 shall be imposed as a percentage of the sales price of each retail
12 transaction that occurs in this state.

13 (2) ~~On and after January 1, 2017, the~~ *The* prepaid MTS
14 surcharge shall be in lieu of any charges imposed pursuant to the
15 Emergency Telephone Users Surcharge Act (Part 20 (commencing
16 with Section 41001)) and the Public Utilities Commission
17 surcharges for prepaid mobile telephony services.

18 (b) The prepaid MTS surcharge shall be annually calculated by
19 the board by no later than November 1 of each year commencing
20 November 1, 2015, by adding the following:

21 (1) The surcharge rate reported pursuant to subdivision (c) of
22 Section 41030.

23 (2) The Public Utilities Commission’s reimbursement fee and
24 telecommunications universal service surcharges, established by
25 the Public Utilities Commission pursuant to subdivisions (a) and
26 (b) of Section 319 of the Public Utilities Code.

27 (c) (1) The board shall post, for each local jurisdiction, the
28 combined total of the rates of prepaid MTS surcharge and the rate
29 or rates of local charges, as calculated pursuant to Sections 42102
30 and 42102.5, that each local jurisdiction has adopted, not later than
31 December 1 of each year, on its Internet Web site. The posted
32 combined rate shall be the rate that applies to all retail transactions
33 during the calendar year beginning April 1 following the posting.

34 (2) Notwithstanding paragraph (1), if a local agency notifies
35 the board pursuant to subdivision (d) of Section 42101.5 that the
36 posted rate is inaccurate or it no longer imposes a local charge or
37 local charges or that the rate of its local charge or local charges
38 has decreased, the board shall promptly post a recalculated rate
39 that is applicable to the jurisdiction of that local agency. The
40 change shall become operative on the first day of the calendar

1 quarter commencing more than 60 days from the date the local
2 agency notifies the board of the inaccuracy or that it no longer
3 imposes a local charge or that the rate of its local charge has
4 decreased. Nothing in this section modifies the notice obligations
5 of Section 799 of the Public Utilities Code. However, beginning
6 January 1, 2016, the notification and implementation requirements
7 of paragraphs (5) and (6) of subdivision (a) of Section 799 of the
8 Public Utilities Code shall not apply to prepaid mobile telephony
9 services.

10 (3) A seller collecting the prepaid MTS surcharge and local
11 charges pursuant to this part and Part 21.1 (commencing with
12 Section 42100) may rely upon the accuracy of the information
13 posted on the board’s Internet Web site in collecting the state
14 surcharge and local charges.

15 (d) (1) Except for amounts retained pursuant to subdivision (e),
16 all amounts of the prepaid MTS surcharge and local charges
17 collected by sellers shall be remitted to the board pursuant to
18 Chapter 3 (commencing with Section 42020).

19 (2) A seller that is authorized to provide lifeline service under
20 the state lifeline program or federal lifeline program, that sells
21 prepaid mobile telephony services directly to the prepaid customer,
22 shall remit the prepaid MTS surcharge to the board, less any
23 applicable exemption from the surcharge that is applicable to the
24 retail transaction pursuant to Section 42012.

25 (e) A seller shall be permitted to deduct and retain an amount
26 equal to 2 percent of the amounts that are collected by the seller
27 from prepaid consumers for the prepaid MTS surcharge and local
28 charges, except in a retail transaction that involves both of the
29 following:

30 (1) The seller is the provider of prepaid mobile telephony
31 services pursuant to Section 224.4 of the Public Utilities Code, or
32 a telephone corporation pursuant to Section 234 of the Public
33 Utilities Code.

34 (2) The seller sells the prepaid mobile telephony services directly
35 to the prepaid consumer.

36 (f) The amount of the combined prepaid MTS surcharge and
37 local charges shall be separately stated on an invoice, receipt, or
38 other similar document that is provided to the prepaid consumer
39 of mobile telephony services by the seller, or otherwise disclosed

1 electronically to the prepaid consumer, at the time of the retail
2 transaction.

3 (g) The prepaid MTS surcharge is required to be collected by
4 a seller and any amount unreturned to the prepaid consumer of
5 mobile telephony services that is not owed as part of the surcharge,
6 but was collected from the prepaid consumer under the
7 representation by the seller that it was owed as part of the
8 surcharge, constitute debts owed by the seller to this state. The
9 local charge shall be collected by a seller, and any amount
10 unreturned to the prepaid consumer of mobile telephony services
11 that is not owed as part of the local charge but that was collected
12 from the prepaid consumer under the representation by the seller
13 that it was owed as part of the local charge constitutes a debt owed
14 by the seller jointly to the state, for purposes of collection on behalf
15 of, and payment to, the local jurisdiction and to the local
16 jurisdiction imposing that local charge.

17 (h) A seller that has collected any amount of prepaid MTS
18 surcharge and local charges in excess of the amount of the
19 surcharge imposed by this part and actually due from a prepaid
20 consumer may refund that amount to the prepaid consumer, even
21 though the surcharge amount has already been paid over to the
22 board and no corresponding credit or refund has yet been secured.
23 Any seller making a refund of any charge to a prepaid consumer
24 may repay therewith the amount of the surcharge paid.

25 (i) (1) Every prepaid consumer of mobile telephony services
26 in this state is liable for the prepaid MTS surcharge and any local
27 charges until they have been paid to this state, except that payment
28 to a seller registered under this part relieves the prepaid consumer
29 from further liability for the surcharge and local charges. Any
30 surcharge collected from a prepaid consumer that has not been
31 remitted to the board shall be a debt owed to the state by the person
32 required to collect and remit the surcharge. Any local charge
33 collected from a prepaid consumer that has not been remitted to
34 the board shall be a debt owed jointly to the state, for purposes of
35 collection on behalf of, and payment to, the local jurisdiction and
36 to the local jurisdiction imposing the local charge by the person
37 required to collect and remit the local charge. Nothing in this part
38 shall impose any obligation upon a seller to take any legal action
39 to enforce the collection of the surcharge or local charge imposed
40 by this section.

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

10 (j) (1) A seller is relieved from liability to collect the prepaid
11 MTS surcharge imposed by this part that became due and payable,
12 insofar as the base upon which the surcharge is imposed is
13 represented by accounts that have been found to be worthless and
14 charged off for income tax purposes by the seller or, if the seller
15 is not required to file income tax returns, charged off in accordance
16 with generally accepted accounting principles. A seller that has
17 previously paid the surcharge may, under rules and regulations
18 prescribed by the board, take as a deduction on its return the
19 amount found worthless and charged off by the seller. If any such
20 accounts are thereafter in whole or in part collected by the seller,
21 the amount so collected shall be included in the first return filed
22 after such collection and the surcharge shall be paid with the return.

23 (2) The board may by regulation promulgate such other rules
24 with respect to uncollected or worthless accounts as it shall deem
25 necessary to the fair and efficient administration of this part.

26 42012. (a) For purposes of this section, “state lifeline program”
27 means the program furnishing lifeline voice communication service
28 pursuant to the Moore Universal Telephone Service Act (Article
29 8 (commencing with Section 871) of Chapter 4 of Part 1 of
30 Division 1 of the Public Utilities Code).

31 (b) The purchase in a retail transaction in this state of prepaid
32 mobile telephony services, either alone or in combination with
33 mobile data or other services, by a consumer is exempt from the
34 prepaid MTS surcharge if all of the following apply:

35 (1) The prepaid consumer is certified as eligible for the state
36 lifeline program or federal lifeline program.

37 (2) The seller is authorized to provide lifeline service under the
38 state lifeline program or federal lifeline program.

39 (3) The exemption is applied only to the amount paid for the
40 portion of the prepaid mobile telephony service that the lifeline

1 program specifies is exempt from the surcharges and fees that
2 comprise the prepaid MTS surcharge.

3 42014. (a) For purposes of this part, a retail transaction occurs
4 in the state under any of the following circumstances:

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

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

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

13 (B) If the prepaid consumer's address is known by the seller to
14 be in the state, including if the seller's records maintained in the
15 ordinary course of business indicate that the prepaid consumer's
16 address is in the state and the records are not made or kept in bad
17 faith.

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

22 (D) The mobile telephone number is associated with a location
23 in this state.

24 (b) (1) A retail transaction shall occur at only one location for
25 purposes of determining local charges. If the retail transaction is
26 a point-of-sale transaction, the consumption of, use of, or access
27 to, the prepaid mobile telephony service shall be presumed to be
28 at that location.

29 (2) If the retail transaction is a known-address transaction, the
30 location shall be as determined in descending order beginning with
31 subparagraph (A) of paragraph (2) of subdivision (a); if
32 subparagraph (A) of that paragraph is inapplicable, then pursuant
33 to subparagraph (B) of that paragraph; if both subparagraphs (A)
34 and (B) of that paragraph are inapplicable, then subparagraph (C)
35 of that paragraph; and if subparagraphs (A), (B), and (C) of that
36 paragraph are inapplicable, then subparagraph (D) of that
37 paragraph. In a known address transaction, the consumption of,
38 use of, or access to, the prepaid mobile telephony service shall be
39 presumed to be at the known address.

1 (c) (1) A seller that relies in good faith on information provided
2 by the board to match the location of a point-of-sale transaction
3 to the applicable prepaid MTS surcharge amount and local charges,
4 that collects that amount from the prepaid consumer, and that
5 remits the amount to the board in compliance with this part, shall
6 not be liable for any additional MTS surcharge or local charges
7 and shall not be required to refund any amounts collected and paid
8 to the board to the prepaid consumer.

9 (2) For a known-address transaction, the seller may collect the
10 prepaid MTS surcharge and local charges that correspond to the
11 five-digit postal ZIP Code of the prepaid consumer's address. A
12 seller that, with due diligence and in good faith, relies on credible
13 information to match the five-digit postal ZIP Code of the prepaid
14 consumer's address to the applicable prepaid MTS surcharge and
15 local charges amount, that collects that amount from the prepaid
16 consumer, and that remits the amount to the board in compliance
17 with this part, shall not be liable for any additional MTS surcharge
18 or local charges and shall not be required to refund any amounts
19 collected and paid to the board to the prepaid consumer, even if
20 the five-digit postal ZIP Code of the prepaid consumer's address
21 that the seller uses corresponds to more than one local charge.

22 42018. (a) Except as provided in subdivisions (b) and (c), if
23 prepaid mobile telephony services are sold in combination with
24 mobile data services or any other services or products for a single
25 price, then the prepaid MTS surcharge and local charges shall
26 apply to the entire price.

27 (b) If prepaid mobile telephone services are sold with a mobile
28 telephone service communication device, commonly termed a
29 cellular telephone, for a single, nonitemized price, then the prepaid
30 MTS surcharge and local charges shall apply to the entire
31 nonitemized price, except if the purchase price for the cellular
32 phone component of the bundled charge is disclosed to the prepaid
33 consumer on a receipt, invoice, or other written or electronic
34 documentation provided to the prepaid consumer, the prepaid MTS
35 surcharge and local charges may be calculated excluding the
36 separately stated price of the cellular telephone.

37 (c) If a minimal amount of prepaid mobile telephony service is
38 sold for a single, nonitemized price with a mobile telephony service
39 communications ~~device~~ *device*, the seller shall not apply the prepaid
40 MTS surcharge or local charges to the transaction. For these

1 purposes, a service allotment denominated as 10 minutes or less,
2 or five dollars (\$5) or less, is a minimal amount.

3
4 CHAPTER 3. ADMINISTRATION
5

6 42020. (a) (1) The board shall administer and collect the
7 prepaid MTS surcharge imposed by this part pursuant to the Fee
8 Collection Procedures Law (Part 30 (commencing with Section
9 55001)). For purposes of this part, the references in the Fee
10 Collection Procedures Law to “fee” shall include the prepaid MTS
11 surcharge imposed by this part, and references to “feepayer” shall
12 include a person required to pay the surcharge imposed by this
13 part, which includes the seller, who shall be required to register
14 with the board.

15 (2) Notwithstanding Article 1.1 (commencing with Section
16 55050) of Chapter 3 of Part 30, any person required, or that elects,
17 to remit amounts due under Part 1 (commencing with Section
18 6001) by electronic funds transfer pursuant to Article 1.2
19 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall
20 remit prepaid MTS surcharge amounts due under this section by
21 electronic funds transfer.

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

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

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

38 (d) The board shall establish procedures for sharing of
39 information, other than information protected under Section 19542,
40 related to the collection of the prepaid MTS surcharge upon the

1 request of the Public Utilities Commission or the Office of
2 Emergency Services.

3 42021. The board shall establish remittance schedules and
4 methods for payment of the prepaid MTS surcharge that utilize
5 existing methods established under the Sales and Use Tax Law
6 (Part 1 (commencing with Section 6001)), including all of the
7 following:

8 (a) The prepaid MTS surcharge, minus the amount retained by
9 the seller pursuant to subdivision (e) of Section 42010, is due and
10 payable to the board quarterly on or before the last day of the
11 month following each calendar quarter.

12 (b) On or before the last day of the month following each
13 calendar quarter, a return for the preceding calendar quarter shall
14 be filed using electronic media with the board.

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

17 42022. Every seller shall register with the board. The board
18 shall establish a method for registration of sellers under this part
19 that utilizes the existing registration process for a seller's permit
20 established pursuant to Section 6066 of the Sales and Use Tax
21 Law (Part 1 (commencing with Section 6001)). Every application
22 for registration shall be made upon a form prescribed by the board
23 and shall set forth the name under which the applicant transacts
24 or intends to transact business, the location of its place or places
25 of business, and such other information as the board may require.
26 An application for registration shall be authenticated in a form or
27 pursuant to methods as may be prescribed by the board.

28 42023. (a) The Prepaid Mobile Telephony Services Surcharge
29 Fund is hereby created in the State Treasury. The Prepaid MTS
30 911 Account and the Prepaid MTS PUC Account are hereby
31 created in the fund. The Prepaid Mobile Telephony Services
32 Surcharge Fund shall consist of all surcharges, interest, penalties,
33 and other amounts collected and paid to the board pursuant to this
34 part, less payments of refunds and reimbursements to the board
35 for expenses incurred in the administration and collection of the
36 prepaid MTS surcharge.

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

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

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

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

14 ~~42024. This part shall remain in effect only until January 1,~~
15 ~~2019, and as of that date is repealed, unless a later enacted statute,~~
16 ~~that is enacted before January 1, 2019, deletes or extends that date.~~

17 ~~SEC. 11.~~

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

20
21 **PART 21.1. LOCAL PREPAID MOBILE TELEPHONY**
22 **SERVICES COLLECTION ACT**
23

24 42100. (a) This part shall be known and may be cited as the
25 Local Prepaid Mobile Telephony Services Collection Act.

26 (b) The Legislature finds and declares all of the following:

27 (1) Maintaining effective and efficient communications services,
28 911 emergency systems, communications-related public policy
29 programs to promote universal service, and various local programs
30 across the state benefit all persons with access to the
31 telecommunications system.

32 (2) Providers of end-use communications services, including
33 providers of mobile voice telecommunications services, which the
34 Federal Communications Commission terms mobile telephony
35 service, are required to collect and remit utility users taxes and
36 local 911 or access charges (local charges) imposed by over 150
37 cities and counties in California on end-users of such mobile
38 telephony services, as required by existing state or local law.

39 (3) Local charges on telecommunication services represent an
40 important source of tax revenue for many cities and counties and

1 are used to pay for such essential governmental services as public
2 safety, streets, parks, libraries, senior centers, and many more.

3 (4) Prepaid mobile telephony services are an important and
4 growing segment of the communications industry. Prepaid mobile
5 telephony services, unlike postpaid mobile telephony services, are
6 frequently sold by a third-party seller that is not the provider of
7 mobile telephony services, and collecting local charges from
8 prepaid consumers of mobile telephony services at the time of the
9 retail transaction is necessary and the most efficient and
10 competitively neutral means for the collection of those local
11 charges.

12 (5) The collection of prepaid mobile telephony services by
13 third-party sellers and the remittance of those local charges to the
14 board involves administrative costs and responsibilities that are
15 unique to prepaid mobile telephony services, and therefore justify
16 unique reimbursement and tax rate simplification measures, which
17 are fair and reasonable.

18 (c) It is a matter of statewide concern that the local charges for
19 local prepaid mobile telephony services be collected in a uniform
20 manner in order for the collection to be fair and uniform on a
21 statewide basis.

22 (d) It is the intention of the Legislature that this part shall
23 preempt the provisions pertaining to the tax or charge rate, base,
24 and method of collection contained in all local ordinances, rules,
25 or regulations concerning the imposition of a local charge upon
26 the consumption of prepaid mobile telephony services to the extent
27 those provisions are inconsistent with the provisions of this part
28 and Part 21 (commencing with Section 42001). It is not the intent
29 of the Legislature to otherwise preempt, limit, or affect the general
30 authority of local jurisdictions to impose a utility user tax, local
31 911 charge, or any other local charges.

32 42101. For purposes of this part, all of the following definitions
33 shall apply:

34 (a) “Local agency” means a city, county, or city and county,
35 which includes a charter city, county, or city and county.

36 (b) “Local charge” means the utility user taxes as described in
37 Section 42102, and charges for access to communication services
38 or to local “911” emergency telephone systems, as described in
39 Section 42102.5.

1 (c) “Ordinance” refers to an ordinance of a local agency
2 imposing a local charge, including any local enactment relating to
3 the filing of a refund or a claim arising under the ordinance.

4 (d) “Board,” “local jurisdiction,” “mobile telephony service,”
5 “person,” “prepaid consumer,” “Prepaid mobile telephony service,”
6 “prepaid MTS provider,” and “prepaid MTS surcharge” have the
7 same meaning as those terms are defined in the Prepaid Mobile
8 Telephony Services Surcharge Collection Act (Part 21
9 commencing with Section 42001).

10 42101.5. (a) On and after January 1, 2016, a local charge
11 imposed by a local agency on prepaid mobile telephony services
12 shall be collected from the prepaid consumer by a seller at the
13 same time and in the same manner as the prepaid MTS surcharge
14 is collected under Part 21 (commencing with Section 42001) if,
15 on or before September 1, 2015, the local agency shall enter into
16 a contract with the board for the board to perform the functions
17 set forth in Section 42103. In the contract, the local agency shall:
18 (1) certify to the board that its ordinance applies its local charge
19 to prepaid mobile telephony services and that the local agency
20 agrees to indemnify, and hold and save harmless, the board, its
21 officers, agents, and employees for any and all liability for damages
22 that may result from collection pursuant to the contract; and, (2)
23 certify to the board the amount of the local 911 charge, as set out
24 in Section 42102.5, or the applicable tiered rate for a utility user
25 tax, as set out in Section 42102.

26 (b) In the event that a local agency adopts a new local charge
27 that is imposed on prepaid mobile telephony services after
28 September 1, 2015, the local agency shall enter into a contract
29 with the board to perform the functions set forth in Section 42103,
30 on or before December 1, with collection of the local charge to
31 commence April 1 of the next calendar year. In the contract, the
32 local agency shall certify to the board: (1) that its ordinance applies
33 its local charge to prepaid mobile telephony services and that the
34 local agency agrees to indemnify, and hold and save harmless, the
35 board, its officers, agents, and employees for any and all liability
36 for damages that may result from collection pursuant to the
37 contract; and, (2) the amount of the local 911 charge, as set out in
38 Section 42102.5, or the applicable tiered rate for a utility user tax,
39 as set out in Section 42102.

1 (c) In the event that a local agency increases its local charge
2 after September 1, 2015, the local agency shall provide the board
3 with written notice of the increased local charge on or before
4 December 1, with collection of the local charge to commence April
5 1 of the next calendar year.

6 (d) In the event that a local agency reduces or eliminates a local
7 charge on prepaid mobile telephony services, the local agency
8 shall provide the board with written notice pursuant to subdivision
9 (c) of Section 42010.

10 (e) Notwithstanding subdivision (a), through and including
11 December 31, 2015, a prepaid MTS provider may elect to remit
12 the local charge to the appropriate local taxing jurisdiction based
13 on the applicable tax rate of Section 42102, Section 42102.5, or
14 both, and those remittances shall be deemed to be in full
15 compliance with the local ordinance imposing a local charge on
16 prepaid mobile telephony service.

17 42102. (a) Notwithstanding any other law, on and after January
18 1, 2016, the authority of a city, county, or city and county, which
19 includes a charter city, county, or city and county, to impose a
20 utility user tax on the consumption of prepaid mobile telephony
21 service in the city, county, or city and county at the rate as specified
22 in an ordinance authorized pursuant to Section 7284.2 or any other
23 law is suspended, and the utility user tax rate to be applied instead
24 during the period under any ordinance as so adopted is the
25 applicable of the following:

26 (1) In the case of a city, county, or city and county that has
27 adopted an ordinance to impose a utility user tax on the
28 consumption of prepaid communication services in the city, county,
29 or city and county at the rate of less than 1.5 percent, the rate shall
30 be 0 percent.

31 (2) In the case of a city, county, or city and county that has
32 adopted an ordinance to impose a utility user tax on the
33 consumption of prepaid communication services in the city, county,
34 or city and county at the rate of 1.5 percent or more but less than
35 2.5 percent, the rate shall be 1.5 percent.

36 (3) In the case of a city, county, or city and county that has
37 adopted an ordinance to impose a utility user tax on the
38 consumption of prepaid communication services in the city, county,
39 or city and county at the rate of 2.5 percent or more but less than
40 3.5 percent, the rate shall be 2.5 percent.

1 (4) In the case of a city, county, or city and county that has
2 adopted an ordinance to impose a utility user tax on the
3 consumption of prepaid communication services in the city, county,
4 or city and county at the rate of 3.5 percent or more but less than
5 4.5 percent, the rate shall be 3.5 percent.

6 (5) In the case of a city, county, or city and county that has
7 adopted an ordinance to impose a utility user tax on the
8 consumption of prepaid communication services in the city, county,
9 or city and county at the rate of 4.5 percent or more but less than
10 5.5 percent, the rate shall be 4.5 percent.

11 (6) In the case of a city, county, or city and county that has
12 adopted an ordinance to impose a utility user tax on the
13 consumption of prepaid communication services in the city, county,
14 or city and county at the rate of 5.5 percent or more but less than
15 6.5 percent, the rate shall be 5.5 percent.

16 (7) In the case of a city, county, or city and county that has
17 adopted an ordinance to impose a utility user tax on the
18 consumption of prepaid communication services in the city, county,
19 or city and county at the rate of 6.5 percent or more but less than
20 7.5 percent, the rate shall be 6.5 percent.

21 (8) In the case of a city, county, or city and county that has
22 adopted an ordinance to impose a utility user tax on the
23 consumption of prepaid communication services in the city, county,
24 or city and county at the rate of 7.5 percent or more but less than
25 9 percent, the rate shall be 7.5 percent.

26 (9) In the case of a city, county, or city and county that has
27 adopted an ordinance to impose a utility user tax on the
28 consumption of prepaid communication services in the city, county,
29 or city and county at the rate of 9 percent or more, the rate shall
30 be 9 percent.

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

38 (c) Notwithstanding subdivision (a), a city, county, or city and
39 county may levy, increase, or extend a utility user tax at any rate
40 on the consumption of communication services, including a utility

1 user tax on the consumption of prepaid mobile telephony service,
2 except that during the period on and after January 1, 2016, any
3 utility user tax rate on prepaid mobile telephony service under any
4 ordinance as so adopted shall be the applicable rate specified in
5 subdivision (a).

6 (d) On and after January 1, 2016, this part shall be all of the
7 following:

8 (1) The exclusive method for both of the following:

9 (A) Collecting the local utility user taxes, local 911 charges,
10 and any other local charges imposed on consumers using prepaid
11 mobile telephony services.

12 (B) Defining the scope of the tax or charge with respect to
13 prepaid mobile telephony services.

14 (2) The complete substitute for the utility user tax rate set out
15 in the local ordinance with the applicable tiered rate as established
16 by the Legislature.

17 (3) This part shall not preempt, limit, or affect the general
18 authority of local jurisdictions to impose a utility user tax, local
19 911 charge, or any other local charges.

20 42102.5. (a) Notwithstanding any other law, on and after
21 January 1, 2016, the authority of a city, county, or city and county,
22 which includes a charter city, county, or city and county, to impose
23 a charge, that applies to prepaid mobile telephony service, for
24 access to communication services or access to local “911”
25 emergency telephone systems in the city, county, or city and county
26 at the rate as specified in an ordinance is suspended, and the rate
27 to be applied instead during that period under any ordinance as so
28 adopted is the applicable of the following:

29 (1) In the case of a city, county, or city and county that has
30 adopted an ordinance to impose a charge that applies to prepaid
31 mobile telephony service for access to communication services or
32 access to local “911” emergency telephone systems in the city,
33 county, or city and county at the rate of less than one dollar (\$1)
34 per month per access line, including any adjustments for inflation,
35 the rate shall be 0 percent.

36 (2) In the case of a city, county, or city and county that has
37 adopted an ordinance to impose a charge that applies to prepaid
38 mobile telephony service for access to communication services or
39 access to local “911” emergency telephone systems in the city,
40 county, or city and county at a specified percentage or at the rate

1 of one dollar (\$1) per month per access line, including any
2 adjustments for inflation, or more, the rate shall be the specified
3 percentage or the rate obtained by dividing the dollar amount by
4 50, rounded to the nearest one-tenth of 1 percent.

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

12 (c) Notwithstanding subdivision (a), a city, county, or city and
13 county may levy, increase, or extend a charge at any rate, that
14 applies to prepaid mobile telephony services, for access to
15 communication services or access to local “911” emergency
16 telephone systems in the city, county, or city and county, except
17 that during the period on and after January 1, 2016, any charge on
18 prepaid mobile telephony service under any ordinance as so
19 adopted shall be the applicable rate specified in subdivision (a).

20 42103. (a) The board shall perform all functions incident to
21 the collection of the local charges of a city, county, or a city and
22 county, and shall collect and administer the local charges in the
23 manner prescribed for the collection of the prepaid MTS surcharge
24 in the Prepaid Mobile Telephony Services Surcharge Collection
25 Act (Part 21 (commencing with Section 42001)), subject to the
26 limitations set forth in Section 42105. For purposes of this part,
27 the references in the Fee Collection Procedures Law to “fee” shall
28 include the local charge imposed by this part, and references to
29 “feepayer” shall include a person required to pay the local charge
30 imposed by this part, which includes the seller.

31 (b) All local charges collected by the board shall be deposited
32 in the Local Charges for Prepaid Mobile Telephony Services Fund
33 which is hereby created in the State Treasury, and shall be held in
34 trust for the local taxing jurisdiction, and shall not be used for any
35 other purpose. Local charges shall consist of all taxes, charges,
36 interest, penalties, and other amounts collected and paid to the
37 board, less payments for refunds and reimbursement to the board
38 for expenses incurred in the administration and collection of the
39 local charges. The board shall transmit the funds to the local
40 jurisdictions periodically as promptly as feasible. The transmittals

1 required under this section shall be made at least once in each
 2 calendar quarter. The board shall furnish a quarterly statement
 3 indicating the amounts paid and withheld.

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

7 (d) The board’s audit duties under this part shall be limited to
 8 verification that the seller complied with this part.

9 (e) The board may contract with a third party for purposes of
 10 this part, solely in connection with the following board duties:

11 (1) To allocate and transmit collected local charges in the Local
 12 Charges for Prepaid Mobile Telephony Services Fund pursuant to
 13 subdivision (b) to the appropriate local jurisdictions.

14 (2) To audit proper collection and remittance of the local charge
 15 pursuant to this part.

16 (3) To respond to requests from sellers, consumers, boards, and
 17 others regarding issues pertaining to local charges that are within
 18 the scope of the board’s duties.

19 (f) For purposes of this part, any third-party contract under
 20 subdivision (e) shall be subject to the following limitations:

21 (1) Any third party shall, to the same extent as the board, be
 22 subject to subdivision (b) of Section 55381, relating to unlawful
 23 disclosures.

24 (2) A third-party contract shall not provide, in whole or in part,
 25 in any manner a contingent fee arrangement as payment for services
 26 rendered. For purposes of this section, “contingent fee” includes,
 27 but is not limited to, a fee that is based on a percentage of the tax
 28 liability reported on a return, a fee that is based on a percentage
 29 of the taxes owed, or a fee that depends on the specific tax result
 30 attained.

31 42105. (a) The city, county, or city and county that has adopted
 32 an ordinance to impose a local charge that applies to prepaid mobile
 33 telephony service shall be solely responsible for:

34 (1) Defending any claim regarding the validity of the ordinance
 35 in its application to prepaid mobile telephony service.

36 (2) Interpreting any provision of the ordinance, except to the
 37 extent specifically superseded by this statute.

38 (3) Responding to any claim for refund by a customer arising
 39 under subdivision (b), (c), or (d). The claim shall be processed in

1 accordance with the provisions of the local enactment that allows
2 the claim to be filed.

3 (4) Certifying that the city, county, or city and county ordinance
4 applies the local charge to prepaid mobile telephony services and
5 agreeing to indemnify and hold harmless the board, its officers,
6 agents, and employees for any and all liability for damages that
7 may result from collection of the local charge.

8 (5) Reallocation of local charges as a result of correcting errors
9 relating to the location of the point of sale of a seller or the known
10 address of a consumer, for up to two past quarters from the date
11 of knowledge.

12 (b) A consumer may rebut the presumed location of the retail
13 transaction to the city or county clerk of the local jurisdiction, as
14 provided in subdivision (b) of Section 42014, by filing a claim and
15 declaration under penalty of perjury on a form established by the
16 city or county clerk of the local jurisdiction indicating the actual
17 location of the retail sale. The claim shall be processed in
18 accordance with the provisions of the local enactment that allows
19 the claim to be filed.

20 (c) A consumer that is exempt from the local charge under the
21 local enactment may file a claim for a refund from the local
22 jurisdiction in accordance with the refund provisions of the local
23 enactment that allows the claim to be filed.

24 (d) In connection with any actions or claims relating to or arising
25 from the invalidity of a local tax ordinance, in whole or in part,
26 the seller shall not be liable to any consumer as a consequence of
27 collecting the tax. In the event a local jurisdiction is ordered to
28 refund the tax, it shall be the sole responsibility of the local
29 jurisdiction to refund the tax. In any action seeking to enjoin
30 collection of a local charge by a seller, in any action seeking
31 declaratory relief concerning a local charge, in any action seeking
32 a refund of a local charge, or in any action seeking to otherwise
33 invalidate a local charge, the sole necessary party defendant in the
34 action shall be the local jurisdiction on whose behalf the local
35 charge is collected, and the seller collecting the local charge shall
36 not be named as a party in the action. There shall be no recovery
37 from the state for the imposition of any unconstitutional or
38 otherwise invalid local charge that is collected pursuant to this
39 part.

40 42106. (a) For purposes of this section:

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

4 (2) “Refund” means the amount of local charges deducted by
 5 the board from a city’s, county’s, or city and county’s quarterly
 6 local charges in order to pay the city’s, county’s, or city and
 7 county’s share of a local charge refund due to one taxpayer.

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

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

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

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

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

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

33 42107. The city, county, or city and county shall pay to the
 34 board its costs of preparation to administer and collect local
 35 charges. The city, county, or city and county shall pay costs
 36 monthly as are incurred and billed by the board. The costs include
 37 all preparatory costs, including costs of developing procedures,
 38 programming for data processing, developing and adopting
 39 appropriate regulations, designing and printing of forms,
 40 developing instructions for the board’s staff and for taxpayers, and

1 other necessary preparatory costs which shall include the board's
2 direct and indirect costs as specified by Section 11256 of the
3 Government Code. Any disputes as to the amount of preparatory
4 costs incurred shall be resolved by the Director of Finance, and
5 his or her decision shall be final.

6 42109. The board shall annually prepare a report showing the
7 amount of both reimbursed and unreimbursed costs incurred by it
8 in administering the collection of local charges pursuant to this
9 part.

10 42110. (a) Notwithstanding Section 55381, it is unlawful for
11 any person, other than an officer or employee of a county, city and
12 county, city, or district, who obtains access to information
13 contained in, or derived from, prepaid mobile telephony services
14 surcharge and local charge records of the board pursuant to
15 subdivision (b), to retain that information after that person's
16 contract with the county, city and county, city, or district has
17 expired.

18 (b) (1) When requested by resolution of the legislative body of
19 any county, city and county, city, or district, the board shall permit
20 any duly authorized officer or employee of the county, city and
21 county, city, or district, or other person designated by that
22 resolution, to examine all of the prepaid mobile telephony services
23 surcharge and local charge records of the board pertaining to the
24 ascertainment of those prepaid mobile telephony services surcharge
25 and local charges to be collected for the county, city and county,
26 city, or district by the board pursuant to contract entered into
27 between the board and the county, city and county, city, or district
28 pursuant to this part. Except as otherwise provided in this section,
29 this subdivision does not allow any officer, employee, or other
30 person authorized or designated by a county, city and county, city,
31 or district to examine any sales or transactions and use tax records
32 of any taxpayer. The costs that are incurred by the board in
33 complying with a request made pursuant to this subdivision shall
34 be deducted by the board from those revenues collected by the
35 board on behalf of the county, city and county, city, or district
36 making the request.

37 (2) The resolution of the legislative body of the county, city and
38 county, city, or district shall certify that any person designated by
39 the resolution, other than an officer or employee, meets all of the
40 following conditions:

1 (A) Has an existing contract with the county, city and county,
2 city, or district to examine those prepaid mobile telephony services
3 surcharge and local charge records.

4 (B) Is required by that contract to disclose information contained
5 in, or derived from, those prepaid mobile telephony services
6 surcharge and local charge records only to an officer or employee
7 of the county, city and county, city, or district who is authorized
8 by the resolution to examine the information.

9 (C) Is prohibited by that contract from performing consulting
10 services for a seller during the term of that contract.

11 (D) Is prohibited by that contract from retaining the information
12 contained in, or derived from, those prepaid mobile telephony
13 services surcharge and local charge records, after that contract has
14 expired.

15 (3) Information obtained by examination of board records
16 pursuant to this subdivision shall be used only for purposes related
17 to the collection of the prepaid mobile telephony services surcharge
18 and local charges by the board pursuant to the contract, or for
19 purposes related to other governmental functions of the county,
20 city and county, city, or district set forth in the resolution.

21 (c) If the board believes that any information obtained pursuant
22 to subdivision (b) has been disclosed to any person not authorized
23 or designated by the resolution of the legislative body of the county,
24 city and county, city, or district, or has been used for purposes not
25 permitted by subdivision (b), the board may impose conditions on
26 access to its local charge records that the board considers
27 reasonable, in order to protect the confidentiality of those records.

28 (d) Predecessors, successors, receivers, trustees, executors,
29 administrators, assignees, and guarantors, if directly interested,
30 may be given information as to the items included in the measure
31 and amounts of any unpaid local charges or amounts of local
32 charges required to be collected, interest, and penalties.

33 ~~42111. This part shall remain in effect only until January 1,~~
34 ~~2019, and as of that date is repealed, unless a later enacted statute,~~
35 ~~that is enacted before January 1, 2019, deletes or extends that date.~~

36 ~~SEC. 12. The repeal of any provision of Part 21 (commencing~~
37 ~~with Section 42001), and Part 21.1 (commencing with Section~~
38 ~~42100), of Division 2, of the Revenue and Taxation Code, shall~~
39 ~~not affect the collection of the prepaid MTS surcharge, the liability~~
40 ~~of which accrued prior to January 1, 2019, the making of any~~

1 ~~refunds and effecting of any credits, the disposition of money~~
2 ~~collected, nor shall the repeal affect any act done or any right~~
3 ~~accruing or accrued, or any suit or proceeding had or commenced~~
4 ~~in any civil cause, before that repeal; but all rights and liabilities~~
5 ~~under that law shall continue, and may be enforced in the same~~
6 ~~manner, as if the repeal had not been made.~~

7 ~~SEC. 13.~~

8 *SEC. 8.* No inference shall be drawn from the enactment of
9 this act with respect to any remittance requirements of a prepaid
10 MTS provider pursuant to the law as it existed prior to the
11 enactment of this act. Additionally, nothing in this act shall affect
12 any remittance requirements of a prepaid mobile telephony services
13 provider for any service other than prepaid mobile telephony
14 services. Nothing in this act shall affect the federal remittance
15 requirements of a prepaid mobile telephony services provider.

16 ~~SEC. 14.~~

17 *SEC. 9.* It is the intent of the Legislature that the remittance
18 obligations of a prepaid mobile telephony services provider,
19 relating to emergency telephone users surcharge and any charges
20 imposed by the Public Utilities Commission pursuant to Chapter
21 2.5 (commencing with Section 401) of Part 1 of Division 1 of the
22 Public Utilities Code or for purposes of the universal services
23 programs, shall ~~continue to remain subject to the law existing prior~~
24 ~~to the effective date of this act until January 1, 2017. However,~~
25 ~~the law existing prior to the effective date of this act shall remain~~
26 ~~applicable for each of the following:~~

27 (a) The collection of surcharges, the liability for which accrued
28 prior to January 1, 2016.

29 (b) The making of any refunds and the effecting of any credits
30 *for payments made on claims of liability that accrued prior to*
31 *January 1, 2016.*

32 (c) The disposition of money collected *on any liability that*
33 *accrued prior to January 1, 2016.*

34 (d) The commencement of any action or proceeding pursuant
35 ~~to this part.~~ *the Public Utilities Act (Part 1 (commencing with*
36 *Section 201) of Division 1 of the Public Utilities Code).*

37 ~~SEC. 15.~~

38 *SEC. 10.* No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

7 ~~SEC. 16.~~

8 *SEC. 11.* This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or safety within
10 the meaning of Article IV of the Constitution and shall go into
11 immediate effect. The facts constituting the necessity are:

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