

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

Memorandum

Date: March 5, 2012

To: The Commission
(Meeting of March 8, 2012)

From: Office of Governmental Affairs (OGA) — Sacramento

Subject: AB 1050 (Ma) – Telecommunications: prepaid mobile telephony services: taxes and fees
As amended: September 8, 2011

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

AB 1050 would establish a uniform method for retail sellers of prepaid mobile telephony communications services to use to collect from customers local and certain state communications fees and surcharges, including the 911 surcharge, the CPUC user fee and the six CPUC universal service programs' surcharges. The bill would establish a "Prepaid Communications Charge" consisting of a state component and a local component, and require all customers purchasing prepaid mobile telephony service at retail to pay the charge to the retailer seller. Monies collected by the retailer seller would be remitted to the Board of Equalization who would then remit to the CPUC that portion of the "Prepaid Communications Charge" collected as the CPUC user fee and universal service programs' surcharges.

The bill would declare that it is to take effect immediately as an urgency statute.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 1050 should be opposed for the following reasons:

(1) The bill incorrectly asserts that no method exists for collecting communications taxes, fees and surcharges from prepaid end-use consumers. The impetus for this bill is the industry position that currently no method exists for collecting communications taxes, fees, and surcharges from prepaid end-use consumers. There is a statement in the Findings to this effect. Further, the bill states that the reason an Urgency clause is necessary is because currently today there is no means by which state and local charges can be collected from end-users of prepaid mobile telephony services. This assertion is completely inaccurate as it pertains to the

determination, collection and remittance of state telecommunications public purpose program surcharges which the Commission administers.

However, aside from a select group of pre-paid wireless service providers who remain non-compliant, most carriers of every carrier type are complying with the CPUC requirement to collect and remit surcharges. Carriers are doing so based on the processes and procedures outlined by the many FCC and CPUC documents that speak to the matter as well as the individual guidance provided by staff.

Determining revenues subject to surcharge:

The FCC requires carriers to pay into the federal Universal Service Fund based on all interstate and international revenues, prepaid as well as postpaid. The FCC has established two methods for determining which wireless revenues are interstate or intrastate. The California legislature in 2011 endorsed three methods of determining which revenues are subject to intrastate surcharges for VoIP providers in the recently-enacted AB 841 (see new PU Code Sec. 285(e)). There is no evidence that carriers are not paying surcharges on revenues derived from the provision of prepaid wireless phone services at the federal level to comply with the FCC mandate.

Collection of surcharges:

The Commission does not prescribe the specific method by which a carrier collects surcharges from end-user customers. Carriers have the discretion to use any method that meets a carrier's own business model as long as the method provides a reasonable basis for accurately assessing and collecting surcharges due from the customer. With this flexibility, carriers, including those providing pre-paid services, are utilizing a variety of solutions to collect these monies. Some, for instance, assess and collect an additional amount on top of the charge for a service, while others include the surcharge in the service rate. The Commission does not prescribe one or the other nor limit carriers to only these solutions.

Remittance of surcharges:

The Commission requires all telecommunications carriers to calculate and report surcharges online using the Telecommunications & User Fees Filing System (TUFFS) and remit the owed monies through the its link to the California State Agency EFT System. The TUFFS website allows any carrier pre-paid or otherwise to calculate, report and remit surcharges via a web solution in a simple and easily manageable way.

Clearly, since methods exist today and are being used for determining, collecting and remitting surcharges on all services including pre-paid, the motive for the bill is not that no methods exist. This incorrect assertion in the bill, if it remains and the bill becomes law, can be used against the CPUC by those providers, TracFone being one, who refuse to remit surcharges today on their prepaid intrastate revenues. The CPUC recently concluded that TracFone owes surcharges for its pre-paid wireless services in Decision 12-02-032.

(2) The bill would require retail sellers of prepaid mobile telephony services and the Board of Equalization (BOE) to needlessly administer what are currently programs wholly under CPUC jurisdiction and oversight. This encroachment into CPUC jurisdiction would hamper the Commission's ability to efficiently and properly administer its universal service programs. The construct envisioned in AB 1050 would place intermediaries -- the retailer and the BOE -- between the CPUC and the carrier, thus diluting, if not vitiating, the CPUC's role in overseeing and managing the collection of surcharges for universal service programs **in conjunction with its other oversight responsibilities for wireless carriers (wireless carrier registration, consumer protection, etc.)**. The proposal would require the CPUC to establish wireless prepaid surcharges separately from the surcharges established for all other intrastate revenues and would dictate when exactly we would have to annually determine the wireless prepaid surcharge levels. The bill would limit the CPUC's flexibility to respond to changing circumstances and adjust surcharges in mid-year, which could mean that any one of the funds could fall short of money and the program's beneficiaries would be adversely affected. The bill also would require that the audit and appeal procedures of the state Fee Collection Procedures Law govern any auditing of existing CPUC requirements. The CPUC already has established auditing procedures for these CPUC funds. Thirdly, in addition to complicating the administration of these program funds by adding two new layers of administration, the bill would also increase the costs of administration for both the user fee fund and the universal service programs because it would require payment to the retail sellers and the BOE for their costs of administration. These increased costs will result in higher surcharges on users of communications services.

(3) The bill would make the prepaid customer liable for remitting the user fee and universal service surcharges, stating that payment of such charges is the liability of the consumer and not the seller or service provider. CPUC regulations put the burden of collecting and remitting the fees on the service provider. (Some service providers assert that the burden of paying surcharges is "on the customer" in California, and in that way, they also argue, California differs from the federal model, which puts the burden on the carrier.) Certainly, California customers have an obligation to pay for services rendered, including assessed surcharges and fees. However, it is the service provider's obligation to collect those surcharges **and remit them to the CPUC**. Indeed, the CPUC has no jurisdiction over individual customers, but does have jurisdiction over service providers, which is why the legal burden is on the provider, not the customer, to collect and remit surcharges. In discussions regarding this bill, CPUC staff has noted repeatedly that the Commission must **maintain what might be called "regulatory privity"** with the carrier in the surcharge collection process for this very reason. The bill **could severely hamper** the CPUC's ability to enforce the required collection of fees/surcharges on prepaid wireless services.

(4) The bill would require the CPUC when establishing telecommunications universal service fees to take into consideration the degree to which prepaid wireless customers benefit from state universal service programs, and to adjust the prepaid wireless universal service surcharges downward to the extent the Commission determines that prepaid wireless users derive a lower benefit from

universal service programs. This imposes on the Commission an additional cost to conduct a study on the benefits of universal service programs that prepaid wireless users receive. This will impose unnecessary administrative costs on the universal service programs, diverting monies from their intended purpose. It would also be at odds with the basis for the Moore Universal Service Act, as discussed in CPUC D.96-10-066, which specifically requires all telephone companies, including wireless providers, to contribute to universal service programs **on an equal basis**. Wireless providers were specifically included because wireless users benefit from interconnecting to the public telephone network by being able to call wireline telephone service customers.

(5) The bill would jeopardize the CPUC's ability to manage and adjust the surcharge amounts. AB 1050 requires that all "Prepaid Communications Charges" be remitted first to the BOE, and subsequently, the "state component" would be remitted to the California Technology Agency and the CPUC. The CPUC would thus be third on the list of recipients of the surcharges that fund the CPUC's universal service programs. As CPUC staff explained to the industry representatives in a June meeting on this bill, while this structure may be convenient for the industry, it would be extremely burdensome and impractical with the system that the CPUC uses for carriers to submit public programs surcharges: the Telecommunications and User Fees Filing System (TUFFS).

SUMMARY OF SUGGESTED AMENDMENTS:

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

DIVISION ANALYSIS (Communications Division):

The bill would impact CPUC programs, practice and policy in the following ways:

- **Collection of funds:** Prepaid wireless service providers are telephone corporations subject to CPUC authority. Wireline and wireless telephone corporations currently are required, both by statute and by CPUC decisions and General Orders, to collect the CPUC reimbursement fee as well as surcharges to support the CPUC's universal service programs. The surcharges and fees generally are assessed as a percentage of a customer's total charges for intrastate services. In the case of prepaid services, the fees and surcharges are assessed on the service provider's prepaid intrastate revenues.

Currently, telephone corporations remit directly to the CPUC the user fees and universal service surcharges collected. AB 1050 requires all "Prepaid Communications Charges" to be remitted first to the BOE, and subsequently, the "state component" would be remitted to the California Technology Agency and the CPUC. The CPUC would then be third on the list of recipients of the surcharges that fund the CPUC's universal service programs. As CPUC staff explained to the industry representatives in a June meeting

on this bill, while this structure may be convenient for the industry, it would be extremely burdensome and impractical with the system that the CPUC uses for carriers to submit public programs surcharges: the Telecommunications and User Fees Filing System (TUFFS).

- **Jurisdiction:** The bill would require retail sellers of prepaid mobile telephony services and the BOE to administer what are currently programs wholly under CPUC jurisdiction and administration. This encroachment of CPUC jurisdiction would hamper our ability to efficiently and properly administer our universal service programs. The construct envisioned in AB 1050 would place intermediaries between the CPUC and the carrier – the retailer and the BOE – thus diluting the CPUC’s role in overseeing and managing the collection of surcharges for universal service programs. The proposal would require the CPUC to establish prepaid surcharges separately from the postpaid surcharges, and would dictate when exactly we would have to annually determine the surcharge levels. The bill also would require that the audit and appeal procedures of the Fee Collection Procedures Law govern auditing of what are CPUC requirements. The CPUC already has established auditing procedures for these CPUC funds.
- **Increased costs:** The bill would also increase the costs of administration for both the user fee fund and the universal service programs because it would require payment to the retail sellers and the BOE for their costs of administration. These increased costs will result in higher surcharges on users of communications services.
- **Statutory conflicts:** The bill language would conflict with existing enabling statutes for the CPUC’s universal service programs. Many (but not all) of the enabling statutes require the CPUC to fund universal service programs via a surcharge assessed against a customer’s charges, and place this responsibility solely with the CPUC.

For example, the bill's proposed methodology contemplates that, if a 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 program statutes under which the CPUC mandates collection and remission of fees contain no exemption for a *de minimus* amount.

The enabling statutes allow the CPUC to order collection of surcharges only against customer charges for service, not for equipment. The proposed methodology in AB 1050 would allow for surcharges to be collected on a bundle of equipment and services if the service provider or retailer chooses not to break out the service charge from the equipment charge.

The proposed amendments would also require some of the universal service fee monies to be paid to the retail sellers and the BOE.

- **Uniformity:** There is no uniform method for collecting the user fee and surcharges from a buyer of prepaid services. However methods do exist for collecting surcharges. If necessary, the CPUC could establish a uniform method via regulatory action which would allow all parties, including the public, to comment. Legislation is not necessary for this purpose. (Although legislation would be necessary to establish a uniform method that includes local taxes and the 9-1-1 fee.)

PROGRAM BACKGROUND:

Current law requires all telecommunications service providers operating in California to collect and remit percentage surcharges on their prepaid and post-paid 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 P.U. Code § 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:
 - a) **The California High-Cost Fund A (CHCF-A)** for the State's small ROR ILECs,
 - b) **The California High-Cost Fund-B (CHCF-B)** for the mid-size and large ILECs.
- **The California Advance Services Fund (CASF)** supports the deployment of broadband facilities and service to unserved and underserved areas of the State. The Legislature codified the CASF in 2008.¹

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

The Commission has not instituted a proceeding to determine the precise methodology for prepaid phone service providers to contribute to our universal service programs. It has been both the Communication Division's and the Consumer Protection and Safety Division's position that no such determination need be made, as prepaid phone service providers already contribute at the federal level and the means of making a corollary contribution at the state level does not require a CPUC determination. The Commission has not spoken specifically to the question of a separate methodology for prepaid, other than to dismiss a Verizon petition requesting that the Commission determine if the universal service programs' surcharges apply to prepaid wireless service and, if so, determine what methods for collecting such surcharges will meet the Commission's requirements for those programs. (See below for more detail.)

- **End-User Billing Requirements:** Existing law requires several universal service program surcharges and user fees to be collected from end-users and remitted to the CPUC:
 - CPUC Decision 96-10-066 and subsequent decisions sets forth rules for establishing the LifeLine (ULTS) program, CHCF A and B programs; the DDTP and the CTF program, requiring the surcharges to be charged to end-users to pay for these programs.
 - PU Code Section 879(c) requires telephone corporations to apply the funding requirement for LifeLine “in the form of a surcharge to service rates which may be separately identified on the bills of the customer using those services.”
 - PU Code Section 2881(d) requires that the DDTP surcharge be applied to “a subscriber’s intrastate telephone service”.
 - The CASF was created by CPUC Decision 07-12-054.
 - The CPUC also collects the CPUC Reimbursement Fee from telephone corporations as required by PU Code Sections 431-434. Except for a few basic parameters, the statute gives the CPUC discretion as to how the fee should be collected. It does not require the fee to be billed to the end user customer.
 - PU Code Sec. 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 Commission the rate of the tax, the manner in which the tax is collected, and the frequency with which the tax is collected.
- **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 Commission’s jurisdiction

and its Public Policy Program (PPP) surcharges, the Commission determine if the universal service programs' surcharges apply to prepaid wireless service and, if so, determine what methods for collecting such surcharges will meet the Commission's requirements for those programs. The Verizon petition for rulemaking was dismissed without prejudice. Verizon has not re-filed, but it did seek to intervene in the TracFone OII (see below) *as an amicus curiae*. The Consumer Protection and Safety Division opposed Verizon's motion, and the motion **was denied**.

- **Pending TracFone OII (I.09-12-016):** On December 17, 2009, the CPUC instituted an investigation, on its own motion, into the failure of TracFone Wireless, Inc. to pay public purpose surcharges and user fees on its intrastate telephone revenue. TracFone offers prepaid wireless services. Hearings have been held in the OII and briefs submitted. A proposed decision was issued for comment on November 18, 2011, and a final Decision (D.12-02-032) was unanimously voted out by the Commission on February 16, 2012. The Decision finds that TracFone is obligated to pay PUC User Fees and Universal Service Surcharges. D.12-02-032 orders TracFone to immediately begin collecting and remitting the surcharges and fees at issue, and sets up a phase II proceeding to determine the amount of past-due fees, surcharges, and interest due and owing.
- **TracFone Application for Rehearing on denial of ETC Status (A.10-01-015):** On December 18, 2009, the CPUC adopted Resolution T-17235 denying TracFone eligible telecommunications carrier (ETC) status for purposes of offering federal lifeline service, because TracFone had failed to collect and remit public purpose program surcharges and user fees. On January 19, 2010, TracFone filed an application for rehearing of T-17235. The rehearing was granted to the extent that the language and logic of T-17235 was vacated, and those issues transferred to the TracFone Investigation (I.09-12-016), but the denial of ETC status was upheld.

LEGISLATIVE HISTORY:

AB 2545 (De La Torre) is a similar bill that was introduced in the 2009-2010 Session of the Legislature and was ultimately held on the Senate Floor.

FISCAL IMPACT:

The fiscal impact to the CPUC of AB 1050 (Ma) as amended September 8, 2011, would be approximately \$571,000 annually for the first two years of implementation and approximately \$428,000 annually thereafter.

The CPUC would require more staff to implement, oversee, and enforce this new project. The Communications Division would require two new staff, Fiscal would require three new staff; Legal would require one new limited term attorney and the Auditing Unit would require one new auditor.

STATUS:

On February 2, 2012, AB 1050 was re-referred to the Senate Governance and Finance Committee.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: AB 1050 AMENDED
BILL TEXT

AMENDED IN SENATE SEPTEMBER 8, 2011
AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011

INTRODUCED BY Assembly Member Ma

FEBRUARY 18, 2011

An act to add ~~and repeal Section 41127.9~~
Section 316 to the Public Utilities Code, and to add Part 21
(commencing with Section 42000) to Division 2 of the Revenue
and Taxation Code, relating to telecommunications, and
declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1050, as amended, Ma. Telecommunications: *prepaid mobile
telephony services: taxes and fees.*

~~The~~

(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. Surcharge amounts 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.

~~—This bill would require the State Board of Equalization to convene a working group by March 1, 2012, 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 consumers. The bill would require the working group to report its recommendations by April 30, 2013. The bill would require that the working group include stakeholder representatives, including representatives from the commission, the California Technology Agency, local government entities, law enforcement agencies, mobile telephony service providers, retailers, and consumer groups. Pursuant to existing law, the bill would repeal these requirements on January 1, 2016.~~

This bill would enact the Prepaid Wireless Surcharge Collection Act. The bill would establish a prepaid communications charge, 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 communications charge would include a state component, as defined, and if a local government has adopted utility user taxes or other specified charges that are otherwise applicable to prepaid mobile telephony services and the retail transaction occurs within that jurisdiction, a local component. The bill would state the intent of the Legislature to develop a method whereby a seller is required to collect the local component. The bill would require a seller, as defined, to collect the prepaid communications charge from a consumer and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law. The bill would require the board to remit that portion of the state component collected pursuant to the Emergency Telephone Users Surcharge Act to the California Technology Agency and remit the balance of the state component, minus certain administrative costs incurred by the board, to the Public Utilities Commission. The bill would require the State Board of Equalization to remit the local component, if applicable, to the local government. The bill would require the Public Utilities Commission to annually compute the commission's reimbursement fee and specified telecommunications universal service program fees, to post notice of those fees on its Internet Web site and to notify the State Board of Equalization of the amounts.

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

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

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

SECTION 1. Section 316 is added to the Public Utilities Code , to read:

316. (a) The commission shall annually, on or before December 31, compute a reimbursement fee to be collected and remitted to the commission pursuant to the Prepaid Wireless Surcharge Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code). On or before January 15 of the following year, the commission shall post notice of the fee on its Internet Web site and notify the State Board of Equalization of this information.

(b) The commission shall annually, on or before December 31, compute the telecommunications universal service fees to be collected

and remitted to the commission pursuant to the Prepaid Wireless Surcharge Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code). On or before January 15 of the following year, the commission shall post notice of the fee on its Internet Web site and notify the State Board of Equalization of this information. In computing the telecommunications universal service fees, the commission shall consider the degree to which persons who utilize prepaid mobile telephony services benefit from the state's programs to advance universal service and adjust those fees downward to the extent the commission determines that persons who purchase prepaid services derive a lower benefit from the state's universal service programs than do subscribers of a telecommunications service plan.

(c) A seller collecting prepaid communications charges pursuant to Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code may rely upon the accuracy of the information posted on the commission's Internet Web site in collecting those charges.

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

PART 21. PREPAID WIRELESS SURCHARGE COLLECTION ACT

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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

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

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

(b) Under existing law, end-use communications taxes, fees, and surcharges, including the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)), telecommunications universal service surcharges, local 911 emergency system surcharges, and utility user taxes are important funding mechanisms to assist state and local governments with the deployment of a variety of important services and programs to the citizens of this state.

(c) Providers of end-use communications services are required to collect and remit communications taxes, fees, and surcharges on various types of communication service revenues, as provided by existing state or local law.

(d) Under existing law, there is a method for collecting communications taxes, fees, and surcharges from postpaid communications end-use consumers. However, there is no method for collecting communications taxes, fees, and surcharges from prepaid end-use consumers.

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

(f) Prepaid communications services are an important and growing segment of the communications industry. Prepaid communications

services are often the only means by which persons with low incomes can obtain limited access to the telecommunications system.

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

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

(a) "Communications charge" means any and all state and locally authorized taxes, fees, and surcharges that are applicable to mobile telephony services, including each of the following:

(1) Surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) that are applicable to mobile telephony services.

(2) Charges authorized by the Public Utilities Commission to be collected from end-use customers of mobile telephony services, including:

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

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

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

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

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

(F) 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).

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

(3) Local 911 or access line taxes, fees, or surcharges that are applicable to mobile telephony services.

(4) Local utility user taxes that are applicable to mobile telephony services.

(b) "Consumer" means a person who purchases prepaid mobile telephony services in a retail transaction.

(c) "Local component" means those items included in paragraphs (3) and (4) of subdivision (a), for a retail transaction, as defined in subdivision (h).

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

(e) "Prepaid communications charge" means a communications charge that is required to be collected by a seller from a consumer in the amount established pursuant to Chapter 2 (commencing with Section 42010).

(f) "Prepaid mobile telephony services" means a purchase of the right to utilize mobile telephony services, either alone or in combination with mobile data services, that is paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

(g) "Provider" means a person or corporation that provides prepaid

mobile telephone services pursuant to a license issued by the Federal Communications Commission.

(h) "Retail transaction" means the purchase of prepaid mobile telephony services, either alone or in combination with mobile data services, from a seller for any purpose other than resale.

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

(j) "State component" means those portions of the prepaid communications charge that are collected and remitted for state services, specifically those items included in paragraphs (1) and (2) of subdivision (a).

CHAPTER 2. THE PREPAID COMMUNICATIONS CHARGE

42010. (a) There is hereby imposed upon end-use consumers a prepaid communications charge that consists of the state component and the local component, if applicable, to be collected at the time of the retail transaction based upon a percentage of the sales price of each retail transaction that occurs in this state.

(b) Beginning ____, the state component of the prepaid communications charge shall be collected by each seller from the consumer for each retail transaction that occurs in the state. The board shall annually post on its Internet Web site the amount of the state component, to include those amounts determined by the Public Utilities Commission pursuant to Section 316 of the Public Utilities Code and those amounts to be collected pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)). The board shall post those amounts on its Internet Web site not less than ____ days prior to the date on which those amounts shall go into effect as the new amount of the state component.

(c) It is the intent of the Legislature to develop a method for sellers to also collect a local component if the retail transaction occurs within a local governmental jurisdiction that has elected to impose such a charge, or more than one such charge.

(d) The amount of the prepaid communications charge shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer. The seller may, but is not required to, separately provide the state component and local component of the prepaid communications charge.

42012. For purposes of this chapter, a retail transaction occurs in this state, and within a local governmental jurisdiction of the state, under any of the following circumstances:

(a) The consumer makes the retail transaction in person at a business location in the state or local jurisdiction.

(b) If subdivision (a) is not applicable, the product is delivered to the consumer by mail or other form of shipping to an address in the state that the consumer supplies to the seller for purposes of mailing or shipping.

(c) If neither subdivision (a) nor (b) is applicable, the seller's records, maintained in the ordinary course of business, indicate that the consumer's address is in the state and the records are not made or kept in bad faith.

(d) If subdivisions (a), (b), and (c) are not applicable, the consumer gives an address in the state during consummation of the sale, including the consumer's payment instrument if no other address is available, and the address is not given in bad faith.

(e) If subdivisions (a), (b), (c), and (d) are not applicable, the calling number for the mobile telephony service communications device is associated with an area code located in California.

42014. The prepaid communications charge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid communications charges that the seller collects from consumers pursuant to Chapter 3 (commencing with Section 42020), including all charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

42016. (a) If prepaid mobile telephony services are sold with one or more other products for a single, nonitemized price, then the prepaid communications charge shall apply to the entire nonitemized price unless the seller elects to apply the charge to either of the following:

(1) If the purchase price for the prepaid mobile telephony services component of the bundled charge is disclosed to the consumer, the prepaid communications charge shall be calculated based upon that amount.

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

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

CHAPTER 3. ADMINISTRATION

42020. (a) All prepaid communications charges collected by sellers shall be remitted to the board pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). Not later than ____, the board shall establish registration and payment procedures for sellers consistent with the Fee Collection Procedures Law.

(b) A seller shall be permitted to deduct and retain ____ percent of the prepaid communications charges that are collected by the seller from consumers.

(c) The audit and appeal procedures of the Fee Collection Procedures Law (Part 30 (commencing with Section 55601)) shall apply to the collection and remittance of prepaid communications charges.

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

(e) Within 30 days of receipt, and after deducting an amount not to exceed ____ percent of the collected prepaid communications charges retained by the board to reimburse its direct costs of administering the collection and remittance of prepaid communications charges, the board shall pay all remitted prepaid communications charges as follows:

(1) The state component shall be remitted as follows:

(A) To the California Technology Agency, that portion of the state component collected pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)).

(B) To the Public Utilities Commission, that portion of the state component collected for those charges authorized by the commission identified in paragraph (2) of subdivision (a) of Section 42004.

(2) The local component shall be remitted to the local government.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) Maintaining effective and efficient telecommunications services, 911 emergency systems, telecommunications related public policy programs to promote universal service, and various local programs across the state benefits all citizens.~~

~~(b) Under existing law, communications taxes, fees, and surcharges, including the Emergency Telephone Users Surcharge Act, telecommunications universal service surcharges, local 911 emergency system surcharges, and utility user taxes are important funding mechanisms to assist state and local governments with the deployment of a variety of important services and programs to the citizens of this state.~~

~~(c) Providers of communications services are required to collect and remit communications taxes, fees, and surcharges on various types of communication service revenues, as provided by existing state or local law.~~

~~(d) Under existing law, there is a method for collecting communications taxes, fees, and surcharges from postpaid communications end use consumers. However, there is no method for collecting communications taxes, fees, and surcharges from prepaid end use consumers.~~

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

~~(f) Prepaid communications services are an important and growing segment of the communications industry.~~

~~(g) To ensure equitable contributions from end use consumers of postpaid and prepaid communications services, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end use consumers of prepaid communications services.~~

~~SEC. 2. Section 41127.9 is added to the Revenue and Taxation Code, to read:~~

~~41127.9. (a) The State Board of Equalization shall convene a working group, by March 1, 2012, 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 consumers. The working group shall report to the Legislature with its recommendations by April 30, 2013. The working group shall include stakeholder representatives, including, but not limited to, representatives from the Public Utilities Commission, the California Technology Agency, local government entities, law enforcement agencies, mobile telephony service providers, retailers, and consumer groups.~~

~~— (b) For the purposes of this section, "communications taxes, fees, and surcharges" means any and all state and locally authorized taxes, fees, and surcharges on communications services, including, but not limited to:~~

~~— (1) Surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)).~~

~~— (2) Charges authorized by the Public Utilities Commission, including:~~

~~— (A) The California High Cost Fund A program surcharge (Section 275.6, Public Utilities Code).~~

~~— (B) The California High Cost Fund B program surcharge (Section 739.3, Public Utilities Code).~~

~~— (C) The Deaf and Disabled Telecommunications Program surcharge (Section 2881 and following, Public Utilities Code).~~

~~— (D) The California Teleconnect Administrative Committee program surcharge (Section 280, Public Utilities Code).~~

~~— (E) The California Advanced Services Fund program surcharge (Section 281, Public Utilities Code).~~

~~— (F) 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).~~

~~— (G) Public Utilities Commission reimbursement fees collected pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.~~

~~— (3) Local 911 or access line taxes, fees, or surcharges.~~

~~— (4) Local utility user taxes.~~

~~— (c) (1) The report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.~~

~~— (2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2016.~~