STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	**04/02/14**	Bill No:	**Assembly Bill 1717**
Tax Program:	**Prepaid Mobile Telephony Services Surcharge**	Author:	**Perea**
Sponsor:	**CTIA – The Wireless Association**	Code Sections:	**RTC 41020, 41030** **RTC Div.2, Part 21 (42001)** **RTC Div. 2, Part 21.1 (42100)**
Related Bills:		Effective Date:	**Upon Enactment**

This analysis only addresses the provisions that impact the Board of Equalization (BOE)

BILL SUMMARY

Among other things, this bill imposes upon each prepaid consumer a prepaid mobile telephony services (MTS) surcharge to be collected by a seller on each retail transaction involving prepaid mobile telephony services.

Summary of Amendments

Among other things, the amendments since the last analysis (1) delete the 5-year sunset date and related provisions; and (2) remove both the requirement for service suppliers to remit, and the prohibition on collection of, the Emergency Telephone Users Surcharge and California Public Utilities Commission (CPUC) surcharges and user fee imposed on prepaid mobile telephony services for calendar year 2016.

ANALYSIS

CURRENT LAW

Surcharges and User Fee.[1] Current law assesses a number of state surcharges and a user fee on telecommunications services. Telephone service providers collect these surcharges and the user fee from their customers and remit them to either the CPUC or the BOE, as specified.

CPUC-Mandated Telecommunications All-End-User Surcharges. Currently, six CPUC-mandated telecommunications all-end-user surcharges support various public purpose programs in California. The all-end-user surcharges are remitted to the CPUC and the surcharge rates vary from program to program. The CPUC periodically adjusts the surcharge rates based on the forecast demand for the programs. The six all-end-user surcharge programs are as follows:

- **Universal LifeLine Telephone Service (ULTS) @ 1.15%.** This program provides discounted basic telephone (landline) services to eligible California households.
- **Deaf and Disabled Telecommunications Program (DDTP) @ 0.2%.** The CPUC implemented three telecommunications programs for California residents who are deaf, hearing impaired, or disabled.

[1] The following information is provided by the CPUC; for additional detail see Surcharges and Taxes.

- **California High Cost Fund-A (CHCF-A) @ 0.18%.** This fund provides a source of supplemental revenues to 14 small local exchange carriers (LECs) for the purpose of minimizing any rate disparity between rural and metropolitan areas.
- **California High Cost Fund-B (CHCF-B) @ 0.0%[2].** This fund provides subsidies to carriers of last resort (COLRs) to provide basic local telephone service to residential customers in high-cost areas that certain carriers currently service, as specified. The fund keeps basic telephone service affordable to meet the CPUC's universal service goal.
- **California Teleconnect Fund (CTF) @ 0.59%.** Another program established by the CPUC to meet universal service goals. This fund provides a 50% discount on selected telecommunication services to qualifying schools, libraries, government-owned and operated hospitals and health clinics, and community-based organizations.
- **California Advanced Services Fund (CASF) @ 0.464%.** A program that provides grants to "telephone corporations" to fund unserved and underserved areas with broadband services.

CPUC User Fee (Reimbursement Account) @ 0.18%. The CPUC determines annually the appropriate fee to be paid by the telecommunications carriers. The CPUC calculates the user fee based on the telecommunications carrier's gross intrastate revenue, excluding inter-carrier sales, equipment sales, and directory advertising. The fee, which is remitted to the CPUC, finances the CPUC's annual operating budget.

Telecommunications carriers with annual gross intrastate revenues in excess of $750,000 remit this fee quarterly, on or before the 15th of April, July, October, and January. Telecommunications carriers with annual gross intrastate revenues of $750,000 or less remit the fee annually on or before January 15.

Emergency Telephone Users Surcharge (911 Surcharge). Under existing law,[3] the 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for:

- Intrastate telephone communication service in this state, and
- Voice over Internet Protocol (VoIP) service that provides access to the "911" emergency system by any service user utilizing the digits 9-1-1 in this state.

The 911 Surcharge Act requires a service supplier to collect the surcharge from each service user at the time it collects its billing from the service user. It also requires the surcharge to be added to, and stated separately in, a service supplier's billings to the service user.

Prepaid Calling Cards. Regulation 2403, *Prepaid Telephone Calling Cards*, provides that the surcharge applies to the dollar amounts deducted or the value of the minutes deducted from the prepaid telephone calling card for intrastate telephone communication service. The surcharge does not apply to dollar amounts or minutes for int*er*state telephone communication services or minutes the user forfeits because of expiration.

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[2] The CHCF-B surcharge rate was temporarily reduced from 0.30% to 0.0%, effective February 1, 2014, because the CPUC determined that the current funds available in the CHCF-B fund's surplus reserve are sufficient to meet forecasted expenditures through January 1, 2015.

[3] Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code (RTC).

The regulation authorizes a service supplier to apply the surcharge to an estimate of the charges for intrastate telephone communication service supplied through a prepaid telephone calling card subject to the surcharge. The regulation also allows the service supplier to base the estimate of charges on such call information as the service supplier reasonably believes demonstrates the approximate amount of int*ra*state telephone communication service charges subject to the surcharge.

If a prepaid telephone calling card contains a statement that the card price includes applicable taxes and fees, the regulation authorizes the service supplier responsible for surcharge collection and payment to reduce the taxable measure of such services by the amount of taxes and fees that are not subject to the 911 surcharge, including the 911 surcharge itself.

Rate. The current surcharge rate is 0.75% of the amounts paid for intrastate telephone and VoIP services in this state. Service suppliers remit the surcharge to the BOE for deposit in the State Treasury to the credit of the State Emergency Telephone Number Account (Account) in the General Fund. The funds in the Account pay for 911 emergency telephone number system administration costs.

Local Taxes, Fees, and Surcharges. Locally imposed taxes, fees, and surcharges on communications services, such as 911 or access line taxes, fees, and surcharges and utility user taxes (UUTs), may also be imposed by cities and counties on the consumption of utility services, including telephone service.

PROPOSED LAW

Prepaid Mobile Telephony Services Surcharge Collection Act

This bill enacts the Prepaid Mobile Telephony Services Surcharge Collection Act (Act).[4] The Act imposes, on and after January 1, 2016, a prepaid mobile telephony services surcharge (MTS surcharge) on each prepaid consumer in lieu of the surcharges and user fee imposed under existing law and collected and paid to the CPUC and BOE by telephone communication service providers. The Act requires a seller to collect the surcharge from the prepaid consumer at the time of each prepaid mobile telephony services "retail transaction" in this state. The bill requires the surcharge and local charges to be imposed as a percentage of the retail sales price. The bill also requires the surcharge to be separately stated on an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

The bill defines a "retail transaction" to mean "the purchase of prepaid mobile telephony services, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business."

Surcharge Liability. The bill imposes the MTS surcharge and local charges on a prepaid consumer rather than the seller; however, the bill requires the seller to collect and remit all of the MTS surcharges and local charges. Both the surcharge amounts required to be collected and any unreturned amounts the seller represents and collects as the MTS surcharge and local charge owed by the prepaid consumer that are not actually owed constitutes a seller's debt to the state, or jointly to the state and to the local jurisdiction, for purposes of collection on behalf of, and payment to, the local jurisdiction imposing the charge.

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[4] Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code (RTC).

Furthermore, the bill provides that a seller that collects an amount that exceeds the MTS surcharge and local charges owing may refund those amounts to the prepaid consumer. The seller may refund those amounts even though the surcharge amount was submitted to the BOE and no corresponding credit or refund has yet been secured.

The bill also provides that every prepaid consumer is liable for the MTS surcharge and local charges until paid to the state. However, a prepaid consumer's payment to a registered seller relieves the consumer from further liability. Nothing in the Act imposes any obligation upon a seller to take any legal action to enforce the collection of the surcharge and local charges imposed.

Administration. This bill requires the BOE to administer and collect the MTS surcharge pursuant to the Fee Collection Procedures Law (FCPL).[5] For purposes of the Act, the bill clarifies the terms "fee" and "feepayer" as follows:

- "Fee" includes the MTS surcharge imposed by this bill; and
- "Feepayer" includes a person required to pay that surcharge, which includes a seller.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

The bill specifically authorizes the BOE to prescribe and adopt tax administration and enforcement regulations including, but not limited to, collections, reporting, refunds, and appeals. In addition, the bill authorizes the BOE to prescribe, adopt, and enforce any emergency regulations as necessary to implement the Act.

The bill also requires the BOE to: (1) establish procedures for a seller to document when a sale is not a retail transaction, and (2) establish procedures for sharing specified MTS surcharge collection information upon the request of the CPUC or the Office of Emergency Services (OES).

Furthermore, the bill relieves a seller from the liability to collect the prepaid MTS surcharge that became due and payable but was subsequently found to be worthless and written off for income tax purposes. If a seller is not required to file income tax returns, the bill allows a bad debt deduction or refund if the amount is charged off in accordance with generally accepted accounting principles. If a seller subsequently collects any amounts for which a bad debt deduction was taken or a refund was claimed, the amount so collected is required to be reported and paid to the BOE on the first return subsequently filed. The bill authorizes the BOE to promulgate regulations with respect to uncollected or worthless accounts, as deemed necessary.

Exemption. The bill exempts from the prepaid MTS surcharge the retail purchase of prepaid MTS if all of the following apply:

- The prepaid consumer is certified as state or federal lifeline program eligible.
- The seller is an authorized lifeline service provider, as described.
- The exemption applies only to the amount paid for prepaid MTS that the lifeline program specifies as exempt from surcharges and fees that compromise the prepaid MTS surcharge.

[5] Part 30 (commencing with Section 55001) of Division 2 of the RTC.

For purposes of the exemption, the bill defines "state lifeline program" to mean the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act[6] or Moore Act.

Registration, Reporting, and Payment. The bill requires every seller to register with the BOE on a BOE-prescribed form. The bill also requires the BOE to establish a registration method that utilizes the existing seller's permit registration process for sales and use tax purposes.

The MTS surcharge is due and payable to the BOE quarterly on or before the last day of the next month following each calendar quarter. In addition, a return for the preceding calendar quarter must be filed with the BOE using electronic media at the time of payment.

Existing law[7] authorizes the payment of the amount due and the filing of returns for periods other than the period or periods specified in the tax and fee laws administered under the FCPL.

Both the electronic application and tax return would be authenticated in a form or pursuant to a method as the BOE may prescribe.

The bill allows a seller, but not a seller that is a telephone corporation or the provider of prepaid MTS, to deduct and retain an amount equal to 2% of the total MTS surcharge and local charge collected by the seller and requires the seller to remit the remainder of the surcharges collected to the BOE. A seller that is a lifeline service provider shall exclude from its remittance to the BOE any applicable lifeline exemption for prepaid MTS sold directly to a prepaid customer.

MTS Surcharge Calculation. The bill requires the BOE to calculate the MTS surcharge rate annually, no later than November 1 each year commencing November 1, 2015, by combining the following:

- **911 Surcharge Rate.** The surcharge rate reported pursuant to Section 41030(c) of the 911 Surcharge Act.

  The bill amends 911 Surcharge Act Section 41030(b) to detail how the OES must determine the 911 surcharge rate and the MTS surcharge rate, commencing with the calculation made on October 1, 2015, to be effective January 1, 2016. In making the computation of the charges applicable to the intrastate portion of prepaid mobile telephone services, the OES is required to use "the computation method developed by the CPUC and reported to the OES." Section 41030(c) further requires the OES to notify the BOE of the 911 surcharge amount, and the prepaid MTS surcharge amount, by October 15 of each year.

- **CPUC End-User Surcharges.** The bill establishes the CPUC's reimbursement (user) fee and telecommunication universal surcharges pursuant to Section 319(b) of the Public Utilities Code (PUC).

  This measure adds PUC Section 319 to require the CPUC to compute, commencing October 1, 2015:

  - A reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, and

[6] Article 8 (commencing with Section 781) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code
[7] RTC §55041.1

- The cumulative amount of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services.

In addition, Section 319 requires the CPUC, on or before October 8 each year, to post the reimbursement fee and cumulative surcharge notice on its Internet Web site and notify both the OES and the BOE of the information. Except for the reimbursement fee and telecommunications universal service surcharge portion of the MTS surcharge, the bill does not restrict the CPUC's authority to adjust the reimbursement fees or universal service surcharges or require that they only be adjusted once annually.

Furthermore, Section 319 provides the CPUC with enforcement authority "to ensure the proper remittance over retail transactions" pursuant to the Act where the prepaid MTS provider is also the seller. However, the CPUC must collaborate with the BOE in the exercise of its enforcement authority.

- **Local Taxes and Surcharges.** The bill requires the BOE to post on its Internet Web site, no later than each December 1, the combined total of the rates of the MTS surcharge and the rate or rates of local charges for each local jurisdiction. The posted combined rate applies to all retail transactions during the calendar year beginning April 1 following the posting. However, the bill provides an exception when a local agency notifies the BOE that the local charge(s) is inaccurate or no longer imposed or has decreased. In such cases, the bill requires the BOE to promptly post the recalculated rate(s). The change becomes operative on the first day of the calendar quarter commencing more than 60 days from the date of the local agency notification.

Retail Sale Location. The bill provides the MTS surcharge is imposed upon a percentage of the sales price of each retail transaction that occurs in this state. A retail transaction occurs *in this state* if the consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction). If this is not applicable, a retail transaction occurs in this state if the consumer's address is in this state (known-address transaction). A consumer's address is in this state under any one of the following circumstances:

- The retail sale involves the shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.
- The prepaid consumer's address is known by the seller to be in the state. The consumer's address is considered to be "known by the seller" if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.
- The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.
- The mobile telephone number associates with a location in this state.

The bill states that a retail transaction occurs at only one location for local charge determination. The bill presumes the consumption of, use of, or access to prepaid MTS occurs at the "point-of-sale" retail transaction location. The bill further presumes a "known-address" retail transaction occurs by the location circumstances bulleted above,

in descending order. The bill also presumes the consumption of, use of, or access to the prepaid MTS in a known-address transaction occurs at the known address.

Transaction Location. For a known-address transaction, the bill allows the seller to collect the MTS surcharge and local charges that correspond to the prepaid consumer's five digit postal ZIP Code.

This measure discharges a seller from any liability for additional MTS surcharge or local charges and also relieves the seller from refunding amounts collected and remitted to the BOE if:

- A seller relies in good faith on BOE-provided information to match either a point-of-sale transaction location, or the five digit postal ZIP Code of the prepaid consumer's known-address, to the applicable MTS surcharge and local charges amount;
- A seller collects that amount from the prepaid consumer; and
- A seller remits the amount to the BOE in compliance with the Act.

The bill also discharges the seller from liability for any additional local charges and relieves the seller from refunding amounts collected and remitted if the seller, with due diligence and in good faith, relies on credible information to match the prepaid consumer's five digit postal ZIP code to the correct local charge, even if the ZIP code corresponds to more than one local charge in a known-address transaction.

Miscellaneous Provisions. The MTS surcharge applies to the entire price where prepaid mobile telephony services are sold in combination with mobile data services or any other services or products for a single price. However, if the prepaid MTS is sold with a cellular telephone and the purchase price for the prepaid cellular phone component of the bundled charge is disclosed to the consumer on a receipt, invoice, or other written electronic documentation provided to the prepaid consumer, the prepaid MTS surcharge and local charge may be calculated on an amount that excludes the separately stated cellular telephone price. Furthermore, the bill prohibits the application of the surcharge or local charges to a transaction where a minimal prepaid MTS amount is sold with a cellular telephone for a single, non-itemized bundled price. For these purposes, a minimal amount includes a service allotment denominated as 10 minutes or less, or $5 or less.

The bill authorizes a credit against, but not to exceed, the MTS surcharge and local charges where the prepaid consumer paid the 911 surcharge, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit would be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

Deposit of Revenues. The bill requires the BOE to deposit all MTS surcharge revenues into the Prepaid Mobile Telephony Services Surcharge Fund (MTS Surcharge Fund). Deposited amounts must include all surcharges, interest, penalties, and other amounts collected, less payments of refunds and reimbursement to the BOE for administration and collection expenses. The bill creates the MTS Surcharge Fund in the State Treasury. All moneys in the MTS Surcharge Fund would be deposited as follows:

- The 911 surcharge portion of the MTS surcharge would be deposited into the Prepaid MTS 911 Account, which this bill creates in the MTS Surcharge Fund.

- The CPUC surcharges portion of the MTS surcharge would be deposited into the Prepaid MTS PUC Account, which this bill also creates in the MTS Surcharge Fund.

Definitions. This bill includes several definitions of key terms, including, but not limited to, the following:

- "Mobile data service" has the same meaning as defined in Public Utilities Code Section 224.4, which provides:

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

- "Mobile telephony service" or "MTS" has the same meaning as defined in Section 224.4 of the Public Utilities Code, which provides:

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

- "Seller" means a person that sells prepaid mobile telephony service to a person in a retail transaction.

Local Prepaid Mobile Telephony Services Collection Act

This bill also enacts and repeals the Local Prepaid Mobile Telephony Services Collection Act[8] (Local Act). It provides that it "is the intention of the Legislature that this part shall preempt the provisions pertaining to the tax or charge rate, base, and method of collection contained in all local ordinances, rules, or regulation concerning the imposition of a local charge upon the consumption of prepaid mobile telephony services, to the extent those provisions are inconsistent with the provisions of this part and Part 21 (commencing with Section 42000). It is not the intent of the Legislature to otherwise preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges."

The Local Act imposes, on and after January 1, 2016, a local charge by a local agency on prepaid MTS collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid

[8] Part 21.1 (commencing with Section 42100) of Division 2 of the RTC.

Mobile Telephony Services Surcharge Collection Act; provided that on or before September 1, 2015, the local agency enters into a contract with the BOE, as provided.

In the event that a local agency adopts a new local charge on prepaid MTS after September 1, 2015, the Local Act requires the local agency to enter into a contract with the BOE, as provided, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

In the contract, the local agency must certify to the BOE: (1) that its ordinance applies its local charge to prepaid MTS and that the local agency agrees to indemnify, and hold and save harmless, the BOE, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and, (2) the amount of the local 911 charge or the applicable tiered rate for a utility user tax.

If a local agency increases its local charge after September 1, 2015, the local agency must provide the BOE with written notice of the increased local charge on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

Notwithstanding any other law, on and after January 1, 2016, the bill:

- Suspends the utility user tax on the consumption of prepaid MTS in the city or county at the rate specified in its ordinance. The bill provides applicable tiered rates based on the existing city or county rate. This provision is self-executing.
- Suspends a charge rate applicable to prepaid MTS for communication services or local "911" emergency telephone access. The bill specifies the applicable rate as 0% or a calculated rate percentage, based on the existing city and county per access line rate.

On and after January 1, 2016, the Local Act shall be:

- The exclusive collection method for the local UUT, local 911 charge, and any other local charge imposed on consumers using prepaid MTS, and for defining the scope of the tax or charge.
- The complete substitute for the UUT rate set forth in the local ordinance at the specified tiered rate. The bill also states that "this part shall not preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges."

Local Act Administration. The bill requires the BOE to perform all functions incident to the collection of the local charges of a city or county. In addition the BOE must collect the local charges in the same manner as it collects the MTS surcharge under the MTS Act, subject to specified limitations. Those limitations, for which the city or county is responsible, include:

- Defending any claim regarding the validity of the ordinance in its application to prepaid MTS.
- Interpreting any provision of the ordinance, except to the extent specifically superseded by the Local Act.
- Responding to specified customer claims for refund.
- Certifying that the city or county ordinance applies the local charge to prepaid MTS and agrees to indemnify and hold harmless the BOE, its officers, agents, and

employees for any and all liability for damages that may result from collection of the local charge.

- Reallocation of local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.

For purposes of the Local Act, the bill clarifies that the references in the FCPL to "fee" include the local charge and references to "feepayer" include a person required to pay the local charge, including the seller.

The Local Act authorizes the BOE to prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

The Local Act limits the BOE's audit duties to verification that the seller complied with the Act and allows the BOE to contract with a third party to:

- o Allocate and transmit collected local charges in the Prepaid Mobile Telephony Services Fund to the appropriate local jurisdictions.
- o Audit proper collection and remittance of the local charge.
- o Respond to requests from sellers, customers, boards, and others regarding local charges.

The bill applies existing disclosure laws to any third party contract, and prohibits contingent fee arrangements as payment for services rendered.

Local Act: Deposit of Revenues. The bill creates the Local Charges for Prepaid Mobile Telephony Services Fund in the State Treasury. All local charges imposed and collected by the BOE are to be held in trust for the local taxing jurisdiction. Local charges consist of all taxes, charges, interest, penalties, and other amounts collected by the BOE, less payments for refunds and reimbursement to the BOE for expenses to administer and collect the local charges. The bill requires the BOE to periodically transmit the funds to the local jurisdictions as promptly as feasible and at least once in each calendar quarter. The BOE must also furnish a quarterly statement to the local jurisdictions indicating the amounts paid and withheld.

Miscellaneous Provisions. The Local Act contains provisions similar to the Bradley-Burns Uniform Local Sales and Use Tax Law and Transactions and Use Tax Law, including, but not limited to provisions that require:

- the city or county to pay such costs monthly as incurred and billed by the BOE that include all preparatory costs, as described. The Director of Finance would resolve any preparatory-cost disputes, and his or her decision would be final.
- the BOE to annually prepare a report showing the amount of both reimbursed and unreimbursed administrative local charges collection costs.

Sole responsibility lies with a city or county that has adopted an ordinance that imposes a charge that applies to prepaid MTS to:

1. Defend any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service.
2. Interpret any provision of the ordinance, except to the extent specifically superseded by this statute.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

3. Respond to claims for refund, including claims of exemption under the ordinance.

911 Surcharge Act. This bill states that, commencing January 1, 2016, a MTS surcharge must be imposed on amounts paid for prepaid MTS pursuant to the Act in lieu of the 911 surcharge.

Savings Clause. The bill adds uncodified language that preserves administrative provisions that are applicable for the collection of the 911 surcharge and CPUC charges, the liability for which accrued prior to January 1, 2016; the making of any refunds and the effecting of any credits; the disposition of money collected; and the commencement of any action or proceeding pursuant to the Public Utilities Act[9].

Operative Date. As an urgency measure, the bill becomes effective immediately. However, the MTS surcharge is operative January 1, 2016.

LEGISLATIVE HISTORY

Last year's identical AB 300 (Perea) successfully passed the Legislature, but was vetoed by Governor Brown. In his veto message, the Governor stated:

> This bill would establish an additional system for collecting and remitting fees, surcharges and taxes applicable to prepaid mobile services. These charges would be collected from prepaid customers and remitted to the Board of Equalization, while fees collected from postpaid customers would continue to be remitted directly to the Public Utilities Commission, State 911 Fund and local governments.
>
> 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 this 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.

In 2010, AB 2545 (De La Torre) would have required the CPUC to conduct a public process for the purpose of developing recommendations for an equitable and uniform method of collection for state and local government-imposed communications taxes, fees, and surcharges from prepaid communications end-user consumers. That bill was ordered to third reading in the Senate, but was subsequently moved to the Senate inactive file where the bill died.

During the 2011-12 Legislative Session, Assembly Member Fiona Ma introduced AB 1050, which would have imposed a MTS surcharge, similar to this bill. That bill died in the Senate Committee on Governance and Finance.

COMMENT

1. **Sponsor and Purpose.** The bill is sponsored by CTIA – The Wireless Association[10] and is intended to create a fair and uniform mechanism to ensure collection of state and local communications taxes and fees from consumers of prepaid mobile telephony services.

[9] Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code.
[10] CTIA was originally the acronym for "Cellular Telecommunications and Internet Association."

2. **The April 2, 2014 amendments** (1) delete the 5-year sunset date and related provisions, (2) make clarifying changes to the uncodified savings clause provisions, and (3) remove the provisions that for calendar year 2016:

   - Prohibit service suppliers from collecting the 911 Surcharge and CPUC surcharges and user fee from service users on the intrastate portion of charges made for prepaid MTS; and
   - Require service suppliers to remit to the BOE and CPUC amounts equal to the surcharges and fee that would have otherwise been reported and remitted.

3. **Postpaid versus prepaid.** Both postpaid and prepaid service requires an eligible phone, SIM card, and service supplier (carrier) activation (e.g. directly from device, online, or by phone). While postpaid service requires detailed service user information verified through a credit check, prepaid service requires a zip code at a minimum. Both postpaid and prepaid services require the service user to pick a rate plan. Available prepaid rate plans include monthly plans, similar to postpaid service, to, for example, per-minute plans and per-day plans. Both services may also allow additional feature and service purchases, such as insurance, international services, family locator, additional data, music, and ringtones. Both services also offer a non-contract option; however, only postpaid services offer a contract option that usually subsidizes the cost of the phone. Lastly, both postpaid and prepaid services require a customer account.

   The principal difference between postpaid and prepaid wireless plans is in the name: service suppliers collect postpaid charges <u>after</u> service consumption whereas service suppliers collect prepaid charges <u>before or at the time</u> of service consumption. Another difference is that postpaid service requires a service user credit check while prepaid service does not.

4. **Postpaid and prepaid services plans.** A postpaid user receives a bill from the service supplier for services consumed, such as the cost of the plan, extra services (music and ringtone downloads, roaming, child-use monitoring, international options, etc.), and for surcharges and fees. The postpaid user has several payment options, such as credit/debit card, check, or online bill payment.

   As the name implies, a prepaid user pays in advance for rate plans, services, and features. Prepaid users also maintain an account with the service supplier but must credit their account before service consumption. Prepaid users may credit their account using the same payment methods offered to postpaid users, but they may also pay through: refill cards (top-off cards). Top-off cards may be purchased at a third-party retail store or a carrier store through the use of check, credit card, or cash.

5. **Top-off cards similar to gift cards.** Top-off cards are simple to purchase and redeem, allow prepaid users to stay within a budget, and provide a convenient payment method for cash users. Top-off cards are similar to a gift card in that they are a form of payment.

   As an example, a cash consumer purchases a $50 top-off card at a retailer location. Although the card may "advertise" $50 for all the text, talk, and data service you can use, the wording simply advertises a service supplier (carrier)-offered plan; the prepaid user has already selected their rate plan when the phone was activated. The $50 redeemed to the user's account may be used for more than paying for a rate plan; the credit may be used to purchase games, ringtones, music, and other

services similar to postpaid service including locator services and roaming. If the consumer would like to purchase more services, they need to buy another card.

6. **Is 911 surcharge pre-collection possible?** Could service suppliers pre-collect the 911 surcharge in the same manner as they pre-collect for rate plans, services, and other features? For example, could a service supplier immediately impose and collect the 911 surcharge at the time a user credits and/or adds value their prepaid account? To illustrate:

   Assume a new user selects a $25 prepaid rate plan at activation that allows unlimited talk and text, plus 1 GB of data monthly. At the time of activation, the user redeems a $50 top-off card, which credits the user's prepaid account by $50. Immediately, the service supplier imposes and collects the 911 surcharge in the amount of $0.06 from the user's $50 account balance leaving a $49.94 prepaid account balance.

   At the beginning of the user's service period, the service supplier deducts $25 from the prepaid account for the selected rate plan, leaving a $24.94 balance. During this same billing cycle, the user purchases ringtones ($9.98) and additional data ($10). Since this is a prepaid account, the service supplier immediately deducts $19.98 from the user's prepaid account leaving a $4.96 account balance.

   Nearing the next billing cycle, the user pays cash for a $20 top-off card and redeems the credit to his account to bring the account balance to $24.96. At the beginning of the billing cycle, the service supplier attempts to pre-collect for the $25 rate plan; however, the account is short by $0.04 and the service does not renew. The cash user must purchase another top-off card to bring the balance up to pay for the $25 monthly rate plan to resume service.

   Current law allows a service supplier to determine which charges are not subject to the surcharge based upon books and records. Current law also allows the service supplier to choose a reasonable and verifiable method to determine the interstate revenue portion not subject to the surcharge from the following:

   - Books and records kept in the regular course of business; and
   - Traffic or call pattern studies representative of the service supplier's business within California.

   Applying existing law to the $50 top-off card, the service supplier may apply a percentage of charges not subject to the 911 surcharge. For this example, the service supplier determines that 80% of their prepaid services represent non-telecommunication services. As such, the service supplier applies the inverse percent, 20%, to the $50 amount credited to the prepaid account to determine the telecommunication charges.

   - $50 top-off card redeemed x 20% telecommunication charges = $10 telecommunication charges

   The service supplier then determines the interstate portion as 25%, and applies the inverse percentage to the telecommunication charge amount to arrive at the intrastate telecommunication charges.

   - $10 telecommunication charges x 75% intrastate portion = $7.50 intrastate telecommunication charges

The service supplier then applies the 911 surcharge to the intrastate telecommunication charges to determine the correct 911 surcharge amount. $7.50 intrastate telecommunication charges x 0.0075% surcharge rate = $0.06 "911" surcharge

A service supplier may be unable to collect the surcharge if (1) the surcharge is collected at the end of a service cycle, and (2) the prepaid users prepaid account balance is zero. While BOE believes existing law provides service suppliers the authority to pre-collect the 911 surcharge at top-off or other credit to the account, it may be prudent to add clarifying language to the 911 surcharge law to specifically allow a surcharge pre-collection. BOE staff is available to draft such language.

7. **Administrative MTS surcharge program start-up cost funding essential.** This bill imposes the MTS surcharge on and after January 1, 2016. As a result, the BOE must begin to implement the bill in fiscal year (FY) 2015-16, or earlier if successfully signed during FY 2014-15.

   Typically, the BOE seeks administrative cost reimbursement from the account or fund into which tax proceeds are deposited. However, this bill creates the MTS Surcharge Fund, which lacks funding to reimburse the BOE prior to collection of the tax. Upfront BOE implementation cost reimbursement is essential. Thus, BOE staff suggests the bill authorize a loan from the General Fund or other eligible fund to the Fund. The loan would be repaid from taxes collected.

   Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed MTS program. **Without an appropriation, it may be necessary for the BOE to divert General Fund (GF) dollars to implement the proposed tax program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.**

8. **Service suppliers currently pay the 911 Surcharge for prepaid communication services.** The 911 Surcharge Act requires the BOE to enforce the provisions of that Act and authorizes the BOE to prescribe, adopt, and enforce rules and regulations relating to its administration and enforcement. In 2000, the BOE amended Regulation 2401, Definitions, and adopted Regulation 2403, Prepaid Telephone Calling Cards, to clarify the application of the 911 surcharge on dollar amounts or value of minutes deducted upon use of prepaid telephone and mobile telephone cards. These regulations were adopted to address confusion regarding the application of the tax to prepaid services within the telecommunications industry.

   In general, the service suppliers state they report the 911 surcharge consistent with existing statutes and regulations. However, service suppliers argue that there is no statewide mechanism to collect the same communications fees and surcharges <u>directly</u> from prepaid wireless customers as are presently collected from post-paid customers. As such, service suppliers state they are not reimbursed for the 911 surcharge or for CPUC end-user fees from prepaid customers.

   The surcharge proposed by this measure only applies to prepaid wireless services. Although the 911 surcharge applies to both prepaid calling cards <u>and</u> prepaid wireless services, the CPUC-related charges apply only to prepaid wireless services. Consequently, the MTS surcharge, which includes CPUC-related charges, applies only to prepaid wireless services.

9. **Should the entire 911 surcharge program be revamped for a MTS surcharge?** Along with concerns regarding the collection of the 911 surcharge on prepaid wireless services, BOE staff suggests a thorough review of the 911 Surcharge Act to determine a more up-to-date surcharge mechanism to provide a sufficient revenue stream to fund the statewide emergency telephone number system.

   This bill proposes to carve out a segment of the 911 Surcharge program (prepaid wireless) and instead impose a prepaid MTS surcharge on retail sales of the service that includes prepaid MTS and mobile data service. As discussed previously, the prepaid MTS surcharge also includes CPUC-related charges and is imposed in conjunction with the specified local taxes, fees, or surcharges.

   This measure intends to address the collection of end-user taxes and fees directly from the consumer where, generally, an established relationship does not exist between the service supplier and consumer. This occurs when consumers purchase prepaid MTS from traditional retailers rather than directly from a service supplier. Without that direct relationship, service suppliers assert that they are unable to collect the taxes and fees directly from the prepaid wireless consumer. On the other hand, service suppliers are able to bill taxes and fees to cell phone consumers on their monthly service bill ("postpaid" services). Consumers pay those taxes and fees directly to the service supplier, who remits those amounts to the appropriate government entities.

   The current 911 Surcharge program faces many challenges that include prepaid wireless services. Technology is rapidly changing, as are the devices and services that provide access to the 911 emergency telephone system. Some of these devices provide direct access to 911 with no intrastate telecommunication services provided, such as 5Star Urgent Response and old, decommissioned cell phones. Since these devices provide no intrastate telecommunication services, the 911 surcharge does not apply. As such, their use/service does not contribute to the state emergency telephone number account.

   Furthermore, surcharge revenues continue to decline because costly landline services have given way to more economical wireless and other communication services, such as electronic mail and texting. As consumer behavior changes, so do the services and products offered by carriers. For example, carriers may offer prepaid unlimited data and text separate from prepaid voice service due to voice service's decline. Under such a scenario, the MTS surcharge would apply only to the minimal per minute prepaid voice service, thus reducing the revenue estimated to be generated by this bill.

10. **MTS surcharge does not exclude ancillary services.** In its current form, the surcharge consists of any and all state and locally authorized taxes, fees, and surcharges that are applicable to **mobile telephony services**, as described. Except as provided, the bill requires the surcharge to apply to the entire price if prepaid MTS is sold in combination with mobile data services or any other service or products for a single price.

    The bill requires the MTS surcharge rate calculation to include the 911 surcharge and CPUC-surcharge rates applicable to **intrastate telephone communication services**, as determined by the OES and CPUC, respectively. However, the application of the resulting MTS surcharge rate does not exclude ancillary services, such as voice-mail service, data, and messaging (texting). Assuming no difference between post- and pre-paid wireless service cost, MTS consumers will pay a higher

surcharge than post-paid wireless consumers since the 911 surcharge and CPUC surcharges do not apply to ancillary services.

11. **Suggested amendments.** BOE staff had several concerns regarding the bill, which have, for the most part, been addressed through last year's AB 300 stakeholder meetings and amendments.

    BOE staff also notes a missing word in Section 42010(g). The subdivision should read as follows:

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

    On a technical note, BOE staff recommends an amendment to move all references to local prepaid MTS from Part 21 (commencing with Section 42010) to Part 21.1 (commencing with Section 42101). Similar to the Uniform Local Sales and Use Tax Law and the Transaction and Use Tax Law, the local provisions are contained only within those laws, and the state Sales and Use Tax Law makes no mention of the local taxes.

12. **MTS seller's recordkeeping and reporting would be complicated.** For sales and use tax purposes, MTS sellers likely hold seller's permits, file returns, and report applicable sales or use tax. In addition, prepaid MTS sellers might also sell tires, covered electronic devices, lumber products, and tobacco products, all of which impose a unique special tax or fee that existing law requires to be separately stated on their customers' receipt.

    The various taxes require separate accounting records for MTS sellers that sell one or more of these specific commodities, which increases their record-keeping burden. Furthermore, a separate tax or fee statement on the customer receipt could result in additional retailer programming costs. However, this measure permits sellers to retain 2% of the MTS surcharge and local charges collected to defray their collection costs.

    Furthermore, the Local Prepaid MTS Collection Act includes a UUT on the consumption of prepaid MTS service and a local 911 charge. This would further complicate a retailer's recordkeeping and reporting if they have retail locations in more than one jurisdiction that impose one or more local charges.

13. **This measure imposes a MTS surcharge at the time of each retail transaction for prepaid wireless services in this state.** The bill states that a retail transaction occurs in the state if the prepaid consumer makes the retail transaction at a retail location in this state, or if the prepaid consumer makes a known-address transaction, as described. A known-address transaction that occurs in this state generally relates to an Internet-based or telephone-based transaction. In this case, the seller likely transfers the prepaid wireless services to the consumer by:

    - Mail as a physical prepaid wireless card or a card bundled with a mobile phone; or
    - Directly adding the prepaid minutes to the consumer's device.

In a known-address transaction, the seller may be located in this state or outside this state. It is questionable whether or not the state may legally require an out-of-state MTS retailer, who has no physical presence in California, to remit the surcharge on services sold to an in-state consumer. While service suppliers are currently registered with the BOE for purposes of the 911 Surcharge, some prepaid MTS sellers may be located outside this state even though they sell to California consumers.

14. **Lifeline exemption.** This measure includes an exemption from the prepaid MTS surcharge (not from local charges) on prepaid MTS purchased by a state or federal lifeline-eligible consumer when purchased directly from a seller authorized to provide such services. *However, wireless providers are not currently authorized to provide California LifeLine service programs, nor are federal lifeline discounts presently applicable to prepaid wireless service plans.*

    In 2011, the CPUC opened a rulemaking proceeding to make changes to the California LifeLine program. In December 2012, the CPUC revised the "basic service" LifeLine definition to be technology-neutral; however, only landline providers can comply with the basic service element requirements. In April 2013, the CPUC commenced proceedings to consider whether or not wireless providers can provide California LifeLine service, consistent with the revised basic service definition. The initial phase of this multi-year proceeding is scheduled for completion within 18 months.

    Also proposing changes to California LifeLine, AB 1407 (Bradford, 2013/14) authorizes wireless providers to voluntarily offer California LifeLine service, as described, and established a fixed LifeLine discount that an eligible customer may apply toward any voice communication service. That measure was held under submission in the Senate Appropriations Committee.

    With respect to federal lifeline services, the CPUC has been evaluating proposals by wireless carriers seeking Eligible Telecommunications Carrier (ETC) status to provide federally funded discounted wireless service to low-income customers. To qualify for federal universal service lifeline subsidies, a service provider must be designated as ETC eligible. There are currently four CPUC-approved wireless providers that are authorized to offer federally-supported lifeline discounts in California. The discounts are offered through specific cell phone plans offered by Cricket Communications, Telcape Communications, Virgin Mobile USA, and Nexus Communications. Although federal lifeline discounts are available to prepaid wireless service plans, the California plans only include postpaid wireless service plans.

    The prepaid MTS surcharge lifeline exemption will become operative once California and/or federal lifeline programs extend to prepaid wireless services. Although it is unknown when, or even if, this may occur, the BOE must take steps to implement the lifeline exemption (computer programming). The BOE staff is concerned about successfully implementing the exemption without decisive legislation or completion of the CPUC's rulemaking process. The bill itself generically states that the exemption "*is applied only to the amount paid for the portion of the prepaid mobile telephony service that the lifeline program specifies is exempt from the surcharges and fees that comprise the prepaid MTS surcharge*." The bill doesn't specify if California LifeLine will apply as a flat discount, a percentage discount, or a reduced-cost service plan, nor does it specific which service offerings it will include. What if

the application of California's LifeLine program differs from the federal program? Would the surcharge exemption apply based on whether the consumer is state or federal LifeLine eligible? What if the consumer is eligible for both the state and federal programs?

COST ESTIMATE

(*The cost estimate has been revised since the previous analysis of the April 2, 2014 amendments*)

BOE administrative costs related to this bill are substantial. These costs include: surcharge-payer identification, notification, and registration; regulation development; manual and publication revisions; surcharge return design; computer programming; return, payment, and refund claim processing; audit and collection tasks; staff training; and public inquiry responses. A detailed cost estimate is pending.

As a point of reference, administrative costs associated with AB 300, which is nearly identical to this bill, were estimated to be $11,391,000 for Fiscal Year (FY) 2014-15, $11,937,000 for FY 2015-16, $13,211,000 for FY 2016-17, and $13,054,000 for FY 2017-18. These costs include administrative costs related to both the state MTS surcharge and local charge components of this bill. BOE staff is unable to determine the actual cost allocation between the state and local components until the MTS surcharge and local charge programs are implemented.

REVENUE ESTIMATE

(*The revenue estimate has been revised since the previous analysis of the April 2, 2014 amendments*)

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Local MTS Revenue. BOE staff estimates $72,571,413 in additional local charge revenue. BOE staff estimated the additional local charge revenue by calculating the UUT weighted average rate (5.72%) and estimated UUT intrastate prepaid wireless revenue ($1,268,731,007) through the use of 2012 sales and use taxable sales by city. For detailed calculation information, see Table 2.

Current Prepaid Wireless CPUC & 911 Surcharge Revenue. The BOE 2011-12 Annual Report indicates that 911 surcharge revenues were $83.3 million, and the surcharge rate was 0.5 percent. This implies a tax base of $16,660.000 million (83.3 / 0.05 = 16,660.000). Industry data show that 58.4 percent of this amount is wireless, which implies a tax base for wireless sales of $9,729.440 million (0.584 x 16,660.00 = 9,729.940).

The Federal Communications Commission's (FCC) 16th Mobile Wireless Competition Report (FCC report) specifies the prepaid wireless market penetration (subscriber number) at 21.6%. A review of industry data suggests that prepaid subscribers tend to have lower incomes than postpaid subscribers and purchase relatively more voice services and less text and data services than postpaid users. Based on our research, we believe that a reasonable assumption is that average voice revenue per user (ARPU) for prepaid subscribers is about 63% of ARPU for postpaid subscribers. This implies that prepaid revenues are about 13.6% of total wireless revenues (0.216 x 0.63 = 0.136). Calculations indicate prepaid services sales of about $1,323.204 million ($9,729.440 million x 0.136 = 1,323.204).

AB 1717 Estimated Prepaid Revenues	Current Rates	Forgone Revenue	AB 1717 Revenue
Estimated CA Prepaid Wireless Revenue Base		$1,323,203,840	$1,989,681,408
Estimated 911 Surcharge Revenue (Prepaid wireless):	0.75%	9,924,029	11,938,088
Estimated Prepaid Wireless ULTS Revenue:	1.15%	15,216,844	18,305,069
Estimated Prepaid Wireless DDTP Revenue:	0.20%	2,646,408	3,183,490
Estimated Prepaid Wireless CHCF-A Revenue:	0.18%	2,381,767	2,865,141
Estimated Prepaid Wireless CHCF-B Revenue:	0.00%	-	-
Estimated Prepaid Wireless CTF Revenue Remitted:	0.59%	7,806,903	9,391,296
Estimated Prepaid Wireless CASF Revenue: [C]	0.464%	6,139,666	7,385,697
Estimated PUC User Fee (Prepaid wireless):	0.18%	2,381,767	2,865,141
Total 911 and Public Purpose Surcharges and Fee	3.514%	$46,497,383	$55,933,924

The table shows current surcharge and fee rates applied to the revenue base of $1,323.204 million. As shown in the last line of the table, we estimate revenues to have been about $46.497 million under current law. The table also shows our estimates of surcharge revenues under the proposed new surcharge structure, totaling about $55.934 million. The difference between current law revenues and AB 1717 revenues is about $9.437 million.

Under this measure, certain surcharge-payers would receive a reimbursement of 2% of surcharge revenues to cover their expenses. Retailers may receive the reimbursement, but a seller that is a telephone corporation or the provider of prepaid MTS is not authorized to deduct the 2% reimbursement. For the purpose of this estimate, we will assume that 70% of the annual prepaid wireless revenue will be derived from non-carrier retail sales for which the seller is authorized to deduct and retain 2% of the surcharge amount as retailer reimbursement. The reimbursement would total about $0.783 million ($55.934 x 0.02 x0.70 = $0.783). If we account for the reimbursement, the difference between surcharge revenues under current law and proposed law would be reduced by this amount, resulting in a difference to about $8.654 million.

REVENUE SUMMARY

This measure would generate approximately $55.934 million in gross revenue annually, less (1) existing CPUC and 911 surcharge revenue on prepaid wireless services which will no longer be imposed under this bill; and (2) the 2% in retailer reimbursement that the bill authorizes certain third party sellers to deduct and retain as reimbursement for their expenses.

In 2016, this measure could result in a net state revenue gain of $8.654 million [($55.934 million - $46.497 million) - ($0.783 million = $8.654 million)].

Taking into account additional local charge revenues in the amount of $72.571 million, this measure could result in a net state and local revenue gain of $81.225 million ($8.654 million + $72.571 million).

These figures do not take into consideration additional revenue lost under this measure for reimbursement to the BOE for administrative costs, which are substantial (see Cost Estimate discussion, above).

Qualifying Remark. For purposes of calculating the new MTS surcharge revenue, the BOE assumed a MTS surcharge rate based on current rates x 80% California intrastate revenue calculation. However, this measure requires the CPUC to determine a methodology to calculate the MTS surcharge rate, which is unknown. ***Accordingly, the new revenues generated by this bill could be higher or lower.***

Furthermore, if the lifeline exemption becomes effective, revenues resulting from the MTS surcharge likely will be reduced. However, we do not know the amount of the reduction. Currently, the California LifeLine program does not extend to wireless services. The issue of whether the California LifeLine program should extend to these services is presently the subject of an ongoing proceeding before the CPUC. Because the LifeLine program currently does not include wireless services, we do not know with certainty when, or even whether, the lifeline exemption in this bill will be effective, nor do we know the number of MTS providers that will participate in the California LifeLine program or how the lifeline subsidy will be applied to wireless.

The revenue impact of the proposed amendments adding seller bad debt deduction provisions to the Prepaid MTS Surcharge Collection Act is minimal.

The local UUT revenue of $72.571 million assumes that wireless carriers are not currently collecting or remitting any local UUT charges, which is unconfirmed.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Table 1 CA Prepaid Wireless Point of Sale Revenue Estimate Worksheet

		FY 2011-12
FCC Reported Subscribers (Postpaid and Prepaid) as of December 2011		34,892,000
Estimated Prepaid Wireless Market Penetration		21.6%
Forecasted CA Prepaid Subscribers from FCC Data		7,536,672
less 20% inactive accounts/churn/lifeline		1,507,334
Forecasted CA paying prepaid Subscribers from FCC data		6,029,338
Estimated Monthly Revenue @ $27.50 ARPU	$	165,806,784
Estimated Annual Prepaid Revenue	**$**	**1,989,681,408**
Intrastate portion of prepaid		80%
Statutory Rate of 911 fee		0.750%
Rate adjusted for Intrastate using inverse FCC safe harbor		0.600%
Estimated State 911 fee revenue	**$**	**11,938,088**
ULTS Statutory Rate		1.150%
Rate adjusted for Intrastate using inverse FCC safe harbor		0.920%
Estimated ULTS Revenue	**$**	**18,305,069**
CA Relay fee rate statutory rate		0.200%
Rate adjusted for Intrastate using inverse FCC safe harbor		0.160%
CA Relay fee revenue	**$**	**3,183,490**
High Cost A & B Funds statutory rate		0.180%
Rate adjusted for Intrastate using inverse FCC safe harbor		0.144%
High Cost A&B Funds revenue	**$**	**2,865,141**
California Teleconnect Fund statutory rate		0.590%
Rate adjusted for Intrastate using inverse FCC safe harbor		0.472%
CTF revenue	**$**	**9,391,296**
PUC User Fee statutory rate		0.1800%
Rate adjusted for Intrastate using inverse FCC safe harbor		0.14400%
PUC User Fee Revenue	**$**	**2,865,141**
California Advanced Services Fund statutory rate		0.4640%
CASF rate adjusted for Intrastate using inverse FCC safe harbor		0.371%
CASF Revenue	**$**	**7,385,697**
TOTAL STATE PUBLIC PURPOSE FEES, and 911 Fees	**$**	**55,933,924**

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Table 2 - Utility User Tax Information Summary Listing

City	CUSTOMER TYPE	UUT Wireless Rate	2012 Taxable Sales '000	Taxable Sales by Jurisdiction '000
Alameda	Residential	7.5%	641,885	48,141
Albany	Residential	6.5%	193,201	12,558
Alhambra	Residential	5.0%	1,206,063	60,303
Alhambra	Non-Residential	5.0%	1,206,063	60,303
Arcadia	Residential	5.0%	842,411	42,121
Arcata	Residential	3.0%	200,589	6,018
Baldwin Park	Residential	3.0%	537,527	16,126
Beaumont	Residential	3.0%	334,876	10,046
Bell	Residential	10.0%	166,872	16,687
Bellflower	Residential	7.0%	446,426	31,250
Benicia	Residential	3.5%	552,805	19,348
Berkeley	Residential	7.5%	1,423,376	106,753
Burbank	Residential	7.0%	2,716,027	190,122
Calabasas	Residential	5.0%	503,929	25,196
Cathedral City	Residential	3.0%	648,817	19,465
Ceres	Residential	3.0%	473,310	14,199
Chico	Residential	5.0%	1,592,290	79,615
Chula Vista	Residential	5.0%	2,501,497	125,075
Claremont	Residential	5.5%	301,708	16,594
Coachella	Residential	5.0%	302,053	15,103
Colton	Residential	4.0%	533,221	21,329
Colton	Non-Residential	6.0%	533,221	31,993
Compton	Residential	8.5%	638,615	54,282
Covina	Residential	6.0%	693,698	41,622
Cudahy	Residential	3.75%	104,515	3,919
Cudahy	Non-Residential	8.0%	104,515	8,361
Culver City	Residential	11.0%	1,598,763	175,864
Cupertino	Residential	2.4%	2,238,924	53,734
Daly City	Residential	5.0%	924,908	46,245
Desert Hot Springs	Residential	7.0%	128,734	9,011
Dinuba	Residential	7.0%	389,248	27,247
Downey	Residential	4.8%	1,359,727	65,267
East Palo Alto	Residential	5.0%	283,831	14,192
El Cerrito	Residential	8.0%	273,354	21,868
El Monte	Residential	6.5%	1,258,498	81,802
El Segundo	Residential	2.0%	909,939	18,199
Elk Grove	Residential	2.3%	1,612,796	36,288
Emeryville	Residential	5.5%	684,192	37,631
Fairfield	Residential	2.0%	1,526,410	30,528
Firebaugh	Residential	10.0%	83,651	8,365
Gardena	Residential	5.0%	787,607	39,380
Gilroy	Residential	4.5%	1,209,176	54,413

Table 2 - Utility User Tax Information Summary Listing, Cont.

City	CUSTOMER TYPE	UUT Wireless Rate	2012 Taxable Sales '000	Taxable Sales by Jurisdiction '000
Glendale	Residential	6.5%	2,681,918	174,325
Gonzales	Residential	4.0%	59,277	2,371
Gonzales	Non-Residential	4.0%	59,277	2,371
Greenfield	Residential	3.0%	75,595	2,268
Gustine	Residential	2.5%	15,353	384
Hawthorne	Residential	5.0%	1,137,164	56,858
Hayward	Residential	5.5%	2,591,046	142,508
Hercules	Residential	6.0%	136,763	8,206
Hermosa Beach	Residential	5.5%	226,146	12,438
Holtville	Residential	5.0%	30,819	1,541
Huntington Beach	Residential	4.9%	3,020,719	148,015
Huntington Park	Residential	9.3%	515,217	47,658
Indio	Residential	6.0%	724,256	43,455
Inglewood	Residential	8.0%	1,047,205	83,776
Irwindale	Residential	7.5%	327,839	24,588
La Palma	Residential	5.0%	484,516	24,226
La Verne	Residential	5.8%	343,984	19,779
Lakewood	Residential	3.0%	1,118,400	33,552
Lawndale	Residential	5.5%	226,193	12,441
Long Beach	Residential	5.0%	5,234,132	261,707
Los Alamitos	Residential	6.0%	231,750	13,905
Los Altos	Residential	3.2%	209,680	6,710
Los Angeles	Residential	9.0%	40,123,926	3,611,153
Lynwood	Residential	9.0%	301,919	27,173
Malibu	Residential	4.5%	244,135	10,986
Mammoth Lakes	Residential	2.5%	146,774	3,669
Maywood	Residential	4.0%	107,714	4,309
Maywood	Non-Residential	7.0%	107,714	7,540
Menlo Park	Residential	1.0%	536,345	5,363
Modesto	Residential	5.8%	2,614,619	151,648
Monterey	Residential	2.0%	695,704	13,914
Monterey	Non-Residential	5.0%	695,704	34,785
Monterey Park	Residential	3.0%	410,932	12,328
Monterey Park	Non-Residential	5.5%	410,932	22,601
Moreno Valley	Residential	5.8%	1,275,922	73,366
Mountain View	Residential	3.0%	1,340,658	40,220
Newark	Residential	3.5%	816,920	28,592
Norwalk	Residential	5.5%	827,283	45,501
Oakland	Residential	7.5%	4,031,912	302,393
Orange Cove	Residential	7.0%	14,210	995
Oroville	Residential	4.5%	321,069	14,448
Pacifica	Residential	5.0%	164,804	8,240

Table 2 - Utility User Tax Information Summary Listing, Cont.

City	CUSTOMER TYPE	UUT Wireless Rate	2012 Taxable Sales '000	Taxable Sales by Jurisdiction '000
Pacific Grove	Residential	5.0%	125,549	6,277
Palm Springs	Residential	4.5%	955,731	43,008
Palo Alto	Residential	5.0%	2,074,689	103,734
Paramount	Residential	3.0%	678,328	20,350
Pasadena	Residential	8.3%	2,817,637	233,300
Pico Rivera	Residential	4.5%	717,444	32,285
Pinole	Residential	8.0%	285,581	22,846
Placentia	Residential	3.5%	472,843	16,550
Pomona	Residential	9.0%	1,191,591	107,243
Port Hueneme	Residential	3.8%	81,794	3,067
Porterville	Residential	6.0%	482,414	28,945
Rancho Cordova	Residential	2.5%	1,240,397	31,010
Rancho Palos Verdes	Residential	3.0%	174,987	5,250
Redondo Beach	Residential	4.8%	897,460	42,629
Redwood City	Residential	4.0%	1,696,509	67,860
Rialto	Residential	8.0%	878,743	70,299
Richmond	Residential	9.5%	1,191,003	113,145
Sacramento	Residential	7.0%	5,471,319	382,992
San Bernardino	Residential	7.8%	2,422,215	187,722
San Francisco	Non-Residential	7.5%	15,953,605	1,196,520
San Gabriel	Residential	8.0%	347,669	27,814
San Jose	Residential	4.5%	13,329,164	599,812
San Leandro	Residential	5.7%	1,867,865	106,468
San Luis Obispo	Residential	4.8%	1,278,529	61,369
San Marino	Residential	5.0%	33,899	1,695
San Pablo	Residential	7.0%	165,422	11,580
Sanger	Residential	5.0%	3,492,395	174,620
Santa Ana	Residential	6.0%	3,492,395	209,544
Santa Barbara	Residential	5.8%	1,724,681	99,169
Santa Cruz	Residential	8.5%	822,877	69,945
Santa Fe Springs	Residential	5.0%	2,013,215	100,661
Santa Monica	Residential	10.0%	2,949,297	294,930
Seal Beach	Residential	11.0%	477,065	52,477
Sierra Madre	Residential	10.0%	22,731	2,273
Soledad	Residential	5.0%	61,189	3,059
South Pasadena	Residential	7.5%	165,708	12,428
Stanton	Residential	5.0%	321,040	16,052
Stockton	Residential	6.0%	3,316,162	198,970
Torrance	Residential	6.5%	3,709,452	241,114
Tulare	Residential	6.0%	812,978	48,779
Vallejo	Residential	7.3%	1,069,917	78,104
Ventura	Residential	4.5%	1,941,328	87,360

Table 2 - Utility User Tax Information Summary Listing, Cont.

City	CUSTOMER TYPE	UUT Wireless Rate	2012 Taxable Sales '000	Taxable Sales by Jurisdiction '000
Westminster	Residential	4.0%	1,242,341	49,694
Whittier	Residential	5.0%	720,805	36,040
Winters	Residential	9.5%	37,792	3,590
County of Alameda	Residential	6.5%	25,181,571	1,636,802
County of Los Angeles	Residential	4.5%	135,295,582	6,088,301
	Totals		$356,058,621	$20,366,553

UUT Weighted Average Rate (*Taxable Sales by Jurisdiction/2012 Taxable Sales*)	**5.72%**
Statewide Total Taxable Sales 2012 (in thousands)	**558,387,250**
UUT Jurisdictions as a Percentage of Taxable Sales *(2012 Taxable Sales/Statewide Total Taxable Sales 2012)*	**64%**
AB 1717 State Prepaid Wireless Revenue	**$1,989,681,408**
Estimated UUT Intra-State Prepaid Wireless *(UUT Jurisdictions as a Percentage of Taxable Sales x AB 1717 Intrastate Prepaid Wireless Revenue)*	**$1,268,731,007**
Estimated UUT Revenue *(Estimated UUT Intrastate Prepaid Wireless x UUT Weighted Average Rate)*	**$72,571,413**

Number of Jurisdictions = 131