



Date:	04/16/13	Bill No:	Assembly Bill 300
Tax Program:	Prepaid Mobile Telephony Services Surcharge	Author:	Perea
Sponsor:	CTIA – The Wireless Association	Code Sections:	RTC 41020, 41030 RTC Part 21 (Sec. 42000) , RTC Part 21.1 (Sec. 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.

ANALYSIS

CURRENT LAW

Surcharges and Taxes.¹ Current law assesses a number of state surcharges, taxes, and fees on telecommunications services. Telephone service providers collect these taxes and surcharges from their customers and remit them to either the California Public Utilities Commission (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 programs in California. The all-end-user 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.
- **California High Cost Fund-A (CHCF-A) @ 0.4%.** This fund provides a source of supplemental revenues to 14 small local exchange carriers (LEC’s) for the purpose of minimizing any rate disparity between rural and metropolitan areas.
- **California High Cost Fund-B (CHCF-B) @ 0.3%.** 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.

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

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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) @ 0.14%.** A two-year program that ran from January 1, 2008 to January 1, 2010, to provide grants to "telephone corporations" to fund unserved and underserved areas with broadband services. The program was extended beyond January 1, 2013, pursuant to SB 1040 (Chapter 317, Stats. 2010), which also established two new program elements: The Rural and Urban Regional Broadband Consortia Account and The Broadband Infrastructure Revolving Loan Account.

CPUC User Fee (Reimbursement Account). 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 finances the CPUC's annual operating budget.

Telecommunications carriers with annual gross intrastate revenues in excess of \$750,000 remit this fee quarterly, by 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 law², 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 minute value deducted from the prepaid telephone calling card for intrastate telephone communication service. The surcharge does not apply to dollar amounts or minutes for interstate telephone communication services or minutes the user forfeits because of expiration.

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

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

reasonably believes demonstrates the approximate amount of intrastate 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 taxes and fees which are not subject to the 911 surcharge, including the 911 surcharge itself.

Rate. The current surcharge rate is 0.50% 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 and Collection Act.

This bill enacts the Prepaid Mobile Telephony Services Surcharge and Collection Act (Act).³ The Act imposes, on and after January 1, 2015, a prepaid mobile telephony services surcharge (MTS surcharge) on each prepaid consumer. A seller must collect the surcharge from the prepaid consumer at the time of each prepaid mobile telephony services “retail transaction” in the state. The bill requires the surcharge and local charges to be collected as a percentage of the retail transaction amount. 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 to the prepaid consumer.

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

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. Any unreturned amounts the seller represents and collects as the surcharge owed by the prepaid consumer that are not actually owed constitutes a seller’s debt to the state.

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.

³ Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code (RTC).

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Administration. This bill requires the BOE to administer and collect the MTS surcharge pursuant to the Fee Collection Procedures Law (FCPL).⁴ 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 California Technology Agency (CTA).⁵

Registration, Reporting, and Payment. The bill requires every seller to register with the BOE on a BOE-prescribed form.

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

Existing law⁶ 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 to deduct and retain an amount equal to 3 percent of the MTS surcharge and the local charge collected by the seller and requires the seller to remit the remainder of the surcharge to the BOE.

MTS Surcharge Calculation. The bill requires the BOE to calculate the MTS surcharge annually, no later than November 1 each year commencing November 1, 2014, by combining the following:

- **911 Surcharge Rate.** The surcharge rate the CTA establishes pursuant to Section 41030 of the 911 Surcharge Act as of October 1 of each year, multiplied by the inverse of the interstate safe harbor percentage established by the Federal Communications Commission (FCC) for federal universal service contribution purposes, as the percentages are revised from time to time.

⁴ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

⁵ The bill references the Department of Technology; however, the CTA administers the 911 program.

⁶ RTC §55041.1

The bill amends 911 Surcharge Act Section 41030 to detail the determination of the 911 surcharge rate and the MTS surcharge rate by the CTA. The determination requires the CTA to multiply the 911 surcharge rate by the inverse of the interstate safe harbor⁷. Section 41030 requires the CTA to notify the BOE of the surcharge amount by October 15 of each year, commencing with October 15, 2014.

- **CPUC End-User Surcharges.** The surcharge rates the CPUC establishes pursuant to Section 316 of the Public Utilities Code (PUC), as of October 1 of each year, multiplied by the inverse of the interstate safe harbor for federal universal service contribution purposes.

This measure adds PUC Section 316 to require the CPUC to compute, commencing October 1, 2014:

- A reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, and
- The cumulative of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services.

In addition, Section 316 requires the CPUC, on or before October 15 each year, to post the reimbursement fee and cumulative surcharge notice on its Internet Web site and notify the BOE of the information. The bill does not restrict the CPUC's authority to adjust the reimbursement fees or universal service fees or require that they only be adjusted once annually.

Furthermore, Section 316 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.

- **Local Taxes and Surcharges.** The bill requires the BOE to post on its Internet Web site, no later than each November 15, the combined total of the rates of 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 January 1 following the posting. However, the bill provides an exception when a local agency notifies the BOE that the local charge(s) is no longer imposed or has decreased since the previous October 1 calculation. In such cases, the bill requires the BOE to promptly post the recalculated rate(s). A seller may rely upon the accuracy of the BOE-posted rates.

Local Charges Calculation. The bill requires a local agency that enacts a local charge to:

- Provide notice to the BOE of the amount or level of prepaid MTS charges;
- Express the charges as a percentage of the sales price of prepaid MTS;
- Provide BOE notice on or before each October 15, commencing October 15, 2014; and
- Notify the BOE, on or before October 15 of each year, of any local charges that are for a fixed amount for a specified period of time.

Retail Sale Location. The bill provides the MTS surcharge is based upon a percentage of the sales price of each retail transaction that occurs in this state. A retail

⁷ Currently, the interstate safe harbor is set at 37.1 percent. Thus, the inverse interstate safe harbor is 62.9 percent.

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 shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.
- The prepaid consumer is being billed for the retail transaction at an address 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 bill states that a retail transaction occurs at only one location for local charge determination. The bill presumes a "point-of-sale" retail transaction occurs at the location of consumption of, or access to, the prepaid MTS. The bill further presumes a "known-address" retail transaction occurs by the location circumstances bulleted above, in descending order.

Location Software. This bill authorizes the BOE to make software available to enable a seller to match the location of a retail transaction to the applicable MTS surcharge amount and local charges.

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

This measure discharges a seller for any 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 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 any additional local charges and relieves the seller from refunding amounts collected and remitted if the prepaid consumer's five digit postal ZIP Code address corresponds to more than one local charge, and the amount collected and remitted to the BOE corresponds to one of the local charges that is applicable to that ZIP Code,

Miscellaneous Provisions. The MTS surcharge applies to the entire sales price where prepaid mobile telephony services are sold with one or more other products for a single,

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non-itemized price. However, the bill allows the seller to apply the surcharge and local charges to either of the following:

- The prepaid mobile telephony services purchase price component of the bundled charge if disclosed to the consumer on a receipt, invoice, or other written documentation; or
- The bundled price portion attributable to prepaid MTS if the seller identifies that portion by reasonable and verifiable standards from its books and records that are kept in the regular course of business.

Also, the bill allows the seller to exempt minimal prepaid MTS if sold in a single, non-itemized bundled price with a mobile telephone. 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 interest, penalties, and other amounts collected, less a deduction not to exceed 2 percent of the collected amounts, to refund and reimburse 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 telephony service" and "mobile data service" would have the same meanings as defined in Section 224.4 of the Public Utilities Code, which provides:

"Mobile data service" means the delivery of nonvoice information 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. Unless specified, "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" means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile

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Radio (SMR). "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" would mean a person that sells prepaid mobile telephony service to a prepaid consumer.

Local Prepaid Mobile Telephony Services Collection Act

This bill also enacts the Local Prepaid Mobile Telephony Services Collection Act⁸ (Local Act). On and after January 1, 2015, the Local Act imposes a local charge on the consumption of prepaid MTS to be collected from the prepaid consumer at the same time and in the same manner as the MTS surcharge. The local charges imposed are in lieu of collection of those local charges by the city, county, or city and county, including a charter city, county, or city and county (city or county).

Notwithstanding any other law, on and after January 1, 2015, the bill:

- Suspends the utility user tax rate on the consumption of prepaid MTS in the city or county at the rate specified in its ordinance. The bill states that it is the intent of the Legislature to create a tiered method for collection of the utility user tax rate. This provision is self-executing.
- Suspends a charge rate applicable to prepaid MTS for communication services or local "911" emergency telephone access. 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.

Local Act Administration. The bill requires the BOE to perform all functions incident to the administration and collection of the local charges of a city or county. In addition, the bill requires the BOE to collect and administer the local charges in the manner as the MTS surcharge in the MTS Act.

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.

Local Act: Deposit of Revenues. The bill authorizes all local charges imposed and collected by the BOE be deposited in the MTS Surcharge Fund, which may be drawn upon to:

- Make refunds;
- Compensate the BOE for costs to administer the Local Act, in an amount not to exceed 2% of the collected amounts.

The bill requires the balance to be transmitted to the city or county periodically as promptly as feasible, but at least once in each calendar quarter. The BOE must also furnish a statement 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:

⁸ Part 21.1 (commencing with Section 42100) to the RTC.

- the city or county to reimburse the BOE for, and hold the board harmless from, any and all costs, losses, or refunds of any kind whatsoever;
- 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 costs disputes, and his or her decision would be final. The amount of preparatory costs to be paid by a city or county is capped, but the maximum amount is currently unspecified in the bill.
- the BOE to annually prepare a report showing the amount of both reimbursed and unreimbursed administrative local charges collection costs.

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

Operative Date. As an urgency measure, the bill becomes effective immediately. However, the MTS surcharge is operative January 1, 2015.

LEGISLATIVE HISTORY

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 Association⁹ and is intended to create a fair uniform mechanism to ensure collection of state and local communications taxes and fees from consumers of prepaid mobile telephony services.
2. **The 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.

⁹ CTIA was originally the acronym for “Cellular Telecommunications and Internet Association.”

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 directly 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 and 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.

- 3. Would existing law be easier to amend?** This bill proposes to carve out a segment of the 911 Surcharge program (prepaid wireless) and instead impose a MTS surcharge on retail sales of the service that includes prepaid MTS and mobile data service. As discussed previously, the MTS surcharge also includes CPUC-related charges and 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. 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. With this in mind, along with concerns regarding the collection of the 911 surcharge on prepaid wireless services, BOE staff suggests thoroughly reviewing the 911 Surcharge Act to determine a more up-to-date surcharge mechanism to fund the statewide emergency telephone number system.

- 4. MTS surcharge does not exclude ancillary services.** In its current form, the MTS surcharge consists of any and all state and locally authorized taxes, fees, and surcharges that are applicable to **mobile telephony services**, as described. The bill defines “mobile telephony services” to mean “mobile telephony service” and “mobile data service,” as defined in PUC Section 224.4.

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 CTA and CPUC, respectively. The bill further requires the CTA and CPUC to multiply the determined rates by the inverse of the interstate wireless safe harbor percentage in order to adjust the rate to exclude interstate telephone communication services. However, the resulting MTS surcharge rate does not exclude ancillary services, such as voice-mail service, data,

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messaging (texting), call forwarding, caller ID and call waiting. 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.

- 5. While the state component language is challenging, the local component in its current form is impossible to administer.** BOE staff has several concerns regarding the bill, which are too numerous to list. However, staff understands that the current version of the bill is a work-in-progress. The BOE staff continues to participate in stakeholder meetings, provide technical assistance, meet with interested parties, and provide appropriate amendments.

In part, BOE staff proposes to align the MTS state surcharge with the BOE-administered sales and use tax program to make the retailer's surcharge collection and reporting as convenient as possible, and reduce BOE-administrative costs.

This measure also enacts the Local Act, which is most problematic for the BOE. Currently, certain cities and counties impose a utility user tax or 911 access charge on MTS pursuant to voter-approved ordinances. The Local Act suspends the rates specified in these ordinances with the intent to limit the number of rates imposed. However, the Local Act does not suspend the ordinances' imposition of taxes and charges on MTS, which can vary among each locality. Accordingly, the local MTS surcharge would not be uniform, thus making administration of the Local Act problematic, if not impossible.

- 6. Administrative start-up cost funding is essential.** This bill imposes the MTS surcharge on and after January 1, 2015. As a result, the BOE must begin to implement the bill in fiscal year (FY) 2013-14. However, the BOE's FY 2013-14 budget does not include funding to implement the bill. Consequently, the BOE requires an adequate appropriation to cover administrative implementation costs.

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.

- 7. Cost cap problematic.** This bill creates a MTS surcharge program that requires the BOE to administer and collect a new MTS surcharge. The bill provides the BOE direct administrative cost reimbursement through the revenues the MTS surcharge generates. However, the bill limits the BOE reimbursement to an amount **not to exceed 2%** of the total amount of revenue the BOE collects. Based on the current revenue estimate of \$30.9 million annually, the BOE would be reimbursed for administrative costs of up to approximately \$600,000 annually ((\$30,901,783 AB 300

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revenue x 3% seller reimbursement) x 2% refund and reimbursement cap = \$599,495).

Although the BOE has not estimated revenues or administrative costs, the bill's cost cap does not provide the BOE with sufficient funding to properly and successfully administer and collect the proposed MTS surcharge.

8. **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 3% of the MTS surcharge and local charges collected to defray their collection costs.

9. **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 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 Internet-based or telephone-based transaction. In such 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 it is possible that 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, there may be some sellers located outside this state that sell prepaid MTS to California consumers.

COST ESTIMATE

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; however, these costs are expected to be over \$1 million.

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REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Local MTS Revenue. BOE staff found that there are over 150 local UUTs. Because of the number of UTTs and various rates, BOE staff was unable to estimate UUT revenue.

Current Prepaid Wireless CPUC & 911 Surcharge Revenue. In fiscal year (FY) 2011-12, the BOE collected \$83.3 million in 911 surcharge revenue. Wireless services make up approximately 37.3% of the total telephony market. As such, BOE staff estimates wireless intrastate service to comprise approximately \$31 million (\$83.3 million x 37.3%) of 911 surcharge revenue.

The 911 surcharge intrastate rate is approximately 0.3145% (62.9% FCC Safe Harbor x 0.50% 911 surcharge rate). Using these factors, BOE staff estimates that California (CA) wireless revenue amounts to \$9.9 billion (\$31 million / 0.3145%) in FY 2011-12.

According to CTIA, **prepaid** wireless accounts for 11.5% of total wireless sales. Accordingly, CA **prepaid sales wireless** revenue is estimated at \$1.1 billion (\$9.9 billion x 11.5%).

Current Public Purpose Fund & 911 Surcharge Revenue and Estimated MTS Revenue . The combined current CPUC surcharge and 911 surcharge rates amount to 3.46%. The following table provides a breakout of revenue calculated under current law and revenue calculated under this measure.

			Current Law 2011-12 BOE Calculated¹⁰	AB 300 BOE Calculated¹¹ Revenue	AB 300 Industry Based¹² 2011- 12 Revenue
Estimated CA Prepaid Wireless (PW) Revenue Base	Current Rates	AB 300 Rates	\$ 1,136,312,460	\$1,422,157,824	\$1,955,467,008
Estimated 911 Surcharge Revenue (PW):	0.50%	0.31%	5,681,562	4,472,686	6,149,944
Estimated PW ULTS Revenue:	1.15%	0.72%	13,067,593	10,287,179	14,144,871
Estimated PW DDTP Revenue:	0.20%	0.13%	2,272,625	1,789,075	2,459,977
Estimated PW CHCF-A Revenue:	0.40%	0.25%	4,545,250	3,578,149	4,919,955
Estimated PW CHCF-B Revenue:	0.30%	0.19%	3,408,937	2,683,612	3,689,966
Estimated PW CTF Revenue Remitted:	0.59%	0.37%	6,704,244	5,277,770	7,256,934
Estimated PW CASF Revenue:	0.14%	0.09%	1,590,837	1,252,352	1,721,984
Estimated PUC User Fees (PW):	0.18%	0.11%	2,045,362	1,610,167	2,213,980
Total 911 and Public Purpose Fee Revenue	3.46%	2.18%	\$ 39,316,411	\$30,950,990	\$42,557,611

Foregone Revenue. This measure would no longer impose the CPUC and 911 surcharges on prepaid wireless services, which amounts to approximately \$39.3 million annually.

Additionally, this measure allows MTS sellers to retain 3% of the MTS surcharge collected and also caps refunds and BOE administrative costs at 2% of MTS surcharge revenue. Combined, these factors allocate 5% (\$1.545 million annually) of the MTS

10 CTIA reports prepaid wireless accounts for 11.5% of total wireless sales

11 See Table 1 on page 15.

12 see Table 2 on page 16.

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.

revenue to retailer reimbursement, refunds, and BOE administrative cost reimbursement.

The total foregone revenue as a result of this measure is estimated to be \$40.8 million annually (\$39.3 million + \$1.545 million).

REVENUE SUMMARY

This measure would generate approximately \$30.9 million annually less (1) existing CPUC and 911 surcharge revenue on prepaid wireless services, and (2) 5% for retailer reimbursement, refunds and BOE administrative cost reimbursement.

Thus the net revenue loss from this bill is approximately \$10 million annually (\$30.9 - \$40.8 foregone revenue = - \$9.945 million).

Qualifying Remarks. As stated previously, this measure proposes a 2% cap for refunds and BOE administrative cost reimbursement. However, the 2% cap may not cover all BOE administrative costs associated with this bill. The BOE administrative cost estimate is pending.

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Table 1 CA Prepaid Wireless Point of Sale Revenue Estimate Worksheet

	FY 2011-12
FCC Reported Subscribers (Postpaid and Prepaid) as of December 2011	\$ 34,292,000
CTIA Reported Prepaid Wireless Market Penetration (as of December 2011)	21.6%
CA Prepaid Subscribers from FCC Data	7,407,072
less 20% inactive accounts/churn/lifeline	1,481,414
CA paying prepaid Subscribers from FCC data	5,925,658
Estimated Monthly Revenue @ \$20 ARPU as reported by FCC Data	\$ 118,513,152
Estimated CA Annual Prepaid Revenue	\$ 1,422,157,824
FCC "Safe Harbor" percentage representing intrastate portion of prepaid	62.9%
Statutory Rate of 911 fee	0.500%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.315%
Estimated State 911 fee revenue	\$ 4,472,686
Universal Lifeline Telephone Service (ULTS) Statutory Rate	1.150%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.723%
Estimated ULTS Revenue	\$ 10,287,179
Deaf and Disabled Telecommunications (CA Relay) fee rate statutory rate	0.200%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.126%
CA Relay fee revenue	\$ 1,789,075
California High Cost A & B Funds statutory rate	0.700%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.440%
Estimated High Cost A&B Funds revenue	\$ 6,261,761
California Teleconnect Fund (CTF) statutory rate	0.590%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.371%
Estimated CTF revenue	\$ 5,277,770
CPUC User Fee statutory rate	0.1800%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.11322%
Estimated CPUC User Fee Revenue	\$ 1,610,167
California Advanced Services Fund (CASF) statutory rate	0.140%
CASF rate adjusted for Intrastate using inverse FCC safe harbor	0.088%
Estimated CASF Revenue	\$ 1,252,352
TOTAL STATE PUBLIC PURPOSE FEES, and 911 Fees	\$ 30,950,990

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Table 2 CA Prepaid Wireless Point of Sale Revenue Estimate Worksheet (Industry)

	FY 2011-12
FCC Reported Subscribers (Postpaid and Prepaid) as of December 2011	\$ 34,292,000
Estimated Prepaid Wireless Market Penetration	21.6%
Forecasted CA Prepaid Subscribers from FCC Data	7,407,072
less 20% inactive accounts/churn/lifeline	1,481,414
Forecasted CA paying prepaid Subscribers from FCC data	5,925,658
Estimated Monthly Revenue @ \$27.50 ARPU	\$ 162,955,584
Estimated Annual Prepaid Revenue	\$ 1,955,467,008
FCC "Safe Harbor" percentage representing intrastate portion of prepaid	62.9%
Statutory Rate of 911 fee	0.500%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.314%
Estimated State 911 fee revenue	\$ 6,149,944
ULTS Statutory Rate	1.150%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.722%
Estimated ULTS Revenue	\$ 14,144,871
CA Relay fee rate statutory rate	0.200%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.126%
CA Relay fee revenue	\$ 2,459,977
High Cost A & B Funds statutory rate	0.700%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.440%
High Cost A&B Funds revenue	\$ 8,609,921
California Teleconnect Fund statutory rate	0.590%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.371%
CTF revenue	\$ 7,256,934
PUC User Fee statutory rate	0.1800%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.11304%
PUC User Fee Revenue	\$ 2,213,980
California Advanced Services Fund statutory rate	0.140%
CASF rate adjusted for Intrastate using inverse FCC safe harbor	0.088%
CASF Revenue	\$ 1,721,984
TOTAL STATE PUBLIC PURPOSE FEES, 911, & UUT	\$ 42,577,611

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