



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date:	Enrolled	Bill No:	<u>Assembly Bill 1717</u>
Tax Program:	Prepaid Mobile Telephony Services Surcharge	Author:	Perea
Sponsor:	CTIA – The Wireless Association	Code Sections:	RTC 41020, 41030, 41033 RTC Div.2, Part 21 (42001) RTC Div. 2, Part 21.1 (42100)
Related Bills:	SB 1211 (Padilla)	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 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.
- **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.

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

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.

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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%.³** 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,⁴ 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 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 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

³ Effective October 1, 2014, the CTF surcharge rate will increase from 0.590% to 0.930%.

⁴ Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code (RTC).

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, which is the maximum rate allowed by law. 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).⁵ The Act imposes, on and after January 1, 2016, a prepaid mobile telephony services surcharge (MTS surcharge) on amounts paid by each prepaid consumer for prepaid MTS, 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. 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.

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.

⁵ Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code (RTC).

Administration. Except as provided, this bill requires the BOE to administer and collect the MTS surcharge pursuant to the Fee Collection Procedures Law (FCPL).⁶ 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 requires a direct seller to remit that portion of the MTS surcharge that consists of the CPUC surcharges to the CPUC. In addition, a direct seller must remit the portion of the MTS surcharge that consists of the 911 surcharge to the BOE pursuant to the 911 Surcharge Act and the portion that consists of the local charge to the local agency imposing the charge. A direct seller must use the rates posted by the BOE when determining what amounts to remit to the PUC, BOE, and each local jurisdiction or local agency.

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 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.

For purposes of the exemption, the bill defines “state lifeline program” to mean the program furnishing lifeline voice communication service pursuant to the Moore

⁶ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

Universal Telephone Service Act⁷ 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 law⁸ 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 that is not a direct seller to deduct and retain an amount equal to 2% of the total MTS surcharge and local charge collected by the seller on a pro rata basis and requires the seller to remit the remainder of the amounts 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, commencing with the calculation made on October 1, 2015, to be effective January 1, 2016. The rate is calculated by dividing OES's 911 cost estimates for the current fiscal year by its estimate of certain charges for the year. 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(d) further requires the OES to notify the BOE of the 911 surcharge amount collected and the surcharge amount applicable to prepaid MTS, 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) and (c) 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

⁷ Article 8 (commencing with Section 781) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code

⁸ RTC §55041.1

- The individual and 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 individual and cumulative surcharge notice on its Internet Web site and notify both the OES and the BOE of the information. Except for that portion of the prepaid MTS surcharge that represents the PUC surcharges, 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" of a prepaid MTS provider pursuant to the Act.

- **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.

The bill further requires the BOE to separately post on its Internet Web site individual rates for each of the PUC surcharges, the 911 surcharge rate, and each of the individual local charges.

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,

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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 emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit would be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

The bill also requires prepaid MTS providers to offer prepaid consumers the option to make payment for additional prepaid usage directly to the provider at the provider's retail location or Internet Web site.

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:

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- 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 bill further requires all moneys deposited into the Prepaid MTS 911 Account to be transferred to the State Emergency Telephone Number Account in the General 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. The bill further requires all moneys deposited in the Prepaid MTS PUC Account to be allocated and transferred to the respective universal service funds and to the PUC Reimbursement Account, as described.

With respect to reimbursement to the BOE, the bill requires the total combined annual expense incurred by the BOE for administration and collection of the MTS surcharge and local charges be allocated on a pro rata based on revenue collected for that portion that is for (1) the 911 surcharge, (2) CPUC surcharges and fee, and (3) local charges.

The bill requires the BOE to prepare an annual report that shows the amount of both reimbursed and unreimbursed administrative costs incurred in the collection of the MTS surcharge.

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

- “Direct seller” means a prepaid MTS provider or service supplier, as defined in RTC Section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited to, any of the following:
 - A telephone corporation, as defined by PUC Section 234
 - An interconnected VoIP service, as defined in PUC Section 285.
 - A retailer, as defined by RTC Section 6203, that is a member of the same commonly controlled group, as defined in Title 18 of the California Code of Regulations Section 25105, or that is a member of the same combined reporting group, as defined in Section 25106.5(b)(3), provided the entity is a telephone corporation or interconnected VoIP service.

For purposes of this definition, “sale” means any transfer of title, possession, exchange, or barter, conditional or otherwise.

- "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.

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- "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 Act⁹ (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 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.

⁹ Part 21.1 (commencing with Section 42100) of Division 2 of the RTC.

- 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, except from direct sellers. 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.
- Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the local agency’s ordinance.

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:

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

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

The Local Act also requires the BOE to make available to a requesting local agency any information that is reasonably available to the BOE regarding the proper collection and remittance of a local charge of that local agency by a seller, including a direct seller. Such information is subject to the confidentiality requirements of RTC Section 7284.6, 7284.7, and 19542.

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.

The Local Act specifically states that a local agency shall pay to the BOE its pro rata share of the BOE's cost of collection and administration.

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 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.
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.

The bill also adds RTC Section 41033 to require that for each fiscal year, beginning with the 2016-17 fiscal year and ending with the 2018-19 fiscal year, the BOE calculate the following on or before November 1 at the end of that fiscal year:

- The total collections for the fiscal year of that portion of the prepaid MTS surcharge that is for the 911 surcharge, net of any reimbursement amounts that a seller was permitted to deduct and retain.
- Less the expenses incurred and reimbursed to the BOE for the fiscal year from that portion of the prepaid MTS surcharge that is for the 911 surcharge.

The bill requires the BOE to provide notification of whether the amount calculated in this section exceeds or is less than nine million nine hundred thousand dollars (\$9,900,000) on its Internet Web site by December 15 following the calculation. The BOE must also provide the underlying calculations, assumptions, and methodology.

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If in any fiscal year the calculation results in an amount less than \$9,900,000, the bill imposes that deficiency on each prepaid MTS provider or direct seller on a pro rata basis. The bill tasks the BOE to bill each prepaid MTS provider or direct seller its pro rata share of the deficiency based upon each provider's percentage share of total California intrastate prepaid MTS revenues, as reported to the CPUC.

Within 45 days of request, the bill requires the CPUC to provide the BOE the following:

- The name and address of each prepaid MTS provider and direct seller;
- Each prepaid MTS provider's and direct seller's California intrastate prepaid MTS revenue;
- Each prepaid MTS provider's and seller's percentage share of total California intrastate prepaid MTS revenue for the prior fiscal year; and
- Any other information the BOE deems necessary.

Any amount billed to a prepaid MTS provider is due and payable to the BOE within 60 days. At the expiration of the 60-day period, interest begins to accrue and a penalty of 10% shall be added. Existing law requires the BOE to deposit deficiency amounts collected into the Account.

Section 41033 also requires each prepaid MTS provider or direct seller to report to the BOE the amount of that portion of the prepaid MTS that is the 911 surcharge, remitted by the provider or seller pursuant to the Act. The report is due on or before September 1 each year beginning with the 2016-17 fiscal year, and ending with the 2018-19 fiscal year.

Legislative Report. To assist the Legislature in determining whether to extend the Act and Local Act beyond the January 1, 2020, repeal date, the bill requires the BOE to prepare, no later than July 1, 2017, the following:

- A report that identifies, for the 2016 calendar year, (1) the actual MTS surcharge revenues collected, (2) the number of sellers remitting the MTS surcharge and local charges, including the number of individual seller locations remitting local charges, and (3) the BOE's actual costs to implement the Act and Local Act.
- A revised estimate for the 2017–2019 calendar years of annual MTS surcharge and local charge revenues to be collected by the BOE and the BOE's annual implementation costs. The report shall also include any other significant anticipated change in revenues or BOE implementation costs if the Act and Local Act are extended beyond the January 1, 2020 repeal date.

Savings Clause. The bill adds uncodified language that preserves administrative provisions that are applicable for the collection of any provision of the Act, Local Act, and related implementing statutes, the liability for which accrued prior to January 1, 2020. It states the making of any refunds and the effecting of any credits; the disposition of money collected; nor shall the repeal affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before that repeal; but all rights and liabilities under that law shall continue, and may be enforced in the same manner, as if the repeal had not been made.

The bill also includes uncodified language that preserves administrative provisions that are applicable to the 911 surcharge and any charges imposed by the PUC, as specified.

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Operative Date. As an urgency measure, the bill becomes effective immediately. However, the MTS surcharge and local charges are operative January 1, 2016, and remain in effect until the provisions are repealed on January 1, 2020.

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.

Last year's 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.

COMMENTS

1. **Sponsor and Purpose.** The bill is sponsored by CTIA – The Wireless Association¹⁰ 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.
2. **Summary of Amendments.** The **August 22, 2014 amendments** (1) added double-jointing language with [SB 1211](#) (Padilla), (2) added an annual reporting requirement for prepaid MTS providers and direct sellers under the 911 fund guarantee language, (3) revised the “direct seller” definition, (4) required the BOE to prepare an annual reimbursed and unreimbursed costs report, (5) required amounts deposited into the Prepaid MTS Surcharge Fund transferred to the State Emergency Telephone Number Account and CPUC surcharge accounts, (6) made technical and administrative-related changes as suggested by BOE staff, (7) required the BOE to make available information to a requesting local jurisdiction or local agency, (8) required the BOE to prepare a report to assist to Legislature in determining whether to extend the Act and Local Act, and (9) made technical and conforming changes.
July 2, 2014 amendments (1) added a December 31, 2019, sunset date, (2) revised the definition for prepaid MTS provider and update related provisions, (3)

¹⁰ CTIA was originally the acronym for “Cellular Telecommunications and Internet Association.”

incorporated 911 surcharge calculation to include Next Generation 911, (4) clarified the guaranteed State Emergency Telephone Number Account funding language, (5) added a definition for “direct seller” and related remittance provisions, (6) specified the allocation for the retailer reimbursement and BOE administrative cost reimbursement, and (7) added savings clause language to allow the BOE to collect and make refunds after the provisions of the bill sunset.

The May 28, 2014 amendments added language that guarantees a minimum annual payment amount to the Prepaid MTS 911 Account, (2) required prepaid MTS providers to reimburse any payment deficiency to that account based on its pro rata share of that deficiency, and (3) established that BOE’s annual expense for collection and administrative costs be allocated on a pro rata basis according to revenues collected for that portion that is for the 911 surcharge, CPUC surcharges and fee, and local charges.

The April 2, 2014 amendments (1) deleted the 5-year sunset date and related provisions, (2) made clarifying changes to the uncodified savings clause provisions, and (3) removed 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 after service consumption whereas service suppliers collect prepaid charges before or at the time 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

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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-

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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. Typically, the BOE requires 6 to 8 months to implement a new tax or fee program. However, due to the complexity of the MTS surcharge and local charge programs, and recent direct seller amendments, the BOE requires at least 12 months to successfully implement the MTS surcharge and local charge programs. The BOE must have funding during Fiscal Year (FY) 2014-15 to allow for the 12-month implementation time. This requires the BOE to begin implementation by January 1, 2015, which requires current year funding. Without FY 2014-15 funding, the BOE cannot begin implementation until July 1, 2015 (FY 2015-16) once the BOE receives administrative cost funding through the Budget Act. **As such, surcharge collections may be at risk without sufficient implementation time.**

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 MTS Surcharge 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

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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 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.

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

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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 includes 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 still includes ancillary services, such as voice-mail service, data, and messaging (texting). Assuming no difference between post- and pre-paid wireless service cost, prepaid 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. **“Direct seller” provisions complicate administration.** In its current form, the bill carves out “direct sellers” to include, in part, prepaid MTS providers, service suppliers, and specified retailers. The bill further requires each of these direct sellers to remit that portion of the prepaid MTS surcharge that consists of the CPUC surcharges, 911 surcharge, and local charges to the CPUC, BOE, and local agencies, respectively. As such, this bill requires certain sellers (direct sellers) to remit (i.e. pay) the MTS surcharge to the CPUC, BOE, and local agencies, as provided, in a different manner than other MTS sellers. This complicates administration of the bill and, for the BOE, the existing 911 Surcharge program. The direct seller provisions split the BOE's administration and collection of the MTS surcharge between the MTS surcharge program and the existing 911 surcharge program. This requires additional programming and resources to incorporate the direct seller remittance under the 911 surcharge program, specifically programming to track the deposit of direct seller remittances to two funds. Furthermore, splitting the MTS surcharge remittance between two BOE-administered programs sets a precedent for future tax and fee programs.

12. **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.

Outstanding suggested amendments include the following:

- **PUC Section 319(e):** This subdivision provides the CPUC the authority to enforce proper remittance of a prepaid MTS provider pursuant to the Act. However, the Act consists of both the 911 surcharge and CPUC surcharges and fee. This subdivision should be amended to clarify that the CPUC's enforcement authority extends only to that portion of the MTS surcharge that consists of the CPUC's surcharges remitted by a direct seller. The BOE staff suggests the following amendment:

319.(e) The commission shall have enforcement authority to ensure the proper remittances ~~over retail transactions~~ for that portion of the prepaid

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MTS surcharge that consists of the Public Utilities Commission surcharges, as defined in Section 42004 of the Revenue and Taxation Code, of a prepaid MTS provider . . . to this subdivision.

- **RTC Section 41033:** Is it the author's intent for the BOE's deficiency calculation to take into account the additional BOE administrative costs under the 911 Surcharge Act to calculate, bill, and collect deficiency amounts, which is funded by the State Emergency Telephone Number Account, and bill prepaid MTS providers for that expense?
- **RTC Section 42004(b)(1):** BOE staff notes that the "direct seller" definition in RTC 42004(b)(1)(B) is confusing and serves no purpose as written. At a minimum, the definition should be amended as follows:
 - 42004(b)(1) "Direct seller" means . . . any of the following:
 - (A) A telephone corporation, as defined by Section 234 of the Public Utilities Code.
 - (B) A provider of An-interconnected Voice over Internet Protocol (VoIP) service, as defined in Section 285 of the Public Utilities Code.
- **RTC Section 42010(d)(1):** The bill adds subdivision (f) to Section 42010 to require a direct seller to remit the CPUC portion of the MTS surcharge to the CPUC, the 911 surcharge portion of the MTS surcharge to the BOE pursuant to the 911 Act, and the local charge portion of the MTS surcharge to the appropriate local agency. This remittance should be specified in subdivision (d)(1) rather than providing an exception to those direct sellers. Providing an exception could have unintended consequences. The BOE staff suggests moving the direct remittance requirements to Chapter 3 (commencing with Section 42020) and placing that reference in (d)(1). Furthermore, the 911 surcharge portion of the MTS surcharge should be remitted to the BOE along with all other remittances of the MTS surcharge under the Act rather than having those amount remitted under an entirely different program (911 Surcharge Act). Reporting a portion of the MTS surcharge under the 911 Surcharge Act results in accounting and audit difficulties, as well as additional administrative costs.

42010.(d)(1) Except for amounts retained pursuant to subdivision (e), ~~and except as provided in subdivision (f) for a seller that is a direct seller,~~ all amounts of the prepaid MTS surcharge and local charges collected by sellers shall be remitted to the Public Utilities Commission or board pursuant to Chapter 3 (commencing with Section 42020).

~~42010.(f) A direct seller shall remit the prepaid MTS surcharge and local charges as follows:~~

~~—(1) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the commission with those reports required by the commission.~~

~~—(2) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the board pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) for those retail transactions with a prepaid consumer in the state.~~

~~—(3) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge. Remittance of the local charges shall be separately identified from any other local taxes or other charges~~

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~~that are remitted to the local jurisdiction or local entity imposing the local tax or other charge.~~

To add remittance language to Chapter 3 (commencing with Section 42020):

42020.(a)(1) Except as provided in subdivision (f), the board shall administer and collect the prepaid MTS surcharge . . . with the board.

(f) A direct seller shall remit that portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges to the commission, and not to the board, for those retail transactions with a prepaid consumer in the state with those reports required by the commission.

To add comparable changes to the Local Act:

42103.(a) The board ... Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001)), except as provided in subdivision (g) and subject to the limitations set forth in Section 42105. For purposes of this part ... the seller.

(i) A direct seller shall remit that portion of the prepaid MTS surcharge that is for local charges, if applicable, to the local jurisdiction or local agency imposing the local charge. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local entity imposing the local tax or other 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.

Furthermore, should the deficiency calculation also take into account the additional BOE administrative costs under the 911 Surcharge Act, which is funded by the State Emergency Telephone Number Account, and bill prepaid MTS providers for that expense?

13. **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.

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14. This measure imposes a prepaid 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.

15. Related legislation. SB 1211 (Padilla) requires the OES to develop a plan, including a timeline of target dates, for the development of a Next Generation 911 emergency communication system. That bill also amends RTC Section 41030, which AB 1717 also amends, to establish requirements for OES in determining the 911 surcharge rate. This bill contains double-jointing language with SB 1211.

COST ESTIMATE

BOE administrative costs related to this bill are substantial. These costs include, in part: 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; public inquiry responses; contract negotiations, surcharge rate maintenance; fund report preparation; and annual administrative cost allocation. These costs are estimated to be \$1 million for Fiscal Year (FY) 2014-15, \$10.5 million for FY 2015-16, and \$11.7 million for FY 2016-17, rising to \$12.8 million ongoing thereafter. The bill authorizes cost reimbursement to the BOE for the administration and collection of the MTS surcharge and local charge from the Prepaid Mobile Telephony Services Surcharge Fund and Local Charges for Prepaid Mobile Telephony Services Fund, respectively.

The bill also contains in the 911 Surcharge Act a provision that guarantees funding to the State Emergency Telephone Number Account. The guaranteed funding language requires the BOE to perform a specified funding calculation. If that calculation results in an amount less than \$9.9 million, the BOE will bill and collect from each prepaid MTS provider or direct seller its pro rata share of the deficiency amount. In addition, each prepaid MTS provider or direct seller must submit an annual report to the BOE that specifies that portion of the MTS surcharge that is the 911 surcharge remitted the prior fiscal year. The costs for this workload include report design and development, staff time to make the required calculations, and if necessary, billing MTS providers or direct sellers and related collection costs. Existing law authorizes BOE reimbursement from the State Emergency Telephone Number Account, to which there may be a funding shift in FY 2017-18.

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REVENUE ESTIMATE**BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

Local MTS Revenue. BOE staff estimates \$35.968 million 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 taxable measure (\$1,269.731 million) through the use of cities' 2012 sales and use taxable sales amounts. According to a CPUC questionnaire, Carrier Practices Regarding Payment of Surcharges, Fees, & UUTs (CPUC Data), carriers remit approximately 68% of local UUT charges to local jurisdictions. The CPUC Data bases the 68% remittance rate on carriers' responses that indicate they remit local UUT charges. However, the CPUC questionnaire did not ask if those carriers remit in all local jurisdictions. As an order of magnitude, we adjusted the 68% down to 50% to take into account the likelihood that those carriers remitting local UUT charges are not doing so in all jurisdictions. Accordingly, the calculation for new revenue is as follows: (\$1,269.731 million x 5.72% x 50% = \$36.286 million) less an indirect seller reimbursement amount of \$0.317 million (indirect sellers' revenue of \$15,860 million x .02 = 0.317 million). Total additional local revenue amounts to \$35,968,497 (\$36,285,707 - 317,210 = \$35,968,497). For detailed calculation information, see Table 2.

Current Prepaid Wireless CPUC & 911 Surcharge Revenue. The BOE's 2011-12 *Annual Report* indicates that 911 surcharge revenues were \$83.3 million at a 0.5% surcharge rate. This implies a \$16,660.000 million ($83.3 / 0.05 = 16,660.000$) tax base. Industry data show that wireless revenue is 58.4% of this amount, which implies a wireless sales tax base of \$9,729.440 million ($0.584 \times 16,660.00 = 9,729.940$).

The Federal Communications Commission's (FCC) [16th Mobile Wireless Competition Report](#) specifies the prepaid wireless market penetration (subscriber number) at 21.6%. An industry data review 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 and a reasonable assumption, we believe the 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 ($0.216 \times .063 = 0.136$). Calculations indicate prepaid services sales of about \$1,323.204 million ($\$9,729.440 \text{ million} \times 0.136 = \$1,323.204 \text{ million}$).

Estimated MTS Revenue. The combined current CPUC surcharge and 911 surcharge rates amount to 3.514%.

As noted in the following table, the *Estimated California Prepaid Wireless Revenue Base* for this revenue calculation includes all prepaid wireless revenue, including interstate and intrastate communications, text, and data. To determine the revenues this bill generates, we multiplied the *Estimated California Prepaid Wireless Revenue Base* by the proposed prepaid MTS rates (the MTS rates are computed by multiplying the current surcharge rates by 74.29%, a CPUC Data intrastate service percentage).

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AB 1717 Estimated Prepaid Revenues	Current Rates	Forgone Revenue	^A 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	11,086,007
Estimated Prepaid Wireless ULTS Revenue:	1.15%	15,216,844	16,998,545
Estimated Prepaid Wireless DDTP Revenue:	0.20%	2,646,408	2,956,269
Estimated Prepaid Wireless CHCF-A Revenue:	0.18%	2,381,767	2,660,642
Estimated Prepaid Wireless CHCF-B Revenue:	0.00%	-	-
Estimated Prepaid Wireless CTF Revenue Remitted:	0.59%	7,806,903	8,720,992
Estimated Prepaid Wireless CASF Revenue:	0.464%	6,139,666	6,858,543
Estimated PUC User Fees (Prepaid wireless):	0.18%	2,381,767	2,660,642
Total 911 and Public Purpose Fees	3.514%	\$ 46,497,383	\$ 51,941,640

REVENUE SUMMARY

This measure would generate approximately \$51.941 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) \$0.454 million that represents the 2% indirect seller reimbursement that the bill authorizes (indirect sellers' revenue of \$22,703,691 x .02 = 454,074). In 2016, this measure could result in a net state revenue gain of \$4.990 million [(\$51.941 million - \$46.497 million) - \$0.454 million = \$4.990 million]. Taking into account additional local charge revenues of \$35.968 million, this measure could result in a net state and local revenue gain of \$40.958 million (\$4.990 million + \$35.968 million). These figures do not take into consideration reimbursement to the BOE for administrative costs, which are substantial, as noted above.

As noted previously, this bill imposes upon each prepaid consumer a prepaid MTS surcharge to be collected by a seller on each retail transaction involving prepaid MTS and those amounts are to be remitted to the BOE, unless the seller is a direct seller, as defined. Direct sellers are required to remit CPUC surcharges to the CPUC, the 911 surcharge to the BOE, and the local charges to the local jurisdiction or agency. According to the CPUC, direct sellers account for 56.29% of total prepaid sales, and indirect sellers account for 43.71% prepaid wireless sales. Therefore, the revenue breakout between direct and indirect sellers is as follows:

Direct Seller 56.29% (911 and CPUC chargers)	\$ 2,809,000
Direct Seller 56.29% (Local UUT)	20,425,000
Total revenue to be remitted by direct sellers	\$ 23,234,000
Indirect Seller 43.71% (911 and CPUC chargers)	\$ 2,181,000
Indirect Seller 43.71% (Local UUT)	15,543,000
Total revenue to be remitted by indirect sellers	\$ 17,724,000
Total new revenue	\$ 40,958,000

Qualifying Remarks. For purposes of calculating the new MTS surcharge revenue, the BOE assumed a MTS surcharge rate based on current rates x 74.29%, as reported by the CPUC to determine intrastate revenue. However, statutes governing both CPUC

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charges and 911 surcharges require that rates be adjusted only to the extent revenues generated will adequately fund expenses, and not more. So any estimated revenue gain will be offset by a corresponding rate change. Rates will also be adjusted to include added administrative costs resulting from this legislation.

The local UUT revenue of \$35.968 million assumes that wireless carriers are remitting 50% of UUT revenues, which is less than the 68% reported by the CPUC. We have not confirmed this assumption. Furthermore, this revenue estimate assumes that carriers that remit UUT on prepaid wireless services do so based on the services' retail price. Although remittance based on the retail price is required by law, this assumption is unconfirmed.

The revenue impact allowing sellers a bad debt deduction is minimal.

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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	34,892,000
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	74.3%
Statutory Rate of 911 fee	0.750%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.557%
Estimated State 911 fee revenue	\$ 11,086,007
ULTS Statutory Rate	1.150%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.854%
Estimated ULTS Revenue	\$ 16,998,545
CA Relay fee rate statutory rate	0.200%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.149%
CA Relay fee revenue	\$ 2,956,269
High Cost A & B Funds statutory rate	0.180%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.134%
High Cost A&B Funds revenue	\$ 2,660,642
California Teleconnect Fund statutory rate	0.590%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.438%
CTF revenue	\$ 8,720,992
PUC User Fee statutory rate	0.1800%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.13372%
PUC User Fee Revenue	\$ 2,660,642
California Advanced Services Fund statutory rate	0.4640%
CASF rate adjusted for Intrastate using inverse FCC safe harbor	0.345%
CASF Revenue	\$ 6,858,543
TOTAL STATE PUBLIC PURPOSE FEES, and 911 Fees	\$ 51,941,640

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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

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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

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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

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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)*

Statewide Total Taxable Sales 2012 (in thousands)

UUT Jurisdictions as a Percentage of Taxable Sales *(2012 Taxable Sales/Statewide Total Taxable Sales 2012)*

AB 1717 State Prepaid Wireless Revenue (non-carrier)

Estimated UUT Prepaid Wireless Taxable Measure

(UUT Jurisdictions as a Percentage of Taxable Sales x AB 1717 Intrastate Prepaid Wireless Revenue)

1,268,731,007

Estimated UUT Revenue (at a rate of 5.72%)

(Estimated UUT Intrastate Prepaid Wireless x UUT Weighted Average Rate)

72,571,413

Estimate of Current Remittances (50%)

(36,285,707)

50% current remittance is as an order of magnitude

Estimate new remittances

Direct (Carriers 56.29%)

20,425,224

Indirect (Retailers 43.71%)

15,860,482

Less 2% reimbursement

(317,210)

Total indirect seller

15,543,273

Total new local UUT revenue

\$35,968,497

Number of Jurisdictions = 131

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