

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** May 18, 2010

**To:** The Commission  
(Meeting of May 20, 2010)

**From:** Edward Randolph, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 2545 (De La Torre) – Emergency Telephone Users  
Surcharge Act.  
As Introduced: February 19, 2010**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:** OPPOSE UNLESS AMENDED

**SUMMARY OF BILL:**

This bill would make legislative findings and declarations regarding equitable contributions to the funding of 911 systems by consumers of prepaid communications services, including the finding that “To ensure equitable contributions to the funding of 911 systems from consumers of prepaid communications services, there should be clarity and standardization with respect to the collection and payment obligations of 911 surcharges for prepaid communications services.”

This bill would amend the Revenue and Taxation Code to require the California Public Utilities Commission (CPUC) to open a proceeding, or expand the scope of an existing proceeding, to determine an equitable manner for mobile telephone service providers to collect the emergency 911 surcharge from users of prepaid communications services. The CPUC would be required to advise the Board of Equalization of its determination.

The bill defines “prepaid communications service” to include both “prepaid calling card service”, as defined, and “prepaid wireless calling service” as defined.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

The definitions of prepaid services in the bill have serious flaws. For example, “prepaid calling card service: is not a “mobile telephony service”. Prepaid calling cards are seldom used with a wireless phone.

The bill should be amended to delete the definitions and permit the CPUC to define "prepaid wireless services" as part of the rulemaking required by the bill.

### **SUMMARY OF SUGGESTED AMENDMENTS:**

The definitions should be removed from the bill and the legislation should require the CPUC to determine in its proceeding what elements constitute prepaid telecommunications service for purposes of collection of the 911- surcharge.

Proposed Amendment: On page 2, delete lines 6 through 21.

### **DIVISION ANALYSIS:**

Although the rulemaking required by the bill would not technically directly impact CPUC practices and policy, there is no doubt that it would indirectly have a substantial impact on the CPUC's collection of surcharges on the CPUC public purpose programs.

The definitions of prepaid services in the bill would also undoubtedly impact the collection of surcharges on the CPUC public purpose programs.

California Revenue and Taxation Code Section 41020 (a) imposes a "911" surcharge on amounts paid by every person in the state for both of the following:

- (1) Intrastate telephone communication service in this state, and
- (2) VoIP service that provides access to the "911" emergency system by utilizing the digits 911 by any service user in this state commencing on January 1, 2009. (The surcharge does not apply to charges for VoIP service where any point of origin or destination is outside of this state.)

Revenue and Taxation Code Sec. 41010 defines. "Intrastate telephone communication services" as "all local or toll telephone services where the point or points of origin and the point or points of destination of the service are all located in this state."

Revenue and Taxation Code Sec. 41020 (b) permits a service supplier to calculate charges not subject to the surcharge based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:

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

Revenue and Taxation Code Section 41021 requires a service supplier to collect the surcharge from each service user at the time it collects its billings from the service user. And Section 41022 states that the surcharge required to be collected by the service supplier shall be added to and stated separately in its billings to the service user.

Currently the Office of the Chief Information Officer determines the 911 surcharge rate and the Board of Equalization collects the surcharge.

Under current statutes and regulations, the CPUC establishes surcharge rates for, and collects the surcharges on, its public purpose programs. All telecommunications carriers operating in the state, including wireless carriers, are required to impose the surcharges on customer intrastate billings. Although revenues from “debit cards” are exempt from the LifeLine surcharge, these carriers are required to impose the surcharge on all other revenue from the sale of prepaid intrastate services.

However, some wireless providers are not collecting CPUC surcharges on their revenues from sales of prepaid services. There is not always a “billing” for such services – i.e., a monthly bill is not sent to the customer from the service provider. Often these sales are made over the counter.

The proceeding required by this bill could ultimately benefit the CPUC if it leads to a more accurate collection of public purpose program surcharges on prepaid services of all providers.

#### **PROGRAM BACKGROUND:**

There are three pending proceedings at the CPUC that are related to public policy program surcharges on wireless prepaid services:

- **Verizon Wireless Petition for Rulemaking on Public Policy Program Surcharges and Prepaid Wireless Service (P.09-12-018)** On December 11, 2009, Verizon Wireless filed a petition for rulemaking. Verizon Wireless “requests that, in conjunction with any declaration, ruling or decision that prepaid wireless intrastate telecommunications services are subject to the Commission’s jurisdiction and its Public Purpose Program (PPP) surcharges, the Commission determine if PPP surcharges apply to prepaid wireless service and, if so, determine what methods for collecting such surcharges will meet the Commission’s requirements for these programs.
- **Tracfone OII (I.09-12-016):** On December 17, 2009, the Commission instituted an investigation, on its own motion, into the failure of Tracfone Wireless, Inc. to pay public purpose surcharges and user fees on its intrastate telephone revenue.
- **Tracfone Application for Rehearing on denial of ETC Status (A.10-01-015):** On January 19, 2010, Tracfone filed an application for rehearing of T-17235. On December 18, 2009, the CPUC adopted Resolution T-17235 denying Tracfone

eligible telecommunications carrier (ETC) status for purposes offering federal lifeline service, because Tracfone had failed to collect and remit public purpose program surcharges and user fees.

**LEGISLATIVE HISTORY:**

None.

**STATUS:**

AB 2545 is in the Senate awaiting policy committee referral by the Senate Rules Committee.

**SUPPORT/OPPOSITION:**

Support: California State Sheriffs' Association (CSSA)

Opposition: None on file.

**STAFF CONTACTS:**

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**Date:** May 18, 2010

**BILL LANGUAGE:**

BILL NUMBER: AB 2545    INTRODUCED  
                  BILL TEXT

INTRODUCED BY    Assembly Member De La Torre

FEBRUARY 19, 2010

An act to add Section 41127.9 to the Revenue and Taxation Code,  
relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2545, as introduced, De La Torre. Emergency Telephone Users  
Surcharge Act: prepaid communications service.

Existing provisions of the Warren-911-Emergency Assistance Act  
establish the number "911" as the primary emergency telephone number  
of use in the state. The existing Emergency Telephone Users Surcharge  
Act generally imposes a surcharge on amounts paid by every person in  
the state for intrastate telephone service that is imposed at a  
percentage rate, not less than 0.5% nor more than 0.75% as annually  
estimated to provide revenues sufficient to fund "911" emergency  
telephone system costs for the current fiscal year. Surcharge amounts  
are paid to the State Board of Equalization on a monthly basis by  
the telephone service supplier and are deposited into the State  
Treasury to the credit of the State Emergency Telephone Number  
Account in the General Fund. Under existing law, the Public Utilities  
Commission (PUC) has regulatory authority over public utilities,  
including telephone corporations, except to the extent regulation of  
commercial mobile radio service is preempted by federal regulation.

This bill would require the PUC to open proceedings or expand the  
scope of existing proceedings to determine an equitable manner for  
mobile telephony service providers to collect the surcharge from  
users of prepaid communications services, and would require the PUC  
to advise the board of its determination.

This bill would also make legislative findings and declarations  
regarding equitable contributions to the funding of 911 systems by  
consumers of prepaid communications services.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

SECTION 1. (a) The Legislature finds and declares the following:

- (1) Maintaining effective and efficient 911 systems across the  
state benefits all citizens.
- (2) 911 fees imposed upon consumers of communications services  
that have the ability to dial 911 are an important funding mechanism  
to assist state and local governments with the deployment of enhanced  
911 services to the citizens of this state.

(3) Prepaid communications services are an important segment of the communications industry and should bear an equitable part of the responsibility for the funding of the 911 system.

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

(5) To ensure equitable contributions to the funding of 911 systems from consumers of prepaid communications services, there should be clarity and standardization with respect to the collection and payment obligations of 911 surcharges for prepaid communications services.

(6) Current law also requires several public purpose surcharges and user fees to be collected from end users and remitted to the Public Utilities Commission.

(7) The Public Utilities Commission has the body of experience and comparative advantage over the State Board of Equalization regarding the collection of surcharges for prepaid communications services.

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

41127.9. (a) The Public Utilities Commission shall open proceedings or expand the scope of existing proceedings to determine an equitable manner for mobile telephony service providers to collect the surcharge from users of prepaid communications services. The commission shall advise the State Board of Equalization of its determination.

(b) For purposes of this section, all of the following shall apply:

(1) "Prepaid communications service" includes both prepaid calling card telephone service and prepaid wireless service as follows:

(A) "Prepaid calling card service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(B) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the downloading of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(2) "Mobile telephony service provider" means a provider of mobile telephony service as defined in subdivision (d) of Section 224.4 of the Public Utilities Code.