

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 25, 2011

To: The Commission
(Meeting of May 26, 2011)

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

Subject: **AB 1050 (Ma) – Telecommunications: taxes and fees.**
As amended: May 10, 2011

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

AB 1050, sponsored by the Cellular Telecommunications Industry Association (CTIA), would require the Board of Equalization (BOE) to convene a working group to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications taxes, fees, and surcharges from prepaid communications end-use customers.

The working group would include stakeholder representatives from the California Public Utilities Commission (CPUC), the California Technology Agency (CTA), local government entities, law enforcement agencies, mobile telephony service providers, retailers, and consumer groups.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Telephone corporations, both wireline and wireless, are currently required to collect CPUC universal service/public purpose program surcharges and the CPUC reimbursement fee on their prepaid intrastate revenues.

The statement in Section 1(d) that “there is no method for collecting communications taxes, fees, and surcharges from prepaid end-use consumers” is inaccurate. Some carriers are complying with the requirement today, so there clearly are methods for collecting from prepaid services. To date, the CPUC has not established a uniform method of collection.

The Public Utilities Commission is the agency with the expertise in telecommunications matters in California. The CPUC should lead the working group required by AB 1050 or, alternatively, the CPUC and the Board of Equalization should jointly convene and administer the working group. In other words, the CPUC at least should be a co-equal with BOE on this effort and have approval over any recommendations.

The definition of “communications taxes, fees, and surcharges” in proposed new Revenue and Taxation Code section 41127.9 (b) should be amended to exclude taxes, fees and surcharges on video services.

The bill requires the working group to develop recommendations, but does not require BOE to report the recommendations to the Legislature nor to take any other action beyond development of the recommendations.

SUMMARY OF SUGGESTED AMENDMENTS:

1) Add new subsection to Section 1 as follows:

“Under existing law, providers of telecommunications services are required to collect and submit telecommunications surcharges on intrastate revenues derived from both their post-paid and prepaid communications services.”

2) On page 3, at line 7, after “no” add: “uniform”.

3) Amend proposed new Revenue and Taxation Code Section 41127.9 to make the CPUC the lead agency or at least a co-lead with the BOE, with approval rights over any final recommendations.

4) On page 4, at line 19, add new subsection(c) clarifying that this subsection (b) does not include taxes, fees and surcharges imposed on the provision of video services.

5) Add a technical amendment stating what the lead agency (or agencies) is to do with the recommendations.

ANALYSIS (Communications Division):

1. Telephone corporations, both wireline and wireless, are currently required to collect CPUC universal service/public purpose program surcharges and the CPUC reimbursement fee on their prepaid intrastate revenues. However, some providers believe there is not an adequate mechanism in place to assess the surcharges on prepaid customers, since unlike other types of telephone service, the customer does not receive a monthly bill for service. AB 1050 is an attempt to address this concern, possibly by requiring that the fees and surcharges are collected by the retailer at the point of sale.

2. Currently, California statutes and CPUC regulations require these surcharges and user fees to be billed to the end-user of all telecommunications services. The CPUC permits carriers leeway in the method they use to collect surcharges from prepaid customers.
3. This bill could result in adoption of uniform methods for such collection if the Legislature or the CPUC adopts the recommendations coming out of the process. Adoption of a uniform method would facilitate administration of the universal service programs and the CPUC reimbursement fee.
4. Customer use of prepaid wireless services is increasing, so the outcome of this process could ultimately impact the amount of money collected by the CPUC public policy program surcharges if the working group develops a more effective way to collect the required fees.
5. As drafted, the CPUC would not have to convene a rulemaking or other proceeding to resolve the issue raised by the bill and but would be an active participant of the BOE-convened working group. However, the CPUC is in a better position to conduct the working group proposed by this bill since the CPUC is charged with administering most of the programs funded by the impacted fees and is the agency that has direct regulatory authority over most of the telephone products that would be required to pay the fees. Consequently, the bill should be amended to provide that the CPUC convene the working group and not the BOE.

PROGRAM BACKGROUND:

Current law requires all telecommunications service providers operating in California to collect and remit percentage surcharges on their prepaid and post-paid intrastate revenues to fund the following communications programs:

- 1) **The California LifeLine**, established in 1984, provides discounted basic telephone service to low-income households as a means to achieve universal service.
- 2) **The California Teleconnect Fund (CTF)**, established in compliance with Assembly Bill (AB) 3643, provides discounts on selected telecommunications services to qualified entities –schools, libraries, CBOs, public health facilities.
- 3) **The Deaf and Disabled Telecommunications Program (DDTP)** was originally created by CPUC decision and subsequently codified in P.U. Code § 2881 *et seq.* Other legislation was added to the Code, ultimately creating four components to address the needs of separate Californian constituencies who are deaf, hard-of-hearing, or otherwise disabled. The California Relay Service is one component of the DDTP.
- 4) **The California High Cost Funds** provide a source of supplemental revenues to incumbent Local Exchange Carriers (LECs) who are Carriers of Last Resort, and whose basic exchange access line service rates would otherwise be increased to levels that would threaten universal service. In D.96-10-066, the Commission identified two programs for the purpose of determining universal service subsidy

support;

- a) **The California High-Cost Fund A (CHCF-A)** for the State's small ROR ILECs,
- b) **The California High-Cost Fund-B (CHCF-B)** for the mid-size and large ILECs.
- c) **The California Advance Services Fund (CASF)** supports the deployment of broadband facilities and service to unserved and underserved areas of the State. The Legislature codified the CASF in 2008.¹

The Commission has not instituted a proceeding to determine the methodology for prepaid phone service providers to contribute to our universal service programs. It has been CD's and CPSD's position that no such determination need be made, as prepaid phone service providers already contribute at the federal level and the means of making a corollary contribution at the state level does not require a CPUC determination. The CPUC has not spoken specifically to the question of a methodology, other than to dismiss the Verizon petition. (See below)

End-User Billing Requirements: Existing law requires several public purpose surcharges and user fees to be collected from end-users and remitted to the CPUC.

- 1) CPUC Decision 96-10-066 and subsequent decisions sets forth rules for establishing the LifeLine (ULTS) program, CHCF A and B programs; the DDTP and the CTF program, requiring the surcharges to be charged to end-users to pay for these programs.
- 2) PU Code Section 879(c) requires telephone corporations to apply the funding requirement for LifeLine "in the form of a surcharge to service rates which may be separately identified on the bills of the customer using those services."
- 3) PU Code Section 2881(d) requires that the DDTP surcharge be applied to "a subscriber's intrastate telephone service".
- 4) The CASF was created by CPUC Decision 07-12-054.
- 5) The CPUC also collects the CPUC Reimbursement Fee from telephone corporations as required by PU Code Sections 431-434. Except for few basic parameters, the statute gives the CPUC discretion as to how the fee should be collected. It does not require the fee to be billed to the end user customer.
- 6) The CPUC is currently conducting a rulemaking to determine if it should require interconnected VoIP providers to contribute to the CPUC's communication public

¹The Commission's Universal Service Public Programs are described at:

<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/>

purpose programs. Several of the VoIP providers also voluntarily collect and remit the state LifeLine surcharges.

PU Code Sec. 495.6 requires any city, county, or city and county that levies a utility user tax on the consumption of telephone services, including, but not limited to, the tax authorized by Section 7284.2 of the Revenue and Taxation Code, to provide to the Commission the rate of the tax, the manner in which the tax is collected, and the frequency with which the tax is collected.

RELEVANT PENDING LITIGATION OR LEGAL ISSUES:

- 1. Verizon Wireless Petition for Rulemaking on Public Policy Program Surcharges and Prepaid Wireless Service (P.09-12-018):** On December 11, 2009, Verizon Wireless filed a petition for rulemaking. Verizon Wireless requested that, in conjunction with any declaration, ruling or decision that prepaid wireless intrastate telecommunications services are subject to the Commission's jurisdiction and its Public Policy Program (PPP) surcharges, the Commission determine if 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. The Verizon petition for rulemaking was dismissed without prejudice. Verizon has not re-filed, but it did seek to intervene in the TracFone OII at the briefing stage. CPSD opposed Verizon's motion, and the disposition of that motion is pending.
- 2. Pending 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 offers prepaid wireless services. Hearings have been held in the OII and briefs submitted. The matter is pending resolution by the Commission.
- 3. Tracfone Application for Rehearing on denial of ETC Status (A.10-01-015):** On December 18, 2009, the CPUC adopted Resolution T-17235 denying Tracfone eligible telecommunications carrier (ETC) status for purposes offering federal lifeline service, because Tracfone had failed to collect and remit public purpose program surcharges and user fees. On January 19, 2010, Tracfone filed an application for rehearing of T-17235. The rehearing was denied. The denial of ETC status was upheld and the remaining issues were added to the Tracfone OII.

LEGISLATIVE HISTORY:

AB 2545 (De La Torre), a similar bill introduced in the 2009-2010 Session of the Legislature, was held in the Senate Appropriations Committee.

FISCAL IMPACT:

None.

STATUS:

AB 1050 is awaiting consideration in the Assembly Committee on Appropriations.

SUPPORT/OPPOSITION:

Support: Cellular Telecommunications Industry Association (CTIA) (sponsor)

AT&T

Opposition: Los Angeles County Board of Supervisors.

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BILL LANGUAGE:

BILL NUMBER: AB 1050 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011

INTRODUCED BY Assembly Member Ma

FEBRUARY 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1050, as amended, Ma. Telecommunications: taxes and fees.

The existing Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service to provide revenues sufficient to fund "911" emergency telephone system costs. Surcharge amounts are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the "911" emergency telephone number system.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. The commission is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state's telecommunications universal service programs and authorizes the commission to impose charges for the purpose of funding those programs.

This bill would, upon appropriation for that purpose, require the State Board of Equalization to convene a working group by March 1, 2012, to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications taxes, fees, and surcharges from prepaid communications end-use consumers. The bill would require the working group to report its recommendations by April 30, 2013. The bill would require that the working group include stakeholder representatives, including

representatives from the commission, the California Technology Agency, local government entities, law enforcement agencies, mobile telephony service providers, retailers, and consumer groups. Pursuant to existing law, the bill would repeal these requirements on January 1, 2016.

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. The Legislature finds and declares all of the following:

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

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

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

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

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

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

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

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

41127.9. (a) Upon an appropriation being made for that purpose, the State Board of Equalization shall convene a working group, by March 1, 2012, to develop recommendations for an equitable and uniform method of collecting state and locally authorized communications taxes, fees, and surcharges from prepaid communications end-use consumers. The working group shall report to the Legislature with its recommendations by April 30, 2013. The working group shall include stakeholder representatives, including , but not limited to, *representatives from the Public Utilities Commission, the California Technology Agency, local government entities, law enforcement agencies, mobile telephony*

service providers, retailers, and consumer groups.

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

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

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

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

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

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

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

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

(F) The Moore Universal Telephone Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code).

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

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

(4) Local utility user taxes.

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

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