

AMENDED IN SENATE MAY 3, 2007
AMENDED IN SENATE MARCH 28, 2007

SENATE BILL

No. 1024

Introduced by Senator Kehoe

February 23, 2007

An act to amend Sections 41007, 41010, 41011, 41016, and 41020 of, and to add Sections ~~41011.5~~ 41007.5, 41016.5, and 41152 to, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1024, as amended, Kehoe. Telecommunications: Emergency Telephone Users Surcharge Act.

Existing provisions of the Warren-911-Emergency Assistance Act establishes the number "911" as the primary emergency telephone number of use in the state. The existing Emergency Telephone Users Surcharge Act ("911" surcharge act) generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service and is imposed at a percentage rate, not less than 0.5% nor more than 0.75% that is 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, 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. Existing law defines a "service supplier," for purposes of the "911" surcharge act, as meaning a person supplying intrastate telephone

communication services, as defined, pursuant to California intrastate tariffs to any service user, as defined, in the state and includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission has eliminated the requirement for filing an intrastate tariff.

This bill would ~~define~~ *expand the definition of a “service supplier,”* for purposes of the “911” surcharge act, ~~as meaning any person supplying intrastate telephone communication services capable of originating a “911” emergency telephone call from any service user in the state. The bill would include “bundled services,” as defined, within the definition of intrastate telephone communication services to include any person supplying Voice over Internet Protocol (VoIP) service capable of originating a “911” emergency call from any service user in this state.~~ This bill would specify that the “911” surcharge act applies to ~~telephonic quality voice communications services~~ *VoIP service, as defined,* but would provide that the surcharge does not apply to customers whose primary place of using the services is outside the state.

~~The~~

This bill would state that it is not the intent of the Legislature to regulate VoIP service, but rather its sole purpose is to ensure that all forms of telephonic quality communication that connect to the “911” emergency system contribute to the State Emergency Telephone Number Account. The bill would incorporate, in the “911” surcharge act, certain definitions from other state law and would also make other conforming, technical, nonsubstantive changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 41007 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 41007. ~~“Service supplier” shall mean any person supplying~~
- 4 ~~intrastate telephone communication services capable of originating~~
- 5 ~~a “911” emergency telephone call from any service user in this~~
- 6 ~~state.~~
- 7 41007. (a) *Service supplier shall mean both of the following:*

1 (1) Any person supplying intrastate telephone communication
2 services pursuant to California intrastate tariffs to any service
3 user in this state and capable of originating a “911” emergency
4 call from any service user in this state.

5 (2) Any person supplying Voice over Internet Protocol (VoIP)
6 service capable of originating a “911” emergency call from any
7 service user in this state.

8 (b) On and after January 1, 1988, “service supplier” also
9 includes any person supplying intrastate telephone communications
10 services for whom the Public Utilities Commission, by rule or
11 order, modifies or eliminates the requirement for that person to
12 prepare and file California intrastate tariffs.

13 SEC. 2. Section 41007.5 is added to the Revenue and Taxation
14 Code, to read:

15 41007.5. It is the intent of the Legislature that VoIP service
16 shall not be regulated by the enactment of Senate Bill 1024 of the
17 2007–08 Regular Session. The sole purpose of this bill is to ensure
18 that all forms of telephonic quality communication that connect
19 to the “911” emergency system contribute to the State Emergency
20 Telephone Number Account.

21 ~~SEC. 2.~~

22 SEC. 3. Section 41010 of the Revenue and Taxation Code is
23 amended to read:

24 41010. ~~(a)~~ “Intrastate telephone communication services”
25 means all local or toll telephone services where the point or points
26 of origin and the point or points of destination of the service are
27 all located in this state.

28 ~~(b) When bundled services include an intrastate telephone~~
29 ~~communication service or services, the bundled services are~~
30 ~~“intrastate telephone communication services” under this part.~~

31 ~~SEC. 3.~~

32 SEC. 4. Section 41011 of the Revenue and Taxation Code is
33 amended to read:

34 41011. ~~(a) “Charges for services” means all charges billed by~~
35 ~~a service supplier to a service user for intrastate telephone~~
36 ~~communications services and local telephone service, and includes~~
37 ~~monthly service flat-rate charges for usage, message unit charges,~~
38 ~~toll charges, intrastate wide area telephone service charges, and~~
39 ~~bundled service charges.~~

1 41011. (a) “Charges for services” means all charges billed
2 by a service supplier to a service user for intrastate telephone
3 communications services and shall mean local telephone service,
4 and includes monthly service flat-rate charges for usage, message
5 unit charges, and shall mean toll charges, and include intrastate
6 wide area telephone service charges.

7 (b) (1) “Charges for services” shall not include any tax imposed
8 by the United States or by any charter city, charges for service
9 paid by inserting coins in a public coin-operated telephone, and
10 shall not apply to amounts billed to nonsubscribers for coin
11 shortages. Where a coin-operated telephone service is furnished
12 for a guarantee or other periodic amount, such amount is subject
13 to the surcharge imposed by this part.

14 (2) “Charges for services” shall not include charges for intrastate
15 toll calls where bills for such calls originate out of California.

16 (3) “Charges for services” shall not include charges for any
17 nonrecurring, installation, service connection or one-time charge
18 for service or directory advertising, and shall not include private
19 communication service charges, charges for other than
20 communications service, or any charge made by a hotel or motel
21 for service rendered in placing calls for its guests regardless of
22 how such hotel or motel charge is denominated or characterized
23 by an applicable tariff of the Public Utilities Commission of this
24 state.

25 (4) “Charges for services” shall not include charges for basic
26 exchange line service for lifeline services.

27 ~~SEC. 4. Section 41011.5 is added to the Revenue and Taxation~~
28 ~~Code, to read:~~

29 ~~41011.5. (a) “Bundled service” means telecommunications~~
30 ~~services or telephonic quality voice communication services that~~
31 ~~are not billed separately, and includes, but is not limited to, all of~~
32 ~~the following:~~

33 ~~(1) Service supplied pursuant to a plan that does not separately~~
34 ~~state the charge for the local telephone service or calling features.~~

35 ~~(2) Service utilizing Interconnected Voice over Internet Protocol~~
36 ~~(VoIP).~~

37 ~~(3) Service supplied to a service user utilizing a prepaid~~
38 ~~telephone card or prepaid wireless service.~~

39 ~~(4) Service provided to a service user pursuant to a plan that~~
40 ~~provides both local and toll telephone services and, if included,~~

1 calling features for either a flat monthly fee or a charge that varies
2 with the elapsed transmission time for which the services are used.

3 ~~(5) Service under a plan for local exchange services and mobile
4 telecommunications services.~~

5 ~~(b) “Calling features” include, but are not limited to, all of the
6 following:~~

7 ~~(1) Three-way calling.~~

8 ~~(2) Call forwarding.~~

9 ~~(3) Caller identification functions, including identification
10 blocking.~~

11 ~~(4) Call waiting.~~

12 ~~(5) Centralized telephone messaging, including voicemail.~~

13 SEC. 5. Section 41016 of the Revenue and Taxation Code is
14 amended to read:

15 41016. “Toll telephone service” means either of the following:

16 ~~(a) A telephonic quality voice communication service, regardless
17 of the means by which it is transmitted, that meets both of the
18 following criteria:~~

19 ~~(1) There is a toll charge for the service that varies in amount
20 with the distance or elapsed transmission time of each individual
21 communication.~~

22 ~~(a) A telephonic quality communication that meets both of the
23 following criteria:~~

24 ~~(1) There is a toll charge for the service that varies in amount
25 with either the distance or elapsed transmission time, or the
26 distance and elapsed transmission time, of each individual
27 communication.~~

28 ~~(2) The charge is paid within the United States.~~

29 ~~(b) A service which entitles the subscriber, upon payment of a
30 periodic charge (determined as a flat amount or upon the basis of
31 total elapsed transmission time), to the privilege of an unlimited
32 number of telephonic communications to or from all or a substantial
33 portion of the persons having telephone or radiotelephone stations
34 in a specified area which is outside the local telephone system area
35 in which the station provided with this service is located.~~

36 SEC. 6. Section 41016.5 is added to the Revenue and Taxation
37 Code, to read:

38 41016.5. “VoIP service” means any service that does both of
39 the following:

1 (a) Enables real-time or two-way voice communication that
2 originates or terminates from the user's location using Internet
3 Protocol, or any successor protocol.

4 (b) Uses a broadband connection from the user's location,
5 including any service that permits users generally to receive calls
6 that originate on the public switched telephone network and to
7 terminate calls to the public switched telephone network.

8 ~~SEC. 6.~~

9 SEC. 7. Section 41020 of the Revenue and Taxation Code is
10 amended to read:

11 ~~41020. (a) A surcharge is hereby imposed on amounts paid~~
12 ~~by every person in the state for intrastate telephone communication~~
13 ~~service in this state commencing on July 1, 1977.~~

14 41020. (a) A surcharge is hereby imposed on amounts paid
15 by every person in the state for both of the following, whether or
16 not the service is billed separately, or in conjunction with other
17 services unrelated to telephone communication for which this
18 surcharge does not apply:

19 (1) Intrastate telephone communication service in this state
20 commencing on July 1, 1977.

21 (2) VoIP service.

22 (b) The surcharge imposed shall be at the rate of one-half of 1
23 percent of the charges made for such services to and including
24 November 1, 1982, and thereafter at a rate fixed pursuant to Article
25 2 (commencing with Section 41030).

26 (c) The surcharge shall be paid by the service user as hereinafter
27 provided.

28 ~~(d) In accordance with the Mobile Telecommunications Sourcing~~
29 ~~Act (P.L. 106-252), which is incorporated herein by reference, the~~
30 ~~surcharge imposed under this section does not apply to any charges~~
31 ~~for mobile telecommunications services billed to a customer where~~
32 ~~those services are provided, or deemed provided, to a customer~~
33 ~~whose place of primary use is outside this state. Mobile~~
34 ~~telecommunications services shall be deemed provided by a~~
35 ~~customer's home service provider to the customer if those services~~
36 ~~are provided in a taxing jurisdiction to the customer, and the~~
37 ~~charges for those services are billed by or for the customer's home~~
38 ~~service provider.~~

39 (d) The surcharge imposed under this section shall not apply
40 to either of the following:

1 (1) *In accordance with the Mobile Telecommunications Sourcing*
2 *Act (Public Law 106-252), which is incorporated herein by*
3 *reference, to any charges for mobile telecommunications services*
4 *billed to a customer where those services are provided, or deemed*
5 *provided, to a customer whose place of primary use is outside this*
6 *state. Mobile telecommunications services shall be deemed*
7 *provided by a customer’s home service provider to the customer*
8 *if those services are provided in a taxing jurisdiction to the*
9 *customer, and the charges for those services are billed by or for*
10 *the customer’s home service provider.*

11 (2) *To any charges for VoIP service billed to a customer where*
12 *those services are provided to a customer whose place of primary*
13 *use of VoIP service is outside this state.*

14 (e) For purposes of this section:

15 (1) “Charges for mobile telecommunications services” means
16 any charge for, or associated with, the provision of ~~mobile~~
17 ~~telephony service, as defined in Section 224.4 of the Public Utilities~~
18 ~~Code commercial mobile radio service, as defined in Section 20.3~~
19 ~~of Title 47 of the Code of Federal Regulations, as in effect on June~~
20 ~~1, 1999, or any change for, or associated with, a service provided~~
21 ~~as an adjunct to a commercial mobile radio service, that is billed~~
22 ~~to the customer by or for the customer’s home service provider,~~
23 ~~regardless of whether individual transmissions originate or~~
24 ~~terminate within the licensed service area of the home service~~
25 ~~provider.~~

26 (2) “Customer” means (A) the person or entity that contracts
27 with the home service provider for mobile telecommunications
28 ~~services or telephonic quality voice communication services, or~~
29 ~~with a VoIP service provider for VoIP service, or (B) if the end~~
30 ~~user of mobile telecommunications services or telephonic quality~~
31 ~~voice communication services VoIP service is not the contracting~~
32 ~~party, the end user of the mobile telecommunications service or~~
33 ~~telephonic quality voice communication services VoIP service.~~
34 This paragraph applies only for the purpose of determining the
35 place of primary use. The term “customer” does not include (A)
36 a reseller of mobile telecommunications service or ~~telephonic~~
37 ~~quality voice communication services VoIP communication service,~~
38 or (B) a serving carrier under an arrangement to serve the *mobile*
39 customer outside the home service provider’s licensed service
40 area.

1 ~~(3) “Home service provider” means either of the following:~~

2 ~~(A) The facilities-based carrier or reseller with which the~~
3 ~~customer contracts for the provision of mobile telecommunications~~
4 ~~services.~~

5 ~~(B) The carrier or reseller with which the customer contracts~~
6 ~~for the provision of telephonic quality voice communication~~
7 ~~services.~~

8 *(3) “Home service provider” means the facilities-based carrier*
9 *or reseller with which the customer contracts for the provision of*
10 *mobile telecommunications services.*

11 (4) “Licensed service area” means the geographic area in which
12 the home service provider is authorized by law or contract to
13 provide commercial mobile radio service ~~or telephonic quality~~
14 ~~voice communication service~~ to the customer.

15 (5) “Mobile telecommunications service” means ~~mobile~~
16 ~~telephony service as defined in Section 224.4 of the Public Utilities~~
17 ~~Code; commercial mobile radio service, as defined in Section 20.3~~
18 ~~of Title 47 of the Code of Federal Regulations, as in effect on June~~
19 ~~1, 1999.~~

20 (6) “Place of primary use” means the street address
21 representative of where the customer’s use of the mobile
22 telecommunications service ~~or telephonic quality voice~~
23 ~~communication service VoIP service~~ primarily occurs, that must
24 be:

25 (A) The residential street address or the primary business street
26 address of the customer.

27 ~~(B) Within~~ *With respect to mobile telecommunications service,*
28 *within the licensed service area of the home service provider.*

29 ~~(7) (A) “Reseller” means either of the following:~~

30 ~~(i) A provider who purchases telecommunications services from~~
31 ~~another telecommunications service provider and then resells the~~
32 ~~services, or uses the services as a component part of, or integrates~~
33 ~~the purchased services into, a mobile telecommunications service.~~

34 ~~(ii) A provider who purchases telephonic quality voice~~
35 ~~communications services from another telephonic quality voice~~
36 ~~communications service provider and then resells the services, or~~
37 ~~uses the services as a component part of, or integrates the purchased~~
38 ~~services into, a communications service.~~

39 *(7) (A) “Reseller” means a provider who purchases*
40 *telecommunications services or VoIP service from another*

1 *telecommunications service provider or VoIP service provider and*
2 *then resells the services, or uses the services as a component part*
3 *of, or integrates the purchased services into, a mobile*
4 *telecommunications service or VoIP service.*

5 (B) “Reseller” does not include a serving carrier with which a
6 home service provider arranges for the services to its customers
7 outside the home service provider’s licensed service area ~~or, in~~
8 ~~the case of telephonic quality voice communications service,~~
9 ~~outside the home service provider’s service area.~~

10 ~~(8) “Serving carrier” means either of the following:~~

11 ~~(A) A facilities-based carrier providing mobile~~
12 ~~telecommunications service to a customer outside a home service~~
13 ~~provider’s or reseller’s licensed area.~~

14 ~~(B) A carrier providing telephonic quality voice communications~~
15 ~~service to a customer outside a home service provider’s or reseller’s~~
16 ~~service area.~~

17 ~~(8) “Serving carrier” means a facilities-based carrier providing~~
18 ~~mobile telecommunications service to a customer outside a home~~
19 ~~service provider’s or reseller’s licensed area.~~

20 (9) “Taxing jurisdiction” means any of the several states, the
21 District of Columbia, or any territory or possession of the United
22 States, any municipality, city, county, township, parish,
23 transportation district, or assessment jurisdiction, or any other
24 political subdivision within the territorial limits of the United States
25 with the authority to impose a tax, charge, or fee.

26 ~~(10) “Charges for telephonic quality voice communication~~
27 ~~services” means any charge for, or associated with, the provision~~
28 ~~of telephonic quality voice communications service that is billed~~
29 ~~to the customer by or for the customer’s home service provider,~~
30 ~~regardless of whether individual transmissions originate or~~
31 ~~terminate within the service area of the home service provider.~~

32 (11) “Telephonic quality voice communications service” means
33 voice communications services, regardless of the means by which
34 they are transmitted.

35 ~~(f) The surcharge imposed under this section does not apply to~~
36 ~~any charges for telephonic quality voice communications services,~~
37 ~~regardless of the means by which they are transmitted, billed to a~~
38 ~~customer where those services are provided, or deemed provided,~~
39 ~~to a customer whose place of primary use is outside this state.~~
40 ~~Telephonic quality voice communication services shall be deemed~~

1 provided by a customer's home service provider to the customer
2 if those services are provided in a taxing jurisdiction to the
3 customer, and the charges for those services are billed by or for
4 the customer's home service provider.

5 (10) "VoIP service provider" means that provider of VoIP
6 service with whom the end user customer contracts for the
7 provision of VoIP services for the customer's own use and not for
8 resale.

9 ~~SEC. 7.~~

10 SEC. 8. Section 41152 is added to the Revenue and Taxation
11 Code, to read:

12 41152. The Legislature finds and declares all of the following:

13 (a) Access to emergency telephone service has been a
14 longstanding goal of the state.

15 (b) The Emergency Telephone Users Surcharge Act remains an
16 important means for making emergency telephone service available
17 to every person in this state.

18 (c) Every reasonable means should be employed by telephone
19 corporations and every provider of telephonic quality voice
20 communication to ensure that every person using their service is
21 informed of and is afforded the opportunity to use emergency
22 telephone service, regardless of the means by which emergency
23 telephone calls are placed.

24 (d) The furnishing of emergency telephone service is in the
25 public interest and should be supported fairly and equitably by
26 every telephone corporation and every provider of telephonic
27 quality voice communication in a way that is equitable,
28 nondiscriminatory, and competitively neutral.

29 ~~SEC. 8. The amendment of Section 41016 of the Revenue and
30 Taxation Code made by this act does not constitute a change in,
31 but is declaratory of, existing law.~~

32 SEC. 9. This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or safety within
34 the meaning of Article IV of the Constitution and shall go into
35 immediate effect. The facts constituting the necessity are:

36 In order to preserve existing funding of the "911" emergency
37 telephone system and to provide continuing public access to

- 1 emergency response service, it is necessary that this act take effect
- 2 immediately.

O