

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY MAY 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1315

Introduced by Assembly Member ~~Ruskin~~ Fuentes

February 27, 2009

~~An act to amend Sections 305, 307, and 308 of the Public Utilities Code, relating to the Public Utilities Commission. An act to add Section 716 to the Public Utilities Code, relating to telecommunications.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1315, as amended, ~~Ruskin~~ Fuentes. *Telecommunications: Public Utilities—Commission. Commission: Federal Communications Commission: forbearance petitions.*

The federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996, establishes a program of cooperative federalism for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The act authorizes an incumbent local exchange carrier, as defined, to file a forbearance petition with the Federal Communications Commission (FCC) to require the FCC to forbear from applying any regulation or any provision of the act to a telecommunications carrier, as defined, or telecommunications service, as defined, in any or some of its or their geographic markets, if the FCC makes certain determinations.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including telephone corporations, as defined.

This bill would provide that if an incumbent local exchange carrier files a forbearance petition with the FCC requesting that the FCC forbear from enforcing that carrier's duty to provide to any requesting telecommunications carrier nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, within any metropolitan statistical area located in the state, the PUC would be required to first determine if the petition meets certain legal requirements pursuant to a specified regulation adopted by the FCC, and if the PUC determines that the petition fails to meet those requirements, to timely submit a motion for summary denial of the petition with the FCC. If the PUC determines that the petition meets those requirements, the bill would require the PUC to review and analyze the petition and make determinations relative to matters that are pertinent to the petition. The bill would require the PUC to file substantive comments with the FCC relative to those determinations. The bill would require the PUC to require each telephone corporation providing service within a metropolitan statistical area to report comprehensive and detailed information sufficient to enable the PUC to file its substantive comments to the petition and to undertake certain analysis.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.

Because the provisions of this bill are within the act and certain of the bill's provisions require action by the PUC to implement, a violation of these provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and~~

~~authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Division of Ratepayer Advocates.~~

~~This bill would require the commission to appoint a president of the commission from among its members. The bill would repeal the requirement that the president direct commission staff.~~

~~Existing law authorizes the attorney for the commission, if directed to do so by the president, except as otherwise directed by vote of the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. Existing law requires the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.~~

~~This bill would authorize the attorney for the commission, if directed to do so by the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. This bill would require the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the commission.~~

~~Existing law requires the executive director for the commission to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. Existing law provides that the president may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.~~

~~This bill would require the executive director to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform the other duties the commission prescribes. The bill would provide that the commission may authorize the executive director to dismiss complaints or applications when all~~

parties are in agreement thereto, in accordance with rules that the commission may prescribe.

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

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

- 1 *SECTION 1. The Legislature finds and declares all of the*
 2 *following:*
 3 *(a) The federal Telecommunications Act of 1996 (Public Law*
 4 *104-104) amended the federal Communications Act of 1934 (47*
 5 *U.S.C. Sec. 151 et seq.), to establish a program of cooperative*
 6 *federalism for the regulation of telecommunications to attain the*
 7 *goal of local competition, while implementing specific, predictable,*
 8 *and sufficient federal and state mechanisms to preserve and*
 9 *advance universal service, consistent with certain universal service*
 10 *principles.*
 11 *(b) Consistent with the federal Telecommunications Act of 1996,*
 12 *state law declares the policies for telecommunications for*
 13 *California to include removal of the barriers to open and*
 14 *competitive markets and promoting fair product and price*
 15 *competition in a way that encourages greater efficiency, lower*
 16 *prices, and more consumer choices, while continuing our universal*
 17 *service commitment.*
 18 *(c) Section 10 of the federal Communications Act of 1934 (47*
 19 *U.S.C. Sec. 160) permit an incumbent local exchange carrier to*
 20 *file a forbearance petition with the Federal Communications*
 21 *Commission (FCC), pursuant to the practice and procedure*
 22 *regulations for forbearance proceedings adopted by the FCC (47*
 23 *C.F.R. 1.53 to 1.59), requesting that the FCC forbear from*
 24 *enforcing that carrier's duty to provide to any requesting*
 25 *telecommunications carrier, nondiscriminatory access to network*
 26 *elements on an unbundled basis at any technically feasible point*
 27 *on rates, terms, and conditions that are just, reasonable, and*
 28 *nondiscriminatory (47 U.S.C. Sec. 251(c)(3) and Sec.*
 29 *271(c)(2)(B)(ii)).*
 30 *(d) The California Constitution establishes the Public Utilities*
 31 *Commission (PUC) with jurisdiction over all public utilities and*
 32 *grants the PUC certain general powers over all public utilities,*
 33 *subject to control by the Legislature. The California Constitution*

1 *authorizes the PUC to fix the rates and charges for every public*
2 *utility, while existing state law requires that those rates and*
3 *charges be just and reasonable.*

4 *(e) In order to fulfill the state's policies for telecommunications,*
5 *when an incumbent local exchange carrier that is a telephone*
6 *corporation subject to the authority and jurisdiction of the PUC,*
7 *files a forbearance petition with the FCC requesting that the FCC*
8 *forbear from enforcing that carrier's duty to provide*
9 *nondiscriminatory access to network elements on an unbundled*
10 *basis, it is necessary for the PUC to monitor and evaluate the*
11 *petition and to act to advance the interests of ratepayers whenever*
12 *forbearance would likely result in rates and charges that are not*
13 *just and reasonable or whenever forbearance would likely have*
14 *an adverse effect on product and price competition.*

15 *SEC. 2. Section 716 is added to the Public Utilities Code, to*
16 *read:*

17 *716. (a) If an incumbent local exchange carrier files a*
18 *forbearance petition with the Federal Communications Commission*
19 *pursuant to Section 10 of the federal Communications Act of 1934*
20 *(47 U.S.C. Sec. 160), requesting that the Federal Communications*
21 *Commission forbear from enforcing that carrier's duty to provide*
22 *to any requesting telecommunications carrier, nondiscriminatory*
23 *access to network elements on an unbundled basis at any*
24 *technically feasible point on rates, terms, and conditions that are*
25 *just, reasonable, and nondiscriminatory (47 U.S.C. Sec. 251(c)(3)*
26 *and Sec. 271 (c)(2)(B)(ii)), within any metropolitan statistical area*
27 *located in the state, the commission shall first determine whether*
28 *the petition for forbearance meets each of the requirements of*
29 *Section 1.54 of Title 47 of the Code of Federal Regulations. If the*
30 *commission determines that the petition fails to meet any of the*
31 *requirements of that section, the commission shall timely submit*
32 *a motion for summary denial of the petition with the Federal*
33 *Communications Commission identifying and supporting each*
34 *deficiency identified by the commission.*

35 *(b) If an incumbent local exchange carrier files a forbearance*
36 *petition with the Federal Communications Commission pursuant*
37 *to Section 10 of the federal Communications Act of 1934 (47 U.S.C.*
38 *Sec. 160), requesting that the Federal Communications*
39 *Commission forbear from enforcing that carrier's duty to provide*
40 *to any requesting telecommunications carrier, nondiscriminatory*

1 access to network elements on an unbundled basis at any
2 technically feasible point on rates, terms, and conditions that are
3 just, reasonable, and nondiscriminatory (47 U.S.C. Sec. 251(c)(3)
4 and Sec. 271(c)(2)(B)(ii)), within any metropolitan statistical area
5 located in the state, after making its determination and taking any
6 action required pursuant to subdivision (a), the commission shall
7 review and analyze the petition and do all of the following:

8 (1) Consistent with paragraph (1) of subsection (a) of Section
9 160 of Title 47 of the United States Code, determine whether
10 enforcement of the carrier's duty to provide nondiscriminatory
11 access to network elements on an unbundled basis is not necessary
12 to ensure that the charges, practices, classifications, or regulations
13 of that carrier are just and reasonable and are not unjustly or
14 unreasonably discriminatory.

15 (2) Consistent with paragraph (2) of subsection (a) of Section
16 160 of Title 47 of the United States Code, determine whether
17 enforcement of the carrier's duty to provide nondiscriminatory
18 access to network elements on an unbundled basis is not necessary
19 to protect consumers.

20 (3) Consistent with paragraph (3) of subsection (a) of Section
21 160 of Title 47 of the United States Code, determine whether
22 forbearance from enforcing the carrier's duty to provide
23 nondiscriminatory access to network elements on an unbundled
24 basis is consistent with the public interest, including whether
25 forbearance will promote competitive market conditions.

26 (4) Independently determine the truth and completeness of the
27 facts offered by the petition, pursuant to subsection (b) of Section
28 1.54 of Title 47 of the Code of Federal Regulations, to support a
29 prima facie case for forbearance.

30 (c) In making its evaluation and determinations pursuant to
31 subdivision (b), the commission shall consult with the Division of
32 Ratepayer Advocates.

33 (d) Upon making its determinations pursuant to subdivision (b),
34 the commission shall timely file substantive comments to the
35 petition with the Federal Communications Commission, pursuant
36 to paragraph (4) of subsection (b) of Section 1.55 of Title 47 of
37 the Code of Federal Regulations. The substantive comments shall
38 include opening and reply comments, shall describe the
39 determinations made by the commission and the basis for those
40 determinations, shall identify how the petition potentially impacts

1 *the telecommunications policies of the state identified in Section*
2 *709, and shall include detailed recommendations regarding the*
3 *adoption or denial of the petition based upon the determinations*
4 *of the commission.*

5 *(e) Not later than _____, in order to gather independent data*
6 *regarding the level of competition in the metropolitan statistical*
7 *areas of the state, the commission shall require each telephone*
8 *corporation providing service within a metropolitan statistical*
9 *area to report, pursuant to Section 583, comprehensive and*
10 *detailed information sufficient to enable the commission to do the*
11 *following:*

12 *(1) File substantive comments to any petition for forbearance*
13 *pursuant to subdivision (d).*

14 *(2) Separately analyze the level of retail competitive options*
15 *available to residential and business customers in each*
16 *metropolitan statistical area at the wire center level, and determine*
17 *which of these options rely upon wholesale inputs from the*
18 *incumbent local exchange carrier.*

19 *(3) Separately analyze the level of wholesale competitive options*
20 *available to competitive carriers for last-mile loops and transport*
21 *circuits in each metropolitan statistical area at the wire center*
22 *level.*

23 *SEC. 3. No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*

32 ~~SECTION 1. Section 305 of the Public Utilities Code is~~
33 ~~amended to read:~~

34 ~~305. The commission shall designate a president of the~~
35 ~~commission from among the members of the commission. The~~
36 ~~president shall preside at all meetings and sessions of the~~
37 ~~commission.~~

38 ~~SEC. 2. Section 307 of the Public Utilities Code is amended~~
39 ~~to read:~~

1 ~~307. (a) The commission may appoint as attorney to the~~
2 ~~commission an attorney at law of this state, who shall hold office~~
3 ~~during the pleasure of the commission.~~

4 ~~(b) The attorney shall represent and appear for the people of the~~
5 ~~State of California and the commission in all actions and~~
6 ~~proceedings involving any question under this part or under any~~
7 ~~order or act of the commission. If directed to do so by the~~
8 ~~commission, the attorney shall intervene, if possible, in any action~~
9 ~~or proceeding in which any such question is involved.~~

10 ~~(c) The attorney shall commence, prosecute, and expedite the~~
11 ~~final determination of all actions and proceedings directed or~~
12 ~~authorized by the commission, advise the commission and each~~
13 ~~commissioner, when so requested, in regard to all matters in~~
14 ~~connection with the powers and duties of the commission and the~~
15 ~~members thereof, and generally perform all duties and services as~~
16 ~~attorney to the commission that the commission may require of~~
17 ~~him or her.~~

18 ~~SEC. 3. Section 308 of the Public Utilities Code is amended~~
19 ~~to read:~~

20 ~~308. (a) The commission shall appoint an executive director,~~
21 ~~who shall hold office during its pleasure. The executive director~~
22 ~~shall be responsible for the commission's executive and~~
23 ~~administrative duties and shall organize, coordinate, supervise,~~
24 ~~and direct the operations and affairs of the commission and~~
25 ~~expedite all matters within the commission's jurisdiction.~~

26 ~~(b) The executive director shall keep a full and true record of~~
27 ~~all proceedings of the commission, issue all necessary process,~~
28 ~~writs, warrants, and notices, and perform the other duties the~~
29 ~~commission prescribes. The commission may authorize the~~
30 ~~executive director to dismiss complaints or applications when all~~
31 ~~parties are in agreement thereto, in accordance with rules that the~~
32 ~~commission may prescribe.~~

33 ~~(c) The commission may appoint assistant executive directors~~
34 ~~who may serve warrants and other process in any county or city~~
35 ~~and county of this state.~~