

AMENDED IN SENATE AUGUST 2, 2010

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 Fuentes

February 27, 2009

An act to add Section 716 to the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1315, as amended, Fuentes. Telecommunications: Public Utilities 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~~ *participate in that forbearance proceeding by timely filing substantive comments on the petition, providing data on local competition in the metropolitan statistical area that is the subject of the petition, and taking any other action that advances the state's policies promoting competition in telecommunications markets. The bill would require the PUC to develop a process and sample data request for collecting data on local competition in any California metropolitan statistical area, and would require all providers of local telephone service, as specified, to provide all data and other information requested by the PUC.*

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: 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
12 1996, 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~~ *the state's*
17 universal service commitment.

18 (c) Section 10 of the federal Communications Act of 1934 (47
19 U.S.C. Sec. 160) ~~permit~~ *permits* an incumbent local exchange
20 carrier to file a forbearance petition with the Federal
21 Communications Commission (FCC), pursuant to the practice and
22 procedure regulations for forbearance proceedings adopted by the
23 FCC (47 C.F.R. 1.53 to 1.59), requesting that the FCC forbear
24 from 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)).

1 ~~(d) The California Constitution establishes the Public Utilities~~
2 ~~Commission (PUC) with jurisdiction over all public utilities and~~
3 ~~grants the PUC certain general powers over all public utilities,~~
4 ~~subject to control by the Legislature. The California Constitution~~
5 ~~authorizes the PUC to fix the rates and charges for every public~~
6 ~~utility, while existing state law requires that those rates and charges~~
7 ~~be just and reasonable.~~

8 (e)

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

21 SEC. 2. Section 716 is added to the Public Utilities Code, to
22 read:

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

1 ~~(b) If an incumbent local exchange carrier files a forbearance~~
2 ~~petition with the Federal Communications Commission pursuant~~
3 ~~to Section 10 of the federal Communications Act of 1934 (47~~
4 ~~U.S.C. Sec. 160), requesting that the Federal Communications~~
5 ~~Commission forbear from enforcing that carrier's duty to provide~~
6 ~~to any requesting telecommunications carrier, nondiscriminatory~~
7 ~~access to network elements on an unbundled basis at any~~
8 ~~technically feasible point on rates, terms, and conditions that are~~
9 ~~just, reasonable, and nondiscriminatory (47 U.S.C. Sec. 251(e)(3)~~
10 ~~and Sec. 271(e)(2)(B)(ii)), within any metropolitan statistical area~~
11 ~~located in the state, after making its determination and taking any~~
12 ~~action required pursuant to subdivision (a), the commission shall~~
13 ~~review and analyze the petition and do all of the following:~~

14 ~~(1) Consistent with paragraph (1) of subsection (a) of Section~~
15 ~~160 of Title 47 of the United States Code, determine whether~~
16 ~~enforcement of the carrier's duty to provide nondiscriminatory~~
17 ~~access to network elements on an unbundled basis is not necessary~~
18 ~~to ensure that the charges, practices, classifications, or regulations~~
19 ~~of that carrier are just and reasonable and are not unjustly or~~
20 ~~unreasonably discriminatory.~~

21 ~~(2) Consistent with paragraph (2) of subsection (a) of Section~~
22 ~~160 of Title 47 of the United States Code, determine whether~~
23 ~~enforcement of the carrier's duty to provide nondiscriminatory~~
24 ~~access to network elements on an unbundled basis is not necessary~~
25 ~~to protect consumers.~~

26 ~~(3) Consistent with paragraph (3) of subsection (a) of Section~~
27 ~~160 of Title 47 of the United States Code, determine whether~~
28 ~~forbearance from enforcing the carrier's duty to provide~~
29 ~~nondiscriminatory access to network elements on an unbundled~~
30 ~~basis is consistent with the public interest, including whether~~
31 ~~forbearance will promote competitive market conditions.~~

32 ~~(4) Independently determine the truth and completeness of the~~
33 ~~facts offered by the petition, pursuant to subsection (b) of Section~~
34 ~~1.54 of Title 47 of the Code of Federal Regulations, to support a~~
35 ~~prima facie case for forbearance.~~

36 ~~(e) In making its evaluation and determinations pursuant to~~
37 ~~subdivision (b), the commission shall consult with the Division of~~
38 ~~Ratepayer Advocates.~~

39 ~~(d) Upon making its determinations pursuant to subdivision (b),~~
40 ~~the commission shall timely file substantive comments to the~~

1 petition with the Federal Communications Commission, pursuant
2 to paragraph (4) of subsection (b) of Section 1.55 of Title 47 of
3 the Code of Federal Regulations. The substantive comments shall
4 include opening and reply comments, shall describe the
5 determinations made by the commission and the basis for those
6 determinations, shall identify how the petition potentially impacts
7 the telecommunications policies of the state identified in Section
8 709, and shall include detailed recommendations regarding the
9 adoption or denial of the petition based upon the determinations
10 of the commission.

11 (e) Not later than _____, in order to gather independent data
12 regarding the level of competition in the metropolitan statistical
13 areas of the state, the commission shall require each telephone
14 corporation providing service within a metropolitan statistical area
15 to report, pursuant to Section 583, comprehensive and detailed
16 information sufficient to enable the commission to do the
17 following:

18 (1) File substantive comments to any petition for forbearance
19 pursuant to subdivision (d).

20 (2) Separately analyze the level of retail competitive options
21 available to residential and business customers in each metropolitan
22 statistical area at the wire center level, and determine which of
23 these options rely upon wholesale inputs from the incumbent local
24 exchange carrier.

25 (3) Separately analyze the level of wholesale competitive options
26 available to competitive carriers for last-mile loops and transport
27 circuits in each metropolitan statistical area at the wire center level.
28 *participate in that forbearance proceeding by timely filing*
29 *substantive comments on the petition, providing data on local*
30 *competition in the metropolitan statistical area that is the subject*
31 *of the petition, and taking any other action that advances the state's*
32 *policies promoting competition in telecommunications markets.*

33 (b) (1) *In order to be prepared to timely comply with subdivision*
34 *(a), the commission shall develop a process and sample data*
35 *request for collecting data on local competition in any California*
36 *metropolitan statistical area. The data shall include, but not be*
37 *limited to, separate data on competitive options for residential,*
38 *business, and wholesale services.*

39 (2) *All providers of local telephone service, including, but not*
40 *limited to, local exchange carriers, interexchange carriers, mobile*

1 *telephony service providers, and providers of facilities-based*
2 *interconnected Voice over Internet Protocol (VoIP) service, shall*
3 *provide all data and other information requested by the commission*
4 *pursuant to this section.*

5 *(c) This section shall not give the commission jurisdiction over*
6 *providers of facilities-based interconnected VoIP service, except*
7 *to require these providers to comply with any data request made*
8 *pursuant to this section.*

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.