

AMENDED IN SENATE AUGUST 16, 2010

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**

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**Introduced by Assembly Member Fuentes**

February 27, 2009

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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 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~~ *voice communications services*, as specified, to provide all data and other information *relevant to the forbearance petition* 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 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) permits 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) In order to fulfill the state's policies for telecommunications,  
31 when an incumbent local exchange carrier that is a telephone  
32 corporation subject to the authority and jurisdiction of the PUC,  
33 files a forbearance petition with the FCC requesting that the FCC  
34 forbear from enforcing that carrier's duty to provide  
35 nondiscriminatory access to network elements on an unbundled  
36 basis, it is necessary for the PUC to monitor and evaluate the  
37 petition and to act to advance the state's policies promoting  
38 competition in telecommunications markets.

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

3 716. (a) If an incumbent local exchange carrier files a  
 4 forbearance petition with the Federal Communications Commission  
 5 pursuant to Section 10 of the federal Communications Act of 1934  
 6 (47 U.S.C. Sec. 160), requesting that the Federal Communications  
 7 Commission forbear from enforcing that carrier’s duty to provide  
 8 to any requesting telecommunications carrier, nondiscriminatory  
 9 access to network elements on an unbundled basis at any  
 10 technically feasible point on rates, terms, and conditions that are  
 11 just, reasonable, and nondiscriminatory (47 U.S.C. Sec. 251(c)(3)  
 12 and Sec. 271 (c)(2)(B)(ii)), within any metropolitan statistical area  
 13 located in the state, the commission shall participate in that  
 14 forbearance proceeding by ~~timely filing substantive comments on~~  
 15 ~~the petition, providing data on local~~ *comments on the petition,*  
 16 *providing data on* competition in the metropolitan statistical area  
 17 that is the subject of the petition, and taking any other action that  
 18 advances the state’s policies promoting competition in  
 19 telecommunications markets.

20 (b) (1) In order to be prepared to timely comply with  
 21 subdivision (a), the commission shall develop a ~~process and~~ sample  
 22 data request for collecting data on ~~local~~ competition in any  
 23 California metropolitan statistical area. The data shall include, but  
 24 not be limited to, separate data on competitive options for  
 25 residential, business, and wholesale services.

26 (2) All providers of ~~local telephone service~~ *voice*  
 27 *communications services*, including, but not limited to, local  
 28 exchange carriers, interexchange carriers, mobile telephony service  
 29 providers, and providers of facilities-based interconnected Voice  
 30 over Internet Protocol (VoIP) service, shall provide all data and  
 31 other information *relevant to the forbearance petition* requested  
 32 by the commission pursuant to this section.

33 ~~(e) This section shall not give the commission jurisdiction over~~  
 34 ~~providers of facilities-based interconnected VoIP service, except~~  
 35 ~~to require these providers to comply with any data request made~~  
 36 ~~pursuant to this section.~~

37 SEC. 3. No reimbursement is required by this act pursuant to  
 38 Section 6 of Article XIII B of the California Constitution because  
 39 the only costs that may be incurred by a local agency or school  
 40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

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