

AMENDED IN ASSEMBLY JULY 5, 2012
AMENDED IN ASSEMBLY JUNE 19, 2012
AMENDED IN SENATE MAY 15, 2012
AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1160

Introduced by Senator Padilla

February 22, 2012

An act to amend Section 7904 of, and to repeal and add Section 7907 of, the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1160, as amended, Padilla. Communications: service interruptions.

Existing law provides that an agent, operator, or employee of a telegraph or telephone office who willfully refuses or neglects to send a message received by the office is guilty of a misdemeanor. Existing law provides that these requirements are not applicable when charges for transmittal or delivery of the message have not been paid or tendered, for messages counseling, aiding, abetting, or encouraging treason or resistance to lawful authority, to a message calculated to further any fraudulent plan or purpose, to a message instigating or encouraging the perpetration of any unlawful act, or to a message facilitating the escape of any criminal or person accused of crime.

This bill would retain the provision that the above-described requirements are not applicable when payment for charges for transmittal or delivery of the message has not been paid or tendered, but would delete the other enumerated exceptions.

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is

committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

This bill would repeal this provision.

This bill would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings. The bill would require the order to clearly describe the specific service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected, be narrowly tailored to the specific circumstances under which the order is made, and would require that the order not interfere with more communication than is necessary to achieve the purposes of the order. The bill would allow the order to authorize an interruption of service only for as long as is reasonably necessary, require that the interruption cease ~~immediately~~ once the danger that justified the interruption is abated ~~or an application for court order has been denied, and require that the communications service provider be notified in writing to cease the interruption,~~ *and require the order to specify a process to immediately serve notice on the communication service provider to cease the interruption.* The bill would provide that a good faith reliance upon an order of a judicial officer, or a signed statement of intent to apply for a court order, as prescribed, constitutes a complete defense for any communications services provider ~~served with an order that meets the above requirements~~ against any action brought as a result of the interruption to communications service as directed by that order *or statement.*

The bill would also find and declare that ~~it is a matter of statewide concern to ensure~~ *ensuring* that California users of any communications service not have this service interrupted and thereby be deprived of a means to connect with the state's 911 emergency services or be deprived of a means to engage in constitutionally protected expression, *is a matter of statewide concern, and not a municipal affair, as provided.*

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

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

1 SECTION 1. Section 7904 of the Public Utilities Code is
2 amended to read:

3 7904. Every agent, operator, or employee of any telegraph or
4 telephone office, who willfully refuses or neglects to send any
5 message received at the office for transmission, or willfully
6 postpones the transmission of the message out of its order, or
7 willfully refuses or neglects to deliver any message received by
8 telegraph or telephone, is guilty of a misdemeanor. Nothing in this
9 section shall be construed to require any message to be received,
10 transmitted, or delivered, unless the charges thereon have been
11 paid or tendered.

12 SEC. 2. Section 7907 of the Public Utilities Code is repealed.

13 SEC. 3. Section 7907 is added to the Public Utilities Code, to
14 read:

15 7907. (a) For purposes of this section, the following terms
16 have the following meanings:

17 (1) “Communications service” means any communications
18 service that interconnects with the public switched telephone
19 network and is required by the Federal Communications
20 Commission to provide customers with 911 access to emergency
21 services.

22 (2) “Governmental entity” means every local government,
23 including a city, county, city and county, a transit, joint powers,
24 special, or other district, the state, and every agency, department,
25 commission, board, bureau, or other political subdivision of the
26 state.

27 (3) “Interrupt communications service” means to knowingly or
28 intentionally suspend, disconnect, interrupt, or disrupt
29 communications service to one or more particular customers or
30 all customers in a geographical area. “Interrupt communications
31 service” does not include any interruption of service pursuant to
32 a customer service agreement, a contract, a tariff, a provider’s
33 internal practices to protect the security of its networks, Section
34 2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the
35 Business and Professions Code, or subdivision (d) of Section 4576
36 of the Penal Code.

37 (4) “Judicial officer” means a magistrate, judge, justice,
38 commissioner, referee, or any person appointed by a court to serve

1 in one of these capacities, of any state or federal court located in
2 this state.

3 (b) (1) No governmental entity and no provider of
4 communications service, or any agent ~~thereof~~ *of a governmental*
5 *entity*, acting at the request of a governmental entity, shall interrupt
6 communications service for the purpose of protecting public safety
7 or preventing the use of communications service for an illegal
8 purpose, except pursuant to an order signed by a judicial officer
9 that includes all of the following findings:

10 (A) That probable cause exists that the service is being or will
11 be used for an unlawful purpose or to assist in a violation of the
12 law.

13 (B) That absent immediate and summary action to interrupt
14 communications service, serious, direct, immediate, and irreparable
15 danger to public safety will result.

16 (C) That interruption of communications service will not
17 suppress speech that is protected by the First Amendment to the
18 United States Constitution or Section 2 of Article I of the California
19 Constitution, or violate any other rights under federal or state law.

20 (2) The order shall clearly describe the specific *communications*
21 service to be interrupted with sufficient detail as to customer, cell
22 sector, central office, or geographical area affected, shall be
23 narrowly tailored to the specific circumstances under which the
24 order is made, and shall not interfere with more communication
25 than is necessary to achieve the purposes of the order.

26 (3) The order shall authorize an interruption of service only for
27 as long as is reasonably necessary and shall require that the
28 interruption cease ~~immediately~~ once the danger that justified the
29 interruption is abated ~~or an application for court order has been~~
30 ~~denied, and that the communications service provider be notified~~
31 ~~in writing to cease the interruption~~ *and shall specify a process to*
32 *immediately serve notice on the communications service provider*
33 *to cease the interruption.*

34 (c) An order to interrupt *communications* service, or a signed
35 *statement of intent provided pursuant to subdivision (d)*, that falls
36 within the federal Emergency Wireless Protocol shall be served
37 on the California Emergency Management Agency. All other orders
38 to interrupt *communications* service or *statements of intent* shall
39 be served on the communications service provider's contact for
40 receiving requests from law enforcement, including receipt of and

1 responding to state or federal warrants, orders, or ~~subpoena~~
2 *subpoenas*.

3 ~~(d) Nothing in this~~ *This section curtails does not curtail* a
4 governmental entity from reliance on judicially recognized
5 exceptions to the prohibition on prior restraints on speech. If a
6 governmental entity determines that *it must rely on a judicially*
7 *recognized exception because* the circumstances justify an
8 interruption of communications service without first obtaining an
9 order as required by this section, the governmental entity shall do
10 all of the following:

11 (1) Apply for a court order without delay, and in no event, later
12 than one hour after an interruption of communications service.

13 (2) Provide the provider of communications service involved
14 in the service interruption a statement of intent to apply for a court
15 order signed by an authorized official of the governmental entity.
16 *The statement of intent shall clearly describe the specific*
17 *communications service to be interrupted with sufficient detail as*
18 *to the customer, cell sector, central office, or geographical area*
19 *affected.*

20 (3) Provide ~~public~~ *conspicuous* notice of the application for a
21 court order authorizing the *communications* service interruption
22 *on its Internet Web site without delay, unless the circumstances*
23 *that justify an interruption of communications services without*
24 *first obtaining a court order justify not providing the notice.*

25 (e) A provider of communications service that intentionally
26 interrupts communications service pursuant to subdivision (b) shall
27 comply with any rule or notification requirement of the commission
28 or Federal Communications Commission, or both, and any other
29 applicable provision or requirement of state or federal law.

30 ~~(f) Good faith reliance upon an order of a judicial officer~~
31 ~~authorizing the interruption of communications service pursuant~~
32 ~~to subdivision (b), or upon a signed statement of intent to apply~~
33 ~~for a court order pursuant to subdivision (d), shall constitute a~~
34 ~~complete defense for any communications service provider served~~
35 ~~with an order that meets the requirements of that subdivision~~
36 ~~against any action brought as a result of the interruption to~~
37 ~~communications service as directed by that order.~~

38 *(f) Good faith reliance by a communications service provider*
39 *upon an order of a judicial officer authorizing the interruption of*
40 *communications services pursuant to subdivision (b), or upon a*

1 *signed statement of intent to apply for a court order that the*
2 *government asserts meets the requirements of subdivision (d), shall*
3 *constitute a complete defense for any communications service*
4 *provider against any action brought as a result of the interruption*
5 *of communications service as directed by that order or statement.*

6 (g) The Legislature finds and declares that ~~it is a matter of~~
7 ~~statewide concern to ensure that~~ *ensuring that California users of*
8 *any communications service not have that service interrupted, and*
9 *thereby be deprived of 911 access to emergency services or a*
10 *means to engage in constitutionally protected expression, is a*
11 *matter of statewide concern and not a municipal affair, as that*
12 *term is used in Section 5 of Article XI of the California*
13 *Constitution.*