

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 380**

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**Introduced by Senator Padilla**

February 20, 2013

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An act to add Section 7908 to the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 380, as amended, Padilla. Communications: service interruptions.

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 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 and 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 once the danger that justified the interruption is abated, and require the order to specify a process to immediately serve notice on the communications 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 service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

This bill would authorize a governmental entity to interrupt communications service without a court order if it reasonably determines that an extreme emergency situation exists that involves immediate danger of death and there is insufficient time, with due diligence, to first obtain a court order, and it complies with other specified requirements.

The bill would also find and declare that 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. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Preserving the availability and openness of communications
- 4 networks is a bedrock principle of federal and state law and
- 5 essential to commerce, public safety, and democracy.
- 6 (b) With email, data transfers, videoconferencing, e-commerce,
- 7 and myriad online services now a core element of every type of
- 8 economic activity, interruption of communications service deprives
- 9 individuals and enterprises of the ability to participate in the
- 10 modern economy, with significant financial impact even if an
- 11 interruption is of short duration.
- 12 (c) Interruption of communications service threatens public
- 13 safety by depriving persons of the ability to call 911 and
- 14 communicate with family, friends, employers, schools, and others

1 in an emergency; deprives persons of the ability to receive wireless  
2 emergency alerts; and impairs the ability of first responders to  
3 communicate with each other.

4 (d) The right of citizens to freedom of speech under the First  
5 Amendment to the United States Constitution and Section 2 of  
6 Article I of the California Constitution extends to speech through  
7 any technology, from the pamphlets and newspapers of the  
8 Founding Fathers to the emails, blogs, tweets, and texts of modern  
9 day citizens using wireless devices.

10 (e) The power of new wireless devices and technologies for  
11 participation in democracy underscores the need to protect First  
12 Amendment rights and ensure that California and the United States  
13 do not take the path of oppressive governments around the world  
14 that routinely shut down the Internet and wireless networks to  
15 silence public protest.

16 (f) Interruption of communications service by a government  
17 entity that prevents citizens from communicating can be a “prior  
18 restraint” on speech, which the United States Supreme Court has  
19 held bears a heavy presumption of unconstitutionality and is  
20 justified only in exceptional circumstances.

21 (g) The California Supreme Court has held that a customer’s  
22 telephone service may be interrupted only as directed by a court  
23 order with a finding of probable cause that service is being used  
24 for an illegal purpose and that, absent immediate interruption of  
25 service, significant dangers to public health or safety will result.

26 (h) In August 2011, the Bay Area Rapid ~~Transportation~~ *Transit*  
27 District (BART) shut down wireless service for three hours in  
28 order to quash a public protest relating to a fatal shooting by BART  
29 police on a train platform.

30 (i) In December 2011, BART adopted a policy authorizing  
31 wireless service shutdowns with no court review and no probable  
32 cause requirement, which prompted a public inquiry by the Federal  
33 Communications Commission.

34 (j) With more than 85 percent of American adults owning a  
35 wireless device, and use of wireless services and platforms  
36 expanding every day, protecting these services from interruption  
37 is more important than ever in order to protect commerce, public  
38 ~~safety~~ *safety*, and First Amendment freedoms that are the core of  
39 democracy.

1 SEC. 2. Section 7908 is added to the Public Utilities Code, to  
 2 read:

3 7908. (a) For purposes of this section, the following terms  
 4 have the following meanings:

5 (1) “Communications service” means any communications  
 6 service that interconnects with the public switched telephone  
 7 network and is required by the Federal Communications  
 8 Commission to provide customers with 911 access to emergency  
 9 services.

10 (2) “Governmental entity” means every local government,  
 11 including a city, county, city and county, a transit, joint powers,  
 12 special, or other district, the state, and every agency, department,  
 13 commission, board, bureau, or other political subdivision of the  
 14 state, or any authorized agent thereof.

15 (3) “Interrupt communications service” means to knowingly or  
 16 intentionally suspend, disconnect, interrupt, or disrupt  
 17 communications service to one or more particular customers or  
 18 all customers in a geographical area. “Interrupt communications  
 19 service” does not include any interruption of service pursuant to  
 20 a customer service agreement, a contract, a tariff, a provider’s  
 21 internal practices to protect the security of its networks, Section  
 22 2876, 5322, or 5371.6, Section 149 or 7099.10 of the Business and  
 23 Professions Code, ~~or~~ subdivision (d) of Section 4576 of the Penal  
 24 ~~Code~~ Code, *or an order to cut, reroute, or divert a landline being*  
 25 *used for telephone communication by a person in a hostage or*  
 26 *barricade situation pursuant to Section 7907.*

27 (4) “Judicial officer” means a magistrate, judge, justice,  
 28 commissioner, referee, or any person appointed by a court to serve  
 29 in one of these capacities of any state or federal court located in  
 30 this state.

31 (b) (1) Unless authorized pursuant to subdivision (c), no  
 32 governmental entity and no provider of communications service,  
 33 acting at the request of a governmental entity, shall interrupt  
 34 communications service for the purpose of protecting public safety  
 35 or preventing the use of communications service for an illegal  
 36 purpose, except pursuant to an order signed by a judicial officer  
 37 obtained prior to the interruption. The order shall include all of  
 38 the following findings:

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

4 (B) That absent immediate and summary action to interrupt  
5 communications service, serious, direct, ~~immediate~~, and ~~irreparable~~  
6 ~~danger to public safety will result~~ *immediate danger to public*  
7 *safety, health, or welfare will result.*

8 (C) That the interruption of communications service is narrowly  
9 tailored to prevent unlawful infringement of speech that is protected  
10 by the First Amendment to the United States Constitution or  
11 Section 2 of Article I of the California Constitution, or a violation  
12 of any other rights under federal or state law.

13 (2) The order shall clearly describe the specific communications  
14 service to be interrupted with sufficient detail as to customer, cell  
15 sector, central office, or geographical area affected, shall be  
16 narrowly tailored to the specific circumstances under which the  
17 order is made, and shall not interfere with more communication  
18 than is necessary to achieve the purposes of the order.

19 (3) The order shall authorize an interruption of service only for  
20 as long as is reasonably necessary and shall require that the  
21 interruption cease once the danger that justified the interruption  
22 is abated and shall specify a process to immediately serve notice  
23 on the communications service provider to cease the interruption.

24 (c) (1) Communications service shall not be interrupted without  
25 a court order except pursuant to this subdivision.

26 (2) If a governmental entity reasonably determines that an  
27 extreme emergency situation exists that involves immediate danger  
28 of death and there is insufficient time, with due diligence, to first  
29 obtain a court order, then the governmental entity may interrupt  
30 communications service without first obtaining a court order as  
31 required by this section, provided that the interruption meets the  
32 grounds for issuance of a court order pursuant to subdivision (b)  
33 and that the entity does all of the following:

34 (A) Apply for a court order without delay, and in no event, later  
35 than two hours after commencement of an interruption of  
36 communications service.

37 (B) Provide to the provider of communications service involved  
38 in the service interruption a statement of intent to apply for a court  
39 order signed by an authorized official of the governmental entity.  
40 The statement of intent shall clearly describe the extreme

1 emergency circumstances, and the specific communications service  
2 to be interrupted with sufficient detail as to the customer, cell  
3 sector, central office, or geographical area affected.

4 (C) Provide conspicuous notice of the application for a court  
5 order authorizing the communications service interruption on its  
6 Internet Web site without delay, unless the circumstances that  
7 justify an interruption of communications ~~services~~ *service* without  
8 first obtaining a court order justify not providing the notice.

9 (d) An order to interrupt communications service, or a signed  
10 statement of intent provided pursuant to subdivision (c), that falls  
11 within the federal Emergency Wireless Protocol shall be served  
12 on the California Emergency Management Agency. All other orders  
13 to interrupt communications service or statements of intent shall  
14 be served on the communications service provider’s contact for  
15 receiving requests from law enforcement, including receipt of and  
16 responding to state or federal warrants, orders, or subpoenas.

17 (e) A provider of communications service that intentionally  
18 interrupts communications service pursuant to this section shall  
19 comply with any rule or notification requirement of the commission  
20 or Federal Communications Commission, or both, and any other  
21 applicable provision or requirement of state or federal law.

22 (f) Good faith reliance by a communications service provider  
23 upon an order of a judicial officer authorizing the interruption of  
24 communications service pursuant to subdivision (b), or upon a  
25 signed statement of intent to apply for a court order that the  
26 government asserts meets the requirements of subdivision (c), shall  
27 constitute a complete defense for any communications service  
28 provider against any action brought as a result of the interruption  
29 of communications service as directed by that order or statement.

30 (g) The Legislature finds and declares that ensuring that  
31 California users of any communications service not have that  
32 service interrupted, and thereby be deprived of 911 access to  
33 emergency services or a means to engage in constitutionally  
34 protected expression, is a matter of statewide concern and not a  
35 municipal affair, as that term is used in Section 5 of Article XI of  
36 the California Constitution.

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