

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2795

Introduced by Assembly Member Lopez

February 19, 2016

~~An act to amend Section 707 of the Public Utilities Code, relating to electricity.~~ *An act to amend Section 2891.1 of the Public Utilities Code, relating to telephony.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2795, as amended, Lopez. ~~Electricity: community choice aggregators.~~ *Telephony: unlisted numbers.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law prohibits a telephone corporation selling or licensing lists of residential subscribers from including the telephone number of any subscriber assigned an unpublished or unlisted access number, as defined, without his or her written waiver of this protection. Existing law prohibits a provider of mobile telephony services, as defined, or any affiliate or agent of the provider, providing the name and dialing number of a subscriber for inclusion in a directory or directory database, from including the dialing number of any subscriber without first obtaining the express consent of that subscriber. Existing law prohibits a subscriber from being charged for making the choice to not have his or her name and mobile telephony dialing number listed in a publicly available directory assistance database.

This bill would prohibit a subscriber from being charged for making a choice to not have the above information listed in a directory. The bill would additionally prohibit a subscriber from being charged for

making the choice to not have his or her name and residential telephone number listed in a directory or a publicly available directory assistance database.

~~Existing law requires the Public Utilities Commission to consider and adopt a code of conduct, associated rules, and enforcement procedures to govern the conduct of electrical corporations relative to the consideration, formation, and implementation of a community choice aggregation program. Existing law requires the commission to ensure that the code of conduct, associated rules, and enforcement procedures are implemented by no later than January 1, 2013.~~

~~This bill would make a nonsubstantive change to that provision.~~

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 2891.1 of the Public Utilities Code is
2 amended to read:

3 2891.1. (a) Notwithstanding Section 2891, a telephone
4 corporation selling or licensing lists of residential subscribers shall
5 not include the telephone number of ~~any~~ a subscriber assigned an
6 unlisted or unpublished access number. A subscriber may waive
7 all or part of the protection provided by this subdivision through
8 written notice to the telephone corporation.

9 (b) Notwithstanding Section 2891, a provider of mobile
10 telephony services, or any direct or indirect affiliate or agent of a
11 provider, providing the name and dialing number of a subscriber
12 for inclusion in any directory of any form, or selling the contents
13 of any directory database, or any portion or segment ~~thereof~~, of a
14 directory database, shall not include the dialing number of ~~any~~ a
15 subscriber without first obtaining the express consent of that
16 subscriber. The express consent shall meet all of the following
17 requirements:

- 18 (1) It shall be one of the following:
 - 19 (A) A separate document that is signed and dated by the
 - 20 subscriber, and that is not attached to any other document.
 - 21 (B) An affirmative response made on a separate field on an
 - 22 Internet Web site where there is no default. The provider of mobile
 - 23 telephony services shall send a confirmation notice to the
 - 24 subscriber’s electronic mail address, or to a subscriber’s postal

1 mail address if the subscriber does not have an electronic mail
2 account.

3 (2) It shall be unambiguous, legible, and conspicuously disclose
4 that, by opting in, the subscriber is consenting to have the
5 subscriber's dialing number sold or licensed as part of a list of
6 subscribers and the subscriber's dialing number may be included
7 in a publicly available directory.

8 (3) If, under the subscriber's calling plan, the subscriber may
9 be billed for receiving unsolicited calls or text messaging from a
10 telemarketer, the provider's form shall include an unambiguous
11 and legible disclosure statement that, by consenting to have the
12 subscriber's dialing number sold or licensed as part of a list of
13 subscribers or included in a publicly available directory, the
14 subscriber may incur additional charges for receiving unsolicited
15 calls or text messages.

16 (c) ~~Nothing in this section prohibits~~ *This section does not*
17 *prohibit* a subscriber of mobile telephony services from voluntarily
18 entering into an agreement for the placement of his or her name
19 and mobile telephony dialing number in any advertising program
20 if the agreement satisfies the express consent requirements of this
21 section.

22 (d) A subscriber who provides express prior consent pursuant
23 to subdivision (b) may revoke that consent at any time. A provider
24 of mobile telephony services shall comply with the subscriber's
25 request to opt out within a reasonable period of time, not to exceed
26 60 days.

27 (e) A subscriber shall not be charged for making the choice to
28 not have ~~their~~ *his or her* name and mobile telephony dialing
29 number ~~be~~ *or his or her name and residential telephone number*
30 listed in a *directory or* publicly available directory assistance
31 database.

32 (f) This section does not apply to the provision of telephone
33 numbers to the following parties for the purposes indicated:

34 (1) To a collection agency, to the extent disclosures made by
35 the agency are supervised by the commission, exclusively for the
36 collection of unpaid debts.

37 (2) (A) To ~~any~~ *a* law enforcement agency, fire protection
38 agency, public health agency, public environmental health agency,
39 city or county emergency services planning agency, or private
40 for-profit agency operating under contract with, and at the direction

1 of, one or more of these agencies, for the exclusive purpose of
 2 responding to a 911 call or communicating an imminent threat to
 3 life or property.

4 (B) Any information or records provided to a private for-profit
 5 agency pursuant to this subdivision shall be held in confidence by
 6 that agency and by ~~any~~ *an* individual employed by or associated
 7 with that agency. This information or these records shall not be
 8 open to examination for any purpose not directly connected with
 9 the administration of the services specified in subdivision (e) of
 10 Section 2872 or this paragraph.

11 (3) To a lawful process issued under state or federal law.

12 (4) To a telephone corporation providing service between service
 13 areas for the provision to the subscriber of telephone service
 14 between service areas, or to third parties for the limited purpose
 15 of providing billing services.

16 (5) To a telephone corporation to effectuate a customer’s request
 17 to transfer the customer’s assigned telephone number from the
 18 customer’s existing provider of telecommunications services to a
 19 new provider of telecommunications services.

20 (6) To the commission pursuant to its jurisdiction and control
 21 over telephone and telegraph corporations.

22 (g) Every deliberate violation of this section is grounds for a
 23 civil suit by the aggrieved subscriber against the organization or
 24 corporation and its employees responsible for the violation.

25 (h) For purposes of this section, “unpublished or unlisted access
 26 number” means a telephone, telex, teletex, facsimile, computer
 27 modem, or any other code number that is assigned to a subscriber
 28 by a telephone or telegraph corporation for the receipt of
 29 communications initiated by other telephone or telegraph customers
 30 and that the subscriber has requested that the telephone or telegraph
 31 corporation keep in confidence.

32 (i) ~~No telephone corporation, nor any official or employee~~
 33 ~~thereof, shall~~ *A telephone corporation, or an official or employee*
 34 *of a telephone corporation, shall not* be subject to criminal or civil
 35 liability for the release of customer information as authorized by
 36 this section.

37 ~~SECTION 1. Section 707 of the Public Utilities Code is~~
 38 ~~amended to read:~~

39 ~~707. (a) Not later than March 1, 2012, the commission shall~~
 40 ~~institute a rulemaking proceeding for the purpose of considering~~

1 and adopting a code of conduct, associated rules, and enforcement
2 procedures, to govern the conduct of the electrical corporations
3 relative to the consideration, formation, and implementation of
4 community choice aggregation programs authorized in Section
5 366.2. The code of conduct, associated rules, and enforcement
6 procedures, shall do all of the following:

7 (1) Ensure that an electrical corporation does not market against
8 a community choice aggregation program, except through an
9 independent marketing division that is funded exclusively by the
10 electrical corporation's shareholders and that is functionally and
11 physically separate from the electrical corporation's
12 ratepayer-funded divisions.

13 (2) Limit the electrical corporation's independent marketing
14 division's use of support services from the electrical corporation's
15 ratepayer-funded divisions, and ensure that the electrical
16 corporation's independent marketing division is allocated costs of
17 any permissible support services from the electrical corporation's
18 ratepayer-funded divisions on a fully allocated embedded cost
19 basis, providing detailed public reports of such use.

20 (3) Ensure that the electrical corporation's independent
21 marketing division does not have access to competitively sensitive
22 information.

23 (4) (A) Incorporate rules that the commission finds to be
24 necessary or convenient in order to facilitate the development of
25 community choice aggregation programs, to foster fair competition,
26 and to protect against cross-subsidization paid by ratepayers.

27 (B) It is the intent of the Legislature that the rules include, in
28 whole or in part, the rules approved by the commission in Decision
29 97-12-088 and Decision 08-06-016.

30 (C) This paragraph does not limit the authority of the
31 commission to adopt rules that it determines are necessary or
32 convenient in addition to those adopted in Decision 97-12-088 and
33 Decision 08-06-016 or to modify any rule adopted in those
34 decisions.

35 (5) Provide for any other matter that the commission determines
36 to be necessary or advisable to protect a ratepayer's right to be
37 free from forced speech or to implement that portion of the federal
38 Public Utility Regulatory Policies Act of 1978 that establishes the
39 federal standard that no electric utility may recover from any person
40 other than the shareholders or other owners of the utility, any direct

1 or indirect expenditure by the electric utility for promotional or
2 political advertising (16 U.S.C. Sec. 2623(b)(5)).

3 (b) No later than January 1, 2013, the commission shall ensure
4 that the code of conduct, associated rules, and enforcement
5 procedures are implemented.

6 (c) This section does not limit the authority of the commission
7 to require that any marketing against a community choice
8 aggregation plan shall be conducted by an affiliate of the electrical
9 corporation, or to require that marketing against a community
10 choice aggregator not be conducted by a marketing division of the
11 electrical corporation, subject to affiliate transaction rules to be
12 developed by the commission.