

Assembly Bill No. 828

CHAPTER 809

An act to amend and repeal Sections 489 and 495 of, to add Section 495.7 to, and to repeal Section 495.5 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor October 12, 1995. Filed
with Secretary of State October 13, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 828, Conroy. Telecommunications: service options.

Under existing law, every public utility other than a common carrier is required to file with the commission, and to print and keep open for public inspection, all rates, tolls, rentals, charges, and classifications, and all rules, contracts, privileges, and facilities as they relate to rates, tolls, rentals, charges, classifications, or services, and to comply with rules and regulations adopted by the commission with respect to rate changes.

Existing law, until January 1, 1998, authorizes the commission, by rule or order, to waive for certain classes of telephone corporations the above filing requirements, in full or in part, for telephone services defined as enhanced services by the commission.

This bill would permit the commission, by rule or order, to partially or completely exempt telecommunications services offered by telephone or telegraph corporations from the above rate change requirements if the commission determines that the provider of the service lacks significant market power in the market for that service or that sufficient consumer protections exist, and to revoke any exemption so granted.

The bill would require the commission to establish enumerated consumer protection rules for the exempted services, and would require the commission to report to the Legislature by January 1, 1997, on its consumer protection rules and implementation procedures to allow telephone corporations to be exempted from the tariffing requirements.

Because violations of orders, decisions, rules, or other requirements of the Public Utilities Commission are misdemeanors, this bill would impose a state-mandated local program by creating new crimes.

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.

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

SECTION 1. Section 489 of the Public Utilities Code, as amended by Section 2 of Chapter 980 of the Statutes of 1992, is amended to read:

489. (a) The commission shall, by rule or order, require every public utility other than a common carrier to file with the commission within the time and in the form as the commission designates, and to print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service. Nothing in this section shall prevent the commission from approving or fixing rates, tolls, rentals, or charges, from time to time, in excess of or less than those shown by the schedules.

(b) The commission shall, by rule or order, require every telephone corporation operating within a service area, on first contact by a prospective subscriber and in subsequent contacts by the subscriber for the purpose of changing service, to fully inform the subscriber of the basic services available to the class of subscribers to which the subscriber belongs. For eligible residential subscribers, these services shall include universal lifeline telephone service. The subscriber shall be presented with information orally, in print form, or in computer data form, according to the means by which contact is established. If after a hearing, the commission finds that any telephone corporation has not provided prospective subscribers with the information required by this section, the commission may make an appropriate adjustment of the telephone corporation's rates or impose penalties pursuant to other provisions of law.

SEC. 2. Section 489 of the Public Utilities Code, as added by Section 2.5 of Chapter 980 of the Statutes of 1992, is repealed.

SEC. 3. Section 495 of the Public Utilities Code, as amended by Section 3 of Chapter 980 of the Statutes of 1992, is amended to read:

495. Every telegraph and telephone corporation shall print and file with the commission schedules showing all the rates and classifications for the transmission of messages or conversations between all of the following points, unless otherwise exempted, in whole or in part, from the filing requirements of subdivision (a) of Section 489:

(a) Between all points within this state and all points outside the state upon its route.

(b) Between all points within this state and all points outside the state upon every route leased, operated, or controlled by it.



(c) Between all points on its route or upon any route, leased, operated, or controlled by it within this state and all points outside the state upon the route of any other telegraph or telephone corporation, whenever a through route and joint rate have been established between any two of these points.

SEC. 4. Section 495 of the Public Utilities Code, as added by Section 3.5 of Chapter 980 of the Statutes of 1992, is repealed.

SEC. 5. Section 495.5 of the Public Utilities Code is repealed.

SEC. 6. Section 495.7 is added to the Public Utilities Code, to read:

495.7. (a) The commission may, by rule or order, establish procedures to allow telephone or telegraph corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 454, 489, 491, and 495.

(b) The commission may, by rule or order, partially or completely exempt certain telecommunications services, except basic exchange service offered by telephone or telegraph corporations, from the tariffing requirements of Sections 454, 489, 491, and 495 if either of the following conditions is met:

(1) The commission finds that the telephone corporation lacks significant market power in the market for that service for which an exemption from Sections 454, 489, 491, and 495 is being requested. Criteria to determine market power shall include, but not be limited to, the following: company size, market share, and type of service for which an exemption is being requested. The commission shall promulgate rules for determining market power based on these and other appropriate criteria.

(2) The Commission finds that a telephone corporation is offering a service in a given market for which competitive alternatives are available to most consumers, and the commission has determined that sufficient consumer protections exist in the form of rules and enforcement mechanisms to minimize the risk to consumers and competition from unfair competition or anticompetitive behavior in the market for the competitive telecommunications service for which a provider is requesting an exemption from Sections 454, 489, 491, and 495. This paragraph does not apply to monopoly services for which the commission retains exclusive authority to set or change rates.

(c) Before implementing procedures to allow telephone corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 454, 489, 491, and 495, and no later than September 30, 1996, the commission shall establish consumer protection rules for those exempted services that include, but are not limited to:

(1) Rules regarding the availability of rates, terms, and conditions of service to consumers.



(2) Rules regarding notices to consumers of rate increases and decreases, changes in terms and conditions of service, and change of ownership.

(3) Rules to identify and eliminate unacceptable marketing practices including, but not limited to, fraudulent marketing practices.

(4) Rules to assure that aggrieved consumers have speedy, low-cost, and effective avenues available to seek relief in a reasonable time.

(5) Rules to assure consumers that their right to informational privacy for services over which the commission has oversight.

(6) Rules to assure a telephone corporation's cooperation with the commission investigations of customer complaints.

(d) Prior to granting every exemption from the tariffing requirements of Sections 454, 489, 491, and 495, the commission shall find that there is no improper cross-subsidization or anticompetitive behavior in connection with the service for which an exemption is requested.

(e) The commission shall report to the Legislature by January 1, 1997, on its consumer protection rules and implementation procedures to allow telephone corporations to be exempted from the tariffing requirements of Sections 454, 489, 491, and 495.

(f) Nothing in this section shall require that the commission exempt any telecommunications service or telecommunications service provider from the requirements of Sections 454, 489, 491, and 495, nor shall this section limit the authority of the commission to require telephone corporations to provide it with contemporaneous information about the current terms, conditions, and prices under which telecommunications services exempted, in whole or in part, from Sections 454, 489, 491, and 495 are being offered to subscribers.

(g) The commission, after notice and hearing if requested, may cancel, revoke, or suspend any exemption granted under subdivision (b) to any telephone corporation that fails to comply with any of the rules established by the commission pursuant to subdivision (c).

(h) Any telecommunications service exempted from the tariffing requirements of Sections 454, 489, 491, and 495 shall not be subject to the limitation on damages that applies to tariffed telecommunications services.

(i) The provisions of this section do not apply to commercial mobile services as defined by the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66).

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government



Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

