

AMENDED IN SENATE JUNE 21, 2004  
AMENDED IN SENATE JUNE 15, 2004  
AMENDED IN SENATE MARCH 30, 2004  
AMENDED IN SENATE JULY 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 442**

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**Introduced by Assembly Member ~~Richman~~ *Levine***

February 14, 2003

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An act to add Article 11 (commencing with Section 910) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 442, as amended, ~~Richman~~ *Levine*. Telecommunications: regulatory streamlining.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law authorizes the commission to fix just and reasonable rates and charges. Under that authority, the commission has adopted decisions adopting an incentive-based regulatory framework called the New Regulatory Framework for certain telephone corporations.

The existing Federal Telecommunications Act of 1996 preempts any state or local statute or regulation that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service, but does not prohibit a state from imposing on a competitively neutral basis, requirements necessary to

preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. The prohibition also does not affect the authority of a state or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis.

Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services. Under existing law, no state or local government may regulate the entry of or the rates charged by any commercial mobile radio service, but is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service. Where commercial mobile radio services are a substitute for land line telephone exchange service for a substantial portion of the telecommunications within a state, commercial mobile radio service providers are not exempted from requirements imposed by a state commission on all providers of telecommunications services that are necessary to ensure the universal availability of telecommunications services at affordable rates.

This bill would require the commission, by January 1, 2005, to commence a rulemaking or quasi-legislative proceeding to develop rules for harmonizing the regulation of the communications industry to eliminate regulations and policies that are no longer necessary as a result of technological advancements and competition in the communications industry, to promote competition, to promote investment that will improve quality of products, quality of service, and greater choices for consumers, and to promote economic growth. The bill would require the commission to adopt a final decision adopting rules by January 1, 2006. The bill would require that the commission rely on competitive forces in the communication industry to promote consumer choice and marketplace protection, whenever possible. The bill would provide that the transmission of communications over the Internet, whether by voice, data, video streams, or any combination thereof, does not, solely by reason of engaging in any of those activities, make a corporation or person providing the necessary software, hardware, transmission service, or the transmission path, a public utility or subject those activities to the jurisdiction of the commission. The bill



would require the commission to report to the relevant policy committees of the Legislature on recommendations for any statutory changes necessary to comply with, or to advance the purposes of, the bill. The bill would require the commission to use existing resources to comply with the provisions of the bill.

Existing law makes any public utility and any corporation other than a public utility that violates the Public Utilities Act, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission guilty of a crime.

The provisions of this bill would be a part of the act and would require an order or other action of the commission to implement those provisions. Because a violation of those provisions or a violation of an order or other action by the commission to implement those provisions would be a crime, the 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.

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. Article 11 (commencing with Section 910) is  
2 added to Chapter 4 of Part 1 of Division 1 of the Public Utilities  
3 Code, to read:

4  
5 Article 11. Communications Regulatory Streamlining

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7 910. (a) The commission shall, by January 1, 2005,  
8 commence a rulemaking or quasi-legislative proceeding to  
9 develop rules for harmonizing the regulation of the  
10 communications industry for the following purposes:

11 (1) Eliminating regulations and policies for the  
12 communications industry that are no longer necessary or  
13 appropriate as a result of technological advancements and  
14 competition in the communications industry.



1 (2) Promoting competition.  
2 (3) Promoting investment that will improve quality of  
3 products, quality of service, and greater choices for consumers.

4 (4) Promoting economic growth.

5 (b) The rules adopted by the commission shall protect existing  
6 policies that provide for *all of* the following:

7 (1) Basic service at reasonable rates.

8 (2) Incentives and transfer payments to provide universal  
9 service to low-income, disabled, rural, and high-cost customers.

10 (3) Access to, or use of, the infrastructure of incumbent local  
11 exchange carriers by competitive carriers, consistent with  
12 requirements of federal and state law and the Federal  
13 Communications Commission.

14 912. The commission shall rely on competitive forces in the  
15 communications industry to promote consumer choice and to  
16 advance the interests of consumers, whenever possible.

17 913. The transmission of communications over the Internet,  
18 whether by voice, data, video streams, or any combination thereof,  
19 does not, solely by reason of engaging in any of those activities,  
20 make a corporation or person providing the necessary software,  
21 hardware, transmission service, or the transmission path, a public  
22 utility or subject those activities to the jurisdiction of the  
23 commission. Nothing in this section alters or affects state or  
24 federal law regarding surcharges or regulatory fees on voice  
25 communications over the Internet.

26 914. The commission shall, by January 1, 2006, issue a final  
27 decision adopting rules consistent with this article. The  
28 commission shall use existing resources to comply with this  
29 article. The commission may issue rules and orders exempting the  
30 communications industry, including telephone corporations, from  
31 existing rules and orders of the commission, in furtherance of this  
32 article. The commission shall report to the relevant policy  
33 committees of the Legislature on recommendations for any  
34 statutory changes necessary to comply with this article or to  
35 advance the purposes of Section 910.

36 SEC. 2. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty



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

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