

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 ~~payment for charges for transmittal or delivery of the message~~ *has* ~~has~~ *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 be narrowly tailored to the specific circumstances under which the order is made and would prohibit the order from interfering with more communication than is necessary to achieve the purposes of the order. The bill would require any interruption of service to extend only as long as is reasonably necessary and to cease immediately once the danger that justified the interruption is addressed.* The bill would provide that a good faith reliance upon an order of a judicial officer constitutes a complete defense *for any communications 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.

The bill would also find and declare that it is a matter of statewide concern to ensure 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.

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 ~~wilfully~~ *willfully* refuses or neglects to send
- 5 any message received at ~~such~~ *the* office for transmission, or
- 6 ~~wilfully~~ *willfully* postpones the transmission of the message out
- 7 of its order, or ~~wilfully~~ *willfully* refuses or neglects to deliver any
- 8 message received by telegraph or telephone, is guilty of a
- 9 misdemeanor. Nothing in this section shall be construed to require

1 any message to be received, transmitted, or delivered, unless the
2 charges thereon have been paid or tendered.

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 Section 7907 of the Public Utilities Code is repealed.

4 SEC. 3. Section 7907 is added to the Public Utilities Code, to
5 read:

6 7907. (a) For purposes of this section, the following terms
7 have the following meanings:

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

13 (2) “Governmental entity” means every local government,
14 including a city, county, city and county, a transit, joint-power
15 powers, special, or other district, the state, and every agency,
16 department, commission, board, bureau, or other political
17 subdivision of the state.

18 (3) “Interrupt communications service” means to knowingly or
19 intentionally suspend, disconnect, interrupt, or disrupt
20 communications service to one or more particular customers or
21 all customers in a geographical area.

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

26 (b) No governmental entity and no provider of communications
27 service, or any agent thereof, acting at the request of a
28 governmental entity, shall interrupt communications service for
29 the purpose of protecting public safety or preventing the use of
30 communications service for an illegal purpose, except pursuant to
31 an order signed by a judicial officer that includes all of the
32 following findings:

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

36 (2) That absent immediate and summary action to interrupt
37 communications service, ~~significant~~ *serious* danger to the public
38 ~~health, safety, or welfare~~ will result.

39 (3) That interruption of communications service will not
40 suppress speech that is protected by the First Amendment to the

1 United States Constitution or Section 2 of Article I of the California
2 Constitution, or violate any other rights under federal or state law.

3 *(c) The order shall be narrowly tailored to the specific*
4 *circumstances under which the order is made and shall not*
5 *interfere with more communication than is necessary to achieve*
6 *the purposes of the order.*

7 *(d) Any interruption of service shall extend only as long as is*
8 *reasonably necessary and shall cease immediately once the danger*
9 *that justified the interruption is addressed.*

10 ~~(e)~~

11 *(e) A provider of communications service that intentionally*
12 *interrupts communications service pursuant to subdivision (b) shall*
13 *comply with any rule or notification requirement of the commission*
14 *or Federal Communications Commission, or both, and any other*
15 *applicable provision or requirement of state or federal law.*

16 ~~(d)~~

17 *(f) Good faith reliance upon an order of a judicial officer*
18 *authorizing the interruption of communications service pursuant*
19 *to subdivision (b) shall constitute a complete defense for any*
20 *communications provider served with an order that meets the*
21 *requirements of that subdivision against any action brought as a*
22 *result of the interruption to communications service as directed*
23 *by that order.*

24 ~~(e)~~

25 *(g) The Legislature finds and declares that it is a matter of*
26 *statewide concern to ensure that California users of any*
27 *communications service not have that service interrupted, and*
28 *thereby be deprived of 911 access to emergency services or a*
29 *means to engage in constitutionally protected expression.*