STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 6, 2012

To: The Commission
(Meeting of June 7, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1161 (Padilla) – Communications: Voice over Internet Protocol and Internet Protocol enabled communications services (VoIP)**
As amended: May 29, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: NONE, WITH RECOMMENDED CLARIFYING AMENDMENTS

SUMMARY OF BILL:

There is no current problem addressed by the bill. Rather, the author and supporters of the bill apparently fear that the CPUC will impose unnecessary regulations on providers of IP-enabled services if this bill is not enacted.

SB 1161 states, among other things that : 1)The Internet and IP-based services have flourished to the benefit of all Californians under the current regulatory structure; and 2) It is the intent of this act to reaffirm California's current policy of regulating "Internet-based services" only as specified by the Legislature and thereby achieve preservation of the future of the Internet by encouraging continued investment and technological advances and supporting continued consumer choice and access to innovative services that benefit California.

SB 1161 would prohibit, until January 1, 2020 and with certain exceptions, any department, agency, commission, or political subdivision of the state from enacting, adopting, or enforcing, either directly or indirectly, any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates Voice over Internet Protocol (VoIP) or other IP-enabled service, unless delegated or required by federal law or expressly authorized by state statute. It further clarifies that, in the event of such requirement or delegation, nothing is this bill expands the Commission's jurisdiction beyond state law.

SB 1161 would prohibit the CPUC, with certain exceptions, from exercising regulatory jurisdiction or control over VoIP and IP-enabled service providers except as expressly directed to do so by state statute.

The Exceptions, as found in the May 29, 2012 amended version of the bill are:

- State activity authorized by the Emergency Telephone Users Surcharge Law which requires interconnected VoIP providers to collect and remit 9-1-1 surcharges. *(Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code)*

- CPUC and local cable franchise authority under the Digital Infrastructure and Video Competition Act of 2006 *(DIVCA) (PU Code Division 2.5 (commencing with Section 5800)).*

- (3) CPUC authority to implement and enforce Sections 251 and 252 of the federal Communications Act of 1934, as amended, (*47 U.S.C. Secs. 251 and 252).*

- (4) CPUC authority to require data and other information from facilities-based interconnected VoIP service providers when conducting an analysis of certain forbearance petitions before the FCC *(PU Code Section 716.).*

- (5) CPUC authority to address or affect the resolution of disputes regarding intercarrier compensation, including for the exchange of traffic that originated, terminated, or was translated at any point into Internet Protocol format.

- The Commission's authority to enforce existing requirements regarding backup power systems.

- The enforcement of any state, federal or local civil or criminal laws or ordinances that apply to the conduct of business, the California Environmental Quality Act, or local utility user taxes.

- Any existing Commission authority over non-VoIP and other non-IP enabled wireline or wireless service, including regulations governing universal service and the offering of basic service and lifeline service.

- The ability of the Commission to monitor and discuss VoIP services as well as respond informally to customer complaints.

- On May 30, 2012, the Senate passed SB 1161 (30 ayes and 6 nays). The bill is now before the Assembly. The current version of the bill, as amended May 29, 2012, is attached to this memo.

On May 30, 2012, the Senate passed SB 1161 (30 ayes and 6 nays). The bill is now before the Assembly. The current version of the bill, as amended May 29, 2012, is attached to this memo.

The bill was amended in the Senate and addressed some of the key concerns of staff.

- The bill now states it does not affect any existing Commission authority over non-VoIP and other non-IP enabled wireline or wireless service.
- It clarifies that an "IP-in-the-Middle" service is not a VoIP service.
- It permits the Commission and other agencies to regulate VoIP or other IP-enabled services as required or expressly delegated by federal law.

An amendment was also added with the intent to exempt CEQA from the prohibition on regulation IP-enabled services, but staff believes that the language needs further modification to meet this intent.

The Senate also added a sunset clause - the statute would sunset on January 1, 2020 unless extended by the Legislature.

The Senate added other amendments – one on the back-up power statute, Public Utilities Code section 2892.1, and one regarding Commission responses to consumer complaints on VoIP, but staff does not agree that these amendments are adequate. (See discussion below.)

Although the bill as it reads now includes some of the amendments CPUC staff proposed (see May 18, 2012 memo from OGA to the Commission), many of staff's strongly recommended amendments were not incorporated into the bill. A discussion of the amendments taken follows:

<u>At page 4, lines 4-9:</u>

Staff proposed this amendment to ensure that communications using ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, but which employs use of IP at one or more points between the non-IP origination and/termination of the call is not exempt from CPUC jurisdiction. (This addresses the IP-in-the-middle issue.)

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<u>At page 4, lines 21-26 and lines 31-36:</u>

Staff proposed these amendments to ensure (1) that the CPUC could act if required or expressly delegated to do so by federal law and (2) that the CPUC could act if required by federal law or as expressly directed by state statute.

<u>At page 5, lines 16-18:</u>

This amendment would retain the back-up power education requirement that the CPUC imposed on VoIP providers. However, it did not go as far as our recommended amendment. Because the CPUC interpreted section 2892.1 to apply to VoIP, the authority to change or expand requirements adopted in D.10-01-026 (which only requires customer education) should be retained.

Staff proposes that the CPUC continue to request the original staff amendment as follows:

"The commission's authority regarding back-up power pursuant to Public Utilities Code section 2892.1."

At page 5, lines 23-25:

The amendment intending to preserve CEQA authority is not properly drafted to do so. CEQA applies only where an agency has discretionary authority to approve a project. The amendment currently in the bill would not preserve the CPUC's discretionary authority over the VoIP providers; consequently, without that discretionary authority, the CPUC could not apply CEQA. The CEQA amendment currently in the bill should be deleted and a new subsection should be added as set forth in Amendment 5, below.

At page 5, lines 27-29

This language preserves existing CPUC authority over non-IP enabled wireline and wireless services. Staff proposed an amendment similar to this.

At page 5, lines 32-34, adds subsection (f):

This amendment does not go far enough, because it would only allow the CPUC to "respond, to," but not to resolve, customer complaints. Accordingly, the language "including responding informally to customer complaints" should be deleted and a new subsection should be added as set forth in Amendment 2, below.

At page 5, lines 35-37, adds subsection (h):

This sunset amendment was added by the Senate. Staff supports a sunset provision but recommends five years (2018), rather than seven (2020). This would be more consistent with historic sunset provisions and provide a more timely re-evaluation of the changing technologies and business models on both consumers and the industry.

SUMMARY OF IMPACTS OF THE BILL

Restraint of VoIP regulation would be consistent with the following:

(1) The federal 1996 Telecommunications Act which adopted a national policy to open communications markets to competition and transition away from regulation adopted when phone and cable TV services were provided by protected monopolies.

(2) Congressional and FCC policy to promote the ubiquitous nationwide deployment of IP-enabled broadband facilities and services as fast as possible.

(3) California Legislature's Policy as stated in PU Code Sections 709 (promoting competition and deployment of advances services); 709.5 (promoting competition); and 709.6 (promoting deployment of advances services) as well as the adoption of universal service programs that subsidize deployment and access to broadband services [California Advanced Services Fund (CASF) and the California Teleconnect Fund (CTF)] and state franchising of broadband video providers (DIVCA).

(4) CPUC efforts to lessen telecommunications regulation where there is sufficient competition in a particular market or markets (URF decision; CPI).

To the extent that states have similar regulations that the FCC has applied to VoIP (e.g., universal service, privacy protections, regulatory fees, local number portability), it would be consistent with federal law for the states to also apply those requirements at the state level. Moreover, the fact that the CPUC said in 2006 that it was "premature" to assess its regulatory role over VoIP is not dispositive of what the Commission or the Legislature does now.

However, concerns remain that SB 1161 will tie the Commission's hands if it decides in the future that there is a need to reassess its regulatory role over VoIP. The bill could prevent the CPUC from acting quickly to address problems that may arise regarding the provision of IP-enabled services that are not addressed in statute.

Staff continues to recommend the following "strongly recommended" amendments, all of which would be listed as exceptions as follows:

<u>NOTE: The original strongly recommended Amendment 1 relating to telephone numbers is no longer needed</u> because the current bill allows the CPUC to exercise authority if delegated by federal law.

<u>Amendment 2 (proposed exception Sec 710(c)(7))</u>

"The commission's authority to hear and resolve customer complaints involving VoIP providers which operate under a certificate of public convenience and necessity (CPCN)."

<u>Amendment 3 (proposed exception Sec 710(c)(8))</u>

"The commission's authority to regulate intrastate retail and wholesale IP-enabled special access services."

Amendment 4 (proposed exception Sec. 710(c)(9))

"The commission's authority over safety of both communications and electric facilities, including compliance with the Statewide Plan regarding the undergrounding of all future electric and communications distribution facilities required by section 320, and compliance with commission regulations governing the placement and maintenance of overhead lines and undergrounding of lines."

Amendment 5 (proposed exception Sec 710(c)(10))

"The commission's authority to review and approve construction of facilities and to apply provisions of the California Environmental Quality Act, where applicable. This section also shall apply to other departments, agencies, commissions, and political subdivisions of the state where such entities have the authority under law to review and approve construction of facilities."

Amendment 6 (exception Sec 710(c)(11))

"The commission's authority over pole attachments, rights-of-way, and easements, regardless of whether the services provided over the facilities are IP-enabled services."

Amendment 7 (add Sec 710 (i))

"The commission may, pursuant to section 1013, subject VoIP service providers to registration to operate in California if the commission determines that registration is necessary to ensure the financial and technical soundness of such service operators, and to prevent fraudulent actors from operating in California."

Amendment 8 (add Sec 710(j))

“The facilities, operations and voice services of a VoIP service provider operating under a certificate of public convenience and necessity issued under section 1001 prior to the date of enactment of section 710, and the facilities, operations and services of any VoIP service provider that requests and is granted such a certificate of public convenience and necessity on or after the date of enactment of section 710 shall be shall be subject to California law, rules, and regulations that apply to the non-VoIP and/or non-IP enabled facilities, operations and voice services of certificated telephone corporations.”

PROGRAM BACKGROUND

According to the National Regulatory Research Institute (NRRI), approximately 17 states have enacted deregulatory statutes; many of which include similar restrictions as in this bill. Deregulatory statutes are pending in 18 other states. On November 12,

2004, the FCC released the *Vonage* Order.[1] In that order, the FCC preempted the Minnesota Public Utilities Commission from applying its traditional telephone company regulations to Vonage's DigitalVoice service. As explained by the FCC, DigitalVoice resembles the telephone service provided by the circuit-switched network, but with some fundamental differences. (*Vonage Order*, at ¶ 4.)

One primary difference is that Vonage's service was fully portable -- customers may use the service anywhere in the world where they can find a broadband connection to the Internet. (*Vonage Order*, at ¶ 5.) In contrast to traditional circuit-switched telephony, while Vonage's service used North American Numbering Plan (NANP) numbers as the identification mechanism for the user's Internet address, the NANP number is not necessarily tied to the user's physical location for either assignment or use. (*Vonage Order*, at ¶ 9.) Based on these facts, the FCC concluded that there are no practical means for separating Vonage's DigitalVoice into interstate and intrastate components for purposes of enabling dual federal and state jurisdiction. (*Vonage Order*, at ¶ 23.) Thus, the FCC held that allowing Minnesota to regulate DigitalVoice would thwart federal law and policy. (*Ibid*.) The FCC did not reach the issue of whether DigitalVoice is a "telecommunications" or "information" service. (*Vonage Order*, at ¶ 14.)

In the *Universal Service Order*,[2] issued on June 27, 2006, the FCC established universal service contribution obligations for providers of VoIP services. In this order, the FCC clarified that preemption under the *Vonage Order* does not apply to an interconnected VoIP provider that is capable of tracking the jurisdictional confines of customer calls (e.g., a "fixed" VoIP provider), and that such a provider would be would be subject to state regulation. (*Universal Service Order*, Report and Order of Proposed Rulemaking at ¶ 56.)

On March 21, 2007, the United States Court of Appeals for the Eighth Circuit upheld the FCC's *Vonage Order*, but further clarified the limitations of that order. (*Minnesota PUC v. FCC* (8th Cir. 2007) 483 F.3d 570.) In that case, the New York Public Service Commission argued that the FCC had exceeded its jurisdiction by apparently preempting all state regulation of VoIP services, including "fixed" services. This argument was based on the FCC's statement in *Vonage* that "[t]o the extent other entities, such a cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order." (See *Vonage Order*, at ¶ 46.)

The Eighth Circuit rejected the argument as not ripe for review, finding that the *Vonage Order* did not specifically address fixed VoIP service providers. (*Minnesota PUC v. FCC* (8th Cir. 2007) 483 F.3d 570, 582-583.) Moreover, the court noted, "the FCC has since indicated VoIP providers who can track the he geographical end point of their calls

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[1] (*In the Matter of Vonage Holdings Corporation's Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission* (WC Docket No. 03-211) (2004) 19 FCC Recd 22404.

[2] *Universal Service Contribution Methodology Proceeding,* Report and Order of Proposed Rulemaking (WC Docket No. 06-122) (2006) 21 FCC Rcd 7518.

do not qualify for preemptive effect of the Vonage order." (*Minnesota PUC v. FCC* (8th Cir. 2007) 483 F.3d 570, 583, citing the FCC's *Universal Service Order*.)

Based on the FCC's *Universal Service Order* and the Eighth Circuit's decision in *Minnesota PUC v. FCC* (8th Cir. 2007) 483 F.3d 570, it is clear that the *Vonage Order* did not preempt all state regulation of VoIP.

Nevertheless, on June 15, 2006, the CPUC issued D.06-06-010, which closed the investigation into regulation of VoIP services. The CPUC stated:

> Since the FCC has determined that it is charged with that role and is exercising its authority, we conclude that it is premature for us to assess what our regulatory role over VoIP will be and to address the issues raised in this investigation (D.06-06-010, at p. 3).

The CPUC rejected requests by the Division of Ratepayer Advocates (DRA), the Peninsula Ratepayers Association (PRA), and The Utility Reform Network (TURN) to include VoIP services in the CPI.

> Our regulatory role is still uncertain, and we have not found an immediate need to address VoIP consumer protection issues. We are tracking VoIP complaints and have seen neither a high number of complaints nor a significant increase in complaints. Should that change, we can reassess this determination (D.06-06-010, at p. 5).

It is important to note that even when D.06-06-010 was issued, it was clear that states were not entirely preempted from regulating VoIP, pursuant to both the FCC's orders and the Eight Circuit Court of Appeals' decision.

Since the FCC issued the *Vonage Order*, the FCC has moved toward treating VoIP as a "telecommunications" service. The FCC has concluded that VoIP carriers "provide telecommunications." (*Universal Service Order*, Report and Order of Proposed Rulemaking, at ¶ 38.) The FCC has also acknowledged that VoIP is increasingly being used to replace analog voice service. (*Universal Service Order*, Report and Order of Proposed Rulemaking, at ¶ 2, quoting *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, ¶ 42.) Moreover, the FCC has used its Title I jurisdiction to apply numerous telecommunications requirements to VoIP.

The following list includes all of the "telecommunications" requirements that have been applied to VoIP by the FCC:

6/3/05: FCC adopts rules requiring interconnected VoIP providers to provide customers access to E911 services. [3]

8/5/05: FCC extends the Communications Assistance for Law Enforcement Act (CALEA) to interconnected VoIP providers (requires providers to provision their services in such a way as to permit legal surveillance of VoIP users by law enforcement)

6/27/06: FCC requires interconnected VoIP service providers to contribute to the federal universal service fund.

3/1/07: FCC issues declaratory ruling stating that wholesale telecommunications carriers are entitled to interconnect under the 1996 Act, even if retail services are provided by VoIP.

4/2/07: FCC requires interconnected VoIP service providers to comply with federal privacy CPNI (customer proprietary network information) laws.

6/15/07: FCC extends disability access requirements (including TRS) to interconnected VoIP service providers.

8/6/07: FCC requires interconnected VoIP providers to pay FCC regulatory fees

11/8/07: FCC extends local number portability (LNP) requirements to interconnected VoIP service providers.

5/13/09: FCC requires interconnected VoIP service providers to comply with discontinuation of service requirements (such as notice to customers) applicable to non-dominant telecommunication carriers.

4/15/10: Congress enacts "Truth in Caller ID Act." The Act, which makes "spoofing" unlawful, applies to VoIP services.

5/13/11: FCC imposes outage reporting requirements on VoIP providers.

Currently, the FCC is also considering in a pending proceeding whether to impose anti-cramming laws on VoIP providers.

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[3] There has been much confusion over the effect of the term "interconnected" VoIP. Whether or not a state is preempted from regulating VoIP is determined by the ability to separate intrastate and interstate calls – not whether the service is "interconnected." The term "interconnected" has been used by the FCC to determine whether the federal telecommunications requirements apply to a VoIP service.

FISCAL IMPACT

Our fiscal analysis focuses on the fiscal impact to the CPUC. We did not attempt to include fiscal impact on other state or local entities. This analysis is divided into two parts. First, we look at the fiscal impacts if the bill is not further amended to include provisions that would either clarify the bill's effect on the CPUC's jurisdiction over traditional wireline service (i.e. the bill as is currently in print). Then we examine the potential fiscal impacts if the CPUC's amendments are incorporated into the bill. That second inquiry is in two subparts: 1) if amendments are accepted only to further clarify the bill's effect on the CPUC's jurisdiction over traditional wireline and wireless service and 2) if amendments are incorporated to clarify the CPUC's jurisdiction over VoIP service.

1. Fiscal Impact if SB 1161 is Not Further Amended to Clarify the CPUC's Jurisdiction over Traditional Wireline and Wireless Service

As discussed above, the CPUC should propose amendments to clarify the scope of the jurisdiction over both traditional wireline and wireless services. Most importantly, the bill without amendment does not address the CPUC's ability to regulate an entity which offers both traditional wireline and VoIP service, and which holds a CPCN. In the event that language clarifying the CPUC's authority over such entities is not added, the CPUC would need to open at least one proceeding to address, at a minimum, the following issues:

- Whether a service provider offering voice only via Internet Protocol may continue to hold a CPCN when state law "prohibits" the CPUC from regulating VoIP service;

- Whether the CPUC could issue a CPCN to a VoIP service provider that requests a CPCN when state law "prohibits" the CPUC from regulating VoIP service;

- If a service provider offers both VoIP services and traditional wireline or wireless services, what is the scope of the CPUC's authority over the traditional wireline and wireless service offering, if the facilities used to provide both the VoIP and traditional services are largely the same;

- What, if any, would be the implications of passage of SB 1161 on the CPUC's administration of its public purpose programs where service providers offer both VoIP service and traditional wireline or wireless service; and

- What, if any, would be the implications of passage of SB 1161 on CPUC authority over rights-of-way, pole attachments, and CEQA review of utility. construction projects or undergrounding under PU Code Sec. 320 where a service provider offers both VoIP service and traditional wireline.

This proceeding likely would require dedication of 1 PY for a PURA V, 1 PY for a PURA III, 1 PY for a Public Utilities Counsel III, and 1 PY for an ALJ II for one year each. The total fiscal impact in this case is approximately $500,496.

2. Fiscal Impact if SB 1161 is Further Amended to Clarify the CPUC's Jurisdiction over Traditional Wireline and Wireless Service

If SB 1161 is amended to clarify the CPUC's on-going authority over traditional wireline and wireless service, then the CPUC's implementation activities would be reduced in scope and costs. Still, the CPUC would need to undertake some type of review, likely through a rulemaking, to determine how the CPUC's various public purpose programs would operate in an environment where some service providers do not hold CPCNs, but wish to participate and obtain subsidies. The proceeding would need to examine the following issues, at a minimum:

- Could the CPUC obligate a wireline or wireless VoIP service provider, which does not hold a CPCN but seeks to participate in one or more of the public purpose programs, to comply with the CPUC's existing rules for that program;

- How would the CPUC oversee and enforce compliance with its public purpose program rules in an environment where service providers offer both traditional wireline or wireless services and VoIP services to customers;

- Could the CPUC bind a service provider via a contract or other agreement to ensure compliance with the CPUC's public purpose program rules; and

- What type of contract or agreement should the CPUC employ for the purpose of binding a service provider which does not hold a CPCN but seeks to participate in a public purpose program.

In the event that SB 1161 is amended to permit the CPUC to require VoIP providers to register with the CPUC, the CPUC would likely need to further examine, at a minimum, the following issues:

- In lieu of requiring VoIP providers to obtain a CPCN, could the CPUC establish a "registration" process, comparable to that established for Non-Dominant Interexchange Carriers (NDIECs) pursuant to Pub. Util. Code § 1013;[4]

- What would be the scope of the registration authority;

- What, if anything, would VoIP providers need to show to become registered; and

[4] Communications Division has already implemented an informal registration process for VoIP providers without CPCNs who now must comply with the mandate in Pub. Util. Code § 285 that they collect and remit surcharges to support the CPUC's public purpose programs. The registration process suggested in this section could be more formal, but not as burdensome as applying for a CPCN.

- What benefits would the registration process afford the registrant VoIP provider.

This proceeding likely would require dedication of 1 PY for a PURA V, 1 PY for a Public Utilities Counsel III, and 1 PY for an ALJ II for 6 months each.
The total fiscal impact in this case is approximately $228,097.

STATUS:

SB 1161 has passed out of the Senate and awaits committee assignment in the Assembly.

SUPPORT/OPPOSITION:

SUPPORT

Silicon Valley Leadership Group (co-source)
TechAmerica (co-source)
TechNet (co-source)
African-American Male Achievers Network
American G.I. Forum of California
Appallicious
Applied Materials
Asian Business Association
Asian Pacific Islander American Public Affairs Association
- Southern California Regional Headquarters
AT&T
Bay Area Council
Black Business Association
Brotherhood Crusade
California Asian Pacific Chamber of Commerce
California Association of Competitive Telecommunications Companies
California Black Chamber of Commerce Foundation
California Cable & Telecommunications Association
California Chamber of Commerce
California Hispanic Chambers of Commerce
California Manufacturers & Technology Association
California Retailers Association
California Small Business Association
California State Association of Electrical Workers
CALinnovates
Cambodian Association of America
Charter Communications
Cisco Systems, Inc.
Coalition of California Utility Employees
Comcast Communications
Concerned Citizens Community Involvement

Congress of California Seniors
CONNECT
Consejo de Federaciones Mexicanas en Norteamérica
Corporation for Education Network Initiatives in California
Cox Communications
Drumbi
Frontier Communications
Great Valley Center
Inland Empire Economic Partnership
Jobblehead
Juniper Networks
La Maestra Community Health Centers
Los Angeles Opportunities industrialization Center
Microsoft
MobileFuture
National Association for the Advancement of Colored People - California Conference
Orange County Business Council
Palm Desert Area Chamber of Commerce
Portal A
QUALCOMM
Self-Help for Elderly
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
TelecomCouncil
Time Warner Cable
United Cambodian Community
United States Hispanic Chamber of Commerce
Verizon
Voice on the Net Coalition

OPPOSITION

AARP
Access Humboldt
American Civil Liberties Union of California
AnewAmerica Community Corporation
Asian American Business Women Association
Brightline Defense Project
California Alliance for Retired Americans
California Broadband Policy Network
Center for Accessible Technology
Center for Media Justice
Central City SRO Collaborative
Chicana/Latina Foundation
Communications Workers of America

Consumer Federation of California
Consumers First, Inc.
Consumers Union
County of Mendocino
Davis Media Access
Division of Ratepayer Advocates
El Concilio of San Mateo County
FAME Corporations
Greenlining Institute
Hmong American Political Association
Humboldt County Supervisors
Media Alliance
MuniServices, LLC
National Federation of Filipino American Associations
National Hispanic Media Coalition
Office of Mayor Gayle McLaughlin
Privacy Rights Clearinghouse
Public Counsel Law Center
San Francisco African American Chamber of Commerce
Santa Clara University
Tenderloin Housing Clinic
Tenderloin Neighborhood Development Corporation
Town of Fairfax
The Utility Reform Network
Utility Consumer's Action Network
Utility Workers Union of America
West Angeles Community Development Corporation

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BILL LANGUAGE

BILL NUMBER: SB 1161 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 29, 2012
AMENDED IN SENATE APRIL 26, 2012
AMENDED IN SENATE MARCH 26, 2012

INTRODUCED BY Senator Padilla
(Principal coauthor: Assembly Member Bradford)
(Coauthors: Senators Correa, Fuller, Lieu, Price, Rubio, and Strickland)

FEBRUARY 22, 2012

An act to add ~~Sections 239 and 710 to~~ *Section 239 to, and to add and repeal Section 710 of,* the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1161, as amended, Padilla. Communications: Voice over Internet Protocol and Internet Protocol enabled communications service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined.

This bill would *, until January 1, 2020,* prohibit the commission from regulating Voice over Internet Protocol (VoIP) and Internet Protocol enabled service (IP enabled service), as defined, except as ~~authorized~~ *required or delegated* by federal law ~~and~~ *or* expressly provided otherwise in statute. The bill would prohibit any department, agency, commission, or political subdivision of the state from enacting, adopting, or enforcing any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates ~~or has the effect of regulating~~ VoIP or other IP enabled service, unless ~~authorized~~ *required or delegated* by federal law ~~and~~ *or* expressly authorized by statute. The bill would specify certain areas of law that are expressly applicable to VoIP and IP enabled service providers. The bill would provide that its limitations upon the commission's regulation of VoIP and IP enabled services do not affect the commission's existing authority over ~~traditional telephone service through a landline connection~~ *non-VoIP and other non-IP enabled wireline or wireless service* and ~~does~~ *do* not affect the enforcement of any state or federal criminal law or local ordinances of general applicability that apply to the conduct of business *, the California Environmental Quality Act, or a local utility user tax* .

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The continued vitality and success of California's technology and innovation sector of the economy is dependent on a business climate that supports the national and international nature of the Internet.

(2) The Legislature is empowered to develop future state policy and actions regarding Internet-based technology to further innovation, consumer choice and protection, and economic benefits to California.

(3) California's innovation economy is leading the state's economic recovery. Silicon Valley alone added 42,000 jobs in 2011, an increase of 3.8 percent versus a national job growth rate of 1.1 percent. The newly designated "app," for application, economy has resulted in 466,000 new jobs nationwide, with 25 percent of that total created in California.

(4) The Internet and Internet Protocol-based (IP-based) services have flourished to the benefit of all Californians under the current regulatory structure. The success of the innovation economy is a result of an open, competitive environment that has provided California consumers and businesses with a wide array of choices, services, and prices.

(5) California-based entrepreneurs and businesses are the global leaders in IP-based services and technologies. These leading technology companies, including content, services , and infrastructure providers, represent some of the largest employers in California, contributing billions of dollars of economic benefit to the state.

(6) California consumers and businesses are driving the demand for faster networks, new and innovative apps and software, and continued innovation. As a result of this demand, network infrastructure companies invested billions of dollars in California in 2011. Internet voice communications connections are up over 22 percent, and entrepreneurs and innovators have launched close to a million apps to meet consumer demand.

(7) The Internet and innovative IP-based services have the power to address critical policy issues facing California and the nation including new telemedicine initiatives to address health care access and affordability, educational tools to improve opportunity and success, IP-based energy solutions to promote conservation and efficiency, and improved Internet access to support rural economic development and sustainability.

(b) It is the intent of this act to reaffirm California's current policy of regulating Internet-based services only as specified by the Legislature and thereby achieve both of the following:

(1) Preserve the future of the Internet by encouraging continued investment and technological advances and supporting continued consumer choice and access to innovative services that benefit California.

(2) Ensure a vibrant and competitive open Internet that allows California's technology businesses to continue to flourish and contribute to economic development throughout the state.

SEC. 2. Section 239 is added to the Public Utilities Code, to

read:

239. (a) *(1)* "Voice over Internet Protocol" or "VoIP" means voice communications service that does all of the following:

~~(1)~~

(A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from or terminates at the user's location in Internet Protocol or a successor protocol.

~~(2)~~

(B) Requires a broadband connection from the user's location.

~~(3)~~

(C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(2) A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

SEC. 3. Section 710 is added to the Public Utilities Code, to read:

710. (a) The commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as ~~authorized~~ *required or expressly delegated* by federal law ~~and~~ *or* expressly directed to do so by statute or as set forth in subdivision (c). *In the event of a requirement or a delegation referred to above, nothing in this section expands the commission's jurisdiction beyond existing state law.*

(b) No department, agency, commission, or political subdivision of the state shall enact, adopt, or enforce ~~, either directly or indirectly,~~ any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates ~~or has the effect of regulating~~ VoIP or other IP enabled service, unless ~~authorized~~ *required or expressly delegated* by federal law ~~and~~ *or* expressly authorized by statute or pursuant to subdivision (c). *In the event of a requirement or a delegation referred to above, nothing in this section expands the commission's jurisdiction beyond existing state law.*

(c) Nothing in this section affects or supersedes any of the following:

(1) The Emergency Telephone Users Surcharge Law (Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code) and the state's universal service programs (Section

285).

(2) The Digital Infrastructure and Video Competition Act of 2006 (Division 2.5 (commencing with Section 5800)) or a franchise granted by a local franchising entity, as those terms are defined in Section 5830.

(3) The commission's authority to implement and enforce Sections 251 and 252 of the federal Communications Act of 1934, as amended (47 U.S.C. Secs. 251 and 252).

(4) The commission's authority to require data and other information pursuant to Section 716.

(5) The commission's authority to address or affect the resolution of disputes regarding intercarrier compensation, including for the exchange of traffic that originated, terminated, or was translated at any point into Internet Protocol format.

(6) The commission's authority to enforce existing requirements regarding backup power systems established in Decision 10-01-026, adopted pursuant to Section 2892.1.

(d) This section does not affect the enforcement of any state or federal criminal or civil law or any local ordinances of general applicability, including, but not limited to, consumer protection and unfair or deceptive trade practice laws or ordinances, that apply to the conduct of business *, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and local utility user taxes* .

(e) This section does not affect any existing regulation of, or existing commission authority over, ~~traditional telephone service through a landline connection~~ *non-VoIP and other non-IP enabled wireline or wireless service* , including regulations governing universal service and the offering of basic service and lifeline service.

(f) This section does not limit the commission's ability to monitor and discuss VoIP services, including responding informally to customer complaints.

(g) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.