

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 18, 2012

To: The Commission
(Meeting of May 24, 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 service.**
As amended: April 26, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: NONE

SUMMARY OF BILL

SB 1161 would prohibit the California Public Utilities Commission (CPUC), as well as any department, agency, commission, or political subdivision of the state, from regulating, or taking action that has the effect of regulating, Voice over Internet Protocol (VoIP) and Internet Protocol (IP) enabled service, unless expressly provided otherwise by statute.

The bill exempts the following from this prohibition:

- The Emergency Telephone Users Surcharge Law, which requires interconnected VoIP providers to collect and remit 911 surcharges (Rev and Tax Code 41001);
- The state's universal service programs (Public Utilities Code section 285);
- The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) (Public Utilities Code section 5800 et seq.);
- The CPUC's authority to implement and enforce sections 251 and 252 of the federal 1934 Communications Act;
- The CPUC's authority to require data and other information pursuant to Public Utilities Code section 716 (for purposes of analysis of certain forbearance petitions before the FCC);

- The CPUC's authority to address resolution of disputes regarding inter-carrier compensation;
- The enforcement of criminal or civil laws of general applicability, including unfair or deceptive trade practices; and
- Any existing regulation of, or existing CPUC authority over, traditional telephone service through a landline connection, including regulations governing universal service and the offering of basic service and line-line service.

The bill would prohibit the CPUC from imposing any new regulations on the provision of such services unless expressly authorized by federal law and state statute.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

SB 1161's carve-out from regulation for interconnected VoIP providers, in two critical ways, would be at odds with the CPUC's historical constitutional charge to regulate utilities. First, the CPUC's existing broad and sweeping jurisdiction over utilities would be limited, relevant to VoIP service providers, to only that authority the Legislature delegates to the agency. While the Legislature has the authority under the California Constitution to limit the CPUC's jurisdiction in this manner, it is an unusual step, and would significantly constrain the CPUC's ability to respond to problems as they arise.

Second, the carve-out would be inconsistent with both federal and state statutory policies to treat voice service providers in a manner that is neutral to the technology employed in delivering service. It would continue California's inconsistent policy of regulating voice provisioned via traditional telephone technologies but not regulating voice services provided via Internet Protocol. By exempting VoIP service providers from future CPUC regulation, while maintaining the CPUC's authority to regulate service providers using other technologies, the VoIP providers arguably would continue to have an advantage in the telecommunications marketplace.

Furthermore, the bill in its current form does not fully carry out the author's stated intent not to affect existing CPUC authority over traditional telephone services, nor does it exempt Carrier of Last Resort (COLR) requirements from the bill's prohibition on regulation of interconnected VoIP services. The amendments proposed below would ensure that the bill does in fact comport with the author's stated intent.

SUMMARY OF SUGGESTED AMENDMENTS

- 1. Amendments to ensure author's stated intent not to impact CPUC jurisdiction over non-IP enabled services and providers (i.e. traditional wireline and wireless service) and not to impact the CPUC's explicit authority over interconnected VoIP service and providers, and informal**

complaint processes regarding Interconnected VoIP service. (Changes written in red).

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.

(8) It is the intent of the Legislature that this act does not affect any existing laws or existing commission regulations, decisions, rules, or orders, or any existing regulation of, or commission authority over, non IP-enabled wireline or wireless service.

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

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

(3) 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.

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using *existing* Internet Protocol, or any successor ~~protocol~~ *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 ~~service providers services~~ *services* except as *authorized by federal law* ~~and or~~ expressly directed to do so by statute or as set forth in subdivision (c).

(b) No department, agency, commission, or political subdivision of the state shall enact ~~or 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 by federal law* ~~and or~~ expressly authorized by statute or pursuant to subdivision (c), (d) and (e).

(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 enforcement of criminal or civil laws of general applicability, including unfair or deceptive trade practice laws, that apply to the conduct of business.~~

~~(6) The commission's authority regarding back-up power pursuant to Public Utilities Code Section 2892.1.~~

~~(7) The commission's authority to enforce federal laws and regulations.~~

~~(8) The commission's authority to require a telephone service provider that receives a subsidy or grant under one or more of the public purpose programs including LifeLine (formerly known as the Universal Lifeline Telephone Service or ULTS), the California High-Cost Fund A (CHCF-A), California High-Cost Fund B (CHCF-B), the California Advanced Services Fund (CASF), the California Teleconnect Fund (CTF), and the Deaf and Disabled Telecommunications Program (DDTP) authorized at PU Code Sections 270 et seq., to comply with all laws and regulations governing these programs.~~

~~(9) The commission's authority to require any provider of voice communications services, including, but not limited to, local exchange carriers, interexchange carriers, mobile telephony service providers, and providers of interconnected Voice over Internet Protocol (VoIP) service to timely provide all data and other information requested by the commission. Nothing in this bill shall limit the commission's authority to investigate and obtain data, documents and information relating to the ownership or operation of any wire, conduit, or technology used for the transport of telecommunications or other electronic services in California.~~

(10) The commission's authority to require a voice service provider receiving high cost support via the California High-Cost Fund A (CHCF-A), California High-Cost Fund B (CHCF-B) to serve as a carrier of last resort.

(11) The commission's authority over a service that (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology and was determined to be a "telecommunications service" by the Federal Communications Commission in *In the Matter of Petition for Declaratory Ruling that AT&T's Phone to Phone IP Telephony Service are Exempt from Access Charges*; 19 FCC Rcd 7457 (2004).

(12) Any existing regulation, decision, order, rule or standard from any department, agency, commission, or political subdivision of the state applicable to non-IP enabled wireline or wireless service

(13) Any existing regulation, decision, order, rule or standard from any department, agency, commission, or political subdivision of the state applicable to IP-enabled service.

(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.

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

(f) This section does not affect the ability of the commission to respond to, and to assist in the resolution of, informal consumer complaints to the commission regarding VoIP services.

2. Strongly Recommended Amendments to add further exceptions and clarifications

- Amendment to permit the CPUC to monitor and oversee the use of telephone numbers by IP-enabled services providers where such authority is delegated by the FCC. *[If SB 1161 is amended to permit the CPUC to enforce federal rules (Tier 1 Amendment proposed for Sec 3, Section 710 (c)(7) of the bill) then this amendment would not be needed.]*
- Amendment to permit the CPUC to hear and resolve formal consumer complaints regarding VoIP service providers which operate under a CPCN.
- Amendment to require IP-enabled services providers to obtain CPUC certification or registration to operate in California if the CPUC determines such certification or

registration is necessary to ensure the financial and technical soundness of such service operators and prevent fraudulent actors from operating in California.

- Amendment to state that if a VoIP service provider currently operates under a CPCN or requests and is granted a CPCN, the VoIP service provided by the provider, as well as the provider, shall be subject to California law, rules, and regulations that apply to non-IP enabled services of certificated telephone corporations and to such certificated telephone corporations, including the requirement to pay user fees.
- Amendment to permit the CPUC to regulate intrastate retail and wholesale special access IP-enabled services. [Special access services are dedicated/private line non-switched telecommunications services, usually broadband lines. In the retail, enterprise market the lines are leased by businesses and large institutions. In the wholesale market, wireless carriers lease these dedicated special access lines to provide backhaul transport functions from the tower to the PSTN or Internet. In many areas of California these markets are not competitive so there is a need for continued CPUC oversight.]
- Amendments to clarify whether the bill would impact CPUC authority over the infrastructure laws and regulations noted below:
 - Compliance with the Statewide Plan regarding the undergrounding of all future electric and communication distribution facilities required by PU Code Sec. 320.
 - CEQA review and compliance requirements.
 - Laws and regulations impacting pole attachments, rights of way and easements.

DIVISION ANALYSIS (Communications Division and Legal Division)

As noted above, SB 1161 would prohibit CPUC regulation of interconnected VoIP services or other IP-enabled services with certain exceptions. The exceptions listed in the bill are already codified in either California or federal statutes. For purposes of this analysis, we will be addressing only “interconnected VoIP” service providers, that is, those service providers that connect with the Public Switched Telephone Network (PSTN). Pursuant to an FCC order issued in 2004, the *Vonage Decision*, the states, including California, are preempted from regulating non-interconnected VoIP service providers.

Summary of the Bill as of April 26, 2012

SB 1161 includes Legislative findings 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 the CPUC, with certain exceptions, from exercising regulatory jurisdiction or control over VoIP and IP-enabled services except as authorized by federal law and expressly directed to do so by state statute.

SB 1161 would prohibit, 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 or has the effect of regulating Voice over Internet Protocol (VoIP) or other IP-enabled service, unless authorized by federal law and expressly authorized by state statute.

The exceptions 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 authority to require interconnected VoIP providers to collect universal service program surcharges (*PU Code Section 285*).
- 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)*).
- 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*).
- 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*).
- 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 bill as amended April 26 also states that it 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 bill as amended April 26 also states that it does not affect any existing regulation of, or existing CPUC authority over, traditional telephone service through

a landline connection, including regulations governing universal service and the offering of basic service and lifeline service.

Snapshot of Existing CPUC Regulation of VoIP Providers

A snapshot of the existing regulatory framework for VoIP in California would show that there is no “regulatory framework” for VoIP. Staff believes that the CPUC clearly has jurisdiction over most VoIP service providers because they fit the definition of a “public utility” and a “telephone corporation” under Public Utilities (P.U.) Code Sections 216 and 234, respectively. However, the CPUC has never declared interconnected VoIP service providers to be telephone corporations. In 2006, the CPUC declared its intent to refrain from regulating VoIP at that time, choosing to wait for further FCC action. Since then, the CPUC has spoken officially in only a few discreet instances on the subject of VoIP service providers.

In 2000, the CPUC opened a rulemaking, R.04-12-007, to determine what, if any, regulatory framework should be applied to VoIP. In that OIR, the CPUC tentatively concluded that interconnected VoIP service providers were public utilities offering a telephone service. However, in D.06-06-010, the CPUC closed the OIR, finding that, in its 2004 Vonage Order, the FCC had indicated that it was charged with the role of determining the regulatory framework for VoIP.¹ In reflecting on the FCC’s action in the Vonage Order, the CPUC stated: “[W]e conclude that it is premature for us to assess what our regulatory role over VoIP will be and to address issues raised in this investigation.” (D.06-06-010, at p.3.)

Further, the CPUC also denied requests by the Division of Ratepayer Advocates (DRA) and the Utility Reform Network (TURN) to address consumer protection requirements for VoIP. However, the CPUC stated that it was tracking VoIP complaints and if VoIP consumer protection issues became a problem, the CPUC could reassess this determination.

As stated above, there are only a few areas in which the CPUC has explicitly applied any type of requirements to VoIP. In the back-up power decision, the CPUC adopted consumer education requirements regarding back-up power for telephone service and extended this requirement to facilities-based VoIP service providers (D.10-01-026). In that case, the statute directing the CPUC to investigate back-up power requirements for telephone service was interpreted by the CPUC to apply to VoIP. (See D.10-01-026).

The CPUC also discussed the role of VoIP service providers in its rulemaking which examined whether the CPUC should impose on VoIP service providers the obligation to collect and remit surcharges to support the CPUC’s public purpose programs. (R.11-01-

¹ Because this memo addresses state law, it does not analyze the preemption issues. However, it should be noted that the FCC did not preempt all state regulation of VoIP in the *Vonage Order*. As explained later in the Eighth Circuit Court of Appeals decision, which upheld the *Vonage Order*, preemption only applies where VoIP carriers cannot determine if their traffic is interstate or intrastate (which generally applies to nomadic VoIP). (*Minnesota PUC v. FCC* (8th Cir. 2007) 483 F.3d 570, 583.)

008.²) In R.11-01-008, the CPUC tentatively concluded that VoIP service providers are telephone corporations for the purposes of collecting and remitting public purpose program surcharges under relevant sections of the Public Utilities Code. However, that rulemaking was put on hold after the Legislature enacted legislation requiring the CPUC to “require interconnected VoIP providers to collect and remit surcharges on their California intrastate revenues in support of” the CPUC’s public purpose program funds. (PU Code Section 285(c).)

Despite this hesitancy on the part of the CPUC to deem VoIP providers to be “telephone corporations”, the CPUC has exercised some regulatory authority over VoIP providers. For example, some carriers who provide VoIP service hold Certificates of Public Convenience and Necessity (CPCNs). Among those providers are carriers such as Time Warner and Comcast, both of which obtained their CPCNs when they first began to offer two-way telephony over their upgraded cable facilities, and then subsequently, migrated their customers to VoIP service. In so doing, the two companies notified the CPUC of their intent, but did not surrender, nor did the CPUC rescind, the CPCNs issued to Time Warner and Comcast. More recently, a CPCN was granted for a new entity that offers both VoIP service and some form of “traditional wireline” service.³ This carrier voluntarily applied for a CPCN, notwithstanding the fact that the CPUC has not exercised jurisdiction over VoIP service providers as a class.

We presume the VoIP service providers seek to obtain a CPCN because of the benefits it affords the holder. Specifically, a CPCN enables the holder, pursuant to § 251(a) of the federal Telecommunications Act of 1996, to interconnect with other service providers so that the VoIP provider’s traffic is properly terminated on the network of other service providers. A prerequisite for interconnection is a license to operate issued by one or more state commissions. In addition, by holding a CPCN, a VoIP service provider can obtain access to telephone numbers from the North American Numbering Plan Administrator (NANPA). To be eligible to obtain numbers, a provider must operate (or lease) its own facilities, must have a state license to operate, and must have an interconnection agreement in place with at least one other service provider. Further, a CPCN is a means to get access to utility-owned poles and to rights-of-way, although it is not the only means to obtain such access.

In addition, both AT&T and Verizon offer VoIP services in connection with their respective video offerings, U-Verse and FIOS, respectively. Both companies have obtained a statewide franchise to offer video service, but the franchise is authorized only for provision of video service, and does not confer explicit authority to offer telephone service.⁴ Both AT&T and Verizon offer VoIP separately and as part of a

² Issued January 13, 2011.

³ See decision granting a CPCN to NobelBiz VoIP Services, issued on April 14, 2011, at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/133758.htm.

⁴ See, Pub. Util. Code §§ 5800 et. seq, *The Digital Infrastructure and Video Competition Act of 2006*,, and specifically, § 5830(f), “Franchise means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution,

package of services to their U-Verse and FIOS customers, and the CPUC to date has not exercised jurisdiction over these VoIP services.

Consequently, up to now, the CPUC has not regulated VoIP services even where service providers hold CPCNs, even though staff believes the CPUC has such authority. Pursuant to PU Code Sec. 285, the CPUC now requires interconnected VoIP service providers to collect and remit surcharges, assessed against their revenues from intrastate services, to support the CPUC's public purpose programs. Certificated providers, such as AT&T, Verizon, Cox, Comcast and TWC remit surcharges under their current authority, whereas, non-certificated providers register as Digital Voice Service (DVS) providers and remit via their registration. Some DVS registered VoIP service providers are collecting and remitting surcharge amounts, others are reporting that their intrastate revenues are "0" and accordingly they do not remit any amount, and still others are not reporting to the CPUC at all.⁵

Regarding the CPUC user fee, currently, VoIP providers with CPCN's do not consistently remit the user fee on their VoIP revenues. Should SB 1161 be enacted without amendment, the CPUC's ability to compel interconnected VoIP service providers with CPCNs to collect and remit user fees on their VoIP revenues could be challenged.

In addition, the CPUC has safety jurisdiction for communications overhead and underground facilities, even though VoIP services may be provided over such lines. It is unclear whether SB 1161 in its current form would prevent the CPUC from enforcing its rules on the basis of a claim that facilities transmitting IP-enabled services are not subject to regulations although the establishment of the facilities or access rights are based upon regulatory authority and/or subject to General Orders and/or are offered via regulatory tariffs. For safety reasons the CPUC should continue to be able to oversee the placing, and maintenance of, lines on poles; the undergrounding of lines per Public Utilities Code Sec. 320; and the placement of wireless facilities. The CPUC does not have jurisdiction over emergency notification systems or the operation of the 9-1-1 system. Utilities offering services for such operations under existing tariffs would continue under CPUC jurisdiction, however the transition to IP-enabled systems could possibly undermine CPUC authority to review and tariff new IP-enabled offerings for 9-1-1 service provisioning.

Except requiring facilities-based interconnected VoIP providers to educate customers about the need for back-up power, the CPUC has not applied any consumer protection rules to VoIP service providers and in one example, where a consumer brought a slamming complaint against a VoIP provider to the CPUC, the CPUC dismissed the

contract, certificate, agreement, or otherwise, that authorizes the construction and operation of any network in the right-of-way capable of providing *video service* to subscribers." [Added emphasis.]

⁵ A review of Communications Division records on May 18, 2012, for October 2011 thru March 2012 show 28 Digital Voice Service (DVS) registered providers reporting and paying surcharges. In addition, 6 DVS providers have reported "0" intrastate revenues for all the months in the above stated time period, and 36 DVS providers have not reported. This totals 70 active registered VOIP providers. The DVS category represents those VoIP service providers that are not already certificated.

complaint. The FCC has adopted slamming cramming rules. However to date the FCC has not applied its slamming rules to VoIP service providers, and recently the FCC explicitly declined to apply its cramming rules to VoIP service providers.

Although the CPUC has not applied consumer protections to VoIP carriers in any decision except for the back-up power education requirement, the CPUC's Consumer Affairs Branch (CAB) does try to assist consumers with complaints on an informal basis, particularly where the CPUC has other regulatory authority over the carrier. CAB processes complaints as follows:

Receipt of an informal inquiry or complaint (not docketed) regarding a telephone service initially involves a representative entering relevant information into the CPUC's database and making a determination if the consumer complainant can be assisted under the CPUC's rules. Normally, consumer complaints are forwarded to the service provider for the company's response regarding the consumer's allegations, and the company's compliance with CPUC rules. However, because the CPUC has not adopted any policies or rules specific to VoIP providers, or deemed them to be telephone corporations, CAB may direct a complainant to the FCC, the Federal Trade Commission (FTC), or the California Attorney General (AG), although not all of these agencies are known to have taken up consumer complaints against VoIP providers.

Depending upon the nature of a consumer's complaint regarding a VoIP service provider, whether the provider holds a CPCN or not, CAB will nonetheless enter the information into the database and forward the complaint to the service provider. In such cases, the service provider may respond with a disposition of the complaint, or may reply that the VoIP issue is beyond CPUC jurisdiction. Because such complaints are considered "informal" matters, the CAB representative has no recourse to take further action. Further, because the CPUC has not applied consumer protection rules to VoIP services, a matter that otherwise would be addressed in a "formal" (docketed) complaint, instead would ordinarily be denied.

The CPUC does have the authority to apply consumer protections to VoIP services, but needs to first modify its 2006 decision. PU Code Section 1708 requires the CPUC to provide parties to a proceeding notice and the opportunity to be heard before the CPUC may modify a final order resulting from that proceeding.

Currently, the CPUC has several open dockets in which parties have raised the question of whether CPUC rules or policies should be extended to VoIP service providers. Prominent among those dockets are the following:

- Service Quality Proceeding, R.11-12-001;
- California High Cost Fund B Proceeding, R.09-06-019; and
- Lifeline Proceeding, R.11-03-013.

Enactment of SB 1161 could affect the CPUC's inquiries in these dockets, though the CPUC could evaluate the impact of the bill on open proceedings once the law is in final form.

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 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 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 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 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;⁶
- What would be the scope of the registration authority;

⁶ 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, if anything, would VoIP providers need to show to become registered; and
- 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 is pending consideration in the Senate Appropriations Committee on May 24th.

SUPPORT/OPPOSITION

Support:

TechAmerica (sponsor)
TechNet (sponsor)
Silicon Valley Leadership Group (sponsor)
American G.I. Form of California
Appallicious, LLC
Asian Business Association
Asian Pacific Islander American Public Affairs Assn. - Southern
CA Regional Headquarters
AT&T
Brotherhood Crusade
California Asian Pacific Chamber of Commerce
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 State Association of Electrical Workers
California State Conference of the National Association for the
Advancement of Colored People
CALinnovates
Cambodian Association of America
Charter Communications
Cisco Systems, Inc.
Coalition of California Utility Employees
Comcast Communications
Consejo de Federaciones Mexicanas en Norteamérica
Corporation for Education Network Initiatives in California
Drumbi, Inc.
Frontier Communications

Great Valley Center
Inland Empire Economic Partnership
Jobblehead
La Maestra Community Health Centers
Microsoft
Mobile Future
Orange County Business Council
Portal A
QUALCOMM
Self-Help for the Elderly
South Bay Association of Chambers of Commerce
Telecom Council of Silicon Valley
Time Warner Cable
United Cambodian Community
United States Hispanic Chamber of Commerce
Verizon
Voice on the Net Coalition
World Institute on Disability

Oppose:

AARP California
African American Lutheran Association
Allen Chapel African Methodist Episcopal Church
AnewAmerica Community Corporation
Asian American Business Women Association
BLU Educational Services
Brightline Defense Project
California Broadband Policy Network
Center for Accessible Technology
Center for Media Justice
Central City SRO Collaborative
Communications Workers of America District 9, AFL-CIO
Congregations Organized for Prophetic Engagement
Consumer Federation of California
Consumers First, Inc., concerns
Consumers Union
Davis Media Access
Division of Ratepayer Advocates (unless amended)
El Concilio of San Mateo County
Faith Temple Apostolic Church
Greater Light Community Church
Hmong American Political Association
Inland Congregations United for Change
Inland Empire Concerned African American Churches
Imani Temple Church

Knotts Family Agency
Media Alliance
Mendocino County Board of Supervisors
National Hispanic Media Coalition
Parents and Communities Engaged for Education
Privacy Rights Clearinghouse
Public Counsel Law Center
Santa Clara University School of Law
Talented and Gifted in the Inland Empire
Tenderloin Neighborhood Development Corporation
The Greenlining Institute
The Utility Reform Network
Utility Consumers' Action Network
West Angeles Community Development Corporation
Young Visionaries

STAFF CONTACTS

Lynn Sadler, Director-OGA (916) 327-3277
Nick Zanjani, Legislative Liaison-OGA (916) 327-3277

ls1@cpuc.ca.gov
nkz@cpuc.ca.gov

BILL LANGUAGE

BILL NUMBER: SB 1161 AMENDED
BILL TEXT

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 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 prohibit the commission from regulating Voice over Internet Protocol (VoIP) and Internet Protocol enabled service (IP enabled service), as defined, ~~providers unless~~ *except as authorized by federal law and 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 by federal law and 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 and does not affect the enforcement of any state or federal criminal law or local ordinances of general applicability that apply to the conduct of business.*

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) "Voice over Internet Protocol" or "VoIP" means voice communications service that does all of the following:

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

(3) 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.

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using *existing* Internet Protocol, or any successor ~~protocol~~ *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 ~~service providers~~ *services* except as *authorized by federal law and* expressly directed to do so by statute or as set forth in subdivision (c).

(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 by federal law and* expressly authorized by statute or pursuant to subdivision (c).

(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 enforcement of criminal or civil laws of general applicability, including unfair or deceptive trade practice laws, that apply to the conduct of business.~~

(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.*

(e) *This section does not affect any existing regulation of, or existing commission authority over, traditional telephone service through a landline connection, including regulations governing universal service and the offering of basic service and lifeline service.*