

STATE OF CALIFORNIA

Public Utilities Commission  
Fresno

**M e m o r a n d u m**

**Date:** May 8, 2012

**To:** The Commission  
(Meeting of May 10, 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 *new* regulations on the provision of such services unless expressly authorized by federal law and state statute.

The Communications Division asserts that no current CPUC regulatory activity or programs regarding VoIP or other IP-enabled services would be impacted by this bill. (Although the bill would prevent the CPUC from adopting service quality regulations for IP-enabled services in the pending OIR proceeding on service quality, as recommended by some parties and also from granting the CPSP motion. The CPSP motion asks the ALJ to expand the pending OIR proceeding on VoIP collection of universal service surcharges to address whether the CPUC should impose any telephone corporation consumer protection rules, such as cramming, on VoIP providers.)

The Legal Division, however, asserts that the bill is so broadly written that it would impede the CPUC's ability to continue to regulate non-IP wireline and wireless service. The Legal Division further states that the bill prevents the CPUC from acting quickly to address problems that may arise regarding the provision of IP-enabled services but that are not addressed in statute. They state the CPUC is the expert agency and the issues are often too complex for statutory resolution. They further assert that the bill would not let the CPUC even monitor the provision of VoIP services in California and make recommendations or to enforce federal regulations on VoIP services.

This difference in opinion within the CPUC does seem to support concerns that many of the provisions of this bill would ultimately require litigation to resolve.

## **SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION**

**Legal Division recommends a position of 'Oppose.'**

**Communications Division recommends a position of 'Oppose Unless Amended.'**

Legal Division recommends that the CPUC oppose this bill because it could de-regulate providers that are not, at present, considered "VoIP" providers. They state it is difficult, if not impossible, to develop a complete list of future situations which should not be subject to the statute's prohibitions. Further, they state that if all of the exceptions needed to preserve the CPUC's ability to administer existing programs were included, the exceptions arguably would swallow the rule. Especially, Legal Division asserts the

CPUC, as the Constitutional agency with the expertise in telecommunications, should retain flexibility to determine whether and how to regulate VoIP and IP-enabled services.

In addition, Legal Division asserts the proposed prohibition is unnecessary. Until now, the CPUC has refrained from regulating VoIP, except in very narrow circumstances, or pursuant to federal directive. They assert it is not in the public interest to hamstring the CPUC so it cannot act if a need arises, for example, to protect consumers or to ensure service quality.

Moreover Legal Division asserts state commissions are best positioned to identify needs for imposing certain obligations on VoIP and IP-enabled services. For example, the FCC has declared that application of state universal service contribution requirements to interconnected VoIP providers, if consistent with federal rules, does not conflict with federal policies, and in fact, could promote them.

Further, Legal Division notes a great disparity in the bill between the treatment of carriers and the treatment of customers. Enactment of this bill would mean that the CPUC can hear and resolve complaints from carriers, but not from customers, thereby inhibiting one of the CPUC's primary functions to protect ratepayers.

Finally, Legal Division expresses concern that the bill will result in extensive litigation over the terms of the prohibitions and exceptions.

As one example, the bill contains an internal inconsistency. It defines "VoIP": "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." That would appear to mean that if either end of the call is in IP (or VoIP), the "service" would be exempt from regulation. As drafted, the CPUC could not regulate a service where the traffic originates or terminates in IP.

At the same time, SB 1161 would exempt from the regulatory prohibition the following: "Any existing regulation of or existing commission authority over, traditional telephone service through a landline connection ....".

So, if a telephone call originates "through a landline connection", but terminates in IP, would the CPUC be able to regulate that service or not? The attempt to preserve CPUC jurisdiction over the set of wires used to provide traditional "landline" service, while prohibiting the CPUC from regulating VoIP service delivered over that same set of wires would lead to a state of great uncertainty as to what the CPUC could regulate and could not regulate.

**Although the Legal Division recommends an outright 'Oppose' position, the Communications Division recommends 'Oppose Unless Amended' as follows:**

- 1) The bill as amended April 26, would retain the CPUC's current general authority over the traditional services provided by telephone corporations. The words "service providers" at page 5, line 3, was amended to read "services". However, the new proposed subsection 710 (e) should be amended to include wireless service (see underlined:

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

Furthermore the language in proposed sec. 710 (b) highlighted below must be deleted. This section as written could prevent adoption of new regulations on non IP-enabled services and enforcement of existing regulations of non-IP-enabled services. The carriers easily could argue that such rule or enforcement of a rule impacting non IP-enabled services indirectly impacts or has the effect of regulating its IP-enabled services. The result would be endless disputes with industry.

*710 "(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* expressly authorized by statute or pursuant to subdivision (c)."*

- 2) The definition of VoIP in the bill as amended April 26, was also amended with the intent to ensure that it did not prohibit CPUC regulation of a traditional service where the transmission utilizes some IP in the middle of the transmission only. The FCC has stated that this type of service is a "telecommunications service" and is still subject to common carrier regulation. However the amendment may not be adequate. Staff recommends the addition of further language to make this clear. For example, the language below, which **reflects the FCC's ruling *In the Matter of Petition for Declaratory Ruling that AT&T's Phone to Phone IP Telephony Services are Exempt from Access Charges* 19 FCC Rcd 7457 (2004), the so-called IP-in-the-Middle decision**, could be added to the bill as an Exception:

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.

- 3) The bill must be amended to permit the CPUC to enforce federal laws and regulations impacting IP-enabled services where authorized to do so by FCC direction. Some examples:
- Wireless Tower Siting regulations adopted by the FCC are enforced by the CPUC (and local authorities as delegated by the CPUC). LTE wireless service is an IP-enabled service. The CPUC should continue to have the authority to enforce federal tower siting rules even in cases where the wireless service is LTE.
  - The FCC is expecting the state commissions to implement and enforce many of the FCC's newly-adopted regulations which impose certain requirements on IP-enabled service and other broadband providers who receive federal Universal Service support.
  - The CPUC currently can enforce the FCC's anti-slamming regulations. If the FCC extends its anti-slamming rules to IP-enabled service providers the CPUC should be able to enforce these federal regulations to protect California consumers. Consumers should not have to call the FCC for recourse in dealing with an unlawful act just because the technology utilized is IP-enabled.
- 4) The bill should be amended to permit the CPUC to monitor the provision of VoIP service, to collect data from interconnected VoIP service providers pertaining to the provision of VoIP services, and to make recommendations and reports to the Legislature regarding the provision of VoIP service. The provision should also require interconnected VoIP service providers to respond to CPUC data requests.

**The Communications Division recommends a Neutral position if the amendments above are adopted; except they also recommend OGA work with the author regarding some further suggested amendments, as noted below, which they believe are in the public interest.**

In addition to the four "must have" amendments listed above, CD staff also recommends additional exceptions to the bill's general prohibition of CPUC regulation of IP-enabled services unless directed by statute. These exceptions would help ensure that Californians continue to have access to safe, reliable, high quality communications service.

They recommend the bill be amended 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 market the lines are leased by businesses and other large institutions (enterprise market). In the wholesale market, wireless carriers lease these dedicated special access lines to provide backhaul

transport functions from the wireless tower to the PSTN or public Internet. Currently in many areas of California these markets are not in fact competitive so there is still a need for the CPUC to ensure that the rates and the terms and conditions of service are just, reasonable and non-discriminatory.

- To permit the CPUC to monitor and oversee administer the use of telephone numbers by IP-enabled services providers where such authority is delegated by the FCC. The CPUC should be able to address area code and numbering conservations issues as it does today, even if the telephone number is assigned to a line that uses internet protocol to deliver the call. It would be impractical and problematic to exempt telephone numbers of IP-enabled service providers and customers from such rules. *[If the SB 1161 is amended to permit the CPUC to enforce federal rules then this amendment would not be needed.]*
- To permit the CPUC to hear and resolve informal consumer complaints regarding VoIP service providers. A California consumer should not have to seek redress from Washington D.C. for problems with an IP-services provider.
- To require IP-enabled services providers to obtain CPUC certification to operate in California if the CPUC determines such certification is necessary to ensure the financial and technical soundness of such service operators and prevent fraudulent actors from operating in California.
- Some technical amendments are also suggested. On page 3, line 25, add the word “interconnected” before the phrase “Voice Over Internet Protocol” and also before the term “VoIP”. There is VoIP service that does not interconnect with the PSTN (computer to computer via the public Internet) so the definition in the bill is really a definition of “interconnected VoIP”.

The bill should further be amended to clarify whether the bill would impact CPUC authority over the infrastructure laws and regulations noted below:

- 1) Compliance with the Statewide Plan regarding the undergrounding of all future electric and communication distribution facilities required by PU Code Sec.320;
- 2) CEQA review and compliance requirements;
- 3) Laws and regulations impacting pole attachments, rights of way and easements;  
and
- 4) Laws and regulations ensuring that California’s communications infrastructure is of high quality, safe, and reliable.

Staff also recommends that the Legislature may want to consider the impact of the bill on the California Technology Agency’s regulation of 9-1-1 and other emergency communications services.

Even with all these amendments, Legal Division continues to believe, however, that the sweep of SB 1161 is so broad that it could prevent the CPUC from acting in many areas not presently identified in either staff analysis.

If, on the other hand, the CPUC decides to take the position of 'Oppose Unless Amended', Legal Division agrees that the amendments to the bill that CD proposes in its Division Analysis would be necessary. In addition to those amendments, Legal Division would recommend exceptions for the following:

- The provision of E911 service in addition to the surcharge collection;
- Universal service program issues in addition to the surcharge collection;
- Pole attachments and rights-of-way;
- Construction of facilities and CEQA review;
- Service quality and outages;
- Local number portability;
- Authority to order disconnection for unlawful or criminal activity; and
- Discontinuance of telephone service.
- Enforcement for State consumer protection rules
- Enforcement for federal consumer protection rules that are delegated to state

## **DIVISION ANALYSIS (Communications and Legal Divisions)**

### **What is the Impact on Policy?**

There is no current problem addressed by SB 1161. Rather, the author and supporters of the bill apparently fear that the CPUC will impose unnecessary regulations on IP-enabled services if this bill is not enacted.

The author of the bill, Senator Padilla, asserts the bill will promote deployment of broadband services by providing regulatory certainty which will in turn incent continued private investment in the development and deployment of such services and related industries.

The author asserts the bill will incent new players to enter the market, thus promoting competition and lessening the need for regulation.

Regarding current policy, this bill is consistent with:

- 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)

Notwithstanding the exceptions contained in SB 1161, the scope of the bill is potentially sweeping. At first blush, it may appear that the intent of SB 1161 is to prohibit the CPUC from regulating so-called "nomadic" VoIP, which is the type of service provided in today's marketplace by Vonage (interconnected VoIP) and Skype (non-interconnected VoIP). However, in 2004, the FCC determined that, because there was no practical way to separate nomadic VoIP service into interstate and intrastate components for purposes of dual federal state jurisdiction, it would thwart federal law and policy to allow states to impose traditional telephone regulation on nomadic VoIP carriers. SB 1161, then, is about a much bigger market segment than that represented by Vonage and Skype.

Not only would SB 1161 prohibit the CPUC from adopting any provision "that regulates or has the effect of regulating VoIP," it would also prohibit any regulation of "other IP enabled service." SB 1161 defines "IP enabled service" as "any service, capability, functionality, or application using Internet Protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet Protocol format, regardless of whether the communication is voice, data, or video." Because virtually all communications service providers use IP at some point in their networks, SB 1161 could be interpreted strip the CPUC of jurisdiction over services that it now actively regulates.

Of paramount importance is the fact that it is not clear what "IP-enabled service" is intended to encompass. The FCC defines "interconnected VoIP" as follows: (1) The service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user's location; (3) the service requires IP-compatible customer premises equipment (CPE); and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. SB 1161's definition of "VoIP" is similar, requiring among other things "a broadband connection from the user's location." However, the definition of "IP enabled service" seems to go further and includes any IP service, capability, functionality, or application using IP that enables an end-user to send or receive a communication (voice, data, or video) in IP format.



At one end of the regulatory spectrum is what is referred to as “VoIP.” At the other end is traditional telephone service where IP may be used somewhere in the network. The FCC held in its “IP-in-the-Middle Order,” that the use of IP in a carrier’s network does not necessarily convert the carrier’s service to something other than a regulated telephone service. The FCC concluded that the service at issue in that case, AT&T’s “phone-to-phone” IP telephony service” was a “telecommunications service” as defined by the 1996 Telecommunications Act.

Accordingly, within the spectrum of “VoIP,” on the one hand, and “IP-in-the middle,” on the other hand, it is not clear what services, providers, and/or facilities would fall under the prohibitions of the statute. SB 1161 appears to limit the prohibition to cases where the “communication originates from or terminates at the user’s location in Internet Protocol or a successor protocol”. (See section 239(a)(1).) At the same time, the bill defines VoIP as permitting a user generally to receive a call from or to terminate a call on the public switched telephone network. This appears to mean that if a call originates from the customer of a VoIP provider but terminates with a customer of a traditional wireline provider, that transmission is exempt from CPUC regulation, notwithstanding the fact that one end of the communication is not VoIP. This illustrates the overbreadth of the prohibition. It also illustrates the ambiguity that would likely be the object of litigation.

Although the CPUC has to date refrained from regulating VoIP service providers as “telephone corporations,” this bill most likely would prohibit the CPUC from determining in the future whether consumer protections, regulatory fees (other than E911 fees and USF fees), service quality standards, or any other standards or rules should apply to VoIP. Moreover, some and possibly all of the CPUC’s current regulation of “telephone corporations” could be jeopardized or prohibited outright by this bill, to the extent that existing telephone corporations assert that they are offering telephone services using IP technology. Such current regulation includes the following:

- The provision of E911 service other than surcharge collection
- Universal service issues other than surcharge collection
- Special access and wholesale services
- Pole attachments and rights-of-way requirements
- Market entry and registration requirements
- Construction of facilities and CEQA review
- Service quality, including the effect of power outages on telephone service
- Consumer protections such as those contained in slamming and cramming statutes (Pub. Util. Code § 2889.5 and Pub. Util. Code § 2890); Caller ID

requirements (Pub. Util. Code § 2893); and automatic dialing device provisions (Pub. Util. Code § 2871 et seq.)

- Customer privacy rights (Pub. Util. Code § 2891 et seq.)
- Other General Order 168 protections
- Local number portability requirements
- Numbering administration
- The authority to order disconnections for unlawful or criminal activity under Business and Professions Code section 7099.10 and Tariff Rule 31
- A telephone corporation's decision to discontinue service to all of its customers or an entire class of customers (Pub. Util. Code § 2889.3)

The FCC and Congress have enacted rules and laws addressing some of the topics or programs listed above. For example, while SB 1161 would not necessarily undo the delegated authority over allocating and monitoring the use of phone numbers, it could complicate the ability of the state to enforce the FCC rules and to enforce equivalent state rules. The short time frame for producing the bill analysis has not allowed for an in-depth review of whether and to what extent SB 1161 may conflict either with delegated FCC authority, or with other state laws.

## **RELEVANT PENDING LITIGATION OR LEGAL ISSUES**

Legal Division staff asserts that the bill would prohibit local jurisdictions from regulating VoIP or IP-enabled services providers, including the ability impose local utility taxes on providers of telephone services. To the extent that those localities are collecting local utility taxes from VoIP or IP-enabled services providers, SB 1161 would void those local taxes. In addition, local governments retain police power pursuant to the California Constitution. The prohibition against any regulation, even by local subdivisions of the state, would conflict with the Constitutional authority that local governments today can exercise.

### **Other States:**

Although approximately 17 other states have enacted deregulatory statutes such as this, and deregulatory statutes are pending in 18 others, some of these have exceptions beyond what is proposed in this bill (e.g., consumer protection, rights-of-way issues).

### **Federal Regulation of VoIP Service Providers:**

The FCC has extended numerous "telecommunications services" requirements to VoIP, including:

- Rules requiring interconnected VoIP providers to provide customers access to E911 services (adopted 6/3/05)
- The Communications Assistance for Law Enforcement Act (CALEA) (requires providers to provision their services in such a way as to permit legal surveillance of VoIP users by law enforcement) (adopted 8/5/05)
- Contribution to federal universal service fund (adopted 6/27/06)
- Right of wholesale telecommunications carriers to interconnect under the 1996 Act, even if retail services are provided by VoIP (adopted 3/1/07)
- Compliance with federal customer proprietary network information (CPNI) laws (adopted 4/2/07)
- Disability access requirements (including TRS) (adopted 6/15/07)
- Requirement to pay FCC regulatory fees (adopted 8/6/07)
- Local number portability (LNP) requirements (adopted 11/8/07)
- Discontinuation of service requirements (e.g., notice to customers) applicable to non-dominant telecommunication carriers (adopted 5/13/09)
- Outage reporting requirements (adopted 5/13/11)
- Truth in Caller ID Act, applying “spoofing” prohibitions to VoIP,
- Currently, the FCC is also considering in a pending proceeding whether to impose anti-cramming laws on VoIP providers.

## **FISCAL IMPACT**

See below.

## **STATUS**

SB 1161 is pending consideration in the Senate Appropriations Committee on May 14<sup>th</sup>.

## **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](mailto:ls1@cpuc.ca.gov)  
[nkz@cpuc.ca.gov](mailto:nkz@cpuc.ca.gov)

**Preliminary Assessment of the  
Potential Fiscal Impacts of SB 1161  
by the CPUC's Legal Division  
May 8, 2012**

---

*CPUC User Fee*

Fiscal Impact: Over \$5.5 million dollars

The CPUC collects a user fee from telecommunications carriers who operate in California. The Commission determines annually the appropriate CPUC fee to be paid based on the telecommunications carrier's gross intrastate revenue excluding inter-carrier sales, equipment sales and directory advertising. The purpose of this fee is to finance the Commission's annual operating budget.

Currently, there is no rule in place that requires VoIP providers in California to pay these user fees. As such, the Commission can only count on funding from sources that are required to pay these fees. In 2011, AT&T California and Verizon paid \$5.56 million in user fees to the CPUC. AT&T and Verizon do not currently pay CPUC user fees from the VoIP lines they operate in California. Together, Verizon and AT&T operate over 10 million landline telephone service lines in California and about 700,000 VoIP lines.

Should SB 1161 pass, the Commission would be precluded from determining whether VoIP providers should pay CPUC user fees in light of the CPUC's consumer protection, reliability, and safety rules and jurisdiction over telephone lines. In addition, the CPUC would no longer receive user fees from the large telephone corporations in the state should they transition to VoIP carriers (which the Bill will allow them to do) because VoIP carriers would be exempt from CPUC regulation. Carriers may also claim an exemption as IP-enabled service. This will result in over \$5 million of lost revenue, not counting the revenue from other carriers that may transition to VoIP, which the State will have to make up for in order to keep the Commission operating.

---

*Utility Users Tax*

Fiscal Impact: \$69.5 million

The Utility User Tax (UTT) is a tax imposed by some California Cities and Counties on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including local, cell phone, and long distance), sanitation and cable television. The rate of the tax and the use of its revenues are determined by the local government which is collecting it.<sup>1</sup>

---

<sup>1</sup> Utility Users Tax Revenue and Tax Rate for the Fiscal Year Ending June 30, 2010, State Controller's Office, available at: [www.sco.ca.gov/Files-ARD-Local/LocRep/0910utilityuserstax.pdf](http://www.sco.ca.gov/Files-ARD-Local/LocRep/0910utilityuserstax.pdf).

SB 1161 would preclude local jurisdictions from collecting the UTT from VoIP providers and IP-enabled service providers in their jurisdictions. According to the California State Controller's Office, this Tax resulted in over \$1.8 Billion in revenue for California in FY 2010.<sup>2</sup> In 2008, the last year for which percentage data is reported, 21% of the total collected under this tax results from landline telephone revenue.<sup>3</sup> Using this percentage as a guide for the 2010 figure, this would equate to approximately \$386 million. It can be argued that VoIP subscribers, who account for about 18% of current landline subscribers,<sup>4</sup> would, therefore, equal to roughly \$69.5 million dollars in UTT revenue that would be lost for local governments should SB 1161 pass. This is a HUGE hit for California and the State will be asked to compensate for this loss of revenue that the Cities and Counties would suffer.

---

### *Collection of Property Taxes on Regulated Telephone Corporations*

Fiscal Impact: Unquantified at this time

Article 13, section 19, of the California Constitution orders the State Board of Equalization (BOE) to "assess and collect property taxes on regulated telephone corporations". Corporations with CPUC CPCNs (such as Competitive Local exchange carriers, and AT&T and Verizon through their statewide franchises, and common carriers as defined by the FCC) have been interpreted to be regulated telephone corporations. The BOE has explained its interpretation of regulated telephone companies in section 755.0110 of its guidelines.

**755.0110 Telephone Companies.** Under paragraph (2) of section 19 of article XIII of the California Constitution, the Board's assessment jurisdiction extends to all property owned or used by various types of public utility companies, including telephone companies that are regulated. The Board has interpreted the term "regulated" to mean telephone companies that are regulated by the California Public Utilities Commission (CPUC) as public utilities, or by a comparable federal commission or board, such as the Common Carrier Bureau of the Federal Communications Commission (FCC). If a regulated telephone company owns or leases property in the state, including a telephone reseller that has its own switching system in California, that property is subject to Board assessment.

The BOE evaluates each telephone company separately to determine for jurisdictional purposes whether it: (1) is regulated by the CPUC or the FCC, and (2) owns or leases property. The evaluation of each company as a separate entity is necessary in order to determine whether the jurisdictional criteria in section 19 have been met.

---

<sup>2</sup> *Id.*

<sup>3</sup> Utility Users Tax Facts, rev. Sept. 2008, available at: [www.californiacityfinance.com/UUTfacts08.pdf](http://www.californiacityfinance.com/UUTfacts08.pdf).

<sup>4</sup> FCC Form 477 data as of December 30, 2010. This figure does not include VoIP connections available via Cable Operators and may be underestimated.

If SB 1161 is enacted, as currently drafted, VoIP providers which are not deemed to be “regulated” by the CPUC or by the FCC would be exempt from California property taxes. At present, the status of VoIP providers is in question before the FCC. While the FCC has extended a number of regulations to VoIP providers, such as provision of 911 service, collection of universal service surcharges, etc., the FCC has not determined whether VoIP providers are telecommunications services providers under federal law. The fact that the FCC has to date not identified the regulatory status of VoIP providers may affect a BOE evaluation of whether a VoIP provider or a company that uses “IP-enabled” services would be “regulated” companies for purposes of Article 13, section 19.

In addition, incumbent telephone corporations, such as AT&T and Verizon, are common carriers under federal law, and as such, are entitled to interconnect with other telecommunications service providers for purposes of exchanging traffic. In addition, the incumbents hold certificates of public convenience and necessity (CPCNs) as telephone corporations from the CPUC. Pursuant to the CPUC's certification, the BOE can assess property taxes against the incumbents. In the event that SB 1161 passes, however, the incumbents could self-determine, without CPUC approval, that they are no longer telephone corporations under California law and deem themselves to be VoIP providers, and then to claim that as VoIP providers, pursuant to SB 1161, they are exempt from regulations that attach to telephone corporations. In that event, the BOE would no longer be able to rely on state regulation as the basis for collecting property taxes. And, as noted above, the basis for the BOE to conclude that VoIP providers are “regulated” by the FCC is currently in doubt, and may remain so in the future. Accordingly, the BOE could be promptly embroiled in litigation over the scope of California's authority to collect property taxes from any provider of telephone service that deems itself to be a VoIP or IP-enabled services provider.

The CPUC does not collect information from regulated telephone companies about the property taxes they pay, so we cannot at this time offer an estimate of the dollar amount of this potential fiscal impact.

---

*California Environmental Quality Act (CEQA)*

Fiscal Impact: \$300,000 – \$500,000 based on increased PYs dedicated to expand the scope of an existing Commission proceeding. Plus up to \$1 million in state court litigation costs.

Language was inserted into the latest version of SB 1161, amended April 26, 2012, which reads as follows:

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.



The new language added to the Bill creates great regulatory uncertainty. Specifically the proposed Bill language states that SB 1161 “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.” CEQA does not fall into any of these categories as it is not a matter of criminal law, a local ordinance, and it is subject to litigation whether CEQA is a law of general applicability that applies to the conduct of business. The CPUC’s orders and rules and the California Public Utilities Code are not “laws of general applicability” as interpreted by California courts. Thus, the CPUC’s CEQA rules applied to telephone corporations operating telephone lines would be the subject of a proceeding to determine whether SB 1161 displaces those rules as applied to VoIP and IP-enabled services.

This uncertainty would apply to existing regulation including the Commission’s determination of CEQA matters. While there is currently an existing proceeding to determine CEQA’s applicability to various telecommunications carriers, the issues that would arise as a result of SB1161 were never contemplated in the proceeding. This Bill would require the Commission to expand the scope of this rulemaking to include how to interpret whether the Commission has jurisdiction over CEQA for VoIP and IP-enabled services, not just how to apply that jurisdiction. We would be required to hold additional hearings, ask for additional rounds of comments, etc. This would result in far more PYs dedicated to this proceeding than originally envisioned.

Further, SB 1161 would push the responsibility to review CEQA impacts of proposed construction on the part of VoIP providers onto local jurisdictions. However, it can be argued that §710(b) of SB 1161 would also strip local jurisdictions of any authority over CEQA review of VoIP-related construction projects. This will, at best, cause delays to many construction projects. More likely, it will require increased litigation to decide who will oversee CEQA projects under what circumstances. Further, it will cause inconsistencies between the treatments of various types of technology that could be the subject of litigation. The Bill’s language that “[n]o 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)” creates a litigation issue over whether local jurisdictions are precluded from CEQA review of VoIP and IP-enabled service. This will result in increased costs to the state courts to handle this litigation. As part of their police powers, municipalities retain authority over use of the rights of way that would seem to conflict with SB 1161’s attempt to divest subdivisions of the state, including municipalities, from adopting or “either directly or indirectly” regulating VoIP or IP-enabled services.

Estimating conservatively, the cost for expanding this kind of proceeding would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff. For one year, this could cost \$300,000. Should the proceeding require additional time or people, it could increase to \$500,000 or more. State court litigation may also be \$1 million or more.

---

*CPUC Proceedings Generated by Current Bill Language*

Fiscal Impact: \$600,000 – \$1 million or more

Under the inserted language stated above, the Commission would face uncertainty as to how to interpret the Bill and, therefore, how to direct its rulemaking and policymaking. This will inevitably lead the Commission to undertake numerous rulemakings in order to determine the meaning of the Bill's language. The Commission would have to determine what existing rules will still apply to VoIP providers, or IP-enabled services, as operators of telephone lines, telephone corporations, interexchange services, or broadband providers and what new rules, if any, will be necessary. Some examples of this are as follows:

Traditional telephone service – Section 710(e) of the Bill states that “[t]he 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...” The term “traditional telephone service,” is not defined in the California Public Utilities Code (P.U. Code) and its meaning is, therefore, unclear. It can be argued that “traditional” service constitutes what is currently in use. Should current practices or technologies change, even slightly, the Commission could face regulatory uncertainty as to how to treat telephone services, even if they are not VoIP. For example, currently, calls are carried to the Public Switched Telephone Network (PSTN) via a special type of nonlinear pulse code modulation known as G.711. Then the call is carried over the PSTN using a 64 kbit/s channel called a Digital Signal 0 (DS0). As soon as a telephone service provider updated any part of this system, it may argue that its service is no longer “traditional” under the terms of this Bill. A rulemaking will need to be held in order for the Commission to determine what this term means and how to account for changes in technology.

Landline connection – The term mentioned in Section 710(e) of the Bill, “landline connection,” is also not defined in the P.U. Code. This also creates uncertainty as the Commission will not know how to interpret this term or what technologies can be assumed to use a “landline connection.” The P.U. Code authorizes the CPUC to regulate telephone lines (P.U. Code §233), defines telephone corporations as those who operate telephone lines (P.U. Code §234), and delegates to the CPUC the duty to regulate utilities to ensure that they operate in a manner to “promote the safety, health, comfort, and convenience of its patrons, employees, and the public” (P.U. Code §451). As with the above example, the Commission would have to open a formal proceeding to determine the meaning of the “landline connection” term and develop rules for what technology types are subject to it.

Estimating conservatively, the cost for these kinds of proceedings would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff for each proceeding. For one year, this could cost \$600,000. Should the proceeding require additional time or people, it could increase to \$1 million or more.

Further, these kinds of proceedings will inevitably carry with them intervenor compensation claims. It is not clear, however, how these claims would be paid or by whom. Should an ILEC, such as AT&T, transition to VoIP, it is unclear whether or not it will be liable to pay intervenor

compensation claims as outside parties make substantial contributions to the proceeding, leaving it to the State to make the intervening entity whole.

---

### *Proceeding to Determine the Commission's Jurisdiction*

Fiscal Impact: \$900,000 – \$1 million plus extensive intervenor compensation claims

SB 1161 would strip the Commission of its regulatory authority over VoIP service throughout the State. It does not make clear, however, how a company may transition from “Telephone Corporation,” which provides basic telephone service via a “landline connection” to a VoIP provider. Neither does this bill make clear what the Commission’s jurisdiction is during this transition. In light of this regulatory uncertainty over our jurisdiction, the CPUC will have to hold a proceeding to determine its role under SB 1161 with respect to those companies that are not VoIP providers and those that wish to become VoIP providers. This will require numerous PYs across many divisions of the CPUC including the ALJ Division, Communications, Executive, Legal, as well as the Department of Ratepayer Advocates and support staff. It will also entail a great deal of state resources as well beyond PYs including supplies, administrative costs, and travel.

Estimating conservatively, the cost for this kind of proceeding would include PYs for two Administrative Law Judges, one P.U. counsel position, three mid-level analysts, one high-level analyst, and two support staff. For one year, this could cost more than \$900,000 not including administrative costs or those associated with Executive division involvement. Should the proceeding require additional time or people, it could increase to \$2 million or more.

Further, this kind of proceeding will inevitably carry with it intervenor compensation claims. It is not clear, however, how these claims would be paid or by whom. Should an ILEC, such as AT&T, transition to VoIP, it is unclear whether or not they will be liable to pay intervenor compensation claims as outside parties make substantial contributions to the proceeding, leaving it to the State to make the intervening entity whole.

---

### *911 Services*

Fiscal Impact: \$0 – \$1 million or more

Currently, wireline providers have a duty to maintain their networks to assure that 911 service is available. There is an expectation that telephone line operators will use best efforts to bring their networks back online within 24 hours. Under SB 1161, the CPUC will be unable to develop rules to impose similar expectations on VoIP providers. There would be no requirements for VoIP providers to fix 911 outages in a timely manner. As a result, prolonged outages could occur and could result in loss of life, property, and other liabilities or damages that could cost the State millions of dollars and would require the courts to determine if the carriers are liable.

The CPUC at present retains the authority to develop rules regarding VoIP 911 service to protect consumers. P.U. Code §2872.5, for example, directed the CPUC to work with other state agencies to determine whether standardized notification systems and protocol should be utilized to facilitate notification of affected members of the public of local emergencies. In addition to this, P.U. Code §701 gives the Commission the discretion to “supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” This section may pertain to any action that the Commission may deem necessary in order to ensure public safety. SB 1161 would strip the CPUC of this authority as applied to VoIP and IP-enabled services, and render any similar actions already taken by the Commission void. This would leave the enforcement of 911 regulations to the FCC, which does not have knowledge of California’s specific needs. SB 1161 would create litigation issues as the extent to which the CPUC could file comments in FCC proceedings regarding VoIP or IP-enabled services, by limited CPUC data gathering analysis, and experience with applying 911 rules to all telephone line providers.

This Bill would have a significant impact on other California state agencies that depend on the reliability of the 911 network. These include, but are not limited to, Cal Fire, the California Highway Patrol, the California Emergency Management Act, local police departments, and various emergency service organizations. Should these agencies lose jurisdiction over VoIP providers, and IP-enabled services, it could mean increased costs for these agencies in order to ensure public safety and reliable 911 service. Other agencies would be put in a position where they cannot impose any rules on VoIP providers should SB 1161 pass. All agencies will be forced to wait until the FCC *and* the California legislature act before any improvements to 911 regulations are enacted.

It is impossible to quantify the exact fiscal impact that SB1161 could have on California due to too many variables. It is foreseeable however that loss of jurisdiction of VoIP providers, which means loss of jurisdiction over those providers that become VoIP, could result in millions of dollars in state and local spending.

---

### *Broadband Deployment*

Fiscal Impact: \$300,000 – \$500,000 or more

SB 1161 would call into question the Commission’s ability to fund and promote broadband deployment throughout California. Currently, the California Advanced Services Fund (CASF) operates to use surcharges collected from end users to fund broadband infrastructure deployment projects throughout California. In order for a company to be eligible for a CASF grant, it is required to have a CPCN or to partner with a CPCN holder, a safeguard put in place to ensure that only fit carriers receive ratepayer money. Under SB 1161, the Commission would not be able to require VoIP and IP-enabled service providers to obtain CPCNs or to partner with CPCN holders, as discussed above. If existing carriers transition to become VoIP providers, the CASF

program, as designed, would cease to operate, and broadband deployment in the state could be jeopardized.

The CPUC would have to hold a proceeding to determine whether the CASF program should be amended to allow non-certified carriers, whether those seeking CASF funds should be compelled to register with the CPUC, and what the implications for these options might be. Estimating conservatively, the cost for expanding this kind of proceeding would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff. For one year, this could cost \$300,000. Should the proceeding require additional time or people, it could increase to \$500,000 or more.

---

### *Rural LECs*

Fiscal Impact: \$300,000 – \$500,000 or more

Currently federal law dictates that the State shall not allow any competitive carriers to provide service in rate-of-return (ROR) rural areas. Should SB 1161 pass, these rural areas may be opened to competition from VoIP providers who would be exempt from the reliability, safety, service quality and other rules currently applied to rural local exchange carriers (RLECs). This shift may result in increased expenditure for the High Cost Fund-A and lead to higher surcharges for California's ratepayers. As these RLEC carriers are required to provide LifeLine service and other Universal Service Fund service, they will incur costs that VoIP providers would not, creating an inequitable regulatory landscape. This inequity will also require the CPUC to hold proceedings to develop new rules to deal with the entry of competitive forces on rural areas.

The CPUC currently has an open proceeding on the High Cost Fund-A. SB 1161 would require the scope of that proceeding to be expanded to consider the Bill's effect on VoIP, IP-enabled, services, the High Cost Fund-A, and the current service providers in rural, high cost areas. Possible costs to California would result from the need for the CPUC to hold additional proceedings dedicated to dealing with the regulatory inequities that would result from SB 1161 in rural areas. Estimating conservatively, the cost for this kind of proceedings would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff. For one year, this could cost \$300,000. Should the proceeding require additional time or people, it could increase to \$500,000 or more. Also, the State could incur additional costs associated with an increased need for High Cost Fund-A subsidies.

---

### *Universal Service*

Fiscal impact: \$900,000 – \$1 million or more

SB 1161 would retain the CPUC's authority to require VoIP providers to collect and remit Universal Service Fund (USF) surcharges but would preclude the agency from requiring any VoIP providers to provide the services that this fund pays for. This includes LifeLine service. As ILECs transition to VoIP services, there will be no mandated lifeline service. Therefore, the Moore Universal Service Act (P.U. Code §871.7) that requires carriers to offer basic phone service to low-income Californians at a subsidized rate would not pertain to VoIP and IP-enabled services. The Moore Universal Service Act requires providers of LifeLine telephone service for low-income Californians to offer "basic" phone service. The CPUC has a current proceeding considering the definition of basic telephone service. SB 1161 could preclude the CPUC from requiring that VoIP or IP-enabled service providers offer "basic" telephone service, even as a condition of participating in the LifeLine telephone service program.<sup>5</sup> Should a customer live in an area where their only option for voice service is VoIP, that customer may not be afforded the opportunity to subscribe to LifeLine service, which would mean an increased cost to that consumer.

The existing LifeLine proceeding did not contemplate the possibility of LifeLine providers transitioning to VoIP in a manner that would make them not be subject to LifeLine requirements. The Commission will have to expand this proceeding to encompass these issues.

The California Teleconnect Fund (CTF), which enables provision of subsidized telecommunications services to schools, libraries, rural health clinics, and now community colleges, would also be in jeopardy. Today, carriers provide the services directly to the recipient organizations and institutions, and submit claims for reimbursement to the CPUC. If SB 1161 were enacted, the CPUC would be prohibited from requiring VoIP providers, or those providers using IP-enabled services, from participating in the program. Should the ILECs transition their customers to VoIP, the CPUC could no longer require the ILECs to provide subsidized services to the eligible recipient institutions and organizations, resulting in either a loss of those services to the organizations and institutions, or a dramatically increased costs to the organizations and institutions to retain the no-longer-subsidized services. These issues would also trigger the need for a proceeding to address these issues.

Moreover, SB 1161 will leave a question as to whether the Commission can determine the total intrastate revenue for VoIP and IP-enabled service providers for the purposes of collecting USF contributions. Currently, most VoIP providers registered in California report zero intrastate revenues to the CPUC. Should service providers transition to VoIP, it is foreseeable that they might also report zero intrastate revenues, leaving the Commission unable to collect for USF programs. The Commission will need to open a proceeding to determine how to collect USF surcharges in order to maintain the programs should this occur.

Estimating conservatively, the cost for expanding the LifeLine proceeding and opening the proceeding on CTF and intrastate revenue issues would include PYs for three Administrative

---

<sup>5</sup> It is possible that the CPUC could compel a VoIP provider seeking to participate in the LifeLine program to abide by the CPUC's rules, specifically, G.O. 168, as a condition of receiving LifeLine subsidies. That proposition has not been tested in California to date specific to the LifeLine program.

Law Judges, three P.U. counsel positions, three mid-level analysts, and three support staff. For one year, this could cost \$900,000. Should the proceeding require additional time or people, it could increase to \$1 million or more. Additional costs to California could result from the loss of subsidized rates for basic service. This will increase in costs to consumers and potentially for the State, which will have to compensate for the loss of this service with increased pay outs for other services that could provide those who cannot afford phone service with an access point for basic communications.

---

### *Service Quality*

Fiscal Impact: \$0 – \$1 million or more

The economy of this State is dependent on a functioning telecommunications network; one that is ubiquitous, reliable, efficient, and effective. SB 1161 will strip the CPUC of any ability to look into the networks of VoIP or IP-enabled providers to see how they are performing. There would be NO remedy other than in the courts for any loss of life or fiscal damages in the event of a major service outage. Should 911 fail, the state will incur these costs. Further, SB 1161 would prohibit us from examining and remediating network failures that result in loss of point of sale terminal functionality (including gas pumps), loss of ATM functionality, telephone lines, instant credit check service performed by business, and many other services procured through a telephone connection. The CPUC would be PRECLUDED from examining these events and trying to remedy them. As explained in the section on 911 Services, above, outages could cost the State millions of dollars and would require the courts to determine if the carriers are liable.

Possible costs to California would result from the potential for increased litigation and costs associated with prolonged outages. As with the fiscal impacts of 911 services, it is impossible to quantify the exact fiscal impact that SB1161 could have on California due to too many variables. It is foreseeable however that loss of jurisdiction of VoIP providers, which means loss of jurisdiction over those providers that become VoIP, could result in millions of dollars in spending

---

### *Market Entry and Registration Requirements*

Fiscal Impact: \$300,000 – \$500,000 or more

SB 1161 would strip the CPUC of its authority to review market entrants and would preclude us from requiring VoIP providers to undergo the registration process by which we vet potential carriers to ensure they have the qualifications to provide service in California. Without this vetting process, there is the potential for “fly-by-nights” to come in, start serving, and defraud the public.



Possible costs to California would result from the inevitable litigation that “unfit” carriers would generate. Under SB 1161, the CPUC would have no authority to block these carriers from entering the market and would be prohibited from tracking, investigating, or penalizing these carriers. As a result, California consumers would suffer. The Commission would also have to hold a proceeding to determine how to make registration attractive to those carriers no longer required to obtain it, as well as to retain registration over those carriers that transition to VoIP. The CPUC has several pending complaint proceedings to consider the fitness to serve by certain Competitive Local Exchange Carriers (CLECs) and resellers of telecommunications services. SB 1161 creates a question about the CPUC’s jurisdiction over those carriers if they offer VoIP or IP-enabled services. Many CLECs connect to the Public Switched Telephone Network as “common carriers” as defined by the FCC, but then switch their service to Internet Protocol and market their service to the public as VoIP.

Estimating conservatively, the cost for this kind of proceedings would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff. For one year, this could cost \$300,000. Should the proceeding require additional time or people, it could increase to \$500,000 or more. Additional costs would be incurred for each pending and future complaint proceeding to determine PUC jurisdiction since CLECs are telephone corporations though they offer VoIP.

---

### *Customer Privacy Rights*

Fiscal Impact: \$300,000 – \$500,000 or more

To the extent that a VoIP provider is serving a residential customer, there are certain rights that the CPUC will not be able to enforce against VoIP providers, including privacy rights. P.U. Code §§ 2891 and 2891.1 prohibit the disclosure of certain customer information without express consent. This information includes calling practices, credit information, demographic information, and unlisted numbers. Under SB 1161, VoIP providers and IP-enabled services would not be subject to these provisions. Further, if ILECs transition to VoIP, millions of telephone customers could be vulnerable to having their personal information disclosed. Were this to happen, the CPUC would have no authority to require the carrier to discontinue service. Instead, consumers would only have the FCC and the courts to turn to.

It is foreseeable that the CPUC would have to hold a proceeding to determine how to maintain privacy rights. As explained above in the *CPUC Proceedings Generated by Current Bill Language* section, uncertainty created from the Bill language could impact who might be subject to what rules and when. Consumer privacy rules would need to be updated in order to assure that customers are protected. Privacy is protected in the California constitution so this bill would lead to litigation about the privacy rights of VoIP and IP-enabled service customers and the ability of the CPUC, other state agencies, or political subdivisions, including municipalities, to protect those rights.



Estimating conservatively, the cost for this kind of proceeding would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff. For one year, this could cost \$300, 000. Should the proceeding require additional time or people, it could increase to \$500,000 or more. Additional costs to California would result from the potential for increased litigation.

---

### *Numbering Administration*

Fiscal Impact: \$300,000 – \$500,000 or more

The CPUC has authority to implement area codes and monitor number inventory. Under SB 1161, our ability to monitor number use would be in question. Without authority over VoIP providers with respect to numbering, numbers could be exhausted more quickly than ever resulting in the need for new area codes. New area codes are huge expenses for the State and local governments, as well as local businesses and consumers, especially in the case of an area code split, which may be necessary depending on the area affected. Even regional legislative offices could be subject to an area code change, requiring new signage, stationary, business cards, etc. Additionally, the CPUC would be required to hold more numbering proceedings to facilitate the creation and implementation of these new area codes. This could result in increased costs for the general fund.

Estimating conservatively, the cost for this kind of proceeding would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff person. For one year, this could cost \$300,000. Should there be need for multiple proceedings, this cost could increase to \$500,000 or more. Additional costs to California would result from those associated with new area codes, as well as costs to allow the CPUC to facilitate new area code proceedings.

---

### *Consumer Complaints Including Cramming and Slamming*

Fiscal Impact: \$300,000 – \$1 million or more

The CPUC currently adjudicates complaints that customers bring to the Commission for the quality of service. Sometimes, these complaints pertain to VoIP providers. Under SB 1161, we would not longer be able to adjudicate these matters. The Commission would have to expend resources determining whether or not, on a case-by-case basis, we are precluded from adjudicating a complaint under SB 1161. This could potentially cost as much as a proceeding to accomplish.

Further, for cramming and slamming, the CPUC has not explicitly determined whether and to what extent those rules apply to VoIP. The CPUC currently does some tracking and monitoring of VoIP-related complaints and has the ability to develop cramming and slamming rules, should

there be a need to do so. Additionally, there have been instances where the FCC has referred slamming complaints that pertain to VoIP service to the CPUC. In 2007, for example a complaint came before the CPUC by a VoIP customer that tried to seek help from the FCC and was told that she should contact the CPUC.<sup>6</sup>

In a declaration filed in 2011 in support of a motion filed by the CPUC's Consumer Protection and Safety Division (CPSD), CPSD's review of the CPUC's Consumer Affairs Bureau's (CAB) complaint data found at least 510 complaints against California VoIP providers between 2008 and 2010 including complaints for slamming (unauthorized change of telephone service providers), cramming (the practice of placing unauthorized, misleading or deceptive charges on your telephone bill), and poor call quality.<sup>7</sup> Here is an example of one such complaint:

**CAB COMPLAINT ID#43602**

Summary of consumer complaint phone call entered by CAB:

Consumer says that a Time Warner rep phoned and spoke with her husband regarding switching her home phone service from Verizon. She alleges that her husband never agreed to switch the service. She says nothing was signed. She says Time Warner took her phone number she had for over twenty years and gave her a new number a couple of weeks ago. She is very upset. No one- neither the consumer's elderly mother, nor her doctors nor other family members nor friends can contact her husband and her because they do not know the home telephone number...<sup>8</sup>

SB 1161 would strip the CPUC of its ability to address complaints like this one that pertain to VoIP or IP-enabled service providers. No matter how many complaints the Commission might receive about any particular VoIP or IP-enabled service provider, we would be powerless to help consumers. As referenced above, customers would have no recourse at the FCC, which has referred slamming complaints against VoIP providers to the CPUC. They would be forced to take their complaints to court.

The CPUC would have to hold a proceeding to determine what authority we have to hear complaints related to VoIP and or IP-enabled service provider cramming and slamming given the FCC's position that state agencies are in the best position to act. Estimating conservatively, the cost for this kind of proceeding would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff person. For one year, this could cost \$300,000. Should there be need for multiple proceedings, this cost could increase to \$1

---

<sup>6</sup> Dismissing, without prejudice, CPSD Third-Party Verification Citation Forfeiture No. 116 Case #07-02-4445, Time Warner Cable Information Services

<sup>7</sup> *Order Instituting Rulemaking on the Commission's Own Motion to Require Interconnected Voice Over Internet Protocol Service Providers to Contribute to the Support of California's Public Purpose Programs*, Rulemaking 11-01-008, *Declaration of Rudy Sastra in Support of Petition for Modification*.

<sup>8</sup> *Order Instituting Rulemaking on the Commission's Own Motion to Require Interconnected Voice Over Internet Protocol Service Providers to Contribute to the Support of California's Public Purpose Programs*, Rulemaking 11-01-008, *Motion of the Consumer Protection And Safety Division for Modification of the Scope of Rulemaking to Include Consumer Protection*, at p. 11.

million or more. Additional costs to California could result from the potential for increased litigation where the CPUC could not resolve a complaint.

SB 1161 would require the CPUC to determine whether any carriers subject to existing cramming or slamming complaints offered service to the CPUC as VoIP or IP-enabled service providers even if the provider is a CLEC or reseller that operates as a telephone corporation per a CPUC Certificate of Convenience and Necessity (CPCN).

---

### *Disconnections*

Fiscal Impact: potential litigation costs

As explained in the section on registration requirements, above, should SB 1161 pass, the CPUC will have no authority over VoIP or IP-enabled service providers who disconnect a customer for any reason. While the FCC requires a 30 day notice to customers, there will be no state requirements beyond that and disconnected VoIP or IP-enabled service customers could be left with no choice for a service provider. Consumers could potentially face cut offs to their service and businesses and customers could face financial burdens as a result. This will only be exacerbated by the inability of the CPUC to vet carriers before they enter the market, as explained above, or to require that a VoIP provider be a Carrier of Last Resort (COLR).

Further, a consumer would have no recourse for a wrongful disconnection at the State level. The customer would have to either file a complaint with the FCC, which might take years to be resolved, or take their complaint to court. Additional costs to California would result from the potential for increased litigation

---

### *Diversity Implications*

Fiscal Impact: \$0 – \$1.1 billion for diverse businesses and losses to the State from the benefits of diverse business participation

P.U. Code §8283 requires each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates, to submit annually, a detailed and verifiable plan for increasing procurement from women, minority, and disabled veteran business enterprises in all categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects. The Commission used this section to develop General Order 156, which promotes diverse spending across the regulated utilities.

Under SB 1161, telephone companies that transfer to VoIP service or IP-enabled service providers would no longer be required to participate in G.O. 156 and comply with P.U. Code

§8283. This could mean that diverse spending could drop by more than \$1.1 billion in California, the aggregate amount of diverse spending put forth by Verizon and AT&T in conjunction with their landline services. The State might have to provide support to diverse businesses who may suffer as a result of this pulled funding. The State would also lose the benefits of diverse business participation in the provision of VoIP and IP-enabled services.

---

### *Pole Attachements*

Fiscal Impact: \$300,000 - \$500,000 or more

Under the CPUC's G.O. 95, telecommunications providers who wish to connect to utility poles throughout the state must adhere to certain rules in order to ensure public safety. These rules include maximum pole loading, spacing between facilities, vegetation management, and equipment marking. Under SB 1161, VoIP and IP-enabled service providers would not be subject to these rules, which could cause major safety implications for California. In light of the recent windstorms in Southern California that caused utility poles to fall and the devastating wildfires that ravaged San Diego when electric lines and telecommunications lines came into contact during high winds, it is imperative that the CPUC maintain the authority to oversee the safety aspects of joint-use utility poles.

Should SB 1161 pass, the Commission would have to hold a proceeding to determine what rules would continue to apply to VoIP and IP-enabled service providers and what new rules, if any, would need to be developed. Estimating conservatively, the cost for having this kind of proceeding would include PYs for one Administrative Law Judge, one P.U. counsel position, one mid-level analyst, and one support staff. For one year, this could cost \$300,000. Should the proceeding require additional time or people, it could increase to \$1 million or more. State court litigation may also be \$500,000 or more.

In addition to the costs associated with the proceeding discussed above, much like with the discussion of 911 service and Service Quality, the amount that the implications of this Bill could cause California could be staggering. Should VoIP and IP-enabled service providers not be subject to these safety rules, more poles could fall, more fires can start, and more lives and property could be lost. It is impossible to quantify the exact fiscal impact that SB1161 could have on California due to too many variables. It is foreseeable however that loss of jurisdiction over VoIP and IP-enabled service providers could result in millions of dollars in spending.

---

### *Law Enforcement Shut-Offs*

Fiscal Impact: \$0 – \$500,000 or more

Under P.U. Code §7907 whenever 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, such official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by such suspected person with any person other than a peace officer or a person authorized by the peace officer.

Under SB 1161, VoIP IP-enabled service providers would not have to comply with this code section. It is feasible that there could be increased loss of life or destruction to property as a result of this provision not being enforced. It is impossible to quantify the exact fiscal impact that SB 1161 could have on California as a result of this due to too many variables.

## 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.