

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 1366 (Gonzalez) – As Amended March 25, 2019

SUBJECT: Voice over Internet Protocol and Internet Protocol enabled communications services

SUMMARY: Extends indefinitely the prohibition on the California Public Utilities Commission (CPUC), or any department, agency, commission, or political subdivision of the state from exercising regulatory jurisdiction or control over Voice over Internet Protocol (VoIP) and Internet Protocol (IP) enable services except as expressly directed to do so by statute. Specifically, **this bill:**

- 1) Deletes the sunset on the prohibition on the CPUC, or any department, agency, commission, or political subdivision of the state to exercise regulatory jurisdiction or control over VoIP and IP enabled services except expressly delegated by federal law or expressly directed to do so by statute, as specified.
- 2) Authorizes the CPUC, or any department, agency commission, or political subdivision of the state to exercise regulatory jurisdiction or control over VoIP and IP enabled services if expressly and specifically directed by the Legislature in the interest of public safety or consumer protection.
- 3) Exempts the CPUC's authority relative to access to support structures, including pole attachments, or to the construction, safety, and maintenance of facilities pursuant to CPUC General Order 95 and General Order 128 from the specified prohibition.

EXISTING LAW:

- 1) Prohibits the CPUC, or any department, agency, commission, or political subdivision of the state, from exercising regulatory jurisdiction or control over VoIP and IP enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute, as specified. Specifies that in the event of a requirement or a delegation referred to above, this statute does not expand the CPUC's jurisdiction beyond the scope of that requirement or delegation. (Public Utilities Code (PUC) Section 710)
- 2) Defines "Voice over Internet Protocol" or "VoIP" to mean voice communications service that does all of the following:
 - a) Uses IP or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in IP or a successor protocol;
 - b) Requires a broadband connection from the user's location; and,
 - c) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network. (PUC Section 239)

- 3) Defines “Internet Protocol enabled service” or “IP enabled service” to mean any service, capability, functionality, or application using existing IP, or any successor IP, that enables an end user to send or receive a communication in existing IP format, or any successor IP format through a broadband connection, regardless of whether the communication is voice, data, or video. (PUC Section 239)
- 4) Exempts the following from the prohibition on exercising regulatory jurisdiction over VoIP and IP enabled services:
 - a) The Emergency Telephone Users Surcharge Law and the state’s universal service programs;
 - b) The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) or a specified franchise granted by a local franchising entity;
 - c) The CPUC’s authority to implement and enforce specified interconnection agreements;
 - d) The CPUC’s authority to require data and other information regarding federal forbearance petitions, as specified;
 - e) The CPUC’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 IP format;
 - f) The CPUC’s authority to enforce existing requirements regarding backup power systems, as specified;
 - g) The CPUC authority relative to access to support structures, including pole attachments, or to the construction and maintenance of facilities pursuant to CPUC General Order 95 and General Order 128; and,
 - h) The Warren-911-Emergency Assistance Act. (PUC Section 710)
- 5) Specifies that the specified prohibition on the CPUC to regulate VoIP or IP enabled services does not limit the CPUC’s ability to continue to monitor and discuss VoIP services, to track and report to the Federal Communications Commission (FCC) and the Legislature, within its annual report to the Legislature, the number and type of complaints received by the CPUC from customers, and to respond informally to customer complaints, including providing VoIP customers who contact the CPUC information regarding available options under state and federal law for addressing complaints. (PUC Section 710)
- 6) Sunsets the specified prohibition on the CPUC, or any department, agency, commission, or political subdivision of the state to regulate VoIP or IP enabled services on January 1, 2020. (PUC Section 710)
- 7) Establishes DIVCA which specifies that the CPUC is the sole franchising authority for a state franchise to provide video service. (PUC Section 5800 et seq.)

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Authors Statement:** According to the author, “In 2012, the Legislature codified a policy of reserving any state regulation of [VoIP] and IP-enabled services for the Legislature. Since then, Californians have continued benefiting from these services [...] However, the clarity provided with the Legislature’s exclusive authority over these services will sunset on January 1, 2020 unless legislation extends the provisions. If allowed to sunset without further legislative direction, this will create an environment of regulatory uncertainty and potential for costly litigation on all sides, potentially delaying further expansion and innovation of these services [...] AB 1366 would delete the sunset of provisions prohibiting state regulation of VoIP and IP enabled services except as specified by the Legislature. This would allow for continued legislative action on issues that may arise, particularly regarding consumer protection and public safety, while still allowing these services regulatory clarity.”
- 2) **Background:** Article XII of the California Constitution established the CPUC, as part Governor Hiram Johnson’s reform movement in the early 20th century. At the turn of the 20th century, California’s public policy was said to have been dictated primarily by the political machine of the Southern Pacific Railroad Corporation. In an effort to break the political and economic clout it held to avoid regulations and maintain its monopoly, the CPUC was granted a high level of independence to set its own procedures due in part to its unique position in the California Constitution. The CPUC is composed of five commissioners who are appointed by the Governor and confirmed by the Senate, for six-year staggered terms to ensure that no single Governor could appoint a majority of commissioners within the Governor’s four year term. Only the Legislature has the power to remove commissioners.

In recent years, due to a number of high profile incidents in which the public and the Legislature perceived the CPUC as lacking in accountability or being too cozy with the industry in which they regulated, in 2016 the Legislature passed a series of reform seeking to improve the governance of the CPUC. The reforms sought to increase transparency and accountability on the CPUC and since then, the CPUC has made substantial strides towards reform, which include a new group of commissioners. But there are still those today who question the CPUC’s ability to effectively regulate certain industries without overreaching or prescribing overly board or burdensome regulations.

- 3) **State Regulatory Authority:** Through its history, the CPUC has had certain regulatory authority over public utilities including telephone corporations. A telephone corporation is defined as every corporation or person owning, controlling, operating, or managing any telephone line for compensation within the state. A “telephone line” includes “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.” For the most part the CPUC has regulatory authority to regulate intrastate components of telecommunications services, whereas, interstate components of telecommunications services is regulated at the federal level.

Federal and state law differentiate regulatory authority based on the type of communications service. These services include landlines, wireless/cellular, cable/video, broadband/IP, and VoIP services. Below is a general summary on the explicit authority to regulate each service:

Landlines: The CPUC has authority under the Public Utilities Code to impose regulations and requirements on landline services. Some of these requirements include service quality, consumer protection, privacy, supplier diversity, carrier of last resort, submission of tariffs, disconnections, complaints, and user fees.

Wireless/Cellular: Federal law prohibits states from regulating wireless rates or entry into the market, but reserves to states the authority to regulate other terms and conditions of service. Generally, the CPUC has authority over the siting of cell towers. The CPUC's General Order 159-A sets out the rules governing the construction of cell towers in the State.

Cable/Video: DIVCA prevents the CPUC from regulating cable services. However, cable companies wishing to build new video and broadband infrastructure must apply for a state issued franchise from the CPUC to cover a service territory to operate. DIVCA left most standard requirements of a franchise in place and under local control, but required all video providers to offer and fund public education and government channels.

IP/Broadband: Public Utilities Code Section 710 prohibits the regulation of IP enabled services until 2020. Broadband/IP is inherently classified as an interstate service regulated at the federal level. The FCC had provided limited authority over these services to address the needs of emergency communications or law enforcement, public safety, or national security authorities, however, following the 2017 FCC Restoring Internet Freedom Order, such services were reclassified as an information service, outside the regulation of traditional telecommunications services.

VoIP: Similar to IP services, Public Utilities Code Section 710 prohibits the regulation of these services until 2020. The code offers a number of exemptions including some to ensure competition in the market and emergency services.

- 4) **IP and VoIP:** IP enabled services are those services delivered by broadband which include services such as instant messaging, email, web-surfing, video streaming, and voice communications. VoIP is the service that allows voice calling through a broadband connection, such as Skype or Google Voice. Unlike traditional telephones, companies using VoIP technology to offer telephone service do not have to install or lease a direct connection to that customer's home or business. Instead the customer must have a broadband internet connection provided by a third company, then the customer can use the combination of their internet connection and VoIP technology to make telephone calls anywhere. As a result of IP technology, companies are able to offer more features and services that would otherwise not be available with a traditional telephone. In simplest terms, IP services are those services delivered over the internet, while VoIP are those services that offer the same capabilities as a telephone but is delivered over the internet.
- 5) **Public Utilities Code 710:** In 2012, the Legislature passed SB 1161 (Padilla) Chapter 733, Statutes of 2012, which prohibited the CPUC or any other state agency from regulating VoIP and IP enabled services unless expressly directed to do so by statute. SB 1161 was codified in Section 710 of the Public Utilities Code. At the time, proponents argued that SB 1161 would provide a platform for innovation, facilitates competition and cost savings for

consumers, and will drive job growth, broadband deployment, and greater economic prosperity for the State. Opponents argued that SB 1161 would “deregulate” the telecommunications industry and eliminate laws and regulation that apply to landline services, putting at risk consumers protections that exist for landlines but not VoIP.

- 6) **Governance of VoIP vs. Landlines:** When SB 1161 was passed, VoIP technology was just beginning to expand beyond a niche technology. Since then, consumers have increasingly continued to abandon landline service and opt instead for wireless and IP services that offers a platform for integrated voice, video and data service all in one. As telecommunications providers continue to migrate customers away from landlines to VoIP, the number of subscribers to VoIP service will continue to increase dramatically. In 2013, when SB 1161 came into effect, there were over 13 million landlines in California and over 4 million VoIP subscribers. By 2018, just under 6 million customers had landlines and over 8 million had VoIP services. In addition, in 2018 the state has over 41 million wireless subscriptions.

Although SB 1161 distinguishes between IP and VoIP, much of the debate has centered on the VoIP aspect and its impact on phone service. But because VoIP is provided over an IP network, it is difficult to separate and craft separate policies between the two. Once again, much of the opposition centers on the issue that as more people move away from landlines to VoIP, many of the protections that exist for landlines are not available for VoIP services. Hence the natural transition of customers from landline to wireless and VoIP services will slowly erode away years of safety and consumer protection telecommunications policies absent the CPUC’s ability to regulate and apply a new regulatory environment to these new technologies.

For comparison, below are some of the regulatory requirements over telecommunications providers compared to the same such regulation on VoIP services.

Basic Service: The CPUC currently requires traditional telephone companies to provide basic service. Basic service includes: a) voice grade access to the public switched telephone network or successor network; b) real time two way communications; c) access to 911 services; d) access to residential backup power; e) access to directory services; f) billing protections; g) access to toll-free numbers; h) telephone relay service for deaf and disabled consumers; i) equal access to interexchange carriers; and j) conditions of service notification to consumers. Public Utilities Code 710 does not impact the CPUC regulation on traditional telephone service, but VoIP providers are not mandated to provide basic service but most providers generally include most of the elements of basic service.

Service Quality: The CPUC requires traditional telephone companies to report their average out of service metrics. The standard is 90 percent outages restored within 24 hours or less. Failure to meet these standards can result in fines by the CPUC to ensure that investments are made by telephone companies to maintain their network. VoIP providers are not mandated to comply with CPUC rules dealing with service quality but they may include enforceable standards in their terms and conditions of service and can be subject to liability for missing installation and repair times.

Carrier of Last Resort: A Carrier of Last Resort (COLR) is a traditional telephone company that is required to serve, upon request, all customers within their service area to ensure that

everyone has access to basic service. Once designated a COLR, the carriers must get CPUC approval to opt out of the obligation to service. VoIP service providers do not have COLR obligations.

Universal Service Programs: The CPUC implements a number of universal service programs including the California High Cost Fund-A, the California High Cost Fund-B, the California Lifeline Program, the California Teleconnect Fund, the California Advanced Services Fund, and the Deaf and Disabled Telecommunications Program. These programs are funded through a surcharge on each customer's phone bill for intrastate telecommunications services. VoIP service providers are required to contribute to the state's universal service programs. Public Utilities Code 710 exempts the collection of the State 911 and universal service surcharges from its prohibition.

Tariffs: The CPUC requires basic service to be tarified and establishes general rules for the submission of tariffs, which provides the public with transparency should prices, charges, or terms and conditions of service change. CPUC rules do not apply to VoIP services but generally applicable laws regarding contracting and customer notification apply.

Interconnection Agreements: To encourage competition in the telecommunications market, federal law establishes certain duties and obligations on incumbent local exchange carriers to provide interconnection and access to services and network elements to other telecommunications carriers. Public Utilities Code 710 exempts the CPUC's authority to enforce interconnection agreements from its prohibitions.

Backup Battery: Power outages are less of an issue for landlines because they are powered by an independent electrical source, however, VoIP phones typically depend on a power source as well as a broadband connection. Hence, some VoIP services do not work during power outages which can be dangerous in emergency situations. Federal Rules requires VoIP providers to offer their customers the option to purchase 8 or 24 hours of backup battery power.

Complaints: The CPUC receives data on customer complaints from the companies it regulates including traditional telephone companies. However, it does not receive this information from wireless, VoIP and IP companies. Public Utilities Code 710 allows the CPUC to continue to monitor and discuss VoIP services and to report to the Legislature the number and type of complaints received by the CPUC and to respond informally to customer complaints, including providing VoIP customers who contact the CPUC with information regarding available options. Hence, the CPUC does not get customer complaint data from VoIP service providers, and customers who complain about VoIP services to the CPUC are directed to alternative options.

- 7) **Emergency Communications:** The scale and frequency of recent wildfires in California has spurred a discussion on the emergency communications capabilities of our public safety officials. As more people move away from landlines to IP based systems, ensuring that the state's emergency communications network can support this transition is critical. In April 2019, the CPUC released a white paper identifying regulatory and statutory gaps in communications that, if addressed, would significantly enhance public safety. The white paper specifically identified Public Utilities Code 710 as a significant obstacle in their ability to require communications provider to protect the public during an emergency.

The Office of Emergency Services is in the mist of transitioning the State's existing 911 system to Next Generation 911 which is a new IP based two way communications system for public safety. Next Generation 911 would lay the groundwork for a new communications system for our first responders that has the capabilities to support advanced technologies and uses. Public Utilities Code 710 does not affect the Warren-911 Emergency Assistance Act which governs the State's 911 system, however, ensuring that emergency communications networks are still able to work seamlessly as it also transitions to an IP based system would be critical for public safety.

- 8) **Where We Stand:** The debate over Public Utilities Code 710 ultimately centers around how rapidly changing technology, especially the internet, has led to a much different regulatory environment than in the days when telecommunications consist only of landlines. When SB 1161 was passed, the question at hand was what California's policy and government framework should be as increasing numbers of customers abandon traditional landline service and choose to subscribe to new services accessible with a broadband connection. SB 1161 included a 2020 sunset to allow the Legislature to revisit the issue. That question and debate is now being revisited.

This bill would extends indefinitely the prohibition on the CPUC, or any department, agency, commission, or political subdivision of the state from exercising regulatory jurisdiction or control over VoIP and IP enable services except as expressly directed to do so by statute.

It is hard to quantify whether or not the regulatory environment created by Public Utilities Code 710 contributed to the growth and innovation of VoIP and other IP enabled services. Certainly since the passage of SB 1161 we have seen an expansion of internet innovation and technology. However, with that comes all the issues associated with the telecommunications industry. Arguably extension of Public Utilities Code 710 would reflect the status quo and the certainty it provides the industry. However, whether or not the status quo of today would work in the future is less then certain.

The author may wish to consider an amendment sunseting the bill in 2030.

- 9) **Suggested Amendments:**

710 (h) This section shall remain in effect only until January 1, 2030, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2030, deletes or extends that date.

- 10) **Arguments in Support:** According to the California Cable and Telecommunications Association, "California's innovation drives demand for faster broadband networks and new IP-enabled services and applications, spurring new job creation and economic growth. This growth has been the result of government policies that promote an open and competitive internet that fosters innovation. These innovations have allowed Californians to improve their lives with greater access to education, jobs, health care, and government services, and have provided economically disadvantaged and immigrant families, an affordable way to stay connected with far-away family and friends. Regulatory agencies, like the CPUC, do not focus on visionary innovation. They are overwhelmed by bureaucracy, with multi-year

proceedings and protracted decision-making and are not equipped to regulate modern internet technology.”

- 11) **Arguments in Opposition:** According to The Utility Reform Network, “AB 1366 indefinitely extends the prohibition on [CPUC] oversight of [VoIP] and IP communication services, due to sunset on January 1, 2020. The majority of telephone lines in California are now VoIP lines and much of our voice and data communication (including retail broadband) is provided over networks that at least partially rely on IP based transport. We are moving to a world where all of our phone and broadband service will be IP-based. AB 1366 would require the legislature and governor to pass a law before the [CPUC], any other state agency or the Legislature itself could take action to ensure reliable communication if it involves VoIP or IP communication. AB 1366 would indefinitely remove all state oversight of critical public communication services. This is not a path that the Legislature should follow.”
- 12) **Prior Legislation:** SB 1161 (Padilla) of 2012 prohibits the CPUC, or any department, agency, commission, or political subdivision of the state, from exercising regulatory jurisdiction or control over VoIP and IP enabled services except as expressly directed to do so by statute until 2020. *Status: Chaptered by the Secretary of State – Chapter 733, Statutes of 2012.*

REGISTERED SUPPORT / OPPOSITION:

Support

African American Male Education Network & Development
 Alliance for Community Development
 Asian Business Association of San Diego
 Asian Pacific American Community Center
 Asian Pacific Islander American Public Affairs Association
 AT&T
 Bay Area Council
 Black Chamber of Orange County
 Black Women Organized for Political Action Political Action Committee
 Boys & Girls Club of the North Valley
 Brotherhood Crusade
 California Asian Pacific Chamber of Commerce
 California Black Chamber of Commerce
 California Cable and Telecommunications Association
 California Cattlemen's Association
 California Hispanic Chambers of Commerce
 California Latino Leadership Institute
 California Manufacturers and Technology Association
 Chicano Federation of San Diego County, Inc.
 Coalition for Responsible Community Development
 Community Women Vital Voices
 Computers 2 Kids
 Computing Technology Industry Association
 Concerned Black Men of Los Angeles
 Congregations Organized for Prophetic Engagement

Congress of California Seniors
Consolidated Communications Inc.
CTIA - The Wireless Association
East Oakland Youth Development Center
Frontier Communications
Frontier Senior Center - AAASCO
Gamma Zeta Boule Foundation
Greater Coachella Valley Chamber of Commerce
Greater Los Angeles African American Chamber of Commerce
Greater Riverside Chamber of Commerce
Hispanic 100
Imperial Valley LGBT Resource Center
In Biz Latino
Inland Empire Economic Partnership
Invest in Women Entrepreneurs Initiative
Kings/Tulare Homeless Alliance
Krimson and Kreme Foundation
Lighthouse Counseling and Family Resource Center
Los Angeles Latino Chamber of Commerce
MAAC
Macedonia Community Development Corporation
National Diversity Coalition
Nonprofit Alliance
North San Diego County NAACP
OASIS Center International
Organization of Chinese Americans - East Bay Chapter
Organization of Chinese Americans - Sacramento Chapter
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Oroville Rescue Mission
Partners in College Success
Sacramento Black Chamber of Commerce
Salvadoran American Leadership and Educational Fund
San Diego North Economic Development Council
San Diego Oasis
San Gabriel Valley Economic Partnership
Santa Barbara Partners in Education
Sentinels of Freedom
Silicon Valley Leadership Group
Society for the Blind
South Bay Community Services
TechNet
TELACU
The Fresno Center
The Village Project, Inc.
UFCW Local 648
Urban Corps San Diego County
Valley Industry and Commerce Association
Verizon

Veterans Association of North County
Young Visionaries Youth Leadership Academy

Opposition

AARP California
Access Humboldt
Bay Area Christian Connection
Beth Eden Baptist Church
California Alliance for Retired Americans
California Labor Federation
Center for Media Justice
Centro La Familia Advocacy Services
City Heights Community Development Corporation
Common Networks
Communications Workers of America, 9th District
Consumer Action
Consumer Federation of California
El Concilio of San Mateo County
Electronic Frontier Foundation
Emerging Leaders Program of The Leadership Institute at Allen Temple Baptist Church
Housing Long Beach
Humboldt County Board of Supervisors
Interdenominational Ministerial Alliance
Media Alliance
Mission Asset Fund
Monkeybrains
National Consumer Law Center
Omsoft and Davis Community Network
One Million NIU
Poverello House
Public Advocates Office
Public Citizen, Inc.
The Center for Media Justice
The Greenlining Institute
The Utility Reform Network
True Faith Community Baptist Church
Utility Consumers' Action Network

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