
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

Senator Ben Hueso, Chair

2019 - 2020 Regular

Bill No:	AB 1366	Hearing Date:	7/10/2019
Author:	Gonzalez		
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Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Smith		

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

DIGEST: This bill extends the sunset date on prohibitions against the regulation of Voice over Internet Protocol (VoIP) and other internet protocol (IP) enabled services from January 1, 2020, to January 1, 2030.

ANALYSIS:

Existing law:

- 1) Authorizes the California Public Utilities Commission (CPUC) to fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction. (California Constitution, Article XII, §6)
- 2) Defines the term “public utility” and includes common carriers in the definition of a public utility. (Public Utilities Code §216)
- 3) Defines VoIP as a communications service that does all the following:
 - a) Uses an IP system to enable real-time, two-way voice communication;
 - b) Requires a broadband connection from the user’s location; and,
 - c) Allows a user to receive and terminate a call over the public switched telephone network.

A service that uses ordinary equipment with no enhanced functionality and does not undergo an IP conversion process is not a VoIP service. (Public Utilities Code §239(a))

- 4) Defines an IP enabled service as any service, capability, function, or application using an IP system to send or receive communication through a broadband

connection, regardless of whether the communication is voice, data, or video.
(Public Utilities Code §239(b))

- 5) Gives the CPUC the authority to supervise and regulate every public utility in the state and do all things necessary and convenient in the exercise of such power and jurisdiction. (Public Utilities Code §701)
- 6) Prohibits until January 1, 2020, the CPUC and any department, agency, commission, or political subdivision of the state from exercising regulatory authority over VoIP and IP enabled services unless required or expressly delegated by state or federal law. Any delegation or express requirement does not expand the jurisdiction of the CPUC, department, agency, or subdivision beyond the scope of that requirement or delegation. (Public Utilities Code §710 (a-b))
- 7) Exempts the following from the prohibition on regulating VoIP and IP-based services:
 - a) The collection of surcharges to fund basic 911 service and the state's universal service programs.
 - b) Cable franchising duties specified in the Digital Infrastructure and Video Competition Act (DIVCA).
 - c) The CPUC's authority to implement and enforce interconnection and arbitration requirements for telecommunications providers classified as common carriers pursuant to Title II of the Federal Communications Act of 1934.
 - d) The CPUC's authority to make data requests regarding market competition proceedings at the Federal Communications Commission (FCC).
 - e) The CPUC's authority to address disputes between carriers regarding compensation for the exchange of traffic over an IP network.
 - f) The CPUC's authority to enforce requirements in CPUC Decision 10-01-026 regarding consumer education programs about the availability and limitations of backup power for VoIP systems.
 - g) The CPUC's authority to address pole attachment disputes.
 - h) The Warren 911 Emergency Assistance Act. (Public Utilities Code §710 (c))
- 8) Specifies that the restrictions on government regulation of VoIP and IP-enabled services does not affect the following:
 - a) Enforcement of state or federal criminal or civil law or any local ordinances of general applicability, including, but not limited to: consumer protection and unfair business or deceptive trade practice laws and ordinances, California Environmental Quality Act requirements, local utility user taxes, and laws regarding public rights of way.

- b) Existing regulation, proceedings, or existing CPUC authority over non-IP wireline and wireless service, including universal, basic, and lifeline service requirements.
- c) The CPUC's ability to monitor and discuss VoIP services, track and report to the FCC and Legislature.
- d) The CPUC's authority to report to the Legislature annually on the number and types of complaints received by the CPUC from VoIP customers and respond informally to complaints with information about potential remedies under state and federal law.
- e) The establishment and enforcement of policies regarding intellectual property protection.

This bill:

- 1) Would extend the prohibition on regulating VoIP and IP-enabled services from January 1, 2020, to January 1, 2030.
- 2) Extends the existing limitations on state regulation of VoIP and IP-enabled services by prohibiting the CPUC and any department, agency, commission, or political subdivision of the state from exercising regulatory authority over VoIP and IP enabled services except in accordance with the following:
 - a) As required or expressly delegated by federal law.
 - b) As expressly directed by statute or pursuant to exemptions established in this bill.
 - c) As expressly and specifically directed by the Legislature in the interest of public safety or consumer protection.
- 3) Adds the following to the list of exemptions to the prohibition on state regulation of VoIP:
 - a) Federal outage reporting requirements for facilities based VoIP service providers, and
 - b) Lifeline Program requirements as established in CPUC Decision 16-01-039, which allowed fixed location VoIP providers to participate in the program.
- 4) Specifies that nothing in this bill limits the Attorney General or other applicable entity from enforcing state or federal criminal or civil law or any local ordinances of general applicability, including, but not limited to: consumer protection and unfair business or deceptive trade practice laws and ordinances, California Environmental Quality Act requirements, local utility user taxes, federal enhanced 911 requirements, and laws regarding public rights of way.

- 5) Requires the CPUC to annually report the number of type of consumer complaints it receives regarding VoIP service to the Attorney General and the Legislature.
- 6) Requires providers of residential interconnected VoIP service to disclose any backup power requirements in state and federal law to each new customer. The disclosure must notify a customer that the customer may contact the CPUC for additional information about alternative communications services, including basic telephone service.
- 7) Requires residential interconnected VoIP service providers to update their terms of service to state that the provider will offer a bill credit for outages lasting longer than 24 hours upon request. This credit does not apply to outages on Sundays, federal holidays, or outages resulting from circumstances beyond the provider's control.
- 8) Requires residential interconnected VoIP service providers to start restoring service within 24 hours of receiving an outage report and restore service within 72 hours of receiving the report. This service restoration period does not apply to Sundays, federal holidays, or outages resulting from circumstances beyond the provider's control.
- 9) Defines "circumstances beyond the provider's control" as any of the following:
 - a) Electrical outages
 - b) Catastrophic events
 - c) Natural disasters
 - d) Emergencies proclaimed by the governor
 - e) Cable theft
 - f) Third-party cable cuts
 - g) A lack of access to the premises
 - h) Absence of customer support to test the facilities
 - i) Any other circumstance.
- 10) Exempts any residential interconnected VoIP provider from the bill credit and service restoration requirements if the provider is subject to any other law or regulation regarding outage response or service restoration.

Background

What are VoIP and IP-enabled services? VoIP is a telecommunications technology that transfers calls as data packets over an internet connection. VoIP may initiate a call over the internet; however, it can also carry and complete calls

over the traditional copper network. VoIP services may be provided with a fixed or mobile connection. Generally, fixed VoIP products are offered by internet service providers (ISPs) in lieu of a traditional telephone connection. Mobile VoIP generally provides voice service through an application downloaded to a device, including wireless devices. Fixed VoIP products more closely resemble traditional home phone service, and IP-enabled services are any services delivered over an internet network. This bill restricts the state from regulating VoIP and any IP-enabled service.

A brief history of the deregulation of the telecommunications sector. This bill extends current deregulation of internet-based telecommunications from 2020 to 2030. This bill applies to VoIP and all other IP-based services, which may include any service delivered over the internet. Deregulation of the telecommunications sector has ebbed and flowed in California since 1995. During the 1990s, federal and state governments initiated a number of market changes to increase competition and reduce regulations for the telecommunications sector. The CPUC issued a decision opening California's local exchanges to competition between companies in 1995. Prior to this decision, local telephone service was generally provided by one telephone utility in each service territory. Federal and state agencies opened telephone service territories and lowered regulatory barriers with the intention of encouraging competition, which agencies hoped would lead to lower prices and higher investment in advanced telecommunications services, including broadband internet. While some communities benefited from increased competition, deregulation also led some telecommunications companies to accrue a significant amount of debt and engage in unsustainable expansion. By the end of 2001, multiple telecommunications providers initiated bankruptcy proceedings and subsequently ceased operations. Several of these bankruptcies remain among the largest bankruptcies in United States history.

Changes since 2012. When legislation establishing VoIP and IP-based regulatory prohibitions (SB 1161, Padilla, Chapter 733, Statutes of 2012) passed the Legislature, most telephone lines were wireline service. However, data from the FCC shows that in 2016, the number of VoIP lines exceeded the number of regulated wireline telephone lines. At current rates of VoIP adoption, VoIP may comprise up to 94 percent of all home telephone lines. With the expansion of other IP-enabled communications, most telephone services are now IP-based services. Additionally, in 2012, the FCC played a more active role in regulating IP-based telecommunications. Since the enactment SB 1161 in 2012, the FCC has largely deregulated IP-based communications at the federal level and at least 35 other states have also adopted laws limiting the regulation of IP-based telecommunications. As a result, most telecommunications have limited federal and state regulation.

COLR = POLR. This bill has implications for basic telephone service in the event that wireline retirement and VoIP adoption continue at current rates. Both the electricity and telecommunications sectors have requirements that ensure that an entity exists to provide customers with service in the event that other providers either cannot or will not serve those customers. In the electricity sector, these requirements establish provider of last resort (POLR) duties. In the telecommunications sector, these requirements are known as carrier of last resort (COLR) duties. In 1996, the CPUC adopted COLR requirements through D. 96-10-066 to ensure that consumers always have a provider of last resort to supply basic telephone service as competition between carriers increased and oversight decreased. The CPUC's COLR requirements are technology neutral; a COLR can provide basic telephone service through wireline telephone service or other technologies, including VoIP. COLR duties are generally less extensive than POLR requirements because they do not require the provider to supply all telecommunications services in the event that no other party exists. Instead, COLRs only have to provide basic telephone service, which does not include internet or cable services. Companies that only provide IP-enabled services generally are not considered COLRs. Unlike investor-owned utilities that provide POLR services, providers that operate as COLRs are not necessarily regulated in any other area beyond their COLR service.

This bill extends limitations on service quality oversight. COLR service is considered a "basic service" under the CPUC's decision, and it is subject CPUC regulatory oversight to ensure that the service is sufficient. The CPUC has established these requirements and metrics for determining whether a provider meets basic service quality requirements through General Order 133-D (GO 133D). These metrics include information about the rate of customer service requests, the speed at which those requests are resolved, outage rates, service restoration rates, and installation speed. To obtain sufficient information to evaluate these metrics, the CPUC requires carriers to report customer service information on a regular basis. Companies that do not meet service quality requirements for basic telephone service can be fined based on the rate of violations. In lieu of paying fines, service quality violators may be permitted to re-invest the funds in services that remediate the service quality issues. Several companies that operate both traditional phone service and VoIP have received fines for failing to meet service quality standards with their traditional telephone service.

COLR and service quality requirements are established by the CPUC through its regulatory jurisdiction, and neither of these requirements are expressly established in statute. The creation and enforcement of both are the result of regulatory action and interpretation. This bill prohibits the CPUC from exercising any regulatory jurisdiction over VoIP and IP-enabled telecommunications unless an exemption to

this prohibition is expressly stated. To the extent that this bill prohibits the CPUC from using its general regulatory powers to enforce requirements on VoIP and IP-enabled telecommunications, this bill may lead to a lack of clarity about the CPUC's authority to enforce COLR and basic service requirements. At this time, no carrier is providing basic service through VoIP. However, if 94 percent of telephone lines become VoIP or IP-based by this bill's 2030 sunset date, it is likely that at least some carriers will use IP-based technology to meet COLR obligations. Under existing law, the CPUC is prohibited from requesting certain customer service data, establishing service quality metrics, or enforcing service quality requirements for VoIP or IP-enabled telecommunications unless the carrier is using VoIP to meet basic service obligations. Some carriers assert that the CPUC's basic service requirement would apply to any COLR using VoIP as a basic service. However, carriers generally also assert that existing law and this bill would prohibit the CPUC from establishing service quality standards for VoIP broadly. Since limited public information exists about VoIP's service quality, it is difficult to evaluate its performance against other communication technologies. Existing law and this bill may not sufficiently provide the CPUC with the authority to ensure that basic service and COLR requirements are established and enforced in a technology neutral manner.

Remedies for consumers remain limited under this bill. This bill extends limitations on the CPUC's ability to formally address consumer complaints through administrative actions, including the ability to request data regarding customer complaints from the telecommunications providers. While most of this bill relies on the FCC and litigation to enforce consumer protections, it is not clear that consumers can currently rely on the FCC and individual litigation to remedy their concerns, including unfair business practices. In the 2011 case *AT&T Mobility v. Concepcion*, the United States Supreme Court determined that California statutes prohibiting the use of coercive clauses are pre-empted by the *Federal Arbitration Act*. Many companies, including telecommunications providers, include arbitration clauses in their contracts that limit a consumer's ability to form a class with other consumers to seek remedies for unfair business practices related to contracts. These clauses frequently limit consumers to a specified arbitration process, which may limit their remedies to individual small claims proceedings.

Prior to the enactment of SB 1161, the Obama FCC took a number of steps to exercise more oversight on IP-enabled services. Between 2010 and 2015, the Obama FCC also adopted two orders to establish net neutrality requirements, which included re-classifying IP-based telecommunications as common carriers. This reclassification provided the FCC with much greater authority to enforce requirements on IP-based services and regulate those services in a manner similar

to other telecommunications utilities. However, in 2017, the Trump FCC reversed the FCC’s net neutrality requirements, and the FCC has since deregulated additional services that may not be entirely IP-based. To the extent that consumers submit complaints to the FCC regarding VoIP and IP-enabled services, it is unclear what kind of remedy consumers can obtain since the FCC has adopted an order limiting its own ability to establish requirements for these services.

Consumer complaints exist, but the analysis is incomplete. In a 2017 report on the status of state-level oversight of telecommunication, researchers from the National Regulatory Research Institute identified areas for states to focus their efforts in the face of VoIP deregulation and the transition to broadband communication networks. The report recommended focusing on the following steps:

- Gaining customer-driven insights such as crowd sourcing information to track service accessibility and reliability.
- Broadening outage reporting.
- Collect and evaluate consumer complaints.

The CPUC operates the Broadband Map, which includes an opportunity to gain crowdsourced information on broadband reliability and accessibility. Additional bills pending in the Legislature broaden outage reporting. However, increasing access to customer complaint data and establishing mechanisms to resolve these complaints has not been addressed at this time.

While the CPUC has not reported on customer complaints specific to VoIP, the CPUC’s Customer Affairs Branch regularly reports on customer complaints received by the CPUC. These reports are broken down by utility sector and month and they include a discussion of the nature of the reports. The chart below shows the number of complaints received by the CPUC between November 2018 and January 2019 for the energy, communications, and water utilities regulated by the CPUC.

	November 2018	December 2018	January 2019
Energy	687	661	677
Communications	904	974	1,087
Water	39	39	53

Despite the occurrence of wildfires in which utility infrastructure was implicated, complaints regarding energy utilities remained largely consistent between November 2018 and January 2019. In January 2019, the energy utilities regulated by the CPUC generated a total of 677 complaints and 49 (approximately seven percent) of these complaints were classified as pertaining to issues over which the

CPUC does not have regulatory jurisdiction. During the same month, the telecommunications sector generated 1,087 consumer complaints, and 205 (approximately 19 percent) of those complaints were classified as issues over which the CPUC does not have regulatory jurisdiction. This data indicates that the communications sector generates a greater number of complaints to the CPUC than other utility sectors on average, and a much greater percentage of those complaints are for customer issues over which the CPUC has no regulatory jurisdiction.

It is likely that VoIP and IP-enabled services would be classified as issues over which the CPUC has no regulatory jurisdiction. However, additional data on informal complaints indicates that service quality is a significant portion of complaints. A portion of the total number of complaints are classified as “informal complaints,” which the CPUC sends to the telecommunications provider for follow-up. In January 2019, the CPUC reported 291 informal complaints to telecommunications providers. Approximately one third of these 291 complaints were classified as service quality issues. For some companies with larger complaint volumes, service quality comprised almost half of their informal complaints. The CPUC data on VoIP customer complaints does not include information regarding the extent to which complaints are resolved and whether those resolutions are timely.

This bill's 911 exemption may not cover all 911 duties. This bill continues to exempt the *Warren 911 Act* from prohibitions on government regulation of VoIP; however, recent conflicts over the implementation of Next Generation 911 (NG 911) indicate that different interpretations of the exemption exist. NG 911 is intended to update the 911 system to accommodate communications delivered over an IP network, including text-to-911. Existing law within the *Warren 911 Act* requires the Office of Emergency Services (OES) to develop a plan and timeline for the testing, implementation and operation of NG 911 system. In April 2019, OES released a request for proposal (RFP) to obtain bids for a NG 911 provider. The RFP specifies that bidders must submit tariffs, which are agreements that stipulate the terms, conditions, and prices for which services are provided. Generally, tariffs are filed with the CPUC, and the CPUC has historically required tariffs for 911 service.

Several telecommunications companies have objected to the inclusion of a tariff in the NG 911 contract because they claim that tariffs are unnecessary for a competitively bid contract and the contract can include terms, conditions, and price disclosures without a tariff. As a complaint to the RFP, AT&T submitted a petition in California Superior Court requesting the following:

- 1) A writ of mandate requiring OES to withdraw the current NG 911 RFP and specifying that any new RFP must not include a tariff or “not to

- exceed” provisions that prohibits costs from exceeding a certain level. The request also requests that any “not to exceed” cap include information specifying how the amount is calculated and related to the scope of the RFP.
- 2) A declaration exempting AT&T from the NG 911 tariff and that the “not to exceed” provisions of the contract are unenforceable.
 - 3) An injunction preventing the implementation of the RFP.
 - 4) Other legal remedies.

Carriers claim that the tariff, cost restrictions, and certain price disclosures constitute regulation prohibited by Public Utilities Code §710 and this bill, regardless of the 911 exemption in statute. According to carriers, even if the tariff is required by OES as part of the NG 911 contract, the tariff implies that the CPUC would have a regulatory authority that is prohibited by this bill. The Attorney General has responded on behalf of the state with OES, and the lawsuit is still pending.

The Attorney General’s argument in response notes that 911 services are critical needs that require tariffs as a means of ensuring that services are provided in a manner consistent with established requirements because contracts for 911 services cannot be terminated in the event that a party breaches its terms. Since NG 911 services are provided over a largely unregulated network, the tariffs and price caps are likely some of the only enforcement mechanisms available to ensure that costs are competitive, prevent unreasonable charges, and ensure that the system is established and maintained properly. Effective maintenance of the system is critical for relaying 911 calls and protecting the system from hazards that could endanger the 911 system, including cyberattacks. While there may be mechanisms for OES to obtain price disclosures from bidders through the contracting process, it is unclear how OES would enforce those prices or verify that they are accurate without some additional enforcement mechanism.

The Legislature as regulator. This bill establishes the Legislature as the primary body for creating requirements for VoIP and IP-based telecommunications. The bill also delegates consumer protection enforcement to the Legislature and Attorney General by prohibiting agencies from requesting consumer complaint information and taking actions against VoIP and IP-based providers to remedy complaints. This bill permits the CPUC to receive complaints from customers, informally respond to those complaints, and provide customers who submit complaints with information about their options for addressing those complaints under federal and state law. However, this bill prohibits the CPUC from taking any action against a telecommunications provider to remedy consumer complaints.

While this bill requires the CPUC to submit an annual report to the Legislature and Attorney General regarding the complaints it receives about VoIP service from VoIP customers, the Legislature and Attorney General do not have any mechanism for resolving those complaints outside of legislation or litigation. It is also unclear how these complaints could be resolved in a timely manner if they are only reported on an annual basis and how the Legislature or Attorney General could remedy complaints outside a litigation process.

Even as this bill implies that it allows the Legislature to set policy for VoIP and IP-services, its provisions may impact bills currently pending in the Legislature. For example, this bill provides an exemption to the limits on CPUC's regulatory action for requirements for any VoIP provider voluntarily participating in the Lifeline universal service program. However, it specifies that the CPUC can only exercise its authority based on requirements already established in a 2016 decision. As a result, the CPUC may be limited in its ability to establish program requirements to implement any bill modifying the Lifeline program for VoIP or IP-based services.

The bill's backup power, service restoration, and bill credit provisions are largely unenforceable. This bill contains provisions that establish some requirements for backup power notifications, service restoration, and customer bill credits that appear to be based on requirements established by the CPUC in regulatory proceedings regarding service quality. However, this bill places these provisions in a portion of the Business and Professions Code over which no board at the Department of Consumer Affairs has oversight. As a result, these provisions may only be enforced by the Attorney General. These provisions also contain a number of exemptions and enforcement restrictions that make them largely unenforceable.

This bill requires providers of residential interconnected VoIP service to provide their customers with information about backup power; however, it does not require the provision of backup power and only allows the CPUC to enforce backup power customer notification requirements established approximately 10 years ago.

This bill also requires these providers to start restoring service within 24 hours of receiving an outage, restore service within 72 hours of the report, and update their terms of service to offer bill credits for outages lasting longer than 24 hours. However, these requirements do not apply to outages resulting from circumstances beyond the provider's control, which is broadly defined, and may include any circumstance. This bill also exempts any residential interconnected VoIP provider from the service restoration and bill credit requirements if the provider is subject to any law or regulation related to outage response or repair time. While this exemption may be intended to prevent duplicate reporting requirements, it also could exempt all residential interconnected VoIP and IP-based service providers

from the service restoration and bill credit requirements because the FCC has established regulations requiring VoIP and broadband providers to submit major outage notifications to the FCC.

The law of unintended consequences. Existing law and this bill contain broad prohibitions against regulation of VoIP and IP-enabled services with narrow exemptions. The deregulation of VoIP has had a variety of unintended consequences for privacy, civil rights, and portions of law that have not been substantially updated since IP-enabled telecommunications have become the dominant form of communications services.

Following the catastrophic wildfires of 2017, the CPUC adopted several resolutions requiring energy utilities and certain telecommunications providers to implement certain consumer protections in the affected communities. In July 2018, the CPUC moved to extend these protections until permanent rules for consumers affected by catastrophic disasters could be adopted. The CPUC's 2018 decision applied to COLRs and "residential communications companies." In response to stakeholder comments, the CPUC clarified that "residential communications companies" includes facilities-based interconnected VoIP providers. While many telecommunications providers already provide some of the consumer relief that the CPUC required as part of its decision, a coalition of VoIP providers objected to the decision. In filings to the CPUC, the coalition stated that Public Utilities Code §710 prohibited the CPUC from requiring these telecommunications providers to comply with these protections. Some of the protections may help limit the degree to which consumers are billed for services that can only be delivered at addresses from which they have been evacuated and may not re-enter for an extended period of time. A number of IP-based services are established on contracts that last for at least a year and include early termination fees. News reports following the 2017 North Bay fires indicate that some telecommunications continued billing accounts for individuals that lost their lives in the fire. While these billing issues may have been errors, effective customer relief protocol may help prevent these errors in the future.

In a recent San Francisco Superior Court decision for *Gruber v. Yelp*, a judge ruled that the California Invasion of Privacy Act (CIPA) does not apply to VoIP calls. While the judge did not specifically cite a specific bill or statute, the judge concurred with the argument that since the CPUC does not regulate VoIP, and VoIP cannot be considered a cordless, cellular, landline phone, it cannot be treated as one of the technologies to which CIPA expressly applies.

In 2013, the Obama FCC took action to cap prison inmate calling costs following a class action lawsuit initiated by Martha Wright-Reed, the grandmother of an

Arizona prison inmate. Wright-Reed sought the lawsuit after paying approximately \$100 a month to call her son through an inmate calling service. A 2017 federal appellate court decision determined that the FCC had overstepped its authority to establish price caps on in-state calls. The Trump FCC abandoned attempts to appeal the decision and has declined to enforce caps on in-state calls transacted through an inmate calling system. Studies indicate that in-state calls comprise approximately 92 percent of all inmate calling system calls. Inmate calling systems do not exist in a competitive environment and the price terms are entirely controlled by the prison and the service contractors. A number of California inmate calling systems are strictly VoIP providers. Prison authorities can be prohibited from taking a cut of inmate calling system contracts and are authorized to establish contracts that limit inmate calling costs. However, under this bill, other government agencies in California may be restricted from exercising any authority over VoIP inmate calling systems, including the establishment of price caps.

Need for amendments. As currently drafted, this bill prohibits the CPUC from establishing regulations for VoIP and IP-based services; however, it also codifies CPUC regulations that prevent the CPUC from further refining existing requirements. This bill also appears to imply that the CPUC's authority to establish COLR and basic service requirements are exempt from the prohibitions on regulatory action; however, this bill's language regarding the CPUC's authority to enforce COLR and basic service quality requirements is unclear because it implies that this authority only applies to non-IP telecommunications. This bill also continues the existing exemption for the *Warren 911 Act*; however, it is not clear whether this exemption is sufficiently broad to ensure that OES has the authority to administer and enforce all 911 services under this bill, including NG 911. *Should this committee move this bill forward, the author and this committee may wish to clarify that OES has the authority to administer and enforce all 911 requirements to ensure that OES has sufficient authority to administer and enforce all NG 911 duties. To ensure that the CPUC has sufficient authority to administer and enforce universal service programs, COLR, and basic service requirements, the author and committee may wish to amend this bill to eliminate codification of past CPUC decisions and clarify that the CPUC has the authority to set and enforce COLR and basic service requirements on a technology-neutral basis.* This bill also includes provisions intended to enable VoIP obtain more information about backup power, provide bill credits for outages, and establish service restoration requirements; however, as currently drafted, these provisions are unenforceable and do not address the lack of specific information about VoIP consumer complaints and resolutions. *Should this bill move forward, the author and committee may wish to consider making these requirements enforceable, improving data collection and analysis regarding VoIP and IP-enabled*

communications, and requiring the CPUC to make specific recommendations to the Legislature and Attorney General based on its analysis.

Prior/Related Legislation

SB 822 (Weiner, Chapter 976, Statutes of 2018) established net neutrality requirements in California by prohibiting internet service providers from taking certain actions that interfere with consumers' ability to lawfully access internet content. The bill prohibited intentionally blocking content, speeding up or slowing down traffic, engaging in paid-prioritization, requiring consideration from edge providers for access to an ISP's end users, and selectively zero-rating certain content.

AB 2395 (Low, 2016) would have established a process by which telecommunications providers could cease to provide basic telephone service and meet COLR obligations. The bill died in the Assembly Committee on Appropriations.

SB 1161 (Padilla, Chapter 733, Statutes of 2012) established prohibitions on the regulation of VoIP and IP-enabled services in California.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT:

100 Black Men of Long Beach Inc.
 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
 Asian Resources, Inc.
 AT&T
 Bay Area Council
 Black Business Association
 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
 California Black Chamber
 California Cable & Telecommunications Association

California Cattlemen's Association
California Chamber of Commerce
California Hispanic Chamber
California Latino Leadership Institute
California Manufacturers & Technology Association
California Rangeland Trust
California Urban Partnership
Carmel Valley Chamber
Center for Fathers and Families
Chicano Federation of San Diego County, Inc.
Chino Valley Chamber
Coalition for Responsible Community Development
Community Women Vital Voices
Computers 2 Kids
Computing Technology Industry Association
Concerned Black Men of Los Angeles
Concerned Citizens Community Involvement
Congregations Organized for Prophetic Engagement
Congress of California Seniors
Consolidated Communications Inc.
Consumer Advocates for RCFE Reform
CTIA-the wireless industry trade association
dev/Mission
Disability Action Center
East Oakland Youth Development Center
Fontana Chamber
Fresno Area Hispanic Foundation
Fresno Metro Black Chamber
Frontier Communications
Frontier Senior Center
Gamma Zeta Boulé Foundation
Glendale Chamber
Greater Coachella Valley Chamber
Greater Los Angeles African American Chamber
Greater Ontario Business Council
Greater Riverside Chambers of Commerce
Greater Sacramento Urban League
Hesperia Chamber
Hispanic 100 Policy Committee
Imperial Valley LGBT Resource Center
In Biz Latino
Inland Empire Economic Partnership

Invest in Women Entrepreneurs Initiative
Janet Goeske Foundation
Kings/Tulare Homeless Alliance
Krimson and Kreme Foundation
Latino Education & Advocacy Days
Lighthouse Counseling and Family Resource Center
Los Angeles Latino Chamber
MAAC
Macedonia Community Development Corp
Monterey County Hospitality Association
Murrieta/Wildomar Chamber
Music Changing Lives
National Diversity Coalition
North San Diego County NAACP
Oasis Center International
Orange County Business Council
Orange County Hispanic Chamber
Organization of Chinese Americans, East Bay
Organization of Chinese Americans, Greater Sacramento
Oroville Rescue Mission
Pacific Grove Chamber
Partners in College Success
Pasadena Chamber
Prancing Ponies Foundation
Rancho Cucamonga Chamber
Redlands Chamber
Riverside National Association for the Advancement of Colored People
Roberts Family Development Center
Russian American Media, Inc.
Sacramento Asian Pacific Chamber
Sacramento Black Chamber of Commerce
Sacramento Hispanic Chamber
Salvadoran American Leadership & Education 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
Slavic-American Chamber
Society for the Blind
South Bay Community Services

TechNet
TELACU
The Arc Butte County
The Fresno Center
The Nonprofit Alliance
The Village Project, Inc.
United Food and Commercial Workers Union, Local 648
United Women's Organization
Upland Chamber
Urban Corps of San Diego County
Verizon
Veterans Association of North County
Victor Valley Chamber
World Institute on Disability
Young Visionaries Youth Leadership Academy

OPPOSITION:

AARP
Access Humboldt
American Civil Liberties Union of California
Bay Area Christian Connection
Beth Eden Baptist Church
Broadband Institute of California
California Alliance for Retired Americans
California Emerging Technology Fund
California Labor Federation
California Public Utilities Commission
Center on Race, Leadership and Social Justice
Centro La Familia Advocacy Services
City Heights Community Development Corp
Common Cause
Common Networks
Communications Workers of America, District 9
Consumer Action
Consumer Federation of California
Consumer Reports
County of Santa Clara
Courage Campaign
Demand Progress
Digital Privacy Alliance
El Concilio of San Mateo County

Electronic Frontier Foundation
Emerging Leaders Program of the Leadership Institute at Allen Temple
Engine
Fight for the Future
Free Press Action
Housing Long Beach
Humboldt County Board of Supervisors
Interdenominational Ministerial Alliance
Media Alliance
MediaJustice
Mendocino County Board of Supervisors
Mission Asset Fund
Monkeybrains
Mono County Board of Supervisors
Mono County Sheriff's Office
National Consumer Law Center
New America's Open Technology Institute
New Media Rights
North Bay North Coast Broadband Consortium
Oakland Privacy
Omsoft and Davis Community Network
One Million New Internet Users
Poverello House
Prison Policy Initiative
Public Advocates Office (formerly Office of Ratepayer Advocates)
Public Citizen, Inc.
Public Knowledge
Santa Clara County Fire Department
Southern California Tribal Digital Village Network
The Center for Media Justice
The Greenlining Institute
The Herald Fire Protection District
The Last Trump of Zion
The Utility Reform Network
True Faith Community Baptist Church
United Church of Christ, OC Inc.
Utility Consumers' Action Network
Several Hundred Individuals

ARGUMENTS IN SUPPORT: According to the author:

In 2012, the Legislature codified a policy of reserving any state regulation of Voice-over Internet Protocol and IP-enabled services for the Legislature. Since then, Californians have continued benefiting from these services.

For business travelers, students abroad, and Californians with family or friends in another country, IP-enabled services are an important part of staying connected without having to pay costly long distance or international telephone bills. While previously many may have relied on navigating complicated phone plans for international calling or purchased expensive international calling cards, now communities with international ties can use free and convenient services like Whatsapp or Skype to stay connected. Consumers and organizations who rely on these services have seen the average price per megabit per second has decreased 90 percent over the last decade.

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 the potential for costly litigation on all sides, possibly delaying further expansion and innovation of these services.

The Legislature has granted the CPUC and other agencies authority over VoIP and IP-enabled services in some circumstances- such as requiring payment of fees for 911 service and state universal service programs, adopting consumer education requirements related to backup power, and obtaining specific data from VoIP providers. These regulations of the industry are necessary for both consumer protection and public safety.

However, for issues that have been identified as in need of regulation with VoIP- and IP-enabled services, it is obvious that the Legislature is best poised to act. For instance, from the time the CPUC directed staff to add new smartphone technology to the Deaf and Disabled Telecommunications Program, it has been 9 years and the rule-making process is still not finalized. These delays can mean consumers lose out on the benefits of technological innovation or expanded services, such as Lifeline program savings for cellphone service.

AB 1366 would extend the sunset of provisions prohibiting state regulation of VoIP and IP enabled services except as specified by the Legislature for

another 10 years, as well as put in place new customer protections regarding service restoration and disclosures. 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.

ARGUMENTS IN OPPOSITION: Opponents claim that the continued deregulation of VoIP will result in fewer consumer protections for the majority of Californians because VoIP lines now exceed traditional telephone lines. Opponents also argue that this bill goes beyond prohibiting CPUC regulation of VoIP by prohibiting any governmental entity's exercise of duty over VoIP and IP-based services, including the collection of data necessary for effectively deploying broadband in underserved communities. Opponents also claim that the current regulatory environment at the federal level necessitates more state oversight on telecommunications issues, which includes the resolution of safety and customer service concerns. In opposition, the Communication Workers of America (CWA) state:

Our workers are on the frontlines and hear directly from consumers about their problems with telephone services, without the ability to have a state commission or entity address these concerns. Our members also witness safety issues with phone lines that are exacerbated by the lack of proper oversight or regulation due to the passage of AB 1161. CWA has long supported policies that protect consumers and hold telecommunications service providers accountable for their infrastructure and service. AB 1366 would further entrench all the issues that SB 1161 caused by extending its provisions until 2030. As customers continue to be switched from traditional phone service to VoIP, a growing majority of Californians will lose the protections they previously enjoyed and still deserve.

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