

STATE OF CALIFORNIA

M e m o r a n d u m

Date: June 24, 2019

To: The Commission
(Meeting of June 27, 2019)

From: Hazel Miranda, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **Assembly Bill 1366 (Gonzalez)** – Voice over Internet Protocol and Internet Protocol enabled communications services. As amended May 20, 2019.

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: STRONGLY OPPOSE

SUMMARY OF BILL

AB 1366 extends for an additional ten years the qualified prohibition upon any state or local entity regulating Voice over Internet Protocol and Internet Protocol (VoIP) enabled service, with the additional qualification that the commission may take no regulatory action, unless expressly and specifically directed by the Legislature in the interest of public safety or consumer protection, among other provisions.

POSITION SUMMARY

At a time when California's essential infrastructure must receive heightened scrutiny for its reliability during increasing catastrophic disasters, when telecommunications infrastructure is failing, and millions of Californians do not benefit from any competition in the communications marketplace, this bill proposes to severely restrict oversight of California's communications grid.

Access to safe, reliable, and affordable communications – regardless of the technology – for every Californian is fundamental. But the law this bill proposes to extend is a barrier to sustaining and modernizing even the minimal requirements and standards that ensure reliable, resilient and universal service. The state's standards for communications companies are still tied to traditional telephone service, even though most Californians now rely on mobile and IP services.

I. This Legislation is *not* about Skype or WhatsApp

Voice over Internet Protocol (VoIP) refers to service to a phone with a dedicated number and the ability to dial 9-1-1. Typically, these are hardwired "wireline" phones, which serve as, and are marketed as, replacements for traditional telephones. This does not include services such as Skype, WhatsApp, FaceTime or other comparable applications, nor does it affect the user's ability to make calls internationally. These applications are add-on services that – even the companies acknowledge – are not replacements for the vital connection regulated phone services afford consumers.

II. This Legislation is *not* about Innovation being Stifled

The stated objective of SB 1161 (Padilla, 2012) was to create a deregulated environment to permit the VoIP market to develop. This stated objective has been achieved – the once-nascent VoIP market now dominates the wireline marketplace. As of December 2017, California had over 8.2 million VoIP wireline subscribers versus 5.8 million subscribers to traditional telephone service. At this rate, by 2021 nearly all wireline telephones will be VoIP-based. Because this bill would prohibit regulation of VoIP, as customers are transitioned to VoIP, this legislation would result in existing state requirements for service quality and universal service disappearing along with the last traditional telephone subscribers. Accordingly, the impact of this bill would be fundamentally different from SB 1161 in that it would no longer protect a new industry, but would instead, seriously harm consumers. It would result – without any public process or deliberation – in the likely dissolution of existing regulatory requirements, most notably the Commission’s carrier-of-last-resort and service quality requirements, which to ensure all Californians have access to telephone service – regardless of the technology used to deliver that service.

III. This Legislation Will End Meaningful and Necessary Oversight of the Communications Grid

- **Public Safety:** This bill prevents the Commission from undertaking meaningful investigations or rulemakings that would result in life saving regulations or standards for the communications grid. Regardless of whether a wildfire is sparked by lightning, arson, a utility, or an unwitting citizen, the common link in whether these fires cause a loss of life is the reliability of the communications grid. The Commission is investigating and developing life-saving initiatives through its proceedings on [De-Energization](#) and [Protections for Wildfire Victims](#). To understand the barrier Public Utilities Code Section 710 poses for the Commission related to these initiatives, please see the application for rehearing submitted by the [VoIP Coalition Application for Rehearing Of Decision 18-08-004 Affirming The Provisions Of Resolutions M-4833 And M-4835 As Interim Disaster Relief Emergency Customer Protections](#).
 - *Example:* For more information on the public safety impact of this legislation, please review the Commission staff’s white paper: [Safety Principles for Communications Providers](#).
- **Carrier of Last Resort:** The Commission requires traditional telephone carriers that serve as carriers of last resort to serve all customers within their designated service area. This is a Commission requirement – it is not in statute. This requirement ensures thousands of Californians, predominantly rural customers, have access to landline telephone service, and hence access to 9-1-1, universal service programs, and other necessary communications. The continued decline in traditional telephone service subscriptions places this essential requirement on precarious legal footing. The Commission developed this requirement as a vital safeguard against market failures when the telecommunications market was first opened to competition. This requirement is still tied to traditional telephone service, and this bill places it in jeopardy. In the quickly approaching future where there are no longer traditional telephone subscribers or companies, this requirement will evaporate without any consideration of whether it should be maintained or modernized.
 - *Example:* It is important to understand the economic impact and importance – especially for Rural California – of the Carrier-of-Last-Resort requirement and Basic Service standards. As an example, see coverage of [Verizon’s decision to refuse to replace wireline phone and DSL service to the residents of Fire Island, New York after the community was decimated by Hurricane Sandy in 2012](#).

- **Service Quality Standards:** The Commission has established limited and very reasonable service quality standards for traditional telephone service providers: take steps to minimize the number of customer complaints they receive, restore service to customers in a timely fashion, and answer a customer's call within a minute. Despite the reasonableness of these fairly minimal requirements, service providers have not met these standards. In just the past two years, the failure to meet these standards resulted in more than 16 million dollars in fines. Poor service quality limits the public's ability to communicate on a daily basis, to contact 9-1-1, or to receive communications during an emergency. In light of these service quality failures, deregulating this industry further – as this legislation proposes – is against the public interest.

IV. This Legislation will Continue Delay of Commission Proceedings and Contradictions of Commission Responsibilities and Programs

This law has resulted in needless delay of Commission proceedings, as what specifically is prohibited by PUC 710 is constantly debated by proceeding parties. PUC 710 has created a hollow distinction that permits companies to circumvent accountability when they violate the law. PUC 710 has additionally developed contradictions and adverse impacts in the Commission's public purpose programs and licensing responsibilities.

V. This Legislation will Continue Undermining Other Laws

In addition to eroding the applicability of Commission regulatory requirements, PUC 710 has also enabled companies to disregard California laws. When SB 1161 was passed in 2012, it did not consider the sweeping impact that placing VoIP as a separate and distinct service would have on other statutes. Surely, the Legislature did not intend to make it permissible to record phone conversations or remove essential services from state oversight.

DETAILED ANALYSIS

AB 1366 (Gonzalez) proposes to extend for an additional ten years the prohibition on any state entity or local government from regulating Voice over Internet Protocol (VoIP) and Internet Protocol (IP) enabled services, unless expressly directed by statute.

STATED PROBLEM

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 [...] 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.

I. This Legislation is *not* about Skype or WhatsApp

Despite statements by the author and supporters of this measure, this legislation is not about applications like Skype, WhatsApp, and FaceTime; applications over which the Commission has never had authority and would not have authority if this bill was not enacted. Simply put, the Commission has no authority over the content of communications (i.e., applications), so claims that this bill is necessary to prevent the Commission from exercising such authority are wrong. Rather, this legislation applies to common carrier services over which the state has exercised oversight in the past and must continue to do so in the future. WhatsApp and Facetime are not essential services; they are not part of the

upkeep or resiliency of critical infrastructure; they do not pose the potential to redline whole communities; they cannot deprive customers of access to vital services in an emergency, and they are not responsible for connecting a call for help to an emergency services dispatcher.

There are two key types of Voice over Internet Protocol service:

1. **“Non-interconnected VoIP service”** typically refers to optional software applications that can be added to computers or smart phones that may or may not be able to make calls to the traditional telephone service network. Specifically, “non-interconnected VoIP” means service that (1) Enables real-time voice communications that originate from or terminate to the user's location using Internet protocol (2) Requires Internet protocol compatible customer premises equipment (3) Does not include any service that is an interconnected VoIP service. [47 CFR § 64.601(a)(23)]
 - Examples: Skype, WhatsApp, FaceTime, etc.
2. **“Interconnected VoIP service”** Typically refers to hardwired “wireline” phones, with ordinary customer premises equipment, that serve as replacements for traditional telephones. Specifically, “interconnected VoIP” means service that (1) enables real-time, two-way voice communications (2) requires a broadband connection from the user's location (3) requires IP-compatible customer premises equipment and (4) permits users to receive calls from and terminate calls to the traditional telephone service network. [47 CFR § 9.3]
 - Examples: AT&T U-verse, Comcast Xfinity, etc.

The FCC has not classified VoIP as either a Title I information service or a Title II common carrier service. Despite this, it has imposed numerous common carrier requirements on interconnected VoIP service that make it indistinguishable from traditional telephone service. VoIP providers must:

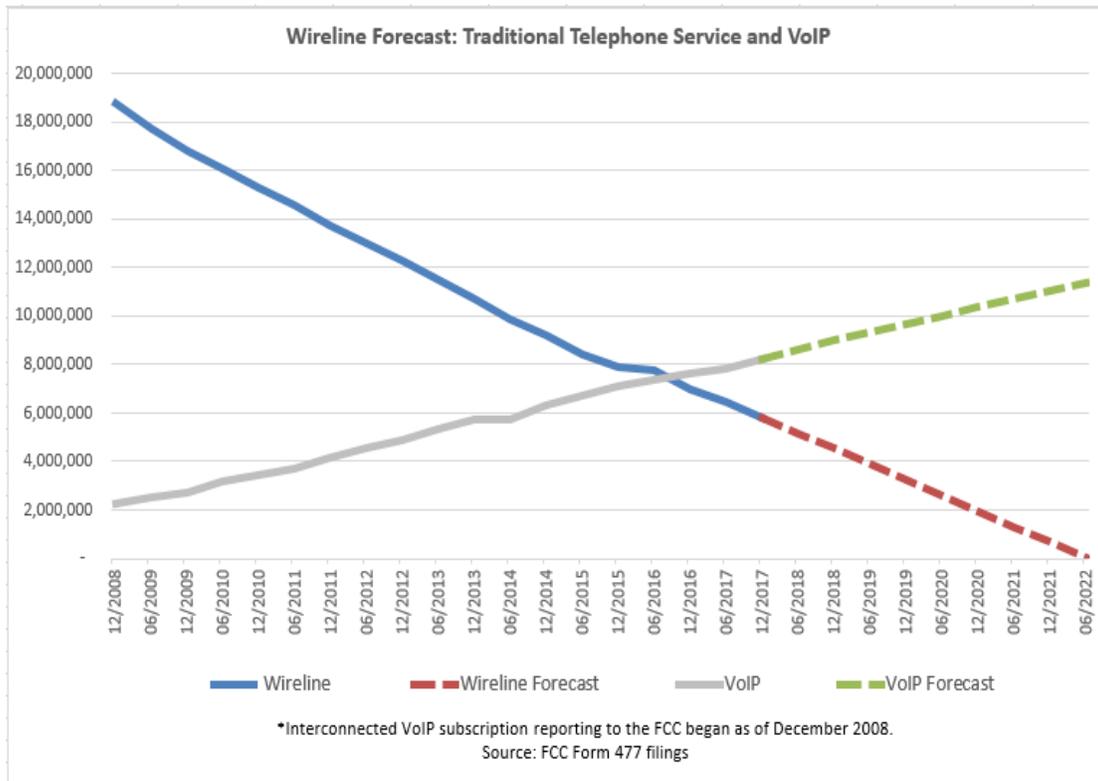
- provide access to 911.
- permit legal surveillance of VoIP users by law enforcement.
- pay into state and federal universal service funds.
- allow other carriers to interconnect with their networks.
- comply with customer privacy laws.
- adhere to disability access requirements.
- pay Federal Communications Commission regulatory fees.
- adhere to local number portability requirements.
- notify customers of plans to discontinue service.
- report on catastrophic outages to the FCC (and CPUC, pursuant to CPUC order).
- comply with “spoofing” prohibitions.
- provide back-up power customer education and provide customers with the option to purchase backup power.

Non-interconnected VoIP services like Skype do not have the same public obligation to serve and protect consumers, to ensure public safety, or contribute to universal service objectives. Accordingly, the state simply has no interest in exercising regulatory authority over these services, in contrast to the interconnected VoIP companies like AT&T, Frontier, and Comcast. Clearly, proponents' claims that this legislation prevents heavy-handed regulation of innovative apps like Skype are specious.

In fact, providers of non-interconnected VoIP are quite vocal about the fact that they [do not consider their services to be a replacement for phone service.](#)

II. This Legislation is *not* about Innovation being Stifled

When this law was originally enacted in 2012, VoIP was a nascent technology. The stated objective was to provide a deregulated environment to permit the VoIP market to develop. This stated objective has been achieved – the once nascent VoIP market is now well developed. Traditional phone subscriptions have declined, as they are upgraded to VoIP subscriptions. As the graph below demonstrates, VoIP has well-surpassed traditional phone subscriptions. As of December 2017, there were over 8.2 million VoIP wireline subscribers and 5.8 million subscribers to traditional telephone service. At this rate, by 2021 nearly all wireline telephones will be VoIP-based:



As indicated in the graph above, the remaining traditional telephone service lines will be switched over to VoIP long before the proposed 2030 sunset date of this legislation. Clearly, this law is no longer about providing a sweetheart deregulatory deal to the telecommunications industry. It is about snuffing out meaningful oversight, leaving customers without a state agency to provide them with any recourse.

Extending this blanket prohibition on sound oversight of this industry has grave and troubling consequences for the protection of consumers, public safety, competition, and universal service in California. Californians expect to have access to safe, reliable, and affordable communications, regardless of the technology used. This bill would continue blocking rational requirements and standards that ensure reliable, resilient and universal service and prevents these requirements from being updated.

Further, the same underlying facilities are used to provide both traditional telephone service and provide VoIP. The companies that used to provide traditional landline service now provide VoIP; those companies market VoIP as another version of landline service; the customers who used to subscribe to traditional landline service now subscribe to VoIP. For all intents and purposes, VoIP appears to consumers as the same service they have always had, except that it will not continue to work when the

power fails. Creating a regulatory distinction between two identical services because of slight differences in the technology used makes little sense.

Finally, competition may anecdotally drive down prices and ensure quality services are provided. However, a competitive market for modern communications does not exist for the majority of Californians. In California, 80% of households have access to 2 or fewer providers of high-speed internet, defined as 25 Mbps down and 3 Mbps up, and 35% of households have one or no provider.

III. This Legislation will End Meaningful Oversight of the Communications Grid

The People and the Legislature have long vested the responsibility to regulate telecommunications in the California Public Utilities Commission. In 1911, by popular constitutional amendment, the People established the Commission and the Legislature subsequently enacted the Public Utilities Act, providing the Commission with the responsibility, among other provisions, to regulate “telephone corporations” as public utilities. The Legislature has time and time again affirmed the commission’s 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. To this end, this legislation undermines the body of regulations that have governed telecommunications in California for more than a century and fails to provide a serious alternative. The impacts will be most grave in the following three areas: (1) Public Safety, (2) Service Quality, and (3) Universal Service.

1) Public Safety

Californians do not consider the type of communications technology they are using when they call 9-1-1 during an emergency or disaster; they just expect the service to work and that the call will go through. Recent catastrophic wildfires and other disasters in the past two years demonstrated failures in the communications grid, highlighted the lack of resiliency, and made irrefutable the need for standards and rules.

This bill would continue to bar the Commission from undertaking meaningful investigations or rulemakings that would result in life saving regulations or standards for the communications grid. Regardless of whether a wildfire is sparked by lightning, arson, a utility, or an unwitting citizen, the common link in whether these fires will result in the loss of life is the reliability of the communications grid. The Commission is investigating and developing life-saving initiatives through its proceedings on [De-Energization](#) and [Protections for Wildfire Victims](#). To understand the obstruction that Public Utilities Code Section 710 has caused related to these initiatives, please see the application for rehearing submitted by the [VoIP Coalition Application for Rehearing Of Decision 18-08-004 Affirming The Provisions Of Resolutions M-4833 And M-4835 As Interim Disaster Relief Emergency Customer Protections](#). For more information on the public safety impact of this legislation, please review the Commission’s white paper: [Safety Principles for Communications Providers](#).

Additional vital public safety issues must be resolved to mitigate the dire impacts of devastating wildfires. The CPUC is prohibited or impeded, by the law that this bill seeks to extend, from resolving the following issues:

- **Emergency Alert Distribution Standards** – Sonoma County’s *Operational Area Alert and Warning Functional Exercise After Action Report/Improvement Plan* found that of the almost 300,000 numbers in the database for emergency notification, nearly 50 percent of the calls failed delivery. [Reporting](#) on the Camp Fire identified similar problems. These inconsistencies reduce emergency management officials’ confidence in a successful emergency response. These are serious discrepancies that warrant the state’s detailed review.

- **Electric Utility De-Energization of Power Lines** – Some of our state’s recent wildfires have started when strong winds damaged or downed electric power lines. The de-energization of power lines is part of the state’s efforts to protect public safety by reducing the risk of utility infrastructure igniting wildfires. De-energization severely impacts the communications grid (e.g., cell towers and IP services with little or no backup power), rendering it inoperable during potentially multi-day blackouts. Mitigating the public safety issues that result from de-energization will likely require the further adoption of standards, protocols and best practices for power companies and communications providers to ensure preparedness and proper notification between utilities, the public and emergency responders.
- **Service Outage Reporting** – Emergency responders and the public need a reliable and resilient communications grid that functions as expected day-to-day and especially during the critical moments of an unfolding disaster. Cal OES representatives have stated that the providers’ current voluntary outage reporting does not ensure that Cal OES can respond to disasters efficiently. While the CPUC receives limited reporting from communications carriers, it does not receive reports in real time or at the level of detail that emergency responders need, nor do CPUC staff have the authority or resources to share this information with emergency responders, in large part, because carriers claim that this data is confidential.
- **Emergency Disaster Protections** – The Commission adopted comprehensive post-disaster consumer protection measures for all utilities under the CPUC’s jurisdiction to support residential and small business customers of utilities affected by disasters that affect utility service. The requirements include waivers, protections and services that ease disaster recovery for Californians. The protections include waiving deposit requirements for reestablishing service, discontinuing billing for the time a residence is unoccupied as result of a disaster, suspending disconnection for non-payment and associated fees and penalties. The communications industry, however, opposes these common sense requirements, [appealed the CPUC decision](#), and will likely challenge the requirements in court, citing PUC 710.

2) Minimum Standards

The Commission has established limited and very reasonable service quality standards for traditional telephone service providers: take steps to minimize the number of customer complaints they receive, restore service to customers in a timely fashion, and answer a customer’s call within a minute. These companies are additionally required to report when there is a very high volume of customers without service.

Failure to meet these minimum requirement limits customers’ ability to contact 9-1-1 and restricts public safety personnel from communicating with each other in daily emergencies or major disasters. These connections provide both telephone and internet services (i.e., DSL broadband), and the lack of reliable service limits the ability of Californians to participate in society and the economy.

Service quality for too many traditional telephone service subscribers is verifiably poor. The California Public Utilities Commission’s requires telephone companies to restore 90% of service outages within 24 hours or less on average. This is a low bar, yet the service providers routinely fail to meet these requirements. As a result, the Commission developed a fine mechanism, which took effect in 2017.

In 2017, AT&T's statewide average for service restoral was 48% and Frontier's was 63%. In 2018, AT&T's was 56% and Frontier was 78%.

The CPUC fined these companies for failing to meet these requirements. In lieu of paying fines into the state General Fund, they opted instead, as the CPUC allows, to invest twice the amount of the fines into Commission-monitored projects to improve parts of their network that demonstrated poor service quality. The fines are working; commission staff see measurable improvements in the parts of the state where these investments are being made.

In total, these companies have been required to pay more than 16 million dollars to improve their networks in just the past two years, money that results in network investment and jobs that would not have otherwise been invested in California. Here is a summary chart of the fines issued:

Company Name	Fine Amount	Additional Investment in Lieu of Fine Amount	Fine Amount	Additional Investment in Lieu of Fine Amount	Company Total to Date
AT&T California	\$2,200,000	\$2,200,000	\$3,702,600	\$3,702,600	\$11,805,200
Frontier California	\$759,833	\$759,833	\$1,310,310	\$1,310,310	\$4,140,286
Frontier Citizens Telecommunications Company	\$63,540	\$63,540	\$71,238	\$0	\$198,318
Frontier Communications of the Southwest	\$3,636	\$0	\$3,821	\$0	\$7,457
Paetec Communications	\$7,920	\$0	\$0	\$0	\$7,920
AT&T Corporation	\$7,875	\$0	\$12,600	\$0	\$20,475
Volcano Telephone	\$1,050	\$0	\$0	\$0	\$1,050
Foresthill Telephone	\$500	\$0	\$0	\$0	\$500
Happy Valley Telephone	\$0	\$0	\$900	\$0	\$900
Hornitos Telephone	\$0	\$0	\$525	\$0	\$525
Winterhaven Telephone	\$0	\$0	\$525	\$0	\$525
Grand Total:	\$16,183,156				

PU Code 710 has barred the Commission from receiving data for service quality on VoIP networks, but there is little evidence to suspect that there are not similar service quality issues.

Consumer Complaints

In 2014, the [State Auditor recommended](#) that to “ensure that the commission has the information it needs to better report on VoIP-related complaints, the Legislature should give the commission the authority to collect information from providers regarding their VoIP customers and require VoIP providers to furnish this information to the commission.” To date, no such authority has been granted and this remains a pending audit finding.

The Commission receives data on the customer complaints from the companies it regulates: electric and natural gas utilities, water utilities, transportation carriers, and traditional telephone companies. As the State Auditor noted, the Commission does not receive this information from wireless, VoIP and IP companies, and therefore has no insight into issues customers have with these providers. When the Commission receives customer complaints directly about issues with non-jurisdictional services, it is unable to track whether the providers actually resolve the issues and can only direct the customers back to the company or to the FCC.

Further, the law treats carriers and customers in a disparate manner. Section 710 allows the CPUC to hear and resolve complaints by carriers against other carriers, but *not* from customers and local governments against their service providers. This disparate treatment prevents the CPUC from performing one of its primary functions – to protect *the public*.

3) Universal Service

At the same time California considers whether energy consumers need a provider of last resort and is further evaluating how to define that term, as the energy market is exposed to competition, the state's carrier of last resort requirement for telecommunications service is at a critical juncture: will it continue into the Internet Protocol age or will it disappear along with traditional telephone service, which could be as soon as 2021?

The “carrier of last resort” (COLR) is a cornerstone of utility regulation, arising both from English common law and historical state regulatory policy.¹ A carrier of last resort is a telecommunications company that is required to provide service to any customer in a service area that requests it, even if serving that customer would not be economically viable at prevailing rates. These are the characteristics of a COLR:

- The obligation to serve all customers within its territory
- A legal barrier to withdrawing service without the specific agreement of the state
- An obligation to charge just and reasonable prices
- An obligation to provide quality and fair service regardless of where it is provided (urban vs. rural service)

In California, carriers of last resort are required to serve upon request all customers within their designated service area. California has 22 carriers of last resort. Most of these carriers received their designation as a COLR because they were incumbent phone companies in the 1990's when the Commission issued Decision 96-10-066, which opened the telecommunications market to competition. The ability to appoint a carrier of last resort where no other service is provided is founded in 47 USC 214(e), which applies to “telecommunications services.” California's rules for carriers of last resort are technology-neutral, giving telephone corporations the freedom to choose how to provide service as long as the “basic service” elements are met. A uniform definition of “basic service” is required so that all residential telephone customers, no matter where they live in California, can expect a certain minimum level of service.

In 2012, the CPUC updated its basic service requirements in Decision 12-12-038, which mandated the following elements of basic service:

¹ <http://nrri.org/wp-content/uploads/2016/04/2016-Feb-Sherry-Lichtenberg-Telecommunications-Carrier-of-Last-Resort.pdf>

1. The ability to place and receive voice-grade calls over all distances; this provision includes a requirement that customers must be able to receive a voice-grade connection to the residence, and requires the service provider to take specified steps once informed by the customer of a service failure.
2. Free access to 911/ Enhanced (E) 911 service
3. Access to Directory Services
4. Various provisions pertaining to billing options
5. Access to 800 and 8YY Toll-Free Services
6. Access to the Deaf and Disabled Telecommunications Relay Service as Provided for in PU Code § 2881
7. Free Access to Customer Service for information about LifeLine Service, including service activation, termination, repair, and billing inquiries
8. One-Time Free Blocking for information services, and one-time billing adjustments for charges incurred inadvertently, mistakenly, or without authorization
9. Access to operator services

Additionally, PU Code § 876 requires telephone corporations that offer basic residential telephone service to offer California LifeLine service to low-income households. California LifeLine provides discounted landline phone and wireless phone services to qualified households. The program allows the customers to choose landline or wireless or VoIP service, and it is a fundamental principle of the program that consumers can choose the service that best suits their needs. While wireless subscribers make up the vast majority of LifeLine subscribers, the program has 378,941 households that subscribe to wireline LifeLine service as of 2018.

Public Utilities Code Section 710 prohibits the CPUC from extending to VoIP providers the Carrier of Last Resort and Basic Service requirements. The continued decline in traditional telephone service subscriptions places this essential requirement in a precarious legal position. The CPUC developed the COLR requirement through its authority over traditional telephone service and imposed the obligation on traditional telephone service companies. It appears that these requirements could no longer be applied in a potential future where traditional telephone has been replaced by VoIP. In addition, carriers have for some years actively pressed the FCC to eliminate all universal service and COLR obligations at the federal level.

Customers who are most at risk of experiencing service abandonment if the carrier of last resort requirement evaporates will be in rural areas where there is no other provider of reliable, affordable telephone service. The CPUC has extensive data on traditional telephone service quality, submitted by carriers under the Commission's General Order 133-D, which shows service quality data (outages and durations) for every central office in California. This data shows that rural wireline service quality, as measured in the average time a customer is out of service, is worse than in urban areas. Urban and suburban areas have superior service quality and benefit from multiple providers, yet rural areas demonstrate worse service quality and lack the luxury of alternate providers

Rural Californians are most at risk of service abandonment, as they commonly have no other options for wireline service, have potentially limited – if any – wireless coverage, and live in high-cost areas that are economically infeasible for companies to serve. Carrier of Last Resort ensure Californians have access to landline telephone service, and hence access to 9-1-1, California LifeLine, the Deaf and Disabled Telecommunications Program, and other necessary communications. This requirement was developed by the Commission through its authority over traditional telephone service and imposed on

traditional telephone service companies. It is unclear how this requirement will continue in a potential future where there are no longer traditional telephone subscribers or companies.

Rural consumers in high cost areas stand to lose communications services completely if no alternative provider can be found. This presents public health and safety issues if these rural residents lose the ability to communicate with their families, medical providers, local schools, local governments, and 911 emergency services. Rural businesses may be negatively affected as well, causing economic loss to California. Rural consumers currently receiving the LifeLine subsidy could lose their subsidy if the COLR obligation goes away, though some may be able to sign up with a wireless provider that offers Lifeline in the area.

Why is Carrier of Last Resort Important?

Hurricane Sandy decimated Fire Island in New York. Instead of replacing the traditional phone lines that served residents on the island, Verizon proposed to provide an unregulated, unreliable, and inequivalent service. <https://www.npr.org/2013/07/22/204501411/residents-forced-to-live-without-landlines> Ultimately, the FCC rejected Verizon's proposal, and the company was compelled to rebuild the landlines that had been destroyed.

IV. This Legislation will Continue Delay of Commission Proceedings and Contradictions of Commission Responsibilities and Programs

This law has resulted in needless delay of Commission proceedings as parties raise the section 710 prohibition as a defense against CPUC action, and precious proceeding time is devoted to addressing the scope of the CPUC's authority. PUC 710 wrongly distinguishes services based on the platform used to deliver traffic, enabling companies to evade accountability for violating other provisions of the law. Additionally, PUC 710 adversely affects legislatively-mandated public purpose programs and licensing responsibilities.

Consumer Protection and Enforcement Hampered

- A [substantial body of consumer complaints](#) received from VoIP consumers about slamming, cramming, and billing complaints that the Commission has not addressed [because of the enactment of PUC 710](#).
- [Comcast disclosed and published the names, telephone numbers, and addresses of over 74,000 unlisted subscribers](#) – a clear violation of Public Utilities Code Sections 2891.1 and 451. Because each customer specifically requested and paid a monthly fee to keep such information private, the disclosure infringed on the affected customer's expectation of privacy. Although the privacy breach occurred well before PUC 710 went into effect in 2012, Comcast withheld information about it until *after* the law's effective date. In the course of the CPUC's investigation, the company aggressively arguing that the Commission lacked jurisdiction because of section 710. Eventually, the Commission, Comcast, and the California Department of Justice [reached a settlement](#).
- The Utility Consumers' Action Network (UCAN) filed a [formal complaint](#) against provider TelePacific Communications, alleging that the company imposed unauthorized charges on subscribers' phone bills, billed customers for unjust and unreasonable charges, and failed to provide customer service. Again, despite allegations that TelePacific had violated existing consumer protection statutes (PUC Sections 2890 and 2896), the proceeding was delayed because TelePacific insisted the Commission did not have authority to enforce the alleged

violations. Ultimately, the Commission did adjudicate the complaint and all parties agreed to a settlement.

Proceedings Delayed

- The Commission undertook a long and comprehensive process to [update its service quality rules for telecommunications carriers](#). After considerable input from the parties, the CPUC's final rules require that VoIP carriers submit to the Commission a copy of the catastrophic outage reports they provide to the FCC. The industry strongly disagreed, and the Commission revised the proposal this requirement, ultimately finding that it does not constitute "regulation" of VoIP, but falls within the scope of PUC 710(f), which preserves the Commission's authority to "monitor and discuss VoIP service."
- In 2012, the Commission opened a proceeding to adopt rules and regulations for Transportation Network Companies (TNCs) to ensure that public safety is not compromised by the operation of this new transportation business model. Though this proceeding is completely unrelated to telecommunications, Uber relied on PUC 710 to claim that passage of SB 1161 prohibited the Commission from "exercising any regulatory jurisdiction" over VoIP or IP-enabled services. Uber argued that its use of a mobile phone application made its business model an "IP enabled" service, outside the CPUC's authority. The Commission [rejected the argument](#) as factually and legally flawed, irrelevant, and unsupported by the cited statutes and precedents, concluding that the section 710 does not prevent the Commission from regulating passenger transportation over public roadways.
- The Commission has the clear statutory obligation and expertise to review communications company mergers and acquisitions and ensure that such transactions are in the public interest. This is required under both state and federal law. And despite the clear exemption in PUC 710(a) for express delegations of federal authority, the applicants in multiple mergers and acquisitions cited PUC 710 to argue that the scope of the Commission's review is limited: [Charter and Time Warner Cable](#), [Comcast and Time Warner Cable](#), [Frontier and Verizon](#).

Programs and Responsibilities Contradicted

- The Commission has the statutory authority to grant *telephone corporations* with licenses to operate within the State of California. These licenses are invaluable as they confer myriad benefits and responsibilities, including the right to request interconnection with other telecommunications carriers and access to public rights-of-way in California. Numerous companies that only provide broadband and VoIP services – and therefore, pursuant to PUC 710, are not *telephone corporations* – [have applied for and have received these licenses](#) by *voluntarily* seeking to submit to the Commission's authority.
- The California LifeLine program was dramatically altered as a consequence of PUC 710's enactment. The LifeLine program had been an essential component of universal service, requiring that all telecommunications companies offer a low-income voice option. After extensive consideration, the Commission held that it cannot compel or mandate VoIP service providers to offer Lifeline service because it of its limited authority under Section 710. The Commission, instead, held that VoIP service providers are *encouraged* to participate in the state Lifeline program on a voluntary basis. To date, *no* uncertificated VoIP providers participate in the LifeLine program on a voluntary basis. Of concern is that some companies have migrated their LifeLine customers from traditional telephone service to VoIP, and as a result, that customer lost their LifeLine service. The Commission is unable to require VoIP providers to participate in the

LifeLine program and as a result, Lifeline customers are left with fewer choices of service offerings and service providers.

- Ironically, PUC 710 is a barrier to California High Cost Fund A (CHCF-A) companies from offering modern VoIP services. CHCF-A recipients do not currently offer VoIP services, so it would seem PUC 710 would not affect CHCF-A carrier regulatory obligations. But, if a carrier provides VoIP services as an unregulated and untariffed entity, it would fail to comply with CHCF-A participation requirements, which includes rate of return regulation, so the carrier would no longer be eligible to receive subsidies. Yet, the majority of CHCF-A carriers' customers receive broadband service through the same facilities subsidized by the CHCF-A program. Therefore, in many cases these companies *could* choose to upgrade their customers to VoIP instead of traditional telephone service. In fact, where these companies have upgraded their network to high-speed fiber optics, they still offer traditional TDM telephone service. Clearly, because of the PUC 710's arbitrary regulatory distinction, these companies do not offer VoIP to remain in compliance with CHCF-A requirement, as they would no longer be providing a regulated telephone service, and therefore no longer eligible for state subsidies.
- The Commission opened an investigation to analyze the impact of competitive forces acting upon California's communications marketplace. This investigation is in line with California law that declares it is State policy to "promote competition" and "reduce barriers" to entry. And in acknowledging that the Commission's jurisdiction over some communications services is limited, the Commission proposed to take limited steps forward for which it had clear and unambiguous legal authority. Despite this, communications providers protested, stating that any discussion and findings regarding broadband "exceed the Commission's stated purpose in this proceeding: to examine whether prices for traditional landline services are just and reasonable ... [and] exceed the statutory limits on the Commission's jurisdiction under Public Utilities Code Section 710." In response, the Commission determined that:

"To say that Section 710 prohibits the Commission from considering the role of IP-enabled services in assessing the state of competition in the telecommunications market is equivalent to saying that the Commission may not describe the telecommunications market as it actually exists. We do not think this is a reasonable point of view, or that it is the law."

V. This Legislation will Continue Undermining Other Laws

In addition to eroding the applicability of Commission regulatory requirements, PUC 710 has also enabled companies to disregard California laws. When SB 1161 was passed in 2012, it did not consider the sweeping impact that placing VoIP as a separate and distinct service would have on other statutes. Surely, the Legislature did not intend to make it permissible to record phone conversations or remove essential services from state oversight.

California Invasion of Privacy Act

The Legislature enacted the California Invasion of Privacy Act (CIPA) to protect an individual's privacy rights in electronic communications. CIPA is a landmark bill originally adopted in 1967 and authored by then Assembly Speaker Jesse M. Unruh. CIPA requires the consent of both parties prior to recording confidential communications. Last year, in class action lawsuit *Gruber v. Yelp*, the plaintiff alleged that online review company Yelp Inc.'s one-way recording of their customer representatives (though not their customers) violated CIPA because the recordings effectively recorded customer conversations without their knowledge or consent, and thus constituted illegal wire-tapping. Yelp's customer representatives use VoIP, not traditional telephone service. The court dismissed the case, finding, in

large part, that CIPA is inapplicable to calls made to and from VoIP.

This is a prime example of the unintended consequences of the broad deregulation imposed by PUC 710. Surely, when it was enacted more than 50 years ago – the act was intended to apply its protections to all Californians. The newly minted California Consumer Privacy Act does not cover this, and surely the legislature did not intend to create such a massive loophole.

AT&T Corp. v. California Governor's Office of Emergency Services

The state's current 9-1-1 system is based on legacy technology and infrastructure that is beyond its useful life. The state is currently experiencing an increased number of outages that exceed acceptable levels. Over the past 12 months there has been an average of 13 9-1-1 outages per month, which equates to 22,705 user minutes when 9-1-1 was not available. Each minute the 9-1-1 system is not available, potentially as many as 51 9-1-1 calls are not delivered. The existing infrastructure must be upgraded to IP-based Next Generation 9-1-1 (NG 9-1-1).

Recent amendments to the Warren-911-Emergency Assistance Act direct the California Governor's Office of Emergency Services (Cal OES) to upgrade the state's 9-1-1 system, which they manage, to NG 9-1-1. Delaying the RFP could jeopardize the lives of those who use 9-1-1 in California. Yet, AT&T filed a lawsuit to delay Cal OES's request for proposal (RFP) to upgrade the state's 9-1-1 system.

AT&T challenged the RFP, in pertinent part, on the grounds that *the RFP's inclusion of a requirement that bidders must have a 9-1-1 tariff on file with the CPUC is illegal because PUC 710 prevents the Commission from regulating VoIP and IP services.*

The CPUC requires telephone corporations to maintain tariffs setting forth what the utility is authorized to charge customers for services. In the context of the Cal OES RFP, a tariff ensures that the State of California, as the customer, is purchasing an essential service, the delivery of which is assured by the State's regulatory authority. This ensures the State will continue to pay the tariffed rate for the service and ensures price transparency for the public. Tariffs protect public safety and are legally enforceable. For example, if the CPUC became aware of significant service failures, such as 911 calls not being delivered, the CPUC could take action against the service provider.

Because 9-1-1 services are currently provided under tariff, Cal OES receives notices when 9-1-1 services are not available. Without tariffs, Cal OES would not receive timely outage reporting and therefore would not be able to properly manage the 9-1-1 system, maintain situational awareness, and provide outage information to local agencies or the residents of California. Tariffs are essential to ensuring a sound 9-1-1 system because Cal OES cannot rely solely on contract remedies to ensure 9-1-1 services are available 24 hours a day, seven days a week, and 365 days a year. In most cases, the harshest contract remedy for nonperformance is to terminate the contract. For 9-1-1 services, terminating the contract is not a viable option because 9-1-1 services cannot fail. Californians' health, welfare, and safety and in many cases, their lives, are dependent on a fully functional operating 9-1-1 service. Administering a procurement process to transition from one 9-1-1 service provider to another can be a 12-18 month process and 9-1-1 must remain available throughout. Under CPUC regulation, 9-1-1 providers ensure that they are delivering 9-1-1 service based on CPUC regulations governing their performance.

As this lawsuit puts into clear view, it is against the public interest to deregulate the communications grid any longer as this bill proposes. 9-1-1 is essential; it cannot fail. To ensure it does not fail, the state must maintain robust regulatory oversight.

LEGAL ANALYSIS

AB 1366 would continue prohibiting the CPUC from adopting any provision “that regulates or has the effect of regulating VoIP,” or “Internet Protocol enabled service.” PUC 710 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.” Today, virtually all communications services providers provision their service with IP at some point in their network. Accordingly, AB 1366 would keep in effect poorly constructed statutory language that could be interpreted to strip the CPUC of jurisdiction over services that it still actively regulates as part of its mandate to ensure safety and access to rights of way.

Of paramount importance is the fact that it is not clear what “IP-enabled service” the statute 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. PUC 710’s definition of “VoIP” is similar, requiring among other things “a broadband connection from the user’s location.” The definition of “IP enabled service” contemplated in section 710 appears broader than the federal definition, 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 “VoIP,” while at the other end is traditional telephone service, today provisioned in smaller or larger measure with IP components; that is, with IP used somewhere in the provider’s network. The FCC held in its “IP-in-the-Middle Order” that the use of IP in a carrier’s network *does not* convert the carrier’s *service* to something other than a regulated telephone service. The FCC concluded that the service at issue there, AT&T’s “phone-to-phone” IP telephony service,” was a “telecommunications service” as defined by the 1996 Federal Telecommunications Act.

Some, and possibly all, of the CPUC’s current regulation of “telephone corporations” has been jeopardized or prohibited outright by PUC 710. The statute’s extension will continue the erosion of consumer protections that customers expect will apply to voice telephone service because those protections apply to traditional wireline service. As companies transfer their customers to VoIP services or simply assert that their telephone services use IP technology, they can avoid having to afford their VoIP customers the mandated protections customers expect. Such current regulation includes the following:

- The provision of E911 service other than surcharge collection. While the CPUC asserts it maintains authority over all 911 service, AT&T is challenging the CPUC’s authority over Next Generation 911 (NG911), claiming that because NG 911 is defined in federal law as an IP-enabled service, Section 710 bars the CPUC from regulating it.
- Service quality, including the effect of power outages on telephone service – Any CPUC rules that apply to telephone corporations do not apply to VoIP providers because they are not telephone corporations.
- 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.) Because these

protections cannot be applied to VoIP service, consumers are at risk.

- Customer privacy rights (Pub. Util. Code § 2891 et seq.) VoIP providers are not telephone corporations. These rules apply only to “telephone corporations”; the Legislature has not designated VoIP providers as telephone corporations, even though they meet the statutory definition, and section 710 prevents the CPUC from doing so.
- General Order 168, the Consumer Bill of Rights Governing Telecommunications Services, Market Rules to Empower Telecommunications Consumers and to Prevent Fraud do not apply to VoIP providers because they are not telephone corporations.
- Numbering administration – the CPUC’s rules for area code relief apply whether the service offered is traditional telephone service or VoIP. However, the FCC allows VoIP providers to get numbers directly from the numbering administrator and requires the VoIP provider to work with the state where numbers are requested. The providers frequently do not notify California where they are seeking to obtain numbers.
- 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). VoIP providers offer unregulated VoIP service which is not subject to this section, and VoIP providers are not telephone corporations.

FISCAL IMPACT

Cost of Public Safety:

This bill obstructs the Commission from undertaking meaningful investigations or rulemakings that would result in life saving regulations or standards for the telecommunications grid. Regardless of whether a wildfire is sparked by lightning, arson, a utility, or an unwitting citizen, the common link in whether these fires will result in the loss of life is the reliability of the communications grid. The U.S. Department of Transportation provides guidance on the Economic Value of a Statistical Life, and places a value of \$9.6 million in 2016 dollars on a single life. Hence, this legislation is likely to have a fiscal impact of 10s to 100s of millions of dollars.

For examples of life-saving initiatives of the Commission, please find our webpages for the standardization and regulation of utility [De-Energization](#) and [Protections for Wildfire Victims](#). These standards have been developed – and continue to be developed – through the Commission’s active proceedings [Rulemaking 18-12-005](#) and [Rulemaking 18-03-011](#) respectively. For more information on the impact of this legislation has, please find the Commission’s white paper, [Safety Principles for Communications Providers](#). To understand the obstruction that Public Utilities Code Section 710 has resulted in, please see the application for rehearing submitted by the [VoIP Coalition Application for Rehearing Of Decision 18-08-004 Affirming The Provisions Of Resolutions M-4833 And M-4835 As Interim Disaster Relief Emergency Customer Protections](#).

Cost of Deregulation:

The impact of this bill is fundamentally different from SB 1161 (Padilla, 2012). It will result in the likely dissolution of various regulatory requirements, most notably the Commission’s carrier of last resort and service quality requirements.

1. **Carrier of Last Resort:** Traditional telephone carriers that serve as a carrier of last resort are required to serve all customers within their designated service area. This requirement ensures thousands of Californians, predominantly rural customers, have access to landline telephone service, and hence access to 9-1-1, universal service programs, and other necessary

communications. The CPUC developed this requirement through its authority over traditional telephone service and imposed on traditional telephone service companies. It is unclear how this requirement will continue in a potential future where there are no longer traditional telephone subscribers or companies. To the extent rural communities are unable to participate in the modern economy because they have no service or receive inferior service, this bill has a real, though unquantifiable, economic impact.

- Example: It is important to understand the economic impact and importance – especially for Rural California – of the Carrier of Last Resort requirement and Basic Service standards. As an example, see coverage of [Verizon's decision to refuse to replace wireline phone and DSL service to the residents of Fire Island, New York after the community was decimated by Hurricane Sandy in 2012.](#)

2. **Service Quality Standards:** There are limited and very reasonable service quality standards that the Commission requires traditional telephone service providers adhere to: minimize the number of customer complaints they receive, restore service to their customers in a timely fashion, and answer the phone within a minute when their customers call them. These rules are located in the Commission's [General Order 133-D: Rules Governing Telecommunications Services](#), and are remarkably less rigorous than the requirements for electric utilities, as laid out in [General Order 166: Standards for Operation, Reliability, and Safety During Emergencies and Disasters](#).

Despite the reasonableness of these requirements, AT&T's and Frontier's networks have not met these standards. The Commission has fined the companies as a result. Poor service quality limits customers' ability to contact 9-1-1 and restricts public safety personnel from communicating with each other in daily emergencies or major disasters. These connections provide both telephone and internet services (i.e., DSL broadband), and the lack of reliable service limits the ability of Californians to participate in society and the economy. The fines result in improved service quality as well as the investment of \$16.2 million that would not otherwise have been spent in the state.

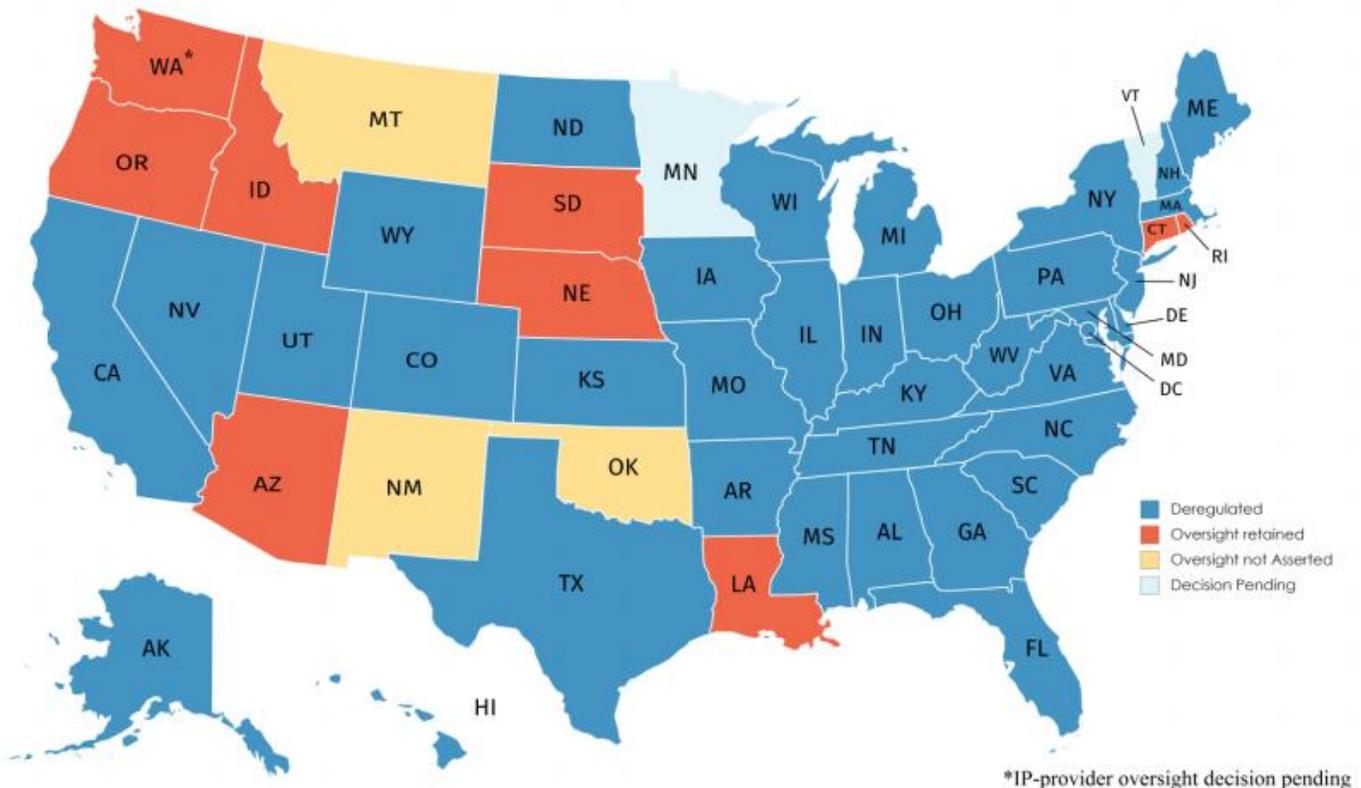
OTHER STATE LEGISLATION

The American Legislative Exchange Council (ALEC) is a nonprofit organization of conservative state legislators and private sector representatives who draft and share model state-level legislation for distribution among state governments in the United States. In 2007, ALEC developed model legislation the ["Advanced Voice Services Availability Act of 2007."](#) The stated purpose of this legislation was "to promote the availability of competitive advanced voice services, such as Voice over Internet Protocol (VoIP) services, to all consumers and businesses in [state] by establishing a common-sense regulatory framework that promotes choice and competition." This is the model legislation that SB 1161 (Padilla, 2012) was modeled after, and similar statutes have been adopted in most states across the country at the urging of industry and trade groups.

According to the latest [NRRRI survey of states](#) in 2017, thirty-four states have passed legislation *limiting* oversight of IP services. No state responded that it retained no jurisdiction over wireline services, despite sometimes broad state legislation reducing oversight. Staff in ten states report that they continue to assert oversight of VoIP carriers. Five states, Alaska, Montana, New Mexico, North Carolina, and Oklahoma, report that state legislation does not limit oversight of VoIP, but the Commission has chosen to not assert jurisdiction over these carriers. While the FCC has declined repeatedly to classify VoIP as either an "information" or "telecommunications" service under federal

law, litigants challenging the classification of VoIP in Minnesota are seeking review by the U.S. Supreme Court. The Vermont Public Utility Commission has completed Phase I of its investigation into the proper regulatory designation of VoIP but continues to review oversight requirements, while Oregon continues to explore the legal requirement for VoIP providers to contribute to the state universal service funds. NRRRI's map below provides a snapshot of the status of the oversight of IP-enabled services, including VoIP, across the country:

IP-Enabled Services Oversight: 2017



What does regulation look like in the states that do regulate VoIP?

The NRRRI Study identifies five key areas of VoIP regulation, which vary significantly from state to state:

Carrier Registration: Twenty-three states register VoIP carriers, and another six voluntarily offer CPCNs. Registration permits companies to operate in their jurisdictions, allows the State to identify carrier contacts, identify carriers that are porting numbers, qualify for access to poles and rights of way, and assess universal service, E911, and regulatory charges. It ensures companies contribute to federal and state universal service funds and identifies points of contact for problem resolution.

ETC Designation: Thirty-one states also designate VoIP providers as eligible telecommunications carriers (ETCs) on request. The question of designating VoIP providers as ETCs will become more important as more carriers move away from TDM services. Without an ETC designation, carriers cannot participate in the federal Lifeline program or receive federal universal service funding. The states that currently do not designate VoIP providers and, potentially, standalone broadband providers as ETCs will need to work with their legislatures to propose statutory changes to resolve this issue. During the

2017 legislative session, New Mexico, Oregon, and Utah added broadband deployment programs to their state universal service funds.

Customer Complaints: A key role of the state commissions has always been to accept, track, and resolve consumer complaints about telecommunications service, including installation timeliness, billing, and service quality and reliability. Tracking complaints allows state commissions to identify and resolve problems before they become critical. By monitoring complaints, the Commission can get early warning of slamming, cramming, and other deceptive practices, as well as ensure that customers continue to receive reliable and affordable service.

Twenty-three states reported that they have no jurisdiction over complaints against VoIP providers. Thirteen refer complaints to the provider, but only Montana, retains the option to adjudicate complaints against IP-enabled service providers. Six states retain limited oversight of IP-enabled products such as VoIP. Colorado, Missouri, Nevada, Pennsylvania, South Carolina, and Wisconsin resolve complaints against VoIP providers when these products are offered as "basic local service." South Dakota and Washington continue to exercise oversight of VoIP providers, including processing complaints.

Service Quality: Service quality regulation requirements for telecommunications generally include standards and reporting for five broad areas of service that have a substantial impact on consumers: customer reported troubles, time period for resolving customer troubles, customer service phone answering, service installation performance, and network reliability. Twenty-three states continue to oversee service quality for wireline providers. Nine states have only limited oversight. In many of the states that previously regulated wireline service quality, competition has supplanted regulation as a means for ensuring carriers continue to provide reliable and useable service. They have argued that the ability to choose among multiple suppliers has made oversight unnecessary as a means of ensuring quality of service. NRRI identified 36 states with no oversight of VoIP, five states that continue to oversee VoIP service quality, and four with limited authority.

Emergency Services and Outage Reporting: Thirty-two states continue to exercise varying authority over emergency service regardless of the technology used to provide it. With the transition to mobile and IP services to reach 9-1-1, there are concerns about availability and reliability of those services. Colorado developed an interesting solution, having required not only outage reporting, but also the hardening and resiliency of 9-1-1 provider networks.

Maintaining active oversight of the telecommunications companies remains a crucial role for all states. This is best illustrated by recent actions:

- New York initiated two separate investigations into violations made by Charter Communications in 2018. The New York Public Service Commission voted to kick Charter Communications out of the state for obfuscation and failure to comply with commitments it made to deploy broadband to rural parts of the state. Charter made these commitments when it merged with Time Warner Cable in 2016. A parallel investigation by the New York Attorney General found that Charter was charging customers for faster and more expensive broadband services than it could possibly deliver. The Attorney General investigation resulted in a record \$174.2 million settlement. The New York Public Service Commission is still in the process of approving a settlement agreement.
- The Minnesota Department of Commerce, at the request of the Minnesota Public Utilities Commission, investigated complaints received by customers of Frontier Communications of Minnesota. The department released a blistering [report](#) earlier this year about reported service

quality issues with Frontier Communications. The report faults Frontier of “*violating at least 35 separate laws and rules that the Commission has clear authority to enforce through this regulatory proceeding,*” and states that the information they provide is not trustworthy “*recordkeeping, which appears to have become so deficient that, for some critically important data, such as data on duration of outages, the Company’s records cannot be relied upon [...] to know if the company is meeting its performance obligations or not.*” Similar investigations and audits have been opened in response to concerns with Frontier Communications service quality:

- In 2018, the West Virginia Public Service Commission opened an investigation into Frontier West Virginia's telephone service quality in the state.
- In May, the Texas Public Utility Commission announced a settlement agreement with Frontier Communications of Texas to resolve a staff investigation into several instances in which Frontier failed to meet service quality benchmarks.

FEDERAL TELECOMMUNICATIONS REGULATION

The FCC has imposed basic common carrier requirements on VoIP providers, but they do not replace the robust regulatory oversight and assurances that the state has required for traditional phone service. The FCC’s requirements include the following:

- 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,
- Residential back-up power notice and requirement (adopted 8/6/15)

CURRENT LAW

- California Constitution, Article XII, Section 6 authorizes the 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.
- Public Utilities Code Section 216 defines the term “public utility” and includes common carriers in the definition of a public utility.
- Public Utilities Code Section 701 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 (PU) Code Sections 233 and 234 define telephone line to include wires and wireless, and telephone corporation to include every corporation managing a line for compensation in the state.
- PU Code Sections 270 – 281 created the programs for the California High Cost Funds A and B, Universal Lifeline Telephone Service Trust, the Deaf and Disabled Telecommunications Program and the California TeleConnect Fund.
- PU Code Section 451 “...Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”
- PU Code Sections 431 – 435 set forth user fees to support CPUC operations.
- PU Code Section 709 “The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: a) to continue our universal service commitments by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians...”
- PU Code Section 710 restricts the CPUC authority over VoIP and IP enabled services except as required, expressly delegated by federal law, expressly designated by statute, or as set forth in sections (c) and (d).
- PU Code Section 871 is the implementation of the Moore Universal Telephone Service Act.
- PU Code Section 2881 describes the implementation of the deaf and hard-of-hearing program.
- Section 9.3 of Title 47 of the Code of Federal Regulations defines “Interconnected Voice over Internet Protocol (VoIP) service”
- PU Code 239 defines “Voice over Internet Protocol”

PREVIOUS LEGISLATION

Assembly Bill 1 (Sutherland, Chapter 14, Statutes of 1911) enacted the Public Utilities Act of 1911, which defined the powers and duties of the Commission and the powers and duties of public utilities, their officers, agents and employees, and the rights, duties and remedies of patrons of public utilities; defined offenses by public utilities, their officers, agents and employees, and other persons or corporations and provided penalties for such offenses, and brought telephone corporations, among other utilities, under the authority of the Commission.

Assembly Bill 841 (Buchanan, Chapter 685, Statutes of 2011) authorized the California Public Utilities Commission to require interconnected Voice over Internet Protocol service providers to collect and remit state universal surcharges (but not the CPUC User Fee) on their California intrastate revenues.

Senate Bill 1161 (Padilla, Chapter 733, Statutes of 2012) required authorization by statute or express delegation by federal law expressly authorized by statute for the California Public Utilities Commission or any other state department, agency, commission or political subdivision of the state to regulate Voice over Internet Protocol or Internet Protocol-enabled service providers.

Assembly Bill 2395 (Low, Failed, 2016) would have established a process for a telephone corporation to withdraw legacy public switched telephone network services and transition to Internet Protocol enabled services and networks, beginning January 1, 2020.

Senate Bill 822 (Wiener, Chapter 976, Statutes of 2018) established net neutrality requirements by prohibiting internet service providers (ISPs) from taking certain actions that interfere with consumers' ability to lawfully access internet content, including 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.

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TEXT OF LEGISLATION

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1366