

AMENDED IN SENATE APRIL 26, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1161

Introduced by Senator Padilla

(Principal coauthor: Assembly Member Bradford)

(Coauthors: Senators *Correa, Fuller, Lieu, Price, Rubio, and Strickland*)

February 22, 2012

An act to add Sections 239 and 710 to the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1161, as amended, Padilla. Communications: Voice over Internet Protocol and Internet Protocol enabled communications service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined.

This bill would prohibit the commission from regulating Voice over Internet Protocol (VoIP) and Internet Protocol enabled service (IP enabled service), as defined, ~~providers unless~~ *except as authorized by federal law and expressly provided otherwise in statute*. The bill would prohibit any department, agency, commission, or political subdivision of the state from enacting, adopting, or enforcing any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates or has the effect of regulating VoIP or other IP enabled service, unless *authorized by federal law and expressly authorized by statute*. The bill would specify certain areas of law that are expressly applicable to VoIP and IP enabled service providers. *The bill would provide that its limitations upon the*

commission's regulation of VoIP and IP enabled services do not affect the commission's existing authority over traditional telephone service through a landline connection and does not affect the enforcement of any state or federal criminal law or local ordinances of general applicability that apply to the conduct of business.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The continued vitality and success of California's technology
4 and innovation sector of the economy is dependent on a business
5 climate that supports the national and international nature of the
6 Internet.

7 (2) The Legislature is empowered to develop future state policy
8 and actions regarding Internet-based technology to further
9 innovation, consumer choice and protection, and economic benefits
10 to California.

11 (3) California's innovation economy is leading the state's
12 economic recovery. Silicon Valley alone added 42,000 jobs in
13 2011, an increase of 3.8 percent versus a national job growth rate
14 of 1.1 percent. The newly designated "app," for application,
15 economy has resulted in 466,000 new jobs nationwide, with 25
16 percent of that total created in California.

17 (4) The Internet and Internet Protocol-based (IP-based) services
18 have flourished to the benefit of all Californians under the current
19 regulatory structure. The success of the innovation economy is a
20 result of an open, competitive environment that has provided
21 California consumers and businesses with a wide array of choices,
22 services, and prices.

23 (5) California-based entrepreneurs and businesses are the global
24 leaders in IP-based services and technologies. These leading
25 technology companies, including content, services and
26 infrastructure providers, represent some of the largest employers
27 in California, contributing billions of dollars of economic benefit
28 to the state.

29 (6) California consumers and businesses are driving the demand
30 for faster networks, new and innovative apps and software, and

1 continued innovation. As a result of this demand, network
2 infrastructure companies invested billions of dollars in California
3 in 2011. Internet voice communications connections are up over
4 22 percent, and entrepreneurs and innovators have launched close
5 to a million apps to meet consumer demand.

6 (7) The Internet and innovative IP-based services have the power
7 to address critical policy issues facing California and the nation
8 including new telemedicine initiatives to address health care access
9 and affordability, educational tools to improve opportunity and
10 success, IP-based energy solutions to promote conservation and
11 efficiency, and improved Internet access to support rural economic
12 development and sustainability.

13 (b) It is the intent of this act to reaffirm California’s current
14 policy of regulating Internet-based services only as specified by
15 the Legislature and thereby achieve both of the following:

16 (1) Preserve the future of the Internet by encouraging continued
17 investment and technological advances and supporting continued
18 consumer choice and access to innovative services that benefit
19 California.

20 (2) Ensure a vibrant and competitive open Internet that allows
21 California’s technology businesses to continue to flourish and
22 contribute to economic development throughout the state.

23 SEC. 2. Section 239 is added to the Public Utilities Code, to
24 read:

25 239. (a) “Voice over Internet Protocol” or “VoIP” means voice
26 communications service that does all of the following:

27 (1) Uses Internet Protocol or a successor protocol to enable
28 real-time, two-way voice communication that originates from or
29 terminates at the user’s location in Internet Protocol or a successor
30 protocol.

31 (2) Requires a broadband connection from the user’s location.

32 (3) Permits a user generally to receive a call that originates on
33 the public switched telephone network and to terminate a call to
34 the public switched telephone network.

35 (b) “Internet Protocol enabled service” or “IP enabled service”
36 means any service, capability, functionality, or application using
37 *existing* Internet Protocol, or any successor ~~protocol~~ *Internet*
38 *Protocol*, that enables an end user to send or receive a
39 communication in *existing* Internet Protocol format, or any
40 successor *Internet Protocol* format *through a broadband*

1 *connection*, regardless of whether the communication is voice,
2 data, or video.

3 SEC. 3. Section 710 is added to the Public Utilities Code, to
4 read:

5 710. (a) The commission shall not exercise regulatory
6 jurisdiction or control over Voice over Internet Protocol and
7 Internet Protocol enabled ~~service providers~~ *services* except as
8 *authorized by federal law and* expressly directed to do so by statute
9 or as set forth in subdivision (c).

10 (b) No department, agency, commission, or political subdivision
11 of the state shall enact, adopt, or enforce, either directly or
12 indirectly, any law, rule, regulation, ordinance, standard, order, or
13 other provision having the force or effect of law, that regulates or
14 has the effect of regulating VoIP or other IP enabled service, unless
15 *authorized by federal law and* expressly authorized by statute or
16 pursuant to subdivision (c).

17 (c) Nothing in this section affects or supersedes any of the
18 following:

19 (1) The Emergency Telephone Users Surcharge Law (Part 20
20 (commencing with Section 41001) of Division 2 of the Revenue
21 and Taxation Code) and the state's universal service programs
22 (Section 285).

23 (2) The Digital Infrastructure and Video Competition Act of
24 2006 (Division 2.5 (commencing with Section 5800)) or a franchise
25 granted by a local franchising entity, as those terms are defined in
26 Section 5830.

27 (3) The commission's authority to implement and enforce
28 Sections 251 and 252 of the federal Communications Act of 1934,
29 as amended (47 U.S.C. Secs. 251 and 252).

30 (4) The commission's authority to require data and other
31 information pursuant to Section 716.

32 (5) The commission's authority to address or affect the
33 resolution of disputes regarding intercarrier compensation,
34 including for the exchange of traffic that originated, terminated,
35 or was translated at any point into Internet Protocol format.

36 ~~(6) The enforcement of criminal or civil laws of general
37 applicability, including unfair or deceptive trade practice laws,
38 that apply to the conduct of business.~~

39 (d) *This section does not affect the enforcement of any state or
40 federal criminal or civil law or any local ordinances of general*

1 *applicability, including, but not limited to, consumer protection*
2 *and unfair or deceptive trade practice laws or ordinances, that*
3 *apply to the conduct of business.*

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

O