

Senate Bill No. 1161

Passed the Senate August 22, 2012

Secretary of the Senate

Passed the Assembly August 20, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 239 to, and to add and repeal Section 710 of, the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1161, 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, until January 1, 2020, prohibit the commission from regulating Voice over Internet Protocol (VoIP) and Internet Protocol enabled service (IP enabled service), as defined, except as required or delegated by federal law or 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 VoIP or other IP enabled service, unless required or delegated by federal law or 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 non-VoIP and other non-IP enabled wireline or wireless service and do not affect the enforcement of any state or federal criminal law or local ordinances of general applicability that apply to the conduct of business, the California Environmental Quality Act, or a local utility user tax, among other things.

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

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

(1) The continued vitality and success of California's technology and innovation sector of the economy is dependent on a business

climate that supports the national and international nature of the Internet.

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

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

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

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

(6) California consumers and businesses are driving the demand for faster networks, new and innovative apps and software, and continued innovation. As a result of this demand, network infrastructure companies invested billions of dollars in California in 2011. Internet voice communications connections are up over 22 percent, and entrepreneurs and innovators have launched close to a million apps to meet consumer demand.

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

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

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

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

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

239. (a) (1) “Voice over Internet Protocol” or “VoIP” means voice communications service that does all of the following:

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

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

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

(2) A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider’s use of Internet Protocol technology is not a VoIP service.

(b) “Internet Protocol enabled service” or “IP enabled service” means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

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

710. (a) The commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as required or expressly

delegated by federal law or expressly directed to do so by statute or as set forth in subdivision (c). In the event of a requirement or a delegation referred to above, this section does not expand the commission's jurisdiction beyond the scope of that requirement or delegation.

(b) No department, agency, commission, or political subdivision of the state shall enact, adopt, or enforce any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates VoIP or other IP enabled service, unless required or expressly delegated by federal law or expressly authorized by statute or pursuant to subdivision (c). In the event of a requirement or a delegation referred to above, this section does not expand the commission's jurisdiction beyond the scope of that requirement or delegation.

(c) This section does not affect or supersede any of the following:

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

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

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

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

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

(6) The commission's authority to enforce existing requirements regarding backup power systems established in Decision 10-01-026, adopted pursuant to Section 2892.1.

(7) The commission's authority relative to access to support structures, including pole attachments, or to the construction and maintenance of facilities pursuant to commission General Order 95 and General Order 128.

(8) The Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1.5 of Part 1 of Division 2 of Title 5 of the Government Code).

(d) This section does not affect the enforcement of any state or federal criminal or civil law or any local ordinances of general applicability, including, but not limited to, consumer protection and unfair or deceptive trade practice laws or ordinances, that apply to the conduct of business, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), local utility user taxes, and state and local authority governing the use and management of the public rights-of-way.

(e) This section does not affect any existing regulation of, proceedings governing, or existing commission authority over, non-VoIP and other non-IP enabled wireline or wireless service, including regulations governing universal service and the offering of basic service and lifeline service, and any obligations to offer basic service.

(f) This section does not limit the commission's ability to continue to monitor and discuss VoIP services, to track and report to the Federal Communications Commission and the Legislature, within its annual report to the Legislature, the number and type of complaints received by the commission from customers, and to respond informally to customer complaints, including providing VoIP customers who contact the commission information regarding available options under state and federal law for addressing complaints.

(g) This section does not affect the establishment or enforcement of standards, requirements, or procedures, including procurement policies, applicable to any department, agency, commission, or political subdivision of the state, or to the employees, agents, or contractors of a department, agency, commission, or political subdivision of the state, relating to the protection of intellectual property.

(h) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

Approved _____, 2012

Governor