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Mark W. Toney, Ph.D., Executive Director

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Senator Alex Padilla
Chair, Senate Energy, Utilities, & Communications Committee
State Capitol • Sacramento, CA 95814

Re: SB 1161—Oppose

Dear Senator Padilla:

I regret to inform you that TURN opposes SB1161, on behalf of our 20,000 dues-paying members, and millions of residential and small business ratepayers. This broad and far-reaching legislation preempts regulation of VoIP and, as a result, will prevent the California Public Utilities Commission from protecting California consumers in the rapidly shifting telecommunications marketplace.

Unwarranted protectionism favoring a specific telecommunications technology is unnecessary to ensure innovation and growth. While SB 1161 indicates a narrow intent to protect the Internet from regulation—the bill would in reality *deregulate* most, if not all, essential non-VoIP, and VoIP, telecommunications services. If enacted, SB 1161 would undermine reliability and affordability of telecommunication networks to the detriment of all customers and the public health and safety.

Internet Protocol (IP) Used By Majority of Telecommunications Networks

SB 1161 defines VoIP in terms of all services using “Internet Protocol (IP) or a successor protocol.” Every regulated telecommunications network in California today, including AT&T’s and Verizon’s, uses IP-enabled equipment and the use of IP equipment is growing.

The fact that telephone networks use IP enabled equipment is merely an indication of the evolution of network technology and does not change the fundamental importance of the service for consumers. “IP” is a protocol used to manage information traveling over telecommunications facilities. The underlying telecommunications networks are the same.

Ironically, the same VoIP providers who seek regulatory exemption on the basis that they are not telecommunication carriers—including the major cable VoIP telephone service providers—have argued to the Federal Communications Commission (FCC) that *they are telecommunications carriers* in order to take advantage of interconnection rights under federal law. These carriers cannot have it both ways. If they claim to be “telecommunications carriers” for the purpose of interconnection benefits, then they should be treated as such for consumer protection issues.¹

¹ *Memorandum Opinion and Order*, TWC Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under

SB 1161 Eliminates Non-Discrimination & Consumer Protections

By prohibiting CPUC regulation of VoIP and IP-enabled services, AT&T, Verizon, Comcast, Cox Cable, and other providers of home phone service could argue that they were exempt from complying with current consumer protection regulations and non-discrimination requirements. SB 1161 would allow the carriers to shield them from CPUC or any local agency enforcement of long-standing basic consumer protections that California residents have come to expect.

Non-Discrimination & Consumer Protections Eliminated by SB 1161

1) Protections for Low-Income Customers.

- a. LifeLine and other programs for low-income customers.
- b. Obligations of Carriers of Last Resort to provide low-cost service to rural customers.
- c. Creating rules for fair billing and collection practices.

2) Protections for Underrepresented Communities.

- a. In-language requirements for customer service representatives.
- b. Tracking minority procurement and employment data.
- c. Requiring accommodations for customers with disabilities.

3) General Protections for All Consumers.

- a. Service quality standards for clear calls and reliable service.
- b. Protections against unauthorized third party billing (cramming).
- c. Monitoring the disposition of customer complaints.

In addition, SB 1161 enables AT&T, Verizon, and other telephone carriers to claim exemption from any section of the Public Utilities code that currently applies to telephone corporations or requires the Commission to implement and enforce a provision.

Requirements Eliminated for Phone Providers Using IP Enabled Technology

1) Privacy Rights and Protection from Disclosure.

- a. Section 2881 et seq. – Protecting privacy of subscriber information.
- b. Section 2891.1 – Limits on use of subscriber information for marketing.
- c. Section 2884 – Restricting information service disclosures.
- d. Section 2893 – Preventing Caller ID disclosures.

2) Consumer Protection Against Unfair Practices.

- a. Section 2896 – Establishing customer service requirements.
- b. Section 2889.5 – Preventing unauthorized switching of service (slamming).
- c. Section 2890 – Protection and refunds for cramming.

3) Carrier Obligation to Serve the Public

- a. Section 871 – Universal phone service to all California residents.
- b. Section 7901 – Right to construct phone lines and poles on public rights of way.
- c. Section 453 – Prohibits discrimination in the provision of service.

State Regulators Have Exercised Restraint

The CPUC and other regulatory agencies have a tradition of adopting consumer protection as an asset that promotes technological innovation and economic development, rather than hinders it. Policy makers can enhance the success of new technologies by monitoring carriers offering VoIP service and addressing market failures, service quality problems, customer complaints and other narrow concerns that will arise more frequently as the popularity of these services increases.

In fact, this case-by-case regulatory approach has been the current practice of the CPUC. There is no threat of overreaching or overly broad or burdensome regulation on VoIP carriers. There have been no developments at the federal level, including by the FCC, that require the California Legislature to divest jurisdiction over services using IP technology.

The California Legislature and the CPUC, because they have not divested themselves of jurisdiction as have many states, have judiciously adopted narrow and specific policies to protect wireless customers requiring protections with regards to in-language marketing, service quality, cramming, and surcharges.

TURN encourages the Legislature to do the same here with IP enabled services: guard its jurisdiction to address consumer harms and use that jurisdiction in a tailored and meaningful way.

Need for Consumer Protection is Technology Neutral

A person who picks up their home phone to dial a number or to answer a call does not know or care whether the phone is connected to the network by an IP protocol or not. What they do care about is the reliability of their service, being protected from unauthorized charges, and the ability to have their complaints resolved. Customers want to know that they can turn to an agency based in California to answer their questions and resolve their complaints when they believe they have not received the level of service they were promised, or felt that they paid for—regardless of whether their phone is IP enabled or not.

SB 1161 goes far beyond its stated intent to protect the Internet from regulation, instead, prevents meaningful regulation of a service that millions of California consumers rely on everyday and that this Legislature and the CPUC have deemed an “essential service” for decades.

TURN could support a bill that directs the CPUC to study and report on the most effective and least restrictive methods for promoting technology innovation while still upholding its mandate to protect California consumers.

Thank you for your consideration.



Mark Toney
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