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June 17, 2019

Senator Ben Hueso

Chair, Senate Committee on Utilities, Energy & Communications  
State Capitol • Sacramento, CA 95814

Re: AB 1366 TURN Oppose

Dear Senator Hueso,

The Utility Reform Network (TURN), on behalf of our 20,000 members throughout California, and the millions of residents throughout the state who subscribe to home telephone service, strongly opposes AB 1366. The effect of this bill would be to deprive the majority of Californians of fundamental phone service consumer protections and severely limit the ability of the legislature, the California Public Utilities Commission (Commission) or any other state agency to proactively address important public safety and consumer protection issues.

AB 1366 extends for 10 years the prohibition on oversight of Voice over Internet Protocol and IP communication services by the Commission, or any other state agency, including those responsible for ensuring public safety such as the Governor's Office of Emergency Services. The current prohibition, established in 2012 by SB 1161, is due to sunset on January 1, 2020 and should not be extended.

The amendments to the bill are profoundly inadequate and fail to recognize the fundamental point that the entire telecommunications grid and all voice phone services will shortly be IP-enabled. This legislation would result in California impeding its own ability to exercise oversight regarding essential communication capability.

The majority of telephone lines in California are now VoIP lines<sup>1</sup> and much of our voice and data communication (including retail broadband) is provided over networks that at least partially rely on IP based transport. We are moving to a world where all of our phone and broadband service will be IP-based. This includes Next Generation 9-1-1 IP-enabled services. Further, even pre-Next Generation 9-1-1 service provided now can use lines that are partially IP-enabled, depending on how the calls are routed.

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<sup>1</sup> Federal Communications Commission, *Voice Telephone Services as of 06/30/17, Supplemental Table 1, State-level Voice Telephone Subscriptions*, <https://www.fcc.gov/voice-telephone-services-report>

AB 1366 would require the legislature and governor to pass a law before the Commission, CAL OES, or any other state agency or the Legislature itself could take action to ensure reliable communication if it involves VoIP or IP communication. AB 1366 would have the practical effect of removing state oversight of critical public communication services. This is not a path that the Legislature should follow.

Passing this bill would threaten California's ability to ensure reliable 9-1-1 and public safety communication. For example, on May 19, 2019 AT&T filed a lawsuit against the Governor's Office of Emergency Services in a Sacramento Court arguing that CAL OES does not have the authority to require bidders for provision of California's Next Generation 9-1-1 services to submit tariffs because the law that AB 1366 seeks to extend prohibits Commission jurisdiction over Next Generation 9-1-1 services.<sup>2</sup> Tariffs set out terms, conditions and prices for essential services ensuring that the requirements are transparent and equally available to all who use an essential service. Offering this service without tariffs would reduce transparency and create opportunities for discriminatory provision of service.

Further, under this this bill, if there were a problem with 9-1-1, for instance a network failure that caused service to be impaired, the Commission would lack authority to investigate the problem and order corrective actions absent a complicated and time-consuming legislative process. Pursuant to this bill, without further legislative action, no state agency could require VoIP and IP-enabled service providers to improve the reliability of 9-1-1 service, or the facilities available to critical institutions such as police stations, fire houses, hospitals or critical infrastructure (e.g., dams, power plants). Nor could the Commission take action to require improvements in the provision of back-up power for networks or at the customer premises.

Phone and data services serve as critical infrastructure, supporting the ability of people to reach essential services (including contacting and receiving alerts from first responders) and serving an integral role in supporting critical infrastructure and services, including provision of electricity and water and supporting first responders. As we experience the impacts of climate change, California needs the flexibility to think outside the box and develop effective and innovative approaches to make the necessary adjustments.

We need both the ability to implement comprehensive approaches to systemic problems and to immediately respond to emergencies such as wildfires, floods, and landslides. This effort includes developing innovative approaches for ensuring robust, reliable communication networks and services that function when we need them the most. AB 1366 takes away that flexibility.

The lack of clear authority over all telecommunications services hinders state efforts to address disaster relief. For example, VoIP phone service providers AT&T, Frontier and the California Cable and Telecommunications Association invoked PU Code Section 710 to argue that they are

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<sup>2</sup> Superior Court of the State of California County of Sacramento, AT&T Corp (Petitioner) v. California Governor's Office of Emergency Services (Respondent), Verified Petition and Complaint for Writ of Mandate and for Injunctive and Declaratory Relief, Filed May 16, 2019.

not obligated to comply with the Commission's disaster relief orders suspending billing for people whose homes burned down because they are providing VoIP services.<sup>3</sup> We can expect similar arguments if, for example, the Commission or another state agency attempted to address issues such as the need for additional back-up power to ensure that VoIP and IP communications services continue to function during prolonged power outages. The public should not have to wait for a bill to proceed through the legislative cycle before our state can act safeguard the public health and safety.

AB 1366 is harmful to retail customers. Under VoIP deregulation, VoIP phone customers do not receive the same consumer protections as traditional phone service customers and AB 1366 would continue this indefinitely. Customers of traditional phone service have the right to file a complaint with the Commission regarding such issues as inaccurate billing, discriminatory treatment or poor service quality and the Commission can address their concerns. For VoIP customers, the Commission cannot act to address these problems directly. As more and more customers are migrated to VoIP lines by AT&T and Frontier, they lose these protections.

Under AB 1366, VoIP carriers are not required to fulfill carrier of last resort (COLR) obligations. A COLR is obligated to serve all customers in its service territory. Implicit in this is that the carrier cannot discriminate between customers in deciding to provide service or in the terms and conditions under which the service is offered. As all services become VoIP services, the absence of a COLR obligation opens the door to both discriminatory treatment and the ability of a carrier to refuse to extend service to particular communities and hard to reach locations, even those that are currently served by landlines.

It is no secret that AT&T desires to eliminate the provision of traditional landline service to rural areas as they have previously sponsored legislation to do so. By enacting AB 1366, the Legislature would be granting carte blanche to that effort, and simultaneously preventing the Commission from acting to ensure that a reasonable form of telecom service is still available to rural areas.

The Public Advocates Office calculates that 3.7 million Californians have only one choice for a communications IP provider, leaving them with no options if the provider fails to supply adequate service. Based on an analysis of the Commission's broadband availability map, fire threat map and Census data, The Public Advocates Office estimates that over 1.1 million of these Californians reside in high fire threat areas, including approximately 533 thousand rural customers.

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<sup>3</sup> Before the California Public Utilities Commission, Order Instituting Rulemaking Regarding Emergency Disaster Relief Program, R. 18-03-011, VOIP Coalition Application for Rehearing of Decision 18-08-004, Affirming the Provisions of Resolutions M-4833 and M-4835 as Interim Disaster Relieve Emergency Customer Protections.

Moreover, in a recent survey of customers affected by wildfires<sup>4</sup>, only six percent of landline customers said they currently have a backup battery. VoIP telephones without back-up batteries will not work during power outages lasting more than a few hours.

In this new reality, customers in high fire threat areas can expect power outages lasting several days when large electric utilities de-energize lines and this is dangerous when customers need to rely on VoIP lines to receive emergency alerts or contact first responders. Under this bill no state agency could act to require more robust back-up power. In 2012, when VoIP/IP deregulation was adopted, no one could foresee that in 2019 electric utilities would need to shut off power for days to help prevent catastrophic wildfires. That is now our reality. Most customers are using VoIP phones, many essential services rely on IP-enabled communications lines and the state agencies responsible for ensuring public safety and reliable communication need to be able to quickly and effectively address issues that involve IP communications.

As a further example of the far reaching effects of AB 1366, the Commission's authority to require VoIP phone service providers to provide affordable LifeLine service is curtailed under the current statute and this would extend indefinitely. The VoIP providers have argued, and the Commission has apparently agreed, that they cannot be required to provide LifeLine service, and their participation is only voluntary.<sup>5</sup> The amendments to AB 1366 codify the current agreement that VoIP participation in LifeLine is "voluntary," despite critical reliance on LifeLine by millions of Californians.<sup>6</sup>

As more and more telephone lines are converted to VoIP, under AB 1366 the very real possibility is that all provision of LifeLine service in California would be deemed "voluntary." While the carriers may agree now to offer the service on a voluntary basis, they are also free to discontinue service as they see fit. And since all voice service will eventually be VoIP, and under this bill VoIP carriers do not have an obligation to be COLRs, if VoIP deregulation is extended due to this bill telecom providers will not be obligated to provide lifeline to all eligible customers in a service area and they will be able to withdraw service even though there is no alternative provider.

The amendments that purport to address service quality for VoIP and IP-enabled service customers are illusory. Under the revised AB 1366, service quality is removed from the Public Utilities Code and shifted to the Business and Professions Code. No entity has been identified or resourced to enforce the provisions, or to handle customer complaints. The service quality protections for VoIP customers are a watered down version of robust standards developed on

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<sup>4</sup> North Bay North Coast Broadband Consortium, Telecommunications Outage Report: Northern California Firestorm 2017. April 2018. Available at: <http://www.mendocinobroadband.org/data-and-reports/>.

<sup>5</sup> California Public Utilities Commission, R. 11-03-013, Decision 16-10-039, Decision Adopting Revisions to Modernize and Expand the California Lifeline Program by Allowing Voluntary Participation by Fixed-Voice over Internet Protocol, Service Providers Without a Certificate of Public Convenience and Necessity. November 1, 2016, p. 10.

<sup>6</sup> AB 1366, 710 (c)(10)

the basis of an extensive evidentiary record and set forth in the Commission's General Order 133-D. This General Order requires reporting and compliance with five service quality criteria:

- 1) Installation Interval;
- 2) Installation Commitment;
- 3) Customer Trouble Report;
- 4) Out of Service report;
- 5) Answer time.<sup>7</sup>

Under AB 1366, these criteria do not apply to VoIP service, the performance of carriers in meeting them is not measured, there are no penalties for failing to comply, and the Commission is prohibited from measuring and requiring improvements in service quality performance. This appears to be another attempt by AT&T to diminish the role of the Commission in oversight of its operations. AT&T failed to eviscerate service quality standards on the basis of an evidentiary record before the Commission, so it is now attempting an end run via the legislature.

Where Commission service quality requirements stipulate that 90 percent of residential and small business customers of traditional phone service must have service restored within 24 hours, the new amendments to AB 1366 would force residential VoIP customers to wait up to 72 hours, with business customers having no service quality protections. Under the Commission's service quality rules, if a covered service does not meet the standard, penalties are assessed and the monies from those penalties are used to improve service quality.<sup>8</sup> This has resulted in millions of dollars in penalties that, pursuant to the most recent Commission rules, are being allocated to improve carrier networks and, thus, service quality.

While the amendments require fixed VoIP providers to provide the Commission with FCC outage reports, the bill does not give the Commission the authority to act to improve service quality. The better approach is to allow the current legislation to sunset, in which case the Commission will receive the FCC reports and have the authority to require service quality improvements.

We ask you to stand up for California residents and businesses and oppose AB 1366 for the following reasons.

- 1) It places California residents at risk of paying for a Next Generation 911 System that has no state agency to enforce its reliability during wildfires.
- 2) It eliminates basic consumer rights for residents and business owners to have their phones repaired within 24 hours.
- 3) It takes away CPUC enforcement of rules that require carriers to provide reliable service, accurate billing, and in-language contracts.

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<sup>7</sup> <https://www.cpuc.ca.gov/General.aspx?id=1011>

<sup>8</sup> See, for example, CPUC Resolution T-17625, Approval of AT&T California's Advice letter setting forth its annual fine and alternative proposal for mandatory corrective action for failing to meet required service quality performance standards in Year 2017 pursuant to General Order 133-D, November 18, 2018, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M241/K840/241840081.PDF> For additional CPUC enforcement actions see <https://www.cpuc.ca.gov/CPUCNewsDetail.aspx?id=6442460824>

- 4) It threatens low-income communities of color with the loss of LifeLine discounts for home phone service, since statutory requirements for LifeLine do not apply to VoIP.
- 5) It hurts rural communities since Carrier of Last Resort Obligations to provide phone service to every residence in their designated service territory disappears once a carrier has completed switching their phone service to a VoIP network.

AB 1366 is a one-sided proposal that benefits the telecommunications industry at the expense of the safety and rights of California residents and businesses that depend on phone service that works everywhere, all the time. Despite their claims, AT&T has never contacted TURN to ask for our input on this legislation.

We urge you to oppose AB 1366. As telecommunications networks and California's needs evolve, the Legislature and the Commission need the flexibility to ensure that our essential communication networks and services are reliable, universally available and affordable—regardless of what technology is used to deliver voice signals.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Mark W. Toney". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark W. Toney, Ph.D.  
Executive Director