

*Testimony of Christine Mailloux  
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Before the California Senate Committee on Energy,  
Utilities and Communication  
Informational Hearing-March 20, 2012*

## **The Scope of State Jurisdiction Over VoIP Services**

Good morning and thank you for inviting me to participate in this hearing today. This is an important issue and we commend the Committee for taking the initiative to open a dialogue.

I have three main points or themes that I will discuss in the remainder of my remarks:

1) State should not *voluntarily* divest itself (or the Commission) of jurisdiction over VoIP services. The FCC has not preempted this state to apply tailored regulation over VoIP services and, in fact, has acknowledged the important federal/state partnership in several decisions.

2) Consumer Protection never goes out of style or-- economic development, technological innovation, and consumer protection are not mutually exclusive.

3) The call for “technology neutrality” cannot be used to weaken regulation or limit jurisdiction. While carriers use the term “technology neutrality” to urge policymakers to move to the lowest common denominator, we urge policy makers to apply tailored regulation equally across technologies to address market failures, ensure reliable and affordable services, and avoid potential for consumer harm. One must look at the functions of services and be agnostic about the type of technology used. It is important to go back to roots for the regulation-what purpose does it serve for the customer and overall public policy.

Discussion:

It is critical to understand the scope of what we are talking about here. To discuss “IP-Enabled” services goes far beyond some cool new technology that no one knew they couldn’t live without. IP-Enabled technology is currently a critical part of the Public Switched Telephone Network. Over the past decade or so, most of the carriers in this room that are offering services throughout California have deployed new equipment to make their network “IP-Enabled.” *Some of the most vulnerable consumers may be relying on IP-enabled services and not even realize it.* This trend is only going to get more widespread until most of the communications services offered in this state, including voice services will be technically VoIP or IP enabled even if they are not marketed that way. This isn’t about regulating the Internet, this is about regulating a technology that millions of California consumers rely on everyday and that this Legislature and the Commission have deemed an “essential service” for decades.

As consumers pick up the phone to call grandma or their work, they do not generally care if their call uses “IP-Enabled” equipment as long as they can pick up the phone and get dial tone and can complete a call to someone next door, across the country or on the other side of the world. It might be cool to be able to get your voicemail messages read to you through email, or to forward your calls to other locations, but a few cool new twists on the old service do not justify losing jurisdiction to protect these consumers.

Indeed, the introduction of VoIP and IP enabled equipment into the network is just part of the *evolution of the network it is not cause for a revolution to regulation.* TURN is very supportive of these technological advancements in the telecommunications industry and expect that they will bring lower prices and new conveniences to consumers. These new technologies should NOT harm consumers or be a cause to “dumb down” the high-quality reliable services they have come to expect.

Over the last several years, state and federal policy makers, including here in California, have recognized that customers who use VoIP still need reliable 911, still

need to support public purpose programs, still need to know when their services are going to be disconnected, still need to be subject to lawful warrants, still need to take advantage of public purpose programs and still need to have their phone records protected. All of these policies and features are important to California consumers, and there are likely many other policies and scenarios that will demonstrate market failure that have not even come up in light of today's relatively small subscriber base for marketed VOIP services. These are issues that California should be able to regulate in a state-specific manner and not risk getting lost among the cacophony of problems being debated at the national level.

This Legislature must tread lightly to be cognizant of all of the consequences of a deregulatory or *liaise faire* policy. For example, the Commission allowed Comcast and Time Warner Cable to withdraw their basic service tariffs because the carriers argued that their "Digital Voice" or VoIP services were not rate regulated by the Commission and so tariffs were unnecessary. As a result, an intended consequence is that both carriers have stopped offering LifeLine service through the state program and the Commission has no jurisdiction at this time to require those carriers to offer LifeLine services. You should not limit yourself in the ability to address critical consumer issues such as:

- Service Quality
- Low Income programs
- Customer Complaints
- In-language requirements
- Some Privacy Protections
- Disability accommodations and access
- Emergency services (including back up power and 911)
- Cramming and other billing problems
- Customer disclosures
- Failure to serve

- PLUS other responsibilities to help develop competition in the state including interconnection requirements with other services, certain reporting requirements on facilities deployment, and non-discrimination requirements

In light of these critical issues of consumer protection, TURN urges this Legislature not to become one of the short-sighted states that most likely bent to the will of political pressure and adopted legislation that provides undue advantage to VoIP carriers all in the name of economic development. Carriers may describe these states' actions as "not regulating VoIP." But that is not exactly accurate. Several of these states have adopted detailed statutes that require VoIP carriers to register as carriers in the state, to provide certain reports, and to pay surcharges into various state programs, among other regulations. These states did not just cut the VoIP providers loose.

*However, TURN does not believe any type of statute is necessary and if adopted such a statute will unnecessarily restrict the state's abilities to protect consumers.* Perhaps we can look at lessons learned from similar states that adopted similar statutes related to wireless regulation over a decade ago. I have met AGs and Commissioners from many of those states that voluntarily divested itself of jurisdiction over wireless carriers and are now deeply regretting it as they have to turn aggrieved consumers away because they can't help them merely due to jurisdictional limitations they placed upon themselves.

Legislature should let the Commission look at this technology in the context of their existing work: consumer protection & service quality, monitoring/reporting, competition policy etc. When the Legislature steps in, it creates regulatory uncertainty, confused roles and goals, potential for conflict. The Commission needs to address this issue comprehensively and quickly to provide that regulatory certainty.

Thank you.

