

County of Santa Clara

Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-5105



June 27, 2019

The Honorable Lorena Gonzalez
California State Assembly
State Capitol Building, Room 2114
Sacramento, CA 95814

RE: AB 1366 (Gonzalez) As Amended May 20, 2019 – OPPOSE

Dear Assemblymember Gonzalez:

On behalf of the County of Santa Clara (the “County”), I write to register the County’s opposition to AB 1366. It is imperative that California develop world-class and nuanced regulatory oversight to ensure that public safety and the public health are not left behind in an economy increasingly dependent on digital communications technology. Rather than protect the well-being of Californians, however, AB 1366 would directly undermine the ability of the state, local governments, and public safety agencies to fulfill their collective responsibility to keep residents alive, safe, and healthy. Particularly in the face of the FCC’s rollback of all manner of consumer and public safety-protecting regulations in recent years, it is dangerous to extend Public Utilities Code § 710 for another decade. For the reasons below, the County strongly opposes AB 1366.

1. AB 1366 prevents the state and local governments from looking forward and advancing public safety. Today, Voice over Internet Protocol (VoIP) and other “Internet Protocol-enabled services” are the backbone of daily life and communications, from mission-critical public safety communication systems, business video calls conducted over Skype and Zoom, and personal calls over FaceTime and WhatsApp, to navigation using Google Maps and Waze, video streaming from Netflix and YouTube, interactive video games, and online education.

Despite the centrality of IP-enabled services, AB 1366 would prohibit state or local regulation from instituting basic common-sense safeguards around these services.

Under AB 1366, for instance, the CPUC and other state and local agencies could not ensure that the State's 9-1-1 system is interoperable with systems used by local public safety agencies, let alone with communications technologies that consumers use now or in the future. They could not require that companies offering VoIP service provide 9-1-1 service to all customers, or to transmit 9-1-1 calls to the dispatch center in the appropriate location. They could not encourage universal access to new communications technologies that displace older technologies commonly recognized as public utilities (like legacy telephone service). They could not ensure that VoIP providers grant consumers the ability to call toll-free numbers, nor could they ensure the disabled access to VoIP-based telephone services. They could not institute basic standards facilitating effective communication by public safety agencies and public health departments to the residents they serve. And they could not put in place rules to govern the privacy of user data.

This makes no sense, and it risks lives. For instance, under AB 1366, no regulator could make sure that home phone service offered via VoIP works with 9-1-1 emergency services.¹ This is a significant threat to the public in times of emergencies.

From its vantage point in the heart of Silicon Valley, the County knows better than to try to predict the next app, platform, or digital technology through which the public will communicate in the future. It focuses instead on residents' well-being, regardless of what technologies the private sector develops. Just as the market will evolve to leverage new technologies, state and local government must be able to respond to those developments to protect their residents. But AB 1366 would tie regulators' hands before these new technologies even develop. This is fundamentally irresponsible.

A case in point is Next Generation 9-1-1. This year the California Office of Emergency Services (Cal OES) solicited bids to replace the state-wide 9-1-1 emergency phone system with a "Next Generation 9-1-1" system that would operate entirely as an IP-enabled service.² It received bids last month, and plans to award a contract by the end of the year. Consistent with the practice governing the current 9-1-1 system that runs in large part over legacy telephone wires, Cal OES directed NextGen 9-1-1 bidders to submit tariff sheets to the CPUC. The tariff sheets would allow the CPUC to ensure

¹ The FCC has said that its rules regarding Enhanced 9-1-1 service are inapplicable to VoIP service offered over cable modems or fiber optics. The vast majority of VoIP service is offered this way. See FCC, VoIP and 911 Service, <https://www.fcc.gov/consumers/guides/fvoip-and-911-service>.

² Cal. Office of Emergency Servs., Req. for Proposals No. 6026-2018, "Next Generation 9-1-1 Services - Prime and Regions," <https://caleprocure.ca.gov/event/0690/0000012442>.

the service providers comply with their terms and conditions of service and prevent them from raising prices without notice or justification. AT&T sued Cal OES, however, claiming that Public Utilities Code § 710 prohibits the CPUC from exercising any jurisdiction over NextGen 9-1-1 because it is an IP-enabled service.³ The case is ongoing; if AT&T prevails, CPUC will be unable to implement any number of rules to make sure that public safety is appropriately protected when the statewide response and dispatch system is operational.

The speed at which technology has evolved is a reason for regulators to be cautious, but it is not a reason to abandon their responsibility altogether. Issues of public safety and public welfare are not new. The State, local governments, and public safety agencies have developed nuanced and careful regulations to protect the public since the State's founding, and the private sector has flourished in this environment. The State cannot disclaim its responsibility to ensure that VoIP and IP-enabled services are deployed in ways that strengthen rather than harm the public welfare simply because the technology is evolving. AB 1366 is the latest incarnation of a deregulatory agenda originating with the American Legislative Exchange Council (ALEC),⁴ and it takes precisely the wrong approach to balancing the private and public welfare.

2. AB 1366 also directly undermines the net neutrality principles that the County, the Santa Clara County Central Fire Protection District ("County Fire"), and the Legislature have championed. Under the Trump-era FCC order rolling back net neutrality protections, there are no federal rules prohibiting internet service providers (ISPs) from slowing or blocking internet traffic from competitors or from websites that have not paid to access the ISPs' fast lanes.⁵ The FCC's deregulation order offered no caveats to protect public safety or public utilities—precisely the point that the County and County Fire made in their pending petition to block the FCC's rollback.⁶ As a result, even as the public comes to rely ever more on VoIP and other IP-enabled services, ISPs are free to degrade the quality and reliability of calls made over VoIP—

³ *AT&T Corp. v. Cal. Governor's Office of Emergency Servs.*, No. 34-2019-80003146 (Super. Ct. Sacramento Complaint filed May 16, 2019; Memorandum of Points and Authorities in Support of Temporary Restraining Order filed May 23, 2019).

⁴ Gwen Shaffer, *A critical discourse analysis of how the telecommunications industry influenced VoIP deregulation legislation in 36 states*, 23 *First Monday* No. 1 (Jan. 2018), <https://perma.cc/587B-2WNS>.

⁵ See generally *Restoring Internet Freedom*, 33 *FCC Rcd* 311 (2018).

⁶ *County of Santa Clara et al. v. FCC*, No. 18-1088 (D.C. Cir. filed Apr. 2, 2018; oral argument Feb. 1, 2019); see also Office of the County Counsel, County of Santa Clara, *Net Neutrality*, <https://www.sccgov.org/sites/cco/overview/Pages/Net-Neutrality.aspx>.

even when those calls are to the police, fire, or 9-1-1 – as well as a whole host of other digital services.

AB 1366 prevents state regulators from stepping into the void left by the FCC. This is of particular concern for large businesses, local governments, and public safety agencies, which are also left unprotected by the California Internet Consumer Protection and Net Neutrality Act of 2018.⁷ As important as the California net neutrality law is, it may not prevent ISPs from blocking, slowing, or otherwise impairing internet traffic to or from the County's Emergency Operations Center or other local government and public safety agency facilities. The result could well be that critical, life-saving information is blocked or delayed, making it harder for emergency responders to effectively respond to wildfires, shootings, or medical emergencies – or to coordinate with other public safety agencies to offer mutual aid.

There is no good reason to prevent the CPUC, state agencies, local governments, or public safety agencies from enacting the rules necessary to make sure this result does not come to pass. The County cannot support a bill that would sacrifice public safety this way.

For these reasons, the County of Santa Clara opposes AB 1366.

Sincerely


Jeffrey V. Smith, M.D., J.D.
County Executive

cc: Santa Clara County Legislative Delegation
Santa Clara County Board of Supervisors
Michael Rattigan, Legislative Representative

⁷ That Act requires ISPs to adhere to net neutrality principles for plans offered to individual consumers, small businesses, and others through mass-market standard plans. But it does not apply those principles to non-mass-market “enterprise” plans directly used by the County of Santa Clara and many other local governments and public safety agencies. *See* Civ. Code § 3100(b), (n).

County of Santa Clara

Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-5105



June 27, 2019

The Honorable Ben Hueso
Chair, Senate Energy, Utilities and Communications Committee
State Capitol Building, Room 4035
Sacramento, CA 95814

RE: AB 1366 (Gonzalez) As Amended May 20, 2019 – OPPOSE

Dear Chairperson Hueso:

On behalf of the County of Santa Clara (the “County”), I write to register the County’s opposition to AB 1366. It is imperative that California develop world-class and nuanced regulatory oversight to ensure that public safety and the public health are not left behind in an economy increasingly dependent on digital communications technology. Rather than protect the well-being of Californians, however, AB 1366 would directly undermine the ability of the state, local governments, and public safety agencies to fulfill their collective responsibility to keep residents alive, safe, and healthy. Particularly in the face of the FCC’s rollback of all manner of consumer and public safety-protecting regulations in recent years, it is dangerous to extend Public Utilities Code § 710 for another decade. For the reasons below, the County strongly opposes AB 1366.

1. AB 1366 prevents the state and local governments from looking forward and advancing public safety. Today, Voice over Internet Protocol (VoIP) and other “Internet Protocol-enabled services” are the backbone of daily life and communications, from mission-critical public safety communication systems, business video calls conducted over Skype and Zoom, and personal calls over FaceTime and WhatsApp, to navigation using Google Maps and Waze, video streaming from Netflix and YouTube, interactive video games, and online education.

Despite the centrality of IP-enabled services, AB 1366 would prohibit state or local regulation from instituting basic common-sense safeguards around these services.

Under AB 1366, for instance, the CPUC and other state and local agencies could not ensure that the State's 9-1-1 system is interoperable with systems used by local public safety agencies, let alone with communications technologies that consumers use now or in the future. They could not require that companies offering VoIP service provide 9-1-1 service to all customers, or to transmit 9-1-1 calls to the dispatch center in the appropriate location. They could not encourage universal access to new communications technologies that displace older technologies commonly recognized as public utilities (like legacy telephone service). They could not ensure that VoIP providers grant consumers the ability to call toll-free numbers, nor could they ensure the disabled access to VoIP-based telephone services. They could not institute basic standards facilitating effective communication by public safety agencies and public health departments to the residents they serve. And they could not put in place rules to govern the privacy of user data.

This makes no sense, and it risks lives. For instance, under AB 1366, no regulator could make sure that home phone service offered via VoIP works with 9-1-1 emergency services.¹ This is a significant threat to the public in times of emergencies.

From its vantage point in the heart of Silicon Valley, the County knows better than to try to predict the next app, platform, or digital technology through which the public will communicate in the future. It focuses instead on residents' well-being, regardless of what technologies the private sector develops. Just as the market will evolve to leverage new technologies, state and local government must be able to respond to those developments to protect their residents. But AB 1366 would tie regulators' hands before these new technologies even develop. This is fundamentally irresponsible.

A case in point is Next Generation 9-1-1. This year the California Office of Emergency Services (Cal OES) solicited bids to replace the state-wide 9-1-1 emergency phone system with a "Next Generation 9-1-1" system that would operate entirely as an IP-enabled service.² It received bids last month, and plans to award a contract by the end of the year. Consistent with the practice governing the current 9-1-1 system that runs in large part over legacy telephone wires, Cal OES directed NextGen 9-1-1 bidders

¹ The FCC has said that its rules regarding Enhanced 9-1-1 service are inapplicable to VoIP service offered over cable modems or fiber optics. The vast majority of VoIP service is offered this way. See FCC, VoIP and 911 Service, <https://www.fcc.gov/consumers/guides/fvoip-and-911-service>.

² Cal. Office of Emergency Servs., Req. for Proposals No. 6026-2018, "Next Generation 9-1-1 Services - Prime and Regions," <https://caleprocure.ca.gov/event/0690/0000012442>.

to submit tariff sheets to the CPUC. The tariff sheets would allow the CPUC to ensure the service providers comply with their terms and conditions of service and prevent them from raising prices without notice or justification. AT&T sued Cal OES, however, claiming that Public Utilities Code § 710 prohibits the CPUC from exercising any jurisdiction over NextGen 9-1-1 because it is an IP-enabled service.³ The case is ongoing; if AT&T prevails, CPUC will be unable to implement any number of rules to make sure that public safety is appropriately protected when the statewide response and dispatch system is operational.

The speed at which technology has evolved is a reason for regulators to be cautious, but it is not a reason to abandon their responsibility altogether. Issues of public safety and public welfare are not new. The State, local governments, and public safety agencies have developed nuanced and careful regulations to protect the public since the State's founding, and the private sector has flourished in this environment. The State cannot disclaim its responsibility to ensure that VoIP and IP-enabled services are deployed in ways that strengthen rather than harm the public welfare simply because the technology is evolving. AB 1366 is the latest incarnation of a deregulatory agenda originating with the American Legislative Exchange Council (ALEC),⁴ and it takes precisely the wrong approach to balancing the private and public welfare.

2. AB 1366 also directly undermines the net neutrality principles that the County, the Santa Clara County Central Fire Protection District ("County Fire"), and the Legislature have championed. Under the Trump-era FCC order rolling back net neutrality protections, there are no federal rules prohibiting internet service providers (ISPs) from slowing or blocking internet traffic from competitors or from websites that have not paid to access the ISPs' fast lanes.⁵ The FCC's deregulation order offered no caveats to protect public safety or public utilities—precisely the point that the County and County Fire made in their pending petition to block the FCC's rollback.⁶ As a result, even as the public comes to rely ever more on VoIP and other IP-enabled

³ *AT&T Corp. v. Cal. Governor's Office of Emergency Servs.*, No. 34-2019-80003146 (Super. Ct. Sacramento Complaint filed May 16, 2019; Memorandum of Points and Authorities in Support of Temporary Restraining Order filed May 23, 2019).

⁴ Gwen Shaffer, *A critical discourse analysis of how the telecommunications industry influenced VoIP deregulation legislation in 36 states*, 23 *First Monday* No. 1 (Jan. 2018), <https://perma.cc/587B-2WNS>.

⁵ See generally *Restoring Internet Freedom*, 33 *FCC Rcd* 311 (2018).

⁶ *County of Santa Clara et al. v. FCC*, No. 18-1088 (D.C. Cir. filed Apr. 2, 2018; oral argument Feb. 1, 2019); see also Office of the County Counsel, County of Santa Clara, *Net Neutrality*, <https://www.sccgov.org/sites/cco/overview/Pages/Net-Neutrality.aspx>.

services, ISPs are free to degrade the quality and reliability of calls made over VoIP—even when those calls are to the police, fire, or 9-1-1—as well as a whole host of other digital services.

AB 1366 prevents state regulators from stepping into the void left by the FCC. This is of particular concern for large businesses, local governments, and public safety agencies, which are also left unprotected by the California Internet Consumer Protection and Net Neutrality Act of 2018.⁷ As important as the California net neutrality law is, it may not prevent ISPs from blocking, slowing, or otherwise impairing internet traffic to or from the County's Emergency Operations Center or other local government and public safety agency facilities. The result could well be that critical, life-saving information is blocked or delayed, making it harder for emergency responders to effectively respond to wildfires, shootings, or medical emergencies—or to coordinate with other public safety agencies to offer mutual aid.

There is no good reason to prevent the CPUC, state agencies, local governments, or public safety agencies from enacting the rules necessary to make sure this result does not come to pass. The County cannot support a bill that would sacrifice public safety this way.

For these reasons, the County of Santa Clara opposes AB 1366.

Sincerely,



Jeffrey V. Smith, M.D., J.D.
County Executive

cc: Members, Senate Energy, Utilities and Communications Committee
Assemblymember Lorena Gonzalez
Santa Clara County Legislative Delegation
Santa Clara County Board of Supervisors
Michael Rattigan, Legislative Representative

⁷ That Act requires ISPs to adhere to net neutrality principles for plans offered to individual consumers, small businesses, and others through mass-market standard plans. But it does not apply those principles to non-mass-market “enterprise” plans directly used by the County of Santa Clara and many other local governments and public safety agencies. *See* Civ. Code § 3100(b), (n).