

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
BellSouth's Petition for Declaratory Ruling) WC Docket No. 19-44
Regarding the Commission's Definition of)
Interconnected VoIP in 47 C.F.R. § 9.3 and the)
Prohibition on State Imposition of 911)
Charges on VoIP Customers in 47 U.S.C. §)
615a-1(f)(1))

To: The Commission

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”)¹ hereby submits these comments in response to the Commission’s February 26, 2019, Public Notice² seeking comment on petitions for declaratory ruling filed by BellSouth Telecommunications, LLC (“BellSouth”)³ and the Alabama 911 Districts of Autauga County, Calhoun County, Mobile County, and the City of Birmingham (collectively, the “Districts”).⁴ BellSouth and the Districts request that the Commission issue a declaratory ruling to respond to the United States District Court for the Northern District of

¹ VON is the leading advocacy organization for the Internet communications industry, working with policymakers to develop policies that support the availability and adoption of Internet communications products and services. For more information, see www.von.org.

² *Pleading Cycle Established for Comments on Petitions for Declaratory Ruling Filed by Bellsouth and Alabama 911 Districts*, Public Notice, DA 19-125 (rel. Feb. 26, 2019).

³ *BellSouth’s Petition for Declaratory Ruling Regarding the Commission’s Definition of Interconnected VoIP in 47 C.F.R. § 9.3 and the Prohibition on State Imposition of 911 Charges on VoIP Customers in 47 U.S.C. § 615a-1(f)(1)*, BellSouth Communications, LLC’s Petition for Declaratory Ruling (filed Jan. 7, 2019) (“BellSouth Petition”).

⁴ *Petition for Declaratory Ruling in Response to Primary Jurisdiction Referral, Autauga County Emergency Management Communication District et al. v. BellSouth Telecommunications, LLC, No. 2:15-cv-00765-SGC (N.D. Ala.)*, Petition of the 911 Districts of Autauga County, Calhoun County, Mobile County, and the City of Birmingham Regarding the Meaning and Application of the Definition of Interconnected VoIP Service Set Forth in 47 C.F.R. § 9.3 (filed Jan. 29, 2019) (“Districts’ Petition”).

Alabama’s primary jurisdiction referral.⁵ The referral “arises from a dispute between the parties regarding BellSouth’s billing of 911 charges for its business telephone service and the Alabama 911 Districts’ position that such service qualifies as Voice over Internet Protocol (VoIP) or similar service pursuant to Alabama’s 911 statute.”⁶ VON’s comments are limited to the disagreement between BellSouth and the Districts regarding the interpretation of the final sentence of 47 U.S.C. § 615a-1(f)(1).⁷ As discussed in more detail below, VON urges the Commission to declare that BellSouth’s interpretation is correct.

The final sentence of 47 U.S.C. § 615a-1(f)(1) states “[f]or each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.” BellSouth and the Districts disagree on whether the “amount” of the “fee or charge” is the “total dollar value of the 911 charges due from a customer (individual 911 charge multiplied by number of charges due), or instead the individual 911 charge[.]”⁸ BellSouth asks the Commission to declare that the amount of the fee or charge is the total dollar value, while the Districts ask the Commission to declare that the language be interpreted as referring to the individual 911 charge.

⁵ *Autauga County Emergency Management Communication District, et al. v. BellSouth Telecommunications, LLC*, Docket No. 2:15-cv-00765-SGC, Order, at 9 (Mar. 2, 2018 N.D. Ala.).

⁶ *See Autauga County Emergency Management Communication District, et al. v. BellSouth Telecommunications, LLC*, Docket No. 2:15-cv-00765-SGC (N.D. Ala.).

⁷ The full text of 47 U.S.C. § 615a-1(f)(1) states: “Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) [43 U.S.C. 1601 et seq.] for the support or implementation of 9–1–1 or enhanced 9–1–1 services, provided that the fee or charge is obligated or expended only in support of 9–1–1 and enhanced 9–1–1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge. For each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.”).

⁸ BellSouth Petition at 11; *see also* Districts’ Petition at 14.

BellSouth's interpretation of the final sentence of 47 U.S.C. § 615a-1(f)(1) is correct because it tracks with the plain meaning and context of the language. By adding such language, Congress sought to prevent state and local governments from putting VoIP at a competitive disadvantage in the marketplace vis-à-vis non-VoIP services through the imposition of 911 charges. In other words, Congress did not want VoIP to be treated differently than non-VoIP services when it comes to 911 charges. This is apparent from a plain reading of the statute and consistent with the federal government's statutory mandate to encourage the deployment of advanced telecommunications capabilities to all Americans.⁹ It is also consistent with the Commission's longstanding commitment to encouraging the deployment of broadband, and the positive role that the demand for VoIP plays in encouraging such deployment.¹⁰

The Districts argue that "the statute regulates the rate [and not the total amount] of 911 fees—providing that a state, or other subdivision, may not impose different rates for local exchange and IP-enabled customers."¹¹ The Districts argue that this interpretation allows the imposition of a 911 charge on a per-VoIP service line basis for VoIP services and on a per-access line basis for local exchange service.¹² As BellSouth points out, this interpretation could

⁹ 47 U.S. Code § 1302(a) ("The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.").

¹⁰ See e.g., First Report and Order and Notice of Proposed Rulemaking, *IP-Enabled Services*, 20 FCC Rcd 10245, ¶ 31 (2005) ("Internet-based services such as interconnected VoIP are commonly accessed via broadband facilities (i.e., advanced telecommunications capabilities under the 1996 Act). The uniform availability of E911 services may spur consumer demand for interconnected VoIP services, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.").

¹¹ Districts' Petition at 37.

¹² *Id.*

cause two customers that bought the same amount of calling capacity and obtained the same number of telephone numbers to owe vastly different amounts in 911 charges depending on whether they bought a VoIP or non-VoIP service.¹³ If Congress wanted such an outcome, it simply would not have included the last sentence of 47 U.S.C. § 615a-1(f)(1) in the first place.

The Districts' key piece of evidence for their reasoning that the last sentence of 47 U.S.C. § 615a-1(f)(1) governs only the rate of 911 charges, and not the total amount, is legislative history in the form of a House of Representatives report ("House Report") to a draft bill that includes a Congressional Budget Office ("CBO") cost estimate that uses the word "rate" one time when discussing whether the limitation on charging VoIP subscribers a higher charge than non-VoIP subscribers would cost state and local governments revenue.¹⁴ Such evidence does not provide support for the Districts' argument and, if anything, is further evidence that the plain meaning of the last sentence of 47 U.S.C. § 615a-1(f)(1) is the correct interpretation. Indeed, unlike the text of the statute, where every word was scrutinized by elected members of Congress, the CBO estimate does not represent terminology approved by any elected official, and instead represents a summary by CBO economists who were focused on providing cost estimates to Congress, not a legal interpretation of the text. Second, nothing in the CBO estimate suggests that the last sentence of 47 U.S.C. § 615a-1(f)(1) governs anything other than the *total* amount of 911 charges, as the plain reading of the statute suggests. Indeed, the CBO estimate's summary of the statute states that "[t]he bill would prohibit state, local, and tribal governments from

¹³ BellSouth Petition at 24.

¹⁴ See H.R. Rep. No. 110-442 at 9-12 (2007) ("It also is possible that some state and local governments might impose such fees at a rate higher than those charged on other telephone services, but CBO has no information upon which to make such a judgment at this time. Most states impose 911 fees on wireline and wireless services that are similar, suggesting that such fees on VoIP also would be similar. In total, CBO estimates that the costs to state and local governments from the bill's limitation on fees, while they might grow over time, would likely be small over the next five years.").

imposing fees on VoIP subscribers that exceed those imposed on the same class of subscribers (business or residential) of other telecommunications services.”¹⁵ This CBO summary, like the statute itself, is clear on its face.

CONCLUSION

The VON Coalition asks the Commission to act in accordance with the discussion herein.

Respectfully submitted,

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¹⁵ *Id.* at 10.