

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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))	
)	
)	

**COMMENTS OF NCTA – THE INTERNET & TELEVISION
ASSOCIATION**

NCTA – The Internet & Television Association (NCTA) submits these comments in response to the Wireline Competition Bureau’s public notice seeking comment on cross-petitions for declaratory ruling filed by BellSouth Telecommunications, LLC (BellSouth) and several Alabama municipalities regarding the imposition of 911 charges on voice over Internet protocol (VoIP) services.¹ NCTA agrees with BellSouth and urges the Commission to declare that state and local governments are preempted by federal law from collecting 911 charges for VoIP services that, in total, exceed the 911 charges applicable to comparable telecommunications services.

I. CONGRESS HAS PREEMPTED STATE AND LOCAL GOVERNMENTS FROM COLLECTING 911 CHARGES IN A MANNER THAT IMPOSES GREATER CHARGES IN TOTAL ON VOIP CUSTOMERS THAN ON SUBSCRIBERS TO COMPARABLE NON-VOIP TELEPHONE SERVICES

A key issue in the cross-petitions filed by BellSouth and the Alabama entities is whether 911 charges can be collected differently for VoIP and non-VoIP services. The Alabama entities,

¹ *Pleading Cycle Established for Comments on Petitions for Declaratory Ruling Filed by BellSouth and Alabama 911 Districts*, WC Docket No. 19-44, Public Notice, DA 19-125 (Wireline Comp. Bur., Feb. 26, 2019).

pursuant to a state law in effect through September 2013, assessed 911 charges on non-VoIP customers per voice channel, while 911 charges on VoIP customers were assessed per phone number.² As BellSouth explains, “[b]ecause businesses typically obtain many more telephone numbers than voice channels, a customer switching from a [non-VoIP time division multiplex] TDM service to a VoIP service with the same outbound calling capacity would, if this interpretation of the state laws were correct, see its monthly telephone bill increase substantially due to the additional 911 charges.”³

NCTA’s members also have practical experience with this problem and we agree with BellSouth that such an unequal application of 911 charges is impermissible under the NET 911 Improvement Act of 2008.⁴ The act specifically provides that “[f]or each class of subscribers to IP-enabled voice services, the [911] fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.”⁵ The “amount of any such fee or charge” that applies to subscribers includes not only the per-unit rate used to calculate the total amount due from a customer, but also the total 911 charge amount.

As BellSouth correctly points out, this broad statutory prohibition was designed to prevent state and local governments from imposing excessive 911 charges on VoIP customers.⁶ Such unequal charges would both discriminate against VoIP customers and discourage customers from switching from legacy TDM-based services to VoIP services, thereby

² BellSouth Telecommunications, LLC’s Petition for Declaratory Ruling, WC Docket No. 19-44, 4 (Jan. 7, 2019) (BellSouth Petition).

³ *Id.* at 2-3.

⁴ 47 U.S.C. §615a-1(f)(1).

⁵ *Id.*

⁶ BellSouth Petition at 23.

undermining the federal policy of promoting the deployment and adoption of VoIP and other IP-based services.⁷

The 911 charge assessment method used by the Alabama petitioners results in just such discriminatory treatment. If the Alabama petitioners' view is accepted, then a customer who today has TDM-based service and more telephone numbers than voice channels, which is a very common circumstance, will, all other things being equal, pay more in 911 charges if they merely switch to VoIP services.⁸

The statute makes clear that states and municipalities may not assess 911 charges on VoIP subscribers in this discriminatory manner.⁹ The contention by the Alabama entities that the mandate of section 615a-1(f)(1) applies only to the per-unit rate and not to the total amount of the 911 assessment is flatly inconsistent with the only reasonable reading of the statutory text – i.e., that the “same class of subscribers” cannot pay more in 911 charges for VoIP services than for comparable non-VoIP services.¹⁰ Indeed, as this dispute shows, the interpretation advanced by the Alabama entities would authorize state and local governments to sidestep the statutory prohibition by adopting an equal per-unit rate for VoIP and non-VoIP services, but using

⁷ See, e.g., New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (establishing that the NET 911 Improvement Act was designed, inter alia, to “encourage the Nation’s transition to a national IP-enabled emergency network”); *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18123, ¶ 1335 (2011) (noting that the “Commission has set an express goal of facilitating industry progression to all-IP networks”); *IP-Enabled Services*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10264, ¶ 31 (2005) (recognizing the “nexus between VoIP services and accomplishing the goals of section 706”).

⁸ For example, BellSouth correctly notes that “during the relevant time period in Alabama, the customer buying VoIP would have owed 100 911 charges, or \$508.00 at the then-effective \$5.08 rate per charge, while the second customer buying a PRI would have owed no more than 23 charges, or a maximum of \$116.84.” BellSouth Petition at 24.

⁹ 47 U.S.C. §615a-1(f)(1).

¹⁰ See, e.g., H.R. Rep No. 110-442, at 15 (2007) (providing that a state or subdivision “may *collect no more* from VoIP providers” than from wireless or wireline providers for the same customer classes) (emphasis added).

different “units” to calculate the total 911 charge assessed to the customers. This result is both inequitable and contrary to the Commission’s repeated commitment to fostering a broad-scale transition to IP-based networks.¹¹ By shifting a disproportionate share of 911 charges to VoIP customers, legacy TDM customers are artificially and inappropriately deterred from changing to VoIP services.

Whether explicitly encoded in state or municipal laws or resulting from the inequitable application of general measures to VoIP services, state and local government actions that have this effect are inconsistent with the statutory text of the NET 911 Improvement Act. There is no policy or technical reason to treat VoIP services differently from traditional telecommunications services in this regard. Accordingly, as BellSouth requests, the Commission should declare that this sort of gamesmanship is preempted.

In doing so, the Commission should make clear that states that assess charges by “line” should look to activated lines or channels rather than to assigned phone numbers to assess both functionally equivalent VoIP and TDM multi-line services. Otherwise, multi-line VoIP services would be assessed unfairly. Multi-line VoIP services provided by NCTA member companies are provisioned with a specific number of activated lines or channels that can be used for simultaneous outbound calls, including outbound calls to 9-1-1. This is the functional equivalent of the number of lines or channels in the multi-line TDM service context, allowing for ready and fair comparison between VoIP and traditional services.

¹¹ See, e.g., *Business Data Services in an Internet Protocol Environment*, WC Docket Nos. 16-143, 05-25, GN Docket No. 13-5, RM-10593, Report and Order, 32 FCC Rcd 3459, 3471-72, ¶ 25 (2017) (“There is no evidence suggesting Ethernet customers are switching to DS1s and DS3s. Nor as a policy matter would we want that to occur as the technology transition is moving towards the eventual termination of TDM service offerings altogether. We want to encourage that migration, while mitigating disruptions to existing customers, to help unleash the benefits of network innovation for American businesses and consumers.”).

II. DECLARING THAT 911 CHARGES MAY NOT BE DISCRIMINATORILY APPLIED TO VOIP CUSTOMERS OBVIATES THE NEED TO DECIDE VOIP CLASSIFICATION ISSUES IN THIS CONTEXT

As discussed above, the Commission should declare that federal law preempts states and local governments from imposing discriminatory 911 charges on VoIP customers. Doing so would obviate the need to decide any of the service classification issues described in the petition.¹² If the Commission eliminates the 911 charge disparity for VoIP and comparable non-VoIP services as required by the NET 911 Improvement Act, the classification of a particular voice service configuration would not matter for purposes of assessing a 911 charge. Instead, the only issue would be ensuring that voice services with comparable calling capacity are assessed the same total charge.

As BellSouth notes, the Commission's "definition of interconnected VoIP has proliferated in a variety of contexts and . . . there is a need to handle potential adjustments to that definition with care" to avoid unintended consequences with respect to other federal statutes, state statutes, and Commission rules.¹³ Classification of a service as interconnected VoIP can affect the provider's rights and obligations under a large number of Commission orders and regulations on topics unrelated to 911 assessments, as well as under numerous state laws and regulations that incorporate or reference federal requirements. Because decisions to classify a particular service configuration as a VoIP or TDM product may have significant legal and regulatory consequences going far beyond the limited issue presented in this declaratory ruling petition it would be imprudent to decide those issues in this context, where the federal preemption issues addressed above are already sufficient to resolve the parties' dispute.

¹² BellSouth Petition at 8-10 and Appendix.

¹³ *Id.* at 22.

Therefore, the Commission should resolve the dispute regarding the unequal assessment of 911 charges on VoIP services and should decline to address the definitional issues raised in the cross-petitions.

CONCLUSION

For the reasons set forth above, the Commission should declare that the NET 911 Improvement Act prohibits state and local governments from collecting 911 charges for interconnected VoIP service that, in total, exceed the 911 charges assessed on similar non-VoIP offerings.

Respectfully submitted,

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