

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
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-	)	WC Docket No. 19-44
1(f)(1)	)	
	)	
Petition for Declaratory Ruling in Response to	)	
Primary Jurisdiction Referral, Autauga County	)	
Emergency Management Communications	)	
District Et al. v. BellSouth	)	
Telecommunications, LLC, No. 2:15-cv-	)	
00765-SGC (N.D. Ala)	)	

**REPLY COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION**

Frontier Communications Corporation ("Frontier") hereby submits these reply comments<sup>1</sup> in support of BellSouth's Petition for Declaratory Ruling.<sup>2</sup> While BellSouth's Petition arises principally out of a single case in Alabama,<sup>3</sup> it addresses issues central to numerous cases across many jurisdictions. Frontier is involved in several of these cases, either directly or through affiliates. These groundless litigations can be mooted by resolving the two issues central to BellSouth's Petition: (1) the preemptive effect of 47 U.S.C. §615a-1(f)(1) on the assessment of 911 charges, and (2) whether service which is neither ordered as VoIP nor delivered as VoIP can

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<sup>1</sup> Pleading Cycle Established for Comments on Petitions for Declaratory Ruling Filed by BellSouth and Alabama 911 Districts, Public Notice, WC Docket No. 19-44, DA 19-125 (WCB Feb. 26, 2019).

<sup>2</sup> *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").

<sup>3</sup> *Autauga County Emergency Management Communication District, et al. v. BellSouth Telecommunications, LLC*, Docket No. 2:15-cv-00765-SGC (N.D. Ala.).

nonetheless be classified as VoIP.

These numerous lawsuits spanning various jurisdictions have almost all been orchestrated by a professional plaintiff, Roger Schneider, who (through various companies he owns) stands to make millions of dollars through his forty percent cut of the additional 911 charges that would be due from customers if his theories are accepted.<sup>4</sup> At its core, this widespread litigation is little more than a money grab based on cute theories divorced from decades of telecom law. If realized, these theories promise to have a significant impact on the fees customers throughout the country pay for next-generation IP-enabled services and thus deter the adoption of these services. As the expert agency, the Commission has the power to halt this profiteering in its tracks by adopting the positions proposed in the BellSouth Petition and rejecting those in the Petition of the Alabama Districts.<sup>5</sup>

First, the Commission should preempt state 911 statutes that apply disproportionately to VoIP service.<sup>6</sup> Doing so will continue the Commission's long-standing policy of promoting the IP transition by prohibiting discriminatory higher charges for VoIP service than other functionally equivalent services. This ruling alone will resolve the issues underlying the litigations without the need to decide the service classification issues described in the Petitions. Should the Commission feel it necessary to delve into this second issue, Frontier urges the Commission to apply the

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<sup>4</sup> As USTelecom adroitly points out, it is not as if any of the approximately thirty telephone company defendants have been unjustly enriched from the collection of 911 charges, rather, Schneider's theory is that each of the companies misinterpreted the nature of the services provided so the charges were never collected in the first place. *See* Comments of USTelecom—The Broadband Association, WC Docket No. 19-44 at 3 (Mar. 28, 2019).

<sup>5</sup> *Petition for Declaratory Ruling in Response to Primary Jurisdiction Referral, Autauga Cnty. 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) ("Alabama Districts Petition").

<sup>6</sup> *See* BellSouth Petition at 23-26.

practical test proposed in the BellSouth Petition focusing on what the customer orders and receives.<sup>7</sup> This is the only logical result and, indeed, the result that most comports with the Commission’s interconnected VoIP definition.

## DISCUSSION

### **I. THE COMMISSION SHOULD AFFIRM THAT 47 U.S.C. § 615a-1(f)(1) PREEMPTS STATES FROM IMPOSING MORE IN 911 CHARGES ON VoIP CUSTOMERS THAN SIMILARLY-SITUATED NON-VoIP CUSTOMERS.**

Frontier agrees with the numerous commenters that Section 615a-1(f)(1) plainly preempts states from imposing the types of discriminatory charges at issue here.<sup>8</sup> Section 615a-1(f)(1) plainly states that “[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.”<sup>9</sup> This plain language clearly forbids the result urged by the Districts, because, as noted in BellSouth’s example from its Petition in district court, in a scenario in which a VoIP subscriber and legacy services subscriber each purchase the same amount of calling capacity and each obtain the same number of 10-digit telephone numbers, the VoIP subscriber would owe more than four times as much in 911 fees as the traditional telephone service subscriber.<sup>10</sup> Thus, the “amount” of the “fee or charge” is clearly higher for the VoIP customer, contrary to the plain language of Section 615a-1(f)(1). Indeed, this language has only

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<sup>7</sup> See *id.* at 16-17.

<sup>8</sup> See Comments of AT&T Services, Inc., WC Docket No. 19-44 at 15-16 (Mar. 28, 2019); Comments of Bandwidth, Inc., WC Docket No. 19-44 at 6 (Mar. 28, 2019); Comments of CenturyLink, WC Docket No. 19-44 at 9-10 (Mar. 28, 2019); Comments of NCTA—The Internet & Television Association, WC Docket No. 19-44 at 2-3 (Mar. 28, 2019); USTelecom Comments at 6-8; Comments of Verizon, WC Docket No. 19-44 at 9-10 (Mar. 28, 2019); Comments of Voice on the Net Coalition, WC Docket No. 19-44 at 2-4 (Mar. 28, 2019); Comments of Windstream Services, LLC, WC Docket No. 19-44 at 8-11 (Mar. 28, 2019).

<sup>9</sup> 47 U.S.C. § 615a-1(f)(1).

<sup>10</sup> BellSouth Petition at 24.

one reasonable interpretation: the *total* of fees or charges a state statute requires VoIP customers to pay cannot be higher than those of similarly situated subscribers to other services. Others agree.<sup>11</sup>

The Districts’ argument that this instead refers to the “rate of 911 fees” and “not the number of fees or charges billed”<sup>12</sup> is absurd and would turn the English language on its head. “Amount” means “the total number or quantity: *aggregate*.”<sup>13</sup> As others agree, the legislative history further supports this interpretation,<sup>14</sup> as the Committee Report explains that “if a State or its political subdivision imposes a 911 fee on wireless or wireline carriers that consists of one rate for residential customers and another rate for business customers, [they] may collect no more from VoIP providers for the same classes of customers.”<sup>15</sup> The reference to “collection” no doubt again refers to an aggregate amount. Taking the Districts’ urged interpretation to its logical end would allow states to charge VoIP providers any amount the state sees fit as long as it is based on a common per-unit rate.<sup>16</sup> This would vitiate the limitation in the statute and thus violate “cardinal principle[s] of statutory construction.”<sup>17</sup>

Accepting the Districts’ flawed interpretation would turn not only the English language

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<sup>11</sup> See AT&T Comments at 15; CenturyLink Comments at 9; NCTA Comments at 2; Verizon Comments at 9-10; Voice on the Net Coalition Comments at 2-3; Windstream Comments at 8.

<sup>12</sup> Alabama Districts Petition at 36-37; *see also*, Comments of the 911 Districts of Autauga County, Calhoun County, Mobile County, and the City of Birmingham, WC Docket No. 19-44 at 4 (Mar. 28, 2019).

<sup>13</sup> <https://www.merriam-webster.com/dictionary/amount> (last accessed Apr. 8, 2019).

<sup>14</sup> See Verizon Comments at 9-10; NCTA Comments at 3.

<sup>15</sup> Committee on Energy and Commerce, *911 Modernization and Public Safety Act of 2007*, Rep. No. 110-442, at 15 (2007).

<sup>16</sup> See CenturyLink Comments at 10.

<sup>17</sup> BellSouth Petition at 24-25 (quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“a cardinal principle of statutory construction that a statute ought upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant”)).

on its head, but also the long policy of encouraging the growth of VoIP services by both Congress and the Commission. In enacting the NET 911 Act, of which Section 615a-1(f)(1) is a part, one of Congress' stated goals was to "encourage the Nation's transition to a national IP-enabled emergency network."<sup>18</sup> Thus, Section 615a-1(f)(1) was part of a larger Congressional direction to ensure that states do not inhibit the proliferation of VoIP services by imposing additional 911 charges that would make VoIP more expensive and thus less appealing than other comparable services.<sup>19</sup>

The Commission has also made clear its goal to support the IP transition given the promise of "IP-enabled communications . . . to reduce the cost of communication and to spur innovation and individualization."<sup>20</sup> Lower cost for customers appears to be a driving factor in the Commission's continued support of the IP transition, stating in 2014 that the drive towards network modernization will allow "providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices."<sup>21</sup> And this drive towards IP seems to have worked with the Commission noting in 2017 that "[s]ubstitution between [TDM and IP-Based] . . . is generally one directional. New customers, more likely than not, are choosing to purchase Ethernet services, subject to their availability and pricing, and existing customers of TDM-based service are switching to Ethernet."<sup>22</sup> Allowing states to collect

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<sup>18</sup> New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620.

<sup>19</sup> See, e.g., BellSouth Petition at 23; USTelecom Comments at 5; Verizon Comments at 9.

<sup>20</sup> *IP Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4867 (2004); see also *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 (2011) (noting that the "Commission has set an express goal of facilitating industry progression to all-IP networks").

<sup>21</sup> *Technology Transitions, et al.*, GN Docket No. 13-5, et al., Order et al., 29 FCC Rcd 1433, 1435 (2014).

<sup>22</sup> *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Report and Order, 32 FCC Rcd 3459, 3471-72 (2017).

a greater amount of 911 fees from VoIP customers with the same outbound calling capacity as those with legacy services would ironically make VoIP a *more* expensive option and halt the very transition the Commission has invested in moving forward. And the “one directional” substitution seen to date could very well go in the opposite direction—back to TDM and other legacy services.

Thus, any state or local law that results in VoIP customers paying more in 911 fees than customers of functionally equivalent non-VoIP services must be preempted, both based on the plain language of the statute and policy. Frontier strongly urges the Commission to find that the Alabama statute at issue here is preempted and make clear that any attempts to impose fees that would result in a VoIP customer paying more in 911 fees than a customer with functionally equivalent non-VoIP service violate federal law.

## **II. THE COMMISSION SHOULD ADOPT A PRACTICAL TEST WHICH FOCUSES ON WHAT THE CUSTOMER ORDERED IN DETERMINING IF SERVICE IS VoIP.**

Should the Commission find it necessary to address the contours of what constitutes VoIP service, Frontier urges the Commission to adopt a practical test that focuses on what the customer ordered.<sup>23</sup> Frontier agrees that the demarcation point has little to do with the type of service rendered and is rather more a reflection of other unrelated factors such as the number of tenants, the age of the building, the specific operating practices of the telephone company, and the desires of the building owner.<sup>24</sup> The Districts’ arguments to the contrary are frankly confusing. But regardless, the demarcation point is simply an inapt measure against which to determine if service is VoIP because “[t]he same service, provisioned in the same way, to

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<sup>23</sup> See BellSouth Petition at 16-17.

<sup>24</sup> *Id.* at 18-19; AT&T Comments at 9; Verizon Comments at 4-5, Windstream Comments at 14.

customers in different buildings should not be classified differently due to the happenstance that led the demarcation points in those two buildings to be in different places relative to the location of equipment that converts the voice service into the format that the customer ordered.”<sup>25</sup>

Instead, the focus should be on what the customer ordered. If the customer orders a TDM service and is delivered TDM service, it is TDM regardless of whether it traverses part of the network over the same last-mile facility as broadband.<sup>26</sup> Proximity to internet service cannot transform TDM service into VoIP service by osmosis. To use a phrase coined by others in this proceeding, “Voice *over* Internet Protocol” does not mean “Voice *nearby* Internet Protocol.”<sup>27</sup>

Similarly, the Districts’ position that the presence of customer premises equipment capable of receiving IP but which does not require IP for the delivered service transforms TDM service into VoIP<sup>28</sup> is nonsensical. The Commission’s regulations are clear: for service to be characterized as VoIP, it must “[r]equire[] Internet protocol-compatible customer premises equipment.” 47 C.F.R. § 9.3 (emphasis added). Service that does not use the IP feature of IP-compatible CPE, which the customer may use for other services like broadband, is not transformed into VoIP simply by proximity to IP-compatible CPE. Again, the proper inquiry is what the customer ordered and received—if the customer ordered non-IP service and is delivered non-IP service, the service is not VoIP, even if IP-compatible CPE is used because IP-compatible CPE is not *required* for the service to be delivered.<sup>29</sup>

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<sup>25</sup> AT&T Comments at 9.

<sup>26</sup> AT&T Comments at 4.

<sup>27</sup> BellSouth Petition at 14; AT&T Comments at 6.

<sup>28</sup> Alabama Districts’ Petition at 15.

<sup>29</sup> See Windstream Comments at 13.

## CONCLUSION

For the forgoing reasons, Frontier requests that the Commission declare that 47 U.S.C. § 615a-1(f)(1) prohibits states from imposing more 911 charges on VoIP service than on functionally equivalent non-VoIP service. If the Commission reaches the issue of what constitutes VoIP service, the Commission should find that the operative question is what service the customer ordered. The plain language of the Commission's statutory mandates, its well-established policies, and common sense compel both of these conclusions.

Respectfully submitted,

/s/ Diana Eisner

AJ Burton  
FRONTIER COMMUNICATIONS  
1800 M Street, NW, Suite 850S  
Washington, DC 20036  
(202) 223-6807

Diana Eisner  
FRONTIER COMMUNICATIONS  
1800 M Street, NW, Suite 850S  
Washington, DC 20036  
(203) 614-4713

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