

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

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-1(f)(1).

WC Docket No. 19-44

Petition of the 911 Districts of Autauga County,
Calhoun County, Mobile County, and the City of
Birmingham for a Declaratory Ruling Regarding the
Meaning and Application of the Definition of
Interconnected VoIP Service Set Forth in 47 C.F.R.
§ 9.3

REPLY COMMENTS OF CENTURYLINK

CENTURYLINK
Timothy M. Boucher
1025 Eldorado Blvd
Interlocken 2000 Fl 3 #23-313
Broomfield, CO 80021
(303) 992-5751
Timothy.Boucher@CenturyLink.com

Joseph C. Cavender
Suite 250
1099 New York Avenue, N.W.
Washington, DC 20001
(571) 730-6533
Joseph.Cavender@CenturyLink.com

John T. Nakahata
Julie A. Veach
Matthew G. Miller
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW
8th Floor
Washington, DC 20036
(202) 730-1300
jnakahata@hwglaw.com
jveach@hwglaw.com
mmiller@hwglaw.com

Counsel to CenturyLink

April 12, 2019

I. INTRODUCTION

The comments in response to BellSouth's and the Districts' petitions overwhelmingly support Commission action to end attempts to impose discriminatory fees on users of VoIP services. AT&T, Bandwidth, NCTA, USTelecom, Verizon, VON, and Windstream all join CenturyLink in encouraging the Commission to make clear that state actions violate federal law when they impose higher fees on users of VoIP services than users of legacy services.¹ This need not be a complex exercise. The Commission can resolve the petitions efficiently by focusing on the meaning of Section 615a-1(f)(1) and declaring that this provision preempts state actions that discriminate against VoIP services by imposing a higher total amount of 911 fees on VoIP than on similar legacy services.² Several commenters pointed out, as CenturyLink has, that clarifying the preemptive scope of Section 615a-1 fully resolves the parties' disputes and renders the VoIP classification issues moot.³ This is because the only reason the Districts (and other plaintiffs in the 911 fee cases) are seeking to expand the definition of VoIP is because they also claim that VoIP customers should have been billed substantially more in 911 fees, and they want to collect those fees from providers as damages. Even the Districts illustrate the benefit of

¹ Comments of AT&T, WC Docket No. 19-44, at 3 (filed Mar. 28, 2019) ("AT&T Comments"); Comments of Bandwidth, Inc., WC Docket No. 19-44, at 6 (filed Mar. 28, 2019) ("Bandwidth Comments"); Comments of NCTA, WC Docket No. 19-44, at 4 (filed Mar. 28, 2019) ("NCTA Comments"); Comments of USTelecom, WC Docket No. 19-44, at 7 (filed Mar. 28, 2019) ("USTelecom Comments"); Comments of Verizon, WC Docket No. 19-44, at 2 (filed Mar. 28, 2019); Comments of the Voice on the Net Coalition, WC Docket 19-44, at 2–3 (filed Mar. 28, 2019) ("VON Comments"); Comments of Windstream, WC Docket 19-44, at 11 (filed Mar. 28, 2019) ("Windstream Comments").

² Comments of CenturyLink, WC Docket No. 19-44, at 1, 16 (filed Mar. 28, 2019) ("CenturyLink Comments"); Comments of NCTA at 5-6.

³ NCTA Comments at 5; USTelecom Comments at 1, 8; Windstream Comments at 11.

focusing on preemption by arguing that the Commission should not decide whether a particular service is “VoIP or similar service” for purposes of the Alabama ETSA.⁴ Their concern supports focusing on preemption, which will make it unnecessary for the Commission to decide the classification issues.

CenturyLink responds briefly to a few points from commenters who disagree that the Commission should act to prevent states from assessing discriminatory fees on VoIP. First, CenturyLink disagrees with the Texas 9-1-1 Entities that technical differences between channelized and non-channelized services make preemption of state regulations inappropriate. Second, preemption will not result in a windfall to providers or “chaos” in state 911 financing.

II. STATE ACTIONS THAT ARE INCONSISTENT WITH SECTION 615a-1(f)(1) ARE PREEMPTED EVEN IF IT REQUIRES SOME STATES TO CHANGE THEIR FEE PRACTICES

CenturyLink disagrees with the Texas 9-1-1 Entities that it would not be “appropriate” for the Commission to preempt state actions that potentially disturb “long-standing state statutes and regulations.”⁵ The Texas 9-1-1 Entities essentially argue that it is impractical to require states to charge the same fees to subscribers of similar TDM and interconnected VoIP services because, they claim, inherent differences between the two services may make it difficult to make “exact comparisons” between VoIP and TDM services. TDM services are channelized, so each channel can be counted and assessed a fee, whereas IP services are not channelized and

⁴ Comments of the 911 Dists. for Autauga Cty., Calhoun Cty., Mobile Cty., and the City of Birmingham in Alabama to BellSouth Telecomms., LLC’s Petition for Declaratory Ruling, WC Docket No. 19-44, at 4–5 (filed Mar. 28, 2019) (“Districts Comments”).

⁵ Comments of the Tex. 9-1-1 Entities to the Petitions for Declaratory Ruling, WC Docket No. 19-44, at 1 (filed Mar. 28, 2019) (“Texas 9-1-1 Entities Comments”).

therefore, according to the Texas 9-1-1 Entities, cannot be assessed in the same way.⁶ The Texas 9-1-1 Entities' arguments fail to hold water for several reasons.

To begin with, the Texas 9-1-1 Entities' discussion of the Texas 911 statute is a red herring. There are no pending 911 fee cases in Texas. And, while CenturyLink expresses no view about the Texas statute here, there are, no doubt, myriad ways to assess 911 fees on a nondiscriminatory basis notwithstanding any inherent differences between channelized services and non-channelized services. Commission preemption would not invalidate every state law that assesses fees on VoIP subscribers, and it would not disturb existing state requirements that result in fees on VoIP subscribers that are equal to or less than fees for a similar class of TDM service. To the extent that the Texas CSEC Rule 255.4—or any other state rule—does not result in discriminatorily high fees on VoIP subscribers, it would be unaffected by Commission action here.

In contrast, the Districts and the plaintiffs in the other pending 911 fee cases argue that the state statutes at issue in Alabama, Florida, Pennsylvania, and South Carolina, for example, impose 911 fees on traditional services based on simultaneous calling capability, but require VoIP customers to pay a 911 fee for every telephone number. As AT&T noted, this interpretation would result in typical VoIP customers owing as much as four times the amount of 911 fees as traditional customers with the same calling capacity. This is precisely the type of discrimination Section 615 was enacted to prevent.

Congress clearly intended to preempt this sort of discrimination in Section 615a-1(f)(1), and the fact that a Commission preemption ruling might require some states to change their 911 fee practices does not mean preemption is inappropriate. The plain meaning of Section

⁶ *Id.* at 3.

615a-1(f)(1) prevents states from charging 911 fees for VoIP services that are effectively higher than those for similar telecommunications services.⁷ Its meaning does not turn on whether the state intentionally or unintentionally charges higher fees for VoIP services, how long its regulations have been in place, or whether conforming to this federal law is very easy or presents some eminently surmountable obstacles.⁸ Moreover, as CenturyLink and others point out, higher fees for VoIP services are inconsistent with Congress’s and the Commission’s policy goals—enhancing public safety, transitioning to a national IP-enabled emergency network, and fostering the IP transition.⁹

III. PREEMPTION WILL NOT RESULT IN A RETROACTIVE FINANCIAL BENEFIT TO PROVIDERS OR OTHER INEQUITIES

Claims by some commenters that preemption would result in windfalls to providers or will disrupt funding for 911 operations are meritless, and in any event, cannot override the plain meaning of Section 615a-1(f)(1). Madison County, Alabama Communications District argues that a determination that the ETSA is preempted by Section 615a-1(f)(1) would result in “chaos” because 911 districts “could” be asked to refund 911 fees.¹⁰ This argument requires the Commission to ignore that Madison County’s claim against BellSouth, and all similar suits, are

⁷ See CenturyLink Comments at 11–12.

⁸ Texas 9-1-1 Entities Comments at 4.

⁹ CenturyLink Comments at 11; USTelecom Comments at 4–8; Windstream Comments at 6–8; *see also* AT&T Comments at 3, 16; Bandwidth Comments at 6; NCTA Comments at 2–3; VON Comments at 3.

¹⁰ Comments of the Madison Cty., Alabama Emergency Commc’ns Dist., WC Docket No. 19-44, at 6 (Mar. 27, 2019) (“Madison County Comments”).

attempts to extract *additional* fees from the providers.¹¹ CenturyLink is aware of approximately eighty 911 fee cases that have been filed since 2014, of which approximately half are still pending. All of those eighty cases involve an attempt to collect additional 911 fees from telecommunications providers. None involve any claim for refunds by providers.

Madison County also argues that retroactive preemption would be “entirely inequitable.”¹² In effect, it argues that the fact that the 911 Districts’ allegedly collected discriminatory, unlawful fees from some providers justifies the collection of additional discriminatory, unlawful fees from other providers. There is no record to support these contentions of past collections of unlawful fees. But, even if there were, the Districts may not bootstrap themselves into another windfall by pointing to their prior violations of federal law.¹³

IV. CONCLUSION

The Commission should interpret Section 615a-1(f)(1) to preempt state actions that lead to discriminatory fees on VoIP services, which is supported by both the statutory text and the Commission’s policy goals, and does not require classification proceedings.

¹¹ Amended Complaint, *Autauga Cty. Emergency Mgmt. Comm’n Dist. et al. v. BellSouth Telecomms., LLC*, No. 2:15-cv-00765, at 3 (N.D. Ala. Dec. 18, 2015), ECF No. 19 (“The Districts seeks recovery of damages related to the unpaid 911 Charges, along with interests, costs, and expenses as allowed by law.”).

¹² Madison County Comments at 6.

¹³ Districts Comments at 2.

CENTURYLINK
Timothy M. Boucher
1025 Eldorado Blvd
Interlocken 2000 Fl 3 #23-313
Broomfield, CO 80021
(303) 992-5751
Timothy.Boucher@CenturyLink.com

Joseph C. Cavender
Suite 250
1099 New York Avenue, N.W.
Washington, D.C. 20001
(571) 730-6533
Joseph.Cavender@CenturyLink.com

April 12, 2019

Respectfully submitted,



John T. Nakahata
Julie A. Veach
Matthew G. Miller
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW
8th Floor
Washington, DC 20036
(202) 730-1300
jnakahata@hwglaw.com
jveach@hwglaw.com
mmiller@hwglaw.com

Counsel to CenturyLink