



July 11, 2019

Ex Parte Notice

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Petitions for Declaratory Ruling Filed by BellSouth and Alabama 911 Districts Regarding the Meaning of 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*

Dear Ms. Dortch:

We write in response to the Alabama 911 Districts' June 19, 2019 ex parte notice. Nothing in their filing refutes our argument that the Commission should issue a prompt declaratory ruling interpreting 47 U.S.C. § 615a-1(f)(1) to preempt state and local 911 statutes and ordinances that, on their face or in application, discriminate against VoIP customers as compared to customers buying non-VoIP wireline services.¹ Multiple states have recently adopted new, expressly *non*-discriminatory 911 statutes that require customers buying either VoIP or non-VoIP wireline services to pay 911 charges based on the number of simultaneous calls they purchase the right to make.² And no state has adopted a 911 statute that expressly adopts a discriminatory rule.³ Rather, it is the Districts and the other plaintiffs in pending litigation in other jurisdictions that are urging courts to read provisions in state 911 laws to discriminate against VoIP customers, in violation of § 615a-1(f)(1).

We also showed that providers sell VoIP services that provide business customers the ability to make a limited number of simultaneous calls to the PSTN (including 911) and that business customers buying those products may obtain a much greater quantity of telephone numbers than simultaneous outbound calls.⁴ Apparently in response to that showing, the Districts attach to their ex parte an excerpt of a Cisco document noting that "SIP trunks do not have a physical limit on the number of calls that can be established concurrently." But this is simply a statement about the technical specification of SIP trunks, not a description of any service actually offered to customers. And the Districts do not dispute that providers both can

¹ See, e.g., Ex Parte Letter from AT&T, CenturyLink, Comcast, Frontier, Verizon, Windstream, NCTA, and USTelecom at 1-3, WC Docket No. 19-44 (June 7, 2019).

² See *id.* at 2 n.5

³ *Id.* at 2.

⁴ *Id.* at 5.

and do impose such limits as part of the products they sell. Those limits are necessary so that providers can price their services appropriately, charging those customers who need to make fewer simultaneous calls less than those who need to make more simultaneous calls.

The Districts also attach AT&T, CenturyLink, and Verizon documents that — the Districts claim — show the marketing of business VoIP products “with burstable and dynamic sharing capabilities allowing for large volumes of simultaneous calls.” But we never denied that businesses can purchase the ability to make large volumes of simultaneous calls using their VoIP services. For example, AT&T’s IP Flexible Reach VoIP service — a “SIP trunking service” where “[c]ustomers choose the calling capacity they require in units of Concurrent Calls” — requires a customer to buy a “minimum of six Concurrent Calls,” while the “maximum of Concurrent Calls” a customer can purchase is limited only by its “circuit bandwidth, interface selection, and CPE.”⁵ The fact remains that, however many Concurrent Calls an IP Flexible Reach customer purchases, that business customer can, and normally does, obtain *more* telephone numbers. It would be discriminatory for a state to require such a business to pay 911 charges based on that quantity of telephone numbers, when a different business — obtaining the same quantity of telephone numbers and buying the same quantity of concurrent calls through a TDM service — is required to pay fewer 911 charges because it pays based on the quantity of concurrent calls. The Commission should promptly rule that § 615a-1(f)(1) preempts any such discriminatory statutes.

Furthermore, the ability of businesses with multiple locations to share their purchased outbound calling capacity to the PSTN across their locations is not unique to VoIP. Any business with an internal, private network connecting its various locations can share its PSTN connections across those locations, regardless of whether those connections to the PSTN use VoIP or TDM.⁶ For example, Cisco’s Unified Communications Manager includes a feature, known as Local Route Groups, which allows a business with “a large number of locations” to “decoupl[e] the location of a PSTN gateway” — which may use PRIs to connect to the PSTN — from the locations of the employees making telephone calls.⁷ VoIP may make that sharing easier for business customers, but it is a difference in degree, not in kind. That difference does not justify the Districts’ argument that the Commission should interpret § 615a-1(f)(1) in a way that would give states the ability to discriminate against VoIP customers by requiring them — but *not* other wireline customers — to pay 911 charges based on the quantity of telephone numbers they have obtained.

Finally, the material the Districts attached to their *ex parte* is presented in a misleading way. For example, the first AT&T screenshot the Districts attach is part of the first page of a document entitled “IP Flexible Reach Overview.” The full document makes clear that IP

⁵ AT&T Business Service Guide: AT&T Business Voice over IP (BVoIP) Services 53, 58 (June 27, 2019). This service guide is available at the link titled “AT&T Business Voice over IP Services” at the Service Guide Library, AT&T Business Service Guide. See <https://serviceguidenew.att.com/>.

⁶ The Commission has recognized the ability of businesses to use their internal networks to share PSTN connectivity across locations since at least 1984, when it arose in the “leaky” PBX context. See, e.g., Memorandum Opinion and Order, *Investigation of Access and Divestiture Related Tariffs*, 97 F.C.C.2d 1082, 1296 (1984).

⁷ See Chapter: Local Route Groups, https://www.cisco.com/c/en/us/td/docs/voice_ip_comm/cucm/admin/8_6_1/ccmfeat/fsgd-861-cm/fslrg.html.

Flexible Reach customers “choose the calling capacity they require in six or more units of Concurrent Calls.”⁸ That document makes clear that an IP Flexible Reach customer must also buy an “Underlying Transport Service,” such as AT&T’s “Managed Internet Service (MIS).”⁹ The Districts present the next two screenshots in a way that suggests not only that the two are from different documents, but also that the first of the two is part of the “IP Flexible Reach Overview.” In fact, those two screenshots are actually portions of consecutive pages of the same document, entitled “Class of Service Data Collection Document for AT&T Managed Internet Service (MIS).”¹⁰ That document explains the class of service profiles a Managed Internet Service customer may select to, among other things, ensure that its MIS applies quality of service logic appropriate for the number of IP Flexible Reach Concurrent Calls it purchased separately. To the extent the Districts have suggested that an IP Flexible Reach customer can use a class of service profile to *exceed* the number of concurrent calls it purchased, that suggestion is false.

The four pages of Verizon documents the Districts attach come from multiple PowerPoint decks. The first two slides — presented out of order — are from a 2008 Verizon deck.¹¹ Other slides from that deck make clear that, when all of the purchased “Concurrent Call Ports” are in use, “[n]o additional calls can be connected.”¹² Verizon cannot locate the other PowerPoint presentation (or presentations) that contained the other two slides the Districts attached to their *ex parte* — and the Districts provide no information about the source(s).

The CenturyLink product document that the Districts attach to their *ex parte* is, unlike the AT&T and Verizon documents, the complete document. But it only describes the ability of customers to share or pool a fixed quantity of capability across multiple locations — an ability customers purchasing legacy TDM services also had. The Districts had attached to their reply comments a different CenturyLink document from 2017 that, the Districts assert, is evidence that a CenturyLink “VoIP customer’s calling capacity is frequently not static and has the ability to ‘burst’ or increase.”¹³ That document was part of a proposal to the General Services Administration for a specific contract for use by the federal government, not a generally available commercial offering. Moreover, the GSA has terminated that contract, replacing it in 2018 with an Enterprise Infrastructure Solutions contract with Level 3 Communications, LLC. The Level 3 contract does not contain any bursting offering. Contrary to the Districts’ arguments, all CenturyLink business VoIP services are sold in a manner that supports a limited number of simultaneous calls to or from the PSTN (including 911), and customers have no ability to exceed that limit, without adding to their service by purchasing the right to make additional simultaneous calls.

⁸ IP Flexible Reach Overview at 2. The full document is available at <https://ebiznet.sbc.com/texan/documents/IP%20Flexible%20Reach%20Overview.pdf>

⁹ *Id.* at 1, 2.

¹⁰ The full document is available at http://carecentral.att.com/downloads/Class_of_Service.pdf.

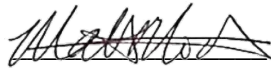
¹¹ The full document is available at <https://www.slideshare.net/mdatkinson/burstable-enterprise-shared-trunks-bestv2-presentation>.

¹² *Id.* at 7; *see id.* at 10.

¹³ Districts Reply at 20-21; *see also* Districts Reply Ex. B.

In sum, there remains need for prompt Commission action to resolve these petitions for declaratory ruling and to confirm that § 615a-1(f)(1) would preempt any state and local 911 statute and ordinance that, on its face or in application, discriminates against VoIP customers as compared to customers buying non-VoIP wireline services.

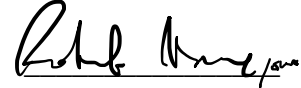
Sincerely,



Matt Nodine
AT&T Services Inc.



Joseph Cavender
CenturyLink



Robert Morse
Verizon