

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *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); 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-cx-00765-SGC (N.D. Ala.), WC Docket No. 19-44.*

In his 1947 article, *Some Reflections on the Reading of Statutes*, U.S. Supreme Court Justice Felix Frankfurter explained that a true problem of statutory construction is only present where “there is a fair contest between two readings”¹ The proceeding before us presents no such contest.

In response to a referral from a federal district court in Alabama, we interpret a provision of the NET 911 Act of 2008. That provision barred states and localities from imposing a 911 fee or charge on VoIP service subscribers that exceeds “the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.”² Some counties and cities in Alabama have argued that this provision allows them to impose a higher total amount of 911 fees on a business subscriber to VoIP service than on a business subscriber to traditional telephone service, so long as the nominal per-unit rate for the 911 charge is the same (and even if the “unit” is different for VoIP service than for traditional telephone service). Take, for example, a charge of \$1 per telephone number for the VoIP customer and \$1 per line for the telephone service customer. Because businesses typically buy many more telephone numbers for internal communications among employees than they do outbound calling lines, in this case, the VoIP customer would likely pay substantially more in 911 fees than the telephone service customer if they both have the same outbound 911 calling capability.

We find that the NET 911 Act does not allow such disparate treatment. The “same class of subscribers” cannot be forced to pay more in *total* 911 charges for VoIP services than for comparable non-VoIP services. This is the only plausible reading of the law; no other interpretation raises a “fair contest,” to borrow from Justice Frankfurter. Our interpretation is consistent with the statutory text and the ordinary meaning of the word “amount” as the total quantity of something or the aggregate. It’s also consistent with the legislative intent behind the NET 911 Act, which was to level the playing field between VoIP and traditional telecommunications services when it comes to 911 rights and obligations. And it’s consistent with both Congress’ and the FCC’s goal of facilitating the transition to next-generation, IP-based networks and services. Indeed, a contrary interpretation—allowing higher aggregate 911 charges for VoIP services—would both discriminate against VoIP customers and discourage consumers and businesses from switching from legacy voice services to modern VoIP services.

To assist the referring court and other courts overseeing similar litigation around the country, we also provide examples of discriminatory 911 fee structures that could violate the NET 911 Act. These include setting caps on the maximum number of 911 fees that may be imposed on a business subscriber to traditional telephone service while providing no such cap for business subscribers to VoIP services.

For their outstanding work on today’s Declaratory Ruling, I’d like to thank Pam Arluk, Allison Baker, Michele Berlove, Justin Faulb, Jesse Goodwin, Kris Monteith, Terri Natoli, and Mike Ray of the Wireline Competition Bureau; Elizabeth Cuttner, John Evanoff, David Furth, Erika Olsen, and Michael Wilhelm of the Public Safety and Homeland Security Bureau; Malena Barzilai, Michael Carlson, Rick Mallen, Linda Oliver, and Bill Richardson of the Office of General Counsel; Eric Burger of the Office of Economics and Analytics; and Padma Krishnaswamy of the Office of Engineering and Technology.

¹ Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUMBIA L. REV. 527, 527-28 (1947).

² 47 U.S.C. § 615a-1(f)(1).