

Before the  
Federal Communications Commission  
Washington, D.C. 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)	)	
	)	
Petition for Declaratory Ruling in Response to	)	
Primary Jurisdiction Referral, <i>Autauga County</i>	)	
<i>Emergency Management Communication District</i>	)	
<i>et al. v. BellSouth Telecommunications, LLC</i> , No.	)	
2:15-cx-00765-SGC (N.D. Ala.)	)	
	)	

**DECLARATORY RULING**

**Adopted: October 25, 2019**

**Released: October 30, 2019**

By the Commission: Chairman Pai and Commissioners O’Rielly, Rosenworcel, and Starks issuing separate statements.

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**I. INTRODUCTION**

1. In the nearly 15 years since the Commission imposed 911 emergency service obligations on then-nascent voice over Internet Protocol (VoIP) services,<sup>1</sup> such services have proliferated to become

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<sup>1</sup> See *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, para. 1 (2005) (*VoIP 911 Order*). For the sake of brevity throughout, we refer to enhanced 911 (E911) and basic 911 obligations collectively as “911” obligations.

the predominant type of fixed voice service used by consumers today.<sup>2</sup> Following that first critical Commission step to advance the goals of public safety in the advent of the IP transition, Congress and the Commission have taken additional steps to ensure regulatory parity between telecommunications services and VoIP services with respect to 911 service responsibilities, rights, and obligations.<sup>3</sup>

2. In response to a primary jurisdiction referral from the U.S. District Court for the Northern District of Alabama,<sup>4</sup> today we take yet another necessary step to maintain regulatory parity with respect to 911 service obligations between traditional telecommunications services and VoIP services.<sup>5</sup> We clarify that section 6(f)(1) of the NET 911 Act<sup>6</sup> (hereinafter, the VoIP 911 Fee Parity Provision) prevents state, local, and Tribal 911 entities from imposing on and collecting from a class of subscribers to VoIP services, a higher total 911 fee than is imposed on and collected from the same class of subscribers to traditional telecommunications services having the same 911 calling capacity. The VoIP 911 Fee Parity Provision provides in relevant part 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>7</sup> With this Declaratory Ruling, we resolve a controversy that threatens to frustrate Congressional intent and the Commission’s goal of facilitating the transition to more advanced, IP-based services that benefit American consumers and businesses.

## II. BACKGROUND

3. *Origin of VoIP 911 Regulation.* The digits “9-1-1” were first made available as an emergency service number in 1965 when emergency services were governed only by state and local requirements. In 1999, however, Congress amended section 251(e) of the Communications Act of 1934, as amended (Act), and directed the Commission to designate “911” as the nationwide abbreviated dialing code for contacting public safety and emergency services for wireline and wireless voice services.<sup>8</sup> At that time, time division multiplexing (TDM) was the dominant technology for providing wireline voice telecommunications service.<sup>9</sup> As the popularity of IP-based voice communications began to increase throughout the early 2000s,<sup>10</sup> the Commission recognized that consumers expected certain types of this

<sup>2</sup> See FCC, Industry Analysis Division, Office of Economics and Analytics, Voice Telephone Services: Status as of December 31, 2017, at 2-3 (Aug. 2019), <https://docs.fcc.gov/public/attachments/DOC-359343A1.pdf>.

<sup>3</sup> See New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620, at § 6(b) (2008) (NET 911 Act); *Implementation of the NET 911 Improvement Act of 2008*, WC Docket No. 08-171, Report and Order, 23 FCC Rcd 15884, 15885, para. 1 (2008) (*NET 911 Act Implementation Order*); *Implementing Kari’s Law and Section 506 of RAY BAUM’s Act et al.*, PS Docket No. 18-261 et al., Report and Order, FCC 19-76, at para. 174 (Aug. 2, 2019) (extending dispatchable location requirements to VoIP service).

<sup>4</sup> See *Autauga Cty Emergency Mgmt. Comm’n Dist. et al. v. BellSouth Telecomms., LLC*, Case No. 2:15-cv-00765-SGC, Order (N.D. Ala. Mar. 2, 2018) (Referral Order).

<sup>5</sup> We refer to VoIP services separately from telecommunications services herein to track the language in the VoIP 911 Fee Parity Provision and not to suggest a regulatory classification of VoIP services. To that end, we use the term “traditional telecommunications service” as compared to VoIP service for purposes of our discussion. We do not address the regulatory classification of VoIP services in this Declaratory Ruling.

<sup>6</sup> 47 U.S.C. § 615a-1(f)(1).

<sup>7</sup> *Id.* In enacting this provision, Congress also recognized that states have the ability to collect 911 fees, but are limited to using such fees to cover and defray the costs of providing or enhancing 911 services. See H.R. Rep. No. 110-442 at 15 (2007) (describing acceptable uses for 911 fees).

<sup>8</sup> See 47 U.S.C. § 251(e)(3); see also *VoIP 911 Order*, 20 FCC Rcd at 10248, 10250, paras. 6, 9.

<sup>9</sup> See, e.g., *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4866, para. 3 (2004) (*IP-Enabled Services NPRM*).

<sup>10</sup> See *id.*; *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, para. 1 (2004).

emerging voice technology to have the same ability to reach emergency services via 911 dialing as their traditional wireline and cellular telephone services.<sup>11</sup> This recognition resulted in the 2005 *VoIP 911 Order*, wherein the Commission (1) defined the characteristics of IP-based voice services for which customers could expect to have 911 calling capability, (2) imposed 911 service obligations on providers of this IP-based service, and (3) adopted new part 9 of the Commission's rules, including section 9.3, to codify the definition of "interconnected VoIP" service for which 911 service obligations apply.<sup>12</sup>

4. Not long thereafter, Congress recognized that the nation's 911 system was "evolving from its origins in a circuit-switched world to an IP-based network"<sup>13</sup> and that in order for VoIP providers to fulfill their 911 service obligations to subscribers, they must have access to the same emergency services capabilities and infrastructure as other voice providers.<sup>14</sup> Congress subsequently passed the NET 911 Act in 2008 to facilitate the rapid deployment of VoIP 911 services and to, among other things, encourage the transition to a national IP-enabled emergency network.<sup>15</sup> Section 6 of the NET 911 Act codified certain 911 requirements set forth in the Commission's *VoIP 911 Order*,<sup>16</sup> including extending to VoIP service providers critical 911 service-related rights, protections, and obligations.<sup>17</sup> In doing so, Congress mandated parity for VoIP providers vis-à-vis other voice providers subject to 911 obligations with respect to the rates, terms, and conditions applicable to exercising their rights and obligations to provision VoIP 911 service,<sup>18</sup> and it prohibited state, local, and Tribal 911 entities<sup>19</sup> from imposing and collecting a 911 fee or charge on VoIP services that exceeds "the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services."<sup>20</sup> Congress directed the Commission to adopt regulations implementing section 6 of the NET 911 Act and mandated that the Commission enforce that section as if the "section was a part of the Communications Act of 1934."<sup>21</sup> The Commission adopted rules implementing key provisions of the NET 911 Act in October 2008.<sup>22</sup>

5. *Alabama 911 Litigation.* In 2015, the Alabama 911 Districts of Autauga County, Calhoun County, Mobile County, and the City of Birmingham (collectively, the Alabama 911 Districts or Districts) filed a federal lawsuit against BellSouth Telecommunications, Inc. (BellSouth), alleging that it failed to properly bill, collect, and remit certain 911 charges due under Alabama's Emergency Telephone Services Act (ETSA). The version of the Alabama ETSA in effect between 2005 and 2013, the period of

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<sup>11</sup> See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10247-49, paras. 4-6.

<sup>12</sup> *Id.* at 10246, 10260, paras. 1, 22; see also 47 CFR § 9.3. While section 615 uses the term "IP-enabled voice service," it defines this term as having the same meaning as "interconnected VoIP" in section 9.3 of the Commission's rules. 47 U.S.C. § 615b(8). We refer to both of these terms in this Declaratory Ruling simply as "VoIP service" and in doing so intend to encompass all VoIP services subject to 911 obligations under section 9.3.

<sup>13</sup> *NET 911 Act Implementation Order*, 23 FCC Rcd at 15893, para. 22 (citing NET 911 Act at Preamble, § 102).

<sup>14</sup> See H.R. Rep. No. 110-442 at 5-7.

<sup>15</sup> See NET 911 Act at Preamble. The NET 911 Act is codified (in part) at 47 U.S.C. § 615a-1.

<sup>16</sup> See *id.* at § 6(a).

<sup>17</sup> See *id.* at §§ 6(b) and (c), 201(a).

<sup>18</sup> 47 U.S.C. § 615a-1(b).

<sup>19</sup> The VoIP 911 Fee Parity Provision refers to "State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) [43 U.S.C. 1601 et seq.]." 47 U.S.C. § 615a-1(f)(1). For convenience, we refer to these entities collectively herein as "non-federal governmental entities."

<sup>20</sup> *Id.*

<sup>21</sup> See NET 911 Act at §§ 6(c) and (e)(2).

<sup>22</sup> See *NET 911 Act Implementation Order*, 23 FCC Rcd at 15884-85, para. 1. The rules went into effect on July 6, 2009.

time at issue in the litigation, included a provision stating that where a 911 district has assessed an emergency telephone service charge, providers of “VoIP or other similar technology” must collect and remit one 911 charge for “each 10-digit access number assigned to the user.”<sup>23</sup> Providers of telephone service other than VoIP, in contrast, were required to collect and remit one 911 charge for each exchange access line, subject to a statutory limit of 100 charges per person, per location.<sup>24</sup> As a result, the Alabama 911 Districts contend that the Alabama ETSA in effect at the relevant time permitted 911 districts to impose a 911 fee on wireline telecommunications service subscribers per exchange access line and on VoIP service subscribers per assigned telephone number.<sup>25</sup> Alabama amended the ETSA in 2012, and the new version, which took effect October 1, 2013, removed this disparity.<sup>26</sup>

6. The Alabama 911 Districts assert that between 2005 and 2013, BellSouth failed to correctly bill, collect, and remit 911 fees with respect to its business voice customers.<sup>27</sup> Specifically, the Districts assert that some of BellSouth’s business voice offerings during the period were VoIP services rather than traditional telecommunications services and that BellSouth should have billed 911 fees to such customers per ten-digit telephone number.<sup>28</sup> BellSouth, however, contends that during the relevant time period it did not offer any business VoIP services and that it correctly billed its business voice customers under the appropriate telecommunications service fee of one 911 charge per access line.<sup>29</sup> It further contends that the Alabama 911 Districts’ interpretation of the ETSA would mean that “[b]ecause businesses typically obtain many more telephone numbers than voice channels, a customer switching from a [non-VoIP] 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.”<sup>30</sup> The parties have not yet completed discovery on the nature of BellSouth’s business voice service at issue before the U.S. District Court for the Northern District of Alabama (District Court).<sup>31</sup>

7. *District Court’s Referral Order.* BellSouth moved the District Court for a primary jurisdiction referral to the Commission and a stay of the litigation during the pendency of the referral.<sup>32</sup> The District Court granted BellSouth’s motion for referral without reservation, but it did not state

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<sup>23</sup> Ala. Code § 11-98-5.1(c) (2009), [https://law.justia.com/codes/alabama/2009/Title11/Title3/11-98-5\\_1.html](https://law.justia.com/codes/alabama/2009/Title11/Title3/11-98-5_1.html).

<sup>24</sup> See *id.* at § 11-98-5(c) (2009), <https://law.justia.com/codes/alabama/2009/Title11/Title3/11-98-5.html>; *Madison Cty. Commc’ns Dist. v. BellSouth Telecomms., Inc.*, Case No. CV-06-X-1786-NE, 2009 WL 9087783, at \*12 (N.D. Ala. Mar. 31, 2009).

<sup>25</sup> See Petition of the Alabama 911 Districts 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, WC Docket No. 19-44, at 36-37 (filed Jan. 29, 2019) (Alabama 911 Districts Petition).

<sup>26</sup> Unless otherwise noted, all references herein to the Alabama ETSA are to the version of the statute in effect prior to October 1, 2013, which is the effective date of significant amendments to the ETSA that removed the disparity between 911 fees for VoIP services and traditional telecommunications services. Ala. Code §§ 11-98-1 to 11-98-15 (2013). The issues in the underlying litigation relate to 911 charges imposed through September 30, 2013.

<sup>27</sup> See Alabama 911 Districts Petition at 2.

<sup>28</sup> *Id.* at 5-6.

<sup>29</sup> See 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, at 5-6 (filed Jan. 7, 2019) (BellSouth Petition).

<sup>30</sup> *Id.* at 2-3.

<sup>31</sup> See Alabama 911 Districts Petition at 13 & n.12.

<sup>32</sup> See BellSouth’s Memorandum in Support of Motion for Primary Jurisdiction Referral and Stay, Case No. 2:15-cv-00765-SGC, at 1-2 (N.D. Ala. filed May 19, 2017).

specifically the questions it was referring to the Commission.<sup>33</sup> Pursuant to the District Court's Referral Order, the parties submitted separate Petitions for Declaratory Ruling to the Commission in January 2019 (jointly, Petitions). The Commission placed the Petitions on public notice on February 26, 2019.<sup>34</sup>

8. *Related State 911 Litigations.* 911 fee lawsuits similar to the underlying Alabama 911 litigation are pending in various states, including in Florida, Pennsylvania, and South Carolina, and involve BellSouth as well as other voice service providers.<sup>35</sup> These other lawsuits also involve issues with state laws that establish 911 fees for VoIP subscribers and the question of whether these laws conflict with federal law.<sup>36</sup> While the 911 fee laws at issue in these other state litigations (some of which are currently in effect) differ from Alabama's in how their 911 fees are assessed on different service providers, including VoIP providers, each lawsuit implicates the relationship between the particular fee structure and the parity requirement set forth in the VoIP 911 Fee Parity Provision.<sup>37</sup> Many of these cases are stayed pending the outcome of the Commission's action on the Petitions,<sup>38</sup> with one other state litigation currently stayed pending settlement negotiations.<sup>39</sup> In that latter case, which was scheduled to go to trial in November 2019,<sup>40</sup> litigants assert that the state's 911 statute discriminates against VoIP subscribers by potentially subjecting them to thousands of monthly 911 charges while capping 911 charges for other voice service subscribers at a maximum of 50 per month.<sup>41</sup>

### III. DISCUSSION

9. Our actions today interpret a statutory provision at the core of the District Court's Referral Order to resolve a controversy that threatens to frustrate both Congress's intent to ensure regulatory parity with respect to 911 obligations and the Commission's policy objectives to promote and facilitate the communications industry's transition to innovative IP technologies and services.<sup>42</sup> The statutory provision at issue (the VoIP 911 Fee Parity Provision) provides 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

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<sup>33</sup> See Referral Order at 1, 14. At a status conference a few days following the issuance of the Referral Order, the Magistrate Judge noted that in the Referral Order, she had not posed specific questions for the Commission to answer. See Letter from Matt Nodine, Ass't V.P., AT&T Services Inc, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44, at 4 (filed June 7, 2019) (Joint Service Provider June 7, 2019 *Ex Parte* Letter). According to AT&T, parent company of BellSouth, neither party objected to the District Court's decision not to pose specific questions for the Commission to answer given the complexities involved in the case. *Id.* AT&T asserts that the District Court "has left it to the Commission's discretion to identify the best way to resolve the federal law issues raised in the Alabama case and referred to the Commission." *Id.*

<sup>34</sup> See Public Notice, FCC, *Pleading Cycle Established for Comments on Petitions for Declaratory Ruling Filed by BellSouth and Alabama 911 Districts*, WC Docket No. 19-44 (Feb. 26, 2019).

<sup>35</sup> See BellSouth Petition at 1 n.1 (listing 911 fee lawsuits pending against AT&T, Verizon, Frontier, CenturyLink, Level 3, and Windstream); Joint Service Provider June 7, 2019 *Ex Parte* Letter at 1 & n.1.

<sup>36</sup> See, e.g., Pennsylvania Counties Comments at 5 & n.9, 12-14 (explaining the relationship between Pennsylvania's 911 fee statute and the Act); Windstream Comments at 2, Appx. (stating Windstream and its subsidiaries currently are parties to 911 fee lawsuits in 27 different jurisdictions involving, in part, the effect of federal law on a state's assessment of 911 charges); Letter from Matt Nodine, Ass't V.P., AT&T Services Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 19-44, at 1, Exh. A (filed June 13, 2019) (AT&T June 13, 2019 *Ex Parte* Letter).

<sup>37</sup> For example, some mandate caps on the number of 911 fees imposed on a traditional TDM service customer but not on a VoIP customer. See, e.g., Joint Service Provider June 7, 2019 *Ex Parte* Letter at 6 (describing South Carolina's 911 fee statute). Other state statutes (similar to Alabama's ETSA) apply the same nominal 911 rate to TDM and VoIP services but employ different methods to calculate the number of TDM units and VoIP units to which the rate applies. See, e.g., Letter from Matt Nodine, Ass't V.P., AT&T Services, Inc., to Marlene H. Dortch,

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charge applicable to the same class of subscribers to telecommunications services.”<sup>43</sup> The above-mentioned 911 fee disputes highlight the ambiguities of this statutory provision, particularly as to the meaning of the terms “amount,” “fee or charge,” and “same class of subscribers.” Following our thorough review of the record in this proceeding, we hereby declare that the VoIP 911 Fee Parity Provision prohibits non-federal governmental entities from imposing 911 fees or charges on VoIP services in any manner that would result in a subscriber to such VoIP services paying a total amount of 911 fees or charges that exceeds the total amount of 911 fees or charges that the same subscriber would pay for a traditional telecommunications service with the same 911 outbound calling capability or same quantity of units upon which 911 fees are imposed for traditional telecommunications services.<sup>44</sup> We find this statutory interpretation best effectuates long-standing goals to promote and enhance public safety by facilitating the rapid deployment of VoIP 911 services<sup>45</sup> and to promote and facilitate the transition from legacy, TDM-based services to next-generation, IP-based services for the benefit of all Americans.<sup>46</sup>

10. By rendering our reasoned interpretation, we defer to the District Court, as the finder of fact in this instance, to determine, based on the specifics of the lawsuit and the interpretation we state herein, whether the VoIP 911 Fee Parity Provision preempts the Alabama ETSA for purposes of resolving the litigation. If the District Court determines that the ETSA as interpreted by the Alabama 911 Districts violates the VoIP 911 Fee Parity Provision’s fee-parity mandate, then the issue of whether BellSouth’s voice service offered at that time was VoIP or a traditional TDM-based telecommunications service is mooted<sup>47</sup> because subscribers should owe total 911 fees or charges to the Districts for the VoIP service at issue that are no higher than those for traditional TDM-based services. Thus, we decline to rule on the extensive VoIP definitional issues articulated in the Petitions and *ex parte* filings.<sup>48</sup> While the Districts claim that addressing the questions set forth in the Petitions and other filings regarding the definition of VoIP would “avoid a far more time-consuming, burdensome, and costly process,”<sup>49</sup> we find that the Districts’ proposed approach would actually be less efficient by causing substantial delay while we grapple with a question that does not need to be answered to resolve this or other pending litigation.<sup>50</sup>

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Secretary, FCC, WC Docket No. 19-44, at 3 (filed May 13, 2019) (AT&T May 13, 2019 *Ex Parte* Letter) (describing Pennsylvania’s 911 fee statute).

<sup>38</sup> See BellSouth Petition at 1 & n.1; AT&T June 13, 2019 *Ex Parte* Letter at Exh. A. According to BellSouth, there are five nearly identical 911 fee cases that have been stayed in Florida until December 9, 2019—one filed against BellSouth and two other AT&T companies, and four other lawsuits filed against affiliates of Verizon, Frontier, CenturyLink, Level 3, and Windstream. See *State ex rel. Phone Recovery Servs., LLC v. Verizon Bus. Glob.*, Case Nos. 2016-CA-000062 *et al.* (Fla. Cir. Ct. Leon Cty. May 17, 2018). A Pennsylvania court similarly stayed a 911 fee lawsuit in which AT&T Corp. and Teleport are among the 26 telephone company defendants. See *Phone Recovery Servs., LLC v. Verizon Pa., Inc.*, Case No. GD-14-021671 (Pa. Ct. Comm. Pl. Allegheny Cty. Aug. 9, 2018).

<sup>39</sup> *County of Richland v. AT&T Corp.*, Case No. 3:18-cv-1295-RMG, Text Order (D.S.C. Sept. 27, 2019, Hon. Richard Gergel) (granting 45 day stay while the parties complete settlement negotiations).

<sup>40</sup> See *County of Richland v. AT&T Corp.*, Case No. 3:18-cv-1295-RMG (D.S.C. May 13, 2019); AT&T May 13, 2019 *Ex Parte* Letter at 3-4.

<sup>41</sup> Joint Service Provider June 7, 2019 *Ex Parte* Letter at 6.

<sup>42</sup> See Letter from Mike Saperstein, V.P., Policy & Advocacy, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44 (filed Oct. 17, 2019). We have authority under the Administrative Procedure Act and our rules to issue this Declaratory Ruling to “terminate a controversy or remove uncertainty.” See 5 U.S.C. § 554(e); 47 CFR § 1.2(a). The dozens of pending lawsuits involving the 911 fee issue and the multitude of opinions on this issue in the record demonstrate uncertainty and controversy over the precise meaning of the VoIP 911 Fee Parity Provision. See BellSouth Petition at 1; CenturyLink Comments at 6-7; AT&T Comments at 14. As a result, we find that a declaratory ruling construing and offering guidance on the meaning of

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11. We also decline the requests of the Alabama 911 Districts to declare that (1) section 615a-1 does not preempt a state from imposing 911 fees on services other than interconnected VoIP, commercial mobile services, or telecommunications services, and (2) state authority to impose 911 fees does not derive from section 615a-1.<sup>51</sup> We find that both of these requests are outside the scope of the District Court’s Referral Order and there is no evidence that a particular controversy exists regarding these issues. In fact, we note that the District Court has apparently already determined that “VoIP or other similar service” under the Alabama ETSA must be read in light of the FCC’s definition of interconnected VoIP service.<sup>52</sup> We find no reason to second-guess this District Court determination.

12. Because the Referral Order refrains from asking specific questions of the Commission, the parties articulate differing views of the questions at issue.<sup>53</sup> By granting BellSouth’s motion in full, the question of the proper application of section 615a-1 to the parties’ dispute is squarely within the scope of the referral,<sup>54</sup> and we believe this Declaratory Ruling on the issue is sufficient to enable the District Court to make a ruling in this case.<sup>55</sup> To be clear, we are not preempting any particular state law or regulation; rather, we are construing the VoIP 911 Fee Parity Provision as Congress intended us to do so as to aid the District Court in reaching a decision in the litigation.

#### A. Interpretation of the VoIP 911 Fee Parity Provision

13. We interpret the VoIP 911 Fee Parity Provision to prohibit non-federal governmental entities from imposing a greater total of 911 fee or charge on VoIP service subscribers than on “the same class of subscribers” of a traditional telecommunications service having the same simultaneous outbound 911 calling capability, or number of telephone numbers or whatever other unit of measurement is specified for imposing 911 fees on telecommunications services. This interpretation best comports with the text of the NET 911 Act as a whole, its legislative history, and with Congress’s and the Commission’s stated goals of facilitating the transition to next-generation IP networks and services, including for 911 services.<sup>56</sup> Examples of certain types of 911 fee provisions that could run afoul of this prohibition are

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the VoIP 911 Fee Parity Provision is necessary to provide clarity to courts hearing disputes over the legality of state laws imposing 911 fees or charges on VoIP subscribers.

<sup>43</sup> 47 U.S.C. § 615a-1(f)(1).

<sup>44</sup> To be clear, when we discuss “911 outbound calling capability (or capacity)” we are referring to the total number of simultaneous outbound calls that can be made to 911, typically reflected by the number of access lines a subscriber purchases. *See, e.g.*, Letter from Brannon J. Buck and James Baller, Counsel to the Alabama 911 Districts, to Marlene Dortch, Secretary, FCC, WC Docket No. 19-44, at 11 (filed July 23, 2019) (Alabama 911 Districts July 23, 2019 *Ex Parte* Letter) (stating that “prior to 2013, Alabama assessed 911 fees on traditional service by exchange access line (interpreted as voice channel)”). Thus, if a business subscriber has, for example, 23 traditional telecommunications service access lines but has 100 assigned telephone numbers, only 23 of those telephone numbers can place outbound calls at any given time. A business VoIP service subscriber can similarly purchase less simultaneous outbound calling capability than the quantity of telephone numbers it obtains. *See* BellSouth Petition at 2-3; Joint Service Provider June 7, 2019 *Ex Parte* Letter at 5-6. If a 911 fee is imposed on a traditional telecommunications service subscriber on a per-access-line basis, a VoIP service subscriber purchasing the same amount of outbound calling capability *must not* have to pay a total VoIP service 911 fee that exceeds the total fee imposed on the telecommunications service subscriber. This is the case regardless of the unit of measurement upon which a 911 fee is imposed for a VoIP service subscriber (e.g., assigned telephone numbers or monthly minutes of use). Similarly, if a 911 fee for a traditional telecommunications service subscriber is not based directly on outbound calling capability but some other unit of assessment, like assigned telephone numbers, then a VoIP subscriber having the same quantity of telephone numbers must not have to pay a higher total 911 fee than the traditional telecommunications service subscriber.

<sup>45</sup> *See NET 911 Act Implementation Order*, 23 FCC Rcd at 15885, para. 2.

contained in the record and include, but are not limited to: (1) imposing caps or limits on the 911 fees or charges that can be collected from telecommunications subscribers regardless of outbound calling capacity, with no similar caps or limits placed on VoIP subscribers, and (2) imposing or collecting higher total 911 fees or charges on VoIP subscribers than on traditional telecommunications subscribers for the same amount of calling capacity by applying the same rate to different units of measurement.

### 1. The VoIP 911 Fee Parity Provision Creates Regulatory Parity for, and Prohibits Discrimination Against, VoIP Services

14. In mandating VoIP providers to supply 911 services to their subscribers, the NET 911 Act sought to prohibit actions by third parties that would discriminate against VoIP providers in their fulfillment of the statutory mandate vis-à-vis other voice services providers.<sup>57</sup> From prescribing rights of access to 911 capabilities (including interconnection) on the same rates, terms, and conditions,<sup>58</sup> to granting immunity from liability for 911-related emergency actions at the same level as traditional telecommunications providers,<sup>59</sup> to requiring parity in the fees or charges applicable to VoIP subscribers vis-à-vis telecommunications service subscribers,<sup>60</sup> Congress's intent is clear. It intended to create a 911 regulatory framework that does not disadvantage VoIP service providers or subscribers relative to service providers and customers of traditional telecommunications services.<sup>61</sup>

15. Against the backdrop of this overarching Congressional intent, we look at the last sentence of the VoIP 911 Fee Parity Provision—the language at issue in this proceeding: “[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>62</sup> This language can be interpreted in at least two ways. First, it could mean only that the nominal “fee or charge” may not exceed the nominal fee or charge for the corresponding class of telecommunications

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<sup>46</sup> See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, 33 FCC Rcd 5660, 5661-62, para. 5 (2018) (*Wireline Infrastructure Second Report and Order*).

<sup>47</sup> See Joint Service Provider June 7, 2019 *Ex Parte* Letter at 4; Letter from Timothy M. Boucher, Ass't. General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44, at 1 (filed Aug. 23, 2019) (CenturyLink Aug. 23, 2019 *Ex Parte* Letter); NCTA Comments at 5; Frontier Reply at 2; USTelecom Comments at 7-8.

<sup>48</sup> See Alabama 911 Districts Petition at 1, 5; BellSouth Petition at 2.

<sup>49</sup> Alabama 911 Districts July 23, 2019 *Ex Parte* Letter at 2; see also Letter from James Baller and Sean A. Stokes, Counsel to the Alabama 911 Districts, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44, at 1 (filed Sep. 10, 2019) (Alabama 911 Districts Sept. 10, 2019 *Ex Parte* Letter).

<sup>50</sup> The various scenarios that the parties raise and the hypothetical services they describe in an attempt to have the Commission make binding classification determinations here are inappropriate grounds on which to base such determinations without more comprehensive and detailed factual information about each scenario, including examining a number of additional factors that determine how a service is offered, described to subscribers, and technically provisioned. We decline to engage in an in-depth interpretation of the definition of VoIP, especially one that might have far-ranging implications beyond the instant controversy and would add even further delay to this proceeding when it is unnecessary to respond to the Referral Order.

<sup>51</sup> Alabama 911 Districts July 23, 2019 *Ex Parte* Letter at 2-3, 5.

<sup>52</sup> Referral Order at 10-11.

<sup>53</sup> These questions include, among others, what constitutes a VoIP service for purposes of applying the Alabama 911 fee statute and whether the Alabama statute is preempted by the 911 VoIP Fee Parity Provision. See, e.g., BellSouth Petition at 2-3; Alabama 911 Districts Petition at 1-2.

<sup>54</sup> See Referral Order at 14; AT&T June 13, 2019 *Ex Parte* Letter at 3-4; BellSouth Petition at 11; AT&T Comments at 13-14; CenturyLink Comments at 7; Windstream Comments at 10.



service subscribers that service providers impose for a given unit of measurement used (e.g., assigned telephone numbers, number of access lines, or per customer account). Under this first interpretation, for example, a fee structure that imposed a specific 911 fee per access line for a business subscriber to a TDM-based telecommunications service and a higher 911 fee per VoIP outbound calling line for a business subscriber to a VoIP service would be prohibited by the statute. This interpretation is the Alabama 911 Districts' view of what this provision of the statute means.<sup>63</sup>

16. Alternatively, the provision could mean that whatever 911 "fee or charge" is imposed on a VoIP service subscriber, regardless of the rate or unit of measurement used to calculate the imposed fee or charge, cannot exceed the total 911 fee amount that would be imposed on the same class of telecommunications subscribers, at least for a VoIP service having the same 911 outbound calling capability as a telecommunications service. For example, under this second interpretation, the statute would prohibit a fee structure that imposed a 911 fee of \$1.00 per access line for a business subscriber to a TDM-based telecommunications service and a 911 fee of \$1.00 per assigned telephone number for a business subscriber to a VoIP service, if both the TDM and VoIP service business subscribers each purchased 10 access lines (capable of outbound calling) and each also obtained 20 telephone numbers (for internal communications between employees). Under this example, because the VoIP subscriber would pay double the 911 fees (\$1.00 per 20 telephone numbers or \$20) than the TDM subscriber (\$1.00 per 10 access lines or \$10), but each subscriber would have the identical outbound calling capability and quantity of assigned telephone numbers, the VoIP subscriber 911 "fee or charge" would exceed that of the TDM subscriber, and thus violate the VoIP 911 Fee Parity Provision. This is the interpretation advocated by BellSouth.<sup>64</sup>

17. In determining the best interpretation of the VoIP 911 Fee Parity Provision, we conclude that the text of the statute, its legislative history, and the goal of facilitating the IP transition, taken as a whole, show that Congress intended to prevent non-federal governmental entities from imposing a greater

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<sup>55</sup> See Letter from Henry G. Hultquist, V.P. Fed. Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44 (filed Oct. 16, 2019). We decline the request of certain commenters for this Declaratory Ruling to apply only prospectively. See Madison County ECD Comments at 6; Pennsylvania Counties Comments at 10-11. We note that the U.S. Court of Appeals for the D.C. Circuit has permitted the Commission to "overcome the presumption of retroactivity" of a declaratory ruling only where it can show that retroactive application would result in "manifest injustice." *Qwest Servs. Corp. v. FCC*, 509 F.3d 531, 539 (D.C. Cir. 2007). We find that no manifest injustice would accrue to the Alabama 911 Districts from retroactive application of this Declaratory Ruling because all we do here is provide guidance to the District Court on what the 911 VoIP Fee Parity Provision means; we are not preempting any state law and leave it to the District Court to take further action based on our guidance.

<sup>56</sup> See, e.g., 47 U.S.C. § 1302(a); *NET 911 Act Implementation Order*, 23 FCC Rcd at 15893, para. 22; *VoIP 911 Order*, 20 FCC Rcd 10247, para. 4; see also AT&T Reply Comments at 2; Verizon Comments at 2; AT&T May 13, 2019 *Ex Parte* Letter at 1.

<sup>57</sup> These third-parties include "an entity with ownership or control over such [911] capabilities" and the non-federal governmental entities described in note 19 *supra*.

<sup>58</sup> See 47 U.S.C. § 615a-1(b).

<sup>59</sup> See *id.* at § 615(a).

<sup>60</sup> See *id.* at § 615a-1(f)(1).

<sup>61</sup> See, e.g., Verizon Comments at 9; CenturyLink Comments at 5; Frontier Reply at 2.

<sup>62</sup> 47 U.S.C. § 615a-1(f)(1).

<sup>63</sup> See, e.g., Alabama 911 Districts Petition at 37 ("An example of the types of fees prohibited by this statute would be a 911 fee that was \$1.00 for local exchange business subscribers and \$2.00 for IP-enabled business subscribers. In this example, the 'amount' of the 911 charge would be higher for VoIP subscribers than local exchange subscribers of the same class. However, if the rate for both IP-enabled and local exchange service is the same, then

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total 911 fee or charge on VoIP services than the total 911 fee or charge imposed on traditional telecommunications services providing a subscriber the same amount of concurrent capability to call 911.<sup>65</sup> In other words, Congress did not intend to put VoIP service at a competitive disadvantage vis-à-vis non-VoIP services through the imposition of higher total 911 charges for essentially the same 911 calling capability.<sup>66</sup> A contrary reading conflicts with one of Congress's goals in enacting the NET 911 Act—leveling the regulatory playing field for VoIP 911 services.<sup>67</sup> Moreover, by focusing on services with like outbound 911 calling capacity, our approach factors in the parties' concerns about ensuring that fee frameworks can accurately reflect the burdens placed on 911 networks by traditional telecommunications services and VoIP services.<sup>68</sup>

18. The record supports the view that simultaneous outbound 911 calling capability is the most relevant characteristic for evaluating the comparability of different services for purposes of determining whether the application of 911 fees to any particular VoIP service is contrary to the 911 VoIP Fee Parity Provision.<sup>69</sup> Both the Districts and BellSouth view this characteristic as best representing the “burden” the public safety system incurs and that 911 fees help offset, although they disagree as to the ease of administrability of evaluating this capability for VoIP services.<sup>70</sup> To the extent 911 fees are imposed on traditional telecommunications services on some other basis that is not directly related to outbound calling capability, such as assigned telephone numbers or subscriber account, a subscriber to a VoIP service having the same number of telephone numbers or accounts cannot face a total 911 fee that exceeds that of the traditional telecommunications service subscriber.

19. *Text of the VoIP 911 Fee Parity Provision.* The VoIP 911 Fee Parity Provision refers to non-federal governmental entities' “imposition and collection” of a “fee or charge” and states that such 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.”<sup>71</sup> The required parity, then, is in the amount that non-

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the prohibition in 47 U.S.C. § 615a-1 is satisfied—even if the statute imposing the 911 fee assessed the fee on a per-telephone number basis for IP-enabled services and on a per-access line basis for local exchange service.” (Footnote omitted.)). The Districts rely in part on the singular use of “fee or charge” in the statute. *See id.*

<sup>64</sup> *See infra* para. 28; *see also* BellSouth Petition at 24-26. For example, BellSouth asserts that “[t]he ‘amount of any such fee or charge’ that is ‘applicable’ to a ‘class of subscribers’ is reasonably read to include not only the rate that is used to calculate the total amount due from a customer, but also the total amount itself.” *Id.* at 24.

<sup>65</sup> *See, e.g.,* Verizon Comments at 9 (“BellSouth’s straightforward interpretation of § 615a-1(f)(1), enacted as part of the NET 911 Act, is consistent with the text of the statute and Congress’s overarching objectives.”); CenturyLink Aug. 23, 2019 *Ex Parte* Letter at 5; Voice on the Net Coalition Comments at 3; NCTA Comments at 2.

<sup>66</sup> Voice on the Net Coalition Comments at 3.

<sup>67</sup> Letter from Matthew Nodine, Ass’t. V.P. Fed. Reg., AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44, at 3 (filed Aug. 19, 2019) (AT&T Aug. 19, 2019 *Ex Parte* Letter) (stating that “[a] 911 charge statute that would impose a monthly tax increase of hundreds or thousands of dollars on a customer who switches from non-VoIP service to VoIP service would have precisely the opposite effect” of advancing federal communications policy).

<sup>68</sup> *See, e.g.,* Alabama 911 Districts Petition at 39; BellSouth Petition at 24; Letter from Matt Nodine, Ass’t V.P.—Fed. Reg., AT&T Services Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 19-44, at 3 (filed Sep. 16, 2019) (AT&T Sep. 16, 2019 *Ex Parte* Letter) (noting that state after state has adopted 911 billing statutes that “unambiguously require both VoIP and non-VoIP customers to pay 911 charges based on concurrent calling capability”).

federal governmental entities *collect*. From the perspective of the “class of subscribers,”<sup>72</sup> the amount collected for 911 services is the *total amount* of such “fee or charge” collected by the non-federal governmental entity—not merely the nominal per-unit rate before it is actually applied to the service. Supporting this view is the definition of “amount” as “the total number or quantity: Aggregate.”<sup>73</sup> In other words, a limitation on the amount collected is best read in this context as a limitation on the aggregate amount—the bottom line—not on the amount of the per-unit fee or charge specified to apply at some intermediate step in the subscriber billing process.

20. We also find that interpreting the phrase “fee or charge” to refer to the *rate* of the “fee or charge,” as the Alabama 911 Districts advocate, would allow states to impose any total amount of 911 fees or charges on VoIP customers, as long as there is a common per-unit rate specified for both VoIP and TDM-based subscribers of the same class.<sup>74</sup> We find this interpretation to be contrary to the letter and spirit of the statute, as it would render meaningless the phrase “may not exceed the amount of” any 911 fee or charge applicable to the same class of subscribers to non-VoIP services.<sup>75</sup> We agree with commenters who argue that the interpretation urged by the Districts could “cause two customers that bought the same amount of calling capacity and obtained the same number of telephone numbers to owe vastly different amounts in 911 charges depending on whether they bought a VoIP or non-VoIP service” and that “[i]f Congress wanted such an outcome, it simply would not have included the last sentence of 47 U.S.C. § 615a-1(f)(1) in the first place.”<sup>76</sup> Indeed, the word “rate” does not even appear in the VoIP 911 Fee Parity Provision. In addition, as Verizon points out, the NET 911 Act uses the term “rates” elsewhere in the same statute; and where Congress uses different terms in the same legislation, it is assumed to do so intentionally.<sup>77</sup> We thus are unpersuaded by arguments that “fee or charge” means the nominal “rate” such that the VoIP 911 Fee Parity Provision prohibits states solely from charging a different per-unit rate to the same class of VoIP and telecommunications service subscribers.<sup>78</sup> We also disagree that since the terms “amount” and “fee or charge” in the VoIP 911 Fee Parity Provision are all

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<sup>69</sup> See, e.g., Alabama 911 Districts Petition at 39; BellSouth Petition at 24; AT&T Aug. 19, 2019 *Ex Parte* Letter at 5-7.

<sup>70</sup> AT&T Aug. 19, 2019 *Ex Parte* Letter at 5-7.

<sup>71</sup> See 47 U.S.C. § 615a-1(f)(1).

<sup>72</sup> The House Report for the NET 911 Act refers to “class of subscribers” as either business or residential. See H.R. Rep. No. 110-442 at 10.

<sup>73</sup> Webster’s New College Dictionary 38 (3d ed. 2008); see also AT&T Comments at 15 (quoting Webster’s Third New International Dictionary at 72); Frontier Reply at 4 (quoting <https://www.merriam-webster.com/dictionary/amount>).

<sup>74</sup> See CenturyLink Comments at 10 (“This theory could lead to even more outlandish results. For example, the Districts could charge a per-unit rate element for every minute a VoIP service is used, or for every byte, or even bit, of data transmitted.”); BellSouth Petition at 24 (“The Districts’ contrary reading — that § 615a-1(f)(1) governs only the rate, not the total — would enable a state or local government easily to evade Congress’s prohibition by establishing a nominally identical rate, but requiring VoIP customers to pay twice as many 911 charges for the same amount of service as a non-VoIP customer.”).

<sup>75</sup> See CenturyLink Comments at 10; NCTA Comments at 3 (“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.”).

<sup>76</sup> Voice on the Net Coalition Comments at 3-4; see also CenturyLink Comments at 10; AT&T Aug. 19, 2019 *Ex Parte* Letter at 3 (“Simply put, customers who must pay more money in 911 charges pay a higher ‘amount,’ regardless of whether that discrimination is accomplished through a higher rate per charge . . . or through a higher total number of charges.”); BellSouth Petition at 24 (noting that in a situation where a business customer obtains

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singular words, that BellSouth's interpretation of the statute would only make sense if those words were plural.<sup>79</sup>

21. *Legislative History.* The legislative history of the NET 911 Act also supports our interpretation of the VoIP 911 Fee Parity Provision. A House Report on the NET 911 Act confirms Congress's intent to encourage "States and their political subdivisions to apply 911 fees equitably to providers of different types of communication services to the extent possible."<sup>80</sup> The House Report also states that "[f]or example, 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>81</sup> We disagree with the Alabama 911 Districts that the House Report's use of the word "rate" in its example precludes a conclusion that the VoIP 911 Fee Parity Provision intended to regulate the total amount of 911 fees or charges.<sup>82</sup> The main thrust of the statement is that states and localities may *collect* no more 911 fees from the same class of VoIP and telecommunications services subscribers. Because it would be illogical to *collect* a rate, we find that the House Report, in this example, is referencing a limit on a total 911 fee or charge as specified on a subscriber's billing statement.<sup>83</sup>

22. *Goal of Facilitating the TDM-to-IP Transition.* In addition, we find that a different interpretation of the VoIP 911 Fee Parity Provision would be counter to the Commission's long-standing goal of facilitating the TDM-to-IP transition. As far back as 2004, the Commission expressed its support for IP-based communications and its desire to facilitate the transition to IP-based communications.<sup>84</sup> Since then, the transition to IP-based telephone service has been a priority for the Commission.<sup>85</sup> Interpreting the VoIP 911 Fee Parity Provision as permitting higher—in some cases substantially higher—total 911 charges for subscribers of VoIP service than traditional telephone services could deter subscribers' adoption of IP-based services, contrary to established Commission policy facilitating a shift

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many more VoIP telephone numbers than TDM-based voice channels, application of an "equal rate" fee structure would result in that customer, who switches from a traditional telecommunications voice service to a VoIP service with the same outbound calling capacity, seeing its monthly telephone bill increase substantially due to the additional 911 charges).

<sup>77</sup> Verizon Comments at 9 (*citing* 47 CFR §§ 615a-1(b), (c)(1)(C); *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1240 (D.C. Cir. 2007)).

<sup>78</sup> See Alabama 911 Districts Petition at 4, 36, 38; South Carolina Comments at 3-4 (arguing that the plain language of the 911 VoIP Fee Parity Provision "establishes only that the base rate or amount of a single 911 service charge for VoIP service should not exceed that of non-VoIP service"); Pennsylvania Counties Comments at 14; Madison County ECD Comments at 6. We also disagree with the Alabama 911 Districts' contention that certain Commission 911 reports submitted to Congress support their interpretation of the VoIP 911 Fee Parity Provision. See Alabama 911 Districts Petition at 37-38. According to the Districts, when asked to provide the Commission with the amount of 911 fees or charges imposed to implement and support state 911 services, the State of Alabama provides the 911 individual rate imposed on the subscriber, not the method and basis for calculating the total 911 fee imposed on, and collected from, the subscriber. *Id.* at 38 (describing Alabama's responses required as part of the Commission's report to Congress on "State Collection and Distribution of 911 and Enhanced 911 Fees and Charges as mandated by the New and Emerging Technologies 911 Improvement Act of 2008"). We agree with AT&T that Alabama's interpretation of the 911 report's instructions has no bearing on the Commission's interpretation of the VoIP 911 Fee Parity Provision herein. See AT&T Comments at 17-18 (noting that anyway, "Alabama's response accords with BellSouth's straightforward reading that the 'amount of fees or charges' includes the total amount charged, which is the product of the rate per charge and the number of charges due").

<sup>79</sup> See South Carolina Comments at 2; Alabama 911 Districts Sep. 10, 2019 *Ex Parte* Letter at 3. We agree with AT&T's assessment that "[t]he Districts' reliance (at 2-3) on the fact that § 615a-1(f)(1) uses the singular terms

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to new and more efficient next-generation networks and services.<sup>86</sup>

23. Our interpretation of the VoIP 911 Fee Parity Provision further aligns with Congress's mandate in the NET 911 Act, as well as its directive in section 706 of the Telecommunications Act of 1996, that the Commission advance the deployment of advanced communications services, including VoIP service. Section 706 provides that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."<sup>87</sup> In addition, the very purpose of the NET 911 Act is to fully integrate VoIP service into the existing 911 system and to give VoIP providers equal status with other telephone service providers.<sup>88</sup> Congress specifically stated that its purpose in passing the NET 911 Act was to "facilitat[e] the rapid deployment of IP-enabled 911 and E-911 services, [and] encourage the Nation's transition to a national IP-enabled emergency network."<sup>89</sup> Were the Commission to interpret the VoIP 911 Fee Parity Provision as allowing non-federal governmental entities to impose a higher total amount of 911 fees on VoIP service than on telecommunications service placing the same burden on 911 networks, this interpretation could deter consumer adoption of VoIP service and contradict Congress's directive that the Commission further the deployment of advanced technology such as VoIP service.<sup>90</sup> We thus reject some commenters' argument that the record lacks evidence that the Alabama 911 Districts' interpretation of the VoIP 911 Fee Parity Provision impedes federal policy.<sup>91</sup>

24. Our interpretive approach also addresses the public safety concerns raised by the Alabama 911 Districts in ensuring that they are able to recover 911 fees from VoIP services commensurate with the burdens such services place on the emergency services system.<sup>92</sup> As long as a total 911 fee is no higher for a VoIP subscriber than for a subscriber to a traditional telecommunications service imposing the same burdens in terms of outbound calling capability or having the same quantity of other units of measurement, non-federal governmental entities have flexibility in determining their jurisdictions' 911 fee structure. By requiring total 911 fee parity for VoIP services, we ensure that

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'fee' and 'charge' provides no support for their narrow reading of that subsection. It is the '*amount of any such fee or charge*' that the 911 charges imposed on VoIP customers may not exceed." AT&T Sep. 16, 2019 *Ex Parte* Letter at 3 (italics in original).

<sup>80</sup> H.R. Rep. No. 110-442 at 15.

<sup>81</sup> *Id.* at 10.

<sup>82</sup> Alabama 911 Districts Reply at 17.

<sup>83</sup> *See, e.g.*, BellSouth Petition at 24; Verizon Comments at 10 ("To expand on BellSouth's example, if a state may 'collect' \$116.84 from a customer buying a [legacy enterprise voice service such as a primary rate interface (PRI)], then a customer buying VoIP service with the same calling capacity should owe (and the state may 'collect') no more than \$116.84."); Frontier Reply at 4 ("The reference to 'collection' no doubt again refers to an aggregate amount.").

<sup>84</sup> *See IP-Enabled Services NPRM*, 19 FCC Rcd at 4867, para. 5 ("IP-enabled services generally - and VoIP in particular - will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services. IP-enabled services, moreover, have increased economic productivity and growth, and bolstered network redundancy and resiliency. Our aim in this proceeding is to facilitate this transition.").

<sup>85</sup> *See, e.g., Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5661-62, para. 5.

<sup>86</sup> *See, e.g., Technology Transitions et al.*, GN Docket No. 13-5 et al., Order, Report and Order, Further Notice of Proposed Rulemaking, and Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1435, para. 2 (2014) (stating that new technologies can allow providers to "serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices").

<sup>87</sup> 47 U.S.C. § 1302(a).

<sup>88</sup> According to Rep. Bart Gordon (D-Tenn.), who sponsored the NET 911 Act, "the intent [of the Act] was to integrate VoIP phones into the Nation's 911 system . . . the bill will provide VoIP phone service providers direct

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subscribers to such services have equal access to these critical public safety services at comparable costs while also ensuring that those non-federal governmental entities may recover costs related to relative burdens placed on the network.<sup>93</sup>

## 2. Examples of Potential Discriminatory 911 Fee Structures That Would Violate the VoIP 911 Fee Parity Provision

25. To further assist the District Court and other courts overseeing similar litigation in applying the Commission's interpretation of the VoIP 911 Fee Parity Provision herein, we address certain types of non-federal governmental entity 911 billing provisions brought to our attention in this proceeding that could violate the VoIP 911 Fee Parity Provision as applied. We provide the guidance below to help the District Court and other courts, as the factfinders, determine whether the manner by which a VoIP service 911 fee or charge is imposed by a non-federal governmental entity violates the VoIP 911 Fee Parity Provision.<sup>94</sup>

26. *911 Fee Per Subscriber Caps.* A state statute or regulation<sup>95</sup> that caps the number of 911 fees that may be charged per subscriber for telecommunications service, but does not similarly cap the number of 911 fees that can be charged to the same class of VoIP subscribers, could be applied in a manner that would violate the VoIP 911 Fee Parity Provision.<sup>96</sup> Some state 911 statutes include caps on the maximum number of 911 fees a single subscriber can be charged, no matter how many access lines or phone numbers the subscriber purchases. These caps, if applied to both VoIP and traditional TDM-based telephone service in such a way that VoIP subscribers do not pay a higher total 911 fee or charge for the same outbound 911 calling capability or other unit of measurement prescribed for telecommunications services, would not violate the VoIP 911 Fee Parity Provision. However, if a state 911 fee regulation were to cap the number of individual 911 fees that may be imposed on TDM voice service subscribers, but not extend the same cap to VoIP subscribers, then application of that state 911 statute would likely

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access to the 911 system at the same rates, terms and conditions, as wireless phone providers.” 154 Cong. Rec. E1331-01 (June 23, 2008).

<sup>89</sup> Pub. L. 110–283, 122 Stat. 2620, at Preamble (July 23, 2008).

<sup>90</sup> See, e.g., Letter from Michael H. Pryor, Counsel to the Cloud Commc's Alliance (CCA), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44, at 3 (filed Apr. 25, 2019) (CCA Apr. 25, 2019 *Ex Parte* Letter) (noting that a “sizable discrepancy” in the amount of 911 fees assessed against VoIP customers versus traditional wireline customers “creates an obvious economic barrier that can hinder the ability of CCA members to incentivize [small and medium-sized businesses] to transition from a traditional TDM service to interconnected VoIP” and “curtails the Commission's and Congress's efforts to ensure technology neutral and nondiscriminatory treatment of VoIP and traditional voice services”); CenturyLink Comments at 5; NCTA Comments at 2 (“unequal charges would both discriminate against VoIP customers and discourage customers from switching from legacy TDM-based services to VoIP services”); Frontier Reply at 2, 4-5; Verizon Reply at 1; Voice on the Net Coalition Comments at 3; Bandwidth Comments at 6; Windstream Comments at 4; USTelecom Comments at 4-6; BellSouth Petition at 23.

<sup>91</sup> See South Carolina Comments at 5 (asserting that “neither BellSouth nor any of the other telecoms provide any evidence or compelling argument that the Alabama 911 Districts' interpretation of the NET 911 Act stands as an actual obstacle to any federal purpose or objective”).

<sup>92</sup> See Alabama 911 Districts Sept. 10, 2019 *Ex Parte* Letter at 4, 6 (“With the chronic underfunding of 911 services nationwide, this discretion [regarding how to fund 911 services] and the ability to impose 911 fees that meet a state's needs are paramount.”).

<sup>93</sup> See *id.* at 3-4.

<sup>94</sup> In offering this guidance, we intend to assist the District Court with enforcing the 911 VoIP Fee Parity Provision. Cf. 47 U.S.C. § 615a-1(e)(2) (requiring the Commission to enforce section 615a-1 as if it were a part of the Act and noting that any violation of section 615a-1 is considered a violation of the Act). We do not, however, “prevent the imposition and collection of a fee or charge” in the absence of a determination by the District Court that such a “fee or charge” violates the statute. See *id.* at § 615a-1(f)(1).

violate the VoIP 911 Fee Parity Provision if it resulted in a higher total 911 fee or charge for the VoIP service subscriber than the TDM voice service subscriber for the same outbound 911 calling capacity or other quantity of units for which a 911 fee is imposed.<sup>97</sup>

27. A simple example best illustrates this scenario. If a business subscriber orders 75 outbound telecommunications service access lines for each of its 75 employees, with each line having the ability to place a 911 call at the same time, but the jurisdiction's 911 fee regulation caps the total monthly 911 fee any single business subscriber must pay at 50 access lines, then this business subscriber would be subject to the applicable 911 rate per line times 50. If this same business subscriber decides to convert her phone system to VoIP and she purchases a VoIP service that also provides outbound calling capability for 75 lines that can reach 911 for each of her employees, but the applicable 911 fee regulation does not cap the monthly 911 fees for VoIP service lines like it does for telecommunications service lines, this same business subscriber would be subject to the applicable 911 rate per VoIP line times 75. In this scenario, even if the nominal 911 rate per line for the telecommunications service was identical to the rate per line for the VoIP service, the business subscriber would owe, and the jurisdiction would *collect*, a 50% greater 911 fee for the 75 VoIP service lines than the 75 telecommunications service lines. As applied, this regulation would be prohibited by the VoIP 911 Fee Parity Provision.

28. *911 Fees Based on Different Units of Assessment.* Another example of a state 911 fee regime that we find could violate the VoIP 911 Fee Parity Provision is when the total 911 fees or charges for VoIP subscribers exceeds the total 911 fees or charges for traditional TDM-based customers for the same outbound 911 calling capacity because the 911 fee imposed applies to different units of measurement, for example, assessing telecommunications services on a *per-line* basis but assessing VoIP subscribers on a *per-telephone-number* basis.<sup>98</sup> While AT&T and the Districts agree that charging higher *rates* per unit of measurement to VoIP versus TDM subscribers is plainly impermissible under the VoIP 911 Fee Parity Provision,<sup>99</sup> where the unit rate for the 911 charge is the same for the same class of both VoIP and TDM-based subscribers (e.g., \$1 per access line for TDM and \$1 per telephone number for VoIP), but the unit of measurement to which the rate is applied is unrelated to the simultaneous outbound 911 calling capability of each service equally or results in a greater total 911 fee for the VoIP subscriber for the same outbound 911 calling capability as a TDM-based subscriber, this would violate the VoIP 911 Fee Parity Provision. In such a circumstance, we agree with AT&T and others that it would be impermissible for a state to require a business VoIP subscriber, for example, to pay a total 911 fee or charge based on the quantity of VoIP telephone numbers it obtains, with each telephone number assessed a separate 911 fee, when a different business subscriber—obtaining the same quantity of telephone numbers and buying the same quantity of concurrent outbound calling capacity through a TDM-based telecommunications service—is required to pay a lower total 911 fee or charge because it only must pay

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<sup>95</sup> For the sake of brevity, references to state statutes or regulations herein should be read as including local and Tribal statutes or regulations or any other non-federal governmental regulation that assesses and collects 911 fees from service providers subject to such fees.

<sup>96</sup> See, e.g., AT&T June 13, 2019 *Ex Parte* Letter at 6.

<sup>97</sup> See, e.g., *id.* at 2 (arguing that the 911 VoIP Fee Parity Provision would prohibit a situation where “the state statute or local ordinance caps the total number of 911 charges due each month from customers buying non-VoIP wireline services, but sets a higher cap—or sets no cap at all—on the number of 911 charges due each month from customers buying VoIP services”).

<sup>98</sup> See, e.g., Windstream Comments at 8 (arguing that the 911 VoIP Parity Provision “can only reasonably be read to limit the *total* fees or charges associated with VoIP services to the *total* amounts imposed on other telecommunications services” (italics in original)); BellSouth Petition at 23.

<sup>99</sup> See AT&T June 13, 2019 *Ex Parte* Letter at 2.

a separate 911 fee or charge based on the lower quantity of concurrent outbound calling lines.<sup>100</sup> This type of 911 fee arrangement would violate the VoIP 911 Fee Parity Provision.<sup>101</sup>

29. We also find instructive Windstream's example of a VoIP subscriber and a TDM subscriber, each of whom has 100 telephone numbers but can only make 23 simultaneous outbound calls.<sup>102</sup> Under a state 911 law that would charge traditional phone service subscribers per line and VoIP subscribers per telephone number, the resulting total 911 fee could be disproportionately different. Even though both types of subscribers place the same burden on the 911 network—that is, they each could make 23 calls to 911 at the same time—the VoIP customer would be charged 100 911 fees while the TDM customer would be charged only 23 such 911 fees.<sup>103</sup> We find that the VoIP 911 Fee Parity Provision prohibits this disparity in total 911 fee amounts charged between TDM and VoIP subscribers, even when the nominal 911 rate charged for each is the same.

30. Because we interpret the VoIP 911 Fee Parity Provision to prohibit only higher total fees for subscribers to VoIP services vis-à-vis subscribers to traditional telecommunications services with the same 911 outbound calling capacity or other unit of measurement, we reject the argument, advanced by some commenters, that higher 911 fees for VoIP subscribers are appropriate because VoIP subscribers impose a greater potential burden on the 911 system than do traditional wireline customers.<sup>104</sup> The mere fact that a 911 call is placed using a VoIP service makes it no more burdensome on the 911 system. We agree with commenters that argue there is nothing inherent in VoIP technology to justify the disparity in the amount of 911 fees charged to VoIP subscribers as VoIP service does not introduce any incremental cost in actually providing 911 service.<sup>105</sup> But even if it did, Congress determined that VoIP subscribers should not pay a greater 911 fee, as we explain above. We are unpersuaded by the Alabama 911 Districts' argument that features of some VoIP services such as unlimited concurrent call capacity, burstable call capacity, and shared call capacity justify disparate treatment of VoIP services having the same simultaneous outbound calling capability of any traditional telecommunications service because of additional alleged burdens VoIP places on 911 networks.<sup>106</sup> Not every VoIP service offers subscribers the same capabilities and features, nor do all VoIP subscribers purchase the same capabilities and features, just as not every traditional telecommunications service has the same capabilities and features. It is not the mere existence of these features that measures a service's burden on a network; instead, these features only affect a network to the extent they increase a VoIP subscriber's ability to make simultaneous

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<sup>100</sup> Letter from Matt Nodine, AT&T Services, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-44, at 2 (filed July 11, 2019) (Joint ILEC July 11, 2019 *Ex Parte* Letter); *see also* USTelecom Comments at 7. Business customers typically obtain many more telephone numbers than outbound calling lines so that employees can communicate with each other inside the organization without availing themselves of the ability to make an outside the organization outbound call. *See* BellSouth Petition at 24.

<sup>101</sup> 47 U.S.C. § 615a-1(f)(1).

<sup>102</sup> Windstream Comments at 2-3.

<sup>103</sup> Windstream Comments at 2-3; *see also* CCA Apr. 25, 2019 *Ex Parte* Letter at 2 (“A small or medium-size business with 100 ‘seats’ (essentially equivalent to 100 extensions) connected via a fully channelized [Integrated services digital network primary rate interface (ISDN PRI)] (23 voice channels) would be assessed, under some state laws, a 911 fee on a per-voice channel basis. If that same business wishes to utilize a CCA members’ services, including VoIP, the 911 fee would be assessed on a per telephone number (effectively a per seat) basis. Assuming the \$5.08 E911 per unit fee utilized in BellSouth’s example, that enterprise’s 911 costs of transitioning to cloud services, including VoIP, would increase from \$116.84 (23 x \$5.08) to \$508.”).

<sup>104</sup> *See, e.g.*, Pennsylvania Counties Comments at 12-14 (“A telephone customer with PRI service can only make a limited number of calls to a 911 system in an emergency. A telephone customer with IVoIP service could, potentially, make far more calls to the system.”); Alabama 911 Districts Reply at 18.

<sup>105</sup> CCA Apr. 25, 2019 *Ex Parte* Letter at 2-3; *see also* AT&T Comments at 18.

<sup>106</sup> Alabama 911 Districts Sep. 10, 2019 *Ex Parte* Letter at 5-6.



outbound calls to 911.<sup>107</sup> Even BellSouth does not assert that a state cannot impose a higher total 911 fee on a VoIP subscriber that purchases more outbound calling capability than a non-VoIP subscriber.<sup>108</sup> We agree, provided the same total 911 fee would be imposed on a telecommunications service subscriber having the same capability of simultaneously accessing 911. A non-federal governmental entity has the discretion to fashion its 911 fee regime to capture the maximum number of outbound calls any subscriber can make at one time, as long as that regime does not impose a higher total 911 fee on a VoIP subscriber than on a traditional telecommunications service subscriber whose service permits the same maximum number of outbound calls at one time.<sup>109</sup>

31. We also observe that many states have demonstrated that they are able to craft non-discriminatory 911 fee statutes that do not violate the VoIP 911 Fee Parity Provision.<sup>110</sup> Indeed, various states have adopted 911 fee mechanisms that fully comport with the VoIP 911 Fee Parity Provision and impose on VoIP subscribers a 911 fee on the same basis as traditional telecommunications services subscribers.<sup>111</sup> Alabama itself amended the ETSA in 2013 to clearly authorize a single monthly 911 charge on each active voice communications service connection that is able to access a 911 system, without distinguishing between VoIP and non-VoIP services.<sup>112</sup> Based on state 911 fee statutes, we are unpersuaded by arguments that suggest there would be no acceptable way to use a non-discriminatory unit on which to base 911 fee billing (e.g., call capacity, number of connections) for purposes of maintaining parity between 911 fees for VoIP subscribers and 911 fees for subscribers of traditional telecommunications services.<sup>113</sup>

32. Despite the Commission's clear support for IP-based services, some commenters have tried to use language in a footnote of the 2005 *VoIP 911 Order* as evidence that the Commission supports higher 911 fees for VoIP services, a proposition we reject.<sup>114</sup> In the *VoIP 911 Order*, the Commission stated, "[b]ecause 911 contribution obligations are typically assessed on a per-line basis, states may need to explore other means of collecting an appropriate amount . . . [for] interconnected VoIP partners, such

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<sup>107</sup> See, e.g., Joint ILEC July 11, 2019 *Ex Parte* Letter at 2-3 (noting that concurrent calling 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" and that "[t]o the extent the Districts have suggested that [a VoIP] customer can use a class of service profile to *exceed* the number of concurrent calls it purchased, that suggestion is false." (italics in original)). Moreover, even telecommunications services can have the ability to share call capacity across multiple locations. See *id.* at 2.

<sup>108</sup> See AT&T Comments at 18-19; see also Joint ILEC July 11, 2019 *Ex Parte* Letter at 1-3; Joint Service Provider June 7, 2019 *Ex Parte* Letter at 6.

<sup>109</sup> To be clear, if a VoIP service to which a customer subscribes provides that subscriber 23 simultaneous outbound calling lines, regardless of whether the VoIP service provider also offers, for example, a service having 46 simultaneous outbound lines and a service theoretically having no outbound calling limits, the subscriber to the VoIP service having only the capability to make 23 simultaneous outbound 911 calls cannot be charged a 911 fee that exceeds the 911 fee that subscriber would be charged if it subscribed to a telecommunications service that had the same capability of only making 23 simultaneous outbound 911 calls.

<sup>110</sup> See, e.g., CenturyLink Aug. 23, 2019 *Ex Parte* Letter at 3 ("multiple states already assess 911 fees based on 'voice communication service connection,' 'voice channel capacity,' or 'service line,' and more continue to do so" (footnote omitted)).

<sup>111</sup> See Texas 911 Districts Comments at 3-4 (describing the Texas Commission on State Emergency Communications Rule 255.4, which "reliably estimate[s] . . . the number of lines related to unchannelized business voice services" in order to calculate appropriately similar 911 fees for unchannelized and channelized voice services); AT&T Aug. 19, 2019 *Ex Parte* Letter at 5-7 (citing examples from 11 states); see also Joint ILEC July 11, 2019 *Ex Parte* Letter at 1 (noting that "[m]ultiple 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" (italics in original)); CenturyLink Reply at 3

(continued....)

as a per-subscriber basis.”<sup>115</sup> Some commenters suggest this language is a Commission endorsement of disparate (and potentially higher) 911 charges for VoIP subscribers as compared to traditional telecommunications subscribers.<sup>116</sup> However, we find that the Commission in the *VoIP 911 Order* was exploring a technical issue with VoIP services—the lack of discrete dedicated channels of bandwidth—that might require a new framework for assessing 911 fees.<sup>117</sup> Nowhere in the *VoIP 911 Order* does the Commission suggest charging VoIP subscribers higher total 911 fees than subscribers of traditional telephone service.<sup>118</sup> Moreover, the *VoIP 911 Order* was adopted *before* the VoIP 911 Fee Parity Provision became law, so even if the *VoIP 911 Order* had constituted an endorsement of charging higher 911 fees to VoIP subscribers, the subsequent passage of the NET 911 Act dictates how Congress intended VoIP fees to be assessed.

33. We also reject the idea proposed by some commenters that our decision here will prevent states from charging 911 fees to VoIP subscribers on a per-telephone-number basis<sup>119</sup> or any other basis. The issue with certain 911 billing arrangements is not that they charge VoIP 911 fees per telephone number. Rather, it is the discrepancy between how these arrangements result in disparate 911 fee regimes for VoIP versus traditional telephone service subscribers in a manner that violates the VoIP 911 Fee Parity Provision. To be clear, states are free to assess VoIP 911 fees on a per-telephone-number basis, but if the fee billing framework results in a VoIP subscriber paying a higher total 911 fee than a traditional telecommunications service subscriber for the same outbound 911 calling capability, that framework would violate the VoIP 911 Fee Parity Provision.<sup>120</sup>

**B. It is Unnecessary to Address the VoIP Definitional Issue Raised by the Parties.**

34. BellSouth contends that during the period at issue “it offered to business customers only TDM and other traditional telephone services, including ISDN PRI.”<sup>121</sup> Integrated services digital network (ISDN) primary rate interface (PRI) service supports up to 23 voice-grade-equivalent channels and one data-signaling channel delivered over two pairs of twisted copper wires,<sup>122</sup> with a total signaling

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(asserting that “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”).

<sup>112</sup> See AT&T May 13, 2019 *Ex Parte* Letter at 2-3 (citing Ala. Code § 11-98-5(a) and Ala. 911 Board Rule 585-X-4.01; also citing similar 911 billing statutes in Georgia and Pennsylvania).

<sup>113</sup> See Alabama 911 Districts July 23, 2019 *Ex Parte* Letter at 5-6, 10-11; South Carolina Comments at 4-5.

<sup>114</sup> See Alabama 911 Districts Petition at 38-39; Madison County ECD Comments at 5.

<sup>115</sup> *VoIP 911 Order*, 20 FCC Rcd at 10274 n.163.

<sup>116</sup> Alabama 911 Districts Petition at 38-39; Madison County ECD Comments at 5.

<sup>117</sup> See *VoIP 911 Order*, 20 FCC Rcd at 10273-74, para. 52.

<sup>118</sup> See, e.g., AT&T Comments at 18 (“nothing about the Commission’s recognition — in 2005 — that states ‘may need to explore’ other means of calculating the 911 charges due from VoIP customers suggests that the Commission was giving states free rein to require VoIP customers to pay *more* in total 911 charges than similarly situated customers of non-VoIP services.” (italics in original)).

<sup>119</sup> See, e.g., Alabama 911 Districts Reply at 18-19, 22; Madison County ECD Comments at 1.

<sup>120</sup> We make no finding as to whether any particular method of assessing 911 fees on service providers is reasonable under any state or federal law that may require a “reasonable” or similar standard for 911 fees. Our finding herein is limited solely to whether the method of assessing fees on VoIP subscribers vis-à-vis telecommunications service subscribers results in disparate treatment resulting in greater total 911 fees for VoIP subscribers.

<sup>121</sup> BellSouth Petition at 5; Alabama 911 Districts Petition at 6; see also AT&T Aug. 19, 2019 *Ex Parte* Letter at 2. The District Court correctly noted that “ISDN PRI services provisioned to a customer over fiber-optic facilities”

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speed of 1.544 megabits per second.<sup>123</sup> ISDN acts as an enhancement of the traditional circuit-switched public switched telephone network (PSTN)<sup>124</sup> and when used for voice, the Commission has referred to it as a legacy enterprise voice service.<sup>125</sup> ISDN PRI has generally been considered a traditional telecommunications service rather than an IP-based service.<sup>126</sup> We note that the parties have not yet completed discovery on the BellSouth voice services at issue, including its ISDN PRI service during the relevant timeframe. The District Court will make findings of fact on this issue, if such findings must be made at all, after proper discovery and our clarification of the VoIP 911 Fee Parity Provision. Nevertheless, whether the District Court determines that the BellSouth service at issue is an ISDN PRI service that falls within the traditional telecommunications service bucket or the “VoIP or similar services” bucket for purposes of determining the proper 911 fee under the pre-2013 ETSA should make no difference. The service under either determination, at least based on the limited information contained in the record, appears to have provided subscribers the same 23 channel outbound capability to simultaneously call 911. If so, then the total 911 fee or charge collected from a business subscriber to that service should be no higher if it is determined by the District Court to be a VoIP service than if it is determined to be a traditional telecommunications service.

#### IV. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED that, pursuant to section 6 of the NET 911 Act, 47 U.S.C. § 615a-1, section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), and section 1.2 of the Commission’s rules, 47 CFR § 1.2, this Declaratory Ruling IS ADOPTED.

36. IT IS FURTHER ORDERED that the Declaratory Ruling IS EFFECTIVE upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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where “the customer also receives IP connectivity” can only be considered interconnected VoIP if the customer requires—i.e., needs—IP-compatible CPE to make calls to and receive calls from the PSTN.” Referral Order at 8.

<sup>122</sup> *Access Charge Reform, et al.*, CC Docket No. 96-262 et al., First Report and Order, 12 FCC Rcd 15982, 16028, para. 111 (1997).

<sup>123</sup> Newton’s Telecom Dictionary 698 (31st ed. 2018).

<sup>124</sup> *Id.*

<sup>125</sup> See *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5678, para. 39 (referring to ISDN service in the context of streamlining the section 214 discontinuance process for legacy voice services).

<sup>126</sup> See, e.g., AT&T Comments at 4; Verizon Comments at 1-2; 5; Newton’s Telecom Dictionary, *supra* note 121, at 698-699 (31st ed.); AT&T Service Publications Guide at [http://cpr.att.com/pdf/al/product\\_line.htm](http://cpr.att.com/pdf/al/product_line.htm) (containing guidebook and definitions); see also *Wireline Infrastructure Second Report and Order*, 33 FCC Rcd at 5678, para. 39.

**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 . . . .”<sup>127</sup> 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.”<sup>128</sup> 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.

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<sup>127</sup> Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUMBIA L. REV. 527, 527-28 (1947).

<sup>128</sup> 47 U.S.C. § 615a-1(f)(1).

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

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.*

It is highly objectionable that some states have attempted to impose discriminatory 9-1-1 fees on certain communications services. The item before us is a completely reasonable and proper response to the narrow scope of issues presented. While I certainly support it and thank Chairman Pai for bringing it forward, Alabama's activity highlights at least two larger issues.

First, there seems to be no apparent moral or ethical barrier to prevent *some* states, territories, and localities from abusing, misappropriating, manipulating, and/or downright stealing consumer-paid 9-1-1 fees. Many of us on this dais, particularly Chairman Pai and Commissioner Rosenworcel, have actively worked to eliminate the diversionary practices by certain dirty-rotten taxing jurisdictions, with some degree of success. The imposition of discriminatory taxes, as highlighted by this case, is simply another example of 9-1-1 fee theft, and further reinforces the need for the Commission to play a far greater role in eliminating such egregious behavior and practices. Where we have authority, we must act aggressively, and where we don't, we shouldn't be afraid to seek new authority from Congress.

Second, and from a broader perspective, this item is reflective of the need to acknowledge market realities that should be part of our regulatory norm: VoIP should be classified as an interstate, information service. Doing so firmly establishes its proper treatment consistent with our governing statute and precedent, as recently confirmed by the Eighth Circuit and left undisturbed by the Supreme Court. That doesn't mean that it would be a completely regulatory free zone because various obligations and burdens, such as 9-1-1 and USF contributions and access requirements, would still apply. Beyond meeting the statutory definitions, logical consistency demands it since we classify fixed broadband, mobile broadband, and IP video as information services, and it strains credibility that we wouldn't do the same for VoIP. Previous Commissions danced around taking this simple step, causing significant hardships and headaches for providers and others. Does the fact that an IP packet contains two-way voice make it intrinsically different from a video or data packet? Of course not. Ending some of the shenanigans and gamesmanship we have seen in some states attempting to regulate IP voice service is necessary and appropriate and can be done without undermining our ability to protect consumers, as needed.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

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 this decision we address a primary jurisdiction referral from a federal court in Alabama seeking guidance on the meaning of the New and Emerging Technologies 911 Improvement Act of 2008.

It's a law with which I have more than a passing familiarity. You can head upstairs and you'll find a signed copy on my wall. That's because when I had the privilege of serving as counsel on Capitol Hill, this was one of the pieces of legislation I was charged with shepherding through the United States Senate.

Today the Federal Communications Commission has been asked to provide direction on the meaning of this law's so-called fee parity provision. This provision was designed to create an upper bound, so that 911 fees applicable to IP-enabled voice services would be comparable to fees for traditional telephony. In response, we determine that outbound 911 calling capability, or capacity, is the key criterion for purposes of this comparison. I approve, because this is a fair interpretation of what the law requires. It is also, however, a close call. That's because our interpretation today supersedes some language from a 2005 FCC decision that invited 911 authorities "to explore other means of collecting" 911 fee assessments when it comes to IP-enabled voice services, just as state authorities in Alabama had done.

But let's get real. While this decision tinkers around the edges, we have a real challenge before us to make sure that 911 is fully funded and functional nationwide.

We can start by working to end 911 fee diversion. This is an abusive practice and I appreciate that Commissioner O'Rielly has joined me in efforts to help bring it to an end.

As we look ahead, we know we will not realize the potential of next generation 911 without getting creative. Last year, the National Highway Traffic Safety Administration and the National Telecommunications and Information Administration estimated the cost of next generation 911 deployment to be between \$9.5 and \$12.7 billion. The way I see it, this is worth every penny because there is no more essential infrastructure for our day-to-day safety. To this end, I am glad that the LIFT America Act recognizes this fact and believe that funding for next generation 911 must be a core feature of any infrastructure package Washington takes up in the future.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

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.*

The ability to call 911 is a vital service that both VoIP and traditional telecommunications services must provide to their customers. As policymakers, we understand that there is a lot of complexity underlying the 911 system so that it works for everyone, everywhere, every time. But when a customer calls 911, she doesn't care how much that call will cost her, or whether her call will be transmitted over the Internet or a traditional phone line. She shouldn't have to care. She just needs help.

I support today's ruling because Congress, when it passed the NET 911 Act in 2008, wanted to prevent the cost of calling 911 from discouraging customers from switching to new VoIP technology. Under that statute, 911 fees or charges to a VoIP subscriber cannot exceed those for a traditional telecommunications service subscriber. There is nothing inherent in VoIP technology that would justify a disparity in the 911 fees charged to VoIP subscribers. Features of VoIP service may impact a customer's capacity to make simultaneous outbound calls to 911—but two customers with the same 911 calling capacity should pay the same in total fees.

In Alabama before 2012, different 911 fees for VoIP and TDM could have impacted business decisions about whether to invest in new technology or to stay with old technology with capped fees. That's exactly what Congress wanted to avoid. The ability to call 911 is not a bargaining chip. It is a public service that saves lives, and one call should not cost more than another.

Today we protect consumers' choice to adopt new technology in times of transitioning infrastructure. We do not want to disincentivize customers from upgrading to new technology by disproportionately charging for access to public services. Nobody wants to have to call 911, but consumers must be able to reach it no matter what technology they use.

I would like to thank the staff of the Wireline Competition Bureau for their work on this item.