

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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In the Matter of the Petition for a	)	
Declaratory Ruling Determining	)	Docket No. TC17-063
Responsibility for Rural Carrier	)	
Interconnection to the	)	
Next Generation 9-1-1 System	)	

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Comments

of

NextGen Communications, Inc.

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### **Comments of NextGen Communications, Inc.**

NextGen Communications, Inc. ("NextGen" or "Party") hereby respectfully submits its Comments in the above-captioned matter. In the foregoing Petition the South Dakota Department of Public Safety / 9-1-1 Coordination Board ("Board") has requested that the Public Utilities Commission of South Dakota ("Commission") issue a Declaratory Ruling determining "... whether it is NextGen or the rural carriers comprising SDTA that has the responsibility to transport 9-1-1 traffic between the rural carriers' service areas and NextGen's centralized points of interconnection."<sup>1</sup> NextGen requests that the Commission hold that such responsibility lies solely with Rural Local Exchange Carriers ("RLECs" or "Party").

#### **1. Overview**

As made clear herein, and supported by statute, regulation, as well as exemplified by the voluntary negotiated contractual commitments made over 20-years by many of the South Dakota Telecommunications Association's ("SDTA") RLECs members, the Commission has ample basis upon which, and statutory and regulatory authority, to rule that the RLECs are solely responsible for delivering their subscribers' 9-1-1 traffic<sup>2</sup> to the "meet-points", also called the points of interconnection ("POIs"), on NextGen's new Next Generation 9-1-1 network ("NG9-1-

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<sup>1</sup> *Petition for Declaratory Ruling Determining Responsibility for Rural Carrier Interconnection to the Next Generation 9-1-1 System*, Public Utilities Commission of the State of South Dakota, filed by the South Dakota 911 Coordination Board (October 27, 2017), Docket No. TC17-063, at p. 3. ("Petition").  
<https://puc.sd.gov/commission/dockets/telecom/2017/tc17-063/petition.pdf>

<sup>2</sup> For purposes of this pleading, and because the various authorities cited herein may be inconsistent in their usage, the terms "9-1-1" and "E9-1-1" may be used interchangeably, unless the specific context denotes otherwise.

1”) established for South Dakota.<sup>3</sup> The laws and regulations in South Dakota, and at the federal level, mandate that the RLECs must provide 9-1-1, are responsible to interconnect with other networks, and must deliver traffic to public safety. The State of South Dakota has contracted with NextGen to build the NG9-1-1 network to assist the RLECs with these duties.<sup>4</sup> The RLECs’ monopoly regulated transport “affiliate” (therefore, subject to regulatory oversight), the South Dakota Network (“SDN” or “Party”), which acknowledges that it was chartered in part to support public safety<sup>5</sup>, already carries the RLECs’ other traffic to the same general colocation as the NG9-1-1 POIs in Sioux Falls and Rapid City South Dakota<sup>6</sup> thereby creating a perfect technical environment for low incremental or almost no-cost 9-1-1 traffic transport.<sup>7</sup>

In the alternative,<sup>8</sup> and without prejudice to the foregoing, the RLEC’s reliance on 47 U.S.C. 251/252 (“Section 251/252”)<sup>9</sup> is deficient because under Section 251/252, not only would

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<sup>3</sup> In summary, the RLECs, through the SDTA, content that all interconnection with an RLEC must only be negotiated via the federal Section 251/252 negotiation process, that the RLEC must be compensated for transport, and that the “meet point” / POI for all interconnection must be within the RLEC’s service territory.

<sup>4</sup> RLEC delivery of 9-1-1 traffic to the meet-point, or POI, whether in or out of an RLEC’s service territory, is only one small component of the NG9-1-1 network. NextGen is responsible for transporting the 9-1-1 traffic from the POI to the NG9-1-1 network ESInet, then to the selective router, and then to the final PSAP destination. The RLEC’s responsibility is only for a relatively small portion of the process; however, the cost of RLEC transport, even though very small, must be recognized by NextGen, the State, or the RLECs.

<sup>5</sup> See footnote 67.

<sup>6</sup> SDN is a subcontractor to NextGen and provides, among other services, 9-1-1 traffic transport from the NG9-1-1 selective routers to the PSAPs. SDN’s network has many traffic interconnection points, including POIs at or near the location of NextGen’s POIs in Sioux Falls and Rapid City; therefore, the technical burden and/or expense of interconnection would be minimal for the RLECs as they all already connect to their network, SDN.

<sup>7</sup> Unfortunately, to date, NextGen has been unable to access any accounting or related records that would provide reliable conclusions as to “how” and “at what cost” the RLEC’s 9-1-1 traffic is delivered to the appropriate selective router POI’s today. On information and belief, the current South Dakota monopoly 911 provider, Centurylink, interconnects with RLECs via a “meet point” on the circuit from an RLEC to CenturyLink’s selective router POIs. Again, on information and belief, NextGen suspects that a portion of the cost of this transport is provided by CenturyLink either through its fees to South Dakota, or billing to relevant PSAPs. See also footnote 24, below.

<sup>8</sup> Our preference is for the Commission to answer the Declaratory Ruling in NextGen’s favor. This is the simplest and fairest outcome, avoids facility duplication, is the quickest solution, and is potentially the lowest cost solution for the RLECs (as both owners and customers of SDN). However, options exist, and are presented as additional evidence that the Commission’s finding the RLECs are solely responsible for delivering their 9-1-1 traffic to the POIs is correct from all legal, regulatory, and public policy perspectives, and is in the best long-term interest of all parties.

<sup>9</sup> 47 U.S.C. 251/252 is the section of the 1996 Telecommunications Act that outlines the formal regulatory interconnection requirements between carriers. The RLECs contend that this statute shields them from most

NextGen be authorized to adopt existing Commission-approved RLEC interconnection agreements, but all such agreements obligate the RLECs to deliver their 9-1-1 traffic to the POIs. Also, NextGen agrees with the Board's recently filed Initial Comments<sup>10</sup> that: (1) all other carriers have agreed to interconnect at the POIs, and (2) the "undue burden" or "technical infeasibility" exceptions to mandatory interconnection under SDCL 49-31-79<sup>11</sup>, South Dakota's state law version of Section 251/252, were not raised as issues during any discussions between the participants in this case<sup>12</sup>, and as point of fact, they do not apply.

Moreover, NextGen believes that the RLECs are not impacted to any significant financial degree by the transport of 9-1-1 traffic to the POIs (and financial impact at any level is not equivalent to an "undue burden") and to date no evidence to the contrary has been offered. If the RLECs truly have financial hardships, those are matters for the Federal Communications Commission ("FCC") Universal Service Fund mechanisms, local rate adjustments, or 9-1-1 surcharge adjustments.

Lastly, in discussions, SDTA has expressed concerns regarding the "precedent" set by requiring 9-1-1 transport. Given the 50-year special nature of 9-1-1, its critical importance to the public's safety, and the fact that many RLECs already accept transport responsibility (*i.e.*, interconnection agreements cited herein), RLECs are the most responsible and qualified parties

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interconnection financial responsibilities. NextGen disagrees, and the details and application of Section 251/252 to this matter are discussed in detail below.

<sup>10</sup> *Petition for Declaratory Ruling Determining Responsibility for Rural Carrier Interconnection to the Next Generation 9-1-1 System*, Public Utilities Commission of the State of South Dakota, Initial Comments, filed by the South Dakota 911 Coordination Board (December 11, 2017), Docket No. TC17-063, at p. 1. ("Initial Comments").

<sup>11</sup> In keeping with its arguments herein, and as discussed in more detail below, NextGen does not automatically concede the application of Section 251/252 or SDCL 49-31-79 to the instant situation, and, even if either or both apply(ies), argues strongly that the rural transport exceptions of "undue burden" and/or "technical infeasibility", or any similar exceptions, do not apply due to a lack of facts, and because the RLECs have waived any rights to raise them in the instant matter.

[http://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=49-31-79](http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=49-31-79)

<sup>12</sup> Based on good faith discussions with SDTA, SDN, and the Board, it is NextGen's impression that the major reason for the RLEC's resistance to interconnection is profit; to drive interconnection traffic to SDN, their transport provider, and away from competitors, such as CenturyLink.

to transport their subscribers' 9-1-1 traffic to the meet-points. Delegating this responsibility to others would be the bad precedent.

For these and many other reasons, the Commission can have complete confidence that a finding in favor of NextGen's position in this matter is legally justified, consistent with the Commission's prior decisions on this topic, in keeping with the RLEC's voluntary negotiated agreements, fulfills its mandate to protect the public interest, and is the best outcome for the citizens of South Dakota.

## **2. Background**

Effective December 18, 2014, NextGen was contracted by the Board to design, build, and maintain a statewide NG9-1-1 public safety communications network<sup>13</sup>. The network architecture, and the approved cost for the network in the contract, was based on all landline, Voice over IP ("VoIP"), and wireless carriers' (collectively "Originating Service Providers" or "OSPs") delivering their 9-1-1 calls to the designated POIs<sup>14</sup> in South Dakota. The contract did not include a line item for RLEC subsidized transport. From the POIs, the OSP's 9-1-1 calls are transported over an Emergency Services IP Network ("ESInet") (the transport component of an NG9-1-1 network) to one of two selective routers, and then to the Public Safety Answering Points ("PSAPs") where trained call takers answer the call, determine the nature of the emergency, and dispatch appropriate public safety resources.

NextGen is not an independent actor in the provision of NG9-1-1 services. As a vendor, it is fulfilling, the vision of the Board, the South Dakota Division of Public Safety, and the State of South Dakota. NextGen is not operating as a "competitor" to the RLECs – far from it – we seek to support their public safety obligations consistent with our contractual mandate. The

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<sup>13</sup> *TeleCommunication Systems Awarded Contract by State of South Dakota for Next Generation 9-1-1 Systems and Services*, (January 8, 2015), <http://www.comtechtel.com/releasedetail.cfm?ReleaseID=955904>

<sup>14</sup> *2015 Annual Report of the South Dakota 911 Coordination Board* (June 30, 2015), at p. 15. <http://sdlegislature.gov/docs/referencematerials/requiredreports/RR063020157.pdf>

Board's contracted network design assumes RLECs, in fact all OSPs<sup>15</sup>, will deliver their current and future 9-1-1 traffic to the POIs, and as noted herein, delivery of 9-1-1 traffic to the POIs is only one segment of a larger network. NextGen is responsible for a greater undertaking, so the portion of 9-1-1 transport that the RLECs would supply is modest and proportional to the overall project. It is, however, vital that each player cooperate in the success of NG9-1-1, and it is appropriate that the RLECs deliver their 9-1-1 traffic to the POIs.

In order for NextGen to have the prerequisite legal authority to operate the NG9-1-1 network on behalf of the Board, on December 23, 2015, the Commission granted NextGen's request for a Certificate of Authority to operate as a telecommunications carrier in South Dakota.<sup>16</sup> SDTA contested NextGen's certification; however, the parties resolved their differences via a Joint Stipulation ("Stipulation") signed December 17, 2017. The Stipulation separated the issue of RLEC responsibility for 9-1-1 call transport from the issue of certification. SDTA withdrew its objection to NextGen's certification, and the parties agreed that the Stipulation was not to be used against either one in the future.<sup>17</sup>

NextGen's network construction has continued. To date, all South Dakota PSAPs are utilizing NextGen's Customer Premise Equipment. NextGen is working with the Board on the next phase of the construction: migrating PSAPs onto the ESInet. The project has reached the

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<sup>15</sup> Wireless carriers have long accepted their financial responsibility to deliver their 9-1-1 traffic to the POI designated by the 9-1-1 authority. As the FCC noted in 2001, "... wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier's Mobile Switching Center (MSC) to the 911 Selective Router ...", See *Letter from Thomas Sugrue, Chief Wireless Telecommunications Bureau, to King County E911 Program Office* (May 7, 2001) <https://transition.fcc.gov/Bureaus/Wireless/Orders/2001/kingco.pdf>

<sup>16</sup> NextGen's CLEC authority is required to permit access to pANI codes, protect it under applicable state and federal law from operational liability, and to permit NextGen to take advantage of other technical operations (ex., colocation) that only telecom carriers can manage. NextGen is not certified with the intent that it will compete with any incumbent ILEC or RLEC for service or customers, or provide two-way telecommunications services.

<sup>17</sup> The Stipulation states that, "The Parties agree that any certification(s) issued by the Commission in this proceeding granting any local exchange service or interexchange service authority to NextGen will not address this unresolved issue, and shall not affect or constitute any precedent relative to this, as of yet, unresolved transport obligations issue relating to the carriage of originated 911 traffic." Stipulation at p. 4. <http://puc.sd.gov/commission/dockets/telecom/2015/tc15-062/stipulation.pdf>

stage where setting the timeline and technical details of RLEC 9-1-1 traffic ingress engineering needs to occur. NextGen has repeatedly reached out to SDTA (as the recognized representative for the RLECs) and the RLECs individually to request and establish connectivity.<sup>18</sup>

Although NextGen has remained open to alternative 9-1-1 ingress traffic design ideas (ex., connectivity to only one POI instead of two) and the Parties (including the Board) have discussed the topic repeatedly with SDTA, the RLECs remain unwilling to acknowledge any responsibility. To overcome this impasse, on October 27, 2017, the Board filed its petition with the Commission asking for a Declaratory Ruling.<sup>19</sup>

### **3. The State of South Dakota has Mandated that Legacy 9-1-1 Evolve to NG9-1-1**

Since the first 9-1-1 call was made in 1968, ILEC monopoly-based 9-1-1 platforms have served South Dakota and the nation well; however, the combination of new technology, obsolescence of old equipment, cost increases, national security demands, and consumer demand dictates that the old 9-1-1 system evolve to NG9-1-1.<sup>20</sup> The federal government, public safety industry, wireless and wireline carriers, homeland security, and many state and local 9-1-1 administrators have joined in a collective effort to bring the many benefits of NG9-1-1 to U.S. citizens, and OSPs need to be part of this process. This national trend, and the technical and

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<sup>18</sup> SDTA (and its members) and NextGen have discussed this matter, both in writing and via telephone (excluding correspondence related to NextGen's certification);  
November – December 2015 Letters from NextGen to SDTA's members notifying them of the technical details of interconnecting to the NG9-1-1 POI's in Rapid City and Sioux Falls, SD.  
January 5, 2016 (and similar dates), Letter from Valley Telecommunications Cooperative Association (an SDTA member) objecting to NG9-1-1 interconnection. NextGen received similar letters from all of SDTA members. See Attachment B.

June 12, 2017, Conference call with representatives from NextGen, SDTA, and SDN Communications.

June 19, 2017, Letter to SDTA, at SDTA's request, providing arguments for RLEC interconnection, and requesting financial, technical, and other information that would facilitate the discussion and/or resolve outstanding questions, such as cost or technical issues.

July 26, 2017, Letter of Agency and technical documentation (details of POIs) sent to all carriers, including SDTA members).

November 17, 2017, Discussion among NextGen, SDTA, Board, and South Dakota PUC.

November 28, 2017, Discussion between SDN and NextGen.

<sup>19</sup> Petition, as detailed above, in Footnote 1.

<sup>20</sup> <http://www.mysanantonio.com/opinion/commentary/article/9-1-1-infrastructure-showing-cracks-11226123.php>



social motivations to move to NG911 are echoed in *South Dakota's State 9-1-1 Master Plan* from 2013:

“The existing 9-1-1 system is based on technologies that were established decades ago and is a barrier to creating an integrated emergency call management system that has the ability to exchange voice, data, text, photographs and live video through the 9-1-1 emergency communications centers. . . . The incorporation of these advanced capabilities would enhance the ability to provide more efficient, effective and dynamic emergency responses. The new system is referred to as Next Generation 9-1-1 (NG9-1-1).”<sup>21</sup>

Both NextGen and South Dakota's RLECs have an important role in this process.

#### **4. South Dakota Has a Complete NG9-1-1 Network Design**

##### **A) South Dakota's Competitively Bid NG9-1-1 Network Contract Assumes RLECs Will Delivery Their 9-1-1 Traffic to the POIs in South Dakota**

NextGen believes that the State of South Dakota has the right to design, maintain, and manage its cost / investment in its 9-1-1 / NG9-1-1 Network, and may include, or not include, transport subsidies for traffic to the POIs.<sup>22</sup> The contracted network design only has two POIs, and all OSPs, including the RLECs, are expected to deliver their 9-1-1 traffic to the NG9-1-1 network at its POIs. As of a date certain (to be determined), the “old” 9-1-1 network will cease operation and the NG9-1-1 ESInet will be the only current method to deliver 9-1-1 traffic to the PSAPs. At no time has the SDTA questioned South Dakota's plans to modernize the 9-1-1 network. RLECs as OSPs have been successfully delivering 9-1-1 calls for decades.<sup>23</sup>

This history has resulted in some confusion for NextGen with regard to the actual scope of SDTA's concerns and/or objections relating to the change to NG9-1-1. In discussions, some of SDTA arguments question only the requirement to change 9-1-1 network configurations, and

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<sup>21</sup> *South Dakota State 911 Master Plan* (August 2013) at p. 2. <https://dps.sd.gov/emergency-services/state-9-1-1-coordination>

<sup>22</sup> As a reminder, the RFP for the NG9-1-1 network was a public process with complete disclosure of the state's plan and goals. Any party could have commented on or questioned the network plan at any time.

<sup>23</sup> NextGen recognizes that a few smaller SDTA members may not offer 9-1-1 services, and has not independently verified which and/or how many RLECs currently provide 9-1-1 services of any type.

other statements assume the RLECs will transport 9-1-1 traffic, but request compensation. NextGen hopes to address the arguments as it understands them, and if our rendition of the disagreement is later cited by SDTA as incorrect, we reserve the right to correct our responses.

**B) No Statute, Regulation, or Agreement Supports the RLEC's Demand for 9-1-1 Transport Subsidies**

It has been proffered that CenturyLink, the dominant regional ILEC in South Dakota, provides support for some RLEC 9-1-1 interconnection and/or transport expenses (by providing “meet points” for 9-1-1 circuit terminations with each company thereby proportionally sharing the circuits’ costs), and that this is the national “default” requirement.<sup>24</sup> However, to date, no documentation in support of these claims has been produced.<sup>25</sup> It is possible that some PSAPs or more accurately, some South Dakota County Governments, are subsidizing 9-1-1 circuit expenses for transport from an RLEC to the current CenturyLink 9-1-1 selective router. It is important that the details of any such arrangements are disclosed so that they can be objectively analyzed and understood. If new information is uncovered during this proceeding, NextGen reserves the right to reconstitute our positions and arguments.

Even if a subsidized network has been the past practice, NextGen has been unable to uncover any statute, regulation, or agreement that obligates the State, its agencies, or its agents (ex. NextGen), to compensate RLECs for 9-1-1 expenses, or to require a network meet-point other than the planned POIs, for the transition to NG9-1-1. In fact, NextGen’s experience has been just the opposite because in many jurisdictions the dominant ILEC does not subsidize, but

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<sup>24</sup> NextGen is uncertain if the “subsidy” takes the form of payments, only mutual meet point responsibilities, or other processes. See also footnote 6, above.

<sup>25</sup> On November 17, 2017, in conversation with SDTA, the response to a request for documentation was that the information, if it existed, was “client confidential” and could not be produced. Though, as noted herein, NextGen is not positive who the “client” is in this description, and if public money is being spent, why this information is not publicly available, NextGen would entertain reasonable confidentiality parameters, as set by the Commission, in order to review such data.

charges OSPs for 9-1-1 interconnection (as a means to help defray the public cost of 9-1-1 and NG9-1-1 services). For example, Verizon’s standard interconnection agreement details charges for 9-1-1 service that include both port and UNE / database charges.<sup>26</sup> While the current South Dakota NG9-1-1 network design does not contain connection charges, the Commission should be aware that an ILEC-subsidized 9-1-1 network including for RLEC transport is not a “standard”, and in fact, is anything but commonplace.<sup>27</sup>

**C) South Dakota Law Requires RLECs to Offer 9-1-1 Service, and Therefore, Transport Their 9-1-1 Traffic to the NG9-1-1 POIs**

South Dakota law requires that telecommunications providers offering local exchange services must offer 9-1-1 as part of these services.<sup>28</sup> Failure to meet these service obligations is grounds for revocation of certification to operate for some carriers.<sup>29</sup> An RLEC has a choice and could independently provision its 9-1-1 traffic from callers to all of South Dakota’s PSAPs, but NextGen is not aware of any RLEC that provides independent end-to-end 9-1-1 service.<sup>30</sup> The state’s solution for 9-1-1 is the contract with NextGen for NG9-1-1. It involves the simpler requirement to transport 9-1-1 traffic to the POIs, and the ESInet manages the rest of the process. NextGen and the ESInet serve to help the RLECs.

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<sup>26</sup> <https://www22.verizon.com/wholesale/business/local/establish/content/est-maint-negotiating-agreement.html>

<sup>27</sup> While the current South Dakota NG9-1-1 plan does not have OSP connection charges, they are not prohibited.

<sup>28</sup> South Dakota Administrative Rules 20:10:32:10. Service obligations of all providers -- Request for waiver. A telecommunications company providing local exchange services shall, at minimum, make the following available to each customer: . . . (2) Access to emergency services such as 911 or enhanced 911. This Rule also permits a company to make an application to waive this requirement. NextGen is unaware of any RLEC that has done so, but has not validated this with the Commission. <http://sdlegislature.gov/rules/DisplayRule.aspx?Rule=20:10:32:10>

<sup>29</sup> <http://sdlegislature.gov/rules/DisplayRule.aspx?Rule=20:10:32:19>

<sup>30</sup> Many RLECs include 9-1-1 Services in their local tariffs. South Dakota RLECs that mention 9-1-1 in their tariffs include: Local Exchange Carrier Association, Inc. group tariff (representing multiple member companies) (<http://puc.sd.gov/commission/tariff/leca/section2.pdf>); Granite Communications (<https://puc.sd.gov/commission/tariffs/telecommunications/granite.pdf>); and Native American Telecom, LLC (<https://puc.sd.gov/commission/tariffs/telecommunications/nativeamerican.pdf>), to name but a few. NextGen was only able to review tariffs that are available on the respective RLEC web sites. It is possible that other SDTA RLEC members have tariffs on file with the Commission that are not available to NextGen

**D) Federal Law Requires RLECs to Offer 9-1-1 Service, and Therefore, Transport Their 9-1-1 Traffic to the NG9-1-1 POIs**

The South Dakota mandate is echoed in federal law via a simple and unambiguous FCC rule requiring the RLECs to transmit their 9-1-1 calls to a PSAP:<sup>31</sup>

**47 CFR 64.3001 - Obligation to transmit 911 calls.**

All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 64.3002.

The ESInet is the easiest path to the PSAPs, and the POIs are the gateways to the ESInet. For all the reasons stated above, this leads to the same RLEC transport responsibility conclusions under federal law as mandated under state law.

**E) NextGen is Not Required to Follow Section 251/252 to Require 9-1-1 Transport to the NG9-1-1 POIs**

Contrary to the arguments of the RLEC, in their responses to NextGen's interconnection requests, 47 U.S.C. 251/252 ("Section 251/252") is not, and has never been, the only process to manage carrier to carrier connections. There are, at least, two "types" of interconnection; regulated, and commercial<sup>32</sup>. The Telecommunications Act of 1996<sup>33</sup> ("96 Act") was primarily designed to permit the economically viable entry of competitors to the local service monopolies of the Bell Operating Companies ("RBOC") and other ILECs. Congress recognized that without legislation no RBOC would ever have an incentive to interconnect on fair and equitable terms with competitors. This is important to bear in mind because 9-1-1 has existed since 1968, and the Section 251/252 process arrived with the 96 Act. For example, carriers have long used (pre-

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<sup>31</sup> <https://www.law.cornell.edu/cfr/text/47/64.3001>

<sup>32</sup> See e.g. The FCC has discussed "Commercial Agreements," including in the Section 251 context, as "**good faith negotiations to arrive at commercially acceptable arrangements** for the availability of [the subject of the agreement]." *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exch. Carriers*, 19 F.C.C. Rcd. 16783, 16786–87 ¶ 7 (2004) (emphasis added).

<sup>33</sup> <https://transition.fcc.gov/Reports/1934new.pdf>

96 Act) and continue to use various combinations of: tariffs for connections with long distance carriers and large commercial customers, tariffs for access charges, special access services (now called “Business Data Services”) under commercial contracts and/or tariffs, agreements to exchange local traffic with other local exchange carriers, commercial agreements and tariffs to interconnect with commercial mobile services (including before and after 1996), and commercial agreements and/or tariffs to interconnect with LEC monopoly providers of 9-1-1 services. All this has occurred outside of the Section 251/252 process. The proposition that NextGen must only follow the Section 251/252 process for 9-1-1 connectivity is simply wrong.<sup>34</sup> The RLEC obligation to delivery 9-1-1 traffic to the POIs exists independently of the 96 Act.

**F) RLEC 9-1-1 Call Delivery is Not Pure “Interconnection” as Contemplated by the 1996 Telecommunications Act; Therefore, Reliance on RLEC-Centric Provisions in the Act is Not Required**

NextGen is not a competitor to the RLECs. NextGen is acting under contractual authority as an agent of the State of South Dakota to construct an ESInet. The old ILEC 9-1-1 network is transitioning, and eventually there will be no “old” network to process 9-1-1 traffic. The 96 Act’s interconnection rules, at least as they apply to the question at hand, are designed to enable competitive entry by a CLEC seeking interconnection so as to compete. This fact is at the center of one of SDTA’s inaccurate assumptions about interconnection: the NG9-1-1 network is not “interconnecting” with ILECs, but just the opposite.

All carriers, including rural ILECs, must request to interconnect with the new NG9-1-1 network to fulfill *their* obligation to delivery 9-1-1 traffic (aa discussed herein). And, even the term “interconnection” deserves to be revisited as the traffic, at least ordinary 9-1-1 calling, is

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<sup>34</sup> See footnote 32.

one-way only. The Section 251(c)(2)<sup>35</sup> requirement in the 96 Act has always been at the discretion of the CLEC (that is, non-ILEC competitor), not vice versa.<sup>36</sup> “[T]he term ‘interconnection’ under Section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic.”<sup>37</sup> When one carrier “transports and terminates” another carrier’s traffic it is not providing interconnection.<sup>38</sup>

NextGen is unaware of any affirmative obligation on the NG9-1-1 network (or the State of South Dakota) to take responsibility for and make the connections “to” RLECs (or any carriers). SDTA has criticized NextGen for not filing Section 251/252 interconnection requests to trigger interconnection negotiations, and has also used the lack of such a request as its rationale for failing to respond to NextGen’s commercial negotiation suggestions and information requests. Such a Section 251/252 request was unnecessary inasmuch as commercial agreements are permissible, and because at the time NextGen was attempting a commercial negotiation. Since the processes do not operate in parallel, a Section 251/252 request would

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<sup>35</sup> “SEC. 251. INTERCONNECTION. (a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.--Each telecommunications carrier has the duty-- . . . (c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties: (1) DUTY TO NEGOTIATE.--The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications Communications Act of 1934 92 carrier also has the duty to negotiate in good faith the terms and conditions of such agreements. (2) INTERCONNECTION.--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.” [*Communications Act of 1996*, 47 U.S.C. 251, at pp. 91-92.] <https://transition.fcc.gov/Reports/1934new.pdf>

<sup>36</sup> “26. Section 251(c)(2) requires incumbent LECs to provide interconnection to any requesting telecommunications carrier at any technically feasible point. The interconnection must be at least equal in quality to that provided by the incumbent LEC to itself or its affiliates, and must be provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.” *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No 96-98, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order (rel. August 8, 1996) at para. 26 (FCC 96-325) [https://transition.fcc.gov/Bureaus/Common\\_Carrier/Orders/1996/fcc96325.pdf](https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1996/fcc96325.pdf)

<sup>37</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15,499 ¶ 176 (1996)

<sup>38</sup> Huber, Kellog & Thorne, *Federal Telecommunications Law* Volume 1 at 5-73.

have been contrary to both parties' interests. And, as noted above, NextGen contends that a request on its part for interconnection is unnecessary as the duty to interconnect for 9-1-1 traffic lies with the RLEC as a natural consequence of its basic regulatory and statutory 9-1-1 responsibilities.

It is important to recognize that questions regarding 9-1-1 traffic have traditionally been handled separately by the FCC from other interconnection issues. For example, the Bell LECs were given permission to transport 9-1-1 traffic across LATA boundaries, something prohibited for non-9-1-1 traffic, as one of the FCC's first major interpretations of the 96 Act.<sup>39</sup> Sections 251/252 miss the mark regarding direct authority for mandated negotiations because they apply when a carrier is requesting interconnection "to" a LEC for the purpose of competition, and not the reverse as in South Dakota.

Ironically, NextGen's activities can be viewed as being in full compliance with Section 251/252. As the Board noted in its recent Initial Comments, "The Board's understanding at the time of the Petition's filing was that valid requests for interconnection had been sent to and received by all the rural carriers represented by SDTA."<sup>40</sup> The RLEC cannot maintain an argument supporting their failure to negotiate – a request for interconnection was either made or not necessary - there is no in-between.

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<sup>39</sup> "We conclude that forbearance from application of the section 272 requirements to the BOCs' E911 services would be consistent with the public interest." *In the Matter of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Docket No. 96-149 (rel. February 6, 1998), at para. 46.

[https://transition.fcc.gov/Bureaus/Common\\_Carrier/Orders/1998/da980220.txt](https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1998/da980220.txt)

<sup>40</sup> *Petition for Declaratory Ruling Determining Responsibility for Rural Carrier Interconnection to the Next Generation 9-1-1 System*, Public Utilities Commission of the State of South Dakota, Initial Comments, filed by the South Dakota 911 Coordination Board (December 11, 2017), Docket No. TC17-063, at p. 1. ("Initial Comments").

**G) RLECs Have Already Negotiated Interconnection Agreements to Be Solely Responsible for the Transport of Their 9-1-1 Traffic to the POIs**

Although NextGen proposes that the Commission need not rely (or, at least, rely exclusively) upon the interconnection methodology embodied in 47 U.S.C. 251/252, including the so-called “rural transport rule,”<sup>41</sup> to decide this matter in NextGen’s favor, to the extent that SDTA relies extensively on Section 251/252, the Commission should take notice of the fact that that many SDTA members have negotiated Commission approved interconnection agreements<sup>42</sup> with CLECs starting in 1997 and up to as recently as the Commission’s November 22, 2017 public meeting.<sup>43</sup>

The RLEC interconnection agreements use various descriptions of 9-1-1 related issues over the 20-year span of these agreements. Therefore, the oldest (circa 1997) agreements, as they pre-date the commercial 9-1-1 industry, do not mention 9-1-1 or specifically exclude it.<sup>44</sup> Of most practical importance to the question before the Commission are those agreements negotiated and approved after the RLECs became aware of NG9-1-1 and the ESInet (ex., 2016 forward). In these agreements, the RLECs reserve exclusive authority and responsibility for transporting their 9-1-1 traffic not to a meet point, or to the edge of their service territories, *but to the POIs of the 9-1-1 network*.<sup>45</sup>

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<sup>41</sup> Full discussion of the rural transport rule follows. Also, as noted herein, the delivery of 9-1-1 traffic to the POIs is, essentially, a one-way process, and not an exchange of traffic between competitors. Therefore, it is not appropriate to shoehorn the section 2521/252 process into the 9-1-1 traffic arrangement.

<sup>42</sup> A detailed listing, including full citations and related information, concerning these Section 251/252 interconnection agreements has been provided in Appendix A to this pleading.

<sup>43</sup> 11/22/17 [TC17-064](#) In the Matter of the Approval of a Wireline Interconnection Agreement between Midcontinent Communications, Inc. and Valley Communications Cooperative Association, Inc.

<sup>44</sup> It is possible that at the time early agreements were executed, one or the other of the parties did not offer 9-1-1, hence no need to mention it in an agreement, and on information and belief, NextGen is aware that some of the smallest SDTA members may not offer 9-1-1 even today. Our pleading is not a request that these RLECs be required to provide 9-1-1; that is a decision for the Commission and the 9-1-1 Coordination Board.

<sup>45</sup> NextGen is aware that these interconnection agreements use the term “router” when NextGen uses the term, “POI”. This is not a defect in our analysis or an escape clause for the RLECs. They are locations on the same network, and a (selective) router can serve as a POI if so agreed by the parties. The ESInet establishes a simpler



**Midcontinent Communications, Inc. and Valley Communications Cooperative Association, Inc.**<sup>46</sup>

Section 1.8. “911/E911 Services. Each Party shall be responsible for establishing its interconnection from its Switch to the emergency service 911/E911 service provider’s router.”

Section 2.8. “911 Trunks. Each Party shall be responsible for establishing its interconnection from its Switch to the PSAP or the emergency service 911/E911 service provider’s router.”

***Midcontinent Communications and Venture Communications.***<sup>47</sup>

Ordering, Provisioning, Maintenance and Repair Attachment

Section 1.6. 9 1 1/E9 1 1 Services. “Each Party shall be responsible for establishing its interconnection from its Switch to the emergency service 911/E911 service provider's router.”

Another component of the 47 U.S.C. 251/252 process is the CLEC’s right to “adopt” an existing approved interconnection agreement.<sup>48</sup> While this is not NextGen’s preferred solution, SDTA is forced by the nature of its arguments, as well as by provisions in the contracts of many of its RLEC members, to concede that NextGen has the right to opt into any of the noted relevant interconnection agreements with the result that the participating RLEC must transport its 9-1-1 traffic at the RLEC’s sole expense to NextGen’s NG9-1-1 POIs. The Commission is fully authorized to enforce such a requirement with the remaining RLECs, or as an alternative, enforce an essentially identical interconnection agreement with the RLEC’s regulated monopoly transport affiliate, SDN.<sup>49</sup> In our discussion of SDN’s role as an RLEC “affiliate”, below,

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design, for the benefit of the OSPs, with two POIs and it is NextGen’s responsibility to transport 9-1-1 traffic from the POIs to the router(s) and on to the PSAPs.

<sup>46</sup> Midcontinent is an SDN shareholder and a member of SDTA. Midcontinent at pp. 25 and 29, respectively.

<sup>47</sup> 4/5/16 [TC16-004](#) - In the Matter of the Approval of a Wireline Interconnection Agreement between Midcontinent Communications and Venture Communications.

<sup>48</sup> § 51.809 Availability of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement. <https://www.law.cornell.edu/cfr/text/47/51.809>

<sup>49</sup> As of November 21, 2017, SDN is a party to this matter. SDN is certified as a carrier in South Dakota and subject to the Commission’s full jurisdiction. Given that SDN’s certification was specifically predicated upon its support of 9-1-1 in furtherance of the public interest, a requirement that SDN transport 9-1-1 traffic for the RLECs

NextGen will clarify existing Commission and FCC authority for the proposition that SDN's network is the RLEC's network for purposes of 9-1-1 interconnection.

**H) RLEC/SDTA Cited “Rural Transport Rule” Is Not Applicable to CLEC  
Interconnection or 9-1-1 Transport**

In their correspondence to NextGen,<sup>50</sup> SDTA members have universally cited 47 CFR 51.709<sup>51</sup> the so called “rural transport rule” as the definitive FCC mandate controlling their 9-1-1 transport obligations. Unfortunately, this reliance is misplaced. A plain reading of this CFR section and a review of the FCC's interpretations of its “rule” clarifies the unrelated applicability of this section, and totally rebuts any conclusion about section 51.709's relation to the requirement to transport 9-1-1 traffic. Surprisingly, the rural transport rule does not apply to the instant question at all. Assuming *arguendo* that SDTA's member RLEC are “rate of return carriers” as required to trigger coverage, the rule:

- i. applies only to “non-access telecommunications traffic”, which does not include 9-1-1 traffic<sup>52</sup>, and does not otherwise mention 9-1-1 traffic or interconnection;

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at their expense to the NG9-1-1 POIs is squarely in that mandate. This point is clarified in the discussion herein of SDN's identity as an affiliate of the RLECs. See footnote 67.

<sup>50</sup> Starting in 2016, NextGen received many (form) letters from SDTA's RLEC members citing 47 C.F.R 51.709 as the reason they have not arranged to deliver their 9-1-1 traffic to the ESInet POIs, and this C.F.R. section has also been cited separately by SDTA.

<sup>51</sup> 47 CFR § 51.709 Rate structure for transport and termination. (c) For Non-Access Telecommunications Traffic exchanged between a rate-of-return regulated rural telephone company as defined in § 51.5 and a CMRS provider, the rural rate-of-return incumbent local exchange carrier will be responsible for transport to the CMRS provider's interconnection point when it is located within the rural rate-of-return incumbent local exchange carrier's service area. When the CMRS provider's interconnection point is located outside the rural rate-of-return incumbent local exchange carrier's service area, the rural rate-of-return incumbent local exchange carrier's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point. This paragraph (c) is a default provision and applicable in the absence of an existing agreement or arrangement otherwise.

[ 76 FR 73856, Nov. 29, 2011] <https://www.law.cornell.edu/cfr/text/47/51.709>

<sup>52</sup> The FCC, for valid public safety and technical reasons, has long treated 9-1-1 traffic, processes, and transport as a special class of services. In 1996, when deciding to permit the Bell Operating Companies to continue to provide integrated E9-1-1 services directly, the FCC affirmed a series of U.S. District Court cases noting that, “. . . E911 services are information services . . . “ (*In the Matters of Bell Operating Companies Petitions for Forbearance from*

- ii. mentions the “exchange” of traffic (i.e., two-way) as a qualifier in every sentence, not one-way traffic, like 9-1-1;
- iii. applies specifically to traffic exchanged only with CMRS providers, and no other type of carrier;
- iv. does not permit a rural carrier to refuse to interconnect;
- v. does not set specific rates, or prevent any particular rate paradigm, for interconnection;
- vi. clearly states that a rural carrier must transport traffic to the “meet point”, however, there is no requirement that the “meet point” be within the rural carrier’s service area;<sup>53</sup>
- vii. clearly states that this is a “default provision” that only applies “. . . in the absence of an existing agreement or arrangement otherwise.”<sup>54</sup>

The FCC has specifically interpreted the rural transport rule as NextGen has outlined above by noting that it applies to, “. . . allocating responsibility for transport costs applicable to non-access traffic exchanged between CMRS providers and rural, rate-of return regulated LECs, including when a CMRS provider selects an interconnection point outside the LEC’s service area.”<sup>55</sup> The FCC went on to state “We clarify that, in adopting the interim default rule, the

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*the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Docket No. 96-149, Memorandum Opinion and Order, at para. 19. (rel. February 6, 1998)  
[https://transition.fcc.gov/Bureaus/Common\\_Carrier/Orders/1998/da980220.txt](https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1998/da980220.txt)

<sup>53</sup> The rule uses two undefined terms, “meet point” and “interconnection point,” with the apparent intention that in one narrow situation connecting at the “meet point” will be more advantageous for the RLEC than a connection at the “interconnection point.” However, in fact, this statement is made in a sentence describing how interconnection is managed when the “interconnection point,” not the “meet point,” is outside the rural carrier’s service area. There is no requirement that the “meet point” be within the RLEC’s service area. NextGen also includes SDN’s network in the definition of the RLEC’s service area, for purposes of calculating “meet point.”

<sup>54</sup> Therefore, by its own definitions and limiting language, 47 CFR § 51.709 cannot supersede another rule, statute, or Commission order resulting in an interconnection arrangement or agreement (whether regulated or commercial, mandated or voluntary).

<sup>55</sup> *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified*

Commission did not intend to affect the existing rules governing points of interconnection (POIs) between CMRS providers and price cap carriers.”<sup>56</sup>

**I) SDTA has Agreed in its FCC Comments with NextGen’s Interpretation that Section 251/252 does not apply to All Traffic Between Carriers**

SDTA is on record in support of a proposition that rural ILECs are not “obligated” to transport (any) traffic outside the boundaries of their service areas, and in recent FCC comments has clarified its position on how the rural transport rule should be expanded and apply in future if changed by the FCC.<sup>57</sup> SDTA declared, “SDTA . . . believes that the Commission should retain and expand the “rural transport rule” set forth in 47 C.F.R. 51.709(c) so that it is applicable to all carrier traffic exchange.”<sup>58</sup> It is bound by these Comments. Consequently, since SDTA has urged that the rule be expanded, it follows that even under SDTA’s interpretation at present not all traffic between carriers is subject to the rural transport rule. NextGen agrees with this interpretation.

**J) South Dakota’s SDCL 49-31-79 “Rural Exemption” for Interconnection is Consistent with NextGen’s Position**

South Dakota codified its own “version” of Section 251/252<sup>59</sup> in 1998 via South Dakota Codified Laws (“SDCL”) 49-31-79. This statute is augmented by South Dakota Administrative

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*Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, respectively, Order, at para. 28. (Released February 3, 2012) (DA 12-147)

[http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0203/DA-12-147A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0203/DA-12-147A1.pdf)

<sup>56</sup> Ibid.

<sup>57</sup> *In the Matter of Connect America Fund Docket No. 10-90 and Developing an Unified Intercarrier Compensation Regime* CC Docket No. 01-92, Reply Comments of the South Dakota Telecommunications Association, (November 20, 2017) <https://ecfsapi.fcc.gov/file/11203001900172/SDTA%20Reply%20Comments%20-%20WC%2010-90-signed.pdf>

<sup>58</sup> Id. at p. 7.

<sup>59</sup> 49-31-79. Requirements of rural telephone company. Pursuant to 47 U.S.C. § 251(f)(1) as of January 1, 1998, the obligations of an incumbent local exchange carrier, which include the duty to negotiate and provide interconnection, unbundled network elements, resale, notice of changes and collocation, do not apply to a rural

Rules (“SDAR”) 20:10:32:37<sup>60</sup> that mentions “. . . requested access to 9-1-1 or enhanced 9-1-1.”<sup>61</sup> Unfortunately, inasmuch as this pre-dated the competitive 9-1-1 industry and NG9-1-1, and the language is essentially identical to 47 U.S.C. 251/252, this statute suffers the same applicability limitations as does the federal statute it parallels.

Designed to prevent an ILEC/RLEC incumbent from preventing a CLEC competitor to have access to 9-1-1 unbundled elements, directory access, or services, interconnection under SDCL 49-31-79 does not exculpate an RLEC from 9-1-1 transport responsibilities. NextGen is not “requesting access to 9-1-1”, just the opposite, it is facilitating the RLEC’s obligation to provide 9-1-1. NextGen is not sending traffic to the RLEC. In fact, because this legislation is silent as to RLEC territory, meet points, or other elements of the RLEC arguments, it can be interpreted as more supportive of NextGen’s position than the RLEC/SDTA’s. Even if relevant and controlling, NextGen would contend that the detailed correspondence from it to SDTA’s

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telephone company unless the company has received a bona fide request for interconnection, services, or network elements and the commission determines that the rural telephone company shall fulfill the request. The commission may only determine that the rural telephone company shall fulfill the request if, after notice and hearing pursuant to chapter 1-26, the commission finds that the request is not unduly economically burdensome the request is technically feasible, and the request is consistent with the universal service principles and provisions set forth in 47 U.S.C. § 254 as of January 1, 1998. The commission shall make such determination within one hundred twenty days after receiving notice of the request. The person or entity making the request shall have the burden of proof as to whether each of the standards for reviewing the request has been met. Nothing in this section prevents a rural telephone company from voluntarily agreeing to provide any of the services, facilities, or access referenced by this section. Source: SL 1998, ch 274, § 17; SL 1998, ch 274, § 17; SL 1998, ch 275, § 3. Source: 25 SDR 89, effective December 27, 1998.

[http://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=49-31-79](http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=49-31-79)

<sup>60</sup> 20:10:32:37. Rural exemption from negotiation and interconnection requirements. Pursuant to 47 U.S.C. § 251(f)(1) (September 10, 1998), the obligations of an incumbent local exchange carrier, which include the duty to negotiate and provide interconnection, unbundled network elements, resale, notice of changes to its facilities or networks, and collocation, do not apply to a rural telephone company, unless the company has received a bona fide request for interconnection, services, or network elements and the commission determines that the rural telephone company shall fulfill the request. A provider of telecommunication services seeking interconnection, services, or network elements from a rural telephone company, subject to the exemption established by 47 U.S.C. § 251(f)(1) (September 10, 1998), shall provide the company with a bona fide request for such interconnection, services, or network elements. The bona fide request shall be in writing and shall detail the specifics of the request. The bona fide request shall, at minimum, include the requesting provider’s best reasonable estimate of the following information concerning the interconnection, services, or network elements requested: . . . (6) Any requested access to 911 or enhanced 911, and any required dialing parity capability; General Authority: SDCL 49-31-76. Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-79.

<http://www.sdlegislature.gov/Rules/DisplayRule.aspx?Rule=20:10:32:37>

<sup>61</sup> Ibid.

RLEC members more than qualifies as a “bona fide” requests for interconnect as it details all the required substantive and procedural elements of interconnection as specified under the statute.<sup>62</sup> The RLECs’ continuing refusal to interconnect could then be viewed as a violation of this statute.

Despite the existence of SDCL 49-31-79, NextGen notes that all the discussion between it and the RLECs / SDTA regarding interconnection, and the Commission approved interconnection agreements cited herein, are described under the Section 251/252 process, and not the SDCL / SDAR procedures. While NextGen does not have an explanation for this, it reserves its arguments as to Section 251/252 inasmuch as they are equally applicable to the SDCL / SDAR analysis as to why the RLECs have an obligation to delivery their 9-1-1 traffic to the POIs, or put another way, why the RLECs have not qualified under any exceptions (existence not conceded by NextGen) to the interconnection mandates in the SDCL / SDAR.

**K) SDN Qualifies as An RLEC Affiliate, and As Such, Its Network is The Same as the RLECs’ Networks for Determining POIs**

Regarding the technical burden and/or cost of 9-1-1 transport, because SDN is owned and/or controlled by the RLECs as a group<sup>63</sup>, and was certified as their intrastate monopoly transport entity<sup>64</sup>, SDN’s network and interconnection points should be included in the definition

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<sup>62</sup> The Letter of Agency (joint document of NextGen and the Board) and accompanying *SOP for CLECs/ILECs Interconnecting to Comtech NG9-1-1 Aggregation Points - State of South Dakota* technical reference more than meet any statutory requirement. See Attachment C.

<sup>63</sup> SDCEA, Inc. “. . . is wholly owned by South Dakota Networks, Inc. (SDN), also a South Dakota corporation. SDN, in turn, is owned by twelve ITCs which operate in the state of South Dakota . . . the stock distribution is based upon a formula consisting of the access lines and minutes of use of the participants relative to the project as a whole.” *In re the Application of SDCEA, Inc. To lease transmission facilities to provide centralized equal access service to interexchange carriers in the State of South Dakota*, File No. W-P-C-6486 (rel. November 21, 1990) (5 FCC Rcd No. 24), at para. 2. (“214 Application”). In short, SDCA, Inc. exists to hold the FCC 214 license that is the subject of this application. The FCC granted SDCEA/SDN’s application for Section 47 U.S.C. Sec. 214 authorization. <https://digital.library.unt.edu/ark:/67531/metadc1643/m1/53/>

<sup>64</sup> “FURTHER ORDERED, that SDN-SDCEA shall have a monopoly over all switched access service originating or terminating in the SDN member exchanges”; *In the Matter of the Application of South Dakota Network, Inc. and SDCEA, Inc. for Permission to Construct Centralized Equal Access Facilities*, Amended Order Granting



of “RLEC network” regarding any cost or technical discussion of interconnection to the 9-1-1 POIs.<sup>65</sup> This relation to 9-1-1 is memorialized in the Commission’s decision to require SDN to support 9-1-1 transport services as part of SDN’s 1991 intrastate certification in South Dakota when it stated, “33. The SDN project will provide for . . . Enhanced 911.”<sup>66</sup>

SDN also endorses IP technology, such as underpins an NG9-1-1 ESInet, and agreed that SDN’s regulatory approval was due in part to its commitment to public safety.<sup>67</sup> In addition, for the purposes of Section 251/252 interconnection, SDN would undoubtedly qualify as an “affiliate.”<sup>68</sup> This view is echoed under South Dakota corporate law: SDN is an affiliate of the RLECs.<sup>69</sup> If SDN and the RLECs represented by SDTA are not affiliates, as SDTA argues, then

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Construction Permit and Approving Tariff (F-3860) (April 12, 1991), (“Amended Order”) at p. 11.

<https://puc.sd.gov/commission/dockets/misc/2011/ms11-001/010511a.pdf>

<sup>65</sup> The logic is inescapable. SDN’s network is the legal, technical, and functional equivalent of any RLEC’s network and the gateway for RLEC access. Therefore, the POI in Sioux Falls, for example, is where interconnection for 9-1-1 traffic should occur, not some mythical “meet-point” on a hypothetical network.

<sup>66</sup> *Amended Order*, at p. 6. <https://puc.sd.gov/commission/dockets/misc/2011/ms11-001/010511a.pdf>

<sup>67</sup> “. . . SDN contends that the aggregation of rural traffic along with the deployment of equal access and other services provides a powerful centralized platform from which to leverage IP technology downstream.” *In the matter of Technology Transitions Policy Task Force Seeks Comments on Potential Trials*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, Reply Comments of South Dakota Network (March 31, 2014), at p. 1. SDN repeatedly mentions support for “public safety” in this filing, including, “. . . the existing regulatory framework for these CEA companies [like SDN] had helped realize statutory objectives of universal service, competition, public safety and consumer protection . . .” At p. 3.

<https://prodnet.www.neca.org/publicationsdocs/wwwpdf/33114sdn.pdf>

<sup>68</sup> “(2)the term “affiliate”, when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;” Definitions [47 USC § 522\(2\)](#)

<sup>69</sup> “2012 South Dakota Codified Laws Title 47 CORPORATIONS

Chapter 33. South Dakota Domestic Public Corporation Takeover Act

§47-33-3 Definition of terms.

(1) Terms used in this chapter mean:

(b) "Affiliate," a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a specified person;

(k) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ten percent or more of the voting power of a corporation's outstanding voting shares creates a presumption that the person has control of the corporation. Notwithstanding the foregoing, a person is not considered to have control of a corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of the corporation.” SD Codified L § 47-33-3 (through 2012)

<https://law.justia.com/codes/south-dakota/2012/title47/chapter33/47-33-3>

why does a recent Commission approved CLEC certification stipulation require that the CLEC in question interconnect to the RLECs *only* via SDN?<sup>70</sup>

For purposes of the instant issue, it is impossible to determine where the RLECs end and SDN begins. SDN is “governed” by a 9-member “Board of Managers”<sup>71</sup> with 100% of those Managers being Officers of the RLEC owners<sup>72</sup>; and 95.4% of SDTA’s RLEC members (17 of 18 companies) as a group own and control SDN.<sup>73</sup> Recently, SDN has revealed that, “All except one of SDN’s owner members own less than 10% of voting shares, and no owner member can control operations.”<sup>74</sup> However, this is unpersuasive as an argument for lack of control, and is, when analyzed, a significant statement declaring group control. It only explains that “one” RLEC does not control SDN; as a group (not to mention their 100% Board control) they clearly control SDN.<sup>75</sup>

It is NextGen’s understanding and belief that NG9-1-1 transport over SDN may be significantly less burdensome for the RLECs than other network designs, and what benefits SDN

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<sup>70</sup> “. . . Wide Voice agrees to deliver all interexchange traffic terminating to any customers of SDN’s member company ILECs and their affiliated CLECs via the SDN tandem switch in Sioux Falls, South Dakota.” *In The Matter Of Wide Voice LLC For a Certificate of Authority to Provide Local Exchange And Interexchange Long Distance Services in South Dakota*, Joint Stipulation Of The Parties Resolving All Issues, TC17-001 (June 12, 2017) <http://puc.sd.gov/commission/dockets/telecom/2017/tc17-001/stipulation.pdf>

<sup>71</sup> “SDN Communications is governed by nine board members.” SDN webpage, with names, RLEC company titles, and pictures, describes the Board of Managers. <https://sdncommunications.com/who-we-are/board-of-directors/>

<sup>72</sup> “Today, the 17 owner companies, we call them Members, serve 80 percent of South Dakota’s geography. Nine of those companies’ general managers serve on our Board of Directors.” SDN Webpage at <https://sdncommunications.com/who-we-are/historyownership/>

<sup>73</sup> Because the RLECs and SDN are private companies, NextGen can only rely on incomplete publicly available information on both SDN and SDTA’s websites and other sources. NextGen can make reasonable assumptions, with references, and does so herein. NextGen assumes there are additional minority owners (ex., management, lenders, equipment vendors, etc.) of SDN, but for all legal practical purposes, including “control” for purposes of classification as an affiliate for this matter, as stated on its website, SDN is managed by its RLEC owners. The RLECs and SDN self-describe their monopoly relationship for traffic transport. See web sites: <https://sdncommunications.com/who-we-are/historyownership/> <http://sdtaonline.com/members/sdta-members/>

<sup>74</sup> *In the Matter of Connect America Fund*, WC Docket No. 90-10, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of South Dakota Network, LLC, (October 26, 2017), at p. 9. <https://ecfsapi.fcc.gov/file/102630786442/SDN-comments-10-90.pdf>

<sup>75</sup> The mention of “voting” shares is an insufficient explanation as corporate stock plans contain many varieties of voting stock including shares with more than one vote per share, and other rights. It is common for a single stockholder with a minority of numerical shares to have a much larger “voting” percentage. Also, as investors, it makes no sense for them to have financed SDN without retaining control over their risk and investment.



benefits its member-owners. The NG9-1-1 network leverages SDN's POI s and minimizes the transition burden on all connecting carriers including the rural ILECs. There is no technical or practical difference between SDN's network and the RLEC networks for NG9-1-1 transport purposes. Reading SDN's Blog from March 16, 2015, "[SDN Communications playing key role in updating 911 system](https://sdncommunications.com/blog/sdn-communications-playing-key-role-in-updating-911-system)",<sup>76</sup> SDN appears to be supportive of this perspective, and the need to migrate to NG9-1-1. The blog entry details SDN's involvement with building the new the NG9-1-1 network and notes, "Sioux Falls-based SDN Communications is pleased to have an important role in updating the 911 emergency communications network in South Dakota."<sup>77</sup> Lastly, SDN has already been significantly subsidized through over \$20,000,000.00 in public financing.<sup>78</sup> To expect even a tiny return on that investment via support for public safety is inherently fair and reasonable.

**L) NextGen's Certification and the Stipulation are Not Relevant**

NextGen Communication, Inc.'s certification proceeding in South Dakota is not relevant to this matter because the Joint Stipulation states, "The Parties agree that any certification(s) issued by the Commission in this proceeding granting any local exchange service or interexchange service authority to NextGen will not address this unresolved issue, and shall not affect or constitute any precedent relative to this, as of yet, unresolved transport obligations issue relating to the carriage of originated 9-1-1 traffic."<sup>79</sup> It describes setting aside the issue for later discussion or litigation separate and distinct from NextGen's certification without prejudicing

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<sup>76</sup> <https://sdncommunications.com/blog/sdn-communications-playing-key-role-in-updating-911-system>

<sup>77</sup> Ibid.

<sup>78</sup> "... a \$20 million federal broadband stimulus grant helped extend the SDN fiber network to hospitals, schools, libraries and public safety facilities in the state." SDN Website. <https://sdncommunications.com/who-we-are/historyownership/>

<sup>79</sup> Joint Stipulation in TC-062, Certification Order for NextGen Communications, Inc. (December 23, 2015). The Commission's statement regarding the "unresolved transport obligations issue relating to the carriage of originated 9-1-1 traffic" relates only to a description of SDTA's objection, and is not a conclusion or Order of the Commission.

either party going forward. It does not, as SDTA has represented in discussions, lock either party into a position, provide limitations on any arguments, or decide the issue in SDTA's favor.

## **5. Conclusion**

NextGen sincerely appreciates the opportunity to present its position in this discussion and is grateful to the Commission, SDTA, SDN, and the Board for their participation. Our goal is to build a world class NG9-1-1 system in service to the Board as it envisioned, including the proposition that all OSPs will deliver their traffic to the NG9-1-1 POIs. A careful review and analysis of relevant state and federal law, enabling regulation, technical network design, transport economics, documented contractual obligations of the RLECs, expressed public policy, and South Dakota law must lead to a decision that the RLECs have the sole responsibility for delivering their 9-1-1 traffic to the POIs in South Dakota.

Dated this 19<sup>th</sup> day of December 2017

Respectfully Submitted,

/S/ Kim Robert Scovill  
Kim Robert Scovill, Esq.  
Vice President Legal and Regulatory, and  
Assistant Treasurer  
NextGen Communications, Inc.  
275 West Street  
Annapolis, MD 21401  
[Kim.scovill@comtechtel.com](mailto:Kim.scovill@comtechtel.com)

## CERTIFICATE OF SERVICE

I hereby certify that an original of the Petition for Intervention, dated October 30, 2018, filed in PUC Docket TC17-063, was served upon the PUC electronically, directed to the attention of:

Ms. Patricia Van Gerpen, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)

A copy was also sent by e-mail to each of the following individuals:

Mr. Russell Frisby, Attorney Stinson, Leonard, Street LLP Ste. 800 1175 Pennsylvania Ave. NW Washington, DC 20006-4605 <a href="mailto:russell.frisby@stinson.com">russell.frisby@stinson.com</a>	Jenna E. Howell, Special Assistant Attorney General Attorney- South Dakota Dept. of Public Safety 118 West Capitol Avenue Pierre, SD 57501 <a href="mailto:jenna.howell@state.sd.us">jenna.howell@state.sd.us</a>
Richard D. Coit, General Counsel SD Telecommunications Association PO Box 57 320 East Capitol Avenue Pierre, SD 57501-0057 <a href="mailto:richcoit@sdaonline.com">richcoit@sdaonline.com</a>	Ms. Amanda Reiss Staff Attorney South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 <a href="mailto:amanda.reiss@state.sd.us">amanda.reiss@state.sd.us</a>
Ms. Kristen Edwards Staff Attorney South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 <a href="mailto:Kristen.edwards@state.sd.us">Kristen.edwards@state.sd.us</a>	Mr. Joseph Rezac Staff Analyst South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 <a href="mailto:joseph.rezac@state.sd.us">joseph.rezac@state.sd.us</a>
Mr. Patrick Steffensen Staff Analyst South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 <a href="mailto:patrick.steffensen@state.sd.us">patrick.steffensen@state.sd.us</a>	Ms. Darla Pollman Rogers Riter Rogers Wattier & Northrup PO Box 280 Pierre, SD 57501 <a href="mailto:dprogers@riterlaw.com">dprogers@riterlaw.com</a>

Dated this 19<sup>th</sup> day of December 2017.

Respectfully Submitted,

/S/ Kim Robert Scovill

Kim Robert Scovill, Esq.

Vice President Legal and Regulatory, and

Assistant Treasurer

NextGen Communications, Inc.

275 West Street

Annapolis, MD 21401

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APPENDIX A  
NEGOTIATE RLEC – CLEC INTERCONNECTION AGREEMENTS

**11/21/17 TC17-064** In the Matter of the Approval of a Wireline Interconnection Agreement between Midcontinent Communications, Inc. and Valley Communications Cooperative Association, Inc. On October 30, 2017, the Commission received a filing pursuant to 47 U.S.C. § 252, for approval of an Interconnection Agreement between Midcontinent Communications, Inc.

Section 1.8. “911/E911 Services. Each Party shall be responsible for establishing its interconnection from its Switch to the emergency service 911/E911 service provider’s router.”

Section 2.8. “911 Trunks. Each Party shall be responsible for establishing its interconnection from its Switch to the PSAP or the emergency service 911/E911 service provider’s router.

<http://puc.sd.gov/commission/dockets/telecom/2017/tc17-064/agreement.pdf>

**4/5/16 TC16-004** - *In the Matter of the Approval of a Wireline Interconnection Agreement between Midcontinent Communications and Venture Communications.* Ordering, Provisioning, Maintenance and Repair Attachment

Section 1.6. 911/E911 Services. “Each Party shall be responsible for establishing its interconnection from its Switch to the emergency service 911/E911 service provider's router.”

<https://puc.sd.gov/commission/dockets/telecom/2016/TC16-004/order.pdf>

**3/26/10 TC10-018** Golden West Coop and Native American

6.1.4 911/E911. Each Party shall be responsible for its own independent connections to the 911/E911 network.

10.4 Each Party will be responsible for its own arrangements for 911/E911 service.

10.8 Each Party is responsible for network management of its network components in compliance with the Network Reliability Council Recommendations and meeting the network standard for the E911 call delivery.

10.9 Neither Party will reimburse the other for any expenses incurred in the provision of E911 services. All costs incurred by the Parties for E911 services shall be billed to the appropriate PSAP.

<https://puc.sd.gov/Dockets/Telecom/2010/tc10-018.aspx> -

<https://puc.sd.gov/commission/dockets/telecom/2010/tc10-018/021110.pdf>

**6/24/10 TC10-029** Brookings and Swiftel

16.1. Each party is solely responsible for the receipt and transmission of 911/E911 Traffic originated by users of its Telephone Exchange Services. Each Party shall route 911/E911 calls over a direct trunk to the selective router for the TELCO's service territory.

<https://puc.sd.gov/Dockets/Telecom/2010/tc10-029.aspx> -

<https://puc.sd.gov/commission/dockets/telecom/2010/tc10-029/051410.pdf>

**5/22/09 TC08-110** Midstate and Native American - -

Section 6.1.4 911/E911. “Each Party shall be responsible for its own independent connections to the 911/E911 network.”

Section 10.4. “Each Party will be responsible for it [sic] own arrangements for 911/E911 service.”

<https://puc.sd.gov/commission/dockets/telecom/2009/tc09-019/042009.pdf> -

<https://puc.sd.gov/Dockets/Telecom/2009/tc09-019.aspx>

**TC09-099** - In the Matter of the Filing for Approval of an Interconnection Agreement between Alliance Communications Cooperative, Inc. and Midcontinent Communications. - 2.7 The CLEC shall be responsible for establishing 911 trunks with the designated 911 vendor. CLEC may purchase transport for such 911 trunks from ILEC subject to applicable ILEC Tariff rates.

<https://puc.sd.gov/Dockets/Telecom/2009/tc09-099.aspx> -

<https://puc.sd.gov/commission/dockets/telecom/2009/tc09-099/111809.pdf>

**TC07-005** - In the Matter of the Filing for Approval of an Interconnection Agreement between Adventure Communication Technology, L.L.C. and Jefferson Telephone Company, LLC

### 13. CLEC RESPONSIBILITY

CLEC shall bear total responsibility for connection and provision of their customer's access to E-911, Line information databases (LIDB), local and long distance operator services and directory assistance. –

<https://puc.sd.gov/Dockets/Telecom/2007/tc07-005.aspx> -

<https://puc.sd.gov/commission/dockets/telecom/2007/tc07-005/ltr011807.pdf>

**TC06-178** - In the Matter of the Application of Sprint Communications Company L.P. for Authority to Provide Local Exchange Services in Certain Rural Areas Served by the Brookings Municipal Utilities d/b/a Swiftel Communications.

Sprint was granted statewide CLEC authority in SD on 4/28/97, [Docket TC96-156], except for rural areas. Sprint (as a CLEC) filed for Local Authority [working through a cable company – MCC Telephony of the Midwest] in rural areas of Brookings Municipal (Swiftel RLEC – 2006) where MCC has cable and broadband, and was eventually granted authority to operate – 10/3/08 - <https://puc.sd.gov/commission/orders/telecom/2008/tc06-178e.pdf> There was an arbitrated Interconnection agreement as part of this docket – but, only parts of it were filed (confidentiality) - <https://puc.sd.gov/commission/dockets/telecom/2007/tc07-007/081908.pdf>

**In 2006, Sprint filed a number of IXC arbitrations in SD trying to interconnect with the RLECs.** All of the proposed agreements had the same 911 language, and 911 was NOT one of the listed issues in arbitration.

**Sprint** [as a CLEC] and Interstate Telecom Coop [RLEC] -

“16. 1. Each Party is solely responsible for the receipt and transmission of 911 /E911 traffic originated by users of its Telephone Exchange Services.”

<https://puc.sd.gov/Dockets/Telecom/2006/TC06-175.aspx>

<https://puc.sd.gov/commission/dockets/telecom/2006/TC06-175/petition2.pdf> - Sprint motion to withdraw - <https://puc.sd.gov/commission/dockets/telecom/2006/TC06-175/111708.pdf>

**Sprint** and Brookings - <https://puc.sd.gov/Dockets/Telecom/2006/TC06-176.aspx> 2004 -

**TC03-192** - In the Matter of the Filing for Approval of an Interconnection Agreement between Midcontinent Communications and Interstate Telecommunications Cooperative, Inc.

<https://puc.sd.gov/Dockets/Telecom/2003/TC03-192.aspx> Bits and pieces of an “interconnection agreement” – see page 146 of the attached referenced -

<https://puc.sd.gov/commission/dockets/telecom/2003/tc03-192.pdf> - specifically says it does NOT cover 911 [page 5 off the IXC]. Matter settled by Commission on 8/18/2004

**TC04-224 - In the Matter of the Filing for Approval of an Interconnection Agreement between Midcontinent Communications and Interstate Telecommunications Cooperative, Inc.**

Agreement specifically excludes 911

<https://puc.sd.gov/Dockets/Telecom/2004/TC04-224.aspx>

<https://puc.sd.gov/commission/dockets/telecom/2004%20Dockets/tc04-224.pdf>

**TC03-176 - IN THE MATTER OF THE FILING FOR APPROVAL OF AN INTERCONNECTION AGREEMENT BETWEEN MIDCONTINENT COMMUNICATIONS AND NORTHERN VALLEY COMMUNICATIONS, LLC**

<https://puc.sd.gov/Dockets/Telecom/2003/TC03-176.aspx> Docket

<https://puc.sd.gov/commission/dockets/telecom/2003/tc03-176.pdf> - no discussion of 911

**TC03-192 - In the Matter of the Filing for Approval of an Interconnection Agreement between Midcontinent Communications and Interstate Telecommunications Cooperative, Inc**

<https://puc.sd.gov/Dockets/Telecom/2003/TC03-192.aspx>

**TC02-051 - In the Matter of the Filing for Approval of an Interconnection Agreement between McLeodUSA Telecom Development, Inc., McLeodUSA Telecommunications Systems, Inc., McLeodUSA Incorporated and Midcontinent Communications, Inc.**

Agreement does not mention 911

<https://puc.sd.gov/Dockets/Telecom/2002/TC02-051.aspx>

<https://puc.sd.gov/commission/dockets/telecom/2002/tc02-051.pdf>

**TC99-097 - In the Matter of the Filing for Approval of an Interconnection Agreement between Fort Randall Telephone Company and Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc.**

<https://puc.sd.gov/Dockets/Telecom/1999/TC99-097.aspx> Agreement not on file

**TC97-062 - In the Matter of the Filing by Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc., for Interconnection with Fort Randall Telephone Company**

<https://puc.sd.gov/commission/dockets/telecom/1997/tc97-062.pdf>

IXC starts on page 492 of attachment -

<https://puc.sd.gov/commission/dockets/telecom/1997/tc97-062.pdf> does not mention 911.

Settlement agreement starts on page 534. Does not mention 911 but does mention bill and keep for local traffic. Settled by Order 12/12/1997

## APPENDIX B

Venture Communications Cooperative Response to TCS LOA-CFA Letter





January 5, 2016

Ms. Loree Parker  
Transport Engineer  
Telecommunications Systems, Inc.  
Email: [TransportTeam@telecomsys.com](mailto:TransportTeam@telecomsys.com)

Venture Communications Telephone Company is in receipt of the recent Telecommunications Systems, Inc. (TCS) correspondence captioned an "LOA-CFA" which is put forth as an "authorization" for Venture Communications Telephone Company to order 911 circuits or trunks to TCS's centralized points of interconnection (POIs) in Rapid City and/or Sioux Falls, South Dakota.

Please note in regards to your "LOA-CFA" letter that Venture Communications Telephone Company believes TCS is responsible for ordering the related circuits/trunks from a meet point location within Venture Communications Telephone Company rural service area to its designated centralized point(s) of interconnection and, accordingly, TCS is asked to promptly submit a completed "Access Service Request (ASR)" form. This will aid us in jurisdictionally classifying the desired transport services, for regulatory purposes, and also enable us to render an appropriate billing for such services.

As was referenced by the South Dakota Telecommunications Association during a meeting of the South Dakota Public Utilities Commission on December 22, 2015, the "rural transport rule" provisions found in 47 CFR Section 51.709 supports our position that rural ILECs are not obligated to transport local or "non-access" traffic to locations outside the boundaries of their service areas.

Once an ASR is received in our office, we can begin the process of establishing the circuits/trunks necessary for origination of the 911 traffic.

Best Regards,

A handwritten signature in blue ink, appearing to read "Randy Houdek".

Randy Houdek  
Venture Communications Telephone Company  
PO Box 157  
Highmore, SD 57345

## APPENDIX C

7-26-17 South Dakota 911 Board of LOA to Carriers



## STATE 9-1-1 COORDINATION BOARD

DEPARTMENT OF PUBLIC SAFETY

118 WEST CAPITOL AVENUE

PIERRE, SD 57501

PHONE: 605-773-3178

FAX: 605-773-3018

**Chairperson:**

Ted Ruffedt, Jr.  
*Dakota Chapter  
NENA*

**Vice Chairperson:**

Kelly Serr  
*South Dakota  
Sheriffs Association*

**Board Members:**

Vernon Brown  
*South Dakota  
Service Provider*

Don Reinesch  
*SD Association of  
County Commissioners*

Marlene Haines  
*South Dakota  
Chapter APCO*

Steve Harding  
*South Dakota  
Municipal League*

Rachel Kippley  
*SD Association of  
County Commissioners*

Lee McPeck  
*South Dakota Police  
Chiefs Association*

Rick Miller  
*SD Department of  
Public Safety*

Jody Sawvell  
*South Dakota  
Service Provider*

Michelle DeNeui  
*South Dakota  
Municipal League*

**State 9-1-1 Coordinator**

Shawnie Rechtenbaugh  
*SD Department of  
Public Safety*

July 26, 2017

Re: Letter of Agency

To: South Dakota Carriers

As part of its project to build a statewide Next Generation 9-1-1 ("NG9-1-1") ESInet, the South Dakota 9-1-1 Coordination Board ("Board"), hereby advises the recipient of this Letter of Agency ("LOA") that the Board authorizes Comtech Telecommunications Corp. and/or NextGen Communications, Inc. (collectively "Comtech") to act as the agent(s) of the Board to :

- Design and construct the ESInet,
- Provide instructions for carrier interconnection to the ESInet, and
- Obtain information associated with and/or supporting 9-1-1 call provisioning, routing, and delivery for 9-1-1 calls to the ESInet as determined by Comtech for operation of the system.

All Communication Service Providers<sup>1</sup> ("CSP"s) are asked to reply to Comtech's requests, and to provide information critical to the success of this project to Comtech. Examples of this requested information include (but are not limited to):

- Description and configuration of the types of facility transport currently in use (including, but not limited to, signaling protocols, type and quantity of trunks, CLLI codes, DACS location, and other technical and capacity information) for connection to/from the South Dakota NG9-1-1 System.

**Any proprietary or confidential data acquired hereunder will be used solely for providing the transition to and ongoing Comtech services described above, and will be protected from unauthorized use or disclosure.**

By this LOA, Comtech is given authority to act independently on behalf of the Board within the scope of this authorization when those actions are in the best interest of the NG9-1-1 project. This LOA is effective on the date of execution and will remain in force until revoked or modified in writing by the Board (as delivered to Comtech, and to the CSP at the address listed above).

CSPs will receive a Carrier Facility Agreement ("CFA") requesting detailed information directly from Comtech. To facilitate the delivery of the CFA, please

<sup>1</sup> Communication Service Providers include, but are not limited to, all Incumbent Local Exchange Carriers, Competitive Local Exchange Carriers, Rural Local Exchange Carriers, Local Exchange Carriers, VoIP Service Providers, or Wireless Service Providers operating in South Dakota that may originate 9-1-1 calls.

acknowledge receipt of this LOA by completing the contact information form per the instructions below within 10 business days of receipt.

Thank you for your cooperation with the very important project.

The undersigned represents that they have authority on behalf of the State to execute this LOA.

By: Shawnie Rechtenbaugh

Name: Shawnie Rechtenbaugh

Title: Deputy Secretary and State 9-1-1 Coordinator

**You will receive communication regarding next steps and a Comtech SOP that will assist in the transition. You may also contact Ms. Laurie Hickok directly if you have any questions related to this LOA or the CFA.**

Laurie Hickok, Client Services Manager, NG9-1-1 |  
Safety & Security Technologies | Comtech Telecommunications Corp. |  
[laurie.hickok@comtechtel.com](mailto:laurie.hickok@comtechtel.com)  
Phone: 515.344.5830