

BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF
SOUTH DAKOTA

IN THE MATTER OF THE PETITION FOR A)
DECLARATORY RULING DETERMINING)
RESPONSIBILITY FOR THE RURAL) Docket TC17-063
CARRIER INTERCONNECTION TO THE)
NEXT GENERATION 9-1-1 SYSTEM)

Reply Comments of South Dakota Network, LLC (“SDN”)

Background

SDN petitioned for and was granted intervention in this docket on November 27, 2017. SDN did not file Initial Comments in the docket because the narrow issue to be determined in the Petition is “whether it is Next Generation (“NextGen”) or the rural carriers comprising SDTA that has the responsibility to transport 911 traffic between rural carriers’ service areas and the NextGen’s centralized points of interconnection.”¹ SDN is not a member of SDTA. SDN supports SDTA’s Initial and Reply Comments wherein SDTA clearly articulates that it is NextGen’s legal responsibility to transport 911 traffic from the LECs’ service areas to NextGen’s centralized POIs in Sioux Falls and Rapid City.

While the legal question raised in the Petition is very narrow, there are factual allegations made by NextGen in its Initial Comments to support its arguments that implicate SDN, many of which factual allegations are incorrect.² SDN accordingly

¹ See Petition for Declaratory Ruling filed October 27, 2017 with the South Dakota Public Utilities Commission (“SDPUC” or “Commission”) Docket TC17-063, pg. 3.

² Not only are some of the factual allegations made by NextGen in its Initial Comments inaccurate, they also have no relevance to this docket. For example, in footnote 46 on page 15 of NextGen’s Initial Comments, NextGen states, “Midcontinent is an SDN shareholder and a member of SDTA.” Both statements are incorrect, and there is nothing in the Interconnection Agreement between Valley Telecommunications Cooperative and Midcontinent, cited by NextGen as authority for its statements, that supports these factual allegations. Another example of an inaccurate factual red herring is NextGen’s reference to SDN’s BTOP grant (NextGen Initial Comments, pg. 23), which funds were utilized entirely by

submits these Reply Comments to counter NextGen’s improper allegations that SDN is an “affiliate” of and thus inseparable from the SDTA member companies (“LECs”).

SDN Is Not an Affiliate of the LECs and SDN’s Network Is Not Part of the LECs’ Networks.

A. SDN and the LECs are Separate Legal Entities

As a legal entity, SDN was initially organized as a corporation in 1988. SDN converted to its current legal status of a limited liability company (“LLC”) in December of 1999³ and maintains that legal status to date. Per South Dakota law, “a limited liability company is a legal entity distinct from its members.”⁴ Therefore, legally, the fact that SDN is owned by LECs does not magically convert SDN into an “affiliate” of the LECs. It is a separate legal entity.

Likewise, the LEC members of SDTA are separate legal entities. The majority of SDTA members are cooperatives organized under SDCL Ch. 47-15. Cooperatives are “cooperative corporations” that are separate and distinct legal entities.⁵ Other SDTA members are either corporations, municipal telephone companies, or a tribal telephone authority. Thus, each SDTA member company is a legal entity that is separate and distinct from SDN.

SDN is also a separately controlled entity. Per SDN’s Articles of Organization and its Operating Agreement, SDN is a member-managed LLC. Its Board

SDN to extend fiber to hospitals, schools, libraries, and other public facilities in the state. To tie that grant to this docket is completely inappropriate, and the implication that SDN has improperly utilized said grant funds is inaccurate. Another example is NextGen’s unsubstantiated and unverified “impression” that RLECs resistance to interconnection is profit (NextGen Initial Comments, fn 12). Again, the question before this Commission is who bears the legal obligation to transport 911 calls, and NextGen reliance on “impressions” rather than legal authority to support its arguments is misplaced.

³ See Certificate of Organization Limited Liability Company, South Dakota Secretary of State, attached as Exhibit A.

⁴ SDCL 47-34A-201.

⁵ SDCL 47-15-1(2); 47-1A-302.

of Managers is separate and distinct from the management and control of each of its member companies. Accordingly, NextGen’s “assumption” that “for all legal practical purposes” SDN is an affiliate of its members because it is “controlled” by its members is factually and legally insupportable.⁶ SDN is a separate legal entity, not an affiliate or extension of its member LECs. The LECs are also separate legal entities, controlled by their own boards of directors or city council members.

B. SDN and the LECs are Separately Authorized to Provide Different Services

SDN was granted a certificate of authority to provide Centralized Equal Access (“CEA”) services by the Federal Communications Commission (“FCC”) on November 9, 1990 (“SDN 214”).⁷ SDN received its authority to provide CEA services from the SDPUC on April 12, 1991.⁸ SDN was authorized by these orders of the FCC and SDPUC to aggregate rural traffic of the LECs, to provide centralized equal access, and to provide interconnection equal in type and quality to all interexchange carriers (“IXCs”). Through the SDN network, IXCs are able to connect to all of the rural LECs’ local network facilities through one convenient point of interconnection (“POI”) in Sioux Falls. Unlike the LECs, SDN does not have end user customers and does not provide local service in any service area at this time. The authority granted by the Commission and the SDPUC to SDN to provide CEA services continues to govern the relationship between SDN and the IXCs that use its services to reach LECs.

⁶ NextGen Initial Comments, fn 73.

⁷ SDN’s wholly owned subsidiary, SDCEA, Inc., is the entity that filed the applications with the FCC for authorization to provide CEA services. *See Memorandum Opinion, Order and Certificate (SDCEA, Inc.)*, 5 FCC Rcd. 6978 (Common Carrier Bureau (1990)).

⁸ Amended Order Granting Construction Permit and Approving Tariff, Public Utilities Commission of the state of South Dakota Docket F-3860, April 12, 1991 (“PUC Order”).

The LECs are authorized by the SDPUC to provide local exchange services. Local exchange service is defined by South Dakota law as “the access to and transmission of two-way switched telecommunications service within a local exchange area.” (SDCL 49-31-1(13)). So, SDN and the LECs were authorized and do provide two distinct, separate services: the LECs provide local exchange services, and SDN provides one centralized POI for the exchange of originating and terminating toll minutes between the LECs that subtend SDN’s tandem switch and IXCs.

The very manner in which SDN was authorized to provide CEA services and how those services have always been provided further demonstrates the distinction between the LECs and SDN. The LECs are not required to pay for transport of their traffic to SDN. Rather, the IXCs pay for transport of traffic to SDN’s tandem switch in Sioux Falls. SDN’s regulated CEA operations are funded solely through interstate and intrastate access charges, set forth in SDN’s interstate and intrastate tariffs, which are approved by the FCC and SDPUC, and which are paid by the IXCs. Accordingly, NextGen’s argument that it is impossible to separate SDN and the LECs is insupportable. SDN and the LECs have separate regulatory authorizations to provide separate and distinct services, and those separate authorizations granted to SDN and the LECs by the FCC and the SDPUC continue to govern the separate operations and services provided by SDN to the IXCs on the one hand, and the local exchange services provided by the LECs to their end user customers, on the other hand.

C. SDN’s Network is Separate From the LECs’ Network

Equally insupportable are NextGen’s assertions that “(f)or purposes of the instant issue, it is impossible to determine where the RLECs end and SDN begins”, and

that “(t)here is no technical or practical difference between SDN’s network and the RLEC networks for NG 9-1-1 transport services.”⁹ NextGen fails to provide any authority for these assertions, as none exists.

The LECs are local exchange carriers and their service areas containing their networks to provide services to their end user customers are approved and certified by the SDPUC.

Telecommunications companies seeking to provide any local exchange service shall submit an application for certification by the commission . . . (t)he commission shall have the exclusive authority to grant a certificate of authority. SDCL 49-31-3.

“Local exchange area” is defined as follows:

(A)ny geographic area established by a local exchange carrier as filed with or approved by the commission for the administration of local telecommunications service which may consist of one or more central offices or wire centers together with associated facilities used in furnishing telecommunications service in that area. SDCL 49-31-1(13) (*emphasis added*).

One of the requirements in the local exchange application process is for the telecommunications company to provide “a service area map or narrative description indicating with particularity the geographic area proposed to be served by the applicant.”¹⁰ Once a telecommunications company has been granted a certificate of authority to provide local exchange services in its certificated area, “(a) company may not extend an existing telecommunications facility outside its local exchange service area for the purpose of providing local exchange service in which it is not certified,” without prior authority from the SDPUC.¹¹ Maps of each local exchange company’s certified service area are maintained by the SDPUC and are available on the SDPUC’s website. At no

⁹ NextGen Initial Comments, pgs 22 and 23.

¹⁰ ARSD 20:10:32:03(9).

¹¹ SDCL 49-31-69.

time have the networks of the LECs included SDN's network. The LECs' designated and Commission-approved local service areas do not extend to Sioux Falls.

SDN's network is distinct from the LECs network. SDN's network is the backbone that provides connectivity between the LECs' local network facilities and the IXCs. Through the SDN network, IXCs are able to connect to all rural LECs' local network facilities through one POI – SDN's tandem switch in Sioux Falls.

There is also no support for the State's implication in its Reply Comments that because SDN contracts with NextGen to provide transport from NextGen's interconnection points in Sioux Falls and Rapid City to NextGen's selective routers that SDN is already part of the LECs' networks. Again, there is nothing to support such a proposition. The existence of a contract between SDN and NextGen for facilities from Sioux Falls and Rapid City to the selective routers does not include facilities from the LECs' service areas to Sioux Falls or Rapid City. As demonstrated herein, SDN's network is separate and distinct from the LECs' networks, and it was separately authorized to provide different services than local exchange services. Any contracts SDN enters into with other carriers does not alter that configuration. Furthermore, through either contracts or tariffs, SDN is entitled to compensation for the use of its network.

Conclusion

SDN is not an affiliate of the LECs. SDN is a separate legal entity whose governance and control is separate from the governance and control of the LECs. The LECs are also separate legal entities, per the laws under which each is organized. SDN and the LECs are separately authorized by regulatory authorities to provide different types of services. Finally, SDN's network is separate and distinct from the networks of

the LECs. For these reasons, NextGen's attempt to overcome well-established statutory and regulatory provisions and "blend" SDN and the LECs to support its inaccurate legal conclusion in this docket must fail.

Respectfully submitted this 16th day of January, 2018.

A handwritten signature in cursive script, reading "Darla Pollman Rogers", is written over a horizontal line.

Darla Pollman Rogers
Riter, Rogers, Wattier, & Northrup LLP
PO Box 280
Pierre SD 57501
Attorney for SDN

CERTIFICATE OF SERVICE

The undersigned, attorney for SDN, hereby certifies that a true and correct copy of the Reply Comments of South Dakota Network was served on this 16th day of January, 2018, upon:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Amanda Reiss
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
amanda.reiss@state.sd.us

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Kristen.edwards@state.sd.us

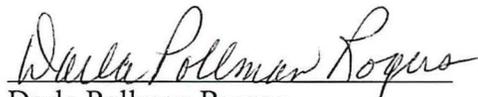
Mr. Joseph Rezac
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
joseph.rezac@state.sd.us

Mr. Patrick Steffensen
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patrick.steffensen@state.sd.us

Ms. Jenna E. Howell
General Counsel and Director
Department of Public Safety
118 W. Capitol Ave.
Pierre, SD 57501
jenna.howell@state.sd.us

Mr. Kim Robert Scovill
Vice President - Legal and Regulatory, and Assistant Treasurer
NextGen Communications, Inc.
275 West St., Ste. 400
Annapolis, MD 21401
kim.scovill@comtechtel.com

Mr. Rich Coit
Executive Director
South Dakota Telecommunications Association
PO Box 57
Pierre, SD 57501
richcoit@sdtanline.com


Darla Pollman Rogers

0141000

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State of South Dakota



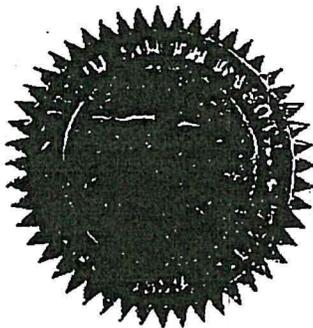
OFFICE OF THE SECRETARY OF STATE

Certificate of Organization Limited Liability Company

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SOUTH DAKOTA NETWORK, LLC** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this December 30, 1999.



Joyce Hazeltine
Secretary of State