

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE PETITION
FOR A DECLARATORY RULING BY
DEPARTMENT OF PUBLIC SAFETY/911
COORDINATION BOARD REGARDING
DETERMINING RESPONSIBILITY FOR
RURAL CARRIER INTERCONNECTION
TO THE NEXT GENERATION 9-1-1
SYSTEM**

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TC17-063

**STAFF’S COMMENTS ON
PETITION FOR
DECLARATORY RULING**

COMES NOW, the Public Utilities Commission Staff (“Staff”) and hereby files these comments on the Department of Public Safety/911 Coordination Board’s Petition for a Declaratory Ruling Determining Responsibility for Rural Carrier Interconnection to the Next Generation 9-1-1 System.

Procedural Background

On October 27, 2017, the Department of Public Safety/911 Coordination Board (“Board”) filed a Petition for a Declaratory Ruling Determining Responsibility for Rural Carrier Interconnection to the Next Generation 9-1-1 System (“Petition”). The Petition arose in Public Utilities Commission Docket TC15-062 which granted NextGen a Certificate of Authority (COA), but left unresolved the issue of which entity had responsibility to transport 911 traffic to NextGen’s centralized points of interconnection, located in Sioux Falls and Rapid City. As such, in its Petition, the Board specifically requests the Commission issue an order determining whether it is NextGen or the rural carriers comprising SDTA that has the responsibility to transport 911 traffic between the rural carriers’ service areas and NextGen’s centralized points of

interconnection. On October 30, 2017, NextGen Communications and SDTA each filed petitions to intervene in the docket and the Commission granted intervention to both parties in its order dated November 15, 2017. On November 9, 2017, SDTA filed a petition to intervene in the docket and the Commission granted SDTA intervention in its November 27, 2017 order. On November 17, 2017, the Board filed a waiver of the sixty day deadline for a decision and proposed a procedural schedule and the Commission granted both in its December 12, 2017 order.

Analysis

First and foremost, in its petition, the Board makes reference to alleged interconnection agreements that have been sent to rural carriers. Additionally, discussions with the parties have included the issue of whether requiring a rural carrier to carry traffic outside of the carrier's service area is unduly burdensome. Staff would like to clarify that this docket and the Petition for a Declaratory ruling is limited to the question at hand, who has responsibility to transport traffic between the rural's service territory and the centralized 911 points of interconnect. All other issues are fact based issues that should be addressed in a later docket if the matters cannot be resolved by the parties.

The Board points to SDCL 49-31-79 as the state statute in question. This statute codifies the federal requirements in South Dakota law, that it is a carrier's duty to negotiate and provide interconnection to another company. 47 U.S.C. § 251 (f)(1). This statute, as well as the federal law, provides an exception for rural telephone companies, providing a specific interconnection request process along with a caveat that the interconnection must be technically feasible and not economically burdensome. The South Dakota statutes do not explicitly establish that a rural is

responsible to transport traffic to a point of interconnect outside of a rural's service territory. the applicable state statutes and administrative rules merely provide a framework for the interconnection process and provide the Commission with guidance as to when a carrier may not be required to interconnect after receiving a request. However, federal rule 47 U.S.C. § 251 (c), does appear to limit the interconnection to any "technically feasible point within the carrier's network."

Reading the state and federal authorities together, it appears that requiring a rural carrier to interconnect outside of its territory, especially at a point of interconnect far outside of the rural's territory would not be consistent with the law. Even if a rural may be required to interconnect outside its territory, Staff would like to be clear that state and federal laws and rules require that a bone fide request for interconnection be made to the rural and also establishes a process for the Commission to determine that interconnection is not required if the request provides an economic burden on the rural, or is not technically feasible.

Dated this 19^h Day of December, 2017.

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