

**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 RESPONSE TO
MOTION TO DISMISS**

COMES NOW, the Public Utilities Commission Staff (“Staff”) and hereby files this response to NextGen’s Motion to Dismiss and Alternative Motion to Continue to Supplement the Petition.

Staff disagrees with NextGen’s assertion that the Board is not permitted to file this Petition for a Declaratory Ruling before the Commission because the statute at issue is not applicable to the Board. This is an extremely limited reading of the rule as well as the situation before the Commission. This is especially true given that the Board’s Petition claims that NextGen was contracted by the Board to design and maintain an NG911 system for South Dakota. In this case, although the Board is not the direct party affected by the Declaratory Ruling in this case the Board does have an interest in the resolution of this issue and will be affected by any action the Commission takes in this docket.

Staff is not convinced by NextGen’s argument that the Commission cannot issue a decision in this docket because it will affect other Parties’ financial and or technical obligations. As NextGen explained in its Motion, “in an agency-based Declaratory Ruling legal proceeding, the

ruling agency acts on assumed facts” and that the “petitioning party is responsible to present the proper facts. *In re Petition For Declaratory Ruling, 2016 SD 21.*” (Motion Page 3 p. 6). Any decision the Commission does issue will be based on the facts the Petitioner presented to the Commission, such a decision would not necessarily apply to a situation involving a different set of facts. If the facts presented by the Petitioner are not accurate, nothing prevents another person from filing a Petition for a Declaratory Ruling based on a different set of facts.

Although the Commission could issue a Declaratory Ruling in this case and such a decision could provide the Parties with guidance moving forward, Staff is not convinced that such a decision will solve the issue at hand. Based on the comments of all Parties, there appears to be a significant disagreement as to the facts involved in this case. Given that a declaratory ruling proceeding is not a forum for determining facts, this issue could be better addressed in a contested case proceeding before the Commission such as a § 251 or other contested case proceeding. Such a proceeding would permit the parties to conduct discovery and present evidence as well as legal argument to the Commission, allowing the Commission to issue a decision on the controversy at hand and bring actual resolution to the matter. In this case, it would be more appropriate to Dismiss the Board’s Petition for Declaratory ruling for Failure to Pose a Question that can be Properly Answered by the Commission and allow the Parties to move forward with resolving the actual issues at hand through a more proper contested case hearing.

If the Commission denies the Motion to Dismiss, Staff opposes the grant of NextGen’s Alternative Motion to Continue this proceeding with a requirement that all Parties factually supplement the Board’s Petition for a Declaratory Ruling. The initial Petition was filed on October 27, 2017, nearly six months ago. Since the filing, all parties have submitted initial comments and response comments on the Petition. Based on these comments, it has become evident that the

parties do not agree on the facts and any requirement that the Parties factually supplement the Board's Petition will merely convolute the Declaratory Ruling process and delay this docket further.

WHEREFORE, Staff respectfully requests the Commission either Dismiss the Board's Petition for a Declaratory Ruling for Failure to Pose a Question that can be Properly Answered by the Commission or issue a final decision on the Board's initial Petition for a Declaratory Ruling.

Dated this 19^h Day of April 2018.

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