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August 29, 2018

Ms. Patricia Van Gerpen
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Re: NextGen Adoption Agreement
TC129


Dear Ms. Van Gerpen:

Attached for electronic filing, please find Valley Telecommunications Cooperative Association's Objections to NextGen's bona fide request.

If you have any questions, please contact me.

Very truly yours,

RITER, ROGERS, WATTIER &
NORTHTRUP, LLP

By: 
Darla Pollman Rogers

DPR-wb

cc: Valley Telecommunications Cooperative Association, Inc.
Kim Scovill
Kara Semmler

Robert C. Riter, Jr
Margo D. Northrup

Darla Pollman Rogers
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August 29, 2018

Mr. Kim Robert Scovill
NextGen Communications, Inc.
275 West Street
Annapolis, MD 21401

Ms. Patricia Van Gerpen
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Re: NextGen Adoption Agreement

Dear Mr. Scovill and Ms. Van Gerpen:

On behalf of Valley Telecommunications Cooperative Association ("Valley") and pursuant to A.R.S.D. 20:10:32:38, Valley disputes that the purported request for interconnection received by it from NextGen Communications ("NextGen") is a bona fide request, for the reasons set forth below.

Background

On August 20, 2018, Valley received a letter dated August 16, 2016 from COMTECH, on behalf of NextGen, requesting Valley to execute an "Adoption Agreement of the Interconnection Agreement" (hereinafter referenced as "Adoption Agreement"), whereby NextGen would adopt or opt in to the terms and conditions of an interconnection agreement entered into by Valley and Midcontinent Communication ("Midco" and "Valley/Midco ICA") in October of 2017. The letter from NextGen to Valley, the Adoption Agreement, and the Valley/Midco ICA were the only documents provided to Valley.¹

Thereafter, on August 22, 2018, Kara Semmler, local counsel for NextGen, hand delivered the following items to Darla Pollman Rogers, as the registered agent for Valley: (1) filing letter to the South Dakota Public Utilities Commission ("Commission") dated August 22, 2018; (2) Certificate of Service; (3) LOA-CFA from NextGen to Valley; (4) copy of NextGen's August 16, 2018, letter to Valley; (5) Adoption Agreement; and (6) copy of the Valley/Midco ICA. In the letter to the Commission accompanying the filing, Mr. Scovill states that "NextGen served the attached bona fide request for interconnection on Valley . . . This bona fide request for interconnection is in compliance with the Commission's directive." Also in the letter, Mr. Scovill refers to an LOA/CFA technical connectivity document NextGen previously sent to Valley, which will be re-submitted to Valley within the next ten days. NextGen's local attorney

¹ Copies were also sent to Darla Pollman Rogers as attorney for Valley.

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Margo D. Northrup

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Kody R. Kryss, Associate



attempted to file the documents as a new docket, but Commission Staff accepted the filing as an informational filing.²

NextGen has Failed to Submit a Bona Fide Request to Valley

A.R.S.D. 20:10:32:38 provides in part as follows:

Notice to commission of request. Upon making a request to a rural telephone company for interconnection, services, or network elements that are subject to the exemption established by 47 U.S.C. § 251(f)(1) (September 10, 1998), the person or entity making the request shall provide the commission notice of the request. Within ten days of receiving the request, the rural telephone company shall inform the requesting party and the commission if the rural telephone company is disputing whether the request is a bona fide request. If the rural telephone company disputes that the request is bona fide, the commission shall determine if the request is a bona fide request.

Pursuant to the provisions of SDCL § 49-31-79 and the above cited administrative rule, Valley hereby disputes that the request from NextGen is a bona fide request. Specifically, in response to NextGen's filed "request" and correspondence, Valley states the following.

A. NextGen's Purported Request is Contrary to
State and Federal Local Interconnection Requirements

47 U.S.C. § 251(a) places upon each telecommunications carrier the duty "(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."³ Section 251(b) enumerates five obligations for all local exchange carriers (resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation). Section 251(c) outlines additional obligations of incumbent local exchange carriers, including in part "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 . . ." but only "at any technically feasible point within the carrier's network . . ."⁴

It is Valley's position that NextGen, in seeking to opt in to the Valley/Midco ICA so that it may receive 9-1-1 calls, is seeking interconnection for the purpose of providing "telephone exchange service" and, accordingly, is seeking local interconnection pursuant to the provisions

² Copies of the filed documents can be viewed on the Commission website, Telecommunications 2018 Informational filings, 2018 Info TC 129.

³ 47 U.S.C. § 251 (a)(1).

⁴ See 47 U.S.C. § 251(c)(2)(A) and (B).



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of 47 U.S.C. § 251(c). As such, the provisions of 47 U.S.C. § 251(f)(1)(A) are applicable and provide in part as follows:

(A) EXEMPTION. – Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(I)(D) thereof).

The provisions in South Dakota statute are consistent with this federal statute and they are significant and relevant to this case, as Valley is an incumbent local exchange carrier and a rural telephone company.

Even though NextGen has not specifically indicated that it is seeking “local” interconnection services from Valley as those services are described in 47 U.S.C. § 251(c), it is clear that local interconnection is needed for it to receive 911 calls from potentially all of Valley’s end user subscribers and, that being the case, a “bona fide request” is necessary to trigger the rural interconnection exemption review process contemplated under 47 U.S.C. § 251(f)(1)(B) and SDCL 49-31-79. NextGen’s demand at this time for Valley to simply review, sign and return an Adoption Agreement does not constitute a “bona fide request” for several reasons. First, in addition to seeking an opt-in to the existing Valley/Midco ICA, NextGen is also asking Valley to comply with a new “LOA-CFA” request or authorization dated August 22, 2018, which in seeking interconnection at a meet point or interconnection point at 2900 W 10th St. in Sioux Falls is plainly inconsistent with the referenced Interconnection Agreement. The demands described in the LOA-CFA are also inconsistent with local interconnection requirements imposed on rural telephone companies under existing federal and state law. As indicated by the South Dakota Telecommunications Association (“SDTA”) in its Initial Comments dated December 19, 2017, filed with this Commission in Docket TC17-063:

. . . Congress did not intend that incumbent local exchange carriers would be required to expand their existing local networks or service areas for the benefit of competing carriers/providers. The obligations to interconnect are confined to points of interconnection or “meet points” within the existing ILEC networks. Specifically, within the context of applying the 47 U.S.C. interconnection provisions to rural telephone companies, this intention was recognized by the FCC with its subsequent adoption of 47 C.F.R. 51.709(c) wherein the FCC limited rural telephone company transport responsibilities (for both originating and terminating IntraMTA wireless traffic) to meet points within the existing rural service areas.



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The provisions of Section 251 and 252 of the Federal Communications Act apply to carrier-to-carrier interconnection involving 911 traffic and these provisions only mandate interconnection “with the local exchange carriers’ network.” They do not, as NextGen claims, require that rural local exchange carriers with limited service areas and limited local exchange networks provide interconnection “off network” for the benefit of NextGen or any other carrier that may be engaged in providing NG911 services.

B. Carriers are Required to Adopt the Entire Agreement

The interconnection request now presented by NextGen also cannot be viewed as a “bona fide request” as is required under SDCL § 49-31-79 and 47 U.S.C. § 251(f)(1) because the FCC has made it clear that if a carrier chooses to opt into an existing interconnection agreement between a rural telephone company and a CLEC entity, it is required to opt into the entirety of any agreement chosen. The FCC in an Order released on July 13, 2004 established an “all or nothing” rule in interpreting the terms of 47 U.S.C. § 252(i), no longer allowing requesting carriers to choose among individual provisions contained in publicly filed interconnection agreements.⁵ NextGen, under Section 252 provisions, would be required to accept all of the terms of the Valley/Midco ICA, including the core terms that establish points of interconnection (“POI”) for local traffic exchanged at locations within the rural telephone company service areas.

Even though NextGen’s August 16 letter to Valley states that “there is no request for changes to the underlying interconnection agreement,” that is clearly not the case, as is evidenced by other documents filed with the Commission as part of the request, including specifically the LOA/CFA document referenced above. There is only one local POI established in the Valley/Midco ICA, and that is at Valley’s central office in Herreid:

2.1 The Parties agree to " physically connect their respective networks . . . at the POI located at Valley’s Central Office located at 102 Main St. S., Herreid, SD (CLLI).⁶

NextGen also states in the August 16 letter to Valley that “Additional technical information regarding connectivity will be provided once the Adoption Agreement has been filed with the Commission.” In its filing of the purported request with the Commission, NextGen attached an “LOA/CFA technical connectivity document.” This document states that NextGen “authorizes Valley . . . to order new SS7 DSO trunks to 2900 W 10th St., Sioux Falls, SD 57104,” which is South Dakota Network’s (“SDN”) headquarters (emphasis added). The letter refers to “South Dakota Networks” as the “Access Vendor.”

⁵ See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01338, Second Report and Order, FCC 04-164, released July 13, 2004, and 47 C.F.C. § 51.809.

⁶ Valley/Midco ICA, Paragraph 2 of the Interconnection Attachment.



In the LOA/CFA filed simultaneously with the Adoption Agreement, NextGen is asking Valley for local interconnection at a point outside of Valley's service area, in Sioux Falls, at SDN. This is inconsistent with the local POI established in the Valley/Midco ICA that NextGen claims it is opting into without changes. Clearly, NextGen is trying to use an Adoption Agreement not only to circumvent the interconnection procedures established in state and federal law, but also to establish a different POI than the exclusive POI set and used by Midco and Valley in their ICA. That is an inappropriate abuse of the process.

C. 911 Language in the Valley/Midco ICA Does Not Take Priority Over Establishment of the POI

If NextGen is relying on the 911 language in the Valley/Midco ICA as supporting its position that the POI for exchange of 911 traffic should be located in Sioux Falls, its reliance is misplaced. The specific language in the Valley/Midco ICA states:

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.⁷

Valley would first point out that the language is intended as an affirmation that each of the contracting parties will continue to have responsibility for their own originated 911 traffic. The 911 terms in the Valley/Midco ICA do not change or add to the existing obligations of the contracting parties, and thus have no practical effect and should be viewed as non-binding. 911 traffic is not, in fact, exchanged between the contracting parties under the Valley/Midco ICA. In addition, the Valley/Midco ICA predates NG911 implementation and the ICA properly reflects the situation where 911 calls are routed directly to a PSAP entity located within or near to the same local exchange area.

The other terms of the Valley/Midco ICA specifically define the POI established between the parties and obligates the contracting parties to "physically connect their respective networks" at Valley's central office in Herreid, South Dakota.⁸ Also, the General Terms and Conditions of the Valley/Midco ICA, provide that "[i]n the event there is a conflict between any term of this Agreement, the provisions shall be construed to give the greatest possible effect to the intent of this Agreement."⁹ Without question, the provisions addressing local traffic that is, in fact, exchanged between the contracting parties at a specifically established POI and defining party obligations to establish physical facility connections at that location are central to the Valley/Midco ICA and must be viewed as taking priority over the non-specific 911 provisions.

⁷ See Valley/Midco ICA, ¶1.8, Pre-Ordering, Ordering, Provisioning, Maintenance, and Repair attachment.

⁸ See Valley/Midco ICA, ¶ 2.1 of Interconnection Attachment.

⁹ See Valley/Midco ICA, ¶ 13, General Terms and Conditions.



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Conclusion

Valley disputes that NextGen provided Valley with a “bona fide request” for interconnection. The purported request does not comply with statutory local interconnection requirements and it fails to comply with the “all or nothing” opt in requirements that the FCC has established. Any attempt by NextGen to rely on the 911 language of the Valley/Midco ICA is misplaced because the 911 terms in the Valley/Midco ICA do not change or add to the existing obligations of the contracting parties. The 911 language of the ICA properly reflects the practice of the contracting parties, which is that 911 calls are routed directly to a PSAP entity located within or near to the same local exchange area.

NextGen’s actions are a breach of both the letter and the spirit of the law. NextGen should be held to the same level of standards as every other carrier. Valley requests that the Commission determine that NextGen has failed to make a bona fide request to Valley.

Respectfully submitted:

RITER, ROGERS, WATTIER &
NORTHRUP, LLP

By: 
Darla Pollman Rogers

cc: Jeff Symens, Valley