

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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)	

Reply

of

NextGen Communications, Inc.

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Reply of NextGen Communications, Inc.

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Next Generation 9-1-1 System)	Communications, Inc.

Reply of NextGen Communications, Inc.

NextGen Communications, Inc. ("NextGen" or "Party") hereby respectfully submits its Reply comments in the above-captioned matter. In the foregoing Petition the South Dakota Department of Public Safety / South Dakota 911 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."¹ NextGen requests that the Commission hold that such responsibility lies solely with Rural Local Exchange Carriers ("RLECs" or "Party").

1. Summary and Overview

The Board² filed initial Comments on December 11, 2017 and its Response to Comments³ on January 12, 2018. NextGen filed its initial Comments in this proceeding on December 19, 2017.⁴ The South Dakota Telecommunications Association (SDTA)⁵ and Commission Staff ("Staff")⁶ also filed their respective initial Comments that same day.

¹ *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>

² *Comments on Petition for Declaratory Ruling* ("911 Coordination Board Comments") (filed December 11, 2017).

³ *Response to Comments on Petition for Declaratory Ruling* ("911 Coordination Board Response") (filed January 12, 2018).

⁴ *Comments of NextGen Communications, Inc.* ("Comments"), (filed December 19, 2017).

⁵ *INITIAL COMMENTS OF THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION* ("SDTA Comments") (filed December 19, 2017).

⁶ *STAFF'S COMMENTS ON PETITION FOR DECLARATORY RULING* ("Staff Comments") (filed December 19, 2017).

Nothing in the Staff's or STDA's filing provides either new facts or persuasive legal authority in support of a position that NextGen should be responsible for the transport of the 9-1-1/NG9-1-1 traffic of the RLECs to the ESInet's POIs in South Dakota⁷. Almost 50% of the pages in SDTA's filing discuss global industry and federal concerns that are not relevant to the Petition.⁸ In addition, SDTA's positions depend on misunderstandings or errors of fact.

NextGen shares many of the sentiments of the Board in its January 12, 2018 pleading, in particular the need to resolve both factual and legal issues simultaneously without an additional hearing⁹, and NextGen supports the request for oral presentations.¹⁰ NextGen reiterates its initial analysis and conclusions, and in this Reply, rebuts the two limited arguments of SDTA; A) the mandatory application of Section 251/252, and B) the "cost" of 9-1-1 transport as an undue burden.

As to SDTA's first argument, the Section 251/251 definition of "interconnection" is the "mutual exchange of traffic,"¹¹ which is not the case here; therefore, Section 251/252 cannot control. Also, 20-years of Commission RLEC interconnection agreement approvals regarding 9-1-1 transport responsibility, unambiguous Federal Communications Commission ("FCC") decisions and policy statements indicating that Sections 251/252 apply only to "traffic exchange" not traffic transport and termination, the need for parity among interconnection requests from all

⁷ *SDTA's Comments* at Footnote 21 reference financial support from some South Dakota local government entities to the RLECs for 9-1-1 transport. NextGen discussed this topic at length on Page 8 in its *Comments* and suggested that further information be made available for all Parties to review and discuss the impact on the Declaratory Petition. NextGen reiterates that request here. NextGen supports every opportunity for the RLECs to secure and/or retain funding, independent of NextGen, so that they can retain responsibility for 9-1-1 transport. If SDTA, and/or the RLECs, are in possession of such information, it is in the best interest of every Party for them to provide this information. NextGen will gladly agree to standard confidentiality terms.

⁸ It is not NextGen's intention to disregard legitimate discussion of relevant issues; however, *SDTA's Comments*, beginning on approximately p. 17 through and including Appendix A concern FCC and national policy matters that are outside the scope of the Petition for Declaratory Ruling and irrelevant. The instant docket is unique as to the RLEC's positions, NextGen's role, the existence of SDN, and other factors. Raising the false specter of a precedential national impact to paralyze the Commission's analysis misses the mark. Nothing in this section of SDTA's pleadings addresses Section 251/252, or any of NextGen's arguments or positions.

⁹ *911 Coordination Board Response* at p. 2.

¹⁰ *Id* at p. 8.

¹¹ See complete discussion *Infra* at p. 10 and Footnote 41.

interconnecting carriers, the interconnection-related correspondence of the RLECs to NextGen that has never included a Section 251/252 request, and the creation of the RLECs' monopoly interconnection affiliate, South Dakota Network, LLC ("SDN")¹² (and SDN's intrastate certification by the Commission being *conditioned upon* transporting 9-1-1 service for public safety), all speak conclusively to the inapplicability of Section 251/252 in this matter.

In addition, NextGen is concerned that SDTA is unwilling to recognize the most basic proposition as to a *requirement* to interconnect via Section 251/252 – it only applies to interconnection requests made by commercial competitors¹³ to the incumbent LEC – not the reverse, and not when the interconnection is for something other than the mutual exchange of traffic (again, consistent with the statutory definition of "interconnection"). NextGen is not an RLEC commercial competitor, but as an agent of the State is seeking to assist the RLECs in the fulfillment of their public safety commitments by providing a one-way 9-1-1 "gateway" (i.e. the POIs) for the RLEC's 9-1-1 traffic to enter South Dakota's NG9-1-1 system.

As to SDTA's second argument, NextGen moves the Commission to accept a Confidential Cost Analysis (redacted version attached hereto) that demonstrates, using South Dakota's current RLEC 9-1-1 call volume, publicly available RLEC access line and other data, and RLEC transport affiliate SDN's¹⁴ current intrastate tariff pricing, that an RLEC can easily satisfy the "cost" of its

¹² By Order of the Commission dated November 27, 2017, SDN is also a Party to this proceeding and therefore under the Commission's jurisdiction regarding its outcome.

¹³ The FCC has articulated this proposition on many occasions including as recently as its January 2018 Federal Register notice to reauthorize Section 251, "... Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. 251, is designed to accelerate private sector development and deployment of telecommunications technologies and services by *spurring competition*." (emphasis added), *Federal Communications Commission Information Collections Being Reviewed by the Federal Communications Commission* (Federal Register / Vol. 83, No. 3 / Thursday, January 4, 2018 / Notices) at p. 526.
https://www.gpo.gov/fdsys/pkg/FR-2018-01-04/pdf/2017-28473.pdf?utm_campaign=subscription%20mailing%20list&utm_source=federalregister.gov&utm_medium=email

¹⁴ The use of SDN for transport cost calculations is illustrative only. It does not in any way obligate NextGen to use SDN as a transport or connecting carrier. In fact, it may be that the Commission finds (based on NextGen's information and belief) the current CenturyLink network arrangement, wherein CenturyLink provides subsidized (by other parties, and not NextGen, as yet unidentified) transport for the RLECs to CenturyLink's Selective Routers, to

NG9-1-1 transport for **less than \$0.01 per access line per year.**¹⁵ Given that SDTA has neither introduced new facts nor articulated any persuasive legal arguments in support of its position, the Commission can have confidence that a finding that the RLECs have sole responsibility for the transport of their 9-1-1 traffic to the POIs is legally justified, protects the public interest, protects the RLEC's rights, and assists them in the satisfaction of their public safety obligations to their customers.

2. SDTA Relies Upon Inaccurate and/or Incomplete Factual Representations

SDTA has included a discussion of the Joint Stipulation even though the plain language of the Joint Stipulation states that it is not relevant to the issue of the Declaratory Ruling.¹⁶ NextGen agrees with the State 9-1-1 Coordination Board (as relayed in its Comments)¹⁷, that the RLECs do not face any issues related to transport of their 9-1-1 traffic to the POIs.

SDTA argues that NextGen sought competitive carrier certification in South Dakota for two reasons:

- (1) so that it could access North American Numbering Plan resources, including specifically "Pseudo Automatic Number Identification ("pANI") numbering resources which are essential to route emergency calls; and
- (2) so that it would be positioned to seek the same sort of "interconnection and co-location made available to Competitive Local Exchange Carriers" (services needed

be the preferable network arrangement. NextGen reserves the right to comment further should the Commission explore this outcome which would include a full and thorough analysis of the costs and revenue associated with transporting RLEC traffic to a PSAP. The Board has also clarified in its December 12, 2018 filing that it does not have any authority over the RLECs to require that they join the NG9-1-1 network, nor can it shut down the existing 9-1-1 network. While this is true, as NextGen pointed out in its Comments, time, technology, and public demand will inevitably make this decision for all parties. It will become impossible, impractical, uneconomic, and/or undesirable to continue the old 9-1-1 system; hence, the need to clarify this matter.

¹⁵ Pursuant to ARSD 20:10:01:41 [<http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=20:10:01:41>], NextGen is filing separately an unredacted version with the Commission's Executive Director, and requests that Parties wishing to review the unredacted information execute and comply with a standard Non-Disclosure Agreement, that NextGen will provide, prior to receiving the redacted information.

¹⁶ *SDTA Comments* at p. 2.

¹⁷ *911 Coordination Board Comments* at p. 2.

in order for it "to aggregate and transport emergency calls and/or calling data").¹⁸

SDTA asserts that NextGen had choices as to the nature and elements of its South Dakota certification¹⁹, or that NextGen's certification request was designed to foreshadow a mandatory commitment to pay to transport RLEC 9-1-1 traffic. SDTA is incorrect on both counts.

NextGen had no choice but to follow the applicable law and regulations regarding its certification application. In response to SDTA's cited examples of NextGen's choices of authority for "pANI" and "interconnection", Competitive Local Exchange Company ("CLEC") certification *always* includes pANI authority because *only* state regulated carriers (including CLECs) have access to numbering resources²⁰ (which includes pANI). With regard to "interconnection and colocation,"²¹ and "services needed 'to aggregate and transport emergency calls and/or calling data'"²², it does not follow that a grant of this authority thereby compels NextGen to be responsible under Section 251/252 to transport RLEC 9-1-1 traffic. In fact, independent of any application of Section 251/252, these technical capabilities are necessary technologies used in the existing South Dakota NG9-1-1 ESInet design (which does not assume or include RLEC traffic transport beyond the POIs); pANI is used for wireless and VoIP²³ (not RLEC) call routing, and interconnection and colocation always occur *at the POIs* (emphasis added) no matter what type of traffic is being delivered to the ESInet – that is why CLEC authority was requested.

¹⁸ *SDTA Comments* at p. 4

¹⁹ The aforementioned "access to pANI and access to "interconnection and colocation". *Id* at p. 4.

²⁰ Since NextGen's case, the FCC expanded some access to NANPA numbering resources to VoIP carriers which do not file CLEC certifications to operate. *Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers* (DA 16-129) (Rel. February 4, 2016). <https://ecfsapi.fcc.gov/file/60001422907.pdf>

²¹ *SDTA Comments* at p. 3.

²² *Ibid.*

²³ Voice over Internet Protocol.

Next, SDTA inaccurately notes that because NextGen filed a CLEC application some of SDTA's members "expected" to receive Section 251/252 interconnection requests subsequent to NextGen's certification – that is, CLEC certification and Section 251/252 requests have a "cause and effect" relationship. Nothing in the NextGen docket or related Commission decisions mandates any such action by NextGen or requires NextGen to use Section 251/252, and there is no evidence for SDTA's assertion. In fact, as cited in NextGen's Comments, the responses that NextGen received *in writing* (emphasis added) from the RLECs in response to the State and NextGen's joint communications regarding interconnection specifically mentioned *only* requests for "Access Service Request (ASR)" forms, not demands for Section 251/252 interconnection requests²⁴ as necessary to complete the network connectivity process.

SDTA argues that while many RLEC members have received joint documentation from the State and "Comtech" / "TCS", none of these documents identify NextGen²⁵. SDTA contends that these documents are insufficient for the purposes of Section 251/252, and NextGen has not provided notice to the Commission of requested interconnection negotiations.²⁶ While NextGen does not acknowledge that a Section 251/252 analysis is appropriate, for purposes of correcting the record, in fact, correspondence to the RLECs clearly identifies NextGen, and explains that

²⁴ *Comments* at Appendix B. This is also discussed, below, on p. 6 and Footnote 25.

²⁵ "... a document from "Comtech" entitled "SOP for CLECS/ILECs Interconnecting to Comtech NG9-1-1 Aggregation Points"; and certain worksheets requesting network related information." *SDTA Comments* at p.5, footnote 9

²⁶ *Ibid.* The confusion over which company was making a request or a lack of "identity" is a puzzling assertion in that SDTA, on behalf of the RLECs, had just been part of NextGen's 2015 certification docket, which included a complete description of NextGen / TCS / Comtech's corporate relationship, and SDTA had signed the Joint Stipulation with NextGen. Also, SDTA comments that many SDTA members were "expecting" to receive an interconnection request, yet, via SDTA, SDTA's members were familiar with the NextGen's docket, thus fully aware of NextGen and the NG9-1-1 project.

NextGen’s communication is for the purpose of helping to arrange the RLEC’s delivery of their 9-1-1 traffic to the NG9-1-1 network.²⁷

As just one example of the multiple notices sent, Appendix C to NextGen’s Comments contains the July 26, 2017 joint correspondence (“July LOA”) from the State and Comtech that clearly explains the introduction of the South Dakota NG9-1-1 network project and specifically mentions “NextGen Communications, Inc.” as one of the involved parties.²⁸ The July LOA explains NextGen’s role, as the agent for the Board, in the “design and construction”²⁹ of the ESInet, and provides very clear instructions (including a positive response to the RLEC’s request for an ASR³⁰) for “. . . carrier interconnection to the ESInet.”³¹ As noted above³², the RLECs would not have responded with a request that NextGen submit an ASR (a document that requests and describes only a simple a network circuit connection) if they expected or required only Section 251/252 interconnection. Further, neither the Board³³ nor NextGen filed interconnection notice with the Commission because the July LOA, since it is a voluntary commitment to connect networks and not a mandatory interconnection process, is not subject to ARSD § 20:10:32:20 and ARSD § 20:10:32:38, nor a part of the Section 251/252 process.

Lastly, SDTA claims that “NextGen’s non-compliance with the ‘Section 251 and 252 provisions’ has necessitated the request for Declaratory Ruling”³⁴ as filed by the 911 Coordination

²⁷ *Comments* at Appendix C. Also, Footnote 18 of the *Comments* details the many times over the last several years that NextGen has provided notice and technical information to SDTA and to the RLECs.

²⁸ *Comments* at Appendix C.

²⁹ *Ibid.*

³⁰ *Comments* at Appendix B. To be clear, even though SDTA maintains that Section 251/252 is the *only* allowable interconnection process, the RLEC’s behavior testifies otherwise. The RLECs did not request a Section 251/252 process, but requested ASRs, and the correspondence shows that NextGen was willing to provide the ASRs.

³¹ *Comments* at Appendix C. See also that the document clearly explains that RLEC’s are included in the list of covered respondents to the request.

³² *Supra* at p. 6.

³³ NextGen is not attempting to speak for or represent the Board as to this issue. The Board may respond separately.

³⁴ *SDTA Comments* at p. 5.

Board. This is incorrect. Nothing in the 911 Coordination Board’s Petition for Declaratory Ruling³⁵ cites non-compliance with Section 251 or 252 as a reason for the filing. In fact, the Petition states, “Interconnection requests were originally sent to South Dakota carriers on December 22, 2015”³⁶ and “Revised requests for interconnection were sent on August 10, 2017.”³⁷ The Board reiterated this position in its December 12 filing, “It was because the Board believed, as stated in the Board’s initial comments, that the threshold requirement of valid requests had been met, that the Board asked for a determination under this statute as to which party, NextGen or SDTA’s rural carriers, had responsibility to transport 9-1-1 traffic to the NG9-1-1 points of interconnection.”³⁸ Therefore, it is apparent that the Board believes (as does NextGen), that sufficient notice of the need / requirement to connect / interconnect was provided multiple times to the RLECs.

3. RLECs Are Responsible for the Transport of Their 9-1-1 Traffic to The NG9-1-1 POIs

NextGen hereby adopts its previous positions on the Petition as articulated in its Comments. In particular, NextGen is concerned that SDTA and the RLECs have either overlooked or misunderstood the most basic elements necessary to a full and fair discussion of the Petition: A) that RLECs have a fundamental obligation to provide 9-1-1 independent of NextGen, B) that NextGen is operating as an “agent” for the state, C) NextGen does not “interconnect” with the RLECs because, rather than a two-way traffic exchange, it provides only one-way gateway into

³⁵ *In the Matter of the Petition for a Declaratory Ruling Determining Responsibility for Rural Carrier Interconnection to the Next Generation 9-1-1 System*, petition of the South Dakota 911 Coordination Board (filed October 27, 2017). (“Coordination Board Petition”) <https://puc.sd.gov/commission/dockets/telecom/2017/tc17-063/petition.pdf>

³⁶ *Coordination Board Petition* at p. 2.

³⁷ *Ibid.*

³⁸ *911 Coordination Board Response* at p. 4.

the State's NG9-1-1 system, and D) therefore, the non-adversarial and non-competitive status of NextGen's project renders traditional Section 251/252 "interconnection" irrelevant to deciding the Petition. NextGen is not an independent actor in the provision of NG9-1-1 services. As a vendor, it is fulfilling under contract, the vision of the Board, the South Dakota Division of Public Safety, and the State of South Dakota for the creation of an NG9-1-1 network.

NextGen is not operating as a commercial "competitor" to the RLECs. NextGen does not create any new financial or business risks for the RLECs. NextGen will not acquire any RLEC customer, nor provide dial tone to an RLEC subscriber, or derive revenue directly from an RLEC customer in replacement of an RLEC service. NextGen is operating to assist the RLECs in their fundamental franchise obligation to provide 9-1-1 services.

NextGen is not even "interconnecting" with RLECs in the traditional sense - NextGen does not send any traffic back to the RLECs – the RLEC's only send their 9-1-1 traffic to NextGen's gateway. Section 251/252 exists to provide the weaker party, the CLEC, with a level playing field upon which to negotiate an arrangement that is not in the incumbent, the RLEC, carrier's best interest. Just the opposite situation exists herein. A competitive adversarial interconnection process is inappropriate. There is nothing to "negotiate." Therefore, the mandatory application of Section 251/252 as a competitive exercise is inappropriate.³⁹

³⁹ It is interesting to note that SDTA's insistence that Section 251/252 is the only path to interconnection would require the RLECs to commit the same infractions as it contends for NextGen. Most of the RLECs provide 9-1-1 service today, as SDTA has noted, through one or more connecting carriers (because RLECs do not "transport" their 9-1-1 traffic outside their "service areas"), yet there are no "9-1-1 only" Section 251/252 approved interconnection agreements between the RLEC and a third-party carrier for the delivery of the RLEC's 9-1-1 traffic on file with the Commission. Therefore, SDTA is incorrect as to the application of Section 251/251 regarding 9-1-1 services.

4. Inappropriate or Misconstrued Application of Section 251/252

A) Section 251/252 Definition of Interconnection Does Not Apply; Therefore, by Law, Section 251/252 Does Not Apply

As detailed previously in NextGen’s Comments⁴⁰, Sections 251 and 252, by law, are not applicable in this situation because the RLEC networks are not linked to NextGen for the purpose of “interconnection” according to its definition under the FCC’s rules. 47 C.F.R. §51.5 defines “interconnection” as “. . . the linking of two networks for *the mutual exchange of traffic*. (emphasis added) This term does not include the transport and termination of traffic.”⁴¹ Delivery of the RLEC’s 9-1-1 traffic to the POIs involves the “transport and termination of traffic, not the “the mutual exchange of traffic.” Instead, NextGen is a gateway that enables the transport and routing of 9-1-1 calls to assist the RLECs with their 9-1-1 obligations under FCC regulations.⁴² “E911 systems route 911 calls through the use of a Selective Router to a geographically appropriate PSAP based on the caller’s location.”⁴³

The purpose of Sections 251 and 252 is to “allow ‘interconnection’ between the [C]LECs’ networks and the incumbents’ networks, enabling “the transmission and routing of telephone exchange service and exchange access. . .[so as to ensure] that customers on a competitor’s network can call customers on the incumbent’s network, and vice versa.”⁴⁴ That is not what is happening here.⁴⁵ The fact the NextGen was required by the FCC to obtain

⁴⁰ *Comments* at p. 12.

⁴¹ “Interconnection. Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.” 47 C.F. R. § 51.5. <https://www.law.cornell.edu/cfr/text/47/51.5> See also *Indiana Bell Tel. Co., Inc. v. Stephan*, 247 F. Supp. 3d 978, 986 (S.D. Ind. 2017); *S. New England Tel. Co. v. Comcast Phone of Connecticut, Inc.*, 718 F.3d 53, 62 (2d Cir. 2013).

⁴² 47 C.F. R. 60.3001

⁴³ *In the Matters of IP-Enabled Services* 20 FCC Rcd 10245, 10250 (2005).

⁴⁴ *Indiana Bell Tel.Co*, 224 F. Supp. at 980-981 [citations omitted].

⁴⁵ [t]elephone exchange service' is defined as 'service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area,' and exchange access as the 'offering of access' thereto. . . . Thus, the interconnection duty as articulated by the Act applies only in the context of local

certification in South Dakota in order to obtain p-ANI⁴⁶ so that it could fulfill the 9-1-1 function pursuant to its contract with South Dakota does not automatically or irrevocably make it a CLEC seeking to interconnect under Section 251/252 for the purpose of the mutual exchange of traffic.

B) Section 251/252 Is Not the Only Path to Interconnection

Again, as noted in its Comments⁴⁷, even if Sections 251/252 were applicable, the mandatory process set forth in those Sections is not the only means by which to negotiate interconnection. The parties may enter into “commercial agreements.” The FCC’s rules “permit parties with a full and fair opportunity, pursuant to the requirements of the 1996 Act, voluntarily to negotiate interconnection agreements.”⁴⁸ Such “commercial agreements” provide an alternative to “the other market-opening provisions under the Act, such as section 251 interconnection rights.”⁴⁹

C) SDTA’s Own Arguments Prove That Section 251/252 Is Inapplicable

SDTA provides a lengthy discussion of Section 251/251, but raises no questions of law which have not been already addressed and dismissed by the analysis in NextGen’s Comments. By FCC definition, NextGen is not seeking “interconnection.” Even so, Section 251/251 is not the only process for carrier interconnection (as demonstrated by the RLEC’s own correspondence to NextGen). NextGen is not seeking any “benefit” from interconnection.⁵⁰ Interconnection (no matter what the process) at “. . . any technically feasible point within the carrier’s network . . .” is

traffic within exchange areas, as distinct from interexchange traffic. “224 F. Supp. At 983

⁴⁶ See discussion of p-ANI *Supra* p.5, and Footnote 15.

⁴⁷ *Comments* at pp. 10-11.

⁴⁸ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 11754, 11762 (1996).

⁴⁹ *In the Matter of Petition of Acs of Anchorage, Inc. Pursuant to Section 10 of the Commc’ns Act of 1934, As Amended, for Forbearance from Sections 251(c)(3) & 252(d)(1) in the Anchorage Study Area*, 22 F.C.C. Rcd. 1958, 1962 ¶ 7, 1972 ¶22 (2007).

⁵⁰ *SDTA Comments* at p. 7.

accommodated and technically feasible because SDN (which the RLECs already connect to) is the RLEC's owned transport affiliate and serves as their monopoly access network.⁵¹

SDTA's misplaced reliance on 47 C.F.R.51.709(c)⁵² – a regulation that only applies to interconnection by wireless carriers – is discussed at length and conclusively rebutted in NextGen's Comments⁵³ - not only because the regulation only applies to wireless carriers, but also because this particular argument of SDTA follows a long discussion in SDTA's Comments regarding the clarity of Congress' direction as to the "intended" transport responsibilities between wireless and incumbent carriers. Consequently, according to SDTA the correct reading of 47 C.F.R.51.709(c), is that the regulation can *only apply to wireless carriers* – which actually contradicts SDTA's position herein. NextGen agrees with the notion of its limited applicability to wireless carriers.

Next, SDTA attempts to refute NextGen's position that Section 251/252 is not controlling as to the Declaratory Ruling.⁵⁴ However, the RLEC's correspondence to NextGen (discussed *supra*) contradicts SDTA's argument. Also, SDTA cites Section 251/252 almost in full, but in doing so undermines its own position. NextGen does not rely on Section 251/252 because it is not seeking "interconnection" - NextGen has nothing to transmit. NextGen does not need any "network elements" from the RLECs, and as detailed by NextGen's attached cost analysis, RLEC responsibility for delivery of their 9-1-1 traffic is neither technically infeasible nor unduly burdensome.⁵⁵

⁵¹ *Ibid.* Interconnection in Sioux Falls, where both NextGen and SDN have POIs, is detailed in NextGen Comments, and the discussion of SDN's role as the RLEC's network is adopted here. NextGen's agreement to interconnect is conditioned on the use of a voluntary process at a mutual colocation.

⁵² *Ibid.*

⁵³ *Comments* at pp. 16-18

⁵⁴ *Id.* at pp. 9-10.

⁵⁵ *Id.* at pp.10-11.

SDTA states, in its Footnote 17, that “NextGen is not the only NG9-1-1 services provider and is in competition with other carriers or providers”⁵⁶, with a presumed result that failure to file negotiated Section 251/252 interconnection agreements for 9-1-1 with the Commission would deny these “other” providers access to the terms and conditions of those agreements.⁵⁷ NextGen’s NG9-1-1 contract for South Dakota calls for only one ESInet with two gateways / POIs for the receipt of carrier 9-1-1 traffic. There is no provision for a “parallel” or “competitive” simultaneous NG9-1-1 network.⁵⁸ Nevertheless, NextGen agrees with SDTA that when such approved interconnection agreements exist, that they be made available for adoption by a qualified third-party. Therefore, as NextGen cited in its Comments⁵⁹, inasmuch as there are approved RLEC interconnection agreements with other carriers that contain RLEC 9-1-1 transport commitments to the POIs, these RLECs should deliver their 9-1-1 traffic to the POIs per the terms of those adoptable interconnection agreements, and the Commission, for the consistency and fairness reasons cited by SDTA above, can easily resolve the Declaratory Ruling Petition by affirming the remaining RLECs’ duty to deliver their 9-1-1 traffic to the POIs (or, do so by Order to SDN). This result would be consistent with SDTA’s argument.

Finally, although SDTA repeatedly argues that Section 251/252 interconnection is mandatory, it cites one of NextGen’s suggested interconnection methods (“indirect interconnection through SDN”⁶⁰) as an “exception” to the Section 251/252 requirement. Interexchange carriers use SDN’s tariff and thus gain access to the RLEC’s networks without

⁵⁶ Id. at p. 12.

⁵⁷ These benefits would flow to the “other” providers per the adoption provisions of Section 251/252 as cited by SDTA and discussed by NextGen in its Comments at p. 15.

⁵⁸ NG9-1-1 network architectures assume that in a given geography, such as a state, there would only be one network connecting to the Public Safety Answering Points. See generally NENA i3 specifications. https://www.nena.org/?page=i3_stage3

⁵⁹ Ibid, and see also Appendix A of the *Comments* for a list of RLEC interconnection agreements.

⁶⁰ *SDTA Comments* at p. 14.

interconnection agreements. VoIP providers can gain access to the RLECs networks without interconnection agreements.⁶¹ Again, the facts as cited by SDTA lead to three unavoidable conclusions: Section 251/252 is not mandatory, is not the exclusive method for interconnection, and is not a prerequisite to 9-1-1 transport.

5. Cost of 9-1-1 Traffic Transport Proves No Undue Burden for RLECs To Transport Their 9-1-1 Traffic to The POIs

A) SDTA Has Not Provided Costs for 9-1-1 Transport

Despite spending over 50% of the pages in its pleading engaged in a defense against what it fears will result in the imposition of “excessive financial or operational burdens”⁶² on RLEC operations caused by the transport of 9-1-1 traffic, the SDTA never provides the most compelling facts (which it logically possesses) regarding this question: i.e., actual 9-1-1 transport cost data. NextGen has rectified this by submitting for the Commission’s consideration data derived from the RLECs 9-1-1 records that demonstrate the cost impact on the RLECs would not rise to the level of being an undue burden.

B) Cost Analysis Proves 9-1-1 Transport Is Not an Undue Burden on the RLEC

SDTA’s primary argument against the recognition of RLEC 9-1-1 transport obligations is that these obligations would cause a “substantial” increase in costs that would ultimately be passed along to RLEC end-users.⁶³ To address this concern, NextGen has analyzed contemporary Landline (including RLEC) 9-1-1 call volume over the past 12-months. It has applied this call

⁶¹ Ibid. SDTA makes the point for NextGen – Section 251/252 is not the exclusive controlling authority for the Declaratory Ruling.

⁶² *SDTA Comments* at p. 10.

⁶³ *Id.* at p. 17. As noted in its *Comments*, NextGen sometimes cannot differentiate SDTA’s arguments as between the requirement to transport traffic or the cost to transport traffic. In this case, NextGen assumes that the most basic objection is only the cost of transport. In other words, and not to speak for SDTA, if it could be shown that the costs for traffic transport were reasonable (i.e., not unduly burdensome), that SDTA would not object to the requirement.

volume to SDN's transport tariff, and calculated the annual incremental cost per access line for 9-1-1 transport to the NG9-1-1 POIs.⁶⁴ NextGen used traffic data interpolation for a small part of 2017 (when data was not available); however, the assumptions are reasonable and generous as to SDTA's position. The calculations, using SDN's intrastate tariff⁶⁵ rates, result in an **incremental annual cost of less than \$0.01 per access line for the RLEC's to transport 9-1-1 traffic to the gateway / POIs**, an expense so low that it cannot qualify as an impermissible burden on either the RLECs or their ratepayers, particularly in view of the substantial incremental benefits of NG9-1-1 services. To be fair, this design may entail some small one-time expenses for SDN switch programming or cross-connections in the colocation; however, since SDN does not have approved tariff charges for these items, so they have not been included. They may exist in a commercial interconnection negotiation, but would be insignificant to this analysis.

6. Conclusion

NextGen sincerely appreciates the opportunity to present its position in this discussion and is grateful to the Commission Staff, SDTA, SDN, and the Board for their participation. South Dakota deserves a world class NG9-1-1 system supported through the proposition that all originating service providers will be treated the same as to their obligations to deliver their traffic to the NG9-1-1 POIs. A careful review of the Comments in this proceeding, the relevant state and federal law and regulations, technical network design, transport economics, and the documented actions of the RLECs leads to the inescapable conclusion that the RLECs have the sole responsibility for delivering their 9-1-1 traffic to the NG9-1-1 POIs in South Dakota.

⁶⁴ See Appendix A. Note that this analysis does not include the benefit of any reduction of current costs to the RLECs for 9-1-1 transport. It also excludes any NextGen termination charges which, while permissible, are not currently in place.

⁶⁵ As noted in Footnote 14, *Supra*, NextGen provides SDN transport as an illustration, not as a commitment.

Dated this 16th day of January 2018

Respectfully Submitted,

/S/ Kim Robert Scovill

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CERTIFICATE OF SERVICE

I hereby certify that an original of the Reply comments, dated January 16, 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

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

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Dated this 16th day of January 2018.

Respectfully Submitted,

/S/ Kim Robert Scovill

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Reply of NextGen Communications, Inc.

COST ANALYSIS

APPENDIX A

Calculation of NG9-1-1 Actual Call Transport Costs Over SDN

Reply of NextGen Communications, Inc.

COST ANALYSIS

Appendix A – Calculation of NG9-1-1 Actual Call Transport Costs Over SDN

Analysis of annual costs for transport of 9-1-1 calls (per minute) from RLECs to the NG9-1-1 / SDN POI in Sioux Falls, SD (both POIs are at the same physical address), based on SDN's current Intrastate Tariff. Does not include equipment (deemed insignificant since carriers already interconnect to SDN and incremental traffic volumes are small), or one-time costs.

Because NextGen provides the 9-1-1 CPE in South Dakota, we capture statistics for all 9-1-1 calls; we have records for call volume, call type, and call duration.

ESTIMATED YEARLY TRANSPORT COSTS – ALL LANDLINE 9-1-1 CALLS

Total 2017 Landline 911 Calls (all LECs and RLECs)	REDACTED	
Average Per Call Duration		
Total 911 Call Minutes		
Total Number of SDTA and Qwest Access Lines	164,567	
Transport Costs -SDN Current Intrastate Transport Tariff Rate	\$0.008 Per Minute	
Annual Costs to Transport ALL Landline 9-1-1 Traffic	REDACTED	
Annual Cost p/Landline Company p/Access Line (approx.)		

Calls / traffic must be costed via per-minute costs. There is no distance sensitivity / cost.

Reply of NextGen Communications, Inc.

COST ANALYSIS

Background Data

The provided counts capture 9-1-1 traffic for sites live on our platform only. The cut dates for the SD sites and their workstation counts are below,

Title	PSAP
1	Pennington
2	Brookings
3	Metro
4	Metro Backup
5	Winner
6	Mitchell
7	Pierre
8	Brown
9	Mobridge
10	Watertown
11	Huron
12	Lincoln County
13	Lawrence
14	Yankton
15	Union CO
16	Lake County
17	Clay
18	Spink County
19	Custer
20	Roberts County
21	Moody
22	Marshall
23	Miner County
24	Charles Mix
25	Bon Homme
26	Meade
27	Spearfish
28	Fall River
29	Butte County

REDACTED

Reply of NextGen Communications, Inc.

COST ANALYSIS

9-1-1 Call Type	TOTAL 2017 Call Counts
Wireless	REDACTED
Landline	
Other	
Total	

Average 9-1-1 call duration over the past 12 months ending December 2017 is:

REDACTED

Calculations:

REDACTED

Reply of NextGen Communications, Inc.

COST ANALYSIS

SOUTH DAKOTA NETWORK, LLC (SDN)

Title Page

SOUTH DAKOTA NETWORK, LLC

TELECOMMUNICATIONS TARIFF

FILED WITH

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

REGULATIONS, RATES, AND CHARGES APPLYING TO

THE PROVISION OF ACCESS SERVICE FOR

CONNECTION TO INTRASTATE COMMUNICATIONS FACILITIES

FOR CUSTOMERS WITHIN THE

OPERATING TERRITORY OF

SOUTH DAKOTA NETWORK, LLC

AS DEFINED HEREIN

**Effective October 1, 2007,
the terms, conditions and rates contained herein
replaces and cancels in its entirety
SDN, Inc. South Dakota Tariff No. 1.**

Issued: September 12, 2007

Effective: October 1, 2007

By: SDN Chief Executive Officer

**2900 West 10th Street
Sioux Falls, South Dakota 57104
SOUTH DAKOTA TARIFF NO. 2**

Reply of NextGen Communications, Inc.

COST ANALYSIS

ACCESS SERVICE

South Dakota Network, LLC

Original Page 205

5. Switched Access Service (Cont'd)

5.7 Rates and Charges
d

5.7.1

Centralized Equal Access Service

Rate
Per Access Minute

\$0.0080

Rate
Per Call Blocked

5.7.2 Network Blocking

\$0.0271

Rate
Per Access Minute

5.7.3 Switched Transport

\$0.0000

Rate
Per Order

5.7.4 Interim NXX Translation

\$181.00

Reply of NextGen Communications, Inc.

COST ANALYSIS

South Dakota Public Utilities Commission

**A REPORT ON TELECOMMUNICATIONS COMPANIES' OPERATIONS
FOR THE YEAR 2016**

ILEC LISTING BY NUMBER OF LINES IN SERVICE

<u>Company</u>	<u>Lines</u>
2 Golden West Telecommunications Cooperative, Inc.	33,985
3 Venture Communications	12,447
4 Interstate Telecommunications Coop., Inc.	11,198
5 Alliance Communications Cooperative, Inc.	9,804
6 City of Brookings, dba Swiftel Communications	9,217
7 Midstate Communications, Inc.	4,170
8 Ft. Randall Telephone Company	3,934
9 Santel Communications Cooperative, Inc.	3,799
10 West River Cooperative Telephone Company	3,067
11 Valley Telecommunications Cooperative Association, Inc.	2,791
12 West River Telecommunications Cooperative	2,607
13 James Valley Cooperative Telephone Company	2,561
14 Cheyenne River Sioux Tribe Telephone	2,449
16 TrioTel Communications, Inc.	2,282
18 Beresford Municipal Telephone Company	1,187
19 Kennebec Telephone Co., Inc.	634
20 Faith Municipal Telephone Company	282
	<u>Total SDTA Access Lines: 106,414</u>
Qwest Corporation	58,153
Total Landlines:	164,567

SDTA Companies (17) and Qwest listed above are copied from the Commission's 2016 Annual Report's list of ILECs by lines in services, and are listed as SDTA Members on SDTA's website (as of 12/29/17). STDA members not listed above include; Roberts County Telephone COOP

References:

<http://sdtaonline.com/members/sdta-members/>

<http://puc.sd.gov/commission/telecom/annualreports/operations2016.pdf>