



Advocating for South Dakota's Rural Broadband Providers

December 19, 2017

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Docket TC17-063 (In the Matter of the Petition for Declaratory Ruling by the Department of Public Safety/911 Coordination Board)

Dear Ms. Van Gerpen:

Enclosed for filing in the above referenced docket you will find the electronic original of the "Initial Comments of the South Dakota Telecommunications Association."

As is evidenced by the Certificate of Service attached to these SDTA Comments, service has been made to representatives of the other parties to the Docket.

Thank you for your assistance in filing and distributing copies of this document.

Sincerely,

Richard D. Coit
SDTA Executive Director and General Counsel

CC: Service List

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

IN THE MATTER OF THE PETITION FOR A)	
DECLARATORY RULING BY THE DEPARTMENT)	
OF PUBLIC SAFETY/911 COORDINATION BOARD	)	DOCKET TC17-063
REGARDING DETERMINING RESPONSIBILITY FOR)	
RURAL CARRIER INTERCONNECTION TO THE NEXT)	
GENERATION 9-1-1 SYSTEM)	

**INITIAL COMMENTS OF THE
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

The South Dakota Telecommunications Association (hereinafter referenced as "SDTA"), by and through its attorneys, hereby provides its Initial Comments in response to the Petition for Declaratory Ruling (hereinafter referenced as "the Petition") filed by the South Dakota 911 Coordination Board/Department of Public Safety which forms the basis for the above captioned proceeding. Specifically, the Petition asks this Commission to rule on the following issue:

"Whether it is NextGen [NextGen Communications, Inc.] or the rural carriers comprising SDTA that has the responsibility to transport 911 traffic between rural carriers' service areas and NextGen's centralized points of interconnection?"

I. BACKGROUND

SDTA was granted intervention in this proceeding by a Commission "Order Granting Intervention" dated November 15, 2017. As noted in SDTA's Petition to Intervene, SDTA is an incorporated organization representing the interests of numerous cooperative, independent, and municipal telephone companies operating throughout the State of South Dakota. All the SDTA member companies operate as "rural telephone companies" for purposes of the Federal Telecommunications Act of 1996 and also the related state laws

enacted in 1998 addressing local exchange service competition (SDCL § 39-31-69, et. seq.).¹ As rural telephone companies engaged in the provisioning of voice communication services to local end user subscribers, every SDTA member company is involved in the origination of 911 calls destined for Public Safety Answering Points (PSAPs) located throughout the State of South Dakota.

The question presented by the 911 Coordination Board's Petition concerns, specifically, the transport that is necessary for the origination and delivery of 911 voice calls from each of the rural telephone companies to NextGen points-of-presence in South Dakota, so that ultimately these 911 calls may be directed through NextGen's "Selective Routing" equipment to the proper PSAPs in South Dakota for emergency services dispatch.² In regards to originating 911 transport obligations, SDTA first voiced concerns to the Commission on behalf of its member companies in the latter part of 2015. On August 17, 2015, NextGen filed an Application for a Certificate of Authority with the Commission seeking authority to provide local exchange and interexchange services in the State of South Dakota.³ The Commission addressed that application in Docket TC15-06 and within the context of that proceeding, SDTA and NextGen engaged in discussions concerning originating 911 transport and the appropriate meet points or points of interconnect for 911 traffic delivery. No agreement resolving the interconnection issue could be reached between the parties in that

¹ It should be noted that SDTA represents most, but not all the "rural telephone companies" operating in South Dakota. Neither Long Lines d/b/a Jefferson Telephone Company nor Vast Broadband are members and SDTA's incumbent local exchange carrier membership also does not include those rural telephone companies that are listed in the Commission's Annual Report as "Foreign Exchange Carriers". These ILECs that are not SDTA members also would obviously have an interest in, and may be impacted by, a Commission ruling on the filed Petition for Declaratory Ruling.

² A listing of all PSAPs in South Dakota can be obtained at <https://dps.sd.gov/resource-library/PSAP-Contact-Sheet-And-Coverage-Map.docx-441>.

³ See Commission Docket TC15-062, In the Matter of the Application of NextGen Communications, Inc. for a Certificate of Authority to Provide Local Exchange and Interexchange Service in the State of South Dakota.

proceeding, but to at least clear the way for Commission action on NextGen's application for local exchange and interexchange service certification, a "Joint Stipulation" was crafted, agreed upon, and filed by SDTA and NextGen.⁴ That Joint Stipulation includes the following language in relation to the unresolved 911 transport issue(s):

NextGen has indicated to SDTA that it "does not provide for the origination of the 911 call," indicating that it does not believe that it has any responsibility for the transport of 911 traffic until it reaches its centralized point of interconnection (POI) in South Dakota. SDTA does not agree with this stated assessment or position. NextGen's centralized POI will in many cases be far removed from existing rural carrier service areas and, relative to 911 traffic origination, 911 traffic exchange arrangements have historically recognized the local character of 911 calls and the more limited geographic presence of rural telephone companies -- 911 originated calls destined to centralized POI(s) of the statewide 911 services provider have generally been picked up at or near rural telephone company service areas, at long established "meet points." The Parties agree that any certification(s) issued by the Commission in this proceeding granting any local exchange service or interexchange service authority to NextGen will not address this unresolved issue, and shall not affect or constitute any precedent relative to this, as of yet, unresolved transport obligations issue relating to the carriage of originated 911 traffic. In addition, neither this Stipulation nor any final Commission Order issued in this Docket shall preclude either SDTA, its member companies, or NextGen from later initiating a separate proceeding or proceedings with this Commission for a resolution of and to obtain compensatory relief that may be due related to this unresolved transport obligations issue.⁵

In Docket TC15-062, this Commission, by a vote of 2-1, issued an Order Granting a Certificate of Authority and certain requested waivers to NextGen. In part, that Order also specifically approved and incorporated by reference the Joint Stipulation presented by SDTA and NextGen.⁶

⁴ See Joint Stipulation filed in Docket TC15-062 dated December 17, 2015.

⁵ *Id.* at par. 7, pages 3 and 4.

⁶ Docket TC15-062, *Order Granting Certificate of Authority and Granting Waiver*.

It is important to note that the “Application” filed by NextGen in the TC15-062 proceeding indicated generally that NextGen was seeking competitive local exchange carrier certification from this Commission 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 in order for it “to aggregate and transport emergency calls and/or calling data”).⁷ In relation to “interconnection,” the Application provided a listing of local exchange carriers with which the company planned to interconnect. This listing, in addition to including a reference to CenturyLink, SDN, AT&T and other larger carriers, also named three rural telephone companies operating in the State, including “Golden West”, “Swiftel” and “WOW” [now Vast Broadband].⁸

Based on the fact that the Application filed by NextGen in Docket TC15-062 was in part seeking competitive local exchange carrier (CLEC) status and given references in the Application to a need for interconnection with certain incumbent local exchange carriers, it was SDTA’s expectation that soon after the Commission issued its final certification Order, NextGen would directly present requests for interconnection negotiations to at least some of the SDTA member companies and that copies of or notices of these requests would be filed with this Commission. This, however, has not been the case. NextGen has failed to properly initiate the carrier-to-carrier interconnection process provided for under 47 U.S.C. §§ 251

⁷ *Id.*, Application filed August 17, 2015, par. 8, p. 3, and *Joint Stipulation* paragraphs 5 and 6, p. 3.

⁸ *Id.* Application par. 13, pp. 3 and 4.

and 252 and under various related South Dakota statutes (SDCL §§ 49-31-79 thru 49-31-82) -- the process that all regulated incumbent local exchange carriers, including rural telephone companies must follow in working through interconnection specifics with other competing carrier entities (other CLECs, Commercial Mobile Radio Service (CMRS) providers, etc.).⁹ At least in part, NextGen's non-compliance with the "Section 251 and 252" provisions has necessitated the request for Declaratory Ruling filed by the South Dakota 911 Coordination Board/Department of Public Safety.

II. THE FEDERAL 47 U.S.C. §§ 251 AND 252 INTERCONNECTION STANDARDS AND PROCEDURES INDICATE CLEARLY THAT NEXTGEN IS REQUIRED TO RECEIVE ORIGINATING 911 TRAFFIC AT MEET POINTS OR POINTS OF INTERCONNECTION WITHIN THE EXISTING RLEC LOCAL EXCHANGE NETWORKS

Under the Petition for Declaratory Ruling presented by the South Dakota 911 Coordination Board, the Commission is asked to "rule as to 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." SDTA understands this question as more precisely asking whether RLECs throughout the State must deliver 911 calls, or assume originating 911 transport obligations, to centralized points of interconnection that NextGen would like to establish at locations off the existing local

⁹ Over the past several months, many of the SDTA member companies have received jointly from the State and "Comtech" and "TCS" certain "Circuit Facility Assignment" (CFA) authorizations, a document from "Comtech" entitled "SOP for CLECS/ILECs Interconnecting to Comtech NG9-1-1 Aggregation Points"; and certain worksheets requesting network related information. None of these documents received by SDTA's rural telephone company members, however, identify NextGen as the entity requesting interconnection or include information sufficient to indicate whether the interconnection being requested is presented under 47 U.S.C. Section 251(a) or 251(c). In addition, to SDTA's knowledge, neither NextGen nor Comtech/TCS has provided this Commission with notice that it has made a request for interconnection or other network services pursuant to the federal and state statutes and administrative rules. Of note, the provisions of ARSD § 20:10:32:20 and ARSD § 20:10:32:38 require that the Commission be given notice of any requests for "negotiations," "interconnection, services, or network elements."

exchange carrier networks and outside of existing RLEC service areas (more specifically at locations in or near Sioux Falls or Rapid City, South Dakota). Regarding this restated question, SDTA believes the answer is clear based on the established 47 U.S.C §§ 251 and 252 interconnection standards and procedures.

This petition for Declaratory Ruling is brought pursuant to SDCL 1-26-5, which states, “each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency” Accordingly, as the issue is framed by the Department, the Commission must determine that SDCL § 49-31-79 and by extension, the 47 USC §§ 251 and 252 requirements, apply to 911 traffic.

As our South Dakota Supreme Court has stated regarding statutory interpretation, “[w]hen regulatory language is clear, certain and unambiguous, [its] function is confined to declaring its meaning as clearly expressed.” Westmed Rehab, Inc. v. Dept. of Soc. Servs., 687 N.W. 2d 516, 518 (2004), quoting Schroeder v. Dept. of Soc. Servs., 545 N.W.2d 223, 227–28 (1996). “When engaging in statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole, as well as enactments relating to the same subject. When the language in a statute is clear, certain, and unambiguous, there is no reason for construction, and this Court's only function is to declare the meaning of the statute as clearly expressed.” Citibank, N.A v. S.D. Dept. of Revenue, No 26933, dated July 29, 2015 citing Paul Nelson Farm v. S.D. Dep't of Revenue, 2014 S.D. 31, ¶ 10, 847 N.W.2d 550, 554. Also, “words may not be inserted in a statutory provision under the guise of interpretation.” In re Petition for Declaratory Ruling re SDCL 62-1-1(6), 877 N.W. 2d 340, 344 (2016). “[W]hen this Court

interprets legislation it cannot add language that simply is not there.” Id. citing State v. Hatchett, 844 N.W. 2d 610, 615 (2014).

47 U.S.C. § 251, in relevant part, requires generally that “[e]ach telecommunications carrier has the duty – (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers” This general duty is then more specifically defined as it relates to incumbent local exchange carriers under the provisions of subsection 251(c) which, as to the interconnection obligation, references the “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . at any technically feasible point within the carrier’s network”

These provisions, in SDTA’s view, display a clear intention that 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).

Also, SDTA is not aware of any other federal or state statutes, rules or decision that could be relied on for a different interpretation of the Section 251 provisions or to expressly impose greater transport obligations and costs on wireline local exchange carriers for 911 traffic delivery. Although the FCC in 2002 took action through an “Order on Reconsideration”

to clarify the demarcation point for allocating costs between wireless carriers and PSAPs with respect to the delivery of “Phase I” and “Phase II” enhanced 911 information (voice call and location data), there has been no similar action addressing wireline carrier E911 or NG911 obligations.¹⁰ And, further, the FCC gave recognition in this prior Order on Reconsideration of important differences existing between wireless and wireline services in the way they are regulated, noting that this would support different treatment in relation to designating a demarcation point for E911 implementation.¹¹

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.

Further, the Section 251 and 252 provisions establish a process through which the facts relating to interconnection disputes between carriers may be reviewed and resolved by the Commission. Before this Commission could take any action that would impose increased transport obligations on rural ILECs throughout the State, these federal and state interconnection procedures must be followed. Rural carriers have rights under the Federal Sections 251 and 252 provisions, and the State laws implementing these sections, to seek Commission review of any interconnection requests that may be technically infeasible, would impose undue economic burdens, would conflict with universal service goals, or

¹⁰ See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, FCC 02-146, released July 24, 2002.

¹¹ *Id.* at paragraphs 14 and 15.

otherwise be inconsistent with the public interest convenience or necessity. The question presented by the Declaratory Ruling not only raises legal questions, but also presents factual issues concerning carrier impacts and cost recovery that this Commission would certainly need to address (if no negotiated agreement for interconnection can be reached between NextGen and the rural telephone companies affected).

III. THE FEDERAL INTERCONNECTION PROVISIONS SET FORTH IN 47 U.S.C. §§ 251 AND 252 AND IN RELATED STATE STATUTES ARE APPLICABLE TO THE NETWORK INTERCONNECTION NECESSARY FOR RURAL INCUMBENT LOCAL EXCHANGE CARRIERS TO DELIVER 911 CALLS TO NEXTGEN AND MUST BE CONSIDERED BY THE COMMISSION IN RULING ON THE FILED PETITION.

NextGen appears to be of the view that the provisions contained in 47 U.S.C. § 251 relating generally to “interconnection” between telecommunications carriers and the provisions contained in 47 U.S.C. § 252 establishing “procedures for negotiation, arbitration, and approval of agreements” for “interconnection, services, or network elements” are entirely inapplicable to the issue of how transport responsibilities involving the delivery of 911 calls to NextGen’s service platform should be addressed. NextGen’s actions to date, since this Commission took its final action in Docket TC15-062, suggest that the company now believes that any agreement between it and any incumbent local exchange carriers operating in South Dakota, so long as the traffic involved is 911 related, can be negotiated and entered into without any regard to the Section 251 and 252 provisions. SDTA strongly disagrees with NextGen’s position and is aware of no other federal or state statutes or federal or state administrative rules that can be relied on to reasonably support the contention that NextGen, as a CLEC, does not have to follow the provisions of 47 U.S.C. §§ 251 and 252 in seeking network connections with regulated incumbent local exchange carriers, and in particular

with rural telephone companies. To SDTA's knowledge, nothing in the current federal or state statutes or the federal or state administrative rules would support such a claim.¹²

The provisions of 47 U.S.C. §§ 251 and 252 are intended to facilitate interconnection arrangements between carriers for the exchange of and seamless flow of telecommunications traffic. In addition, the provisions have special relevance to this Docket because in several respects they give recognition to the increased cost recovery challenges faced in rural areas with lower population densities and higher capital and operational costs. Included within Sections 251 and 252 (and within the implementing state statutes and rules) are various rural protections/safeguards specifically intended to ensure that any interconnection requirements applied to rural telephone companies do not impose excessive financial or operational burdens that may threaten accomplishment of federal "universal service" goals (the continued availability and affordability of basic telecommunications services, including broadband Internet access services for rural area consumers).

For purposes of this declaratory ruling proceeding, SDTA would highlight the following 47 U.S.C. §§ 251 and 252 statutory language:

§ 251(a) setting forth the general duties applicable to all telecommunications carriers, including the duty to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.";

§ 251(b) setting forth specific service obligations imposed on all local exchange carriers in relation to requests for services from competing providers;

§ 251(c) listing a set of "additional obligations" for "incumbent local exchange carrier[s], including the "duty to negotiate" with other carriers; the duty to provide "interconnection with the local exchange carriers' network, the duty to provide nondiscriminatory access to network elements on an unbundled basis; the duty to offer resale at wholesale rates any

¹² See 47 C.F.R. §§ 9.5, 9.7, 20.11, 20.18, 64.605, 64.706, 64.3000 to 64.3005 and Part 51.

telecommunications service that the local exchange carrier offers on a retail basis; the duty to provide reasonable public notice of network changes; and the duty to provide for “physical colocation” of the equipment of other interested telecommunications carriers;¹³

§ 251(f)(1) providing an “exemption” for certain rural telephone companies from the obligations set forth in § 251(c) until the rural telephone company has received a “bona fide request for interconnection, services, or network elements” and the State commission has concluded, after an inquiry, that the request made by the other carrier is not “unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions found in section 254”;

§ 251(f)(2) allowing incumbent local exchange carriers with fewer than 2% of the Nations’ subscriber lines to petition the State commission for a suspension or modification of any of the exchange service requirements contained in subsections 251(b) or 251(c)¹⁴;

§ 252(a)(1) allowing for the negotiation of agreements between incumbent local exchange carriers and other carriers without regard to the “standards” set forth in subsections 251(1)(b) or 251(c), but also stating that any such agreement must be submitted to the State Commission for approval;

§ 252(a)(2) giving State commissions authority to mediate differences arising in the course of carrier negotiations;

§ 252(b)(1) giving either the incumbent local exchange carrier or any other carrier or party to a negotiation a right to petition the State commission to arbitrate any open issues; and

§ 252(e) requiring that any interconnection agreement adopted by negotiation or arbitration be submitted to the State commission for approval.¹⁵

Emphasis added.

¹³ It should be noted that, to SDTA’s knowledge, all the SDTA member rural telephone companies continue to hold the rural interconnection “exemption” provided for under this subsection of the FCC rules, which generally exempts rural telephone companies from the 47 U.S.C. § 251(c) obligations. This Commission has not issued any orders that specifically terminate the exemption provided. In addition, it should be mentioned that one of the obligations contained within § 251(c) is the duty for interconnection “at any technically feasible point within the carrier’s network.”

¹⁴ Under this subsection, State Commissions are required to grant any such petition if it is determined that the requested suspension or modification “(A) is necessary— (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience, and necessity.

¹⁵ State commissions are specifically directed to approve or reject the interconnection agreement that is filed. They are authorized to reject any agreement filed upon finding that (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity . . .”

The above referenced statutes are intended to ensure that State commissions are involved in the process of evaluating the technical feasibility and costs associated with providing interconnection or other carrier-to-carrier wholesale services, particularly regarding the provisioning of such services by rural telephone companies. The statutes very appropriately recognize that if rural carriers and rural end users are unduly burdened by any of the interconnection requirements it could negatively affect the achievement of other “universal service” goals set forth in the Federal Communications Act (47 U.S.C. § 254). In addition, the statutes mandate that any interconnection agreements reached between incumbent local exchange carriers and other carriers must be filed for Commission approval. More specifically, these agreements are subject to review by State commissions to ensure that their terms are “consistent with the public interest convenience and necessity” and that they do not “discriminate against a telecommunications carrier that is not a party to the agreement. Emphasis added”¹⁶

It is SDTA’s position that the carrier-to-carrier interconnection provisions set forth in 47 U.S.C. §§ 251 and 252 and in related state statutes are applicable to the network connections at issue in this Docket. By taking the position that it does not have to follow the standards and processes for interconnection set forth in the federal and state law, NextGen is asking this Commission to set aside important rural carrier and rural consumer protections and to also ignore the Commission’s legal obligation to review and approve the agreements that are reached between regulated ILEC carriers and other competing carriers/providers.¹⁷ SDTA does not believe the Commission has such authority.

¹⁶ See Section 251(e), SDCL § 49-31-81, and ARSD § 20:10:32:21.

¹⁷ Clearly, NextGen is not the only NG911 services provider and is in competition with other carriers or providers that are engaged in the provisioning of 911 related support services. Under the provisions of Section 251 and 252 ,

If NextGen (or indirectly its affiliated company Comtech/TCS) desires interconnection with any rural telephone company in the State, it must follow the process that any other CLEC would follow. Specifically, because NextGen exists as a certified CLEC in South Dakota and is seeking interconnection for the purpose of receiving 911 calls (traffic which has historically been treated as local and not subject to access charges), the company may be seeking interconnection services under the ambit of 47 U.S.C. § 251(c). This would in turn mean that its requests for interconnection are subject to the “exemption” provided rural telephone companies under subsection 251(f)(1). In such case, NextGen would be obligated to submit to each of the rural telephone companies in South Dakota a “bona fide request” for “interconnection, services, or network elements” that fulfills the specific informational requirements put in place under ARSD § 20:10:32:37. The company would also be required, pursuant to ARSD § 20:10:32:38, to provide this Commission with “notice” concerning any such request. Rural telephone companies must under that same administrative rule review the request and inform the requesting party and the Commission whether they dispute that the request meets a “bona fide” status. This action must occur within 10 days after the rural telephone company receives the request for interconnection or other network services. If the rural telephone company does not dispute that the request received is a bona fide request, the rule states that the “[C]ommission shall initiate a proceeding to determine if the rural telephone company shall comply with the request unless the rural telephone company receiving the request waives its exemption.”

it is envisioned that these other competing entities would have some access to the rates, terms or conditions included within any agreement that is reached between a rural telephone carrier and NextGen. See 47 U.S.C. §§ 251(c)(2)(C) and (D) and 252(e)(2)(i) and (ii). This purpose is frustrated, if any such agreements are never filed with State commissions and made available for review by other interested entities.

NextGen apparently believes that as a provider of NG911 it may forgo the established 47 U.S.C. §§ 251 and 252 procedures and simply negotiate private commercial agreements that would give it either direct or indirect connections with each of the rural incumbent local exchange carriers in the State. SDTA does not agree and would further point out that the filed Petition for Declaratory Ruling which merely seeks a general legal review and determination by the Commission related to originating transport responsibilities does not have the effect of displacing the Section 251 and 252 interconnection provisions. Regardless of what decision the Commission may make on the Petition filed, all the various federal and state substantive and procedural requirements governing interconnection must be deemed applicable.

IV. THE ORIGINATING TRANSPORT OBLIGATIONS IMPOSED ON RURAL TELEPHONE COMPANIES SHOULD NOT BE CHANGED WITHOUT DUE CONSIDERATION OF BOTH THE IMMEDIATE AND POTENTIAL LONGER-TERM IMPACTS

As to the filed Petition and the question raised, SDTA would urge the Commission to proceed carefully and seriously consider both the immediate and longer-term impacts of any decision that would expand rural carrier transport responsibilities to meet points or points of interconnection that exist outside RLEC exchange areas or service areas. What NextGen is seeking through this process is an extreme shift as to how transport obligations and associated costs have historically been divided between smaller carriers which generally serve less dense, rural service areas and larger carriers, which often operate in multiple states and are more focused on serving urban customers. No other telecommunications carriers/service providers having connections (either direct or indirect) with the SDTA member RLECs today for traffic exchange (whether it be local or long-distance traffic) view themselves as exempt from having to arrange for transmission either into or out of the

existing rural telephone company service areas. Interexchange carriers or long-distance providers many of which use indirect interconnection through SDN pay access charges for the origination and termination of their traffic into the rural service areas. Competitive local exchange carriers that need to exchange local traffic with another local exchange carrier establish meet points for such purpose within rural service areas or very close to service area boundaries. CMRS providers in exchanging “non-access” Intra-MTA wireless traffic use direct connections to points of interconnect within the RLEC exchange areas or pay for transiting services to reach meet points within RLEC service areas.¹⁸ CMRS providers, for Inter-MTA traffic either received from or destined for RLEC customers, pay access charges. And, the traffic of interconnected VoIP providers is also subject to originating and terminating access charges per the FCC rules to reimburse local exchange carriers for use of local exchange network facilities.

Specifically, what NextGen is proposing is that RLECs in South Dakota would be responsible for delivering all 911 calls originated by their local area end users to centralized points of interconnection established in the cities of Sioux Falls and/or in Rapid City. This in some cases would require rural carriers to deliver 911 calls, which historically have been viewed as local calls traveling to local area PSAPs, to locations that are hundreds of miles

¹⁸ CMRS providers are specifically obligated to arrange and pay for transport to and from rural telephone company areas (for the purpose of exchanging non-access, IntraMTA traffic) pursuant to 47 C.F.R. § 51.709(c) which reads as follows: *For Non-Access Telecommunications Traffic exchanged between a rate-of-return regulated rural telephone company as defined in §51.5 and a CMRS provider, the rural rate-of-return incumbent local exchange carrier will be responsible for transport to the CMRS provider's interconnection point when it is located within the rural rate-of-return incumbent local exchange carrier's service area. When the CMRS provider's interconnection point is located outside the rural rate-of-return incumbent local exchange carrier's service area, the rural rate-of-return incumbent local exchange carrier's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point. This paragraph (c) is a default provision and applicable in the absence of an existing agreement or arrangement otherwise.*

from the rural telephone company service areas.¹⁹ Without question, any Commission action increasing rural local exchange carrier transport responsibilities so significantly would be unprecedented. Moreover, moving a greater share of total statewide 911 system costs to rural carriers could ultimately have the effect of penalizing rural area telecommunications end users to the benefit of end users residing in non-rural service areas. Currently, the “911 emergency surcharges” collected from wireline and wireless telecommunications service users in South Dakota are, in part, used to reimburse the transport costs incurred by rural carriers relating to 911 transmission.²⁰ If greater originating transport responsibilities are moved to rural carriers from other carriers/providers like NextGen, questions may arise as to how these additional transport costs will be recovered. If these costs are not the responsibility of the statewide NG911 provider and are now considered the responsibility of the originating wireline ILEC, will emergency surcharge dollars still be available to offset these originating transport costs, or will the rural carriers have to rely on end user rate increases to recoup such costs?²¹ 911 calls, as local calls and as calls carried over dedicated transmission facilities, are not subject to switched access charges. Also, at present, no federal high cost mechanisms exist to assist rural carriers with the recovery of “middle mile” transmission costs, related to any type of telecommunications traffic. If state emergency surcharge dollars, because of a decision changing carrier transport responsibilities, are no longer available to offset 911 transport costs and no other federal or state mechanism is in

¹⁹ Reply Comments of South Dakota Telecommunications Association, in FCC Docket WC 10-90, In the Matter of the Connect America Fund, dated March 30, 2012 (attached hereto within Appendix, see specifically included map exhibits).

²⁰ See SDCL Chapter 34-45.

²¹ Presently, many of the SDTA member companies bill the local government entities operating their local area PSAPs for dedicated originating transport related to 911 transmission. If the Commission were to decide that RLECs have originating transport responsibilities extending outside of their service areas, to what extent are these billings affected?

place to assist with cost recovery, rural carriers will have no choice but to pass the related costs on to their retail end user customers.

NextGen seems to take the view that even if the Commission saddles rural carriers with greater 911 transport obligations, the associated costs would be insignificant from a cost recovery perspective. This is simply not the case. If transport obligations are substantially increased it should not be presumed that rural carriers can either easily absorb the costs or simply add the increased costs on to rural end user bills without consequence. As this Commission knows, many RLECs in the State are already under financial pressures due to recent federal high cost reforms and earlier federal intercarrier compensation (ICC) reforms. Many of the SDTA members are now struggling with substantial high cost support reductions under an FCC established “Budget Control Mechanism” and most have seen significant access revenue declines (as a consequence of declining access minutes of use and ICC rate reductions).²² Total statewide rate-of-return high cost funding has been significantly reduced over a very short time period and, as a result, a number of previously planned rural broadband deployment projects have either been delayed or shelved by SDTA members. Given these circumstances, SDTA would strongly urge the Commission to avoid altering existing carrier responsibilities in South Dakota as it relates to 911 traffic delivery. As noted, no federal or state mechanism exists today to offset the annual increased costs that would result if rural carriers are required to extend points of interconnection to locations outside their local exchange networks for the benefit of other telecommunications carriers.

²² The total statewide reduction in rate-of-return high cost funding, as shown by the Universal Service Administrative Company (USAC) “2017-2018 Budget Analysis” (representing an annual view for July 2017 through June 2018) is approximately 8.6 million dollars (reflecting a decrease in the annual forecasted high cost support amounts of 12.2 percent). See Budget Control Mechanism for Rate of Return Carriers, available at <http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx>.

Many of the SDTA member RLECs already face increasingly difficult cost recovery issues; any decisions that increase transport facility obligations would only add to the enormity of these challenges.

As the Commission considers the Petition for Declaratory Ruling, it should further be mindful that any change in transport obligations or responsibilities, even though in this case it may only relate to 911, could also potentially affect other “network edge” issues pertaining to other telecommunications traffic that is either originated by or terminated to rural carrier service areas, including interexchange access traffic. The FCC recently released a Public Notice inviting interested parties to update the record on certain issues raised in its *2011 Transformation FNPR*, including on the issue of how the “network edge” should be defined “for purposes of delivering traffic” within a bill-and-keep framework.²³ In that Notice, the FCC noted a particular interest in “the experiences of states that have addressed network issues.” And, as to defining the “network edge” the FCC referenced the following possible definitions: (1) designating the edge as a “competitively neutral location where interconnecting carriers have competitive alternatives”; (2) a point in each Local Access and Transport Area (LATA) determined by a terminating carrier for “Mutually Efficient Traffic Exchange”, or (3) “a terminating carrier’s central office, among other possibilities.”²⁴

Any regulatory reforms that would move the “network edge” for purposes of traffic exchange and impose additional network transport costs on rural carriers are obviously of

²³ Public Notice, Parties asked to Refresh the Record on Intercarrier Compensation Reform related to the Network Edge, Tandem Switching and Transport, and Transit, WC Docket No. 10-90 and CC Docket No. 01-92, DA 17-863, Released September 8, 2017. Within that Public Notice, pp. 1 and 2, the FCC explained that the “edge” would be “the point where bill-and-keep applies, a carrier is responsible for carrying, directly or indirectly by paying another provider, its traffic to that edge.”

²⁴ *Id.* at pp. 1 and 2.

heightened concern to SDTA members. As SDTA explained in its comments responding to the FCC's cited Public Notice:

... absent well-defined interconnection rights and obligations, larger carriers will be incented to dictate distant points of interconnection with smaller rural carriers and will attempt to transfer significant additional transport costs onto the backs of rural consumers. Any such attempts by interconnecting carriers to further shift transport costs to rural consumers (on top of receiving the benefit of access and reciprocal compensation rate reductions) would be patently unfair to rural carriers and would seriously undermine universal service efforts. In the first instance, permitting such a result ignores the smaller local calling areas and more limited service areas and networks of rural carriers, and effectively, works to put rural carriers at a competitive disadvantage. Under such circumstances, RLECs are effectively forced to build out their networks into areas where they do not presently serve, and areas where they likely will never serve, for no purpose, other than to allow another carrier to gain an unfair competitive advantage by shifting their costs to RLEC subscribers. Moreover, the imposition of transport responsibilities on smaller rural carriers, far beyond the actual boundaries of their service areas, would have serious negative financial impacts undermining this Commission's core universal service objectives.²⁵

In these comments, SDTA noted its concurrence in Joint Comments filed in the same proceeding by NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband. SDTA, like NTCA and WTA, agrees that states should retain their essential role in defining network edges for traffic exchange -- that they should continue to have an opportunity to define the network edge in the first instance. However, SDTA has also urged the FCC to provide guidance for state determinations and to establish a minimum or default standard that will guard against the unloading of excessive out-of-area transport costs on rural carriers and rural consumers. SDTA in concurrence with NTCA and WTA has asked the FCC to retain and expand the “rural transport rule” set forth in 47 C.F.R. 51.709(c) (governing

²⁵ Reply Comments of the South Dakota Telecommunications Association dated November 20, 2017, WC Docket No. 10-90 and CC Docket No. 01-92 (attached hereto within Appendix).

IntraMTA traffic exchanged between rural telephone companies and CMRS providers) making it applicable to all carrier traffic exchange. Through such action, the FCC could further ensure that points of interconnection for traffic exchange are not located outside of rural incumbent local exchange carriers' service areas and that existing meet points within RLEC areas are considered in dividing transport responsibilities between any carriers that either directly or indirectly interconnect for traffic exchange purposes. SDTA shares the view that adopting a rural transport rule applicable to all CMRS, CLEC, and interexchange carrier traffic should be considered a critical part of any additional FCC reforms. Such a rule is essential to effectively prevent other larger carriers from imposing additional and excessive transport costs on rural carriers that cannot reasonably be absorbed within end user customer rates.²⁶

It is reasonable to expect that if larger, more urban-centered carriers are successful in moving points of interconnection to places far removed from rural carrier local exchange areas, that rural carriers and many rural consumers will be negatively impacted. As earlier noted, the SDTA member RLECs are already experiencing substantial revenue losses due to the FCC's existing Budget Control Mechanism and earlier ICC reforms. The "network edge" proposal which NextGen is pushing in this Docket, just like similar proposals referenced in the ongoing FCC proceeding, would substantially add to rural carrier costs, create new cost recovery challenges, and likely produce additional high cost USF deficiencies.

²⁶ See Joint Comments of NTCA and WTA dated October 26, 2017, WC Docket No. 10-90 and CC Docket 01-92. As noted therein, "Defining the network "edge" is critical to the success of ICC reform. As the Associations previously made clear, ICC reform initiatives that move current usage-based tandem switching and transport charges to bill and keep could create significant incentives for IXCs or other carriers to attempt to compel RLECs and other small providers to deliver and receive traffic only in central locations (such as Chicago or Dallas or New York or Atlanta). This would transfer significant transport costs to rural carriers and their small, rural consumer bases, greatly undermining the Commission's universal service policies in other respects."

V. CONCLUSION

Regarding the question presented by the Petition for Declaratory Ruling, SDTA believes the answer is clear based on the established 47 U.S.C §§ 251 and 251 interconnection standards and procedures. As the issue is framed by the 911 Coordination Board/Department of Public Safety, the Commission must determine that SDCL 49-31-79 and by extension, the 47 USC 251 and 252 requirements, apply to 911 traffic. 47 U.S.C. § 251, in relevant part, requires generally that “[e]ach telecommunications carrier has the duty – (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers” This general duty is then more specifically defined as it relates to incumbent local exchange carriers under the provisions of subsection 251(c) which, as to the interconnection obligation, references the “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . at any technically feasible point within the carrier’s network” *Emphasis added.*

It is SDTA’s position that 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 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. Further, the applicable provisions establish a process through which the facts relating to interconnection disputes between carriers may be reviewed and resolved by the Commission. Before this Commission can take any action that would impose increased transport obligations on all

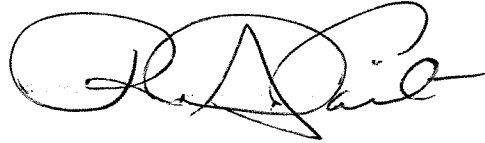
rural ILECs throughout the State, it would need to follow the established federal and state interconnection procedures. The question presented by the Declaratory Ruling not only raises legal questions, but also presents factual issues concerning carrier impacts and cost recovery.

As to the filed Petition and the question raised, SDTA would also urge the Commission to carefully consider both the immediate and longer-term impacts of any decision that would expand rural carrier transport responsibilities to meet points or points of interconnection that exist outside RLEC exchange areas or service areas. Any Commission action that would have the effect of increasing rural carrier transport responsibilities to points of interconnection at locations removed from existing local exchange carrier networks would be unprecedented and could have the effect of penalizing rural area telecommunications end users to the benefit of end users residing in non-rural service areas. If transport obligations are substantially increased it should not be presumed that rural carriers can either easily absorb the costs or simply add the increased costs on to rural end user bills without consequence. No federal or state mechanism exists today to offset the annual increased costs that would result if rural carriers are required to extend points of interconnection to locations outside their local exchange networks for the benefit of other telecommunications carriers. Many of the SDTA member RLECs already face increasingly difficult cost recovery

issues and any decisions that increase transport facility obligations would only add to the enormity of these challenges.

Dated this 19th day of December, 2017.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Richard D. Coit", written in a cursive style.

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Representing the South Dakota
Telecommunications Association

CERTIFICATE OF SERVICE

I hereby certify that an original of the Initial Comments of the South Dakota Telecommunications Association, dated December 19, 2017, r 30, 2017, filed in PUC Docket TC17-063, was served upon the PUC electronically, directed to the attention of:

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South Dakota Public Utilities Commission
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A copy was also sent by e-mail and/or US Postal Service First Class mail to each of the following individuals:

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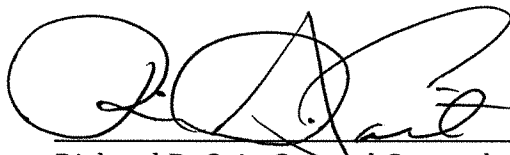
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Dated this 9th day of December, 2017

A handwritten signature in black ink, appearing to read "Richard D. Coit", is written over a horizontal line.

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APPENDIX A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Link-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**REPLY COMMENTS OF THE
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

The Federal Communications Commission (“FCC” or “Commission”) released a *Report and Order* (“*Report and Order*”) and *Further Notice of Proposed Rulemaking* (“*Further Notice*”) in these proceedings on November 18, 2011 adopting new rules and proposing possible additional reforms related to the federal universal service fund (“USF”) and intercarrier compensation (“ICC”).¹ In response to the Commission’s *Further Notice*, specifically, the Rural Associations (NECA, NTCA, OPASTCO and WTA) have filed Initial Comments addressing many of the

¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, (Rel. Nov. 18, 2011). (“*Report and Order*”) and (“*Further Notice*”).

proposed additional reforms.² As an association in South Dakota representing all of this State's rural incumbent local exchange carriers ("SD RLECs"), SDTA continues to support and agree with the arguments, positions, and specific alternative reform proposals submitted by the Rural Associations, including those related to intercarrier compensation. With these Reply Comments, SDTA provides supplemental data and argument on several of the items addressed within the Rural Associations' earlier filed Initial Comments on the ICC issues.

I. SDTA Member Company Information

SDTA's membership includes all of South Dakota's rural incumbent local exchange carriers ("RLECs"). The membership includes 12 companies that are rural telephone cooperatives, 5 local exchange carriers that are owned by and affiliated with these cooperatives, 3 municipally-owned telephone companies, 1 tribally-owned telecommunications company, and 4 privately-held rural telephone companies which are either locally-based or which have local facilities in the State of South Dakota. The RLECs' service areas cover approximately 80% of the State's geographic area, consisting of an area of approximately 62,162 square miles. The average customer density throughout the RLECs' service areas is approximately 2.3 customers per square mile. The smallest incorporated town, the town of Hillview, and the largest city, the city of Brookings, served by the RLECs, have populations of 3 and 18,504 residents, respectively.

² See, Initial Comments of the National Exchange Carriers Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance on Sections XVII.L-R (Inter-carrier Compensation Issues), dated February 24, 2012, and Initial Comments of the National Exchange Carriers Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance, dated January 18, 2012.

As of the fourth quarter of 2010, SDTA's members served 134,365 access lines.³ As SDTA noted in earlier comments filed with the Commission responding to the initial Notice issued by the Commission related to the "National Broadband Plan," SDTA's members invested over \$133,196,000 in capital expenditures in 2008 and 2009 and were projected to invest, over the 2010-2011 two-year time frame, approximately \$91,966,000.⁴ In 2009, the RLECs collectively had over \$29,100,000 in annual loan principal and interest payments. In most cases, the RLECs were the first companies to provide basic telephone services to the rural communities that they serve, and they have existed in these areas as the only "Carrier of Last Resort" ("COLR") for fifty (50) years or more. In addition to basic telephone services, all of the RLECs also provide access to broadband service to almost 100% of their customers via a variety of broadband delivery technologies, including Digital Subscriber Line (DSL), Cable Modems, Fiber-to-the-Premises, and wireless technologies. Deployment of DSL, one of the primary broadband delivery technologies, started in the late 1990s in South Dakota and became widespread by the early 2000s. Since that time, the RLECs have deployed broadband facilities steadily, and now almost 100% of customers within their service areas have broadband Internet access.

Federal universal service support and intercarrier compensation revenues have been critical in enabling the RLECs to make the facility investments necessary to deploy high quality voice and broadband services. Presently, the RLECs members of SDTA receive, on average, approximately 24 percent of their total regulated revenues from federal universal service support and 28 percent of total regulated revenues from intercarrier compensation (including

³ This access line count number is taken from the USAC document "High Cost Loop Support Projected by State by Study Area Fourth Quarter 2010" and includes study areas served by SDTA member incumbent local exchange carriers.

⁴ See, Comments of SDTA, *In the Matter of Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *High-Cost Universal Support*, WC Docket No. 05-337, (filed July 12, 2010) at p. 3.

special access).⁵ The RLECs' voice and broadband networks would not exist as they do today without the assistance that has been provided through the federal universal service support mechanisms and the revenues provided through intercarrier compensation payments.

II. Any Federally Mandated Reductions in Originating Access Rates or Tandem Switching and/or Transport Charges Must Be Coupled with Sufficient Alternative Recovery Mechanisms.

As noted in the Initial Comments of the Rural Associations addressing ICC issues raised in the FNPRM:

. . . [t]he questions and proposals presented in the FNPRM on intercarrier compensation ("ICC") reform implicate the fundamental mission of universal service Whatever one's perspective on the mechanics of the system, ICC has been an essential component of promoting universal service in high-cost areas by helping to keep end-user rates low and enabling network investment and maintenance. If ICC revenues are substantially reduced (or driven to zero) by regulatory fiat and without a meaningful alternative for cost recovery (beyond merely piling yet more costs atop consumers in high-cost areas), rural rate-of-return regulated local exchange carriers ("RLECs") will not be able to sustain the previous progress they have made in deploying high-quality advanced networks. In turn, consumers in these high cost areas could see their broadband and voice services fall behind with respect to availability, quality and affordability. Likewise, if interconnection obligations are not defined carefully in the context of ICC reform and RLECs face substantially increased transport costs, they will be unable to provide reasonably comparable rates in high-cost areas.

Therefore, it is essential that the Commission methodically align ICC reform with high cost USF reform and the core principles of universal service to avoid massive disruption to rural consumers and carriers. . . . The two processes must be thoughtfully calibrated, with corresponding examination and analyses of the impacts that reform measures (both those already adopted and those still being considered) will have on consumers and carriers of last resort ("COLRs").⁶

⁵ It should be noted that these percentages are based on both 2009 and 2010 data. The intercarrier compensation percentage, specifically, reflects a comparison of only billed switched and billed special access revenues to total regulated revenues (for 23 of SDTA's 25 member companies, representing 95 percent of total SDTA member company access lines or working loops). If the special access revenues are removed and only billed switched access and reciprocal compensation revenues are included, the intercarrier compensation percentage in relation to total regulated revenues is 18 percent.

⁶ See, Initial Comments of the National Exchange Carriers Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance on Sections XVII.L-R (Inter-carrier Compensation Issues) (filed Feb. 24, 2012) at pp. 2-3.

As SDTA has indicated in past comments to this Commission, South Dakota's RLECs have, very substantially, relied on intercarrier compensation in building out broadband facilities and in maintaining and operating their current networks. As previously noted, the South Dakota RLECs receive approximately 28 percent of their total regulated revenues from intercarrier compensation.⁷ Application of a "bill-and-keep" mechanism to all access rate elements as proposed in the *Further Notice*, and the resulting total elimination of all intercarrier compensation, would result in an estimated total revenue loss to the South Dakota RLECs, as a group, of over \$37 million (approximately \$37,620,084) which translates to an average per-line, per-month impact of \$24.51.⁸ The impact of such extreme rate reductions on individual RLECs in the State would vary substantially. For many of the companies, the per-line, per-month impact would be even greater. In regards to originating access specifically, revenues from originating switched access charges (both interstate and intrastate) as of 2010 were estimated at \$15,809,706 annually accounting for approximately 42 percent of total intercarrier compensation revenue. This amount translates to an average per-line, per-month impact of approximately \$10.30.

Very clearly, the adoption of any further proposals to reduce intercarrier compensation (in addition to the already mandated reductions in terminating access and reciprocal compensation rates) would have severe negative consequences for all of the RLECs in South Dakota and their rural customers. End user rates simply could not rise to levels needed to replace the additional revenue losses and remain competitive; rates at such levels would obviously no longer be "reasonably comparable" to urban rates as is required under federal law. Further, the revenue losses associated with the expansion of "bill-and-keep" would impact the RLECs' ability to

⁷ As noted earlier, this number reflects billed and not settlement revenue.

⁸ These numbers reflect billed intercarrier compensation data received from 23 of SDTA's 25 member companies, representing 95 percent of total SDTA member company access lines or working loops.

maintain and operate their current networks, meet their existing loan commitments, and undoubtedly would make it almost impossible for the carriers to continue with network upgrades and advance their broadband service offerings.

SDTA agrees with the Rural Associations that moving to an “end state” of “bill-and-keep” for all intercarrier compensation is an unacceptable result as a matter of law and good economic policy. As noted in the Rural Association comments:

ICC reform cannot be sustained as a matter of law or policy unless it is ensured that local service rates in rural areas will indeed stay reasonably comparable to rates in urban areas and that “additional costs” are in fact being recovered through some combination of remaining ICC rates, end-user rates (provided those remain reasonably comparable) and/or explicit support (including, but not limited to, a “Recovery Mechanism” or “CAF ICC support”). In contrast, even if it were good policy (which it is not) that all costs of providing services to other carriers should be recovered only through a combination of explicit support and/or end user rates, the Commission presumption that such “additional costs” can be recovered, in part or in whole, from end users is accompanied by no indication, let alone evidence, that it has evaluated the likelihood that end user rates will then in fact remain affordable, or “reasonably comparable” thereafter.⁹

Because of the significant additional revenues that are currently received by RLECs from originating access charges and tandem switching and transport rate elements, it is essential that any further FCC reforms mandating intercarrier rate reductions be paired with a “robust and compensatory” Recovery Mechanism.¹⁰ A Restructure Mechanism that contributes to intercarrier compensation rate reductions along the lines advocated by the Rural Associations

⁹ See, Initial Comments of the National Exchange Carriers Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance on Sections XVII.L-R (Inter-carrier Compensation Issues) (filed Feb. 24, 2012) at p. 5.

¹⁰ It has been suggested by some parties in this proceeding that any mandated reductions to originating intrastate access charges should be replaced through intrastate universal service funds. In regards to such claims, there is currently no such fund in South Dakota, despite the fact that on a number of occasions the South Dakota RLEC industry has undertaken efforts to propose legislation and lobby the South Dakota legislature to establish a state universal service fund to facilitate rate rebalancing. In addition, it is important to note that South Dakota's low population, its relatively low statewide total access line count, and its very high cost characteristics, make it much more difficult to sufficiently offset the negative impacts of further rate rebalancing without federal assistance.

must be adopted to ensure that RLECs are able to keep retail local service and broadband rates affordable, and at the same time, provide high quality services to their rural area customers.

III. The Commission, as Part of Any Further ICC Reforms, Must Also Guard Against the Imposition of Significant Additional Transport Costs on Rural Carriers and Rural Area End Users.

In regard to any further implementation of “bill-and-keep” by the Commission with respect to further intercarrier rates or rate elements, SDTA agrees with the Rural Associations that, absent well-defined interconnection rights and obligations, larger carriers will be incented to dictate distant points of interconnection with smaller rural carriers and will attempt to transfer significant additional transport costs onto the backs of rural consumers. Any such attempts by interconnecting carriers to further shift transport costs to rural consumers (on top of receiving the benefit of access and reciprocal compensation rate reductions) would be patently unfair to rural carriers and would seriously undermine universal service efforts. In the first instance, permitting such a result ignores the smaller local calling areas and more limited service areas and networks of rural carriers, and effectively, works to put rural carriers at a competitive disadvantage. Effectively, RLECs would be forced to build out their networks into areas where they do not presently serve, and into areas where they likely will never serve for the sole purpose of allowing larger carriers to gain an unfair competitive advantage over RLECs by shifting their costs onto RLEC subscribers. Moreover, the imposition of transport responsibilities on smaller rural carriers, far beyond the actual boundaries of their service areas, would have serious negative financial impacts undermining this Commission’s core universal service objectives. Under the universal service and ICC reforms already adopted by this Commission, especially for rural ROR carriers, there are substantial cost recovery shifts from intercarrier compensation to end-user rates. If the FCC proceeds ahead with further ICC reforms, it must also, as pointed out by the

Rural Associations, take certain steps to ensure that RLECs will not be further burdened with additional interconnection and transport obligations.

More specifically, SDTA would urge the Commission in any further order arising out of the FNPRM to take the “four additional steps” set forth in the Rural Associations’ Initial Comments, clarifying precisely how the Section 251 and 252 framework applies under a bill-and-keep approach.¹¹ Most importantly, the Commission must reaffirm that its governing framework for intercarrier compensation restricts interconnection to technically feasible points on the ILEC’s existing network and that interconnection is subject to the applicable exemptions, suspensions, and modifications that apply under section 251.¹² This statement would be consistent with the Commission’s finding elsewhere in its *Order* that state commissions retain their essential roles and responsibility in defining network edges for purposes of interconnection. Also, the Commission “must clarify that the “rural transport rule” adopted in the *Order* applies to an RLECs’ exchange of all section 251(b)(5) traffic with any carrier.”¹³ Specifically, the Commission should further “confirm via a “rural transport rule” that an RLEC’s financial responsibility for transport of any and all telecommunications traffic is limited to the relevant exchange boundary of the RLEC.”¹⁴

Even today in requesting interconnection of RLECs, many carriers refuse to give any recognition to the more limited RLEC service areas and networks arguing in certain cases that rural LECs should be responsible for the provisioning of transport extending hundreds of miles outside their service area. Other carriers, for instance, often take the position that they should

¹¹ *Id.* at pp. 23-27.

¹² *Id.* at p. 25.

¹³ *Id.*

¹⁴ *Id.* at p. 26.

only have to meet incumbent LECs, including rural LECs, for purposes of exchanging local telecommunications traffic, at a single location within the "Local Access and Transport Area" ("LATA") or within the Metropolitan Trade Area ("MTA"). These carriers further argue that rural LECs should bear the full cost of the backbone transport facilities that are needed to reach this single location. This insistence on the part of other carriers for interconnection at a point anywhere within the LATA or MTA, without regard to the actual rural LEC networks or service areas, is especially unsettling for South Dakota's rural telephone companies because South Dakota is essentially a one LATA state and the relevant MTA boundaries extend far beyond the borders of South Dakota to also cover locations as far away as Denver and Minneapolis. The potential impact of these types of requests, if rural carriers are forced to comply, would be very significant. The attached maps are intended to illustrate this impact.

The map marked as "Attachment 1" is intended to show the effect on West River Cooperative Telephone Company ("West River") which has its main business office in Bison, South Dakota. As indicated by the company data shown on that map, West River currently serves approximately 3,479 loops, located over a service area of approximately 6,209 square miles (within South Dakota, North Dakota and Montana). The company's density number sits at about 0.56 loops per square mile. Presently, West River is a member company of SDN Communications and its long distance traffic reaches the SDN Communications tandem through the use of certain fiber ring transport facilities that run through its service area. If West River were required to deliver and receive local traffic exchanged with other interconnecting carriers at a location in Sioux Falls, the transport route miles on the shortest fiber ring route would be approximately 614 miles. The airline miles distance is approximately 360 miles. Given the number of carriers that would desire such interconnection and anticipated traffic volumes, even

narrowband traffic exchange over such distances would result in substantial additional transport costs.

The map provided as "Attachment 2" provides another example showing the significance of the issue to the Kennebec Telephone Company which has its offices in Kennebec, South Dakota. Kennebec presently serves 743 loops over a service area which covers approximately 742 square miles. Its meet point with the backbone transport facilities of SDN Communications is approximately 160 airline miles from Sioux Falls. The actual transport route miles that would be associated with Kennebec Telephone delivering and receiving local telecommunications traffic at the SDN tandem switch location in Sioux Falls would be approximately 425 miles, assuming the shortest distance over the established fiber ring network facilities. It could also be expected in the case of Kennebec Telephone, given the number of carriers that would desire such interconnection and the expected traffic amounts, that substantial additional transport costs would be imposed.

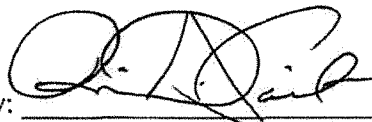
As the Rural Associations have appropriately emphasized, as part of any further universal service and ICC reforms, the interconnection rights and obligations of RLECs need to be specifically addressed and steps must be taken to guard against imposing additional transport burdens on RLECs and RLEC end users.

VII. Conclusion

SDTA appreciates the opportunity to submit Reply Comments on these important issues. SDTA respectfully requests that the Commission carefully consider the positions and argument set forth herein.

Respectfully submitted,

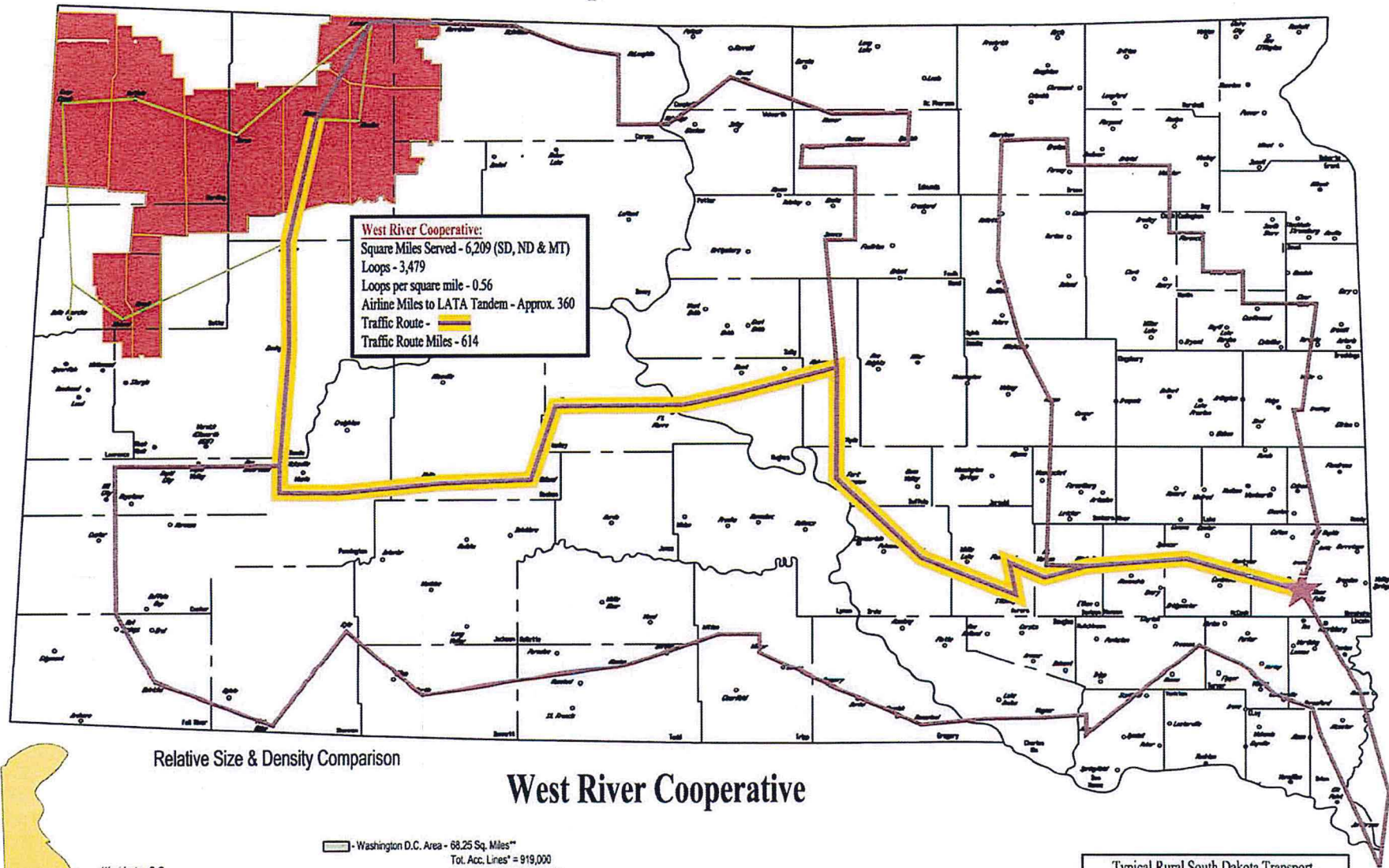
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Filed: March 30, 2012

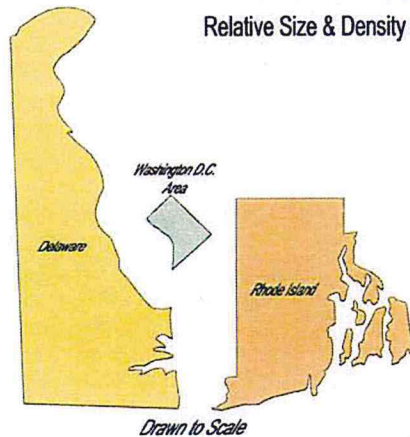
Rural LEC Transport Distances to the LATA Tandem



Relative Size & Density Comparison

West River Cooperative

Typical Rural South Dakota Transport Construction Costs are \$13,000 / Mi.

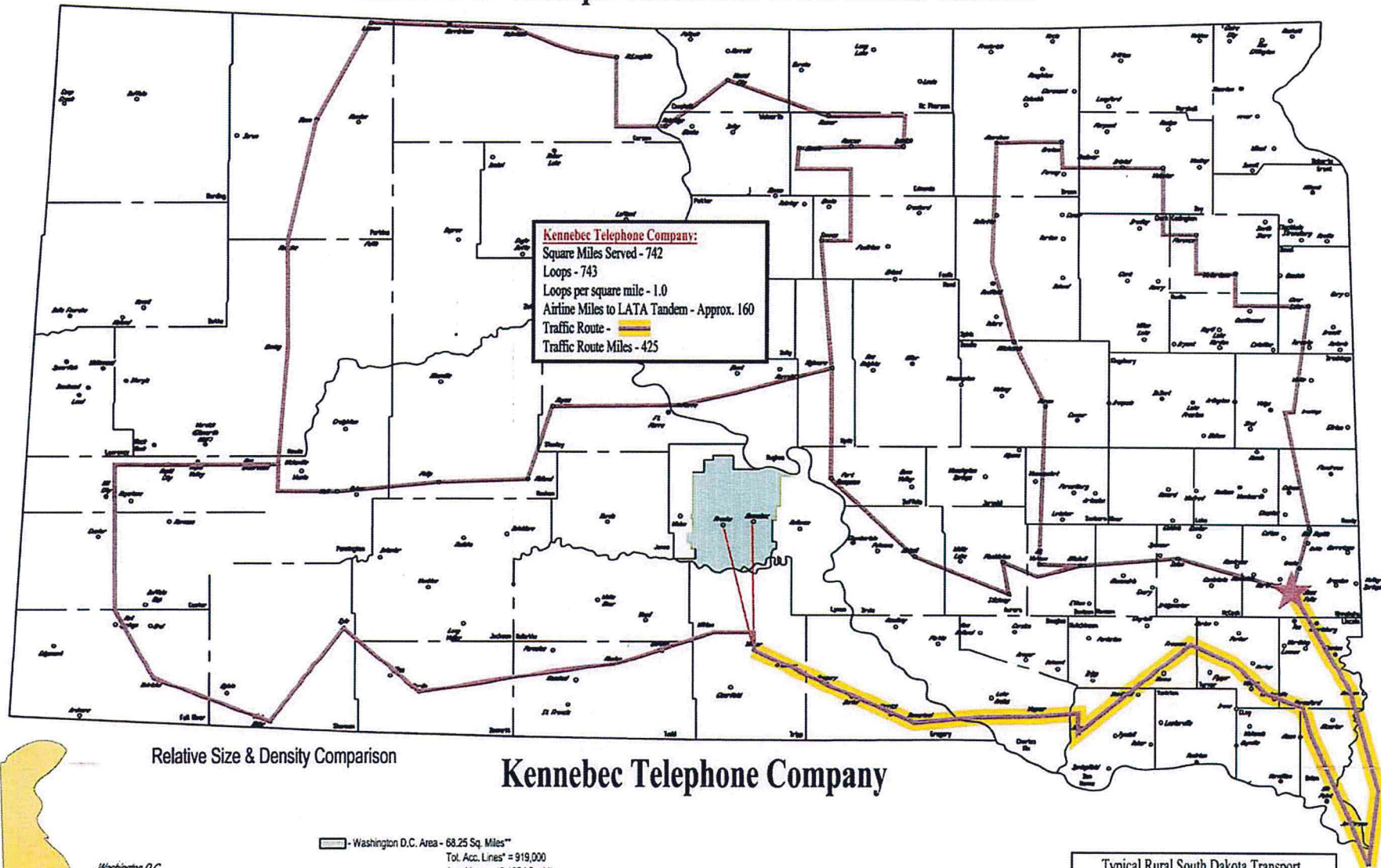


- Washington D.C. Area -	68.25 Sq. Miles**
Tot. Acc. Lines*	= 919,000
Acc. Lines =	13,465 / Sq. Mi.
- Rhode Island Area -	1,545 Sq. Miles**
Tot. Acc. Lines*	= 608,000
Acc. Lines =	394 / Sq. Mi.
- Delaware Area -	2,489 Sq. Miles**
Tot. Acc. Lines*	= 544,000
Acc. Lines =	219 / Sq. Mi.
- South Dakota Area -	77,353 Sq. Miles**
Tot. Acc. Lines*	= 391,000
Acc. Lines =	5 / Sq. Mi.

* - Source: Industry Analysis Technology Division, Wireline Competition Bureau, Trends in Telephone Service (September 2010)

** - Source: US States: Area Ranking, US States (plus Washington D.C.) Area and Ranking, <http://www.echadecol.com/us/states/area.shtml> (March 15, 2012)

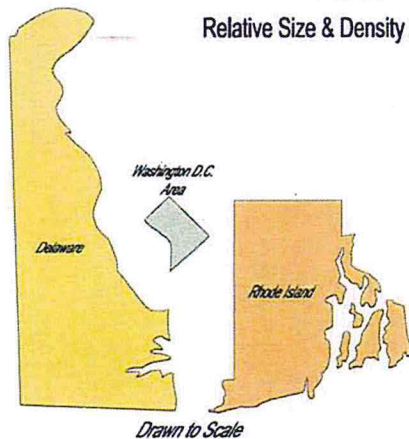
Rural LEC Transport Distances to the LATA Tandem



Relative Size & Density Comparison

Kennebec Telephone Company

Typical Rural South Dakota Transport Construction Costs are \$13,000 / Mi.



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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	

**REPLY COMMENTS OF THE SOUTH DAKOTA
TELECOMMUNICATIONS ASSOCIATION**

The South Dakota Telecommunications Association (SDTA) hereby files its reply comments pursuant to this Commission’s Public Notice of September 8, 2017 asking interested parties to update the record on certain issues raised in the *2011 ICC Transformation FNPRM*,¹ including issues related to the determination of the “network edge” for purposes of traffic delivery/exchange and possible transitioning of remaining access rate elements in a manner consistent with a “bill-and-keep” framework. Specifically, SDTA supports the joint comments filed by NTCA- The Rural Broadband Association and WTA- Advocates for Rural Broadband (NTCA/WT A Comments) which urge the Commission to: (1) not undertake any further intercarrier compensation reforms until it both addresses the current high-cost universal service funding shortfalls and provides for

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*2011 ICC Transformation FNPRM*).

sufficient, supplemental CAF-ICC support; and (2) ensure that states retain their responsibility for defining “network edges” in the first instance, but at the same time establish a “rural transport rule” applicable to all traffic exchange that will protect rural carriers from increased transport obligations that would impose excessive costs and undermine universal service efforts.

I. INTRODUCTION

SDTA is an association representing many of South Dakota's rural incumbent local exchange carriers (“RLECs”), including rural telecommunications cooperatives, municipally-owned telecommunications companies, a tribally-owned telecommunications company, and several privately-held rural telephone companies which are either locally-based or which have local network facilities within the State of South Dakota. The SDTA member RLEC service areas cover approximately 75% of the State's geographic area, encompassing an area of approximately 60,434 square miles. The average customer density, taking into account the entirety of the SDTA member company service areas, is approximately 1.8 access lines per square mile. In most cases, the SDTA member RLECs were the first companies to provide basic telephone services to the rural communities they serve, and they have existed in these areas as “Carriers of Last Resort” (“COLR”) for fifty (50) years or more. In addition to basic telephone services, all of the RLECs also universally offer access to broadband service within their service areas.

Federal high-cost universal service support and intercarrier compensation revenues have been, and continue to be, crucial to rural area broadband facility investment in the

State of South Dakota. Clearly, the RLECs' voice and broadband networks would not exist as they do today without the assistance of federal high cost funding, federal access support mechanisms like ICLS and CAF ICC, and without support of switched access charges still assessed to other carriers/service providers for their use of rural local exchange networks. The limited number of potential customers and the greater number of miles to cover generally makes it difficult, if not impossible, to rely on end user charges alone to either support a business case for investing in network facilities or a plan for providing voice and/or broadband services at affordable rates.

At present, as indicated by the NTCA/WTB filing, "RLEC budgets are already strained beneath the Commission's existing rural high cost budget cap and prior ICC reforms."² Similar to the situation faced by many rural carriers throughout the United States, the South Dakota RLECs have already seen significant access revenue declines (as a consequence of declining access minutes of use and ICC rate reductions) and are now struggling with substantial high cost support reductions under the Commission's established "Budget Control Mechanism". The impacts of that Budget Control Mechanism in South Dakota have been particularly harsh.³ Total statewide rate-of-return high cost funding has been significantly reduced over a very short time period and, as a result, a number of previously planned rural broadband deployment projects have either been delayed or shelved by SDTA members. If the Budget Control Mechanism continues in its

² NTCA/WTB Comments at p. 4.

³ Only three of South Dakota's rural telephone companies elected ACAM/Model Support (representing 3 of the thirty SD rural study areas). In addition, the higher cost characteristics in a good number of the SD study areas make it more difficult, under the present federal high cost support mechanisms, to affordably offer stand-alone broadband services. This results in fewer CAF Broadband Loop Support (BLS) lines and under the existing Budget Control Mechanism results in greater high cost funding reductions.

current form and broader USF “insufficiency” issues are not addressed, it is reasonable to expect that broadband deployments and improvements will be further slowed and that the ability of SDTA members to satisfactorily maintain existing network facilities and also provide affordable broadband services to their rural customers will be diminished. Under these circumstances, SDTA would urge the Commission to proceed cautiously before adopting any additional reforms that would have the effect of further reducing RLEC access revenues or increasing rural transport costs and, thereby, adding to already existing cost recovery challenges.

II. BEFORE PROCEEDING WITH ANY FURTHER ACCESS CHARGE REDUCTIONS THE COMMISSION MUST ADDRESS THE CURRENT HIGH-COST FUNDING SHORTFALLS AND ENSURE THAT ADDITIONAL FUNDING IS AVAILABLE TO SUPPLEMENT CAF ICC SUPPORT

SDTA supports the NTCA/WTB Comments that the Commission should not undertake further ICC reforms until it addresses the current high-cost budget shortfalls and provides for sufficient, supplemental CAF-ICC support. In addition, as pointed out by NTCA and WTB, before the Commission proposes further specific access reforms, including any transitions, it should at a minimum evaluate the degree to which consumers have actually benefitted from earlier access rate reductions and should also collect and analyze other relevant data (necessary to determine rural carrier impacts) regarding current ILEC minutes, revenues and rates. As set forth in the NTCA/WTB Comments, the reductions in support for rate-of-return RLECs that receive support via legacy universal service support mechanisms have grown dramatically under the established Budget Control Mechanism. An overly restrictive high cost support budget for rural carriers and application of the current Budget Control has led to a total high cost funding shortfall for rural rate-of-return

carriers estimated at \$173 million.⁴ Many of the SDTA member-RLECs have experienced significant reductions in their high cost support due to the Budget Control and, as noted in the NTCA/WTCA Comments, these support reductions are likely to worsen. The total statewide reduction in rate-of-return high cost funding, as shown by the Universal Service Administrative Company (USAC) “2017-2018 Budget Analysis” (representing an annual view for July 2017 through June 2018) is approximately 8.6 million dollars (reflecting a decrease in the annual forecasted high cost support amounts of 12.2 percent).⁵ Across the 27 separate South Dakota rate-of-return study areas impacted, the decrease in support ranges from a low of 9 percent to a high of 25.5 percent. It is important to note that these reductions in support are (in large part) for broadband investments already made by the impacted rural carriers.

Any action by the Commission at this time aimed at moving closer to a bill-and-keep framework for all access charges, including forced reductions in originating access rates, absent corresponding action to provide additional offsetting revenue in the form of additional CAF-ICC support, will only deepen the revenue hole that the RLECs find themselves in due to the existing Budget Control Mechanism. Currently, SDTA member-RLECs, as a group, receive approximately \$10 million in annual revenues from originating switched access charges (both interstate and intrastate) as of 2017.⁶ The adoption of any proposals to reduce these ICC charges would have severe negative consequences for many of the RLECs in South Dakota and their rural customers. End user rates simply could not

⁴ NTCA/WTCA Comments at 7.

⁵ See Budget Control Mechanism for Rate of Return Carriers, available at <http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx>.

rise to levels needed to replace the additional revenue losses and at the same time remain "reasonably comparable" to urban rates as is required under federal law. The stand-alone broadband rates of many SDTA member RLECs which as a result of insufficient USF are already too high, would be even higher. Further revenue losses caused through an expansion of "bill-and-keep", unless replaced with additional explicit high cost funding, would not only threaten continued new broadband deployment plans, but would also likely impact the ability of many RLECs to reasonably upgrade their existing broadband capacities in response to ever increasing consumer broadband needs and, for some RLECs, could even raise problems with respect to existing infrastructure loan commitments. Thus, SDTA shares the position of NTCA and WTA that the Commission should not undertake any further ICC reforms unless those reforms are also coupled with actions to address the current high cost funding shortfalls and make additional explicit CAF-ICC funding available to fully offset implicit access support losses.

III. THE REGULATORY FRAMEWORK APPLYING TO NETWORK EDGE DETERMINATIONS SHOULD GUARD AGAINST THE IMPOSITION OF ADDITIONAL TRANSPORT COSTS ON RURAL CARRIERS AND RURAL CONSUMERS

SDTA also supports the positions expressed by the joint NTCA-WTA Comments regarding the regulatory framework that should apply to ensure a proper and fair determination of the "network edge" for purposes of carrier traffic exchange. As SDTA emphasized in comments filed by SDTA in 2012 in response to the 2011 ICC Transformation FNPRM:

⁶ Annual originating access MOU and the revenues association with these minutes has steadily and substantially declined in recent years, but the originating switched access revenue received on a per access line basis still averages approximately \$7 monthly per line.

... absent well-defined interconnection rights and obligations, larger carriers will be incented to dictate distant points of interconnection with smaller rural carriers and will attempt to transfer significant additional transport costs onto the backs of rural consumers. Any such attempts by interconnecting carriers to further shift transport costs to rural consumers (on top of receiving the benefit of access and reciprocal compensation rate reductions) would be patently unfair to rural carriers and would seriously undermine universal service efforts. In the first instance, permitting such a result ignores the smaller local calling areas and more limited service areas and networks of rural carriers, and effectively, works to put rural carriers at a competitive disadvantage. Under such circumstances, RLECs are effectively forced to build out their networks into areas where they do not presently serve, and areas where they likely will never serve, for no purpose, other than to allow another carrier to gain an unfair competitive advantage by shifting their costs to RLEC subscribers. Moreover, the imposition of transport responsibilities on smaller rural carriers, far beyond the actual boundaries of their service areas, would have serious negative financial impacts undermining this Commission's core universal service objectives.⁷

SDTA agrees that states should retain their essential role in defining network edges for the purpose of traffic exchange, and that they should continue to have an opportunity to define the network edge in the first instance. It is also necessary, however, given the very real concerns noted above, that the Commission provides guidance for these state determinations and that it establish a minimum or default standard that will guard against the unloading of excessive out-of-area transport costs on rural carriers and rural consumers. Specifically, SDTA, like NTCA and WTA, believes that the Commission should retain and expand the "rural transport rule" set forth in 47 C.F.R. 51.709(c) so that it is applicable to all carrier traffic exchange. The clear intention of that rule is to ensure that points of interconnection for traffic exchange are not located outside of rural incumbent local exchange carriers' service areas and that existing traffic exchange meet points within RLEC areas are considered in dividing transport responsibilities between carriers that

⁷ See Reply Comments of the South Dakota Telecommunications Association, WC Docket No. 10-90, at p. 7 (filed March 30, 2012).

either directly or indirectly interconnect for traffic exchange. SDTA shares the view that adopting a rural transport rule applicable to all CMRS, CLEC, and interexchange carrier traffic exchange should be considered a critical part of any additional reforms that may be undertaken in this proceeding. Such a rule is essential to effectively prevent other larger carriers from imposing additional and excessive transport costs on rural carriers that cannot reasonably be absorbed within end user customer rates.

Proposals like those offered by Sprint and T-Mobile, which are nothing more than self-serving attempts to excessively shift transport costs to rural end user consumers, should be rejected outright. Sprint's proposal would require rural carriers to bear the cost of transporting traffic to its nearest Internet exchange point (IXP). For South Dakota, this would mean that each RLEC in the State, regardless of where they may provide end user voice and broadband services, would take on the financial responsibility for transport to or from the city of Sioux Falls. T-Mobile similarly proposes that rural carriers should be required to transport traffic to a single, safe harbor point of interconnection ("POI") in the carrier's state.⁸ These proposals are patently unfair and would clearly work to competitively and financially disadvantage rural carriers and penalize many of South Dakota's rural area consumers.⁹ They fail to give any recognition to the fact that the RLEC local exchange networks and service areas are more geographically limited and could in some instances require that RLECs provision transport facilities extending hundreds of miles outside of their service areas.

⁸ Comments of T-Mobile USA, Inc., WC Docket No. 10-90, at ii-iii (Oct. 26, 2017).

⁹ See Reply Comments of the South Dakota Telecommunications Association, WC Docket No. 10-90, at pp.7-10.

As earlier noted herein, the SDTA member RLECs are already experiencing substantial revenue losses due to the Commission's existing Budget Control Mechanism and earlier ICC reforms. The network edge proposals of Sprint and T-Mobile, and any similar proposals expanding rural carrier transport obligations beyond existing rural service areas, if adopted, would by substantially adding to rural carrier costs create new cost recovery challenges and produce additional USF deficiencies. The proposals are plainly contrary to federal universal service principles and are undeserving of any serious consideration in this proceeding.

IV. CONCLUSION

Based on the foregoing, SDTA urges the Commission to forego any further intercarrier compensation reforms until it both addresses the current high-cost budget shortfalls and provides for sufficient, supplemental CAF-ICC support. SDTA also urges the Commission to ensure that states retain their responsibility for defining "network edges" in the first instance, but at the same time establish a "rural transport rule" applicable to all traffic exchange that will protect rural carriers from unreasonable transport obligations that would impose excessive costs and undermine universal service efforts. These measures are necessary to ensure that the RLECs can continue to maintain and expand high quality voice and broadband services throughout their rural service areas.

Respectfully submitted,
**SOUTH DAKOTA
TELECOMMUNICATIONS
ASSOCIATION**

By:

A handwritten signature in black ink, appearing to read "Salvatore Taillefer, Jr.", written over a horizontal line.

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