

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

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

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TC17-063

STAFF’S REPLY COMMENTS

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

As a preface, Staff reiterates that the Petition the Board filed with the Public Utilities Commission is a Petition for a Declaratory Ruling and should be processed as such. Under SDCL 1-26-15 and ARSD 20:10:01:34, a petition for a declaratory ruling involves a determination “as to the applicability to that person of any statutory provision or rule or order of the Commission.” Essentially, a petitioner provides an agency with a set of facts and requests the agency determine the whether or how the statute applies to the uncontested fact-based scenario provided. A petition for a declaratory ruling is not a Contested Case proceeding and though the Commission has jurisdiction to make factual determinations regarding interconnection requests, a petition for a declaratory ruling is not the most appropriate proceeding for such decisions.

In its petition, the Board requests the Commission issue a ruling determining “who has responsibility for 911 traffic transport between rural carriers’ service area and the Next Generation 911 network’s centralized points of interconnection.” The Board provides a fact scenario that NextGen has sent request for interconnection to rural carriers and that SDTA’s members have indicated that they will not connect to the NG911 system at the centralized points until this issue is resolved. The Board cites SDCL 49-31-79 as the state statute in question.

Based on this Petition, Staff does not believe a declaratory ruling by the Commission will fully determine which entity has the end responsibility to transport the 911 traffic to the NG911 centralized point as requested by the Board. The statute is simply not written in a manner that the Commission can determine that one entity is responsible for carrying traffic without delving into a specific interconnection request and the technical capabilities of the rural and the economic burden the request may have on the rural.

The statute at issue specifically excludes the applicability of the Federal 47 U.S.C. §251(f)(1) to a “rural telephone company *unless* the company has received a bone fide request for interconnection, services, or network elements *and* the commission determines that the rural telephone company shall fulfill the request.” (SDCL 49-31-79, emphasis added). The statute goes on establish a process and to specify that the “commission may only determine that the rural telephone company shall fulfill the request if, after notice and hearing pursuant to chapter 1-26, the commission finds that the request is not unduly economically burdensome the request is technically feasible, and the request is consistent with the universal service principles and provisions set forth in 47 U.S.C § 254 as of January 1, 1998.” Based on Staff’s reading of these authorities, the exemption this statute provides for rural telephone companies is always applicable to interconnection requests. If a request for interconnection is made and rejected by a

rural, the requesting party may then file the request with the Commission and ask for a determination that the rural fulfill the request. The Commission then holds a contested case proceeding where evidence is presented and reviewed to determine if the rural telephone company must fulfill the interconnection request. The burden of proof in such a proceeding rests with the party requesting interconnection, in this case either NextGen or the Board.

Staff does agree that it is possible for the Commission to issue a declaratory ruling regarding certain portions of the question posed in the Petition. Specifically, the Commission could issue a ruling determine whether a rural telephone company, after receiving a bone fide interconnection request from the 911 service provider NextGen, could be required to interconnect with the requestor at centralized points of interconnect in either Rapid City or Sioux Falls. The Commission could also issue a determination as to what area is included in a rural telephone company's "network," what items are required for an interconnection request to be bone fide, and whether NextGen does in fact need an interconnection agreement from the rurals. However, unless the Commission determines that a rural cannot be required to fulfill an interconnection request with a point of interconnection in Sioux Falls or Rapid City, the Board's question as to which entity has the responsibility to transport traffic to the points of interconnect cannot be fully answered in this docket. Staff asserts that the final decision relies heavily on the specific facts involved and requires the Commission to review evidence presented by the parties and make factual determinations under SDCL 49-31-79 as to whether the request is consistent with section 254, and whether the requests is technically feasible and not unduly economically burdensome for each rural telephone company.

Dated this 16th Day of January 2018.

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