



Advocating for South Dakota's Rural Broadband Providers

June 22, 2018

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

RE: Docket TC18-013 - In the Matter of the Petition by the Department of Public Safety/9-1-1 Coordination Board for a Declaratory Ruling Determining Competitive Local Exchange Carrier Processes for Requesting 9-1-1 Traffic Delivery from Rural Local Exchange Carriers

Dear Ms. Van Gerpen:

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

As is evidenced by the Certificate of Service attached to the Comments, service has been made to representatives of the 911 Coordination Board and NextGen Communications, Inc.

Thank you for your assistance in filing and distributing copies of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a circular scribble.

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 DETERMINING)	
COMPETITIVE LOCAL EXCHANGE CARRIER)	DOCKET TC18-013
PROCESSES FOR REQUESTING 9-1-1 TRAFFIC)	
DELIVERY FROM RURAL LOCAL EXCHANGE)	
CARRIERS)	

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

The South Dakota Telecommunications Association (hereinafter referenced as “SDTA”), by and through its attorneys, hereby provides its Reply Comments relating to the Petition for Declaratory Ruling (hereinafter referenced as “the Petition”) filed by the South Dakota 911 Coordination Board/Department of Public Safety.

In reply to the initial comments filed by the other parties to this proceeding and also the Motion to Dismiss filed by NextGen Communications, Inc. (NextGen), SDTA presents the following comments. In addition, SDTA, like NextGen, would ask the Commission take notice of SDTA’s prior arguments presented in Docket TC17-063 (In the Matter of the Petition for a Declaratory Ruling by the Department of Public Safety/911 Coordination Board Regarding Determining Responsibility for Rural Carrier Interconnection to the Next Generation 9-1-1 System) to the extent those arguments are deemed relevant for consideration on any questions concerning the instant Petition of the 911 Coordination Board.

SDTA would first note its opposition to the Motion to Dismiss presented by NextGen and the specific contention that the Petition of the 911 Coordination Board, as filed, “is flawed in fact and law.” SDTA believes the question presented is a proper legal question that may be addressed through this Declaratory Ruling process, pursuant to the broad authority given state agencies pursuant to SDCL 1-26-15. Under that statute, “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 . . .” In this instance, as pointed out in SDTA’s Initial Comments, the 911 Coordination Board is essentially asking “whether the carrier-to-carrier interconnection provisions set forth in federal and state law (47 U.S.C. §§ 251 and 252, SDCL §§ 49-31-79 through 49-31-81, and ARSD §§ 20:10:32:20 through 20:10:32:41) are applicable to arrangements necessary for the transmission of 911 traffic between RLECs and other carriers. The specific question presented in the Petition referencing “bona fide requests”, “RLEC exemptions” and the “delivery of 9-1-1 traffic” very clearly concerns application of the state statutes and administrative rules governing interconnection arrangements between regulated telecommunications carriers and may properly be addressed by the Commission based on known industry practice to date and by relying on facts already presented by NextGen in its “Application for a Certificate of Authority to Provide Local Exchange Services” filed in Docket TC15-062. NextGen argues that the question raised cannot rightly be addressed without this Commission first having an answer to all of the factual questions presented in “NextGen Exhibit A” attached to its Initial Comments. SDTA would strongly disagree. Regarding the authority granted this Commission and other South Dakota agencies under SDCL § 1-26-15, the South Dakota Supreme Court has made it clear that declaratory rulings may be issued under the statute without the existence of an “actual case or controversy. . . based on any state of facts described by a petition, including an assumed state of facts.” In re Petition for Declaratory Ruling Re SDCL 62-1-1(6), 877 N.W.2nd 340, 343 (2016), citing *Power Authority of State of New York v. New York State Department of Environmental Conservation*, 58 N.Y.2d 427, 461 N.Y.S.2d 769, 448 N.E.2d 436, 438-39 (1983). Contrary to what NextGen claims, the

Commission in this proceeding is not restricted to issuing declaratory rulings only if they are supported by actual facts, either already established or conceded by the parties.¹ The authority of the Commission under SDCL 1-26-15 is more expansive and even permits agency declaratory rulings based on “hypothetical facts.”²

A. NextGen requires “interconnection” with the public switched network in order to provision its NG911 services.

NextGen states in its comments that it “never requests 9-1-1 traffic from an RLEC” and that 9-1-1 traffic is one-way; from the RLEC’s subscriber to the 9-1-1 network, not two-way” and suggests that it does not need “interconnection” as contemplated by the provisions of SDLC §§ 49-31-79 through 49-31-81 because RLECs by federal and state mandates are required to “deliver” their 911 traffic. In response to these arguments, as noted in SDTA’s Initial Comments, pp. 16-19, NextGen is a certified competitive local exchange carrier (CLEC) engaged in the provisioning of emergency 911 services and, as such, it is providing a regulated telecommunications service clearly deemed to be an essential component of “local exchange” or “telephone exchange services.” Necessarily then, it is providing a local exchange service that is either already being provided by other local exchange carriers or which at least potentially can be provided by other LECs or CLECs certified in South Dakota.³ Regardless of how NextGen may view the situation (as the current carrier selected to assist the State with NG911 deployment) it is operationally a CLEC providing a

¹ In re Petition for Declaratory Ruling Re SDCL 62-1-1(6), 877 N.W.2nd 340, 343 (2016)

² *Id.*

³ See <http://urgentcomm.com/ng-911/att-announces-plan-deploy-nationwide-esinet-support-psaps-transition-ng911> AT&T announces “plan to deploy a nationwide Emergency Services IP network (ESInet) that meets the core networking standards that public-safety answering points (PSAPs) must have to transition to next-generation 911 (NG911) that will enable text, data, video and photo communications, as well as emergency voice calls.”

telecommunications service that other carriers are also able to provide. In addition, because the company, to successfully provision its services, must be positioned to receive 911 calls from potentially all local exchange customers throughout the State, it requires from other LECs in South Dakota public switched telephone network (PSTN) connections. Given these circumstances, it is nonsensical for NextGen to argue that it is seeking something other than regulated carrier-to-carrier “interconnection.”

Further, it should be noted, as SDTA also pointed out in Docket TC17-063, that it is not accurate for NextGen to suggest that it is only receiving 911 traffic that originates from the RLEC service areas. NextGen also requires traffic termination facilities back to PSAP entities that are located in such areas.

B. The ability to pursue “voluntary negotiations” does not displace the procedures set forth in 47 U.S.C. Section 252.

NextGen continues to argue that it has the right to pursue separate voluntary commercial negotiations entirely outside of the process for local network interconnection set forth in SDCL §§ 49-31-79 through 49-31-81 and 47 U.S.C §§ 251 and 252. SDTA disputes this interpretation of the applicable state and federal laws.

Again, NextGen is seeking interconnection arrangements that are necessary for it to receive 911 originating traffic from all other local exchange carriers operating in South Dakota. It requires local interconnection with exchange carrier networks throughout the State and it is not asking for exchange access services in the form of switched access services, that could be obtained out of either the LECA, NECA or individual company tariffs, or special access services that could be purchased out of the existing LEC tariffs or possibly on an individual case basis through contract. Rather, it is seeking “interconnection” with the public

switched network that requires both local transport and local switching services (for switching and transport of “non-access” local telecommunications traffic).

The provisions of 47 U.S.C. § 251(a)(1) reference “[v]oluntary negotiations,” but merely provide that “an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 . . .” There is no language indicating that the “procedures for negotiation, arbitration, and approval of agreements” may be set aside at the discretion of interconnecting carriers and entirely replaced with a separate commercial negotiations process.

Specifically, NextGen contends in its comments filed herein that the “only 9-1-1 arrangements in place today in South Dakota must be “voluntary” as there are no Commission approved negotiated 9-1-1 specific agreements on file with the Commission . . .” In response, SDTA would note that CenturyLink has for a good number of years been providing 9-1-1 selective router services to the State of South Dakota and RLECs in South Dakota have had local traffic exchange agreements in place with CenturyLink, with established local points of interconnect (POIs) or meet points, for many years predating the 1996 Communications Act. Through these long-established meet point arrangements, CenturyLink has been able to receive local originated traffic, including originated 911 calls, and has accepted its transport responsibilities as an interconnecting carrier.

C. The Petition for Declaratory Ruling properly seeks a determination as to whether the “quasi-judicial” procedures prescribed under the state and federal interconnection provisions contained in SDCL §§ 49-31-79 through 49-31-81 and 47 U.S.C §§ 251 and 252 may be used to resolve the disputed 911 transport issues.

NextGen refuses to recognize in its initial comments that the question presented in the 911 Coordination Board’s Petition, as compared to the question set forth in the earlier Petition filed in TC17-063, is more limited in scope, going so far as to state that “a Declaratory Ruling is an inappropriate Commission process for answering the Board’s question –period.” SDTA would adamantly disagree. The question now presented, unlike the question presented in TC17-063, does not ask the Commission to make any determination concerning whether and what specific 911 originating transport obligations rest with the RLECs or NextGen. It rather only seeks an answer from this Commission as to whether, in relation to the carrier network interconnection arrangements needed to receive and complete 911 calls, the provisions of SDCL §§ 49-31-79 through 49-31-81 and 47 U.S.C. §§ 251 and 252 are applicable.

As this Commission is well aware both the state and federal provisions governing interconnection requirements include very specific procedures for the resolution of disputes, giving the Commission authority to (1) hold hearings and make decisions concerning the rural interconnection exemption established by 47 U.S.C. § 251(f)(1) and requests for suspensions and modifications received from rural carriers pursuant to 47 U.S.C. § 251(f)(2), and (2) to engage itself as an arbiter on open interconnection issues pursuant to 47 U.S.C. § 252(b). This Commission has historically under the purview of these provisions appropriately conducted its proceedings as adversarial, contested case proceedings, allowing for intervention by interested parties and holding evidentiary

hearings when requested by the parties or deemed necessary by the Commission. These proceedings are best suited to address the specific transport obligations that should be shouldered by RLECs and RLEC end users in relation to the carriage of 911 traffic and, further, contrary to the arguments now presented by NextGen (as part of its Motion to Dismiss), a decision by the Commission on the limited question presented by the 911 Coordination Board's Petition would be very helpful. To date, despite its status as a certified CLEC and even though it has been unable to cite to any state or federal law that specifically provides an exception to the established carrier-to-carrier interconnection requirements for 911 traffic arrangements, NextGen continues to claim that it has absolutely no responsibility to even seek interconnection from RLECs throughout the State. Nothing has occurred since 2015 indicating that NextGen is likely to change this view and, for this reason, SDTA urges the Commission to act on the filed Petition and answer the question raised. Action on the Petition, hopefully, will put the disagreement between the RLECs and NextGen, over transport obligations, on a path that leads to actual final resolution. The South Dakota Department of Public Safety/911 Coordination Board as a state agency has the standing and right to pursue the Declaratory Ruling process provided for under SDCL 1-26-15 and the Commission should rule on the same.

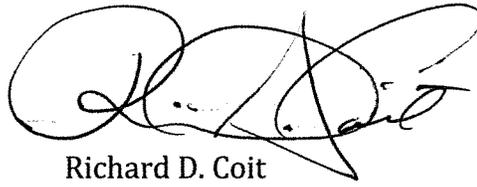
D. Conclusion.

Regarding the question presented by the Petition for Declaratory Ruling, SDTA believes the answer is clear and that the Commission must find that the carrier-to-carrier interconnection provisions set forth in federal and state law (47 U.S.C. §§ 251 and 252, SDCL §§ 49-31-79 thru 49-31-81, ARSD §§ 20:10:32:20 through 20:10:32:41) are applicable to arrangements necessary for the transmission of 911 traffic between carriers. This then

would require that CLECs requesting delivery of 9-1-1 traffic from an RLEC submit a “bona fide request” for interconnection to each RLEC and also file a copy of such request with the Commission as required under 47 U.S.C. § 251(f)(1)(B), SDCL § 49-31-79 and ARSD § 20:10:32:38.

Dated this 22 day of June, 2018.

Respectfully submitted:

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

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CERTIFICATE OF SERVICE

I hereby certify that an original of the Initial Comments of the South Dakota Telecommunications Association, dated June 22, 2018, filed in PUC Docket TC18-013, was served upon the PUC electronically, directed to the attention of:

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Dated this 22nd day of June 2018



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