

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

**IN THE MATTER OF THE PETITION FOR)
A DECLARATORY RULING DETERMINING) NEXTGEN COMMUNICATION INC
COMPETITIVE LOCAL EXCHANGE) OBJECTIONS TO THE
CARRIER PROCESSES FOR REQUESTING) JUNE 28, 2018 COMMISSION ORDER
9-1-1 TRAFFIC DELIVERY FROM RURAL)
LOCAL EXCHANGE CARRIERS) TC18-013
)**

NextGen Communications, Inc. ("NextGen") hereby respectfully Objects to the written Public Utilities Commission ("Commission") Order ("Order") entered on June 28, 2018 in this matter. The Order contains findings and a declaration that are outside the scope of and differ materially from the Department of Public Safety / 9-1-1 Coordination Board's ("Board") Petition for Declaratory Ruling ("Petition."). NextGen respect's the Commission's desire to resolve this long-standing controversy; however, to preserve the authority, dignity, and integrity of the Commission's Order, it must be revised to comply with the Petition.¹ NextGen supports this Objection as follows:

1. The Board's Petition requested a Commission ruling on only the following question:

"Does South Dakota law require bona fide requests as a prerequisite to determining if RLEC exemptions do or do not apply when a CLEC is requesting delivery of 9-1-1 traffic from an RLEC, assuming voluntary agreements are not feasible?"

2. The Board's Petition, as detailed above, was the only noticed issue for the hearing.

Therefore, the Commission is restricted to answer only the question asked based upon only the facts presented as related to that question. The parties to this proceeding have cited to In re Petition for Declaratory Ruling, 2016 S.D. 21 throughout the proceeding

¹ Some differences appear to be typographical errors. While these may be inadvertent, they would have the authority of a Commission Order if not corrected.

as authority for this Commission to Act on the Petition. That case also supports NextGen's position that the Petition must "contain all the pertinent facts necessary" for a decision. Id at ¶1. The Commission must act only upon those facts and cannot omit facts or add to them.

3. Every part of the question asked by the Board defines its applicability to NextGen and other carriers. This includes the statement that, "voluntary agreements are not feasible." The Commission omitted this key component of the Board's question in its Order.
4. In Paragraph 4 the Order states, "the Commission voted unanimously to declare that when a competitive local exchange carrier is requesting deliver of 9-1-1 traffic from a rural exchange carrier, it must submit a bona fide request for interconnection as contemplated in both state and federal law and file a copy of the request with the Commission." The finding is in error because it omitted the Board's written assumption that "voluntary agreements are not feasible." Furthermore, the Petition did not request the Commission to determine when or whether the initial bona fide request must be filed, *only* what happens *after* a request is filed.
5. The Commission also made a finding outside the question asked by the Board. In its pleadings, the Board acknowledged and reinforced the narrowness of its question. The final sentence of Paragraph 5 is outside the question asked by the Board in its Petition. The sentence states, "The Commission finds that for a CLEC to successfully provide its telecommunications throughout the state, it requires from other local exchange companies in South Dakota public switched telephone network connections, or in other words, interconnection." This finding should be stricken

from the Order as it is outside the confines of the Petition, thus improperly included in the Order. Neither the manner or mechanisms by which a CLEC can provide telecommunications services, nor the details of CLEC business models, were noticed questions before the Commission. The language of the Order inaccurately draws a conclusion representing facts not in evidence regarding the various business models of CLECs. For example, some may be for business services only, some may target limited geographic areas (and not require connectivity “throughout the state”), others may be only concerned with data services, etc.

6. It is not accurate to state that NextGen *requires* “public switched telephone network connections.” In NextGen’s situation, 9-1-1 services are a limited type of traffic carried, in part, over dedicated segregated circuits that are not part of the public switched network. In addition, as NextGen has noted many times, the term, “interconnection” has a specific technical definition in the 1996 Telecommunications Act that directly controls state law, and the Commission’s re-definition is inaccurate.
7. In summary, if a conclusion was not briefed, argued, supported by facts, or otherwise properly noticed and before the Commission, it is improper to include it in the Order and it must be revised or removed.
8. NextGen’s position as briefed and argued in this matter was that the Board lacked legal standing under the applicable statute to file the Petition. NextGen played by the Commission’s rules, and restricted its arguments and rebuttal accordingly. NextGen understands and respects the Commission’s disagreement as to NextGen’s position on this topic. However, as the Order contains affirmative conclusions and direction beyond the question asked by the Board, there is a clear and present danger than

NextGen was denied fundamental due process that could place the Order in legal jeopardy. In deference to the Commission, NextGen understands that errors can occur, and respectfully believes the proposed edits will remedy this issue without impacting any party's rights, yielding the clarity expected by the Board, and creating an accurate and legally sufficient Commission record.

WHEREFORE, NextGen requests the Commission adopt the attached Amended Order which contains the changes outlined above.

Dated this 29th day of June 2018.

NEXTGEN COMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Petition to Intervene was served electronically on the parties listed below on June 29, 2018:

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Dated this 29 day of June 2018.

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