

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition for a)	
Declaratory Ruling Determining)	Petition Filing Number ____
Competitive Local Exchange Carrier)	
Processes for Requesting 9-1-1 Traffic)	Petition for Declaratory Ruling
Delivery from Rural Local Exchange)	
Carriers)	

Pursuant to ARSD 20:10:01:34, the South Dakota 9-1-1 Coordination Board (hereinafter “the Board”), which is administratively attached to the Department of Public Safety, petitions the Commission to issue a declaratory ruling determining if bona fide requests are required prerequisites under South Dakota law in order to determine whether or not rural local exchange carrier (“RLEC”) exemptions apply when a competitive local exchange carrier (“CLEC”) requests delivery of 9-1-1 traffic from an RLEC, assuming voluntary agreements are not feasible.

In support of its petition, the Board submits the following information required by ARSD 20:10:01:34:

1. The state statute in question

The South Dakota statute applicable to this Petition is SDCL 49-31-79:

Pursuant to 47 U.S.C. § 251(f)(1) as of January 1, 1998, the obligations of an incumbent local exchange carrier, which include the duty to negotiate and provide interconnection, unbundled network elements, resale, notice of changes and collocation, do not apply to a rural telephone company unless the company has received a bona fide request for interconnection, services, or network elements and the commission determines that the rural telephone company shall fulfill the request. 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. The commission shall make such determination within one

hundred twenty days after receiving notice of the request. The person or entity making the request shall have the burden of proof as to whether each of the standards for reviewing the request has been met. Nothing in this section prevents a rural telephone company from voluntarily agreeing to provide any of the services, facilities, or access referenced by this section.

2. The facts and circumstances which give rise to the issue to be answered by the Commission

In 2012, the South Dakota Legislature enacted legislation to provide funding to upgrade South Dakota's 911 system to Next Generation 9-1-1 (hereinafter "NG9-1-1"). The Board is spearheading the effort to implement NG9-1-1 throughout South Dakota. Effective December 18, 2014, NextGen Communications, Inc. (hereinafter "NextGen") was contracted to design and maintain an NG9-1-1 system for South Dakota. On December 23, 2015, in docket TC15-062, the Commission granted NextGen a Certificate of Authority pursuant to a Joint Stipulation between NextGen and the South Dakota Telecommunications Association (hereinafter "SDTA"). Under Section 7 of that Stipulation, the issue of who had responsibility for transport of 9-1-1 traffic to NextGen's centralized points of interconnection remained undetermined.

Requests for connections at the NG9-1-1 network ingress points were originally sent to South Dakota carriers on December 22, 2015, but not filed with the Commission. Thereafter, Board staff was contacted by SDTA regarding the issue of responsibility for call transport from rural carriers' areas of service to NextGen's points of interconnection. Ongoing discussions among Board staff, NextGen, and SDTA have failed to produce a resolution to this issue. Revised requests were sent on August 10, 2017, but were also not filed with the Commission. SDTA's members have indicated that they will not connect to the NG9-1-1 system at the centralized points until this issue is resolved.

The issue of transport from rural carriers' service areas to the centralized points of ingress is halting progress in connecting rural carriers to the NG9-1-1 System. In an effort to resolve the issue reserved in the Stipulation under the 2015 Order in Docket 15-062, the Board filed a Petition for Declaratory Ruling on October 27, 2017. That Petition became Docket TC17-063. NextGen, SDTA, and South Dakota Network, LLC were all granted intervenor status in that Docket. On April 20th, 2018 the Commission dismissed the docket. Based on the Order in TC17-063 dated April 30th, the Commission felt the specific facts and technical arguments were too broad for the October 2017 Petition. Therefore, the Board is requesting a narrow, non-party specific, legal ruling in this Petition, which would allow the Board to make informed decisions moving forward.

3. The precise issue to be answered by the Commission's declaratory ruling

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?

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