

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

**IN THE MATTER OF THE PETITION BY THE  
DEPARTMENT OF PUBLIC SAFETY/9-1-1  
COORDINATION BOARD FOR DECLARATORY  
RULING DETERMINING COMPETITIVE LOCAL  
EXCHANGE CARRIER PROCESSES FOR  
REQUESTING 9-1-1 TRAFFIC DELIVERY FROM  
RURAL LOCAL EXCHANGE CARRIERS**

**ORDER DENYING MOTION TO  
DISMISS; DECLARATORY  
RULING REGARDING  
COMPETITIVE LOCAL  
EXCHANGE CARRIER  
PROCESSES FOR REQUESTING  
9-1-1 TRAFFIC DELIVERY FROM  
RURAL LOCAL EXCHANGE  
CARRIERS; NOTICE OF ENTRY**

**TC18-013**

On May 11, 2018, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling from the South Dakota Department of Public Safety, 911 Coordination Board (Board), to resolve the following issue: Does South Dakota law require bona fide requests as a prerequisite to determining if rural local exchange carrier (RLEC) exemptions do or do not apply when a competitive local exchange carrier (CLEC) is requesting delivery of 9-1-1 traffic from an RLEC, assuming voluntary agreements are not feasible?

On May 17, 2018, the Commission electronically transmitted notice of the filing and the intervention deadline of June 1, 2018, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On May 31, 2018, the South Dakota Telecommunications Association (SDTA) filed a Petition to Intervene in the docket. On June 1, 2018, NextGen Communications, Inc. (NextGen) filed a Petition to Intervene in the docket. On June 1, 2018, South Dakota Network, LLC filed comments. On June 11, 2018, Commission staff filed a letter in the docket requesting the Commission establish a procedural schedule. On June 18, 2018, the Commission issued an Order Granting Intervention; Order Establishing Procedural Schedule. On June 14, 2018, the Board filed initial comments. On June 18, 2018, SDTA and Commission staff filed initial comments and NextGen filed initial comments and a Motion to Dismiss. On June 22, 2018, SDTA and NextGen filed Reply Comments. On June 22, 2018, Commission staff filed Reply Comments and a Response to NextGen's Motion to Dismiss and the Board filed Reply Comments and Opposition to Motion to Dismiss.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:01:34, 20:10:01:35, and 20:10:32. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its regularly scheduled meeting on June 26, 2018, the Commission considered this matter. Having reviewed the filed documents and the arguments of the parties, the Commission voted unanimously to deny the Motion to Dismiss; as to whether South Dakota law requires 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, the Commission voted unanimously to declare that when a competitive local exchange carrier is requesting delivery of 9-1-1 traffic from a rural exchange carrier assuming voluntary agreements are not feasible, 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.

Pursuant to SDCL 49-31-79, 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 120 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. See also, SDCL 49-31-80 and 49-31-81; 47 U.S.C. §§ 251 and 252, and ARSD 20:10:32, ~~The Commission finds that for a CLEC to successfully provide its telecommunications services throughout the state, it requires from other local exchange companies in South Dakota public switched telephone network connections, or in other words, interconnection.~~

It is therefore

ORDERED, that NextGen's Motion to Dismiss is hereby denied. It is further

DECLARED, that when a competitive local exchange carrier is requesting delivery of 9-1-1 traffic from a rural exchange carrier assuming voluntary agreements are not feasible, 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.

#### NOTICE OF ENTRY

PLEASE TAKE NOTICE that this Declaratory Ruling was duly issued and entered on the day of June 2018. Dated at Pierre, South Dakota, this \_\_\_\_ day of June 2018.

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has n served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

(OFFICIAL SEAL)