

**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)	

**RESPONSE OF SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION
TO NEXTGEN COMMUNICATIONS OBJECTIONS
TO JUNE 28, 2018 COMMISSION ORDER**

The South Dakota Telecommunications Association (SDTA), by and through its attorneys, provides the following as its response to the objections raised by NextGen Communications, Inc. (NextGen) concerning the Commission’s Order issued in this matter on June 28, 2018. As indicated herein, SDTA opposes the proposed Amended Order that has been presented by NextGen for adoption by the Commission.

Regarding the filing by NextGen of June 29, 2018, SDTA states as follows:

1. In the cover letter provided with its filing, NextGen contends generally that the Commission with its Order of June 28, 2018 changed and expanded the scope of this proceeding. SDTA disagrees with this characterization of the Commission’s action. The Commission by its Order specifically “declared” that “when a competitive local exchange carrier is requesting delivery of 9-1-1 traffic from a rural local 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.” This ruling is appropriately confined and does respond directly to the legal question posed in the declaratory ruling presented by the South Dakota Department of Public Safety/911 Coordination Board.

NextGen's objections appear to rest primarily on the fact that the Commission did not within the last paragraph of its Order, in making its "DECLARED" statement, include the "assuming voluntary agreements are not feasible" language that was made part of the question stated in the 911 Coordination Board's Petition. In SDTA's view, these objections are baseless given that the Commission did in its Order reference the "voluntary agreements" language in describing the Commissioner voting which occurred at its meeting on June 26th (see paragraph 4 of the Order). The Commission Order also included a recitation of the provisions of SDCL § 49-31-79, the specific state statute at issue, including the last sentence of that statute which notes that a rural telephone company is not prevented from "voluntarily agreeing to provide any of the services, facilities, or access referenced by this section."

Further, the absence of a reference to the "voluntary agreements" language in the final declaration paragraph of the Commission's Order is of no significance and does not prejudice the due process rights of NextGen because, as noted in the "the facts and circumstances" outlined in the Petition for Declaratory Ruling filed by the 911 Coordination Board, it is clear that NextGen and the RLECs for some time have been unable to "voluntarily agree" on any necessary interconnection and transport terms. The Petition states specifically that "SDTA's members have indicated that they will not connect to the NG9-1-1 system at centralized points until this issue is resolved" and that "[t]he 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."¹ Based on these facts as set forth in the Petition for Declaratory Ruling, the Commission very reasonably concluded that "voluntary agreements" were not "feasible" and proceeded to rule on the crucial issue presented -- whether the

¹ Petition for Declaratory Ruling, pp. 2 and 3.

provisions of SDCL 49-31-79 were applicable and whether those provisions required the submittal and filing of a bona fide request for interconnection by CLECs like NextGen that are seeking the delivery of 9-1-1 traffic.

2. NextGen references in its objections the South Dakota Supreme Court decision in In re Petition of Declaratory Ruling Re SDCL 62-1-1(6), 877 N.W.2nd 340, 343 (2016) and states that this case “supports NextGen’s position that the Petition must ‘contain all the pertinent facts necessary for a decision.’” NextGen elaborates and cites this case for the proposition that the Commission “must act only upon those facts [in the Petition] and cannot omit facts or add to them.” SDTA would point out that this is a misstatement of the Court’s decision. The Court opinion merely refers to a South Dakota Department of Labor rule provision, ARSD § 47:01:01:04, which stated that “petitions” should “contain all the pertinent facts necessary to inform the secretary of the nature of the rulings requested.”² Contrary to what NextGen suggests, the Court did not address the specific question of what facts must be set forth in requests for declaratory ruling that are presented to South Dakota government agencies, pursuant to the provisions of SDCL § 1-26-15. The “underlying question” addressed in the Court’s decision was limited to whether or not state agencies were authorized under SDCL § 1-26-15 to issue declaratory rulings absent an actual case or controversy. The Court concluded that state agencies were authorized to do so.

3. NextGen argues in paragraphs 3 and 4 of its filing that the Commission’s finding that CLECs must submit and file a bona fide request when delivering 9-1-1 traffic to RLECs is in error because the Commission omitted the 911 Coordination Board’s “written assumption that voluntary agreements are not feasible”. Again, SDTA would disagree. While the

² In re Petition of Declaratory Ruling Re SDCL 62-1-1(6), 877 N.W.2nd 340,344 (2016)

provisions of SDCL § 49-31-79 include language allowing for voluntary agreements between parties seeking interconnection services or arrangements, this language does not, as NextGen suggests, do away with the entire process applicable to interconnections between RLECs and other carriers “for the transmission and routing of telephone exchange service and exchange access” (as set forth in SDCL §§ 49-31-79 through 49-31-81, ARSD §§ 20:10:32:20 through 20:10:32:41, and 47 U.S.C. §§ 251 and 251). As noted in SDTA’s Reply Comments filed in Docket TC17-063:

NextGen asserts that there are two types of interconnection, regulated and commercial and argues, with respect to the interconnection it is seeking in South Dakota, that it may engage in commercial negotiations entirely outside of the Section 251/252 interconnection provisions.

SDTA disputes this reading of the law. Again, as already noted, 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). These services in all other cases to date, when provided by RLECs to other CLEC entities, have been provided pursuant to “interconnection agreements” negotiated by the parties, and filed with and approved by this Commission in accordance with the 47 U.S.C. § 252 procedures.

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. The provisions of 47 U.S.C. § 251(a)(1) clearly indicate otherwise requiring, in part, that any “agreement, including any interconnection agreement negotiated before February 8, 1996” must still be submitted for State commission review and approval pursuant to Section 252(e).

It is SDTA's belief that NextGen continues to cling to the view that it has the right to a separate "commercial negotiations" process without any regard for the established state and federal local interconnection provisions. This, from our perspective, explains why it is attempting to revise the Commission's Order as it has proposed. If successful in obtaining its "Amended Order", SDTA believes NextGen will assert that the Commission's declaratory ruling is essentially meaningless. It will continue to ignore the interconnection procedures established in the state and federal law believing that RLECs will eventually be pressured into accepting 911 transport responsibilities to NextGen's centralized points of presence in Sioux Falls and/or Rapid City. SDTA would urge the Commission to be wary of this possible result and avoid any amendments to its Order that would suggest to carriers like NextGen that they may unilaterally set aside the established state and federal interconnection procedures when connecting with RLECs, or other ILECs, to receive 911 traffic and provide competitive emergency 911 services.

4. NextGen also proposes that the Commission delete from its order the following specific finding:

"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."

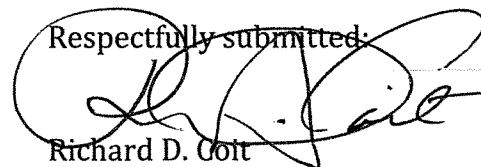
SDTA objects to the Commission making this requested revision and believes the above finding is an appropriate assumed fact based on all the pleadings and comments filed in this proceeding. NextGen states in its objections that "[i]t is not accurate to state that NextGen requires 'public switched telephone 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.” These statements are misleading and completely ignore the fact that NextGen does need a local switching service (in addition to separate direct trunking services into local exchange areas) in order to receive originated 911 calls from potentially every wireline telephone user in the State. It is SDTA’s understanding that NextGen has been retained by the State of South Dakota to provide NG911 services that support all or most of the Public Safety Answering Points (PSAPs) in the State. This being the case, obviously something more than dedicated, non-switched transport services, such as special access services are needed by NextGen to meet its contractual obligations. NextGen is surely not positioned to receive all 911 calls into its ESInet through the use of only special access type services (which would require dedicated loop facilities to all local exchange service end users). Both local transport and local switching or routing functions would be required.

Conclusion

Based on the foregoing, SDTA respectfully requests that the Commission dismiss the objections raised by NextGen to the Commission’s Order of June 28th issued in this Docket and reject NextGen’s proposed Amended Order.

Dated this 31st day of July, 2018.

Respectfully submitted:


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CERTIFICATE OF SERVICE

I hereby certify that an original of the RESPONSE OF SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION TO NEXTGEN COMMUNICATIONS OBJECTIONS TO JUNE 28, 2018 COMMISSION ORDER, dated July 13, 2018, filed in PUC Docket TC18-013, was served upon the PUC electronically, directed to the attention of:

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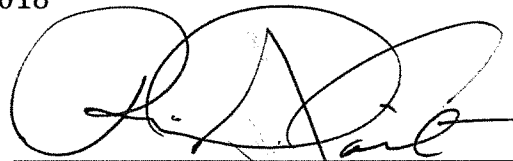
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Dated this 13th day of July 2018



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