

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

**IN THE MATTER OF THE PETITION
FOR A DECLARATORY RULING BY
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**

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**TC18-013

STAFF’S REPLY COMMENTS
TO PETITION; RESPONSE TO
NEXTGEN’S MOTION TO
DISMISS**

COMES NOW, the Public Utilities Commission Staff (“Staff”) and hereby files these Reply Comments to Petition and Response to NextGen Communications Inc.’s (“NextGen”) Motion to Dismiss.

In comments submitted on June 18, 2018, NextGen claims that the Petitioner does not have appropriate standing to request a declaratory ruling because the Petitioner, as a state agency, is not regulated by the Commission and thus the Petition is legally flawed and must be dismissed. Staff disagrees with this claim. ARSD 20:10:01:34 provides that “any person wishing the commission to issue its ruling as to the applicability to that person of any statutory provision or rule or order of the commission may file with the commission a petition for declaratory ruling.” While the Petitioner may not be regulated by the Commission, the question presented is under the purview of the Commission’s authority and the Petitioner requests a Commission ruling on the applicability of a statute within the Commission’s jurisdiction. Additionally, according to the filing, the Petitioner has contracted with NextGen, an entity holding a Certificate of Authority to provide telecommunications services in South Dakota, to design and maintain an NG9-1-1 system in South Dakota. Under the facts presented in the filing, it appears the Petitioner would likely be impacted

by the applicability of the question and statute posed and should not be precluded from seeking a declaratory ruling simply because the Petitioner is not an entity regulated by the Commission.

NextGen further argues that the dismissal of docket TC17-063 should logically lead to the dismissal of the Petition for Declaratory Ruling in this docket, but NextGen fails to recognize that the dockets are not identical and should not have the same result. Although the dockets focus on the same issue, the questions posed are wholly different. In TC17-063, the question posed was extremely broad and requested the Commission make a determination of which carrier has the responsibility to transport 911 traffic between rural carriers' service areas and the NextGen 911 network's centralized points of interconnection. Essentially, in that docket, the Petition requested the Commission make a factual SDCL 49-31-79 determination without the ability for the Commission to conduct a full evidentiary hearing on the matter. Ultimately, the Commission dismissed the petition on the basis that in order to answer the question posed, a quasi-judicial resolution of the technical and factual issues raised by the parties would be required.

In the current docket, the Petitioner requests the Commission answer a very specific question based on hypothetical facts. Although a declaratory ruling by the Commission may not be overly useful if, as NextGen claims, the hypothetical facts presented are not accurate, this proceeding is not the proper forum to argue the accuracy of the facts presented by the Petitioner. While a Declaratory Ruling by the Commission in this docket may not fully solve all of the issues raised by the parties in Docket TC17-063 or in the current TC18-013, a ruling may provide useful guidance to the Petitioner. If the Petition and the filed comments have provided sufficient information, Staff would encourage the Commission to issue a declaratory ruling on the question presented.

Dated this 22nd day of June 2018.

Amanda M. Reiss

Amanda M. Reiss
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501