

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

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**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 INITIAL COMMENTS  
REGARDING PETITION FOR A  
DECLARATORY RULING**

COMES NOW, the Public Utilities Commission Staff ("Staff") and hereby files these initial comments to the Department of Public Safety/9-1-1 Coordination Board's ("Applicant") Petition for a Declaratory Ruling.

Question Presented

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?

Legal Guidance

SDCL 49-31-81 and 49-31-79 are the guiding statutes regarding a requirement that telecommunications carriers interconnect and incorporate the coordinating federal statutes. The statutes state:

SDCL 49-31-81-The commission may implement and comply with the provisions of the federal Telecommunications Act of 1996, including the promulgation of rules pursuant to chapter 1-26. Except to the extent a local exchange carrier is exempt from or has received a suspension or modification pursuant to 47 U.S.C. § 251(f)(1) or 251(f)(2),

as of January 1, 1998, and the provisions of this chapter, the carrier shall provide interconnection, network elements, and other telecommunications services to any provider of competitive telecommunications services that requests such interconnection and services to the extent required by 47 U.S.C. §§ 251(a) to 251(c), inclusive, as of January 1, 1998. If the parties are unable to voluntarily negotiate an agreement for the interconnection or services requested, either party may petition the commission to mediate or arbitrate any unresolved issues as provided in 47 U.S.C. § 252. The provisioning of interconnection, network elements, and other telecommunications services to the extent required by 47 USC §§ 251(a) to 251(c), inclusive, by a local exchange carrier pursuant to this section is not subject to §§ 49-31-1.1 to 49-31-1.4, inclusive, 49-31-3.1 to 49-31-4, inclusive, 49-31-12.2, 49-31-12.4, 49-31-12.5, and 49-31-18 and 49-31-19, inclusive.

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.

## Analysis

Under federal and state law, there is a requirement that an incumbent local exchange carrier (“ILEC”) interconnect to any provider of competitive telecommunications services (“CLEC”) requesting interconnection. *47 U.S.C. §§ 251(a) to 251(c) and SDCL 49-31-81*. However, SDCL 49-31-79 specifically provides an exception to the interconnection requirement by expressly stating “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.*” (emphasis added). Based in the plain language of the statute, a rural telephone company (“rural” or “RLEC”) is exempt from an ILEC’s duty to negotiate and provide interconnection merely because of the company’s status as a rural carrier.

If a CLEC would like to interconnect with a rural, but a voluntary agreement is not feasible, there is an avenue to pursue a Commission order that the rural shall fulfill the CLEC’s request. However, as indicated in SDCL 49-31-79, in order to begin such process, the rural must receive a *bone fide* request to interconnect. Additionally, the Commission would need to receive notice that such a request was made on the rural. Finally, the Commission would need to determine that that the request is not overly burdensome, that the request is technically feasible, and the request is consistent with the universal service principles in 47 U.S.C § 254 the rural shall fulfill the request, a finding which can only be issued after notice and a hearing pursuant to SDCL Chapter 1-26.

In its petition for a declaratory ruling, the 911 board cited no authority that provides an exception for a carrier transporting 911 traffic nor that indicates that 911 traffic should be treated differently than any other carrier providing telecommunications services. Staff is unaware of any provision in state or federal law, nor in case law, that provides any exemption to these telecommunications provisions because the requesting party is requesting interconnection for 911 purposes. Unless such provisions do exist, a CLEC requesting delivery of 9-1-1 traffic should be treated in the same manner as any other telecommunications carrier seeking to interconnect with a RLEC.

WHEREFORE, Staff respectfully requests the Commission issue a declaratory ruling indicating that 1) there is not an exemption from the rural exemptions if a CLEC requests delivery of 9-1-1 traffic and 2) that a *bone fide* request is a prerequisite for determining whether a rural local exchange carrier must interconnect when requested by a CLEC.

Dated this 18<sup>th</sup> day of June 2018.

*Amanda M. Reiss*

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