

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

_____)	
Application of)	
)	
NGA 911, L.L.C.)	
)	Docket No. _____
for Certificates of Authority)	
to Provide Resold and Facilities-Based)	
Local Exchange and Interexchange)	
Telecommunications Services in the)	
State of South Dakota)	
_____)	

APPLICATION OF NGA 911, LLC

NGA 911, L.L.C. (“NGA 911” or “Applicant”), by its undersigned counsel and pursuant to 20:10:32:03 and 20:10:24:02 of the South Dakota Public Utilities Commission (“Commission”) Administrative Rules (S.D. Admin. Rules), applies for a Certificate of Authority (“Certificate”) to provide facilities-based and resold local exchange and interexchange telecommunications services throughout the State of South Dakota. Specifically, Applicant seeks Certificates to provide local exchange and interexchange telecommunications services in order to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support public service answering point (“PSAP”) operations. Applicant does not intend to provide other retail voice services.

The Applicant submits the following information in support of its request:

- (1) The applicant's name, address, telephone number, facsimile number, web page URL, and E-mail address;**

Applicant's legal name is NGA 911, LLC and its corporate headquarters are located at:

8383 Wilshire Blvd., Suite 800
Beverly Hills, CA 90211
Tel: 877-899-8337
Fax: 646-632-1311
Website: www.nga911.com
Email: don@nga911.com

The Commission's primary contact for Applicant's ongoing operations and regulatory matters is:

Don Ferguson, CEO
NGA 911, L.L.C.
8383 Wilshire Blvd., Suite 800
Beverly Hills, CA 90211
Tel: 213-284-1480
don@nga911.com

- (2) A description of the legal and organizational structure of the applicant's company;**

Applicant is a duly formed limited liability company, organized under the laws of the State of California. A copy of Applicant's Articles of Organization is provided in **Exhibit A**.

- (3) The name under which applicant will provide local exchange services if different than in subdivision (1) of this section;**

Applicant will provide service in South Dakota under the name NGA 911, L.L.C.

- (4) The location of the applicant's principal office, if any, in this state and the name and address of its current registered agent, if applicable;**

Applicant does not maintain an office or personnel within the State of South Dakota. Responsibility for South Dakota operations will be handled by Applicant's current management team from its Beverly Hills, California location. NGA 911's registered agent in South Dakota is:

Registered Agent Solutions, Inc.
880 Kingswood Drive
Rapid City, SD 57702

- (5) **A copy of its certificate of authority to transact business in South Dakota from the secretary of state;**

A copy of Applicant's Certificate of Authority to transact business as a foreign limited liability company in South Dakota is attached as **Exhibit B**.

- (6) **A description of the applicant's experience providing any telecommunications services in South Dakota or in other jurisdictions, including the types of services provided, and the dates and nature of state or federal authorization to provide the services;**

Applicant has not previously provided any services in South Dakota. Applicant currently provides service in California, Louisiana, Texas and West Virginia. Applicant is currently authorized to provide intrastate telecommunications services in California, Montana, South Carolina, Texas and West Virginia. NGA 911 has not had a certification or authorization denied, suspended, terminated, or revoked by any state. NGA 911 has pending applications to provide intrastate telecommunications services in Georgia, Louisiana and Virginia and is in the process of seeking such authorization in other states. A chart noting the type of service and the dates on which NGA 911 obtained authorization in each state noted above, is attached as **Exhibit C**.

Applicant does not hold any authority from the Federal Communications Commission.

- (7) **Names and addresses of applicant's affiliates, subsidiaries, and parent organizations, if any;**

Applicant is a privately held company. Applicant does not have any parent companies or subsidiaries.

(8) A list and specific description of the types of services the applicant seeks to offer and how the services will be provided including:

(a) Information indicating the classes of customers the applicant intends to serve;

Applicant will provide services to state and municipal governmental agencies to support public service answering point (“PSAP”) operations.

(b) Information indicating the extent to and time-frame by which applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale;

NGA 911 intends to offer its services through the use of a combination of its own facilities and facilities to be leased (such as through unbundled network elements) from a variety of telecommunications carriers, and also seeks authority to provide service for resale. NGA 911 will use existing network infrastructure, include fiber optic lines, poles, conduits, ducts and other access methods, where appropriate to provide its services. Applicant does not have plans to deploy specific facilities in South Dakota at this time. Should additional access or network deployment be necessary, NGA 911 will obtain necessary approvals through the appropriate permitting agency. NGA 911 expects that any outside plant construction ordinarily would be small in scale, consisting of construction of relatively short conduit routes, installations of a poles where existing facilities are inadequate, and installation or construction of other, small above-ground facilities. Further, such construction generally would occur in existing roadways or other previously-developed and disturbed rights-of-way.

NGA 911 proposes to begin providing telecommunications service in South Dakota shortly after it has obtained the requisite Commission certification.

- (c) **A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers; and**

Please see Response to (b) above. Applicant will not provide traditional switched local exchange services.

- (d) **Information identifying the types of services it seeks authority to provide by reference to the general nature of the service;**

Applicant seeks authority to provide facilities-based and resold local exchange and interexchange telecommunications services in order to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support public service answering point (“PSAP”) operations. At this time, NGA 911 does not have plans to provide retail switched voice services to customers in South Dakota.¹ As noted above, NGA 911 intends to provide infrastructure facilities (such as conduit, and dark or lit fiber) for use in connection with the transport and transmission of communications. NGA 911 provides a complete, customizable NG911 solution offering to bring secure, affordable 9-1-1 services from the cloud to the State of South Dakota. NGA 911’s solution provides a highly efficient path to achieve end-to-end IP call handling for 9-1-1 services. NGA 911’s incremental deployment, patented and patent pending services are poised to safely transition legacy 9-1-1 systems, like those used in South Dakota, to the future of emergency services worldwide, offering the latest NG911 technology available. Applicant is seeking to comply with South Dakota’s regulatory requirements so NGA 911’s advanced technology can be applied to the modernization of the state’s 9-1-1 system. The anticipated impact of this technology is an improvement in the operation, function and downtime at a manageable cost.

¹ In the event that Applicant decides to expand its services to include voice services as dictated by marketplace conditions, Applicant will seek such authority at that time.

With its cloud services Applicant has created an infrastructure that stays ahead of cyber threats, scales on demand, and employs numerous failover strategies. It enables multiple access points to integrate new technology through innovative collaborative techniques, with no single point of failure. It allows for the seamless integration of PSAP (Public Safety Answer Points) processes that translate into faster call processing times, increased resource efficiency, quicker response times, and better decision making.

(9) A service area map or narrative description indicating with particularity the geographic area proposed to be served by the applicant;

Applicant seeks authority to provide its services throughout the state of South Dakota.²

Accordingly, a map of Applicant's proposed service area is not attached.

(10) Information regarding the technical competence of the applicant to provide its proposed local exchange services including:

(a) A description of the education and experience of the applicant's management personnel who will oversee the proposed local exchange services; and

Applicant has the managerial and technical qualifications necessary to provide the proposed services in South Dakota. NGA 911 is managed by a highly skilled team with substantial expertise and experience in public safety communications, related engineering, and business management. Its founder and CEO is Don Ferguson. Mr. Ferguson is joined by Bill Munn, Ph.D., who serves as the company's Vice President; Darold Whitmer, Senior Vice President, Strategic Relationships; Michelle Bland, ENP, who is the Senior Vice President of Operations; and Ed Veal, who is the Chief Technology Officer. Biographies of key management personnel of Applicant, who are responsible for the Applicant's operations, are provided in **Exhibit D**. These biographies

² Applicant plans to respond to a Request for Proposal #1569 from the South Dakota Department of Public Safety on behalf of the South Dakota 9-1-1 Coordination Board to provide integrated network services to South Dakota PSAPs. The RFP seeks a provider or combination of providers to provide such services statewide. In order to be able respond to the RFP as a single source provider, Applicant seeks statewide authority.

reflect management's substantial communications industry experience and expertise, and demonstrate that the Applicant possesses significant managerial and technical expertise operating a variety of communications services across multiple jurisdictions. Thus, NGA 911 possesses the managerial and technical qualifications necessary to operate a competitive telecommunications company in South Dakota, consistent with the Commission's requirements. Applicants officers and directors are:

Corporate Officers

Don Ferguson, President and CEO
Charmaine Francesca (Ishka) Villacisneros, Chief Financial Officer/Controller
Darold E. Whitmer, Senior Vice President Strategic Relationships
John (Bill) Munn, Ph.D., Vice President
Michelle Bland, Senior Vice President, Operations
Ed Veal, Chief Technical Officer

Board of Directors

Don Ferguson
Russ Larry
Koorosh Rad
Elio Galam

- (b) Information regarding policies, personnel, or arrangements made by the applicant which demonstrates the applicant's ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements;**

Customers with complaints or inquiries should contact the Company toll free at 877-899-8337, via email at Services@nga911.com or by mail to the Company's principal place of business at . 8383 Wilshire Blvd., Suite 800, Beverly Hills, CA 90211.

Applicant will perform network and equipment maintenance necessary to ensure compliance with any quality of service requirements. Applicant will comply with all applicable Commission rules, regulations and standards, and will provide safe, reliable and high-quality telecommunications services in South Dakota.

(11) Information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services;

NGA 911 intends to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support public service answering point (“PSAP”) operations. As noted above, NGA 911 intends to provide infrastructure facilities (such as conduit, and dark or lit fiber) for use in connection with the transport and transmission of communications. NGA 911 is a complete, customizable NG911 solution offering to bring secure, affordable 9-1-1 services from the cloud to the State of South Dakota. NGA 911’s solution provides a highly efficient path to achieve end-to-end IP call handling for 9-1-1 services. NGA 911’s incremental deployment, patented and patent pending services are poised to safely transition legacy 9-1-1 systems, like those used in South Dakota, to the future of emergency services worldwide, offering the latest NG911 technology available. Applicant is seeking to comply with South Dakota’s regulatory requirements so NGA 911’s advanced technology can be applied to the modernization of the state’s 9-1-1 system. The anticipated impact of this technology is an improvement in the operation, function and downtime at a manageable cost.

With its cloud services Applicant has created an infrastructure that stays ahead of cyber threats, scales on demand, and employs numerous failover strategies. It enables multiple access points to integrate new technology through innovative collaborative techniques, with no single point of failure. It allows for the seamless integration of PSAP (Public Safety Answer Points) processes that translate into faster call processing times, increased resource efficiency, quicker response times, and better decision making.

- (12) **For the most recent 12-month period, financial statements of the applicant consisting of balance sheets, income statements, and cash flow statements. The applicant shall provide audited financial statements, if available;**

The Applicant has sufficient financial resources to initiate and maintain the services and related operations in South Dakota as proposed in this Application. Applicant attaches as **Confidential Exhibit E**, financial information for NGA 911 that demonstrates that Applicant has the financial resources available to provide the proposed telecommunications services in South Dakota. Because Applicant is a privately held company, Applicant requests that the financial statement appended hereto as **Confidential Exhibit E** be treated as confidential and proprietary. Applicant is also filing a *Request for Confidential Treatment* concurrent with this Application. The Confidential exhibit is marked “**CONFIDENTIAL**” and is being filed as a separate document and Applicant requests that it not to be made part of the public record.

- (13) **Information detailing the following matters associated with interconnection to provide proposed local exchange services:**

Applicant has not begun negotiations, and has not yet executed an interconnection agreement (or other arrangements) with respect to its operations in South Dakota.

- (a) **The identity of all local exchange carriers with which the applicant plans to interconnect;**

Applicant proposes to complete and execute an interconnection agreement (or similar arrangements) to provide connectivity and interconnection between Applicant’s NG9-1-1 system with incumbent local exchange carriers, including AT&T and CenturyLink, rural local exchange carriers, competitive local exchange carriers, wireless carriers and other service providers such as VoIP providers necessary to provide the services under the RFP.

- (b) **The likely timing of initiation of interconnection service and a statement as to when negotiations for interconnection started or when negotiations are likely to start; and**

Applicant has not begun negotiations, but expects that negotiations will likely begin during the processing of this application for authority or shortly after the Commission has granted this application.

- (c) **A copy of any request for interconnection made by the applicant to any local exchange carrier;**

As noted above, Applicant has not yet made a request for interconnection. Applicant will supplement this application and provide a copy of any such requests in the near future.

- (14) **A description of how the applicant intends to market its local exchange services, its target market, whether the applicant engages in multilevel marketing, and copies of any company brochures that will be used to assist in sale of the services;**

As previously noted, NGA 911 plans to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support PSAP operations. Typically, as described in footnote 4, a government agency will issue a request for proposal (“RFP”) to provide services and Applicant will respond to that RFP. Applicant may conduct some direct marketing to governmental agencies but will not engage in multilevel marketing. Copies of Applicant’s company brochures and marketing materials are provided as **Confidential Exhibit F**. Applicant is also filing a *Request for Confidential Treatment* concurrent with this Application. The Confidential exhibit is marked “**CONFIDENTIAL**” and is being filed as a separate document and Applicant requests that it not to be made part of the public record.

- (15) **If the applicant is seeking authority to provide local exchange service in the service area of a rural telephone company, the date by which the applicant expects to meet the service obligations imposed pursuant to § 20:10:32:15 and applicant’s plans for meeting the service obligations;**

Not Applicable. Applicant will provide only non-switched services and will not provide traditional switched local exchange service to retail end users. Applicant also does not intend to

provide service to residential or business customers in the service area of any rural telephone company. Applicant also does not seek status as an Eligible Telecommunications Carrier as described in § 20:10:32:15 of the S.D. Admin. Rules. As described above, Applicant will offer its emergency call routing, transport, and related functionalities to state and municipal governmental agencies throughout the state, including in rural areas. In the future, if Applicant chooses to provide telephone exchange services or switched access services within any area served by a rural telephone company, Applicant will seek permission from the Commission in another proceeding before providing local service in that rural service area pursuant to 47 U.S.C. § 253(f). Applicant does not seek to affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f).

(16) A list of the states in which the applicant is registered or certified to provide telecommunications services, whether the applicant has ever been denied registration or certification in any state and the reasons for any such denial, a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable;

Applicant is currently authorized or registered to provide intrastate telecommunications services in California, Louisiana, Montana, South Carolina, Texas and West Virginia. NGA 911 has not had a certification or authorization denied, suspended, terminated, or revoked by any state. NGA 911 has pending applications to provide intrastate telecommunications services in Georgia and is in the process of seeking such authorization in other states.

NGA 911 is currently in good standing with the respective regulatory agencies in the states in which it is authorized to provide service.

- (17) The names, addresses, telephone numbers, E-mail addresses, and facsimile numbers of the applicant's representatives to whom all inquiries must be made regarding customer complaints and other regulatory matters;**

Correspondence concerning this Application should be directed to Applicants' attorneys:

Catherine Wang
Brett P. Ferenchak
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
Tel: 202-739-3000
Fax: 202-739-3001
catherine.wang@morganlewis.com
brett.ferenchak@morganlewis.com

NGA 911's primary contact for regulatory matters and customer service is:

Don Ferguson, CEO
NGA 911, L.L.C.
8383 Wilshire Blvd., Suite 800
Beverly Hills, CA 90211
Tel: 213-284-1480
don@nga911.com

- (18) Information concerning how the applicant plans to bill and collect charges from customers who subscribe to its proposed local exchange services;**

Customers will be billed directly by Applicant for the proposed telecommunications services, typically on a monthly basis. The name NGA 911, L.L.C. shall appear on customer's monthly bills and invoices.

- (19) Information concerning the applicant's policies relating to solicitation of new customers and a description of the efforts the applicant shall use to prevent the unauthorized switching of local service customers by the applicant, its employees, or agents;**

Applicant intends to obtain customers in response to RFPs but may also solicit government customers through direct marketing. Applicant does not intend to provide switched voice services, and therefore, anti-slamming measures are not applicable to NGA 911.

- (20) The number and nature of complaints filed against the applicant with any state or federal commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered;**

Applicant has not been the subject of complaints for the unauthorized switching of a Customer's telecommunications provider nor for charging Customers for services that were not ordered.

- (21) Information concerning how the applicant will make available to any person information concerning the applicant's current rates, terms, and conditions for all of its telecommunications services;**

Information regarding NGA 911's services including terms, conditions, rates and charges are available through the Company's regulatory contact as provided in Response to Question 17.

- (22) Information concerning how the applicant will notify a customer of any materially adverse change to any rate, term, or condition of any telecommunications service being provided to the customer. The notification must be made at least thirty days in advance of the change;**

NGA 911 will provide notice to its affected customers of any materially adverse change to any rate, term or condition of any telecommunications service consistent with the terms of their contracts with NGA 911 and applicable law, at least thirty (30) days prior to the effective date of the change.

- (23) A written request for waiver of those rules believed to be inapplicable;**

As NGA 911 will not be providing traditional switched local exchange and voice services to end users, Applicant respectfully requests a waiver of S.D. Admin. Rule 20:10:32:10, which requires that South Dakota local exchange carriers make the following services available to their customers (1) access to the public switched telephone network; (2) access to emergency services such as 911 or enhanced 911; (3) access to a local directory and directory assistance; (4) access to operator services; (5) telecommunications relay service capability or access necessary to comply with state and federal regulations; (6) non-published service upon written request or verbal request

of the customer; and (7) access to interexchange services. With respect to (2) above, Applicant reiterates that it plans to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support PSAP operations but does not believe such services are covered by (2) because they do not directly provide an end user access to emergency services but rather will connect the end user's carrier to the PSAP.

(24) Federal tax identification number and South Dakota sales tax number; and

NGA 911's Federal Tax Identification Number is 82-3960315. NGA 911 has requested a South Dakota sales tax number and will supplement this Application with the number once it is assigned.

(25) Other information requested by the commission needed to demonstrate that the applicant has sufficient technical, financial, and managerial capabilities to provide the local exchange services it intends to offer consistent with the requirements of this chapter and other applicable rules and laws.

Granting this Application will promote the public interest by increasing competition in the provision of telecommunications services in South Dakota. Applicant's operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise. These benefits work to maximize the public interest by providing continuing incentives for carriers to reduce costs while simultaneously promoting the availability of potentially desirable services.

For the reasons stated above, Applicant respectfully submits that the public interest, convenience, and necessity would be furthered by a grant of this Application for the authority to

provide facilities-based and resold local and interexchange telecommunications services.
Accordingly, Applicant requests that the Commission expeditiously grant this Application.

Respectfully submitted,

By: Brett P Ferenchak

Catherine Wang

Brett P. Ferenchak

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Tel: 202-739-3000

Fax: 202-739-3001

catherine.wang@morganlewis.com

brett.ferenchak@morganlewis.com

Counsel for NGA 911, L.L.C.

Dated: February 14, 2019