

**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/911 COORDINATION BOARD) REGARDING DETERMINING RESPONSIBILITY) FOR RURAL CARRIER INTERCONNECTION TO) THE NEXT GENERATION 9-1-1 SYSTEM)	ORDER DISMISSING PETITION) FOR DECLARATORY RULING) TC17-063
--	---

On October 27, 2017, the South Dakota Public Utilities Commission (Commission) received a Petition for a Declaratory Ruling (Petition) from the South Dakota Department of Public Safety 911 Coordination Board (Board) to resolve the following issue: Whether it is NextGen Communications, Inc. (NextGen) or the rural carriers comprising South Dakota Telecommunications Association (SDTA) that has the responsibility to transport 911 traffic between the rural carriers' service areas and NextGen's centralized points of interconnection.

On November 2, 2017, the Commission electronically transmitted notice of the filing and the intervention deadline November 17, 2017, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On November 15, 2017, the Commission issued an Order Granting Intervention to NextGen and SDTA. On November 17, 2017, the Board filed a Waiver of Sixty Day Deadline pursuant to ARSD 20:10:01:35. On November 27, 2017, the Commission issued an Order Granting Intervention to South Dakota Network (SDN). On December 12, 2017, the Commission issued an Order Granting Waiver of Deadline and Setting Procedural Schedule.

On December 11, 2017, the Board filed Comments on the Petition. On December 19, 2017, SDTA, NextGen, and Commission staff filed Comments. On January 12, 2018, the Board filed its Response to the Comments. On January 16, 2018, SDTA, SDN, and Commission staff filed Reply Comments. On January 17, 2018, NextGen filed Reply Comments.

On April 16, 2018, NextGen filed a Motion to Dismiss and Alternative Motion to Continue to Supplement the Petition (Motion to Dismiss). On April 18, 2018, the Board filed its Objection and Opposition to the Motion to Dismiss. On April 19, 2018, Commission staff filed its Response to the Motion to Dismiss; SDN and SDTA filed a Joint Response to the Motion to Dismiss; and NextGen filed its Reply to the Objections and Comments.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:01:02.04, 20:10:01:15.05, 20:10:01:34, and 20:10:01:35. The Commission may rely upon any or all of these or other laws of this state in making its declaration.

The Motion to Dismiss was noticed for consideration at the Commission's regular meeting on April 20, 2018, at 9:30 a.m., and the matter was duly heard at the scheduled time and place. The Commission affirmed with the parties that they did not want a continuance and they wanted to proceed to have the Petition heard at the scheduled time. After considering the Petition, the written comments of the parties, the Motion to Dismiss, the opposition to the Motion to Dismiss, and having thoroughly reviewed all the filings in the docket and the supporting documents, and after hearing oral argument from all the parties and the parties' answers and discussion in response to extensive questioning from Commissioners, the Commission, on its own motion pursuant to ARSD 20:10:01:02.04, voted unanimously to dismiss the Petition.

In making this decision, the Commission declared that the question raised in the Petition for a Declaratory Ruling required more than the Commission's informal adjudication. The filings submitted thus far suggest that this matter will require a quasi-judicial resolution of the technical and factual issues raised by the parties. The Commission further stated that a contested case proceeding and a full record are more appropriate for making a determination. It is therefore

ORDERED, that the Petition for Declaratory Ruling is hereby dismissed and the docket is closed.

Dated at Pierre, South Dakota, this 30th day of April 2018.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Karen E. Bremer</u>
Date: <u>04/30/18</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner