

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA)
DEPARTMENT OF PUBLIC SAFETY)
ON BEHALF OF THE SOUTH DAKOTA)
9-1-1 COORDINATION BOARD)

32 CIV 19-000169

Plaintiff,

v.

STIPULATION

NEXTGEN COMMUNICATIONS, INC.;)
TELECOMMUNICATION SYSTEMS,)
INC.; AND COMTECH)
TELECOMMUNICATIONS CORP.)

Defendants.

This Stipulation (the "Stipulation") is entered into by and among the South Dakota Department of Public Safety, on behalf of the South Dakota 9-1-1 Coordination Board (collectively, the "State"); and NextGen Communications, Inc., and TeleCommunication Systems, Inc. (collectively, "NextGen") and Comtech Telecommunications Corp. ("Comtech"). Each of the signatories to this Stipulation may be referred to as a "Party" and, collectively, they may be referred to as the "Parties."

NOW THEREFORE, for good and valuable consideration, the sufficiency of which each Party acknowledges, it is stipulated and agreed as follows:

1. The Parties acknowledge that this Stipulation was entered into as a voluntary compromise and final settlement of disputed claims and that nothing in this Stipulation is, or may be, construed as an admission of liability by any Party or an

admission of the existence of any facts upon which liability could be based. NextGen and Comtech specifically disclaim and deny any liability to the State. The State specifically disclaims and denies any liability to NextGen or Comtech.

2. For purposes of this Stipulation, capitalized terms used herein and not otherwise defined have the following meanings:

- “PSAP” means “any twenty-four-hour communications facility which receives all 911 service calls and reroutes the requestor or information to appropriate public or private safety agencies”, as defined in SDCL 34-45-1(15).
- “Contract” means the Consulting Contract (South Dakota Auditor Contract #15-1400-025), as previously amended, entered into by the State and NextGen, effective December 18, 2014 through December 17, 2019, for next generation 9-1-1 services in South Dakota.
- “CPE” means the hardware and software related to the hosted customer premises equipment and any associated connectivity in the System (as defined in the Contract).
- “Action” means the lawsuit filed by the State in the Sixth Judicial Circuit, County of Hughes, State of South Dakota (the “Court”) against NextGen and Comtech on September 13, 2019 and captioned as 32CIV19-000169.

3. For purposes of this Stipulation, or any action to enforce this Stipulation, the State and NextGen consent to this Court’s jurisdiction over this Stipulation and any such action to enforce this Stipulation. Comtech expressly disputes that it is subject to

the jurisdiction of this Court, its execution of this Stipulation should not be construed as consenting to such jurisdiction, and the State agrees not to rely on the fact of Comtech's execution of this Stipulation in asserting jurisdiction against Comtech in any future proceeding.

4. NextGen shall pay or cause to be paid to the State the sum of Three Million Four Hundred Fifty Thousand Dollars (\$3,450,000.00) within 21 calendar days following the Effective Date. The State agrees that \$200,000.00 of the \$3,450,000.00 will be distributed by the State to the twenty-eight (28) PSAPs in South Dakota in equal amounts to be used for 9-1-1 related services separate from those items contained in the contract for 9-1-1 services awarded to CenturyLink.
5. The Parties agree to take any and all necessary steps for the Action to be dismissed with prejudice within 10 business days of the payment of the consideration specified in Paragraph 4, above, subject to the Court reserving jurisdiction to enforce the terms and conditions of this Stipulation, which reservation may be incorporated into the order of dismissal.
6. The State shall not be required to pay NextGen any further amounts due from the State under the Contract, or in any manner related to the Contract or arising out of the Contract, including but not limited to use of the CPE from April 1, 2019 to the end of the Contract term on December 17, 2019, totaling \$1,568,946.00, continued use of the CPE by the State thereafter through February 29, 2020, and the possession and ultimate disposition of the CPE as provided for in Paragraph 7 herein.

7. NextGen shall, at no cost to the State, disconnect and remove its CPE in/from each PSAP within 20 calendar days of the Effective Date. Should NextGen fail to remove its CPE within 20 calendar days of the Effective Date, such CPE shall be considered abandoned and the State may remove and discard such CPE equipment without any liability and without further notice to NextGen.
8. Except as set forth in Paragraph 7, the Parties acknowledge that as of February 29, 2020, neither NextGen nor Comtech has any further obligation to provide materials or services to the State, including access to or use of the System or CPE.
9. **RELEASE OF THE STATE BY NEXTGEN AND COMTECH:** NextGen and Comtech, on behalf of themselves, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest, (collectively, the "NextGen/Comtech Releasing Parties"), hereby releases and discharges the State, its departments, offices, agencies and instrumentalities, and its and their elected officials, and its and their officers, employees, agents, attorneys and consultants, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of actions, suits, rights, demands, costs, losses, debts, penalties, fees, expenses (including attorney fees and costs actually incurred), and punitive damages, of any nature whatsoever, known

or unknown, suspected or unsuspected, whether or not concealed or hidden, whether direct or indirect, which any of the NextGen/Comtech Releasing Parties has or may have had against the State together with the State's departments, offices, agencies and instrumentalities and its and their elected officials, its and their officers, employees, agents, attorneys and consultants, and all persons acting by, through, under or in concert with them, and each of them, whether or not apparent or yet to be discovered, or which may hereafter develop, including any matter which any of the NextGen/Comtech Releasing Parties ever had, now has, or hereafter can, shall, or may, have for, upon, or by reason of any matter, cause or thing whatsoever through and including the Effective Date, whether or not apparent or yet to be discovered, or which may hereafter develop, arising out of, in connection with or in any way related to the Contract, the Action, the use of the CPE by the State after the expiration of the Contract or the services provided by NextGen to the State following the expiration of the Contract. The foregoing notwithstanding, nothing herein shall act as a release or discharge of the State's obligations under this Stipulation.

10. RELEASE OF NEXTGEN AND COMTECH BY THE STATE: The State, on behalf of itself and the State of South Dakota, and its departments, offices, agencies and instrumentalities, and its and their elected officials, and its and their officers, employees, agents, attorneys and consultants (collectively, the "State Releasing Parties"), hereby releases and discharges NextGen and Comtech, together with NextGen and Comtech's insurers, predecessors, successors, direct and indirect

parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of actions, suits, rights, demands, costs, losses, debts, penalties, fees, expenses (including attorney fees and costs actually incurred), and punitive damages, of any nature whatsoever, known or unknown, suspected or unsuspected, whether or not concealed or hidden, whether direct or indirect, which any of the State Releasing Parties has or may have had against NextGen and/or Comtech, together with NextGen and/or Comtech's insurers, predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, whether or not apparent or yet to be discovered, or which may hereafter develop, including any matter which any of the State Releasing Parties ever had, now has, or hereafter can, shall, or may, have for, upon, or by reason of any matter, cause or thing whatsoever through and including the Effective Date, whether or not apparent or yet to be discovered, or which may

hereafter develop, arising out of, in connection with or in any way related to the Contract or the Action, the use of the CPE by the State after the expiration of the Contract or the services provided by NextGen to the State following the expiration of the Contract. The foregoing notwithstanding, nothing herein shall act as a release or discharge of NextGen and Comtech's obligations under this Stipulation.

11. The State, on behalf of itself and each of the State Releasing Parties, agrees that none of them will file or pursue any proceeding to seek to disbar NextGen or Comtech in connection with the Contract, allegations contained in the Action, use of the CPE by the State after the expiration of the Contract or services provided by NextGen to the State following the expiration of the Contract, or commence any administrative action against NextGen or Comtech in connection with the Contract, allegations contained in the Action, use of the CPE by the State after the expiration of the Contract or services provided by NextGen to the State following the expiration of the Contract.
12. Should any person or entity not released in Paragraphs 9 and 10 initiate any action against any Party released in Paragraphs 9 and 10, which action is based on any claim that was released under this Stipulation, this Stipulation shall not act to limit or impede the assertion by the Party against whom such a claim was asserted of any defense, including, but not limited to any allegation that fault lies with the other Party, but does not permit either Party to file any action against the other Party or seek to collect damages of any type, including indemnification, based upon a released claim from a released Party, under any circumstance.


13. The Parties agree not to bring, maintain or prosecute any action at law, arbitration, administrative proceeding, proceeding in equity, or proceeding of any type against the persons or entities released in Paragraphs 9 and 10 based upon any claim that was released by such Party under this Stipulation. The foregoing shall be a complete defense to any such claim. The Parties agree not to collaborate with any person or entity to bring, or prosecute any action at law, arbitration, administrative proceeding, proceeding in equity, or proceeding of any type against the persons or entities released in Paragraphs 9 and 10 based upon any claim that was released by such Party under this Stipulation, except as otherwise required by law.
14. This Stipulation is intended for the benefit of the Parties hereto and their respective releasees, and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.
15. This Stipulation constitutes the entire agreement of the Parties with respect to the subject matter hereof.
16. Time is of the essence in the performance of the covenants, terms and conditions of this Stipulation. This Stipulation may only be amended in writing, executed by all Parties with the same formalities as this Stipulation. The terms of this Stipulation shall be binding upon, and inure to the benefit of, the Parties.
17. The Parties acknowledge that this Stipulation is a product of mutual negotiation, and the Parties' respective attorneys have had an opportunity to review, comment upon, and modify the document, and as such, this Stipulation is deemed to be mutually drafted. The terms of this Stipulation shall be construed under and

governed by the laws of the State of South Dakota, exclusive of its choice of law provisions, statutory or decisional. Any lawsuit arising out of or related to this Stipulation brought by or against the State or NextGen shall be brought in the Circuit Court for the Sixth Judicial Circuit in Hughes County, South Dakota. Nothing contained herein acts as a waiver of the State's right to seek jurisdiction over Comtech in Circuit Court for the Sixth Judicial Circuit in Hughes County, South Dakota.

18. If any sentence, provision or clause of this Stipulation is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, the remainder of the Stipulation shall remain in full force and effect.
19. This Stipulation constitutes a public document under the laws of the State of South Dakota.
20. The Parties acknowledge and agree that they each are solely responsible for paying their own attorneys' fees and costs incurred in this matter.
21. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to constitute the same instrument.
22. Each Party acknowledges that the person signing for that Party below is authorized to do so and bind that Party to the terms of this Stipulation. This Stipulation is effective as of the date the last Party hereto signs (the "Effective Date").


Dated this 17th day of March, 2020.

STATE OF SOUTH DAKOTA

By: 
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Dated this 17th day of March, 2020.

NEXTGEN COMMUNICATIONS, INC.,
TELECOMMUNICATION SYSTEMS, INC.
AND COMTECH TELECOMMUNICATIONS
CORP.

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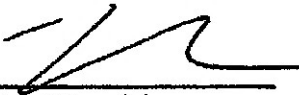
NEXTGEN COMMUNICATIONS, INC.

By: 
Kent Hellebust
President, Safety & Security Technologies

TELECOMMUNICATION SYSTEMS, INC.

By: 
Kent Hellebust
President, Safety & Security Technologies

COMTECH TELECOMMUNICATIONS CORP.

By: 
Michael Porcelain
Chief Operating Officer