Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of NextG Networks of California, Inc. (U6745C) for Authority to Engage in Ground-Disturbing Outside Plant Construction.	Application 09-03-007 (Filed March 3, 2009)
And Related Matter.	Case 08-04-037 (Filed April 23, 2008)

DECISION ADOPTING SETTLEMENT AGREEMENT BETWEEN CITY OF HUNTINGTON BEACH AND CROWN CASTLE NG WEST, LLC

Summary

This decision grants the joint motion filed by the City of Huntington Beach and Crown Castle NG West, LLC. (formerly known as NextG Networks of California, Inc.) and adopts the Settlement Agreement between the two parties. As discussed below, the Settlement Agreement satisfies Rule 12.1 of the California Public Utilities Commission's Rules of Practice and Procedure. The Settlement Agreement is reasonable in light of the record as a whole, consistent with law and prior Commission decisions, and in the public interest.

1. Procedural Background

On November 12, 2007, Crown Castle NG West, LLC. (Crown Castle), formerly known as NextG Networks of California, Inc. submitted an advice letter to the Energy Division of the California Public Utilities Commission (Commission) seeking to install a Distributed Antenna System (DAS) network in the public right-of-way of the City of Huntington Beach (City). The installation required the construction of three new utility poles and 19 miles of fiber optic

cable within City limits. On March 14, 2008, the Commission's Energy Division approved the DAS project. The City filed a Case (C.) 08-04-037 on April 23, 2008 challenging the approval based in part on Chapter 17.64 of the City's Municipal Code and Section 230.96 of the City's Zoning and Subdivision Ordinance.[1]

On December 27, 2007, Crown Castle filed *NextG v. City of Huntington Beach* (C.D. Cal.) Case No. SACV 07-1471, which resulted in injunctions issued against the City. On appeal, the Ninth Circuit vacated the injunctions and remanded the case to the District Court. In February 2009, the District Court granted the City's motion for judgment on the pleadings and directed Crown Castle to either apply to the City for approval of its DAS project or to seek relief in State Court. On March 6, 2009, Crown Castle filed *NextG Networks of California, Inc. v. City of Huntington Beach*, Orange County Superior Court Case No. 30-2009-00119646. The Superior Court stayed the suit so that it could be resolved upon conclusion of Application (A.) 09-03-007[2] and C.08-04-037.

The City filed a motion to consolidate C.08-04-037 with A.09-03-007 on April 07, 2009, which was granted on June 18, 2009.

On October 14, 2010, the Commission issued Decision (D.) 10-10-007 in the consolidated proceeding. D.10-10-007 dismissed the City's Complaint, concluded Crown Castle's proposed construction is authorized under Certificates of Public Convenience and Necessity previously granted to Crown

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[1] Chapter 17.647 of the City's Municipal Code (the undergrounding ordinance) regulates the installation of utilities in the public right-of-way, including when facilities must be installed underground. Section 230.96 of the City's Zoning and Subdivision Ordinance (the wireless ordinance) regulates the deployment of wireless communications equipment in the City.

[2] On March 3, 2009, Crown Castle filed A.09-03-007 with the Commission, seeking approval of its DAS project and its environmental assessment.

Castle, adopted the Negative Declaration prepared by the Commission staff that Crown Castle's project is exempt from the California Environmental Quality Act, and approved Crown Castle's application.

In November 2010, the City applied for rehearing of D.10-10-007 and requested oral arguments on its application for rehearing on November 23, 2010. In D.11-01-027, the Commission denied the application for rehearing and the request for oral arguments. The City then sought appellate review of D.10-10-007 and D.11-01-027. The City's appeal of those two decisions was resolved in *City of Huntington Beach v. Public Utilities Commission of the State of California* (2013) 214 Cal.App.4th 566, which reversed and set aside the Commission's conclusion that the City's ordinances are preempted.

On October 2, 2013 Crown Castle field a Petition with the Commission to re-open A.09-03-007. During the April 28, 2014 Prehearing Conference (PHC) on the Petition, the assigned Administrative Law Judge (ALJ) referred Crown Castle's Petition to the Commission's Alternative Dispute Resolution program. ALJ Kimberly Kim was assigned as the neutral to mediate the settlement discussions. Pursuant to settlement discussions, the City and Crown Castle filed a joint motion requesting approval of the Settlement Agreement, attached here as Attachment A, on December 3, 2014. On February 6, 2015, the City and Crown Castle filed an amended joint motion attaching a copy of the Settlement Agreement to the December 3, 2014 motion.

2. Settlement Agreement

As a result of multiple mediation conferences, Crown Castle and the City reached a settlement of their dispute. The terms of the Settlement Agreement include the withdrawal of particular aspects of the DAS project, the City's consent to the Commission's preempting application of the City's underground

and wireless ordinances for certain equipment, the process for Crown Castle to apply for the City's Conditional Use Permit (CUP) to install equipment not already in place and to appeal the City's decision, compliance with the City's wireless and undergrounding ordinance, and waiver of claims.

In pertinent part, upon adoption of the Settlement Agreement, Crown Castle shall dismiss *NextG Networks of California, Inc. v. City of Huntington Beach* with prejudice. The City and Crown Castle further agree that the Parties shall not protest a dismissal with prejudice on C.08-04-037 and A.09-33-007, provided that Crown Castle may petition the Commission to re-open A.09-03-007 in order to appeal the City's decision on the CUP. The parties also agree to waive any claims for attorney fees or costs against each other.

Furthermore, as required by the Settlement Agreement, Crown Castle agrees not to challenge the validity of the City's undergrounding and wireless ordinances, in Court or at the Commission, through December 31, 2019. During this time, Crown Castle may propose and apply for additional projects installing antennas on existing utility poles, provided that it obtains a CUP, as required by the City's wireless ordinance. If the City denies a CUP for an individual project, Crown Castle may challenge the denial in any court or venue of competent jurisdiction so long as the challenge is not based on the validity of the undergrounding or wireless ordinances on their face. Crown Castle agrees not to seek preemption of a denial of a specific application for a CUP through the Commission. Crown Castle has also agreed to refrain from making certain legal claims through December 31, 2019 unless the City amends the wireless or undergrounding ordinances before December 31, 2019.

3. Compliance with Rule 12.1 of the Commission's Rules of Practice and Procedure

In order for the Commission to approve any proposed settlement, the Commission must be convinced that the parties have a sound and thorough understanding of the application, the underlying assumptions, and the data included in the record. Pursuant to Rule 12.1(d), the Commission will only approve settlements if the settlement is reasonable in light of the whole record, consistent with the law, and is in the public interest. As discussed below, we find the Settlement Agreement consistent with Rule 12.1.

3.1 Reasonableness in Light of the Record as a Whole

The Settlement Agreement contains statements of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds for its adoption. In relevant part, the settlement requires that Crown Castle comply with the City's CUP process and its undergrounding and wireless ordinances while also allowing Crown Castle to maintain the structures it has already built and providing Crown Castle with a reasonable appeal process of the City's CUP determinations. Drawing on an extensive record between A.09-03-007 and C.08-04-037, the parties reached a reasonable settlement that addressed the underlying issues and concerns of the City and Crown Castle.

3.2. Consistent with Law and Prior Commission Decisions

The Settlement Agreement is also consistent with law and prior Commission decisions. The issues resolved in the Settlement Agreement are within the scope of the proceeding. Crown Castle and the City complied with Rule 12.1 by making the appropriate filings and submitting a Joint Status Report Statement.

3.3. The Public Interest

The contentions between Crown Castle and the City have spanned approximately 7 years. In that time, both parties have spent a substantial amount of resources and time presenting their sides in front of state and federal courts and the Commission. The parties also save time and uncertainty by refraining from continuing to litigate. By reaching a reasonable settlement, the parties relieve ratepayers and the public of added costs incurred from further litigation on the matter.

4. Conclusion

We conclude, pursuant to Rule 12.1(d) that the settlement is reasonable in light of the whole record, consistent with the law and in the public interest. Based upon the record of this proceeding, we find that the Settlement Agreement is a reasonable compromise for both the City and Crown Castle and relieves ratepayers, the courts, and the parties from further time, costs, and uncertainty.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3230, dated March 12, 2009, the Commission preliminarily categorized A.09-03-007 as ratesetting and preliminarily determined that hearings were not necessary. In Resolution ALJ-240, dated August 21, 2009, the Commission ratified changes to the preliminary categorization of C.08-04-037 because of its consolidation with A.09-03-007 and categorized the consolidated application as ratesetting. Evidentiary hearings have not been held on this phase of the caseand with the filing of the Settlement Agreement and supporting Joint Motion, no further hearings are necessary.

6. Waiver of Comment Period

Pub. Util. Code § 311(g)(1), provides that a decision must be served on all parties and be subject to at least 30 days review and comment prior to a vote by the Commission. Rule 14.6(c)(2) provides that the Commission may waive the period for public review and comment on proposed decisions such as this one in an uncontested matter where the decision grants the relief requested. Therefore, comments on this decision are waived.

7. Assignment of Proceeding

Liane Randolph is the assigned Commissioner and S. Pat Tsen is the assigned ALJ in this proceeding.

Findings of Fact

1. On November 12, 2007, Crown Castle, formerly known as NextG Networks of California, Inc. submitted an application to the Energy Division of the Commission seeking to install a Distributed Antenna System network in the public right-of-way of the City of Huntington Beach.

2. On March 14, 2008, the Commission's Energy Division approved the DAS project.

3. The City filed a Complaint (C.) 08-04-037 on April 23, 2008 challenging the approval based in part on Chapter 17.64 of the City's Municipal Code and Section 230.96 of the City's Zoning and Subdivision Ordinance.

4. On October 2, 2013 Crown Castle field a Petition with the Commission to re-open A.09-03-007.

5. During the April 28, 2014 PHC on the Petition, the assigned ALJ referred Crown Castle's Petition to the Commission's Alternative Dispute Resolution program and ALJ Kimberly Kim was assigned as the neutral to mediate the settlement discussions.

6. As a result of multiple mediation conferences, Crown Castle and the City reached a settlement of their dispute.

7. Pursuant to settlement discussions, the City and Crown Castle filed a joint motion requesting approval of the Settlement Agreement on December 3, 2014.

8. The Settlement Agreement is reasonable in the light of the record as a whole, consistent with law and prior Commission decisions, and in the public interest.

9. The Settlement Agreement contains statements of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds for its adoption.

10. Drawing on an extensive record between A.09-03-007 and C.08-04-037, the parties reached a reasonable settlement that addressed the underlying issues and concerns of the City and Crown Castle.

11. The Settlement Agreement is also consistent with law and prior Commission decisions. The issues resolved in the Settlement Agreement are within the scope of the proceeding.

12. Both parties have spent a substantial amount of resources and time presenting their sides in front of state and federal courts and the Commission. The parties also save time and uncertainty by refraining from continuing to litigate. By reaching a reasonable settlement, the parties relieve ratepayers and the public of added costs incurred from further litigation on the matter.

Conclusions of Law

1. Pursuant to Rule 12.1(d), the Commission will only approve settlements if the settlement is reasonable in light of the whole record, consistent with the law, and is in the public interest.

2. The Settlement Agreement satisfies Rule 12.1 of the California Public Utilities Commission's Rules of Practice and Procedure.

3. The Settlement Agreement between City and Crown Castle should be adopted.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement filed on December 3, 2014 by the City of Huntington Beach and Crown Castle NG West, LLC. is adopted.

2. Application 09-03-007 and Case 08-04-0367 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
Settlement Agreement