

Investigation on the Commission's own Motion into the Operations and Practices of NextG Networks of California, Inc.

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**JULY 10, 2008**  
**SAN FRANCISCO**  
**I. 08-07-012**

**ORDER INSTITUTING INVESTIGATION**  
**AND ORDER TO SHOW CAUSE**

**I. INTRODUCTION**

By this order, the Commission institutes an investigation to determine whether NextG Networks of California, Inc. ("NextG") violated any Commission rule, regulation, order, requirement or state law in constructing its communications network by engaging in ground-disturbing activity without the requisite authority and without disclosing its activities to the Commission. The Order directs NextG to show cause why a penalty should not be imposed if any violations are found.

**II. BACKGROUND**

On January 30, 2003, NextG, a radiofrequency transport services provider to wireless telecommunications service providers, registered with the Commission as a competitive local carrier ("CLC") and an interexchange carrier ("IEC") and received a limited facilities-based certificate of public convenience and necessity ("CPCN") in Decision (D.) 03-01-061. NextG's application stated it was seeking limited authority and that its construction activities would be limited to the installation of equipment exclusively in or on existing structures and facilities. Moreover, D.03-01-061 stated that if new construction of facilities was necessary to provide its services, NextG would need to comply with additional rules and regulations in order to obtain a full facilities-based CPCN necessary for such construction.

On May 19, 2006, NextG applied for a full facilities-based CPCN and expedited environmental review. In its application, Application (A.) 06-05-031, NextG proposed construction activities, including (1) new pole installation, (2) small-scale trenching and underground conduit installation, and (3) micro-trenching and installation of laterals.

ExteNet Systems, Inc. (“ExteNet”), previously known as ClearLinx Network Corp., and the League of California Cities and City and County of San Francisco (“Cities”) protested the application. ExteNet alleged NextG had violated its limited facilities-based authority in constructing its Distributed Antenna System (“DAS”) networks. The Cities objected to allowing the expedited review process to include the construction of new utility poles in underground utility districts. The Commission held a prehearing conference on September 13, 2006 and the assigned Commissioner subsequently issued a ruling and scoping memorandum. In Decision 07-04-045, adopted April 12, 2007, the Commission granted NextG’s request for expanded authority and expedited environmental review and ordered further enforcement proceedings.

Pursuant to D.07-04-045, the Commission hereby orders this investigation to determine whether NextG violated its limited facilities-based CPCN when NextG engaged in ground-disturbing activity and whether NextG violated Rule 1.1 in failing to disclose to the Commission that it engaged in ground-disturbing activity. Further, the investigation will determine whether a penalty should be imposed for any violations.

### **III. SUMMARY OF STAFF ALLEGATIONS**

CPSD staff (“Staff”) has prepared a report documenting its investigation to date. The Commission expects this proceeding to be transparent and public since it involves issues of public enforcement. Staff has not yet released its report publicly so that NextG may seek confidential treatment from the Commission for any portions of Staff’s report it deems confidential. The Commission directs NextG to provide justification for specific, identified portions of the report for which NextG requests continued confidential treatment. NextG shall provide its justification by written motion

filed within seven days of this Order and Staff and interested parties may provide responses within seven days of the written motion. On the same dates, the parties shall provide their justification or opposition to the continued confidentiality of all supporting data used in the reports.

**A. NextG Engaged in Ground-Disturbing Activity**

In reviewing NextG's contracts and local permits, Staff found that NextG engaged in several instances of ground-disturbing and pole installations while it only had limited authority. Between the Commission's grant of a limited facilities-based CPCN on January 31, 2003 and NextG's first attempt to discuss licensing and environmental requirements with Energy Division staff in May 2006, NextG engaged in ground-disturbing activity in four instances in the City of Los Angeles, 23 instances in an unincorporated area of the County of Los Angeles (858 N. Topanga Boulevard), one instance in Nevada County, one instance in Chino Hills, and one instance in San Pablo. During August 2004, NextG installed 18 new poles in Mystic, California. NextG did not have a full-facilities based CPCN nor did it request an environmental review or an exemption before performing this construction. All together, Staff believes NextG exceeded its limited facilities-based CPCN authority in 48 instances.

**B. NextG Failed to Disclose Ground-Disturbing Activity**

Staff's investigation reveals that NextG has made several factual misrepresentations to the Commission. In its application for a full facilities-based CPCN, NextG stated that "to date, NextG has been able to establish its network through the installation of its fiber on existing poles and in existing underground conduit in public-rights-of-way and the installation of its microcells and antennas on existing poles in the public way." This statement is belied by NextG's extensive construction activity, i.e., 48 instances of ground-disturbing activity while it had only a limited facilities-based CPCN.

In filings submitted to the Commission, NextG stated that the allegedly wrongful activities for four City of Los Angeles permits had occurred under the direction of a former employee. NextG stated that the permits in question were issued between

July and September 2004, while the employee served as Director of Implementation. This statement appears to be false because the permits NextG used for this construction, which NextG attributes to the employee, were issued after the employee's employment with NextG ended. The Declaration of John B. Georges ("Georges"), CEO of NextG, states that the employee was employed from August 30, 2001 through March 31, 2004. The permits from the City of Los Angeles were applied for between May 4, 2004 and July 21, 2004, and were issued between July 12, 2004 and September 10, 2004. Clearly, NextG's statements that the wrongful activities occurred under the direction of the former employee are simply wrong and inaccurate.

Staff finds that NextG made one misrepresentation to the Commission in its application for full facilities-based CPCN and four misrepresentations to the Commission regarding four City of Los Angeles permits.

#### **IV. DISCUSSION**

##### **A. Violation of Public Utilities Code Section 1001**

Under Section 1001 of the Public Utilities Code, telephone corporations must obtain a CPCN from the Commission before constructing a line, system or any extension thereof. The Commission distinguishes between a limited facilities-based CPCN and full facilities-based CPCN. Under a limited facilities-based CPCN, a utility is only allowed to install facilities in existing buildings or structures. To engage in ground-disturbing activity, a utility company must first be granted a full facilities-based CPCN and comply with the California Environmental Quality Act ("CEQA").

NextG appears to have violated applicable law in engaging in ground disturbing activity in 48 instances based on local permits and submissions to the Commission during the evidentiary hearings in A.06-05-031. The Staff Report indicates that there is substantial evidence to show that NextG performed construction beyond the scope of its limited facilities-based CPCN authority. In apparent violation of Section 1001, NextG failed to obtain a full-facilities based CPCN from the Commission and comply with applicable CEQA requirements by going through an environmental review

or requesting approval of exemption(s) before it engaged in ground-disturbing construction.

### **B. Violation of Rule 1.1**

The Commission requires public utilities operating in this State to abide by a code of ethics. Rule 1.1 of the Commission's Rules of Practice and Procedure states:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Staff's investigation supports the finding that NextG violated Rule 1.1 in five instances by failing to disclose the ground-disturbing activity to the Commission and by misrepresenting information about the permits it obtained. NextG falsely stated in its application for a full-facilities based CPCN that it had complied with its limited facilities-based CPCN up to the time of the application when, in reality, NextG had already engaged in ground-disturbing activities in several locales. In addition, NextG's application appears to include incorrect information regarding the issue dates of four permits.

Therefore, **IT IS ORDERED** that:

1. An investigation is instituted on the Commission's own motion to determine whether NextG contravened any provision of the Public Utilities Code, Commission's Rules of Practice and Procedure, General Orders, rules, or requirements in engaging in ground-disturbing activity and failing to disclose to the Commission that it had broken ground.
2. NextG is directed to show cause why a penalty should not be imposed if any violation is determined in this investigation.
3. Pursuant to Rule 6(c) of the Commission's Rules of Practice and Procedure, this proceeding is categorized as adjudicatory.

4. A prehearing conference shall be convened before an Administrative Law Judge for the purpose of establishing a schedule in this matter, including the date, time, and location of an evidentiary hearing.

The Executive Director shall cause a copy of this order to be personally served on NextG at 2216 O'Toole Avenue, San Jose, CA 95131.

This order is effective today.

Dated July 10, 2008 at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners