

INTERVENTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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2009 MAY -1 P 4: 57

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Commissioner

20567A

In the Matter of the Application of NewPath Networks, LLC, for Approval of a Certificate of Convenience and Necessity to Provide Transport and Backhaul Telecommunications Services

Docket No. T-~~02567~~-07-0662

APPLICATION TO INTERVENE BY NEXTG NETWORKS OF CALIFORNIA, INC. D/B/A NEXTG NETWORKS WEST

Pursuant to AAC R14-3-105, NextG Networks of California, Inc. d/b/a NextG Networks West ("NextG") hereby respectfully applies to the Arizona Corporation Commission (the "Commission") for an order granting it leave to intervene as an interested party in the above captioned proceeding. Arizona law permits intervention by parties who "are directly and substantially affected by the proceedings." R14-3-105(a). In support of this Application, NextG states as follows:

1. On August 29, 2006, the Commission issued Decision 68915 and granted a Certificate of Convenience and Necessity ("CC&N") to NextG for authority to provide private line and intrastate access services in order to supply transport and backhaul telecommunications services to other carriers. NextG provides telecommunications service via Distributed Antenna Systems ("DAS"), and its services are generally referred to as "DAS service."

1                   2. On November 26, 2007, NewPath Networks, LLC (“NewPath”), a  
2 competing provider of DAS service, filed with the Commission an Application and  
3 Petition for Certificate of Convenience and Necessity to Provide Intrastate  
4 Telecommunications Services (the “NewPath Application”).

5                   3. The City of Scottsdale and the Towns of Carefree and Paradise Valley  
6 filed Applications to Intervene in the NewPath Application proceeding on April 10, 2009.  
7 On April 24, 2009, the City of Scottsdale (“Scottsdale”) submitted a Memorandum to the  
8 Commission that challenges the Commission’s jurisdiction to award a CC&N to a provider  
9 of DAS service.<sup>1</sup> In addition, Scottsdale went farther. In its Memorandum, Scottsdale  
10 states that “the Commission may have issued a CC&N to one or more competitors of New  
11 Path who also provide DAS services.”<sup>2</sup> Scottsdale then goes on to state that “the proper  
12 remedy when a public body acts in excess of its jurisdiction is to rescind the acts which  
13 were taken in excess of that jurisdiction, not to perpetuate them further.”<sup>3</sup> Scottsdale also  
14 made various factual allegations regarding NextG’s business and regulatory filings.<sup>4</sup>

15                   4. Scottsdale’s challenge to the Commission’s jurisdiction to grant DAS  
16 service providers a CC&N, and its subsequent suggestion that the Commission should also  
17 revoke NextG’s authority, directly and substantially affects NextG’s interests. While  
18 NextG does not believe that the Commission could lawfully revoke NextG’s CC&N in this  
19 proceeding, Scottsdale’s assertion has nonetheless directly attacked NextG’s regulatory  
20 and legal authority to do business in Arizona. At a minimum, a decision by the  
21 Commission concerning its jurisdiction over DAS service providers could harm NextG’s  
22 ability to provide telecommunications service and its relationship with its customers. Such a  
23 decision could also affect NextG’s rights under Arizona law regarding municipal fees for  
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25 <sup>1</sup> Hearing Memorandum from Intervenor City of Scottsdale, Arizona, Docket No. T-20567A-07-0662,  
submitted April 24, 2009.

26 <sup>2</sup> *Id.* at n.6.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at n.11 and n.13.



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Conclusion

As noted above, the intervening parties in this proceeding have raised material questions regarding the Commission's jurisdiction and the extent to which a DAS service provider should be granted a CC&N. Indeed, Scottsdale appears to have suggested that the Commission revoke NextG's CC&N. Because NextG is a DAS provider that has already been granted a CC&N, NextG's interests may be substantially impacted should the Commission utilize this proceeding as a vehicle to reexamine its authority to grant DAS service providers CC&N authority or attempt to act on Scottsdale's suggestion to revoke NextG's CC&N. Based upon the foregoing, NextG Networks of California, Inc. requests that an Order be entered permitting NextG to intervene in these proceedings to participate in both submission of briefs and at hearing and any other further proceedings in this docket.

Dated this 1st day of May, 2009.

LEWIS and ROCA, LLP



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ORIGINAL and thirteen (13) copies  
of the foregoing filed  
this 1st day of May, 2009, with:

1 The Arizona Corporation Commission  
Utilities Division – Docket Control  
2 1200 W. Washington Street  
Phoenix, Arizona 85007  
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4 Copy of the foregoing hand-delivered  
this 1st day of May, 2009, to:

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12 Ernest G. Johnson, Director  
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15 Copy of the foregoing mailed  
This 1st day of May, 2009, to

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