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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
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- BOB STUMP

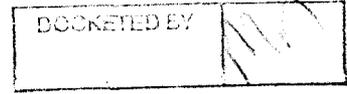
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Arizona Corporation Commission

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AZ CORP COMMISSION  
DOCKET CONTROL

JUL 10 2009



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-20567A-07-0662

**STAFF RESPONSE TO NEXTG'S  
APPLICATION FOR INTERVENTION**

On May 1, 2009, NextG Networks of California, Inc. d/b/a NextG Networks West ("NextG") filed an application to intervene out of time in this matter pursuant to A.A.C. R14-3-105. R14-3-105(a) provides that persons directly and substantially affected by a proceeding may be granted leave to intervene by order of the Commission or presiding hearing officer.

NextG is a service provider previously certificated by the Commission to offer private line telecommunications services in the state of Arizona. It provisions its services in a manner similar to NewPath, the applicant in this proceeding, in that it utilizes a Distributed Antenna System ("DAS") in part to provide service to its customers.

NextG's stated interest in this matter is to respond to several assertions by the City of Scottsdale in its Hearing Memorandum regarding the Commission's jurisdiction to grant "DAS providers" such as NextG a CC&N and the City's suggestion that the Commission should revoke NextG's authority. NextG states in this regard: "Scottsdale's challenge to the Commission's jurisdiction to grant DAS service providers a CC&N, and its subsequent suggestion that the Commission should also revoke NextG's authority, directly and substantially affects NextG's interest."<sup>1</sup> The City of Scottsdale has since withdrawn from this proceeding and asked that its Hearing Memorandum be withdrawn as well. However, the Towns of Paradise Valley and Carefree continue to challenge the Commission's jurisdiction to award a CC&N to NewPath based in large

<sup>1</sup> NextG Motion at p. 2.

1 part upon the Hearing Memorandum originally filed by the City of Scottsdale. The Towns of  
2 Paradise Valley and Carefree are concerned that grant of a CC&N conferring "utility status" on  
3 NewPath will impact their ability to effectively manage their rights-of-way.<sup>2</sup>

4 The Utilities Division Staff does not agree with the Cities' assertions and has recommended  
5 approval of NewPath's application for a CC&N. The Utilities Division Staff similarly recommended  
6 approval of NextG's application for a CC&N in Docket No. T-20377A-05-0484.

7 Nonetheless, the Staff believes that NextG's motion for intervention should be denied, or to  
8 the extent allowed, its intervention should be of a very limited nature. First, this is a specific CC&N  
9 proceeding involving NewPath, and the Staff believes that allowing NextG to intervene could lead to  
10 confusion of the issues in this case. The Staff is also concerned that inclusion of NextG could lead to  
11 an undue broadening of the issues in this case as well. It is likely that NextG will be drawing  
12 comparisons in this case to how it provisions service, which Staff believes could lead to confusion of  
13 the issues in this case. The facts in this case are different from the facts in the NextG CC&N case.  
14 The introduction of facts from the NextG case will just confuse the issues and these two separate  
15 CC&N cases. The Staff believes that the issues raised in this case will also be unduly broadened as a  
16 result of NextG's participation because the focus will shift in part to NextG's provision of service and  
17 whether grant of its CC&N was appropriate. Such an examination in the context of this case would  
18 be inappropriate and would lead to a whole new set of issues emerging which have little to no  
19 relevance with respect to the current application.

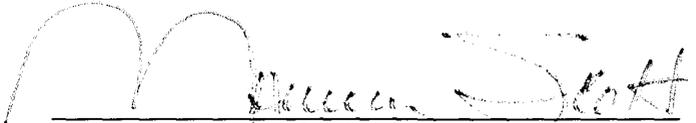
20 Finally, the Staff does not believe that NextG's interest in this matter meets the standard  
21 contained in R14-3-105(a), such that it should be granted intervention. Even if the Commission  
22 decides that the facts in this case do not require the issuance of a CC&N, NextG will not be affected  
23 by that determination. NextG itself acknowledges in its Motion that it does not believe that the  
24 Commission could lawfully revoke NextG's CC&N in this proceeding.<sup>3</sup> The Staff agrees. In  
25 addition, NextG's interests are not unique and are already adequately represented by the applicant in  
26 this case.

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28 <sup>2</sup> See, e.g., Town of Paradise Valley Brief at 2-5.

<sup>3</sup> NextG Motion at p. 2.

1 NextG argues that at a minimum a decision by the Commission concerning its jurisdiction  
2 over "DAS service providers" could harm NextG's ability to provide telecommunications service and  
3 its relationship with its customers.<sup>4</sup> To the extent that the Hearing Division believes some  
4 participation by NextG is appropriate, Staff believes that it should be limited to briefing of the legal  
5 issue of the Commission's jurisdiction over the services offered by NewPath.

6 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of July, 2009.

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15 Original and thirteen (13) copies  
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17 10<sup>th</sup> day of July, 2009 with:

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28 <sup>4</sup> *Id.*

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