

# OPEN MEETING ITEM

COMMISSIONERS  
GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

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ARIZONA CORPORATION COMMISSION

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DATE: APRIL 11, 2011  
DOCKET NO.: T-20722A-10-0026

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

NEXTGEN COMMUNICATIONS, INC.  
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 20, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 27, 2011 and APRIL 28, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

APR 11 2011

DOCKETED BY

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF  
NEXTGEN COMMUNICATIONS, INC. FOR  
APPROVAL OF A CERTIFICATE OF  
COVENIENCE AND NECESSITY TO PROVIDE  
PRIVATE LINE AND ACCESS  
TELECOMMUNICATION SERVICES.

DOCKET NO. T-20722A-10-0026

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATE OF HEARING: December 2, 2010  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
APPEARANCES: Ms. M. Elizabeth Nillen, STINSON MORRISON  
HECKER, LLP, on behalf of Applicant; and  
Ms. Bridget Humphrey, Staff Attorney, Legal Division,  
on behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

On January 28, 2010, NextGen Communications, Inc. ("NextGen" or "Applicant" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide private line and access telecommunication services in Arizona and requesting that its proposed services be classified as competitive.

On February 10, 2010, Staff issued its first Set of Data Requests. NextGen responded with the required information on March 17, 2010.

On March 22, 2010, Staff issued its Second Set of Data Requests and NextGen filed its response on March 29, 2010.

On June 16, 2010, NextGen filed revised tariff pages and additional responses to the Staff's Data Request.

1 On July 15, 2010, Staff filed a Staff Report recommending approval of NextGen's  
2 application.

3 On July 19, 2010, a Procedural Order was issued scheduling the hearing in this matter for  
4 September 27, 2010, and establishing other procedural deadlines.

5 On July 27, 2010, NextGen filed a Motion for an Extension of Time ("Motion") to publish  
6 notice of the application. The Motion stated that NextGen required an additional 60 days to publish  
7 notice because NextGen desired to provide its proposed services throughout Arizona therefore  
8 making the notice process more complex. The Motion also requested that the hearing date and other  
9 associated deadlines be reset.

10 On August 3, 2010, a Procedural Order was issued granting NextGen's Motion and  
11 rescheduling the hearing for December 2, 2010.

12 On December 2, 2010, the hearing was held as scheduled. NextGen and Staff appeared  
13 through counsel and presented testimony and evidence on the application. No members of the public  
14 were present to give public comment.

15 At the conclusion of the hearing, the matter was taken under advisement pending submission  
16 of a Recommended Opinion and Order to the Commission.

17 \* \* \* \* \*

18 Having considered the entire record herein and being fully advised in the premises, the  
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. NextGen is a foreign C corporation headquartered in Annapolis, Maryland and is  
22 authorized to transact business in Arizona.<sup>1</sup>

23 2. NextGen is a wholly owned subsidiary of Telecommunication Systems, Inc ("TCS").<sup>2</sup>  
24 TCS is a publicly traded company and owns 100 percent of NextGen's outstanding stock.<sup>3</sup>

25 3. TCS reported annual revenues of \$300 million for the year 2009.<sup>4</sup>

27 <sup>1</sup> NextGen Exhibit A-2.

<sup>2</sup> Id.

<sup>3</sup> Id.

28 <sup>4</sup> Staff Exhibit S-1 at 1.

1           4.       On January 28, 2010, NextGen filed with the Commission an application for a CC&N  
2 to provide private line and access telecommunication services in Arizona and requesting that its  
3 proposed services be classified as competitive.

4           5.       Notice of the application was given in accordance with the law.

5           6.       Staff recommends that the Commission approve NextGen's application for a CC&N to  
6 provide private line and access service telecommunications in Arizona.

7           7.       Staff further recommends that:

- 8           a.       NextGen comply with all Commission Rules, Orders, and other requirements  
9 relevant to the provision of intrastate telecommunications services;
- 10          b.       NextGen keep its books and records as required by Generally Accepted  
11 Accounting Principles ("GAAP") and in accordance with the additional  
12 accounting principles required as the subsidiary of a public company, in lieu of  
13 the USOA requirements in A.A.C. R14-2-510.G;
- 14          c.       NextGen abide by the quality of service standards that were approved by the  
15 Commission for Qwest in Docket No. T-01051B-93-0183;
- 16          d.       NextGen be required to notify the Commission immediately upon changes to  
17 the Applicant's name, address or telephone number;
- 18          e.       NextGen cooperate with Commission investigations including, but not limited  
19 to customer complaints;
- 20          f.       The rates proposed by this filing are for competitive services. In general, rates  
21 for competitive services are not set according to rate of return regulation. Staff  
22 obtained information from NextGen that indicated that its net book value or  
23 fair value rate base was estimated to be less than \$100,000 at the end of the  
24 first twelve months of operation. Staff has reviewed the rates to be charged by  
25 applicant and believes they are just and reasonable. The rate to be ultimately  
26 charged by the Company will be heavily influenced by the market. Therefore,  
27 while Staff considered the fair value rate base information submitted by the  
28 Company, the fair value information provided was not given substantial weight  
in this analysis; and
- g.       The Commission authorizes NextGen to discount its rates and service charges  
to the marginal cost of providing the services.

25          8.       Staff recommends that the Commission's grant of a CC&N should be considered null  
26 and void, after due process, if NextGen fails to comply with the following conditions:

- 27          a.       NextGen shall docket conforming tariffs for each service within its CC&N  
28 within 365 days from the date of an Order in this matter or 30 days prior to

1 providing service, whichever comes first. The tariffs submitted shall coincide  
2 with the Application and state that the Applicant does not collect advances,  
deposits and/or prepayments from its customers.

3 **Technical Capability**

4 9. NextGen's executives are key leaders of TCS, which has been operating since 1987.<sup>5</sup>  
5 The top executives of NextGen and TCS have a combined 110 years experience in the  
6 telecommunications industry.<sup>6</sup>

7 10. NextGen seeks certification to provide transport emergency local, Voice Over Internet  
8 Protocol ("VoIP"), telemetric, Private Branch Exchange ("PBX")<sup>7</sup>, and mobile 911 traffic, as well as  
9 manage and transmit location and calling number data to Public Safety Access Points ("PSAPs")<sup>8</sup>.

10 11. NextGen's application states that a CC&N to provide its proposed services will enable  
11 it to acquire and manage Pseudo Automatic Number Identification ("PANI") resources essential for  
12 routing emergency calls, pursuant to the Federal Communications Commission's ("FCC") directive  
13 of September 8, 2006.

14 12. NextGen's witness testified that TCS (NextGen's parent company) provides services  
15 through its VoIP positioning center ("VPC") and has been providing service in Arizona since 2001.<sup>9</sup>  
16 According to the witness, the VPC provides call-routing instructions to VoIP switches to determine  
17 which public safety answering point the call should be routed to.<sup>10</sup> NextGen's witness stated that the  
18 Company has been certified in 35 states to provide services to VoIP carriers, that Arizona is the 35th  
19 state in which NextGen is seeking certification and the Company intends to seek certification in all  
20 50 states.<sup>11</sup>

21 13. Upon certification in Arizona, TCS will continue to operate its VPC and NextGen will  
22 operate in parallel by beginning to provide next generation 911 services.<sup>12</sup> NextGen's witness  
23 testified that the Company anticipates that in the future it will begin routing some of the actual voice  
24

25 <sup>5</sup> Applicant Exhibit A-2.

26 <sup>6</sup> Id.

27 <sup>7</sup> PBX- is a telephone system that serves a particular business or office.

28 <sup>8</sup> PSAP- is a call center responsible for answering calls to an emergency telephone number for police, firefighting, and ambulance services.

<sup>9</sup> Staff Exhibit S-1 and Tr. at 11.

<sup>10</sup> Staff Exhibit S-1.

<sup>11</sup> Tr. at 21.

<sup>12</sup> Tr. at 23.

1 traffic onto its own network in order to remain competitive with incumbent local exchange carriers  
2 (“ILECs”) and to position itself for the next generation of 911 services.<sup>13</sup>

3 14. NextGen has not been denied certification in any state where it has sought a  
4 certificate.<sup>14</sup>

5 15. Staff concludes that NextGen has the technical capability to provide its proposed  
6 services in Arizona.

### 7 **Financial Capability**

8 16. NextGen states it will rely on the financial resources of its parent company TCS to  
9 fund its operations in Arizona and that NextGen currently has no revenue.<sup>15</sup>

10 17. NextGen’s application included financial statements for TCS through the end of 2008  
11 listing total assets of \$181 million; total stockholder equity of \$114.3 million; and a net income of  
12 \$57.6 million.<sup>16</sup>

13 18. NextGen’s proposed tariffs state that NextGen may require deposits from its  
14 customers.<sup>17</sup>

15 19. Based on Staff’s analysis, NextGen’s proposed customers will not include individuals  
16 or residential customers and NextGen’s target market should not present any risk to end users.<sup>18</sup>  
17 Further, Staff believes that because NextGen’s customers will consist of large telephone carriers and  
18 government agencies, a bond should not be required.<sup>19</sup>

19 20. NextGen requested a waiver of A.A.C. R14-2-510(G)(2), which requires Class A, B,  
20 C, and D telephone utilities to maintain their books and records according to the Uniform Systems of  
21 Accounts (“USOA”).<sup>20</sup> NextGen stated in its responses to Staff’s First Set of Data Requests that  
22 because NextGen is not rate base or otherwise revenue/expense regulated there is no need for  
23 application of the USOA to NextGen and that any financial information the Commission needs can

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<sup>13</sup>Tr. at 21.

<sup>14</sup>Applicant Exhibit A-2 at A-18.

<sup>15</sup>Tr. at 23.

<sup>16</sup>10-K Financial Report for TCS submitted to the Securities and Exchange Commission on March 3, 2009.

<sup>17</sup>NextGen’s proposed tariff Page 23, Section 4.D.

<sup>18</sup>Staff Exhibit S-1 at 2.

<sup>19</sup>Id. See also, Decision No. 71781 at 6, Staff recommends that no bond be required for private line service providers because their potential customers are large business who have the bargaining power to negotiate the best prices for their services.

<sup>20</sup>Staff Exhibit S-1 at 3.

1 be ascertained by other reliable accounting means.<sup>21</sup>

2 21. Staff supports NextGen's request for waiver of A.A.C. R14-2-510(G)(2) and  
3 recommends that in lieu of USOA requirements NextGen keep its books and records in accordance  
4 with the accounting principles required as the subsidiary of a public company.

5 **Rates and Charges**

6 22. Staff believes NextGen will have to compete with various ILEC, CLECS, and  
7 interexchange carriers ("IXCs") currently providing telecommunications services.<sup>22</sup>

8 23. Given the competitive environment in which NextGen will be providing service, Staff  
9 believes NextGen will not be able to exert any market power and the competitive process will result  
10 in rates that are just and reasonable.<sup>23</sup>

11 24. According to Staff, rates for competitive services are not set according to a rate of  
12 return.<sup>24</sup> NextGen states that its net book value or fair value rate base will be less than \$100,000 at  
13 the end of 12 months of operation. Staff believes that NextGen's rates will be heavily influenced by  
14 the market and while Staff considered the fair value rate base information submitted by NextGen,  
15 Staff did not give it substantial weight in its analysis.<sup>25</sup>

16 25. Based on Staff's review of the Applicant's proposed services, Staff concludes that  
17 NextGen's rates are for specialized services that are highly competitive and targeted at carriers and  
18 government agencies; NextGen's proposed customers will have ample resources and bargaining  
19 power to protect their business interests and can negotiate the best market prices for services; and  
20 rates charged by NextGen cannot be less than the total service long-run incremental cost of providing  
21 the service. Therefore, Staff concludes that NextGen's proposed rates and charges are just and  
22 reasonable.

23 **Complaint History**

24 26. According to NextGen, it has not had an application for service denied in any state  
25

26 \_\_\_\_\_  
27 <sup>21</sup> Staff Exhibit S-1 at 3.

28 <sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

1 where it has applied for a certificate to provide telecommunication services.<sup>26</sup>

2 27. As part of the review of NextGen's application, Staff contacted three Public Utility  
3 Commissions ("PUCs") and reviewed the FCC website and found that no complaints had been filed  
4 against NextGen.<sup>27</sup>

5 28. NextGen's application states that none of its officers, directors, partners, or managers  
6 have been or are currently involved in any criminal investigations within the last ten years.<sup>28</sup>

7 29. NextGen is in good standing with the Commission's Corporation Division.

8 30. The Commission's Consumer Service Section reported that no complaints have been  
9 filed against NextGen.

#### 10 **Competitive Analysis**

11 31. Staff recommends approval of NextGen's proposed services as competitive. Staff  
12 states that the combined number of IXC, ILECs, and CLECs providing private line services hold a  
13 substantial share of the market; NextGen will have to convince customers to purchase its services;  
14 NextGen has no ability to adversely affect the IXC and ILEC markets it will be competing in; and  
15 alternative providers exist in the markets NextGen desires to serve.

16 32. Based on the above information, Staff recommends that NextGen's proposed services  
17 be classified as competitive.

18 33. Staff's recommendations as set forth herein, are reasonable and should be adopted.

#### 19 **CONCLUSIONS OF LAW**

20 1. NextGen is a public service corporation within the meaning of Article XV of the  
21 Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-801 *et seq.*

22 2. The Commission has jurisdiction over the subject matter of the application.

23 3. Notice of the application was given in accordance with the law.

24 4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a  
25 CC&N to provide competitive telecommunications services.

26 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised

27 <sup>26</sup> Applicant Exhibit A-2.

28 <sup>27</sup> Staff Exhibit S-1 at 4. Staff reports it contacted the PUCs in Iowa, Oregon, and Utah.

<sup>28</sup> Applicant Exhibit A-2 at A-12.

1 Statutes, it is in the public interest for NextGen to provide the telecommunications services set forth  
2 in its application.

3 6. NextGen is a fit and proper entity to receive a CC&N authorizing it to provide private  
4 line and access telecommunications services within the State of Arizona.

5 7. The telecommunications services NextGen intends to provide are competitive within  
6 Arizona.

7 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
8 it is just and reasonable and in the public interest for NextGen to establish rates and charges that are  
9 not less than NextGen's total service long-run incremental costs of providing the competitive services  
10 approved herein.

11 9. Staff's recommendations are reasonable and should be adopted.

12 **ORDER**

13 IT IS THEREFORE ORDERED that the application of NextGen Communications, Inc., for a  
14 Certificate of Convenience and Necessity for authority to provide private line and access  
15 telecommunications services within the State of Arizona is hereby approved, subject to the  
16 conditions in Findings of Fact No. 7.

17 IT IS FURTHER ORDERED that if NextGen Communications, Inc., fails to comply with  
18 Staff's conditions, as described in Findings of Fact No. 8, the Certificate of Convenience and  
19 Necessity granted herein shall be considered null and void after due process.

20 IT IS FURTHER ORDERED that NextGen Communications, Inc.'s request for a waiver of  
21 A.A.C. R14-2-510(G)(2) is hereby granted.

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1 IT IS FURTHER ORDERED that NextGen Communications, Inc. shall maintain its books in  
2 records in accordance with the accounting principles required as the subsidiary of a public company.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
Executive Director of the Arizona Corporation Commission,  
have hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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DISSENT \_\_\_\_\_

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DISSENT \_\_\_\_\_

YBK:db

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1 SERVICE LIST FOR: NEXTGEN COMMUNICATIONS, INC.

2 DOCKET NO.: T-20722A-10-0026

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