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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

Arizona Corporation Commission

**DOCKETED**

**AUG 29 2006**

JEFF HATCH-MILLER Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

DOCKETED BY	nr
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IN THE MATTER OF THE APPLICATION OF  
NEXTG NETWORKS OF CALIFORNIA, INC.  
DBA NEXTG NETWORKS WEST FOR  
APPROVAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY FOR  
TRANSPORT AND BACKHAUL SERVICES TO  
OTHER CARRIERS, INCLUDING BUT NOT  
LIMITED TO WIRELESS  
TELECOMMUNICATIONS SERVICES  
PROVIDERS AND POTENTIALLY TO  
WIRELESS INFORMATION SERVICES  
PROVIDERS.

DOCKET NO. T-20377A-05-0484

DECISION NO. 68915

**OPINION AND ORDER**

DATE OF HEARING: July 27, 2006

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Wolfe

APPEARANCES: Thomas H. Campbell, LEWIS AND ROCA, LLP, on behalf of NextG Networks of California, Inc. dba NextG Networks West;

T. Scott Thompson, COLE, RAYWID & BRAVERMAN, LLP, on behalf of NextG Networks of California, Inc. dba NextG Networks West; and

Keith Layton, Staff Attorney, Legal Division, on behalf of the Commission's Utilities Division Staff.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On July 1, 2005, NextG Networks of California, Inc. dba NextG Networks West ("NextG" or "Applicant") filed with the Commission an application for a Certificate of Convenience

1 and Necessity (“Certificate”) to provide private line and intrastate access services in order to supply  
2 transport and backhaul services to other carriers, including but not limited to wireless  
3 telecommunications services providers and potentially to wireless information services providers  
4 within the State of Arizona.

5         2.       On August 17, 2005, the Commission’s Utilities Division Staff (“Staff”) docketed a  
6 copy of a letter informing Applicant of further information required for Staff to complete its analysis  
7 of the application.

8         3.       On October 17, 2005, Applicant docketed its responses to Staff’s request for  
9 additional information.

10        4.       On June 6, 2006, Staff filed a Staff Report on the application, recommending approval  
11 subject to certain conditions.

12        5.       On June 16, 2006, a Procedural Order was issued setting the matter for hearing to take  
13 place on July 27, 2006, and setting associated procedural deadlines.

14        6.       On July 14, 2006, NextG filed an Affidavit of Publication demonstrating that notice of  
15 the application was published in *The Arizona Republic*, a newspaper of general circulation in the  
16 requested Certificate service area, on June 30, 2006. No requests for intervention were filed.

17        7.       On July 26, 2006, Thomas H. Campbell and Michael T. Hallam filed a Motion and  
18 Consent of Local Counsel for *Pro Hac Vice* Admission of Scott Thompson.

19        8.       The hearing convened as scheduled on July 27, 2006. Admission *pro hac vice* was  
20 granted to Scott Thompson at the commencement of the hearing. Applicant and Staff appeared  
21 through counsel and presented evidence. No members of the public appeared to provide public  
22 comment.

23        9.       NextG is organized under the laws of Delaware as a C corporation, and has been  
24 authorized to do business in Arizona since December 23, 2004.

1           10.     NextG plans to offer private line and intrastate access services in order to provide  
2 transport and backhaul services of voice and data signals, primarily for wireless providers. NextG's  
3 "RF Transport Services" use optical technology, including multi-wavelength optical technology, over  
4 dedicated transport facilities to provide telecommunications companies with more efficient transport  
5 and greater overall network service options. RF Transport Services connect customer provided  
6 wireless capacity equipment to customer-provided or NextG provided bi-directional RF-to-optical  
7 conversion equipment at a hub facility. The hub facility can be customer or NextG provided. The  
8 conversion equipment will allow NextG to accept RF traffic from the customer and then send bi-  
9 directional traffic transmission across the appropriate optical networks. At the remote end, NextG or  
10 the telecommunications company will provide RF-to-optical conversion equipment to allow bi-  
11 directional conversion between optical signals and RF signals. RF signals can be received and  
12 radiated at this remote node. NextG will offer service subject to the availability of the necessary  
13 facilities and/or equipment. NextG currently has plans to operate in 27 states, and has commenced  
14 operations in California, Georgia and Illinois. At the hearing, NextG's witness testified that NextG  
15 plans to commence provision of service in Arizona within one year of receiving a Certificate.  
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18           11.     NextG states in its application that it will rely on the financial resources of its parent  
19 company, NextG Networks, Inc. The Staff Report states that the 2005 financial statements provided  
20 by NextG list total assets of \$44,638,000, total equity of \$17,514,000, and net income of  
21 (\$5,739,000).  
22

23           12.     The Staff Report states that NextG's parent and affiliates operate in 8 states and have  
24 approximately 36 employees and 11 contract workers with more than 150 years of combined  
25 experience in the wireless industry.

26           13.     The application states that on March 9, 2005, the City and County of San Francisco  
27 filed a complaint against NextG associated with a dispute between NextG and the City regarding  
28

1 NextG's ability to construct in the public rights-of-way. Staff states in its Staff Report that on  
2 January 19, 2006, Staff received a copy of a January 12, 2006 Order of the California Public Utilities  
3 Commission (CPUC Decision 06-01-006) finding on behalf of NextG. Staff noted that the complaint  
4 did not involve issues related to customer service, but only jurisdictional issues raised by the City.  
5 NextG certified that neither the Applicant nor any of its officers, directors, partners or managers have  
6 been or are currently involved in any other formal or informal complaint proceedings pending before  
7 any state or federal regulatory commission, administrative agency, or law enforcement agency, or in  
8 any civil or criminal investigations, and that NextG's parent and affiliates have not had an application  
9 for service denied, or authority revoked, in any state.  
10

11 14. Applicant has the financial, technical, and managerial capabilities to provide the  
12 private line services and intrastate access services it is requesting authority to provide.

13 15. Applicant will be providing service in areas where incumbent local exchange carriers  
14 ("ILECs"), along with various competitive local exchange carriers ("CLECs") and interexchange  
15 carriers ("IXCs") are providing telephone and private line services.  
16

17 16. Staff recommended that Applicant's proposed services be classified as competitive  
18 because there are alternatives to Applicant's services; Applicant will have to convince customers to  
19 purchase its services; Applicant has no ability to adversely affect the local exchange or interexchange  
20 service markets; and Applicant will therefore have no market power in those local exchange or  
21 interexchange service markets where alternative providers of telecommunications services exist.  
22

23 17. It is appropriate to classify all of Applicant's authorized services as competitive.

24 18. NextG's proposed tariff lists a maximum rate for its proposed private line services and  
25 intrastate access services. Staff reviewed NextG's proposed tariff, and states that while it lists a  
26 maximum rate, NextG's proposed tariff is based on actual rates, and notes that Commission rules  
27 require that the rate charged for a service may not be less than a company's total service long-run  
28

1 incremental cost of providing the service. Staff states that since the services to be offered are highly  
2 competitive and targeted for sophisticated carriers and communications companies experienced in  
3 negotiating charges and other contract terms for point-to-point wireless voice and data services, Staff  
4 believes the proposed rates are just and reasonable. Staff also notes that the majority of NextG's  
5 customers are expected to purchase services under individual case basis ("ICB") arrangements and  
6 pricing. Staff stated that while it considered the fair value rate base ("FVRB") information submitted  
7 by the Applicant, it did not believe the information deserved substantial weight in setting Applicant's  
8 rates.  
9

10 19. The rates proposed by the application are for competitive services, and in general,  
11 rates for competitive services are not set according to rate of return regulation. Staff obtained  
12 information from the Applicant that indicates its FVRB is zero. Staff has reviewed the rates to be  
13 charged by the Applicant and believes they are just and reasonable as they are comparable to those of  
14 other competitive local carriers offering service in Arizona and comparable to the rates Applicant  
15 charges in other jurisdictions. The rates to be ultimately charged by Applicant will be heavily  
16 influenced by the market. Because of the nature of the competitive market and other factors, a FVRB  
17 analysis is not necessarily representative of Applicant's operations.  
18

19 20. Staff recommends that Applicant be granted a Certificate to provide the requested  
20 intrastate telecommunications services subject to the condition that Applicant docket tariffs for each  
21 certificated service conforming to the tariffs proposed in the application, within 365 days from the  
22 date of an Order in this matter or 30 days prior to providing service, whichever comes first, and that  
23 the Certificate should become null and void after due process if it does not timely comply with the  
24 condition.  
25

26 21. Staff further recommends the following:

- 27 (a) that Applicant be ordered to comply with all Commission rules, orders, and  
28 other requirements relevant to the provision of intrastate telecommunications services;

- 1 (b) that Applicant be ordered to abide by the quality of service standards that were  
2 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 3 (c) that Applicant be required to notify the Commission immediately upon  
4 changes to Applicant's name, address, or telephone number; and
- 5 (d) that Applicant be ordered to cooperate with Commission investigations  
6 including, but not limited to customer complaints.

7 22. Staff's recommendations, as set forth herein, are reasonable.

8 23. Applicant's fair value rate base is determined to be zero for purposes of this  
9 proceeding.

### 10 CONCLUSIONS OF LAW

11 1. Applicant is a public service corporation within the meaning of Article XV of the  
12 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. The Commission has jurisdiction over Applicant and the subject matter of the  
14 application.

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

16 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
17 Certificate to provide competitive telecommunications services.

18 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
19 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
20 in its application.

21 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide  
22 private line and intrastate access services in order to supply transport and backhaul  
23 telecommunications services in Arizona as conditioned by Staff's recommendations to other carriers,  
24 including but not limited to wireless telecommunications services providers and wireless information  
25 services providers within the State of Arizona.


26 7. The telecommunications services that Applicant intends to provide are competitive  
27 within Arizona.



1 IT IS FURTHER ORDERED that the services NextG Networks of California, Inc. dba NextG  
2 Networks West is authorized to provide herein are hereby classified as competitive.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN

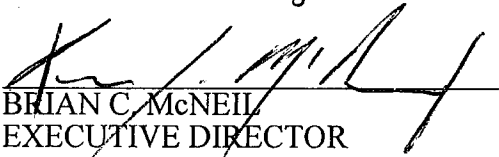
  
COMMISSIONER

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10 COMMISSIONER

  
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COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this 29<sup>th</sup> day of August, 2006.

15   
16 BRIAN C. McNEIL  
17 EXECUTIVE DIRECTOR

18 DISSENT \_\_\_\_\_

19  
20 DISSENT \_\_\_\_\_

21 TW:mj

1 SERVICE LIST FOR: NEXTG NETWORKS OF CALIFORNIA, INC. dba  
2 NEXTG NETWORKS WEST

3 DOCKET NO.: T-20377A-05-0484

4 T. Scott Thompson  
5 COLE, RAYWID & BRAVERMAN, LLP  
6 1919 Pennsylvania Avenue, Ste. 200  
7 Washington, DC 20006  
8 Attorneys for NextG Networks of California, Inc.

9 Thomas H. Campbell  
10 Michael T. Hallam  
11 LEWIS AND ROCA  
12 40 N. Central Avenue  
13 Phoenix, AZ 85004

14 Christopher Kempley, Chief Counsel  
15 Keith Layton, Staff Attorney  
16 Legal Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 Ernest G. Johnson, Director  
21 Utilities Division  
22 ARIZONA CORPORATION COMMISSION  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

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26  
27  
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