



**NextG Networks**

EMPOWERING NEXT GENERATION WIRELESS  
NETWORKS

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March 30, 2010

VIA EMAIL AND U.S. MAIL

**COUNTY OF SANTA BARBARA**  
Attn: Megan Lowery, Planner  
123 E. Anaamu Street  
Santa Barbara, CA 93101

*re: NextG Networks of California, Inc.,*

Dear Ms. Lowery:

I am writing in response to your letter dated March 29, 2010, wherein you assert that "NextG has not shown that a 'significant gap' in coverage would occur if the County denied one or more, but not all, of the specific antenna sites that NextG proposed." Our understanding is that the request that you have made here are responsive to the action from the Board of Supervisors on March 16, 2010, where the minutes reflect the Board's request that Staff perform additional analysis for each of the sites "and to return to the Board as appropriate with draft findings for denial." NextG responds to and opposes the request made in your March 29, 2010 letter for the following reasons.

1. The County's Request is Not Timely

NextG made the applications for the above-referenced sites on August 5, 2009, and the County has not, until now, requested that NextG provide any additional information. The applications have been deemed complete under both state and federal law. The California Permit Streamlining Act, Cal. Gov. Code §65943(b), states that "[i]f the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter." This principle was upheld by the FCC in the Declaratory Ruling, WT Docket No. 08-165 (Nov. 18, 2009), which acknowledged the Permit Streamlining Act in California, and concluded that "a 90-day timeframe for processing collocation applications is reasonable." Under either analysis, the request that the County has made comes for the first time nearly seven (7) months after the applications were submitted, and nearly six (6) months after they were deemed complete by operation of law. As such, the request is not timely.

Likewise, your letter states that you will "consider any additional information" that we provide regarding additional sites. Each of these sites has been discussed extensively with you

and with staff members since the applications were made, including alternative options. Accordingly, the information has already been provided to the County.

2. The County Code Does Not Require Significant Gap Analysis

The County Code identifies the facilities that NextG has proposed in this case as “Tier I” facilities. As you note, NextG has never submitted any analysis of a “significant gap” or feasible alternatives. That is because such a showing is not required for an application to install Tier 1 facilities. There is nothing in the County Code that requires that a certificated telephone corporation provide “significant gap” details on its coverage. Further, there is nothing under P.U. Code § 7901 that can be read to require or allow the County to impose a “significant gap” analysis of any kind. Indeed, Section 7901 prohibits the County from denying NextG access to the public rights of way.

The County’s current course of action, including the Board’s instructions to Staff at the March 16, 2010 hearing and your request, violate the County’s own Code. Under MLUDC § 35.444.010.C.1 and CZO § 35-144F.3.1.b, NextG’s proposed nodes are Tier 1 commercial facilities, requiring only a ministerial grant of a Land Use or Coastal Development Permit. The *sole* issue before the Board is whether NextG’s nodes fall within the definition of Tier 1 facilities, because if they do, the Board has no authority to reverse the grant of the permits. If the Board holds that NextG’s nodes are not Tier 1, it cannot then decide whether NextG has satisfied the criteria for a Tier 4 facility because NextG has never filed an application for a conditional use permit to install a Tier 4 facility. The Board cannot deny NextG a permit it has not applied for nor automatically convert NextG’s pending applications to a classification different from that under which NextG applied.

Thus, the request for this additional information does not comply with either the County’s published code or with any requirement under the California Public Utilities Code.

For the foregoing reasons, NextG does not agree to provide the additional information that has been requested. If the County would like to discuss further, please contact me.

Very truly yours,



Patrick S. Ryan  
VP, Government Relations &  
Regulatory Affairs

cc: Robert Delsman, Esq. (NextG)  
Sharon James (NextG)  
Dave Ward (County of Santa Barbara) (by email)  
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