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November 30, 2016

Via FedEx Delivery

David Shields, Esq.
Chairman, Florida Association of County Attorneys
County Attorney
Seminole County
Office of the County Attorney
1101 E. 1st Street
Sanford, Florida 32771

Dear Mr. Shields:

It has come to our attention that the Florida Association of County Attorneys (“FACA”) has questioned the regulatory certification of Crown Castle NG East LLC (“Crown Castle”) as we seek to provide telecommunications services in the State of Florida. The purpose of this letter is to explain the status of Crown Castle as a provider of Communications Services under Florida law and Crown Castle’s right to occupy the public rights of way as a result. As demonstrated herein, under relevant Florida law, Crown Castle is a provider of Communications Services, and as a result, local governments must allow Crown Castle to install its facilities in the public rights of way under the same permitting and processes the local governments use to allow the installation of facilities by other Communications Services providers, such as the Incumbent Local Exchange Carrier (“ILEC”). In addition, this letter addresses the limits on the authority of local governments to impose fees on Crown Castle’s use of the public rights of way.

Crown Castle has never been provided any meaningful and specific articulation supporting the position of FACA or the local governments represented by its members denying Crown Castle’s rights under Florida law. In light of the following, Crown Castle respectfully requests that, if FACA and/or its membership disputes Crown Castle’s rights under Florida law, a written explanation of the basis for that position be provided to Crown Castle.

I. CROWN CASTLE’S STATUS UNDER FLORIDA LAW

Under Florida law, Crown Castle is a provider of “Communications Service,” and for purposes of the Florida Communications Services Tax, Crown Castle is a “dealer” in communications services. For purposes of rights of way access and fees and taxes, “Communications Services” is defined broadly as:

“the transmission, conveyance, or routing of voice, data, audio, video, **or any other information or signals**, including cable services, to a point, or between or among points, **by or through any electronic, radio,**

satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.”

Fla. Stat. § 202.11(3) (emphasis added). Through its networks, Crown Castle transmits voice, data, or other signals for wireless carriers between remote antenna nodes and a central base station via Crown Castle’s fiber optic lines. Crown Castle’s service, thus, clearly falls within the definition of a Communications Service. The fact that Crown Castle’s customers are commercial wireless carriers is irrelevant, as the statute does not limit itself to providers of retail service, and it clearly includes carriage of any possible form of signal, including “wireless” signals through its reference to radio, satellite, microwave “or other medium.” While Crown Castle provides service to wireless carriers, it is not itself a wireless carrier, and it does not hold an FCC wireless license or control radio frequency spectrum.

Based on Crown Castle’s service offerings, in August 2004, the Florida Public Service Commission (“PSC”) granted Crown Castle (at the time known as NextG Networks East, Inc.) certificates of public convenience and necessity to operate as both a Competitive Local Exchange Carrier (“CLEC”) and an Alternative Access Vendor (“AAV”). Copies of the relevant PSC orders are attached. Among other things, these certificates recognize that Crown Castle is a “Telecommunications Company” under Florida Statutes Section 364.02(13) because it is an entity that “offer[s] two-way telecommunications service to the public for hire within this state by use of a telecommunications facility. . .”

The Commission’s grant is conclusive evidence of Crown Castle’s status under Florida law. The Legislature has granted the PSC “exclusive jurisdiction in all matters set forth in this chapter [364 governing Telecommunications Companies], and **such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist.**” Fla. Stat. § 364.01(2) (emphasis added). Section 364.01(2) further states that “this chapter does not affect the authority and powers granted in s. 166.231(9) or s. 337.401,” but Section 337.401 further emphasizes that only the PSC may establish that Crown Castle is qualified as a Telecommunications Company.

Specifically, Section 337.401(3)(g) prohibits local governments from using their rights of way management to second-guess Crown Castle’s status. It states:

A municipality or county may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding **matters within the exclusive jurisdiction of the Florida Public Service Commission** or the Federal Communications Commission, including, but not limited to, the operations, systems, **qualifications** . . . of a provider of communications services

Fla. Stat. § 337.401(3)(g) (emphasis added). The PSC has determined that Crown Castle is qualified as a Telecommunications Company. Local governments are prohibited from second-guessing the PSC’s determination of Crown Castle’s qualifications or status.

Finally, Florida Stat. § 337.401(3)(a) further emphasizes that proof of Crown Castle's PSC certifications are conclusive proof of Crown Castle's status. Section 337.401(3)(a) identifies the limited items that a municipality or county may require as a condition of access to the public rights of way, and that list includes "the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission." Fla. Stat. § 337.401(3)(a). Thus, once Crown Castle (or any other applicant) provides its proof of certificate of authorization from the PSC, the municipality or county must accept that certificate as proof of the company's rights to use the rights of way under Section 337.401.¹

II. CROWN CASTLE'S RIGHT TO USE PUBLIC RIGHTS OF WAY SUBJECT ONLY TO STANDARD RIGHT OF WAY PERMITS

Under Florida Statutes Section 337.401, municipalities and counties cannot deny Crown Castle access to public rights-of-way and are required to grant access on the same terms and subject only to the same requirements as they impose on all other utilities and Communications Services providers. As a threshold matter, municipalities and counties cannot require that Crown Castle enter into a franchise under Section 337.401(3)(a)(1), which provides that a municipality or county "may not require a provider of communications services, except as otherwise provided in subparagraph 2 [addressing cable operators], to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way." Fla. Stat. § 337.401(3)(a)(1).

It is also clear under Section 337.401 that municipalities and counties are required to allow Crown Castle to install its facilities in the public rights of way pursuant to the same right of way permitting procedures the local authority uses with other Communications Services providers. Section 337.401(3)(a) requires that any rules or regulations adopted by a municipality or county relating to providers of communications services placing communications facilities in the public rights of way "**must be generally applicable to all providers of communications services.**" Fla. Stat. § 337.401(3)(a) (emphasis added). Section 337.401(3)(b) further emphasizes this point, stating:

Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and **may include only those matters necessary to manage the roads or rights-of-way** of the municipality or county.

Fla. Stat. § 337.401(3)(b) (emphasis added). Thus, under Section 337.401(3), a municipality or county cannot impose on Crown Castle's installation of its communications facilities a process or rules different from the generally applicable right

¹ Florida Statutes Section 350.111 further supports the conclusive nature of the Commission's certification, defining "regulated company" as "any public utility as defined in s. 366.02 **or any person holding a valid and current certificate from the commission under chapter 351, chapter 364, chapter 365, or chapter 367.**" Fla. Stat. § 350.111 (emphasis added).

of way permits imposed on the incumbent local exchange carrier (*e.g.*, AT&T). And those requirements must be limited to matters “necessary to manage the roads or rights-of-way.” This means that local governments cannot subject Crown Castle’s installation in the right of way to discretionary, aesthetics-based zoning or similar requirements, which are clearly not necessary to manage the roads.

To the extent municipalities or counties may believe that the involvement of wireless equipment, such as antennas, excludes Crown Castle’s installations from Section 337.401, that is incorrect. Section 337.401 makes clear that the limitation on local authority fully applies to the installation of communications facilities that involve wireless antennas. Like Communications Services, “Communications Facility” is also defined in the broadest possible terms as “a facility that may be used to provide communications services.” Fla. Stat. § 337.401(6)(a)(2). Indeed, Section 337.401(3)(e) includes language making clear that antennas are included in the protections of Section 337.401. It states that “[t]he provisions of this subsection do not restrict the authority, if any, of municipalities or counties or other governmental entities to receive reasonable rental fees based on fair market value for the use of public lands and buildings on property **outside the public roads or rights-of-way** for the placement of communications antennas and towers.” (Emphasis added). By articulating that the provision does not restrict a municipality’s or county’s authority to charge fees for antennas on government property *outside the public rights of way*, the language thereby recognizes that the restrictions of Section 337.401 do otherwise apply to antennas *in the rights of way*.

III. CONCLUSION

Crown Castle is committed to working constructively with local governments in Florida. However, the current actions of many local governments represented by FACA members is not constructive and is inconsistent with Florida and federal laws. Moratoria, for example, are explicit prohibitions on the ability to provide competitive telecommunications services. They conflict with the pro-competition, pro-deployment policies of Florida and the Nation, and they ultimately harm the retail consumers who demand the advanced services that Crown Castle’s networks support.

Crown Castle hopes this discussion removes any question about Crown Castle’s status, and it is open to further discussions to cooperatively support deployment of its networks and services. Please contact me with any questions, and thank you in advance for your assistance in this matter.

Respectfully,



Wanda Melton
Government Relations Manager

CC: Robert Millar, Esq., Crown Castle
Christopher Sinclair, Crown Castle

Attachments: PSC Certificates 8515 and 8516

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide
competitive local exchange
telecommunications service by NextG
Networks of NY, Inc. d/b/a NextG Networks
East.

DOCKET NO. 040706-TX
ORDER NO. PSC-04-0907-CO-TX
ISSUED: September 17, 2004

CONSUMMATING ORDER

BY THE COMMISSION:

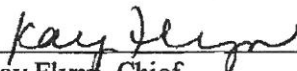
By Order No. PSC-04-0828-PAA-TX, issued September 18, 2004, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order, in regard to the above mentioned docket. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-04-0828-PAA-TX has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of September, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services



Kay Flynn, Chief
Bureau of Records

(SEAL)

JPR

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10036 SEP 17 3

FPSC-COMMISSION CLERK

ORDER NO. PSC-04-0907-CO-TX
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide competitive local exchange telecommunications service by NextG Networks of NY, Inc. d/b/a NextG Networks East.	DOCKET NO. 040706-TX ORDER NO. PSC-04-0828-PAA-TX ISSUED: August 24, 2004
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CERTIFICATE TO
PROVIDE COMPETITIVE LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

NextG Networks of NY, Inc. d/b/a NextG Networks East (NextG) has applied for a certificate to provide Competitive Local Exchange Telecommunications (CLEC) service, pursuant to Section 364.337, Florida Statutes. Upon review of its application, it appears that NextG has sufficient technical, financial, and managerial capability to provide such service. Accordingly, we hereby grant to NextG Certificate No. 8516 which shall authorize it to provide CLEC services throughout the State of Florida.

If this Order becomes final and effective, it shall serve as NextG's certificate. NextG should, therefore, retain this Order as proof of certification. We are vested with jurisdiction over this matter pursuant to Sections 364.335 and 364.337, Florida Statutes.

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09226 AUG 24 04

FPSC-COMMISSION CLERK

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CLEC providers are subject to Chapter 25-24, Florida Administrative Code, Part XV, Rules Governing Telecommunications Service Provided by Competitive Local Exchange Companies. CLEC providers are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code.

Pursuant to Section 364.337(2), Florida Statutes, basic telecommunications service provided by an CLEC "... must include access to operator services, "911" services, and relay services for the hearing impaired." Further, Section 364.337(2), requires that an CLEC's "911" service "... shall be provided at a level equivalent to that provided by the local exchange telecommunications company serving the same area."

In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAFs) of \$50 if the certificate was active during any portion of the calendar year. A RAFs Return notice will be mailed each December to NextG for payment by January 30th. Neither the cancellation of the certificate nor the failure to receive a RAFs Return notice shall relieve NextG from its obligation to pay RAFs.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby grant Certificate No. 8516 to NextG Networks of NY, Inc. d/b/a NextG Networks East, which shall authorize it to provide Competitive Local Exchange Telecommunications services, subject to the terms and conditions set forth in the body of this Order. It is further

ORDERED that this Order shall serve as NextG Networks of NY, Inc. d/b/a NextG Networks East's certificate and should be retained by NextG Networks of NY, Inc. d/b/a NextG Networks East as proof of certification. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-04-0828-PAA-TX
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By ORDER of the Florida Public Service Commission this 24th day of August, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:



Kay Flynn, Chief
Bureau of Records

(SEAL)

JPR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This

ORDER NO. PSC-04-0828-PAA-TX
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petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 14, 2004.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide
alternative access vendor service by NextG
Networks of NY, Inc. d/b/a NextG Networks
East.

DOCKET NO. 040707-TA
ORDER NO. PSC-04-0908-CO-TA
ISSUED: September 17, 2004

CONSUMMATING ORDER

BY THE COMMISSION:

By Order No. PSC-04-0829-PAA-TA, issued September 18, 2004, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order, in regard to the above mentioned docket. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-04-0829-PAA-TA has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of September, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

JPR

DOCUMENT NUMBER-DATE

10037 SEP 17 04

FPSC-COMMISSION CLERK

ORDER NO. PSC-04-0908-CO-TA
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide
alternative access vendor service by NextG
Networks of NY, Inc. d/b/a NextG Networks
East.

DOCKET NO. 040707-TA
ORDER NO. PSC-04-0829-PAA-TA
ISSUED: August 24, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CERTIFICATE TO PROVIDE
ALTERNATIVE ACCESS VENDOR SERVICES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

NextG Networks of NY, Inc. d/b/a NextG Networks East (NextG) has applied for a certificate to provide Alternative Access Vendor (AAV) services pursuant to Section 364.337, Florida Statutes. Upon review of its application, it appears that NextG has sufficient technical, financial, and managerial capability to provide such service. Accordingly, we hereby grant Certificate No. 8515 to NextG.

If this Order becomes final and effective, it shall serve as NextG's certificate. NextG should, therefore, retain this Order as proof of certification. We are vested with jurisdiction over this matter pursuant to Sections 364.335 and 364.337, Florida Statutes.

AAV providers are subject to Chapter 25-24, Florida Administrative Code, Part XIV, Rules Governing Alternative Access Vendor services. AAV providers are also required to comply with all applicable provisions of Chapter 364, Florida Statutes.

In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAFs) of \$50 if the certificate was active during

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FPSC-COMMISSION CLERK

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any portion of the calendar year. A RAFs Return notice **will be** mailed each December to NextG for payment by January 30th. Neither the cancellation of the certificate nor the failure to receive a RAFs Return notice shall relieve NextG from its obligation to pay RAFs.

Based on the foregoing, it

ORDERED by the Florida Public Service Commission that we hereby grant Certificate No. 8515 to NextG Networks of NY, Inc. d/b/a NextG Networks East, which shall authorize it to provide Alternative Access Vendor services, subject to the terms and conditions specified in the body of this Order. It is further

ORDERED that this Order shall serve as NextG Networks of NY, Inc. d/b/a NextG Networks East's certificate and should be retained by NextG Networks of NY, Inc. d/b/a NextG Networks East as proof of certification. It is further

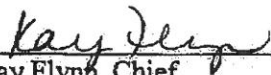
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of August, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:



Kay Flynn, Chief
Bureau of Records

(SEAL)

JPR

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 14, 2004.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.