

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of NextGen )  
Communications, Inc., for a Certificate of ) DOCKET NO. 09-2507-01  
Public Convenience and Necessity ) REPORT AND ORDER  
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ISSUED: September 8, 2009

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) grants the request (Application) of NextGen Communications, Inc. (NextGen or Applicant) for a Certificate of Public Convenience and Necessity (CPCN or certificate) authorizing Applicant to provide public telecommunications services within Utah. Generally speaking, NextGen will offer its E911 routing and location-related services on a wholesale basis to VoIP providers, ILECs, cellular telephone providers, CLECs, and/or local 911 authorities. The Applicant does not anticipate providing any form of dial tone services on a retail basis to either residential or business end-users. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

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By The Commission:

PROCEDURAL HISTORY

NextGen filed its Application on July 13, 2009, seeking a Certificate to operate as a telecommunications corporation in Utah. However, unlike other previous applicants, *NextGen will not be providing traditional long distance voice toll services or traditional local exchange dial tone services and does not intend to provide such services. NextGen intends to offer its E911 routing and location-related services on a wholesale basis to VoIP providers, ILECS, cellular telephone providers, CLECs, and/or local 911 authorities.*

NextGen states that it does not intend to compete in providing interexchange and public local exchange telecommunications services in Utah at this time. NextGen is a VoIP

Positioning Center (VPC) service provider. In its letter of August 27, 2009, it referred the Commission to the October 21, 2008 Report and Order of the Federal Communications Commission, in *In the Matter of the Implementation of the NET 911 Improvement Act of 2008*, WC Docket No. 08-171, FCC 08-249, 2008 WL 4659843 to explain how it, as a VPC, operates, specifically pointing to paragraphs 10-11, and 18 of that Report and Order.<sup>1</sup> The Commission took administrative notice of that order and subsequently of the letter filed with the Commission.

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¶ 10. In a typical wireless E911 network construct, the wireless 911 call is received by a base station, which in turn sends the call to a Mobile Switching Center (MSC). The MSC essentially serves the same function as the competitive and incumbent LEC central office described above for wireline E911 calls. The MSC sends the call record information associated with the call (*e.g.*, the actual call back number) as well as the cell site or sector to a Mobile Positioning Center (MPC). The MPC in turn sends back to the MSC a “pseudo-ANI” or “p-ANI” number. The term “p-ANI” refers to a number consisting of the same number of digits as ANI, that, unlike standard ANI, is not a North American Numbering Plan telephone number but may be used in place of ANI to convey special meaning to the Selective Router, PSAP, and other elements of the 911 system. Wireless 911 systems use p-ANI because Selective Routers are not generally capable of properly routing calls from telephone numbers that are not local, or “native” to the geographic area that they service.

¶ 11 The MPC then simultaneously takes the call record information, along with location information, and populates a “shell record” associated with that p-ANI, which has been previously provisioned within ALI Database. Based on the p-ANI provided, the MSC then routes the call along with the p-ANI to the appropriate Selective Router. The Selective Router queries the SR Database to determine the ESN, which in turn identifies the PSAP that serves the wireless 911 caller’s location based upon the p-ANI number, and routes the call accordingly. The PSAP accesses the ALI Database using the p-ANI and is provided with the information in the shell record associated with that p-ANI. Thus, the elements of the wireless 911 systems that are additional to the Wireline E911 Network are p-ANI, mobile switching center capabilities, mobile positioning center capabilities, and shell records. The wireless 911 systems also may include additional data circuits, network elements, features, processes, and agreements necessary to enable the use of these additional elements.

¶ 18. *Third-Party Commercial Providers.* Certain third-party commercial providers of communications services also own or control capabilities. For example, Intrado and TCS are major providers of VoIP positioning center (VPC) services – these are essentially the same services provided by an MPC in the wireless E911 context, only here they are provided in the VoIP context – which route E911 calls to the appropriate PSAP based on the interconnected VoIP customers’ Registered Locations and often include elements such as transport and p-ANI. Some competitive LECs provide interconnection to Selective Routers, access to p-ANI, and other E911 capabilities on a wholesale basis to interconnected VoIP providers

It seeks certification so that it may aggregate and transport emergency local, VoIP, telemetric, PBX, and mobile E911 traffic, manage and transmit location and calling number data, and provide call routing management for the delivery of emergency calls to public safety answering point (PSAPs). As NextGen has stated, however,

In order to aggregate and transport emergency calls, deliver location and calling number data, and manage emergency call location services and call routing, NextGen will require the same sort of interconnection and collocation made available to certificated CLECs. NextGen needs the ability to order carrier grade circuits, order special access facilities, and to locate its equipment in proximity to other network devices for connection to ILECS and other carriers as the most efficient method for this interconnection may be collocation.

*NextGen Application, p. 3.*

NextGen will contract with telecommunications carriers operating in Utah and/or local 911 authorities to enable residential and business end-users, whether on traditional landline, wireless, VoIP or other devices, to place emergency calls and to have those calls routed to the correct PSAPs for their needs, and to deliver calling number and location data to the PSAP in coordination with those calls. These services will be operated in conjunction with or in parallel to legacy emergency systems operated by other carriers.

*Id.* At 5.

On July 30, 2009, the Division of Public Utilities (Division) filed a memorandum recommending approval of the Application. The Division noted the unique services the applicant would provide and also noted that it did not intend to provide any form of dial tone services on a retail basis to either residential or business end users. The Division also affirmed that NextGen has a positive net worth and has ample working capital. It also affirms that NextGen has never had any complaints filed against it, nor undergone any investigations, not engaged in slamming, nor engaged in any illegal activity. It also opined that its officers had the

managerial expertise to operate NextGen. The Division specifically recommended the Commission waive the requirement that Applicant file proof of a \$100,000 bond, given that the Applicant will not require customer deposits or prepayments of any kind. It stated that approving NextGen's application would serve the public interest.

On Wednesday, August 26, 2009, a hearing was held before the Administrative Law Judge of the Commission. Appearing telephonically for NextGen were counsel H. Russell Frisby, Jr. and Megan E. Garrett of Stinson Morrison Hecker, LLP. Together with Mr. Frisby appeared Kim Scovill, who testified on behalf of NextGen. Mr. Scovill is Senior Director-Government Affairs, of TeleCommunication Systems, NextGen's parent company. Michael Ginsberg was counsel for the Division. Testifying on behalf of the Division was Ronald Slusher. Steve Mecham was counsel for Utah Rural Telecom Associations. Paul Proctor was counsel for the Office of Consumer Services. At the hearing, Mr. Slusher testified that granting the CPCN would be in the public interest. Mr. Scovill explained the nature of NextGen's service and testified that they would not be offering long distance voice toll services or traditional local exchange dial tone services and does not intend to provide such services. NextGen stated that if it did intend to provide such services, it would move to amend its CPCN. The Applicant has made out its *prima facie* case in support of the Application. Therefore, the Commission, being fully appraised in the matter, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Applicant requests the Commission grant a Certificate authorizing it to provide public telecommunications services within Utah.
2. Applicant will not be providing, and does not intend to compete in providing, traditional long distance voice toll services or traditional local exchange dial tone services at this time.
3. Applicant intends to offer its E911 routing and location-related services on a wholesale basis to VoIP providers, ILECS, cellular telephone providers, CLECs, and/or local 911 authorities.
4. Applicant requires the ability to aggregate and transport emergency local, VoIP, telemetric, PBX, and mobile E911 traffic, manage and transmit location and calling number data, and provide call routing management for the delivery of emergency calls to public safety answering point.
5. Applicant will utilize its managerial expertise to support its Utah operations.
6. Applicant has sufficient technical resources and abilities to provide the public telecommunication services for which it has applied.
7. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.
8. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied.

9. Applicant's service offerings will help provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
10. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
11. Applicant will not require customer deposits or offer any prepaid services in Utah.
12. Applicant has applied for waivers from the \$100,000 bond.

CONCLUSIONS OF LAW

1. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for issuance of a certificate as a telecommunications corporation.
2. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for authorization to provide the public telecommunications services for which it seeks a certificate.
3. Applicant is entitled to the rights of interconnection, collocation, resale, access to automatic location identification information, ALI databases, special access, access to unbundled network elements, and all other rights and privileges as enjoyed by CLECs under the Telecommunication Act of 1996.
4. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and regulations, as set forth in Exhibit B, is in accord with Commission practice and is in the public interest. The grant of waivers, as set

forth above, from the provisions of the Utah Code and the Commission's Rules and regulations, is in accord with Commission practice and is in the public interest.

5. The issuance of a Certificate to the Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code § 54-8b-1.1 *et seq.* and is in the public interest.

ORDER

The Commission, having entered its Findings and Conclusions above, hereby

ORDERS:

- a. The Applicant is hereby granted the certificate attached hereto as Exhibit A, which Exhibit is incorporated by reference into this Order;
- b. The certificate is effective as of the date of issuance of this order;
- c. Applicant shall provide reports to the Commission and to the Division as set forth in Exhibit B, which Exhibit is incorporated by reference into this Order;
- d. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;
- e. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;

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- f. The bond requirement is waived.
- g. The Applicant may not provide traditional long distance voice toll services or traditional local exchange dial tone services. If at any time it desire to provide such services, it shall file an application to amend its CPCN to enable it to provide such services.

DATED at Salt Lake City, Utah this 8<sup>th</sup> day of September, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#63429

**EXHIBIT A**

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application of NextGen  
Communications, Inc., for a Certificate of  
Public Convenience and Necessity

DOCKET NO. 09-2507-01

CERTIFICATE 2507

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ISSUED: September 8, 2009

By The Commission:

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, hereby issues a Certificate of Public Convenience and Necessity authorizing NextGen Communications, Inc. to provide public telecommunication services within the State of Utah as defined in the August 2009 Report and Order issued in this docket.

DATED at Salt Lake City, Utah, this 8<sup>th</sup> day of September, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

**EXHIBIT B**

**I. Annual Report:** NextGen Communications, Inc. (Grantee) shall file an Annual Report, on or before March 31 of each year, unless said Grantee requests and obtains an extension. The Annual Report shall contain the following:

**A. Annual Revenues** from operations attributable to the State of Utah by major service categories. Such information would be provided on a “Total Utah” and “Utah Intrastate” basis. “Total Utah” will consist of the total of interstate and intrastate revenues. “Utah Intrastate” will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

1. private line and special access,
2. business local exchange,
3. residential local exchange,
4. measured interexchange, and
5. vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

**B. Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

**C. Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation** for telecommunications

investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

- D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.
  - E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.
  - F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.
  - G. **Number of Messages and Minutes of Services** for measured services billed to end users.
  - H. **List of Officers and Responsible Contact Personnel** updated annually.
  - I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.
- II. **Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.** Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	Prohibitions of discrimination
54-7-12	Rate increases or decreases
54-4-21	Establishment of property values
54-4-24	Depreciation rates
54-4-26	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	Tariff filings required
R746-340-2(E)(2)	Exchange Maps
R746-341	Lifeline <sup>2</sup>
R746-344	Rate case filing requirements
R746-401	Reporting of construction, acquisition and disposition of assets
R746-405	Tariff formats
R746-600	Accounting for post-retirement benefits

III. **Obligations with Respect to Provision of Services.** Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

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<sup>2</sup>This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

- A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.
  - B. Grantee will only be responsible for the operation and maintenance of services that it provides.
- IV. **Modification:** It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.