

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Recommendations of the Independent Panel  
Reviewing the Impact of Hurricane Katrina on  
Communications Networks

EB Docket No. 06-119

WC Docket No. 06-63

**DECLARATION OF ROBERT L. DELSMAN**

I, Robert L. Delsman, do hereby state:

1. I am Vice President, Government Relations & Regulatory Affairs of NextG Networks, Inc. ("NextG").
2. In my role as Vice President, Government Relations & Regulatory Affairs for NextG, I have personal knowledge of the telecommunications services provided by NextG, NextG's equipment and network, and of their legal and regulatory status. In addition, I have been personally involved in every aspect of NextG's attempts to access the public rights-of-way throughout the county in order to provide telecommunications services.
3. I have been an attorney in the telecommunications industry for over 10 years, including being an attorney for Metricom, Inc. from 1996 to 2001. As a result of my duties in my positions, I have had personal experience and knowledge with requirements imposed by local governments for access to public rights-of-way by telecommunications providers in hundreds of communities around the country. In addition, I have been personally involved in both the legal and practical issues involved in legal access and physical attachment to utility poles by telecommunications providers.

4. In order for NextG to provide eight hours of backup power it would need batteries that would weigh, at a minimum, approximately three hundred fifty pounds and would be enclosed in an equipment box measuring over four and a half feet high.

5. Keeping expenses minimal is essential to DAS deployment, because although the benefits of DAS deployments to the robustness, capacity, and coverage of a wireless network are enormous, high-site antennas are capable of delivering wireless signals for less money per square mile than DAS. Accordingly, if DAS were to become uneconomical, carriers might forego the opportunity to enhance their networks and provide better service to their customers and settle for weaker signals and lower bandwidth in many underserved areas.

6. NextG frequently encounters resistance from utility pole owners regarding the attachment of even small boxes housing equipment to provide non-backup power, as it has in Los Angeles. Indeed, some utility companies have communicated to NextG that they prohibit the attachment of any equipment boxes of any kind to their poles. NextG has been involved in negotiations with pole owning utilities that refused to allow such small box attachments or significantly opposed their attachment, and would never agree to allowing boxes over three hundred pounds to be attached to their poles.

7. I have reviewed the specifications required for eight hours of backup power from a leading provider of backup battery equipment, Alpha Technologies, documentation of which is attached to the Declaration of Mr. Cutrer as Attachment 1. It is my understanding that in order for NextG to provide eight hours of backup power it would need batteries that would weigh, at a minimum, approximately three hundred fifty pounds and would be enclosed in an equipment box measuring over four and a half feet high.

8. If NextG were required to install equipment necessary to provide eight hours of back up power at each of its Nodes, the requirement would significantly effect NextG's ability to deploy its facilities and provide its telecommunications services.

9. First, local government regulations and requirements would create a significant barrier that in many, if not the vast majority of, communities will completely prohibit NextG's ability to deploy. Because its facilities are deployed in public rights-of-way, NextG must deal with hundreds of communities around the country. NextG has already encountered significant resistance or impediments from local communities based just on NextG's desire to deploy its existing small Node equipment on poles in the public rights of way. Indeed, many communities seek to review NextG's deployment based on wholly subjective aesthetic criteria. NextG believes that such review is unlawful under Section 253 of the Communications Act, but nonetheless, must deal with municipalities and their concerns. Based on our experience, I am confident that many communities would deny any attempt to deploy equipment of the size that would be necessary to provide eight hours of back up power at each Node. Even if some communities may not prohibit the equipment outright, obtaining approval of such equipment would certainly significantly delay NextG's ability to deploy. It could easily take over a year to obtain approval. Such a delay would be deadly to NextG's ability to secure customer orders and provide service in a timely fashion.

10. Some cities have requirements that would prohibit such equipment outright. For example, the City of New York has adopted regulations governing the size of wireless equipment that will be permitted on poles in the public rights of way in the City. The City of New York has adopted regulations that permit equipment boxes that are only 13 inches by 9 inches by 4 inches.

The City's regulations will allow an equipment box with a volume of no greater than 2.8 cubic feet, with a maximum width of 18 inches only upon a demonstration of an "operational need" to the City's satisfaction.<sup>1</sup> It would be impossible for NextG, or anyone, to install back up power equipment in the public rights of way within the parameters of the New York City regulations.<sup>2</sup>

11. Second, as with local government, NextG must deal with pole owners. Even if a city approved the required equipment, NextG has encountered significant resistance by utility pole owners to the attachment of even small Node equipment. Indeed, some utilities purport to prohibit the attachment of any equipment box on poles. Based on our experience with utilities, it is clear that the equipment required to provide eight hours of back up power would face significant resistance from pole owners, and realistically, it is extremely unlikely that any pole owner would approve attachment to poles of the required equipment.

12. Moreover, NextG has installed its Nodes on many street light/traffic light poles. Indeed, access to such street light/traffic light poles is critical to NextG's business and technological plans. However, such poles are not going to be able to accommodate equipment required to provide eight hours of back up power. Moreover, given their typical location (*e.g.* downtown, urban sidewalks), there is likely no space on the ground to permit adjacent pedestal mounting.

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<sup>1</sup> *See, e.g.*, City of New York Department of Information Technology and Telecommunications, Request for Proposals For Franchises For The Installation And Use, On City-Owned Street Light Poles, Traffic Light Poles, Highway Sign Support Poles And Certain Utility Poles Located On City Streets, Of Telecommunications Equipment And Facilities, Including Base Station And Access Point Facilities, In Connection With The Provision Of Mobile Telecommunications Services, § 5(a) (released July 19, 2007).

<sup>2</sup> NextG has also been involved in a multi-year lawsuit with the City regarding the City's barriers to NextG's entry in violation of Section 253 of the Communications Act.

13. Third, other regulations, particularly environmental regulations, may also significantly impact NextG's ability to equipment, such as batteries or generators, necessary to deploy back up power.

14. Based on its current understanding of what would be required, NextG estimates that purchasing, mounting, installing, and housing batteries sufficient to provide eight hours of full power back up at NextG's nodes would cost at least \$25,000 per node. This additional cost of node deployment would cause NextG's cost to its customers to skyrocket, making its DAS business model uneconomical for most carriers. Accordingly, I believe the cost of an eight hour backup power rule would make it prohibitively expensive for NextG and jeopardize its ability to continue to operate as a going concern deploying DAS facilities for its customers.

15. If the Commission's eight hour back up rule were held to apply to each of NextG's Nodes, it would cause NextG irreparable harm. NextG is a new market entrant. It has had some success in obtaining orders from carrier customers to deploy networks in areas on the West and East coasts. If NextG's current Nodes were all suddenly deemed out of compliance with FCC rules, it would have a devastating effect. The impediments to deployment would undermine the availability of DAS as a deployment alternative, perhaps completely. Even if the Commission were to ultimately hold that DAS Nodes are not "cell sites" under the Rule, or otherwise clarify that the Rule does not apply, nonetheless, in the meantime, NextG would be irreparably harmed. New entrants and recent AWS licensees are deploying their facilities now. The unavailability of NextG's service and technology, even for a short period of time could destroy its one-time opportunity to serve such companies. It would also threaten NextG's relationships with its current customers. If the Commission's Rule apply to NextG's Nodes,

NextG cannot comply by August 10, 2007. Even if the equipment were available, and money were no object, NextG would still need to obtain approval from many local governments and utility pole owners. It would have to re-design all of its existing Node sites, and obtain approval for the new equipment. Obtaining the necessary authorizations for the initial equipment was a multi-year process. Going back to those communities and pole owners now would take a significant amount of time and would face resistance. Moreover, if NextG were to undertake such an effort and the Commission were then to amend the Rule or clarify its application at some point in the near future, NextG would have no way of recovering the lost investment of time and expense, or the political goodwill of municipalities and pole owners.

I declare under penalty of perjury that the information and statements contained in this Declaration are true and correct.

*Robert J. Williams*

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July 30, 2007