Before the
Federal Communications Commission
Washington, DC 20556

In the Matter of Amendment of Part 1 of the Commission's Rules Regarding Environmental Compliance Procedures for Processing Antenna Structure Registration Applications	WT Docket No. 08-61 WT Docket No. 03-187

COMMENTS OF NEXTG NETWORKS, INC.

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NextG Networks, Inc. on behalf of its operating subsidiaries NextG Networks of NY, Inc., NextG Networks of California, Inc., NextG Networks Atlantic, Inc., and NextG Networks of Illinois, Inc. (jointly, "NextG') respectfully submits these Comments on the Wireless Telecommunications Bureau's proposed rules for the Commission's Antenna Structure Registration ("ASR") program set forth in its Public Notice, DA 11-558.

I. INTRODUCTION AND SUMMARY

NextG offers telecommunications services to wireless carriers typically over distributed antenna system ("DAS") networks that use small antennas situated on utility distribution poles, street light poles, and/or traffic signal poles in the public rights of way or utility easements. NextG's service and DAS networks enable NextG's wireless carrier customers to increase capacity on their networks and offer wireless broadband. For the reasons discussed below, NextG does not believe that its DAS network facilities that are located on structures in the public rights of way or utility easements, such as utility distribution poles, that are less than 200 feet tall, would fall within the scope of this proceeding or the proposed rules. However, out of an abundance of caution, NextG submits these comments for the limited purpose of confirming or seeking clarification that the proposed rules do not encompass small facilities such as DAS antennas on utility distribution poles, street light poles, and similar structures in public rights of way or utility easements. Such structures are not currently subject to the rules, there is no evidence that they have any impact on migratory bird mortality, and the mere addition of a small DAS antenna should not subject such facilities to the Commission's proposed rules.

In the alternative, NextG proposes that the Commission adopt a discrete exemption from the proposed environmental notification requirements for certain types of facilities, including: (i) antennas or facilities collocated on existing utility distribution poles, street light poles, traffic signal poles, or similar structures in the public rights of way or utility easements that are shorter

than 200 feet; (ii) new utility distribution poles, street light poles, traffic signal poles, or similar structures in the public rights of way or utility easements on which antennas are also being installed that are less than 200 feet in height; and (iii) antenna structures that are located near airports but do not have lights. While some of these types of facilities may fall under the exceptions listed in the proposed rules, adopting these explicit exemptions provides certainty to providers such as NextG that installation of its smaller facilities may continue efficiently, while advancing the Commission's policy goals of promoting innovation in wireless broadband services.[1]

II. BACKGROUND

NextG does not itself hold wireless licenses or provide wireless service but provides wholesale telecommunications services to various licensed wireless carriers[2] using existing advanced technologies and capabilities as well as developing new technologies. NextG provides

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[1] Indeed, the Commission recently recognized the important role that DAS facilities play in expanding capacity and enabling wireless carriers to provide broadband to customers. *See, e.g., In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No. 11-59, Notice of Inquiry, FCC 11-51 (April 7, 2011), at ¶ 24, n.37 (noting that DAS antennas are "generally smaller, lower-powered antennas that are located below the clutter level of nearby trees or buildings" and particularly useful in filling holes in wireless coverage areas, such as in buildings and urban areas); *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for the Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, FCC 11-50 (April 7, 2011) at ¶¶ 6, 41. The Chairman in a statement accompanying these Commission orders noted that "DAS deployments use multiple antennas to extend wireless coverage and provide service more efficiently than conventional wireless antennas." *See Statement of Chairman Julius Genachowski*, in Re: *Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving the Policies Regarding Public Rights of Way and Wireless Facilities Siting,* WC Docket No. 11- 59.

[2] To date, NextG has been granted certificates of public convenience and necessity, or the state equivalent thereto, to provide telecommunications services in 35 states plus Washington DC and Puerto Rico.

telecommunications services primarily via a relatively new network architecture called DAS that uses fiber-optic cable and small antennas mounted on infrastructure in public rights-of-way, such as utility poles and lamp posts.

NextG has previously explained to the Commission that it and other DAS providers generally do not construct DAS "towers."[3] Instead, NextG uses pre-existing infrastructure such as utility distribution poles, lamp posts and street light poles to deploy antennas and equipment boxes. In most cases NextG does not own the pole or structure on which it installs its DAS antennas, but in some instances has installed a new utility pole or street light pole. Accordingly, DAS facilities support innovation in the wireless industry with nominal impacts to the environment.

Specifically, NextG's DAS systems typically include (1) fiber-optic cable, which is attached horizontally to utility distribution poles in the traditional manner; (2) small pole-mounted antennas; and (3) small pole-mounted equipment boxes containing electronics for the system connected to the fiber-optic cable and antennas. Where NextG attaches antennas to existing utility distribution poles or street lamps, the poles or street lamps are the traditional height of between 35 and 50 feet tall and certainly do not exceed 200 feet. Pictures of typical installations of NextG s equipment on utility poles are provided in Attachment 1.

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[3] *See* Initial Comments of NextG Networks, Inc. (September 29, 2009) on Notice of Inquiry *In the Matters of Fostering Innovation and Investment in the Wireless Communications Market, and A National Broadband Plan for Our Future* (GN Docket Nos. 09-157 and 09-51) (responding to footnote 63 of the Commission's NOI that "If DAS towers do have to be constructed, they may be smaller than other antenna sites, thus minimizing the construction expenses and environmental reviews.")

III. THE COMMISSION SHOULD CLARIFY THAT THE PROPOSED RULES DO NOT APPLY TO DAS FACILITIES

The focus of this proceeding has been primarily on whether large antenna structures – those that are over 400 feet – have impacts on migratory birds. While the evidence is inconclusive on this issue, the Commission has proposed some initial rules for, among other things, notification to the public when antenna structures are registered with the Commission pursuant to 47 C.F.R. § 17.4.

As an initial matter, NextG believes that its DAS facilities, would in most or all cases fall outside the scope of the Commission's existing and proposed ASR rules.[4] However, because there may be an unusual situation, for example where a utility pole is near the end of a runway, where the addition of an antenna may technically trigger the ASR process based on flight path calculations under the rule, and due to the number of comments and issues raised, NextG seeks confirmation that small antenna structures are exempt from the Commission's proposed rules – in particular, antennas that are located on existing or new utility distribution poles, street light poles, traffic signal poles, or similar structures in the public rights of way or utility easements.

As a practical matter, in almost every case, the structures to which DAS providers, such as NextG, attach antennas are utility infrastructure that is already present and is not otherwise the subject of the proposed rules. The mere installation of a small DAS antenna on the utility pole should not change the status of these poles, and certainly does not suddenly raise concerns for migratory birds.

The clarification that small antenna collocations on existing utility poles and similar structures are exempt from the proposed rules is consistent with the record. The record reflects

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[4] *See* 47 C.F.R. § 17.4 (requiring certain antenna structures to be registered with the Commission, including those over 200 feet and/or located within certain distances of an airport).

strong support for encouraging collocation as a way to minimize impacts on migratory birds. For example, the Commission asked whether rules to require "collocation" might help mitigate any potential impacts from antenna structures on migratory birds.[5] The U.S. Fish and Wildlife Service ("FWS") has recommended that applicants seeking to construct new communications towers be encouraged to collocate equipment on existing communication towers or structures; where collocation is not feasible, providers are encouraged to construct towers no higher than 199 feet above ground level.[6] The conservation groups, too, support encouraging collocation of facilities on existing antenna structures.[7] Accordingly, the Commission should confirm that the proposed rules for environmental notification (or review) would not apply to small antennas that are collocated on utility distribution poles, street light poles, and similar structures.

IV. THE COMMISSION SHOULD ALTERNATELY ADOPT EXCEPTIONS FOR SPECIFIC CATEGORIES OF FACILITIES

In the alternative, if the Commission fails to clarify the above point, NextG proposes that the Commission recognize additional exceptions for certain types of antenna structures from the environmental review or notification requirements. Consistent with the record, there is no basis for additional environmental notification or environmental review of the following types of facilities: (i) antennas or facilities collocated on existing utility distribution poles, street light poles, traffic signal poles, or similar structures in the public rights of way or utility easements

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[5] *In the Matter of Effects of Communications Towers on Migratory Birds*, WT Docket No. 03-187, Notice of Proposed Rulemaking ("NPRM"), FCC 06-164 (November 7, 2006) at ¶ 60.

[6] *See* Department of Interior, Fish and Wildlife Service, *Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers*. http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html.

[7] *See* Comments of the American Bird Conservancy, Center for Sustainable Economy, National Audubon, and Friends of the Earth ("ABC Comments") in response to NPRM FCC 06-164 (April 23, 2007) (WT Docket No. 03-187)at 71 (supporting and noting FWS guidelines for preventing avian fatalities).

that are shorter than 200 feet; (ii) new utility distribution poles, street light poles, traffic signal poles, or similar structures in the public rights of way or utility easements that are less than 200 feet in height on which antennas are also being installed; and (iii) antenna structures that are located near airports but are not required by the Federal Aviation Administration ("FAA") to have lights.

As an initial matter, the above categories of antenna structures would likely not be subject to the Commission's ASR rules in any event. However, for the sake of clarity and in the rare instance where an antenna structure theoretically might be subject to the proposed rules, NextG notes that the record supports adoption of these exceptions. While the voluminous record reflects a number of conflicting opinions on whether antenna structures have a significant impact on migratory birds, even groups supporting environmental review of antenna structures do not appear to dispute that antenna structures or poles less than 200 feet in height are unlikely to have impacts on migratory birds. Indeed, the focus in this proceeding has been on the height of antenna structures substantially greater than 200 feet (in many cases, over 400 feet), and the impacts of certain lighting required for antenna structures by FAA. Accordingly, it should be categorically clear that attachments to utility distribution poles that are typically in a range from 35 to 45 feet tall, and which would not be part of this discussion without the addition of an antenna, should be exempt from any ASR registration, environmental review, or public notice requirements.

Specifically, the conservation groups have noted that "[m]ass mortality events almost never occur at towers under 400'-500'" and that "[m]ost migrants fly at -1,500 feet, with a small proportion (2-15% in one study) below 300 feet during clear weather."[8] As a result, the

[8] *See* ABC Comments at 89-90.

conservation groups and the FWS have advocated for communications towers to be lower than 200 feet, if possible. The record also indicates that antennas or facilities collocated on structures that are less than 200 feet, are favored.

While NextG notes that the evidence regarding impacts of taller communications towers on migratory birds is inconclusive and does not support height restrictions, given the lack of dispute among the parties as to the impacts of antenna structures less than 200 feet, the Commission should confirm that DAS antennas installed on existing utility distribution poles, street light poles, and similar structures that are under 200 feet, and that the construction of new utility distribution poles, street light poles, and similar structures in the public rights of way or utility easements under 200 feet to which antennas may be installed are not subject to environmental review and/or the environmental notification requirements proposed in draft rule 17.4(c)(2). Such a clear exception could be added to proposed rule 17.4(c)(1) to ensure that there is no confusion.[9] Moreover, by adopting such an exception, the Commission could advance policies advocated by the FWS – without requiring height restrictions.

The evidence with regard to lighting also is contradictory and evolving. While initially some studies suggested that red lighting attracted birds and contributed to avian mortality, other studies have indicated that white lighting may be preferable to red lighting for mitigating impacts on migratory birds; studies also appear to be inconclusive as to whether strobe lighting is preferred.[10] Notwithstanding the uncertainty as to the type of lighting that may cause more bird collisions, it appears that poles or antenna structures that do not contain lighting required by the

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[9] Because the FAA's lighting requirements apply to towers or structures that are greater than 200 feet above ground level or within a certain distance of an airport, there is no danger that the facilities in question may attract birds through lighting, another issue raised in this proceeding.

[10] Reply Comments of the Infrastructure Coalition (May 23, 2007) in NPRM (WT Docket No. 03-187) at 28-30.

FAA are unlikely to have impacts on birds. Thus, the Commission should adopt an additional exemption from the environmental review and notification requirements for antenna structures that do not have lighting (and are not required to have lighting by the FAA). This proposal would be consistent with the proposed rules that provide exceptions for removal of lighting or any change that does not alter the "lighting" of an existing structure.[11]

V. CONCLUSION

NextG does not believe that its facilities will fall within the scope of the proceeding or the ASR rules. However, out of an abundance of caution, NextG respectfully requests that the Commission confirm that small antennas that are collocated on existing or new utility distribution poles, street light poles, traffic signal poles, or similar structures located in the public rights of way or utility easements are exempt from the proposed rules. Alternately, NextG requests that the Commission adopt an explicit exemption stating that the following facilities fall outside the scope of this proceeding as discussed above: (i) antennas or facilities collocated on existing utility distribution poles, street light poles, traffic signal poles, or similar structures in the public rights of way or utility easements that are shorter than 200 feet; (ii) new utility distribution poles, street light poles, traffic signal poles, or similar structures in the public rights of way or utility easements on which antennas are also being installed that are less than 200 feet in height; and (iii) antenna structures that are located near airports but do not have lights.

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[11] *See* Proposed Rule 17.4(c)(1)(C) (noting that removal of lighting from an antenna structure or adoption of a more preferred FAA lighting style would be exempt from the environmental notification process) and 17.4(c)(1)(E)(any other change that does not "alter the physical structure, lighting, or geographic location" of an existing structure).

Respectfully submitted,

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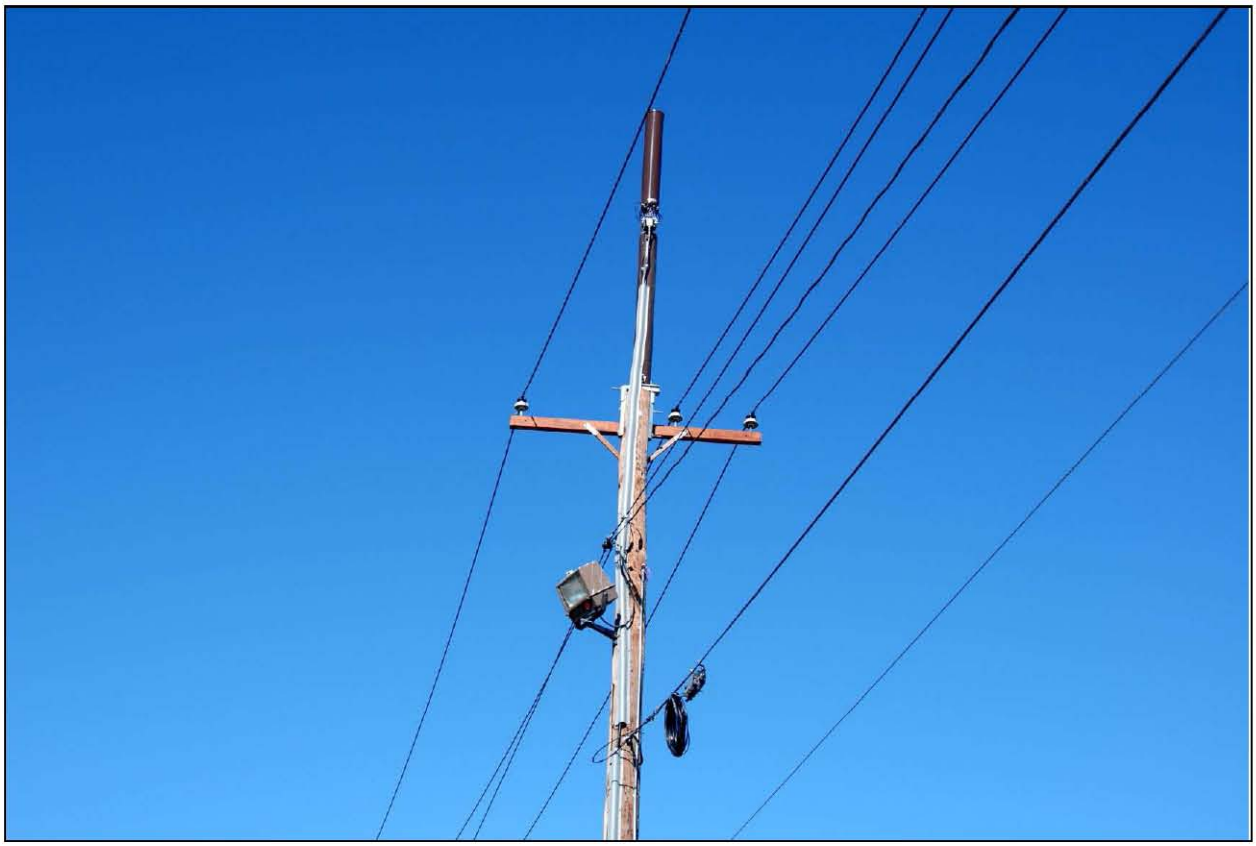
May 5, 2010

Attachment 1
Pictures of Representative NextG DAS Installations

MIRA MESA BL.

ORIGINAL
PRETZEL FACTORY
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