



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 12-202
February 16, 2012

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITION FOR
DECLARATORY RULING INTERPRETING THE DEFINITION OF “COMMERCIAL
MOBILE RADIO SERVICES” AS APPLIED TO NEXTG NETWORKS OF CALIFORNIA,
INC.’S DISTRIBUTED ANTENNA SYSTEMS AND OTHER “SMALL-CELL” SOLUTIONS**

WT Docket No. 12-37

Comments Due: April 2, 2012
Reply Comments Due: May 2, 2012

On December 21, 2011, NextG Networks of California, Inc. (Petitioner), a subsidiary of NextG Networks, Inc., filed a Petition for Declaratory Ruling (Petition)¹ asking the Federal Communications Commission (Commission) to interpret Section 20.3 of the Commission’s rules² in response to a referral from the Superior Court of Arizona, County of Maricopa.³ In the state court litigation, Petitioner is challenging the City of Scottsdale, Arizona’s authority to impose fees on Petitioner for use of public rights-of-way. Petitioner asks the Commission to find that it is not a provider of “commercial mobile radio service” (CMRS) as defined in Section 20.3 of the Commission’s rules.⁴ Such a finding could potentially exempt Petitioner from local fees under Arizona law.⁵

The Commission has defined CMRS in Section 20.3 of the rules as: “A mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this section.”⁶ Section 332(d)(1) of the Communications Act

¹Petition For Declaratory Ruling, NextG Networks of California, filed Dec. 21, 2011 (Petition).

²47 C.F.R. § 20.3.

³See Petition at 1, 4; *NextG Networks of California, Inc. v. City of Scottsdale*, Case No. CV2010-000832, Order on Motion to Stay Pursuant to the Primary Jurisdiction Doctrine (Nov. 21, 2011).

⁴47 C.F.R. § 20.3

⁵See Petition at 1, 4-5; Ariz. Rev. Stat. §§ 9-581 & 9-582.

⁶47 C.F.R. § 20.3.

of 1934, as amended, similarly defines a “commercial mobile service” as “any mobile service (as defined in Section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.”⁷

Petitioner states that it provides telecommunications service via Distributed Antenna Systems (DAS) and other “small-cell solutions.” Petitioner states that in operating these systems, it transmits signals for its wireless carrier customers along fiber optic networks between equipment used by the carriers to receive and transmit radio signals and the carriers’ networks.⁸ Petitioner argues that, because it only transports received wireless signals over its own wired network, it does not provide “commercial mobile radio service” as defined under the Commission’s rules.⁹ Petitioner also states that it has received a certificate of convenience and necessity from the Arizona Public Utilities Commission to provide its services in the State of Arizona.¹⁰

The Wireless Telecommunications Bureau seeks comment on the Petition.

Procedural Matters

Interested parties may file comments on or before April 2, 2012, and reply comments on or before May 2, 2012. All filings should refer to Docket No. 12-37. Comments may be filed using (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-

⁷47 U.S.C. § 322(d)(1). “The term ‘mobile service’ means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled ‘Amendment to the Commission’s Rules to Establish New Personal Communications Services’ (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.” 47 U.S.C. § 153(33).

⁸*See* Petition at 1-2.

⁹*Id.*

¹⁰*Id.* at 13.

A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202-418-0530 (Voice), 202-418-0432 (TTY).

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Documents in Docket No. 12-37, including a copy of the petition, are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making *ex parte* presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information about this Public Notice, please contact Amy Brett at 202-418-2703 or Amy.Brett@fcc.gov.

¹¹47 C.F.R. §§ 1.1200 *et seq.*