



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
Two Gateway Center  
Newark, NJ 07102  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF )  
NEXTG NETWORKS OF NY, INC. D/B/A NEXTG )  
NETWORKS EAST FOR AUTHORITY TO PROVIDE )  
LOCAL EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICES THROUGHOUT )  
THE STATE OF NEW JERSEY )

ORDER

DOCKET NO. TE04111434

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated November 15, 2004, NextG Networks of NY, Inc. d/b/a NextG Networks East ("Petitioner" or "NextG") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide competitive intrastate facilities-based (both switched and dedicated) local exchange, exchange access, interexchange and private line telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has included a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

NextG is a privately held corporation organized under the laws of the State of Delaware. NextG is a wholly owned subsidiary of NextG Networks, Inc. Petitioner's principal offices are located at 1759 South Main Street, Suite 128, Milpitas, California 95035.

Petitioner has submitted copies of its Certificate of Incorporation and Certificate of Good Standing from the State of Delaware and its New Jersey Certificate of Authority to operate as a Foreign Corporation. According to the Petition, NextG was formed to provide competitive intrastate facilities-based (both switched and dedicated) local exchange, exchange access, interexchange and private line telecommunications services throughout the State of New Jersey. Petitioner states that currently, it is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services in the State of California, Florida, Georgia, Illinois, Maryland, New York and Virginia and that its application to provide both facilities-based intra and inter exchange telecommunications services is pending before the Public Utilities Commission of Nevada and North Carolina. Petitioner states that it has not been denied authority to provide telecommunications services nor has its authority been revoked in any jurisdiction and that it has not been the subject of any civil or criminal proceedings in any jurisdiction. Currently Petitioner does not intend to furnish traditional residential or business local telephone services or switched interexchange telephone service in New Jersey. Therefore, Petitioner does not anticipate a need to enter into an interconnection agreement with any incumbent local exchange carrier.

Petitioner seeks authority to provide competitive intrastate facilities-based (both switched and dedicated) local exchange, exchange access, interexchange and private line telecommunications services throughout the State of New Jersey. Initially, Petitioner will offer service to carriers by providing Radio Frequency ("RF") transport and backhaul services to commercial mobile radio service providers. These services will be offered pursuant to tariff rates or as established on individual case basis. Petitioner states that following the grant of authority requested herein, it will deploy RF transport equipment on the utility poles, street lights and rights of the way in the selected areas in New Jersey. Petitioner will provide both intrastate and interstate services using a system of fiber optic cable and small antennas and conversion equipment attached to poles and other structures. Petitioner may also transport and distribute its wireless customers' data services. According to the Petition, RF Transport Service ("RFTS") use optical technology, including multi-wavelength optical technology over dedicated transport facilities to provide telecommunications companies with more efficient transport and greater overall network service options and that it also connects customer-provided wireless capacity equipment to customer or company provided bi-directional RF-to-optical conversion equipment at customer or company provided hub facility. The conversion equipment will allow the company to accept RF traffic from the customer and then send bi-directional traffic transmission across the appropriate optical networks. At the remote end, Petitioner or the customer will provide RF-to-optical conversion equipment to allow bi-directional conversion between optical signals and RF signals which can be received and radiated at this remote node. Petitioner states that only where the technology permits, it will provide RFTS to business customers in certain parts of New Jersey. Petitioner states that although it does not initially intend to provide voice service to end-use-subscribers, should it decide to do so in the future, it will provide either directly or through arrangement with others, 911 & 911E, telecommunications relay, directory assistance, operator and non-discriminatory interconnection services with other local exchange carriers. Petitioner states that, its services will be provided on a monthly basis and will be available twenty-four (24) hours per day and seven (7) days per week, it maintains a toll-free number for its customer service inquiries and it will file a proposed tariff with the Board.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Milpitas, California. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

NextG states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to NextG, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed NextG's Petition and the information supplied in support thereof, the Board **FINDS** that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey. The Board also **FINDS** that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board.

The Board **HEREBY ORDERS** that:

- 1) Petitioner file its tariff with the Board.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1<sup>st</sup> of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board **FINDS** that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey.

Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 2/1/05

BOARD OF PUBLIC UTILITIES  
BY:



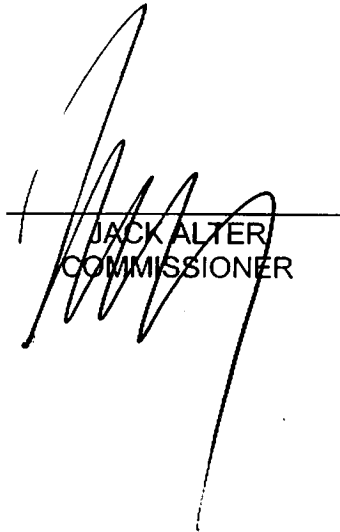
JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER

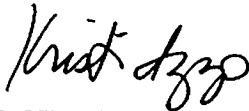


CONNIE O. HUGHES  
COMMISSIONER



JACK ALTER  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

