



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: David N. Carmany, City Manager

FROM: Richard Thompson, Director of Community Development
Laurie B. Jester, Planning Manager
Michael P. Rocque, Assistant Planner

DATE: April 5, 2011

SUBJECT: Consideration of an Appeal of Staff's Approval with Conditions of Two New Telecommunication Facilities for Next G in the Public Right of Way on the Southeast Corner of Highland and 34th Street and on Ocean Drive Between 26th and 27th Streets

RECOMMENDATION:

Staff recommends that the City Council uphold the Director of Community Development decision to approve a Telecom Permit with conditions, thereby denying the appeal.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

The City has been working with the applicant, Next G Networks, since January of 2008 on this project and has a longstanding telecom permit application on file for two (2) new wireless antennae poles to be located within the public right of way at the locations listed above. During this time the City has been working diligently with the applicant to find the most feasible location to install these wireless facilities. Staff has granted a telecom permit with the same conditions on two different occasions, May 26, 2008 and September 27, 2010. The applicant never implemented the first approval as they were not satisfied with the conditions, however they did not appeal the decision. So the second application was submitted and subsequently approved with the same conditions. On October 6, 2010, the applicant appealed the second permit because they have objections to the imposed conditions (Exhibit B). Both of the proposed locations are located in utility undergrounding districts.

Under Manhattan Beach Municipal Code (MBMC) Section 13.02.030B the Director of Community Development has the authority to issue telecom permits located within the public right of way. When applications are submitted to locate within the public right of way, all wireless service providers are encouraged to co-locate onto existing utility poles or street lights in order to alleviate the visual and physical impact of new poles and related equipment and locations in underground

utility districts are particularly sensitive.

DISCUSSION:

Project Description

Next G Networks provides network coverage to Metro PCS wireless service and is fairly well established in most areas of Manhattan Beach but is weaker in the beach area. The purpose of the proposed telecommunication facilities is to enhance the Metro PCS wireless and landline broadband phone coverage within the City of Manhattan Beach. The proposed facilities will help Metro PCS strengthen its current coverage and capacity.

The proposed projects include: 1) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the Ocean Drive between 26th and 27th Streets measuring 18' in height with an additional 2' antenna on top of pole totaling 20' in overall height. 2) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SE corner of Highland Ave./ 34th St. measuring 28' in height with an additional 2' antenna on top of the pole totaling 30' in overall height. For reference, a "photo simulation" illustrating the project location has been provided (Exhibit C).

Due to the locations of both sites being in an underground utility assessment district, staff approved these facilities on September 27, 2010 with specific conditions stating that no new poles are to be installed and that the applicant must either co-locate on existing utility poles, or street lights or find other feasible alternative locations (Exhibit D). Attached is a map showing the current underground utility assessment districts (#1 and #3) that would be impacted by the placement of these new poles (Exhibit E).

As mentioned above, Staff has worked very diligently with Next G to try and come up with the best location and throughout the review process encouraged them multiple times to try and co-locate on the adjacent street lights owned by Southern California Edison (SCE) due to locations being in current undergrounding utility districts. SCE has a standard practice and form they have created to assist wireless service providers in expanding their networks (Exhibit F). SCE makes available their structures so that they can be used to co-locate the wireless service provider's equipment, while lessening the visual impacts within the City that is served.

Currently, the City has two existing/proposed wireless facilities that are co-located on existing street lights and have agreements with SCE. The first facility is located on the northwest corner of Highland Avenue and 26th Street which is directly one block east of one of the proposed locations. The second facility is a pending application and is located on the southwest corner of Manhattan Avenue and 6th Place. Both wireless providers at these sites have formal agreements with SCE to co-locate on the existing street light poles as seen in Exhibit E of this report.

Next G Appeal

As stated in its appeal application, Next G basis for the appeal is that they should be allowed to erect new poles within right of way and current undergrounding districts and that they are unaware that any underground districts exist. Below is a synopsis of Next G objections to the conditions listed above:

Condition 2:

No new poles are allowed to be installed. Any proposed telecom facilities must be installed upon existing street lights or utility poles as provided by State and Federal Law.

Next G suggests that the City lacks authority to prohibit it from erecting new poles based on their status as a Telephone utility under the Public Utilities Code (PUC) with a Certificate of Public Convenience and Necessity (CPCN) from the PUC. They also cite MBMC Section 7.28.070(F) for their authority to be free of any undergrounding requirement.

All utilities are required to comply with the restrictions of an undergrounding district, even major telephone utilities such as Verizon, and AT&T. Therefore, the CPCN does not allow Next G to be free from compliance. The PUC guarantees that utilities can use the right of way for their facilities but does not exempt them from the requirements of underground utility districts. MBMC Section 7.28.070 (F) only applies to antennae and not wires or poles and only for pre-existing improvements. New facilities are clearly governed under MBMC Section 13.02.080 which may require that new facilities be located underground if an undergrounding district exists, which is the present case.

Conditions 3 and 4:

The facility located on Ocean Avenue between 26th Street and 27th Street must be co-located on an existing street light pole or co-located on another existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.

The facility located on the Southeast corner of Highland Avenue and 34th Street must be co-located on an existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.

Next G argues that this is infeasible and inappropriate. They note that the nearest existing utility line is too far away from the node location and the nearest utility pole is overloaded with wires and equipment. They also object to locating on the nearest streetlight on the southeast corner of Ocean and 26th Street because they would have to pay for installation and pay rent to Southern California Edison (SCE). They suggest that the City should retain ownership of the streetlight and turn it over to them for use.

Next G has failed to demonstrate throughout this whole process that they have explored alternative utility poles and sites. There has been no demonstration that they have contacted the utilities owning the pole to determine if there is room on the pole to locate and has failed to present any technical data showing why the location would be too remote. As far as the streetlights, they provide no documentation of logistical problems and as noted above other wireless companies have used street lights for their facilities and have entered into agreements with SCE. Their argument that dealing with SCE is too expensive and is therefore infeasible is not a valid reason to not pursue this option. Next G has also stated that they would not mind locating on the streetlight as long as the City intervenes and assist them in doing so.

Condition 5:

All future appurtenant equipment serving the primary utility poles shall be provided underground.

Next G states that their proposed locations are not in an undergrounding district and that all other utilities are permitted to maintain facilities above ground.

As we have stated, the proposed locations are in an undergrounding district and Next G is being treated exactly as all other utilities within the district as seen in Exhibit D of this report. Exempting Next G from this requirement would actually be treating them more favorably and would be discriminatory against other utilities.

Next G Alternative and Clarification:

Most recently on January 25, 2011, Next G proposed an alternative to the City regarding the street light option. Next G proposed to have the City elect to decommission the SCE street lights and allow them to provide street light service to the City. Also, they provided clarification to help understand the fundamental differences between themselves and other wireless carriers. They stated that they are classified by the CPUC as a regulated telephone corporation and not a wireless carrier, therefore questioning their applicability to our telecommunication ordinance (MBMC 13.02.030).

The City has no interest in the most recent proposal as Public Works does not want to have a few random street lights that other network providers are responsible for. It can create and become an ongoing maintenance and operations issue which the City does not want to endure. As far as whether or not Next G is classified as a telephone corporation is irrelevant to the application of the City's telecommunication ordinance. According to the City Attorney, the ordinance applies to any telecommunication facility to be located on private or public property. The ordinance provides specific procedures for providers classified as telephone corporations but makes no distinction between wireless sites and other types of telecommunication sites. It is therefore the City's position that the ordinance applies to Next G's current application.

Public Input:

The application has been processed in accordance with MBMC 13.02.030 which regulates telecommunication facilities within the public right of way. On September 3, 2010, Staff mailed an initial notice to all property owners within 500 feet of the project, informing of the pending Telecom Permit and application process. Staff did receive several comments from the initial notice with most of the comments not being in favor of the proposed telecom facility locations. A second notice was mailed on September 27, 2010 informing of the approval with conditions decision on the Telecom Permit. A third notice was mailed on October 27, 2010 informing of the permit appeal public meeting date and time. Due to delays and resource constraints this item was removed from the agenda of the scheduled meeting of November 16, 2010. Since that time, this item has been re-scheduled a couple times due to agenda and scheduling conflicts as seen in the attached notices. A courtesy notice of this meeting date was mailed on February 23, 2011 informing of the permit appeal public meeting date and time. Copies of all of the above notices are attached (Exhibit G). A few comments have been received as of the writing of this report and have also been attached (Exhibit H). The public has been invited to attend the Council meeting and give testimony.

CONCLUSION:

Under MBMC Section 13.02.030B the Director of Community Development has the authority to issue telecom permits located within the public right of way. When applications are submitted to locate within the public right of way all wireless service providers are encouraged to co-locate onto existing utility poles or street lights in order to alleviate the visual and physical impact of new poles and related equipment. The proposed facilities are located in an underground utility district which further encourages undergrounding of new telecom facilities.

Staff granted a telecom permit with conditions on two different occasions with the most recent being on September 27, 2010. The applicant, Next G appealed the permit because it has objections to the imposed conditions. Next G's objections are not supported by the code criteria.

Staff recommends that the City Council uphold the Director of Community Development decision to approve a Telecom Permit with conditions, thereby denying the appeal.

Attachments:

- A. Resolution No. 6299
- B. Appeal application
- C. Photos: Proposed simulation of both locations
- D. Approval Notice dated 9/27/10
- E. Map of Current Underground Utility Assessment Districts
- F. Southern California Edison draft agreement
- G. Public Notices dated 9/3/10, 10/27/10, 2/16/11 and 2/23/11
- H. Public Comments received

RESOLUTION NO. 6299

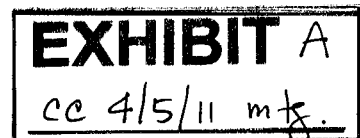
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MANHATTAN BEACH, CALIFORNIA, UPHOLDING THE DIRECTOR
OF COMMUNITY DEVELOPMENT DECISION TO APPROVE A
TELCOM PERMIT WITH CONDITIONS THEREBY DENYING AN
APPEAL REQUEST (NEXT G NETWORKS)

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA DOES
HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby makes the
following findings:

- A. The proposed projects include: 1) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SW corner of Ocean Ave./27th St. measuring 18' in height with an additional 2' antenna on top of pole totaling 20' in overall height. 2) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SE corner of Highland Ave./ 34th St. measuring 28' in height with an additional 2' antenna on top of the pole totaling 30' in overall height.
- B. The proposed Telecom facility was reviewed in accordance with Chapter 13.02.030 of the Manhattan Beach Municipal Code (MBMC). In order to avoid installations on private property, telecommunication facilities are encouraged to be located on existing utility poles or facilities within the public right of way in order to alleviate the visual and physical impact of new poles and related equipment as defined in the purpose of Section 13.02.030A of the MBMC.
- C. Both sites are located in Utility Undergrounding districts and MBMC Section 13.08.080 may require new facilities to be located underground.
- D. The Director of Community Development decision on September 27, 2010 provided that:
 - 1. No new poles are allowed to be installed and any proposed telecom facilities must be installed upon existing street lights or utility poles as provided by State and Federal Law.
 - 2. The facility located on Ocean Avenue between 26th Street and 27th Street must be co-located on an existing street light pole or co-located on another existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.
 - 3. The facility located on the Southeast corner of Highland Avenue and 34th Street must be co-located on an existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.
 - 4. All future appurtenant equipment serving the primary utility poles shall be provided underground.
- E. On October 6, 2010, the applicant appealed the Directors decision because they have objections to the imposed conditions.
- F. On March 1, 2011 the City Council of Manhattan Beach conducted a public hearing to consider the appeal request of the Director of Community Development decision to approve a telecom permit with conditions. A notice of this meeting date was mailed on February 16, 2011 informing of the permit appeal public meeting date and time.

SECTION 2. The City Council of the City of Manhattan Beach hereby upholds the
Director of Community Developments decision to approve a Telecom permit with conditions, thereby
denying the appeal request from Next G Networks.



SECTION 3. Pursuant to Government Code Section 65907 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 4. This resolution shall take effect immediately. The City Clerk shall make this resolution readily available for public inspection within thirty (30) days of the date this resolution is adopted.

SECTION 5. The City Clerk shall certify to the adoption of this resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED and ADOPTED this 1st day of March, 2011.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By 
City Attorney



October 6, 2010

City of Manhattan Beach
Laurie B. Jester, Acting Director of Community Development
1400 Highland Avenue
Manhattan Beach, CA 90266

RE: Appeal of 09/27/10 Administrative Approval and Conditions o Telecom Permit

Ms. Jester

Please accept this letter, Master Application Form and supporting documentation as formal appeal of the September 27, 2010 Administrative Approval and conditions of a Telecom Permits for telecommunication installations at the following two locations:

Southeast corner of Ocean Avenue and 27th Street
Southwest corner of Highland Avenue and 34th Street

This appeal is made consistent with Section 13.02 of the Manhattan Beach Municipal Code and Section 7901 of the California Public Utilities Code governing the installations of telecommunications in the public right of way.

First, NextG is on the record in support of the approval for the two locations under consideration. However, as conditioned, it represents a wholesale change to the proposed project being approved. In addition, NextG cannot comply with conditions 2 through 5 of the approval as discussed in more detail following:

Condition 2. No New Poles Are Allowed to Be Installed. The condition goes on to state that any proposed telecom facilities must be installed on upon existing street light and utility poles as provided by State and Federal Law. The condition does not cite and NextG is not aware of any State or Federal Law that prohibits the installation of new poles to telecommunication facilities. In fact, just the opposite is true. Specifically, Section 7901 of the California Public Utilities Code expressly allows a telephone corporation to install equipment, lines, wires, poles and appurtenances in the public right of way for the purposes of providing telecommunications services. In addition, NextG Networks holds a Full Facilities Based Certificate of Public Convenience and

NextG Networks, Inc.

Headquarters

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Houston Office

8000 Research Forest Drive, Suite 115-250, The Woodlands, TX 77382 • Tel 281.205.9185 • Fax 281.205.9184



Necessity (CPCN) from the California Public Utilities Commission which further confirms NextG's right to install poles and facilities in the right of way. The city has not indicated to NextG whether either of these locations are within an established underground utility district.. In the event that one or both are in an underground utility district, then Section 7.28.070 (F) of the Manhattan Beach municipal code would apply. This section exempts Antennae, associated equipment and supporting structures used by a utility for furnishing communication services from the underground requirement. These points aside, NextG's project did not propose new poles, rather the replacement of existing poles with new poles.

Conditions 3 and 4. Facilities at both locations shall be co-located on an existing street light pole or co-located on another existing utility pole. The condition continues to explicitly prohibit the replacement of the existing parking sign pole.

This condition is neither appropriate to feasible. First, the existing utility line is too far away from the proposed node location and the poles are already overloaded with wires and equipment. In addition, the line runs in a narrow alley between residential buildings and it would not be possible to comply with condition number 7 requiring a minimum of 10 feet of separation from any residential building. Importantly, this is a *sua sponte* condition imposed by the City that is in the City's own right to allow, e.g., by enabling a process for NextG to either remove and install a new streetlight (as previously proposed), or by allowing NextG to work with the City to replace a current City-owned infrastructure.

In response to the street light pole, the City of Manhattan Beach does not own its own street lights and does not have the authority to condition that equipment be placed on that pole. It is also important to note that Southern California Edison, the pole owner, would require the placement of a replacement pole. The issue NextG has with this, is that the cost of the new pole would be borne by NextG, yet we would still have to pay annual rent to SCE. As a public utility, NextG will not accept these terms given we have the right to place a new pole under the authority of the PUC. If the pole has to be replaced in both the case of a street light or parking sign, NextG sees no logical reason why the city is rejecting the proposed project design. Nonetheless, as noted in multiple prior meetings, letters, and discussions, the City can take action to remove a streetlight, and NextG has proposed a contract to enable that to happen (wherein NextG would take over responsibility and maintenance of the streetlight at no cost to the City, and which would further enable the City to earn a revenue-sharing fee from NextG).

Condition 5. All future appurtenant equipment serving the primary utility poles shall be provided underground. The two proposed locations are not in an underground utility district within the city. As such, the city cannot legally require NextG to place facilities underground when all other utilities are permitted to maintain

and operate above ground facilities. Contrary to the city's position, both state and Federal law requires equal non-discriminatory treatment among like providers. The city cannot legally require or enforce this condition upon one carrier and not others.

Seeking Relief from the City Council. NextG Networks is seeking relief from these conditions and requests that the City Council uphold the appeal and strike Conditions 2 through 5, thereby approving the project as submitted or accepting an alternative solution previously rejected by city staff.

Proposed Project. The project as proposed at both locations would replace existing poles found in the public ROW with new taller poles that would house the existing signs and NextG's equipment. This would be a one-for-one change out of poles and would result in a no-net add of poles in the city. The Ocean Avenue and 27th location would replace an existing 8' pole with an 18' pole. The Highland Avenue and 34th location would replace the existing 8' pole with a 28' pole. In both cases, the replacement pole would be much more decorative in nature, matching other street lights found in the city.

Suggested Alternative. As an alternative to replacing the parking signs, there is a process that would enable NextG to attach to a street light in the city. This would involve the notification to SCE of the City's intention to terminate the streetlight agreement pursuant to Schedule LS-1. A model for doing that, together with a draft agreement, was previously prepared and submitted to the City. While SCE does not endorse this process, it is an acceptable solution for the city to implement. SCE even has a standard form agreement to commence this process.

We hope to be able to reach agreement with the City to make our attachments in a way that is consistent with law. If we are unable to reach agreement and overturn the matter on appeal, NextG will have no other choice other than to further pursue its rights under §7901 in a subsequent appeal.

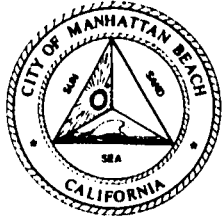
Respectfully submitted,



Joseph Milone
Sr. Director of Government Relations

Cc: Patrick Ryan, Esq.

Enclosures: Prior correspondence from 2008 and 2009



MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

Office Use Only
Date Submitted: 10/6/10
Received By: Eric Hidalgo
F&G Check Submitted: N/A

1. SW Corner of Ocean Ave & 27th
2. SE Corner of Highland Ave & 34th
Project Address

Public Right-of-Way
Legal Description

General Plan Designation Zoning Designation Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

- | | |
|---|--|
| <u>Project located in Appeal Jurisdiction</u> | <u>Project not located in Appeal Jurisdiction</u> |
| <input type="checkbox"/> Major Development (Public Hearing required) | <input type="checkbox"/> Public Hearing Required (due to UP, Var., etc.) |
| <input type="checkbox"/> Minor Development (Public Hearing, if requested) | <input type="checkbox"/> No Public Hearing Required |

Submitted Application (check all that apply)

- | | | | |
|---|-------|--|-------|
| <input checked="" type="checkbox"/> Appeal to PC/PWC/BBA/CC | _____ | <input type="checkbox"/> Use Permit (Residential) | _____ |
| <input type="checkbox"/> Coastal Development Permit | _____ | <input type="checkbox"/> Use Permit (Commercial) | _____ |
| <input type="checkbox"/> Environmental Assessment | _____ | <input type="checkbox"/> Use Permit Amendment | _____ |
| <input type="checkbox"/> Minor Exception | _____ | <input type="checkbox"/> Variance | _____ |
| <input type="checkbox"/> Subdivision (Map Deposit) 4300 | _____ | <input type="checkbox"/> Public Notification Fee / \$65 | _____ |
| <input type="checkbox"/> Subdivision (Tentative Map) | _____ | <input type="checkbox"/> Park/Rec Quimby Fee 4425 | _____ |
| <input type="checkbox"/> Subdivision (Final) | _____ | <input type="checkbox"/> Lot Merger/Adjustment/\$15 rec. fee | _____ |
| <input type="checkbox"/> Subdivision (Lot Line Adjustment) | _____ | <input checked="" type="checkbox"/> Other Telecom Permit | _____ |

Fee Summary: Account No. 4225 (calculate fees on reverse)

Pre-Application Conference: Yes _____ No X Date: _____ Fee: _____
Amount Due: \$ 465.00 (less Pre-Application Fee if submitted within past 3 months)
Receipt Number: _____ Date Paid: _____ Cashier: _____

Applicant(s)/Appellant(s) Information

NextG Networks of California, Inc.
Name

2125 Wright Avenue, Suite C-9, La Verne, CA 91750
Mailing Address

Public Utility using the Public Right of Way
Applicant(s)/Appellant(s) Relationship to Property

Joe Milone, Dir. of Government Relations (858) 876-2070
Contact Person (include relation to applicant/appellant) Phone number / e-mail

2125 Wright Avenue, Suite C-9, La Verne, CA 91750
Address,

(858) 876-2070
Applicant(s)/Appellant(s) Signature Phone number

Complete Project Description- including any demolition (attach additional pages if necessary)

Appeal of Telecom Permit Approval and Conditions. Additional
back up materials and information are attached.

¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)



City Hall

1400 Highland Avenue

Manhattan Beach, CA 90266-4795

Telephone (310) 802-5000

FAX (310) 802-5001

**CITY OF MANHATTAN BEACH
NOTICE OF APPROVAL FOR TWO TELECOMMUNICATION FACILITIES TO BE
LOCATED ON EXISTING UTILITY POLES AND/OR LIGHT POLES
WITHIN THE PUBLIC RIGHT OF WAY**

In accordance with Section 13.02 of the Manhattan Beach Municipal Code, the Department of Community Development has **approved** a Telecom Permit, submitted by Next-G Networks, **subject to conditions** enumerated below. The purpose of the proposed telecommunication facilities is to enhance Metro PCS wireless and landline broadband phone and data coverage within the City of Manhattan Beach. The proposed project is located within a recently undergrounded utility district and includes: 1) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SW corner of Ocean Ave./27th St. measuring 18' in height with an additional 2' antenna on top of pole totaling 20' in overall height. 2) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SE corner of Highland Ave./ 34th St. measuring 28' in height with an additional 2' antenna on top of pole totaling 30' in overall height. A notice of the proposal was sent on September 3, 2010 with a response period ending on September 13, 2010.

This project is approved in compliance with State and Federal regulations and is subject to the following conditions:

1. The project shall be constructed in substantial compliance with the plans submitted to the City, as amended to comply with conditions of approval listed below.
2. No new poles are allowed to be installed. Any proposed telecom facilities must be installed upon existing street lights or utility poles as provided by State and Federal Law.
3. The facility located at the Southwest corner of Ocean Avenue and 27th Street must be co-located on an existing street light pole or co-located on another existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.
4. The facility located on the Southeast corner of Highland Avenue and 34th Street must be co-located on an existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.
5. All future appurtenant equipment serving the primary utility poles shall be provided underground.
6. The facilities must comply with and stay below the mandated RF emission exposure levels as stated by the FCC standards. Following installation of the proposed facilities, a subsequent field report shall be submitted detailing the projects cumulative field measurements of RF power densities and RF exposures, confirming that the facilities complies with accepted FCC standards.
7. All antennas and telecom equipment shall be located a minimum of ten feet (10') from any residential building.
8. A certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the telecom permit and shall be

- maintained in good standing at all times so long as the facility exists, releasing the City from any and all liability whatsoever in the granting of such permit.
9. The applicant agrees to maintain and improve said facilities with new updated technology as it becomes available and that upon cessation of use or abandonment of the facilities it shall be promptly removed at the expense of the applicant.
 10. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition the foregoing, as a prerequisite to the granting of the telecom permit by the City.

The project file containing background information, project plans, and other related data, is available for review at the Community Development Department at City Hall, 1400 Highland Avenue. Further information may be obtained by contacting Michael Rocque, Assistant Planner at (310) 802-5512 or mrocque@citymb.info

Any person wishing to appeal this decision to the City Council must do so by October 6, 2010. The required appeal forms and procedures will be provided upon request. A fee of \$465 must accompany any appeal request.


LAURIE B. JESTER
Acting Director of Community Development

Dated: September 27, 2010

cc: Richard Thompson, Interim City Manager
Robert Wadden, City Attorney
City Council Members

PSR law firm, llc

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satellite office
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san diego, ca 92101

June 17, 2008

VIA FACSIMILE AND U.S. MAIL

ATT: Mr. Richard Thompson
Director of Community Development
Manhattan Beach City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

RE: Application of NextG Networks of California, Inc.

Dear Mr. Thompson:

My firm represents NextG Networks of California, Inc. ("NextG"), and I am writing in response to your letter dated June 4, 2008, in connection with the "clarification" of the decision that you provided for NextG. There are several issues that we will need to discuss.

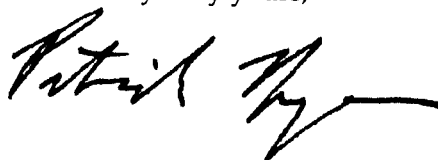
NextG applied for the right to place two new poles in the public way. The City's ostensible "approval" accurately described and authorized the project in the preamble, but later included a condition that no new poles be installed. Since that condition that no poles be installed is inapposite to NextG's application to place two new poles and inconsistent with approval of the application as submitted, NextG has assumed, and continues to assume, that the condition(s) are erroneous and they are not intended to be relevant. NextG has no property right to the SCE streetlight poles that the City appears to reference, and NextG did not seek the right to attach to any third-party poles in its application to the City. The City must act and respond to the application that was placed before it, and is a matter of common sense, whether in the context of a regulated utility or any other matter.

Simply stated, the conditions in the City's "approval" are so disconnected with the application that NextG submitted that the only way to read it is that the conditions are illusory if intentional (*to wit*: conditions 2, 3 and 4, pertaining to a third-party pole are not subject to the approval sought). The City has no authority, *sua sponte*, to condition an approval on the further consent to use the property of an entity outside the control of both the City and NextG in a manner not included in the submitted application. The only matter that the City has the jurisdiction to review is within the four corners of the application that was set before it, unless the application was amended or modified by the applicant (which it was not). We are aware of no law or regulation that allows the City to reconstruct an application to read the way that it wished, and then "approve" the City's reconstruction based on a non-existent set of facts.

To the extent that the City takes the position that this purported "approval" is final, we agree, but only as far as the decision approves the application described in the preamble. In other words, to the extent that the City believes that NextG is forever enjoined from further discussing this matter (your letter indicated that it is "final"), please note that NextG files its disagreement with that position and reminds the City that its authority for applications in the public rights of way are subject to CPUC Section 7901 and 47 USC 253. NextG protests any position of the City that is in derogation of these state and federal rights and in derogation of NextG's statewide franchise for use and occupation of the public rights-of-way. The City has clearly understood and described the application before it; it has issued an approval for that, and we are confident that illusory conditions not relevant to the application would be found to exceed the City's management of the public rights of way pursuant to statute.

Notwithstanding the foregoing, if the City is willing to work cooperatively with NextG, we have an offer that may be able to solve the controversy: NextG understands that the City has a preference for NextG to install its facilities on the SCE streetlights rather than install its own poles. In order to accomplish this, NextG believes that the City has the ability to request that SCE remove those two streetlights as part of the agreement between the City and SCE. If the City is willing to exercise that authority in these two cases, then NextG is willing to replace the pole with a new pole of a similar shape and design for NextG's use (upgraded structurally in order to support the equipment), and to enter into an appropriate agreement with the City for this purpose. If the City is willing to discuss this arrangement, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick Ryan", with a long horizontal flourish extending to the right.

Patrick S. Ryan, PhD
Counsel for NextG

cc: Robert Wadden, Esq. (City of MB)

PSR law firm, llc

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satellite office
402 w. broadway, 4th floor
san diego, ca 92101

March 14, 2009

VIA FEDERAL EXPRESS

CITY OF MANHATTAN BEACH
Attn: Mr. Robert Wadden, Esq.
Manhattan Beach City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266

re: *Application of NextG Networks of California, Inc.*

Dear Mr. Wadden:

I am writing to follow up with you on the previous discussions related to the application made by NextG Networks of California, Inc. ("NextG") in the City of Manhattan Beach ("City") for the installation of two new poles in the City's rights-of-way. As you may recall, NextG applied for the right to install two new steel poles in the City's right-of-way, and on May 16, 2008, rather than denying NextG's application, the City granted an ostensible "approval," subject to the City's *sua sponte* condition that NextG attach to a nearby streetlight instead of its application for a new pole. NextG has never agreed with that condition since it does not control nor have any rights to the streetlight. However, in the spirit of avoiding litigation with the City, as we discussed a couple months ago, NextG has conducted various public-records requests and other research in order to obtain an amicable solution to satisfy the parties' objectives and to explore whether the City had the ability to help satisfy the City's *sua sponte* condition. It does, and a proposed solution is outlined in this letter.

In order for NextG to comply with the City's *sua sponte* condition that NextG co-locate on a nearby streetlight, NextG will require the City's cooperation in order to secure the rights to the streetlight, which is owned by Southern California Edison ("SCE") but paid for by the City. The City has the capability to grant the rights required by the City's *sua sponte* condition: through public-records requests that I have made to the City, I have confirmed that the relevant streetlights have been placed as part of the City's Landscaping and Street Lighting Assessment District pursuant to the Landscaping and Lighting Act of 1972.¹ Since the City pays for these streetlights through tax assessments under the 1972 Act,

¹ See "Engineer's Report for Landscaping and Street Lighting Maintenance Assessment District, Fiscal Year 2009-09," prepared by Harris & Associates for the City of Manhattan Beach (May 29, 2008).

it also has the right to request that any streetlight be removed, relocated or modified for any reason. The mechanism for removal, relocation or modification is found in SCE's Advice 2019-E, Schedule LS-1, Special Conditions, §6(a), which reads as follows:

"Where street lighting service and facilities are ordered removed by a customer and such facilities, or any part thereof, were in service for a period of less than 10 years (120 consecutive months), the customer shall pay to SCE a nonrefundable amount equal to the total estimated cost installed less any customer contribution, plus the estimated cost of removal less the estimated net salvage value of the facilities." ²

Thus, the mechanism for requesting that a streetlight be removed would require that the City make a request and pay a cost-based fee (according to the SCE tariff filing) for the removal. In accordance with the foregoing, NextG proposes the following framework to the City:

1. NextG proposes to enter into a right-of-way use agreement along the lines of a format that has previously been proposed to the City, and which is in place with dozens of other municipalities in the State. The agreement will propose to compensate the City a total of 5% of all revenue that NextG earns for its network in the City, and will provide a framework and method of cooperation for future installations.
2. In the agreement, the City will cooperate with NextG to request that NextG remove the two SCE streetlights in question pursuant to Schedule LS-1, §6(a). In exchange, NextG will reimburse the City for the costs imposed by SCE according to the formula set forth in §6(a) so that the removal does not incur any costs for the City.
3. In order to provide lighting in the area, NextG will install a new streetlight of a similar design, and NextG will install its equipment on the streetlight, consistent with the City's *sua sponte* permit condition. NextG will operate the streetlight on behalf of the City.

This matter has been unresolved for several months, and it is important for us to establish whether or not the City is willing to work with NextG collaboratively in the way suggested above. If not, as an alternative, the City may review its May 16, 2008 approval and remove its *sua sponte* condition to install on a streetlight, and allow NextG to proceed as it applied.

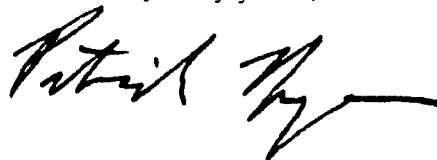
In either case, please review this proposal internally and let me know within the next twenty (20) how the City wishes to proceed. NextG believes that its proposal(s) in this

² Advice 2019-E (U 338-E), Implementation of the Test Year 2006 General Rate Case (GRC) Revenue Requirement Authorized in D.06-05-016, the Revenue Requirement Allocation Authorized in D.06-06-067, the Transmission Settlement Rates Authorized by the Federal Energy Regulatory Commission (FERC) in Docket No. ER06-186-000 and ER06-186-001 and the Direct Access Cost Responsibility Surcharge (DA CRS) authorized in D.06-07-030 (July 27, 2006).

letter meet with the City's objectives, and importantly, it proposes options and a mechanism for NextG to comply with the City's *sua sponte* permit condition in a collaborative way, without a need for litigation.

I look forward to hearing from you soon.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick Ryan", with a long horizontal flourish extending to the right.

Patrick S. Ryan
Counsel for NextG



Southern California Edison
 Rosemead, California (U 338-E)

Revised Cal. PUC Sheet No. 41166-E
 Cancelling Revised Cal. PUC Sheet No. 35127-E

Schedule LS-1
LIGHTING - STREET AND HIGHWAY
COMPANY-OWNED SYSTEM

Sheet 5

(Continued)

SPECIAL CONDITIONS (Continued)

5. Other Than All Night Service:

- a. Where the customer requests the installation and/or removal of equipment in order to obtain Midnight Service and such request is acceptable to SCE, SCE will comply with such request provided the customer first agrees to pay to SCE the estimated cost installed of any additional equipment required and/or the removal cost of equipment currently installed. Such payments will not be refunded and shall be paid in advance or in installments acceptable to SCE over a period not to exceed three years. Facilities installed in connection with such requests become and remain the sole property of SCE.
- b. Total non-energy charge(s) shown under the Rates section shall be applicable under this Schedule when SCE has been requested to discontinue the existing service by the customer and the customer has stipulated, in writing, that the facilities are to be left in place for future use.

6. Removal, Relocation or Modification of Facilities:

- a. Where street lighting service and facilities are ordered removed by a customer and such facilities, or any part thereof, were in service for a period of less than 10 years (120 consecutive months), the customer shall pay to SCE a nonrefundable amount equal to the total estimated cost installed less any customer contribution, plus the estimated cost of removal less the estimated net salvage value of the facilities. (T)
(T)
- b. Where street lighting service and facilities were ordered removed or modified by a customer and such service and facilities, or their equivalent, are ordered reinstalled within 36 months from the date of the order to remove or to modify, the customer shall pay to SCE, in advance of the reinstallation, a nonrefundable amount equal to the cost of removal or modification of the prior facilities and the estimated cost of such reinstallation.

(Continued)

(To be inserted by utility)
 Advice 2019-E
 Decision 06-05-016;06-06-
067;06-07-030

Issued by
Akbar Jazayeri
Vice President

(To be inserted by Cal. PUC)
 Date Filed Jul 27, 2006
 Effective Aug 1, 2006
 Resolution E-4023



City of Manhattan Beach

Community Development

Phone: (310) 802-5500
FAX: (310) 802-5501
TDD: (310) 546-3501

June 4, 2008

Next G Networks
Nicole B. Mason, Director of Government Relations and Regulatory Affairs
2216 O'Toole Avenue
San Jose, CA 95131

Re: Next G Networks Decision Clarification

Dear Mrs. Mason:

The Community Development Department is in receipt of your letter dated May 28, 2008. This letter is to clarify and further state City's position regarding the above project. It appears in your letter that there is some confusion as to the final decision that was made regarding your applications for the proposed sites. These sites were "conditionally approved" or approved with conditions, meaning that in order to gain a permit you must comply with all of the conditions listed in the May 16, 2008 notice of approval (attached). On Tuesday May 27, 2008 the appeal period expired and the decision is now final.

Once all conditions have been satisfied, the City will issue a building permit.

Should you have any questions, please contact **Michael Rocque at 310-802-5512 or e-mail at mrocque@citymb.info**.

Sincerely,


RICHARD THOMPSON
Director of Community Development

Michael P. Rocque
Assistant Planner

Cc: Robert V. Wadden, City Attorney
Robert Delsman
Patrick Ryan
Ahmad Smith



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5000 FAX (310) 802-5001

**CITY OF MANHATTAN BEACH
NOTICE OF APPROVAL FOR TWO TELECOMMUNICATION FACILITIES TO BE
LOCATED ON EXISTING UTILITY POLES AND/OR LIGHT POLES
WITHIN THE PUBLIC RIGHT OF WAY**

In accordance with Section 13.02 of the Manhattan Beach Municipal Code, the Department of Community Development has **approved** a Telecom Permit, submitted by Next-G Networks, subject to conditions enumerated below. The purpose of the proposed telecommunication facilities is to enhance Metro PCS wireless and landline broadband phone and data coverage within the City of Manhattan Beach. The proposed project is located within a recently undergrounded utility district and includes: 1) Installing one (1) steel pole antenna located on the Northeast corner of Ocean Avenue/26th Street measuring 20'9" in height with an additional 2' antenna on top of the pole totaling 22'9" in total height. 2) Installing one (1) steel pole antenna located on the East side of Highland Avenue between 34th/35th Street measuring 25' in height with an additional 2' antenna on top of the pole, totaling 27' in total height. A notice of the proposal was sent on April 25, 2008, with a response period ending on May 5, 2008.

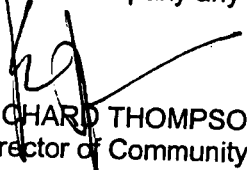
This project is approved in compliance with State and Federal regulations and is subject to the following conditions:

1. The project shall be constructed in substantial compliance with the plans submitted to the City, as amended to comply with conditions of approval listed below.
2. No new poles will be allowed to be installed. Any telecom facilities must be installed upon existing street light or utility poles as provided by Federal Law.
3. The facility located at the Northeast corner of Ocean Avenue and 26th Street must be co-located on the adjacent existing street light pole or co-located on another alternative existing utility pole approved by the City.
4. The facility located on the East side of Highland Avenue between 34th and 35th Street must be co-located on an existing utility pole approved by the City.
5. All future appurtenant equipment serving the primary utility poles shall be provided underground.
6. The facilities must comply with and stay below the mandated RF emission exposure levels as stated by the FCC guidelines. Following installation of the proposed facilities, a subsequent field report shall be submitted detailing the projects cumulative field measurements of RF power densities and RF exposures, confirming that the facilities complies with accepted FCC standards.
7. All antennas and telecom equipment shall be located a minimum of ten feet from any residential building.
8. A certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the telecom permit and shall be maintained in good standing at all times so long as the facility exists, releasing the City from any and all liability whatsoever in the granting of such permit.

9. The applicant agrees to maintain and improve said facilities with new updated technology as it becomes available and that upon cessation of use or abandonment of the facilities it shall be promptly removed at the expense of the applicant.
10. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition the foregoing, as a prerequisite to the granting of the telecom permit by the City.

The project file containing background information, project plans, and other related data, is available for review at the Community Development Department at City Hall, 1400 Highland Avenue. Further information may be obtained by contacting Michael Rocque, Assistant Planner at (310) 802-5512 or mrocque@citymb.info

Any person wishing to appeal this decision to the City Council must do so by Monday, May 26, 2008. The required appeal forms and procedures will be provided upon request. A fee of \$465 must accompany any appeal request.


RICHARD THOMPSON
Director of Community Development

Dated: May 16, 2008

cc: Geoff Dolan, City Manager
City Council Members

Fire Department Address: 400 15th Street, Manhattan Beach, CA 90266 FAX (310) 802-5201
Police Department Address: 420 15th Street, Manhattan Beach, CA 90266 FAX (310) 802-5101
Public Works Department Address: 3621 Bell Avenue, Manhattan Beach, CA 90266 FAX (310) 802-5301

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satellite office
402 w. broadway, 4th floor
san diego, ca 92101

July 21, 2008

VIA USPS PRIORITY MAIL WITH SIGNATURE CONFIRMATION

ATT: Mr. Robert Wadden
Manhattan Beach City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266

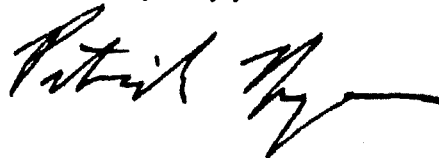
RE: Application of NextG Networks of California, Inc.

Dear Mr. Wadden:

I am writing to follow up on my letter dated June 17, 2008 which has not been responded to by the City. NextG formally requests an opportunity to meet with you and any city officials to discuss the suggested solution in that letter.

NextG proposed a possible solution in the June 17th letter. If we do not hear from you **within fifteen (15) days**, NextG will have no choice but to assume that the City has no interest in discussing an amicable resolution to the matter.

Very truly yours,



Patrick S. Ryan
Counsel for NextG

MANHATTAN BEACH

RIGHT-OF-WAY USE AGREEMENT

THIS RIGHT-OF-WAY USE AGREEMENT (“Agreement”) is entered into on _____, 2009 (“Effective Date”), by the CITY OF MANHATTAN BEACH, a California municipal corporation (“City”), and NEXTG NETWORKS OF CALIFORNIA, INC., a Delaware corporation (“NextG”).

RECITALS

- A. NextG owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the California Public Utilities Commission, a fiber-based telecommunications Network (as defined in Section 1.9 below) serving NextG’s wireless carrier customers and using microcellular optical repeater Equipment (as defined in Section 1.4 below) certified by the Federal Communications Commission.
- B. NextG holds a certificate of public convenience and necessity that was issued by the California Public Utilities Commission in its Decision No. 03-01-061 that became effective on January 30, 2003, and amended to include full-facilities based authority (allowing installations of new poles and conduits) in Decision No. 07-04-045 (April 12, 2007).
- C. For the purpose of operating the Network and improving wireless coverage and capacity in the City, NextG wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined in Section 1.11 below) on facilities owned by the City and by third parties. Various facilities have already been installed on third-party infrastructure in the City, and those facilities are included within the scope of this Agreement as of its signature.
- D. Additionally, this Agreement is being entered into in order to address the specific conditions of an approval issued by the City to NextG on May 16, 2009, which condition requires that NextG utilize existing infrastructure in two locations.
- E. Beneficial competition between providers of communications services can be furthered by the City’s provision of grants of location and rights to use the Public Ways on nondiscriminatory and competitively neutral terms and conditions.
- F. NextG is willing to compensate the City in exchange for a grant of location and the right to use and physically occupy portions of the Public Way.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. **DEFINITIONS.** The following definitions apply generally to the provisions of this Agreement:

1.1 “Adjusted Gross Revenues” means the gross dollar amount received by NextG for its Services (as defined in Section 1.13 below) provided to wireless carrier customers, which Services are attributable to Equipment located within the City, excluding (i) the Right-of-Way Use Fee, if any, payable pursuant to Section 4.2 *et seq.* below and any utility users tax, communications tax, or similar tax or fee paid to City; (ii) local, state, or federal taxes that have been billed to the customers and separately stated on customers’ bills; and (iii) revenue uncollectible from customers (i.e., bad debts) for Services provided in the City, which revenue was previously included in Gross Revenues.

1.2 “City” means the City of Manhattan Beach, California.

1.3 “Decorative Streetlight Pole” means any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles, and that does not have a mast arm for electrolier support.

1.4 “Equipment” means the optical repeaters, DWDM and CWDM multiplexers, antennas, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by NextG. Examples of typical Equipment types and installation configurations that have been pre-approved by the City are shown in the drawings and photographs attached as Exhibit A and incorporated by this reference. Any Equipment type and installation configuration not contained in Exhibit A must receive prior written approval from the City before it may be installed on any Municipal Facility or placed on or in the Public Way.

1.5 “Fee” means any assessment, license, charge, fee, imposition, tax, or levy of general application upon entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users tax, franchise fees, communications tax, or similar tax or fee).

1.6 “Installation Date” means the date that any Equipment is first installed by NextG pursuant to this Agreement and is inspected and approved by City in accordance with its customary permitting procedures.

1.7 “Laws” means statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Agreement.

1.8 “Municipal Facilities” means City-owned streetlight poles, decorative streetlight poles, lighting fixtures, electroliers, fiber-optic strands and conduit, or other City-owned structures located within the Public Way. These facilities may be referred to in the singular or plural, as appropriate to the context in which used.

1.9 “Network” or collectively “Networks” means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by NextG to serve its wireless carrier customers in the City.

1.10 “NextG” means NextG Networks of California, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

1.11 “Public Way” or “Public Rights-of-Way” means the space in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term does not include county, state, or federal rights-of-way or any property owned by any person or entity other than the City, except as provided by applicable laws or pursuant to an agreement between the City and any such person or entity.

1.12 “PUC” means the California Public Utilities Commission.

1.13 “Services” means the radio frequency (“RF”) transport telecommunications services provided through the Network by NextG to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the PUC.

1.14 “Streetlight Pole” or “SCE Pole” means any standard-design concrete, fiberglass, metal, or wooden pole that has a mast arm for electrolier support and is used for streetlighting purposes.

2. **TERM.** This Agreement is effective on the Effective Date as specified in Section 12.11 and will be for a term of ten (10) years commencing on the Installation Date, unless earlier terminated by either party in accordance with the provisions of Section 10. Within six months prior to the expiration of the initial 10-year term, and upon NextG’s written request, the parties will meet and confer with regard to a five-year renewal or extension of this Agreement, and the terms and conditions applicable to any such renewal or extension.

3. **SCOPE OF USE AGREEMENT.** All rights expressly granted to NextG under this Agreement, which will be exercised at NextG’s sole cost and expense, are subject to the prior and continuing right of the City under applicable laws to use all parts of the Public Way exclusively or concurrently with any other person or entity and are further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Public Way. Nothing in this Agreement may be deemed to grant, convey, create, or vest in NextG a real property interest in land, including any fee, leasehold interest, or easement. All work performed pursuant to the rights granted by this Agreement is subject to the prior review and approval of the City in accordance with its customary permitting procedures.

3.1 **Attachment to Municipal Facilities.** The City authorizes NextG to enter upon the Public Way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes

of operating the Network and providing Services. In addition, subject to the provisions of Section 4.2 below, NextG has the right, at NextG's expense, to draw electricity for the operation of the Equipment from the power source associated with each such attachment to Municipal Facilities. A denial of an application for the attachment of Equipment to Municipal Facilities shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment identified in that application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A. Notwithstanding anything to the contrary herein, attachment to Decorative Streetlight Poles is discretionary and subject to the City's reasonable approval in each instance. In addition, City may authorize NextG to use City-owned conduit for the purposes of operating the Network and providing Services, if such conduit becomes available and such use is authorized by NextG's certificate of public convenience and necessity.

3.2 Attachment to Third-Party Property. Subject to obtaining written permission from the owner of the affected property, City authorizes NextG to enter upon the Public Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such items of Equipment in or on poles or other structures owned by public utility companies or other property owners located within the Public Way as may be permitted by the public utility company or property owner. NextG must furnish to the City documentation of that permission from the individual utility or property owner. The denial of an application for the attachment of Equipment to third-party-owned poles or structures in the Public Way will not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment identified in that application substantially conforms to one of the pre-approved configurations and the Equipment specifications set forth in Exhibit A.

3.3 Attachment to SCE Poles. On May 16, 2008 the City granted NextG approval to install its facilities in two locations: (i) a location at the northeast corner of Ocean Avenue and 26th Street, and (ii) a location on the east side of Highland Avenue between 34th and 35th Street. These facilities were approved on the condition that NextG utilize the two SCE Streetlights located in the area. Since NextG and SCE do not have an agreement to attach to those streetlights, the City and NextG agree to cooperate in good faith such that the City will file a request with SCE to remove the SCE Streetlight in the two locations pursuant to the terms of the Landscaping and Lighting Act of 1972, and pursuant to the formula in SCE's Advice Filing 2019-E, Schedule LS-1, §6(a). Upon receipt of SCE's agreement to remove the streetlights, NextG will, in its place, install a new streetlight of the same design, subject to prior review and approval by the City. After installation by NextG, at NextG's sole cost and expense, the new streetlight will become a Municipal Facility as defined in §1.8, above. NextG agrees to maintain the streetlight and to replace the light on it on regular intervals, on the same terms and conditions that the streetlights are currently maintained by SCE.

3.4 No Interference. In the performance and exercise of its rights and obligations under this Agreement, NextG must not interfere in any manner with the existence and operation of any public or private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television and telecommunications facilities, utilities, or municipal property, without the express

written approval of the owner or owners of the affected property or properties, except as authorized by applicable laws or this Agreement.

3.5 **Compliance with Laws.** NextG will comply with all applicable laws in the exercise of its rights and the performance of its obligations under this Agreement.

3.6 **No Authorization to Provide Other Services.** NextG represents that its Equipment installed pursuant to this Agreement will be used solely for the purpose of providing the Services identified herein and that NextG will not use its Equipment to offer or provide any other services except for those services referenced in Subsection 4.5. NextG's failure to comply with these limitations will constitute a material breach of this Agreement and City, after providing written notice to NextG, may levy monetary penalties in an amount not to exceed \$1,000 per day from the date of noncompliance until the breach is cured.

4. **COMPENSATION; UTILITY CHARGES.** NextG is solely responsible for the payment of all lawful fees in connection with NextG's performance under this Agreement, including those set forth below.

4.1 **Annual Fee.** In order to compensate City for NextG's entry upon and deployment within the Public Way, and as compensation for the use of Municipal Facilities, NextG will pay to the City an annual fee (collectively the "Aggregate Annual Fee") that consists of the following:

(i) A fee (the "Pole Fee") in the amount of Five Hundred Dollars (\$500) for the use of each City-owned streetlight or traffic-signal pole, if any, upon which NextG's Equipment has been installed pursuant to this Agreement; and

(ii) A fee (the "Conduit Fee"), in an amount equivalent to that charged by cities of similar size, per foot per annum for City-owned conduit, if any, that the City permits NextG to use hereunder.

The Aggregate Annual Fee to be paid with respect to each year of the term will be an amount equal to (i) the number of Equipment installations made on Municipal Facilities, or that continue to remain on Municipal Facilities, during the preceding 12 months multiplied by the annual Pole Fee, prorated as appropriate; and (ii) the annual Conduit Fee multiplied by the number of City-owned conduit feet used by NextG during the preceding 12 months, prorated as appropriate. The Aggregate Annual Fee is due and payable not later than 45 days after each anniversary of the Installation Date. City represents that City owns all Municipal Facilities for the use of which it is collecting from NextG the Aggregate Annual Fee pursuant to this Section 4.1.

4.2 **CPI Adjustment.** Commencing on the fifth anniversary of the Installation Date and continuing on each fifth anniversary thereafter during the term, the fees for each component of the Aggregate Annual Fee for the ensuing five-year period will be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Consumers, 1982 1984=100) that

occurred during the previous five-year period for the Los Angeles-Riverside-Orange County Metropolitan Statistical Area.

4.3 Right-of-Way Use Fee. To further compensate City for NextG's entry upon and deployment of Equipment within the Public Way, NextG will pay to City, on an annual basis, an amount equal to five percent (5%) of Adjusted Gross Revenues (the "Right-of-Way Fee"). NextG must make payment of the Right-of-Way Fee that is due and owing within 45 days after the first anniversary of the Effective Date and within the same period after each subsequent anniversary of the Effective Date. Within 45 days after the termination of this Agreement, the Right-of-Way Fee will be paid for the period elapsing since the end of the last anniversary date for which the Right-of-Way Fee has been paid. NextG will furnish to City with each payment of the Right-of-Way Fee a statement, executed by an authorized officer of NextG, showing the amount of Adjusted Gross Revenues for the period covered by the payment. If NextG discovers any error in the amount of compensation due, the City will be paid within 30 days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise will be offset against the next payment due. Acceptance by City of any payment of the Right-of-Way Fee will not be deemed a waiver by City of any breach of this Agreement occurring prior thereto, nor will the acceptance by City of any such payment preclude City from later establishing that a greater amount was actually due or from collecting any balance that is due.

4.4 Accounting Matters. NextG will maintain accurate books of account at its principal office in Milpitas, or another location of its choosing, for the purpose of determining the amounts due to City under Sections 4.1 and 4.2 above. City, or a consultant acting on behalf of City, may inspect NextG's books of account relative to City at any time during regular business hours on 10 business days' prior written notice and may audit the books from time to time, but in each case only to the extent necessary to confirm the accuracy of payments due under Sections 4.1 and 4.2 above. The City agrees to hold in confidence any non-public information it obtains from NextG to the maximum extent permitted by law.

4.5 Services to City. NextG will at all times during the term of this Agreement reserve one wavelength of capacity in the fiber owned or operated by NextG in the City for the City's exclusive use in operating a noncommercial, City-owned Wi-Fi network, or for any other City-operated noncommercial data network or communications system.

4.6 Electricity Charges. NextG is solely responsible for the payment to the utility service provider of all electrical utility charges that are attributable to the Equipment's usage of electricity.

4.7 Delinquent Payment. If NextG fails to pay any amounts due under this Section 4 within 30 days from the specified due date, NextG must pay, in addition to the unpaid fees, a sum of money equal to one percent (1%) of the amount due for each month or fraction thereof during which the payment is due and unpaid.

4.8 "Most-Favored-Municipality" Status. The parties anticipate that, following the effective date of this Agreement, NextG will enter into similar right-of-way use

agreements with other municipalities. If NextG enters into a similar agreement with another municipality in the Los Angeles Metropolitan Statistical Area, which municipality has a population that is the same or smaller than that of the City, then the parties will modify this Agreement if the following conditions are met:

- (i) The right-of-way use agreement confers financial benefits upon the municipality that, taken as a whole and balanced with other terms of that agreement, are deemed by the City to be substantially superior to the financial benefits provided for in this Agreement; and
- (ii) City notifies NextG of its desire to modify this Agreement to substitute the same or substantially similar financial benefits, and related terms and conditions, of that right-of-way use agreement in order to achieve parity. To the extent practicable, such modification will be retroactive to the effective date of the similar right-of-way use agreement with the comparable municipality.

Concurrently with NextG's annual payment of the right-of-way use fee provided for in Subsection 4.3, NextG will provide to the City a list of right-of-way use agreements that have been executed with municipalities within the Los Angeles Metropolitan Statistical Area during the preceding 12-month period.

5. **CONSTRUCTION.** NextG must comply with all applicable federal, state, and City technical specifications and requirements and all applicable state and local codes related to the construction, installation, operation, maintenance, and control of NextG's Equipment installed in the Public Way and on Municipal Facilities in the City. NextG may not attach, install, maintain, or operate any Equipment in or on the Public Way or on Municipal Facilities without the City's prior written approval for each location.

5.1 **Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way requires any permits, NextG must, if required under applicable City ordinances, apply for the appropriate permits and pay all required standard permit fees. City will process NextG's applications for permits and will otherwise cooperate with NextG in facilitating the deployment of the Network in the Public Way in a reasonable and timely manner.

5.2 **Location of Equipment.** The proposed locations of NextG's planned initial installation of Equipment will be provided to the City promptly after NextG's review of available street light maps and prior to any deployment of the Equipment. Prior to installation of the Equipment in the Public Way or upon any Municipal Facility, NextG must obtain the City's prior written approval. The City may approve or disapprove a location and installation, based upon reasonable regulatory factors, including but not limited to the location of other existing, or planned and approved but not yet constructed communications facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other communications facilities and services to the extent not preempted by federal law, and public safety considerations; provided however, that City's approval will not be unreasonably conditioned, delayed, or withheld. Upon the completion of each installation, NextG must promptly furnish to

the City a current pole list and map that identifies the exact location of the Equipment in the Public Way. That information must be provided in a format that is compatible with City's information technology.

5.3 Relocation and Displacement of Equipment. NextG acknowledges that City may require NextG to relocate one or more of its Equipment installations. NextG will at City's direction relocate that Equipment, at NextG's sole cost and expense, whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. If NextG fails to relocate any Equipment as requested by the City within a reasonable time under the circumstances described above, City is entitled to relocate the Equipment at NextG's sole cost and expense, without further notice to NextG. To the extent City has actual knowledge thereof, the City will endeavor promptly to inform NextG of the displacement or removal of any pole on which any Equipment is located.

5.4 Relocations at NextG's Request. If NextG desires to relocate any Equipment from one Municipal Facility to another, NextG must so advise City. City will use reasonable efforts to accommodate NextG by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

5.5 Damage to Public Way. Whenever the removal or relocation of Equipment is required or permitted under this Agreement, and that removal or relocation causes the Public Way to be damaged, NextG, at its sole cost and expense, must promptly repair and return the Public Way in which the Equipment is located to a safe and satisfactory condition as directed by, and to the satisfaction of, the City Engineer. If NextG does not repair the site as required above, then City will have the option, upon 15 days' prior written notice to NextG, to perform or cause to be performed all reasonable and necessary work on behalf of NextG. City may charge NextG for all costs to be incurred, or the actual costs incurred by City, in the manner that City customarily determines costs if the work is performed by City, or at actual cost if the work is performed by a third party. Upon receipt of a demand for payment by City, NextG must promptly reimburse City for those costs.

6. INDEMNIFICATION AND WAIVER. NextG will indemnify, defend, protect, and hold harmless the City, its councilmembers, officers, employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense (collectively, the "Losses") directly or proximately resulting from NextG's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of the City, its councilmembers, officers, employees, agents, or contractors.

6.1 **Waiver of Claims.** NextG waives all claims, demands, causes of action, and rights it may assert against City on account of any loss, damage, or injury to any Equipment, or any loss or degradation of the Services, resulting from any event or occurrence that is beyond the City's reasonable control.

6.2 **Limitation of City's Liability.** City will be liable only for the cost of repair to damaged Equipment arising from the sole negligence or willful misconduct of City, its employees, agents, or contractors, and City will in no event be liable for indirect or consequential damages.

7. **INSURANCE.** NextG must obtain and maintain during the term of this Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting NextG in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for both personal injury liability and products-completed operations. The Commercial General Liability insurance policy must name the City, its councilmembers, officers, and employees as additional insureds as respects any covered liability arising out of NextG's performance of work under this Agreement. Coverage must be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. This insurance must not be canceled, nor may the occurrence or aggregate limits set forth above be reduced, until the City has received at least 30 days' advance written notice of such cancellation or change. NextG is responsible for notifying the City of any change or cancellation.

7.1 **Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Agreement, NextG must file with City the required original certificates of insurance with endorsements, which must state the following:

- (a) The policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) That the City will receive not less than 30 days' prior notice of cancellation;
- (c) That NextG's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that City may possess, including any self insured retentions that City may have; and that any other insurance the City possesses will be considered excess insurance only and will not be required to contribute with this insurance; and
- (d) That NextG's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificates of insurance with endorsements and notices must be mailed to the City at the address specified below in Section 9.

7.2 **Workers' Compensation Insurance.** NextG must obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and must furnish to City a certificate showing proof of that coverage.

7.3 **Insurer Criteria.** All insurance policies obtained by NextG must be issued by companies that are admitted and licensed to do business in the State of California and that have a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

7.4 **Severability of Interest.** All deductibles or self-insured retentions must be stated on the certificates of insurance, which must be sent to and approved by City. "Severability of interest" or "separation of insureds" clauses must be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

8. **FAITHFUL PERFORMANCE BOND.** In order to secure the performance of its obligations under this Agreement, NextG will provide the following security instrument to the City:

8.1 **Faithful Performance Bond.** Prior to the commencement of any work pertaining to Municipal Facilities or SCE Streetlights under this Agreement, NextG must provide a faithful performance bond running to the City, substantially in the form attached as Exhibit B, in the penal sum of not less than Two Thousand Five Hundred Dollars (\$2,500) for each Municipal Facility upon which Equipment is to be installed pursuant to Section 5 of this Agreement, conditioned upon the faithful performance by NextG of all the terms and conditions of this Agreement and upon the further condition that if NextG fails to comply with any law, ordinance, rule, or regulation governing this Agreement, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or costs of removal or abandonment of NextG's property, plus costs and reasonable attorneys' fees up to the full amount of the faithful performance bond. The City may require NextG to increase the amount of the faithful performance bond if the City concludes that it is necessary to do so based upon the harm being caused by NextG to Public Ways or Municipal Facilities. NextG will keep the faithful performance bond in place during the term of this Agreement.

8.2 **Assessment of the Bond.** Upon NextG's failure to pay the City any amount owing under this Agreement, the faithful performance bond may be assessed by the City for purposes including, but not limited to:

(a) Reimbursement of costs borne by the City to correct violations of the Agreement not corrected by NextG, after City provides notice and a reasonable opportunity to cure such violations.

(b) To provide monetary remedies or to satisfy damages assessed against NextG due to a material breach of this Agreement.

8.3 Restoration of the Bond. NextG must deposit a sum of money or a replacement instrument sufficient to restore the faithful performance bond to its original amount within 30 days after notice from the City that any amount has been recovered from the faithful performance bond. Failure to restore the bond to its full amount within 30 days will constitute a material breach of this Agreement. NextG will be relieved of the foregoing requirement to replenish the bond during the pendency of an appeal from the City's decision to draw on the faithful performance bond.

8.4 Costs of Collection. If the faithful performance bond is drawn upon, all of City's costs of collection and enforcement of the provisions relating to the bond that are specified in this section, including reasonable attorneys' fees and costs, will be paid by NextG.

8.5 Required Endorsement. The faithful performance bond is subject to the approval of the City Attorney and must contain the following endorsement:

"This bond may not be canceled until sixty (60) days after receipt by the City Attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

8.6 Reservation of City Rights. The rights reserved by the City with respect to the faithful performance bond are in addition to all other rights and remedies the City may have under this Agreement or any other law.

9. NOTICES. All notices to be given pursuant to this Agreement must be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as described above, addressed as follows:

If to City:

CITY OF Manhattan Beach
Attn: City Manager
1400 Highland Avenue
Manhattan Beach, CA 90266

If to NextG:

NEXTG NETWORKS OF CALIFORNIA, INC.
Attn: Contracts Administration
2216 O'Toole Ave.
San Jose, CA 95131

9.1 **Date of Notices; Changing Notice Recipient or Address.** Notices will be deemed given upon receipt in the case of personal delivery, three days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other recipient or address for this purpose by written notice to the other party delivered in the manner set forth above.

10. **TERMINATION.** This Agreement may be terminated by either party upon 45 days' prior written notice to the other party upon a default by the other party of any material covenant or term, which default is not cured within 45 days of receipt of written notice of default (or, if such default is not curable within 45 days, if the defaulting party fails to commence that cure within 45 days or fails thereafter diligently to prosecute such cure to completion); provided, that the grace period for any monetary default will be 10 days from receipt of notice. Except as expressly provided herein, the rights granted under this Agreement are irrevocable during its term.

11. **ASSIGNMENT.** This Agreement shall not be assigned by NextG without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of NextG to a parent, subsidiary, or other affiliate of NextG or to any successor in interest or entity acquiring fifty-one percent (51%) or more of NextG's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City; however, NextG shall give the City prior written notice that an Exempted Transfer will be taking place. The City shall consent to any Transfer other than an Exempted Transfer, provided that NextG reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of NextG immediately prior to the transfer; (ii) any such transferee assumes all of NextG's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee in the provision of telecommunications or similar services, evidences an ability to operate the Network. NextG shall give at least thirty (30) days' prior written notice (the "Transfer Notice") to the City of any such proposed Transfer other than Exempted Transfers and shall set forth with specificity in such Transfer Notice the reasons why NextG believes the Transfer Criteria have been satisfied. The City Council of City shall have a period of thirty (30) days (the "Transfer Evaluation Period") from the date that NextG gives the City its Transfer Notice to object in writing to the adequacy of the evidence contained therein. If the City Council of City fails to act upon NextG's Transfer Notice within the Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City Council that NextG has in fact established compliance with the Transfer Criteria to the City's satisfaction.

12. **MISCELLANEOUS PROVISIONS.** The following provisions apply generally to the obligations of the parties under this Agreement.

12.1 **Nonexclusive Use.** NextG acknowledges that this Agreement does not provide NextG with exclusive use of the Public Way or any Municipal Facility and that City retains the right to permit other providers of communications services to install equipment or

devices in the Public Way and on Municipal Facilities. City will make information available to other providers of communications services concerning the presence or planned deployment of NextG's Equipment in the Public Way or on Municipal Facilities.

12.2 **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Agreement will not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

12.3 **Severability of Provisions.** If any provision of this Agreement is held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, that provision will be deemed to be severable from the remaining provisions of this Agreement and will not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party represents that it would have entered into this Agreement, and each of its provisions, regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

12.4 **Contacting NextG.** NextG will be available to the employees of any City department having jurisdiction over NextG's activities 24 hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. City may contact by telephone the network control center operator at telephone number 1-866-44-NEXTG (446-3984) regarding these problems or complaints.

12.5 **Governing Law; Jurisdiction.** This Agreement will be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of that action will be vested exclusively in the state courts of California, County of Los Angeles, or in the United States District Court for the Southern District of California.

12.6 **Attorneys' Fees.** If any dispute arising out of this Agreement results in litigation, the prevailing party will be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

12.7 **Consent Criteria.** In any case where the approval or consent of a party is required, requested, or otherwise to be given under this Agreement, that party must not unreasonably delay, condition, or withhold its approval or consent.

12.8 **Representations and Warranties.** Each of the parties represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its obligations hereunder and that those obligations will be binding upon that party without the approval or consent of any other person or entity, except as provided above in Section 3.3.

12.9 **Amendment of Agreement.** This Agreement may be amended only by a written instrument signed by both parties.

12.10 **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to its subject matter. There are no representations, agreements,

or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement that are not fully expressed herein.

12.11 **Effective Date.** It is the intention of the parties that NextG will first execute this Agreement and then submit it to the City. The effective date will be the date on which this Agreement is executed on behalf of the City. The City Clerk will insert the effective date in the introductory paragraph of all counterparts of this Agreement, attest to their execution by a duly authorized officer of the City, and transmit one or more fully executed counterparts to NextG.

-- SIGNATURES ON NEXT PAGE --

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

APPROVED AS TO FORM:

CITY OF MANHATTAN BEACH,
a municipal corporation

By: _____
City Attorney

By: _____
Mayor

ATTEST:

City Clerk

Date: _____

NEXTG NETWORKS OF CALIFORNIA,
INC., a Delaware corporation

By: _____
Title:
Date: _____

EXHIBIT A

EQUIPMENT

[To be provided by NextG]

EXHIBIT B

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City of Manhattan Beach, California, a municipal corporation ("City") and NextG Networks of California, Inc., a Delaware corporation, ("Principal") have entered into an agreement for the occupancy of portions of the public ways upon City-owned infrastructure; and

WHEREAS, the agreement, identified as "Right of Way Use Agreement," is incorporated by this reference; and

WHEREAS, Principal is required under the terms of the agreement to furnish a bond for its faithful performance;

NOW, THEREFORE, we, Principal and _____, as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation will become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, will in all things stand to, abide by, well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and will indemnify and save harmless the City, its officers, agents, and employees, as therein stipulated; otherwise, this obligation will be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified, costs and reasonable expenses and fees will be included, including reasonable attorneys' fees, incurred by the City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement, the work authorized to be performed thereunder, or the specifications accompanying the agreement will in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the agreement, the work, or the specifications; provided; however, that this bond is subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect until canceled under Subsection 8.5 of the agreement, after which all liability ceases, except as to any liability incurred or accrued prior to the date of such cancellation.

2. The aggregate liability of the Surety hereunder on all claims shall not exceed the penal sum of this bond in any event.

3. The Surety reserves the right to withdraw as Surety from this bond, except as to any liability incurred or accrued, and may do so upon giving the City not less than sixty (60) days' written notice in accordance with Subsection 8.5 of the agreement.

IN WITNESS WHEREOF, this instrument has been duly executed by the above-named Principal and Surety on _____, 2009.

Note: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment.

(Type name of Principal)

(Type address of Principal)

By: _____
(Signature of authorized officer)

(Title of officer)

(Type name of Surety)

(Type address of Surety)

By: _____
(Signature of authorized officer)

(Title of officer)

APPROVED AS TO FORM:

CITY ATTORNEY

From: "Michael Rocque" <mrocque@citymb.info>
Subject: **RE: Your letter dated July 21, 2008**
Date: August 27, 2008 11:59:48 AM MDT
To: "Patrick S. Ryan" <pryan@pryan.net>
Cc: "Richard Thompson" <rthompson@citymb.info>, <renalen@nextgnetworks.net>

Mr. Ryan-

The City has sent several communications to your client in regards to how to move forward with the application process. In the notice of approval dated 5/16/08, the conditions were very clear that the only way the City would be agreeable to any new telecom facilities would be to install them either upon the existing street light poles or to co-locate on another existing utility pole within the area.

Another letter was sent on 6/4/08 which further clarified the City's position and made the decision final. In the scenarios listed below, the conversion of the existing traffic control signs was not a presented option and will not be a viable solution. As far as the SCE light poles are concerned the City would have no problem moving forward with this option, however it is not only the City that has to take the appropriate action to make this work. There needs to at least be initiation made by Next G that they have contacted SCE and can provide proof or documentation that SCE would be amicable to the co-locating of a telecom facility on light poles. If SCE is not even willing to move forward with this option, then there is no reason for the City to get involved in terms of canceling any franchises, etc.

Staff does not see the need for a meeting at this point. The only purpose of having a meeting would be to either discuss a new alternative location which is co-located on an existing utility pole (which staff can review) or to further discuss the SCE option once there is some confirmation from SCE.

Please understand that the City does want to reach an agreeable outcome that is in favor for both Next G and the City.

Thank you.

Michael P. Rocque
Assistant Planner
City of Manhattan Beach
Community Development Department
(310) 802-5512
mrocque@citymb.info

From: Patrick S. Ryan [mailto:pryan@pryan.net]
Sent: Monday, August 25, 2008 3:27 PM
To: Michael Rocque
Cc: Richard Thompson; Robert Wadden; Ron Enalen; Joe Milone
Subject: Fwd: Your letter dated July 21, 2008

Mr. Rocque:

It isn't possible to simply make a proposal consistent with the conditional approval, since NextG never applied for anything other than to place two new poles. The conditions were set out by the City without regard to the application made, and it is only the City that can take the appropriate action to make them work. In short, if the City wishes to reach an amicable settlement, NextG has offered the following:

- If the City wishes to have NextG on the SCE poles, the City will need to work with NextG in order to cancel the portion of the City's franchise with SCE for the streetlights in question, take over ownership of them, and then to work out an agreement with NextG to attach to those poles.
- Alternatively, NextG has offered to work with the City in order to convert one of the existing traffic-control signs into a pole that could serve the required purpose. A photosimulation of two possibilities was sent by email to

Robert Wadden on 8/6, I'll resend.

Ron Enalen is taking the lead to coordinate the meeting with you and Mr. Thompson, and I'll only get involved from here on out if those discussions result in an impasse. I believe that Ron has tried to contact you today, but will check with him on that.

Sincerely,

Patrick

Begin forwarded message:

From: "Michael Rocque" <mrocque@citymb.info>
Date: August 25, 2008 4:12:03 PM MDT
To: "Patrick S. Ryan" <pryan@pryan.net>
Cc: "Richard Thompson" <rthompson@citymb.info>
Subject: RE: Your letter dated July 21, 2008

Mr. Ryan-

I will await a response from Next G. In the meantime, it would be wise for them to put together a proposal that is consistent with the conditional approval notice and letter dated May 26, 2008. Once this is completed, staff can review it and discuss the proposal and if a meeting is required, one can be scheduled.

Thanks again for your cooperation and we look forward to working with you and Next G on their project.

Michael P. Rocque
Assistant Planner
City of Manhattan Beach
Community Development Department
(310) 802-5512
mrocque@citymb.info

From: Patrick S. Ryan [<mailto:pryan@pryan.net>]
Sent: Friday, August 22, 2008 2:00 PM
To: Robert Wadden
Cc: Richard Thompson; Michael Rocque; Ron Enalen; Joe Milone
Subject: RE: Your letter dated July 21, 2008

Thank you -- I've confirmed with NextG and they are fine with that approach. They'll set up a working-level meeting with Mr. Roque with the following attendees (I don't know if everyone will attend, but the first two are three will for sure):

Joe Milone, NextG's Director of Gov't Relations
Ron Enalen, Project Manager
Rafael Nunez, Project Manager
Chad Rasmussen, Fiber Engineer

Ron will take the lead to set the meeting up.

Patrick

Original message:

From: "Robert Wadden" <rwadden@citymb.info>
Date: August 21, 2008 4:50:20 PM MDT
To: "Patrick S. Ryan" <pryan@pryan.net>
Cc: "Richard Thompson" <rthompson@citymb.info>, "Michael Rocque" <mrocque@citymb.info>
Subject: FW: Your letter dated July 21, 2008

Why don't you put your people directly into contact with Michael Roque to see if they can work something out?

From: Richard Thompson
Sent: Thursday, August 21, 2008 1:19 PM
To: Robert Wadden
Cc: Michael Rocque
Subject: RE: Your letter dated July 21, 2008

Hi Bob-

I think they should be working directly with the case planner, Michael Rocque. If Michael needs assistance he will check in with us.

Richard Thompson
Director of Community Development

From: Robert Wadden
Sent: Monday, August 18, 2008 2:05 PM
To: 'Patrick S. Ryan'
Cc: Richard Thompson
Subject: RE: Your letter dated July 21, 2008

Richard Thompson the Director of Community Development is out this week, he needs to be involved in any discussions.

From: Patrick S. Ryan [<mailto:pryan@pryan.net>] **On Behalf Of** Patrick S. Ryan
Sent: Monday, August 18, 2008 1:41 PM
To: Robert Wadden
Cc: Wendy Moreno
Subject: Fwd: Your letter dated July 21, 2008

The letter indicating the City's interest in discussing alternatives for the nodes arrived late last week. I would like to set up a time for a call to involve me and one or two of NextG's engineers. Please let me know your availability -- Tuesday, Wednesday and Thursday of this week are fairly open from 10:00 to 3:00. Please let me know if there are any times within that range that work.

Sincerely,

Patrick

Begin forwarded message:

From: Patrick S. Ryan <patrick.ryan@ryanlegal.net>
Date: August 14, 2008 8:05:09 AM MDT
To: wmoreno@citymb.info
Cc: Robert Wadden <rwadden@citymb.info>
Subject: RE: Your letter dated July 21, 2008

I would be grateful if you would let me know by return email if a response to NextG has been sent. If I don't hear by

COB today regarding any willingness for the City to sit down with NextG to discuss a proposed settlement of the apparent impasse, I'll assume that the City is not interested in such discussions and will plan the next steps accordingly with my client.

Patrick Ryan

Original message:

From: "Patrick S. Ryan" <patrick.ryan@ryanlegal.net>
Date: July 23, 2008 2:50:01 PM MDT
To: wmoreno@citymb.info
Cc: Robert Wadden <rwadden@citymb.info>
Subject: Fwd: Your letter dated July 21, 2008

Understood, we can wait another week, until August 11th 2008 for a response. The objective is to know whether the city is interested in having a discussion on the proposal offered in our June 17th letter, or whether the matter has truly reached an impasse requiring other action. If Mr. Wadden would like to set up a time to meet and discuss the matter in person, I would be happy to do so.

Patrick

Original message:

From: "Wendy Moreno" <wmoreno@citymb.info>
Date: July 23, 2008 11:52:56 AM MDT
To: <patrick.ryan@ryanlegal.net>
Cc: "Robert Wadden" <rwadden@citymb.info>
Subject: Your letter dated July 21, 2008

Please be advised that Mr. Wadden is on vacation out of state and will not be returning to the office until Monday, August 4, 2008.

Thank you,

Wendy Moreno
Legal Secretary to
Robert V. Wadden, Jr.
City Attorney
City of Manhattan Beach



From: Patrick S Ryan <patrick.ryan@ryanlegal.net>
 Subject: **Fwd: Draft Agreement - NextG and Manhattan Beach**
 Date: September 10, 2009 9:10:22 PM MDT
 To: Robert Wadden <rwadden@citymb.info>
 Cc: Richard Thompson <rthompson@citymb.info>, mrocque@citymb.info, Joe Milone <jmilone@nextgnetworks.net>

Yes, this is not new, and was discussed in prior emails and in our meeting. Edison does not have a program that allows companies to attach to their streetlights. But they do have a program that allows a company to replace, at the company's cost, the streetlight, and then to pay a fee of approximately \$6,000 per year to Edison. However, since the streetlights are part of the rate-of-return regulation and on cost recovery basis, their program is not appropriate.

We understand that the City may not wish to get into the middle of the situation with Edison. However, at risk of repeating the same refrain, the City it did so when the City required, *sua sponte*, the requirement to attach to existing infrastructure. As we discussed, the City has the ability to make that condition possible on the terms that we discussed and per the contract that we proposed. Back to my question, then, if the City prefers not to facilitate with the satisfaction of the condition that it imposed, will the City allow us to appeal the prior decision to the Council at this point? Or do we need to re-apply, take the decision (which I assume will be negative), appeal that decision and escalate from there?

The problem will not go away: NextG is fine with working with the City to replace the streetlight (per the proposed contract), or to put in new infrastructure. We are fine with either approach, but believe (and hope) that the approach can be collaborated somewhat with the City, if possible.

Patrick

Begin forwarded message:

From: "Robert Wadden" <rwadden@ci.manhattan-beach.ca.us>
Date: September 9, 2009 11:33:35 AM MDT
To: "Patrick S Ryan" <patrick.ryan@ryanlegal.net>
Cc: "Richard Thompson" <rthompson@citymb.info>, "Michael Rocque" <mrocque@citymb.info>, "Joe Milone" <jmilone@nextgnetworks.net>
Subject: RE: Draft Agreement - NextG and Manhattan Beach

Edison has told us they are quite open to allowing replacement of their street lights so the proposed condition is not a barrier to NextG proceeding with their installation. Obviously there is some kind of an issue between Edison and NextG or some reason why your client prefers not to deal with them. Without knowing what that is it is difficult to see the condition imposed by the City as unreasonable or prohibitive.

From: Patrick S. Ryan [<mailto:pryan@pryan.net>] **On Behalf Of** Patrick S Ryan
Sent: Tuesday, September 08, 2009 6:57 PM
To: Robert Wadden
Cc: Richard Thompson; Michael Rocque; Joe Milone
Subject: Fwd: Draft Agreement - NextG and Manhattan Beach

This is disappointing; we had discussed this, and as we discussed, NextG disagrees with the legality of the SCE option. Since the City imposed the condition *sua sponte* to use the existing streetlight--and has a way, on its own to comply with the condition--the whole purpose of our proposal was to make that happen. Since we apparently do not have the agreement in principle that we thought we had, it probably isn't worth rehashing the same arguments and concerns.

A question, though: will the City allow NextG to appeal the planning decision to City Council at this point, or is it the City's position that a new application must be made (which could then be appealed)? Assuming the latter to be the case, I suppose that we would have no other choice than to re-apply, appeal, and escalate from there (if required).

Please advise.

Patrick

 patrick ryan
 t: 619.819.6313 e: 619.923.3244 m: 512.751.5346
 e: patrick.ryan@ryanlegal.net w: www.ryanlegal.net
 pubs: www.ssrn.com/author=355148

PSR lawfirm
p.o. box 515381
los angeles, ca 90051

notice

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Begin forwarded message:

From: "Robert Wadden" <rwadden@ci.manhattan-beach.ca.us>
Date: August 25, 2009 12:44:18 PM MDT
To: "Patrick S Ryan" <patrick.ryan@ryanlegal.net>
Cc: "Richard Thompson" <rthompson@citymb.info>, "Michael Rocque" <mrocque@citymb.info>
Subject: RE: Draft Agreement - NextG and Manhattan Beach

We have reviewed the agreement you forwarded and also communicated with SCE regarding the use of their street lights for telecommunications purposes. Edison tells us that they have offered written agreements for substitution of street lights to all carriers but that for some reason NextG has declined to sign them. Obviously use of the Edison street lights is an option available to any carrier and the City would prefer to not be in the middle of the relationship between a carrier and Edison regarding street light use or replacement. As to the agreement, while it does offer some advantages to the City staff feels more comfortable continuing to process the applications on a case by case basis thus giving us the maximum flexibility to tailor each installation to its location.

From: Patrick S. Ryan [<mailto:pryan@pryan.net>] **On Behalf Of** Patrick S Ryan
Sent: Monday, August 17, 2009 6:03 PM
To: Robert Wadden
Cc: Richard Thompson; Joe Milone
Subject: Fwd: Draft Agreement - NextG and Manhattan Beach

Bob:

Checking in to see if you have had a chance yet to review this? Might it be possible to get on your calendar in the next couple of weeks to discuss comments and next steps?

Patrick

Begin forwarded message:

From: Patrick S Ryan <patrick.ryan@ryanlegal.net>
Date: July 31, 2009 3:48:05 PM MDT
To: Robert Wadden <rwadden@citymb.info>
Cc: Richard Thompson <rthompson@citymb.info>, Joe Milone <jmilone@nextgnetworks.net>
Subject: Draft Agreement - NextG and Manhattan Beach

Bob:

After a longer delay than we had hoped, I am finally enclosing a draft right-of-way use agreement for use in the City, which would accomplish the objective of allowing NextG to work with the City to replace the streetlights in the two locations from last year's approval.

A few of the features:

- The agreement offers 5% of NextG's revenue for all of its installations, not just the two in question (and would apply to any future installations that may be installed). See Â§4.3.
- The agreement does not abrogate the City's rights to review and approve individual installations. See Â§5.1.
- We have drafted a provision that asks that NextG and the City work in good faith to remove the SCE poles and

- replace them, per our discussion. See Â§3.3.
- Additional bonding for each of the streetlights that will be replaced is proposed. See Â§8.
 - We have offered a "most favored municipality clause," which promises to the City to increase the fees if NextG enters into a more favorable agreement with another city. See Â§4.8.

I trust that this proposal meets, in general, with our discussion from May 15th. I would be grateful for any comments or questions.

Sincerely,

Patrick

patrick ryan
t: 303.785.8990 f: 303.265.9737 m: 512.751.5946
e: patrick.ryan@ryanlegal.net w: www.ryanlegal.net
pubs: www.ssrn.com/author-355448

PSR lawfirm, llc
1444 blake street
denver, co 80202

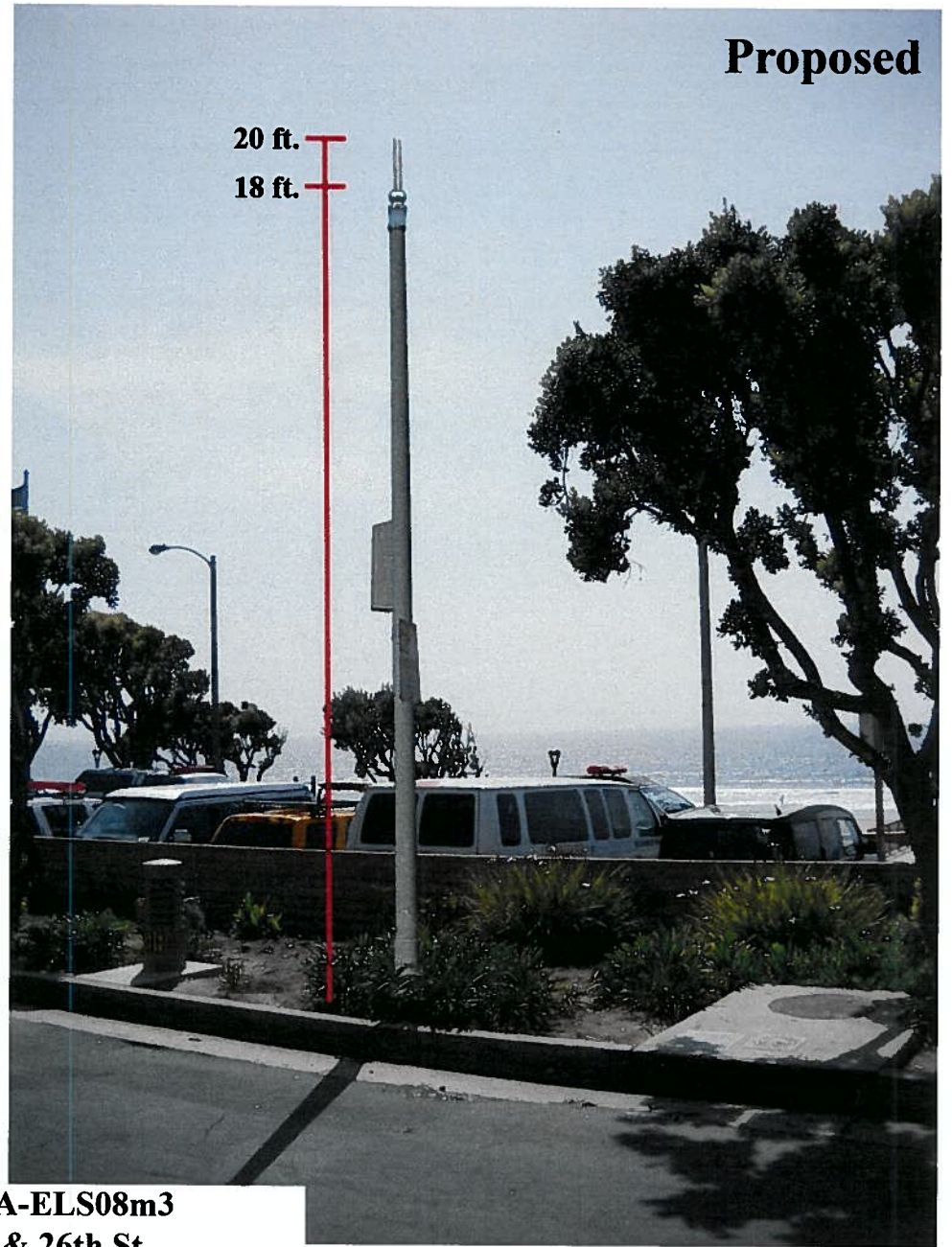
notice

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Existing



Proposed

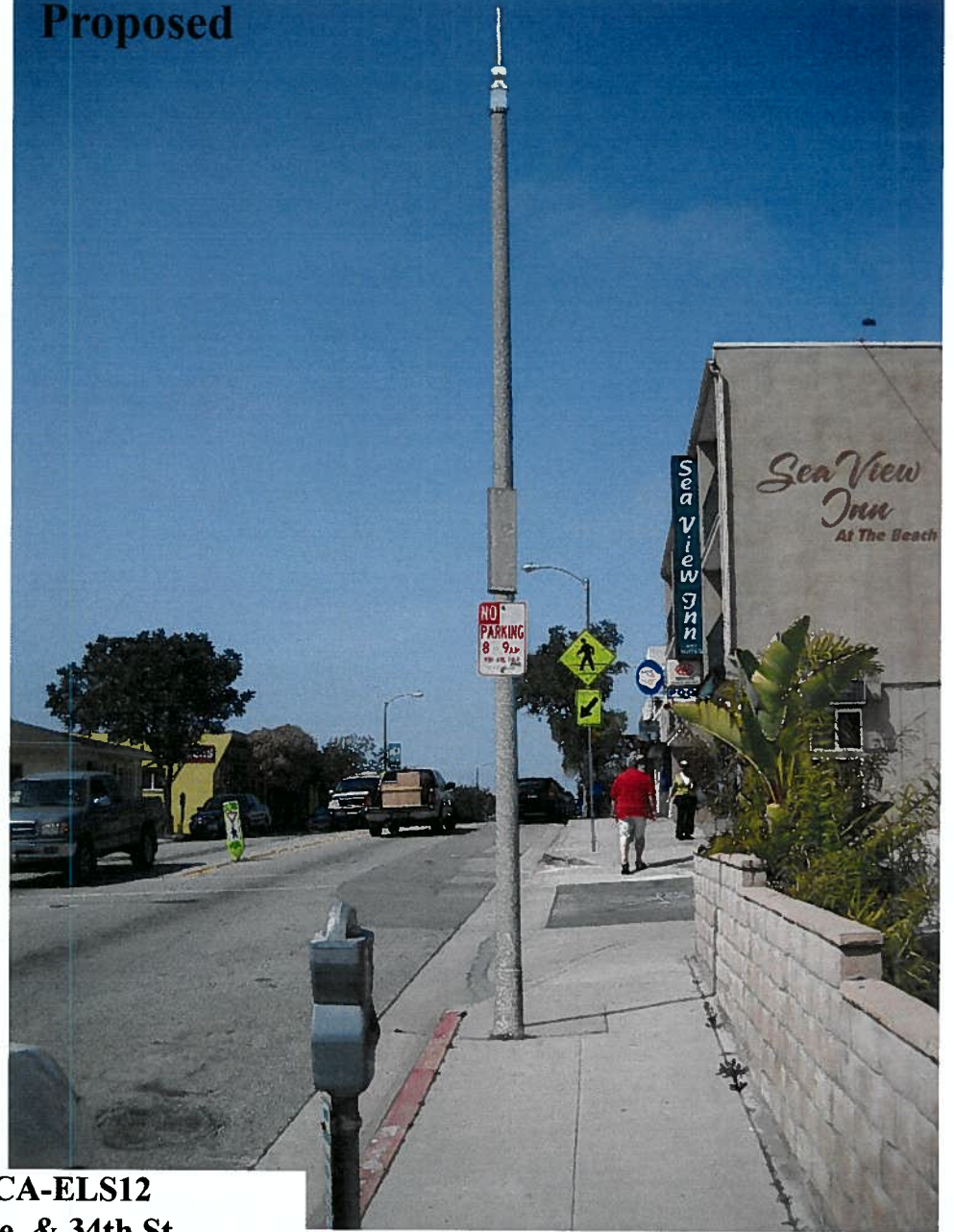


MPC1008CA-ELS08m3
Ocean Dr. & 26th St.
City of Manhattan Beach, CA 90266

Existing



Proposed



MPC1008CA-ELS12
Highland Ave. & 34th St.
City of Manhattan Beach, CA 90266



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5000 FAX (310) 802-5001

**CITY OF MANHATTAN BEACH
NOTICE OF APPROVAL FOR TWO TELECOMMUNICATION FACILITIES TO BE
LOCATED ON EXISTING UTILITY POLES AND/OR LIGHT POLES
WITHIN THE PUBLIC RIGHT OF WAY**

In accordance with Section 13.02 of the Manhattan Beach Municipal Code, the Department of Community Development has **approved** a Telecom Permit, submitted by Next-G Networks, **subject to conditions** enumerated below. The purpose of the proposed telecommunication facilities is to enhance Metro PCS wireless and landline broadband phone and data coverage within the City of Manhattan Beach. The proposed project is located within a recently undergrounded utility district and includes: 1) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SW corner of Ocean Ave./27th St. measuring 18' in height with an additional 2' antenna on top of pole totaling 20' in overall height. 2) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SE corner of Highland Ave./ 34th St. measuring 28' in height with and additional 2' antenna on top of pole totaling 30' in overall height. A notice of the proposal was sent on September 3, 2010 with a response period ending on September 13, 2010.

This project is approved in compliance with State and Federal regulations and is subject to the following conditions:

1. The project shall be constructed in substantial compliance with the plans submitted to the City, as amended to comply with conditions of approval listed below.
2. No new poles are allowed to be installed. Any proposed telecom facilities must be installed upon existing street lights or utility poles as provided by State and Federal Law.
3. The facility located at the Southwest corner of Ocean Avenue and 27th Street must be co-located on an existing street light pole or co-located on another existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.
4. The facility located on the Southeast corner of Highland Avenue and 34th Street must be co-located on an existing utility pole or alternative site approved by the City. No new facility shall replace existing parking sign poles.
5. All future appurtenant equipment serving the primary utility poles shall be provided underground.
6. The facilities must comply with and stay below the mandated RF emission exposure levels as stated by the FCC standards. Following installation of the proposed facilities, a subsequent field report shall be submitted detailing the projects cumulative field measurements of RF power densities and RF exposures, confirming that the facilities complies with accepted FCC standards.
7. All antennas and telecom equipment shall be located a minimum of ten feet (10') from any residential building.
8. A certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the telecom permit and shall be

EXHIBIT D
C.C.M.B. 4/5/11

- maintained in good standing at all times so long as the facility exists, releasing the City from any and all liability whatsoever in the granting of such permit.
9. The applicant agrees to maintain and improve said facilities with new updated technology as it becomes available and that upon cessation of use or abandonment of the facilities it shall be promptly removed at the expense of the applicant.
 10. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition the foregoing, as a prerequisite to the granting of the telecom permit by the City.

The project file containing background information, project plans, and other related data, is available for review at the Community Development Department at City Hall, 1400 Highland Avenue. Further information may be obtained by contacting Michael Rocque, Assistant Planner at (310) 802-5512 or mrocque@citymb.info

Any person wishing to appeal this decision to the City Council must do so by October 6, 2010. The required appeal forms and procedures will be provided upon request. A fee of \$465 must accompany any appeal request.


LAURIE B. JESTER
Acting Director of Community Development

Dated: September 27, 2010

cc: Richard Thompson, Interim City Manager
Robert Wadden, City Attorney
City Council Members

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City of Manhattan Beach

Current Underground Utility Assessment Districts

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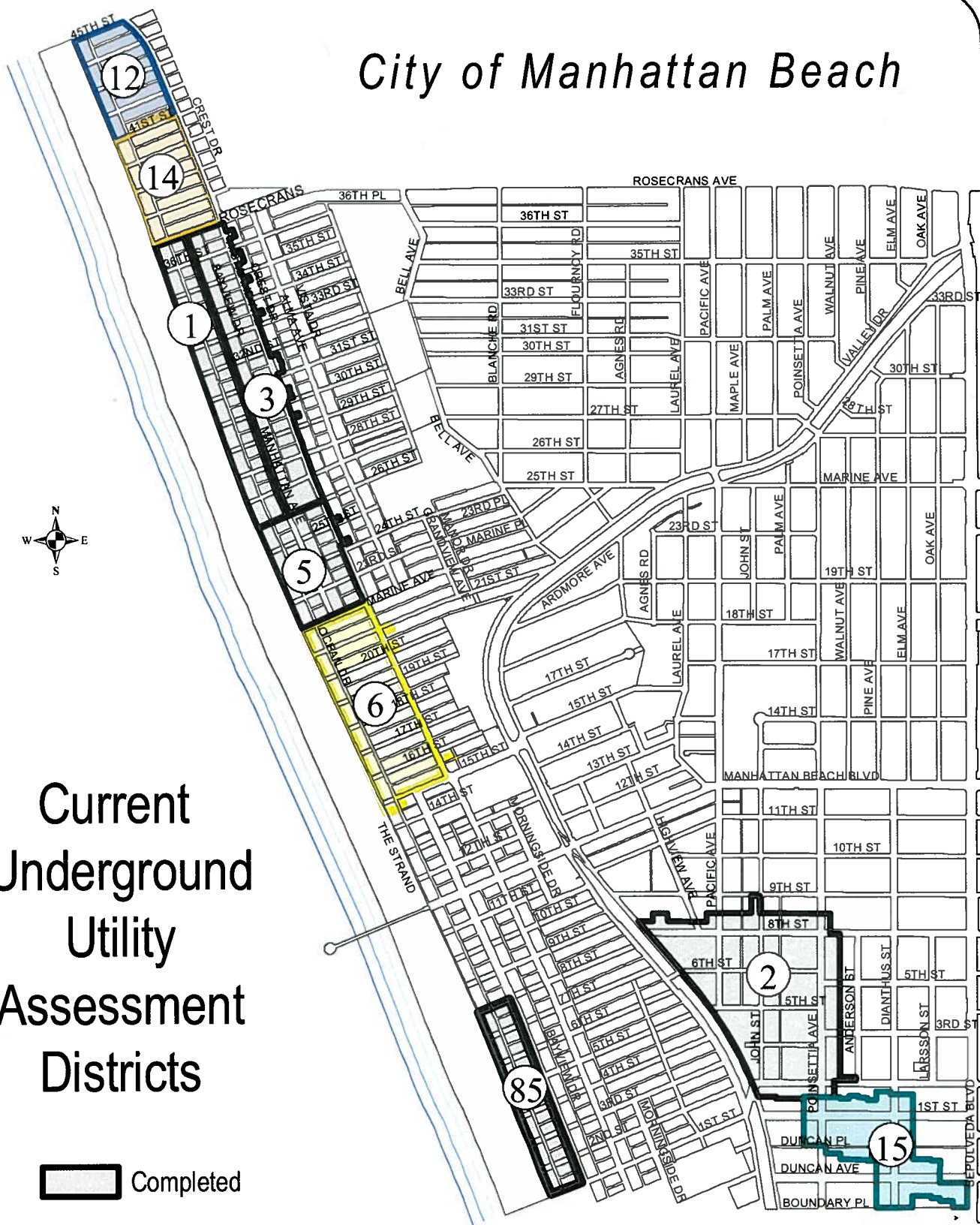
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10/29/2010



EXHIBIT E

CC MING. 4/5/11



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Robert Teran
Senior Manager
Edison Carrier Solutions
e-mail: Robert.teran@sce.com
Telephone: (626) 543-8124
Fax: (626) 5438486

The City of Manhattan Beach:

Since 1994, Southern California Edison (SCE) has assisted wireless service providers in expanding their networks to meet customers' needs for telecommunications service. SCE makes available existing structures that can be used to co-locate the wireless service providers' equipment, while lessening the visual impacts on the community and constituency that is served. This letter requests that you help us in this endeavor.

In an effort to minimize the potential clutter that new vertical structures would produce, many California cities have adopted ordinances and policies encouraging wireless facilities to be mounted on street light poles within the public rights of way.

As you are aware, SCE owns and maintains street light poles in your city pursuant to our LS-1 tariff. In order to accommodate the increasing demand for micro-cell site locations, SCE has agreed to allow wireless service providers to attach their antennas to some of these streetlight poles, and contractually requires the wireless service provider to comply with certain requirements, including a requirement that the facility will not impact SCE's ability to provide street lighting service.

The city has and retains full control over the entitlement and permitting process for these and future sites. The wireless service providers also pay for electrical usage resulting from their sites. This electrical service is metered and billed separately, and the city is not impacted.

While SCE believes this approach benefits local governments as well as their constituency, we would not engage in this solution if doing so resulted in extra costs to SCE. We would therefore appreciate you confirming that the City of Manhattan Beach consents to use of its public rights of way for the purpose of licensing space on an SCE streetlight located at Manhattan Beach Ave/S/O of 6ths Place, Manhattan Beach CA. (SCE Street Light # 2244110E, Carrier's site reference LA0622-01) located on or over the City's public rights of way at no cost to SCE.

Please sign this letter to indicate the City's consent and return it to me at the below address. If you have any questions, please feel free to call me at (626) 543-8124.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Teran", written over a horizontal line.

Robert Teran

Signature _____

Name _____

Title _____

Date: _____

4900 Rivergrade Road Bldg. 2B1
Irwindale CA, 91706



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CITY OF MANHATTAN BEACH
NOTICE OF PENDING APPLICATION FOR TWO TELECOMMUNICATIONS FACILITIES
WITHIN THE PUBLIC RIGHT OF WAY

The Community Development Department is currently reviewing an application for a Telecom Permit for two (2) new wireless telecom facilities within the public right of way, pursuant to provisions of Section 13.02.030 of the City of Manhattan Beach Municipal Code.

Applicant: Next-G Networks

Project Location: Public right-of-way, with two specified locations:
1) **S/W corner of Ocean Ave/27th Street**
2) **S/E corner of Highland Avenue/ 34th Street**

Project Description: The purpose of the proposed telecommunication facilities is to enhance Metro PCS wireless and landline broadband phone coverage within the City of Manhattan Beach. The proposed project includes: 1) Replacing an exiting parking sign and installing one (1) steel pole antenna located on the SW corner of Ocean Ave./27th St. measuring 18' in height with an additional 2' antenna on top of pole totaling 20' in overall height. 2) Replacing an existing parking sign and installing one (1) steel pole antenna located on the SE corner of Highland Ave./ 34th St. measuring 28' in height with and additional 2' antenna on top of pole totaling 30' in overall height. For reference, a "photo simulation" illustrating the project upon completion and location of above equipment is provided on the reverse side of this notice.

City Contact: Michael P. Rocque, Assistant Planner
(310) 802-5512; mrocque@citymb.info

Further Information: Additional information can be obtained by reviewing the project file available at the Community Development Department, Manhattan Beach City Hall, Monday through Friday 8:00AM to 5:00PM, or by phoning or e-mailing the City contact (see above).

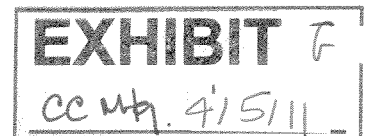
Public Comments & Approval Process: Comments are invited but must be received in writing no later than September 13, 2010, after which date the Director of Community Development will make a decision regarding the application.

Mailed comments should be sent to:

City of Manhattan Beach
Attention: Michael P. Rocque, Assistant Planner
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266

E-mailed comments to: mrocque@citymb.info

LAURIE B. JESTER
Acting Director of Community Development
Date Mailed: September 3, 2010



Existing



Proposed



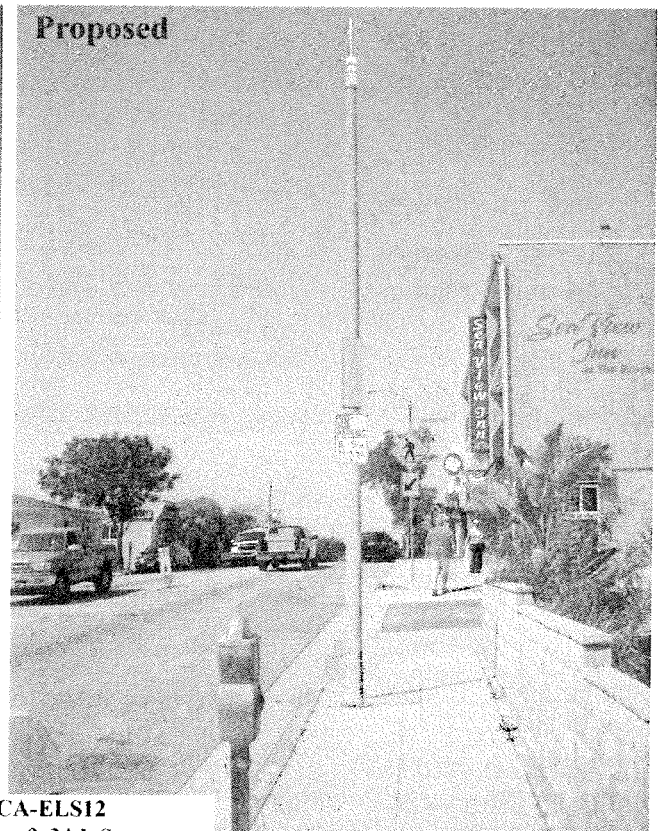
MPC1008CA-ELS08m3
Ocean Dr. & 26th St.
City of Manhattan Beach, CA 90266

NextG Networks 4/30/10

Existing



Proposed



MPC1008CA-ELS12
Highland Ave. & 34th St.
City of Manhattan Beach, CA 90266

NextG Networks 3/28/10



**NOTICE OF PUBLIC MEETING BEFORE THE CITY COUNCIL OF
THE CITY OF MANHATTAN BEACH REGARDING AN APPEAL
APPLICATION FOR THE INSTALLATION OF TWO
TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHT
OF WAY**

A public meeting will be held before the City Council of the City of Manhattan Beach to consider and review an appeal application from the applicant, Next G Networks, for the installation of two new telecommunications facilities within the public right of way at two specified locations:

- 1) S/W corner of Ocean Ave/27th Street**
- 2) S/E corner of Highland Avenue/ 34th Street**

The purpose of the proposed telecommunication facilities is to enhance Metro PCS wireless and landline broadband phone coverage within the City of Manhattan Beach. The proposed project includes: 1) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SW corner of Ocean Ave./27th St. measuring 18' in height with an additional 2' antenna on top of pole totaling 20' in overall height. 2) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SE corner of Highland Ave./ 34th St. measuring 28' in height with and additional 2' antenna on top of pole totaling 30' in overall height. For reference, "photo simulations" illustrating the project upon completion and location of above equipment is provided on the reverse side of this notice.

An initial notice was sent on September 3, 2010 informing all affected residents that the City was considering and reviewing the said locations listed above. A second notice of decision was sent on September 27, 2010 with an appeal deadline of October 6, 2010. The applicant, Next G Networks filed an appeal of the decision based on that they cannot meet the required conditions of approval from the City.

The meeting will be held:

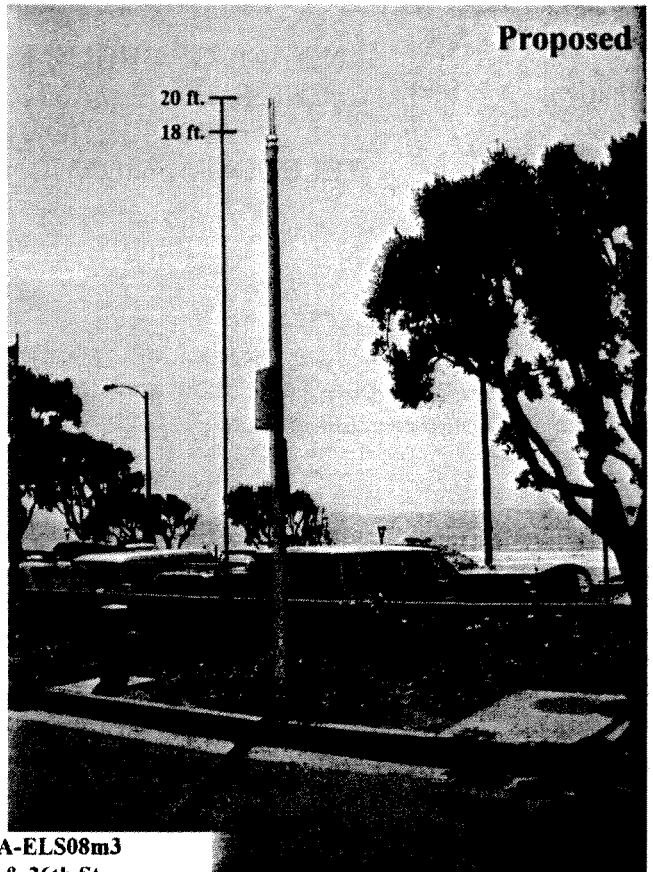
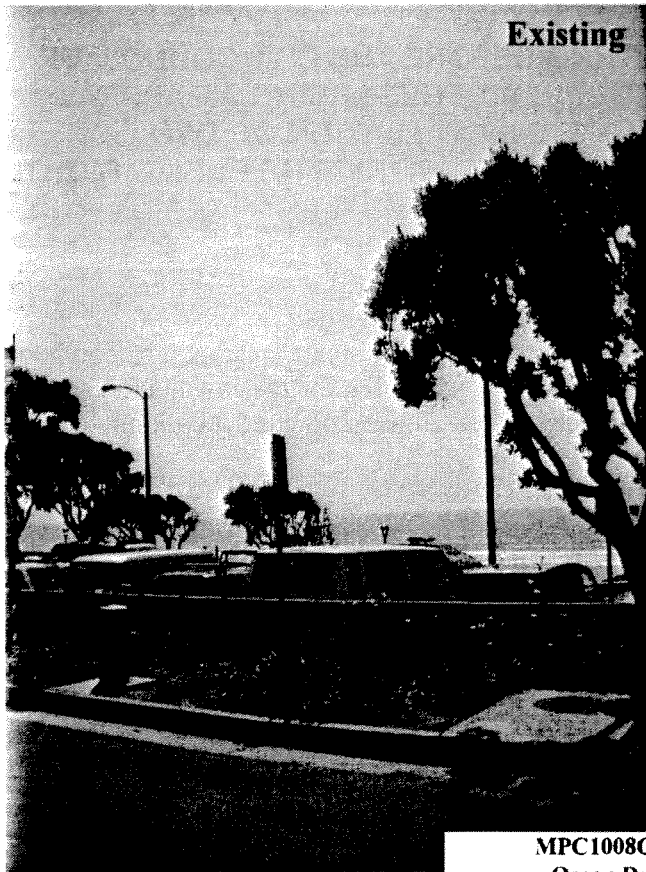
**Tuesday, November 16, 2010 at 6:30 p.m.
in the City Council Chambers at City Hall,
1400 Highland Avenue, Manhattan Beach.**

Anyone wishing to provide written comments for inclusion in the November 16th Staff Report must do so by November 8, 2010. All comments received after this date will be forwarded to the City Council at or prior to the meeting. Persons wishing to receive additional information regarding the new telecommunications facilities may contact Michael P. Rocque, Assistant Planner at 310 -802-5512 or mrocque@citymb.info

If you challenge the proposed actions in court, you may be limited to raising only those issues you or someone else raised at the meeting described in this Notice, or in correspondence delivered to the City Council at, or prior to, the meeting.

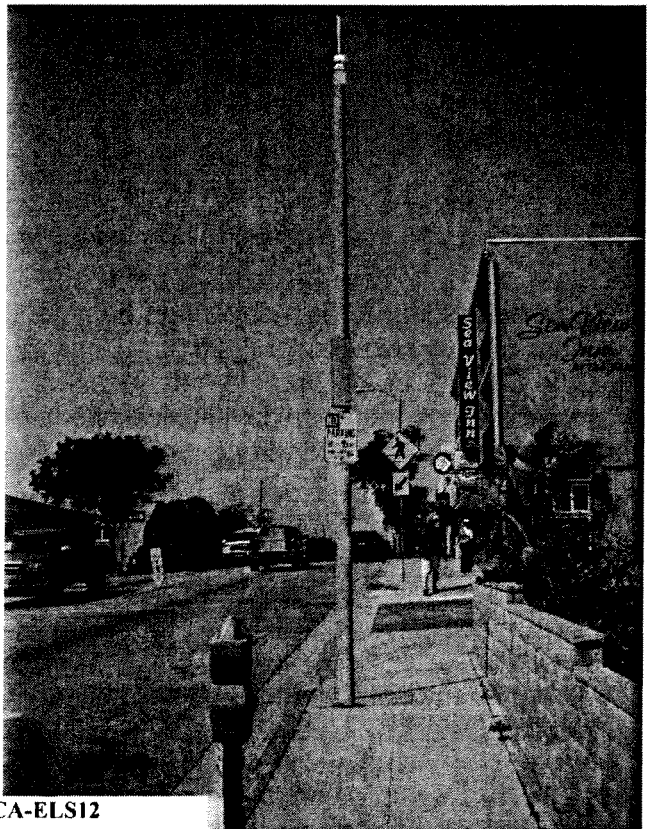
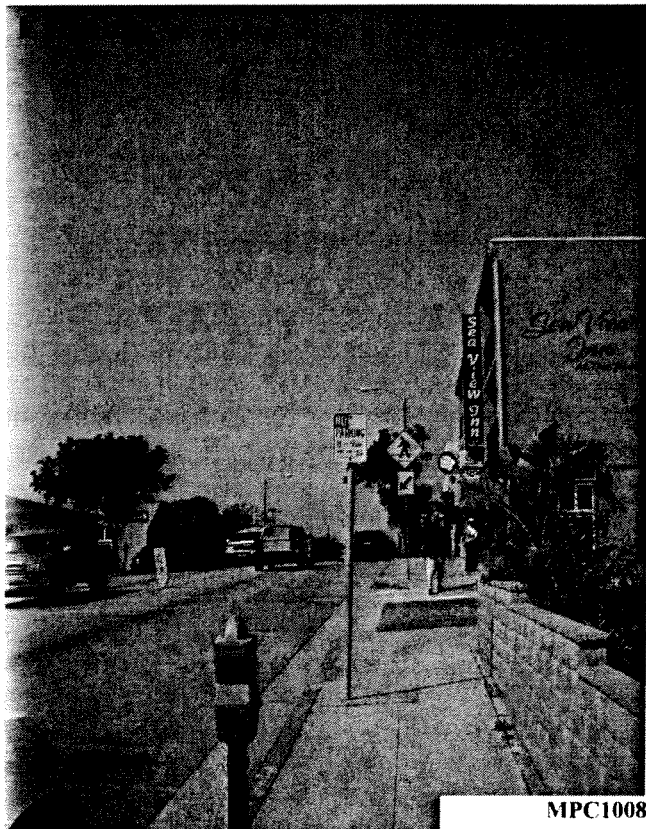
Laurie B. Jester
Acting Director of Community Development
Dated: October 27, 2010

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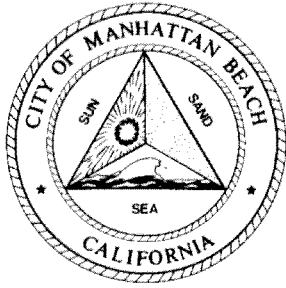
MPC1008CA-ELS08m3
Ocean Dr. & 26th St.
City of Manhattan Beach, CA 90266

 Nanco Networks 4/30/10



MPC1008CA-ELS12
Highland Ave. & 34th St.
City of Manhattan Beach, CA 90266

 Nanco Networks 3/28/10



**NOTICE OF PUBLIC MEETING BEFORE THE CITY COUNCIL OF
THE CITY OF MANHATTAN BEACH REGARDING AN APPEAL
APPLICATION FOR THE INSTALLATION OF TWO
TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHT
OF WAY**

A public meeting will be held before the City Council of the City of Manhattan Beach to consider and review an appeal application from the applicant, Next G Networks, for the installation of two new telecommunications facilities within the public right of way at two specified locations:

- 1) S/W corner of Ocean Ave./27th Street**
- 2) S/E corner of Highland Avenue/ 34th Street**

The purpose of the proposed telecommunication facilities is to enhance Metro PCS wireless and landline broadband phone coverage within the City of Manhattan Beach. The proposed project includes: 1) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SW corner of Ocean Ave./27th St. measuring 18' in height with an additional 2' antenna on top of pole totaling 20' in overall height. 2) Replacing an existing 8' high parking sign and installing one (1) steel pole antenna located on the SE corner of Highland Ave./ 34th St. measuring 28' in height with and additional 2' antenna on top of pole totaling 30' in overall height. For reference, "photo simulations" illustrating the project upon completion and location of above equipment is provided on the reverse side of this notice.

An initial notice was sent on September 3, 2010 informing all affected residents that the City was considering and reviewing the said locations listed above. A second notice of decision was sent on September 27, 2010 with an appeal deadline of October 6, 2010. The applicant, Next G Networks filed an appeal of the decision based on that they cannot meet the required conditions of approval from the City. An initial notice of this meeting was sent on October 27, 2010 with the project being heard by City Council on November 16, 2010. Due to scheduling conflicts the meeting was re-scheduled and will be held at the time noted below.

The meeting will be held:

**Tuesday, March 1st, 2011 at 6:30 p.m.
in the City Council Chambers at City Hall,
1400 Highland Avenue, Manhattan Beach.**

Anyone wishing to provide written comments for inclusion in the March 1st Staff Report must do so by February 24, 2010. All comments received after this date will be forwarded to the City Council at or prior to the meeting. Persons wishing to receive additional information regarding the new telecommunications facilities may contact Michael P. Rocque, Assistant Planner at 310 -802-5512 or mrocque@citymb.info

If you challenge the proposed actions in court, you may be limited to raising only those issues you or someone else raised at the meeting described in this Notice, or in correspondence delivered to the City Council at, or prior to, the meeting.

Richard Thompson, Director of Community Development
Dated: February 16, 2011



**COURTESY NOTICE OF PUBLIC HEARING BEFORE THE CITY
COUNCIL OF THE CITY OF MANHATTAN BEACH REGARDING AN
APPEAL APPLICATION FOR THE INSTALLATION OF TWO
TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHT
OF WAY**

The following is a courtesy notice regarding the appeal application from Next G Networks, for the installation of two new telecommunications facilities within the public right of way at two specified locations:

- 1) Ocean Drive between 26th and 27th Streets**
- 2) S/E corner of Highland Avenue/ 34th Street**

The public hearing scheduled for the March 1, 2011, is **PROPOSED** to be continued to the following meeting:

**Tuesday, April 5, 2011 at 6:30 p.m.
in the City Council Chambers at City Hall,
1400 Highland Avenue, Manhattan Beach.**

The staff report recommends a continuance, and no information on the project will be presented to the City Council on March 1st. The City Council will determine on March 1st whether or not they will continue the application, and to what specific date the application will be continued to.

Anyone wishing to provide written comments for inclusion in the April 5th Staff Report must do so by March 25, 2011. All comments received after this date will be forwarded to the City Council at or prior to the meeting. Persons wishing to receive additional information regarding the new telecommunications facilities may contact Michael P. Rocque, Assistant Planner at 310 -802-5512 or mrocque@citymb.info

If you challenge the proposed actions in court, you may be limited to raising only those issues you or someone else raised at the meeting described in this Notice, or in correspondence delivered to the City Council at, or prior to, the meeting.

Richard Thompson, Director of Community Development
Dated: February 23, 2011

Michael Rocque

From: Laura Sanders [lsanders123@yahoo.com]
Sent: Monday, November 08, 2010 2:09 PM
To: Michael Rocque
Subject: Appeal: MetroPCS tower

Hi Michael,
I understand MetroPCS has submitted an appeal application. I submit the arguments I articulated below still stand. This section of Manhattan Beach is squarely outside Metro PCS's demographics, so I don't even understand why they would want to put a tower here. But nonetheless, the most important point is that if there is one pole, others will surely follow and I can't agree to start down that path.
I strongly object to their appeal.
Thank you,
Laura

Laura T Sanders

Social Media Consulting
310 545-4242

----- Forwarded Message -----

From: Laura Sanders <lsanders123@yahoo.com>
To: mrocque@citymb.info
Sent: Tue, September 7, 2010 12:50:09 PM
Subject: MetroPCS tower

Dear Michael,
It has come to my attention that Metro PCS has applied to place a communications tower near my home at 113 27th St. I've lived here for 10 years and have endured a string of disruptive construction events. Having just gotten rid of our poles, I can't sit idly by and agree to place a pole in such an unseemly position in front of my house.

Moreover, the pole will belong to Metro PCS. I would almost guarantee that this low-end mobile provider has few to no subscribers within a 20 block radius. This pole would invite others like AT&T, Verizon, T-Mobile etc, who actually have customers in this area to apply for their own pole placements. It's a slippery slope. I strongly vote to reject the application.

Sincerely,
Laura Sanders

Laura T Sanders

Social Media Consulting



11/08/2010

Michael Rocque

From: Larry Grik [lgatextiles@earthlink.net]
Sent: Thursday, September 16, 2010 4:17 PM
To: Michael Rocque
Cc: Laurie B. Jester; Richard Thompson
Subject: Proposed Next-G Wireless Telecom Tower at Ocean Avenue & 27th Street

Dear Mr. Rocque:

I trust my comments will still be timely and considered even though I have just returned from a business trip and therefore this note is after your "respond by" date of September 13th. That date allowed for only 6 days to respond after I received the notice. Why did the "City" not give more notice respond time? Is the Utility trying to jam something through under pressure?

1. Your "Notice" does not show in the pictures submitted any ground equipment placements. From previous experience with a "cell tower" at Highland and 26th Street, there is usually sizable ground based metal boxes, such as those placed in Bruce's Beach Park, that contain the support communication equipment for the "cell tower". I believe that this omission is reason enough to re-notice everyone showing the size and placement of any ground based equipment.

2. I realize that "Utilities" have the right to place facilities within the public right of way. But the "City" needs to consider that this "right" was given so that "Utilities" could provide the basic necessities for living - water, gas, electricity - not the "right" to place facilities so that "cell phone providers" can make additional profits.

3. The residents of our neighborhood, myself included, just paid \$25,000.00 or more per residence to get rid of above ground Utility poles and wires, to enhance our views and property values. This "cell phone tower" is totally anathema to what our City Council is trying to do by their Undergrounding Program.

4. My home at 2701 Manhattan Avenue is built to the equivalent of only one story off of Manhattan Avenue. I have a precious Ocean view, albeit a narrow view, because of the lack of height of my structure. I will not be able to see over this "cell tower" and the "cell tower" would be absolutely in the middle of what ocean view I do have.

Please, there is NO compelling reason for this "cell tower". There is only a Utilities greed motive for more profit dollars. Do not allow this "cell tower" to be installed. Let's live up to the reputation that Manhattan Beach City represents first and foremost its residents.

I urge the outright rejection of this "cell tower" by the City and if it is not rejected outright, that at least a re-notification be sent that would show the ground equipment size and placements and also a re-notification that would allow sufficient time to gather the pulse (read opposition) of a broader representation of the neighborhood.

I will wait to hear from you or the staff.
Thank You and Regards,
Larry Grik

Larry Grik
2701 Manhattan Avenue
Manhattan Beach, CA 90266
Cell: 310-508-1986
lgatextiles@earthlink.net

Michael Rocque

From: Jeff Kelber [jeffkelber@gmail.com]
Sent: Wednesday, September 08, 2010 7:11 PM
To: Michael Rocque
Subject: proposed cell antenna

Hi Michael. I'm writing regarding the proposed cell antenna at 27th and Ocean Dr. I live on the corner of 26th and Ocean (across from the parking lot). Is this the same antenna that had been proposed for our corner several months back? If so, has the location simply been changed? If not, what's happened regarding that one?

My response here is basically the same as for the previous one. I don't feel that a cell antenna should be placed anywhere near a home since there have been no long term studies regarding their safety (for the simple reason that they haven't been around long enough to have a long term study). If, however, one is going to be put up in our block, I'd prefer (for obvious reasons) that it go up near 27th Street. I realize that, unless the law has changed, a city cannot refuse an antenna request for health considerations. I just feel that it is my responsibility as a father to make my point of view known.

Thank you. Best Regards, Jeff Kelber.

September 7, 2010

City of Manhattan Beach
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266

Attention: Michael P. Rocque, Assistant Planner

Dear Mr. Rocque,

I received the notice of pending application for two telecommunications facilities within the public right of way for Next-G Networks. I further understand that the proposed reception poles are to enhance Metro PCS wireless and landline service. While these poles will not directly impede my view I want to voice my concern as a north Manhattan Beach resident as to the precedent this potentially sets. Metro-PCS/Next-G Networks has very limited market share in the S. Bay as compared to other providers such as Verizon and AT&T. If we allow small providers to put up poles which obstruct one of our city's greatest assets – our views of the Pacific and the western horizon, it follows suit that larger ones and everyone in between will soon be petitioning to do the same.

With the proliferation of mobile and wireless devices, I suspect the demand for more towers, more receivers, more petitions will only grow – absent a master plan we will quickly and unwittingly compromise the sense of community, natural beauty, and quality of life which distinguishes Manhattan Beach from the other beach communities. Given a voice, I would vote no to these one-off petitions until the City resolves how to incorporate these requests in the context of a master plan to protect the next block and the next block and the one after that from having to make these one-off, “not in my backyard” decisions.

Thank you for taking my thoughts into consideration regarding the Next-G/Metro PCS proposal.

A handwritten signature in black ink, appearing to read 'Adam Lerner', with a long horizontal flourish extending to the right.

Adam Lerner
310 36th Street
Manhattan Beach, 90266

Michael Rocque

From: Adam Lerner [alerner@marlinequity.com]
Sent: Tuesday, September 07, 2010 1:19 PM
To: Michael Rocque
Subject: Next G Networks Petition: MPC1008CA-ELS12

Dear Mr. Rocque,

I received the notice of pending application for two telecommunications facilities within the public right of way for Next-G Networks. I further understand that the proposed reception poles are to enhance Metro PCS wireless and landline service. While these poles will not directly impede my view I want to voice my concern as a north Manhattan Beach resident as to the precedent this potentially sets. Metro-PCS/Next-G Networks has very limited market share in the S. Bay as compared to other providers such as Verizon and AT&T. If we allow small providers to put up poles which obstruct one of our cities greatest assets – our views of the Pacific and the western horizon, it follows suit that larger ones and everyone in between will soon be petitioning to do the same. With the proliferation of mobile and wireless devices, I suspect the demand for more towers, more receivers, more petitions will only grow – absent a master plan we will quickly and unwittingly compromise the sense of community, natural beauty, and quality of life which distinguishes Manhattan Beach from the other beach communities. Given a voice, I would vote no to these one-off petitions until the City resolves how to incorporate these requests in the context of a master plan to protect the next block and the next block and the one after that from having to make these one-off, “not in my backyard” decisions.

Thank you for taking my thought into consideration and review the Next-G/Metro PCS proposal,

Adam Lerner
310 36th Street
Manhattan Beach, 90266

Michael Rocque

From: Derik Mills [derik@yogaglo.com]
Sent: Tuesday, September 07, 2010 2:41 PM
To: Michael Rocque
Cc: Larry and Helene Grik; Anne Pearson
Subject: Re: Proposed Next-G Pole - Ocean Ave. @ 27th St.

Dear Mr. Rocque

We are located on 27th and Ocean and we oppose the proposed installment of the telecommunications tower on Ocean St.

Why would the town consider installing an eyesore on, and obstructing the view of, a scenic location that is an iconic Manhattan Beach tourist destination?

We too would appreciate a reconsideration of this location.

Thank you,

Derik Mills

On 9/6/10 10:45 AM, "Anne Pearson" <katiesmnd@yahoo.com> wrote:

Dear Mr. Rocque:

Please reconsider the installation of the subject telecommunications equipment on Ocean Avenue at 27th Street.

The underground project was only recently completed, and we finally have an unobstructed view without poles and wires. As you may know, our neighborhood also continues to have ongoing projects (sewer, etc.) and there never seems to be an end to the beeping of trucks backing up at 7:30 in the morning.

Why does this telecommunications equipment have to be installed on Ocean Drive? Why can't this equipment be installed on Highland Avenue as with the other installation on 34th Street?

We would appreciate a reconsideration of this location, and would appreciate a response from you. Thanks for your time and attention to this matter.

Sincerely,

Anne Marie Pearson
117 27th Street
Manhattan Beach, CA. 90266
310-545-1739
katiesmnd@yahoo.com

Michael Rocque

From: Laura Sanders [lsanders123@yahoo.com]

Sent: Tuesday, September 07, 2010 12:50 PM

To: Michael Rocque

Subject: MetroPCS tower

Dear Michael,


It has come to my attention that Metro PCS has applied to place a communications tower near my home at 113 27th St. I've lived here for 10 years and have endured a string of disruptive construction events. Having just gotten rid of our poles, I can't sit idly by and agree to place a pole in such an unseemly position in front of my house.

Moreover, the pole will belong to Metro PCS. I would almost guarantee that this low-end mobile provider has few to no subscribers within a 20 block radius. This pole would invite others like AT&T, Verizon, T-Mobile etc, who actually have customers in this area to apply for their own pole placements. It's a slippery slope. I strongly vote to reject the application.

Sincerely,
Laura Sanders

Laura T Sanders

Social Media Consulting
310 279 9079

 [View my profile](#)

Michael Rocque

From: Anne Pearson [katiesmnd@yahoo.com]
Sent: Monday, September 06, 2010 10:45 AM
To: Michael Rocque
Cc: Larry and Helene Grik; Derik Mills
Subject: Proposed Next-G Pole - Ocean Ave. @ 27th St.

Dear Mr. Rocque:

Please reconsider the installation of the subject telecommunications equipment on Ocean Avenue at 27th Street.

The underground project was only recently completed, and we finally have an unobstructed view without poles and wires. As you may know, our neighborhood also continues to have ongoing projects (sewer, etc.) and there never seems to be an end to the beeping of trucks backing up at 7:30 in the morning.

Why does this telecommunications equipment have to be installed on Ocean Drive? Why can't this equipment be installed on Highland Avenue as with the other installation on 34th Street?

We would appreciate a reconsideration of this location, and would appreciate a response from you. Thanks for your time and attention to this matter.

Sincerely,

Anne Marie Pearson
117 27th Street
Manhattan Beach, CA. 90266
310-545-1739
katiesmnd@yahoo.com

09/16/2010