

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Crown Castle NG West, Inc.,
formerly NextG Networks of California, Inc.,
(U6745C) for Authority to Construct and for
Deviation from Public Utilities Code Section 320
for San Mateo County DAS Facilities.

Application 13-02-007
(Filed February 5, 2013)

**DECISION GRANTING APPLICATION OF CROWN CASTLE NG
WEST, INC., FOR AUTHORITY TO CONSTRUCT DISTRIBUTED
ANTENNA SYSTEM FACILITIES AND TO DEVIATE FROM
PUBLIC UTILITIES CODE SECTION 320**

1. Summary

This decision grants the amended application of Crown Castle NG West, Inc., formerly NextG Networks of California, Inc., (U6745C) (Crown Castle), for authority to construct Distributed Antenna System (DAS) facilities in San Mateo County and for approval of the project in compliance with the California Environmental Quality Act (CEQA).¹ Crown Castle is granted permission to deviate from California Public Utilities Code Section (Pub. Util. Code §) 320² for the installation of certain of the facilities above ground on existing utility poles in utility rights-of-way in the vicinity of portions of California State Highway 1 that have been designated a "Scenic Highway."³

¹ California Public Resources Code, Section 21000, et seq.

² All statutory references are to the Public Utilities Code unless otherwise indicated.

³ California Streets and Highways Code, Section 260, et seq.

The Commission also finds that the project will not have significant adverse effects on the environment, and approves the Initial Study/Negative Declaration prepared by Commission staff for the project as the Lead Agency under CEQA.

2. Background

Crown Castle provides wireless carriers with point-to-point radio frequency transport and backhaul services that augment wireless broadband services in dense urban and isolated suburban/rural areas for its wireless carrier customers. Crown Castle provides these services over non-switched, digital fiber-optic communications facilities referred to as Distributed Antenna Systems or DAS networks. Crown Castle contends that DAS networks are highly effective at providing increased wireless broadband coverage and capacity in areas where traditional sites are impractical. DAS technology enables the efficient use of scarce spectrum resources, fosters competition by allowing multiple carriers to operate on the same system, and provides critical public safety coverage for motorists and emergency first responders by improving access to 911 and other emergency services in areas that otherwise have little or no wireless coverage. In order to provide such services, Crown Castle installs and operates DAS network facilities consisting of fiber-optic cable, nodes, antennae, and related equipment. Where technically and economically feasible, Crown Castle utilizes existing infrastructure and installs facilities on existing poles and in existing underground conduit vaults. Where existing infrastructure is not available, it may be necessary for Crown Castle to install facilities on new poles or in new underground vaults.

In Decision (D.) 03-01-061, Crown Castle's predecessor company, NextG Networks, Inc., (NextG) obtained a limited facilities-based (LFB) Certificate of

Public Convenience and Necessity (CPCN) authorizing it to provide services as a Non-Dominant Inter-Exchange Carrier (NDIEC) and Competitive Local Exchange Carrier (CLEC), and to construct facilities exempt from CEQA. NextG's CPCN authority was later expanded to include full facilities-based (FFB) CPCN authority in D.07-04-045. Under this expanded authority, NextG is authorized to construct FFB facilities subject to review and approval by the Commission on an expedited basis under the 21-day Notice of Proposed Construction (NPC) process (previously approved for other telecommunications carriers in D.06-04-063⁴ and D.06-04-067)⁵ if the proposed construction is exempt from CEQA. If the proposed construction is not exempt from CEQA, NextG is required to obtain prior approval from the Commission by filing a formal application, together with a Proponent's Environmental Assessment (PEA). Approval is contingent upon the preparation by the Commission of a Negative Declaration (ND), Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR) for the project in compliance with CEQA. As successor to NextG, Crown Castle remains subject to the rules and procedures for Commission review and approval of proposed facility construction set forth in D.03-01-061 and D.07-04-045.

3. The Proposed Project

Pursuant to Pub. Util. Code § 1001, D.03-01-061 and D.07-04-045, Crown Castle filed an Application with the Commission for authority to construct DAS facilities in rural San Mateo County. With the Application, Crown Castle

⁴ Re ClearLinx (now known as Crown Castle Systems, Inc.), D.06-04-063 (April 27, 2006).

⁵ Re CA-CLEC LLC, D.06-04-067 (April 27, 2006).

submitted a PEA and paid \$4,833.33 pursuant to Rule 2.5⁶ of the Commission's Rules of Practice and Procedure to cover the cost of the preparation of the environmental document, in this case, an Initial Study/Negative Declaration (IS/ND). Crown Castle states that the purposes of the project are to improve cellular service, improve access to 911 and other emergency services for motorists and emergency first responders, and to provide an opportunity for competition for wireless service in un-served and under-served unincorporated areas of San Mateo County.

The initial proposal was to span approximately 9.3 miles along Highway 1, 4.67 miles of which would be fiber-optic cable installed above ground in the vicinity of portions of Highway 1 that have been designated a Scenic Highway. The amended application includes plans to install DAS network facilities, including fiber-optic cable, antennas, nodes, and related facilities along approximately 14.22 miles of existing highway rights-of-way or existing utility easements.⁷

The proposed project, as amended, would consist of a total of 10 antennae (two on each of five node poles, all of which are existing utility poles), pole extenders and associated equipment; 14.22 miles of fiber-optic cable (10.76 miles above ground across approximately 258 existing utility poles and 3.46 miles underground); guy wires and anchors on up to 70 existing utility poles (pending further engineering analysis and structural testing), and potentially replacing up to 14 existing utility poles to accommodate the new stress loads (also pending

⁶ All references to Rule or Rules refer to the Commission's Rules of Practice and Procedure.

⁷ In addition to extending the length of the project, the amended application alters the path of the project to include an alignment spur extending from the vicinity of Highway 1 to an existing cellular tower located at 1000 Bean Hollow Road.

further engineering analysis). The facilities will be installed primarily underground where the existing utility facilities are underground and above ground where the existing utility facilities are above ground. The antenna and node facilities must be located above ground in order to function properly. Approximately 10.1 miles of fiber-optic cable will be installed above ground in the vicinity of portions of Highway 1 that have been designated a Scenic Highway. One spur line of approximately 900 feet would run under and adjacent to the entrance road to the Año Nuevo State Park to the location of an existing antenna node.

The application also requested authority to deviate from Pub. Util. Code § 320, which requires, wherever feasible, undergrounding of electric and communication distribution facilities within 1000 feet⁸ of a Scenic Highway if the facilities would be visible from the Scenic Highway.

No protests to the application were filed. An amended application was filed on September 6, 2013. A prehearing conference was held on August 25, 2015, during which it was reported that the Commission's CEQA staff held public meetings on the application, there was minimal attendance and no opposition was expressed by members of the public or governmental agencies. The Assigned Commissioner issued a Scoping Memo and Ruling on September 8, 2015 which confirmed the category as ratesetting and determined that evidentiary hearings are not needed.

⁸ D.80864 at 19, implementing § 320, defined "in proximity to" as "within 1000 feet of each edge of the right-of-way of designated State Scenic Highways."

4. Request for FFB Authority

As noted above, under D.03-01-061, Crown Castle is authorized to construct LFB facilities without further review or approval by the Commission. Under D.07-04-045, Crown Castle is further authorized to construct FFB facilities, subject to review and approval by the Commission under the expedited 21-day NPC process if the proposed construction is exempt from CEQA, or, if compliance with CEQA is required, pursuant to a formal application process requiring preparation of a ND, MND or EIR.

The Commission has held that the installation of DAS facilities on existing poles within existing rights-of-way constitutes LFB construction that does not generally require additional review or approval by the Commission.⁹ The Commission has also held that the replacement of existing poles with similar facilities in the same location does not entail new construction¹⁰ or require approval from the Commission. Because the underground portion of the proposed project will be installed in new underground conduit, approval by the Commission is required for compliance with CEQA.

The nature and type of the construction that will be required and potential environmental impacts are set forth in more detail in the amended PEA filed as Exhibit 1 to the amended application.

5. Request for Deviation from Pub. Util. Code § 320

Pub. Util. Code § 320 states that it is California State policy to underground electric and communications distribution facilities which are in proximity to

⁹ City and County of San Francisco v. NextG. D.06-07-036, mimeo at 5-6 (July 20, 2006).

¹⁰ See, e.g., Re Overhead Distribution Facilities et al, D.80864, 74 CPUC 454, 1972 Cal PUC LEXIS 504, at *15-*17.

designated Scenic Highways when they would be visible from Scenic Highways if erected above ground “whenever feasible and not inconsistent with sound environmental planning.”¹¹ The Commission has been delegated the authority to implement this policy.¹²

5.1. Cost Estimates

Crown Castle estimates that installing these facilities above ground would cost approximately \$136,076.00 and that to underground the fiber-optic cable in this vicinity would cost approximately \$1,630,665.00, a cost differential of nearly 12 to 1. These figures are based on Crown Castle’s estimates that installing facilities above ground on existing poles in this area will cost approximately \$13,562 per mile, and installing facilities underground in this area will cost approximately \$161,452 per mile. In prior resolutions on advice letters for deviations from Pub. Util. Code § 320, the Commission has held cost deviations for undergrounding similar to or less than the differential estimated by Crown Castle for this project economically impractical and infeasible.¹³

¹¹ Pub. Util. Code § 320 states, “The Legislature hereby declares that it is the policy of this state to achieve, *whenever feasible and not inconsistent with sound environmental planning*, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to any highway designated a state scenic highway ... and which would be visible from such scenic highways if erected above ground.” (emphasis added.)

¹² Pub. Util. Code § 320.

¹³ See, e.g., *Re Crown Castle Highway 35 Project*, Resolution T-17354 (7:1 ratio); *Re Sunesys UC Santa Cruz Project*, 320 Deviation re Highway 9, Santa Clara County Resolution T-17140 (January 29, 2009) (12:1 ratio); *Re NextG Networks Inc./Sprint Highway 50 Project*, Resolution T-17059 (September 7, 2006) (5.994:1 ratio); and *Re AT&T Deviation re Highway 89 and Highway 50, El Dorado County*, Resolution E-3975 (5:1 ratio).

6. Environmental Review

The Commission is the Lead Agency for this proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the environmental documents and findings prepared by staff pursuant to CEQA before acting upon the project.¹⁴

As the Lead Agency under CEQA, the Commission retained an environmental and engineering consulting firm to analyze the project and determine the environmental impact of the project as it relates to CEQA and the implementation guidelines for CEQA. Following an extensive study, a draft IS/MND was prepared and distributed for public review on March 20, 2014, with the public review period ending on April 18, 2014. The draft IS/MND was distributed to federal, state, and local agency representatives, property owners within 300 feet of the proposed project and other interested individuals. A public notice was published in a local newspaper of general circulation announcing the availability of the draft IS/MND for public review. The Commission established a comment telephone line, fax line and email address for the public to ask questions, provide comments, and obtain additional information on the proposed project analyzed in the draft IS/MND. The only comments received are discussed below.

During the course of development of the IS/MND, the Commission's Energy Division staff met with a representative of the San Mateo County Planning Department who expressed no reservations about the project. In addition, copies of the project documents were sent to the California Coastal

¹⁴ CEQA Guidelines, Section 15074(b).

Commission, California Department of Fish & Wildlife, Office of Historic Preservation, Department of Parks & Recreation, CalTrans District 4, Water Quality Control Board Regions 2 & 3 and the Native American Heritage Commission.

A public meeting was held on April 10, 2014 in Pescadero, California. In addition to Commission staff and consultants, two members of the public attended but no public comments were made.

Four comment letters on the draft IS/MND were received, three from public agencies: the Departments of Transportation and Parks and Recreation, and the Coastal Commission, and one from a member of the public. In response to those comments, changes to the draft IS/MND were deemed appropriate, including:

- Clarification of standard practices regarding inspection of underground construction sites before construction to ensure conflicts with irrigation lines and/or drainage facilities, if present, would be avoided (Transportation);
- Re-routing segments of the proposed project to avoid State Park lands and to underground a 900 foot spur line under the entrance road to the Año Nuevo State Park to facilitate the installation of DAS antenna nodes on existing poles (Parks and Recreation); and
- Modifying one of the stated project objectives to facilitate possible future expansion of wireless service by other carriers utilizing the fiber-optic cable to be installed in this project (Coastal Commission).

The public commenter was referred to specific sections of the IS/MND that address the project's impact on the view shed and undergrounding as a viable option for parts of the project.

Amendments were made to the IS/MND which addressed the environmental impacts such that mitigation measures were no longer needed, and the environmental document became a negative declaration (IS/ND).

On May 11, 2015, the Commission filed a Notice of Availability to Adopt a Final Initial Study/Negative Declaration (IS/ND)¹⁵ with the Office of Planning and Research pursuant to Public Resources Code § 21152 and California Code of Regulations § 15075, with the following findings:

- The Commission finds that the IS/ND was developed in accordance with CEQA and is adequate for the Commission's decision-making purposes as a Lead Agency pursuant to CEQA;
- On the basis of the record as a whole, including the IS/ND, there is no substantial evidence the project will have a significant adverse effect on the environment; and
- The Negative Declaration reflects the Commission's independent judgment and analysis.

7. Discussion

This application was thoroughly reviewed by the Commission's CEQA staff and the Communications Division, and presented to the public and various governmental agencies as required by law. There was no significant opposition to the project, and those environmental concerns which were expressed were addressed by amending the project in such a way as to eliminate the need for any mitigation measures. The project as amended has minimal environmental impact, is consistent with CEQA, will improve access to 911 and other emergency services on Highway 1 and foster competition by helping ensure that existing

¹⁵ The Initial Study/Negative Declaration can be found at:
<http://www.cpuc.ca.gov/environment/info/dudek/crowncastle/CrownCastleMain.htm>.

systems remain compatible with future technological advances in fiber-optic equipment.

Therefore, we will adopt the Final IS/ND and approve the amended application, thereby granting Crown Castle authority to construct DAS facilities in San Mateo County, and permission to deviate from Pub. Util. Code § 320 to construct above-ground facilities as described in the amended application.

8. Categorization and Need for Hearing

In Resolution ALJ 176-3309, dated February 13, 2013, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were necessary. On September 8, 2015, the Assigned Commissioner issued a Scoping Memo and Ruling which confirmed the category as adjudicatory, and found that evidentiary hearings are not required.

9. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

10. Assignment of Proceeding

Catherine J.K. Sandoval is the Assigned Commissioner and Dan H. Burcham is the assigned Administrative Law Judge.

Findings of Fact

1. Notice of the Application was published in the Commission's Daily Calendar on February 13, 2013.
2. No protests have been filed and the Application is uncontested.
3. The Commission's CEQA staff held public meetings, two members of the public attended but no public comments were made.

4. No evidentiary hearings were conducted.
5. Crown Castle holds a CPCN authorizing the provision of FFB telecommunications services in this State.
6. Under D.06-04-063, Crown Castle is required to apply for Commission authorization to perform FFB construction projects and to undergo CEQA review if, based on information submitted by Crown Castle, the Commission's Energy Division finds that the proposed project is not exempt from CEQA and therefore is unable to issue a Notice to Proceed with construction.
7. Crown Castle is applying for authorization to construct a fiber-optic DAS system along portions of State Highway 1 in San Mateo County which have been designated a Scenic Highway.
8. The Commission is the lead agency for the project under CEQA.
9. Crown Castle paid \$4,833.33 to cover the cost of preparing the IS/ND pursuant to Rule 2.5.
10. Commission staff prepared and issued an IS/ND pursuant to CEQA on May 11, 2015.
11. The IS/ND prepared by the Commission analyzes the potential environmental impacts of the project over the entire range of applicable environmental resources and concludes that the project will not have a significant adverse effect on the environment and no mitigation measures are required.
12. Commission staff filed the Final IS/ND with the State Clearinghouse Office of Planning and Research on May 11, 2015, in order to circulate the IS/ND for formal comment. No comments have been received.
13. The Commission has independently considered the IS/ND for Crown Castle's project in its decision-making process in accordance with the CEQA Guidelines Section 15096(f).

14. On the basis of the record as a whole, including the IS/ND, the Commission finds that there is no substantial evidence the project will have a significant effect on the environment.

15. The project will increase the availability of telecommunications services in this State and will help ensure that existing systems remain compatible with future technological advances in fiber-optic equipment.

16. This project will improve critical public safety access to 911 and other emergency services for motorists and emergency first responders in an area that otherwise has little or no wireless coverage.

17. The Final IS/ND must be formally adopted by the Commission for Crown Castle to obtain the necessary construction permits and contracts needed to begin construction.

Conclusions of Law

1. It is not necessary to disturb the preliminary determination made in Resolution ALJ 176-3309 regarding the category of this proceeding; however, in the Assigned Commissioner's Scoping Memo and Ruling it was determined a public hearing is not necessary.

2. The IS/ND developed by Commission staff was prepared pursuant to CEQA and is adequate for the Commission's decision-making purposes.

3. The Final IS/ND is competent, comprehensive, and has been completed in compliance with CEQA and the Public Resources Code.

4. The Final IS/ND reflects our independent judgment.

5. The Final IS/ND should be adopted by the Commission as adequate for our decision-making purposes pursuant to CEQA.

6. Granting Crown Castle's application to construct this project, as described in the amended Application and the IS/ND, is in the public interest.

7. Under Rule 14.6(c)(2), the comment period is waived because this is an uncontested matter where the decision grants the relief requested.

8. In order to expedite construction of the project, approval of this Application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Application of Crown Castle NG West, Inc., for authorization to construct fiber-optic Distributed Antenna System facilities along California State Highway 1 in San Mateo County, as described in the amended application, is granted.

2. The request by Crown Castle NG West, Inc. to deviate from the requirements of Public Utilities Code Section 320 under the terms of Application 13-02-007 is granted.

3. The Final Study/Negative Declaration prepared by Commission staff for Crown Castle NG West, Inc.'s proposed project is adopted.

4. Commission staff shall file a Notice of Determination for the Final Study/Negative Declaration with the State Office of Planning and Research within the time required by law.

5. The Crown Castle NG West, Inc. authorization to construct the Distributed Antenna System project approved by this Order shall expire if not exercised within two years, unless this time is extended at least 30 days in advance of expiration by the Commission's Energy Division.

6. Authorization for Crown Castle NG West, Inc. to construct the Distributed Antenna System project approved by this Order may be revoked or modified,

after giving notice to Crown Castle NG West, Inc., if the public convenience, necessity, or health and safety so require.

7. Application 13-02-007 is closed.

This Order is effective today.

Dated _____, at San Francisco, California.