CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: November 9, 2010

RE: **Conduct a Public Hearing and Upon Conclusion Adopt a Resolution Denying Appeal #A10223 and Upholding the Decision of the Planning Commission to Deny Case #CM10131 for a 41'-5"-tall Monopole Wireless Telecommunications Facility in the Open Space Zone section of Public Right-of-Way on Skyline Blvd. North of the Roberts Park Street Entrance**

SUMMARY

On August 4, 2010, the Planning Commission denied an application by NextG Networks ("NextG") for a Major Conditional Use Permit for a Monopole Wireless Telecommunications Facility in an Open Space Zone section of public right-of-way on Skyline Boulevard north of the Roberts Park street entrance (#CM10131). On August 16, 2010, the applicant NextG timely filed an Appeal of the Planning Commission's decision (#A10223). Staff recommends the City Council deny the Appeal and uphold the Planning Commission's decision to deny the application. This report describes the Appeal and staff's analysis and recommendation. Staff has attached a Resolution to this report.

FISCAL IMPACT

This is an appeal of a Zoning Application; therefore, there is no fiscal impact. Staff time required to process this appeal is cost-covered through the Appeal fees paid by the appellant.

BACKGROUND

Application

On June 3, 2010, NextG submitted a Major Conditional Use Permit application to the Planning and Zoning Department to construct the new Monopole Wireless Telecommunications Facility. The proposal was to install a 41'-5"-foot tall wooden pole with two (2) panel antennas attached at 33'-5" top height. The pole would be set back approximately ten-feet from the edge of street pavement. The pole would also have accessory equipment attached between 7'-6" and 19'-7" in height. All attachments would be painted to match the color of the wooden pole. The applicant

states that the purpose of the project is to improve cellular telephone reception in the area and that other carriers would be eligible to apply to co-locate on or use the services of the pole. The area consists of woodland (predominantly Redwoods) and a regional park (Roberts Park/East Bay Regional Parks District).Very few man-made structures and no similar facilities exist in the immediate area along Skyline Boulevard north of Joaquin Miller Road. For a more detailed description of this area, see ***Attachment D*** (Description of Physical Location).

Prior Determination

On March 12, 2010, NextG submitted an incomplete application to CEDA for poles for telecommunications purposes at four sites along Skyline Boulevard. On April 9, 2010 staff sent out a letter and indicated to NextG that the proposed poles were Monopole Wireless Telecommunications Facilities subject to discretionary approvals pursuant to the Planning Code and deemed the applications incomplete. On May 13, 2010 the Zoning Manager issued an administrative interpretation / determination which stated that the erection of these new and independent poles within the public right-of-way intended for Wireless Telecommunications Facilities, as defined, and regulated, by the Oakland Planning Code included the requirement for Conditional Use Permits. (See ***Attachment B*** for a copy of the zoning manager's determination letter). NextG appealed the determination on the basis that the poles were not Monopoles but rather utility poles and not subject to zoning when located in the public right-of-way. On July 21, 2010 the Planning Commission denied the administrative appeal and upheld the Zoning Manager's determination. A copy of this determination is located at the Planning and Zoning Department located at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland CA 94612. The Planning Commission decision was final and could not be further appealed. The applicant has not challenged the final decision in court.

An application for another site located adjacent to the Chabot Space and Science Center street entrance was denied and appealed. Application for sites adjacent to Marlborough Terrace and generally adjacent to the Sequoia Bayview trailhead have not yet had Planning Commission hearings.

Application Review and Decision

Beginning on June 22, 2010, staff indicated to the applicant in various correspondence that the required legal findings to support the project could not be made because the proposal is not compatible with the surroundings. Staff explained this is because the site is located in an open space zone consisting of woodlands, essentially lacking man-made structures, including but not limited to utility poles, as well as being a regional park that attracts citizens and visitors for appreciation of the natural environment there. Staff then indicated to the applicant their options were therefore to either withdraw the application and request a refund; revise the proposal by, for example, relocating the facility further from the road to conceal it behind trees and redesigning

the facility to further conceal it as best as possible; or move forward to the Planning Commission with a staff recommendation of denial.

On July 26, 2010, staff met with the applicant to discuss the application. Staff reiterated its position including its willingness to support a revised proposal for a concealed facility located away from the public right-of-way. The applicant explained it would not revise its proposal by relocating the proposed facility out of the public rights-of-way due to the fact that the company's model strictly consists of construction within public rights-of-way. Staff advised the applicant that the requirement to locate only within the public right-of-way is artificial and self-imposed; however, in the spirit of working with the applicant to arrive at an acceptable project, staff also expressed willingness to consider a stealth facility such as a light standard containing the facility and located within the public right-of-way. The applicant did not express a desire to revise the proposal and at that time did not request additional time and/or a continuance of the Planning Commission hearing date. Instead, the applicant indicated interest to keep moving forward toward a public hearing with the Planning Commission. This was with the full knowledge that staff could not support the original request and the reasons for staff's position.

On August 4, 2010, the Planning Commission denied the application. As previously stated, staff presented the item and recommended denial because required legal findings could not be made to support the proposal. NextG representatives spoke to the Planning Commission regarding the item and requested a continuance to allow additional time to explore design alternatives within the public right-of-way with staff. The Planning Commission did not grant a continuance and denied the item. The Planning Commission, believing there was no acceptable location within the right-of-way, did indicate to the applicant that a new design and location was welcome for consideration as part of a new application.

On August 16, 2010, Next G Networks timely submitted an Appeal of the Planning Commission's decision to the Planning and Zoning Department.

KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL

The Planning Code indicates that for an appeal of a Planning Commission decision on a Conditional Use Permit: *"The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record."* (OMC Sec. 17.134.070). The basis of NextG's appeal of the Planning Commission's denial is that the Oakland Planning Code does not require a Conditional Use Permit for a utility pole and that the applicant was not allowed an opportunity to present a revised proposal. The appeal also indicates that utilities cannot be required to provide screening or be excluded from public right-of-ways, and furthermore, that the denial renders useless preliminary system construction completed in the area.

The appellant's appeal is attached as ***Attachment A***. The appellant fails to provide a substantive basis for each of the issues raised as required in the appeal form itself and the Oakland Planning Code. The "supposed" bases for the appeal, as contained in the appeal letter, is shown in bold text below. A staff response follows each point in normal type.

Appellant's Arguments

A) The Planning Commission Decision is Inconsistent with Law
B) Minimization of Visual Impact while Achieving Telecommunications Service Objectives

Issues

1. "NextG had reviewed the OPC, and it does not speak to governing utility infrastructure (including telecommunications, cable, electric or other similar infrastructure) in the public right-of-way." (p. 4)

Staff Response:

The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010 classified the facility as a Monopole, not a utility pole as the appellant continuously asserts. The Planning Commission upheld the Zoning Manager's determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

For further explanation of this non-appealable issue, see Staff's Response under Section 2 of the July 21, 2010 Staff Report attached hereto as ***Attachment C***.

Further, as a stand-alone structure being built to support only telecommunications-related equipment, the structure is not considered a utility pole.

2. "As drafted, the Planning Code contemplates private property and becomes nonsensical when applied to the public right-of-way." (p. 4)

Staff Response:

The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010, stated that the Oakland Planning Code does apply to public property and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

By way of explanation and without re-opening this issue, as stated in the staff report to the Planning Commission on the applicant's appeal of the Zoning Manager's determination, the

Planning Code applies to both public and private property in accordance with the following section:

> **Applicability of zoning regulations.**
> To Which Property Applicable. The zoning regulations shall apply, to the extent permissible under other laws, to all property within the city of Oakland, and to property outside Oakland to the extent provided in subsection B of this section, regardless of whether such property is in *private or public* ownership. (OMC Sec. 17.07.040(A))(emphasis added)

For further explanation of this non-appealable issue, see Staff's Response under Section 1 of the July 21, 2010 Staff Report attached hereto as ***Attachment C***.

3. "NextG had reviewed the OPC, and it does not speak to governing utility infrastructure (including telecommunications, cable, electric or other similar infrastructure) in the public right-of-way." (p. 4)

Staff Response:

The City does not prohibit telecommunications facilities in the public rights-of-way. As an example, on May 5, 2010 the Planning Commission approved a Major Conditional Use Permit and Design Review for an AT&T Wireless Telecommunications Facility located within the public right-of-way on Moraga Avenue. Two Major Conditional Use Permit/Design Review applications, one located in the public right-of-way on Moraga Avenue another in the public right-of-way of Shepherd Canyon Road, have been filed by T-Mobile and are pending a public hearing before the Planning Commission.

As stated above, the City has the right to exercise reasonable control as to the time place and manner in which the rights of way are accessed and used. (Pub. Util. Code sec. 7901.1) The Ninth Circuit Court of Appeal has held that the city may consider aesthetics with respect to the siting of wireless facilities. *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F,3d 716, 725 (9th cir. 2009) Here, the Planning Commission denied this particular application for a telecommunications facility in the public right-of-way solely because of aesthetic concerns. The City is open to other design suggestions as well as other locations, but the applicant refused to work with the City in the months leading up to the hearing on the applicant's Major CUP.

4. "Since the City's code does not require CUPs for other users of the public rights-of-way, the City cannot arbitrarily create new criteria just to fit NextG." (p. 4)

Staff Response:

The appellant's assertion is not relevant. The Zoning Manager's determination dated May 13, 2010 classified the facility as a telecommunications facility and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision.

By way of explanation and without re-opening this issue, the City regulates all companies constructing facilities for purpose of wireless telecommunications in the same manner. As a matter of fact, the Planning Commission often rules on applications for Wireless Telecommunications Facilities, including new facilities located within the public rights-of-way, consistent with their authority granted under the OPC. As an example, on May 5, 2010 the Planning Commission approved a Major Conditional Use Permit and Design Review for an AT&T Wireless Telecommunications Facility located within the public right-of-way on Moraga Avenue. Two Major Conditional Use Permit/Design Review applications, one located in the public right-of-way on Moraga Avenue another in the public right-of-way of Shepherd Canyon Road, have been filed by T-Mobile and are pending a public hearing before the Planning Commission. Neither AT&T nor T-Mobile has challenged the applicability of the Planning Code in relation to these projects. The applicant has failed to demonstrate why they should be treated differently from other wireless telecommunications providers especially since the facilities that they desire to erect are the same or similar to those of other providers.

For further explanation of this non-appealable issue, see Staff's Response under Section 4 of the July 21, 2010 Staff Report attached hereto as ***Attachment C***.

5. "The staff report for the above referenced case mischaracterized NextG as acting "for Verizon" and inaccurately referred to NextG's utility pole as a "monopole" and to the public right-of-way as the "lease areas." (p. 5)

Staff Response:

The appeal is for a NextG facility and is being reviewed as such. The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010 stated that the facility desired to be constructed by the applicant is a Monopole Wireless Telecommunications Facility and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

By way of explanation and without re-opening this issue, the project is for a facility determined to be a Monopole Wireless Telecommunications Facility by the Zoning Manager on May 13, 2010 and was therefore analyzed subject to the Telecommunications Ordinance (OMC Ch. 17.128). NextG appealed this decision to the Planning Commission on July 21, 2010. The

Planning Commission upheld the Zoning Manager's determination and such decision is final and non-appealable.

6. "By treating NextG like a wireless carrier, which is (sic) it is not, rather than a regulated CLEC with the same rights and responsibilities as the ILEC and other utility entities, the City violated stated and federal law by managing the public rights-of-way in a discriminatory and unequal manner." (p. 5)

Staff Response:

The appellant's assertion is not relevant or timely; the Zoning Manager's determination dated May 13, 2010 stated that this application was subject to the City's Telecommunications Ordinance and the Planning Commission upheld this determination on Appeal on July 21, 2010, which is a final, non-appealable decision. Appellant has not challenged this determination in court.

By way of explanation and without re-opening this issue, NextG's proposal involved a facility to be constructed for the purposes of wireless telecommunications. The project is therefore subject to City regulations regardless of the company type of the applicant.

NextG has not been exempted from local regulation by the California Public Utility Commission. Staff notes that the Public Utilities Code expressly authorizes a local government to "exercise reasonable control as to the time, place and manner in which roads, highways and waterways are accessed. Pub. Util. Code section 7901.1. The City clearly has time, place and manner control over its rights of ways and facilities in its rights of ways. (see *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F,3d 716, 725 (9th cir. 2009) *Williams Commc'ns, LLC,v. City of Riverside*, 114 Cal App.4th 642,648 (2003)

The City's Telecommunications Regulations apply to all wireless facilities. Section 17.128.010 provides that "The purpose and intent of these regulations are to provide a uniform and comprehensive set of standards for the development, location, siting and installation of wireless facilities. These regulations are intended to balance the needs of wireless communications providers, the regulatory functions of the City of Oakland, the mandates of State and Federal law and the potential impacts on the community and neighboring property owners in the design and siting of wireless facilities." It is the type of facility rather than the licensing of the company that desires to erect the facility that is determinative. The City's telecom ordinance regulates Monopoles in the right of ways. See Section 8 below.

7. "Leaving aside the mischaracterization of NextG's proposed installation, screening from the public right-of-way should not be required for utility infrastructure in the public right-of-way because it is in the public right-of-way." (p. 5)

Pursuant to the City's Telecommunications regulations and Design Review criteria wireless telecommunications antennas must be screened to a degree commensurate with their location, surroundings, and potential for adverse visual impacts. See 17.128.080(B) (Design Review Criteria for Monopoles).

All wireless telecommunications facilities are held to the standards set forth in the City's ordinance. This regulatory ordinance assures that there is no unreasonable discrimination among providers of functionally equivalent services and facilities.

Also, see criteria for conditional use permits generally under Planning Code Section 17.134.050(A), cited in the August 4, 2010, staff report which states in part, that the location, size, design and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density....to harmful effect upon desirable neighborhood character..and to any other impact of the development. The applicant's design proposal is completely incongruous with the location, design and operating characteristics of this open space area, which does not include any similar structures within 500 radial feet of the applicant's proposed location.

Further, Section 17.134.050(B) requires that the location, design, and site planning of the proposed development ....will be as attractive as the nature of the use and its location and setting warrant. This was not case with appellant's proposal, which did not take into account the surrounding open space and natural environment as described previously.

Please note that in its original findings for denial under Attachment A of its August 4, 2010, staff report, CEDA based one its findings on 17.134.050(F), but erroneously cited it as 17.134.050(E).

This finding cannot be made: the proposal does not conform to the Intent of the Urban Open Space of the General Plan: "*To identify, enhance and maintain land for parks and open space. Its purpose is to maintain and urban park, schoolyard, and garden system which provides open space for outdoor recreation, psychological and physical well-being, and relief from the urban environment.*" or to the following Policies of the General Plan's Open Space, Conservation and Recreation (OSCAR) Element:

> POLICY OS-6.1: INTERGOVERNMENTAL COORDINATION
> Coordinate Oakland's open space planning with other agencies, including adjacent cities and counties, the Port of Oakland, and the East Bay Regional Park District.
>
> POLICY OS-10.2: MINIMIZING ADVERSE VISUAL IMPACTS
> Encourage site planning for new development which minimizes adverse visual impacts and takes advantages of opportunities for new vistas and scenic enhancement.

POLICY OS-10.4: RETENTION OF CITY-OWNED OPEN SPACE IN SCENIC CORRIDORS
Retain City-owned parcels adjacent to Skyline Boulevard, Shepherd Canyon Road, and other scenic roadways to preserve panoramic views, vegetation, and natural character.

The location is along a natural wooded corridor serving as a gateway to City and regional parks and facilities. The area offers relief for citizen and area residents from the built environment. The relatively unspoiled character of the area should be maintained for the continued enjoyment by residents and to maintain the economic viability of facilities to attract regional visitors. Furthermore, the East Bay Regional Park District contacted CEDA about their concerns of such an imposing structure in a scenic open space area,

8. "The Findings of Denial under OPC section 17.128.080(B) also makes it clear that collocation of wireless equipment on existing structures is not feasible in the area requiring coverage because it is "completely lacking such structures."" (p. 5)

Staff Response:

There are light standards to the south at the intersection of Joaquin Miller Road and Skyline Boulevard and to the north at the Metropolitan Horsemen's Association building on Skyline Boulevard; there are existing utility poles on Skyline Boulevard north of the Chabot Space and Science Center street entrance.

The applicant has not shown that this is the only location and the only design that will accommodate the applicant's proposed use or that this proposed use is necessary at this site. As noted in this report, the applicant has been unwilling to investigate alternatives that would provide a less intrusive location that would be consistent with the established City policies, including but not limited to the City's General Plan and open space policies. The applicant is encouraged to review and investigate and apply for an alternative location that would be consistent with the City's existing ordinance and policies.

9. "However, this police power must be used reasonably and does not allow municipalities to prohibit access to the public rights-of-way based on visual impact, as the Planning Commission did when it denied NextG's application." (p. 6)

The Design Review and Telecommunications chapters of the Planning Code contains criteria indicating projects must not generate excessive visual impacts, which is part of the aesthetic impacts a city can consider when reviewing the siting of telecommunication facilities. Furthermore, as discussed above, cities have clear authority to regulate the public right of way as to time place and manner and may regulate, including denial of applications, based on aesthetic concerns. Aesthetic concerns are fundamental to the visual fabric of an area. *Sprint PCS Assets,*

LLC v. City of Palos Verdes Estates, 583 F,3d 716, 725 (9th cir. 2009) Here, the location proposed is in an important open space area of the city, which has been protected by numerous city policies, as outlined in the staff report to the Planning commission. The proposed facility is not compatible with the natural environment of the area and there are no similar facilities in that area. The design proposed in NextG's CUP application is incompatible with the open space environment Next G may propose alternative locations or alternative designs that would not have an adverse visual impact on this open space area

NextG has not shown that the proposed location is the only feasible location for their facility, nor that their facility is necessary at this location; NextG has not shown that the City's regulation of the right of way by denying the proposed facility at its proposed location is not reasonable.

Further, the proposal involved unshielded antennas. As an example, the project could be redesigned to utilize shielded antennas attached or mounted inside of a new light standard (light pole).

There are various types of monopoles and antennas that may be used, many of which include shielded antennas. The City has the authority to consider aesthetics with respect to the siting of wireless facilities. Shielding, and co-location on light poles are one of several feasible ways to address aesthetics.

Staff notes that the proposed type of facility can be attached to a light pole and screened by enclosing the antenna in a cylinder that looks like the extension of the light pole. NextG has used this type of installation in other places which removed the need for an additional stand-alone monopole. Next G could also investigate alternative locations where poles are already present and co-locate on existing poles, including light poles, street poles, traffic lights and utility poles.

The ancillary equipment necessary for the antennas can also be screened, including placement underground.

10. "NextG requested it be allowed to work with the Planning Commission and planning staff on a solution in the public right-of-way that minimized adverse visual impact, but this request was denied in favor a complete prohibition of critical telecommunications infrastructure in the public right-of-way." (p. 6)

Staff Response:

As stated earlier the city does not prohibit telecommunications facilities in the public rights of way. NextG has not been willing to apply for an alternative location and design that would meet the requirements of the City's regulations.

As described in the BACKGROUND section of this report, on July 26, 2010 staff met with the applicant to discuss the application. Staff reiterated its position including willingness to support a revised proposal for a concealed facility located out of the public right-of-way. When the applicant explained it would not revise its proposal by relocating the proposed facility out of the public right-of-way due to the fact that the company's model strictly consists of construction within public rights-of-way, staff advised the applicant that the requirement to locate only within the public right-of-way is artificial and self-imposed; however, in the spirit of working with the applicant to arrive at an acceptable project, staff also expressed willingness to consider a stealth facility such as a light standard containing the facility and located within the public right-of-way. The applicant did not express a desire to revise the proposal and at that time did not request additional time and/or a continuance of the Planning Commission hearing date even though CEDA indicated to the applicant that they would be recommending denial of their application based on the design proposal, which did not include any alternatives.

Further, the applicant could also have proposed alternative locations in the right of way that are not located in a open space area of regional significance. The proposed location and design is not compatible with the character of the right of way and the open space area, which does not contain any other large poles such as telephone poles or light standards.

To date, NextG has not been willing to consider alternative locations and designs that would be consistent with the City's regulations (see below).

12. "NextG now respectfully requests City Council accept NextG's proposal to work with the City to find a solution in the public right-of-way that minimized visual impact while also meeting NextG's network coverage objectives in this "dead zone." (p. 6)

Staff Response:

The Applicant has provided alternative proposals with their appeal to replace the proposal that was denied (see ***Attachment A***). The changes essentially consist of switching pole material from wood to metal, adding illumination, locating related equipment on the ground as cabinets, and locating the pole closer to the street entrance. Staff and the Planning Commission have not reviewed the new alternatives NextG proposed in their appeal. To do so requires submittal of a new application to the Planning and Zoning Department as previously indicated by the Planning Commission.

The Applicant has not provided any evidence that the proposed area is in fact a "dead zone." Further the applicant has not provided any evidence that the proposed location and design is the only way of addressing the asserted "dead zone." NextG, as the applicant has the burden to show the lack of available and technologically feasible alternatives to address a significant gap in coverage. At this point, they have not met their burden. There is no evidence before the City that the current location is necessary to close a significant gap in coverage. In addition, only

FCC-licensed providers may assert a significant gap in coverage. Since NextG is not itself an FCC-licensed wireless provider, it is at best unclear whether NextG can assert a significant gap in coverage on its own behalf. If an FCC-licensed provider were to approach the City asserting a significant gap in coverage in this area, that provider would have to show both the significant gap and that the proposed site was the least intrusive means to close that significant gap. No such showing has been made.

The City is not opposed to a facility necessary to close a significant gap from an FCC-licensed provider so long as the facility is located and designed in the least intrusive manner available to close this gap. First, the provider would have to provide evidence of a significant gap in coverage. Then the provider would have to show that the proposed facility was the least intrusive means of addressing this gap in coverage. The facility would have to meet the required findings for a Conditional Use Permit and Design Review. This might be achieved with an alternative design and location such as a stealth facility co-located with a new street standard situated adjacent to a park street entrance. If the provider asserts that it cannot close a significant gap in coverage and still meet the requirements of the City's regulations, the provider would have the burden to prove this and the City could then consider the least intrusive means of closing this significant gap.

However, at this time there has been no showing of a significant gap in service from an FCC-licensed provider or that the proposed monopole, as located and designed is the least intrusive way to close this gap.

ENVIRONMENTAL DETERMINATION

As stated in the Planning Commission report, CEQA statutorily exempts projects which are disapproved (Guidelines Section 15270). Therefore, the City Council's action to uphold the Planning Commission's denial of this application, as recommended in this staff report, is exempt from CEQA.

Staff would note that, given the impacts of the regional park and open space area, the aesthetic concerns and the inconsistencies between the proposed project and the General Plan, as set forth in the Planning Commission's staff report and its determination and in this staff report, should the Council determine that this application should be processed as currently proposed, Staff believes that an initial study under CEQA would be required to determine whether the project has potential significant adverse environmental impacts and what type of environmental review under CEQA is required prior to a consideration of approval of the project that is the subject of this appeal. This review has not occurred because of the staff recommendation for denial and the Planning Commission's determination to deny this application. Analysis under CEQA would be required prior to any further processing for any application for telecommunications facilities, as proposed by this appellant or any other applicant.

SUSTAINABLE OPPORTUNITIES

Economic:
To deny the appeal and disallow construction of a 41'-5" pole might result in the maintained attendance of regional visitors paying fees to visit Roberts Park due to the protection of the natural environment sought by open space enthusiasts.

Environmental:
To deny the appeal and disallow construction of the 41'-5" pole would protect the natural environment in an open space zone.

Social:
To deny the appeal and disallow construction of a 41'-5" pole would protect the experience of citizens including children who live in densely-developed areas of Oakland and rely on the City's open space zone for short respites from the urban environment.

DISABILITY AND SENIOR CITIZEN ACCESS

The appeal or proposed construction would not affect access including to disabled or senior citizens.

RECOMMENDATION(S) AND RATIONALE

Staff recommends the City Council deny the Appeal and uphold the Planning Commission's decision to deny the application. Staff has attached a Resolution for denial to this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council Adopt a Resolution Denying Appeal #A10223 and Upholding the Decision of the Planning Commission to Deny Case #CM10131 for a 41'-5"-tall Monopole Wireless Telecommunications Facility in the Open Space Zone section of Public Right-of-Way on Skyline Blvd. north of the Roberts Park street entrance.

Respectfully submitted,

Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Scott Miller, Zoning Manager
Acting Deputy Director, CEDA

Prepared by:
Aubrey Rose, Planner II
Planning and Zoning Division

FORWARDED TO THE
CITY COUNCIL:

Office of the City Administrator

ATTACHMENTS

A. Appeal letter by Ms. Natasha Ernst (legal counsel)/NextG Networks of California submitted August 16, 2010 (contains Exhibit 4. Alternative Design Proposals)
B. Planning Commission staff report dated August 4, 2010
C. Planning Commission staff report dated July 21, 2010 (contains Appeal letter by Ms. Natasha Ernst/NextG dated May 24, 2010 and Zoning Manager's administrative determination letter dated May 13, 2010)
D. Description of Physical Location

ATTACHMENT A

Appeal letter by Ms. Natasha Ernst (legal counsel)/NextG Networks of California submitted August 16, 2010 (contains Exhibit 4. Alternative Design Proposals)

NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

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August 15, 2010

City of Oakland
Attn: Aubrey Rose
Planning and Zoning Services Division
250 Frank H. Ogawa Plaza, Ste 2114
Oakland, CA 95131

RE: Case File No. CM10131; Skyline Boulevard, public right-of-way adjacent to 10902 Skyline Blvd. (NextG Node No. 30)

Dear Mr. Rose:

Pursuant to City of Oakland Planning Code ("OPC") section 17.134.070, NextG Networks of California, Inc. ("NextG") appeals the Planning Commission decision to deny NextG's major conditional use permit ("CUP") application in the above referenced case. The decision was arbitrary and capricious *first,* because there is no ordinance published within OPC that requires a CUP for a utility pole, and *second,* because even if a CUP could be required, the Planning Commission summarily dismissed the application and issued a denial in spite of NextG's requests to present alternatives.

The application is for placement of a utility pole in a vacant portion of the public right-of-way along Skyline Boulevard near the entrance to the swimming facilities and a bus stop at approximately 10902 Skyline Boulevard. The utility pole will bring critical wireless telecommunications services to this area, which is a well-known "dead zone" in the Oakland Hills. Specifically at issue is the applicability of Public Utilities Code section 7901, and the City's concerns about visual impact of the proposed utility pole in the public right-of-way. The Planning Commission's denial was arbitrary and capricious because the Planning Commission refused to consider alternative options that NextG offered the could minimize visual impact in the public right-of-way, and further, the Planning Commission issued a decision over NextG's protests that the Planning Commission has never previously exercised its authority similarly for placements of other utility poles by regulated utility companies, like NextG.

At this point, NextG has already constructed several miles of fiber optic cable underground in the public rights-of-way that are currently inactive because the appurtenant wireless equipment has been denied permits by the City of Oakland ("City") Planning Commission. This substantial investment is at risk until the City determines it will allow all of NextG's telecommunications

infrastructure in the public right-of-way, pursuant to the authorization granted to NextG by the California Public Utility Commission ("CPUC") under Public Utilities Code section 7901 to construct utility infrastructure, such as utility poles, in the public rights-of-way.

At the public hearing, NextG offered to work with the City on a solution to the visual impact with the understanding that the installation be in the public right-of-way. As discussed below, the Planning Commission erred by requiring a major CUP for a utility pole in the public right-of way and then by denying the application because it found the installation could not be screened from the public right-of-way, as required by major CUP criteria.

NextG would like to work with the City on a solution in the public right-of-way in compliance with state and federal law. NextG respectfully requests that the City Council hear NextG's application *de novo* and issue NextG a permit for either the original utility installation design or one of the alternative designs and locations NextG is offering the City. If the City finds that its current planning code does not require approval by the Planning Commission for utility installations in the public right-of-way, then NextG requests that the City Council require the appropriate City department or division grant NextG's permit pursuant to the same process applied to other public utilities.

Background

NextG is a regulated "telephone corporation" with a statewide franchise under California Public Utilities Code section 7901 with the right to construct utility poles in the public right-of-way. NextG is *not* a wireless company and thus has different rights and responsibilities than the wireless carriers, such as Verizon, Sprint, T-Mobile, etc. Through the process required by California Public Utilities Code §1001 *et seq*, NextG was granted a certificate of public convenience and necessity ("CPCN") by the CPUC, authorizing a statewide franchise under the terms of D 03-01-061 (Jan. 30, 2003). NextG's initial authorization was as a "limited-facilities based provider of telecommunications services," which meant that NextG had no right to install its own poles. In D 07-04-045 (Apr. 12, 2007), the CPUC granted NextG "full-facilities based authority," including the right to install its own utility infrastructure in the public rights-of-ways.

NextG is a wireline telecommunications company with wireless elements to enable it to provide point-to-point radio transport services over fiber optic cable. NextG installed miles of fiber optic cable and approximately twenty-one (21) wireless attachments in the City in its first phase network completed last year. Prior to submitting permits for the second phase of its telecommunications network (also consisting of fiber optic cable and wireless attachments), NextG proactively sought direction from the City Planning and Zoning Division of the Community and Economic Development Agency ("CEDA") regarding the placement of four (4) new utility poles that would ultimately have wireless attachments in addition to electric and communication wire attachments. NextG's government relations director Sharon James was advised by the City's staff member, Mr. Eric Angstadt in February 2010, that the process should be Small Project Design Review. Relying on this direction, NextG prepared master applications and submitted them on March 12, 2010, provided as Exhibit 1.

On April 9, 2010, NextG received a letter from the Planning and Zoning Division stating a contrary position to the one taken when Ms. James consulted with Mr. Angstadt, *i.e.*, that NextG's four (4) new utility poles were considered "monopoles" under the City Planning Code because they include a proposed antenna (even though utility poles installed by other utilities, with even larger attachments of transformers, cable boxes, switches, and other apparatus are not "monopoles"). On April 16, 2010, NextG responded to the City's letter and, hoping to illustrate the stark difference between utility infrastructure like NextG's and other utilities (in the right-of-way) and monopoles (large steel structures installed on private property), NextG provided examples of a utility pole with wireless attachments versus a "monopole" in its letter, attached with all the correspondence between NextG and the City as Exhibit 2. On April 19, 2010, NextG met with the City for further discussion, and the City requested more information regarding NextG's regulatory status and analysis of the City's Planning Code, which was provided on April 29, 2010. On May 13, 2010, the City restated its position from April 9, 2010 that NextG's utility poles are "monopoles" requiring major CUP permits and made a general reference to the telecommunications section 17.128.

NextG filed a major CUP application for the above referenced site. At the same time, NextG appealed the administrative determination on May 24, 2010 and appeared before the Planning Commission on July 21, 2010. NextG argued that its status as a regulated utility under Public Utilities Code section 7901 allowed it to set utility poles in the public right-of-way because it is a utility company, *not a wireless company*. NextG pointed to OPC section 17.11.140, which defines essential service activities to include "telephone distribution lines and poles." The Planning Commission upheld the administrative determination, and NextG did not bring a further challenge.

Prior to the Planning Commission meeting on August 4, 2010, NextG met with staff in order to determine what could be done in order to obtain a staff recommendation of approval of the application, but no resolution could be reached because of staff's insistence that NextG locate its utility pole *outside* of the public right-of-way, in spite of California Public Utilities Code section 7901, which is a specific grant to place utility poles *within* the public right-of-way. As the California Court of Appeals has clearly held, "telephone companies have the right to use the public highways to install their facilities." *Williams Communications, LLC v. City of Riverside*, 114 Cal.App.4th 642 (2003).

On August 4, 2010, NextG appeared before the Planning Commission in support of the above referenced application. NextG explained that there appeared to be confusion regarding NextG's regulatory status and emphasized that it is not a wireless carrier, but rather a regulated utility company with different rights and responsibilities than wireless carriers, particularly the right to set utility poles in the public right-of-way. The Planning Commission denied NextG's application.

For the following reasons, the Planning Commission's decision is in error, an abuse of its discretion, and unsupported by substantial evidence, and therefore, should be reversed by the City Council.

The Planning Commission's Decision is Inconsistent with Law

The Planning Commission, just like City Council, is bound by all applicable federal, state and local laws, including in particular California Public Utilities Code section 7901, which states:

> Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

Put plainly, the Planning Commission's denial of NextG constructing a pole in the public right-of-way for telecommunications services violates section 7901 of California's Public Utilities Code as well as the federal Telecommunications Act of 1996, specifically section 253.

NextG does not dispute that the City has jurisdiction over and the responsibility to manage the public rights-of-way; however, state law and federal law require municipalities treat both competitive local exchange carriers ("CLEC") like NextG and incumbent local exchange carriers ("ILEC") like AT&T in an equal and nondiscriminatory manner. *See TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 79–80 (2nd Cir. 2002) (the City of White Plains, New York ran afoul of the law when it treated the ILEC differently than a CLEC). Public Utilities Code section 7901.1(b) states that the control exercised by municipalities over access to the public rights-of-way "be reasonable" and "at a minimum, be applied to all entities in an equivalent manner." Section 253(c) of the Telecommunications Act requires cities to manage "use of public rights-of-way on a nondiscriminatory basis."

NextG had reviewed the OPC, and it does not speak to governing utility infrastructure (including telecommunications, cable, electric or other similar infrastructure) in the public right-of-way. As drafted, the Planning Code contemplates *private* property and becomes nonsensical when applied to the public right-of-way. By way of example, OPC section 17.11.060 states that a minor CUP is required for "[e]lectric, gas, and telephone distribution lines and poles" in the Open Space Zone. Yet, if the City were to apply this requirement to the public rights-of-way (which it never has), there would be direct conflict with section 17.11.140, which exempts essential services (presumably when in the public right-of-way). In point of fact, there are hundreds of utility poles in the public rights-of-way in the Open Space Zone throughout Oakland, none of which went through the Planning & Zoning Division. This demonstrates not only that the Planning Code does not literally apply (as it is written) to the public rights-of-way, but also that the Planning Code does not (as it is applied) carry over to the public right-of-way.

The City would not require the ILEC to get a major CUP to set a new utility pole in the public right-of-way because, as staff accurately pointed out in its staff report to Case No. A10129, OPC Section 17.11.140 exempts "telephone distribution lines and poles" in the public rights-of-way. Since the City's code does not require CUPs for other users of the public rights-of-way, the City cannot arbitrarily create new criteria just to fit NextG. Indeed, federal courts have held that a local government cannot "arbitrarily invent new criteria" and new processes that do not "go to

any of the criteria set out in the Zoning Code." *T-Mobile vs. Wyandotte County*, 546 F.3d 1299 (10th Cir. 2008*), citing Virginia Metronet, Inc. v. Bd. of Supervisors of James City County., Va.*, 984 F.Supp. 966, 974 n. 14 (E.D.Va.1998); *also see New Par v. City of Saginaw*, 301 F.3d 390, 398 (6th Cir.2002), *Town of Amherst, N.H. v. Omnipoint Commc'ns Enters., Inc.*, 173 F.3d 9, 14 (1st Cir.1999). Therefore, the City's application of the Planning Code to the public right-of-way is in error.

The staff report for the above referenced case mischaracterized NextG as acting "for Verizon" and inaccurately referred to NextG's utility pole as a "monopole" and to the public right-of-way as the "lease area." Treating the public right-of-way as private property loses site of the public rights-of-way as the traditional utility corridor for utility infrastructure, in line with NextG's request to place a utility pole in it. By treating NextG like a wireless carrier, which is it is not, rather than a regulated CLEC with the same rights and responsibilities as the ILEC and other utility entities, the City violated state and federal law by managing the public rights-of-way in a discriminatory and unequal manner.

In addition, the City's management of the public rights-of-way may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). To the extent NextG's telecommunications infrastructure serves wireless communications, the City also must comply with section 332(c)(7)(B)(i)(II), which states that municipalities, "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The Findings for Denial adopted by the Planning Commission found that NextG's installation "would not be compatible with the surrounding open space/region-serving park area, would contain unsightly attached equipment, and would be excessively tall and bulky in comparison to the minimal examples of man-made structures found in the area." Oakland City Planning Commission Staff Report, Case File Number CM10-140, 6 (August 4, 2010) (attached as Exhibit 3). The finding under UCP section 17.128.080(B) item 3 states that "[t]he Monopole would not be screened" from "the road" and thus will be in public view. Leaving aside the mischaracterization of NextG's proposed installation, screening from the public right-of-way should not be required for utility infrastructure in the public right-of-way because it is in the public right-of-way. NextG is a utility, and like other utilities, operates in the utility corridor—the public right-of-way. This finding exemplifies how the OCP was not designed to be applied to the public right-of-way, but rather only to private property.

The Findings of Denial under OCP section 17.128.080(B) also makes is clear that collocation of wireless equipment on existing structures is not feasible in the area requiring coverage because it is "completely lacking such structures." NextG has already installed miles of fiber optic cable underground, but the appurtenant wireless equipment must be above ground with an antenna located at adequate height to meet coverage objectives, namely providing seamless coverage to vehicular traffic so that "drop calls" are avoided in this notorious dead-zone. Michael Libbey, *Verizon Improves Cell Coverage in Some Oakland Hills Areas, but Not Others*, Oakland Hills Examiner (June 20, 2009), available at: http://www.examiner.com/hills-in-oakland/verizon-improves-cell-coverage-some-oakland-hills-areas-but-not-others (last visited Aug. 15, 2010)

(Michael Libbey wrote a series of articles came out in 2009 documenting the lack of cell phone coverage in the Oakland Hills.)

NextG repeatedly explained that it is a regulated utility company with the right to construct utility infrastructure in the public right-of-way, and while it would like to work with staff on a design that it would consider "more compatible" with the surrounding area, all installations had to be in the public right-of-way, pursuant to NextG's authority under state and federal law. NextG requested the Planning Commission instruct staff to work with NextG on a solution in the public right-of-way. The Planning Commission rejected NextG's application and request to find a workable solution, which effectively prohibits NextG from providing telecommunications services in this area of the Oakland Hills, in violation of state and federal laws.

Minimization of Visual Impact while Achieving Telecommunications Service Objectives

NextG understands the City's goal of permitting utility infrastructure that minimizes the visual impact on the surrounding area. Recent case law acknowledged that aesthetics may be considered when determining "when, were and how telecommunications service providers gain entry to the public rights-of-way." *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F.3d 716, 725 (9th Cir. 2009). However, this police power must be used reasonably and does not allow municipalities to prohibit access to the public rights-of-way based on visual impact, as the Planning Commission did when it denied NextG's application.

The court states that "a company can 'access' a city's rights-of-way in both aesthetically benign and aesthetically offensive ways. It is certainly within a city's authority to permit the former and not the later." *Id.* Again, by denying NextG's application completely and refusing to consider *any* construction in the public right-of-way, the Planning Commission violated Public Utility Code section 7901.1 and abused its discretion of what constitutes "visual impact" under the Oakland Comprehensive Plan, Policy OS-10-2. The Finding for Denial recognize that Policy OS-10-2 encourages "site planning for new development that minimizes adverse visual impact." Minimal adverse impact acknowledges that some impact will be made. NextG requested it be allowed to work with the Planning Commission and planning staff on a solution in the public right-of-way that minimized adverse visual impact, but this request was denied in favor a complete prohibition of critical telecommunications infrastructure in the public right-of-way. During the Planning Commission, planning staff also mentioned that it did not have the resources to continue working with NextG to find an acceptable solution, which is not in the Findings of Denial or an acceptable reason for recommending denial.

NextG now respectfully requests City Council accept NextG's proposal to work with the City to find a solution in the public right-of-way that minimized visual impact while also meeting NextG's network coverage objectives in this "dead zone." This section of Skyline Boulevard is very dark and winding and lacks streetlights. NextG would like to work with the City to find an alternative design or location along the ROW, such as a streetlight in the public right-of-way near one of the entrances to park facilities.

For the City's consideration, NextG is attaching as Exhibit 4 a number of photo simulations showing various types of structure near the entrance to the swimming facilities near an existing

bus stop. NextG has designed a number of different options for the City's consideration, including a simple wood pole, a steel pole, or, if the City would like to provide light to the bus stop location, a wood pole with a lighting attachment or a steel pole with a lighting attachment. In all cases, the antennas are attached discretely at the top of the structure, and the equipment is placed aesthetically in nearby ground furniture. NextG hopes that the City finds one of these to be an "aesthetically benign" solution. If not, NextG is willing to continue working with the City to modify the design further.

NextG has also determined that this location will enable it to meet its telecommunications service objective of providing seamless coverage to Skyline Boulevard. A common customer complaint is the "dropped call" experienced when a roadway lacks coverage, which is the situation on Skyline Boulevard in this area. People demand seamless cellphone services always, but particularly in an emergency situation. Some recent high profile incidents where the lack of cell phone coverage compromised people's safety prompted Senator Kerry to reprimand a national wireless provider for inadequate coverage. Matt Pilon, *Sen. Kerry Calls for Better Phone Service*, Amherst Bulletin, available at: http://www.amherstbulletin.com/story/id/177160/ (last visited Aug. 15, 2010).

It is not hard to imagine a similar safety risk along this portion of Skyline Boulevard, which is a dark, winding road without streetlights or other lighting structures. In addition to the lack of vehicular coverage, hikers lost or injured in the woods similarly lack the ability to call for help. Communication is vital everywhere, but particularly in our wildfire and earthquake-prone region. This installation comes equipped with a battery backup unit, enabling communication services to continue even with a power outage. Wireless communications, with its GPS capabilities, provide a link that often means the difference between life and death.

NextG's Facilities Meet All Other Applicable Requirements

The City deemed NextG's application for a major CUP complete, and no other issues were raised in the staff report or at the Planning Commission meeting aside from the visual impact issue. As such, NextG would like to work with the City to resolve this last remaining impediment.

Conclusion

For the reasons stated above, NextG respectfully requests that the City Council hear NextG's application *de novo* and issue NextG a permit for either the original utility installation design or one of the alternative designs and locations NextG is offering the City. If the City finds that its current planning code does not require approval by the Planning Commission for utility installations in the public right-of-way, then NextG requests that the City Council require the appropriate City department or division grant NextG's permit pursuant to the same process applied to other public utilities.

NextG looks forward to working with the City Council, the Planning Commission and planning staff on a successful resolution of this issue.

Best regards,

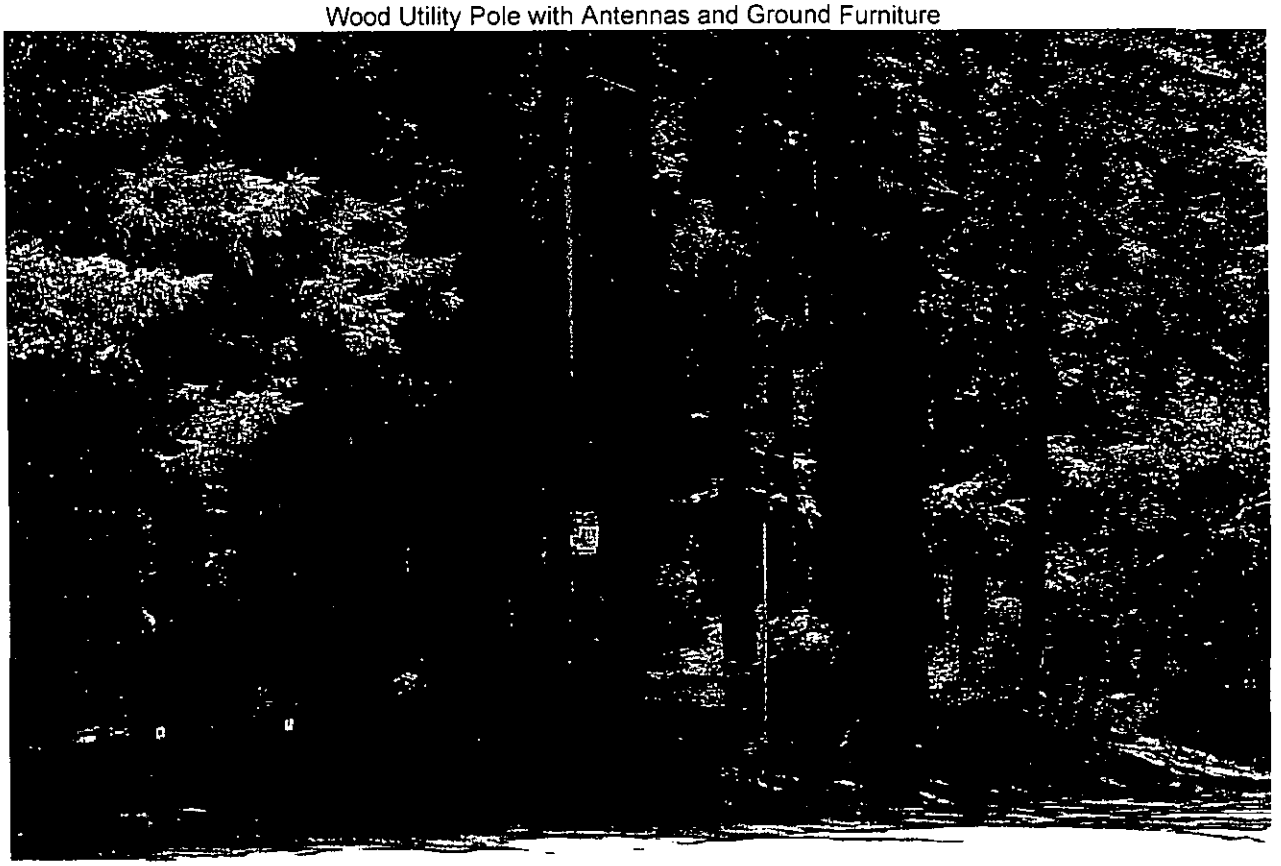
Natasha Ernst
Government & Utility Counsel

Enclosures:
Application Form for Appeal
Appeal fee ($1,352.91)
Exhibit 1. Original Application for Small Project Design Review
Exhibit 2. Correspondence between NextG and the City
Exhibit 3. Staff Report with the Major CUP Application Package
Exhibit 4. Alternative Design Proposals

Exhibit 4: Alternative Design Proposals

Current View

Wood Utility Pole with Antennas and Ground Furniture



Lighting Attachment on Wood Pole with Antennas and Ground Furniture

Lighting Attachment on Steel Pole with Antennas and Ground Furniture

Steel Pole with Antennas and Ground Furniture

ATTACHMENT B

Planning Commission staff report dated August 4, 2010

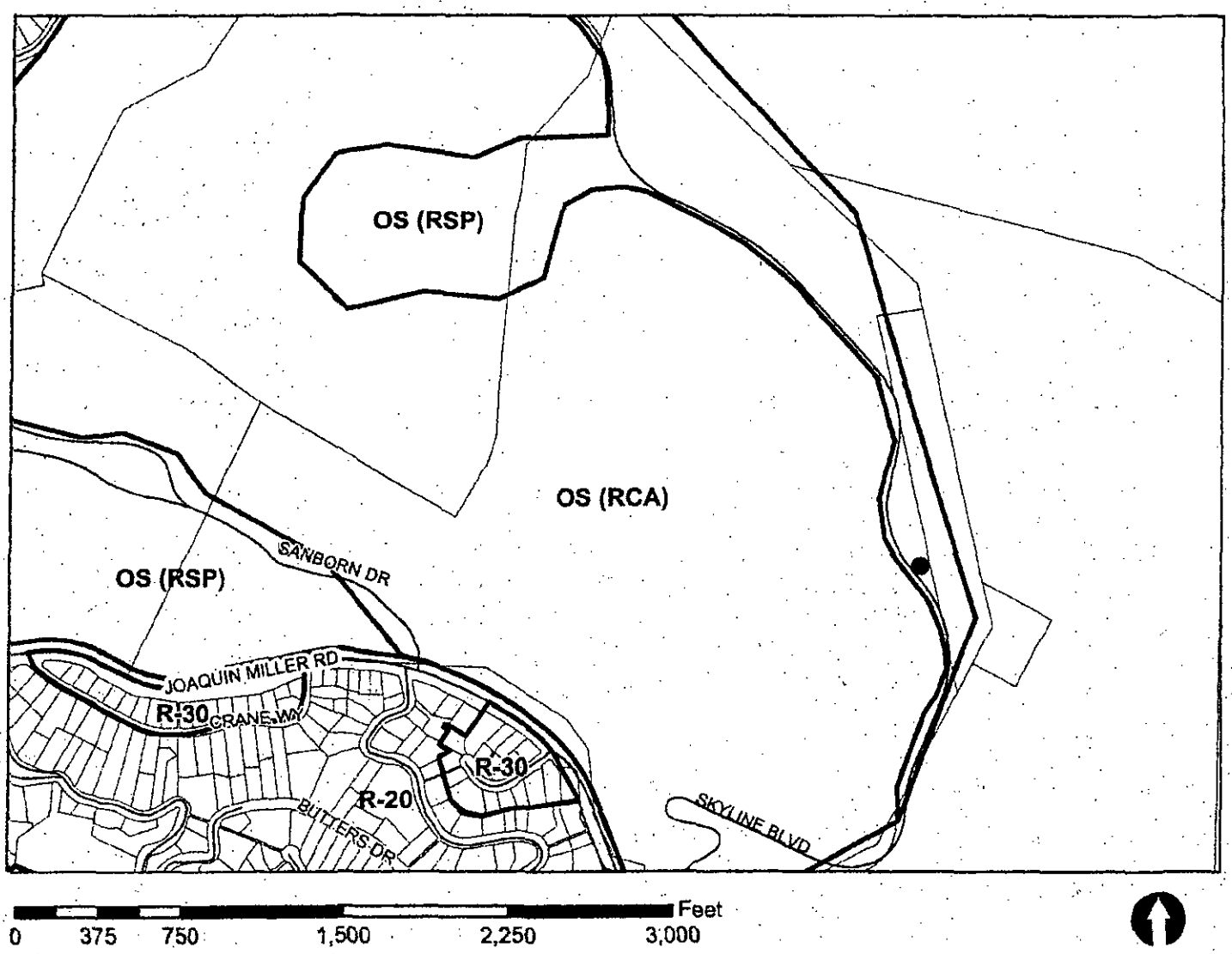
Location:	**Skyline Boulevard (north of Roberts park, east side of street)**
Assessor's Parcel Number:	**None**
Proposal:	To install a 41'-5"-tall Monopole Telecommunications Facility in the public right-of-way along Skyline Boulevard.
Applicant/ Phone Number:	Sharon James / NextG (for Verizon) (408) 426-6629
Owner:	City of Oakland
Planning Permits Required:	Major Conditional Use Permit with two (2) sets of additional findings to allow a Monopole Telecommunications Facility in the OS Zone (OMC Sec. 17.11.080, 128.080(C), 134.020(A)(3)(f))
General Plan:	Urban Open Space
Zoning:	OS (RSP) Open Space (Region-Serving Park) Zone
Environmental Determination:	Exempt, Section 15270 of the State CEQA Guidelines: Projects Which Are Disapproved
Historic Status:	No Historic Status (vacant portion of public right-of-way)
Service Delivery District:	IV – San Antonio/Fruitvale
City Council District:	4 – Quan
Date Filed:	June 3, 2010
Staff Recommendation:	To deny the application
Finality of Decision:	*Appealable to City Council within 10 days*
For Further Information:	Contact case planner **Aubrey Rose, Planner II** at **(510) 238-2071** or arose@oaklandnet.com

SUMMARY

The applicant Sharon James of NextG (for Verizon) requests Planning Commission approval of a Major Conditional Use Permit with two (2) sets of additional findings to install a 41'-5"-tall Monopole Telecommunications Facility in the public right-of-way. The request requires Planning Commission review, pursuant to the Planning Code, because the proposed project involves a Monopole in an Open Space Zone.

Staff recommends denial of the requested permits as described in this report, subject to Findings for Denial (Attachment A).

CITY OF OAKLAND PLANNING COMMISSION



Case File: CM10-131
Applicant: Sharon James/NextG
Address: Skyline Blvd, east side of street (north of Roberts Park entrance)
Zone: OS (RSP)

PROPERTY DESCRIPTION

The property is an unpaved portion of City public right-of-way situated alongside a two-way section of Skyline Boulevard lacking sidewalks. The site is adjacent to the street entrance to Roberts Park (East Bay Regional Park District), indicated by signage. To the rear of the site is a fire trail leading into the park with a wooden fence facing the street. Both sides of the street are lined by forests consisting primarily of Redwoods. The only man-made features present at or adjacent to the site are the park sign, trail fence, and No Parking Signs. The closest structures similar in height are traffic signals and lights standards located at the terminus of Joaquin Miller Drive at Skyline Boulevard located approximately 2,500-radial-feet to the south and a light standard on Skyline Boulevard located approximately 2,000-radial-feet to the north located at a crosswalk. There are no structures directly along the public right-of-way close to the height of the proposed poles in proximity to the proposed site.

PROJECT DESCRIPTION

The project is to install a 41'-5"-foot tall wooden Monopole Telecommunications Facility with two (2) panel antennas attached to the 41'-5" wooden pole at 33'-5" top height. The lease area would measure a few square feet in area and the Monopole would be set back approximately ten-feet from the edge of street pavement. The Monopole would also have a utility meter, equipment cabinet (24" tall x 36"wide x 14" deep) and large battery (33" tall x 6" wide x 6" deep) attached to it at between 7'-6" and 19'-7" in height, respectively. All attachments will be painted to match the color of the wooden pole. The purpose of the project is to improve cellular telephone reception in the area. Other carriers would be eligible to apply to co-locate on or use the services of the Monopole.

GENERAL PLAN ANALYSIS

The proposed project site is located in an Urban Open Space of the General Plan's Land Use & Transportation Element (LUTE). The Intent of the area is: "*To identify, enhance and maintain land for parks and open space. Its purpose is to maintain and urban park, schoolyard, and garden system which provides open space for outdoor recreation, psychological and physical well-being, and relief from the urban environment.*" The site is located in a Maintain and Enhance area of the LUTE. The proposal does not conform to the LUTE or to the following Policies of the General Plan's Open Space, Conservation and Recreation (OSCAR) Element:

> POLICY OS-6.1: INTERGOVERNMETNAL COORDINATION
> Coordinate Oakland's open space planning with other agencies, including adjacent cities and counties, the Port of Oakland, and the East Bay Regional Park District.
>
> POLICY OS-10.2: MINIMIZING ADVERSE VISUAL IMPACTS
> Encourage site planning for new development which minimizes adverse visual impacts and takes advantages of opportunities for new vistas and scenic enhancement.
>
> POLICY OS-10.4: RETENTION OF CITY-OWNED OPEN SPACE IN SCENIC CORRIDORS
> Retain City-owned parcels adjacent to Skyline Boulevard, Shepherd Canyon Road, and other scenic roadways to preserve panoramic views, vegetation, and natural character.

The proposal is not in conformance with the General Plan. The location is along a natural wooded corridor serving as a gateway to a City facility and regional park. The area offers relief for citizens and

area residents from the built environment. The character of the area should be maintained for the continued enjoyment by residents and to maintain the economic viability of facilities to attract regional visitors.

ZONING ANALYSIS

The proposed project site is located within the OS (RSP) Open Space (Region-Serving Park) Zone. The Intent of the OS (RSP) Zone is: *"to create, preserve, and enhance land for permanent open space to meet the active and passive recreational needs of Oakland residents and to promote park uses which are compatible with surrounding land uses and the city's natural environment. The zone is typically appropriate in areas of public open space only."* The proposal is not consistent with the Intent of the Zoning District or with the following Purposes of the Zoning regulations:

> *"To especially protect and improve the appearance and orderliness of major trafficways and transit lines and views therefrom, thereby increasing the enjoyment of travel, reducing traffic hazards, and enhancing the image of Oakland derived by residents, businesspeople, commuters, visitors, and potential investors;*
>
> *To protect the very substantial public investment in, and the character and dignity of, public buildings, open spaces, thoroughfares, and rapid transit lines"* (OMC Sec. 17.07.030(L), (M))

The proposal is also not consistent with the following development standard for Monopoles:

> *The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground.* (OMC Sec. 17.128.080(A)(2))

In conclusion, the proposal is inconsistent with the Planning Code and findings required to approve the project cannot be made (Attachment A – Findings for Denial). The proposed structure would not preserve open space and would not be compatible with the minimal built environment and prevailing natural environment in the area. The design is bulky as it would contain equipment and the area does not contain any other large poles such as light standards, telephone poles, or telecommunications facilities such as monopoles. Lastly, the proposed facility is not complementary to Roberts Park.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily exempt projects which are disapproved (Section 15270) and the proposal is therefore not subject to further Environmental Review.

KEY ISSUES AND IMPACTS

The applicant has submitted a Site Design Alternatives Analysis as required for a facility lacking concealment. The Analysis indicates no preferred sites containing buildings for attachment located within the area. Staff finds the Analysis to hold merit, especially since the Analysis is generally meant to apply to facilities that are smaller than a Monopole and can be attached to a building. However, the proposal would create adverse impacts to a wooded corridor serving as a gateway to City and regional facilities located in a park/open space area. Staff is not opposed to the use; however, due to lack of concealment, the facility would be incompatible with the surrounding natural environment. Therefore,

staff recommends the Planning Commission deny the requested Major Conditional Use Permit and two (2) sets of additional findings for a Monopole Telecommunications Facility in the Open Space Zone.

East Bay Regional Park District representatives have contacted the Planning & Zoning Department to express concern regarding the application, due to the proximity of the project site to the entrance of Roberts Park.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Deny the Major Conditional Use Permit and two (2) sets of additional findings.

Prepared by:

AUBREY ROSE
Planner II

Approved by:

SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:

ERIC ANGSTADT
Deputy Director
Community and Economic Development Agency

ATTACHMENTS:

A. Findings for Denial
B. Plans with Photo-Simulations
C. Network diagram (general)
D. Site Design Alternatives Analysis
E. Radio Frequency Analysis (RF Emissions Report) by Jerrold T. Bushberg dated May 20, 2010

Attachment A: Findings for Denial

This proposal does not meet the required findings under General Use Permit Criteria (OMC Sec. 17.134.050), Conditional Use Permit Criteria for Monopoles (OMC Sec. 17.128.080(C)), and Design Review for Monopoles (OMC Sec. 17.128.080(B)), as set forth below. Required findings that cannot be made are shown in bold type; explanations as to why these findings cannot be made are in normal type.

SECTION 17.134.050 – GENERAL USE PERMIT CRITERIA:

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

This finding cannot be made: the proposed Monopole would not be compatible with the surrounding open space/region-serving park area, would contain unsightly attached equipment, and would be excessively tall and bulky in comparison to the minimal examples of man-made structures found in the area. The design of the tall pole with attached equipment along a scenic stretch of Skyline Boulevard that is unencumbered by similar man-made structures (including power poles and light standards) will adversely affect the neighborhood character. Manmade objects in the vicinity are essentially limited to necessary No Parking signs, a trail fence, and a regional park sign, which are much smaller than the proposed 41'-5"-tall Monopole.

E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.

This finding cannot be made: the proposal does not conform to the Intent of the Urban Open Space of the General Plan: "*To identify, enhance and maintain land for parks and open space. Its purpose is to maintain and urban park, schoolyard, and garden system which provides open space for outdoor recreation, psychological and physical well-being, and relief from the urban environment.*" or to the following Policies of the General Plan's Open Space, Conservation and Recreation (OSCAR) Element:

> POLICY OS-6.1: INTERGOVERNMENTAL COORDINATION
> Coordinate Oakland's open space planning with other agencies, including adjacent cities and counties, the Port of Oakland, and the East Bay Regional Park District.
>
> POLICY OS-10.2: MINIMIZING ADVERSE VISUAL IMPACTS
> Encourage site planning for new development which minimizes adverse visual impacts and takes advantages of opportunities for new vistas and scenic enhancement.
>
> POLICY OS-10.4: RETENTION OF CITY-OWNED OPEN SPACE IN SCENIC CORRIDORS
> Retain City-owned parcels adjacent to Skyline Boulevard, Shepherd Canyon Road, and other scenic roadways to preserve panoramic views, vegetation, and natural character.

The location is along a natural wooded corridor serving as a gateway to City and regional parks and facilities. The area offers relief for citizen and area residents from the built environment. The relatively unspoiled character of the area should be maintained for the continued enjoyment by residents and to

maintain the economic viability of facilities to attract regional visitors. Furthermore, the East Bay Regional Park District contacted CEDA about their concerns of such an imposing structure in a scenic open space area.

SECTION 17.128.080(C) – CONDITIONAL USE PERMIT CRITERIA FOR MONOPOLES.

1. The project must meet the special design review criteria listed in subsection B of this section.

These findings cannot be made as described in the following section of this Attachment.

3. The proposed project must not disrupt the overall community character.

This finding cannot be made: the area consists predominantly of the natural environment featuring Redwood groves. Manmade objects in the vicinity are essentially limited to necessary No Parking signs, a trail fence, and a regional park sign. The addition of a tall pole supporting equipment along a scenic stretch of Skyline Boulevard that is **unencumbered** by similar man-made structures (including power poles and light standards) will disrupt the overall community character.

SECTION 17.128.080(B) – DESIGN REVIEW CRITERIA FOR MONOPOLES.

1. Collocation is to be encouraged when it will decrease visual impact and collocation is to be discouraged when it will increase negative visual impact.

The project does not involve collocation; the proposal is to install new facilities in an area completely lacking such structures.

2. Monopoles should not be sited to create visual clutter or negatively affect specific views.

The Monopole would negatively impact a wooded corridor essentially serving as a gateway to a City facility and regional park. The only manmade structures along this stretch of Skyline Boulevard are No Parking signs, a park entrance sign, and a trail fence, which are much smaller than the proposed 41'-5"-tall Monopole. Installation of such tall structures where none exist would adversely impact the aesthetic quality of the area. Furthermore, it is not clear from NextG whether additional Monopoles in this area would be necessary to completely service Verizon's needs. See Attachment C for a depiction of how NextG's system works. It is our understanding that a minimum of 6-8 Monopoles are needed to service the facility housing the base station equipment, which would further dramatically affect specific views and create greater visual clutter.

3. Monopoles shall be screened from the public view wherever possible.

The Monopole would not be screened; it would be ten-feet from the road in an area where no other structures similar in height exist and would have bulky equipment attached to such Monopole

4. The equipment shelter or cabinet must be concealed from public view or made compatible with *the architecture of the surrounding structures or placed underground. The shelter or cabinet must* be regularly maintained.

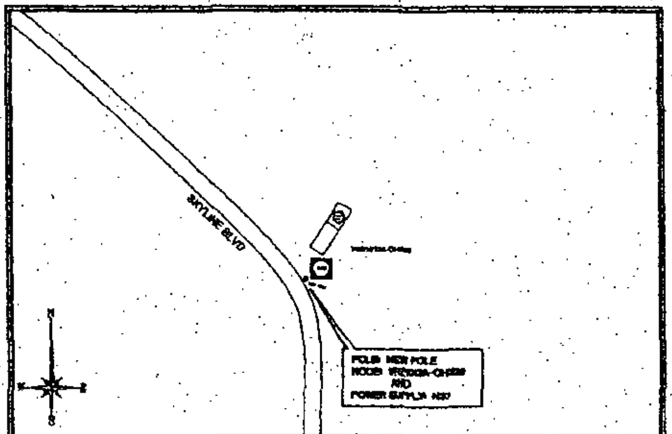
The equipment cabinet would be pole mounted and therefore would not be screened. The pole would therefore be bulky in comparison with a facility having ground-mounted equipment.

5. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district as much as possible. Wireless communication towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

The Monopole would be incompatible with the area consisting of open space with parks and no tall manmade structures because it would not be concealed. The proposed structure would not preserve open space and would not be compatible with the minimal built environment and prevailing natural environment in the area. The design is relatively bulky as it would contain equipment and the area does not contain any other large poles such as light standards, telephone or power poles, or telecommunications facilities such as monopoles.

NextG Networks Inc.

OAKLAND HILLS
VRZ1013A-OHN30
10000 SKYLINE BLVD.
OAKLAND, CA. 91649



VICINITY MAP

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SHEET	DESCRIPTION	REV.
1	TITLE SHEET	0
2	UTILITY NODE / REPEATER POLE EQUIPMENT PROFILES	0
3	SYSTEM OVERVIEWS	0
4	UTILITY POLE EQUIPMENT TYPICALS	0
		0
		0
		0

SHEET INDEX

[illegible]

CODE COMPLIANCE

PROPERTY INFORMATION

CUSTOMER:	[illegible]
PROJECT:	OAKLAND HILLS
NODE:	[illegible]
LATITUDE:	37.81530
LONGITUDE:	-122.17760
STREET ADDRESS:	10000 SKYLINE BLVD.
CITY, STATE:	OAKLAND, CA 91649
POLE #:	NEW POLE
POLE TYPE:	WOOD UTILITY POLE
RAD CENTER / ANTENNA HEIGHT:	32'-6"
ANTENNA TYPE:	[illegible]
AZIMUTH FOR ANTENNA:	[illegible]
POWER TO POLE:	METERED AT NODE
POLE ACCESS:	STREET ACCESS
POLE OWNER:	N/A
POLE LOCATION & DESCRIPTION:	[illegible]

PROJECT SUMMARY

[illegible]

PROJECT DESCRIPTION

[illegible]

PROJECT SCOPE

DO NOT SCALE DRAWINGS

[illegible]

GENERAL CONTRACTOR NOTES

NextG Networks Inc.

PROJECT INFORMATION:

10000 SKYLINE BLVD.
OAKLAND, CA 91649

CURRENT ISSUE DATE:

2/25/10

PERMIT SUBMISSION:

REV. | DATE | DESCRIPTION

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks Inc.

REP:

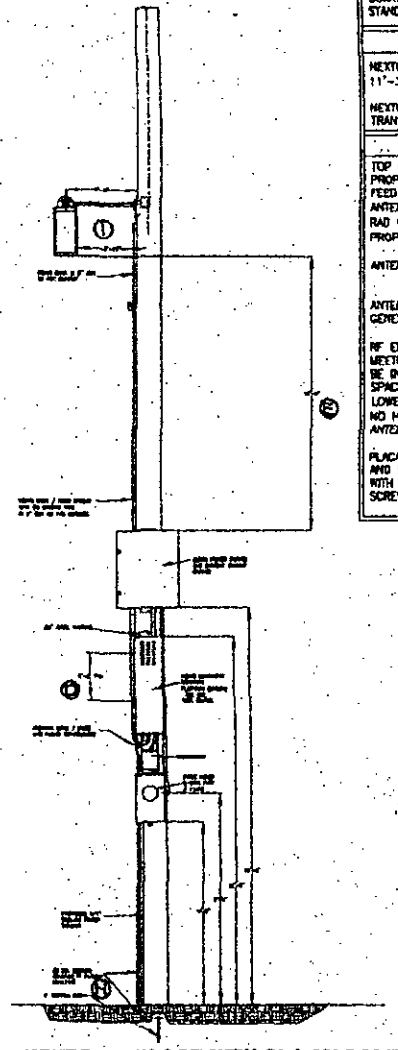
COMMENTS:

SHEET TITLE:

NEXTG NETWORKS
OAKLAND HILLS PROJECT
POLE PROFILE VRZ1013A-OHN30

SHEET NUMBER: | REVISION:

1 | 1 OF 4



NEXTG TO PLACE NEW CL4 40' POLE

UTILITY POLE DETAIL | POLE# NEW POLE | LOOKING WEST | A

MAKE READY

QUARTER STEP POLE ACCORDING TO GO95 STANDARDS

NEW CONSTRUCTION

NEXTG TO INSTALL SHROUD KIT SH001 @ 11'-3" AGL

NEXTG TO PLACE NEW METAL POLE AND TRANSFER ALL SIGNAGE.

NOTES:

TOP OF POLE: 41'-5"
PROPOSED SECONDARY: UNDERGROUND FEED.
ANTENNA RAD H.O.A: 33'-5"
RAD CENTER OF ANTENNA: 32'-0"
PROPOSED NEXTG H.O.A: 29'-0"

ANTENNA TYPE: 12"X24" ANDREW DIRECTIONAL ANTENNA(S).

ANTENNA OUTPUT DOES NOT EXCEED GENERAL POPULATION EXPOSURE LIMITS.

RF EMISSION PLACARDS / SIGNAGE MEETING THE FCC REQUIREMENTS SHALL BE IN A LOCATION VISIBLE FROM CLIMBING SPACE AND BE AFFIXED TO THE POLE NO LOWER THAN 6'-0" ABOVE GROUND LINE & NO HIGHER THAN 3'-0" BELOW THE ANTENNA.

PLACARDS / SIGNAGE ARE UVA RESISTANT AND SHALL BE ATTACHED TO THE POLE WITH GALVANIZED NAILS OR GALVANIZED SCREWS.

Ⓐ – 48" MIN. CLEARANCE BETWEEN SECONDARY POWER AND LOWEST POINT OF ANTENNA ASSEMBLY. –NOT APPLICABLE–

Ⓑ – STEP POLE TOP EXTENSION AS PER DETAIL DWG. –NOT APPLICABLE–

Ⓒ – 40" MIN CLEARANCE REQ'D.

Ⓓ – 24", SPACING MIN.

Ⓔ – 72" MIN. TO SECONDARY LEVEL.

Ⓕ – 12" MIN. SPACING FOR EQUIP TO CURB. –NOT APPLICABLE–

Ⓖ – 15" MIN. (MAY BE REDUCED TO 8" WHEN NOT EXPOSED TO TRAFFIC).

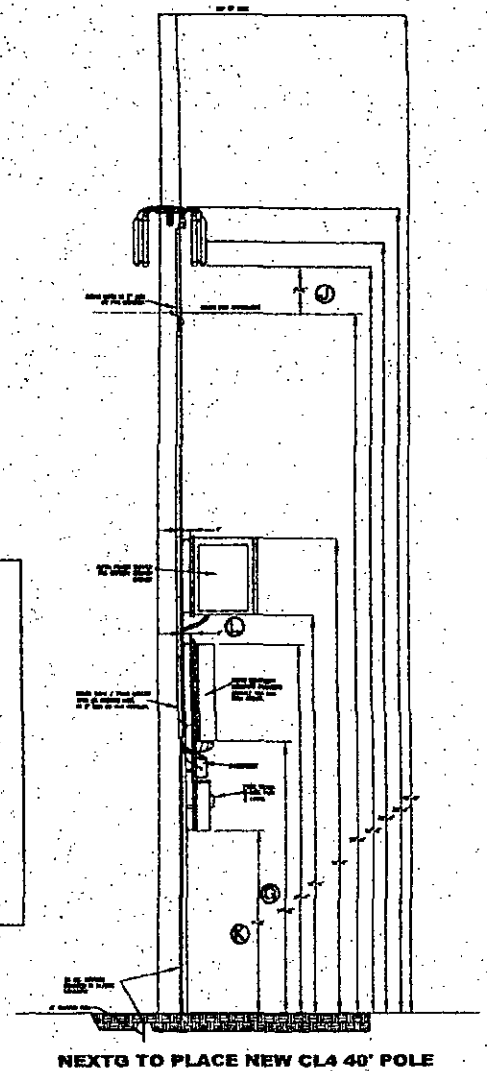
Ⓗ – GROUND INSTALLED BY COMM COMPANY (INCLUDES 8' COPPER ROD).

Ⓘ – 24" MIN. FROM CENTER OF POLE.

Ⓙ – 24" MIN. CLEARANCE REQ'D.

Ⓚ – 7' MIN. / 8' MAX. REQ'D.

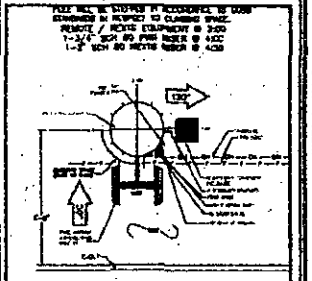
Ⓛ – 4" MIN. CLEARANCE BETWEEN EQUIPMENT AND POLE.



NEXTG TO PLACE NEW CL4 40' POLE

UTILITY POLE DETAIL | POLE# NEW POLE | LOOKING NORTH | B

SITE POLE PICTURE | C



POLE# NEW POLE
RISER POLE DETAIL | D

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NextG Networks Inc.

PROJECT INFORMATION:

CURRENT ISSUE DATE:
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PLANS APPROVED BY:
NextG Networks Inc.

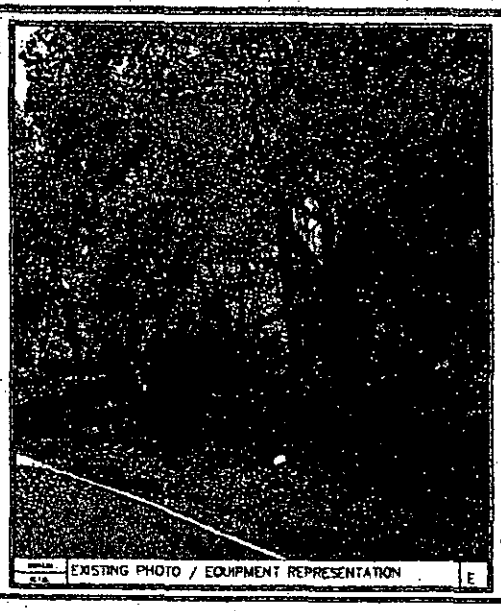
REP:

COMMENTS:

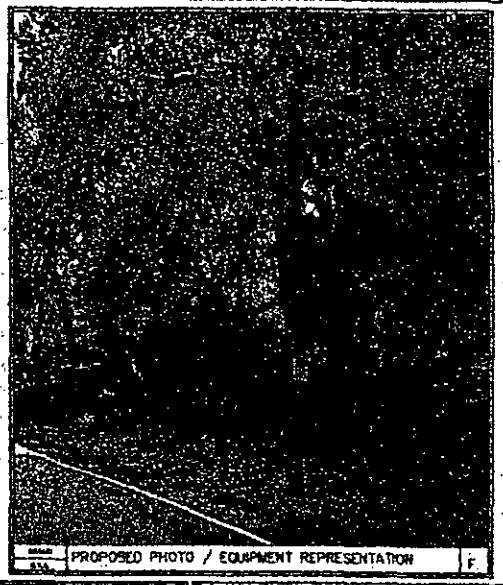
SHEET TITLE:
NEXTG NETWORKS
OAKLAND HILLS PROJECT
POLE PROFILE

SHEET NUMBER | REVISION
2 | 2 OF 4

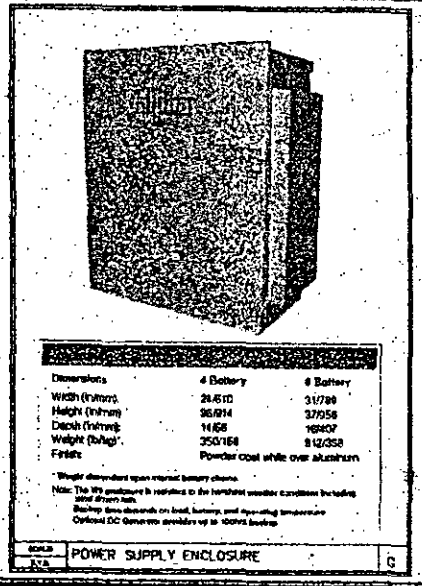
UTILITY NODE / REPEATER POLE EQUIPMENT PROFILES



EXISTING PHOTO / EQUIPMENT REPRESENTATION E

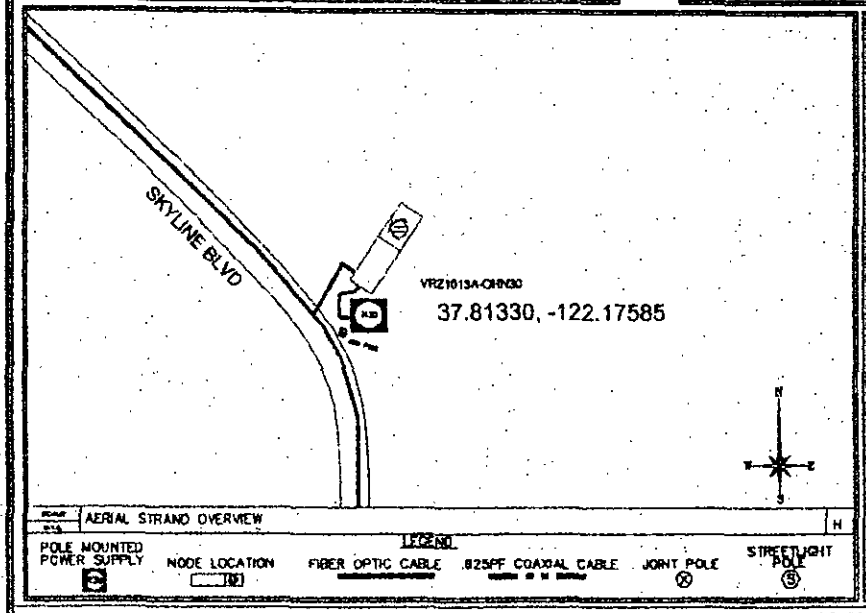


PROPOSED PHOTO / EQUIPMENT REPRESENTATION F



Dimensions	4 Battery	8 Battery
Width (in/mm)	24/610	31/788
Height (in/mm)	36/914	37/956
Depth (in/mm)	14/356	16/407
Weight (lb/kg)*	350/158	512/358
Finish	Powder coat white over aluminum	

POWER SUPPLY ENCLOSURE G



AERIAL STRAND OVERVIEW H

LEGEND

POLE MOUNTED POWER SUPPLY | NODE LOCATION (N) | FIBER OPTIC CABLE | .625PF COAXIAL CABLE | JOINT POLE ⊗ | STREETLIGHT POLE (S)

AERIAL/ POLE LOCATION REPRESENTATION I

SYSTEM OVERVIEWS

NextG Networks Inc.

PROJECT INFORMATION

CURRENT ISSUE DATE: 2/25/10

FIRST SUBMISSION:

REV.	DATE	DESCRIPTION

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

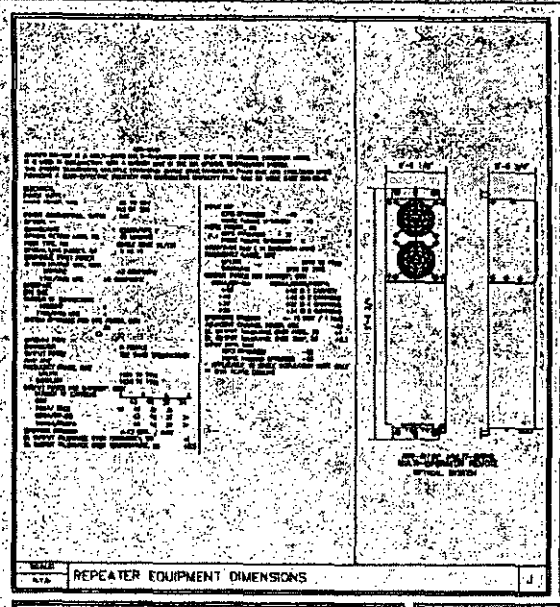
NextG Networks Inc.

COMMENTS:

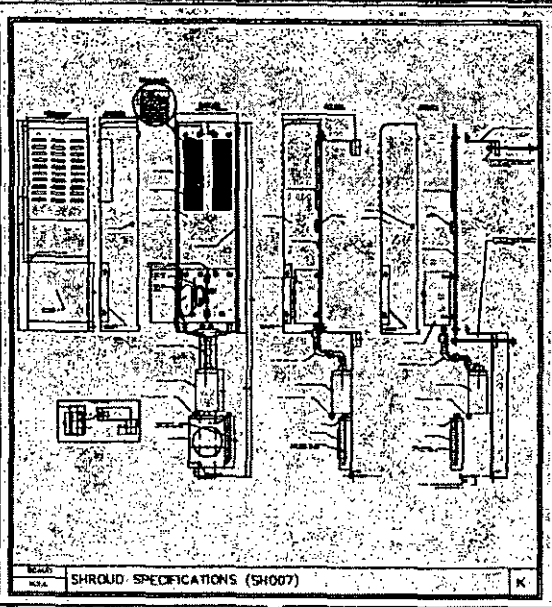
SHEET TITLE:

NEXTG NETWORKS
OAKLAND HILLS PROJECT
POLE PROFILE VICINITY/AERIAL DRAWS
(POWER SUPPLY LOCATION)

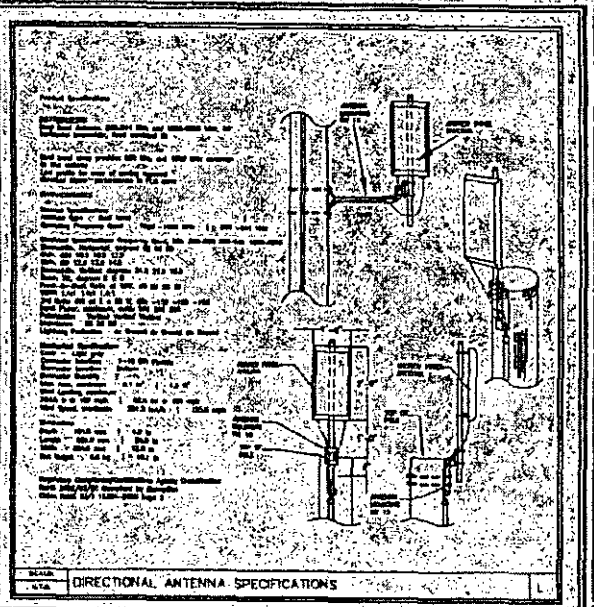
SHEET NUMBER: 3 REVISION: 3 OF 4



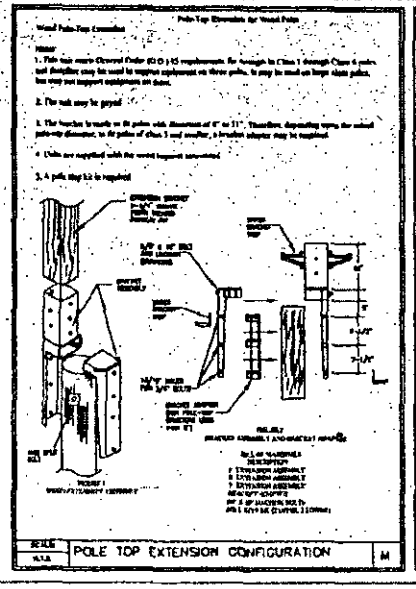
REPEATER EQUIPMENT DIMENSIONS — J



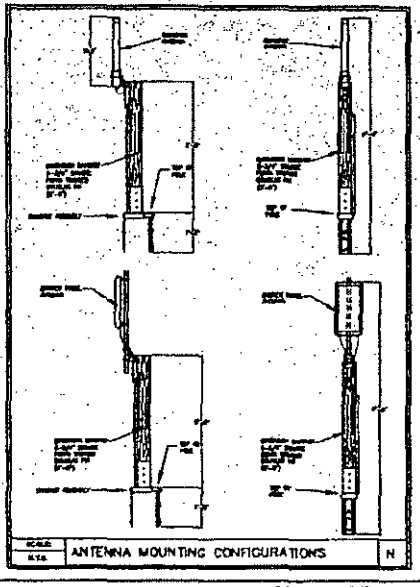
SHROUD SPECIFICATIONS (SH007) — K



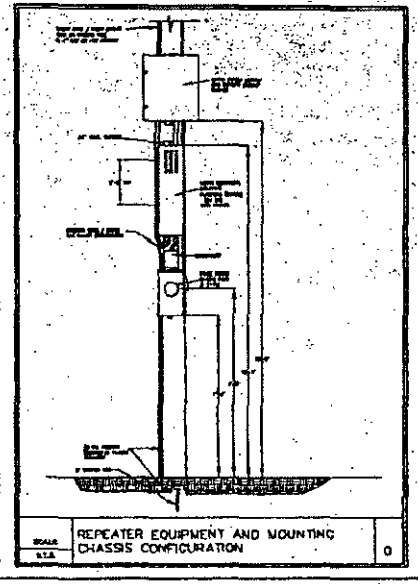
DIRECTIONAL ANTENNA SPECIFICATIONS — L



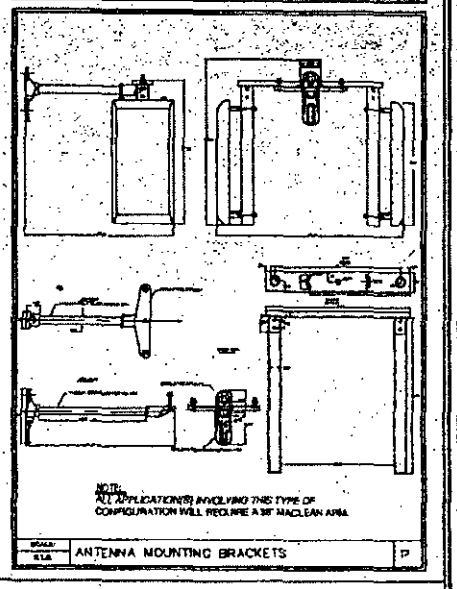
POLE TOP EXTENSION CONFIGURATION — M



ANTENNA MOUNTING CONFIGURATIONS — N



REPEATER EQUIPMENT AND MOUNTING CHASSIS CONFIGURATION — O



NOTE:
ALL APPLICATION(S) INVOLVING THIS TYPE OF CONFIGURATION WILL REQUIRE A 30' MACLEAN ARM.

ANTENNA MOUNTING BRACKETS — P

UTILITY POLE EQUIPMENT TYPICALS

NextG Networks Inc.

PROJECT INFORMATION:

CURRENT ISSUE DATE: 2/25/10

PERMIT SUBMISSION:

REV	DATE	DESCRIPTION

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks Inc.

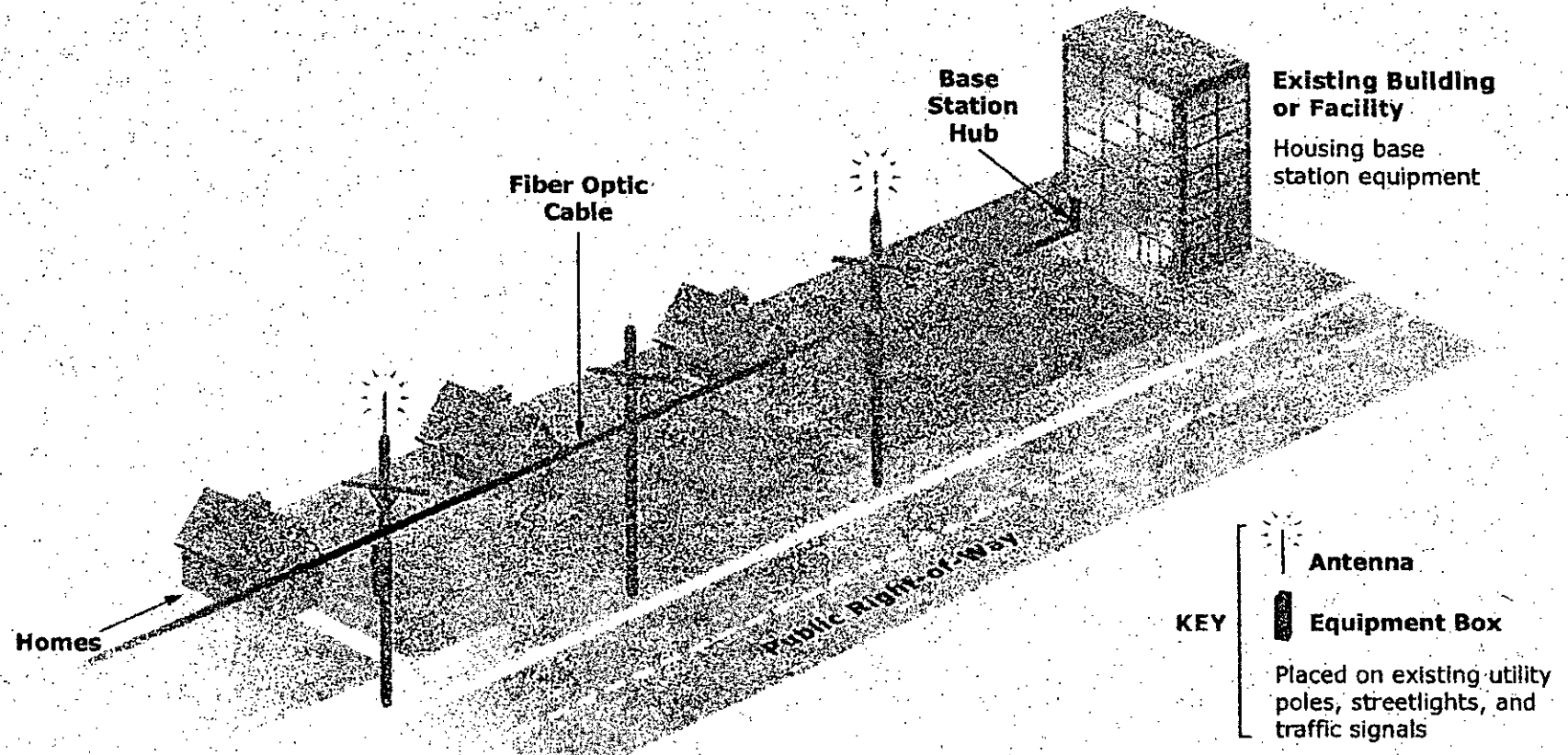
RF:

COMMENTS:

SHEET TITLE:

NEXTG NETWORKS
OAKLAND HILLS PROJECT

SHEET NUMBER: 4 — REVISION: 4 OF 4


Base Station Hub
Existing Building or Facility
Housing base station equipment
Fiber Optic Cable
Homes
Public Right-of-Way
KEY
Antenna
Equipment Box
Placed on existing utility poles, streetlights, and traffic signals

Alternative Analysis

Project Address: **Public Right-of-way at approximately 10000 Skyline Boulevard**

From the Oakland City Municipal Code 17.128.120, NextG reviewed each of the criteria listed for alternative analysis.

New wireless facilities shall generally be designed in the following order of preference:

A. Building or structure mounted antennas completely concealed from view.
- Not Applicable. The NextG design proposes to install a new wood utility pole in the Public right-of-way and does not propose to attach to buildings. The wood pole can not be concealed from view.

B. Building or structure mounted antennas set back from roof edge, not visible from public right-of way.
- Not Applicable. The NextG design does not include roof tops and utilizes the public right-of-way almost exclusively.

C. Building or structure mounted antennas below roof line (façade mount, pole mount) visible from public right-of-way, painted to match existing structure.
- Not Applicable. The NextG design does not include buildings or structures in its deployment.

D. Building or structure mounted antennas above roof line visible from public right-of-way.
- Not Applicable. The NextG design does not include buildings or structures in its deployment.

E. Monopoles.
- We need to install a new wood utility pole. City of Oakland Planning defines our installation a Monopole, however, there are none in the PROW where we need coverage and the traditional "monopole" does not fit our business model which only allows for attachment to utility poles.

F. Towers.
- We need to install a new wood utility pole. Our proposed design is defined as a "monopole" by the City of Oakland Planning department. NextG's business model only allows for attachment to utility poles in the PROW. There are no Towers that fit our business model or are in the PROW.

JERROLD T. BUSHBERG Ph.D., DABMP, DABSNM
♦*HEALTH AND MEDICAL PHYSICS CONSULTING*♦

7784 Oak Bay Circle Sacramento, CA 95831
(800) 760-8414–jbushberg@hampc.com

Christopher D. Hourigan
NextG Networks
2216 O'Toole Ave
San Jose CA 95131

May 20, 2010

Introduction

At your request, I have reviewed the technical specifications and calculated the maximum radiofrequency, (RF), power density from four proposed NextG nodes to be located in the public right-of-way near the intersection of 7294 Marlboro Terrace/4949 Grizzly Peak Blvd, Berkeley, CA (Node 25) and at 9950; 10000; 10648 Skyline Blvd., Oakland, CA (Nodes 29-31). These nodes will be used for Verizon Wireless (VW) telecommunications wireless transmission and reception utilizing two (2) Andrew antennae model # DB772G65ESXM mounted with their the face of the antennae are separated by 120 to 160 degrees. The antenna used in this network is directional and is designed to transmit with a maximum input power of up to 5.7 watts, with a gain of 10.5 dBd, within a bandwidth between approximately 880 and 890 MHz, and up to 5.7 watts, with a gain of 12.5 dBd, and within a bandwidth between approximately 1,850 and 1,990 MHz. The distance from the antenna center to the ground is at least 32 feet. An example of the site configuration is shown in attachment one. The antenna specification details are depicted in attachment two. This analysis represent the worst case of any of the proposed nodes.

Calculation Methodology

Calculations at the level of the antenna were made in accordance with the cylindrical model recommendations for near-field analysis contained in the Federal Communications Commission, Office of Engineering and Technology Bulletin 65 (OET 65) entitled "Evaluating Compliance with FCC-Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields." RF exposure calculations at ground level were made using equation 10 from the same OET document. Several assumptions were made in order to provide the most conservative or "worse case" projections of power densities. Calculations were made assuming that all channels were operating simultaneously at their maximum design effective radiated power. Attenuation (weakening) of the signal that would result from surrounding foliage or buildings was ignored. Buildings or other structures can reduce the signal strength by a factor of 10 (i.e., 10 dB) or more depending upon the construction material. In addition, for ground level calculations, the ground or other surfaces were considered to be perfect reflectors (which they are not) and the RF energy was assumed to overlap and interact constructively at all locations (which they would not) thereby resulting in the calculation of the maximum potential exposure. In fact, the accumulations of all these very conservative assumptions, will significantly overestimate the actual exposures that would typically be expected from such a facility. However, this method is a prudent approach that errs on the side of safety.

RF Safety Standards

The two most widely recognized standards for protection against RF field exposure are those published by the American National Standards Institute (ANSI) C95.1 and the National Council on Radiation Protection and measurement (NCRP) report #86.

The NCRP is a private, congressionally chartered institution with the charge to provide expert analysis of a variety of issues (especially health and safety recommendations) on radiations of all forms. The scientific analyses of the NCRP are held in high esteem in the scientific and regulatory community both nationally and internationally. In fact, the vast majority of the radiological health regulations currently in existence can trace their origin, in some way, to the recommendations of the NCRP.

All RF exposure standards are frequency-specific, in recognition of the differential absorption of RF energy as a function of frequency. The most restrictive exposure levels in the standards are associated with those frequencies that are most readily absorbed in humans. Maximum absorption occurs at approximately 80 MHz in adults. The NCRP maximum allowable continuous occupational exposure at this frequency is 1,000 $\mu W/cm^2$. This compares to 5,000 $\mu W/cm^2$ at the most restrictive of the PCS frequencies (~1,800 MHz) that are absorbed much less efficiently than exposures in the VHF TV band.

The traditional NCRP philosophy of providing a higher standard of protection for members of the general population compared to occupationally exposed individuals, prompted a two-tiered safety standard by which levels of allowable exposure were substantially reduced for "uncontrolled " (e.g., public) and continuous exposures. This measure was taken to account for the fact that workers in an industrial environment are typically exposed no more than eight hours a day while members of the general population in proximity to a source of RF radiation may be exposed continuously. This additional protection factor also provides a greater margin of safety for children, the infirmed, aged, or others who might be more sensitive to RF exposure. After several years of evaluating the national and international scientific and biomedical literature, the members of the NCRP scientific committee selected 931 publications in the peer-reviewed scientific literature on which to base their recommendations. The current NCRP recommendations limit continuous public exposure at PCS frequencies to 1,000 $\mu W/cm^2$.

The 1992 ANSI standard was developed by Scientific Coordinating Committee 28 (SCC 28) under the auspices of the Institute of Electrical and Electronic Engineers (IEEE). This standard, entitled "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" (IEEE C95.1-1991), was issued in April 1992 and subsequently adopted by ANSI. A complete revision of this standard (C95.1-2005) was completed in October 2005 by SCC 39 the IEEE International Committee on Electromagnetic Safety. The current version, including minor revisions, was published in March 2010. Their recommendations are similar to the NCRP recommendation for the maximum permissible exposure (MPE) to the public PCS frequencies (950 $\mu W/cm^2$ for continuous exposure at 1,900 MHz) and incorporates the convention of providing for a greater margin of safety for public as compared with occupational exposure. Higher whole body exposures are allowed for brief periods provided that no 30 minute time-weighted average exposure exceeds these aforementioned limits.

On August 9, 1996, the Federal Communications Commission (FCC) established a RF exposure standard that is a hybrid of the current ANSI and NCRP standards. The maximum permissible exposure values used to assess environmental exposures are those of the NCRP (i.e., maximum public continuous exposure at PCS frequencies of 1,000 $\mu W/cm^2$). The FCC issued these standards in order to address its responsibilities under

the National Environmental Policy Act (NEPA) to consider whether its actions will "significantly affect the quality of the human environment." In as far as there was no other standard issued by a federal agency such as the Environmental Protection Agency (EPA), the FCC utilized their rulemaking procedure to consider which standards should be adopted. The FCC received thousands of pages of comments over a three-year review period from a variety of sources including the public, academia, federal health and safety agencies (e.g., EPA & FDA) and the telecommunications industry. The FCC gave special consideration to the recommendations by the federal health agencies because of their special responsibility for protecting the public health and safety. In fact, the maximum permissible exposure (MPE) values in the FCC standard are those recommended by EPA and FDA. The FCC standard incorporates various elements of the 1992 ANSI and NCRP standards which were chosen because they are widely accepted and technically supportable. There are a variety of other exposure guidelines and standards set by other national and international organizations and governments, most of which are similar to the current ANSI/IEEE or NCRP standard, figure one.

The FCC standards "Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation" (Report and Order FCC 96-326) adopted the ANSI/IEEE definitions for controlled and uncontrolled environments. In order to use the higher exposure levels associated with a controlled environment, RF exposures must be occupationally related (e.g., PCS company RF technicians) and they must be aware of and have sufficient knowledge to control their exposure. All other environmental areas are considered uncontrolled (e.g., public) for which the stricter (i.e., lower) environmental exposure limits apply. All carriers were required to be in compliance with the new FCC RF exposure standards for new telecommunications facilities by October 15, 1997. These standards applied retroactively for existing telecommunications facilities on September 1, 2000.

The task for the physical, biological, and medical scientists that evaluate health implications of the RF data base has been to identify those RF field conditions that can produce harmful biological effects. No panel of experts can guarantee safe levels of exposure because safety is a null concept, and negatives are not susceptible to proof. What a dispassionate scientific assessment can offer is the presumption of safety when RF-field conditions do not give rise to a demonstrable harmful effect.

Summary & Conclusions

All NextG antenna systems operating with the characteristics as specified above and observing a 3 foot public exclusion zone directly in front of and at the same elevation as the antenna, will be in full compliance with FCC RF public and occupational safety exposure standards. These transmitters, by design and operation, are low-power devices. Even under maximal exposure conditions in which all the channels are operating at full power, the maximum exposure next to and at the elevation of the antenna will not result in RF exposures in excess of 51% of the FCC occupational RF safety standard for these frequencies, (see appendix A-1). At three feet or more directly in front and at the same elevation of the antenna, the maximum RF exposure will not exceed the FCC public RF safety standard. An information sign, as depicted in appendix A-2, containing appropriate contact information and indicating that RF exposures at 3 feet or closer to the face of the antenna may exceed the FCC public exposure standard and thus only qualified RF workers may work in this 3 foot exclusion zone, should be placed near the antenna. The maximum RF exposure at ground levels will not be in excess of 0.7% of the FCC public safety standard, (see appendix A-3). A chart of the electromagnetic spectrum and a comparison of RF power densities from various common sources is presented in figures two and three respectively in order to place exposures from wireless telecommunications systems in perspective.

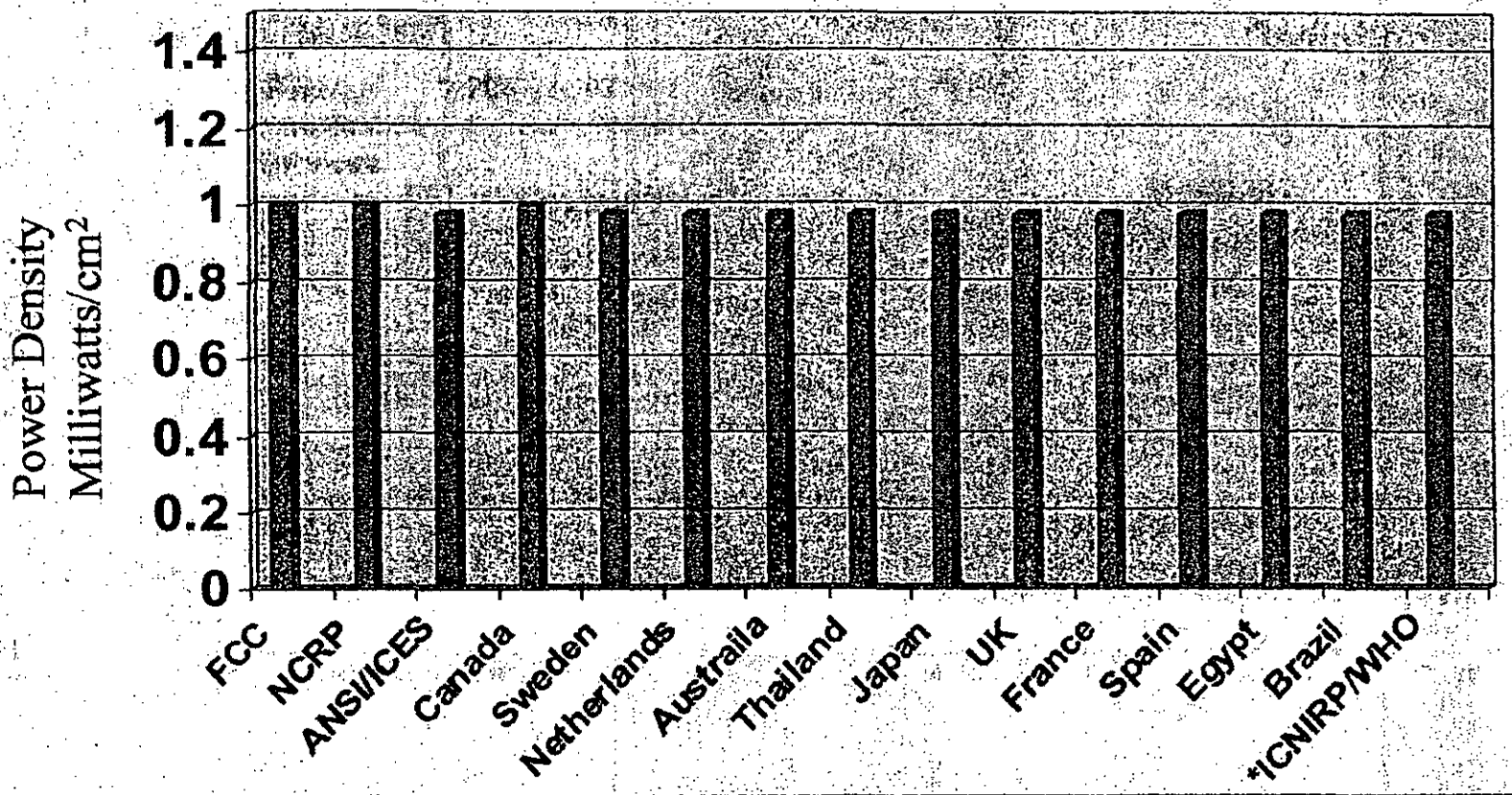
Given the low levels of radiofrequency fields that would be generated from all NextG directional antenna installations of this configuration, (e.g., antenna specification and input power); where the center of the antenna is 32 or more feet above grade, and the three foot public exclusion zone directly in front and at the same elevation as the antenna are observed, there is no scientific basis to conclude that harmful effects will attend the utilization of these proposed wireless telecommunications facilities. This conclusion is supported by a large numbers of scientists that have participated in standard-setting activities in the United States who are overwhelmingly agreed that RF radiation exposure below the FCC exposure limits has no demonstrably harmful effects on humans. These findings are based on my professional evaluation of the scientific issues related to the health and safety of non-ionizing electromagnetic radiation and my analysis of the technical specification as provided by NextG Networks. The opinions expressed herein are based on my professional judgement and are not intended to necessarily represent the views of any other organization or institution. Please contact me if you require any additional information.

Sincerely,

Jerrold T. Bushberg Ph.D., DABMP, DABSNM
Diplomate, American Board of Medical Physics (DABMP)
Diplomate, American Board of Science in Nuclear Medicine (DABSNM)

Enclosures: Figures 1-3; Attachment 1,2; Appendix A-1, A-2, A-3 and Statement of Experience.

National and International Public RF Exposure Standards (PCS @ 1,950 MHz)



*International Commission on Non-Ionizing Radiation Protection (ICNIRP) Public Safety Exposure Standard. ICNIRP standard recommended by the World Health Organization (WHO). Members of the ICNIRP Scientific Committee were from:

- Australia
- Finland
- France
- Germany
- Hungary
- Italy
- Sweden
- Japan
- United Kingdom
- United States

Figure 1

Typical Exposure from Various Radio Frequency / Microwave Sources

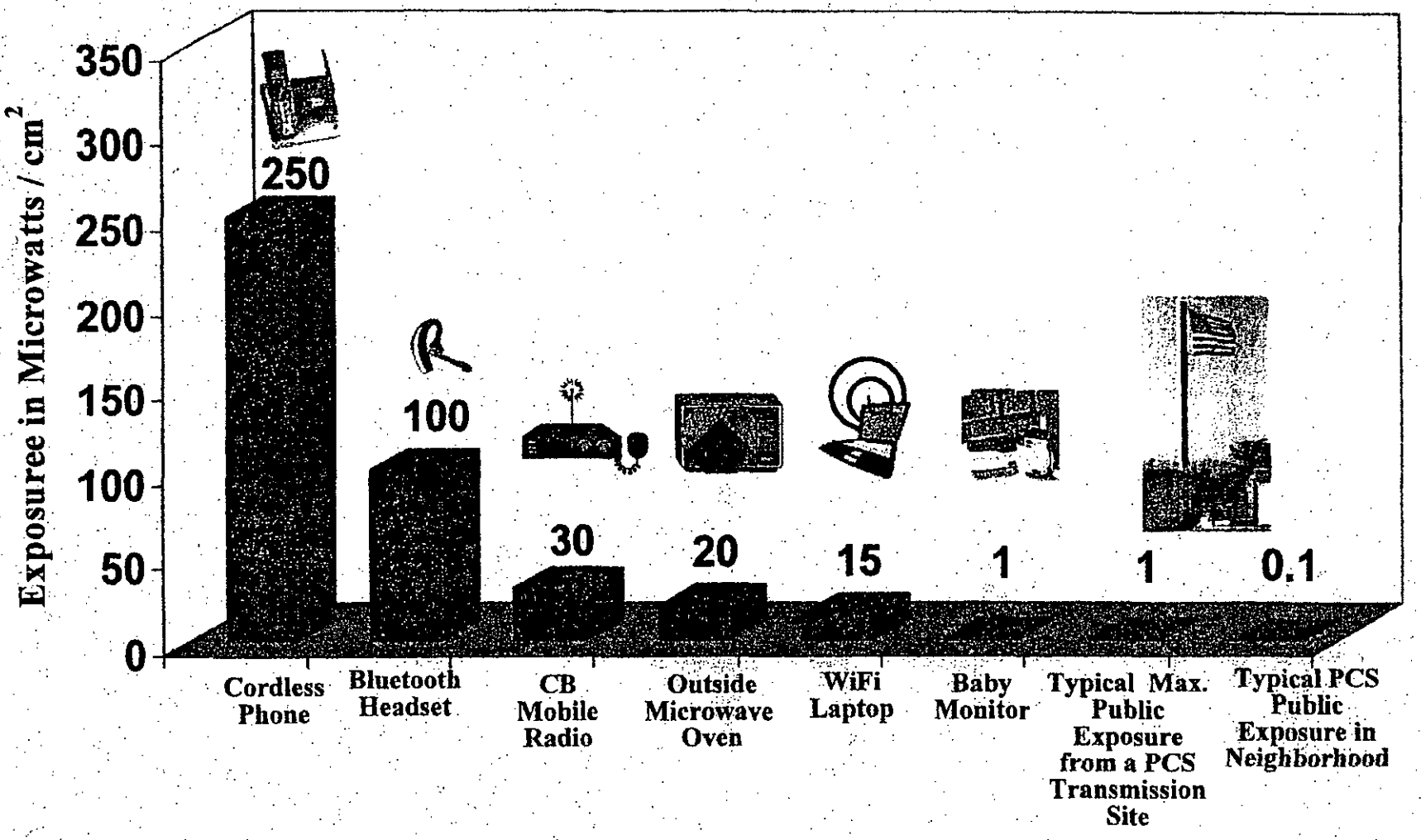


Figure 3

Attachment 1

Wood Pole Mounted Antennae

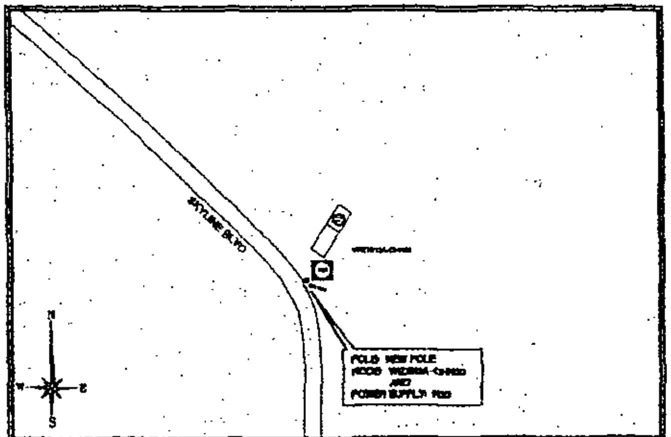
NextG Networks Inc.

OAKLAND HILLS

VRZ1013A-OHN30

10000 SKYLINE BLVD.

OAKLAND, CA. 91649



VICINITY MAP

Call Before you Dig!

811

Know what's below.
Call before you dig.
Call 811 Before you Dig!

[illegible]

CODE COMPLIANCE

PROPERTY INFORMATION

CUSTOMER:	[illegible]
PROJECT:	OAKLAND HILLS
NODE:	[illegible]
LATITUDE:	[illegible]
LONGITUDE:	[illegible]
STREET ADDRESS:	[illegible]
CITY, STATE:	[illegible]
POLE #:	NEW POLE
POLE TYPE:	WOOD UTILITY POLE
RAD CENTER / ANTENNA HEIGHT:	[illegible]
ANTENNA TYPE:	[illegible]
AZIMUTH FOR ANTENNA:	[illegible]
POWER TO POLE:	METERED AT NODE
POLE ACCESS:	STREET ACCESS
POLE OWNER:	N/A
POLE LOCATION & DESCRIPTION:	[illegible]

PROJECT SUMMARY

[illegible]

PROJECT DESCRIPTION

[illegible]

PROJECT SCOPE

SHEET	DESCRIPTION	REV.
1	TITLE SHEET	0
2	UTILITY NODE / PROPOSED POLE EQUIPMENT PROFILES	0
3	SYSTEM OVERVIEWS	0
4	UTILITY POLE EQUIPMENT TYPICALS	0
		0
		0
		0

SHEET INDEX

DO NOT SCALE DRAWINGS

[illegible]

GENERAL CONTRACTOR NOTES

NextG Networks Inc.

[illegible]

PROJECT INFORMATION:

[illegible]
OAKLAND, CA. [illegible]

CURRENT ISSUE DATE:

2/25/10

PERMIT SUBMISSION:

REV.	DATE	DESCRIPTION	

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

[illegible]

PLANS APPROVED BY:

NextG Networks Inc.

REP:

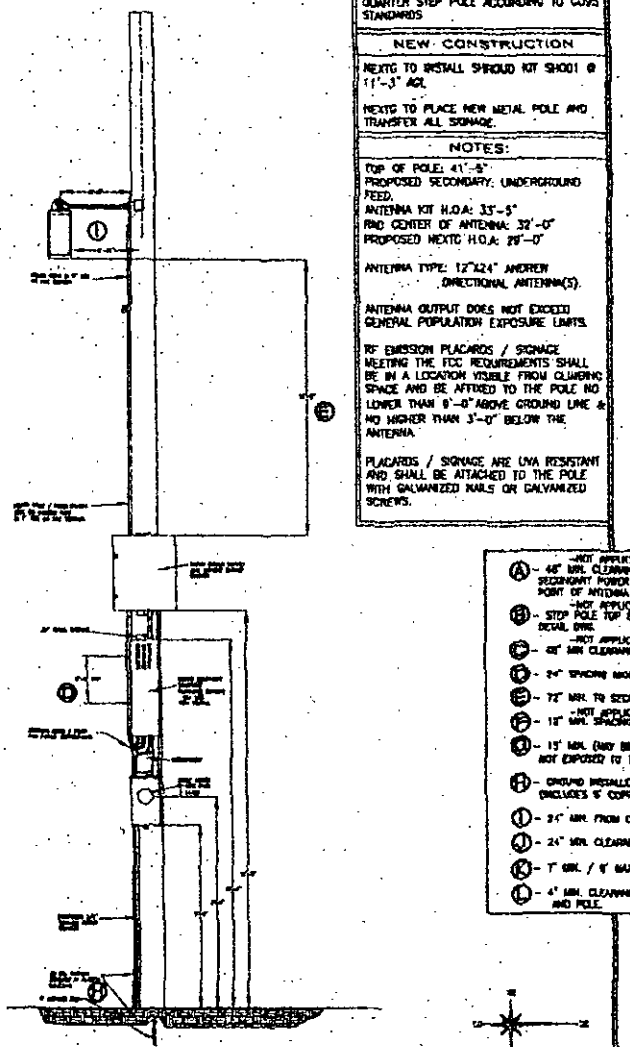
COMMENTS:

SHEET TITLE:

NEXTG NETWORKS
OAKLAND HILLS PROJECT
POLE PROFILE VRZ1013A-OHN30

SHEET NUMBER: 1

REVISION: 1 OF 4



NEXTG TO PLACE NEW CL4 40' POLE

UTILITY POLE DETAIL | POLE# NEW POLE | LOOKING WEST | A

MAKE READY

QUARTER STEP POLE ACCORDING TO GO93 STANDARDS

NEW CONSTRUCTION

NEXTG TO INSTALL SHROUD KIT SHOOT @ 11'-3" AGL

NEXTG TO PLACE NEW METAL POLE AND TRANSFER ALL SIGNAGE.

NOTES:

TOP OF POLE: 41'-6"
PROPOSED SECONDARY: UNDERGROUND FEED.
ANTENNA KIT H.O.A: 33'-5"
RAD CENTER OF ANTENNA: 32'-0"
PROPOSED NEXTG H.O.A: 29'-0"

ANTENNA TYPE: 12"X24" ANDREW DIRECTIONAL ANTENNA(S).

ANTENNA OUTPUT DOES NOT EXCEED GENERAL POPULATION EXPOSURE LIMITS.

RF EMISSION PLACARDS / SIGNAGE MEETING THE FCC REQUIREMENTS SHALL BE IN A LOCATION VISIBLE FROM CLIMBING SPACE AND BE AFFIXED TO THE POLE NO LOWER THAN 6'-0" ABOVE GROUND LINE & NO HIGHER THAN 3'-0" BELOW THE ANTENNA.

PLACARDS / SIGNAGE ARE UVA RESISTANT AND SHALL BE ATTACHED TO THE POLE WITH GALVANIZED NAILS OR GALVANIZED SCREWS.

Ⓐ – 48" MIN. CLEARANCE BETWEEN SECONDARY POWER AND LOWER POINT OF ANTENNA ASSEMBLY.
–NOT APPLICABLE–

Ⓑ – STEP POLE TOP EXTENSION AS PER DETAIL D1R1.
–NOT APPLICABLE–

Ⓒ – 60" MIN CLEARANCE REQ'D.
–NOT APPLICABLE–

Ⓓ – 24" SPACING MIN.

Ⓔ – 72" MIN. TO SECONDARY LEVEL.

Ⓕ – 12" MIN. SPACING FOR EQUIP TO CURB.
–NOT APPLICABLE–

Ⓖ – 15" MIN. (MAY BE REDUCED TO 5" WHEN NOT EXPOSED TO TRAFFIC).

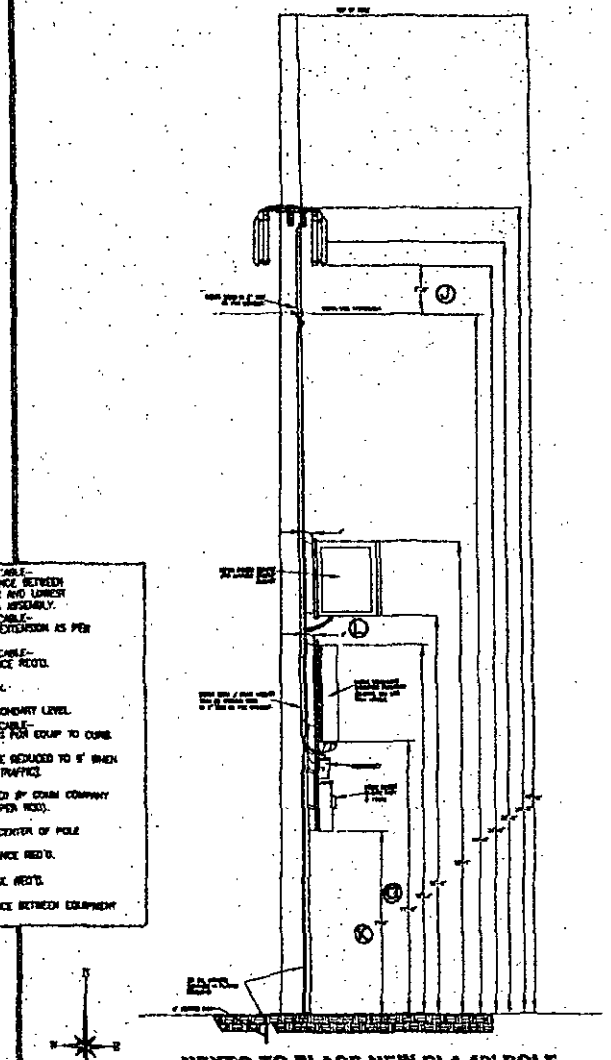
Ⓗ – GROUND INSTALLED 8' COMM COMPANY (INCLUDES 5' COPPER ROD).

Ⓘ – 24" MIN. FROM CENTER OF POLE

Ⓙ – 24" MIN. CLEARANCE REQ'D.

Ⓚ – 7' MIN. / 9' MAX. REQ'D.

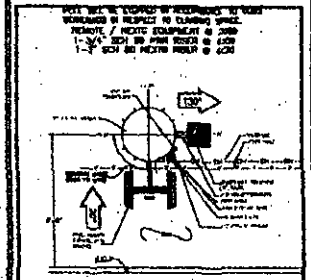
Ⓛ – 4" MIN. CLEARANCE BETWEEN EQUIPMENT AND POLE.



NEXTG TO PLACE NEW CL4 40' POLE

UTILITY POLE DETAIL | POLE# NEW POLE | LOOKING NORTH | B

SITE POLE PICTURE | C



POLE# NEW POLE

RISER POLE DETAIL | D

Call Before you Dig!

Know what's **below.**
Call before you dig.
Call 811 Before you Dig!

NextG Networks Inc.

PROJECT INFORMATION:

CURRENT ISSUE DATE: 2/25/10

PERMIT SUBMISSION:

REV. DATE: DESCRIPTION:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks Inc.

INC#:

COMMENTS:

SHEET TITLE:

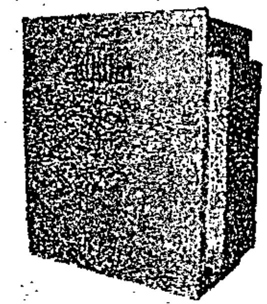
NEXTG NETWORKS
OAKLAND HILLS PROJECT
POLE PROFILE VNE1915-ONN39

SHEET NUMBER: 2 | REVISION: 2 OF 4

UTILITY NODE / REPEATER POLE EQUIPMENT PROFILES

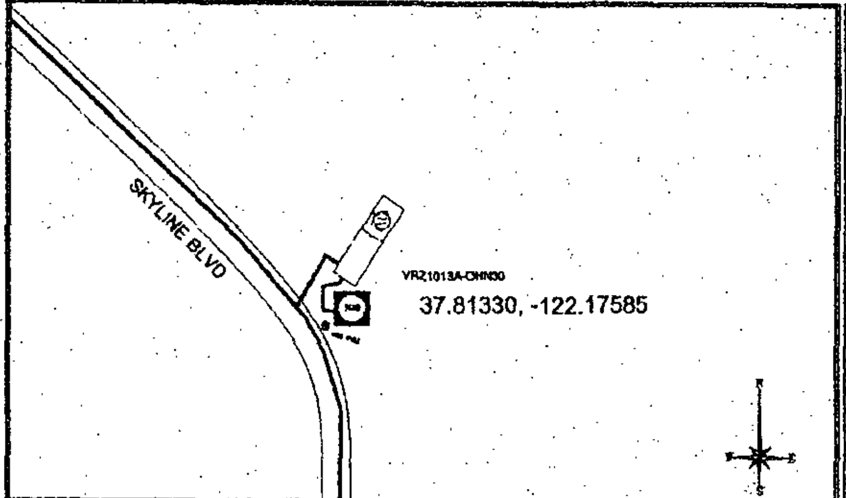
EXISTING PHOTO / EQUIPMENT REPRESENTATION — E

PROPOSED PHOTO / EQUIPMENT REPRESENTATION — F



Dimensions	4 Battery	8 Battery
Width (in/mm)	24/610	31/788
Height (in/mm)	36/914	27/856
Depth (in/mm)	14/56	16/407
Weight (lb/kg)*	250/158	812/368
Finish	Powder coat white over aluminum	

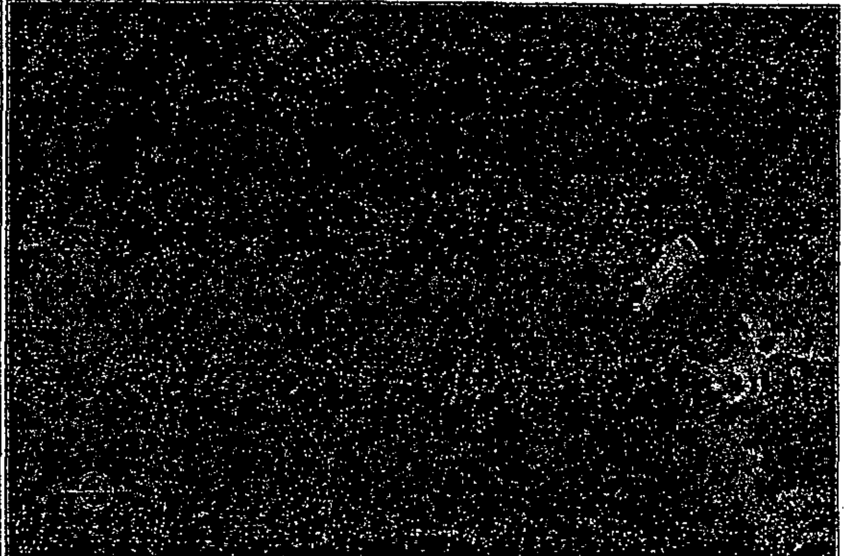
POWER SUPPLY ENCLOSURE — G



AERIAL STRAND OVERVIEW — H

LEGEND

POLE MOUNTED POWER SUPPLY | NODE LOCATION | FIBER OPTIC CABLE | .625PF COAXIAL CABLE | JOINT POLE | STREETLIGHT POLE



AERIAL/ POLE LOCATION REPRESENTATION — I

SYSTEM OVERVIEWS

NextG Networks Inc.

PROJECT INFORMATION:

OAKLAND, CA

(POWER SUPPLY LOCATION)

CURRENT ISSUE DATE:

2/25/10

PERMIT SUBMISSION:

REV. DATE DESCRIPTION:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks Inc.

REP:

COMMENTS:

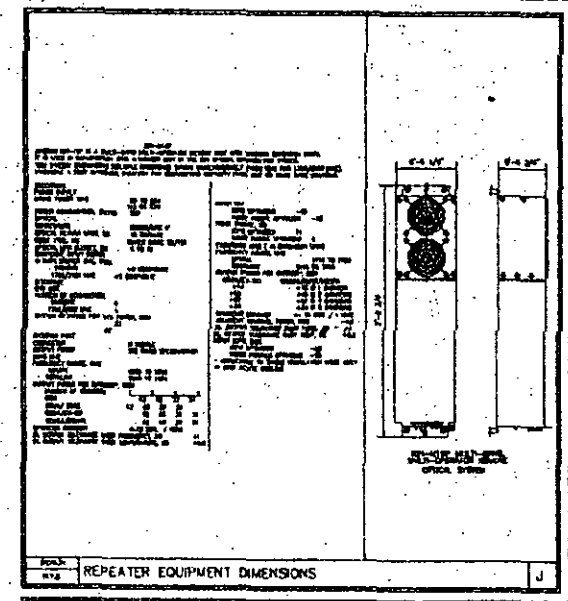
SHEET TITLE:

NEXTG NETWORKS
OAKLAND HILLS PROJECT
POLE PROFILE VR21013A-OHN30
(POWER SUPPLY LOCATION)

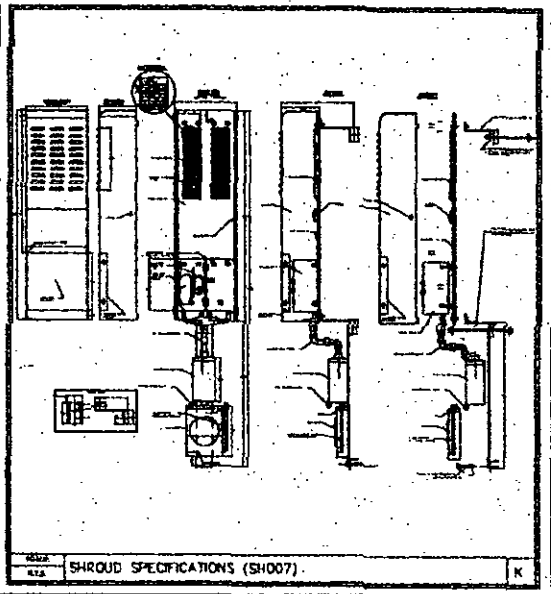
SHEET NUMBER: REVISION:

3

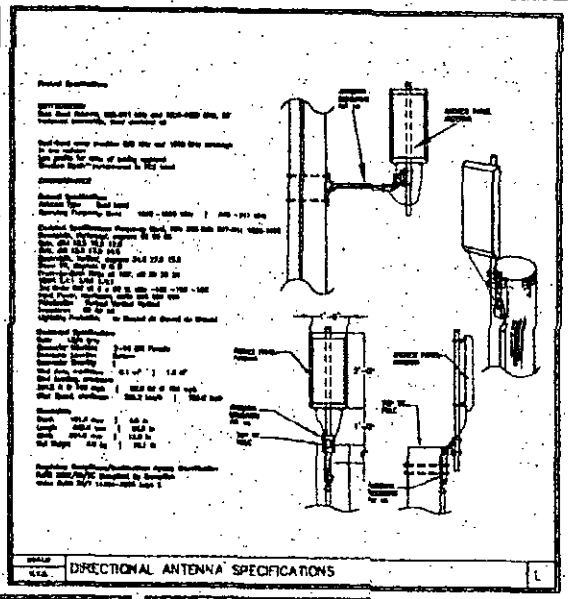
3 OF 4



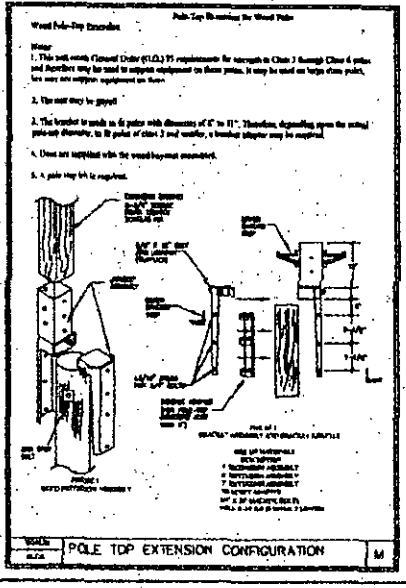
REPEATER EQUIPMENT DIMENSIONS — J



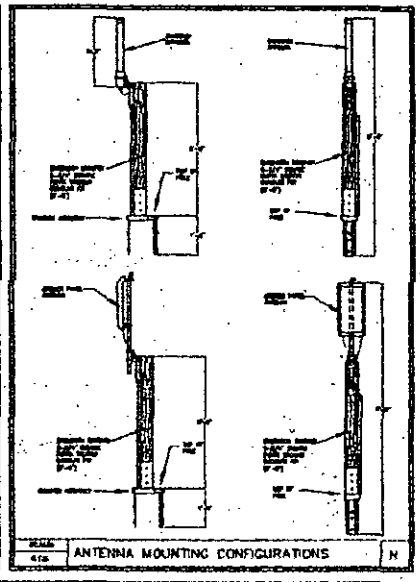
SHROUD SPECIFICATIONS (SH007) — K



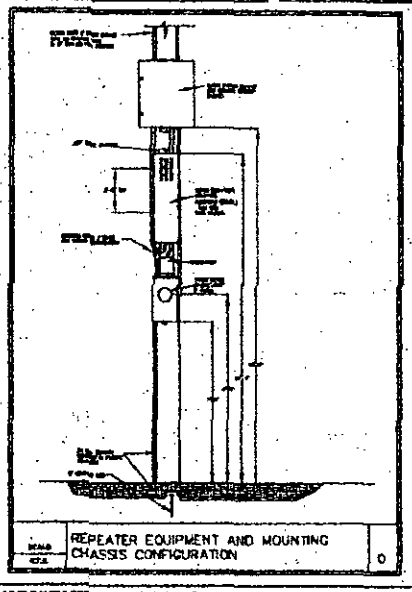
DIRECTIONAL ANTENNA SPECIFICATIONS — L



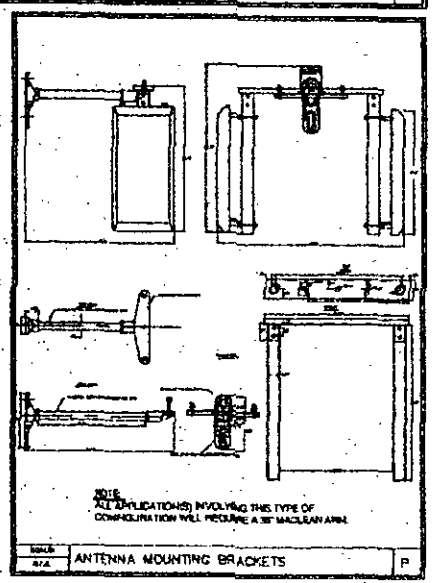
POLE TOP EXTENSION CONFIGURATION — M



ANTENNA MOUNTING CONFIGURATIONS — N



REPEATER EQUIPMENT AND MOUNTING CHASSIS CONFIGURATION — O



NOTE:
ALL APPLICATION(S) INVOLVING THIS TYPE OF CONFIGURATION WILL REQUIRE A 36" MACLEAN ARM.

ANTENNA MOUNTING BRACKETS — P

UTILITY POLE EQUIPMENT TYPICALS

NextG Networks Inc.

PROJECT INFORMATION

CURRENT ISSUE DATE
2/25/10

PERMIT SUBMISSION

REV	DATE	DESCRIPTION

PLANS PREPARED BY
HP COMMUNICATIONS INC.

PLANS APPROVED BY
NextG Networks Inc.

RFP:

COMMENTS:

SHEET TITLE
NEXTG NETWORKS
OAKLAND HILLS PROJECT

SHEET NUMBER — REVISION
4 — 4 OF 4

Attachment 2

Antenna Specifications

Product Specifications

ANDREW.
A CommScope Company

DB772G65ESXM

Dual Band Antenna, 806–941 MHz and 1850–1990 MHz, 65° horizontal beamwidth, fixed electrical tilt

- Dual band array provides 850 MHz and 1900 MHz coverage in one radome
- Low profile for ease of zoning approval
- Directed Dipole™ performance in PCS band

CHARACTERISTICS

General Specifications

Antenna Type	Dual band
Operating Frequency Band	1850 – 1990 MHz | 806 – 941 MHz

Electrical Specifications

Frequency Band, MHz	806–896	897–941	1850–1990
Beamwidth, Horizontal, degrees	63	60	65
Gain, dBd	10.5	10.9	12.5
Gain, dBi	12.6	13.0	14.6
Beamwidth, Vertical, degrees	31.0	27.0	15.0
Beam Tilt, degrees	0	0	0
Front-to-Back Ratio at 180°, dB	24	28	20
VSWR	1.4:1	1.4:1	1.4:1
3rd Order IMD at 2 x 20 W, dBc	-150	-150	-150
Input Power, maximum, watts	500	500	250
Polarization	Vertical	Vertical	Vertical
Impedance	50	50	50
Lightning Protection	dc Ground	dc Ground	dc Ground

From North America, toll free
Telephone: 1-800-255-1479
Fax: 1-800-349-5444

Outside North America
Telephone: +1-708-873-2307
Fax: +1-779-435-8579

Product Specifications

ANDREW.
A CommScope Company

Mechanical Specifications

Color	Light gray
Connector Interface	7-16 DIN Female
Connector Location	Bottom
Connector Quantity	2
Wind Area, maximum	0.1 m² | 1.5 ft²
Wind Loading, maximum	364.8 N @ 100 mph | 82.0 lbf @ 100 mph
Wind Speed, maximum	201.2 km/h | 125.0 mph

Dimensions

Depth	101.6 mm | 4.0 in
Length	609.6 mm | 24.0 in
Width	304.8 mm | 12.0 in
Net Weight	4.6 kg | 10.1 lb

Regulatory Compliance/Certifications

Agency	Classification
RoHS 2002/95/EC	Compliant by Exemption
China RoHS SJ/T 11364-2006	Logo 2

Included Products

DB5083
Downtilt Mounting Kit for 4.5 in (114.3 mm) OD round members

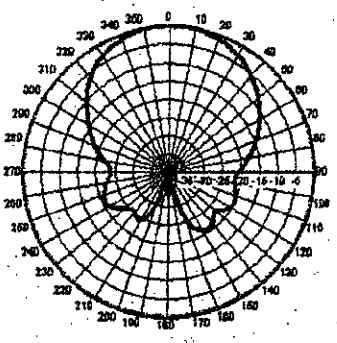
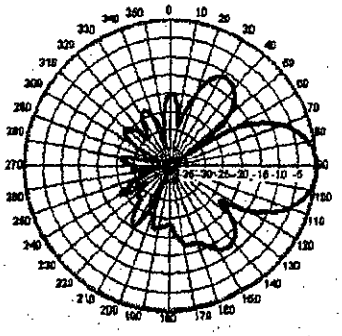
DB380
Pipe Mounting Kit for 4.5 in (114.3 mm) OD round members

From North America, toll free
Telephone: 1-800-255-1479
Fax: 1-800-349-5444

Outside North America
Telephone: +1-708-873-2307
Fax: +1-779-435-8579

Product Specifications

ANDREW.
A CommScope Company

Horizontal Pattern	Vertical Pattern
	
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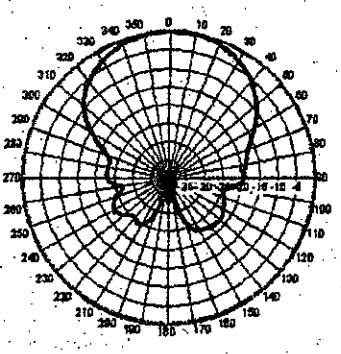	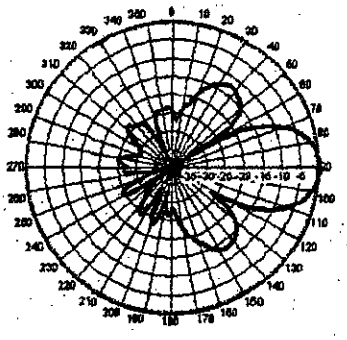
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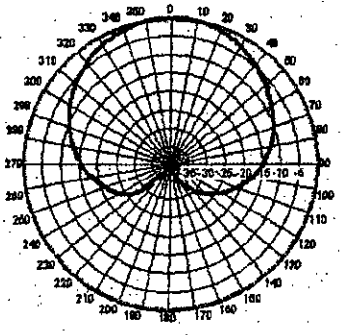
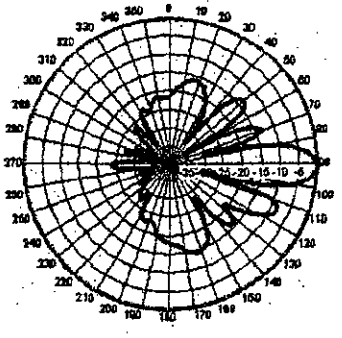
	
Freq: 1950 MHz, Tilt: 0	Freq: 1950 MHz, Tilt: 0

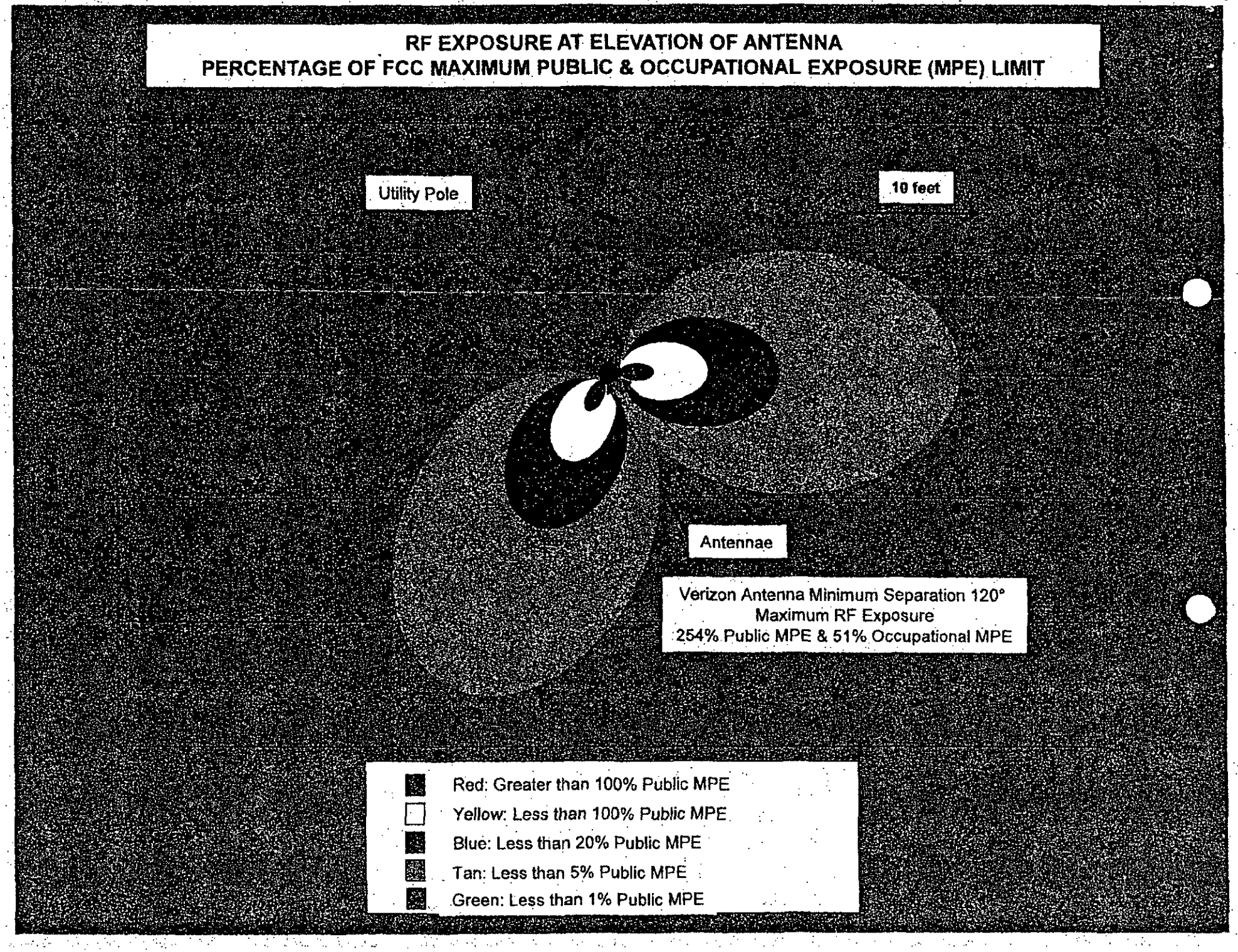
From North America, toll free
Telephone: 1-800-255-1479
Fax: 1-800-349-5444

Outside North America
Telephone: +1-708-873-2307
Fax: +1-779-435-8579

Appendix A-1

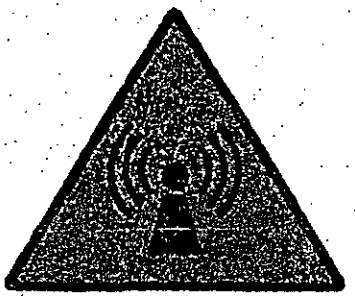
RF EXPOSURE AT THE LEVEL OF THE ANTENNA

RF EXPOSURE AT ELEVATION OF ANTENNA
PERCENTAGE OF FCC MAXIMUM PUBLIC & OCCUPATIONAL EXPOSURE (MPE) LIMIT



Appendix A-2

RF NOTICE SIGN



NOTICE

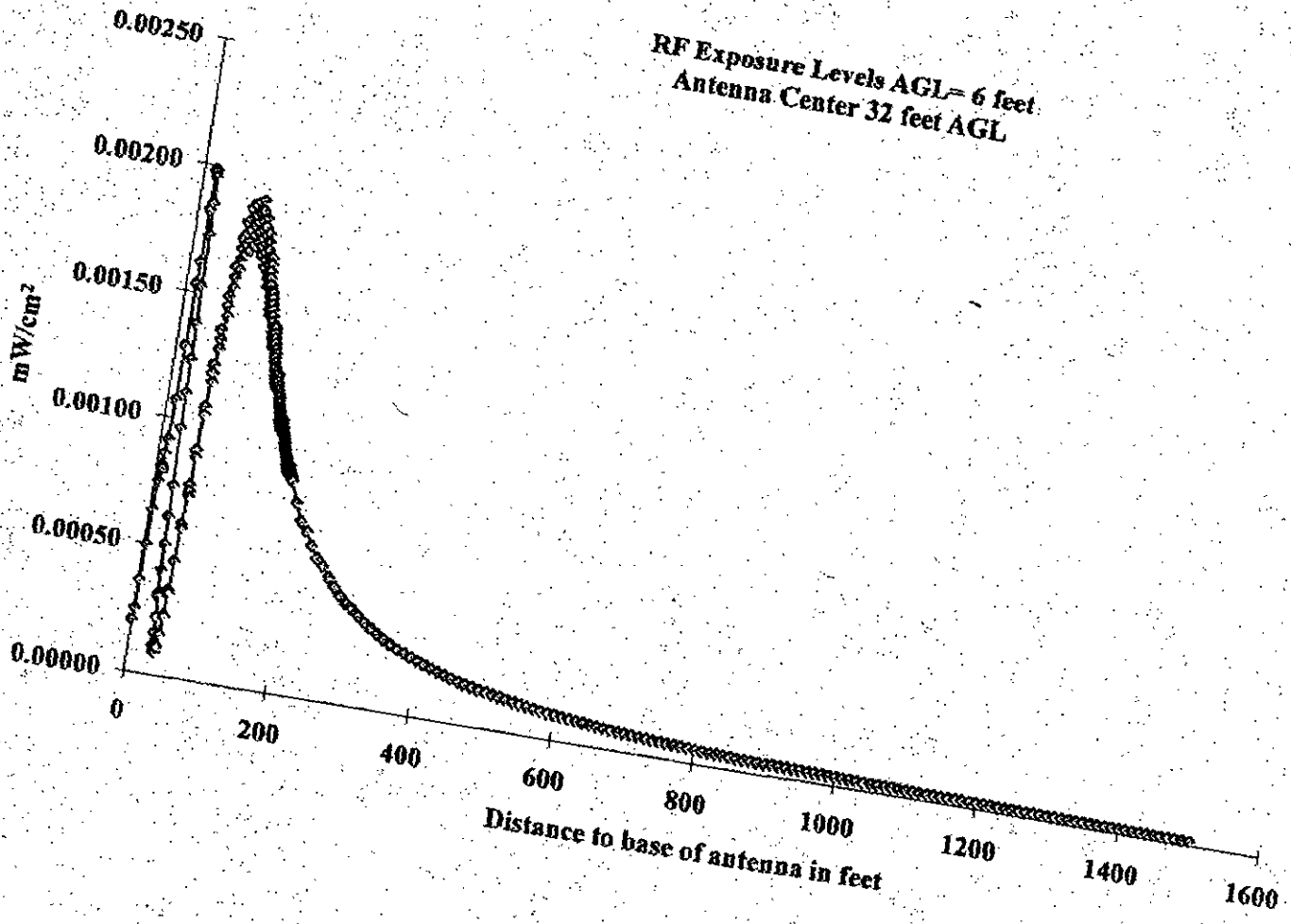
The radio frequency (RF) emissions at this site have been evaluated for potential RF exposure to personnel who may need to work near these antennae.

RF EXPOSURE AT 3 FEET OR CLOSER TO THE FACE OF THE ANTENNA MAY EXCEED THE FCC PUBLIC EXPOSURE STANDARD AND THUS ONLY QUALIFIED RF WORKERS MAY WORK IN THIS 3 FOOT EXCLUSION ZONE. OTHERS WHO NEED TO WORK IN THE EXCLUSION ZONE SHOULD CALL _____ FOR INSTRUCTIONS. REFER TO SITE # _____

Reference: Federal Communications Commission (FCC) Public Exposure Standard. OET Bulletin-65, Edition 97-01, August 1997.

Appendix A-3-1

Andrew Antennae Model # DBXLH-8585A-VTM
Exposure Calculation 6.0 ft Above Grade Level (AGL)
ERP 62.4 Watts (~850 MHz)
Antenna Center 32.0 ft AGL


RF Exposure Levels AGL= 6 feet
Antenna Center 32 feet AGL
mW/cm²
0.00250
0.00200
0.00150
0.00100
0.00050
0.00000
0
200
400
600
800
1000
1200
1400
1600
Distance to base of antenna in feet

ARL: 26 | Max gain (dBd): 10.5 | Max exposure: 0.00198298 mW/cm²

Max ERP (W): 62.4 | Ant type: Andrew DB772G65ESXM | Feet from site: 17

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
0	90.000	-13.67	-24.17	792.48	238.8826	0.00020	0.04225
1	87.797	-12.77	-23.27	793.07	293.8899	0.00024	0.05190
2	85.601	-11.17	-21.67	794.82	424.8001	0.00035	0.07469
3	83.418	-9.65	-20.15	797.74	602.8157	0.00049	0.10521
4	81.254	-8.51	-19.01	801.80	783.7627	0.00064	0.13541
5	79.114	-7.73	-18.23	807.00	937.9606	0.00075	0.15997
6	77.005	-7.34	-17.84	813.31	1026.0880	0.00081	0.17229
7	74.932	-7.24	-17.74	820.70	1049.9886	0.00081	0.17315
8	72.897	-7.3	-17.8	829.15	1035.5822	0.00079	0.16731
9	70.907	-7.13	-17.63	838.62	1076.9228	0.00080	0.17008
10	68.962	-6.71	-17.21	849.07	1186.2728	0.00086	0.18276
11	67.068	-6.33	-16.83	860.49	1294.7460	0.00091	0.19422
12	65.225	-5.52	-16.02	872.81	1560.2155	0.00107	0.22748
13	63.435	-4.58	-15.08	886.02	1937.2452	0.00129	0.27409
14	61.699	-3.69	-14.19	900.06	2377.8507	0.00153	0.32601
15	60.018	-3.31	-13.81	914.91	2595.2822	0.00162	0.34437
16	58.392	-2.64	-13.14	930.51	3028.2002	0.00183	0.38645
17	56.821	-2.13	-12.63	946.84	3405.5291	0.00198	0.42191
18	55.305	-2	-12.5	963.86	3509.0099	0.00197	0.41952
19	53.842	-1.88	-12.38	981.53	3607.3193	0.00195	0.41588
20	52.431	-1.95	-12.45	999.82	3549.6423	0.00185	0.39440
21	51.072	-2.09	-12.59	1018.69	3437.0400	0.00173	0.36787
22	49.764	-2.47	-12.97	1038.11	3149.0865	0.00153	0.32456
23	48.504	-2.74	-13.24	1058.06	2959.2700	0.00138	0.29361
24	47.291	-3.04	-13.54	1078.49	2761.7514	0.00124	0.26372
25	46.123	-3.38	-13.88	1099.39	2553.7865	0.00110	0.23468
26	45.000	-3.8	-14.3	1120.74	2318.3798	0.00096	0.20501
27	43.919	-4.77	-15.27	1142.49	1854.3196	0.00074	0.15779
28	42.879	-5.39	-15.89	1164.64	1607.6244	0.00062	0.13164
29	41.878	-6.1	-16.6	1187.16	1365.1633	0.00051	0.10759
30	40.914	-6.92	-17.42	1210.02	1130.2762	0.00040	0.08574
31	39.987	-7.88	-18.38	1233.22	906.1176	0.00031	0.06618
32	39.094	-7.88	-18.38	1256.72	906.1176	0.00030	0.06372
33	38.234	-9.02	-19.52	1280.52	696.9227	0.00022	0.04721
34	37.405	-10.32	-20.82	1304.60	516.6359	0.00016	0.03372
35	36.607	-11.63	-22.13	1328.94	382.1066	0.00011	0.02403
36	35.838	-12.38	-22.88	1353.53	321.5027	0.00009	0.01949

ARL 26 Max gain (dBd): 10.6 Max exposure: 0.00198299 mW/cm^2

Max ERP (W): 62.4 Ant type: Andrew DB772G65ESXM Feet from site: 17

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm^2	Precent of FCC STD
37	35.096	-12.38	-22.88	1378.36	321.5027	0.00009	0.01880
38	34.380	-12.26	-22.76	1403.40	330.5100	0.00009	0.01864
39	33.690	-11.1	-21.6	1428.66	431.7025	0.00011	0.02349
40	33.024	-11.1	-21.6	1454.12	431.7025	0.00011	0.02268
41	32.381	-9.32	-19.82	1479.77	650.4061	0.00016	0.03299
42	31.759	-7.4	-17.9	1505.60	1012.0095	0.00023	0.04959
43	31.159	-7.4	-17.9	1531.60	1012.0095	0.00023	0.04792
44	30.579	-5.6	-16.1	1557.76	1531.7384	0.00033	0.07011
45	30.018	-5.6	-16.1	1584.08	1531.7384	0.00032	0.06780
46	29.476	-4	-14.5	1610.54	2214.0355	0.00045	0.09481
47	28.951	-2.57	-13.07	1637.15	3077.4045	0.00060	0.12753
48	28.443	-2.57	-13.07	1663.88	3077.4045	0.00058	0.12346
49	27.951	-1.29	-11.79	1690.75	4132.2310	0.00075	0.16055
50	27.474	-1.29	-11.79	1717.73	4132.2310	0.00073	0.15555
51	27.013	-1.29	-11.79	1744.83	4132.2310	0.00071	0.15076
52	26.565	-0.17	-10.67	1772.04	5347.9162	0.00089	0.18916
53	26.131	-0.17	-10.67	1799.35	5347.9162	0.00086	0.18346
54	25.710	0.86	-9.64	1826.77	6779.2959	0.00106	0.22564
55	25.301	0.86	-9.64	1854.28	6779.2959	0.00103	0.21899
56	24.905	1.77	-8.73	1881.88	8359.5825	0.00123	0.26218
57	24.520	1.77	-8.73	1909.57	8359.5825	0.00120	0.25463
58	24.146	1.77	-8.73	1937.34	8359.5825	0.00116	0.24738
59	23.782	2.61	-7.89	1965.19	10143.4242	0.00137	0.29172
60	23.429	2.61	-7.89	1993.12	10143.4242	0.00133	0.28360
61	23.085	2.61	-7.89	2021.13	10143.4242	0.00130	0.27580
62	22.751	3.38	-7.12	2049.20	12111.1279	0.00151	0.32034
63	22.426	3.38	-7.12	2077.34	12111.1279	0.00147	0.31172
64	22.109	3.38	-7.12	2105.55	12111.1279	0.00143	0.30342
65	21.801	4.06	-6.44	2133.82	14163.9567	0.00162	0.34551
66	21.501	4.06	-6.44	2162.15	14163.9567	0.00158	0.33652
67	21.209	4.06	-6.44	2190.53	14163.9567	0.00154	0.32785
68	20.925	4.7	-5.8	2218.98	16412.8723	0.00174	0.37023
69	20.647	4.7	-5.8	2247.47	16412.8723	0.00170	0.36090
70	20.376	4.7	-5.8	2276.02	16412.8723	0.00165	0.35191
71	20.113	4.7	-5.8	2304.62	16412.8723	0.00161	0.34323
72	19.855	5.29	-5.21	2333.26	18801.1576	0.00180	0.38358
73	19.604	5.29	-5.21	2361.95	18801.1576	0.00176	0.37432
74	19.359	5.29	-5.21	2390.69	18801.1576	0.00172	0.36537
75	19.120	5.29	-5.21	2419.47	18801.1576	0.00168	0.35673
76	18.886	5.84	-4.66	2448.29	21339.5172	0.00186	0.39542
77	18.658	5.84	-4.66	2477.14	21339.5172	0.00182	0.38626

ARL 26 Max gain (dBd): 10.5 Max exposure: 0.00198299 mW/cm^2

Max ERP (W): 62.4 Ant type: Andrew DB772G65ESXM Feet from site: 17

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm^2	Precent of FCC STD
78	18.435	5.84	-4.66	2506.04	21339.5172	0.00177	0.37740
79	18.217	5.84	-4.66	2534.98	21339.5172	0.00173	0.36884
80	18.004	5.84	-4.66	2563.95	21339.5172	0.00169	0.36055
81	17.796	6.38	-4.12	2592.95	24164.8770	0.00188	0.39920
82	17.592	6.38	-4.12	2621.99	24164.8770	0.00183	0.39041
83	17.393	6.38	-4.12	2651.06	24164.8770	0.00179	0.38189
84	17.199	6.38	-4.12	2680.16	24164.8770	0.00176	0.37364
85	17.008	6.38	-4.12	2709.29	24164.8770	0.00172	0.36565
86	16.821	6.88	-3.62	2738.45	27113.4380	0.00189	0.40158
87	16.639	6.88	-3.62	2767.64	27113.4380	0.00185	0.39315
88	16.460	6.88	-3.62	2796.86	27113.4380	0.00181	0.38498
89	16.285	6.88	-3.62	2826.11	27113.4380	0.00177	0.37705
90	16.113	6.88	-3.62	2855.38	27113.4380	0.00174	0.36936
91	15.945	7.35	-3.15	2884.67	30212.3557	0.00190	0.40326
92	15.781	7.35	-3.15	2913.99	30212.3557	0.00186	0.39519
93	15.619	7.35	-3.15	2943.33	30212.3557	0.00182	0.38735
94	15.461	7.35	-3.15	2972.70	30212.3557	0.00178	0.37973
95	15.306	7.35	-3.15	3002.09	30212.3557	0.00175	0.37234
96	15.154	7.35	-3.15	3031.50	30212.3557	0.00172	0.36515
97	15.005	7.35	-3.15	3060.93	30212.3557	0.00168	0.35816
98	14.859	7.8	-2.7	3090.38	33510.7841	0.00183	0.38972
99	14.715	7.8	-2.7	3119.85	33510.7841	0.00180	0.38240
100	14.574	7.8	-2.7	3149.34	33510.7841	0.00176	0.37527
101	14.436	7.8	-2.7	3178.85	33510.7841	0.00173	0.36833
102	14.300	7.8	-2.7	3208.37	33510.7841	0.00170	0.36159
103	14.167	7.8	-2.7	3237.92	33510.7841	0.00167	0.35502
104	14.036	7.8	-2.7	3267.48	33510.7841	0.00164	0.34862
105	13.908	8.22	-2.28	3297.06	36913.4460	0.00177	0.37716
106	13.782	8.22	-2.28	3326.65	36913.4460	0.00174	0.37048
107	13.658	8.22	-2.28	3356.26	36913.4460	0.00171	0.36397
108	13.536	8.22	-2.28	3385.89	36913.4460	0.00168	0.35763
109	13.416	8.22	-2.28	3415.53	36913.4460	0.00165	0.35145
110	13.299	8.22	-2.28	3445.18	36913.4460	0.00162	0.34543
111	13.183	8.22	-2.28	3474.85	36913.4460	0.00160	0.33955
112	13.069	8.22	-2.28	3504.54	36913.4460	0.00157	0.33383
113	12.958	8.6	-1.9	3534.23	40288.8239	0.00168	0.35825
114	12.848	8.6	-1.9	3563.94	40288.8239	0.00166	0.35230
115	12.740	8.6	-1.9	3593.67	40288.8239	0.00163	0.34650
116	12.633	8.6	-1.9	3623.40	40288.8239	0.00160	0.34084
117	12.529	8.6	-1.9	3653.15	40288.8239	0.00158	0.33531
118	12.426	8.6	-1.9	3682.91	40288.8239	0.00155	0.32991

ARL 26 *Max gain (dBd):* 10.5 *Max exposure:* 0.00198299 *mW/cm²*

Max ERP (W): 62.4 *Ant type:* Andrew DB772G65ESXM Feet from site: 17

RF Exposure Level

Feet to Ant. base	*Depress angle*	*Antenna gain*	*dB from max ERP*	*Prop dist in cm*	*Act ERP in mW*	*Level mW/cm²*	*Precent of FCC STD*
119	12.325	8.6	-1.9	3712.68	40288.8239	0.00153	0.32464
120	12.225	8.6	-1.9	3742.47	40288.8239	0.00150	0.31950
121	12.127	8.6	-1.9	3772.26	40288.8239	0.00148	0.31447
122	12.031	8.6	-1.9	3802.07	40288.8239	0.00145	0.30956
123	11.936	8.94	-1.56	3831.88	43569.7020	0.00155	0.32958
124	11.842	8.94	-1.56	3861.71	43569.7020	0.00153	0.32451
125	11.750	8.94	-1.56	3891.55	43569.7020	0.00150	0.31955
126	11.659	8.94	-1.56	3921.39	43569.7020	0.00148	0.31470
127	11.570	8.94	-1.56	3951.25	43569.7020	0.00146	0.30996
128	11.482	8.94	-1.56	3981.11	43569.7020	0.00144	0.30533
129	11.395	8.94	-1.56	4010.99	43569.7020	0.00141	0.30080
130	11.310	8.94	-1.56	4040.87	43569.7020	0.00139	0.29637
131	11.226	8.94	-1.56	4070.76	43569.7020	0.00137	0.29203
132	11.143	8.94	-1.56	4100.66	43569.7020	0.00135	0.28779
133	11.061	8.94	-1.56	4130.57	43569.7020	0.00133	0.28364
134	10.981	9.25	-1.25	4160.49	46793.3987	0.00141	0.30026
135	10.901	9.25	-1.25	4190.42	46793.3987	0.00139	0.29598
136	10.823	9.25	-1.25	4220.35	46793.3987	0.00137	0.29180
137	10.746	9.25	-1.25	4250.29	46793.3987	0.00135	0.28770
138	10.670	9.25	-1.25	4280.24	46793.3987	0.00133	0.28369
139	10.595	9.25	-1.25	4310.20	46793.3987	0.00131	0.27976
140	10.521	9.25	-1.25	4340.16	46793.3987	0.00130	0.27591
141	10.448	9.25	-1.25	4370.13	46793.3987	0.00128	0.27214
142	10.376	9.25	-1.25	4400.11	46793.3987	0.00126	0.26844
143	10.305	9.25	-1.25	4430.10	46793.3987	0.00124	0.26482
144	10.235	9.25	-1.25	4460.09	46793.3987	0.00123	0.26127
145	10.166	9.25	-1.25	4490.09	46793.3987	0.00121	0.25779
146	10.098	9.25	-1.25	4520.09	46793.3987	0.00120	0.25438
147	10.030	9.25	-1.25	4550.10	46793.3987	0.00118	0.25104
148	9.964	9.52	-0.98	4580.12	49794.8685	0.00124	0.26365
149	9.898	9.52	-0.98	4610.14	49794.8685	0.00122	0.26023
150	9.834	9.52	-0.98	4640.17	49794.8685	0.00121	0.25687
151	9.770	9.52	-0.98	4670.21	49794.8685	0.00119	0.25358
152	9.707	9.52	-0.98	4700.25	49794.8685	0.00118	0.25035
153	9.644	9.52	-0.98	4730.30	49794.8685	0.00116	0.24717
154	9.583	9.52	-0.98	4760.35	49794.8685	0.00115	0.24406
155	9.522	9.52	-0.98	4790.40	49794.8685	0.00113	0.24101
156	9.462	9.52	-0.98	4820.47	49794.8685	0.00112	0.23801
157	9.403	9.52	-0.98	4850.54	49794.8685	0.00110	0.23507
158	9.345	9.52	-0.98	4880.61	49794.8685	0.00109	0.23218
159	9.287	9.52	-0.98	4910.69	49794.8685	0.00108	0.22935

ARL 26 Max gain (dBd): 10.6 Max exposure: 0.00198299 mW/cm²

Max ERP (W): 62.4 Ant type: Andrew DB772G65ESXM Feet from site: 17

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist In cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
160	9.230	9.52	-0.98	4940.77	49794.8685	0.00106	0.22656
161	9.174	9.52	-0.98	4970.86	49794.8685	0.00105	0.22383
162	9.118	9.52	-0.98	5000.95	49794.8685	0.00104	0.22114
163	9.063	9.52	-0.98	5031.05	49794.8685	0.00103	0.21851
164	9.009	9.52	-0.98	5061.15	49794.8685	0.00101	0.21591
165	8.955	9.75	-0.75	5091.25	52503.0568	0.00106	0.22497
166	8.902	9.75	-0.75	5121.37	52503.0568	0.00104	0.22234
167	8.849	9.75	-0.75	5151.48	52503.0568	0.00103	0.21974
168	8.797	9.75	-0.75	5181.60	52503.0568	0.00102	0.21720
169	8.746	9.75	-0.75	5211.72	52503.0568	0.00101	0.21469
170	8.696	9.75	-0.75	5241.85	52503.0568	0.00100	0.21223
171	8.645	9.75	-0.75	5271.98	52503.0568	0.00099	0.20981
172	8.596	9.75	-0.75	5302.12	52503.0568	0.00097	0.20743
173	8.547	9.75	-0.75	5332.26	52503.0568	0.00096	0.20510
174	8.499	9.75	-0.75	5362.40	52503.0568	0.00095	0.20280
175	8.451	9.75	-0.75	5392.55	52503.0568	0.00094	0.20054
176	8.403	9.75	-0.75	5422.70	52503.0568	0.00093	0.19831
177	8.357	9.75	-0.75	5452.85	52503.0568	0.00092	0.19612
178	8.310	9.75	-0.75	5483.01	52503.0568	0.00091	0.19397
179	8.264	9.75	-0.75	5513.17	52503.0568	0.00090	0.19186
180	8.219	9.75	-0.75	5543.34	52503.0568	0.00089	0.18977
181	8.174	9.75	-0.75	5573.51	52503.0568	0.00088	0.18773
182	8.130	9.75	-0.75	5603.68	52503.0568	0.00087	0.18571
183	8.086	9.75	-0.75	5633.86	52503.0568	0.00086	0.18373
184	8.043	9.75	-0.75	5664.03	52503.0568	0.00085	0.18177
185	8.000	9.95	-0.55	5694.22	54977.4497	0.00089	0.18833
186	7.958	9.95	-0.55	5724.40	54977.4497	0.00088	0.18635
187	7.916	9.95	-0.55	5754.59	54977.4497	0.00087	0.18440
188	7.874	9.95	-0.55	5784.78	54977.4497	0.00086	0.18248
189	7.833	9.95	-0.55	5814.97	54977.4497	0.00085	0.18059
190	7.792	9.95	-0.55	5845.17	54977.4497	0.00084	0.17873
191	7.752	9.95	-0.55	5875.37	54977.4497	0.00083	0.17689
201	7.370	9.95	-0.55	6177.52	54977.4497	0.00075	0.16001
211	7.025	9.95	-0.55	6479.92	54977.4497	0.00068	0.14543
221	6.710	10.12	-0.38	6782.54	57172.1586	0.00065	0.13804
231	6.422	10.12	-0.38	7085.34	57172.1586	0.00059	0.12649
241	6.157	10.12	-0.38	7388.30	57172.1586	0.00055	0.11633
251	5.914	10.25	-0.25	7691.42	58909.3987	0.00052	0.11060
261	5.689	10.25	-0.25	7994.65	58909.3987	0.00048	0.10237
271	5.480	10.25	-0.25	8298.01	58909.3987	0.00045	0.09502
281	5.286	10.25	-0.25	8601.46	58909.3987	0.00042	0.08844

ARL 26 | Max gain (dBd): 10.5 | Max exposure: 0.00198299 mW/cm²

Max ERP (W): 62.4 | Ant type: Andrew DB772G65ESXM | Feet from site: 17

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
291	5.106	10.25	-0.25	8905.01	58909.3987	0.00039	0.08251
301	4.937	10.35	-0.15	9208.64	60281.5748	0.00037	0.07896
311	4.779	10.35	-0.15	9512.35	60281.5748	0.00035	0.07400
321	4.631	10.35	-0.15	9816.12	60281.5748	0.00033	0.06949
331	4.491	10.35	-0.15	10119.96	60281.5748	0.00031	0.06538
341	4.360	10.35	-0.15	10423.85	60281.5748	0.00029	0.06162
351	4.236	10.35	-0.15	10727.79	60281.5748	0.00027	0.05818
361	4.119	10.35	-0.15	11031.78	60281.5748	0.00026	0.05502
371	*4.009*	*10.35*	*-0.15*	*11335.81*	*60281.5748*	*0.00024*	*0.05210*
381	3.904	10.43	-0.07	11639.89	61402.2930	0.00024	0.05034
391	3.804	10.43	-0.07	11944.00	61402.2930	0.00022	0.04781
401	3.710	10.43	-0.07	12248.14	61402.2930	0.00021	0.04546
411	3.620	10.43	-0.07	12552.32	61402.2930	0.00020	0.04328
421	3.534	10.43	-0.07	12856.53	61402.2930	0.00019	0.04126
431	3.452	10.43	-0.07	13160.76	61402.2930	0.00019	0.03937
441	3.374	10.43	-0.07	13465.02	61402.2930	0.00018	0.03762
451	3.299	10.43	-0.07	13769.30	61402.2930	0.00017	0.03597
461	3.228	10.43	-0.07	14073.61	61402.2930	0.00016	0.03443
471	3.160	10.43	-0.07	14377.94	61402.2930	0.00016	0.03299
481	3.094	10.43	-0.07	14682.28	61402.2930	0.00015	0.03164
491	3.031	10.43	-0.07	14986.65	61402.2930	0.00014	0.03036
501	2.971	10.48	-0.02	15291.03	62113.2980	0.00014	0.02951
511	2.913	10.48	-0.02	15595.43	62113.2980	0.00013	0.02837
521	2.857	10.48	-0.02	15899.84	62113.2980	0.00013	0.02729
531	2.803	10.48	-0.02	16204.27	62113.2980	0.00012	0.02627
541	2.751	10.48	-0.02	16508.71	62113.2980	0.00012	0.02531
551	2.702	10.48	-0.02	16813.17	62113.2980	0.00011	0.02441
561	2.654	10.48	-0.02	17117.63	62113.2980	0.00011	0.02354
571	2.607	10.48	-0.02	17422.11	62113.2980	0.00011	0.02273
581	2.562	10.48	-0.02	17726.60	62113.2980	0.00010	0.02195
591	2.519	10.48	-0.02	18031.10	62113.2980	0.00010	0.02122
601	2.477	10.48	-0.02	18335.61	62113.2980	0.00010	0.02052
611	2.437	10.48	-0.02	18640.13	62113.2980	0.00009	0.01986
621	2.397	10.48	-0.02	18944.66	62113.2980	0.00009	0.01922
631	2.360	10.48	-0.02	19249.20	62113.2980	0.00009	0.01862
641	2.323	10.48	-0.02	19553.75	62113.2980	0.00008	0.01804
651	2.287	10.48	-0.02	19858.30	62113.2980	0.00008	0.01749
661	2.253	10.48	-0.02	20162.86	62113.2980	0.00008	0.01697
671	2.219	10.48	-0.02	20467.43	62113.2980	0.00008	0.01647
681	2.186	10.48	-0.02	20772.00	62113.2980	0.00008	0.01599
691	2.155	10.48	-0.02	21076.58	62113.2980	0.00007	0.01553

ARL 26 Max gain (dBd): 10.5 Max exposure: 0.00198299 mW/cm^2

Max ERP (W): 62.4 Ant type: Andrew DB772G65ESXM Feet from site: 17

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm^2	Precent of FCC STD
701	2.124	10.48	-0.02	21381.17	62113.2980	0.00007	0.01509
711	2.094	10.48	-0.02	21685.76	62113.2980	0.00007	0.01467
721	2.065	10.48	-0.02	21990.36	62113.2980	0.00007	0.01427
731	2.037	10.48	-0.02	22294.97	62113.2980	0.00007	0.01388
741	2.010	10.48	-0.02	22599.58	62113.2980	0.00006	0.01351
751	1.983	10.5	0	22904.19	62400.0000	0.00006	0.01321
761	1.957	10.5	0	23208.81	62400.0000	0.00006	0.01287
771	1.931	10.5	0	23513.44	62400.0000	0.00006	0.01254
781	1.907	10.5	0	23818.07	62400.0000	0.00006	0.01222
791	1.883	10.5	0	24122.70	62400.0000	0.00006	0.01191
801	1.859	10.5	0	24427.34	62400.0000	0.00005	0.01162
811	1.836	10.5	0	24731.98	62400.0000	0.00005	0.01133
821	1.814	10.5	0	25036.63	62400.0000	0.00005	0.01106
831	1.792	10.5	0	25341.27	62400.0000	0.00005	0.01079
841	1.771	10.5	0	25645.93	62400.0000	0.00005	0.01054
851	1.750	10.5	0	25950.58	62400.0000	0.00005	0.01029
861	1.730	10.5	0	26255.24	62400.0000	0.00005	0.01005
871	1.710	10.5	0	26559.91	62400.0000	0.00005	0.00982
881	1.690	10.5	0	26864.57	62400.0000	0.00005	0.00960
891	1.671	10.5	0	27169.24	62400.0000	0.00004	0.00939
901	1.653	10.5	0	27473.91	62400.0000	0.00004	0.00918
911	1.635	10.5	0	27778.59	62400.0000	0.00004	0.00898
921	1.617	10.5	0	28083.26	62400.0000	0.00004	0.00879
931	1.600	10.5	0	28387.94	62400.0000	0.00004	0.00860
941	1.583	10.5	0	28692.63	62400.0000	0.00004	0.00842
951	1.566	10.5	0	28997.31	62400.0000	0.00004	0.00824
961	1.550	10.5	0	29302.00	62400.0000	0.00004	0.00807
971	1.534	10.5	0	29606.69	62400.0000	0.00004	0.00791
981	1.518	10.5	0	29911.38	62400.0000	0.00004	0.00775
991	1.503	10.5	0	30216.07	62400.0000	0.00004	0.00759
1001	1.488	10.5	0	30520.77	62400.0000	0.00003	0.00744
1011	1.473	10.5	0	30825.47	62400.0000	0.00003	0.00729
1021	1.459	10.5	0	31130.17	62400.0000	0.00003	0.00715
1031	1.445	10.5	0	31434.87	62400.0000	0.00003	0.00701

ARL 26 Max gain (dBd): 12.5 Max exposure: 0.00248673 mW/cm^2

Max ERP (W): 98.9 Ant type: Andrew DB772G65ESXM Feet from site: 8

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm^2	Precent of FCC STD
0	90.000	-6	-18.5	792.48	1396.9996	0.00116	0.11612
1	87.797	-5.6	-18.1	793.07	1531.7796	0.00127	0.12714
2	85.601	-5.2	-17.7	794.82	1679.5630	0.00139	0.13879
3	83.418	-4.9	-17.4	797.74	1799.6841	0.00148	0.14763
4	81.254	-4.2	-16.7	801.80	2114.4445	0.00172	0.17169
5	79.114	-3.5	-16	807.00	2484.2557	0.00199	0.19913
6	*77.005*	*-3.1*	*-15.6*	*813.31*	*2723.9322*	*0.00215*	*0.21497*
7	74.932	-2.6	-15.1	820.70	3056.3022	0.00237	0.23688
8	72.897	-2.3	-14.8	829.15	3274.8868	0.00249	0.24867
9	70.907	-2.4	-14.9	838.62	3200.3413	0.00238	0.23756
10	68.962	-2.7	-15.2	849.07	2986.7323	0.00216	0.21627
11	67.068	-3	-15.5	860.49	2787.3807	0.00197	0.19652
12	65.225	-3.8	-16.3	872.81	2318.4423	0.00159	0.15887
13	63.435	-5	-17.5	886.02	1758.7183	0.00117	0.11695
14	61.699	-6.6	-19.1	900.06	1216.7358	0.00078	0.07841
15	60.018	-7.9	-20.4	914.91	901.9787	0.00056	0.05625
16	58.392	-10.6	-23.1	930.51	484.3913	0.00029	0.02920
17	56.821	-14.3	-26.8	946.84	206.6314	0.00012	0.01203
18	55.305	-15.9	-28.4	963.86	142.9540	0.00008	0.00803
19	53.842	-14.9	-27.4	981.53	179.9684	0.00010	0.00975
20	52.431	-12.8	-25.3	999.82	291.8746	0.00015	0.01524
21	51.072	-10.9	-23.4	1018.69	452.0602	0.00023	0.02274
22	49.764	-7.5	-20	1038.11	989.0000	0.00048	0.04791
23	48.504	-6.2	-18.7	1058.06	1334.1243	0.00062	0.06221
24	47.291	-5.3	-17.8	1078.49	1641.3315	0.00074	0.07366
25	46.123	-4.6	-17.1	1099.39	1928.3963	0.00083	0.08329
26	45.000	-4.1	-16.6	1120.74	2163.6962	0.00090	0.08993
27	43.919	-3.8	-16.3	1142.49	2318.4423	0.00093	0.09272
28	42.879	-4.1	-16.6	1164.64	2163.6962	0.00083	0.08327
29	41.878	-4.7	-17.2	1187.16	1884.5007	0.00070	0.06980
30	40.914	-5.7	-18.2	1210.02	1496.9121	0.00053	0.05337
31	39.987	-7	-19.5	1233.22	1109.6763	0.00038	0.03809
32	39.094	-7	-19.5	1256.72	1109.6763	0.00037	0.03668
33	38.234	-8.1	-20.6	1280.52	861.3830	0.00027	0.02742
34	37.405	-8.8	-21.3	1304.60	733.1558	0.00022	0.02249
35	36.607	-8.5	-21	1328.94	785.5906	0.00023	0.02322
36	35.838	-7.1	-19.6	1353.53	1084.4169	0.00031	0.03090

ARL 26 Max gain (dBd): 12.5 Max exposure: 0.00248673 mW/cm^2

Max ERP (W): 98.9 Ant type: Andrew DB772G65ESXM Feet from site: 8

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm^2	Precent of FCC STD
37	35.096	-7.1	-19.6	1378.36	1084.4169	0.00030	0.02980
38	34.380	-5.3	-17.8	1403.40	1641.3315	0.00044	0.04350
39	33.690	-3.5	-16	1428.66	2484.2557	0.00064	0.06354
40	33.024	-3.5	-16	1454.12	2484.2557	0.00061	0.06133
41	32.381	-2	-14.5	1479.77	3509.1044	0.00084	0.08366
42	31.759	-0.6	-13.1	1505.60	4843.9125	0.00112	0.11155
43	31.159	-0.6	-13.1	1531.60	4843.9125	0.00108	0.10780
44	30.579	0.6	-11.9	1557.76	6385.5203	0.00137	0.13737
45	30.018	0.6	-11.9	1584.08	6385.5203	0.00133	0.13284
46	29.476	1.6	-10.9	1610.54	8038.8938	0.00162	0.16179
47	28.951	2.5	-10	1637.15	9890.0000	0.00193	0.19263
48	28.443	2.5	-10	1663.88	9890.0000	0.00186	0.18649
49	27.951	3.1	-9.4	1690.75	11355.2393	0.00207	0.20736
50	27.474	3.1	-9.4	1717.73	11355.2393	0.00201	0.20090
51	27.013	3.1	-9.4	1744.83	11355.2393	0.00195	0.19471
52	26.565	3.6	-8.9	1772.04	12740.7881	0.00212	0.21181
53	26.131	3.6	-8.9	1799.35	12740.7881	0.00205	0.20543
54	25.710	3.9	-8.6	1826.77	13652.0004	0.00214	0.21356
55	25.301	3.9	-8.6	1854.28	13652.0004	0.00207	0.20727
56	24.905	3.9	-8.6	1881.88	13652.0004	0.00201	0.20124
57	24.520	3.9	-8.6	1909.57	13652.0004	0.00195	0.19544
58	24.146	3.9	-8.6	1937.34	13652.0004	0.00190	0.18988
59	23.782	3.8	-8.7	1965.19	13341.2429	0.00180	0.18034
60	23.429	3.8	-8.7	1993.12	13341.2429	0.00175	0.17532
61	23.085	3.8	-8.7	2021.13	13341.2429	0.00170	0.17049
62	22.751	3.4	-9.1	2049.20	12167.3581	0.00151	0.15126
63	22.426	3.4	-9.1	2077.34	12167.3581	0.00147	0.14719
64	22.109	3.4	-9.1	2105.55	12167.3581	0.00143	0.14327
65	21.801	2.6	-9.9	2133.82	10120.3677	0.00116	0.11603
66	21.501	2.6	-9.9	2162.15	10120.3677	0.00113	0.11301
67	21.209	2.6	-9.9	2190.53	10120.3677	0.00110	0.11010
68	20.925	1.5	-11	2218.98	7855.9062	0.00083	0.08329
69	20.647	1.5	-11	2247.47	7855.9062	0.00081	0.08119
70	20.376	1.5	-11	2276.02	7855.9062	0.00079	0.07917
71	20.113	1.5	-11	2304.62	7855.9062	0.00077	0.07721
72	*19.855*	*0*	*-12.5*	*2333.26*	*5561.5557*	*0.00053*	*0.05333*
73	19.604	0	-12.5	2361.95	5561.5557	0.00052	0.05204
74	19.359	0	-12.5	2390.69	5561.5557	0.00051	0.05080
75	19.120	0	-12.5	2419.47	5561.5557	0.00050	0.04960
76	18.886	-2.5	-15	2448.29	3127.4926	0.00027	0.02724
77	18.658	-2.5	-15	2477.14	3127.4926	0.00027	0.02661

ARL: 26 | Max gain (dBd): 12.5 | Max exposure: 0.00248673 mW/cm²

Max ERP (W): 98.9 | Ant type: Andrew DB772G65ESXM | Feet from site: 8

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
78	18.435	-2.5	-15	2506.04	3127.4926	0.00026	0.02600
79	18.217	-2.5	-15	2534.98	3127.4926	0.00025	0.02541
80	18.004	-2.5	-15	2563.95	3127.4926	0.00025	0.02484
81	17.796	-6.3	-18.8	2592.95	1303.7559	0.00010	0.01012
82	17.592	-6.3	-18.8	2621.99	1303.7559	0.00010	0.00990
83	17.393	-6.3	-18.8	2651.06	1303.7559	0.00010	0.00968
84	17.199	-6.3	-18.8	2680.16	1303.7559	0.00009	0.00947
85	17.008	-6.3	-18.8	2709.29	1303.7559	0.00009	0.00927
86	16.821	-14.1	-26.6	2738.45	216.3696	0.00002	0.00151
87	16.639	-14.1	-26.6	2767.64	216.3696	0.00001	0.00147
88	16.460	-14.1	-26.6	2796.86	216.3696	0.00001	0.00144
89	16.285	-14.1	-26.6	2826.11	216.3696	0.00001	0.00141
90	16.113	-14.1	-26.6	2855.38	216.3696	0.00001	0.00139
91	15.945	-18.9	-31.4	2884.67	71.6467	0.00000	0.00045
92	15.781	-18.9	-31.4	2913.99	71.6467	0.00000	0.00044
93	15.619	-18.9	-31.4	2943.33	71.6467	0.00000	0.00043
94	15.461	-18.9	-31.4	2972.70	71.6467	0.00000	0.00042
95	15.306	-18.9	-31.4	3002.09	71.6467	0.00000	0.00041
96	15.154	-18.9	-31.4	3031.50	71.6467	0.00000	0.00041
97	15.005	-18.9	-31.4	3060.93	71.6467	0.00000	0.00040
98	14.859	-7.2	-19.7	3090.38	1059.7326	0.00006	0.00579
99	14.715	-7.2	-19.7	3119.85	1059.7326	0.00006	0.00568
100	14.574	-7.2	-19.7	3149.34	1059.7326	0.00006	0.00558
101	14.436	-7.2	-19.7	3178.85	1059.7326	0.00005	0.00547
102	14.300	-7.2	-19.7	3208.37	1059.7326	0.00005	0.00537
103	14.167	-7.2	-19.7	3237.92	1059.7326	0.00005	0.00528
104	14.036	-7.2	-19.7	3267.48	1059.7326	0.00005	0.00518
105	13.908	-1.9	-14.4	3297.06	3590.8420	0.00017	0.01724
106	13.782	-1.9	-14.4	3326.65	3590.8420	0.00017	0.01694
107	13.658	-1.9	-14.4	3356.26	3590.8420	0.00017	0.01664
108	13.536	-1.9	-14.4	3385.89	3590.8420	0.00016	0.01635
109	13.416	-1.9	-14.4	3415.53	3590.8420	0.00016	0.01607
110	13.299	-1.9	-14.4	3445.18	3590.8420	0.00016	0.01579
111	13.183	-1.9	-14.4	3474.85	3590.8420	0.00016	0.01552
112	13.069	-1.9	-14.4	3504.54	3590.8420	0.00015	0.01526
113	12.958	1.5	-11	3534.23	7855.9062	0.00033	0.03283
114	12.848	1.5	-11	3563.94	7855.9062	0.00032	0.03229
115	12.740	1.5	-11	3593.67	7855.9062	0.00032	0.03176
116	12.633	1.5	-11	3623.40	7855.9062	0.00031	0.03124
117	12.529	1.5	-11	3653.15	7855.9062	0.00031	0.03073
118	12.426	1.5	-11	3682.91	7855.9062	0.00030	0.03023

ARL 26 Max gain (dBd): 12.5 Max exposure: 0.00248673 mW/cm²

Max ERP (W): 98.9 Ant type: Andrew DB772G65ESXM Feet from site: 8

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
119	12.325	1.5	-11	3712.68	7855.9062	0.00030	0.02975
120	12.225	1.5	-11	3742.47	7855.9062	0.00029	0.02928
121	12.127	1.5	-11	3772.26	7855.9062	0.00029	0.02882
122	12.031	1.5	-11	3802.07	7855.9062	0.00028	0.02837
123	11.936	4	-8.5	3831.88	13969.9963	0.00050	0.04967
124	11.842	4	-8.5	3861.71	13969.9963	0.00049	0.04890
125	11.750	4	-8.5	3891.55	13969.9963	0.00048	0.04816
126	11.659	4	-8.5	3921.39	13969.9963	0.00047	0.04743
127	11.570	4	-8.5	3951.25	13969.9963	0.00047	0.04671
128	11.482	4	-8.5	3981.11	13969.9963	0.00046	0.04601
129	11.395	4	-8.5	4010.99	13969.9963	0.00045	0.04533
130	11.310	4	-8.5	4040.87	13969.9963	0.00045	0.04466
131	11.226	4	-8.5	4070.76	13969.9963	0.00044	0.04401
132	11.143	4	-8.5	4100.66	13969.9963	0.00043	0.04337
133	11.061	4	-8.5	4130.57	13969.9963	0.00043	0.04274
134	10.981	6	-6.5	4160.49	22140.9521	0.00067	0.06677
135	10.901	6	-6.5	4190.42	22140.9521	0.00066	0.06582
136	10.823	6	-6.5	4220.35	22140.9521	0.00065	0.06489
137	10.746	6	-6.5	4250.29	22140.9521	0.00064	0.06398
138	10.670	6	-6.5	4280.24	22140.9521	0.00063	0.06309
139	10.595	6	-6.5	4310.20	22140.9521	0.00062	0.06222
140	10.521	6	-6.5	4340.16	22140.9521	0.00061	0.06136
141	10.448	6	-6.5	4370.13	22140.9521	0.00061	0.06052
142	10.376	6	-6.5	4400.11	22140.9521	0.00060	0.05970
143	10.305	6	-6.5	4430.10	22140.9521	0.00059	0.05889
144	10.235	6	-6.5	4460.09	22140.9521	0.00058	0.05810
145	10.166	6	-6.5	4490.09	22140.9521	0.00057	0.05733
146	10.098	6	-6.5	4520.09	22140.9521	0.00057	0.05657
147	10.030	6	-6.5	4550.10	22140.9521	0.00056	0.05583
148	9.964	7.6	-4.9	4580.12	32003.4127	0.00080	0.07964
149	9.898	7.6	-4.9	4610.14	32003.4127	0.00079	0.07861
150	9.834	7.6	-4.9	4640.17	32003.4127	0.00078	0.07759
151	9.770	7.6	-4.9	4670.21	32003.4127	0.00077	0.07660
152	9.707	7.6	-4.9	4700.25	32003.4127	0.00076	0.07562
153	9.644	7.6	-4.9	4730.30	32003.4127	0.00075	0.07466
154	9.583	7.6	-4.9	4760.35	32003.4127	0.00074	0.07372
155	9.522	7.6	-4.9	4790.40	32003.4127	0.00073	0.07280
156	9.462	7.6	-4.9	4820.47	32003.4127	0.00072	0.07190
157	9.403	7.6	-4.9	4850.54	32003.4127	0.00071	0.07101
158	9.345	7.6	-4.9	4880.61	32003.4127	0.00070	0.07014
159	9.287	7.6	-4.9	4910.69	32003.4127	0.00069	0.06928

ARL 26 Max gain (dBd): 12.5 Max exposure: 0.00248673 mW/cm²

Max ERP (W): 98.9 Ant type: Andrew DB772G65ESXM Feet from site: 8

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
160	9.230	7.6	-4.9	4940.77	32003.4127	0.00068	0.06844
161	9.174	7.6	-4.9	4970.86	32003.4127	0.00068	0.06761
162	9.118	7.6	-4.9	5000.95	32003.4127	0.00067	0.06680
163	9.063	7.6	-4.9	5031.05	32003.4127	0.00066	0.06600
164	9.009	7.6	-4.9	5061.15	32003.4127	0.00065	0.06522
165	8.955	8.8	-3.7	5091.25	42188.7144	0.00085	0.08497
166	8.902	8.8	-3.7	5121.37	42188.7144	0.00084	0.08397
167	8.849	8.8	-3.7	5151.48	42188.7144	0.00083	0.08299
168	8.797	8.8	-3.7	5181.60	42188.7144	0.00082	0.08203
169	8.746	8.8	-3.7	5211.72	42188.7144	0.00081	0.08108
170	8.696	8.8	-3.7	5241.85	42188.7144	0.00080	0.08015
171	8.645	8.8	-3.7	5271.98	42188.7144	0.00079	0.07924
172	8.596	8.8	-3.7	5302.12	42188.7144	0.00078	0.07834
173	8.547	8.8	-3.7	5332.26	42188.7144	0.00077	0.07746
174	8.499	8.8	-3.7	5362.40	42188.7144	0.00077	0.07659
175	8.451	8.8	-3.7	5392.55	42188.7144	0.00076	0.07574
176	8.403	8.8	-3.7	5422.70	42188.7144	0.00075	0.07490
177	8.357	8.8	-3.7	5452.85	42188.7144	0.00074	0.07407
178	8.310	8.8	-3.7	5483.01	42188.7144	0.00073	0.07326
179	8.264	8.8	-3.7	5513.17	42188.7144	0.00072	0.07246
180	8.219	8.8	-3.7	5543.34	42188.7144	0.00072	0.07167
181	8.174	8.8	-3.7	5573.51	42188.7144	0.00071	0.07090
182	8.130	8.8	-3.7	5603.68	42188.7144	0.00070	0.07014
183	8.086	8.8	-3.7	5633.86	42188.7144	0.00069	0.06939
184	8.043	8.8	-3.7	5664.03	42188.7144	0.00069	0.06865
185	8.000	9.8	-2.7	5694.22	53112.4447	0.00086	0.08551
186	7.958	9.8	-2.7	5724.40	53112.4447	0.00085	0.08461
187	7.916	9.8	-2.7	5754.59	53112.4447	0.00084	0.08373
188	7.874	9.8	-2.7	5784.78	53112.4447	0.00083	0.08285
189	7.833	9.8	-2.7	5814.97	53112.4447	0.00082	0.08200
190	7.792	9.8	-2.7	5845.17	53112.4447	0.00081	0.08115
191	7.752	9.8	-2.7	5875.37	53112.4447	0.00080	0.08032
201	7.370	9.8	-2.7	6177.52	53112.4447	0.00073	0.07265
211	7.025	9.8	-2.7	6479.92	53112.4447	0.00066	0.06603
221	6.710	10.6	-1.9	6782.54	63855.2033	0.00072	0.07246
231	6.422	10.6	-1.9	7085.34	63855.2033	0.00066	0.06640
241	6.157	10.6	-1.9	7388.30	63855.2033	0.00061	0.06107
251	5.914	11.3	-1.2	7691.42	75023.3222	0.00066	0.06620
261	5.689	11.3	-1.2	7994.65	75023.3222	0.00061	0.06128
271	5.480	11.3	-1.2	8298.01	75023.3222	0.00057	0.05688
281	5.286	11.3	-1.2	8601.46	75023.3222	0.00053	0.05294

ARL 26 Max gain (dBd): 12.5 Max exposure: 0.00248673 mW/cm^2

Max ERP (W): 98.9 Ant type: Andrew DB772G65ESXM Feet from site: 8

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm^2	Precent of FCC STD
291	5.106	11.3	-1.2	8905.01	75023.3222	0.00049	0.04939
301	4.937	11.8	-0.7	9208.64	84177.5520	0.00052	0.05182
311	4.779	11.8	-0.7	9512.35	84177.5520	0.00049	0.04856
321	4.631	11.8	-0.7	9816.12	84177.5520	0.00046	0.04560
331	4.491	11.8	-0.7	10119.96	84177.5520	0.00043	0.04291
341	4.360	11.8	-0.7	10423.85	84177.5520	0.00040	0.04044
351	4.236	11.8	-0.7	10727.79	84177.5520	0.00038	0.03818
361	4.119	11.8	-0.7	11031.78	84177.5520	0.00036	0.03611
371	4.009	11.8	-0.7	11335.81	84177.5520	0.00034	0.03420
381	3.904	12.2	-0.3	11639.89	92298.8503	0.00036	0.03556
391	3.804	12.2	-0.3	11944.00	92298.8503	0.00034	0.03377
401	3.710	12.2	-0.3	12248.14	92298.8503	0.00032	0.03212
411	3.620	12.2	-0.3	12552.32	92298.8503	0.00031	0.03058
421	3.534	12.2	-0.3	12856.53	92298.8503	0.00029	0.02915
431	3.452	12.2	-0.3	13160.76	92298.8503	0.00028	0.02782
441	3.374	12.2	-0.3	13465.02	92298.8503	0.00027	0.02658
451	3.299	12.2	-0.3	13769.30	92298.8503	0.00025	0.02541
461	3.228	12.2	-0.3	14073.61	92298.8503	0.00024	0.02433
471	3.160	12.2	-0.3	14377.94	92298.8503	0.00023	0.02331
481	3.094	12.2	-0.3	14682.28	92298.8503	0.00022	0.02235
491	3.031	12.2	-0.3	14986.65	92298.8503	0.00021	0.02145
501	2.971	12.4	-0.1	15291.03	96648.7612	0.00022	0.02158
511	2.913	12.4	-0.1	15595.43	96648.7612	0.00021	0.02074
521	2.857	12.4	-0.1	15899.84	96648.7612	0.00020	0.01996
531	2.803	12.4	-0.1	16204.27	96648.7612	0.00019	0.01921
541	2.751	12.4	-0.1	16508.71	96648.7612	0.00019	0.01851
551	2.702	12.4	-0.1	16813.17	96648.7612	0.00018	0.01785
561	2.654	12.4	-0.1	17117.63	96648.7612	0.00017	0.01722
571	2.607	12.4	-0.1	17422.11	96648.7612	0.00017	0.01662
581	2.562	12.4	-0.1	17726.60	96648.7612	0.00016	0.01606
591	2.519	12.4	-0.1	18031.10	96648.7612	0.00016	0.01552
601	2.477	12.4	-0.1	18335.61	96648.7612	0.00015	0.01501
611	2.437	12.4	-0.1	18640.13	96648.7612	0.00015	0.01452
621	2.397	12.4	-0.1	18944.66	96648.7612	0.00014	0.01406
631	2.360	12.4	-0.1	19249.20	96648.7612	0.00014	0.01362
641	2.323	12.4	-0.1	19553.75	96648.7612	0.00013	0.01320
651	2.287	12.4	-0.1	19858.30	96648.7612	0.00013	0.01279
661	2.253	12.4	-0.1	20162.86	96648.7612	0.00012	0.01241
671	2.219	12.4	-0.1	20467.43	96648.7612	0.00012	0.01204
681	2.186	12.4	-0.1	20772.00	96648.7612	0.00012	0.01169
691	2.155	12.4	-0.1	21076.58	96648.7612	0.00011	0.01136

ARL 26 | Max gain (dBd): 12.5 | Max exposure: 0.00248673 mW/cm²

Max ERP (W): 98.9 | Ant type: Andrew DB772G65ESXM | Feet from site: 8

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
701	2.124	12.4	-0.1	21381.17	96648.7612	0.00011	0.01104
711	2.094	12.4	-0.1	21685.76	96648.7612	0.00011	0.01073
721	2.065	12.4	-0.1	21990.36	96648.7612	0.00010	0.01043
731	2.037	12.4	-0.1	22294.97	96648.7612	0.00010	0.01015
741	2.010	12.4	-0.1	22599.58	96648.7612	0.00010	0.00988
751	1.983	12.5	0	22904.19	98900.0000	0.00010	0.00984
761	1.957	12.5	0	23208.81	98900.0000	0.00010	0.00958
771	1.931	12.5	0	23513.44	98900.0000	0.00009	0.00934
781	1.907	12.5	0	23818.07	98900.0000	0.00009	0.00910
791	1.883	12.5	0	24122.70	98900.0000	0.00009	0.00887
801	1.859	12.5	0	24427.34	98900.0000	0.00009	0.00865
811	1.836	12.5	0	24731.98	98900.0000	0.00008	0.00844
821	1.814	12.5	0	25036.63	98900.0000	0.00008	0.00824
831	1.792	12.5	0	25341.27	98900.0000	0.00008	0.00804
841	1.771	12.5	0	25645.93	98900.0000	0.00008	0.00785
851	1.750	12.5	0	25950.58	98900.0000	0.00008	0.00767
861	1.730	12.5	0	26255.24	98900.0000	0.00007	0.00749
871	1.710	12.5	0	26559.91	98900.0000	0.00007	0.00732
881	1.690	12.5	0	26864.57	98900.0000	0.00007	0.00715
891	1.671	12.5	0	27169.24	98900.0000	0.00007	0.00699
901	1.653	12.5	0	27473.91	98900.0000	0.00007	0.00684
911	1.635	12.5	0	27778.59	98900.0000	0.00007	0.00669
921	1.617	12.5	0	28083.26	98900.0000	0.00007	0.00655
931	1.600	12.5	0	28387.94	98900.0000	0.00006	0.00641
941	1.583	12.5	0	28692.63	98900.0000	0.00006	0.00627
951	1.566	12.5	0	28997.31	98900.0000	0.00006	0.00614
961	1.550	12.5	0	29302.00	98900.0000	0.00006	0.00601
971	1.534	12.5	0	29606.69	98900.0000	0.00006	0.00589
981	1.518	12.5	0	29911.38	98900.0000	0.00006	0.00577
991	1.503	12.5	0	30216.07	98900.0000	0.00006	0.00565
1001	1.488	12.5	0	30520.77	98900.0000	0.00006	0.00554
1011	1.473	12.5	0	30825.47	98900.0000	0.00005	0.00543
1021	1.459	12.5	0	31130.17	98900.0000	0.00005	0.00533
1031	1.445	12.5	0	31434.87	98900.0000	0.00005	0.00522

STATEMENT OF EXPERIENCE

Jerrold Talmadge Bushberg, Ph.D., DABMP, DABSNM
(800) 760-8414 jbushberg@hampc.com

Dr. Jerrold Bushberg has performed health and safety analysis for RF & ELF transmissions systems since 1978 and is an expert in both health physics and medical physics. The scientific discipline of Health Physics is devoted to radiation protection, which, among other things, involves providing analysis of radiation exposure conditions, biological effects research, regulations and standards as well as recommendations regarding the use and safety of ionizing and non-ionizing radiation. In addition, Dr. Bushberg has extensive experience and lectures on several related topics including medical physics, radiation protection, (ionizing and non-ionizing), radiation biology, the science of risk assessment and effective risk communication in the public sector.

Dr. Bushberg's doctoral dissertation at Purdue University was on various aspects of the biological effects of microwave radiation. He has maintained a strong professional involvement in this subject and has served as consultant or appeared as an expert witness on this subject to a wide variety of organizations/institutions including, local governments, school districts, city planning departments, telecommunications companies, the California Public Utilities Commission, national news organizations, and the U.S. Congress. In addition, his consultation services have included detailed computer based modeling of RF exposures as well as on-site safety inspections and RF & ELF environmental field measurements of numerous transmission facilities in order to determine their compliance with FCC and other safety regulations. The consultation services provided by Dr. Bushberg are based on his professional judgement as an independent scientist, however they are not intended to necessarily represent the views of any other organization.

Dr. Bushberg is a member of the main scientific body of International Committee on Electromagnetic Safety (ICES) which reviews and evaluates the scientific literature on the biological effects of non-ionizing electromagnetic radiation and establishes exposure standards. He also serves on the ICES Risk Assessment Working Group that is responsible for evaluating and characterizing the risks of non-ionizing electromagnetic radiation. Dr. Bushberg was appointed and is serving as a member of the main scientific council of the National Council on Radiation Protection and Measurement's (NCRP). He is also a Scientific Vice-President of the NCRP, a member of the NCRP Board of Directors and chairs its committee on Radiation Protection in Medicine. In addition, Dr. Bushberg is a member of NCRP's scientific advisory committee on Non-ionizing Radiation Safety. The NCRP is the nation's preeminent scientific radiation protection organization, chartered by Congress to evaluate and provide expert consultation on a wide variety of radiological health issues. The current FCC RF exposure safety standards are based in large part on the recommendations of the NCRP. Dr. Bushberg was elected to the International Engineering in Medicine and Biology Society Committee on Man and Radiation (COMAR) which has as its primary area of responsibility the examination and interpreting the biological effects of non-ionizing electromagnetic energy and presenting its findings in an authoritative and professional manner. Dr. Bushberg is also a member of a six person U.S. expert delegation to the international scientific community on Scientific and Technical Issues for Mobile Communication Systems established by the Federal Communications Commission.

Dr. Bushberg is a full member of the Bioelectromagnetics Society, the Health Physics Society and the Radiation Research Society. Dr. Bushberg received both a Masters of Science and Ph.D. from the Department of Bionucleonics at Purdue University. Dr. Bushberg is certified by several national professional boards with specific sub-specialty certification in radiation protection and medical physics. Prior to coming to California, Dr. Bushberg was on the faculty of Yale University School of Medicine.

ATTACHMENT C

Planning Commission staff report dated July 21, 2010 (contains Appeal letter by Ms. Natasha Ernst/NextG dated May 24, 2010 and Zoning Manager's administrative determination letter dated May 13, 2010)

Case File Number: A10129 **July 21, 2010**

Locations:	**Public Right-of-way at approximately 7294 Marlboro Terrace/4949 Grizzly Peak Boulevard** **Public Right-of-way at approximately 9950 Skyline Boulevard** **Public Right-of-way at approximately 10648 Skyline Boulevard** **Public Right-of-way at approximately 10000 Skyline Boulevard**
Proposal:	Appeal of the Zoning Manager's interpretation/determination that the proposed poles, to be located within the public right-of-way, are Monopole Telecommunication Facilities and are subject to the Planning Code.
Appellant:	NextG Networks
Owner:	City of Oakland
Planning Permits Required:	Major Conditional Use Permits (CUP) to erect Telecommunication Monopole Facilities within the R-30, Singe-family Residential Zone and the Open Space Zone. The site located at the corner of Marlboro Terrace and Grizzly Peak Boulevard, zoned R-30, will require Design Review, in addition to a major CUP.
General Plan:	Skyline Boulevard: Open Space Marlboro Tr / Grizzly Peak Blvd: Hillside Residential
Zoning:	Skyline Boulevard: OS Marlboro Tr / Grizzly Peak Blvd: R-30 / S-10 / S-11
Service Delivery District:	Skyline Boulevard: IV Marlboro Tr / Grizzly Peak Blvd: II
City Council District:	Skyline Boulevard: 4 Marlboro Tr / Grizzly Peak Blvd: 1
Action to be Taken:	Uphold Zoning Manager's Decision and deny the appeal.
Finality of Decision:	Final
For further information:	Contact case planner **Leigh McCullen** at **510-238-4977** or **lmcullen@oaklandnet.com.**

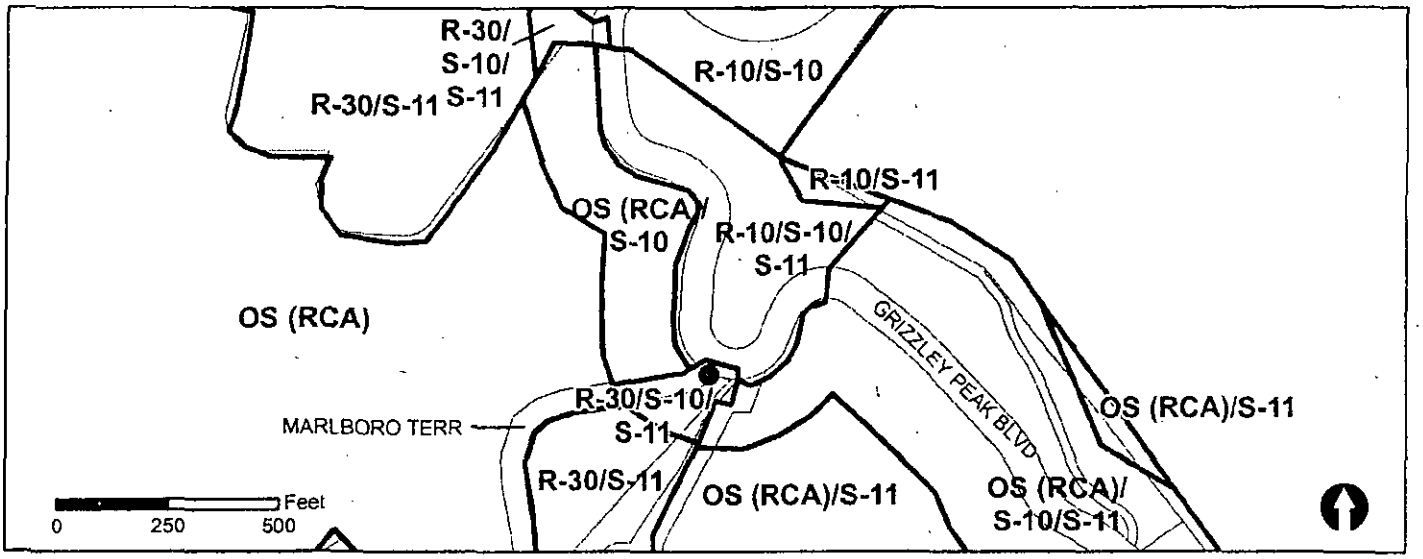
SUMMARY

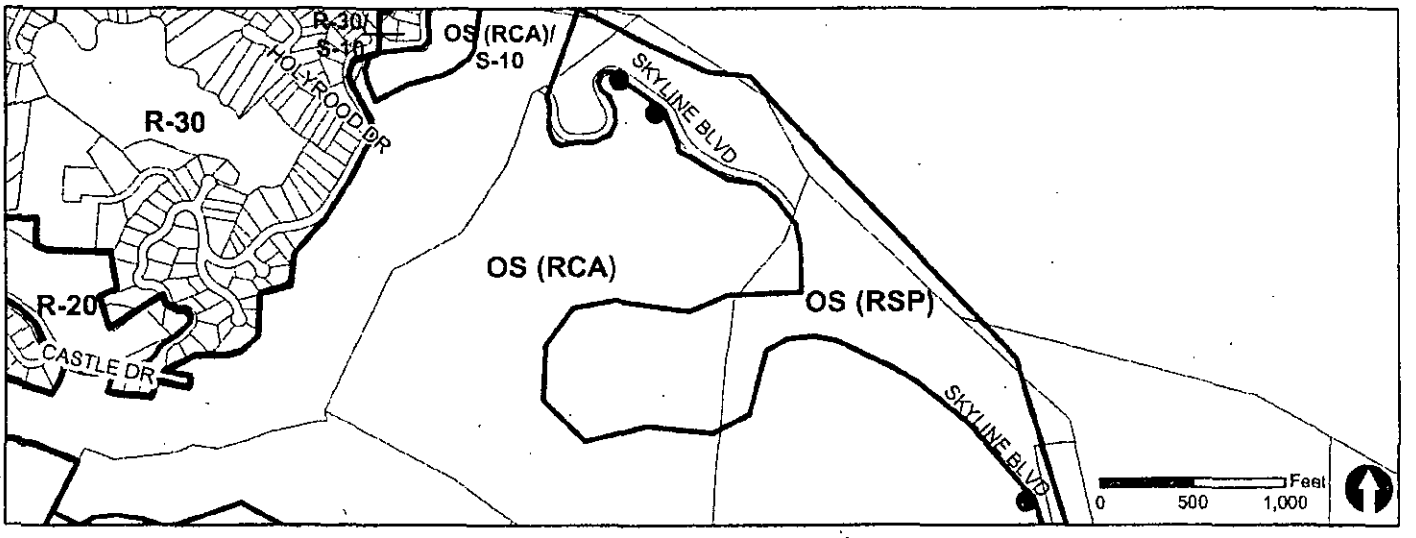
The Zoning Manager has determined that the erection of these new and independent poles within the public right-of-way intended for Wireless Telecommunications purposes are considered Monopole Wireless Telecommunications Facilities, as defined, and regulated, by the Oakland Planning Code including the requirement for Conditional Use Permits. This determination has been appealed by NextG Networks. The appeal is the subject of this report.

BACKGROUND

On March 12, 2010, the City of Oakland Zoning Division received from the appellant four (4) incomplete basic applications for the above four (4) referenced sites. Application fees were not paid at that time. These applications would provide for the erection of four (4) 40(+)-foot wooden poles, with attached wireless telecommunications antenna and equipment, within the public right-of-way. On April 9, 2010 staff sent an incomplete letter for these applications. The incomplete letter states that the poles qualify as Wireless Telecommunication Monopoles and subject to the Oakland Planning Code (OPC).

CITY OF OAKLAND PLANNING COMMISSION





Case File: A10-129
Appellant: NextG Netrworks c/o Natasha Ernst
Address: Public Right-of-ways at approximately:
7294 Marlboro Tr/4949 Grizzley Peak Blvd;
9950, 10000 & 10648 Skyline Blvd
Zone: Skyline Blvd: OS; Marlboro Tr/
Grizzley Peak: R-30/S-10/S-11

NextG Networks, the appellant, alleges that its wireless telecommunications operations fall under the exclusive jurisdiction of the California Public Utilities Commission (CPUC) and is not subject to local land use controls because they would be located within the public right-of-way and are utilities. They have not provided evidence to support this claim. Staff does not dispute that NextG Networks is a "Telephone Corporation" defined by California Public Utilities Code (PUC) and has obtained, as required by the PUC, a Certificate of Public Necessity and Convenience (CPNC) from the CPUC. However, the appellant has failed to provide evidence to substantiate their claim that their CPNC overrides local land use controls.

All Telephone Corporations, as defined by the PUC, with very limited exceptions, are required to obtain a CPNC. Verizon, T-Mobile, AT&T Wireless, Clearwire and many other telecommunication providers all have a CPNC but still submit to local land use authority. As a matter of fact, the Planning Commission often rules on applications for Wireless Telecommunications Facilities, including new facilities located within the public rights-of-way, consistent with their authority granted under the OPC. As an example, on May 5, 2010 the Planning Commission approved a Major Conditional Use Permit and Design Review for an AT&T Wireless Telecommunications Facility located within the public right-of-way on Moraga Avenue. Two Major Conditional Use Permit/Design Review applications, one located in the public right-of-way on Moraga Avenue another in the public right-of-way of Shepherd Canyon Road, have been filed by T-Mobile and are pending a public hearing before the Planning Commission. Neither AT&T nor T-Mobile has challenged the applicability of the Planning Code in relation to these projects. The applicant has failed to demonstrate why they should be treated differently from other wireless telecommunications providers.

ZONING ANALYSIS

The OPC defines Wireless Telecommunications Facilities to include attachment of antennas to buildings and similar facilities, the construction of support structures, and the provision of equipment associated with transmitting and receiving of radio frequencies. Consistent with this definition, NextG provides radiofrequency transport services for wireless carriers and constructs transport networks consisting of a central switch-like hub and a system of fiber optic cables, remote nodes, and small antennae attached to poles and other structures. The OPC defines Wireless Telecommunications Monopoles as a monopolar structure erected on the ground, terminating in one or more connecting appurtenances (OPC Section 17.11.900.). A review of NextG's elevations and photo simulations (**Attachment A**) would clearly demonstrate that the proposed poles meet this definition. Given the characteristics and intended use of NextG's proposed facilities the Zoning Manager determined that they are Monopole Wireless Telecommunications Facilities.

OPC Section 17.07.040 states that the 'zoning regulations shall apply, to the extent permissible under other laws, to all property within the City of Oakland....regardless of whether such property is in private or public ownership'. The scope and applicability of the Planning Code clearly includes public right-of-ways. Subsection C of this section further states that 'Whenever any provision of the zoning regulations and any other provision of law, whether set forth in this code, in the Oakland Building Code or Oakland Housing Code, or in any other law, ordinance, or resolution of any kind, impose overlapping or contradictory regulations, or contain restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in the zoning regulations.'

The four proposed NextG sites located along Skyline Boulevard are near Chabot Observatory and in the Open Space Zone. Major Conditional Use Permits are required to erect Wireless Telecommunications Monopoles in the Open Space Zone (OPC Section 17.11.090). The site located on Marlboro Terrace is zoned R-30, Detached Unit Residential, S-10 Scenic Route Combining Zone and S-11 Site Development and Design Review Combining Zone. A major Conditional Use Permit, with Design Review, is required to

erect a Wireless Telecommunications Monopole in the R-30 Zone (OPC 17.16.070, 17.16.030 and 17.134.020(e)).

BASIS FOR THE APPEAL

On May 13, 2010 the Zoning Manager issued an administrative interpretation / determination which stated that the erection of these new and independent poles within the public right-of-way intended for Wireless Telecommunications purposes are considered Monopole Wireless Telecommunications Facilities, as defined, and regulated, by the Oakland Planning Code including the requirement for Conditional Use Permits. Pursuant to OPC Section 17.132.020, NextG Networks filed an appeal of the Zoning Manager's interpretation / determination (see **Attachment B**, Appeal request and supporting documentation).

The following discussion combines related appeal issues where appropriate for efficiency and clarity of the report. Each key point of the appeal is summarized in *underlined italics* with Staff's responses to each point immediately following in regular text.

1. *The City erred by applying the Planning Code to the Public Rights-of-Way*

Staff Response

OPC Section 17.07.040 states that the 'zoning regulations shall apply, to the extent permissible under other laws, to **all property** within the city of Oakland....regardless of whether such property is in private or **public ownership**' (emphasis added). It is clear from this Section that the scope and applicability of the Planning Code includes public right-of-ways, which are lands under public ownership. Subsection C of this section further states that 'Whenever any provision of the zoning regulations and any other provision of law, whether set forth in this code, in the Oakland Building Code or Oakland Housing Code, or in any other law, ordinance, or resolution of any kind, impose overlapping or contradictory regulations, or contain restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in the zoning regulations. The Planning Code is more restrictive regarding this matter, therefore it governs. Separate permits, such as excavation, building and encroachment permits may be required by other agencies.

NextG admits in their appeal that should they propose their telecommunications infrastructure on private property then the construction would fall squarely under the Planning Code. As evidenced in the preceding paragraph, the Planning Code applies to all property within the City of Oakland, including public rights-of-way. And as detailed above, other Wireless Telecommunication Facility providers have obtained local land use approvals in the public right of way pursuant to OPC 17.128. Therefore, NextG's proposed telecommunications infrastructure falls squarely under the Planning Code.

NextG generally alleges that construction in the public rights-of-way is governed exclusively by the Building Services Division of CEDA which issues encroachment and excavation permits for the placement of improvements in the public rights-of-way. The appellant fails to site a specific Code or Ordinance to substantiate this claim. Many projects within the City of Oakland require the issuance of permits from multiple agencies, including Planning and Building. Indeed, NextG will be required to obtain all necessary encroachment, excavation and/or building permits required by the Building Services Division, if Major Conditional Use Permits are approved for the proposed facilities.

The appellant generally alleges that the OPC does not mention or regulate any type of utility infrastructure in the public right-of-way. The OPC does regulate utilities as Essential Service

Civic Activities, includes those in the public rights-of-way (as discussed above the OPC regulates all land within the City of Oakland). OPC Section 17.11.140 defines Essential Service Civic Activities to include the maintenance and operation of the following installations:

A. Electric, gas, and telephone distribution lines and poles, and water, storm drainage, and sewer lines, with incidental appurtenances thereto, but excluding electric transmission lines;

...

H. Telecommunication activities include the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Essential Service Activities are permitted by right in each of the zoning districts contained in the OPC. The OPC sets forth additional regulations for Telecommunications *Facilities,* defined in the OPC to include attachment of antennas to buildings and similar facilities, the construction of support structures, and the provision of equipment associated with transmitting and receiving of radio frequencies. Staff has determined that the appellant's facilities, including the proposed support structures or poles, antennas and equipment intended to transmit and receive radio frequencies, are considered Telecommunications *Facilities*. See the Zoning Analysis section of this report for the permits required by the OPC for the applicant's proposed Telecommunication Facilities.

2. *The City inaccurately determined that a Utility Pole is a Monopole.*

Staff Response

The OPC defines Wireless Telecommunications Facilities to include attachment of antennas to buildings and similar facilities, the construction of support structures, and the provision of equipment associated with transmitting and receiving of radio frequencies. Consistent with this definition, NextG provides radiofrequency transport services for wireless carriers and constructs transport networks consisting of a central switch-like hub and a system of fiber optic cables, remote nodes, and small antennae attached to poles and other structures. The OPC defines Wireless Telecommunications Monopoles as a monopolar structure erected on the ground, terminating in one or more connecting appurtenances (OPC Section 17.11.900). The poles proposed by NextG are monopolar (**Attachment A**) and are intended to transmit radio frequencies. Given the characteristics of NextG's proposed facilities, as described above, the Zoning Manager determined that they are Monopole Wireless Telecommunications Facilities.

The appellant argues that their facilities are differentiated from monopoles because monopoles are made out of steel with large concrete foundations and connected to equipment cabinets by coaxial cable where their poles are wooden, set into the ground and outfitted with fiber cable or electric power connections. The definition for Monopole contained in the OPC is sufficiently broad to cover any type of monopolar structure, whether it is a steel pole, a wood pole or some other material. Further, the OPC does not discuss the type of foundation or the type of power supply required to fall within the Monopole category. The appellant's wooden poles, intended for wireless telecommunications purposes, clearly meet the definition of a Monopole.

The appellant suggests that their poles *could* support traditional wireline and power attachments. Staff would point out that wireline and power attachments would be permitted by right as Essential Service Activities on the proposed poles and in any zoning district. However, the proposed poles are being erected for Wireless Telecommunications purposes, not for wireline or power attachments.

The appellant has indicated that they intend to register the poles with the Northern California Joint Pole Association (NCJPA). Registration with the NCJPA does not guarantee that another utility will co-locate on these poles. Co-location by a typical Oakland utility is unlikely at the Grizzly Peak/Marlboro Terrace site given that this is an underground utility district and traditional wireline and power companies have already placed their cables and equipment underground. Further, co-location is unlikely along the section of Skyline Boulevard where three poles are proposed because this area is surrounded by parks and open space areas that do not require these utilities, nor do any utility poles exist in the immediate area. Essentially, there are not any other utility poles in these areas because they are not required by other utility providers.

3. *Even if the Planning Code governs, the City erred in its application*

Staff Response

The appellant generally alleges that if the OPC applies, Minor Conditional Use Permits would be required for Monopoles in the Open Space Zone. OPC Section 17.11.090 clearly indicates that Monopole Telecommunications Facilities require a Major Conditional Use Permit in the Open Space Zone (**Attachment C**). Staff did not err in this regard.

4. *The City seems to be abusing its discretion by treating NextG in a Discriminatory Manner.*

Staff Response

The City is merely treating NextG in the same fashion, and consistent with the authority granted under the OPC, as any other Wireless Telecommunications provider. For example, Verizon, T-Mobile, AT&T Wireless, Clearwire and many other telecommunications providers all have a CPNC but still submit to local land use authority As a matter of fact, the Planning Commission often rules on applications for Wireless Telecommunications Facilities, includes new facilities located within the public rights-of-way, consistent with their authority granted under the OPC. For example, on May 5, 2010 the Planning Commission approved a Major Conditional Use Permit/Design Review application for an AT&T Wireless Telecommunications Facility located within the public right-of-way on Moraga Avenue. Two Major Conditional Use Permit/Design Review applications, one located in the public right-of-way on Moraga Avenue another in the public right-of-way of Shepherd Canyon Road, have been filed by T-Mobile and are pending a public hearing before the Planning Commission. Neither AT&T nor T-Mobile has challenged the applicability of the Planning Code in relation to these projects. The applicant has failed to demonstrate why they should be treated differently from other wireless telecommunications providers.

CONCLUSION

The appellant has not provided sufficient evident to substantiate their allegations. The Zoning Manager, after thorough review of the projects, found that the proposed projects are Monopole Wireless Telecommunications Facilities subject to the Oakland Planning Code.

RECOMMENDATIONS: 1. Deny the Appeal and uphold the Zoning Administrator's determination.

Prepared by:

Leigh A. McCullen
Planner III

Approved by:

Scott Miller
Zoning Manager

Forwarded to the Planning Commission by:

Eric Angstadt
Deputy Director, Community and Economic Development Agency

ATTACHMENTS:

A. Elevations and Photo Simulations of proposed poles
B. Appeal request and supporting documentation
C. OPC Section 17.11.090

ATTACHMENT A

MAKE READY
QUARTER STEP POLE ACCORDING TO GO95 STANDARDS

NEW CONSTRUCTION
NEXTG TO INSTALL SHROUD KIT SH001 @ 11'-3" AGL NEXTG TO PLACE NEW METAL POLE AND TRANSFER ALL SIGNAGE.

NOTES:

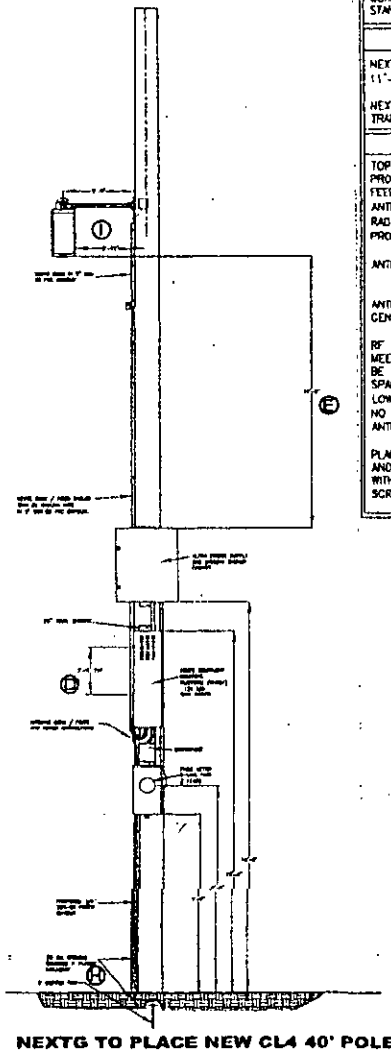
TOP OF POLE: 41'-5"
PROPOSED SECONDARY. UNDERGROUND FEED.
ANTENNA RAD CENTER OF ANTENNA: 33'-5"
RAD CENTER OF ANTENNA: 32'-0"
PROPOSED NEXTG H.O.A: 29'-0"

ANTENNA TYPE: 12"X24" ANDREW OMNIDIRECTIONAL ANTENNA(S).

ANTENNA OUTPUT DOES NOT EXCEED GENERAL POPULATION EXPOSURE LIMITS.

RF EMISSION PLACARDS / SIGNAGE MEETING THE FCC REQUIREMENTS SHALL BE IN A LOCATION VISIBLE FROM CLIMBING SPACE AND BE AFFIXED TO THE POLE NO LOWER THAN 9'-0" ABOVE GROUND LINE & NO HIGHER THAN 3'-0" BELOW THE ANTENNA.

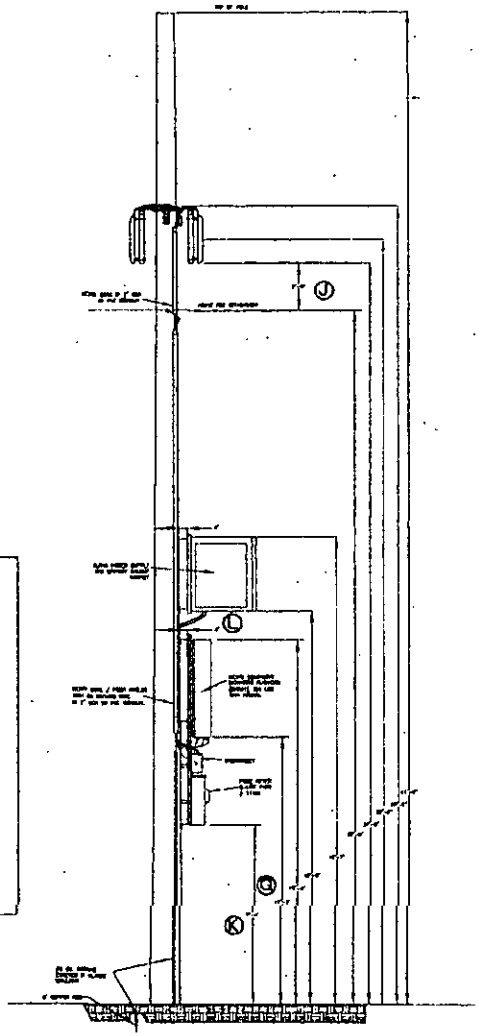
PLACARDS / SIGNAGE ARE UVA RESISTANT AND SHALL BE ATTACHED TO THE POLE WITH GALVANIZED NAILS OR GALVANIZED SCREWS.



NEXTG TO PLACE NEW CL4 40' POLE

SCALE: N.T.A.	UTILITY POLE DETAIL	POLE# NEW POLE	LOOKING WEST	A

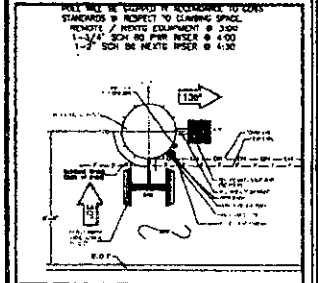
- -NOT APPLICABLE- Ⓐ - 48" MIN. CLEARANCE BETWEEN SECONDARY POWER AND LOWEST POINT OF ANTENNA ASSEMBLY.
- -NOT APPLICABLE- Ⓑ - STEP POLE TOP EXTENSION AS PER DETAIL DWG.
- -NOT APPLICABLE- Ⓒ - 48" MIN CLEARANCE REQ'D.
- Ⓓ - 24" SPACING MAX.
- Ⓔ - 72" MIN. TO SECONDARY LEVEL.
- -NOT APPLICABLE- Ⓕ - 12" MIN. SPACING FOR EQUIP TO CURB.
- Ⓖ - 15' MIN. (MAY BE REDUCED TO 9' WHEN NOT EXPOSED TO TRAFFIC).
- Ⓗ - GROUND INSTALLED BY COMM COMPANY (INCLUDES 8' COPPER ROD).
- Ⓘ - 24" MIN. FROM CENTER OF POLE
- Ⓙ - 24" MIN. CLEARANCE REQ'D.
- Ⓚ - 7' MIN. / 8' MAX. REQ'D.
- Ⓛ - 4" MIN. CLEARANCE BETWEEN EQUIPMENT AND POLE.



NEXTG TO PLACE NEW CL4 40' POLE

SCALE: N.T.A.	UTILITY POLE DETAIL	POLE# NEW POLE	LOOKING NORTH	B

SCALE: N.T.A.	SITE POLE PICTURE	C



SCALE: N.T.A.	POLE# NEW POLE RISER POLE DETAIL	D

Call Before you Dig!

811

Know what's **below.**
Call before you dig.
Call 811 Before you Dig!

PROJECT INFO:

CURRENT ISSUE:

PERMIT SUBMITTAL:

REV.	DATE	

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks Inc.

REF:

COMMENTS:

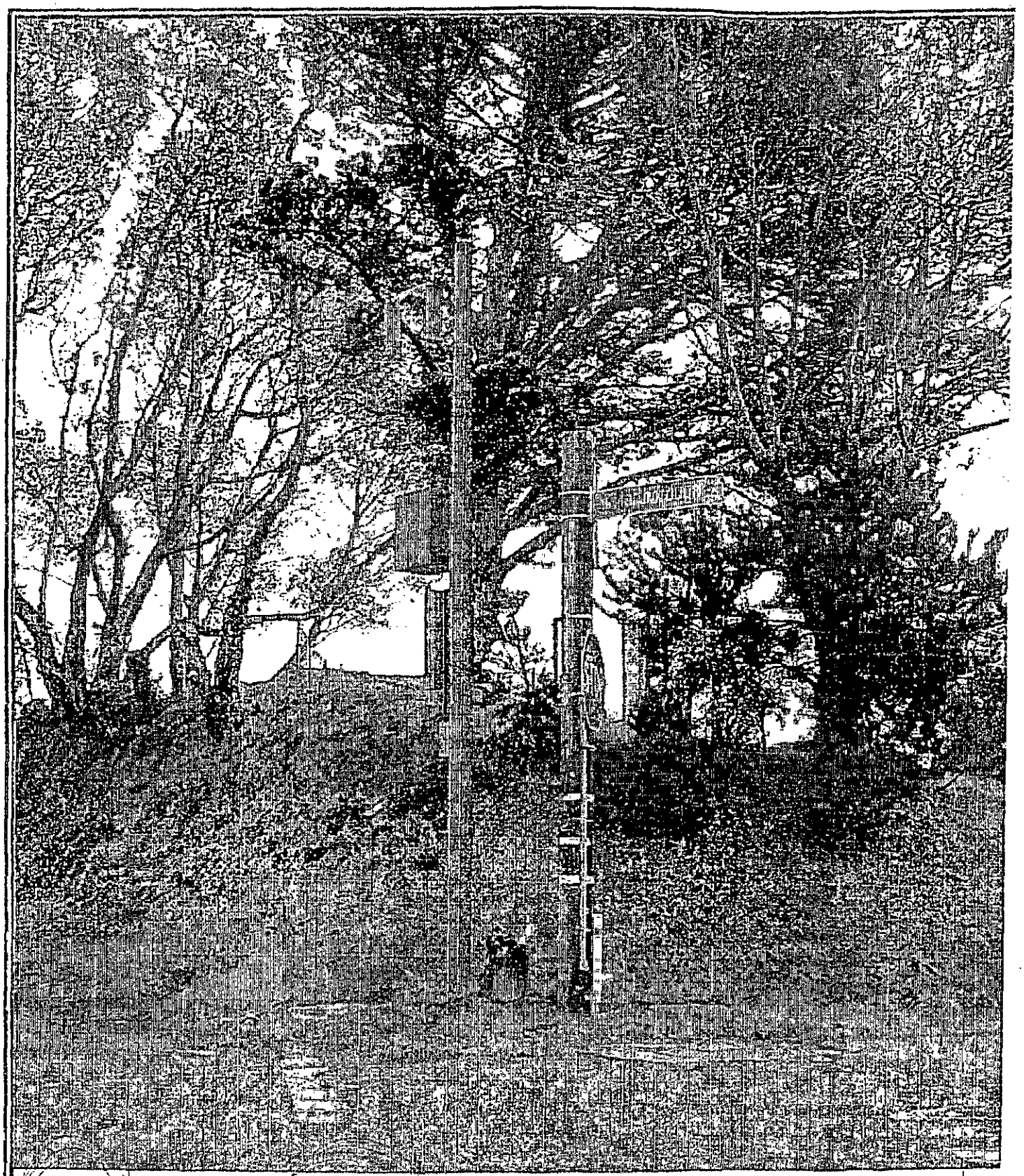
SHEET TITLE:

NEXTG NETWORKS
OAKLAND HILLS PROJECT
POLE PROFILE VRZ1013A-ONH39

SHEET NUMBER: 2 REVISION:

2 OF 4

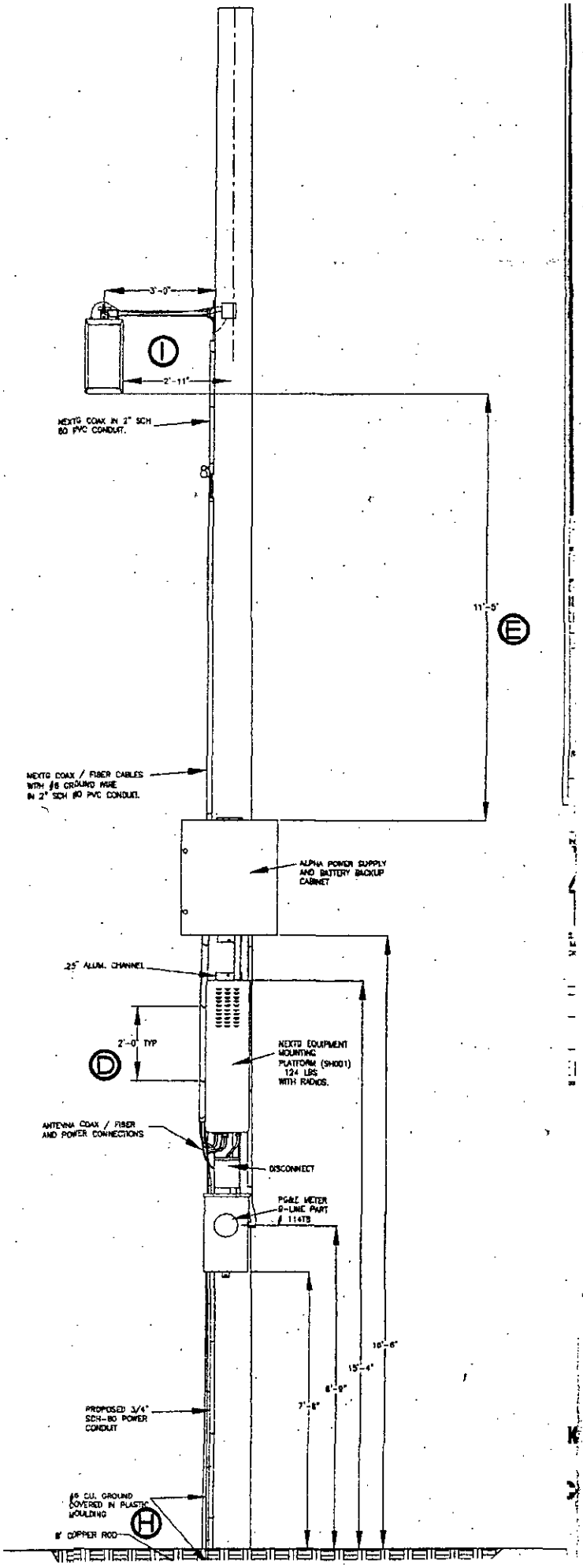
UTILITY NODE / REPEATER POLE EQUIPMENT PROFILES

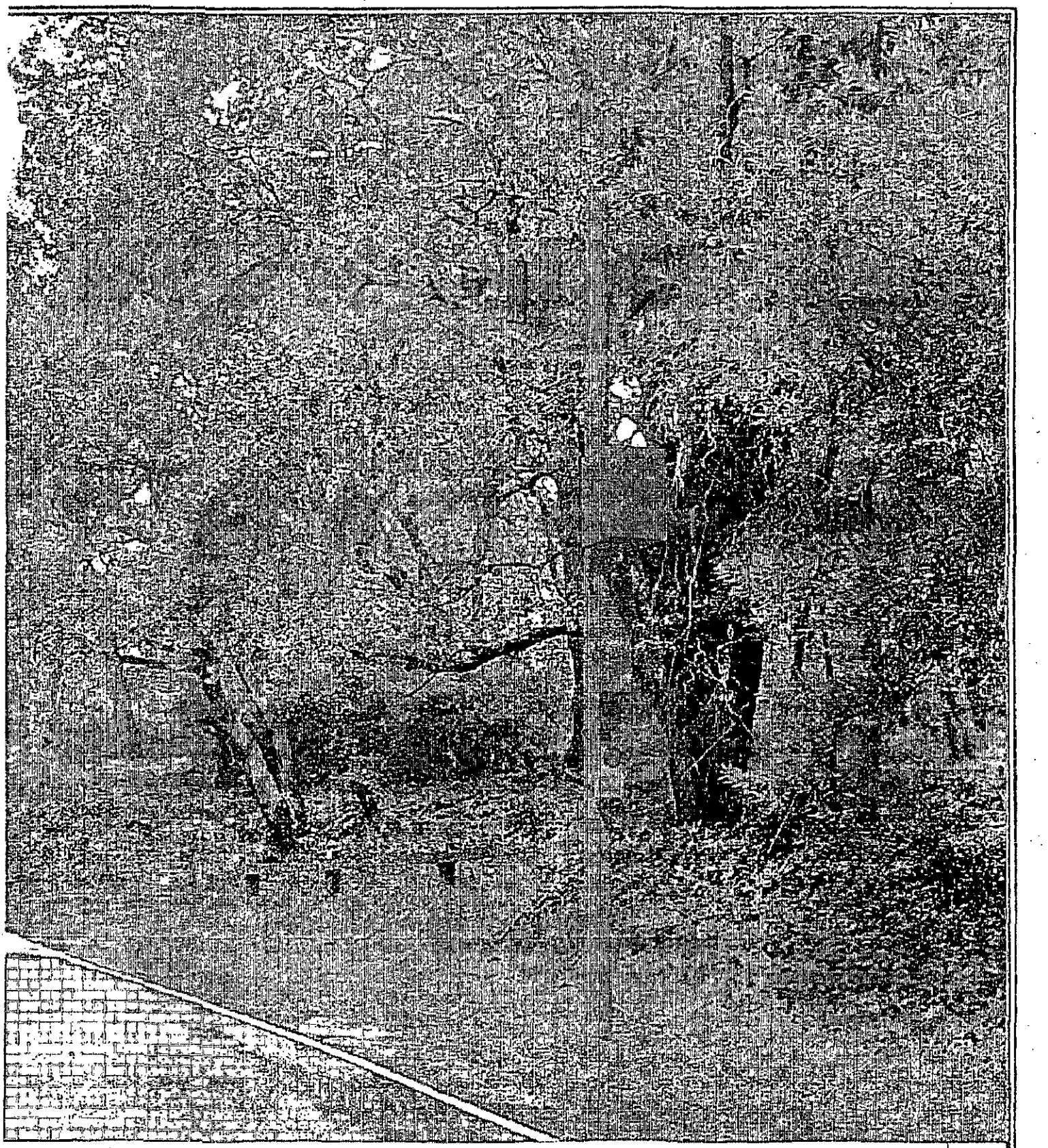


SCALE: N.T.S.

PROPOSED PHOTO / EQUIPMENT REPRESENTATION

F

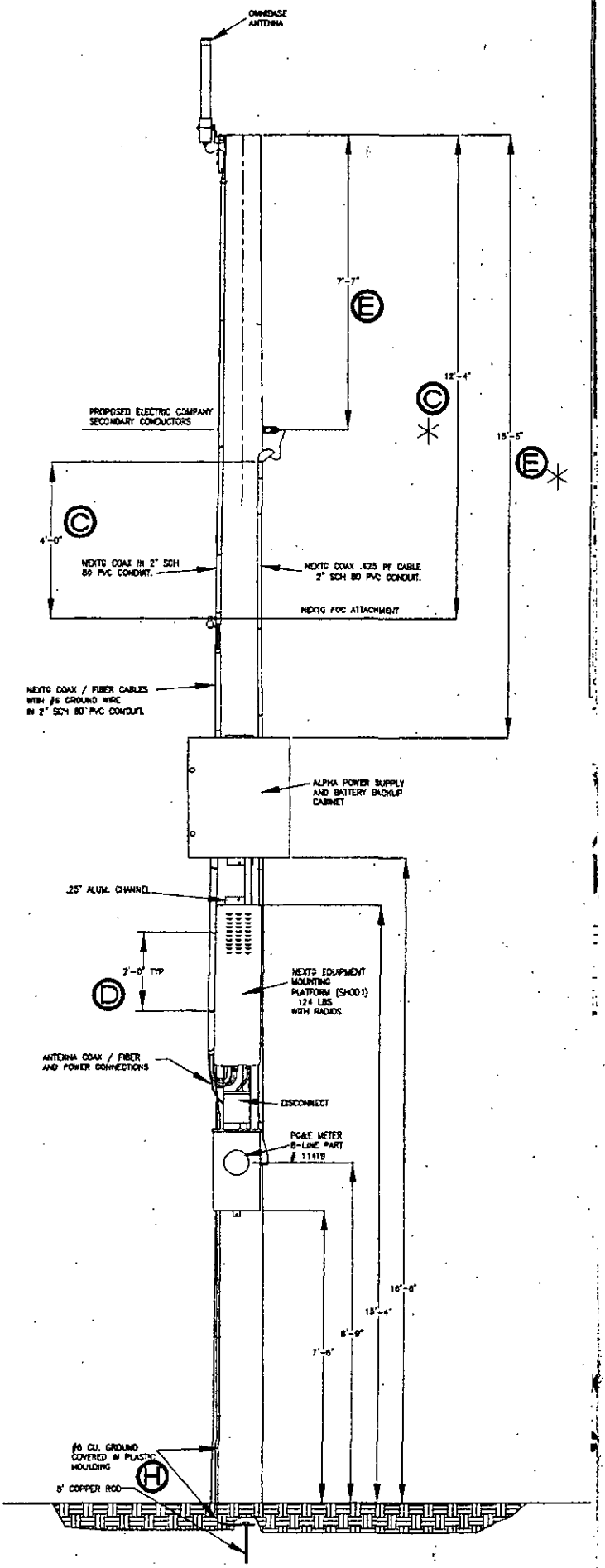

3'-0"
2'-11"
NEXTG COAX IN 2" SCH 80 PVC CONDUIT.
11'-5"
NEXTG COAX / FIBER CABLES WITH #6 GROUND WIRE IN 2" SCH 80 PVC CONDUIT.
ALPHA POWER SUPPLY AND BATTERY BACKUP CABINET
.25" ALUM. CHANNEL
2'-0" TYP
NEXTG EQUIPMENT MOUNTING PLATFORM (SH001) 124 LBS WITH RADIOS.
ANTENNA COAX / FIBER AND POWER CONNECTIONS
DISCONNECT
PG&E METER
10'-6"
15'-4"
8'-9"
7'-6"
PROPOSED 3/4" SCH-80 POWER CONDUIT
#6 CU. GROUND COVERED IN PLASTIC MOULDING
8' COPPER ROD



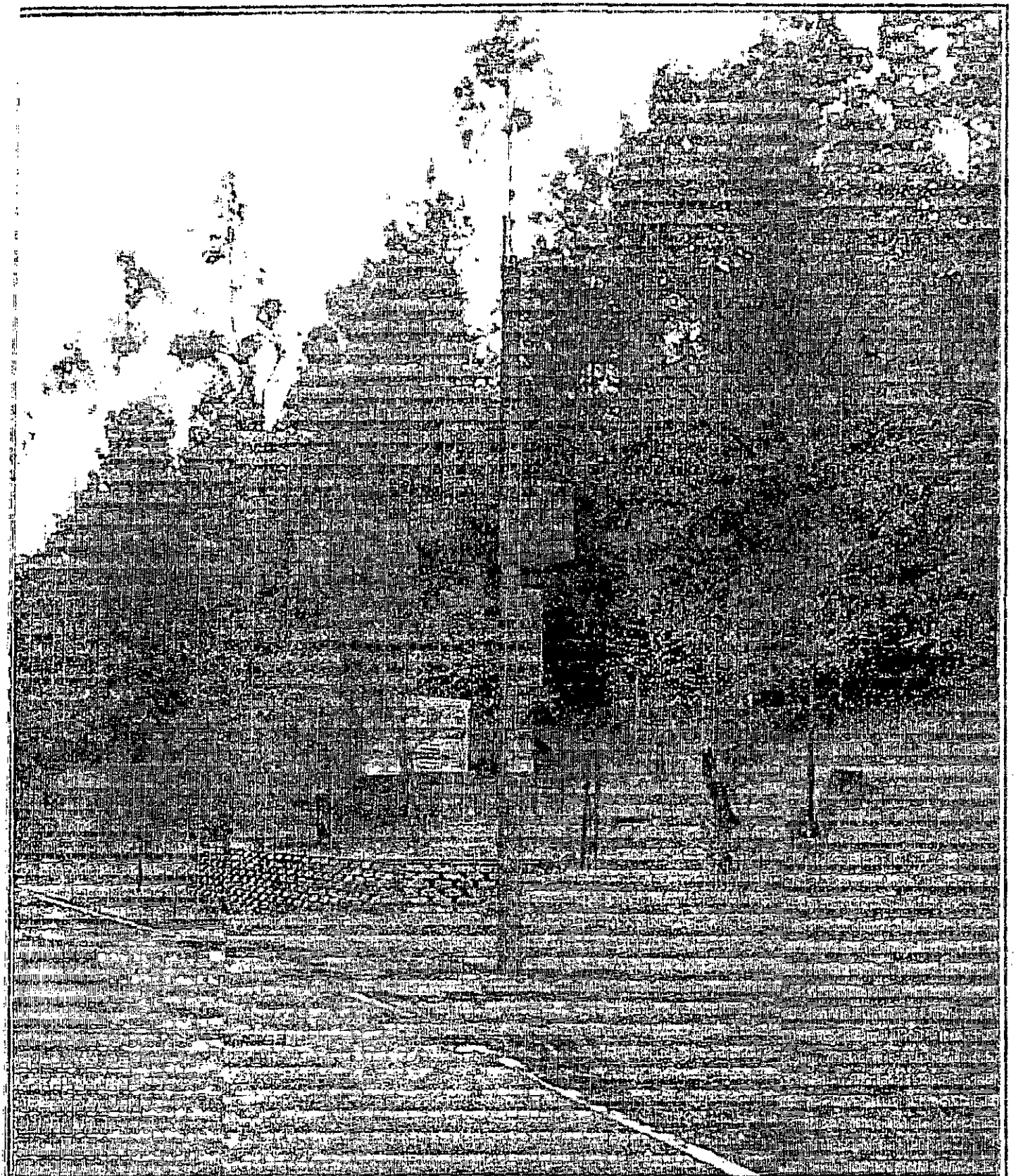
SCALE: N.T.S.

PROPOSED PHOTO / EQUIPMENT REPRESENTATION

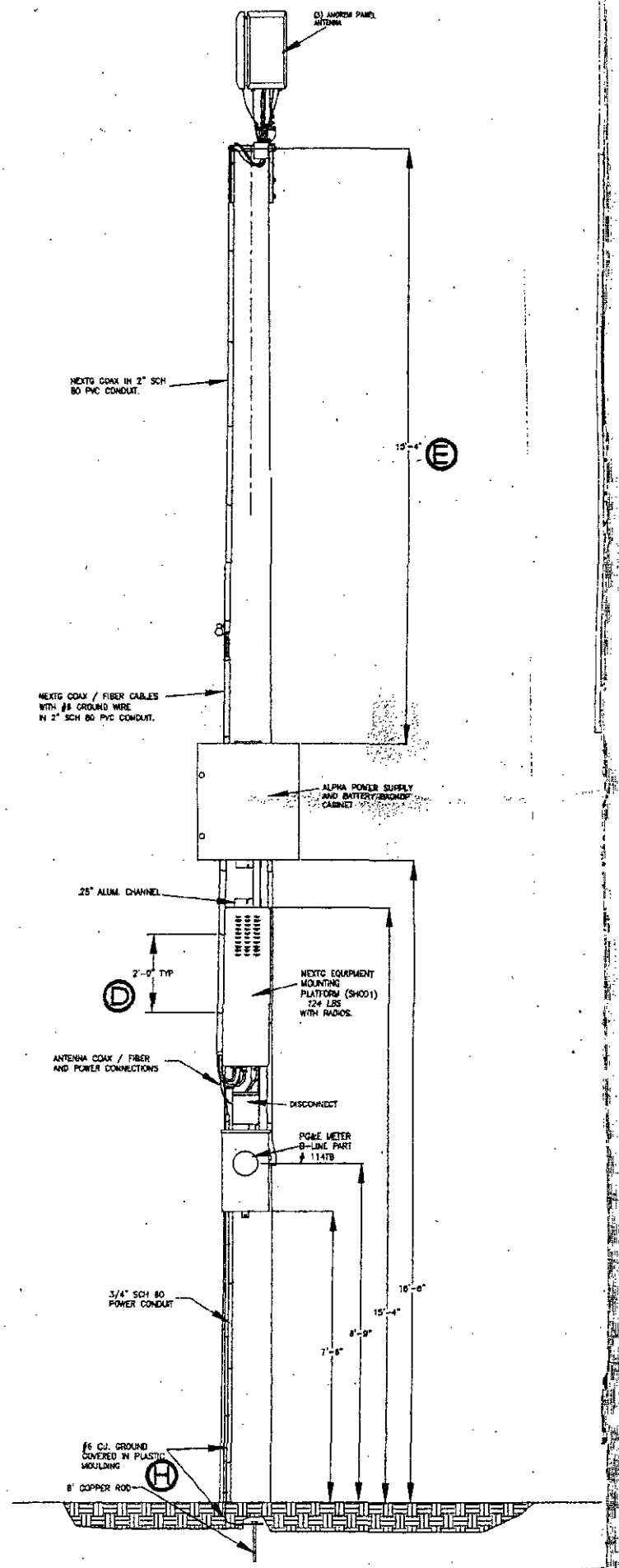
F



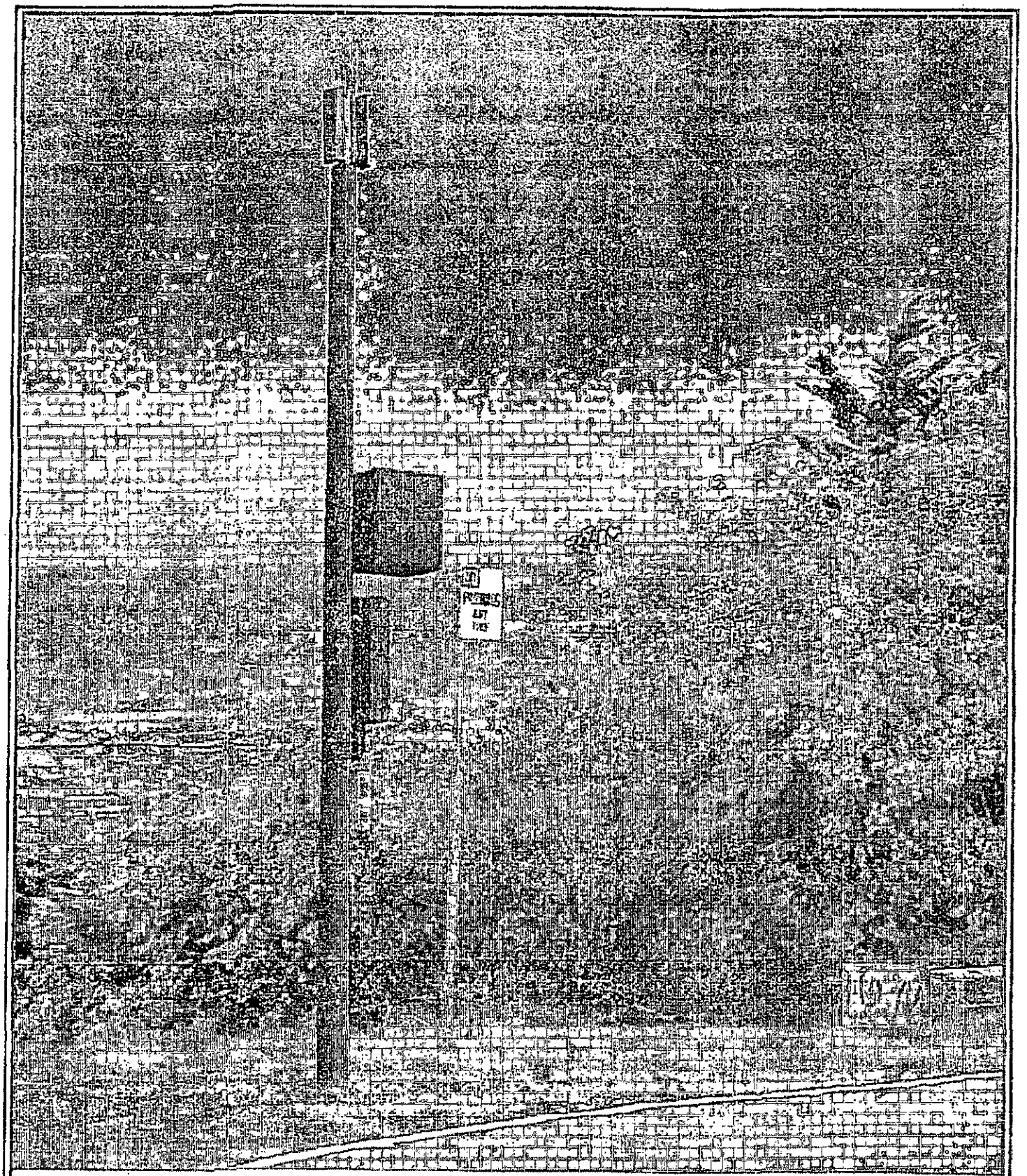
NEXTG TO PLACE NEW CL4 40' PC



SCALE:	PROPOSED PHOTO / EQUIPMENT REPRESENTATION	F
N.T.S.		



NEXTG TO PLACE NEW CA



SCALE:	PROPOSED PHOTO / EQUIPMENT REPRESENTATION	F
N.T.S.		

NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

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Email: nernst@nextgnetworks.net

May 24, 2010

City of Oakland
Attn: Leigh McCullen
Planning and Zoning Services Division
250 Frank H. Ogawa Plaza, Ste 2114
Oakland, CA 95131
Attention: Scott Miller, Zoning Manager

RE: Installation of Telecommunications Facilities within the Public Right-of-Way
Project Addresses: Public Right-of-way at approximately 7294 Marlboro Terrace/ 4949 Grizzly Peak Boulevard
Public Right-of-way at approximately 9950 Skyline Boulevard
Public Right-of-way at approximately 10648 Skyline Boulevard
Public Right-of-way at approximately 10000 Skyline Boulevard

Dear Ms. McCullen,

Pursuant to City of Oakland Planning Code ("O.P.C.") section 17.132.020, NextG Networks of California, Inc. ("NextG") appeals the Administration Determination issued by the Zoning Administrator on May 13, 2010 (attached as Exhibit A). At the same time, NextG is submitting major conditional use permit ("CUP") applications for the four (4) locations referenced above and concedes to processing of these CUPs in this instance; however, we are filing this appeal in order to preserve NextG's rights as to permit processing for similar applications in the future.

As discussed in the correspondence sent to the City of Oakland ("City") dated April 16, 2010 and April 29, 2010 (attached as Exhibit B), NextG is a "telephone corporation" with a statewide franchise under Public Utilities Code §7901.[1] Through the process required by Public Utilities Code §1001 *et seq*, NextG was granted a certificate of public convenience and necessity ("CPCN") by the California Public utilities Commission ("CPUC"), authorizing a statewide franchise under the terms of D 03-01-061 (Jan. 30, 2003). NextG's initial authorization was as a "limited-facilities based provider of telecommunications services," which meant that NextG had

[1] Cal. P.U. Code § 7901 states: "Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters."

ATTACHMENT B

no right to install its own poles. However, in D 07-04-045 (Apr. 12, 2007), the CPUC granted NextG "full-facilities based authority," including the right to install its own utility infrastructure in the public rights-of-ways.

NextG's model is to use the public rights-of-way, which have been dedicated for the benefit of telephone corporations and electric utilities by the establishment of corridors for utility installations. City's typically embrace—and prefer—NextG's networks over traditional large wireless towers and monopoles on private property precisely because NextG's facilities are located in the public rights-of-way and use small and unobtrusive attachments a fraction of the size of those attachments on monopoles, towers, and rooftop-mounted equipment. Indeed, NextG's equipment is approximately the same size or smaller than the many other attachments on utility infrastructure, such as transformers, telephone junction boxes, cable routers, Wi-Fi antennae, meters, switches and other similar attachments.

NextG has already installed approximately twenty-one (21) wireless attachments and miles of fiber optic cable in the City in its first phase network completed last year. Prior to submitting permits for the second phase of its telecommunications network (also consisting of fiber optic cable and wireless attachments), NextG proactively sought direction from the City Planning and Zoning Division of the Community and Economic Development Agency ("CEDA") regarding the placement of four (4) new utility poles that would ultimately have wireless attachments in addition to electric and communication wire attachments. NextG's government-relations director Sharon James was advised by the City's staff member, Mr. Eric Angstadt in February 2010, that the process should be Small Project Design Review. Relying on this direction, NextG prepared master applications and submitted them on March 12, 2010 (attached as Exhibit C). Further analysis has made it unclear if the Planning and Zoning Division has jurisdiction over these poles at all since the Building Services Division is charged with development in the public rights-of-way, and this issue is discussed in further detail below.

On April 9, 2010, NextG received a letter from the Planning and Zoning Division stating a contrary position to the one taken when Ms. James consulted with Mr. Angstadt, *i.e.*, that NextG's four new utility poles were considered "monopoles" under the City Planning Code. However, no detailed reasoning or explanation was provided for the determination. On April 16, 2010, NextG responded to the City's letter and, hoping to illustrate the stark difference between utility infrastructure (in the right-of-way) and monopoles (installed on private property), NextG provided examples of a utility pole with wireless attachments versus a "monopole" (see Exhibit B for photos). On April 19, 2010, NextG met with the City for further discussion, and the City requested more information regarding NextG's regulatory status and analysis of the City's Planning Code, which was provided on April 29, 2010 (attached in Exhibit B).

NextG expected Deputy City Attorney, Ms. Kiran Jain, to examine these points and provide a legal explanation of the City's position under the code. However, two weeks later, May 13, 2010, the City's only response was restatement from April 9, 2010 that NextG's utility poles are "monopoles" requiring major CUP permits and a general reference to the telecommunications section 17.128, without elaboration or explanation of NextG's questions about the open space zoning section. For the following reasons, the City's decision is in error, an abuse of its

discretion, and unsupported by substantial evidence, and therefore, should be reversed by the Planning Commission.[2]

I. The City Erred by Applying the Planning Code to the Public Rights-of-Way

The City erred when it applied its Planning Code to NextG's request to set new utility poles in the public right-of-way because the Planning Code applies to private property, not the public right-of-way. NextG has found nothing in the Planning Code regulating construction of utility infrastructure in the public right-of-way at all, and it is our understanding that the incumbent local exchange carrier ("ILEC"), AT&T, as well as the electric company, PG&E, and the cable companies, Time Warner and Comcast, make their pole installations and attachments with no input from the Planning & Zoning Division, but rather through the Building Services Division. Should NextG, AT&T, PG&E, Time Warner, Comcast or any other company propose telecommunications infrastructure on private property or even publicly-owned fee-simple property, such as a police station, then the construction would fall squarely under the Planning Code; but this is not the situation with NextG's current applications.

In Oakland, construction in the public rights-of-way is governed by the Building Services Division of CEDA who issues encroachment and excavation permits for the placement of improvements in the public rights-of-way.[3] NextG has worked with the Building Services Division to obtain encroachment permits for wireless attachments to existing joint-use utility poles, which NextG partially owns. NextG requested to place four (4) utility poles that are indistinguishable to all existing utility poles in Oakland. As a member of the Northern California Joint Pole Association ("NCJPA), which is a cooperative ownership of utility infrastructure, NextG will have a vested ownership interest in the proposed poles equivalent to the ownership interest of AT&T and PG&E.[4] These poles will be registered with the NCJPA for use by additional utilities in the future. By extension, these utility poles should fall under the jurisdiction of the Building Services Division.

When NextG sought input initially on the project from the Planning and Zoning Division, the Planning and Zoning Division instructed NextG to submit Small Project Design Applications for the four (4) utility poles, which NextG did not challenge because this process is administrative and takes a reasonable length of time, estimated as a five (5) day over-the-counter process. NextG did not expect the City's to reverse its prior instruction and assert the authority of the Planning Code, as occurred in the City's April 9, 2010 letter, wherein the City made a reference to NextG's request being governed by O.P.C section 17.128.

The City has summarily concluded, without evidence, that O.P.C. section 17.128 applies to construction of telecommunications infrastructure in the public rights-of-way. As previously noted, a review of Planning Code reveals no mention or regulation of any type of utility infrastructure (including telecommunications, cable, electric or other similar infrastructure) in the public right-of-way. As drafted, the Planning Code contemplates *private* property and becomes nonsensical when applied to the public right-of-way. By way of example, O.C.P. section

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[2] Oakland Planning Code §§ 17.132.020 & 17.32.030 (*hereinafter* "O.P.C.")
[3] http://www.oaklandnet.com/government/ceda/revised/build_ser/1buildsr.htm (lasted visited May 21, 1010).
[4] See http://www.ncjpa.org/ (last visited April 15, 2010).

17.11.060 states that a minor CUP is required for "[e]lectric, gas, and telephone distribution lines and poles" in the Open Space Zone. Yet, if the City were to apply this requirement to the public rights-of-way (which it never has), a substantial delay of essential services by PG&E, AT&T, Time Warner, Comcast and others would result. In point of fact, there are hundreds of utility poles in the public rights-of-way in the Open Space Zone throughout Oakland, none of which went through the Planning & Zoning Division. This demonstrates not only that the Planning Code does not literally apply (as it is written) to the public rights-of-way, but also that the Planning Code does not (as it is applied) carry over to the public right-of-way. Therefore, the City's application of the Planning Code to the public right-of-way is in error.

II. The City Erred by Inaccurately Determining that a Utility Pole is "Monopole"

NextG has requested to place four (4) new utility poles in the public rights of way, which the City is characterizing as "monopoles." This is in error because utility poles are physically and functionally different than monopoles. NextG described this difference in its letter to the City dated April 16, 2010, incorporated herein by reference and attached as in Exhibit B, including a photo of an existing utility pole with wireless attachments versus a monopole, both of which are located in the Oakland Hills.

NextG's four (4) new utility poles poles will be wood and set into the ground like any other utility pole. They will have fiber cable and electric power attachments in addition to the wireless equipment. They will also be made available for use by other utility companies, such as AT&T, Comcast, PG&E and any other member of the NCJPA. The one use that will not be allowed is additional wireless attachments because wood utility poles are typically designed to only accommodate one wireless attacher, pursuant to pole-attachment guidelines promulgated by the CPUC in General Order 95.

By contrast, monopoles are made out of steel and set into a large concrete caisson foundation, which requires a very deep bore into the earth—making them in most practical cases impossible to set in a public right-of-way. Rarther than being outfitted with fiber cable or electric power connects, coaxial cable runs from the antennas to the base station equipment, often located in a separate "shelter" to house equipment and air-conditioning equipment. Power and fiber connections are handled at the base station, often with a generator outlet, batteries, and other equipment. The only attachments to a monopole are the relatively large antennas, often "sectorized," with 6-12 antennas in a typical configuration.

O.P.C. code 17.128.080 contemplates a typical monopole in its discussion of the "General Development Standards for Monopoles." First, the code requires owners to allow use by future wireless communication companies, something that is not functionally possible with a wood utility pole.[5] Second, the code requires the equipment shelter or cabinet to be concealed from public view, which is necessary when using equipment cabinets the size of large refrigerators or stand alone structures, as can be seen behind the monopole in NextG's April 16, 2010 letter.[6]

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[5] O.P.C. § 17.128.080(A)(1)
[6] O.P.C. § 17.128.080(A)(2)

The definition contained in O.P.C. section 17.10.900 states, "[a] Monopole Facility is a wireless communication facility that supports wireless communications antennas with a monopolar structure erected on the ground, terminating in one or more connecting appurtenances." However, this definition does not apply to utility poles because a utility poles is not a "wireless communication facility." Indeed, all utility poles are "monopolar" and capable of supporting "wireless communication antennas," some of which already do, as shown in NextG's letter dated April 16, 2010.

The City has failed to produce substantial evidence that its assertion is accurate. It has ignored the fact that these four (4) utility poles will support traditional wireline and power attachments, in addition to wireless attachments. The City has also ignored that these will be joint use poles, capable of being used by many non-wireless providers, but no additional wireless companies. During the April 19, 2010 meeting, the City acknowledged that NextG has a right to set new utility poles in the public rights-of-way through the Building Services Division without falling under the Planning Code in support of wireline attachments. The fact that utility poles have wireless attachments in addition to other types of attachments has not been determinative in the past, nor should it be now, for permitting purposes.

III. Even if the Planning Code Governs, the City Erred in Its Application

The City has not provided, and NextG has not been able to find, relevant sections of the Planning Code that provide direction for building utility infrastructure in the public rights-of-way; however, NextG found some language in the Open Space Zone section 17.11, which surrounds three (3) of the four (4) utility poles, that shows that if the Planning Code does apply to the public rights-of-way, then the City is erring in its application. NextG presented the following to the City in its April 29, 2010 letter, but received no response.

According to section 17.11.060, all "[e]lectric, gas, and telephone distribution lines and poles" require a minor conditional use permit in all areas of the Open Space Zone. The City has produced no evidence that this section of the code applies to public rights-of-way passing through the Open Space Zone; nor has NextG ever been instructed to obtain minor conditional use permits for the telephone lines it has constructed in the public rights-of-way previously. This implies that the Planning Code does not apply to the public rights-of-way, but rather to electric, gas, and telephone distribution lines and poles running directly over open space zoned private property, such as through a park, where one would expect the City to require a minor conditional use permit.

Although it remains NextG's position that the requested utility poles are not monopoles, NextG examined how monopoles are treated under in the Open Space Zone as well. O.P.C. section 17.11.090 shows that a minor conditional use permit is needed for a monopole in most areas of the open space zone with the exception of the active mini-park ("AMP") and the passive mini-park ("PMP") where they are prohibited. Indeed, mini, micro, and macro telecommunications facilities are treated equal to electric, gas, and telephone distribution lines and poles and require minor conditional use permit in all areas of the Open Space Zone. This further implies that the code was intended for private property, not the public rights-of-way.

That being said, if it is determined that the Planning Code applies to the public rights-of-way, the City erred by instructing NextG to obtain a major CUP for three (3) of the above referenced locations because the Planning Code only requires *minor* CUP in the Open Space Zone. Also, the City failed to present substantial evidence that it requires minor CUPs for electric, gas, and telephone distribution lines and poles in the public rights-of-ways in the Open Space Zone, which is necessary to show that the City is not treating NextG in a discriminatory, anti-competitive fashion as prohibited under state and federal law.[7]

IV. The City Seems to be Abusing Its Discretion by Treating NextG in a Discriminatory Manner

NextG does not dispute that the City has jurisdiction over the public rights-of-way; however, its management of the public rights-of-way cannot "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[8] Additionally, the City's time, place and manner management of the public rights-of-way must treat all utilities equality as required by Public Utilities Code section 7901.1(b) and the federal Telecommunications Act section 253.[9] Municipalities are bound to treat competitive local exchange carriers ("CLEC") equivalent to the ILEC. For example, White Plains, New York ran afoul of the law when it treated the ILEC differently than a CLEC.[10] As such, if the City of Oakland allows the ILEC to set new utility poles through a simple approval process, then NextG should be offered the same process.

Pursuant the authorization granted to NextG by the CPUC, NextG has the right under Public Utilities Code section 7901.1(b) to construct utility infrastructure, such as utility poles, in the public rights-of-way in an "equivalent manner" as other utilities. In practical terms, this means that the city must apply the same permitting processes on NextG that it also applies on other utilities, such as PG&E, AT&T, Comcast, and others. NextG has requested that the City produce evidence of the permitting requirements for other utilities placing utility poles in the public rights-of-way, but the City has offered nothing to show that NextG is being treated equally.

The City's vague reference to section 17.128 it is not helpful because it provides no detailed support pursuant to the Planning Code or any other section of City code. NextG has reviewed and re-reviewed section 17.128 for a scintilla of clear direction for placing utility poles with wireless attachments or a monopole in the public rights-of-way and found nothing. Since the City's code does not require CUPs for other users of the rights-of-way, the City cannot arbitrarily create new criteria just to fit NextG. Indeed, federal courts have held that a local government cannot "arbitrarily invent new criteria" and new processes that do not "go to any of the criteria set out in the Zoning Code."[11]

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[7] Cal. P.U. Code §7901.1(b), 47 U.S.C. 253(b).
[8] 47 U.S.C. 253(a).
[9] 47 U.S.C. § 253.
[10] See *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 79–80 (2nd Cir. 2002).
[11] *T-Mobile vs. Wyandotte County*, 546 F.3d 1299 (10th Cir. 2008), *citing Virginia Metronet, Inc. v. Bd. of Supervisors of James City County., Va.*, 984 F.Supp. 966, 974 n. 14 (E.D.Va.1998); *also see New Par v. City of Saginaw*, 301 F.3d 390, 398 (6th Cir.2002), *Town of Amherst, N.H. v. Omnipoint Commc'ns Enters., Inc.*, 173 F.3d 9, 14 (1st Cir.1999).

The City's failure to produce substantial evidence of equal treatment suggests that the City is abusing its discretion by applying its code in an arbitrary manner, first, by stating that the Planning Code applies to utility construction in the public rights-of-way, and second, by inaccurately classifying a utility pole as a "monopole."

V. Conclusion

For the reasons stated above, NextG respectfully requests that the Planning Commission reverse the Administrative Decision provided to NextG on May 13, 2010 because its four (4) new utility poles are not monopoles and the Planning Code does not apply to standard utility construction in the public rights-of-way. NextG's utility pole permits should be handled by the Building Services Division equal to the treatment of new utility poles placed by other companies, e.g., AT&T, Comcast, and PG&E, in the public rights-of-way.

Best regards,

Natasha Ernst
Government & Utility Counsel

Enclosures:
Exhibit A
Exhibit B
Exhibit C

EXHIBIT A

CITY OF OAKLAND

DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

VIA U.S. MAIL AND ELECTRONIC MAIL

May 13, 2010

Natasha Ernst, NextG Networks of California
2216 O'Toole Ave
San Jose, CA 95131

RE: **Installation of Telecommunications Facilities within the Public Right-of-Way**

Project Addresses: **Public Right-of-way at approximately 7294 Marlboro Terrace/4949 Grizzly Peak Boulevard**
Public Right-of-way at approximately 9950 Skyline Boulevard
Public Right-of-way at approximately 10648 Skyline Boulevard
Public Right-of-way at approximately 10000 Skyline Boulevard

Dear Ms. Ernst,

On March 12, 2010, the City of Oakland Zoning Division received incomplete basic applications with plans for the above four (4) referenced sites. Application fees were not paid. Notwithstanding this, staff sent an incomplete letter on April 9, 2010 (see attached). NextG then inquired as to which local regulatory processes its projects fell under. NextG has argued that its wireless telecommunications operations fall under the exclusive jurisdiction of the California Public Utilities Commission (CPUC), and that it does not need to apply for local land use permits. NextG is apparently relying on a "CPUC determination," which is merely an ex parte communication by the CPUC to the judge presiding over NextG's ongoing case with the City of Huntington Beach simply requesting exclusive jurisdiction in this matter. Further, the Certificate of Public Convenience & Necessity (CPCN) issued by the CPUC states you are a utility, but the determination also states that NextG must adhere to local planning processes. (The CPCN states that NextG shall provide a construction workplan to the CPUC, including, among other things, a list of other agencies contacted with respect to siting, land use and environmental resource issues).

Based upon the available facts, the Zoning Manager maintains staff's determination that the erection of new poles within the public right-of-way intended for Telecommunications purposes are considered Monopoles, as defined by the Oakland Planning Code and regulated by the City's Telecommunications Regulations under Oakland Planning Code Chapter 17.128. Therefore, NextG's above referenced projects require major Conditional Use Permits (CUP), including environmental review consistent with the CPCN. The site located at the corner of Marlboro Terrace and Grizzly Peak Boulevard is zoned residential and will, therefore, also require Design Review, in addition to a major CUP. Please refer to Chapter 17.134 of the Oakland Planning Code for procedures for consideration of a major CUP.

Therefore, if you wish to proceed with the application process, and thus waive your ability to contest the City's jurisdiction, please submit all the required application materials, including payment of all fees, in order for the City to process the applications.

If you disagree with this determination/administrative interpretation, you **must** file an appeal to the City Planning Commission and such appeal **must** be submitted within ten (10) calendar days after the date of this letter, and by 4:00 p.m. (May 24, 2010). The appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the Planning and Zoning Division at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of Leigh McCullen, Planner III. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence, and must include payment of $1,181.93 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during your appeal and/or in court. If you challenge the Planning Commission's decision in court, you may be limited to issues raised at the appeal hearing or in correspondence delivered to the Planning and Zoning Division at, or prior to, the appeal hearing; provided, however, such issues were first raised in the appeal itself.

Please contact the case planner, Leigh McCullen, Planner III, at (510) 238-4977 or lmccullen@oaklandnet.com, if you have any questions.

Sincerely,

Scott Miller
Zoning Manager

Attachment: April 9, 2010 Incomplete Letter

cc. Kiran Jain, Deputy City Attorney
Ann Clevenger, Planner III

Sharon James, NextG Networks of California
2216 O'Toole Ave
San Jose, CA 95131

EXHIBIT B

NextG Networks
EMPOWERING NEXT GENERATION WIRELESS NETWORKS

Corporate Headquarters:

NextG Networks, Inc.
2216 O'Toole Ave.
San José, California 95131

Tel: (408) 954-1580
Fax: (408) 383-5397
Web: www.nextgnetworks.net

Writer's Contact Information:

Natasha Ernst, Esq.
NextG Networks of California, Inc.

Tel: (206) 419-9800
Fax: (408) 383-5397
Email: nernst@nextgnetworks.net

VIA EMAIL & HAND DELIVERY

April 16, 2010

Ms. Kiran Jain
Deputy City Attorney, Land Use & Development
City of Oakland Office of the City Attorney
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612

Re: Public Right-of-way at approximately 7294 Marlborough Terrace
Public Right-of-way at approximately 9950 Skyline Boulevard
Public Right-of-way at approximately 10648 Skyline Boulevard
Public Right-of-way at approximately 10000 Skyline Boulevard

Dear Ms. Jain:

Thank you for this opportunity to give you more information about NextG Networks of California, Inc. ("NextG"). As you will see below, NextG is a telephone corporation that provides telecommunications services. As such, it has the right to construct utility infrastructure, such as utility poles, in the public rights-of-way in a manner equal to other utilities.

A. Information about NextG

NextG is a "telephone corporation" with a statewide franchise under Public Utilities Code §7901.[1] Through the process required by Public Utilities Code §1001 *et seq*, NextG was granted a certificate of public convenience and necessity ("CPCN"), authorizing a statewide franchise pursuant to Public Utilities Code §7901 under the terms of D 03-01-061 (Jan. 30, 2003), which granted NextG initial authorization as a limited-facilities based provider of telecommunications services. In D 07-04-045 (Apr. 12, 2007), the California Public Utilities Commission ("CPUC") granted NextG full-facilities based authority, including the right to install its own utility infrastructure in the public rights-of-ways.

[1] Cal. P.U. Code § 7901 states: "Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters."

NextG Networks

Pursuant the authorization granted to NextG by the CPUC, NextG has the right under Public Utilities Code §7901.1(b)[2] to construct utility infrastructure, such as utility poles, in the public rights-of-way in an "equivalent manner" as other utilities. In practical terms, this means that the city must apply the same permitting processes on NextG that it also applies on other utilities, such as PG&E, AT&T, Comcast, and others.

In addition, NextG has obtained "blanket" authority from the Federal Communications Commission ("FCC") as a telecommunications provider pursuant to 47 U.S.C. 214. Please note that this registration was granted by the wireline bureau, which is because NextG's registered "RF Transport Service" is a wireline service. NextG is not a wireless carrier because it does not own or operated radio spectrum licenses, but instead builds distributed antenna system ("DAS") networks as a "carrier's carrier."

DAS networks are deployed on utility poles and utilize fiber optic cable that connects small radio nodes over geographic areas. Even though wireless attachments are a component of the network, it is essentially a wireline network similar to that of AT&T. DAS networks allow wireless carriers to cover hard-to-reach areas, such as the Oakland Hills, resulting in increased coverage and safety advantages for customers without having to construct large towers or monopoles. Cities typically embrace DAS solutions because they integrate cleanly into surrounding communities.

Our model is to use the public rights-of-way, which have been dedicated for the benefit of telephone corporations and electric utilities by the establishment of corridors for utility installations. Additionally, NextG is a member of the Northern California Joint Pole Association ("NCJPA), which is a cooperative ownership of utility infrastructure. As such, NextG will have a vested ownership interest in the proposed poles equivalent to the ownership interest of AT&T and PG&E.[3] These poles will be registered with the NCJPA for possible use by additional utilities in the future.

B. NextG's Request

In order to expand the wireless coverage in the Oakland Hills for one of NextG's customers, a well-known wireless service provider, NextG needs to construct four (4) new utility poles in the public rights-of-way. These four (4) locations are as follows:

1. Public Right-of-way at approximately 7294 Marlborough Terrace
2. Public Right-of-way at approximately 9950 Skyline Boulevard
3. Public Right-of-way at approximately 10648 Skyline Boulevard
4. Public Right-of-way at approximately 10000 Skyline Boulevard

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[2] Cal. P.U. Code § 7901.1 requires that cities treat telecommunications companies equally, stating: "(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed. (b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner. (c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities."

[3] See http://www.ncjpa.org/ (last visited April 15, 2010).

NextG Networks

This is the second phase of NextG's existing network in the Oakland Hills, which was permitted on existing utility poles without incident. NextG always looks for existing utility poles when building networks; however, in this area of Oakland Hills, the existing utility infrastructure is not running along side the public right-of-way. All of NextG's fiber optic cable will be underground to avoid placing additional utility poles, however, antennas and radio equipment must be above ground.

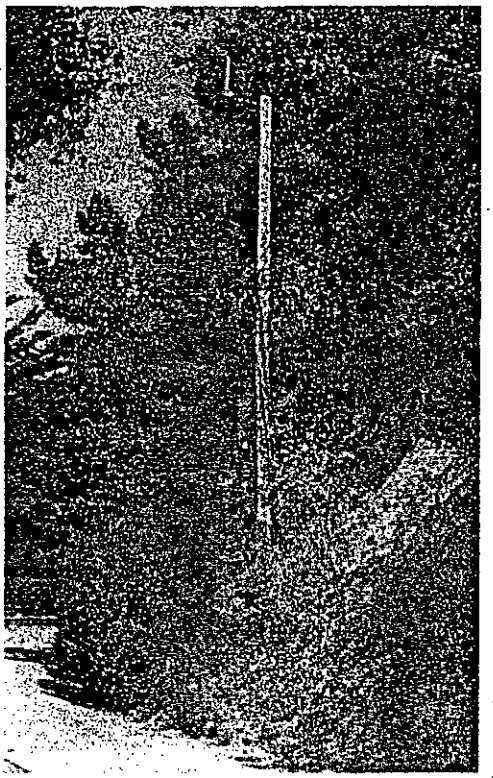
The four (4) utility poles will have fiber optic cable and power attachments in addition to the antenna and radio equipment. In all aspects, these new utility poles will look and function just like all the utility poles currently in use for this project. The only difference is that they do not currently exist, hence, NextG's request.

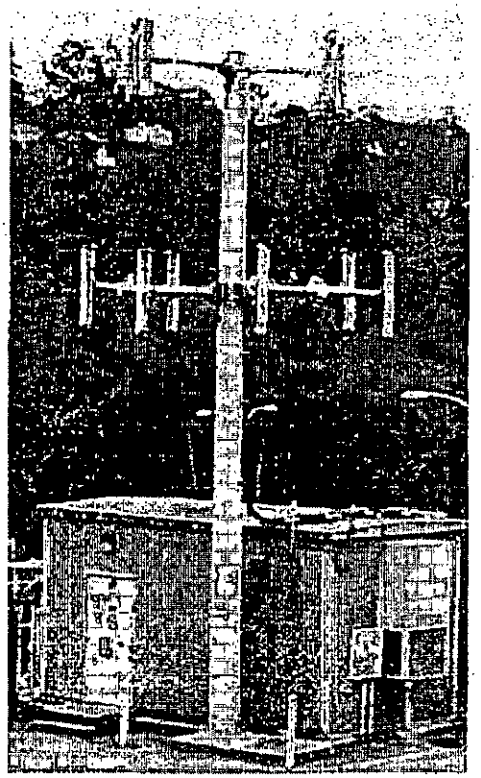
C. Utility Pole v. Monopole

The above information demonstrates that NextG is a telecommunications utility and should be treated in a nondiscriminatory manner similar to other telecommunications utilities, such as AT&T, *in accordance with California Public Utility Code § 7901.1(b).*

To illustrate this point, below are pictures of two installations in the Oakland Hills. The picture on the left is essentially what NextG will be building. The picture on the right is a monopole on private property constructed by a wireless carrier.

Oakland Hills Joint Use Utility Pole with NextG's DAS Attachments v. a Monopole:





NextG Networks

As you can see, these are very different facilities from a legal and practical stand point.

It has been suggested that NextG seeks to install a "monopole" in the right-of-way. This is not the case. The term "monopole" is generally reserved for full-size cell deployments, typically consisting of an array of 9-12 antennas, a deep casson-style (deep concrete) foundation, and a connection to a full base station (typically located on private property). Of course, if NextG were placing a monopole, or any other instillations of this magnitude on private property, then the code sections mentioned in the letter from the City of Oakland dated April 9, 2010 would be appropriate. However, that is not the situation. NextG does not want to build four (4) monopoles in the public rights-of-way, but rather four (4) *utility* poles of the same general size, stature and purpose of the near-by existing utility poles. Thus, NextG's proposal is appropriate for the aesthetics of the surrounding community.

D. Conclusion

Earlier this year NextG director Sharon James was advised by Eric Angstadt of the City of Oakland Planning and Zoning Department that the process for these four (4) new utility poles should be Small Project Design Review. Trusting that information we prepared master applications and submitted them on March 12, 2010. We request that the city honor the original instructions we were given and allow our project to move forward. We are ready and willing to provide any missing items originally required under the Small Project Design Review.

Thank you for your assistance with this matter, and I look forward to meeting with you on Monday, April 19, 2010. Should you have any questions or concerns in advance of or after our meeting, please feel free to contact me at 206.419.9800 or by email at nernst@nextgnetworks.net.

Best regards,

Natasha Ernst
Government & Utility Counsel

cc: Patrick Ryan, Esq. (NextG)

CITY OF OAKLAND

DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

April 9, 2010

Sharon James, NextG Networks of California
2216 O'Toole Ave
San Jose, CA 95131

VIA U.S. MAIL AND ELECTRONIC MAIL

RE: **Installation of Telecommunications Facilities within the Public Right-of-Way**

Project Addresses: **Public Right-of-way at approximately 7294 Marlboro Terrace**
Public Right-of-way at approximately 9950 Skyline Boulevard
Public Right-of-way at approximately 10648 Skyline Boulevard
Public Right-of-way at approximately 10000 Skyline Boulevard

Dear Ms. James,

Section 65943 of the California Code requires a determination in writing as to the completeness of an application for a development project. This letter does not constitute either an approval or a denial of your application. Your applications to erect four wooden Telecommunications Monopole Facilities at the above referenced addresses have been found to be:

[X] INCOMPLETE

At this time, staff has determined that the erection of new poles within the public right-of-way intended for Telecommunications purposes are considered Monopoles, as defined by the Oakland Planning Code and regulated by the City's Telecommunications Regulations. Please note that the City is continuing to investigate the applicabity of the Joint Powers Authority Agreement to these projects.

The following information will be needed to complete the four applications submitted on March 12, 2010:

Public Right-of-way at approximately 7294 Marlboro Terrace

This site is located in the R-30, One-family Residential Zone. A Major Conditional Use Permit and Design Review is required to place a Telecommunications Monopole within a residential zone. The following information will be needed to complete this application:

- Basic Application Form signed by the property owner
- Design Review Supplement Form (see Part B of form for applicable findings)
- Conditional Use Permit Supplement Form
- Site Design Alternatives Analysis (see Section 17.128.120 of Oakland Planning Code)
- EMF Study demonstrating compliance with federal emissions standards
- Fees (6,555.97)

Public Right-of-way at approximately 9950 Skyline Boulevard
Public Right-of-way at approximately 10648 Skyline Boulevard
Public Right-of-way at approximately 10000 Skyline Boulevard

These sites are located in the Open Space Zone. A Major Conditional Use Permit is required for Monopoles with this zone. The following information will be needed to complete these applications:

- Basic Application Form signed by the property owner
- Conditional Use Permit Supplement Form
- Site Design Alternatives Analysis (see Section 17.128.120 of Oakland Planning Code)
- EMF Study demonstrating compliance with federal emissions standards
- Fees ($7,061.23)

Should it be determined that these proposed facilities full under the authority of the Joint Powers Authority these facilities would require Design Review in lieu of a Conditional Use Permit.

Please direct any comments or questions to me at (510) 238-4977 or lmccullen@oaklandnet.com .

Sincerely,

Leigh McCullen
Planner III

cc. Scott Miller, Zoning Manager
Kiran Jian, Deputy City Attorney
Ann Clevenger, District 2 Supervisor

NextG Networks
EMPOWERING NEXT GENERATION WIRELESS NETWORKS

Corporate Headquarters:

NextG Networks, Inc.
2216 O'Toole Ave.
San José, California 95131

Tel: (408) 954-1580
Fax: (408) 383-5397
Web: www.nextgnetworks.net

Writer's Contact Information:

Natasha Ernst, Esq.
NextG Networks of California, Inc.

Tel: (206) 419-9800
Fax: (408) 383-5397
Email: nernst@nextgnetworks.net

VIA EMAIL & OVERNIGHT COURIER

April 29, 2009

Ms. Kiran Jain
Deputy City Attorney, Land Use & Development
City of Oakland Office of the City Attorney
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612

Re: Public Right-of-way at approximately 7294 Marlborough Terrace
Public Right-of-way at approximately 9950 Skyline Boulevard
Public Right-of-way at approximately 10648 Skyline Boulevard
Public Right-of-way at approximately 10000 Skyline Boulevard

Dear Ms. Jain:

I am writing to follow up on our recent discussions regarding the regulation of NextG Networks of California, Inc. ("NextG") in the City of Oakland ("City"). While we are happy to provide this additional information, we are deeply concerned about the information that the City's Right-of-Way Supervisor, Fred Loeser, conveyed to us April 27, 2010. Briefly, Mr. Loeser informed NextG's representatives that the Department of Public Works would no longer be issuing NextG any permits, including the nondiscretionary construction, excavation, and encroachment permits to existing infrastructure, until the question of new utility pole placements was resolved.

While I know you have been working to get what seems to be a miscommunication cleared up, at this time, NextG is still effectively stopped from doing any and all construction in the City. We ask the City to take immediate action to resolve this issue. NextG has signed a binding agreement with its customer to deliver the network within a specified timeframe, and the agreement was made after a prior course of dealing and an understanding of the process through prior deployments with the City. This late development is deeply troubling, and we hope that it will be immediately resolved.

Turning to your request from our meeting of April 19, 2010 for an analysis NextG's regulatory status, as a threshold matter, NextG is a "telephone corporation" with a statewide franchise under California Public Utilities Code ("P.U. Code") section 7901.[1] NextG's status as a "telephone

[1] Cal. P.U. Code § 7901 states: "Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and

corporation" is neither optional nor discretionary in any way; certification by the California Public Utilities Commission ("CPUC") is a requirement under state law. Indeed, section 1001 of the P.U. Code provides that to deploy telephone lines and offer telephone service, a "telephone corporation" must obtain a certificate from the CPUC. Specifically, section 1001 provides that "No . . . telephone corporation . . . shall begin the construction of . . . a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction." In January 2003, the CPUC granted, through D 03-91-061 NextG the authority to operate as a limited facilities-based carrier in California. In April 2007, the CPUC expanded NextG's authority to include full-facilities based construction. In the meantime—between the initial application and the later expansion—in 2006, the City and County of San Francisco challenged NextG's status as a telephone corporation, in a matter that was heard at both the CPUC and in federal court. NextG's status was made particularly clear in Decision 06-01-006 in the proceeding *City and County of San Francisco v. NextG Networks of California, Inc.* which found the following:

- "***NextG is currently providing telephone service*** in accordance with the limited facilities-based authority granted in D.03-01-061." *Id.* at 14 (emphasis added).
- "NextG provides wireless carriers certain radiofrequency transport services, which augment those carriers' geographic wireless coverage and improve system capacity."
- "We reaffirm that the authority granted in D.03-01-061 includes the provision of radiofrequency transport services." *Id.* at 2.
- "In providing radiofrequency transport services, NextG installs microcells and antennas on existing utility poles. Allowing placement of microcells and antennas on existing utility poles is consistent with limited facilities-based authority. . . ." *Id.*
- "We have found wholesale services to be competitive local exchange services. For example, we granted Southern California Edison a CPCN as a [competitive local exchange carrier] to provide wholesale services to other CLCs and to other telecommunications providers, including wireless carriers, as a facilitator of local communications services, rather than as a competitor." *Id.* at 5-6.
- "We have made no distinction between carriers providing wholesale services to wireline or wireless carriers or certificated or uncertificated providers." *Id.* at 6.

P.U. Code section 1759(a) deprives the municipality—and any even the trial courts in California—of subject matter jurisdiction to adjudicate NextG's status as a telephone corporation in contradiction of the CPUC's orders. It states:

> (a) No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the

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may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters."

commission in the performance of its official duties, as provided by law and the rules of court.

Because NextG has a statewide franchise under P.U. Code section 7901 to construct its facilities, it can also enjoy the benefits of P.U. Code section 7901.1(b)[2] to construct utility infrastructure, such as wood utility poles, in the public rights-of-way ("ROW") in an "equivalent manner" as other utilities. In addition to the foregoing, this letter outlines more federal and state law bases for governing telecommunications utilities constructing telecommunications infrastructure in the right-of-way ("ROW") so that the City may better understand why it must apply the same permitting process to NextG that it applies to other entities in the public ROW, such as PG&E, AT&T, Comcast, and others when setting new utility poles in the ROW.

A. Background

NextG is in the process of constructing a telecommunications network in the Oakland Hills and, Oakland areas. This network consists of approximately six (6) new miles of fiber optic cable running aerially on wood utility poles and underground in the ROW with eight (8) periodic associated wireless equipment attachments. This network is an extension of NextG's existing network in the area, which consists of 11.7 miles of fiber optic cable and 24 locations of associated wireless equipment attachments. The existing network was constructed by obtaining nondiscretionary permits from the Department of Public Works under the City's ordinance governing the ROW.

In the meeting between the City and NextG on April 19, 2010, the City acknowledged NextG's right as a utility company to place standard wooden utility poles in the ROW for wireline attachments, which is a routine and simple process handled by the Department of Public Works because it does not fall within the purview of the City's Planning Code. However, the City objects to NextG setting the four (4) wood utility poles at the locations referenced above for wireline, associated wireless equipment, and electricity attachments.

NextG contends, and an analysis of which follows, that it is a telecommunications utility under both federal and state law with the right to nondiscriminatory treatment for use of the ROW. The City's current position, as stated in its letter to NextG dated April 9, 2010, targets NextG for discriminatory treatment in its use of the ROW based on the type of associated equipment it uses, running contrary to the City's standard practice of having the placement of new wood utility poles go through the Department of Public Works.

NextG wishes to amicably resolve this issue by outlining for the City how the City's current position is out of compliance with both federal and state law because it violates the mandate that telecommunications utilities be treated in a non-discriminatory, competitively neutral manner, an

[2] Cal. P.U. Code § 7901.1 requires that cities treat telecommunications companies equally, stating: "(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed. (b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner. (c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities."

extension of which is an equal permitting process for like entities. In any case, as stated at the outset of this letter, *there is absolutely no basis* for the City to hold up all permitting from NextG until the issue of new pole placements is resolved.

Please note that because NextG is not a wireless service provider, nothing in this letter should be construed as to how the City should handle an application from a wireless service provider to construct infrastructure in the ROW. This analysis is limited to telecommunications utilities constructing telecommunications infrastructure with associated equipment in the ROW because those are the laws that govern NextG's use of the ROW.

B. Under Federal Law NextG is a Telecommunications Utility, not a Wireless Service Provider

As mentioned in my letter dated April 16, 2010, NextG has obtained blanket authority across the United States of America from the Federal Communications Commission ("FCC") as a telecommunications carrier and enjoys "blanket" certification conferred by 47 U.S.C. 214. While "blanket" certifications are not separately certificated, NextG sought and obtained confirmation from the FCC that its § 214 service applies nationwide.[3]

As a telecommunications carrier, NextG is afforded certain rights, such as attaching to utility poles[4] and placing its own poles in the public rights-of-way to build telecommunications infrastructure.[5] By contrast, wireless service providers, which are also sometimes referred to as "commercial mobile radio service" ("CMRS") providers, own proprietary wireless spectrum licenses and may follow different regulatory guidelines at both the federal and state level. At the same time, however, the U.S. Supreme Court has found that telecommunications carriers (both wireline and CMRS) are entitled to make their wireless attachments to utility poles.[6]

NextG is "telecommunications carrier" with "telecommunications equipment" under the federal Telecommunications Act of 1996 ("TCA").[7] In addition to that, NextG has particular responsibilities unique to wireline providers because NextG must grant access to all other forms of utilities to attach equipment, regardless of type, to its infrastructure, including utility poles.[8] The TCA defines "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any *wire* communications."[9] Specifically, NextG falls under the definition of "utility" precisely because of the wireline nature of its infrastructure. In other

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[3] *See Domestic Section 214 Application Filed for the Transfer of Control of NextG Networks, Inc.*, WC Docket No. 09-94, DA 09-1305 (rel. June 10, 2009); *also see Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 09-94, DA 09-1522 (rel. July 13, 2009).
[4] 47 U.S.C. § 224.
[5] § 253.
[6] *See National Cable & Telecomms. Ass'n v. Gulf Power Co.* 534 U.S. 327, 340-42 (2002) (hereinafter, *"Gulf Power")* (providers using wireless equipment included in "telecommunications service" under the Communications Act).
[7] § 153(44)–(45).
[8] § 224.
[9] § 224(a)(1) (emphasis added).

words, if NextG were a wireless service provider it would not be mandated by federal law to grant other utilities access to its poles.

As a "telecommunications carrier," a "telecommunications utility" or as a "telephone corporation," NextG must allow access to all electrical, telephone, cable and other certificated carriers with any necessary "associated equipment," whether wireline or wireless.[10] This has been the consistent policy of the FCC and affirmed by the United States Supreme Court in *Gulf Power*. There the Supreme Court was explicitly clear that discrimination between wireline and wireless associated equipment is not allowed, stating, "Yet the proposed distinction-between proto-typical wire-based 'associated equipment' and the wireless 'associated equipment' which allegedly falls outside of the rationale of the Act-finds no support in the text, and, based on our present understanding of the record before us, appears quite difficult to draw."[11] Indeed, the requirement under the TCA to grant regulated rights of access to telecommunications and utility companies of all ilks is a fundamental precept of the TCA in order to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition ...."[12]

As you know, the TCA also mandates that cities not create barriers to entry for telecommunications utilities and must treat them equally.[13] As such, cities must behave in a nondiscriminatory, competitively neutral manner when allowing telecommunications infrastructure into the ROW.[14] Creating a separate and more laborious process to set a standard wood utility pole in the ROW based on the nature of future "associated equipment" is contrary to the federal requirement that cities treat telecommunications utilities equally.

C. Palos Verdes Estates

As this point in time, the federal interpretation of law in California is in a bit of flux given the recent Ninth Circuit Court of Appeals decision, *Sprint PCS Assets v. City of Palos Verdes Estates* (hereinafter "*Palos Verdes Estates*").[15] The precedential value of this case is questionable because it involves the federal courts interpreting a matter of California state law in, as some would say, a manner that lies in contrast to extensive state precedent to the contrary. Because *Palos Verdes Estates* is not binding on the state courts, it is unclear how a California state court may interpret P.U. Code sections 7901 and 7901.1; however, until that time, NextG understands that cities may be looking to *Palos Verdes Estates* for guidance.

First and foremost, *Palos Verdes Estates* was a significant departure from one hundred years of established California case law holding that aesthetics could not be considered with permitting

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[10] *Gulf Power, supra*, at 340-41 (2002).
[11] *Id.* at 341.
[12] H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 1 (1996).
[13] 47 U.S.C. § 253.
[14] § 253(b)–(c).
[15] *Sprint PCS Assets v. City of Palos Verdes Estates*, 583 F.3d 716 (9th Cir. 1009) (hereinafter "*Palos Verdes Estates*").

telecommunications infrastructure in the ROW.[16] However, the aesthetic nature of the standard wood utility poles NextG wishes to set in the ROW is not at issue. The issue is NextG's right to set those utility poles in a nondiscriminatory manner as all other "entities," as required by § 7901.1(b). Importantly, *Palos Verdes Estates* is a discrete federal interpretation of California state law, with no basis or foundation in California law for its holding.

Palos Verdes Estates did nothing to overturn established federal or state law requiring equal treatment among entities; rather, it was the opposite. Because the court does not distinguish between the *type* of telecommunications infrastructure in the ROW, the decision is in no way limited to wireless infrastructure. In other words, since Ninth Circuit issued *Palos Verdes Estates*, it is clear that if a city wants to set a standard for telecommunications infrastructure, including the request for a new wood utility pole, in the ROW based on aesthetics or any other sort of time, place and manner restriction, the city *must* apply its ordinance equally to *both* wireline and wireless infrastructure requests.

In addition, the holding in *Palos Verdes Estates* is very fact based and involves a very different ordinance than the one that has been published in the City. For example, the court was convinced that the *private* rights-of-way in Palos Verdes created a unique character for consideration, which is very different than the situation in the City. However, in all cases, the applicability of Palos Verdes Estates will depend on the municipality's published ordinances *for deployments in the rights-of-way*. It may not be relevant in a situation like the one with the City, where an ordinance seems to be intended for private property, not the public ROW, as discussed further below

D. ***Under California Law NextG is a Telecommunications Utility, not a Wireless Service Provider***

As mentioned in my letter dated April 16, 2010, and stated at the outset of this letter, NextG is also a "telephone corporation" with a statewide franchise under P.U. Code section 7901.

As discussed extensively in our meeting of April 19, 2010, NextG is also a member of the Northern California Joint Pole Association ("NCJPA"). The NCJPA is an organization that is more than 100 years old in California and was founded as a cooperative among utilities in order to share utility infrastructure and minimize the need for multiple deployments by companies in the same utility corridor. As a member, NextG is required to allow other members of the NCJPA to become joint owners of its utility poles upon request. This means that while NextG may be the first owner of the requested wood utility poles, at any point they may be incorporated into part of another utility company's infrastructure and used for electric, cable, internet or additional telephone services.

The CPUC has stated that "competitive local carriers" ("CLC") must be treated equally when attaching equipment to utility infrastructure in the ROW. The CPUC's policies are captured in a

[16] *See generally Western Union Tele. Co. v. City of Visalia*, 149 Cal. 744 (1906); *Pacific Tel. & Tel. Co. v. City & County of San Francisco*, 51 Cal. 2d 766 (1959); *Pacific Tel. & Tel. Co. v. City & County of San Francisco*, 197 Cal. App.2d 133 (Cal. Ct. App. 1961).

comprehensive rulemaking referred to in industry and government as the "ROW Decision."[17] NextG is a CLC, also known as a CLEC, because it has a CPCN from the CPUC, which means it can neither discriminate or be discriminated against on the basis of the type of associated equipment, whether wireline or wireless. It is important to recognize that the CPUC was explicit that this decision covers the CLCs, but not the wireless service providers/CMRS providers.[18] Accordingly, NextG must be treated like other certificated telecommunications utilities in the ROW, not a wireless services provider.

The CPUC's ROW Decision is consistent with the P.U. Code section 7901.1(b) requirement that cities treat "all entities" requesting access to the ROW in an "equivalent manner."[19] NextG acknowledges that "The California Constitution authorizes local governments to make and enforce within their limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."[20] However, these limits must still conform to state and federal laws.

Because of the CPUC's broad authority and the need to preserve consistent treatment of the highly regulated industry, there are several statutes that clarify that only the CPUC is authorized to make relevant findings on the scope of attachments. For example, P.U. Code section 1759(a) is not limited to cases that directly challenge CPUC orders, which would be the case if the City attempts to attack NextG's regulatory status. Section 1759(a) deprives the court of jurisdiction to hinder, frustrate, interfere with or obstruct the CPUC in carrying out its broad, exclusive jurisdiction over telephone corporations.[21] In the seminal *San Diego Gas* case (also known as "*Covalt*" based on the real party in interest's name), the California Supreme Court explained that "'[t]he PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be *hampered*, interfered with, or *second-guessed* by a concurrent superior court action addressing the same issue.'"[22] Accordingly, the California Supreme Court held that "when the relief sought [in the Superior Court] would have interfered with a broad and continuing supervisory or regulatory program of the commission, the courts have found such a hindrance and barred the action under section 1759."[23]

Therefore, pursuant to state law, NextG respectfully requests the City treat it equally to other entities operating in the ROW and allowed it to set four (4) wood utility poles in the ROW, in compliance with the City's routine process of having such permits go through the Department of Public Works.

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[17] *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, D. 98-10-058 (Oct. 22, 1998).
[18] *Id.* at 27.
[19] Cal. P.U. Code § 7901.1(b).
[20] *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 722 (9th Cir. 2009) (quoting Cal. Const. art. XI, 5 7).
[21] *See, e.g., San Diego Gas & Elec. Co v. Superior Court of Orange County*, 13 Cal.4th 893, 918 (1996).
[22] *San Diego Gas*, 13 Cal.4th at 918 n.20 (quoting *Barnett v. Delta Lines, Inc.*, (1982) 137 Cal. App.3d 674, 681)(emphasis in original).
[2323] *Id.* at 919.

NextG Networks

E. ***NextG's Customers Do Not Determine Its Legal Status nor the Nature of Its Infrastructure***

As we discussed at length during our meeting on April 19, 2010, NextG builds wireline networks with periodic associated wireless attachments, but the existence of a periodic wireless attachment does not make NextG a wireless service provider. Similarly, the fact that NextG is a "carrier's carrier" that leases the use of its networks to wireless service providers does not turn it into a wireless service provider, nor does it turn its network into wireless infrastructure.

As outlined above, the form, function, and laws governing wireless services providers, such as T-Mobile, Sprint, etc, vary in some critical ways from the laws governing wireline telecommunications companies, such as NextG. Like many CLECs, NextG leases the use its networks to wireless services providers. ILECs also provide extensive services to wireless services providers, but no one treats their wireline networks as wireless infrastructure whenever a piece of associated wireless equipment is inserted into the overall network. Again, wireless elements of a network do not control the nature of the telecommunications infrastructure or turn a wireline carrier into a wireless service provider.

As a practical matter, NextG fiber optic cable may be used for a number of purposes, including use by municipalities, dark fiber leasing, backhaul, or lit services to other wireline carriers. The specific services that NextG provides to its initial customer, while they facilitate the provision of wireless communications, are not ultimately relevant. In addition, the wood utility poles NextG seeks to place in the ROW will be used for a variety of distinctly traditional, non-wireless, utilities services, such as electricity.

NextG's network and utility pole infrastructure will provide a variety of different services at different times that are impossible for wireless infrastructure, such as a monopole, to perform. For example, monopoles do not have non-wireless attachers, nor are electric power and fiber optic cables ever attached to monopoles. By trying to put a standard wood utility pole into the wireless infrastructure box, not only is the City discriminating against a CLEC, it is creating an incongruous situation wherein the status of a utility pole flips back and forth depending on the arbitrary nature of the attachers. NextG is a utility company making a request to set utility poles just like any other utility company.

F. ***City Planning Code***

As discussed above, NextG has already constructed a portion of the network through obtaining routine nondiscretionary permits from the Department of Public Works for the installation of fiber optic cable, both aerial and underground, and associated wireless equipment. However, based on the City's April 9, 2010 letter, wherein it was suggested that the wood utilities poles in the ROW fall under the City's Planning Code, NextG looked at section 17.11, OS Open Space Zoning Regulations, where three (3) of the four (4) proposed poles will be located. The fourth pole is currently in a residential zone, but there has been internal discussion at NextG about moving it.

NextG Networks

NextG examined how standard telephone lines and poles are treated under the code. According to section 17.11.060, all "[e]lectric, gas, and telephone distribution lines and poles" require a minor conditional use permit in all areas of the open space zone. Based on NextG's experience to the contrary, this section of the code implies that it does not apply to the ROW, but rather electric, gas, and telephone distribution lines and poles running directly over open space zoned private property, such as through a park. Should NextG or anyone else want to build a pole line through a park, one would expect the City to require a minor conditional use permit.

Although it remains NextG position that the requested utility poles are not monopoles, we looked at how monopoles are treated under the open space code as well. Section 17.11.090 shows that a minor conditional use permit is needed for a monopole in most areas of the open space zone with the exception of the active mini-park ("AMP") and the passive mini-park ("PMP") where they are prohibited. Meanwhile, mini, micro, and macro telecommunications facilities are treated similar to electric, gas, and telephone distribution lines and poles where a minor conditional use permit is required in all areas of the open space zone. This further implies that the code was intended for property, not the ROW.

G. Conclusion

NextG requests that the City treat NextG equal to any other utility requesting to set a standard wood utility pole in the ROW. Based on our previous conversation with the City, it appears this process is handled by the Department of Public Works. As such, NextG would like to work with the Department of Public Works on the placement of the utility poles.

Additionally, we thank you and the City in advance for clearing up the current confusion relating to the undisputed permit requests. Please instruct the Department of Public Works to begin issuing the nondiscretionary construction, excavation, and encroachment permits immediately.

Should you have any questions or concerns, please feel free to contact me at 206.419.9800 or by email at nernst@nextgnetworks.net.

Best regards,

Natasha Ernst
Government & Utility Counsel

cc: Patrick Ryan, Esq. (NextG)

EXHIBIT C

RECEIVED

MAR 1 2 2010

CITY PLANNING COMMISSION
ZONING DIVISION

CITY OF OAKLAND

BASIC APPLICATION FOR DEVELOPMENT REVIEW

Community and Economic Development Agency

250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2032
Zoning Information: 510-238-3911
www.oaklandnet.com

CERTAIN APPLICATIONS ARE ACCEPTED BY APPOINTMENT ONLY!

Please call (510) 238-3940 to schedule an appointment if your project involves any of the following:

- **Conditional Use Permit**
- **Variance**
- **Regular Design Review**
- **Parcel Map Waiver**
- **Tentative Parcel Map**
- **Tentative Tract Map**
- **New dwelling unit(s)**
- **1,000 sq. ft. or more of new floor area/footprint**
- **Additions ≥ 100% of existing floor area/footprint**

All other projects may be submitted to the zoning counter without an appointment.

Submit applications for Small Project Design Review to station #12 at the zoning counter by signing the sign-up sheet.

1. TYPE OF APPLICATION

(Check all that apply)

Development Permits

- ☐ Conditional Use Permit (Major, Minor, or Interim)
- ☐ Variance (Major or Minor)
- ☐ Regular Design Review
- ☒ Small Project Design Review
- ☐ Tree Preservation or Removal Permit
- ☐ Creek Protection Permit (separate application required)
- ☐ Other: _____

Subdivision Applications

- ☐ Parcel Map Waiver (Lot Line Adjustment/Merger)
- ☐ Tentative Parcel Map (subdivision for 1 – 4 lots)
- ☐ Tentative Tract Map (subdivision for 5 or more lots)
- ☐ Planned Unit Development/Mini-Lot Development

Other Applications

- ☐ Request for Environmental Review
- ☐ *General Plan Amendment* ☐ *Rezoning*

2. GENERAL INFORMATION

APPLICANT'S NAME/COMPANY: NextG Networks of California, Inc.

PROPERTY ADDRESS: Public Right of Way at approximately ~~9950~~ 10648 Skyline Blvd

ASSESSOR'S PARCEL NUMBER: N/A **LOT AREA (ACRES/SQ. FT.):** N/A

EXISTING USE OF PROPERTY: Public Right-of-Way

DESCRIPTION OF PROPOSAL (including type of use, hours of operation, number of employees, etc., on additional sheets if needed.):

Install one wood utility pole near the 10648 Skyline Blvd to accommodate a small 26" omni antenna at pole top and two equipment boxes; 33"x6"x6" and 24"x36"x14" to support wireless telephone coverage via a distributed antenna system.

TO BE COMPLETED BY STAFF

GENERAL PLAN LAND USE CLASS: _____ ZONING: _____

FEES

APPLICATION FEE[1]: $ _____
POSTER DEPOSIT[2]: $ _____
VIOLATION FEE[3]: $ _____
TREE PERMIT FEE: $ _____
CREEK PERMIT FEE: $ _____
TOTAL FEES DUE: $ _____

EXPECTED PROCESSING TIME[4]: _____

1. Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal.
2. For permit applications requiring public notice, a refundable security deposit is required for the on-site poster containing the public notice.
3. For permit applications to legalize work that has already been started, the REPORT FEE portion of any permit application fee is DOUBLED.
4. Expected processing time is only an estimate and is subject to change without notice due to staff workload, public hearing availability, and the completeness or complexity of the application.

RECEIVED

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CITY PLANNING COMMISSION

ZONING DIVISION

CITY OF OAKLAND

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Community and Economic Development Agency

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www oaklandnet com

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- ***1,000 sq. ft. or more of new floor area/footprint***
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- ☐ Regular Design Review
- ☒ Small Project Design Review
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- ☐ Creek Protection Permit (separate application required)
- ☐ Other: _____

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- ☐ Planned Unit Development/Mini-Lot Development

Other Applications

- ☐ Request for Environmental Review
- ☐ General Plan Amendment
- ☐ Rezoning

2. GENERAL INFORMATION

APPLICANT'S NAME/COMPANY: NextG Networks of California, Inc.

PROPERTY ADDRESS: Public Right of Way at approximately 7294 Marlborough Terrace

ASSESSOR'S PARCEL NUMBER: N/A LOT AREA (ACRES/SQ. FT.): N/A

EXISTING USE OF PROPERTY: Public Right-of-Way

DESCRIPTION OF PROPOSAL (including type of use, hours of operation, number of employees, etc., on additional sheets if needed.):

Install one wood utility pole near the intersection of Grizzly Peak Blvd and Marlborough Terrace for a small 26" omni antenna at pole top and two equipment boxes; 33"x6"x6" and 24"x36"x14" to support wireless telephone coverage via a distributed antenna system.

TO BE COMPLETED BY STAFF

GENERAL PLAN LAND USE CLASS: ZONING:

FEES[1]

APPLICATION FEE: $

POSTER DEPOSIT[2]: $

VIOLATION FEE[3]: $

TREE PERMIT FEE: $

CREEK PERMIT FEE: $

TOTAL FEES DUE: $

EXPECTED PROCESSING TIME[4]:

[1] Fees are subject to change without prior notice. The fee charged will be those that are in effect at the time of application submittal.

[2] For permit applications requiring public notice, a refundable security deposit is required for the on-site poster containing the public notice.

[3] For permit applications to legalize work that has already been started, the REPORT FEE portion of any permit application fee is DOUBLED.

[4] Expected processing time is only an estimate and is subject to change without notice due to staff workload, public hearing availability, and the completeness or complexity of the application.

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MAR 1 2 2010

CITY PLANNING COMMISSION
ZONING DIVISION

Community and Economic Development Agency

CITY OF OAKLAND

BASIC APPLICATION FOR DEVELOPMENT REVIEW

250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Zoning Information: 510-238-3911
www.oaklandnet.com

CERTAIN APPLICATIONS ARE ACCEPTED BY APPOINTMENT ONLY!

Please call (510) 238-3940 to schedule an appointment if your project involves any of the following:

- **Conditional Use Permit**
- **Variance**
- **Regular Design Review**
- **Parcel Map Waiver**
- **Tentative Parcel Map**
- **Tentative Tract Map**
- **New dwelling unit(s)**
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(Check all that apply)

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- ☐ Conditional Use Permit (Major, Minor, or Interim)
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- ☐ Tentative Tract Map (subdivision for 5 or more lots)
- ☐ Planned Unit Development/Mini-Lot Development

Other Applications

- ☐ Request for Environmental Review
- ☐ *General Plan Amendment* ☐ *Rezoning*

2. GENERAL INFORMATION

APPLICANT'S NAME/COMPANY: NextG Networks of California, Inc

PROPERTY ADDRESS: Public Right of Way at approximately 10000 Skyline Blvd

ASSESSOR'S PARCEL NUMBER: N/A **LOT AREA (ACRES/SQ. FT.):** N/A

EXISTING USE OF PROPERTY: Public Right-of-Way

DESCRIPTION OF PROPOSAL (including type of use, hours of operation, number of employees, etc., on additional sheets if needed):

Install one wood utility pole near the 10000 Skyline Blvd to accommodate a small 26" omni antenna at pole top and two equipment boxes; 33"x6"x6" and 24"x36"x14" to support wireless telephone coverage via a distributed antenna system.

TO BE COMPLETED BY STAFF

GENERAL PLAN/LAND USE CLASS: _____ *ZONING:* _____

FEES:		EXPECTED PROCESSING TIME[4]:
APPLICATION FEE:	$	
POSTER DEPOSIT[2]:	$	
VIOLATION FEE[3]:	$	
TREE PERMIT FEE:	$	
CREEK PERMIT FEE:	$	
TOTAL FEES DUE:	$	

1. Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal.
2. For permit applications requiring public notice, a refundable security deposit is required for the on-site poster containing the public notice.
3. For permit applications to legalize work that has already been started, the REPORT FEE portion of my permit application fee is DOUBLED.
4. Expected processing time is only an estimate and is subject to change without notice due to staff workload, public hearing availability, and the completeness or complexity of the application.

17.11.090 Special provisions for permitted and conditionally permitted facilities and facilities allowed by variance in the OS zone.

USE/PARK TYPE	RSP	CP	NP	AMP	PMP	LP	SU	RCA	AF
FACILITY TYPES									
ONE-FAMILY RESIDENCE									
Caretaker's Quarters	✪	✪	✪			✪	✪		✪
TELECOMMUNICATIONS FACILITIES									
Mini	★	★	★	★	★	★	★	★	★
Micro	★	★	★	★	★	★	★	★	★
Macro	✪	✪	✪	✪	✪	✪	✪	✪	✪
Monopole	✪	✪	✪	✪	✪	✪	✪	✪	✪
Lattice Tower									

* Limited to the circumstances outlined in 17.11.090A.

Legend: ✪ = Requires Major Conditional Use Permit; ★ = Requires Minor Conditional Use Permit
RSP (Region-Seeking Park); CP (Community Park); NP (Neighborhood Park); AMP (Active Mini-Park); PMP (Passive Mini-Park); LP (Linear Park); SU (Special Use Park); RA (Resource Conservation Area); AF (Athletic Field)

Attachment C

17.11.090 Special provisions for permitted and conditionally permitted facilities and facilities allowed by variance in the OS zone.

USE/PARK TYPE	RSP	CP	NP	AMP	PMP	LP	SU	RCA	AF
FACILITY TYPES									
ONE-FAMILY RESIDENCE									
Caretaker's Quarters	✪	✪	✪			✪	✪		✪
TELECOMMUNICATIONS FACILITIES									
Mini	★	★	★	★	★	★	★	★	★
Micro	★	★	★	★	★	★	★	★	★
Macro	✪	✪	✪	✪	✪	✪	✪	✪	✪
Monopole	✪	✪	✪	✪	✪	✪	✪	✪	✪
Lattice Tower									

* Limited to the circumstances outlined in 17.11.090A.

Legend: ✪ = Requires Major Conditional Use Permit; ★ = Requires Minor Conditional Use Permit

RSP (Region-Seeking Park); CP (Community Park); NP (Neighborhood Park); AMP (Active Mini-Park); PMP (Passive Mini-Park); LP (Linear Park); SU (Special Use Park); RA (Resource Conservation Area); AF (Athletic Field)

Attachment C

ATTACHMENT D

Description of Physical Location

ATTACHMENT D: DESCRIPTION OF PHYSICAL LOCATION

The property is an unpaved portion of City public right-of-way situated alongside a two-way section of Skyline Boulevard lacking sidewalks. The site is adjacent to the street entrance to Roberts Park (East Bay Regional Park District), indicated by signage. To the rear of the site is a fire trail leading into the park with a wooden fence facing the street. Both sides of the street are lined by forests consisting primarily of Redwoods. The only man-made features present at or adjacent to the site are the park sign, trail fence, and No Parking Signs. The closest structures similar in height are traffic signals and lights standards located at the terminus of Joaquin Miller Drive at Skyline Boulevard located approximately 2,500-radial-feet to the south and a light standard on Skyline Boulevard located approximately 2,000-radial-feet to the north located at a crosswalk. There are no structures directly along the public right-of-way close to the height of the proposed poles in proximity to the proposed site.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 OCT 28 PM 2:22

APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____C.M.S.

A RESOLUTION DENYING APPEAL #A10223 AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION TO DENY CASE #CM10131 FOR A 41'-5"-TALL MONOPOLE WIRELESS TELECOMMUNICATIONS FACILITY IN THE OPEN SPACE ZONE SECTION OF PUBLIC RIGHT-OF-WAY ON SKYLINE BLVD. NORTH OF THE ROBERTS PARK STREET ENTRANCE.

WHEREAS, on March 12, 2010, the applicant Ms. Sharon James/NextG Networks, submitted a proposal for four sites including a 41'-5"-tall wooden pole with two antennas attached for wireless telecommunications purposes in the open space zone section of public right-of-way on Skyline Boulevard north of the Roberts Park street entrance; and

WHEREAS, on April 9, 2010, Planning and Zoning Department staff sent the applicant a letter indicating the application was incomplete and that the proposal constituted Monopole Wireless Telecommunications Facilities requiring four separate Major Conditional Use Permits; and

WHEREAS, on May 13, 2010, the Zoning Manager issued a formal administrative determination that interpreted the Planning Code to classify the proposed pole's facility type as Monopole Wireless Telecommunications Facility requiring a Major Conditional Use Permit; and

WHEREAS, on May 24, 2010 Ms. Natasha Ernst/NextG Networks filed an administrative appeal of the Zoning Manager's Determination; and

WHEREAS, on July 21, 2010, the Planning Commission upheld the Zoning Administrator's determination dated May 13, 2010 which classified the facility as a Monopole and determined that the Monopole was subject to the Telecommunications Regulations and required a Major Conditional Use Permit, and this decision is final and non-appealable; and

WHEREAS, on June 3, 2010, notwithstanding the fact that NextG's appeal on the Zoning Administrator's decision was pending, the applicant Ms. Sharon James/NextG Networks, re-submitted an individual application for a Major Conditional Use Permit with two sets of additional findings (Conditional Use Permit for Monopole; Design Review for Monopole) to construct a 41'-5"-tall pole with two antennas in the open space zone section of public right-

of-way on Skyline Boulevard north of the Roberts Park street entrance as case # CM10131 (Project); and

WHEREAS, on July 26, 2010, staff advised the applicant that required legal findings could not be made to support the project and other options might be considered which the applicant declined to pursue; and

WHEREAS, on August 4, 2010 a duly noticed public hearing was held before the City Planning Commission for the Project; and

WHEREAS, on August 4, 2010, the Planning Commission independently reviewed, considered and determined that the Project is statutorily exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to section 15270 of the State CEQA Guidelines because the project was disapproved; and

WHEREAS, on August 4, 2010, the Planning Commission denied the application for case # CM10131 and advised the applicant they are encouraged to submit a revised proposal as a new application; and

WHEREAS, on August 16, 2010 Ms. Natasha Ernst/NextG Networks timely filed an appeal of the Planning Commission's decision to deny the Project; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on November 9, 2010; and

WHEREAS, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on November 9, 2010; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is statutorily exempt from CEQA pursuant to CEQA Guideline Section 15270 "Projects Which Are Disapproved" of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, or that the Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the November 9, 2010, City Council Agenda Report and the August 4, 2010, Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein and on the reports and testimony provided at the hearing. Accordingly, the Appeal is

denied, the Planning Commission's decision to deny a 41'-5"-tall Monopole Wireless Telecommunications Facility with two antennas in the open space zone section of public right-of-way on Skyline Boulevard north of the Roberts Park street entrance, is upheld, subject to the findings for denial adopted by the Planning Commission, each of which is hereby separately and independently adopted by this Council in full, as may be amended here; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the Project, the City Council affirms and adopts as its findings and determinations (i) the November 9, 2010, City Council Agenda Report, attached to the report as Attachment "A" [including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full], and (ii) the August 4, 2010 Denied City Planning Commission Staff Report [including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full)], attached to the report as Attachment "B,", except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;

2. all plans submitted by the Applicant and their representatives;

3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.

4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST:_____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.