

**BEFORE THE  
ILLINOIS COMMERCE COMMISSION**

NG-911, Inc.	:	
	:	Docket 12-0093
Application for a Certificate of Authority to Operate as a 9-1-1 System Provider in the State of Illinois.	:	
	:	(Consolidated)
NG-911, Inc.	:	
	:	Docket 12-0109
Application for a Certificate of local, interexchange authority to operate as a reseller and/or facilities based carrier of telecommunications services in all areas in the State of Illinois.	:	

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. Procedural History

On February 3, 2012, NG-911, Inc. ("Applicant" or "NG-911") filed a verified application with the Illinois Commerce Commission ("Commission"), Docket No. 12-0093, pursuant to the Illinois Public Utilities Act (the "Act") Section 13-900 for Certification as a 9-1-1 System provider.

On February 10, 2012, Applicant filed a verified application with the Commission, Docket No. 12-0109, pursuant to Section 13-403 of the Act for a Certificate of Interexchange Service Authority to provide facilities-based interexchange telecommunications services, pursuant to Section 13-404 of the Act for a Certificate Service Authority to provide resold local and interexchange services, and pursuant to Section 13-405 of the Act for a Certificate of Exchange Service Authority to provide facilities-based local telecommunications services in Illinois (220 ILCS 5/13-403, 5/13-404 and 5/13-405).

Petitions to Intervene were filed by Illinois Bell Telephone Company ("Illinois Bell"), the Counties of Southern Illinois, the Illinois Telecommunications Association and Frontier Communications, which were granted.

On March 22, 2012, the Administrative Law Judge consolidated the proceedings in Docket Nos. 12-0093 and 12-0109.

Pursuant to notice given in accordance with the rules and regulations of the Commission, this matter came on for hearing on August 7, 2012 before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois. NG-

911 appeared by counsel and presented the testimony of its President and CEO, Michael Ramsey, and the testimony of Albert F. Fillenwarth. Commission Staff appeared by counsel and presented the testimony of Karen Chang, Stacy Ross and Bud Green of the Telecommunications Division. Illinois Bell appeared by counsel and presented the testimony of Patricia H. Pellerin. At the conclusion of the hearing on August 7, 2012, the record was marked "Heard and Taken."

## II. Applicable Legal Standards

The applicable legal standard for the Application filed in Docket No. 12-0109 is whether the Applicant has sufficient managerial, technical and financial abilities to provide facilities-based interexchange telecommunications services pursuant to Section 13-403 of the Act, resold local and interexchange services pursuant to Section 13-404 of the Act, and facilities-based local telecommunications services pursuant to Section 13-405 of the Act. (220 ILCS 5/13-403, 5/13-404 and 5/13-405)

The applicable legal standard for the Application filed in Docket No. 12-0093 is whether the Applicant has sufficient managerial, technical and financial abilities to provide network and database services as a 9-1-1 System Provider in a safe, continuous and uninterrupted manner. (220 ILCS 5/13-900)

## III. Record Evidence

### A. Applicant Position

NG-911, an Iowa corporation authorized to transact business in Illinois, seeks to provide E9-1-1 and Next Generation 9-1-1 services to counties, municipalities and Emergency Telephone Service Boards (ETSBs). Applicant seeks authority to provide facilities-based interexchange, resold local and interexchange, and facilities-based local telecommunications services in Illinois (Docket No. 09-0109); and seeks certification as a 9-1-1 System Provider pursuant to PUA 13-900 (Docket No. 12-0093) to provide 9-1-1 emergency communications services. Applicant submitted evidence through the testimony of Michael Ramsey, President and CEO of Applicant, that it has the requisite technical, financial and managerial resources and abilities to provide the services set forth in its application. NG-911 provided the management profile of its key management members to show that it has the necessary business and telecommunications experience to support the service Applicant will offer in Illinois. Albert F. Fillenwarth testified that Applicant has the requisite financial ability to operate in the capacities requested in the Application. Mr. Fillenwarth's testimony included a Balance Sheet, Income Statement and a Statement of Cash Flows as evidence of its financial ability to support the services it will offer. Applicant stated in its application that technical personnel will be available at all times to assist customers with service problems. Mr. Ramsey testified that Applicant will adhere to all federal and state laws and regulations.

The application states that Ramsey Emergency Services, Inc., which merged into Applicant in 2008, was denied a Certificate of Service in ICC Docket No. 04-0406. Otherwise, Applicant has not had any certification revoked or suspended in any jurisdiction in this or any other name.

Applicant requested that the Commission grant certain waivers of the requirements of the Public Utilities Act and from the rules and regulations of the Commission.

Applicant requested a waiver of 83 Ill. Adm. Code, Part 710, the requirement to keep books and records in accordance with the Uniform System of Accounts, in order to reduce the economic burdens of regulation on a telecommunications carrier which provides only competitive services.

Applicant also requested Commission approval pursuant to 83 Ill. Adm. Code 250 to maintain its books and records at its principle place of business in Iowa.

The Applicant's request for waivers of 83 Ill. Adm. Code, Parts 210, 215, 255, 265, 270, 725.101, et seq., 725.205(a), (b), (c), (d), 725.210(b)(2), 725.210(b)(4), 726, 727, 728, 730, 73.305, 730.325, 730.330, 730.520, and 730.600 were withdrawn by the Applicant.

#### B. Staff Position

Staff stated that it had reviewed NG-911's applications and supporting documentation and based on that review, recommended that the applications be approved. Staff witness Karen Chang testified regarding NG-911, Inc.'s financial ability to provide service. Staff witness H.K. (Bud) Green testified regarding NG-911, Inc.'s technical ability to provide service. And Staff witness Stacy Ross testified regarding NG-911, Inc.'s managerial ability to provide service.

Staff and Applicant jointly requested the Commission to make the following findings and orders:

1. NG-911 has sufficient managerial, technical and financial abilities and resources to provide local and interexchange services in the State of Illinois as a reseller or facilities based telecommunications carrier in Illinois.
2. NG-911 has sufficient managerial, technical and financial resources and abilities to provide network service and database services as a 9-1-1 System Provider in Illinois in a safe, continuous, and uninterrupted manner as required by Section 13-900(c) of the Public Utilities Act.
3. The Commission reserves the right to revisit and review the adequacy of the company's financial resources to serve a specific customer or set of customers when the modified 9-1-1 plans are submitted for Commission approval.
4. NG-911 shall enter into an agreement with future customers whereby NG-911 will provide a performance or surety bond or some other mechanism to help its customers defray the costs of replacing NG-911 as the 9-1-1 System Provider in the event the company unexpectedly ceases to operate, with the terms of the bond or other agreement to be jointly determined by NG-911 and its customers.
5. NG-911 shall notify the Commission's 9-1-1 Program Manager of any staffing changes regarding 9-1-1 personnel in or assigned to Illinois, including applicable contact information for these personnel.

6. The Applicant's request for waivers of 83 Ill. Adm. Code, Parts 210, 215, 255, 265, 270, 725.101, et seq., 725.205(a), (b), (c), (d), 725.210(b)(2), 725.210(b)(4), 726, 727, 728, 730, 73.305, 730.325, 730.330, 730.520, and 730.600 are withdrawn by the Applicant.
7. The Applicant's request for a waiver of 83 Ill. Adm. Code 250, allowing Applicant to maintain its books and records out of state, should be granted. The Applicant has agreed to promptly produce all books and records at any time and place as requested by Staff.
8. The Applicant's request for a waiver of 83 Ill. Adm. Code, Section 710, allowing Applicant to keep its accounting system in accordance with Generally Accepted Accounting Principles rather than the Uniform System of Accounts (USOA) for Telecommunications Carriers, should be granted.

C. Illinois Bell Telephone Company Position

Patricia H. Pellerin testified on behalf of Illinois Bell Telephone Company (Illinois Bell). Illinois Bell requested that the Commission include a finding that it is not deciding whether a particular 9-1-1 service offering either meets the definition of "telephone exchange service" or "exchange access service" under federal law. Illinois Bell explained that if there are subsequent proceedings, it did not want to be deemed to have waived its rights by not having objected to Applicant's certification in this proceeding. Applicant and Staff stated that they had no objection to such a finding. Accordingly, Applicant and Illinois Bell jointly requested the Commission to make the following findings and conclusions:

1. By granting either the certificate to be a 911 system provider pursuant to Section 13-900 or the certificate for local exchange authority pursuant to Section 13-405 of the Illinois Act, the Commission is not finding, concluding or deciding:
  - a. whether a particular NG 911, Inc. offering or provision of 911 service to PSAPs meets either the definition of "telephone exchange service" or "exchange access service" under federal law;
  - b. whether a particular NG 911, Inc. offering or provision of 911 service to PSAPs constitutes telephone exchange service or exchange access eligible for interconnection with AT&T Illinois pursuant to section 251(c)(2) of the 1996 Act or access to unbundled network elements pursuant to section 251(c)(3) of the 1996 Act; or
  - c. whether NG 911, Inc. is a telecommunications carrier under federal law when offering or providing 911 service to PSAPs, entitling it to request that AT&T Illinois provide it with any of the ILEC duties, obligations or services pursuant to section 251 of the 1996 Act.
2. The order shall be without prejudice to the rights of the parties and no party shall be deemed to have waived any rights to seek determination of, or assert any positions with respect to, the foregoing issues in any other proceeding.

D. Counties of Southern Illinois Position

Ken Smith, Williamson County 9-1-1 Coordinator and Chairman of the Counties of Southern Illinois (CSI), testified that NG-911, Inc. was selected as the primary vendor for equipment and services for the CSI Pilot Project. Smith testified that CSI issued an RFP and

obtained bids from several well qualified companies. CSI selected NG-911, Inc. as the primary vendor because of its passion for improving public safety by deploying Next Generation emergency communications and its willingness to see the project through to successful conclusion. Smith testified that NG-911, Inc. demonstrated that it is thoroughly knowledgeable about Next Generation 9-1-1; that NG-911, Inc. assisted CSI in developing its plan for the pilot project by providing expertise in the planning and engineering of the system; that NG-911, Inc. raised new issues and offered solutions to both known and new issues; and that NG-911, Inc.'s selection of subcontractors demonstrates its experience and professionalism.

Smith further testified that NG-911, Inc.'s managerial performance has been exceptional, including providing a project manager, Bart Lovett, to conduct weekly meetings. Smith further testified that even though NG-911, Inc. is a relatively small company, CSI is not concerned about NG-911, Inc.'s financial strength because it has been doing business for more than a decade. Furthermore, CSI purchased the equipment through government grants and individual members' budgets, so NG-911, Inc. did not have to fund a large up-front investment. CSI urged the Commission to grant a certificate to NG-911, Inc. to become a 9-1-1 Service Provider.

#### E. Illinois Chapter of the National Emergency Number Association Position

Patrick J. Lustig, ENP, Director of Jackson County 9-1-1 and President of the Illinois Chapter of the National Emergency Number Association (INENA), testified on behalf of INENA. Lustig testified that INENA believes it is in the best interest of the citizens of Illinois to foster competition in the provision of emergency communications equipment and services because competition encourages technological innovation and efficient use of resources; better service and, secondarily, cost savings, are direct benefits of competition. Lustig testified that INENA intervened in these proceedings to voice its support for allowing competition among providers of 9-1-1 services and for the application of NG-911, Inc. for certification as a 9-1-1 System Provider. Lustig testified that INENA believes that by amending the Public Utilities Act, 220 ILCS 5/13-900, on June 30, 2009, the state legislature has acknowledged that "telephone companies" are not the only entities that are capable of providing emergency communications services and, subject to Commission approval, new market entrants may be allowed.

Lustig further testified that INENA recommends approval of NG-911, Inc.'s application for certification as a 9-1-1 Service Provider because NG-911, Inc. has been a good corporate citizen in Illinois for more than a decade; because NG-911, Inc. already provides equipment and services to many ETSBs in Illinois (other than selective routing and database management); and because NG-911, Inc. has demonstrated a commitment to the deployment of Next Generation 9-1-1 in Illinois in accordance with NENA standards.

#### IV. Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds and concludes that:

1. NG-911, Inc., an Iowa corporation authorized to transact business in Illinois, seeks a Certificate of Interexchange Service Authority pursuant to Section 13-403 of the Act to provide facilities-based interexchange telecommunications services, a

Certificate Service Authority pursuant to Section 13-404 of the Act to provide resold local and interexchange telecommunications services, and pursuant to Section 13-405 of the Act for a Certificate of Exchange Service Authority to provide facilities-based local telecommunications services.

2. NG-911, Inc. seeks Certification as a 9-1-1 System Provider pursuant to Section 13-900 of the Act. This is the first application filed with the Commission for certification as a 9-1-1 System Provider.
3. The Commission has jurisdiction over the parties and over the subject matter of this proceeding.
4. As required by Sections 13-403, 13-404 and 13-405 of the Act, Applicant possesses sufficient technical, financial and managerial resources to provide facilities-based and resold local and interexchange telecommunications services in Illinois.
5. NG-911 has sufficient managerial, technical and financial resources and abilities to provide network service and database services as a 9-1-1 System Provider in Illinois in a safe, continuous, and uninterrupted manner as required by Section 13-900(c) of the Public Utilities Act.
6. The Commission reserves the right to revisit and review the adequacy of the company's financial resources to serve a specific customer or set of customers when the modified 9-1-1 plans are submitted for Commission approval.
7. NG-911 shall enter into an agreement with future customers whereby NG-911 will provide a performance or surety bond or some other mechanism to help its customers defray the costs of replacing NG-911 as the 9-1-1 System Provider in the event the company unexpectedly ceases to operate, with the terms of the bond or other agreement to be jointly determined by NG-911 and its customers.
8. NG-911 shall notify the Commission's 9-1-1 Program Manager of any staffing changes regarding 9-1-1 personnel in or assigned to Illinois, including applicable contact information for these personnel.
9. The Applicant's request for waivers of 83 Ill. Adm. Code, Parts 210, 215, 255, 265, 270, 725.101, et seq., 725.205(a), (b), (c), (d), 725.210(b)(2), 725.210(b)(4), 726, 727, 728, 730, 73.305, 730.325, 730.330, 730.520, and 730.600 are withdrawn by the Applicant.
10. The Applicant's request for a waiver of 83 Ill. Adm. Code 250, allowing Applicant to maintain its books and records out of state, should be granted. The Applicant has agreed to promptly produce all books and records at any time and place as requested by Staff.
11. The Applicant's request for a waiver of 83 Ill. Adm. Code, Section 710, allowing Applicant to keep its accounting system in accordance with Generally Accepted Accounting Principles rather than the Uniform System of Accounts (USOA) for

Telecommunications Carriers, should be granted as long as Applicant maintains its accounting records in accordance with Generally Accepted Accounting Principles and at a level of detail substantially similar to the accounting system which it currently uses pursuant to its Chart of Accounts, and in sufficient detail to comply with all applicable tax laws;

12. Applicant should file with the Commission a tariff consisting of its rates, rules and regulations in accordance with Sections 13-501 and 13-502 of the Act, to be effective upon proper filing before commencing service;
13. Applicant should establish books of account such that revenues from its telecommunications services subject to the public utility revenue tax are segregated from the revenues derived from other business activities not regulated by the Commission.
14. Pursuant to 83 Ill. Adm. Code 250, Applicant should be allowed to maintain its books and records at its principal place of business in Iowa in accordance with Section 5-106 of the Act; and
15. By granting either the certificate to be a 911 system provider pursuant to Section 13-900 or the certificate for local exchange authority pursuant to Section 13-405 of the Illinois Act, the Commission is not finding, concluding or deciding:
  - A. whether a particular NG 911, Inc. offering or provision of 911 service to PSAPs meets either the definition of "telephone exchange service" or "exchange access service" under federal law;
  - B. whether a particular NG 911, Inc. offering or provision of 911 service to PSAPs constitutes telephone exchange service or exchange access eligible for interconnection with AT&T Illinois pursuant to section 251(c)(2) of the 1996 Act or access to unbundled network elements pursuant to section 251(c)(3) of the 1996 Act; or
  - C. whether NG 911, Inc. is a telecommunications carrier under federal law when offering or providing 911 service to PSAPs, entitling it to request that AT&T Illinois provide it with any of the ILEC duties, obligations or services pursuant to section 251 of the 1996 Act.
  - D. The order shall be without prejudice to the rights of the parties and no party shall be deemed to have waived any rights to seek determination of, or assert any positions with respect to, the foregoing issues in any other proceeding.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that NG-911, Inc. be, and is hereby, granted a Certificate to operate as a 9-1-1 System Provider in Illinois.

IT IS FURTHER ORDERED that the 9-1-1 System Provider Certificate authority hereinabove granted shall be the following:

CERTIFICATE OF 9-1-1 SYSTEM PROVIDER AUTHORITY

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that NG-911, Inc. be, and is hereby, granted a Certificate of 9-1-1 System Provider Authority pursuant to Section

13-900 of the Act, to provide 9-1-1 services in Illinois.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Commission reserves the right to revisit and review the adequacy of the company's financial resources to serve a specific customer or set of customers when the modified 9-1-1 plans are submitted for Commission approval.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that NG-911 shall enter into an agreement with future customers whereby NG-911 will provide a performance or surety bond or some other mechanism to help its customers defray the costs of replacing NG-911 as the 9-1-1 System Provider in the event the company unexpectedly ceases to operate, with the terms of the bond or other agreement to be jointly determined by NG-911 and its customers.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that NG-911 shall notify the Commission's 9-1-1 Program Manager of any staffing changes regarding 9-1-1 personnel in or assigned to Illinois, including applicable contact information for these personnel.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that NG-911, Inc. be, and is hereby, granted a Certificate of Interexchange Service Authority pursuant to Section 13-403 to provide facilities-based interexchange telecommunications services in Illinois.

IT IS FURTHER ORDERED that the Certificate of Interexchange Service Authority hereinabove granted shall be the following:

CERTIFICATE OF INTEREXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that NG-911 is authorized, pursuant to Section 13-403 of the Public Utilities Act, to provide facilities-based interexchange telecommunications services within the State of Illinois.

IT IS FURTHER ORDERED that NG-911, Inc. be, and is hereby, granted a Certificate of Service Authority pursuant to Section 13-404 to provide resold local and facilities-based telecommunications services in Illinois.

IT IS FURTHER ORDERED that the Certificate of Service Authority hereinabove granted shall be the following:

CERTIFICATE OF SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that NG-911 is authorized, pursuant to Section 13-404 of the Public Utilities Act, to provide resold local and interexchange telecommunications services within the State of Illinois.

IT IS FURTHER ORDERED that NG-911, Inc. be, and is hereby, granted a Certificate

of Exchange Service Authority pursuant to Section 13-405 to provide facilities-based local telecommunications services in Illinois.

IT IS FURTHER ORDERED that the Certificate of Exchange Service Authority hereinabove granted shall be the following:

CERTIFICATE OF EXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that NG-911 is authorized, pursuant to Section 13-405 of the Public Utilities Act, to provide facilities- based local exchange telecommunications services within the State of Illinois.

IT IS FURTHER ORDERED that NG-911 file with this Commission a tariff consisting of its rates, rules and regulations, to be effective upon proper filing before commencing service.

IT IS FURTHER ORDERED that 83 Ill. Adm. Code 250 and 710 be, and are hereby, waived as set forth in Findings (9) and (10) hereinabove.

IT IS FURTHER ORDERED that as a condition of these Certificates, NG-911, Inc. be, and is hereby, directed to establish books of account such that revenues from its telecommunications services, subject to the public utility revenue tax, are segregated from the revenues derived from other business activities not regulated by the Commission.

IT IS FURTHER ORDERED that pursuant to 83 Ill. Adm. Code 250, NG-911 is authorized to maintain its books and records at its principal place of business in Iowa.

IT IS FURTHER ORDERED that the financial statements filed by NG-911, Inc. are afforded proprietary treatment and are exempt from public disclosure and will be accessible only by the Commission and Commission Staff for a period of \_\_\_\_ years from the date this Order is entered.

IT IS FURTHER ORDERED that by granting either the certificate to be a 911 system provider pursuant to Section 13-900 or the certificate for local exchange authority pursuant to Section 13-405 of the Illinois Act, the Commission is not finding, concluding or deciding:

- A. whether a particular NG 911, Inc. offering or provision of 911 service to PSAPs meets either the definition of "telephone exchange service" or "exchange access service" under federal law;
- B. whether a particular NG 911, Inc. offering or provision of 911 service to PSAPs constitutes telephone exchange service or exchange access eligible for interconnection with AT&T Illinois pursuant to section 251(c)(2) of the 1996 Act or access to unbundled network elements pursuant to section 251(c)(3) of the 1996 Act;
- C. whether NG 911, Inc. is a telecommunications carrier under federal law when offering or providing 911 service to PSAPs, entitling it to request that AT&T Illinois provide it with any of the ILEC duties, obligations or services pursuant to section 251 of the 1996 Act; and
- D. this order shall be without prejudice to the rights of the parties and no party shall

be deemed to have waived any rights to seek determination of, or assert any positions with respect to, the foregoing issues in any other proceeding.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this \_\_\_\_ day of August, 2012.

Chairman

Submitted by:

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