

NextG Networks, Inc., (“NextG”) a provider of distributed antenna systems (DAS) and a member of the DAS Forum, was involved in litigation with the City of Huntington Beach, California. The lawsuit sought relief from the City’s zoning ordinances that were prohibiting NextG from building out their DAS network in Huntington Beach. The ruling, from the U.S. District Court for the Central District of California, Western Division, was issued in two parts.<p>

The first decision, issued February 7, 2008, enjoined the City from enforcing its wireless ordinance against NextG. The court, when assessing the City’s wireless ordinance, had “little trouble concluding here that the City’s five-step permitting process is so burdensome and Byzantine as to erect a barrier to providing telecommunications services.” As such, the City’s ordinance was in violation of §253(a) of the Telecommunications Act of 1996, which does not allow statutes or ordinances that “prohibit or have the effect of prohibiting” telecommunications services such as NextG’s. The court found that the ordinance’s aesthetic requirements, administrative procedures, and use of purely discretionary standards provided effective prohibitions to deployment and that NextG would suffer permanent injury if the court did not act.

[PDF of the Ruling](#)

The second decision, issued on February 26, 2008, enjoined the City from enforcing its requirement that NextG place all of their equipment associated with their DAS network underground. The court pointed out that even though §253(c) of the Telecommunications Act preserves the localities right to control their right of ways, it must do so on a competitively neutral and non-discriminatory basis. In this case, the court noted that the incumbent land lines were not subject to this provision, so in requiring NextG to do, the City discriminated against a competing communications service.

[PDF of the Ruling](#)