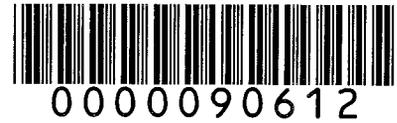


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BY OVERNIGHT EXPRESS

November 19, 2008

Ms. Lyn Farmer
Chief Hearing Officer
Hearings Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

DOCKETED BY [Signature]

RECEIVED
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ARIZONA CORPORATION COMMISSION

Re: Request for Earlier Hearing Date; NewPath Networks, LLC Application for a Certificate of Convenience and Necessity; Docket No. T-20567A-07-0662

Dear Ms. Farmer:

I am writing to request an earlier public hearing date for the pending application for a Certificate of Convenience and Necessity ("CC&N") for NewPath Networks, LLC ("NewPath"). The Arizona Corporation Commission's ("Commission") Procedural Order issued on November 7, 2008 sets a hearing date of March 25, 2009. However, a hearing date set out 118 days following the Order constitutes a significant impediment in NewPath's ability to operate in Arizona. For the reasons outlined below, NewPath respectfully requests that the Hearings Division reconsider the placement of NewPath's CC&N application on the calendar and grant an earlier hearing date.

As it stands, NewPath's ability to negotiate and conclude right-of-way franchises with several local jurisdictions is severely hampered by the delays in obtaining its CC&N. These jurisdictions will not commence negotiations with NewPath until NewPath can show that it has obtained a CC&N. In other words, delays in getting the CC&N not only prevent NewPath from operating its DAS networks, but even from obtaining the local approvals it needs in order to construct its networks. Thus any delay in the hearing date compounds the delays NewPath faces in providing services to its customers.

NewPath has planned several large Distributed Antenna System ("DAS") projects in Arizona. These DAS projects will provide greatly needed wireless coverage to communities and will promote the rapid deployment of new telecommunications services as mandated by the Telecommunications Act of 1996 ("Telecom Act"). The Telecom Act was passed to "encourage the **rapid** deployment of new telecommunications technologies." Further, Section 706(a) of the Telecom Act states the following: "[t]he Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" NewPath's innovative telecommunications service promotes the expressed intent of the Telecom Act by extending wireless capacity and coverage in hard-to-cover areas. NewPath is in the final stages of designing these projects and has reached a critical stage in the deployment process.

The problem is not only that franchise negotiations with several localities cannot be begun or, even if they have begun, completed until the issuance of a CC&N by the Commission. These localities appear to be relying on a state law that permits them to require a CC&N as a condition of a right-of-way franchise. *See e.g. Arizona Revised Statutes § 9-583(B)(1)* (" . . . a political subdivision may impose reasonable, competitively neutral and nondiscriminatory requirements on applicants which may include . . . *Proof that the applicant has received a certificate of convenience and necessity from the Arizona corporation commission*") (emphasis added). The real problem is that these franchises cannot be issued without city council approval, which requires public hearings that must be calendared and may be delayed by budgetary review processes that tend to occur in the spring and may postpone matters that are deemed less important in the council calendar. What may appear to be a brief delay becomes a several month delay at the local level.

NewPath reasonably expected this application process to take about 12-13 months. Extending the process to 17-18 months has an immediate and severe impact on NewPath's relations with its customers. A 5-6 month delay seriously impacts NewPath's ability to serve its customers in a timely manner and, therefore, to keep those customers. NewPath is operating under strict time constraints to complete its projects and failure to meet those deadlines will result in graduated penalties and could result in cancellation of the contract. As the frustration of NewPath's customers mounts, there is a real danger to NewPath that they may turn to NewPath's principal competitor who has already received a CC&N or decide to abandon efforts to provide advanced services to these difficult to serve areas.

Moreover, the jurisdictions in which NewPath seeks to provide enhanced telecommunications services include sizable areas in which residents have poor service or no service. *See* study of service levels in Paradise Valley, for example, which is attached as Exhibit 1. The additional coverage that will be available with the installation of NewPath's DAS facilities will thus be of significant public benefit. It is therefore in the public interest not to delay the provision of these improved services that are needed at this time by residents in these communities.

Although NewPath appreciates the workload that Commission staff faces, it is important for the Hearings Division to know that NewPath originally filed its application with the Commission on November 26, 2007 (approximately 12 months ago). NewPath's application was initially assigned to one staff member, but that staff member left the Commission on February 15, 2008, and

NewPath's application was not reassigned until August 2008. As documented in the staff memorandum issued by Armando Fimbres, NewPath has promptly responded to several data requests since Mr. Fimbres' assignment and has diligently worked to answer questions, comments or concerns, resulting in the issuance of the staff memorandum on October 31, 2008. Given these delays, it seems fair to try to reassign NewPath's hearing to an earlier date, even if the best that can be done is late January or early February.

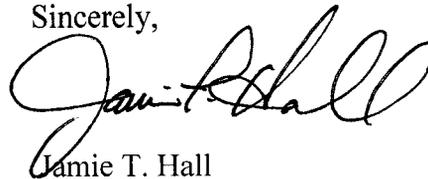
Finally, it should be noted that an earlier hearing date for this project is consistent with the Commission's prior actions. For example, on an application made by another DAS provider, the Hearing Division set a hearing date only a month after the issuance of staff's memorandum. *See* Docket No. T-20377A-05-0484. The applicant in that case was ultimately issued a CC&N after spending 13 months in the application process; NewPath has already been in the CC&N application process for 12 months with its ALJ hearing set for the 16th month.

It goes without saying that the Arizona Administrative Code requires that "[h]earings shall be held **not less than 30 or more than 60 days** after the date notice is first given" *See* R14-3-208. NewPath is sympathetic of the fact that the current economic climate has placed budgetary and staffing constraints on the Commission. Recognizing these constraints, NewPath is willing to offer to pay the reasonable administrative costs required to reset NewPath's hearing date, including any overtime and/or costs of additional staffing.

In conclusion, a hearing date that follows the issuance of the staff memorandum by 118 days is unfair to NewPath, contrary to the public interest, and jeopardizes NewPath's immediate and concrete plans to rapidly deploy new telecommunications services.

NewPath respectfully requests that the hearing date for this project be rescheduled to a date in closer compliance with the intent of the Code to provide a hearing within a reasonable time frame in service of the public interest. Please do not hesitate to contact me if you have any questions or need additional information. Thank you in advance for your time and consideration.

Sincerely,



Jamie T. Hall

Attorney for NewPath Networks, LLC

ORIGINAL and thirteen (13)
copies of the foregoing filed this
19th day of November, 2008, with:

The Arizona Corporation Commission
Utilities Commission – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

SERVICE LIST FOR:
DOCKET NO.:

NEWPATH NETWORKS, LLC
T-20567A-07-0662

Copies of the foregoing mailed/delivered
this 19th day of November, 2008 to:

J. Gregory Lake, Esq.
LAKE & COBB, PLC
1095 West Rio Salado Parkway
Suite 206
Tempe, Arizona 85281

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Exhibit 1

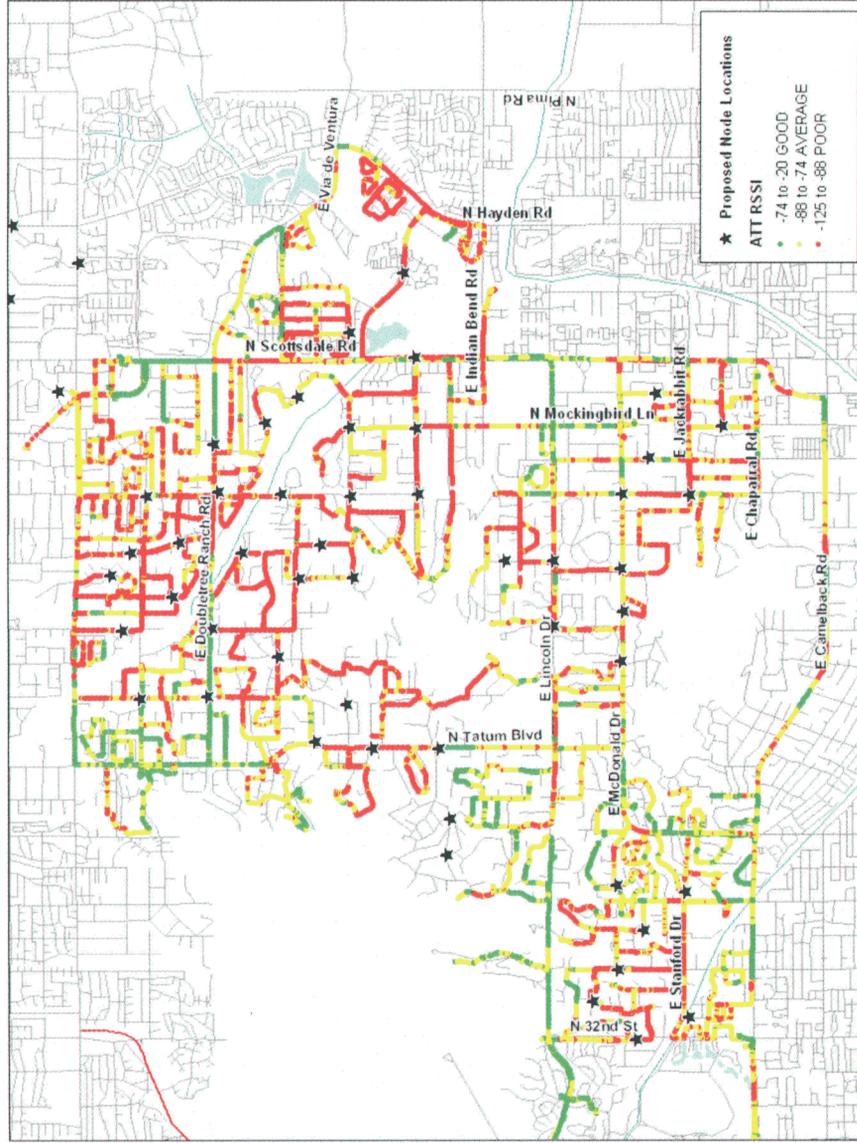
newpath
N E T W O R K S

WIRELESS COVERAGE AND CAPACITY FOR HARD-TO-ZONE AREAS

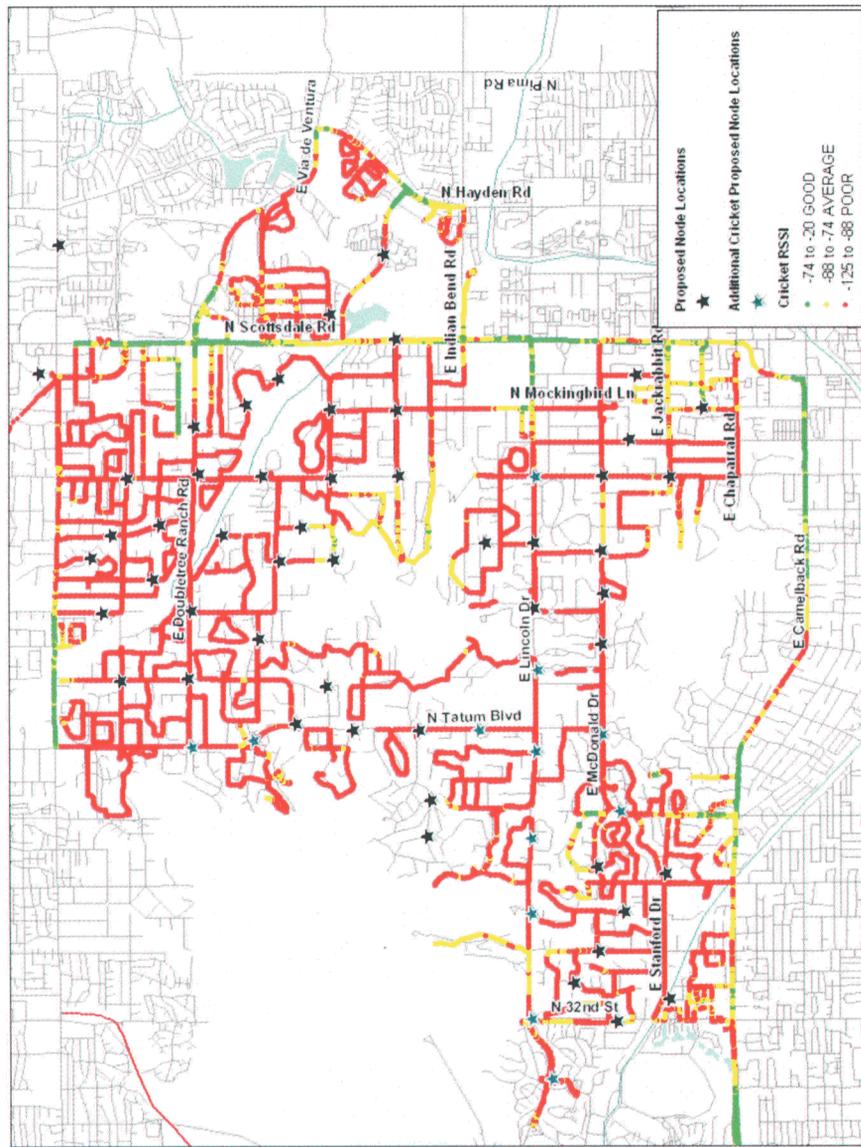
Paradise Valley Drive Test

October 2008

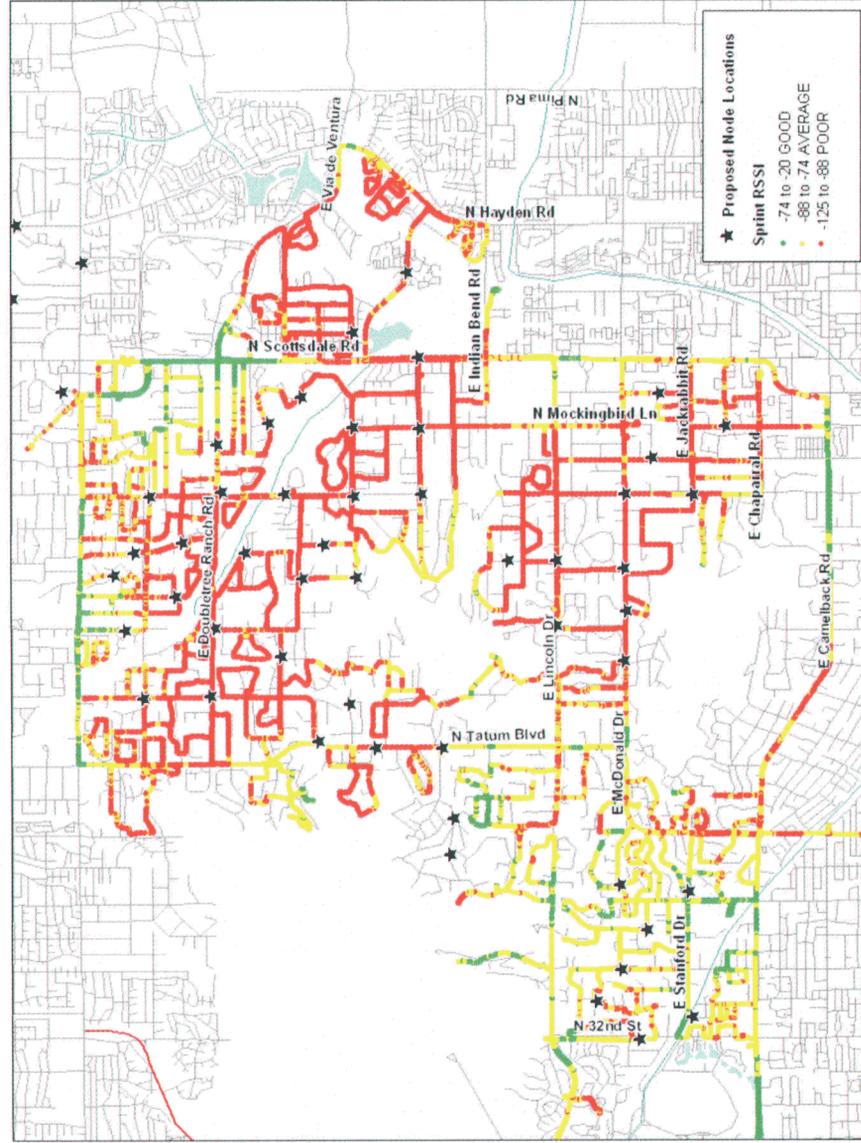
ATT Drive Data with Proposed Nodes



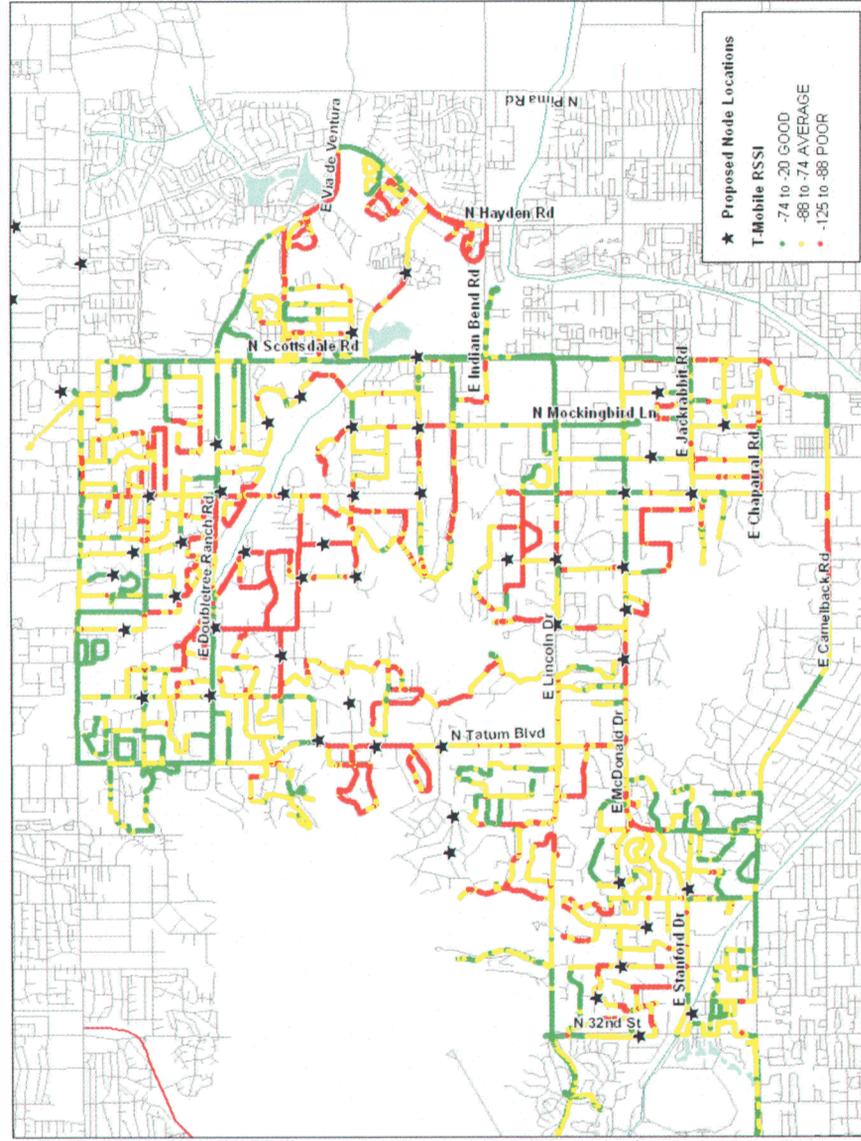
Cricket Drive Data with Initial and New Proposed Nodes



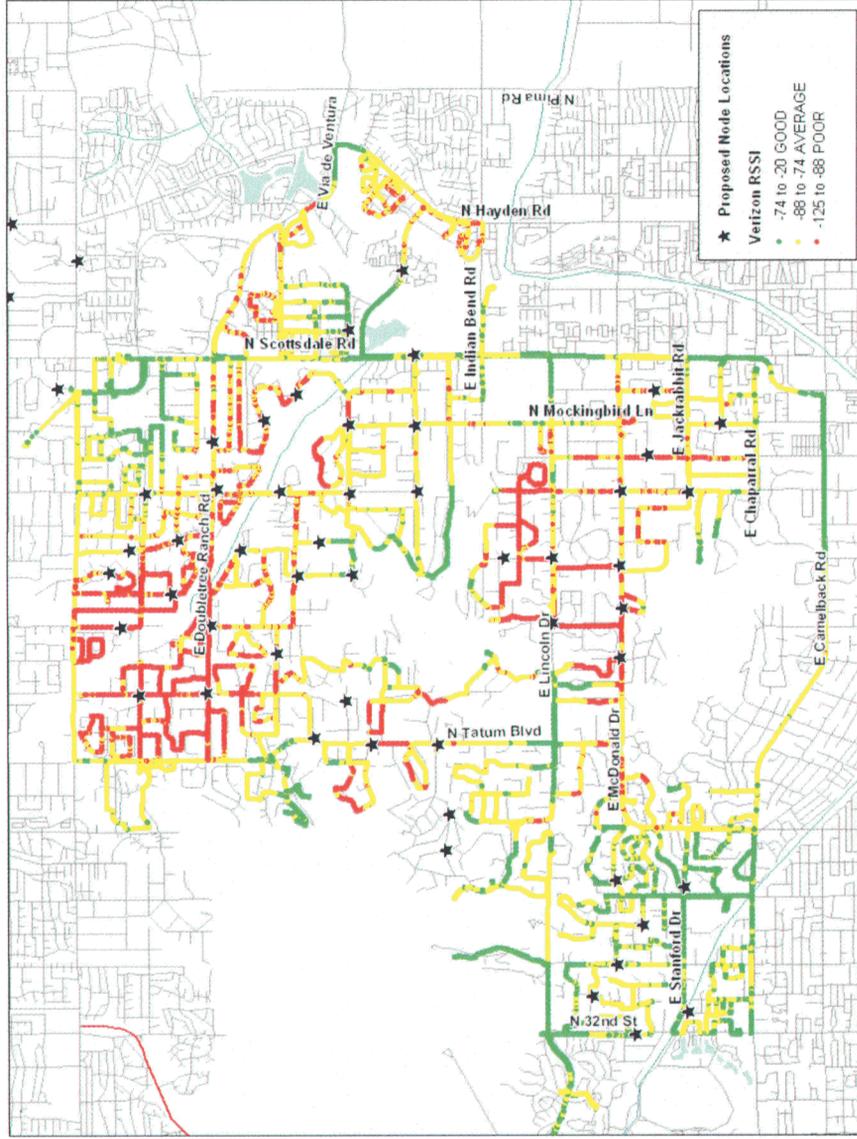
Sprint Drive Data with Proposed Nodes



T-Mobile Drive Data with Proposed Nodes



Verizon Drive Data with Proposed Nodes



Alltel Drive Data with Proposed Nodes

