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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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6 SANDRA D. KENNEDY
7 BOB STUMP

MAR 18 2009

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AZ CORP COMMISSION
DOCKET CONTROL

8 IN THE MATTER OF THE APPLICATION OF
9 NEWPATH NETWORKS, LLC, FOR APPROVAL
10 OF A CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE TRANSPORT AND
12 BACKHAUL TELECOMMUNICATIONS
13 SERVICES.

DOCKET NO. T-20567A-07-0662

**PROCEDURAL ORDER SETTING
ADDITIONAL HEARING DATE**

11 **BY THE COMMISSION:**

12 On November 26, 2007, NewPath Networks, LLC ("NewPath" or "Company") filed with the
13 Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience
14 and Necessity ("CC&N") to provide transport and backhaul telecommunications services to wireless
15 carriers in Arizona.

16 On August 7, 2008, the Commission's Utilities Division ("Staff") filed a Letter of
17 Insufficiency and first set of data requests in this matter.

18 On August 15, 2008, NewPath filed responses to Staff's Data Requests.

19 On November 10, 2008, NewPath, through Arizona counsel, filed a Motion and Consent of
20 Local Counsel for *Pro Hac Vice* of Jamie T. Hall, requesting that Mr. Hall be admitted *pro hac vice*
21 in this matter.

22 On November 13, 2008, a Procedural Order was issued granting Mr. Jamie T. Hall admission
23 *pro hac vice*.

24 On October 31, 2008, Staff filed a Staff Report recommending approval of NewPath's
25 application, subject to certain conditions.

26 On November 7, 2008, a Procedural Order was issued setting the hearing in the matter for
27 March 25, 2009, and other procedural deadlines were established.

28 On November 19, 2008, NewPath filed a Request for an Expedited Hearing Date ("Request").

1 On December 4, 2008, Staff filed a Response to NewPath's Request, stating Staff did not
2 object to an expedited hearing.

3 On December 8, 2008, by Procedural Order, NewPath's Request was granted and the date of
4 the hearing was reset to February 18, 2009.

5 On January 30, 2009, NewPath docketed its Affidavit of Publication showing notice of
6 application and hearing date had been published on January 15, 2009, in the *Arizona Republic*, a
7 newspaper of general circulation in the proposed service area.

8 On February 18, 2009, the hearing was held as scheduled before a duly authorized
9 Administrative Law Judge of the Commission. NewPath and Staff appeared through counsel and
10 presented testimony. During the hearing, several members of the public appeared to give public
11 comments and raised concerns that the hearing date had been expedited and stated they had planned
12 to file for intervention in this matter.

13 On February 27, 2009, public comments were filed on behalf of the DC Ranch Association.

14 On March 3, 2009, a Procedural Order was issued directing that the record would remain open
15 until March 9, 2009, for additional public comments. The Procedural Order also stated that NewPath
16 could file responses to the public comments on or before March 13, 2009.

17 Between March 3, 2009 and March 13, 2009, additional public comments were docketed
18 regarding NewPath's application. Further, on March 13, 2009, NewPath filed a response to the
19 public comments.

20 Given the number of public comments that have expressed concerns regarding NewPath's
21 application, it is appropriate to schedule additional hearings for the purpose of allowing additional
22 comments and receiving additional evidence and testimony in the record. Concerns were also stated
23 regarding the timing of the expedited hearing and the inability of members of the public to seek
24 intervention. Accordingly, the record in this matter should remain open to allow for intervention
25 from interested parties and an additional day of hearing should be held.

26 Witnesses for the Company and Staff should be prepared to respond to concerns raised both
27 thorough oral and written public comments, as well as to questions regarding both technical and
28 policy issues raised by NewPath's application.

1 IT IS THEREFORE ORDERED that a second day of **hearing** in this matter shall commence
2 on **April 27, 2009, at 10:00 a.m.** at the Commission's offices, Hearing Room #1, 1200 West
3 Washington, Phoenix, Arizona 85007.

4 IT IS FURTHER ORDERED that NewPath shall publish notice of the additional hearing date
5 as stated below, in a newspaper(s) of general circulation in every county in Arizona in which
6 Company desires to provide service **as soon as possible, but no later than March 31, 2009**, and
7 shall file Affidavits of Publication with the Commission no later than **April 10, 2009**.

8 **IN THE MATTER OF THE APPLICATION OF NEWPATH NETWORKS,**
9 **LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND**
10 **NECESSITY TO PROVIDE TRANSPORT AND BACKHAUL**
11 **TELECOMMUNICATIONS SERVICES.**
12 **(Docket No. T-20567A-07-0662)**

13 On November 26, 2007, NewPath Networks, LLC ("NewPath") submitted to the
14 Arizona Corporation Commission ("Commission") an application for a Certificate of
15 Convenience and Necessity ("CC&N") to provide transport and backhaul
16 telecommunications services in Arizona. On February 18, 2009, a hearing was held on
17 NewPath's application and it was determined that an additional day of hearing was
18 needed. The Commission's Utilities Division ("Staff") has recommended approval of
19 NewPath's application. The Commission is not bound by the proposals made by
20 NewPath, Staff, or any intervenors, and the Commission will issue a decision
21 regarding NewPath's application following consideration of testimony and evidence
22 presented at the evidentiary hearing. Copies of the application are available at
23 NewPath's offices [insert address] and the Commission's offices at 1200 West
24 Washington, Phoenix, Arizona, for public inspection during regular business hours and
25 on the internet via the Commission website (www.azcc.gov) using the e-docket
26 function.

27 The Commission will hold a second day of hearing beginning **April 27, 2009, at**
28 **10:00 a.m.**, in Hearing Room #1, at the Commission's offices, 1200 West
Washington, Phoenix, Arizona. Public comments will be taken on the first day of the
hearing. Written public comments may be submitted via email (visit
http://www.azcc.gov/divisions/utilities/forms/public_comment.pdf for instructions) or
by mailing a letter referencing Docket Number T-20567A-07-0662 to: Arizona
Corporation Commission, Consumer Services Section, 1200 West Washington,
Phoenix, AZ 85007. If you require assistance, you may contact the Consumer Services
Section at 1-800-222-7000 or 602-542-4251.

The law provides for an open public hearing at which, under appropriate
circumstances, interested parties may intervene. Any person or entity entitled by law
to intervene and having a direct and substantial interest in the matter will be permitted
to intervene. If you would like to intervene, you must file a written motion to
intervene with the Commission, and you must send copies of the motion to NewPath
or its counsel, and to all parties of record in the case. Your motion to intervene must
contain the following:

1. Your name, address, and telephone number, and the name, address, and

1 telephone number of any party upon whom documents are to be served in your
place, if desired;

- 2 2. A short statement of your interest in the proceeding (e.g., a customer of the
Company, a shareholder of the Company, etc.); and
- 3 3. A statement certifying that a copy of your motion to intervene has been mailed
4 to the Company or its counsel and to all parties of record in the case.

5 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
6 that all motions to intervene must be filed on or before April 10, 2009. The granting
7 of intervention, among other things, entitles a party to present sworn evidence at
hearing and to cross-examine other witnesses. However, failure to intervene will not
8 preclude any person or entity from appearing at the hearing and making a statement on
9 their own behalf.

10 The Commission does not discriminate on the basis of disability in admission to its
11 public meetings. Persons with a disability may request a reasonable accommodation
12 such as a sign language interpreter, as well as request this document in an alternative
13 format, by contacting the ADA Coordinator Shaylin Bernal, at SBernal@azcc.gov,
14 voice phone number 602-542-3931. Requests should be made as early as possible to
15 allow time to arrange the accommodation.

16 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
17 105, except that all motions to intervene shall be filed by **April 10, 2009**.

18 IT IS FURTHER ORDERED that any objections to intervention shall be filed by **April 20,**
19 **2009.**

20 IT IS FURTHER ORDERED that NewPath shall contact all entities with which it has
21 previously communicated regarding this application including, but not limited to, the DC Ranch
22 Association and the City of Scottsdale, to inform such entities of the new hearing date and the revised
23 intervention deadline.

24 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
25 Communications) continues to apply to this proceeding as the matter is now set for public hearing.

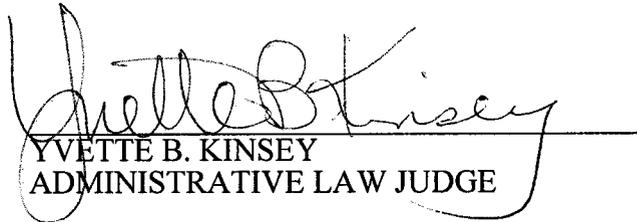
26 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
27 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
28 *hac vice*.

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation

1 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
2 matter is scheduled for discussion, unless counsel has previously been granted permission to
3 withdraw by the Administrative Law Judge or the Commission.

4 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
5 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

6 Dated this 18th day of March, 2009.

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10 
11 YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered
13 this 18th day of March, 2009 to:

14 Jamie T. Hall, Esq.
15 Martha Hudak, Esq.
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28
By: 
Debra Broyles
Secretary to Yvette B. Kinsey