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2009 APR 23 P 3: 59

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22 April 2009

**VIA OVERNIGHT EXPRESS**

Docket Control Center  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2996

Arizona Corporation Commission  
**DOCKETED**

APR 23 2009

DOCKETED BY

**RE: Docket No. T-20567A-07-0662  
Supplement to Application for Certificate of Convenience and  
Necessity ("CC&N") of NewPath Networks, LLC**

Dear Judge Kinsey:

NewPath Networks, LLC ("NewPath") hereby supplements its application for a Certificate of Convenience and Necessity ("CC&N") to outline additional financing that NewPath recently received and an associated corporate restructuring. As NewPath's witness, Stephen Garcia, testified at the last public hearing held on February 18, 2009, NewPath's proposed systems in Arizona will be financed through a combination of NewPath's own funds and financial support from new venture capitalists.<sup>1</sup>

NewPath is pleased to report that it has obtained an initial round of \$30 million in new financing from the New York private equity firm Charterhouse Group (which is investing \$20 million) and Denver-based Meritage Funds (which is investing \$10 million, with a small portion - \$64,995.46 - being contributed by an entity owned by a Meritage principal). Both firms also have committed to fund future rounds up to an additional \$17 million in order to support NewPath's continued growth. NewPath's financial qualifications for the CC&N are clearly enhanced by this additional financial support,

<sup>1</sup> Transcript of Hearing before Administrative Law Judge Kinsey dated February 18, 2009 ("Trans."), page 38, lines 17-18 (hereinafter cited in the form "38:17-18").

which strengthens staff's conclusion that NewPath is financially capable of providing private line telecommunications services in Arizona.<sup>2</sup>

The additional financing was effectuated by a Preferred Stock Purchase Agreement whereby the investors purchased shares in a recently formed holding company called NewPath Networks, Inc. ("NewPath, Inc."). NewPath Networks, LLC, which is the entity applying for a CC&N, becomes a wholly owned subsidiary of NewPath, Inc. The transaction closed on April 20, 2009. For the reasons set forth below, NewPath submits that this new information is consistent with and supports NewPath's application for a CC&N.

## **I. DESCRIPTION OF THE PARTIES**

### **A. NewPath Networks, LLC**

NewPath Networks, LLC ("NewPath") is a limited liability company founded in 2004 under the laws of the State of New Jersey. NewPath's headquarters is currently located at 768 Garfield Street, Seattle, WA 98109. NewPath's telephone number is 206.632.0931 and its facsimile number is 206.299.9374. NewPath currently has an application for a CC&N pending before the Commission under Docket No. T-20567A-07-0662.

NewPath's members prior to the transfer of control consisted of Sweetwater Capital, LLC ("Sweetwater"); Gordon G. Cohen; MJK Investment LLC' and EMC Technology Sales, LLC (n/k/a SRC Investments, LLC).

### **B. NewPath Networks, Inc.**

NewPath, Inc. is a corporation formed under the laws of Delaware on March 13, 2009.

NewPath, Inc.'s Board of Directors is composed of five directors, including two of the current managers of NewPath (Michael J. Kavanagh and William J. Marriccini) together with two directors appointed by Charter and one director appointed by Meritage (both hereinafter defined). Attached to this letter is a revised answer to Question A-8 to NewPath's CC&N application (see Exhibit B). NewPath's answers to Questions A-11 and A-12 remain the same.

NewPath is now a wholly owned subsidiary of NewPath, Inc.

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<sup>2</sup> Memorandum from Ernest G. Johnson, Utilities Division to Docket Control ("Staff Report") (stating at page 4 that staff "believes that the Company met the technical, managerial and financial requirements as set forth by Commission rules."); Trans. 62:3-6.

## **II. DESIGNATED CONTACTS**

Inquiries or copies of correspondence, orders, or other materials pertaining to this filing should be directed to:

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## **III. DESCRIPTION OF TRANSACTION**

Under the terms of the Preferred Stock Purchase Agreement, NewPath's members, as listed in Paragraph I(A) above, contributed their ownership interests in NewPath for ownership interests in the new entity, NewPath, Inc. Concurrently, three new investors, Charter NewPath, LLC, a Delaware limited liability company ("Charter"); Meritage Fund III, L.P., a Delaware limited partnership ("Meritage"); and Mattbrel, LLLP, a Colorado limited liability limited partnership purchased shares in NewPath Inc. Collectively the three new investors own fifty-seven and 651/1000 percent (57.651%) of the newly formed NewPath, Inc. ("Transaction").

NewPath is now a wholly owned subsidiary of NewPath, Inc. A depiction of NewPath's former and current organizational charts is attached hereto as Exhibit A.

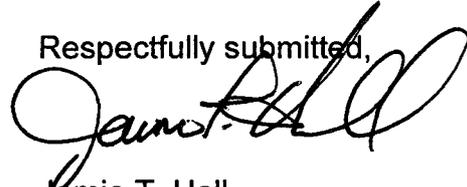
NewPath, Inc. will serve as a holding company only and no assets, including but not limited to the pending CC&N and any NewPath facilities existing in the State of Arizona, will be transferred to NewPath, Inc.

## **IV. CONCLUSION**

As we have stated previously, NewPath's application for a CC&N is in the public interest and this new information only enhances NewPath's justifications for a CC&N and Staff's conclusions that NewPath is qualified to obtain a CC&N to provide private line telecommunications services in Arizona. NewPath is further poised to quickly provide cost-effective and competitive telecommunications services in an already capacity constrained environment.

NewPath is prepared to discuss the Transaction in more detail at the pending hearing on April 27, 2009, if there are additional questions. In any event, please contact the undersigned if the Commission has any questions regarding this supplement to NewPath's CC&N application or the Transaction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jamie T. Hall". The signature is written in a cursive, flowing style with a large initial "J".

Jamie T. Hall  
*Attorney for*  
*NewPath Networks, LLC*

# **EXHIBIT A**

NEWPATH NETWORKS, LLC  
CURRENT AND PROPOSED ORGANIZATIONAL CHART

**FORMER**

NewPath Networks, LLC  
A New Jersey limited liability company

InSITE Solutions, LLC  
A Maryland limited liability company  
A subsidiary of NewPath Networks, LLC

InSITE Fiber of Virginia, Inc.  
A Virginia corporation  
A subsidiary of InSITE Solutions, LLC

**NEW**

NewPath Networks, Inc.  
A Delaware corporation

NewPath Networks, LLC  
A New Jersey limited liability company  
A subsidiary of NewPath, Inc.

InSITE Solutions, LLC  
A Maryland limited liability company  
A subsidiary of NewPath Networks, LLC

InSITE Fiber of Virginia, Inc.  
A Virginia corporation  
A subsidiary of InSITE Solutions, LLC

## **EXHIBIT B**

**NEWPATH APPLICATION AND PETITION FOR CERTIFICATE OF CC&N TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES**

**REVISED ATTACHMENT A**

**A-8(2) Please find below details regarding officers for NewPath Networks, LLC**

**LIMITED LIABILITY COMPANY MEMBERS**

NAME	POSITION
NewPath Networks, Inc.	Sole Member

**OFFICERS OF NEWPATH NETWORKS, LLC**

NAME	POSITION
Michael J. Kavanagh	Chief Executive Officer
Shawn Coopriders	Chief Operating Officer
Brian Broucek	Director of Finance
Jim McLernon	Director of Engineering & Operations

**OWNERS AND OWNERSHIP INTEREST IN NEWPATH NETWORKS, INC. (Parent of NewPath Networks, LLC)**

NAME	OWNERSHIP INTEREST
Sweetwater Capital, LLC	34.103%
MJK Investment, LLC	2.338%
SRC Investments, LLC	2.338%
Gordon G. Cohen	3.570%
Charter NewPath, LLC	38.435%
Meritage Fund III, LP	19.091%
Mattbrel, LLLP	0.0125%

**OFFICERS OF NEWPATH NETWORKS, INC (Parent of NewPath Networks, LLC)**

NAME	POSITION
Michael J. Kavanagh	Chief Executive Officer
Shawn Coopriders	Chief Operating Officer

**A-8(3) NewPath's member companies have an ownership stake as outlined below:**

NAME	OWNERSHIP
NewPath Networks, Inc	100%

SERVICE LIST FOR:  
DOCKET NO.:

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

Original and 13 copies of the foregoing filed  
this 22nd day of April, 2009 to:

ARIZONA CORPORATION COMMISSION  
Docket Control  
1200 West Washington Street  
Phoenix, AZ 85007

Copies of the foregoing delivered to:  
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