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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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MAY -4 2009

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF  
NEWPATH NETWORKS, LLC, FOR APPROVAL  
OF A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE TRANSPORT AND  
BACKHAUL TELECOMMUNICATIONS  
SERVICES.

DOCKET NO. T-20567A-07-0662

PROCEDURAL ORDER

**BY THE COMMISSION:**

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

On October 31, 2008, the Commission's Utilities Division ("Staff") filed a Staff Report recommending approval of NewPath's application, subject to certain conditions.

On February 18, 2009, a hearing was held before a duly authorized Administrative Law Judge of the Commission. NewPath and Staff appeared through counsel and presented testimony. During the hearing, several members of the public provided public comment raising concerns that the hearing date had been expedited and stating that they desired to file for intervention in this matter.

On March 18, 2009, by Procedural Order, a second day of hearing in this matter was scheduled for April 27, 2009 and other procedural deadlines were established.

On April 10, 2009, the Town of Carefree, the Town of Paradise Valley and the City of Scottsdale filed Motions to Intervene ("Motions") in this matter.

On April 17, 2009, by Procedural Order, the Town of Carefree, the Town of Paradise Valley, and the City of Scottsdale were granted intervention.

On April 20, 2009, NewPath filed objections to the requests for intervention made by the City

1 of Scottsdale, Town of Carefree, and Town of Paradise Valley.<sup>1</sup>

2 On April 24, 2009, the City of Scottsdale docketed a Hearing Memorandum.

3 On April 27, 2009, a second day of hearing was convened before a duly authorized  
4 Administrative Law Judge ("ALJ") of the Commission. NewPath, Staff, and the intervenors  
5 appeared through counsel. Public comment was taken. Counsel for Staff requested that the hearing  
6 be continued to afford Staff and the Company an opportunity to respond to the City of Scottsdale's  
7 Memorandum, which had been received by the ALJ, Staff, the Company, and the intervenors on the  
8 morning of the hearing. Further, the parties discussed continuing the hearing to May 18, 2009. Upon  
9 further review of the issues raised in the City of Scottsdale's Memorandum, the May 18, 2009  
10 hearing date is premature and a hearing date should be set after briefs have been filed in this matter.

11 IT IS THEREFORE ORDERED that NewPath, Staff, the Town of Carefree, and the Town of  
12 Paradise Valley shall file **written briefs** addressing the jurisdictional issues raised by the City of  
13 Scottsdale and other relevant arguments pertaining to this matter **no later than May 29, 2009**.

14 IT IS FURTHER ORDERED that **responsive briefs** may be filed by any party by **no later**  
15 **than June 12, 2009**.

16 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
17 Communications) continues to apply to this proceeding.

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

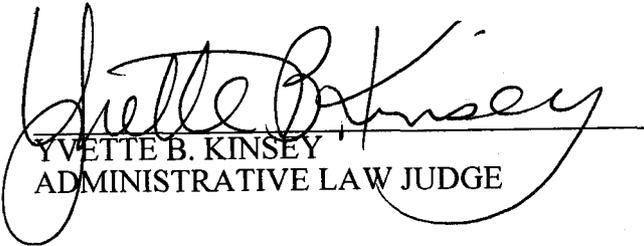
21 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
22 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
23 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation  
24 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the  
25 matter is scheduled for discussion, unless counsel has previously been granted permission to  
26 withdraw by the Administrative Law Judge or the Commission.

27

28 <sup>1</sup> Pursuant to the Procedural Order issued on March 18, 2009, objections to Motions for Intervention were to be filed no later than April 20, 2009. NewPath filed timely objections to the Motions for Intervention on April 20, 2009.

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

3 Dated this 4th day of May, 2009.

4  
5  
6   
7 YVETTE B. KINSEY  
ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered  
9 this 4th day of May, 2009 to:

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By:   
Debra Broyles  
Secretary to Yvette B. Kinsey