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BEFORE THE ARIZONA CORPORATION

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
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At: Phoenix, Arizona
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:08 a.m. on the 27th of April,
6 2009.

7

8 BEFORE: YVETTE B. KINSEY, Administrative Law Judge

9

APPEARANCES:

10

11 For the Arizona Corporation Commission Staff:

12 Ms. Maureen Scott
13 Mr. Kevin O. Torrey
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For the Applicant:

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1 ALJ KINSEY: Good morning. I am Administrative
2 Law Judge Yvette Kinsey. And this is the time set for
3 the hearing on the application of NewPath Networks, LLC
4 for approval of a CC&N to provide transport and backhaul
5 services in Arizona. This is docket T-20567A-07-0662.

6 And may I have appearances for the record,
7 please. And we will start with Mr. Hall.

8 MR. HALL: My name is Jamie Hall, outside
9 counsel for NewPath Networks.

10 ALJ KINSEY: Okay. And for Staff.

11 MS. SCOTT: Good morning, Your Honor. Maureen
12 Scott and Kevin Torrey on behalf of the Utilities
13 Division Staff.

14 ALJ KINSEY: Thank you. And for the City of
15 Scottsdale.

16 MR. ANDERSON: Good morning, Your Honor. Eric
17 Anderson, assistant city attorney, and Deborah
18 Robberson, city attorney, are present.

19 ALJ KINSEY: And it was, last name was?

20 MR. ANDERSON: Anderson.

21 ALJ KINSEY: Anderson.

22 And for the Town of Carefree.

23 MR. CHENAL: Good morning, Your Honor. Tom
24 Chenal, Sherman & Howard, for Town of Carefree.

25 ALJ KINSEY: Thank you.

1 And for the Town of Paradise Valley.

2 MR. MILLER: Good morning, Your Honor. Andrew
3 Miller, town attorney, Town of Paradise Valley, and
4 Steve Zraick, deputy town attorney, Town of Paradise
5 Valley.

6 ALJ KINSEY: Okay, thank you.

7 And let the record reflect that notice of the
8 hearing today was given in accordance with the law. And
9 a couple procedural issues that I just want to go over.
10 And if anyone has any before we get started, we can
11 bring those up at this point.

12 For the City of Scottsdale, what is the extent
13 of your intervention today? Are you planning to give
14 extensive public comment or are you going to be having
15 witnesses sworn in and have them subject to
16 cross-examination?

17 MR. ANDERSON: Your Honor, right now we do have
18 a couple of witnesses available if needed, depending.
19 We don't intend to call them from the city itself. And
20 there is also some questions we may pose if some of
21 NewPath or Staff take the stand and testify further. We
22 have reviewed the transcript for the earlier proceeding,
23 and feel that there is a lot of things there that have
24 already been established so we won't be repetitive of
25 that.

1 ALJ KINSEY: Okay. And the same for the Town of
2 Paradise Valley.

3 MR. MILLER: Your Honor, we apologize for
4 stepping in a bit late. We weren't quite sure if we
5 were stepping in, but, in looking at the transcript, we
6 did have questions and decided it was worth intervening
7 in the case. And I would have possible follow-up
8 questions for Mr. Garcia based upon his testimony on
9 February the 19th of this year.

10 ALJ KINSEY: Okay. And for the Town of
11 Carefree.

12 MR. CHENAL: Yes, Your Honor. Our role will be
13 very limited. We may ask a few questions but it will be
14 really in the nature of follow-up.

15 ALJ KINSEY: Okay. And no witnesses?

16 MR. CHENAL: And no witnesses.

17 ALJ KINSEY: And no witnesses for the Town of
18 Paradise Valley?

19 MR. MILLER: We do not plan to call witnesses,
20 Your Honor.

21 ALJ KINSEY: Okay, thank you.

22 And were there any other procedural issues
23 that -- yes.

24 MR. SCOTT: Yes, Your Honor. We just got this
25 hearing memorandum from the City of Scottsdale at 5:00

1 on Friday. And we are very concerned because it raises
2 a lot of factual, potential factual issues as well as
3 legal issues. And in the interest of responding to this
4 thoroughly, we think it would be in the best interest of
5 the parties if this hearing could be postponed a week or
6 two --

7 ALJ KINSEY: Okay.

8 MS. SCOTT: -- so that Staff can look over this
9 hearing memorandum more carefully and then decide
10 whether it needs to present further testimony. The
11 other parties can do the same.

12 We did confer with NewPath this morning. They
13 did not have an opportunity to review all the issues
14 either before today's hearing. And they are not
15 opposed, from what I understand, to a brief postponement
16 either.

17 But we really do feel prejudiced by the filing
18 of this memorandum at such a late hour. And we just
19 have not had the opportunity to review the issues
20 raised. And, again, some of them do appear to be
21 factual and we would be unable to respond adequately to
22 those today.

23 ALJ KINSEY: And, Ms. Scott, I did receive this
24 actually this morning, right before I walked in. So I
25 have not had a chance to review it.

1 Mr. Hall, what is NewPath's position on what
2 Ms. Scott has just said?

3 MR. HALL: Well, NewPath also, I personally
4 received a copy of this very late on Friday after
5 business hours. And we feel that, you know, first of
6 all, we were unaware that there was a briefing schedule
7 established for filing briefs in this docket.

8 And, further, you know, we feel that this is
9 prejudicial as well. And I had initially asked that we
10 be given -- had prepared responses asking that we be
11 given an opportunity to respond in writing to these
12 questions of law. And, you know, there are some factual
13 issues in there.

14 But NewPath is not opposed to a continuation of
15 this public hearing should that postponement be brief
16 and that we be given an opportunity to respond --

17 ALJ KINSEY: Okay.

18 MR. HALL: -- in writing or, alternatively, that
19 this be stricken and that we proceed.

20 ALJ KINSEY: And, Mr. Hall, Ms. Scott mentioned
21 a postpone of a week's time. Is that comfortable for
22 the company as well?

23 MR. HALL: We are prepared to respond by the,
24 within five business days or whatever Your Honor might
25 establish. But one of the paramount and important

1 things for us, because we filed this application over 17
2 months ago, is that we move forward.

3 ALJ KINSEY: Okay. And for the City of
4 Scottsdale, any response, or what is your position?

5 MS. ROBBERSON: Your Honor, we wouldn't oppose a
6 continuance. It was our understanding that briefing
7 memos are often turned in at the end of hearing. And we
8 tried, as a courtesy, to provide it early. But we
9 certainly don't have any objection to a continuance.

10 While this is not maybe my purview, but there
11 are a lot of people here that would like to speak, I
12 think -- I don't know if Your Honor allows that
13 testimony to be heard today and then the more legal
14 issues at the next hearing, but if that's a possibility,
15 that might be a way to not inconvenience the people who
16 have come to be heard.

17 ALJ KINSEY: And you mean the people who are
18 here to give public comment, not the witnesses?

19 MS. ROBBERSON: Correct. I just see the room is
20 filled, and I don't know them, and I presume they are
21 here to give comment.

22 ALJ KINSEY: Exactly. Generally what we do if
23 we have a postponement and we noticed the hearing, we
24 noticed the public comment today, so I don't think that
25 would be an issue.

1 And for the Town of Paradise Valley.

2 MR. MILLER: I have a question, Your Honor. My
3 only prior experience down at the Corporation Commission
4 was with a water rate case about a month ago. The
5 schedule set up would have closing arguments done
6 through closing briefs and rely back to the record and
7 cite law in those briefs. I think kind of what
8 Scottsdale put together looks a lot like that. Will
9 there be opportunities for other intervenors to also do
10 the same thing at the end of this case, there will be a
11 schedule for that?

12 ALJ KINSEY: Absolutely.

13 MR. MILLER: My only concern is if it is
14 continued Wednesday, Thursday, Friday of next week, I'm
15 out of town. Other than that, Monday and Tuesday, and
16 then up until Thursday of the next week thereafter.

17 ALJ KINSEY: And, of course, all of this would
18 be subject to availability of a room. As you can tell,
19 we are a little short on space, so...

20 And for the Town of Carefree.

21 MR. CHENAL: We would have no objection, Your
22 Honor, to what is requested.

23 ALJ KINSEY: Okay, okay. It seems like the
24 parties are in agreement that we do need some additional
25 time based on the filing that I received this morning

1 from the City of Scottsdale. There was also a filing
2 that I received this morning also from NewPath that
3 shows a date stamp of April 27th, which I believe was
4 Friday. And I don't know if all the parties have had a
5 chance to review that. It includes a letter from
6 Scottsdale Ranch. And so that would give everybody an
7 opportunity to look at that one and review it as well.

8 MR. HALL: Your Honor.

9 ALJ KINSEY: Yes.

10 MR. HALL: Excuse me. There is one other
11 procedural issue that I would like to discuss before we
12 move forward, if that's all right.

13 ALJ KINSEY: Certainly.

14 MR. HALL: The April 17th procedural order
15 granting intervenors' motions to intervene indicated at
16 line 26 that no objections were filed to the motions.
17 However, NewPath timely filed its objections on
18 April 20th, the deadline established in the procedural
19 order dated March 3rd. And we would respectfully
20 request that Your Honor alter her order authorizing
21 intervention to reflect the fact that NewPath timely
22 filed objections. We have -- I would just like the
23 record to be clear in that regard.

24 ALJ KINSEY: Okay. And I don't think that's an
25 issue. We can do that in the next procedural order

1 which would set out the schedule for the hearing. But
2 thank you for bringing that to my attention, Mr. Hall.

3 Okay. So what we will do today to proceed,
4 because the parties have requested a fairly brief
5 continuance of the hearing today, I will go ahead and
6 grant that. And before we break, I will go and get the
7 hearing calendar to see where we can schedule in our
8 next hearing date so everybody leaves here knowing when
9 we will resume again.

10 But for the members of the public that are here
11 this morning, we will go ahead and take public comment.
12 And I have -- have I received all of the public comment
13 slips for everyone who wants to speak? Are there any
14 additional ones?

15 (No response.)

16 ALJ KINSEY: Okay. We will get started then
17 with Mr. Paul Given. Mr. Given, if you can just state
18 your name and address for the record. And if you don't
19 mind, stand up so we can kind of all hear you.

20 MR. GIVEN: My name is Paul Given. I am
21 president of the Grayhawk Homeowners Association
22 community of about 10,000 people located just north of
23 the 101. I am sure most people are familiar with it if
24 you are from the area.

25 The reason for my comment primarily is we have

1 been meeting with, off and on somewhat infrequently,
2 with NewPath over the course of the last year and with
3 limited results. And one of the things that we have run
4 into over the course of time has been that we hear from
5 our neighbors, DC Ranch, and also in hearings with the
6 City of Scottsdale, that we are in support of it, of
7 their application for the various sites. And there are
8 13 that would occur within the Grayhawk community, some
9 in the gated areas, which are wholly owned by Grayhawk,
10 and some in the public areas known as the park.

11 And, unfortunately, those are not accurate
12 statements. We have not been supportive of the plan.
13 We actually would like to see it go away.

14 And we also have had limited success in getting
15 responses from NewPath over the course of time. Our
16 primary concern right now is that, if granted a CC&N,
17 that the responsiveness of NewPath would be even less.
18 We don't know what our -- we are unclear, so to say, on
19 exactly what impact we would have.

20 To date, for instance, last week we finally met
21 on Thursday with representatives of NewPath and received
22 some overtures about what they could do as far as
23 mitigating some of the obtrusiveness of the antennas and
24 the vaults that they plan on putting in. We asked for a
25 quick response. We actually asked for a response before

1 today. We have heard nothing back, not even in terms of
2 a response as to, well, we really can't get that to you
3 today or tomorrow, we will try and get it to you by
4 Monday, so that, as far as our concerns are, we are very
5 concerned that if granted the CC&N that essentially it
6 will be more or less a free-for-all.

7 ALJ KINSEY: Mr. Given, has the homeowners
8 association participated in any of the meetings that
9 have been held with NewPath to discuss this?

10 MR. GIVEN: Yes, we have. In fact, Mr. Tait and
11 I have both attended several of the informational
12 meetings on several occasions. Those were usually
13 located down at the Hilton. They occurred on weekends,
14 for instance, just before Memorial Day, just before
15 Labor Day, just before rather inconvenient times when
16 people really aren't in town in many instances or have
17 other things planned.

18 They also have on a couple of occasions when we
19 have attended at the Hilton, they had no information and
20 said there was some kind of snafu that occurred that
21 they didn't receive it. They did not even have, on that
22 particular occasion, did not have signup sheets so that
23 we could sign in saying we were there, but then it was
24 represented to the city during the permit process that,
25 or through development review, that there was very

1 little interest and people didn't show up. While we
2 were there, there were at least a dozen people that
3 showed up but were unable to learn anything. So some of
4 that, it just left a very, left us with a great deal of
5 concern over the course of time in what we would be
6 encountering.

7 ALJ KINSEY: How many residents are in the
8 Grayhawk community homeowners association?

9 MR. GIVEN: Approximately 3800 units or homes.
10 And that amounts to about 10,000 residents.

11 ALJ KINSEY: Okay. Thank you.

12 MR. GIVEN: Thank you.

13 ALJ KINSEY: Was there anything else?

14 MR. GIVEN: No. That should do it. Thank you.

15 ALJ KINSEY: Okay. Thank you.

16 And then Ms. Susan Walden-Wells. Good morning.

17 MS. WALDEN-WELLS: Good morning, Judge. I would
18 like to delay my comments until the continuance.

19 ALJ KINSEY: Okay, sure.

20 And Mr. Ronald Finkel. Good morning.

21 MR. FINKEL: Good morning, Judge. My name is
22 Ron Finkel, real estate commercial broker by trade,
23 sitting on the City of Scottsdale board, but I am
24 speaking as the president of Happy Valley Homeowners
25 Association and just a citizen in Scottsdale.

1 I believe we are going to hear a lot of
2 different details from a lot of different people so I am
3 not going to bore you with some of the details of it,
4 but mainly I wanted to get above the issue. This is a
5 statewide problem. This is not a City of Scottsdale
6 battle only that we are all representing. As a citizen
7 of State of Arizona, I am sort of -- if there is a
8 possible way to even put a moratorium on this so we can
9 deal with this as citizens working with the state to
10 work on the federal level, because obviously this is a
11 law that is on the books that's very difficult and
12 confusing for everyone.

13 We need time to work with the senators and the
14 congress people to try and get this worked out. We are
15 all going to be affected by the installations, every one
16 of us. City of Scottsdale is the one that has the
17 battle in front of them now. But as we all know, these
18 are quarter mile apart, G-3. If they have to move them
19 ever so slightly for reception, it could be two of them
20 in an every-three-block area. So everyone in Phoenix,
21 Glendale has the possibility of having this in front of
22 their house if we move forward. Furthermore, another
23 company can come in on the back side and put up 16-,
24 24-foot towers again.

25 As communities, we spend a lot of time to

1 improve the looks of a lot of communities, master
2 planned communities. All the utilities are underground,
3 no power poles. Maybe some have light poles up at a
4 minimum. We do that for safety. We do that for view,
5 you know. And here we are, we are thinking of putting
6 up multiple cell towers throughout the state. We are
7 just encouraging further use of people using cellphones
8 being mobile when we have laws on the books trying to
9 oppose people who drive and use cellphones.

10 I do worry. As the spokesman for Grayhawk said,
11 we have had issues in Happy Valley. We are a 115-unit
12 subdivision. We have an engineer in our community who
13 has requested detailed answers to his detailed
14 electrical engineering background. Since October the
15 City of Scottsdale planning commission backed us in
16 trying to get their answers. They never responded since
17 October of '08, not only multiple times by us but with
18 the city's encouragement directly to NewPath.

19 We do, you know, again, have information
20 available. You know, I know they have been involved in
21 the lawsuit with the City of Irvine. We know that there
22 is some patent infringements. I just don't feel
23 comfortable with this particular company and their
24 responses.

25 Again, I am asking for a moratorium so we can

1 work with the other cities, coalitions, to come up with
2 proper answers and procedures on this to slow this down
3 from what I think is a state problem, that we are going
4 to leave a bad legacy.

5 Thank you.

6 ALJ KINSEY: Mr. Finkel, have you, you mentioned
7 some questions that you had from an engineer in your
8 community, have you made those questions available to
9 the city so that those can be answered?

10 MR. FINKEL: Yes, a Keith Nieder. Keith Nieder
11 was our representative on our city and planning. Plus
12 we have met with several people on the Scottsdale levels
13 of planning and the city manager, that we have, we have
14 documented this on e-mails from people that -- we sent
15 it to two people at NewPath, have yet to receive a
16 response. And NewPath received the request also
17 directly from the city to answer the questions. We
18 haven't received them.

19 We have done the open houses. We have attended
20 other people's open houses. We are a very involved
21 homeowners association. We are not as large as Grayhawk
22 and DR Ranch but we feel we are fairly well informed and
23 educated on this issue --

24 ALJ KINSEY: Okay.

25 MR. FINKEL: -- to answer any further questions.

1 ALJ KINSEY: All right. Thank you.

2 MR. FINKEL: Thank you, Judge.

3 ALJ KINSEY: Thank you for your comments.

4 Mr. Cliff -- is it Tait?

5 MR. TAIT: Tait.

6 ALJ KINSEY: Tait. Good morning, Mr. Tait.

7 MR. TAIT: Good morning, Your Honor and guests
8 and intervenors. I am in Grayhawk and I have been in
9 Grayhawk for a lot of years. And we, like a number of
10 other subdivisions, spent a lot of time and money and
11 are very proud of our association and ambience that is
12 there.

13 We are concerned with the things that NewPath
14 wants to put in. Their towers are, I guess, to put it
15 as softly as I can, they are not attractive, ugly was
16 the word that I heard many times, but not attractive to
17 view this morning. In ground or above ground stations
18 where their equipment is actual going to be are also
19 very obtrusive. They are in front of houses.

20 We had to request the other day to meet with
21 NewPath and they said they would consider or would bury
22 all of the electrical stuff that's on the ground if we
23 gave them a letter of support. We met last Thursday, as
24 Paul Given indicated, and we went through these things
25 one after another. Some of them are in the NAOS area

1 where they want to put fake cactus, one thing or
2 another.

3 ALJ KINSEY: NAOS?

4 MR. TAIT: Natural area open space.

5 ALJ KINSEY: Okay.

6 MR. TAIT: And nothing false can be put in
7 there. You can't have false plants and stuff.

8 There is a large section of Grayhawk, half of it
9 what we call a retreat, which is a great area. And
10 that's divided into two, Talon and Raptor. For some
11 reason or another at the present time NewPath has not
12 requested any of these things to be put in Raptor. When
13 we asked them if they were going to agree to something
14 would they agree that the same conditions would apply to
15 Raptor, they refused to answer that. They were going to
16 get back to us on Friday with a detailed response and no
17 response has come in.

18 We sent them a detailed e-mail on Friday asking
19 a number of questions, and no response to that either.
20 They were fully aware that we were in opposition. We
21 said, I personally have said from day one we didn't want
22 them in Grayhawk, they didn't fit in the area, and I
23 think that they are very intrusive and there is no
24 reason for them to be made a utility.

25 As a matter of fact, one of the representatives

1 admitted to me the only reason they want to become a
2 utility was so they could run free without having to do
3 all the various things that were discussed with the
4 various associations.

5 So it just seems to me, if this is granted, they
6 will just run rough shod over all of our requests and do
7 what they want to do. And they haven't done anything so
8 far to indicate any sincerity in completing whatever
9 they indicated. Every time we have a meeting they
10 change what went before as though that had never
11 happened and they come up with something new. Again, we
12 don't trust they will do and fulfill their obligations.
13 So we are totally opposed to it.

14 ALJ KINSEY: And, Mr. Tait, just a question, and
15 just in general, because the City of Scottsdale has
16 intervened in this matter, do you believe that your
17 community's concerns can be addressed through the
18 community, through the City of Scottsdale?

19 MR. TAIT: I haven't read the brief with the
20 City of Scottsdale. I know they are opposed for various
21 reasons. But I would really think that Grayhawk should
22 be represented, and as well as some of the other
23 communities, be represented at the reconvened hearing.
24 And, quite frankly, I would be happy to come back and
25 talk again if it is necessary.

1 ALJ KINSEY: Okay.

2 MR. TAIT: As a matter of fact, I probably would
3 prefer to be back to find out what they are going to
4 say. Thank you.

5 ALJ KINSEY: All right. Thank you.

6 And Ms. Nikki Silver.

7 MS. SILVER: Yes.

8 ALJ KINSEY: Good morning.

9 MS. SILVER: Good morning. I am from Happy
10 Valley Ranch.

11 Ron Finkel just spoke. He is the president of
12 our association. And we come at it from a little bit
13 different aspect from Grayhawk because our community is
14 a very natural desert community. We have only desert
15 plants in our community. Everything is very natural.
16 We do not even have street lights. So our rules and our
17 homeowners association are a lot stricter than they are
18 in a lot of other communities.

19 I am absolutely horrified that Scottsdale, or
20 Arizona for that matter, could even consider having
21 towers such as these throughout our communities. I
22 think one of the biggest mistakes that part of
23 Scottsdale/Phoenix ever made was, and I guess it was
24 long ago and they didn't do this type of thing, but was
25 to have telephone poles and electrical poles not buried.

1 I am from Chicago. We spend half of our time in
2 Chicago, half of our time here. The entire north side
3 of Chicago, all the communities there, there is no such
4 thing as an electrical tower being exposed. Everything
5 is buried. I think that at one point they looked into
6 burying the electrical towers out here, but it was too
7 expensive.

8 So I mean, as we also know, that time has shown
9 that it is very dangerous to live under and near the
10 electrical towers. How do we know that this isn't going
11 to be the same thing for these NewPath towers? It could
12 be 15, 20 years from now people could be getting brain
13 tumors from these towers the same way that they thought
14 that people were getting from living under the
15 electrical towers. That's a health concern.

16 But the main concern right now is how
17 horrifyingly ugly these towers are, how it is going to
18 totally ruin our community. And it is not -- we are not
19 saying we are going to put one tower in Happy Valley,
20 one tower in Grayhawk, one tower in DC Ranch, where
21 every third block there is going to be a 25-foot tower.
22 Unless they can come up with a plan that they are going
23 to bury these towers, that it is not going to ruin our
24 communities, then everybody in Happy Valley Ranch is
25 totally opposed. I think that if you talk to the

1 majority of people in each community that we are talking
2 about, I can't imagine that anybody would be in favor of
3 this.

4 I understand that the towers are for AT&T. I
5 happen to have AT&T. I don't care. I don't want them.
6 And that's, you know, that's what I have to say.

7 ALJ KINSEY: Okay.

8 MS. SILVER: Thank you.

9 ALJ KINSEY: And what is your understanding of
10 what the towers will look like in your community?

11 MS. SILVER: I understand that they are supposed
12 to be, I believe, 24 feet tall, that they will be
13 approximately every third block, and that they are very
14 ugly.

15 ALJ KINSEY: They are traditional towers?

16 MS. SILVER: Traditional? What do you mean by
17 traditional?

18 ALJ KINSEY: Traditional cellphone towers, is
19 that your understanding --

20 MS. SILVER: Yes.

21 ALJ KINSEY: -- of what they will be?

22 MS. SILVER: Yes, that's my understanding.

23 ALJ KINSEY: Okay.

24 MS. SILVER: And if they are hidden inside a
25 cactus, doesn't make any difference. Our neighborhood

1 has only natural everything. And to have a metal fake
2 cactus, you know, it makes it a little bit better, but
3 still very ugly.

4 ALJ KINSEY: Okay. Thank you very much.

5 MS. SILVER: You are welcome.

6 ALJ KINSEY: Mr. Ken Dennison.

7 MR. DENNISON: That's me.

8 ALJ KINSEY: Good morning.

9 MR. DENNISON: Hello, everybody. My name is Ken
10 Dennison. I live in Happy Valley Ranch. And I am
11 opposed to these towers for several reasons.

12 I have been a builder for over 40 years, Realtor
13 for approximately 15 years. And I can see that these do
14 nothing except bring down the property values. As a
15 builder I would never even consider purchasing a lot at
16 one of these atrocities sticking out in front of it
17 because I would have an extremely difficult time
18 marketing it. To try and stuff this down our throats I
19 think is obscene. No one wants them. I don't think
20 they are necessary. And if you want to see your
21 property values tank at a time when they already have,
22 bring them on. That's all I have got to say.

23 ALJ KINSEY: All right. Thank you.

24 Mr. Ken Stubeck or Stanbeck?

25 MR. STROBECK: Strobeck.

1 ALJ KINSEY: Strobeck.

2 MR. STROBECK: I would prefer to defer my
3 comment to when the time the hearing is rescheduled.

4 ALJ KINSEY: Okay, all right. And I believe
5 that was all the speaker slips that I had. Did I miss
6 anyone?

7 (No response.)

8 ALJ KINSEY: Okay. We are going to go off the
9 record and take a brief recess and I am going to get the
10 hearing calendar so that we can see when we can
11 reschedule a time for everybody to come back.

12 (A recess ensued from 10:37 a.m. to 10:41 a.m.)

13 ALJ KINSEY: We are going to go back on the
14 record.

15 And would the parties like to go ahead and make
16 any kind of brief response to the public comment this
17 morning or do you want to hold that for our next hearing
18 date?

19 Mr. Hall.

20 MR. HALL: I think it would be more appropriate
21 to -- well, actually I will say a little bit.

22 As we stated in our February 18th public
23 hearing, NewPath is committed to working with
24 communities, whether that be municipalities or community
25 associations or homeowners associations. In the

1 intervening time from our February 18th hearing until
2 today, we have actually obtained several zoning
3 approvals from the City of Scottsdale. We have held
4 additional public hearings. As you requested, we
5 notified interested parties of the extended deadline to
6 intervene in this hearing. And we are committed to
7 working with communities to find technically feasible
8 solutions. And we have gone through quite extraordinary
9 lengths to find designs that are esthetically pleasing.
10 We can offer more testimony at our continued public
11 hearing. I just want that to be clear on the record
12 that we are committed to working with communities, not
13 against communities.

14 ALJ KINSEY: Okay. Ms. Scott, anything from
15 Staff?

16 MS. SCOTT: Just very briefly. We understand
17 the concerns that have been raised by interested persons
18 today and we appreciate their taking the time out and
19 coming here today to make their views known. We would
20 hope that NewPath would be responsive to any concerns
21 that are raised. And we would hope that the concerns
22 that were identified by citizens today that have not
23 been responded to, we would certainly hope that NewPath
24 would respond to those by the next hearing date.

25 ALJ KINSEY: Okay. Anything from the City of

1 Scottsdale?

2 MS. ROBBERSON: No, Your Honor.

3 ALJ KINSEY: From the Town of Paradise Valley?

4 MR. MILLER: No, Your Honor. I would just note
5 as far as our residents in Paradise Valley, we have not
6 had open houses yet. We had meetings to discuss, I
7 guess call it, the esthetic impact.

8 Part of our reason for intervening, we are
9 concerned about the esthetic impacts. And the fact is
10 we don't have light poles. We have undergrounded most
11 of our utility poles. So existing verticality is mostly
12 through commercial properties in the town. And
13 ordinances encourage looking at those types of sites.
14 So that will be some of, I think, what we will be
15 talking about when we ask Mr. Garcia questions next
16 time.

17 ALJ KINSEY: Okay. Anything from the Town of
18 Carefree?

19 MR. CHENAL: No, Your Honor.

20 ALJ KINSEY: Okay. Well, let's look at,
21 Mr. Hall, how long do you think -- you said maybe five
22 business days to review what has been submitted by the
23 City of Scottsdale.

24 Staff, do you concur with that length of time?

25 MS. SCOTT: Well, I think, Your Honor, one of

1 the parties, I believe it was the attorney for Paradise
2 Valley, would have a conflict around that time.

3 ALJ KINSEY: Okay.

4 MS. SCOTT: And Staff would certainly want to
5 accommodate and pick a date that would be suitable for
6 him.

7 ALJ KINSEY: Okay.

8 MR. MILLER: Yes. Unfortunately I have got a
9 seminar I already prepaid for with government money on
10 May 6th, 7th and 8th.

11 ALJ KINSEY: 6th, 7th and 8th.

12 MR. MILLER: I am available most of next week up
13 until Thursday.

14 Looking at the following week, May 11th through
15 the 15th, there may be some availability on Wednesday,
16 May 13th.

17 MS. SCOTT: Your Honor, I have an oral argument
18 that day at the Ninth Circuit Court of Appeals.

19 ALJ KINSEY: Okay. And then the next day is
20 Securities open meeting.

21 Friday the 15th? Same thing?

22 MS. SCOTT: That would be acceptable to Staff.

23 ALJ KINSEY: Okay. Mr. Hall.

24 MR. HALL: That would be acceptable, I believe,
25 to NewPath.

1 ALJ KINSEY: Okay. City of Scottsdale.

2 MR. ANDERSON: That's fine, Your Honor.

3 MS. ROBBERSON: That's fine, Your Honor.

4 ALJ KINSEY: Okay. And for Paradise Valley?

5 MR. MILLER: Yes, Your Honor.

6 ALJ KINSEY: And for Carefree?

7 MR. CHENAL: Yes, Your Honor.

8 MS. SCOTT: Your Honor, I just found out that

9 our primary Staff person has a conflict that day.

10 ALJ KINSEY: Okay, all right. Okay. Then let's

11 go into, it would be -- let's see what we have here.

12 MR. HALL: Your Honor, may I ask, is next

13 Monday, is that a date that we could expedite our

14 responses? We keep moving further back.

15 ALJ KINSEY: Monday, that would be the 4th?

16 MR. HALL: Yes, Your Honor. The two main

17 hearing rooms on that day are not available.

18 MR. MILLER: Tuesday, the 5th?

19 MR. HALL: That would be acceptable to NewPath.

20 ALJ KINSEY: The main hearing room is not

21 available. And this one won't be available until

22 probably, I would have to check, but maybe noon or

23 after. I would like to give this a full day, though.

24 So I would prefer not to do it on that date. And I am

25 really just booked up here. I think we are going to

1 have to go out to the 15th.

2 MR. HALL: Was May 12th full?

3 MR. MILLER: May 12th was good for me. One
4 complication is that May 19th is my 25th wedding
5 anniversary and I promised my wife I would take her
6 somewhere for a week. So I was planning that week,
7 sometime the 18th, 19th, through that period, I would be
8 gone for about a week.

9 MS. SCOTT: May 12th would not work for you?

10 ALJ KINSEY: For your hearing.

11 I think, Mr. Hall --

12 MR. MILLER: Your Honor, if it is a concession,
13 I can try, I am up in Prescott, seminar up in Prescott,
14 I can try and come back from Wednesday, Thursday or
15 Friday of that week.

16 ALJ KINSEY: I don't think Ms. Scott is
17 available.

18 MR. MILLER: 6th, 7th or 8th?

19 ALJ KINSEY: And we really don't have any
20 availability.

21 MR. MILLER: My conflict is your conflict.

22 ALJ KINSEY: Now, we do have availability for
23 this room on Monday, the 18th. There is nothing
24 available for Tuesday, the 19th.

25 MR. HALL: Your Honor, did you say May 15th was

1 booked?

2 ALJ KINSEY: May 15th I think is a conflict for
3 Ms. Scott or something.

4 MR. MILLER: Staff's witness.

5 ALJ KINSEY: I am sorry, Staff's witness, yes.

6 I think the earliest date would be Monday, the
7 18th, to resume. And that would give us a full day with
8 this hearing room, which is probably the one that can
9 accommodate everybody as far as taking witnesses and
10 testimony and that sort of thing.

11 MR. HALL: And, I am sorry, I am probably
12 repeating myself but May 11th you said was booked?

13 ALJ KINSEY: May 11th, I really -- there is no
14 real availability, Mr. Hall, up until, giving
15 consideration for -- no. There is, there are two
16 hearings already booked for that day. And one is a rate
17 case, so, and we usually give those at least a full day.

18 But I am available on Monday, the 18th. And if
19 that works for everybody, then I think that's what we
20 should go with.

21 MR. HALL: May I ask, and I am sorry, but are
22 there other offices at all available?

23 ALJ KINSEY: Typically no. And sometimes we
24 will move a hearing, but I think it is an additional
25 cost to the agency when we do that. So we really try

1 not to do that, especially under --

2 MR. HALL: Well, NewPath would be open to
3 reimbursing or taking care of that. The point here is
4 that we are just, we don't want this late filed brief to
5 be used to further delay this. We don't think that's
6 really fair. And so we, you know, I would like to
7 request that we try to move it a little bit back.

8 ALJ KINSEY: I don't think we have any
9 availability, so I am going to have to deny your
10 request, Mr. Hall. And I appreciate your comments this
11 morning regarding that. And I do understand that
12 NewPath has been at this now for about 18 months. But
13 in the interest of serving the public, I think we need
14 to do what we can to get the responses in and to make
15 sure that we have availability for everybody who wants
16 to come in and give comments.

17 And we will start then on Monday, the 18th. And
18 I am sure we will be in this room because there is
19 another hearing already set for the big hearing room at
20 10:00 a.m.

21 MR. HALL: And, Your Honor, will you be setting
22 out a briefing schedule?

23 ALJ KINSEY: I will. And I will submit a
24 procedural order before the end of the week just letting
25 everybody know what the briefing schedule will be.

1 MR. HALL: Okay. So you are anticipating, you
2 are working with dates but not this week as far as like
3 responding?

4 ALJ KINSEY: I believe that we probably -- the
5 earliest response date, if I am not mistaken, was not
6 this week but the following week, so, to give everybody
7 ample time to prepare their response to what has been
8 filed.

9 MR. HALL: Okay.

10 ALJ KINSEY: Okay? Does that sound okay?

11 MR. HALL: Yes. Thank you.

12 ALJ KINSEY: All right. Is there anything else
13 that we need to cover this morning before we break until
14 the 18th?

15 MR. TAIT: I have one question, Your Honor.

16 ALJ KINSEY: Yes. Can you identify yourself for
17 the record.

18 MR. TAIT: Cliff Tait, Grayhawk. Is that
19 scheduling going to all the people that spoke today or
20 just to the intervenors?

21 ALJ KINSEY: It is only going to intervenors.
22 Anyone who has an interest in following the docket, you
23 should follow it through our E-docket system.

24 MR. TAIT: Okay.

25 ALJ KINSEY: And I am sure you probably have

1 used that or you are kind of familiar with it.

2 MR. TAIT: Thank you. I will see you 10:00 on
3 the 18th.

4 ALJ KINSEY: Okay. Sounds good. All right.
5 Anything else?

6 MS. SCOTT: No.

7 ALJ KINSEY: All right. And I will see you guys
8 back here at 10:00 a.m. on Monday, the 18th.

9 (The proceedings recessed at 10:53 a.m.)

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I, COLETTE E. ROSS, Certified Reporter No. 50658 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 7th day of May, 2009.



COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658