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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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

2009 JUN 12 A 10: 31

AZ CORP COMMISSION  
DOCKET CONTROL

JUN 12 2009

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

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

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

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

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

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

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

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

26 On April 20, 2009, NewPath filed objections to the requests for intervention made by the City  
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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, the hearing reconvened. NewPath, Staff, and the intervenors appeared  
4 through counsel. Public comment was taken. Counsel for Staff requested that the hearing be  
5 continued to afford Staff and Newpath an opportunity to respond to the City of Scottsdale's  
6 Memorandum, which had been received by Staff, the Company, and the intervenors on the morning  
7 of the hearing. Staff's request to continue the hearing was granted and the matter was recessed.

8 On May 1, 2009, NextG Networks of California, Inc. d/b/a Next G Networks West ("NextG")  
9 filed an Application to Intervene in this proceeding.

10 On May 4, 2009, by Procedural Order, NewPath, Staff, the Town of Carefree, and the Town  
11 of Paradise Valley were directed to file written briefs addressing the jurisdictional issues raised by the  
12 City of Scottsdale and other relevant arguments pertaining to this matter no later than May 29, 2009.

13 On May 22, 2009, at the request of the City of Scottsdale, a telephonic procedural conference  
14 was conducted. The Town of Carefree, Town of Paradise Valley, City of Scottsdale, NewPath, and  
15 Staff appeared through counsel for the conference. The City of Scottsdale requested that the briefing  
16 schedule be continued because the City of Scottsdale anticipated possible settlement of the issues  
17 with NewPath. The other parties agreed to continue the briefing schedule.

18 On May 29, 2009, a Procedural Order was issued amending the briefing schedule and  
19 directing the parties to file a response to Next G's Application for Intervention on or before June 12,  
20 2009. The Procedural Order also rescheduled the hearing to reconvene on July 7, 2009.

21 On June 10, 2009, the City of Scottsdale ("Scottsdale") filed a Motion to Withdraw as Party  
22 and Notice of Withdrawal of Hearing Memorandum ("Motion"). Scottsdale's Motion stated that the  
23 Scottsdale City Council considered and adopted two separate agreements with NewPath. According  
24 to the Motion, Scottsdale no longer wishes to have a role in this proceeding due to its agreements  
25 with NewPath.

26 On June 10, 2009, Scottsdale filed Objections to Data Requests from Staff stating that in light  
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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 of the withdrawal of its Hearing Memorandum, Staff's data request are inappropriate.

2 Accordingly, a procedural conference should be held to discuss Scottsdale's possible  
3 withdrawal from this proceeding and to resolve Staff's pending data requests.

4 IT IS THEREFORE ORDERED that a **procedural conference shall be held on June 18,**  
5 **2009, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington, Phoenix, Arizona 85007.  
6 The purpose of the procedural conference is to discuss Scottsdale's request to withdraw, and any  
7 other pending procedural issues.

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

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

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

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

21 Dated this 12<sup>th</sup> day of June, 2009.

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24  
25 *Yvette B. Kinsey / by Dn*  
26 YVETTE B. KINSEY  
27 ADMINISTRATIVE LAW JUDGE  
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1 Copies of the foregoing mailed/delivered  
this 12<sup>th</sup> day of June, 2009 to:

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26 Debra Broyles  
27 Secretary to Yvette B. Kinsey  
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