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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2009 JUN 30 P 3:19

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

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  
27  
28

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  
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 of the withdrawal of its Hearing Memorandum, Staff's data request are inappropriate.

2 On June 12, 2009, Staff filed a Motion to Delay Briefing Schedule Until After the June 18,  
3 2009 Procedural Conference.

4 On the same date, the Town of Carefree and the Town of Paradise Valley filed briefs raising  
5 the same issues raised in the City of Scottsdale's Hearing Memorandum, as well as other issues.

6 On June 18, 2009, a procedural conference was held to discuss Scottsdale's possible  
7 withdrawal from this proceeding and to resolve Staff's pending data requests. Staff, Town of  
8 Paradise Valley, Town of Carefree, and City of Scottsdale all appeared through counsel for the  
9 procedural conference. Counsel for NewPath appeared telephonically.

10 During the procedural conference, counsel for Scottsdale stated that Scottsdale had reached an  
11 agreement with NewPath on June 2, 2009, and the city council had voted to seek withdrawal from  
12 this proceeding. Counsel for Carefree, Paradise Valley, NewPath and Staff all stated that they had no  
13 objection to Scottsdale withdrawing from this proceeding. Counsel for Staff also stated that in light of  
14 Scottsdale's request to withdraw from this proceeding, Staff no longer believes that Scottsdale's  
15 responses to Staff's data request are necessary. However, counsel for Staff noted that similar data  
16 requests had been submitted to the Towns of Carefree and Paradise Valley and Staff is still seeking  
17 responses to those requests. Counsel for Staff stated that Staff had received responses from the Town  
18 of Carefree and will do follow up on those responses, but that Paradise Valley filed an objection to  
19 Staff's data requests. During the procedural conference the Town of Paradise Valley was ordered to  
20 respond to Staff's data requests.

21 IT IS THEREFORE ORDERED that the hearing scheduled for **July 7, 2009, is hereby**  
22 **vacated.**

23 IT IS FURTHER ORDERED that the **City of Scottsdale** is granted withdrawal from this  
24 proceeding.

25 IT IS FURTHER ORDERED that the parties shall file **a response** to Next G's Application for  
26 Intervention, **no later than July 10, 2009.**

27 IT IS FURTHER ORDERED that discovery shall be permitted by law and the rules and  
28 regulations of the Commission, except that: **for discovery requests made through August 10, 2009,**

1 any objection to discovery requests shall be made within 3 days<sup>2</sup> of receipt and responses to  
2 discovery requests shall be made within 5 days of receipt. However, the response time may be  
3 extended by mutual agreement of the parties involved if the request requires an extensive compilation  
4 effort.

5 IT IS FURTHER ORDERED that, **in the alternative to filing a written motion to compel**  
6 **discovery**, any party seeking discovery may telephonically contact the Commission's Hearing  
7 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a  
8 request, a procedural hearing will be convened as soon as practicable; and that the party making such  
9 a request shall contact all other parties to advise them of the hearing date and shall at the procedural  
10 hearing provide a statement confirming that the other parties were contacted.<sup>3</sup>

11 IT IS FURTHER ORDERED that NewPath and Staff shall file **written briefs**, no later than  
12 **August 21, 2009**, addressing the issues raised in the written briefs filed by the Town of Carefree and  
13 Town of Paradise Valley, as well as any other relevant arguments pertaining to this matter.

14 IT IS FURTHER ORDERED that **responsive briefs** may be filed by any party **no later than**  
15 **September 7, 2009**.

16 IT IS FURTHER ORDERED that **Staff** shall docket all data requests and responses within  
17 **five days** of receipt of the responses.

18 IT IS FURTHER ORDERED that any Responses to Motions shall be filed with 7 days of the  
19 Motion.

20 IT IS FURTHER ORDERED that any Motions which are filed in this matter and which are  
21 not ruled upon by the Commission within 20 days of the filing date of the Motion shall be deemed  
22 denied.

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

25

26 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules

27 <sup>2</sup> "Days" means calendar days.

28 <sup>3</sup> The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*  
2 *hac vice*.

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

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

11  
12 Dated this 30<sup>th</sup> day of June, 2009.

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16   
17 YVETTE B. KINSEY  
ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed/delivered  
19 this 30<sup>th</sup> day of June, 2009 to:

20 Jamie T. Hall, Esq.  
21 Martha Hudak, Esq.  
22 CHANNEL LAW GROUP, LLP  
100 Oceangate, Suite 1400  
23 Long Beach, California 90802  
24 Attorney *Pro Hac Vice* for NewPath Networks, LLC

25 J. Gregory Lake  
26 LAKE & COBB, PLC  
1095 W. Rio Salado Pkwy., Ste. 206  
27 Tempe, Arizona 85281  
28 Attorney for NewPath Networks, LLC

29 Deborah Robberson, City Attorney  
30 Eric C. Anderson, Assistant City Attorney  
31 CITY OF SCOTTSDALE  
3939 N. Drinkwater Boulevard  
32 Scottsdale, AZ 85251  
33 Attorneys for City of Scottsdale

1 Thomas K. Chenal  
2 SHERMAN & HOWARD L.L.C.  
3 7047 East Greenway Parkway, Suite 155  
4 Scottsdale, AZ 85254-8110  
5 Attorney for Town of Carefree

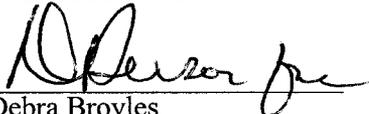
6 Andrew M. Miller, Town Attorney  
7 TOWN OF PARADISE VALLEY  
8 6402 East Lincoln Drive  
9 Paradise Valley, AZ 85253  
10 Attorney for Town of Paradise Valley

11 Janice Alward, Chief Counsel  
12 Legal Division  
13 ARIZONA CORPORATION COMMISSION  
14 1200 West Washington Street  
15 Phoenix, AZ 85007

16 Ernest G. Johnson, Director  
17 Utilities Division  
18 ARIZONA CORPORATION COMMISSION  
19 1200 West Washington Street  
20 Phoenix, AZ 85007

21 ARIZONA REPORTING SERVICE, INC.  
22 2200 North Central Avenue, Suite 502  
23 Phoenix, AZ 85004-1481

24 By:

  
25 Debra Broyles  
26 Secretary to Yvette B. Kinsey