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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

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

OCT -7 2009

DOCKETED BY [Signature]

IN THE MATTER OF EXTENET SYSTEMS, INC.
FOR APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE PRIVATE LINE POINT-TO-POINT
FIBER TRANSPORT SERVICE FOR WIRELESS
SERVICE PROVIDERS.

DOCKET NO. T-20597A-08-0320

DECISION NO. 71294

OPINION AND ORDER

DATE OF HEARING:

February 17, 2009
July 27, 2009 (Procedural Conference)

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

APPEARANCES:

Mr. Michael W. Patten, ROSHKA DEWULF & PATTEN, PLC, on behalf of ExteNet Systems, Inc.; and

Mr. Wesley C. Van Cleve, Staff Attorney, Legal Division on behalf of Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On June 24, 2008, ExteNet Systems, Inc. ("ExteNet" or "Company"), filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide private line point-to-point fiber transport service for wireless providers in Arizona.

On July 22, 2008, the Commission's Utilities Division ("Staff") filed a Letter of Insufficiency and First Set of Data Requests.

On August 12, 2008, ExteNet filed responses to Staff's First Set of Data Requests.

On December 24, 2008, Staff filed a Staff Report in this matter recommending approval of ExteNet's application, subject to certain conditions.

1 On December 31, 2008, a Procedural Order was issued setting the hearing to begin on March
2 11, 2009, and establishing other procedural deadlines.

3 On January 14, 2009, ExteNet filed a Motion to Expedite Hearing and stating Staff had no
4 objection to an accelerated hearing date.

5 On January 16, 2009, by Procedural Order, ExteNet's Motion was granted and the hearing
6 was reset to begin on February 17, 2009.

7 On February 3, 2009, ExteNet filed an Affidavit of Publication, stating notice of the
8 application and hearing date had been published on January 16, 2009, in the *Arizona Republic* a
9 newspaper of general circulation in the proposed service area.

10 On February 6, 2009, ExteNet filed a Notice of Telephonic Appearance.

11 On February 17, 2009, a full public hearing was convened before a duly authorized
12 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and
13 Staff appeared through counsel and presented evidence and testimony. No members of the public
14 appeared to give public comment.

15 On July 13, 2009, ExteNet filed a Motion for Procedural Conference.

16 On July 20, 2009, by Procedural Order, a procedural conference was scheduled for July 27,
17 2009.

18 On July 27, 2009, a procedural conference was held as scheduled.

19 The matter was taken under advisement after the procedural conference pending submission
20 of a Recommended Opinion and Order to the Commission.

21 * * * * *

22 Having considered the entire record herein and being fully advised in the premises, the
23 Commission finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 1. ExteNet is a foreign corporation, incorporated under the laws of the State of Delaware
26 and authorized to transact business in the Arizona.

27 2. ExteNet is a privately funded company, headquartered in Lisle, Illinois, and has two.
28

1 wholly owned subsidiaries: ExteNet (Virginia) LLC and ExteNet Systems (California) LLC.
2 ExteNet's two subsidiaries provide services similar to the services ExteNet proposes to provide in
3 Arizona.¹

4 3. On June 24, 2008, ExteNet filed an application for a CC&N to provide private line
5 point-to-point fiber transport service for wireless carriers. The application also seeks a determination
6 that ExteNet's proposed services be classified as competitive.

7 4. Staff recommends approval of ExteNet's application for a CC&N to provide private
8 line telecommunication services in Arizona and that ExteNet's proposed services be classified as
9 competitive.

10 5. Staff further recommends that:

- 11 a) ExteNet comply with all Commission Rules, Orders, and other
12 requirements relevant to the provision of intrastate telecommunications
13 services;
- 14 b) ExteNet abide by the quality service standards that were approved by the
15 Commission for Qwest in Docket No. T-01051B-93-0183;
- 16 c) ExteNet be required to notify the Commission immediately upon changes
17 to ExteNet's name, address or telephone number;
- 18 d) ExteNet cooperate with Commission investigations including, but not
19 limited to customer complaints;
- 20 e) ExteNet's rates be classified as competitive; and
- 21 f) ExteNet be authorized to discount its rates and service charges to the
22 marginal cost of providing the services.

23 6. Staff further recommends that ExteNet comply with the following condition and if
24 ExteNet fails to comply, the CC&N should be deemed null and void, after due process.

- 25 a. ExteNet shall docket conforming tariffs for each service within its
26 CC&N within 365 days from the date of an Order in this matter or
27 30 days prior to providing service, whichever comes first. The
28 tariffs submitted shall coincide with the application and shall state
that ExteNet does not collect advances, deposits and/or
prepayments from its customers.

¹ Application at A-20.

Technical/ Managerial Capabilities

7. ExteNet is comprised of approximately 40 employees and four full time independent contractors. The top nine members of ExteNet's management team each have an average of 20 years experience in the telecommunications business.

8. ExteNet plans to employ two employees in Arizona. (Tr. at 10.)

9. Mr. Terry Ray, Vice President and Chief Financial Officer for ExteNet, testified that the Company has been in existence since 2002, and ExteNet deployed its first network in Michigan in late 2004. (Tr. at 8.) According to the witness, ExteNet currently has 20 data networks throughout the country and the Company's primary customers are wireless service providers. (Tr. at 8.)

10. ExteNet proposes to provide dedicated point-to-point Private Virtual Circuit ("PVC") transport service using a Distributed Antenna System ("DAS") network. ExteNet's proposed services allow wireless service providers to bring services to hard to reach locations due the topography in certain areas. According to ExteNet's witness, ExteNet provides the vehicle or network to transmit a signal from one point to another. (Tr. at 14.) In addition, ExteNet's witness stated that in other places where the Company provides services to high-density areas, such as central business districts or large apartment complexes, wireless carriers can run into capacity issues and that is where ExteNet's services can fill a void by providing the extra capacity. (Tr. at 15.)

11. Although ExteNet does not plan to have a customer support center in Arizona, the proposed network will be connected to a network operations center in another location, 24 hours a day to monitor how the equipment is working. (Tr. at 18)

12. According to ExteNet's application, it is authorized to provide telecommunications services in 23 states. ExteNet is currently providing the services it proposes to offer in Arizona in: California, Florida, Massachusetts, Michigan, Nevada, New York, and Texas.

13. ExteNet has the technical and managerial capabilities to provide the services it is proposing in Arizona.

Financial Capabilities

14. Staff reviewed the financial information provided by the Company for the time period between September 30, 2006, and September 30, 2007, which showed ExteNet had total assets of

1 \$29,213,678, equity of \$23,535,667, and a net loss of \$4,859,741.

2 15. According to the Company's witness, ExteNet is generating a positive cash on an
3 operating basis and if needed will rely on its existing investors or future investors to fund its
4 operations in Arizona. (Tr. at 23.)

5 16. ExteNet submitted proposed tariffs with its application. The tariff states that ExteNet
6 will not collect deposits or advances. ExteNet's witness testified that the Company will not collect
7 deposits or advances from any individual residential end-users. (Tr. at 11.)

8 17. Staff recommends that ExteNet not be required to procure a performance bond or
9 irrevocable sight draft letter of credit because the Company does not plan to collect deposits or
10 advances from customers and ExteNet will be contracting with large wireless service providers that
11 can use their bargaining power when negotiating contracts with ExteNet. (Tr. at 28.)

12 **Rates and Charges**

13 18. ExteNet will have to compete with various incumbent local exchange carriers
14 ("ILECs"), competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs")
15 currently providing the same types of telecommunications services ExteNet proposes to offer.

16 19. ExteNet's proposed rates are for competitive services. In general, rates for competitive
17 services are not set according to the rate of return regulation.

18 20. According to the Staff Report, ExteNet will have to engage in a competitive bidding
19 process to gain new customers, which will result in rates provided on an individual case basis
20 ("ICB"). For those customers who do not require an ICB contract, they will be able to purchase
21 services at the rates contained in ExteNet's proposed tariffs.

22 21. Based on the competitive environment in which ExteNet will operate, it will not be
23 able to exert any market power and the competitive process should result in rates that are just and
24 reasonable.

25 22. Although Staff considered ExteNet's net book value or fair value rate base of \$10,000,
26 Staff did not give the information substantial weight in its analysis.

27 23. Pursuant to A.A.C. R-14-2-1109, ExteNet may charge rates for services that are not
28 less than its total service long-run incremental costs of providing service.

1 24. ExteNet's proposed rates, as they appear in the proposed tariff, are just and reasonable
2 and should be approved.

3 Complaint History

4 25. ExteNet certified that it has not had an application for service denied, or a CC&N
5 revoked in any state and that none of its officers, directors or partners have been involved in any civil
6 or criminal investigations. The Company further certified that none of its officers, directors, or
7 partners have been convicted of any criminal acts within the last ten years.

8 26. ExteNet has not had any informal or formal complaints or civil or criminal
9 proceedings filed against it.

10 27. ExteNet is in good standing with the Commission's Consumer Services Section and no
11 complaints have been filed in Arizona between January 1, 2005, to July 9, 2008.

12 28. Staff's review showed no complaints have been filed against ExteNet by the Federal
13 Communications Commission.

14 Competitive Services Analysis

15 29. ExteNet's proposed service is considered private line services, because it involves
16 connecting two or more sites in a multi-site network using a direct circuit or channel specifically
17 dedicated for the use of an end user. As with ExteNet proposed services, private lines service
18 provides an infrastructure that customers can use to transmit and receive data.

19 30. Because IXC's, ILEC's, and CLEC's hold a monopoly or are authorized to provide
20 private line services, ExteNet's entry into the market will be highly competitive. ExteNet will have
21 no market power in those markets where alternative providers to private line telecommunications
22 services exist.

23 31. ExteNet's proposed services in Arizona are competitive.

24 Other Issues

25 32. On February 18, 2009, the Commission held a hearing on the application of NewPath
26 Networks, LLC ("NewPath").² NewPath's application request authority to provide point-to-point
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28 ² See Docket No. T-20567A-07-0662

1 telecommunications services and backhaul services through a DAS, similar to ExteNet's application
2 in this docket. Both NewPath and ExteNet requested that their applications be expedited by the
3 Commission because of on-going negotiations for contracts with wireless carriers. During the
4 NewPath hearing, several members of the public appeared to give public comment, and objected to
5 the Commission granting NewPath's application and the expedited treatment of the hearing. By
6 Procedural Order, an additional day of hearing was scheduled on the NewPath application and the
7 time for intervention was extended. Subsequently, the City of Scottsdale ("Scottsdale"), Town of
8 Paradise Valley ("Paradise Valley"), and Town of Carefree ("Carefree") requested and were granted
9 intervention in the NewPath proceeding. On the eve of the NewPath hearing, Scottsdale filed a
10 Hearing Memorandum challenging the Commission's jurisdiction over the type of service NewPath
11 proposes to provide in Arizona and stating federal law preempted the Commission from granting
12 NewPath a CC&N because NewPath is essentially a wireless carrier. The scheduled hearing was
13 vacated to give the parties time to respond to Scottsdale's Hearing Memorandum.

14 33. On June 10, 2009, Scottsdale filed a Motion to Withdraw as Party and Notice of
15 Withdrawal of Hearing Memorandum by City of Scottsdale, Arizona, in the NewPath docket.
16 Scottsdale's Motion stated that the city council considered and adopted two separate agreements with
17 NewPath establishing a relationship framework on a going forward basis. On June 12, 2009, Paradise
18 Valley and Carefree both filed Hearing Briefs raising the same issues discussed in the Scottsdale
19 Hearing Memorandum. Subsequently, Scottsdale was granted withdrawal as a party in the NewPath
20 Proceeding.³

21 34. On July 13, 2009, ExteNet filed a Motion for Procedural Conference, requesting to
22 discuss the timeframe for processing the application in this matter and to discuss issues pending in the
23 NewPath docket that could have an effect on ExteNet's application.

24 35. On July 27, 2009, a procedural conference was held to discuss the issues raised in
25 ExteNet's motion. ExteNet and Staff appeared through counsel. Counsel for the Company explained
26 that ExteNet has been negotiating with Arizona Public Service ("APS") for use of APS' poles to run
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28 ³ Procedurally, the NewPath hearing has not been reset.

1 fiber lines for its proposed services; however, the negotiations with APS cannot be finalized until
2 ExteNet has obtained a CC&N from the Commission. ExteNet's counsel stated that ExteNet's
3 business plan is somewhat different from NewPath's in that ExteNet is focused on bringing wireless
4 coverage to campus environments (i.e., universities, resorts, state buildings, hospitals). (Tr. at 5, 15)
5 ExteNet's counsel explained that as a part of its proposed services, ExteNet will be able to take a
6 wireless handoff from a wireless provider and turn it into optical data that will run on a fiber network,
7 but the fact that ExteNet can accommodate the wireless handoff does not convert ExteNet into a
8 wireless carrier. (Tr. at 12) ExteNet's counsel further stated that no requests for intervention have
9 been filed in this proceeding and ExteNet believes the Commission has jurisdiction over the services
10 ExteNet proposes to provide in Arizona. Counsel for Staff stated that Staff has reviewed the issues
11 raised in the NewPath docket, no requests for intervention have been made and no jurisdictional
12 issues have been raised in this docket and it is Staff's position that the Commission has jurisdiction
13 over ExteNet and its proposed services and the CC&N should be granted. (Tr. at 8).

14 36. Staff's recommendations are reasonable and should be adopted.

15 CONCLUSIONS OF LAW

16 1. ExteNet Systems, Inc., is a public service corporation within the meaning of Article
17 XV of the Arizona Constitution and A.R.S. §40-281 and 40-282.

18 2. The Commission has jurisdiction over ExteNet Systems, Inc., and the subject matter of
19 this application.

20 3. Notice of the application was given in accordance with the law.

21 4. A.R.S §§ 40-282 allows a telecommunications company to file an application for a
22 CC&N to provide competitive telecommunications services.

23 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
24 Statutes, it is in the public interest for ExteNet Systems, Inc., to provide the telecommunications
25 services set forth in its application.

26 6. ExteNet System, Inc., is a fit and proper entity to receive a CC&N authorizing it to
27 provide competitive private line telecommunications services in Arizona, subject to Staff's
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1 recommendations set forth herein.

2 7. The telecommunications services that ExteNet Systems, Inc., intends to provide are
3 competitive within Arizona.

4 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
5 it is just and reasonable and in the public interest for ExteNet Systems, Inc., to establish rates and
6 charges that are not less than ExteNet System Inc.'s total service long-run incremental costs of
7 providing the competitive services approved herein.

8 9. Staff recommendations are reasonable and should be adopted.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the application of ExteNet Systems, Inc., for a
11 Certificate of Convenience and Necessity to provide competitive private line telecommunications
12 services within the State of Arizona, is hereby granted subject to Staff's conditions in Findings of
13 Fact Nos. 5 and 6.

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1 IT IS FURTHER ORDERED that if ExteNet Systems, Inc., fails to comply with the
2 conditions stated in Findings of Fact Nos. 5 and 6, the Certificate of Convenience and Necessity
3 granted herein shall be considered null and void after due process.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

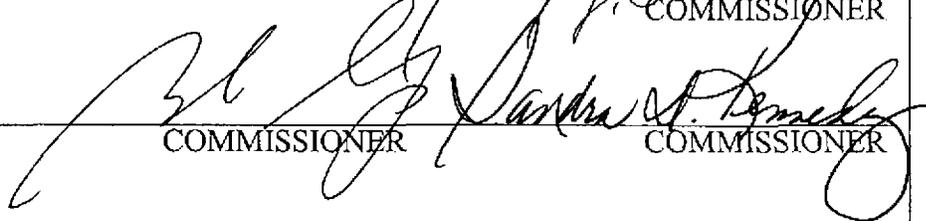
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN _____ COMMISSIONER 

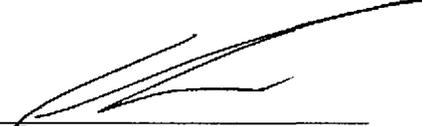
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10 COMMISSIONER _____ COMMISSIONER  COMMISSIONER

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12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this 7th day of October, 2009.

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17 for ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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19 DISSENT _____

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21 DISSENT _____

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1 SERVICE LIST FOR: EXTENET SYSTEMS, INC.

2 DOCKET NO.: T-20597A-08-0320

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