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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

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 November 19, 2008, NewPath filed a Request for an Expedited Hearing Date.

On December 4, 2008, Staff filed a response to NewPath's request to expedite the hearing, stating Staff did not object to NewPath's request.

On December 10, 2008, by Procedural Order, NewPath's request to expedite the hearing date was granted and the hearing date was scheduled for February 18, 2009.

On January 30, 2009, NewPath docketed its Affidavit of Publication showing notice of application and hearing date had been published in the *Arizona Republic*, a newspaper of general circulation in the proposed service area, on January 15, 2009.

On February 18, 2009, a hearing was held as scheduled before a duly authorized Administrative Law Judge ("ALJ") of the Commission. NewPath and Staff appeared through counsel and presented testimony. During the hearing several members of the public appeared to give public comment, raised concerns that the hearing date had been expedited, and stated they desired to

1 file for intervention in this matter.

2 On February 27, 2009, public comments were filed on behalf of the DC Ranch Association, a
3 residential subdivision located in the City of Scottsdale.

4 On March 3, 2009, a Procedural Order was issued, which directed that the record in this
5 matter remain open until March 9, 2009, to allow for any additional public comments regarding
6 NewPath's application.

7 On March 18, 2009, by Procedural Order, a second day of hearing was scheduled for April
8 27, 2009; the deadline for intervention was extended; and notice of the additional hearing date was
9 ordered.

10 On April 6, 2009, NewPath filed certification that notice of the hearing date had been
11 published in the *Arizona Republic*, a newspaper of general circulation on March 31, 2009.

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

15 On April 17, 2009, a Procedural Order was issued granting Scottsdale, Carefree, and Paradise
16 Valley intervention.

17 On April 24, 2009, Scottsdale docketed a Hearing Memorandum ("Memorandum") which,
18 among other things, challenged the Commission's jurisdiction over NewPath's application.

19 On April 27, 2009, a second day of hearing was convened by a duly authorized ALJ of the
20 Commission. NewPath, Staff, and the intervenors appeared through counsel. Public comment was
21 taken. Counsel for Staff requested that the hearing be continued to allow Staff and NewPath to
22 respond to Scottsdale's Memorandum. Further, discussions were held regarding continuing the
23 hearing to May 18, 2009.

24 On May 4, 2009, by Procedural Order, Staff, NewPath, Carefree, and Paradise Valley were
25 directed to file written briefs in response to Scottsdale's Memorandum by May 29, 2009.

26 On May 22, 2009, at the request of Scottsdale a telephonic procedural conference was held
27 with the parties. Carefree, Paradise Valley, Scottsdale, NewPath, and Staff appeared through
28 counsel. Scottsdale requested rescheduling the briefing schedule because settlement of the issues

1 raised in its Memorandum was possible. Further the hearing was scheduled to reconvene on July 7,
2 2009.

3 On June 10, 2009, Scottsdale filed a motion to withdraw as a party from this proceeding and
4 notice of withdrawal of its hearing memorandum. Scottsdale's motion stated that the City Council
5 had adopted two separate agreements with NewPath which establish a framework for a working
6 relationship on a going forward basis.

7 On June 12, 2009, by Procedural Order a procedural conference was scheduled for June 18,
8 2009.

9 On June 12, 2009, Carefree and Paradise Valley filed Hearing Memorandums incorporating
10 the issues raised in Scottsdale's Memorandum, as well as raising additional issues. On the same date,
11 Staff filed a motion to delay the briefing schedule until after the June 18, 2009, procedural
12 conference.

13 On June 18, 2009, a procedural conference was held as scheduled to discuss Scottsdale's
14 possible withdrawal from this proceeding and to resolve Staff's pending data requests. Staff,
15 Paradise Valley, Carefree, and Scottsdale appeared through counsel for the procedural conference.
16 Counsel for NewPath appeared telephonically. During the procedural conference, Scottsdale's
17 request to withdraw from this proceeding was taken under advisement and Paradise Valley was
18 directed to respond to Staff's data requests.

19 On June 30, 2009, by Procedural Order, the July 7, 2009 hearing date was vacated, Scottsdale
20 was granted withdrawal, and a revised briefing schedule was established.

21 On August 21, 2009, NewPath filed a Request for Extension of Deadlines ("Extension"). The
22 extension states that NewPath has been "progressing toward an agreement" with Paradise Valley and
23 Carefree. Further, NewPath avowed that all of the parties in this matter participated in a conference
24 call on August 14, 2009, and agreed that the briefing schedule should be extended.

25 By Procedural Order on August 24, 2009, NewPath's request to extend the briefing schedule
26 was granted and the parties were directed to file briefs on or before September 15, 2009.

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1 On September 15, 2009, NewPath filed its brief. On the same date, Staff filed a request for an
2 extension of time to file its brief, until September 18, 2009.

3 On September 16, 2009, by Procedural Order, Staff's request for an extension of time was
4 granted and the time for filing responsive briefs was extended.

5 On September 21, 2009, Staff filed a memorandum on the issues raised by Paradise Valley
6 and Carefree.

7 On October 1, 2009, Carefree filed a request for an extension of time to file a responsive brief
8 on the issues raised by Staff and NewPath. Carefree requested additional time to negotiate a
9 resolution with NewPath and requested an extension of time, until October 21, 2009, to file its
10 responsive brief.

11 On October 2, 2009, Paradise Valley filed a motion to withdraw as party (with prejudice) and
12 notice of withdrawal of its hearing memorandum. According to the motion, Paradise Valley entered
13 into an agreement with NewPath that establishes a working relationship on a going-forward basis.

14 On October 6, 2009, by Procedural Order, Carefree's request for an extension of time, until
15 October 21, 2009, to file its reply brief in this matter was granted; Paradise Valley's request to
16 withdraw its hearing memorandum was granted; and Paradise Valley's motion to withdraw as a party
17 in this proceeding was granted.

18 On October 23, 2009, Carefree filed a Motion and Notice of Withdrawal of Hearing
19 Memorandum by Town of Carefree. Carefree's motion states that on October 22, 2009, Carefree's
20 town council entered into an agreement with NewPath resolving the issues raised and therefore
21 Carefree seeks permission to withdraw its hearing memorandum.

22 On October 30, 2009, NewPath filed a Motion to Request an Expedited Recommended
23 Opinion and Order or in the Alternative an Expedited Hearing Date. On the same date, NewPath also
24 filed a request for a procedural conference to address the issues related to its pending CC&N.

25 On November 12, 2009, a telephonic procedural conference was held to discuss NewPath's
26 recent filings, the procedural posture of the case, and Carefree's request to withdraw its hearing
27 memorandum. Staff, Carefree, and NewPath appeared through counsel. At the conclusion of the
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1 procedural conference, NewPath was directed to make a filing by November 18, 2009, updating the
2 Commission on its community outreach efforts.

3 On November 18, 2009, NewPath filed its late-filed exhibit.

4 On November 20, 2009, NewPath filed a supplement to its application.

5 A review of the testimony, evidence, and pleadings in this matter indicates that additional
6 information is needed. Further, good cause has been shown for granting Carefree's request to
7 withdraw its hearing memorandum.

8 IT IS THEREFORE ORDERED that Carefree's Motion to withdraw its hearing memorandum
9 is hereby granted.

10 IT IS FURTHER ORDERED that NewPath shall file, on or before November 30, 2009, as a
11 late-filed exhibit in this docket, a discussion of any safety measures NewPath will use in Arizona
12 communities regarding the use of nodes.

13 IT IS FURTHER ORDERED that NewPath shall file, on or before November 30, 2009, as a
14 late-filed exhibit in this docket, copies of the agreements reached with the City of Scottsdale, Town
15 of Paradise Valley, and Town of Carefree.

16 IT IS FURTHER ORDERED that NewPath shall file, on or before November 30, 2009, as a
17 late-filed exhibit in this docket, an update on the litigation involving NewPath and the City of Irvine,
18 including but not limited to, any future legal actions NewPath intends to pursue.

19 IT IS FURTHER ORDERED that NewPath shall file, on or before November 30, 2009, as a
20 late-filed exhibit in this docket, an update on the litigation involving NewPath and NextG.

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

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

26 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
27 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
28 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation

1 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
2 matter is scheduled for discussion, unless counsel has previously been granted permission to
3 withdraw by the Administrative Law Judge or the Commission.

4 IT IS FURTHER ORDERED that that the time clock in the matter remains suspended.

5 Dated this 24th day of November 2009.

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9 
10 YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered
12 this 24th day of November 2009 to:

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