



State of Utah  
Department of Commerce  
Division of Public Utilities

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**MEMORANDUM**

**To:** Public Service Commission

**From:** Division of Public Utilities  
Philip Powlick, Director  
Bill Duncan, Telecommunications / Water Manager  
Ron Slusher, Utility Technical Consultant

**Date:** December 9, 2009

**Re:** In the Matter of the Application of NewPath Networks, LLC. for a Certificate of Public Convenience and Necessity to compete as a Competitive Access Provider within the State of Utah Docket No. 09-2512-01.

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**RECOMMENDATION:**

The Division of Public Utilities (DPU) has reviewed the technical, managerial, and financial abilities of the Applicant and has found that the Applicant has provided the necessary information to fulfill the requirements as stated in the existing Commission rules. The DPU believes that assuming that the applicant were providing a service that may be considered a local exchange service and/or a public telecommunications service, the public interest will be promoted by recommending that the Commission allow the Applicant a CPCN as requested under the same terms and conditions allowed in other CPCNs. It appears that the Applicant is offering a public telecommunications service to a subset of the public generally, but, is not at this time offering any local exchange services. Therefore, the Division recommends that the Commission grant a CPCN to the applicant for the limited purpose of providing their current service offering. If the applicant chooses to expand their service offering to include Local Exchange Services, the Division recommends that they apply to amend their certificate. The Division also recommends that the \$100,000 bond be waived on the basis that the Applicant will not require customer deposits or prepayments of any kind.

**EXPLANATION:**

In accordance with the Order issued by the Public Service Commission on November 12, 2009 the Division has reviewed the application submitted by NewPath Networks, LLC. ("Applicant") for a certificate of public convenience and necessity ("CPCN") as if their service were a local exchange service or public telecommunications service and found the following:

The Applicant does not currently own any telecommunications facilities, including switches, in the State of Utah. They state that initially they may lease the fiber optic facilities of other carriers while their own facilities are being built. As they complete the build out of their network, they will move this traffic onto their own network. At such time as the Applicant may plan to construct its own facilities, it will comply with the Commission's requirements and all other relevant regulations.

The Applicant proposes to operate a Distributed Antenna System ("DAS") which provides transport and backhaul services to other carriers, including, but not limited to wireless telecommunication service providers and other wireless information service providers. The Applicants' distributed architecture is designed to support multiple wireless carriers within a defined network using a shared infrastructure that results in enhanced service while minimizing the expense of expanding existing carrier networks. Their customers are wireless carriers and wired and wireless internet service providers who wish to increase cell coverage in an area where zoning for typical cellular communications towers are prohibited and in areas where cellular coverage is inadequate. Thus, they serve a subset of the general public.

In conversations with the applicant, NewPath represented that they may in the future change their business plan and expand their service offering to include products that require a CPCN such as Local Exchange Services (UC 54-8b-2(10)).

The Applicant claims that it has never had any complaints nor has any investigation been undertaken against it or any of its affiliates involving unauthorized switching (slamming) or any other illegal activities. The Applicant's marketing plan for Utah will be limited in nature and will focus on large sophisticated carriers. As such, the public's exposure to unauthorized PUC changes relating to NewPath Networks' marketing activities is non-existent.

Summaries of professional experience and education of its managerial personnel demonstrate that the Applicant has considerable experience in the telecommunications industry. They are currently authorized as a Public Utility in the states of Florida, Georgia, Iowa, Missouri, New Mexico, New Jersey, New York, North Carolina and Pennsylvania. NewPath Networks has an active Distributive Antenna System (DAS) networks in the following states: Arizona, California, Colorado, Louisiana, Maryland, Minnesota, Nevada, Oregon, Virginia and Washington

The Applicant requests that the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind.

The Applicant asserts that approval of its application will serve the public interest creating and enhancing competition and expanding customer service options. Additionally, the approval of this application will expand the availability of innovative, high quality, reliable and competitively-priced telecommunications services in the State of Utah.

cc: Todd H. Wells, Attorney, NewPath Networks, LLC.  
Michael Ginsberg, Assistant Attorney General, State of Utah