

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of NewPath )  
Networks, LLC for a Certificate of Public ) DOCKET NO. 09-2512-01  
Convenience and Necessity to Compete as a )  
Competitive Access Provider within the ) REPORT AND ORDER  
State of Utah )  
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ISSUED: February 9, 2010

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) grants the request (Application) of NewPath Networks, LLC (Applicant) for a Certificate of Public Convenience and Necessity (Certificate or CPCN) authorizing it to operate a distributed antenna (DAS) system in Utah. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

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By The Commission:

PROCEDURAL HISTORY

Applicant filed its Application on September 16, 2009, seeking a Certificate to operate the DAS in Utah. The DAS provides transport and backhaul services to other carriers, including but not limited to wireless telecommunication service provider and other wireless information service providers.

The Applicant described the nature of its DAS service as follows:

NewPath Networks 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. NewPath Networks' 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. In hard to zone communities or on large corporate, retail or university campuses, NewPath Networks enables multiple wireless operators to improve coverage and capacity while eliminating community aesthetic concerns. NewPath's networks allow wireless service providers to expand their networks to these hard to reach areas by leasing space on the NewPath's network without making the capital investment of building their own network systems or managing the additional infrastructure. NewPath Networks provides a cost-effective solution that addresses increased capacity needs due to growth in data and multi-media applications that require more bandwidth from the wireless carriers. NewPath Networks' design allows the wireless carrier to leverage available network infrastructure while maintaining independent control of their network configurations.

*Application* at ¶ 4.

The Applicant sought a CPCN, as it did not desire to commence a declaratory judgement proceeding to determine if indeed the DAS was a local exchange service or public telecommunications service. The Commission ordered the Division of Public Utilities (Division) to assume the Applicant was providing a service typically requiring a CPCN and investigate if the Applicant possessed sufficient technical, managerial, and financial abilities to obtain a CPCN. The Division recommended approval of the Application, finding that the Applicant possessed sufficient technical, managerial, and financial abilities to obtain a CPCN. The Division specifically recommended the Commission waive the requirement that Applicant file proof of a \$100,000 bond, given that the Applicant will not require customer deposits or prepayments of any kind. The Division also recommended that should the Applicant choose to expand their DAS service to include local exchange services, they should move to amend their certificate.

The administrative law judge of the Commission held a duly-noticed hearing on the Application. Todd Wells was counsel for the Applicant and appeared at the hearing. Bill

Duncan and Ron Slusher testified on behalf of the Division. Steve Mecham appeared on behalf of the Utah Rural Telecom Association (URTA) and moved to intervene. There were no objections to the intervention.

The URTA expressed concern with the nature of the Application purporting to provide the Applicant a CPCN state-wide, including rural areas. The Applicant did not oppose the Commission limiting the CPCN to Qwest service territory. With that adjustment, the URTA's concerns were allayed.

Therefore, the Commission, being fully apprised in the matter, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant requests the Commission grant a Certificate authorizing it to provide DAS services within Utah.
3. Applicant will utilize its managerial expertise to support its Utah operations.
4. Applicant has sufficient technical resources and abilities to provide the DAS services which it provides.
5. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.
6. Applicant has sufficient financial resources and abilities to provide the services which it provides.

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7. Applicant's service offerings will support the development of competition.
8. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
9. Applicant will not require customer deposits or offer any prepaid services in Utah.
10. Applicant has also applied for waivers from the \$100,000 bond.
11. Applicant does not oppose its certificate being limited to the Qwest service territory.

CONCLUSIONS OF LAW

1. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for issuance of a Certificate.
2. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for authorization to provide the DAS services for which it seeks a Certificate.
3. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and regulations, as set forth in Exhibit B, is in accord with Commission practice and is in the public interest. The grant of waivers, as set forth above, from the provisions of the Utah Code and the Commission's Rules and regulations, is in accord with Commission practice and is in the public interest.
4. The issuance of a Certificate to the Applicant to provide the DAS services is in accord with the legislative policy declarations set forth in Utah Code § 54-8b-1.1 *et seq.* and is in the public interest.

5. Restricting the Applicant's Certificate to exclude those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state is in the public interest.

ORDER

The Commission, having entered its Findings and Conclusions above, hereby ORDERS:

- a. The Applicant is hereby granted the Certificate attached hereto as Exhibit A, which Exhibit is incorporated by reference into this Order, as if set forth here;
- b. Applicant shall provide reports to the Commission and to the Division as set forth in Exhibit B, which Exhibit is incorporated by reference into this Order, as if set forth here;
- c. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;
- d. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- e. The bond requirement is waived;
- f. The Applicant's certificate excludes those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines;
- g. Should the Applicant seek to provide its services in those exchanges with less than 5,000 access lines that are served by incumbent telephone

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corporations with fewer than 30,000 access lines, it shall move to amend its certificate prior to doing so;

- h. Should the Applicant seek to provides local exchange service, it shall move to amend its certificate prior to doing so.

DATED at Salt Lake City, Utah this 9<sup>th</sup> day of February, 2010.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#65170

**EXHIBIT A**

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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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

CERTIFICATE 2512

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ISSUED: February 9, 2010

By The Commission:

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, hereby issues a Certificate of Public Convenience and Necessity authorizing NewPath Networks, LLC to provide distributed antenna system services within the State of Utah, excluding those local exchanges of less than 5,000 access lines if incumbent telephone corporations with fewer than 30,000 access lines in the state.

DATED at Salt Lake City, Utah, this 9<sup>th</sup> day of February, 2010.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

**EXHIBIT B**

**I. Annual Report:** NewPath Networks, LLC (Grantee) shall file an Annual Report, on or before March 31 of each year, unless said Grantee requests and obtains an extension.

The Annual Report shall contain the following:

**A. Annual Revenues** from operations attributable to the State of Utah by major service categories. Such information would be provided on a “Total Utah” and “Utah Intrastate” basis. “Total Utah” will consist of the total of interstate and intrastate revenues. “Utah Intrastate” will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

1. private line and special access,
2. business local exchange,
3. residential local exchange,
4. measured interexchange, and
5. vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

**B. Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

**C. Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation** for telecommunications

investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

- D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.
  - E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.
  - F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.
  - G. **Number of Messages and Minutes of Services** for measured services billed to end users.
  - H. **List of Officers and Responsible Contact Personnel** updated annually.
  - I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.
- II. **Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.** Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	Prohibitions of discrimination
54-7-12	Rate increases or decreases
54-4-21	Establishment of property values
54-4-24	Depreciation rates
54-4-26	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	Tariff filings required
R746-340-2(E)(2)	Exchange Maps
R746-341	Lifeline <sup>1</sup>
R746-344	Rate case filing requirements
R746-401	Reporting of construction, acquisition and disposition of assets
R746-405	Tariff formats
R746-600	Accounting for post-retirement benefits

III. **Obligations with Respect to Provision of Services.** Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

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<sup>1</sup>This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

- A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.
  - B. Grantee will only be responsible for the operation and maintenance of services that it provides.
- IV. **Modification:** It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.