

BEFORE
THE
UTAH PUBLIC SERVICE COMMISSION

Application of)
NEWPATH NETWORKS, LLC)
) Docket No. _____
)
For a Certificate of Public Convenience and)
Necessity to compete as a Competitive Access)
Provider within the State of Utah)
)

APPLICATION

NewPath Networks, LLC ("NewPath Networks" or "Applicant"), by its undersigned officer and pursuant to Chapter 8b of Title 54 of the Utah Code; the Commission's Rules of Practice and Procedure, Utah Admin. Code § 746-100 et seq.; and the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., hereby applies to the Utah Public Service Commission ("Commission") for a certificate of public convenience and necessity authorizing Applicant to operate as a Competitive Access Provider (CAP) in the State of Utah.

In support of its application, NewPath Networks provides the following information:

1. **General Information**

Corporate Information

(a) Applicant's legal name is NewPath Networks, LLC Applicant may be reached at its principal place of business:

768 Garfield Street
Seattle, Washington 98109
1-888-632-0931(Phone)
206-299-9374 (Facsimile)
www.newpathnetworks.net

(b) NewPath Networks is a limited liability company and is incorporated in the State of New Jersey and is in good standing under the laws of that State. The Company was incorporated on February 6, 2004 as NewPath Networks, LLC and is authorized to do business as a foreign corporation in the State of Utah. Copies of NewPath Networks's certificate of existence and certificate of good standing (from the State of New Jersey) as a foreign corporation in Utah are attached hereto as Exhibit A.

NewPath Networks is a wireless infrastructure company that designs, develops and operates fiber-fed wireless carrier networks to improve signal strength and network capacity. NewPath Networks increases existing carrier footprints by adding network coverage in hard-to-reach areas to increase quality for the wireless customers. NewPath's network is run over existing infrastructure, such as telephone poles and street lights to expand carrier networks with solutions that are aesthetically acceptable to local communities and municipalities. NewPath Networks focuses on bringing turnkey wireless communications solutions to areas where traditional network build-out is difficult due to zoning or cost constraints, such as large corporate, retail, or university campuses, sports arenas and stadiums and neighborhood areas.

(c) NewPath Networks, LLC has no parent company.

(d) NewPath Networks, LLC has a subsidiary named Insite Solutions, LLC.

Contact Information

Correspondence or communications pertaining to this Application should be directed to:

Todd H. Wells
Schnelz Wells, P.C.
280 North Old Woodward, Suite 250
Birmingham, Michigan 48009
248-258-7074 (Phone)
248-258-7084 (Facsimile)
TWells@swlawpc.com

Questions concerning the ongoing operations of Applicant following certification should be directed to:

Brian Broucek
768 Garfield Street
Seattle, Washington 98109
206-632-0931 (Phone)
206-632-9374 (Facsimile)
info@newpathnetworks.net

Applicant's registered agent in the State of Utah is:

National Registered Agents, Inc.
3622 West Bay Circle
Lehi, Utah 84043

Customer Service Information

NewPath Networks's toll-free number for customer inquiries is 1-888-632-0931

2. **R746-349-3(A)(2) Proof of Bond in the Amount of \$100,000**

This bond is intended to provide security for customer deposits or other liabilities to telecommunications customers of the Applicant. NewPath Networks does not plan to collect customer deposits or offer any prepaid services in Utah. NewPath Networks hereby requests a waiver of this bond requirement.

3. **R746-349-3(A)(3) Construction or Acquisition of Facilities**

NewPath Networks does not currently own any telecommunications facilities, including switches, in the State of Utah. Initially, NewPath Networks may lease the fiber optic facilities of other carriers while its own facilities are being built. As NewPath Networks completes the build out of its network, NewPath Networks will move this traffic onto its own network. At such time as NewPath Networks may plan to construct its own facilities, it will comply with the Commission's requirements and all other relevant regulations. Additionally, NewPath Networks will implement the procedures necessary to prevent deceptive and unfair marketing

practices and will comply with applicable Commission service and billing standards.

To facilitate the deployment of these services, NewPath Networks intends to obtain collocation arrangements, access to databases, special access trunking facilities, and to interconnect with the incumbent local exchange carriers ("ILEC") or other competitive carriers as permitted under the Federal Telecommunications Act of 1996, 47 U.S.C. § 251(c).

4. R746-349-3(A)(4) Services to be Offered

NewPath Networks petitions the Commission for a Certificate of Public Convenience and Necessity to compete as a Competitive Access Provider as defined at Utah Code Ann. § 54-8b-2(7) in Utah. Upon initiation of service in Utah, 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.

(a) **R746-349-3(A)(4)(a) Classes of Customers**

NewPath Networks provides wireless communication services to Licensed National Wireless Providers. Our 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.

(b) **R746-349-3(A)(4)(b) Location of Service**

NewPath Networks will design, develop and operate fiber-fed wireless carrier networks to improve signal strength and network capacity throughout the State of Utah. NewPath Networks increases existing carrier footprints by adding network coverage in hard-to-reach areas to increase quality for the wireless customers. NewPath's network is run over existing infrastructure, such as telephone poles and street lights, to expand carrier networks with solutions that are aesthetically acceptable to local communities and municipalities. NewPath Networks focuses on bringing turnkey wireless communications solutions to areas where traditional network build-out is difficult due to zoning or cost constraints, such as large corporate, retail, or university campuses, sports arenas and stadiums and neighborhood areas.

NewPath Networks intends to make its services available on a wholesale basis to carriers and/or local 9-1-1 authorities throughout the state of Utah.

5. **R746-349-3(A)(5) Access to Standard Services**

NewPath Networks will comply with the applicable intraLATA access requirements of incumbent local exchange telephone companies and with all other applicable Commission rules, regulations and standards. NewPath Networks will further participate in all existing Commission approved programs and can satisfy statutory requirements relating to the provision

of 911/E-911 services and Telecommunications Device for the Deaf (TDD).

6. R746-349-3(A)(6) Implementation Schedule

Prior to the provision of service in Utah, several important developments must occur. Among these developments are: the issuance of a certification by the Utah Commission; successful negotiation of interconnection agreements with the incumbent carriers; and successful completion of the installation of any facilities NewPath Networks needs to offer its service in the State of Utah. Each of these activities may be subject to delay beyond the control of NewPath Networks. Therefore, NewPath Networks has no timetable established for the commencement of its services and the Applicant has not yet begun to market its services in Utah.

7. R746-349-3(A)(7) Professional Experience and Education of Managerial Personnel and Personnel Responsible for Utah Operations

NewPath Networks was founded by wireless industry professionals with knowledge of the inter-workings of the wireless carriers, including wireless service providers and communication tower developers. NewPath Networks began in 2004 and has since expanded their network footprint to include 31 states. 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 with a project currently in production in the State of Texas. NewPath Networks has Public Utility authority in the states of Florida, Georgia, Iowa, Missouri, New Mexico, New Jersey, New York, North Carolina and Pennsylvania. The senior management of NewPath Networks are veterans of the communications industry and lead a highly qualified technical staff to insure that NewPath Networks' operations will meet the most demanding standards for service quality and

reliability. Furthermore, by employing state-of-the-art technology, NewPath Networks' services will be equal, if not superior, in the quality to the services of other certified telecommunications service providers.

The Management Team of NewPath Networks' are the following:

Michael J. Kavanagh, Co-Founder and Chief Executive Officer.

With 20 years of wireless industry experience and a broad understanding of the challenges facing the industry, Mr. Kavanagh co-founded NewPath Networks in 2004. He spent his career prior to NewPath Networks focused on wireless technology and gained broad experience from a service provider, manufacturer, and OEM perspective. He has consistently worked with visionary technology products to optimize the efficiency of wireless network infrastructure.

Prior to founding NewPath Networks, Mr. Kavanagh was vice-president of sales and marketing at OpenCell Corporation (now part of ADC), where he oversaw the deployment of their digital neutral host hardware platform. He was also a founding member of Metawave Communications, a cellular infrastructure company focused on improving capacity and performance through the use of smart antennas, which supported the wireless service providers. At Metawave, Mr. Kavanagh served in various executive roles in both sales and product management.

Earlier in his career, Mr. Kavanagh worked at US WEST NewVector (a wireless carrier, now part of Verizon Wireless) focusing on the commercialization of the CDMA technology. He has also worked overseas for Raytheon Corporation in the United Kingdom.

Mr. Kavanagh holds a Bachelor of Science degree from the Rochester Institute of Technology and a Masters in Business Administration from Seattle University.

Shawn Cooprider, Co-Founder and Chief Operating Officer.

Shawn Cooprider is the Co-Founder and Chief Operating Officer of NewPath Networks. He is directly responsible for NewPath Networks' revenue generation efforts as well as the day-to-day operations of the Sales and Marketing, Engineering and Network organizations. Shawn co-founded NewPath Networks in March 2004 as its "business founder," leading the development and implementation of the company's initial business model and network organization. Since then he has brought NewPath Networks to a level of functionality and profitability in record time.

Shawn has more than 16 years of high technology consumer and enterprise experience, holding key positions at several startups, including Cellular Wireless pioneer McCaw Communications and Smart Antenna innovator Metawave Communications.

Additionally, he gained invaluable experience while holding various corporate and regional positions in marketing, product management, and business development at AT&T Wireless, Allen Telecom Group and EMC. He is educated in Marketing and Economics from the University of Idaho and Washington State University.

Brian Broucek, Director of Finance.

Mr. Broucek brings more than 22 years of finance, accounting and operational management experience across rapidly emerging businesses in the distribution, manufacturing and services sectors.

Prior to joining NewPath Networks, Mr. Broucek was Director of Finance and Accounting at Majestic America Line, a cruise ship operator owned by Ambassadors International, Inc. Prior to that, Mr. Broucek was a division Controller and later Director of Finance and Customer Care at Corporate Express Office Products, Inc., one of the world's largest business-to-business suppliers of essential office and computer products and services. Earlier in his career, Mr. Broucek was the Controller at Supreme Corq, Inc., a startup company that became the world's leading manufacturer of synthetic closures for the wine and distilled spirits industry.

Mr. Broucek holds a Bachelor's degree in Finance from the University of Notre Dame and a Masters in Business Administration from Seattle University.

James McLernon, Director of Engineering of Operations.

James McLernon is a veteran of the telecommunications and wireless industry with more than 20 years experience in those fields. Prior to joining NewPath Networks, Jim held positions with several major service provider (Westinghouse and Motorola NVG) and infrastructure companies (Motorola, Metawave, Spotwave). As Director of Engineering & Operations at NewPath Networks, Jim is responsible for the design, implementation, and operation of NewPath Networks' distributed antenna system (DAS) networks. Jim and his team work with the wireless carriers to configure and optimize the DAS network to ensure seamless integration into the carrier's macro network.

Throughout his career, Jim has focused on utilizing and applying cutting-edge technology to gain operational efficiencies, as well as the management of technical teams for successful wireless network deployments. While at Motorola Corporation, he was involved with the commercialization of CDMA and was responsible for the buildout of Greenfield networks in South America and the Middle East. At Metawave Communications, Jim was responsible for the development of a Field Engineering group that was responsible for the deployment and optimization of Smart Antennas.

Jim holds an Electrical Engineering degree from the University of Illinois.

Descriptions of the extensive telecommunications and managerial experience of NewPath Networks' key personnel are attached hereto as Exhibit B. NewPath Networks does not plan to operate an office with personnel within Utah. Responsibility for Utah operations will be handled by Applicant's current management team from its existing operations in multiple states.

8. **R746-349-3(A)(8) Organization Chart**

Please see Exhibit B for the Applicant's organizational charts.

9. **R746-349-3(A)(9) Chart of Accounts**

NewPath Networks' accounting complies with GAAP accounting rules.

The requirement for a chart of accounts is typically necessary with an entity using regulated rate base or rate of return methodology so that authorities can be confident of the proper classification of revenue and expenses for end user price calculations in a monopoly environment. This is not the financial environment surrounding the services offered by NewPath Networks. Therefore, NewPath Networks asks that the requirement for a chart of accounts be waived.

10. **R746-349-3(A)(10) Financial Statements**

(a) **R746-349-3(A)(10)(a) Balance Sheet, Income Statement and Cash flow**

Statement

The Applicant is providing, in Exhibit C, the year-end 2008 Financial Statements. NewPath Networks is financially qualified to provide local exchange services in Utah. NewPath Networks is a privately-held company and their financial statements are confidential and commercially sensitive. Accordingly, Applicant has filed these financial statements separately and under seal. This exhibit is offered to demonstrate Applicant's financial ability to operate as a telecommunications service provider in the State of Michigan. Applicant respectfully requests that this information be given confidential treatment and that it not be made a part of the public record or otherwise made available for public disclosure.

(b) **R746-349-3(A)(10).(b) Letter from Management**

Not applicable.

(c) **R746-349-3(A)(10)(c) Start-up Company**

Applicant is not a start-up company.

(d) **R746-349-3(A)(10)(d) Parent Company Financials**

NewPath Networks is not a subsidiary of another corporation.

11. **R746-349-3(A)(11) Additional Financial Statements**

(a) **R746-349-3(A)(11)(a) Positive net worth**

The Applicant is providing, in Exhibit C, the year-end 2008 Financial Statements, income statement, cash flow statement and Annual Report, and SEC Form 10 K, in support of NewPath Networks' financial ability.

(b) **R746-349-3(A)(11)(b) Income and Cash Flow Statements**

The Applicant is providing, in Exhibit C, the year-end 2008 Financial Statements demonstrating that NewPath Networks has access to sufficient financial resources to provide the proposed telecommunication services in the State of Utah. NewPath Networks is financially and technically qualified to provide public telecommunication services in the State of Utah. NewPath Networks has received additional capital investment that will enable it to operate and expand the network.

(c) **R746-349-3(A)(11)(c) Proof of Bond**

NewPath Networks requests a waiver as the company does not solicit customer deposits or offer any prepaid telecommunications services.

12. **R746-349-3(A)(12) Five-year Projection**

(a) **R746-349-3(A)(12)(a) Pro-forma Income and Cash Flow Statements**

To the extent that NewPath Networks was founded in 2004, we anticipated continued significant growth. Specific income and cash flow projections are not readily

available.

(b) **R746-349-3(A)(12)(b) Technical Description**

NewPath Networks will lease the fiber optic facilities of other carriers

(c) **R746-349-3(A)(12)(c) Detailed Maps of Facilities Locations**

Not applicable. NewPath Networks does not yet have physical facilities and does not now know where it will construct such facilities in Utah. Also, to the extent that maps are necessary or useful to the supervision of NewPath Networks' services, the service areas would coincide with the maps of its customers (which would already be on file with the Commission).

13. **R746-349-3(13) Implementation schedule**

Discussed in paragraph 4 above Services to be Offered.

NewPath Networks does not intend to provide dial tone services to any customers in Utah. As such, it will not create an implementation schedule setting forth the date that dial tone services will commence. The Applicant intends to offer its 9-1-1-related services in Utah upon a valid request from Customers in its target market. (See response to 4(a) of this application for a definition of a target market customer). The Applicant will enter into negotiations with Qwest Communications and other appropriate ILECs for a region-wide interconnection/commercial agreement after the Commission approves NewPath Networks' application and it receives orders from its carrier-customers for service.

14. **R746-349-3(A)(14) Technical and managerial abilities**

NewPath Networks has extensive experience in providing telecommunications services, and is currently providing service in 31 states. 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 with a project currently in production in the State of Texas. NewPath Networks has Public Utility authority in the states of Florida, Georgia, Iowa, Missouri, New Mexico, New Jersey, New York, North Carolina and Pennsylvania. NewPath Networks has not been denied the authority to provide telecommunication services in any jurisdiction nor has it had a certificate revoked or suspended in any jurisdiction. NewPath Networks will rely upon existing financial, personnel and technological resources to provide the proposed Competitive Access Provider services.

See Exhibit D for a complete listing of the certification status of NewPath Networks. The Applicant has CLEC applications pending in other states and plans on filing applications for service nationwide.

(a) **R746-349-3(A)(14)(a) Proof of Certification**

Please see Exhibit D.

(b) **R746-349-3(A)(14)(b) Experience**

Please see Exhibit B.

15. **R746-349-3(A)(15) Public interest**

It has been determined that it is in the public interest to promote competition in the provision of telecommunication services. The Telecommunications Act of 1996 was designed to promote increased competition in the telecommunications, market. NewPath Networks proposed services will provide multiple public benefits by increasing the efficiency of incumbent local exchange carriers by providing users of telecommunication services with telecommunication services at least equal to the current reliability standards and by increasing the competitive choices available to users in the state.

(1) Among other things, NewPath Networks' participation will:

(a) provide a wider private investment in the telecommunications infrastructure of the State of Utah;

(b) promote consumer choice by expanding the availability of innovative, high quality, reliable and competitively priced public telecommunications services; and

(c) increase incentives for other providers of public telecommunications services to improve their responsiveness to consumers to enhance their productive efficiency, to accelerate product innovation and to adjust service prices continually according to market conditions.

(2) NewPath Networks contends the public convenience and necessity requires the issuance of a Certificate to NewPath Networks due to, among other things:

(a) the significant benefits of the entry of NewPath Networks to the citizens of Utah enumerated above;

(b) the continuing changes in the public demand for public telecommunication services;

(c) the rapid advance of telecommunications technology; and

(d) the market position, managerial skill and technological expertise of NewPath Networks.

(3) Before engaging in regulated activities in geographic areas under the jurisdiction of any local public authority, NewPath Networks will secure and submit to the Commission evidence of any required consent, franchise or permit of the local authority.

(4) The proposed operations of NewPath Networks will not conflict with or adversely affect the operations of any existing certificated fixed public utility in the NewPath

Networks service territory within the meaning of Utah Code Ann. § 54-4-25(3).

(5) NewPath Networks will not encroach upon, interrupt, overburden, disrupt or otherwise adversely affect the transmission lines, switches or facilities of any existing fixed public utility within the meaning of Utah Code Ann. § 54-4-25(3).

(6) The proposed activities and services of NewPath Networks are not an improper extension into the territory certificated to an existing fixed public utility within the meaning of Utah Code Ann. § 54-4-25(3).

16. **R746-349-3(A)(16) Proof of Authority to Conduct Business in Utah**

Please see Exhibit A.

17. **R746-349-3(A)(17) Statement Regarding Complaints**

NewPath Networks, LLC, has had no complaints filed with the FCC or any state regulatory authority, nor have any sanctions been imposed against the company. NewPath Networks has never had any complaints, investigations, or sanctions imposed against it for slamming or any other conduct in any state. Nor has the Applicant ever had its Authority to Conduct Business revoked in any state.

(a) **R746-349-3(A)(17)(a) Sanctions**

Not applicable.

(b) **R746-349-3(A)(17)(b) Written Documents**

Not applicable.

(c) **R746-349-3(A)(17)(c) Responses**

Not applicable.

18. **R746-349-3(A)(18) Applicant's written policies**

As discussed, NewPath Networks does not provide dial tone services or have any direct

contact with end user telephone customers. Further, as detailed in 4(a) above, 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.

WHEREFORE, NewPath Networks, LLC, respectfully requests that the Utah Public Service Commission issue a Certificate of Public Convenience and Necessity authorizing NewPath Networks, LLC to compete as a Competitive Access Provider as defined in Utah Code Ann. § 54-8b-2(7) in the State of Utah.

Respectfully submitted this _____ day of _____, 2009

By: _____
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LIST OF EXHIBITS

EXHIBIT A Certificate of Existence and Certificate of Good Standing in Utah

EXHIBIT B Managerial and Technical Qualifications including Organizational Chart.

EXHIBIT C Financial Statements

EXHIBIT D Evidence of Certification in Other Jurisdictions