

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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 State) ORDER
of Utah)

ISSUED: November 12, 2009

By The Commission:

This matter is before the Commission on the Application of NewPath Networks, LLC (NewPath) for a Certificate of Public Convenience and Necessity (CPCN) to Compete as a Competitive Access Provider within the State of Utah. NewPath filed its Application on September 16, 2009. NewPath intends to provide the service it describes 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. NewPath proposes to provide this service state-wide.

The Division of Public Utilities (Division) filed its recommendation with the Commission on October 28, 2009. After a review of the Application, it recommended the Application be dismissed without prejudice. It noted that NewPath intended to operate a “Distributed Antenna System (DAS)” but concluded, “the Applicant does not intend to provide services that require a CPCN such as Local Exchange Service [] or Public Telecommunications Service [], at this time.”

The Commission determines that the record is not sufficient for it to conclude that the service NewPath intends to provide is not a local exchange service as defined in Utah Code Ann. § 54-8b-2(10), nor a public telecommunications service as defined in Utah Code Ann. § 54-8b-2(16). In essence, the Commission would be rendering a declaratory judgment on an informal basis, without the benefit of formal proceedings, e.g. “adequate advance notices to all affected parties, an opportunity to participate, and an opportunity to comment on the proposed rule” etc. *Williams v. Public Service Comm’n.*, 720 P.2d 773, 777 (Utah 1986). NewPath has indicated that in the future it may “change their business plan and expand their service offering to include products that require a CPCN.” *Division Recommendation*, p. 2.

ORDER

Therefore, the Commission directs the Division to assume NewPath will be providing a service that may be considered a local exchange service and/or a public telecommunications service and review NewPath's technical, managerial, and financial abilities to determine if it has the qualifications to allow NewPath a CPCN. The Division shall perform its review no later than 30 days from the date of entry of this Order. If it requires more time, it

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may move for an extension of time. The Commission does not make a finding as to whether a Distributed Antenna System is or is not a local exchange service and/or a public telecommunications service.

DATED at Salt Lake City, Utah, this 12th day of November, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 12th day of November, 2009, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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