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6 Attorneys for Plaintiff,  
7 NEWPATH NETWORKS, LLC

8  
9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**

11 NEWPATH NETWORKS, LLC, A )  
NEW JERSEY LIMITED LIABILITY )  
12 COMPANY, )

13 Plaintiff, )

14 vs. )

15 THE CITY OF DAVIS, CALIFORNIA, )  
A GENERAL LAW MUNICIPALITY )

16 Defendants )

Case No. 2:10-CV-00236-GEB-KJM

**DECLARATION OF CAROLYN  
DEVOLDER IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: March 8, 2010  
Time: 9:00 am  
Courtroom: 10  
Judge: Hon. Garland E. Burrell

17 )  
18 )  
19 )  
20 I, Carolyn DeVolder, declare and state as follows:

- 21
- 22 1. I am a resident of King County, Washington, am over the age of eighteen, suffer no legal  
23 disabilities, am familiar with the facts set forth in this Declaration, and if called as a  
24 witness, I could and would competently and truthfully testify to the facts set forth below.
  - 25 2. I am a Senior Radio Frequency (“RF”) Design Engineer at NewPath Networks, LLC, a  
26 New Jersey limited liability company (“NewPath”), with offices located at 768 Garfield  
27 St., Seattle, WA 98109.
  - 28 3. I have worked for NewPath for five years. I am responsible for RF design of Distributed

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1 Antenna Systems (“DAS”) for all major wireless carriers. In the course of my job duties, I  
2 manage and conduct comparative drive testing to evaluate existing wireless coverage. I  
3 also manage and conduct continuous wave drive testing for system verification and  
4 coordinate with carrier engineers to ensure proper design DAS design configurations.

5 4. I have been informed by representatives of MetroPCS that its network was operating  
6 normally on December 28, 2009 and January 6, 2010, the dates of my data collection  
7 utilized in preparation of the drive test report I prepared for the hearing on NewPath’s  
8 appeal of the revocation and rescission of NewPath’s encroachment permits by the City  
9 Manager of the City of Davis. For the other wireless service provider data, the data did  
10 not display any irregularities that would indicate that the networks were not functioning  
11 properly. Additionally, as wireless service providers have millions of customers that  
12 expect that their networks function properly at all times, it is not unreasonable to assume  
13 that the networks were operating properly.

14 5. Although there are no federal laws or FCC rules governing or establishing signal levels,  
15 word terms, or other items described in the NewPath drive test, assigning these words and  
16 signal levels with colors on a map is an important way to characterize a network and to  
17 compare coverage between different wireless service providers. Disregarding the signal  
18 levels and descriptions, when comparing the map of MetroPCS versus the other wireless  
19 carriers, there are significantly more red and blue points on the MetroPCS maps than the  
20 other maps. This means that the level of coverage and service that they are providing is  
21 of less quality than their competitors, and therefore they are at a competitive  
22 disadvantage. To provide other methods of interpreting the data, the average signal level  
23 over the entire data collection area was analyzed. The average signal level can be  
24 compared among the different carriers to determine whether one carrier is providing  
25 better coverage than another. The average signal level for MetroPCS over the given drive  
26 data area was -93.8 dBm. Sprint, Verizon, ATT, and T-Mobile had average signal levels  
27 of -87.5 dBm, -78 dBm, -75 dBm, and -79 dBm respectively. From this data, it can be  
28 shown that MetroPCS provides the lowest average signal level over the project area in

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Davis.

6. Yet another way to review the data is to compare the percentage of collected data points above or below a given signal level. For this exercise, a signal level of -88 dBm and a level of -75 dBm was chosen. From the data below, a conclusion can be drawn that MetroPCS has the lowest signal level of coverage of all of the wireless service providers.

Measurement	MetroPCS	Sprint	Verizon	ATT	T-Mobile
% data points > -88 dBm	17%	44%	92%	89%	83%
% data points < -88 dBm	83%	56%	8%	11%	17%
% data points < -75 dBm	98%	91%	67%	54%	70%
average signal level	-93.8	-87.5	-78	-75.8	-79.6

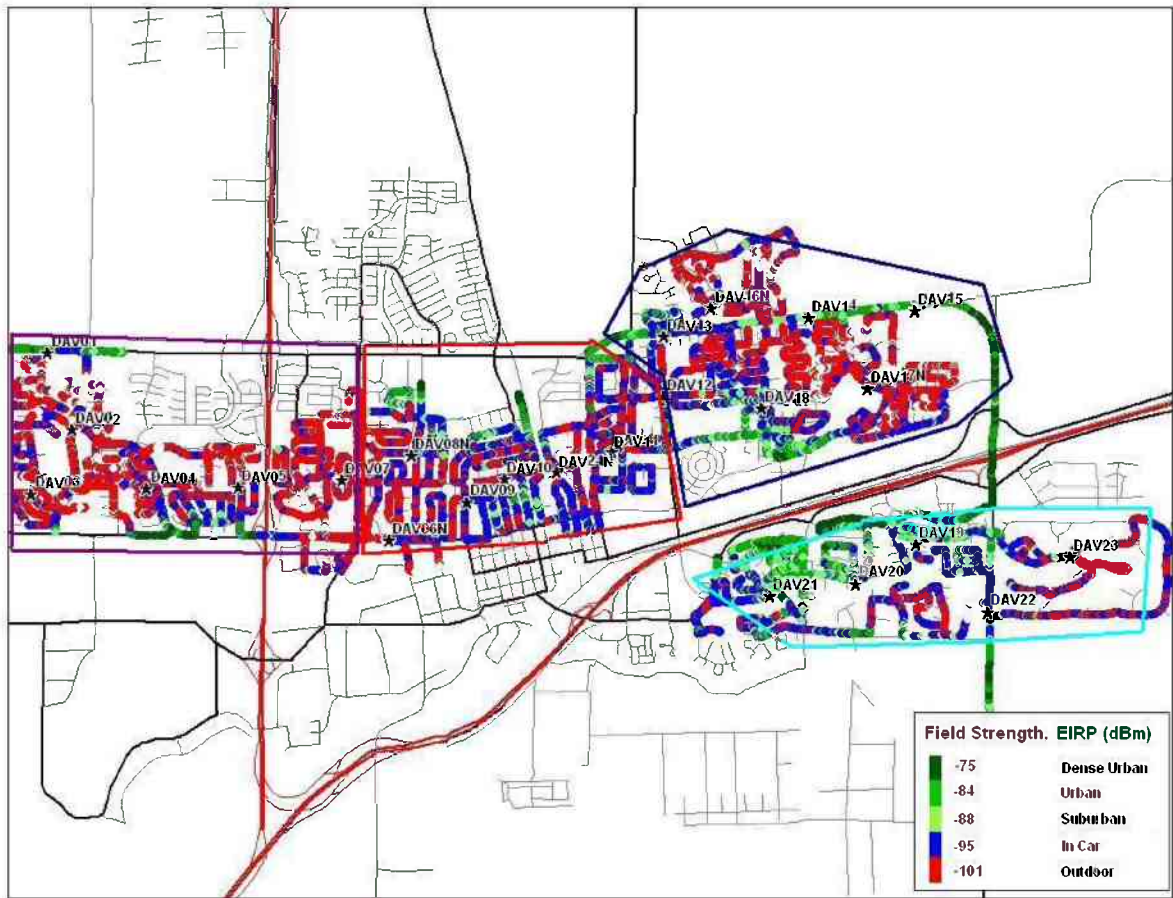
7. As there are no federal guidelines that set standards for coverage signal levels, each carrier has created a corporate standard that they generally abide by when analyzing their network coverage through predictive maps and displaying drive test data. With the increasing use of wireless phones as primary landlines, and the popularity of smart phones, wireless carriers need to provide a level of coverage that will meet their customers desires of utilizing their mobiles indoors. To achieve this level of coverage, each wireless service provider uses a standard level of -76 dBm or above to indicate indoor coverage can be met. For example, MetroPCS uses -75 dBm, Verizon -75 dBm, T-Mobile -76 dBm, ATT -74 dBm, and Sprint -75 dBm. As an RF Design engineer that has worked personally with RF engineers from each of the companies listed above for the past 10 years, I can attest that -76 dBm is their desired coverage level to meet indoor coverage requirements for their customers.
8. The Davis area of interest where the coverage gap exists is primarily residential with

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- 1 some small pockets of commercial properties. The residential areas consist of single  
2 family homes and apartment buildings, and student housing for the University of  
3 California. The overall project area has been divided into 4 different subareas for further  
4 detail on the coverage gaps that exist.
- 5 9. Sub Area 1 (purple) - this area is bounded by Anderson Road to the east, W. Covell to the  
6 north, Russell Road to the south, and farmland to the west. This area is primarily  
7 residential with single family homes and several schools, both elementary and middle  
8 schools, on either side of State Route 113, a state highway that is an important connecting  
9 route between I-80 and I-5. This area is in close proximity to the University of Davis  
10 campus. The drive data shows coverage of less than -88 dBm throughout this area, and  
11 MetroPCS has determined that is an unacceptable level of coverage from their assessment  
12 of their network.
- 13 10. Sub Area 2 (red) – this area is bounded by Anderson Road to the west, Pole Line road to  
14 the east, Covell road to the north, and 5<sup>th</sup> St and 8<sup>th</sup> St to the south. This area consists of  
15 the small central business district of downtown Davis along with single family homes,  
16 other residential and public schools. This area exhibits coverage of levels less than -88  
17 dBm and has been designated as coverage gap by MetroPCS that needs to be improved.
- 18 11. Sub Area 3 (blue) – this area is bounded by Pole Line Road to the west, Mace to the east,  
19 5<sup>th</sup> St to the south, and Rockwell Drive/Covell to the north. This area has a combination  
20 of residential, public schools, parks, and a high school. Covell road is a primary road that  
21 runs through this sub area. This area also has poor coverage levels of less than -88 dBm  
22 for MetroPCS.
- 23 12. Sub Area 4 (turquoise) – this area is south of I-80 and is bounded by Covell to the west  
24 and north, Montgomery to the south, and El Macero drive to the south. This area consists  
25 of all residential and a golf course. The areas to the south exhibit poor coverage less than  
26 -88 dBm for MetroPCS.
- 27  
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13. The drive data collection was completed to display a typical customer experience. As the typical customer does not realize what frequency band they are utilizing as they are using their mobile or smart phone, disclosing that information or further collecting data on both frequency bands was deemed irrelevant and was not completed. Additionally, voice data was the only data that was collected, data service were not utilized in this test. The voice data was collected on Verizon Wireless's 800 MHz cellular band channels, and the voice data for ATT was collected on their 800 MHz cellular band channels. Data services were not included in the drive test, so this data was not collected at the 1900 MHz PCS band where Verizon typically deploys its data EVDO services. The data collected for ATT was for GSM and was collected on the cellular frequency band at 850 MHz.

14. NewPath is applying its own professional assessment of areas where carriers may seek to improve their wireless coverage through the use of their proposed DAS. MetroPCS is the

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primary carrier that has contracted to build the network with NewPath, and there are areas of lower coverage levels that other carriers may seek to improve. As an RF Design Engineer, part of my job responsibilities include analyzing drive data from either the wireless service providers or collecting by NewPath Networks and making recommendations as to where coverage levels could be improved through the use of a DAS. It is my professional opinion that each of the carriers has areas in the Davis project area where they would want to seek improvement and would consider DAS as an option.

15. MetroPCS has provided coverage maps showing their significant coverage gap, and further has contracted with NewPath to design and build a DAS to eradicate that gap.

I HEREBY ATTEST THIS 1<sup>st</sup> DAY OF MARCH 2010 THAT, TO THE BEST OF MY KNOWLEDGE, UNDERSTANDING AND BELIEF, THE FOREGOING STATEMENTS ARE TRUE AND THAT I WOULD BE WILLING TO MAKE THESE STATEMENTS UNDER PENALTY OF PERJURY IN A COURT OF LAW.



Carolyn DeVolder  
Senior RF Design Engineer  
NewPath Networks, LLC

**CERTIFICATE OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 207 E. Broadway, Suite 201, Long Beach, CA 90802.

On March 1, 2010, I caused to be served the following document(s):

**DECLARATION OF CAROLYN DEVOLDER IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

on the interested parties in this action as follows:

Harriet Ann Steiner  
McDonough Holland & Allen PC  
500 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
916-444-3900  
[hsteiner@mhalaw.com](mailto:hsteiner@mhalaw.com)

I served a true copy of the foregoing document by way of the Court's electronic filing/serving system, file and serve website. I declare under penalty pursuant to the laws of the United States that the above is true and correct.

Executed on March 1, 2010, at Long Beach, California.

/s/ Robert Jystad  
Attorney for NewPath Networks, LLC  
E-mail: [rjystad@channellawgroup.com](mailto:rjystad@channellawgroup.com)

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