



December 5, 2009

Mr. Stephen Garcia, Director, External Affairs/Land Use
Mr. Jason Sears, Manager, Implementation
NewPath Networks
768 Garfield Street
Seattle, Washington 98109

SUBJECT: NOTICE OF RESCISSION OF ENCROACHMENT PERMITS

Dear Sirs:

As you are aware, the City issued a stop work notice on the encroachment permits issued to NewPath Networks to allow for investigation of potential conflicts with the City's Telecommunication ordinance and to determine whether permits were issued properly. The City has now completed an initial review of the propriety of issuance of these permits, and has determined that the permits were improperly issued because (1) NewPath did not, and has not, complied with the City's Telecommunications Ordinance; (2) Certain of the permits for ground based fiber and conduit rely on the location of the wireless facilities, which, as stated above, have not been approved and which may not meet the locational requirements for wireless facilities in the City's ordinances; (3) other permits rely on access to public property that is not within the public rights of way for which no agreements have been reached to permit access and use by NewPath, and (4) certain poles and other aboveground facilities (including proposed monopoles) are proposed for locations that do not permit above ground facilities. Further, there has been no showing that the proposed locations of the wireless facilities are each necessary given the impacts of these facilities on the public, including both public safety and aesthetic impacts. It is impossible to act on individual permits without a complete review of the entire system proposed by NewPath for compliance with all city and state regulations.

Therefore, the City has determined that these permits should be, and, hereby, are, REVOKED AND RESCINDED. These permits, as listed below are no longer of any force and effect.

NewPath may file an appeal of this action to the City Council within 10 calendar days of the date of this notice.

NewPath may also apply for permits as follows:

- (1) With respect to wireless facilities, New Path may apply for permits under the City's Telecommunications Ordinance
- (2) With respect to conduit and/or wired facilities that are not tied to the location of a wireless facility and that are located within a street right of way or to be located on existing utility poles, , NewPath may seek issuance of an encroachment permit for that construction. These encroachment permits, if any, will be issued if they comply with state and city requirements. Any issuance of such permits shall not be grounds to a determination that a particular location of a wireless facility is or must be approved by the city and, as such NewPath would proceed at its own risk with respect to any such authorized construction.
- (3) With respect to facilities proposed for property that is not within the right of way, NewPath must show that it has the right to use that property for the proposed facility(ies) prior to the issuance of any permit.

The City remains willing to work with NewPath to provide for NewPath's facilities within the City in a manner that complies with all applicable laws, regulations and city ordinances.



The following Encroachment Permits are revoked and rescinded pursuant to this order:

Encroachment Permits and any Related Building Permits Issued to NewPath Networks:

09	77700271	1455 E 8TH STREET
09	77700268	3700 ALHAMBRA DRIVE
09	77700267	4000 E COVELL BLVD
09	77700266	3075 E COVELL BLVD
09	77700265	1306 CLARA LANE
09	77700262	2500 MOORE BLVD
09	77700252	730 J STREET
09	77700251	308 ANTIOCH DRIVE
09	77700250	803 LINDEN LANE
09	77700249	2819 LILLARD DRIVE
09	77700248	3606 LILLARD DRIVE
09	77700247	809 LA PAZ DRIVE
09	77700246	812 BURR STREET
09	77700245	2322 WESTERNESSE ROAD
09	77700244	3215 BERMUDA AVENUE
09	77700243	1340 LAKE BLVD
09	77700242	3100 LOYOLA DRIVE
09	77700228	1427 E 8TH STREET
09	77700227	515 E 8TH STREET
09	77700226	646 A STREET
09	77700218	2902X W COVELL BLVD
09	77700201	2500 MOORE BLVD
09	77700200	23 RUSSELL BLVD
09	77700199	875 RUSSELL BLVD
09	77700196	1306 CLARA LANE
09	77700195	3700 ALHAMBRA DRIVE
09	77700194	2500 MOORE BLVD
09	77700193	4000 E COVELL BLVD
09	77700192	3075 E COVELL BLVD
09	77700189	1813 OLEANDER PLACE
09	77700188	1010 E 8TH STREET
09	77700187	402 ANTIOCH DRIVE
09	77700186	513 RUSSELL BLVD
09	77700185	1241 TULIP LANE
09	77700184	23 RUSSELL BLVD
09	77700158	3200X ALHAMBRA DRIVE
09	77700157	803 LINDEN LANE

Given the number of sites, significant public outreach will be required. My understanding is your firm had previously been reluctant to engage in public outreach in advance of these permits being issued. I do not believe that is a good strategy or policy particularly given that some of the poles are effectively within some property owners front or side yards. Even if there were no permit issues, it seems unconceivable to be reluctant to inform these individuals of what is proposed. Under no circumstances will a new encroachment or any other types of permits be issued until all affected parties are properly informed and they have an opportunity to comment under the appropriate process.

The City is prepared to work with you further on this matter.

Sincerely,



Bill Emlen
City Manager

Cc: Harriet Steiner
Katherine Hess
Robert Clarke
Rick Guidara