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July 11, 2000

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Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**RE: Case No. TA-2000-665**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **SUGGESTIONS IN SUPPORT OF THE UNANIMOUS STIPULATION AND AGREEMENT.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

*Julie A. Kardis*

Julie A. Kardis  
Assistant General Counsel  
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JAK:sw  
Enclosure  
cc: Counsel of Record

**FILED<sup>2</sup>**  
JUL 11 2000

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

JUL 11 2000

Missouri Public  
Service Commission

In the Matter of the Application of )  
PathNet, Inc. for a Certificate of Service )  
Authority to Provide Basic Local )  
Telecommunications Service in Portions )  
of the State of Missouri and to Classify )  
Said Services and the Company as )  
Competitive. )

Case No. TA-2000-665

**SUGGESTIONS IN SUPPORT OF**  
**THE UNANIMOUS STIPULATION AND AGREEMENT**

Comes now the Staff of the Missouri Public Service Commission (Staff) and in support of the Unanimous Stipulation and Agreement filed in this matter states as follows:

1. PathNet, Inc. (Applicant) agreed in the Stipulation and Agreement, paragraph 5, that any service authority it receives shall be conditional and not exercised until tariff(s) for services have become effective. The Applicant also agreed to file a list of its interconnection or resale agreements or explain why the Applicant does not need an interconnection or resale agreement in order to begin business.<sup>1</sup>

2. The application process envisioned in the Stipulation and Agreement requires that the Applicant: a) file a complete application, including such undertakings as the Parties have deemed essential; b) enter into interconnection and/or resale agreements and file them for approval; and c) file tariffs for approval. The Staff believes this three-step process provides the necessary protections without unduly burdening or delaying certification.

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<sup>1</sup>The Parties were reluctant to completely rule out the possibility that an applicant could do business in a way that would not require an interconnection agreement, although no one could imagine such a scenario at this time; this provision would afford incumbent LECs the opportunity to challenge the feasibility of an assertion that no interconnection agreements were necessary.

3. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. (See § 392.361.2 RSMo 1994). All the services a competitive company provides must be classified as competitive. (See § 392.361.3 RSMo 1994). As indicated in paragraph 10 of the Stipulation and Agreement, no Party disputes that the Applicant should be classified as a competitive telecommunications company, and all of the telecommunications services it offers should be classified as competitive. However, the Staff and other parties expressed concern about classifying exchange access service as competitive. The end user, not the access customer (presently the interexchange carrier [IXC]), determines whose services will be used. Accordingly, an IXC does not have the option to avoid a certain LEC because its access charges are too high; if the IXC's customer is served by that LEC, the ICX will have to buy access from that LEC. To address this concern, the Parties devised an access rate "cap" that places an upper limit on access rates at the lowest level charged by the large incumbent LEC(s) in whose service territory(ies) the Applicant seeks authority to provide service. This access rate cap is discussed and stipulated to in paragraph 4. Although access services would technically be classified as competitive, the Applicant may not avail itself of the near automatic rate changes normally afforded to competitive services in §§ 392.500 and .510, RSMo. Instead, if the Applicant can establish to the Commission's satisfaction that its costs of providing access exceed the capped rate, it could increase its rates through the rate change process set out in §§ 392.220 and 230, RSMo. Such a mechanism is permissible because §§ 392.361.5 and .6, RSMo., authorize the Commission to impose conditions and competitive classification rate changes that are reasonably necessary to protect the public interest.

4. The Stipulation and Agreement provides, in paragraph 4, that the Applicant will adhere to the same quality of service and billing standards as those to which the incumbent LECs must adhere.

5. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392 RSMo. (See §§ 392.361.3 and 392.420 RSMo 1994 and § 392.185 RSMo Supp. 1999). The requested waivers in the Stipulation and Agreement include the waivers listed in the Notice of Applications except Subsection 392.240(1) RSMo is omitted from the Stipulation and Agreement at the request of intervenor Southwestern Bell Telephone Company. Because the Applicant was willing to sign a Stipulation and Agreement that did not include this waiver, the Staff was willing to sign the Stipulation and Agreement rather than potentially delaying the Applicant's certification.

6. The Applicant agrees, in paragraph 4 of the Stipulation and Agreement, that it will provide equitable access, as determined by the Commission, to all Missourians. The Staff believes that such an affirmative statement is not necessarily required, as the statutory section in question is couched in terms of a Commission finding rather than an affirmative undertaking.<sup>2</sup> However, the Staff can see a potential benefit in such an undertaking, so it does not object to including equitable access as an affirmative statement in the Stipulation and Agreement.<sup>3</sup>

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<sup>2</sup>§ 392.455, RSMo. Supp. 1999.

<sup>3</sup>As equitable access is a concern the Commission must address in the certification process, the Parties wanted to bring it to the Commission's attention and assert their belief that this application is in no way inconsistent with equitable access.

7. The Stipulation and Agreement was specifically designed to address the five (5) criteria set out in § 392.455, RSMo. Supp. 1999, which the Commission must address in the process of certificating new basic local telecommunications service providers.

The Applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. In Appendices C and D to its Application, the Applicant demonstrates its technical, financial and managerial resources and abilities.

The Applicant has demonstrated that the services it proposes to offer satisfy the minimum standards established by the Commission. The Staff has reviewed the Applicant's services and has concluded that the Applicant satisfies the minimum standards established by the Commission.

The Applicant has set forth the geographic area in which it proposes to offer service and has demonstrated that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange. The Staff has concluded that the geographic area in which the Applicant proposes to offer service follows exchange boundaries and is not smaller than an exchange.

The Applicant has agreed to offer basic local telecommunications service as a separate and distinct service. The Staff has concluded that the Applicant will offer basic local telecommunications service as a separate and distinct service.

The Applicant has agreed to provide equitable access to affordable telecommunications services for all Missourians, regardless of where they live or their income. The Staff has concluded that the Applicant will provide equitable access to affordable telecommunications services for all Missourians, regardless of where they live or their income.

For all of the foregoing reasons, the Staff believes the Unanimous Stipulation and Agreement has adequately addressed the relevant issues and should be approved by the Commission. Staff thereby prays the Commission approve the Application of PathNet Inc. for a certificate of authority to provide basic local telecommunications services in those exchanges listed in its application and to classify those services as competitive.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

Julie A. Kardis

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 11<sup>th</sup> day of July, 2000.

Julie A. Kardis

**Service List for  
Case No. TA-2000-665  
July 11, 2000**

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