

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
August 8, 2000**

CASE NO: TA-2000-665

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Sheldon K. Stock, Esq.
Greensfelder, Hemker & Gale, P. C.
2000 Equitable Building
10 South Broadway
St. Louis, MO 63102

Paul G. Lane/Leo J. Bub
Anthony K. Conroy/Mimi B. MacDonald
Southwestern Bell Telephone Company
One Bell Center, Room 3518
St. Louis, MO 63101

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Gerard J. Waldron, Esq./Mary Newcomer Williams, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N. W.
Washington, D.C. 20004-2401

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of August, 2000.

In the Matter of the Application of Pathnet,)
Inc., for a Certificate of Service Authority)
to Provide Basic Local Telecommunications) **Case No. TA-2000-665**
Service in the State of Missouri and to)
Classify Said Services and the Company as)
Competitive.)

**ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL
TELECOMMUNICATIONS SERVICES**

Procedural History

Pathnet, Inc. (Pathnet), applied to the Missouri Public Service Commission on April 19, 2000, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1999. Pathnet asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. Pathnet is a Delaware corporation with its principal offices located at 11720 Sunrise Valley Drive, Reston, Virginia 20191.

The Commission issued a notice and schedule of applicants on April 25, 2000, directing interested parties wishing to intervene to do so

¹ All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

by May 25, 2000. On May 5, 2000, Southwestern Bell Telephone Company (SWBT) filed an application to intervene which was granted on May 30, 2000.

The parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on July 10, 2000. The Staff of the Commission (Staff) filed Suggestions in Support of the Stipulation and Agreement on July 11, 2000.

The Agreement states that the Office of the Public Counsel, while not a signatory to the Agreement, has been contacted with regard to its filing and has offered no objection. The Agreement will be treated as unanimous. Commission Rule 4 CSR 240-2.115(1) states in part: "If no party requests a hearing, the commission will treat the stipulation and agreement as a unanimous stipulation and agreement."

In the Agreement, the parties waive their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The Agreement also provided that one of the statutes originally proposed for waiver by Pathnet, Section 392.240.1, RSMo 1994, would not be waived.

On July 20, 2000, the Commission issued its Notice and Order Directing Staff Appearance and Response. This order directed the Staff of the Commission to appear at the Commission's Agenda meeting on August 3, 2000, to explain why Section 392.240.1, RSMo 1994, originally requested for waiver by Pathnet, was no longer among the statutes whose waiver was requested. Such an appearance was specifically approved by the parties in their Agreement:

The Staff shall also have the right to provide, at any agenda meeting at which this Unanimous Stipulation and

Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff.

The order also provided notice to all parties that Staff would appear at the Agenda meeting on August 3, 2000, and respond to questions by the Commission.

On August 3, 2000, the Staff of the Commission and counsel for SWBT did appear at the Commission's Agenda meeting. Staff, and counsel for SWBT, explained that SWBT believed that waiver of Section 392.240.1, RSMo 1994, was not in the public interest as it would deprive the Commission of a useful enforcement mechanism in the event that Pathnet should ever charge unlawful, unjust or unreasonable rates. However, discussion of this point satisfied the Commission that it would continue to possess ample enforcement powers, even if Section 392.240.1, RSMo 1994, were to be waived as originally requested by Pathnet. Counsel for SWBT stated that SWBT would not object to the waiver of that section, if ordered by the Commission.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the application.

Discussion

Pathnet seeks certification to provide basic local and exchange access telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc., d/b/a Sprint (Sprint). Pathnet is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). Pathnet proposes to provide service in the all exchanges currently served by SWBT, GTE and Sprint. Pathnet is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Requirements of 4 CSR 240-2.060(4)

Commission Rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing that it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. Pathnet has provided all the required documentation except for the proposed tariff. Pathnet requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. Pathnet agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement. The Agreement provides that

Pathnet will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing, Pathnet has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas. The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and, when Pathnet files the required tariff, it will be assigned a new case number. Pathnet will be directed to provide the notice and disclosures required by the Agreement when it files its proposed tariff.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1999, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the ILEC and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

Pathnet submitted as Exhibit D to its application certain financial documentation. Exhibit C to the application lists the names and qualifications of Pathnet's management team. The parties agree that Pathnet possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Pathnet has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agree that Pathnet proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Pathnet wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint as described in their basic local tariffs. The parties agree that Pathnet has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

Pathnet has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1999.

C. Competitive Classification

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. Sec-

tion 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunications Companies Within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the Matter of Southwestern Bell Telephone Company's Application for Classification of Certain Services as Transitionally Competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, the commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services pursuant to Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that Pathnet should be classified as a competitive telecommunications company. The parties agree that Pathnet's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Pathnet's ability to charge for its access services. Pathnet has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates for each large incumbent LEC within whose service area(s) Pathnet seeks authority to provide service. The parties agree that the grant of service authority and competitive classification to Pathnet should be

expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

SWBT does not object and the other parties agree that waiver of the following statutes is appropriate: Sections 392.210.2, 392.240.1, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1999. The agreed waivers reflect the waivers listed in the Notice of Applications with the exception of Subsection 392.240(1). SWBT requested that this provision not be waived and Pathnet agreed to sign the Stipulation and Agreement without this waiver. The parties also agree that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that Pathnet has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.

- C. The Commission finds that Pathnet has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that the local exchange services market is competitive and that granting Pathnet a certificate of service authority to provide local exchange telecommunications services is in the public interest. Pathnet's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Pathnet meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting Pathnet a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Pathnet's certificate shall become effective when its tariff becomes effective.
- F. The Commission finds that Pathnet is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- G. The Commission finds that Pathnet's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to

Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. Pathnet has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1999, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1999, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1999.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1999. Based upon the Commission's review of the applicable law and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on July 10, 2000, is approved as modified on August 3, 2000.

2. That Pathnet, Inc., is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That Pathnet, Inc., is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

4. That Pathnet, Inc., is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2 - uniform system of accounts
392.240.1 - rates-rentals
392.270 - valuation of property (ratemaking)
392.280 - depreciation accounts
392.290 - issuance of securities
392.300.2 - acquisition of stock
392.310 - stock and debt issuance
392.320 - stock dividend payment
392.340 - reorganization(s)
392.330, RSMo Supp. 1999 - issuance of securities,
debts and notes

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - posting of rate schedules
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.030(4)(C) - exchange boundary map
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

5. That the certification and competitive status herein granted to Pathnet, Inc., are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

6. That the request for waiver of 4 CSR 240-2.060(4)(H), which requires the filing of a 45-day tariff, is granted.

7. That Pathnet, Inc., shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement that will allow Pathnet to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

8. That Pathnet, Inc., shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, Pathnet, Inc., shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all

portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

9. That this order shall become effective on August 18, 2000.

10. That this case may be closed on August 21, 2000.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, and
Simmons, CC., concur.
Schemenauer, CC., absent.

Thornburg, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JUL 10 2000

Missouri Public
Service Commission

Case No. TA-2000-665

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.)

UNANIMOUS STIPULATION AND AGREEMENT

1. PathNet, Inc. ("PathNet" or "Applicant") initiated this proceeding on April 19, 2000 by filing an Application requesting a certificate of service authority to provide basic local exchange telecommunications services on a facilities and resold basis throughout all exchanges currently served by incumbent local exchange telecommunications companies Southwestern Bell Telephone Company ("SWBT"), Sprint/United Telephone Company ("Sprint") and GTE Midwest, Inc. ("GTE").

2. The Commission has granted the timely application to intervene of SWBT. GTE and Sprint did not seek and have not been granted intervention in this proceeding.

3. For purposes of this Unanimous Stipulation and Agreement, the parties agree that applications for basic local exchange service authority in exchanges served by "large" local exchange companies (LECs)¹ should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

4. In determining whether PathNet's application for a certificate of service authority should be granted, the Commission should consider PathNet's technical, financial and managerial resources and abilities to provide basic local telecommunications service. PathNet must demonstrate that the basic local services it proposes to offer satisfy the minimum standards

¹ Large LECs are defined as LECs who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1999. In Missouri, the current large LECs are SWBT, GTE and Sprint.

established by the Commission, including but not limited to the Applicant agreeing to file and maintain basic local service tariff(s) with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which the applicant seeks to compete. Further, PathNet agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which the applicant seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo., as a condition of certification and competitive classification, PathNet agrees that, unless otherwise ordered by the Commission, the Applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each large incumbent LEC within whose service area(s) Applicant seeks authority to provide service. Additionally, PathNet agrees that if the ILEC, in whose service area the Applicant is operating, decreases its originating and/or terminating access service rates, PathNet shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap. Further, PathNet agrees to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which it proposes to offer basic local service. Such area must follow exchange boundaries of the incumbent local exchange telecommunications companies in the same area and must be no smaller than an exchange. Finally, PathNet agrees to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local services, regardless of residence or their income. See Section 392.455 RSMo. (1999 Supp.)

5. PathNet has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C). PathNet has not obtained approved Resale Agreements with SWBT, Sprint, or GTE.² PathNet agrees to file its initial tariffs in this certification docket and serve all parties thereto with written notice at the time the initial tariffs are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by Applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariffs for services have become effective. When filing its initial basic local tariff, PathNet shall also file and serve a written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier, and its explanation of why such a resale and/or interconnection agreement is unnecessary for such areas.

6. PathNet has, pursuant to Section 392.420 RSMo., requested that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo., should continue to apply to all PathNet's services:

STATUTORY PROVISIONS

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

COMMISSION RULES

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

² Good cause for failure to file proposed tariffs with the Application must be shown. The lack of approved interconnection agreement (47 U.S.C. §252) constitutes good cause.

7. In negotiating the remaining provisions of this Unanimous Stipulation and Agreement, the parties have employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and Sections 392.450 and 392.455 RSMo., regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications services and follows the provisions of the Commission's order of June 1, 2000 in Case No. TO-99-596 dealing with CLEC access rates, etc.

PATHNET'S CERTIFICATION

8. PathNet has stated in its Application that it seeks authority to provide service in all exchanges currently served by SWBT, GTE and Sprint as listed in the incumbent providers local exchange tariffs. PathNet hereby agrees that its Application should be deemed further amended as required to include by reference the terms and provisions described in paragraph 4-6 hereinabove and paragraph 11 below to the extent that its Application might be inconsistent therewith.

9. Based upon its verified Application, as amended by this Unanimous Stipulation and Agreement, PathNet asserts and no other party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and conclude that PathNet:

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service;

B. proposes and agrees to offer basic local services that will satisfy the minimum standards established by the Commission;

C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local

exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;

D. will offer basic local telecommunications services as a separate and distinct service;

E. has agreed to provide equitable access to affordable basic local telecommunications services as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income; and

F. has sought authority which will serve the public interest.

10. PathNet asserts, and no party opposes, that PathNet's application and request for authority to provide basic local telecommunications service and local exchange telecommunications service (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200 continue to apply, and PathNet shall remain classified as a competitive telecommunications company. PathNet asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of PathNet's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective.

The Commission's Order should state the foregoing conditions substantially as follows:

"The service authority and service classification herein granted are subject to the requirements of Section 392.200 RSMo., and are conditional and shall not be exercised until such time as tariffs for services have become effective."

The parties agree that the Applicant's switched exchange access services may be classified as competitive services. The parties further agree that the Applicant's switched exchange access services are subject to Section 392.200 RSMo. Unless otherwise determined by the Commission, any increases in intrastate-switched access service rates above the maximum switched access service rates as set forth in Paragraph 4 herein shall be made pursuant to Sections 392.220 and 392.230 RSMo., and not Sections 392.500 and 392.510 RSMo. PathNet agrees that if the ILEC, in whose service area PathNet is operating, decreases its originating and/or terminating access service rates, PathNet shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200 RSMo., and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo., and not Sections 392.500 and 392.510 RSMo. Further, if the ILEC, in whose service area PathNet is operating, decreases its originating and/or terminating access service rates, PathNet shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap."

11. PathNet's request for a temporary waiver of 4 CSR 240-2.060(6)(C), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties and should be granted because, at the time of the filing of the application, PathNet does not yet have approved resale or interconnection agreements with SWBT, Sprint and GTE. PathNet agrees that at such time as all facts necessary for the development of tariffs become known, it will submit tariffs in this docket, with a minimum 45-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. PathNet shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time they are filed with the Commission and serve them with the aforesaid written disclosure and shall upon request immediately provide any party with a copy of those tariffs. The Commission's order should state these obligations as conditions to the waiver of 4 CSR 240-2.060(6)(C), substantially as follows:

"Applicant's request for waiver of 4 CSR 240-2.060(6)(C) is hereby granted for good cause in that applicant does not yet have approved resale or interconnection agreements with the incumbent local exchange carriers within whose service areas it seeks authority to provide service; provided, when applicant submits its tariffs in this docket to the Commission, such tariffs shall have a minimum of a 45-day effective date and the applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such tariffs to such parties immediately upon request. When filing its initial basic local tariff in this docket, the applicant shall also file and serve upon the parties hereto a written disclosure of: all resale and/or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local

exchange carrier; and its explanation of why such a resale and/or interconnection agreement is unnecessary for any such areas.”

12. PathNet’s request for waiver of the applications of the following statutory provisions and rules and as they relate to the regulation of PathNet’s new services should be granted:

STATUTORY PROVISIONS

COMMISSION RULES

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

13. This Unanimous Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Unanimous Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

14. In the event the Commission accepts the specific terms of this Unanimous Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1, RSMo., to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo.; and their respective rights to seek rehearing pursuant to Section 386.500 RSMo.; and to seek judicial

review pursuant to Section 386.510, RSMo. The parties agree to cooperate with the Applicant and with each other in presenting this Unanimous Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the PathNet application made herein.

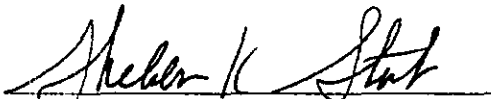
15. The Staff shall file suggestions or a memorandum in support of this Unanimous Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony, or memorandum shall be subject to the terms of any Protective Order that may be entered in this case.

16. The Staff shall also have the right to provide, at any agenda meeting at which this Unanimous Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

17. PathNet will comply with all applicable Commission rules and regulations except those which are specifically waived by the Commission.

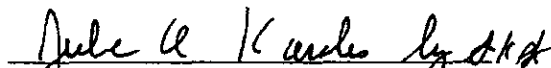
18. The Office of the Public Counsel is a signatory to this Unanimous Stipulation and Agreement for the sole purpose of stating that it has no objection to this Unanimous Stipulation and Agreement.

WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Unanimous Stipulation and Agreement and issue its Order granting authority and classification and waiving certain statutes and rules as requested by PathNet, subject to the conditions described above, as expeditiously as possible.



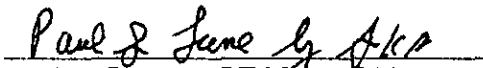
Sheldon K. Stock, MBE No. 18581
GREENSFELDER, HEMKER
& GALE, P.C.
10 South Broadway, Ste. 2000
St. Louis, Missouri 63102
(314) 241-9090
(314) 241-6965 (facsimile)
sks@greensfelder.com

Attorney for PathNet, Inc.



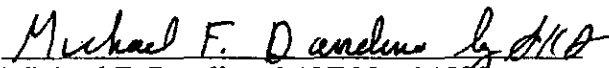
Julie A. Kardis, MBE No. 44450
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-8706
(573) 751-9285 (facsimile)
jkardis@mail.state.mo.us

Attorney for Staff of the Public Service
Commission



Paul G. Lane, MBE No. 27011
Leo J. Bub, MBE No. 34326
Anthony K. Conroy, MBE No. 35199
Mimi B. MacDonald, MBE No. 37606
Southwestern Bell Telephone Company
One Bell Center, Rm. 3520
St. Louis, Missouri 63102
(314) 235-6060
(314) 247-0014 (facsimile)
lb7809@momail.sbc.com

Attorneys for Southwestern Bell Telephone
Company

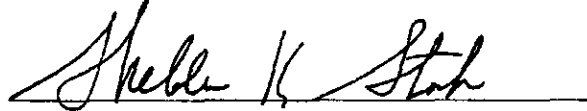


Michael F. Dandino, MBE No. 24590
Senior Public Counsel
Office of Public Counsel
301 West High Street
Jefferson City, Missouri 65102
(573) 751-5559
(573) 751-5562 (facsimile)
mdandino@mail.state.mo.us

Attorney for Staff of the Public Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Unanimous Stipulation and Agreement was served upon counsel for all parties of record in Case No. TA-2000-665 by depositing a true copy thereof in the United States mail, postage prepaid, or by hand delivery, this 10th day of July, 2000.

A handwritten signature in cursive script, appearing to read "Shellen K. Stah", is written over a horizontal line.

ALJ/Sec'y: Thornburg/Pope
8-3 7A-2000-665
 Date Circulated CASE NO.
 Lumpe, Chair SL
 Drainer, Vice Chair red
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 Murray, Commissioner
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 Schemenauer, Commissioner
KS
 Simmons, Commissioner
8-8
 Agenda Date
 Action taken: 4-0AA
 Must Vote Not Later Than _____

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
 I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
 Missouri, this 8th day of Aug. 2000.



Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge