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July 10, 2000

VIA FACSIMILE (573-522-6176)
And FEDERAL EXPRESS

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

FILED²
JUL 10 2000 *js*
Missouri Public
Service Commission

Re: PathNet, Inc.; Case No. TA-2000-665

Dear Mr. Roberts,

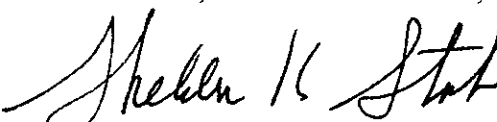
Enclosed for filing with the Commission is an original and eight (8) copies of the Unanimous Stipulation and Agreement resolving certain matters in the above-referenced case. I have executed the stipulation on behalf of the parties with their permission. Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

We question the necessity of continuing to file stipulations of this type inasmuch as we believe the Commission's order of June 1, 2000 in Case No. TO-99-596 deals with the concerns previously expressed by Southwestern Bell Telephone Company. In order to avoid a time consuming dispute and the cost attendant thereto, we have agreed to enter into this stipulation with the various parties.

Thank you for your assistance.

Yours very truly,

GREENSFELDER, HEMKER & GALE, P.C.

By 
Sheldon K. Stock

SKS/kka
Enclosures
404083.1

cc: Attorneys of Record
Gerard J. Waldron, Esq.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²
JUL 10 2000

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

Missouri Public
Service Commission

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.

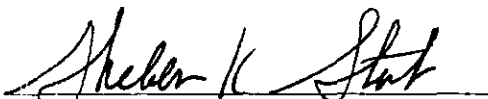
15. The Staff shall file suggestions or a memorandum in support of this Unanimous Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony, or memorandum shall be subject to the terms of any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

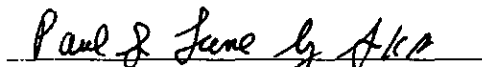
18. The Office of the Public Counsel is a signatory to this Unanimous Stipulation and Agreement for the sole purpose of stating that it has no objection to this Unanimous Stipulation and Agreement.

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.



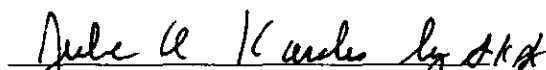
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Attorney for Staff of the Public Counsel

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.

