

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation
by Florida Public Service
Commission of Alternative Local
Exchange Telecommunications
Certificate No. 7299 issued to
Pathnet, Inc. d/b/a Pathnet
Communications, Inc., effective
8/2/01.

DOCKET NO. 011005-TX
ORDER NO. PSC-01-1898-PAA-TX
ISSUED: September 24, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING VOLUNTARY CANCELLATION OF
ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pathnet, Inc. d/b/a Pathnet Communications, Inc. (Pathnet) currently holds Certificate of Public Convenience and Necessity No. 7299, issued by the Commission on January 25, 2000, authorizing the provision of Alternative Local Exchange Telecommunications (ALEC) service. On February 2, 2001 we received Pathnet's payment for the 2000 RAFs. The statutory penalties and interest charges for late RAFs payments for the year 2000 have not been paid. Pathnet was scheduled to remit its RAFs by January 30, 2001.

DOCUMENT NUMBER DATE

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FPSC-SECRETARY'S CLERK

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing ALEC service.

On August 2, 2001, our staff received a letter from Ms. Mary McDermott, Senior Vice President and General Counsel of Pathnet. Ms. McDermott stated that the company is requesting cancellation of ALEC Certificate No. 7299 because the company is in Chapter 11 bankruptcy. Ms. McDermott stated in the letter that the company has no retail customers.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, Codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority to collect a debt or engage in other economic regulation. However, in this case, the Company has requested cancellation of its certificate. Under those circumstances, we are free to do so. Accordingly, we find it appropriate to cancel ALEC Certificate No. 7299, effective August 2, 2001. In addition, the Division of Administration shall be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write off the uncollectible amount should be requested. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes.

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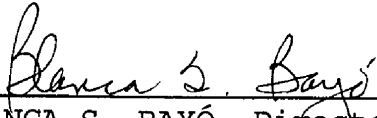
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pathnet, Inc. d/b/a Pathnet Communications, Inc.'s Certificate No. 7299 to provide Alternative Local Exchange Telecommunications service is hereby canceled, effective August 2, 2001. It is further

ORDERED that the past due RAFs shall not be sent to the Comptroller's Office for collection and permission to write of the uncollectible amount shall be requested. It is further

ORDERED that this Docket is closed.

By ORDER of the Florida Public Service Commission this 24th Day of September, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

JAE

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 15, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.