



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
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COMMISSION  
CLERK

**DATE:** AUGUST 23, 2001

**TO:** DIRECTOR, DIVISION OF THE COMMISSION  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF COMPETITIVE SERVICES (ISLER) *PIV*  
DIVISION OF LEGAL SERVICES (ELLIOTT) *JAE*

**RE:** DOCKET NO. 011005-TX - 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.

**AGENDA:** 09/04/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\011005.RCM

CASE BACKGROUND

- **01/25/00** - This company was granted Florida Public Service Commission Certificate No. 7299.
- **12/12/00** - The Division of the Commission Clerk & Administrative Services mailed the 2000 Regulatory Assessment Fee (RAF) return form. Payment was due January 30, 2001.
- **02/02/01** - The Commission received the company's payment for the 2000 RAF. The company reported revenues in the amount of \$10,011.70 for the period ended December 31, 2000.
- **06/05/01** - The Commission received a notice that this company had filed for Chapter 11 Bankruptcy protection.

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

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- **08/02/01** - Staff received a letter from Mary McDermott, Senior Vice President and General Counsel, requesting cancellation of its certificate and advising that it had no customers.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.337, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Pathnet, Inc. d/b/a Pathnet Communications, Inc.'s request for cancellation of its Certificate No. 7299?

**RECOMMENDATION:** Yes. The Commission should grant the company a bankruptcy cancellation of its Certificate No. 7299 with an effective date of August 2, 2001. In addition, the Division of the Commission Clerk & Administration Services will 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. (Isler; Elliott)

**STAFF ANALYSIS:** Rule 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of a certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On June 5, 2001, the Commission received a notice stating that Pathnet, Inc. d/b/a Pathnet Communications, Inc. had filed for Chapter 11 bankruptcy protection. On August 2, 2001, the Commission received a letter from the company, which advised that it had no customers and requested cancellation of its certificate.

Pathnet, Inc. d/b/a Pathnet Communications, Inc. has not paid the statutory penalty and interest charges owed for the late filing of its 2000 RAF and the 2001 RAF will become due January 30, 2002.

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 seeking 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, this Commission is free to do so.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its Certificate No. 7299 with an effective date of August 2, 2001. In addition, the Division of the Commission Clerk & Administration Services will 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.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed. (Elliott)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.