

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-2105
Pathnet, Inc., Washington, D. C.,)
seeking a Certificate of Public Con-)
venience and Necessity to provide) GRANTED
local exchange telecommunications)
services within the state of)
Nebraska.) Entered: December 21, 1999

APPEARANCES:

For the Applicant:
Eric A. Anderson
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For the Commission:
Chris Post
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Lincoln, Nebraska 68508

BY THE COMMISSION:

By its application filed August 18, 1999, Pathnet, Inc. (Applicant or Pathnet), Washington, D.C., seeks authority to provide competitive local exchange telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on August 19, 1999. The following parties filed petitions of formal intervention: Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company and Wauneta Telephone Company. A hearing on the application was held November 30, 1999, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced one witness, J. Alfred Baird, vice president of Access Policy and Planning for the applicant, who testified as follows:

Mr. Baird testified that Pathnet is seeking authority to provide local exchange and exchange access services on a statewide basis. Mr. Baird testified that Pathnet initially intends to offer point-to-point private line services ranging from DS-0 to OC-N, using TDM technology, as well as TDM-based special access services. Mr. Baird further testified that Pathnet plans to offer exchange services connecting switches of other competitive local exchange carriers (CLECs) that wish to provide competitive dial tone services in Nebraska to the CLECs' end-users. In this scenario, Pathnet would order unbundled network element (UNE) loops in areas where the Pathnet facility network extends and transport the loops

to the switch of the CLEC who is purchasing the extended loop facility from Pathnet. These CLECs would also be certificated carriers in Nebraska and would be responsible for 911 service, operator services and trunk interconnection with the incumbent carrier. Pathnet also plans to offer data services, including digital subscriber line (xDSL) services, primarily to Internet service providers (ISPs) and other telecommunications carriers. Applicant has concluded negotiations with US West and has begun negotiations with Alltel and Sprint regarding interconnection, but has made no other requests for interconnection. While applicant intends initially to offer services in the areas presently served by US West, GTE, Sprint and Alltel, it requests statewide authority.

Mr. Baird testified that the applicant has the managerial, technical and financial ability to be certified to provide local exchange services in Nebraska. Mr. Baird himself has over 34 years of experience in the telecommunications industry. Pathnet also has several executive officers and employees with significant experience in all aspects of the industry, as set forth in Exhibit E to the application, as amended by Mr. Baird's testimony. Mr. Baird testified that through existing credit facilities and equity investments, Pathnet has access to the capital necessary to fulfill the obligations it may undertake in providing local exchange and exchange access services in Nebraska. Mr. Baird further testified that Pathnet's application is in the public interest because it will promote greater competition, faster technological advancement of telecommunications services, and wider access to advanced telecommunications services in Nebraska. The services Pathnet plans to offer to ISPs and other telecommunications carriers will assist Pathnet's customers in providing competitive services to end-users.

Upon questioning by Mr. Post, Mr. Baird testified that Pathnet is familiar with and willing and able to abide by all applicable requirements of the Nebraska Universal Service Fund and Nebraska Telecommunications Relay Service Fund.

No other parties introduced testimony or evidence at the hearing.

O P I N I O N A N D F I N D I N G S

The Commission considers this application in light of the following criteria and standards established in the Commission's telecommunications rules:

- Whether the applicant has provided the information required by
- the Commission;

- Whether the applicant has provided a performance bond, if
- required;

- Whether the applicant possesses adequate financial resources
- to provide the proposed service;

- Whether the applicant possesses adequate technical competence
- and resources to provide the proposed service;

- Whether the applicant possesses adequate managerial competence
- to provide the proposed service; and

- Whether granting the applicant the requested certificate preserves and advances universal
- service, protects the public
- safety and welfare, ensures the continued quality of
- telecommunications services and safeguards the rights of
- consumers, pursuant to Section 253 (b) of the Act.

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide local

exchange telecommunications service in the state of Nebraska. No evidence was submitted or testimony elicited to suggest that the applicant is not qualified to provide its proposed services in light of the criteria this Commission must consider.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2105 should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-2105 be, and is hereby, granted and Pathnet, Inc. is authorized to provide competitive local exchange telecommunications services within and throughout the state of Nebraska.

IT IS FURTHER ORDERED that the applicant comply with Section 251 (f) (1) (B) of the Telecommunications Act of 1996 and that the applicant submit any bona fide request(s) by the applicant for interconnection, services, or network elements from a rural telephone company to the Commission for its approval.

IT IS FURTHER ORDERED that applicant is obligated to abide by all Commission orders, applicable laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service, restrictions on joint marketing and quality of service), applicable to other local exchange carriers, except obligations imposed on incumbent local exchange carriers pursuant to Section 251 (c) of the Act.

IT IF FURTHER ORDERED that, to the extent the applicant provides access line service as referenced in the Telecommunications Relay System Act, Neb. Rev. Stat. §§ 86-1302 to 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. tit. 291, ch. 5, § 001.01B, the applicant shall collect from its subscribers a surcharge (Relay Surcharge) pursuant to the Relay Act and the Commission's annual orders establishing the amount of the Relay Surcharge, and shall remit to the Commission the proceeds from the Relay Surcharge, as provided by the Relay Act.

IT IS FINALLY ORDERED that this order be and hereby is made the Commission's official Certificate of Public Convenience and Necessity to the applicant to provide local exchange telecommunications service within Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of December, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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