

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-2254
Petition of Pathnet, Inc.)
Seeking Arbitration of)
Interconnection Pursuant to) INTERCONNECTION AGREEMENT
47 U.S.C. § 252(b).) APPROVED
)
)
) Entered: August 8, 2000

APPEARANCES :

For Pathnet:	For the Commission staff:
Eric A. Anderson and	Chris A. Post
Joseph M. Acierno	300 The Atrium, 1200 N St.
Anderson Ferguson Chesterman	Lincoln, Nebraska 68508
& Acierno, P.C.	
14301 FNB Parkway, Suite 207	
Omaha, Nebraska 68154	

For Aliant Communications Co.
d/b/a ALLTEL:
Stephen T. Refsell
Vice President-Law
ALLTEL Corporate Services, Inc.
One Allied Drive
Little Rock, Arkansas 72202

BY THE COMMISSION:

Pathnet, Inc. (Pathnet) requested to negotiate an interconnection agreement with Aliant Communications Co., d/b/a ALLTEL (ALLTEL) on August 18, 1999. After negotiating and reaching agreement on all but two issues, pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996, Pathnet filed a petition with the Commission on March 24, 2000, seeking arbitration of the two unresolved issues between the parties. ALLTEL filed a response and motion regarding Pathnet's petition on April 18, 2000. On April 24, 2000, Pathnet filed a reply to ALLTEL's response and motion. On April 28, 2000, Arbitrator James K. Sharpe issued a decision regarding ALLTEL's response and motion and Pathnet's reply, as well as a decision regarding procedure and schedule to be followed in the arbitration. On May 18, 2000, Pathnet and ALLTEL each filed their final offers and on June 2, 2000, Pathnet and ALLTEL each filed a response to the other party's final offer.

The Commission, in Docket No. C-1128/Progression Order No. 3, established the policies to be used concerning Section 252 arbitrations. Pursuant to Commission policy, the parties selected a mutually acceptable independent arbitrator, James K. Sharpe. The arbitrator rendered a decision in this docket June 15, 2000. A proposed interconnection agreement was filed with the Commission

July 13, 2000. In accordance with the Commission's policy, interested parties were allowed to submit written comments on the interconnection agreement. No comments were filed by any parties. A hearing was held to approve or reject the proposed inter-connection agreement pursuant to Section 252(e) of the Act in the Commission Hearing Room, August 1, 2000, with appearances as shown above.

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

Section 252(e)(1) of the Act requires that any interconnection agreement adopted by arbitration be submitted to the state commission for approval. Section 252(e)(2)(B) provides that state commissions may reject an agreement (or any portion thereof) adopted by arbitration only "if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251, or the standards set forth in subsection (d) of this section." Section 252(e)(3) further provides that a state commission may utilize and enforce state law in its review of agreements.

The Commission has reviewed the arbitrator's decision, the proposed interconnection agreement using the standards set out above. We conclude that the arbitrator's decision comports with the requirements of the Act, applicable FCC rules and relevant state laws and regulations.

Issue 1: The arbitrator's decision to adopt Pathnet's proposed language on the issue of escort services. The arbitrator ruled that the language submitted by ALLTEL conflicted with an FCC order. ALLTEL asserted that the arbitrator and the Commission should disregard the rulings in the FCC order with respect to escort services on the grounds that the FCC order could be overturned by the Eighth Circuit. We agree with the arbitrator that neither he nor this Commission has the authority to deviate from the FCC's order. Moreover, we agree with the arbitrator that Pathnet's proposed language is reasonable. Pathnet's proposed language complies with the Act, applicable FCC rules and state law. Accordingly, we uphold the decision of the arbitrator. This section shall be implemented accordingly.

Issue 2: The arbitrator's decision to adopt Pathnet's proposed language on the issue of whether the petitioner is obligated to pay for the conditioning of all of the collocation space even when the petitioner will occupy only a portion of the space. ALLTEL contends that as the first collocater, Pathnet should be responsible for reimbursing ALLTEL for all reasonable and necessary expenses caused by Pathnet's physical collocation in a particular site. We agree with the arbitrator that the language proffered by

ALLTEL would again be inconsistent with an order entered by the FCC. Whereas, the language provided by Pathnet is consistent with the Act, applicable FCC rules and relevant state laws. We agree with the arbitrator's decision and find this section shall be implemented accordingly.

The remaining provisions of the interconnection agreement are fair, just and reasonable and should be approved. The interconnection agreement between Pathnet and ALLTEL shall become effective August 14, 2000.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposed interconnection agreement between Pathnet and Aliant Communications Co., d/b/a ALLTEL submitted to the Commission on July 13, 2000, shall become effective on August 14, 2000.

IT IS FURTHER ORDERED that original signatures of both companies, agreeing to the interconnection agreement as described, shall be filed with the Commission on or before August 14, 2000.

IT IS FINALLY ORDERED that the interconnection agreement be submitted to the Commission on diskette by ALLTEL in WordPerfect on or before August 14, 2000.

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of August, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONER CONCURRING:

Chairman

ATTEST:

Deputy Director

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