



PUBLIC NOTICE

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APPLICATION OF PATHNET, INC AND PATHNET OPERATING, INC. TO DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES NOT AUTOMATICALLY GRANTED

NSD File No. W-P-D-503

On June 29, 2001, Pathnet, Inc. and Pathnet Operating, Inc. (Pathnet or Applicants), each located at 11720 Sunrise Valley Drive, Reston, Virginia 20191, collectively filed an application requesting authority under section 214(a) of the Communications Act of 1934, 47 U.S.C. § 214(a), and section 63.71 of the Federal Communications Commission's (FCC or Commission) rules, 47 C.F.R. § 63.71, to discontinue their domestic telecommunications services.

The application indicates that Applicants provide wholesale telecommunications services by utilizing a high-capacity, digital, microwave network. More specifically, Applicants explain that they provide, on a wholesale basis, both dedicated private line services and primary rate ISDN dial-up services to other carriers, telecommunications service providers, and Internet service providers. Applicants seek to discontinue these services in the following states: Colorado, Idaho, Illinois, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, New Mexico, Ohio, Oregon, South Dakota, Texas, and Wyoming.

By Public Notice dated **July 5, 2001**, the Commission notified the public that in accordance with 47 C.F.R. § 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of this notice, unless the Commission notified Applicants that the grant would not be automatically effective. Accordingly, the automatic grant date for this application would have been **August 5, 2001**.

The FCC will normally authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity is otherwise adversely affected. The Commission received several comments raising significant objections to this application. Frontier Internet asks the Commission to delay the discontinuance until September 4, 2001. It asserts that Pathnet provides service for one of its most important circuits. Similarly, Worldcom asks for a delay because it states that

Pathnet provides service for its circuits that serve critical radar and air to ground communications to the Federal Aviation Administration's (FAA) Air Route Traffic Control Centers. Sagir, Inc. asks for a sixty (60) day delay because it asserts that if Pathnet shut off service in August, it would be forced to temporarily suspend cellular service along U.S. Interstate 80 in Western Nebraska, an area that includes service to a number of state and local public safety entities. AT&T also filed an objection to delay the discontinuance until November 1, 2001, on grounds, *inter alia*, that Pathnet provides service to a circuit that serves a dedicated Government Emergency Telecommunications Services (GETS) line for the state of Nebraska, as well as eight thousand (8,000) to ten thousand (10,000) customers. Lastly, Verizon Wireless requests that the discontinuance be delayed until August 30, 2001, as Pathnet provides transport service to its circuits that serve Northeast Colorado.

Subsequently, Pathnet filed a formal Response to the filed comments. Pathnet states that it will accommodate Frontier Internet's request for continued service until September 4, 2001. Similarly, Pathnet states that it will accommodate both Worldcom, by extending service until September 1, 2001¹, as well as Sagir, Inc., by delaying discontinuance until October 1, 2001. Pathnet also states that it will maintain service to Verizon Wireless' circuit. In regard to AT&T, Pathnet indicates that termination of the subject circuits is not imminent, and under no circumstances will it occur on August 1, 2001. Pathnet explains that it is continuing work with AT&T to develop a mutually agreeable solution. However, on August 2, 2001, AT&T formally filed reply comments, stating that the parties have failed to reach an agreement.

Significantly, in its Response to the filed comments, Pathnet explains that on July 19, 2001, the Bankruptcy Court converted the cases for Pathnet Operating, Inc. and its subsidiaries from Chapter 11 to Chapter 7. As a result, Pathnet states that a bankruptcy trustee may now controls decisions about the entities' fiber assets and routes. Pathnet states that both Frontier Internet and Worldcom are served, in part, through these fiber facilities. Therefore, Pathnet states its opinion that a small risk exists that the bankruptcy trustee could prevent it from implementing the arrangements made with Frontier Internet and Worldcom.

Where comments on a discontinuance application allege that the service has no reasonable substitute or that either present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations. See 47 U.S.C. § 214(a); 47 CFR § 63.71. The Supreme Court has ruled that the Commission has considerable discretion in deciding how to make its Section 214 public interest finding. *FCC v. RCA Communications, Inc.*, 73 S.Ct 998, 1002 (1953). Given that the comments raise significant concerns, we find that the public interest will not be served by automatic grant. Therefore, by this Public Notice, Pathnet is notified that its application to discontinue its domestic telecommunications services is not automatically granted. Pathnet may, however, discontinue service to Sagir, Inc. and Verizon Wireless, according to the terms and conditions of its agreements with these two (2) companies, and its representations in this proceeding. Furthermore, Pathnet

¹ Worldcom filed a request to withdraw its comments on July 30, 2001.

may discontinue service on August 5, 2001, to all of its other customers who did not file comments in opposition of its application. In regard to Frontier Internet, Worldcom, and AT&T, Pathnet is hereby ordered to notify the Commission when it has fully and unconditionally resolved these matters. If Pathnet discontinues service to any one of these three (3) entities, it is further notified that, pursuant to section 214(c) of the Communications Act of 1934, the Commission, or any party in interest, may seek to enjoin Pathnet's action.

For further information, contact Carmell Weathers, (202) 418-2325 (voice), cweathers@fcc.gov, or Jon Minkoff (202) 418-2353 (voice), jminkoff@fcc.gov, of the Network Services Division, Common Carrier Bureau. The TTY number is (202) 418-0484. For further information on procedures regarding Section 214 please visit the Network Services Division web site at: <http://www.fcc.gov/ccb/nsd/documents/214.html>.

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