

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF PATHNET, INC.'S )</b>	<b>FINDINGS OF FACT,</b>
<b>FAILURE TO TIMELY FILE ANNUAL )</b>	<b>CONCLUSIONS OF LAW AND</b>
<b>REPORTS, PAY POST-BANKRUPTCY )</b>	<b>FINAL ORDER; NOTICE OF</b>
<b>PETITION GROSS RECEIPTS TAX, AND )</b>	<b>ENTRY OF FINAL ORDER</b>
<b>MAINTAIN IN EFFECT ITS CORPORATE )</b>	
<b>REGISTRATION AND SALES TAX PERMIT )</b>	<b>TC13-131</b>

On November 12, 2013, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against Pathnet, Inc. (Company) for failure to timely pay the gross receipts tax. The hearing was held as scheduled on December 17, 2013, at 9:00 a.m., in Room 413 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give Company an opportunity to show cause why the Commission should not revoke its Certificate of Authority, or other specified actions, for failure to pay the gross receipts tax as required by SDCL 49-1A-1, failure to maintain its certificate of authority from the Secretary of State to conduct business in this state, failure to file an annual report, or failure to maintain a current sales tax permit with the Department of Revenue. No representative of Company appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke Company's Certificate of Authority for failure to pay the gross receipts tax.

The Commission, having heard the testimony presented at the hearing, makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Company is a telecommunications company holding a Certificate of Authority, issued by this Commission, to provide telecommunications services in South Dakota.
2. Cindy Kemnitz, Finance Manager for the Commission, sent invoices to Company requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. She testified that Company never paid the gross receipts tax. The Company also failed to file an annual report and failed to maintain its certificate of authority from the Secretary of State. Exhibit 1.
3. A copy of the Order for and Notice of Show Cause Hearing was sent by United States Postal mail to Company on November 13, 2013.
4. No representative of Company appeared at the hearing to show cause why the Commission should not revoke its Certificate of Authority.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, and 49-31-3.

2. Pursuant to SDCL 49-1A-3 and 49-1A-4, the Commission assesses a tax on the annual intrastate gross receipts received by a telecommunications company from the company's customers within the state of South Dakota. Pursuant to SDCL 49-1A-5, the tax is due on July fifteenth of each year.
3. Company has failed to pay the gross receipts tax.
4. The Commission has the authority, under SDCL 49-31-3, to suspend or revoke a Certificate of Authority granted to a company for a willful violation of the laws of this state. Based on the failure of Company to timely pay the gross receipts tax in violation of SDCL 49-1A-5, the Commission revokes Company's Certificate of Authority.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that any Certificate of Authority granted to Company by this Commission is hereby revoked and any order, certificate, or other document evidencing the Certificate of Authority shall be null and void as of the date of this order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 30<sup>th</sup> day of December, 2013. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:29, a party may request reconsideration of this Order by filing a petition with the Commission within thirty (3) days following the issuance of the Order and pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Entry and Right to Appeal.

Dated at Pierre, South Dakota, this 30<sup>th</sup> day of December, 2013.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.	
By:	<u>[Signature]</u>
Date:	<u>12/30/13</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

[Signature: Gary Hanson]  
 GARY HANSON, Chairman

[Signature: Chris Nelson]  
 CHRIS NELSON, Commissioner

[Signature: Kristie Fiegen]  
 KRISTIE FIEGEN, Commissioner