

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

IN THE MATTER OF PATHNET, INC.'S FAILURE TO TIMELY FILE ANNUAL REPORTS, PAY POST- BANKRUPTCY PETITION GROSS RECEIPTS TAX, AND MAINTAIN IN EFFECT ITS CORPORATE REGISTRATION AND SALES TAX PERMIT))))))	ORDER FOR AND NOTICE OF SHOW CAUSE HEARING TC13-131
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SDCL 49-1A-1 and 49-1A-2 establish the South Dakota Public Utilities Commission (Commission) Gross Receipts Tax Fund. To fund the account, SDCL 49-1A-3 levies a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a telecommunications company from the company's customers within the state of South Dakota during the previous calendar year, and SDCL 49-1A-4 and 49-1A-5 require that all telecommunications companies submit, by April 1 of each year, a report of the amount of such gross receipts received during the preceding calendar year and pay the tax by July 15. SDCL 49-1A-6 imposes a penalty of 10% of the tax for each month of delinquency. SDCL 47-1A-1501 and 47-34A-1002 require that foreign corporations and limited liability companies must maintain an active certificate of authority from the South Dakota Secretary of State to transact business in this state. SDCL 10-45-24 and 10-46-22 require that any person transacting business in this state whose sales are subject to sales or use tax obtain and maintain in effect a permit from the South Dakota Department of Revenue. ARSD 20:10:24:02 and 20:10:32:03 require a certificate of authority from the Secretary of State and a sales tax permit from the Department of Revenue as conditions for a certificate of authority to provide telecommunications service in South Dakota.

Pursuant to SDCL 49-31-3 and 49-31-75 and ARSD 20:10:24:04.02 and 20:10:32:09, the Commission has the authority to revoke the certificate of authority to provide telecommunications service in South Dakota for violation of any applicable law or rule.

The Commission has sent a notice of the annual gross receipts tax assessment to Pathnet, Inc. (Company), at the address provided to the Commission by the Company, in each of the years from 2003 to the present. Despite these notices, Company has failed to file its annual report with the Commission and pay the gross receipts taxes due for the period post-bankruptcy petition. Furthermore, the Company's certificate of authority to conduct business in this state was revoked by the Secretary of State on August 27, 2002, for failure to file an annual report and pay the requisite fee, and it no longer has a current sales tax permit with the Department of Revenue.

Company shall appear on December 17, 2013, at 9:00 a.m. (CST) in Room 413 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota, or contact the Commission before 5:00 p.m. on December 16, 2013, at 1-800-332-1782 to set up a telephonic connection to appear telephonically, to show cause why the Company's certificate of authority should not be revoked for failure to comply with the above referenced requirements of South Dakota laws and rules. The hearing will be held pursuant to the Commission's jurisdiction over telecommunications companies pursuant to SDCL Chapters 1-26, 49-1, 49-1A, and 49-31, specifically, 49-1-11(4), 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, 49-31-3, and 49-31-75, and ARSD 20:10:01:45, 20:10:24:04.02, and 20:10:32:09.

The issue for hearing is whether the Commission shall revoke Company's certificate of authority for violation of applicable state laws and rules.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If Company or its representative fails to appear at the time and place set for the hearing, the final decision will be based solely on the testimony and evidence provided, if any, during the hearing or a final decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter findings of fact, conclusions of law, and a final decision regarding this matter. As a result of the hearing, the Commission will determine whether to revoke Company's certificate of authority.

The Commission's final decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a show cause hearing in the matter of Company's delinquencies described above shall be held on December 17, 2013, at 9:00 A.M. (CST) in Room 413 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. And it is

FURTHER ORDERED, that, in the event Company files the delinquent annual reports, pays the delinquent post-bankruptcy petition gross receipts taxes, including the 10% penalty for each month of delinquency, and restores its certificate of authority with the Secretary of State and sales tax permit with the Department of Revenue to good standing, the hearing and actions mentioned herein shall not be held or taken. Otherwise this order shall remain in effect.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 12th day of November, 2013.

CERTIFICATE OF SERVICE	
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>Joy Lashley</u>
Date:	<u>11.12.13</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner