

DIVISION OF
ADMINISTRATION
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FLORIDA
PUBLIC SERVICE COMMISSION

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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Alexandria Division

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In re:

PATHNET TELECOMMUNICATIONS
INC., et al.

Debtors.

)
) Chapter 11
)
) Case No. 01-12264 - SSM
) Jointly Administered
)
)

AUCTION PROCEDURES

These Auction Procedures¹ set forth the process by which Pathnet Telecommunications, Inc. and its affiliated Debtors and debtors in possession, Pathnet, Inc., Pathnet Operating, Inc., Pathnet Operating of Virginia, Inc., Pathnet Fiber Equipment LLC, and Pathnet Real Estate LLC (collectively, the “**Debtors**”) may effectuate a Sale by Auction of their Assets. The Auction Procedures were approved upon the Debtors’ Motion (the “**Sale Procedure Motion**”) by order (the “**Sale Procedure Order**”) of the United States Bankruptcy Court for the Eastern District of Virginia (Alexandria Division) (the “**Bankruptcy Court**”) in which the Debtors’ jointly administered Chapter 11 bankruptcy cases are pending.

¹ Capitalized terms not defined herein, but defined in the Motion, shall have their respective meanings set forth in the Motion.

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1. **Assets to be Sold**

The Debtors propose, by Auction (as defined below), to sell, lease, license, or otherwise dispose of (to “Sell” or a “Sale”) any and all of the Debtors’ assets in whole, in part or parts, or in any combination (collectively or in part, as appropriate, the “Assets”), by one or more Sales, to one or more bidders. The Assets may be sold free and clear of all liens, claims, encumbrances and interests. Unless otherwise ordered by the Bankruptcy Court, a license, lease or other disposition (other than a sale or assignment) of assets subject to the liens of the Secured Creditors shall be subject to the approval of the Secured Creditors.

2. **Notice of Auction and Sale Hearing**

Within not more than three business days following the entry of the Sale Procedure Order, the Debtors will transmit a notice, substantially in the form annexed to the Sale Procedure Motion, of the proposed sale of the Assets by Auction and the Sale Hearing (the “Notice of Auction and Sale Hearing”) by postage prepaid, first-class U.S. mail, hand-delivery, telecopy, or overnight courier, to: (i) the Office of the United States Trustee; (ii) counsel to the Creditors’ Committee; (iii) the indenture trustee in respect of the Senior Notes; (iv) all known creditors in the cases; (v) those entities who have requested notice pursuant to Bankruptcy Rule 2002; (vi) those governmental agencies required to receive notice of proceedings under the Bankruptcy Rules and the Local Bankruptcy Rules; and (vii) potential qualified bidders known to the Debtors.

3. **Confidentiality Agreement and Selection of Qualified Bidders**

Potential bidders for the Assets will be required to complete and execute a confidentiality agreement and to provide the Debtors with information about their financial qualifications and any other information the Debtors may reasonably request. The Debtors, after

consultation with the Creditors' Committee and the Secured Creditors, shall qualify potential bidders for continuing in the sales process by notifying potential bidders who have returned the confidentiality agreement and presented satisfactory financial qualifications that they have been selected as a qualified bidder (the "**Qualified Bidders**").

4. Notification of Stalking Horse Agreement

Debtors reserve their rights, after consultation with Cisco Systems Capital Corporation ("**Cisco**") and Nortel Networks, Inc. ("**Nortel**") (collectively, the "**Secured Creditors**"), and the Creditors' Committee, to enter into a purchase agreement (a "**Stalking Horse Agreement**") with any entity or entities (collectively, the "**Stalking Horse Bidder**"), which may contain customary terms and conditions. The Stalking Horse Agreement shall be subject to Bankruptcy Court approval and to higher or better offers.

Unless otherwise ordered by the Bankruptcy Court, a Stalking Horse Agreement for the purchase of assets subject to the liens of the Secured Creditors (i) at a purchase price of less than the amount of the allowed secured claim of the Secured Creditors, or (ii) that includes an assumption in whole or in part of the allowed secured claim of the Secured Creditors shall be subject to the approval of the Secured Creditors.

If the Debtors enter into a Stalking Horse Agreement(s), the Debtors shall provide notice of such agreement(s) to: (i) the Office of the United States Trustee; (ii) counsel to the Creditors' Committee; (iii) those entities who have requested notice pursuant to Bankruptcy Rule 2002; (iv) those governmental agencies required to receive notice of proceedings under the Bankruptcy Rules and the Local Bankruptcy Rules; (v) potential qualified bidders known to the Debtors; and (vi) counterparties to those executory contracts and unexpired leases that the Debtors may seek to assume or reject in conjunction with the Stalking Horse Agreement.

5. Bid Protection

If the Debtors execute a Stalking Horse Agreement(s) with an earnest money deposit satisfactory to the Creditors' Committee and the Secured Creditors, the Debtors, with the approval of the Creditors' Committee and the Secured Creditors, may grant each such Stalking Horse Bidder the following bid protection (collectively, the **"Bid Protection"**):

(a) a break-up fee of up to the greater of (i) 3% of the total proposed purchase price (based upon the total cash and non-cash consideration) to be paid pursuant to the Stalking Horse Agreement(s) subject to a maximum break-up fee of \$2 million; or (ii) 3% of the total cash consideration of the proposed purchase price (the **"Break-Up Fee"**);

(b) reimbursement of the expenses of the Stalking Horse Bidder incurred in connection with its bid up to a maximum amount of \$250,000.00 (the **"Expense Reimbursement"**); and

(c) a requirement that any bid submitted at the Auction must exceed the consideration to be paid pursuant to the Stalking Horse Agreement by no less than the sum of (i) the Stalking Horse Bid, (ii) the Break-Up Fee, (iii) the Expense Reimbursement, and (iv) an amount designated by the Debtors up to a maximum amount of \$250,000.00.

Notwithstanding the foregoing, the Debtors may seek such other bid protection as they believe is appropriate in their business judgment on five business days' notice or such lesser notice as may be approved by the Bankruptcy Court. Any hearing on such other bid protection shall be held on June 22, 2001, at 9:30 a.m., or such other date and time as the Debtors may request, subject to approval of the Bankruptcy Court.

The Break-Up Fee and the Expense Reimbursement shall be paid only upon execution and consummation by the Debtors of an agreement embodying a higher or better bid

than the Stalking Horse Agreement prior to the termination of the Stalking Horse Agreement. Payment of the Break-Up Fee and the Expense Reimbursement is conditioned upon the Debtors' closing the agreement embodying the successful bid, and is not payable if the Stalking Horse Agreement is terminated due to the Stalking Horse Bidder's breach thereof.

6. Asset Purchase Agreement and Due Diligence

The Debtors, in their discretion, may send, for negotiation, bidding or other purposes, to each Qualified Bidder or to any entity interested in participating in the Auction, a form agreement for the Sale of the Assets (the "**Asset Purchase Agreement**"). The Debtors will provide reasonable access to Debtors' books, records and executives to Qualified Bidders for the purpose of conducting due diligence.

7. Auction and Selection of Winning Bid or Bids

The Sale of the Assets will be by auction to be held at the offices of Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. on July 11, 2001, at 10:00 a.m. Eastern Time or such other date, time and place as the Debtors may determine (the "**Auction**"). Only Qualified Bidders with a qualifying bid may attend the auction. For its bid to be considered, a Qualified Bidder must appear in person at the Auction or through a duly authorized representative.

To be considered, a bid must comply with the following:

(a) consist of an executed version of the Asset Purchase Agreement or Stalking Horse Agreement (if any) with marked alterations, if desired; or if no Asset Purchase Agreement or Stalking Horse Agreement exists, then a proposed form of asset purchase agreement;

(b) include an earnest money deposit (the “**Earnest Down Payment**”) equal to 10% of the total proposed purchase price (based upon the total of cash and non-cash consideration) in the form of a certified check or wire transfer payable to an escrow agent to be determined by the Debtors. In lieu of the Earnest Down Payment, the bidder may make such other arrangements as may be acceptable to the Debtors. The existence of an Earnest Down Payment or the nature of the alternative arrangements in lieu thereof shall be considered by the Debtors in the determination of the winning bid;

(c) clearly state the portion of consideration to be paid in cash and the portion to be paid in any other form of value;

(d) if any consideration is to be provided in a form other than cash, provide such information as to permit the Debtors to accurately assess the value of such consideration;

(e) must give sufficient indicia that the Qualified Bidder or its representative is legally empowered by power of attorney or otherwise, and financially capable, to bid on behalf of the Qualified Bidder and to complete and sign, on behalf of the Qualified Bidder, a binding and enforceable asset purchase agreement;

(f) must not contain any contingencies to the validity, effectiveness, and/or binding nature of the bid, including without limitation, contingencies for financing, due diligence or inspection;

(g) must identify with particularity each and every executory contract or unexpired lease the assumption and assignment of which is a condition to closing; and

(h) if a bid is conditioned on the assumption and assignment of any executory contract or unexpired lease, the bid must include sufficient information to permit the

Debtors to determine the proposed assignee's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such assignee's ability to perform in the future.

Bidders and all other entities shall keep bids confidential, with access restricted to the Debtors, the Creditors' Committee, and the Secured Creditors. However bids may be revealed to any other entity at the option of the Debtors. The Debtors may request additional information from a bidder (whether previously qualified or not) in order to evaluate the bidder's ability to consummate a transaction and to fulfill its obligations in connection therewith, and such bidder shall be obligated to provide such information as a precondition to participating further in the Auction.

If multiple bids satisfying all requirements the Debtors may impose are received, each such bidder shall have the right to continue to improve its bid at the Auction. At the conclusion of the Auction, and subject to Bankruptcy Court approval following the Auction, the winning bid(s) will be selected by the Debtors, after consultation with the Creditors' Committee and the Secured Creditors, from the bids (singular or plural, as appropriate, the **"Winning Bid"**); provided, however, the Debtors shall have the right, in their discretion, after consultation with the Creditors' Committee and the Secured Creditors, to reject any and all bids. The Winning Bid shall be subject to **approval by the Bankruptcy Court**.

Prior to the conclusion of the Auction, unless and to the extent otherwise agreed by the Debtors, each entity that makes a Winning Bid (the **"Winning Bidder"**) shall complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which its respective Winning Bid was made. Within 24 hours after the conclusion of the Auction, the Winning Bidder(s) shall pay an earnest money deposit (the

“Earnest Down Payment”) equal to (when added to any Earnest Down Payment previously paid by the Winning Bidder(s) and still held for the benefit of the Debtors) 10% of the total proposed purchase price (based upon the total of cash and non-cash consideration) in the form of a certified check or wire transfer payable to an escrow agent to be determined by the Debtors. In lieu of the Earnest Down Payment, the Winning Bidder may make such other arrangements as may be acceptable to the Debtors. The existence of an Earnest Down Payment or the nature of the alternative arrangements in lieu thereof shall be considered by the Debtors in the determination of the Winning Bid.

8. Sale Hearing.

The sale hearing will be held at the United States Bankruptcy Court for the Eastern District of Virginia (Alexandria Division), 200 South Washington Street, Alexandria, Virginia, on July 24, 2001, at 1:30 p.m., or at other date and time as the Debtors may request, subject to approval by the Bankruptcy Court (the **“Sale Hearing”**).

At least six business days before the Sale Hearing (or such lesser time as may be approved by the Bankruptcy Court), the Debtors will file notice of the winning bidder(s) and a summary of the essential terms of the winning bid(s), including the assets to be purchased and any executory contracts or unexpired leases to be included therein (the **“Winning Bidder Notice”**). Objections (an **“Objection”**), shall be in writing and filed and served in the manners set forth in the Auction Procedures.

The Debtors will transmit the Winning Bidder Notice by hand-delivery, telecopy, or overnight courier, to: (i) the Office of the United States Trustee; (ii) Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attention: Lawrence Handelsman, Esq.; (iii) the Secured Creditors; (iv) the entities who have requested notice pursuant to

Bankruptcy Rule 2002; (v) those government agencies required to receive notice of proceedings under the Bankruptcy Rules and the Local Bankruptcy Rules; (vi) entities that are known by the Debtors to have filed proofs of claim asserting that their claims are secured and entities who hold secured claims according to the Debtors' schedules of assets and liabilities; and (vii) counterparties to those executory contracts and unexpired leases that the Debtors may seek to assume, reject or modify in conjunction with a Sale.

9. Objections

No later than 11:00 a.m. (Eastern Time) on July 23, 2001, Objections shall be set forth in writing with particularity the grounds for such objections or other statements of position and filed with the Bankruptcy Court, and served (for receipt no later than 11:00 a.m. (Eastern Time) on July 23, 2001), on (i) Debtors' undersigned counsel at their respective specified addresses; (ii) Houlihan Lokey Howard & Zukin, 685 Third Avenue, 15th Floor, New York, New York 10017, Attention: Mr. Saul E. Burian; (iii) FTI/Policano & Manzo, 622 Third Avenue, New York, New York 10017, Attention: Mr. Christopher Kearns; (iv) the Office of the United States Trustee; (v) Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attention: Lawrence Handelsman, Esq.; (vi) Murphy Sheneman Julian & Rogers, 101 California Street, 39th Floor, San Francisco, California 94111, Attention: Cecily A. Dumas, Esq.; and (vii) Piper Marbury Rudnick & Wolfe, 1200 - 19th Street, N.W., Washington D.C. 20036, Attention: John G. McJunkin, Esq.

10. Failure to Consummate Purchase

If for any reason a Winning Bidder fails to consummate a Sale of Assets, or any part thereof, the offeror of the second highest and best Bid for any of the same Assets (as determined by the Debtors after consultation with the Creditors' Committee and the Secured

Creditors) will automatically be deemed to have submitted the highest or best bid, and to the extent such offeror and the Debtors consent, the Debtors and such offeror are authorized to effect the sale of the Assets, or any part thereof, to such offeror as soon as is commercially reasonable without further order of the Bankruptcy Court. If such failure to consummate the purchase is the result of a breach by the Winning Bidder, such breaching bidder's Earnest Down Payment shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from the defaulting bidder.

11. Return of Earnest Down Payment

After the Sale Hearing, if Winning Bids have been selected and sales of the Assets to Winning Bidders, which have been approved by the Bankruptcy Court, have closed, the Earnest Down Payments of the Qualified Bidders who are not Winning Bidders shall be returned.

12. Reservation of Rights

The Debtors reserve their rights, after consultation with the Creditors' Committee and the Secured Creditors: (i) to impose, at or prior to the Auction, additional terms and conditions on a Sale of Assets; (ii) to extend the deadlines set forth in the Auction Procedures, adjourn the Auction at the Auction, and/or adjourn the Sale Hearing in open court without further notice; (iii) to **withdraw from Sale** any Assets at any time prior to or during the Auction and to make subsequent attempts to market the same; and (iv) to reject all bids, if in the Debtors' reasonable judgment no bid is for a fair and adequate price.

13. Prepetition Secured Creditors' Consents

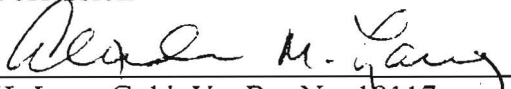
The Sale of the Assets may require the consents of certain of the Debtors' secured creditors. Consequently, the determinations to be made by the Debtors in connection with a Sale or the Assets and the above-described Auction Procedures may be subject to such consents.



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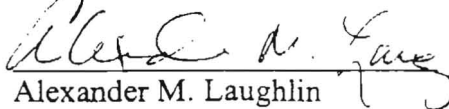
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Local Counsel for the Debtors and Debtors-in-Possession

Dated: June 27, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June 2001, the foregoing Auction Procedures was hand carried to the Office of the United States Trustee.


Alexander M. Laughlin