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DOCKET NO. 31105

JOINT APPLICATION OF PATHWAY § PUBLIC UTILITY COMMISSION
COM-TEL, INC. AND NEXTEL OF §
TEXAS, INC. FOR APPROVAL OF § OF TEXAS
INTERCONNECTION AGREEMENT §
UNDER PURA AND THE §
TELECOMMUNICATIONS ACT OF 1996 §

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ORDER DISMISSING APPLICATION

This Order dismisses the application of Pathway Com-Tel, Inc. (Pathway) and Nextel of Texas, Inc. (Nextel) pursuant to P.U.C. PROC. R. 22.181(a)(1)(A). The jurisdiction of the Public Utility Commission of Texas (Commission) to approve interconnection agreements is governed by §§ 251 and 252 of the federal Telecommunications Act of 1996.¹ Although all telecommunications carriers have the duty to interconnect under § 251(a)(1), the specific duty to negotiate in good faith in accordance with § 252 rests solely with incumbent local exchange carriers (ILECs). The procedures for negotiation, arbitration, and approval of agreements under § 252 of the FTA are designed to ensure that ILECs meet their obligations. Neither Pathway nor Nextel is an ILEC. Agreements between competitive local exchange carriers (CLECs) are outside the FTA framework. As such, this application is hereby dismissed.

I. Background

On May 17, 2005, Pathway and Nextel (collectively, Applicants) filed a joint application for approval of an interconnection agreement (Agreement) under the FTA, the Public Utility Regulatory Act,² and P.U.C. PROC. R. 22.308. The joint application included a copy of the Agreement.

Within their filing, Applicants state that the statutory standards of review for this docket are set forth within § 252(e) of the FTA. Section 252(e) requires approval by a state commission of any interconnection agreement adopted by negotiation or arbitration. This is a clear reference to §§ 252(a) and (b) which address voluntary negotiation and compulsory arbitration. Both of these types of agreements are triggered from the date the ILEC receives a request for interconnection. As such, an ILEC must be a party to such negotiations and arbitrations. A review of Commission records indicates that neither Applicant is certificated as an ILEC.

¹ Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

² TEX. UTIL. CODE ANN. Chapters 52 and 60 (Vernon 1998 & Supp. 2005) (PURA).

Although all local exchange carriers (LECs) have a general duty to interconnect, and under § 251(b)(5), to establish reciprocal compensation arrangements for the transport and termination of telecommunications, these arrangements do not require state approval under FTA § 252(e). On the other hand, FTA § 251(c) governs the special obligations of ILECs, which include the duty to negotiate in accordance with § 252 of the FTA. FTA § 252(a)(1) expressly requires that an agreement reached through negotiation between the requesting telecommunications carrier or carriers and the ILEC shall be submitted to the state commission under FTA § 252(e). Furthermore, approval by the state commission of such negotiated and arbitrated agreements carries with it continuing oversight and the responsibility to address disputes post-interconnection.

In addition, under § 252(e)(2), a state commission may reject an interconnection agreement if it does not meet the requirements of § 251 of the FTA. The grounds for rejection again refer back to negotiation under § 252(a) and arbitration under § 252(b), both of which are triggered from the date an ILEC receives a request to negotiate. As set forth above, it is clear that neither Pathway nor Nextel is an ILEC.

Accordingly, this proceeding is dismissed pursuant to P.U.C. Proc. R. 22.181(a)(1)(A).

SIGNED AT AUSTIN, TEXAS the 2nd day of June 2005.

PUBLIC UTILITY COMMISSION OF TEXAS



MICHAEL E. FIELD
DIRECTOR, DOCKET MANAGEMENT
POLICY DEVELOPMENT DIVISION