

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against American Network Exchange, Inc. d/b/a AMNEX for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries; and fine assessment for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 000035-TI
ORDER NO. PSC-01-0459-FOF-TI
ISSUED: February 26, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER GRANTING BANKRUPTCY CANCELLATION OF INTEREXCHANGE
TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

At our February 1, 2000, Agenda Conference, we ordered American Network Exchange, Inc. D/B/A AMNEX (AMNEX) to show cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries and \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. In addition, we required AMNEX to provide a written response to the requested information within ten business days of the issuance of the Order. On February 2, 2000, however, we received a letter from AMNEX stating that it had filed for Chapter 11 bankruptcy

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protection and all proceedings should be withdrawn. Therefore, an order reflecting our February 1, 2000, vote was not issued.

On March 3, 2000, we received a letter from AMNEX wherein it requested a voluntary cancellation of its certificate, in order to eliminate the accrual of additional costs and fees.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336 and 364.285, Florida Statutes.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority seeking to collect a debt or engage in other economic regulation. In this case, however, the Company has requested cancellation of its certificate in the interest of limiting continuing accrual of additional costs and fees. Under those circumstances, we are free to do so. It appears clear, however, that regulatory fees and penalties already accrued by the company are not extinguished by a Chapter 11 proceeding. If the company emerges from Chapter 11, the State could, at that time, again pursue collection.

The company had filed for bankruptcy protection prior to the Commission's vote. Therefore, we now reconsider our vote from the February 1, 2000 Agenda Conference, in which AMNEX's certificate was involuntarily canceled, and grant the company a bankruptcy cancellation of its Certificate No. 1527 with an effective date of June 30, 1999. AMNEX shall return its certificate to this Commission. In addition, the Division of Administration shall not forward the outstanding RAFs to the Comptroller's Office for collection at this time.

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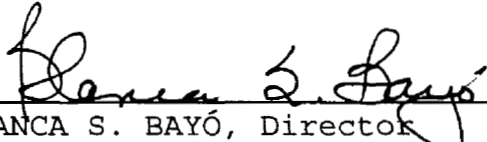
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that American Network Exchange, Inc. D/B/A AMNEX's Certificate Number 1527 to provide interexchange telecommunications services is hereby canceled. It is further

ORDERED that American Network Exchange, Inc. D/B/A AMNEX, shall return its certificate to this Commission. It is further

ORDERED that this Docket shall be closed upon issuance of the Final Order.

By ORDER of the Florida Public Service Commission, this 26th day of February, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.