

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850



**-M-E-M-O-R-A-N-D-U-M-**

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RECORDS AND REPORTING

**DATE:** FEBRUARY 8, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF COMPETITIVE SERVICES (ISLER) *AK*  
DIVISION OF LEGAL SERVICES (FORDHAM) *C.S.F. OV*

**RE:** DOCKET NO. 000035-TI - 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.

**AGENDA:** 02/20/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\000035.RCM

**CASE BACKGROUND**

- **02/01/00** - The Commission approved staff's recommendation to order 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, it required AMNEX to provide a written response to the requested information within ten business days of the issuance of the Order. The recommendation provided that the docket would remain open pending further show cause proceedings in

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the event AMNEX failed to provide a response to the requested information.

- **02/02/00** - Staff received a letter from AMNEX stating that it had filed for Chapter 11 bankruptcy protection and all proceedings should be withdrawn. An Order based on the Commission's February 1, 2000, vote was, therefore, not issued.
- **02/29/00** - The Division of Administration mailed a late notice for the 1999 RAF.
- **03/30/00** - AMNEX requested a voluntary cancellation of its certificate.
- **06/06/00** - This docket was deferred from the Agenda Conference.
- **01/31/01** - As of this date, the company's payment for the outstanding RAF has not been received.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336 and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission reconsider its vote from the February 1, 2000 Agenda Conference on its own motion and grant American Network Exchange, Inc. d/b/a AMNEX's request for cancellation of its Certificate No. 1527?

**RECOMMENDATION:** Yes. The company had filed for bankruptcy protection prior to the Commission's vote. Therefore, the Commission should reconsider its 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. In addition, the Division of Administration should not forward the outstanding RAFs to the Comptroller's Office for collection at this time. (Isler; Fordham)

**STAFF ANALYSIS:** On February 1, 2000, the Commission approved staff's recommendation to order 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. On February 2, 2000, staff received a letter stating that AMNEX had filed for Chapter 11 bankruptcy protection, and, therefore, the show cause proceeding should be withdrawn. Therefore, an Order based on the Commission's vote was not issued. Thereafter, the company requested cancellation of its certificate.

AMNEX has not paid the 1999 RAF nor the statutory penalty and interest charges owed for the late filing of its 1991 and 1998 RAFs. Rule 25-4.0161, Florida Administrative Code, requires the payment of RAFs by January 30, or the next business day, of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. As of January 31, 2001, the 1999 RAF, plus statutory penalty and interest charges for the late filing of its 1991 and 1998 RAFs remain unpaid.

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. However, in this case, the Company has requested cancellation of its certificate in the interest of limiting continuing accrual of additional costs and fees. Under those circumstances, this Commission is 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.

This docket was deferred from the June 6, 2000 Agenda Conference to allow staff additional time to review the bankruptcy issue. This recommendation contains additional detail supporting the cancellation of the certificate.

Therefore, staff believes the Commission should reconsider its 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 IXC certificate with an effective date of June 30, 1999. In addition, the Division of Administration should not forward the outstanding RAFs to the Comptroller's Office for collection at this time.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed upon issuance of the Final Order. (Fordham)

**STAFF ANALYSIS:** This docket should be closed upon issuance of the final Order.