



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

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DATE: JULY 23, 1998

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *ac m.c.*
 DIVISION OF CONSUMER AFFAIRS (DURBIN) *DD BDD*
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB JW*

RE: DOCKET NO. 980165-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST AMER-I-NET SERVICES CORP. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION, AND RULE 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 08/04/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980165.RCM

CASE BACKGROUND

Amer-I-Net Services Corp. (Amer-I-Net), certificate number 2671, is a provider of interexchange telecommunications service and was certificated on July 2, 1991. Amer-I-Net reported gross operating revenues of \$1,318,222.69 on its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, Amer-I-Net is subject to the rules and regulations of this Commission.

For the period May 5, 1997, through March 20, 1998, the Commission staff has received 176 complaints against Amer-I-Net that have been determined to be apparent unauthorized carrier change (slamming) infractions in violation of Rule 25-4.118, Florida Administrative Code. Based on the number of complaints

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received by Commission staff and the number of apparent slamming violations, the Commission issued Order No. PSC-98-0549-SC-TI, on April 20, 1998, requiring Amer-I-Net to show cause why it should not have certificate number 2671 canceled or be fined \$1,760,000 for 176 apparent violations of Rule 25-4.118, Florida Administrative Code. By Order No. PSC-98-0748-PCO-TI, issued May 29, 1998, the Commission granted Amer-I-Net's Motion for Extension of Time to Respond to the Commission's Order to Show Cause by June 19, 1998. On June 11, 1998, Commission staff met with representatives of Amer-I-Net regarding this matter. On June 19, 1998, Amer-I-Net filed a Motion for Additional Time to Respond within five working days, and on June 26, 1998, Amer-I-Net filed an Amended Motion for Additional Time asking that it be allowed to respond by June 30, 1998. On June 30, 1998, Amer-I-Net filed an offer of settlement. (Attachment A, Pages 6-7) Amer-I-Net also filed a Motion for Stay of Order No. PSC-98-0549-SC-TI that same day.

Staff's recommendations on Amer-I-Net's settlement proposal and procedural motions are set forth below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Amer-I-Net Services Corp. to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. The Commission should accept the settlement offer proposed by Amer-I-Net. (Biegalski)

STAFF ANALYSIS: On February 19, 1998, and again on June 11, 1998, Amer-I-Net met with staff and addressed its concerns about the apparent violations. On June 30, 1998, Amer-I-Net submitted its offer to settle. In its settlement offer, Amer-I-Net agreed to do the following:

- Amer-I-Net will surrender its Florida certificate within 60 days of a final order approving this offer.
- Neither Amer-I-Net nor a successor corporation to Amer-I-Net will reapply for a certificate in

Florida sooner than 2 years from the date of the final order.

- The Commission will give due consideration to any reapplication if filed.
- The settlement resolves all allegations of violations occurring as of the date of this letter and there will no finding of wrongdoing by Amer-I-Net.
- Amer-I-Net will continue to rerate and resolve all pending complaints.

As the outcome of the discussions between staff and Amer-I-Net counsel, the company decided to surrender its certificate rather than submit to a fine it could not absorb. Staff believes Amer-I-Net's settlement offer is reasonable and recommends that the Commission accept it.

ISSUE 2: Should the Commission grant Amer-I-Net's Amended Motion for Additional Time and Motion for Stay?

RECOMMENDATION: Yes. The Commission should grant Amer-I-Net's Amended Motion for Additional Time and the Motion for Stay. (B. Keating)

STAFF ANALYSIS: As indicated in the Case Background, the Commission granted Amer-I-Net's Motion for Extension of Time to Respond to the Commission's Order to Show Cause by June 19, 1998, by Order No. PSC-98-0748-PCO-TI, issued May 29, 1998.

On June 11, 1998, Commission staff met with representatives of Amer-I-Net regarding this matter. Thereafter, on June 19, 1998, Amer-I-Net filed a Motion for Additional Time to Respond within five working days to the Commission's Order to Show Cause, and on June 26, 1998, Amer-I-Net filed an Amended Motion for Additional Time asking that it be allowed to respond by June 30, 1998. On June 30, 1998, Amer-I-Net filed an offer of settlement. Amer-I-Net also filed a Motion for Stay of Order No. PSC-98-0549-SC-TI that same day.

By its June 19, 1998, Motion for Additional Time, Amer-I-Net requested five additional days to respond to the Commission's Order

to Show Cause. Amer-I-Net asserted that it needed additional time because it was preparing a settlement proposal as a result of its meeting with Commission staff. In its Amended Motion for Additional Time filed June 26, 1998, Amer-I-Net asked that it be allowed to respond by June 30, 1998. Amer-I-Net stated that it had prepared the settlement proposal discussed in its June 19, 1998, Motion, but that it would require a few more days to obtain final approval within the company itself. By its Motion for Stay, which was filed in conjunction with its settlement proposal, Amer-I-Net asks that the Commission stay the requirements of Order No. PSC-98-0549-SC-TI until the Commission can consider and address Amer-I-Net's settlement proposal.

In view of staff's recommendation in Issue 1 and Amer-I-Net's efforts to seek a resolution of this matter, staff believes that Amer-I-Net's requests for additional time to respond and for a stay of the Order to Show Cause are appropriate. Staff recommends, therefore, that the Commission grant Amer-I-Net's June 26, 1998, Amended Motion for Additional Time and June 30, 1998, Motion for Stay. Staff notes that if the Amended Motion for Additional Time is granted, Amer-I-Net's June 19, 1998, Motion for Additional Time is rendered moot.

ISSUE 3: Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to Amer-I-Net pursuant to Rule 25-24.4701(3), Florida Administrative Code, if certificate number 2671 is canceled?

RECOMMENDATION: Yes. Pursuant to Rule 25-24.4701(3), Florida Administrative Code, the Commission should order all certificated interexchange companies to discontinue providing interexchange telecommunications service to Amer-I-Net if Amer-I-Net's certificate is canceled as the result of the Commission's action in Issue 1. (Biegalski)

STAFF ANALYSIS: Rule 25-24.4701(3), Florida Administrative Code, states in part:

(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and

desist reselling or rebilling such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

If Amer-I-Net's certificate is canceled as the result of the Commission's acceptance of the company's settlement offer in Issue 1, any intrastate interexchange service offered by Amer-I-Net would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since the Commission cannot readily identify which IXC provides service to Amer-I-Net, the Commission should order all certificated IXCs to discontinue service to Amer-I-Net if the Commission votes to accept the company's settlement offer in Issue 1.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, Amer-I-Net must surrender its Florida certificate within 60 days of the Commission's Order from this recommendation. Upon the surrender and cancellation of Amer-I-Net's certificate number 2671, no further issues will remain for the Commission to address. This docket may, therefore, be closed.
(B. Keating)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, Amer-I-Net must surrender its Florida certificate within 60 days of the Commission's Order from this recommendation. Upon the surrender and cancellation of Amer-I-Net's certificate number 2671, no further issues will remain for the Commission to address. This docket may, therefore, be closed.

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

218 SOUTH MONROE STREET SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE (850) 222-0720
TELECOPIERS (850) 224-4359 (850) 425-1942

June 30, 1998

Beth Keating, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 980165-TI

Dear Ms. Keating:

The purpose of this correspondence is to propose a settlement of the captioned docket and reduce to writing that which was discussed by the parties recently. Since this proposal is submitted in an effort to resolve the outstanding show cause proceeding, it should not be viewed as an admission against interest nor as an abandonment by Amer-I-Net of any positions which might be taken if this matter were to go to a hearing. Amer-I-Net urges acceptance of this proposal but in the event this proposal is not approved Amer-I-Net reserves the right to assert any response or positions to which it may be entitled.

Amer-I-Net was certificated in 1991 but only recently were allegations of "slamming" brought to this Commission. These complaints form the basis of the outstanding order. The show cause also incorporates allegations of late responses but it is the alleged slamming infractions which are the main issue. While Amer-I-Net believes that substantially all of the alleged slamming violations are attributable to third parties, we are desirous of resolving these issues with the Commission.

In reviewing the Order and developing a response, it became apparent that litigation would be time consuming and expensive to both the company and the Commission. It also became apparent, based on a review of similar proceedings and conversations, that the level of a payment necessary to settle this matter is beyond the ability of the company. The reluctant conclusion was that Amer-I-Net would surrender its certificate. Accordingly, in an effort to resolve this matter Amer-I-Net proposes the following:

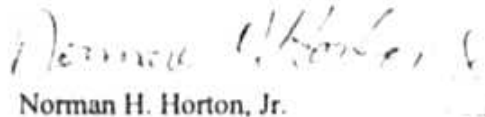
1. Amer-I-Net will surrender its Florida certificate within 60 days of a final order approving this offer.

Beth Keating, Esq.
June 30, 1998
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2. Neither Amer-I-Net nor a successor corporation to Amer-I-Net will reapply for a certificate in Florida sooner than 2 years from the date of the final order.
3. The Commission will give due consideration to any reapplication if filed.
4. The settlement resolves all allegations of violations occurring as of the date of this letter and there will be no finding of wrongdoing by Amer-I-Net.
5. Amer-I-Net will continue to rerate and resolve all pending complaints.

The foregoing proposal is offered in good faith in an effort to resolve this show cause proceeding. We would urge the Commission to favorably consider this offer and enter an order adopting these points. If you have any questions, please call me.

Sincerely,



Norman H. Horton, Jr.

NHH:amb
cc: Patrick Crocker, Esq.