

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Amer-I-Net Services Corp. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 980165-TI
ORDER NO. PSC-98-1140-AS-TI
ISSUED: August 24, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER APPROVING SETTLEMENT

BY THE COMMISSION:

I. CASE BACKGROUND

Amer-I-Net Services Corp. (Amer-I-Net), holder of Certificate Number 2671, is a provider of interexchange telecommunications service. It obtained its certificate from us 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 our rules and regulations.

Between May 5, 1997, and March 20, 1998, our staff received 176 complaints against Amer-I-Net that were determined to be apparent unauthorized carrier change (slamming) infractions in violation of Rule 25-4.118, Florida Administrative Code. In view of the number of complaints our staff received and the number of apparent slamming violations, we issued Order No. PSC-98-0549-SC-

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TI, on April 20, 1998, requiring Amer-I-Net to show cause why it should not have certificate number 2671 canceled or why it should not 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, we granted Amer-I-Net's Motion for Extension of Time to Respond to our Order to Show Cause by June 19, 1998. On June 11, 1998, our 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. The settlement offer is attached and incorporated into this Order as Attachment A. Amer-I-Net also filed a Motion for Stay of Order No. PSC-98-0549-SC-TI that same day.

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

II. SETTLEMENT OFFER

Amer-I-Net met with our staff On February 19, 1998, and again on June 11, 1998, to discuss the apparent rule violations. On June 30, 1998, Amer-I-Net submitted an offer to settle. In its settlement offer, Amer-I-Net agreed to do the following:

- 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;
- Amer-I-Net will continue to rerate and resolve all pending complaints.

We note that the company decided to surrender its certificate rather than submit to a fine it could not absorb. As part of its settlement offer, Amer-I-Net also requested that we give due consideration to any reapplication by Amer-I-Net for a certificate if filed after the two year period, that the settlement, if

approved, be considered a resolution of all allegations of violations occurring as of the date of its letter, and that there will be no finding of wrongdoing by Amer-I-Net.

Upon consideration, we find that Amer-I-Net's offer of settlement is reasonable, and, therefore, we accept it.

III. ENLARGEMENT OF TIME TO RESPOND

As indicated in the Case Background of this Order, we granted Amer-I-Net's Motion for Extension of Time to Respond to our Order to Show Cause by June 19, 1998, by Order No. PSC-98-0748-PCO-TI, issued May 29, 1998. Thereafter, on June 19, 1998, Amer-I-Net filed a Motion for Additional Time to Respond within five working days to our 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 its 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 our 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 asked that we stay the requirements of Order No. PSC-98-0549-SC-TI until we can consider and address Amer-I-Net's settlement proposal.

In view of Amer-I-Net's efforts to seek a resolution of this matter and our approval of its settlement offer, Amer-I-Net's requests for additional time to respond and for a stay of the Order to Show Cause are appropriate. Therefore, we hereby grant Amer-I-Net's June 26, 1998, Amended Motion for Additional Time and June 30, 1998, Motion for Stay. With our approval of the Amended Motion for Additional Time, Amer-I-Net's June 19, 1998, Motion for Additional Time is rendered moot.

IV. CERTIFICATED IXCs TO CEASE PROVIDING SERVICE

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

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.

Because we have accepted Amer-I-Net's settlement offer, Amer-I-Net's certificate shall be surrendered and canceled within 60 days of the issuance of this Order. Thus, any intrastate interexchange service offered by Amer-I-Net would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since we cannot readily identify which IXCs provide service to Amer-I-Net, we hereby order all certificated IXCs to discontinue service to Amer-I-Net upon the cancellation of Certificate Number 2671 in accordance with this Order.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the settlement offered by Amer-I-Net Services Corp., attached and incorporated into this Order as Attachment A, is accepted. It is further

ORDERED that the Amended Motion for Additional Time and the Motion for Stay filed by Amer-I-Net Services Corp. are granted. It is further

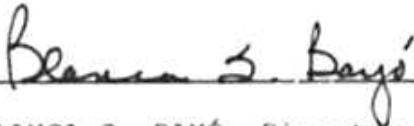
ORDERED that Amer-I-Net Services Corp. shall surrender its certificate, Certificate Number 2671, and the certificate shall be canceled within 60 days of the issuance of this Order. It is further

ORDER NO. PSC-98-1140-AS-TI
DOCKET NO. 980165-TI
PAGE 5

ORDERED that all certificated interexchange carriers shall cease providing service to Amer-I-Net Services Corp. upon the cancellation of Certificate Number 2671. It is further

ORDERED that this Docket shall be closed upon the surrender and cancellation of Certificate Number 2671.

By ORDER of the Florida Public Service Commission this 24th Day of August, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BK

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.

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,

ORDER NO. PSC-98-1140-AS-TI
DOCKET NO. 980165-TI
PAGE 6

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.

ATTACHMENT A
DOCKET NO. 980165-TI
JULY 23, 1998

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

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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.

ORDER NO. PSC-98-1140-AS-TI
DOCKET NO. 980165-TI
PAGE 8

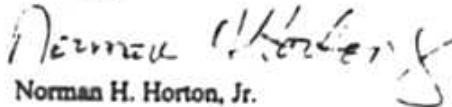
ATTACHMENT A
DOCKET NO. 980165-TI
JULY 23, 1998

Beth Keating, Esq.
June 30, 1998
Page 2

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.