

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR AUTHORITY TO)
TRANSFER CONTROL OF CAPITAL) CASE NO. 96-198
NETWORK SYSTEM, INC. TO)
AMNEX, INC.)

O R D E R

This matter arising upon the joint petition of Capital Network System, Inc. ("CNSI") and AMNEX, Inc. ("AMNEX"), filed May 10, 1996, pursuant to 807 KAR 5:001, Section 7, for confidential protection of portions of a Letter of Intent from AMNEX to CNSI on the grounds that disclosure of the information is likely to cause the parties competitive injury, and it appearing to this Commission as follows:

AMNEX has negotiated an agreement with the shareholders of CNSI to acquire all of their capital stock, together with CNSI's tangible assets. To confirm the agreement, AMNEX delivered to CNSI, a Letter of Intent setting forth the terms of the transactions. Included in the letter was a description of the percentage of stock to be acquired, the purchase price to be paid for the stock, the financial obligations of the parties with respect to outstanding and undisclosed liabilities, the dates by which the transaction must be completed, and the dates by which due diligence requirements are to be provided by AMNEX and by which it is to be performed. By this petition, CNSI and AMNEX seek to protect those portions of the Letter of Intent as confidential.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, the information may not be a matter of public knowledge or record and the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is publicly disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

In its application, AMNEX is identified as a corporation that, through its subsidiaries, provides telecommunications services for "0+" and "1+" calls transmitted throughout the United States and internationally. Although the petition for confidentiality does not identify its competitors, it is common knowledge that companies like AMNEX operate in a competitive market, not only in providing telecommunications services, but in expanding their operations through the acquisition of other telecommunications service providers. Disclosure of the information sought to be protected would provide AMNEX's competitors with information they could use in future negotiations with other companies that have been targeted for acquisition, thereby, undermining AMNEX's ability to negotiate with these companies for the best terms available. Therefore, disclosure of

the information is likely to cause AMNEX competitive injury and, unless the information is a matter of public record or knowledge, it should be protected as confidential.

However, some of the information for which protection is being sought may be now, or may in the future become, a matter of public record through disclosure to other governmental agencies, in particular the Securities and Exchange Commission of the United States ("SEC"). This is evident from a copy of a Form 10-K filed with that agency by AMNEX and included as a part of its application in this proceeding. The form discloses the purchase price and method of payment by AMNEX of Crescent Communications, Inc., a New York based telecommunications company, and there is not evidence that the information, which is similar to information sought to be protected in this proceeding, was ever granted confidential protection by the SEC. Therefore, before making a final determination concerning this confidentiality petition, the Commission will need copies of all documents and information regarding this transaction, filed with any federal, state or local governmental agency, which has not been protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. Within 20 days from the date of this order, AMNEX shall:
 - a. File copies of all documents and information regarding this transaction, filed with any federal, state or local governmental agency, including, but not limited to, SEC Annual Report Forms 10-K and 10-Q and Registration Forms S-1 and S-4, which is not protected as confidential.


b. Identify in writing those items of information sought to be protected by this petition which AMNEX intends to file with any governmental agency from whom confidential protection from public disclosure will not be requested. Include the dates by which such information is expected to be filed.


2. Pending the final determination of this proceeding, the information sought to be protected by this petition shall be held and retained by this Commission as confidential and shall not be open for public inspection.

Done at Frankfort, Kentucky, this 24th day of June, 1996.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director