

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against WebNet Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection.

DOCKET NO. 001109-TI
ORDER NO. PSC-01-1027-SC-TI
ISSUED: April 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 TO SHOW CAUSE

BY THE COMMISSION:

WebNet Communications, Inc. (WebNet) is certified to provide Interexchange Telecommunications (IXC) service in Florida pursuant to Certificate Number 7220. As a provider of telecommunications services in Florida, WebNet is subject to the rules and regulations of the Commission.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.183, 364.285 and 364.603, Florida Statutes.

Between April 21, 2000, and February 16, 2001, our Division of Consumer Affairs (CAF) logged 128 complaint cases from consumers claiming they were slammed by WebNet. As of February 16, 2001, our staff determined that 58 of those complaints were apparent unauthorized changes of the primary interexchange carrier by WebNet.

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The majority of the violations were for the apparent failure of the company to comply with Rule 25-4.118(2)(c)(2), Florida Administrative Code. This rule defines the minimum content of the Third Party Verification (TPV) audio recording that must be maintained as proof that the carrier change was authorized. It incorporates by reference Rule 25-4.118(3)(a)1. through 5., Florida Administrative Code, which requires the company to provide certain information to the customer and obtain certain information from the customer to prove that the carrier change was authorized. The most common omissions were failure to provide the name of the provider and the service(s) being subscribed to (Rule 25-4.118(3)(a)1., Florida Administrative Code), failure to obtain a statement that the person requesting the change is authorized to request the change (Rule 25-4.118(a)(3), Florida Administrative Code), and failure to state that the Local Exchange Company may charge a fee for each provider change (Rule 25-4.118(3)(a)5., Florida Administrative Code). In three cases, the company did not provide a Third Party Verification tape or a Letter of Agency, in apparent violation of Rules 25-4.118(2) and (6), Florida Administrative Code.

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

We believe that WebNet's conduct in executing unauthorized carrier changes in apparent violation of Commission Rule 25-4.118, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that

"In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as WebNet's conduct at issue here, would meet the standard for a "willful violation."

We also believe that the 58 apparent slamming violations display a pattern of disregard for our rules, and the customers wishes. We also note that WebNet's alleged settlement offers, which have been presented with the caveat that the company would need a commitment by our staff to the terms presented, prior to the company agreeing to the language therein, does not constitute a bonafide offer.

Upon consideration, WebNet shall have 21 days from the date of this order to show cause in writing why it should not be fined \$580,000 or have certificate number 7220 canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. The company's response should contain specific allegations of fact and law. If WebNet fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 7220 should be canceled administratively. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that WebNet Communications, Inc., shall show cause in writing within 21 days of the date of this Order why it should not be fined \$580,000 or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes. It is further

ORDERED that any response to the Order to Show Cause filed by WebNet Communications, Inc. shall contain specific allegations of fact and law. It is further

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ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, as well as a waiver of the right to a hearing, and will result in the automatic assessment of the fine. It is further

ORDERED that if WebNet Communications, Inc. pays the fine, it shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that should WebNet Communications, Inc. fail to respond to this Order and the fine is not received within ten business days after the expiration of the show cause response period, Certificate Number 7220 shall be canceled. It is further

ORDERED that in the event WebNet Communications, Inc. pays the fine, or Certificate Number 7220 is canceled, this docket shall then be closed. It is further

ORDERED that should WebNet Communications, Inc. timely respond to this Order, the docket shall remain open pending resolution of the show cause proceeding.

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

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 17, 2001.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.