

The Helein Law Group, P.C.

ORIGINAL

Telecommunications
E Commerce
Technology
Corporate & Finance
Trademarks
Proprietary Rights
Complex Litigation
General Business Law

8180 Greensboro Drive
Suite 700
McLean, VA 22102

(703) 714-1300 (Telephone)
(703) 714-1330 (Facsimile)
mail@helein.com

Management Consulting Group
Global Telecompetition Consultants, Inc. (GTC)
(703) 714-1320 (Telephone)

Writer's Direct Dial Number

(703) 714-1321

Writer's E-mail Address

lhaddad@helein.com

RECEIVED-FPSC
01 SEP 26 AM 11:34
COMMISSION CLERK

September 25, 2001

VIA OVERNIGHT DELIVERY

Blanco S. Bayo, Director
Division of Commission clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Ms. Bayo:

On behalf of WebNet Communications, Inc., enclosed please find an original and fifteen copies of its Prehearing Statement with regard to the above-referenced case.

An additional copy of this filing is enclosed. Please date-stamp the extra copy and return it to me in the enclosed postage-prepaid envelope. If you have any questions, or need anything additional, please do not hesitate to contact me.

Sincerely,

Loubna W. Haddad

Enclosures

cc: Wayne Knight, Legal Counsel

APP
CAF
CMP
COM 5
CTR
ECR
LEG
OPC
PAI
RGO
SEC
SER
OTH

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

12121 SEP 26 01

FPSC-COMMISSION CLERK

DISTRIBUTION CENTER
01 SEP 26 AM 10:09

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
DATED: SEPTEMBER 26, 2001

WEBNET COMMUNICATIONS, INC.'S PREHEARING STATEMENT

Pursuant to the Florida Public Service Commission's ("FPSC") July 23, 2001 Order Establishing Procedure and its July 30, 2001 Amendatory Order, WebNet Communications, Inc. ("WNC"), by and through its undersigned counsel, hereby submits this Prehearing Statement in the above-referenced docket.

(a) Witnesses:

WNC proposes to call M. Howard Lewis, President of WNC, as its sole witness. Mr. Lewis will testify to WNC's procedures for soliciting customers, obtaining verifications, and responding to complaints, as well as quality control and disciplinary measures employed by the company.

(b) Exhibits:

WNC proposes to use the following Exhibits, each of which has previously been provided to the FPSC and Staff and will be sponsored by Mr. Lewis:

- 1) WNC's Telemarketing Script;
- 2) Agreement between WNC and FCG, Inc., an independent third party verifier;
- 3) Automated Third Party Verification Recording Script;
- 4) Printout from FCG, Inc.'s web site; and
- 5) Composite list of all refunds provided to the 58 complainants in this Docket.

(c) Basic Position:

WNC's basic position in this case is that it has not willfully violated or refused to comply with Rule 25-4.118, Florida Administrative Code, which prohibits unauthorized carrier changes. WNC's telemarketing script makes clear to the prospective customer that the telemarketer is calling on behalf of WNC for the purpose of soliciting the called party's long distance business. Once the customer indicates its desire to switch to WNC, the telemarketer advises that a verification procedure will begin, the purpose of which is to verify that the customer is choosing WNC as its long distance provider. The verification script discloses that the individual is authorizing a switch in long distance service. The verifications are in substantial compliance with Rule 25-4.118 and substantially achieve the regulatory goal of notifying the customer it selected WNC as its long distance provider. These facts undercut the allegations of intentional slamming by WNC. To the extent that any deficiencies in the process are viewed as evidencing willful violations of the anti-slamming rules, these deficiencies are not those of WNC. Such deficiencies to the extent shown to be actual and substantive reside in the third party verification process. This is a process over which WNC has no control. The third party verifier is, and by law must be, independent from WNC. As such, WNC cannot and should not be held liable for any failures of an independent agent, particularly where it is clear, even in the light of verification deficiencies, proper customer authorization to switch service was obtained by WNC.

(d) Questions of Fact at Issue:

WNC submits that the following questions of fact are at issue in this proceeding, along with WNC's position on each issue. Mr. Lewis will be addressing all of these issues at the hearing.

1) *Whether the procedures WNC and its telemarketers use for soliciting new customers clearly indicate the purpose of the call and all necessary elements of telemarketing procedure.*

WNC's position is that they do. The script that WNC's telemarketers must use identifies the name of the company, the purpose of the call, the rate to be provided and any promotional plans, assures that the individual is authorized to make the change, verifies the customer's name, address and billing number, advises the customer of the fee to be charged by the local carrier and notifies the customer of the independent verification process that will follow. The script clearly requires the telemarketer to indicate that he/she is with WebNet Communications, Inc. All of the above, taken in conjunction with the fact that in discussing the upcoming verification process, the script directs the telemarketer to state that "you will be asked to personally confirm your selection of WebNet as your telecommunications service provider for all of your long distance communication needs" leave no doubt that the customer understands, or in this context of regulatory enforcement, must be found to have understood that he or she was opting to switch to WNC's services.

2) *Whether the Company has an effective method for monitoring and disciplining telemarketers.* WNC's position is that its procedures for monitoring and disciplining its telemarketers are as effective a means of deterring the potential for slamming as exist in the industry today. The company has an internal monitoring system that randomly monitors sales associates on a continuous basis. This typically consists of two to three monitors listening in on random calls throughout the day and without the telemarketers' knowledge. If the monitors find that a particular telemarketer is not following the script or is in any way attempting to mislead or deceive the prospective customer, the company policy is to either give a warning or immediately

terminate the telemarketer, depending on the circumstances and the gravity of the telemarketer's conduct.

3) *Whether WNC has any control over the verification process.* WNC has no control over the verification process. The company contracts with an independent third party verifier for all its customer authorizations. This company is completely independent from WNC, as required by the Florida Rules. It is the responsibility and obligation of this company, which advertises itself as having a third party verification system that "meets all Federal and State Regulatory Anti-Slamming Requirements" to record the verification/authorization process and obtain verification in conformity with the laws of each state. The independent third party verifier maintains the verifications for the requisite period of time on its own premises and in its own databases. WNC's access to these verifications is limited. It may only gain access with the consent of the independent third party verifier. Then WNC's access is limited to a "listen only" basis.

4) *Whether WNC has any control over the charges that appear on the invoices of allegedly slammed consumers.* No. WNC bills its customers through the system known as "LEC billing." With LEC billing, a layer of intermediaries act as WNC's billing agent. The first billing agent purchases WNC's accounts receivables, audits the rates individual customers are to be charged, and then calculates the discount percentage on the total charges and pays WNC this discounted price (70%) to buy the accounts of WNC. This first billing agent then passes its ownership of the billed accounts to the LEC (again at a discount) which then in turn purchases the accounts from the first billing agent. The LEC then bills the customer the total of all charges and retains the customer's payments as its own. WNC's only direct communication after it receives its call detail is with the first billing agent. WNC's first billing agent is in turn the only

one with direct contact with the LEC. And it is the LEC only who has the final direct communication with the customer and the final word on what appears on the bill and in what form.

5) *Whether WNC has made all 58 complainants whole.* Yes. WNC has followed its standard procedure of promptly disconnecting the customer's accounts, re-rating the bill to a lower rate if necessary and paying for any fees associated with changing the customer to another carrier. WNC followed this procedure for all 58 customers and expended approximately \$4,700 in total refunds.

6) *Whether WNC has taken any remedial measure to mitigate the possibility of future unauthorized changes.* Yes. First, WNC put a moratorium on its telemarketing in Florida. WNC does not intend to resume marketing until it has had the opportunity to further investigate the verification issues and work with the FPSC to remedy any deficiencies within its control to correct. Second, WNC will continue to reprimand telemarketers where deficiencies in marketing methods are observed and will increase its warnings to telemarketers that they will be suspended any time a supervisor overhears a telemarketer straying from the script or in any way failing to fully inform prospective customers of the nature of the transaction being conducted. Third, WNC's management will continue its routine investigations based on the telephone numbers of complainants and will terminate the telemarketing employee shown to be responsible for switching such numbers. Fourth, when and if WNC resumes marketing in Florida, it will implement a program to retrain its telemarketers and to better train new telemarketers. Finally, when and if WNC resumes marketing in Florida, it will increase its monitoring of telemarketers using the following three-pronged approach: (i) random monitoring of conversation on a third

line, (ii) patrolling the telemarketing department, and (iii) thorough investigation and clearance of complaints and disciplining telemarketers associated with such complaints.

(e) Questions of Law at Issue:

WNC submits that the following questions of law are at issue in this proceeding, along with WNC's position on each issue.

1) *Whether during the period of April 21, 2001, through February 16, 2001, WNC willfully violated or refused to comply with Rule 25-4.118, Florida Administrative Code, which prohibits unauthorized carrier changes.* WNC did not willfully violate or refuse to comply with Rule 25-4.118 and there is no competent evidence to the contrary. WNC's telemarketers complied with applicable requirements, made clear that the prospective customers were being solicited to switch service to WNC and the prospective customers were aware or should have been aware that the verification process was meant to verify their authorization of the switch. The intent of WNC's telemarketing script was to make clear that the purpose of the call was to obtain authorization for a switch in long distance service. WNC's independent third party verifier did in fact obtain authorizations from all of the alleged complainants. If any technical deficiencies in the verifications existed, WNC had no knowledge of them and was not in a position to prevent them. The telemarketing and verification processes as described, constitutes un rebuttable evidence that WNC was intent on complying with all rules and obtaining proper authorization for all switches of long distance service.

2) *If WNC did willfully violate or refuse to comply with Rule 25-4.118, how many willful violations were there, and what is the appropriate action, penalty, and/or fine to be imposed by the Commission for any such violations.* As shown, there is no evidence to support a conclusion that there were any willful violations involved. The FPSC may not then impose penalties and/or

finer against the company because there is no factual or legal basis on which to do so. Moreover, the FPSC should take into consideration WNC's actions that made the complainants whole, the amount of money it has expended to refund all its legitimate tariffed charges, and the remedial measures it has and will take.

(f) Questions of Policy at Issue:

WNC submits that there are no questions of policy at issue in this matter.

(g) Issues Stipulated to by the Parties:

The Parties have not stipulated to any issues in this matter.

(h) Pending Motions:

There are no pending motions or other matters upon which WNC seeks the Commission's action.

(i) Pending Requests/Claims for Confidentiality

WNC does not have any pending requests or claims for confidentiality.

(j) Requirements that Cannot be Complied With:

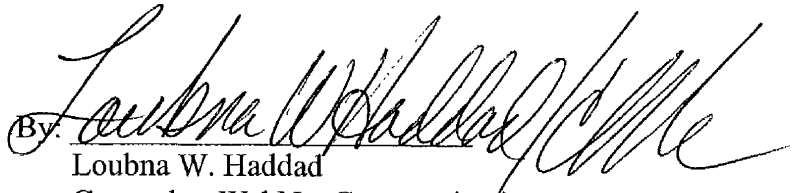
The FPSC's Order sets the prehearing conference for Monday, October 8, 2001 in Tallahassee, Florida. WNC does not have any objection to the date of the prehearing conference. However, in light of the tragic events of September 11, 2001, WNC respectfully requests that its representative and counsel be allowed to attend the prehearing conference via telephone. As a result of the recent events, air travel throughout the nation is particularly difficult, especially in the Washington, DC metropolitan area, where WNC's counsel resides and where a major national airport remains closed. Rather than risk the possibility that WNC's representative and/or its counsel will not make the hearing in a timely manner, WNC would appreciate the opportunity to attend via telephone.

(k) Related Decisions:

There are no decisions or pending decisions of the FCC or any court that have or may either preempt or otherwise impact the FPSC's ability to resolve any of the issues presented or the relief requested in this matter.

Dated this 15th day of September, 2001.

THE HELEIN LAW GROUP, P.C.

By: 
Loubna W. Haddad
Counsel to WebNet Communications, Inc.

8180 Greensboro Drive
Suite 700
McLean, Virginia 22102
(703) 714-1300

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
DATED: SEPTEMBER 26, 2001

CERTIFICATE OF SERVICE

This is to certify that I have on this day served upon those persons listed below a copy of the within and foregoing Prehearing Statement by depositing a copy of same in the United States Mail in a properly addressed envelope with sufficient postage thereon to insure delivery to:

Wayne D. Knight
Staff Counsel
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dated this 25th day of September, 2001.

THE HELEIN LAW GROUP, P.C.

By 
Loubna W. Haddad
Counsel to WebNet Communications, Inc.

8180 Greensboro Drive
Suite 700
McLean, Virginia 22102
(703) 714-1300