

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
01 MAR 22 AM 11:08
RECORDS AND REPORTING

DATE: MARCH 22, 2001

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

FROM: DIVISION OF LEGAL SERVICES (KNIGHT) *WJK BK*
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *WJA MR*

RE: DOCKET NO. 001109-TI - 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.

AGENDA: 04/03/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001109RS.RCM

CASE BACKGROUND

- November 12, 1999 - WebNet Communications, Inc. (WebNet) obtained Interexchange Telecommunications certificate number 7220.
- April 21, 2000 to February 16, 2001 - Staff received 128 complaints from customers claiming they were slammed by WebNet.
- August 11, 2000 - Staff opened this docket to investigate whether WebNet should be ordered to show cause why it should not be fined or have its certificate canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

DOCUMENT NUMBER-DATE

03655 MAR 22 01

FPSC-RECORDS/REPORTING

DOCKET NO. 001109-TI
DATE: March 22, 2001

- September 26, 2000 - This docket was deferred from the Agenda Conference pending a settlement offer from the company.
- February 15, 2001 - WebNet paid Regulatory Assessment Fees of \$50.00 with \$507,373.07 reported intrastate revenue for 2000.
- February 16, 2001 - Staff conducted settlement negotiations via teleconference with WebNet's counsel, The Helein Law Group. During the negotiations, staff stated that the previous offer was unacceptable, informed WebNet's attorney of staff's position with regard to settlement and indicated that the next correspondence, due February 28, 2001, should contain a firm, final offer from WebNet.
- March 1, 2001 - WebNet's counsel, The Helein Law Group, submitted a proposal (Attachment A, pages 7-12) that, if accepted by the Commission, it would obtain its client's permission to offer as settlement of this docket (Attachment A, page 9, paragraph 13). WebNet's counsel has repeatedly stated that a commitment by staff to the terms of WebNet's settlement offer is necessary before WebNet will agree to it. Thus, it cannot be considered a bona fide offer.

The Florida Public Service Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.183, 364.285 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order WebNet Communications, Inc. to show cause 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?

RECOMMENDATION: Yes. The Commission should order WebNet to show cause in writing within 21 days of the issuance of the Commission's Order 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. (M. Watts/Knight)

STAFF ANALYSIS: Between April 21, 2000, and February 16, 2001, the Commission's Division of Consumer Affairs (CAF) logged 128 complaint cases from consumers claiming they were slammed by WebNet. As of February 16, 2001, staff has determined that 58 of those complaints were apparent unauthorized changes of the primary interexchange carrier by WebNet. Staff recommends that WebNet be fined \$10,000 per violation, for a total of \$580,000. This recommendation is consistent with previous decisions in Docket Nos. 980950-TI, Initiation of show cause proceedings against Corporate Services Telcom, Inc. for violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, and 980897-TI, Initiation of show cause proceedings against Least Cost Routing, Inc. d/b/a Long Distance Charges for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

Pertinent excerpts from the rule are included as Attachment B, pages 13-14.

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, the Commission is authorized to impose upon any entity subject to its 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).

Staff believes 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."

On March 1, 2001, WebNet's counsel, The Helein Law Group, submitted a proposal (Attachment A, pages 7-12) that, if accepted

by the Commission, it would obtain its client's permission to offer as settlement of this docket (Attachment A, page 9, paragraph 13). WebNet's counsel has repeatedly stated that a commitment by staff to the terms of WebNet's settlement offer is necessary before WebNet will agree to it. In each instance, staff explained to WebNet's counsel that the Commission is the body that approves settlements, and any offer made by counsel should have prior final approval by WebNet. It is not WebNet who shall have final say over whether the terms of a settlement meets its approval, but rather the Commissioners. WebNet did not conform to staff's request and as such, staff believes that the offer submitted by WebNet's counsel, The Helein Law Group, does not constitute a bona fide offer to resolve the issues in this docket. In fact, staff believes that WebNet's attempt to gain staff's commitment to its offer before WebNet would agree to the terms of the offer would render the offer meaningless.

As stated above, there are 58 apparent slamming violations against WebNet. Although this is the first show cause docket opened against WebNet, staff believes that WebNet has displayed a pattern of disregard for the Commission's Rules and the customers' wishes. Therefore, staff recommends that the Commission order WebNet to show cause in writing within 21 days of the issuance of the Commission's Order 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.

DOCKET NO. 001109-TI
DATE: March 22, 2001

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved and WebNet timely responds to the Order to Show Cause, this docket should remain open pending the outcome of the show cause proceedings.

If WebNet fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 7220 should be canceled and this docket may be closed administratively. If WebNet pays the fine recommended in Issue 1, this docket should be closed.
(Knight)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved and WebNet timely responds to the Order to Show Cause, this docket should remain open pending the outcome of the show cause proceedings.

If WebNet fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 7220 should be canceled and this docket may be closed administratively. If WebNet pays the fine recommended in Issue 1, this docket should be closed.

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

The Helein Law Group, P.C.

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)

(703) 714-1300
Writer's Direct Dial Number

February 28, 2001

Pdean@helein.com
Writer's E-mail Address

VIA Federal Express

Melinda Watts
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Final Settlement Proposal of WebNet Communications, Inc.
Docket No. 001109-TI

Ms. Watts and staff:

1. On behalf of WebNet Communications, Inc. ("WebNet" or "the company") and at the request of the Florida Public Service Commission, we hereby respectfully tender a final settlement offer to terminate the initiation of show cause proceedings in Docket No. 001109-TI for apparent violations of Rule 25-4.118 F.A.C.

2. WebNet was granted Certificate of Public Convenience and Necessity No. 7220 by Commission Order PSC-99-2050-PAA-TI to provide interexchange service in the state of Florida. As a requirement of its certificate, WebNet was charged with the responsibility of complying with the provisions of Chapter 364 of the Florida statutes and Chapters 25-4 and 25-24 of the Florida Administrative Code.

3. On August 7, 2000, the staff of the Public Service Commission ("Staff") docketed an initiation of show cause proceedings against WebNet for 32 slamming complaints. Subsequently, the Commission staff added 26 more slamming complaints to this docket for a total of 58. This is the first time that the Commission has sought to initiate a show cause proceeding with respect to WebNet's operations in Florida. The initial fine suggested by Commission staff was \$320,000.

4. Despite the fact that press releases regarding the Commission's recent settlements for slamming violations with other carriers indicate a significantly less punitive stance on the part of the Commission, WebNet is willing to settle this proceeding at \$1500 per complaint with the incorporation of the recommendations of the Commission staff. The total fine

payable to the state then would be \$87,000 for 58 complaints. WebNet bases this figure upon consideration of the significant financial costs and structural changes that the company is undertaking to protect Florida consumers. These costs include the retention of an outside CSR company at the expense of \$10,000 per month to handle Florida customer relations. This is in addition to the expense of providing the FPSC with the LOAs or TPVs of every customer who agrees to switch to WebNet.

5. The Telecommunications Act of 1996 was designed to broadly assist consumers by fostering competition within the industry. Competition necessarily includes the advent of smaller, more efficient start-up companies without the massive resources of the ILECs benefiting from guaranteed rates of return. Nonetheless, without these smaller companies to push the industry giants to compete, the entire act is only so many dead trees. In assessing a fine, the company respectfully requests that the Commission take into account the already significant costs WebNet has incurred in defending itself, in making restitution to Florida customers and in undertaking a significant overhaul of its operation support services to better comply with Florida's requirements.

6. This amount is contingent upon arriving at a workable payment plan. The company suggests a \$25,000 initial payment within 30 days of the Commission's approval of this agreement, followed by a second payment 90 days later of \$25,000. This would then be followed by a third payment 90 days after that of another \$25,000. Finally, the remaining \$12,000 would be paid 90 days after the third payment.

7. Because of the company's limited resources, it is willing to undergo substantial structural and behavioral alterations in the interest of minimizing its financial liability. Given the drastic reduction of the company's revenue stream by half when it voluntarily suspended telemarketing in November as well as the concessions set forth in paragraphs 10 and 11 and given the company's generous settlement offer, WebNet cannot agree to any mandatory suspension of its marketing. The company is quite willing to work with the Commission to ensure that its marketing techniques and policies comply with all aspects of Florida law. However, any mandatory suspensions would be a death blow for a small company with limited revenue sources.

8. Given the foregoing analysis, the company's position is that a fair and equitable settlement would include consideration of the following elements. In an effort to show good faith and to obtain an immediate end to the possibility of further complaints, the company ceased marketing and as a result has lost half of its revenues in the state. WebNet would like to take this opportunity to point out that of the violations that occurred after this date, all had verification dates before November 1, 2000, indicating that these are in fact old complaints and not new violations by the company. *See Appendix A.* The aforementioned loss, along with the restitution to customers who have claimed to be slammed is a palpable economic injury that should be taken into account by the Commission in reaching its final decision as to proper level of WebNet's fines.

9. Since the company ceased its telemarketing efforts in Florida in November, the company is in the process of assessing its overall strategic position with reduced revenue streams as well as the long term economic impact thereof upon the company. This analysis also involves an analysis of the internal problems that developed in its telemarketing department as well as the difficulties that the company has encountered with vendors, underlying carriers and intermediate billing services and their contribution to the company's success in meeting its regulatory commitments. As a part of this assessment, the company is investigating its problems with slamming and is in the process of devising a comprehensive proposed solution, including a warm transfer line, for the FPSC's review. In the meantime, the company will take the steps outlined in paragraphs 10 and 11.

10. WebNet will submit all of its TPVs and LOAs for every customer it switches for a period of ninety days once it resumes marketing. At such time or beforehand, if the Commission is satisfied that the company's procedures fully comply with Florida law, the Company shall return to only providing the TPVs or LOAs requested by the Commission, either statutorily or specifically.

11. WebNet has retained an outside CSR firm to handle all of its interactions with Florida consumers until such time as the company believes that it can handles such relations in a satisfactory manner. The company plans to retain said firm for at least one year.

12. For further consideration with respect to its fine, WebNet will provide the actual tapes of particular sales calls upon request by the Commission.

13. If these terms are acceptable, we will obtain our client's final consent and we can proceed as outlined above.

Respectfully submitted,



Paul A. Dean

Enclosure
CC: Wayne Knight

DOCKET NO. 001109-TI
DATE: March 22, 2001

ATTACHMENT A

APPENDIX A

Florida Complaints Verifications and Connection dates

Complainant	Verification Date	Connection Date
Jack Pfister	8/5/00	8/7/00
Chris Pearce	7/23/00	7/28/00
Dan R Williamson	9/8/00	9/10/00
Adriana Johnson	5/15/00	5/17/00
Ted Miller	7/31/00	8/2/00
Thomas L. Mckeen	4/26/00	4/26/00
Magaret Hustoles	8/23/00	8/28/00
June Underwood	9/4/00	9/6/00
Joseph Vagner	9/3/00	9/5/00
William Sheppard	9/3/00	9/10/00
Jorge Maldonado Delgado	9/15/00	9/17/00
Anthony Vasallo	6/02/00	6/2/00
Peirre	8/21/00	8/22/00
Robert Miller	8/5/00	8/8/00
Rafael Comesana	9/1/00	9/5/00
Stephanie Koolich	9/14/00	9/16/00
Pat Clark	8/23/00	8/28/00
Teresa Kountz	6/9/00	6/10/00
Chad Morgan	9/3/00	9/5/00
George V Smith	9/10/00	9/12/00
Francis Murphy	9/23/00	9/25/00
Sara Santana	9/23/00	9/25/00
Rigoberto Marengo	9/13/00	9/15/00
Jennifer Nelson	4/11/00	4/14/00
Alberto Gomez	9/12/00	9/14/00
Janette Girone	9/3/00	9/5/00
Frederick Lusting	8/21/00	8/22/00
Donald Kelker	7/6/00	7/8/00
Carisa Whitley	9/6/00	9/7/00
Laura Mather	9/14/00	9/16/00
Martin Maragin	5/23/00	5/25/00
Jane Gorder	9/14/00	9/16/00
Robert Humes	9/10/00	9/11/00
Ramon Diaz	9/15/00	9/17/00
Louis Lawrent	9/10/00	9/12/00
Donald Ward Sr.	9/10/00	9/11/00
Toni Beyda	9/10/00	9/11/00
Edward H. Swanko	9/7/00	9/9/00
George Schoenberg	4/11/00	4/13/00
Ann Smith	9/10/00	9/11/00
Yolanda Ponceleon	9/10/00	9/11/00

DOCKET NO. 001109-TI
DATE: March 22, 2001

ATTACHMENT A

Shaun Bell	9/14/00	9/15/00
Carey Ferrell	9/10/00	9/11/00

**Excerpts from Rule 25-4.118
Florida Administrative Code**

Rule 25-4.118(2); Florida Administrative Code, states in part:

(2) A LEC shall accept a change request from a certificated LP or IXC acting on behalf of the customer. A certificated LP or IXC shall submit a change request only if it has first certified to the LEC that at least one of the following actions has occurred:

(a) The provider has a letter of agency (LOA), as described in (3), from the customer requesting the change;

(b) The provider has received a customer-initiated call, and beginning six months after the effective date of this rule has obtained the following:

1. The information set forth in (3)(a)1. through 5.;

and

2. Verification data including at least one of the following:

a. The customer's date of birth;

b. The last four digits of the customer's social security number; or

c. The customer's mother's maiden name.

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

1. The customer's consent to record the requested change or the customer has been notified that the call will be recorded; and

2. Beginning six months after the effective date of this rule an audio recording of the information stated in subsection (3)(a)1. through 5.

Rule 25-4.118 (3)(a)1. through 6., Florida Administrative Code, states:

(3)(a) The LOA submitted to the company requesting a provider change shall include the following information (each shall be separately stated):

1. Customer's billing name, address, and each telephone number to be changed;

2. Statement clearly identifying the certificated name of the provider and the service to which the customer wishes to subscribe, whether or not it uses the facilities of another company;

3. Statement that the person requesting the change is

authorized to request the change;

4. Statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number;

5. Statement that the LEC may charge a fee for each provider change;

6. Customer's signature and a statement that the customer's signature or endorsement on the document will result in a change of the customer's provider.

Rule 25-4.118(5) and (6), Florida Administrative Code, states:

(5) A prospective provider must have received the signed LOA before initiating the change.

(6) Information obtained under (2)(a) through (d) shall be maintained by the provider for a period of one year.