

**EXHIBIT NO.** \_\_\_\_\_

**DOCKET NO.:** 001109-TI

**WITNESS:** Melinda Watts

**PARTY:** Florida Public Service Commission

**DESCRIPTION:**

**Surrebuttal Testimony**

**DATE FILED:** October 1, 2001

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SURREBUTTAL TESTIMONY OF MELINDA WATTS

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Q. Please state your name and business address.

A. My name is Melinda Watts. My business address is 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399.

Q. Have you reviewed the rebuttal testimony prepared by Mark Lewis and filed on behalf of WebNet Communications, Inc. (WebNet)?

A. Yes, I have.

Q. What is the purpose of your testimony?

A. I will provide surrebuttal testimony to the rebuttal testimony provided by the WebNet witness Lewis.

Q. Is WebNet aware of the requirements of the Commission's rules?

A. Yes. A copy of the rules is provided to each company as an attachment to the Application Form for Authority to Provide Interexchange Telecommunications Service within the State of Florida. In the application, the company is required to sign a statement acknowledging that it has received and understands the Commission's rules and that it is the company's responsibility to comply with all current and future Commission requirements regarding interexchange telephone service. This statement was, in fact, signed by Patrick H. Allen, Secretary, on August 6, 1999, on behalf of WebNet Communications, Inc.

Q. Does the marketing script presented as WNC Exhibit 1 conform to the requirements of Rule 25-4.118, Florida Administrative Code?

A. In most respects. There are three points of non-compliance:

1. The script states that the purpose of the call is to

1 notify the prospective customer of WebNet's new  
2 rates, which is significantly different from stating  
3 that the purpose of the call is to solicit a provider  
4 change, as required by Rule 25-4.118(4), Florida  
5 Administrative Code.

6 2. The script asks the customer for the main billing  
7 number, fax number and Internet access number, and  
8 later states that the Local Exchange Company (LEC)  
9 may charge a fee for each line the customer switches,  
10 but does not make it clear that WebNet intends to  
11 switch these additional lines or even ask the  
12 customer if he or she wishes to switch these or other  
13 additional lines.

14 3. Nowhere in the script does the telemarketer inform  
15 the customer that the change would only apply to the  
16 number or numbers listed and that there could only be  
17 one provider for each number, in accordance with Rule  
18 25-4.118(4), Florida Administrative Code.

19 Q. In his testimony, witness Lewis states that WebNet relied upon the  
20 representation made on a prospective third party verifier's  
21 website that its system meets all Federal and State Regulatory  
22 anti-slamming requirements when it made its selection of a company  
23 to provide third party verification (TPV) services. (RT p.4) Is  
24 it the third party verification company's responsibility to ensure  
25 that the verifications are compliant with Florida's rules?

1 A. No. Each interexchange company providing telecommunications  
2 services in Florida must take all steps necessary to ensure its  
3 verifications are obtained and maintained in accordance with Rule  
4 25-4.118, Florida Administrative Code. In fact, witness Lewis  
5 states in his testimony that WebNet is required to provide the  
6 script to use in the automated verification. Thus, WebNet has  
7 ultimate control over the content of its verification and its  
8 compliance with Rule 25-4.118, Florida Administrative Code.

9 **Q. Is the script of the automated TPV recording provided by witness**  
10 **Lewis as WNC Exhibit 3 in compliance with Rule 25-4.118, Florida**  
11 **Administrative Code?**

12 A. No. Rule 25-4.118(2)(c)2. requires that the information required  
13 in Rule 25-4.118(3)(a)1.-5. be included on the TPV, each stated  
14 separately. Rule 25-4.118(3)(a)1. requires that the TPV contain  
15 the customer's billing name, address and each telephone number to  
16 be changed. The TPV script provided by witness Lewis as WNC  
17 Exhibit 3 asks the prospective customer to state his name as he  
18 would like it to appear on the \$100 check. Since the prospective  
19 customer is not specifically asked for the billing name, whether  
20 or not this is the correct billing name is unknown. The script  
21 then tells the prospective customer to state his address to  
22 receive a free gift of a pre-paid calling card. Again, the  
23 prospective customer is not asked for the billing address and the  
24 address given may not reflect the billing address. Also the  
25 script does not ask for or provide the telephone number(s) to be

1 changed. The language in the script that asks for the name and  
2 address is couched as the means for the prospective customer to  
3 receive free promotional items, not as authorization to switch  
4 providers.

5 Rule 25-4.118(3)(a)4. requires that the TPV contain the  
6 statement that the customer's change request will apply only to  
7 the number on the request and there must only be one presubscribed  
8 local, one presubscribed local toll and one presubscribed toll  
9 provider for each number. This language does not appear in any  
10 form in the script.

11 Rule 25-4.118(3)(a)5. requires that the TPV contain the  
12 statement that the LEC may charge a fee for each provider change.  
13 This language does not appear in any form in the script.

14 Also, Rule 25-4.118(2)(c)1. requires that the third party  
15 verifier has obtained the customer's consent to record the  
16 requested change or notifies the customer that the change request  
17 will be recorded. The automated TPV script does not contain this  
18 language, and neither does the portion of the sales solicitation  
19 script (provided as WNC Exhibit 1) leading up to the verification.

20 **Q. Is the script provided by witness Lewis as WNC Exhibit 3 the same**  
21 **as the ones found on the TPVs submitted by WebNet in the**  
22 **investigation of the 58 complaints at issue in this docket?**

23 **A. No. WebNet submitted TPVs for 38 of the 58 complaints at issue**  
24 **in this docket, and, while there are some similarities, none of**  
25 **the TPVs submitted follow this script. In fact, the first 32 TPVs**

1 submitted used one script, and the last six TPVs reflected a  
2 different script.

3 Q. Witness Lewis attached a copy of an agreement between its third  
4 party verification company and WebNet as WNC Exhibit 2 to his  
5 testimony. Does this agreement contain any language addressing  
6 compliance with Federal and State Regulatory anti-slamming  
7 requirements?

8 A. First, the document provided as WNC Exhibit 2 with witness Lewis'  
9 testimony appears to have been prepared as an agreement between  
10 WebNet and Federal Communications Group (FCG), Inc., but it was  
11 not signed by either party. Assuming this agreement was in fact  
12 signed by both parties, it does not contain language indicating  
13 that the verification system is in compliance with any anti-  
14 slamming requirements.

15 Q. If this agreement was in fact signed by the parties at some time,  
16 does it provide WebNet the authority to terminate the contract for  
17 non-compliance with regulatory requirements?

18 A. Yes. On page 3 of WNC Exhibit 2, the agreement states that the  
19 Customer may terminate the agreement immediately and without  
20 notice for, among other things, the failure or inability of FCG,  
21 Inc. to provide proper verifications when requested by the  
22 customer for any one order for which a complaint has been filed  
23 with a federal or state agency by an end user.

24 Q. Was WebNet unable to produce a third party verification (TPV) to  
25 the Commission for any of the 58 complaints at issue in this

1 docket?

2 A. Yes. In his testimony, witness Lewis states that FCG maintains  
3 the TPVs in its database and WebNet retrieves only the ones that  
4 it needs on an as-needed basis. (RT pp.5-6) However, it was  
5 unable to produce a TPV for 20 of these complaints.

6 Q. Witness Lewis states in his testimony that WebNet does not listen  
7 to each TPV to determine if it is valid, but only samples between  
8 ten and 15 percent of them. (RT p.7) How does this affect the  
9 verification process?

10 A. It negates it. The purpose of third party verification is to, in  
11 fact, verify that the customer understands the transaction and  
12 agrees to switch providers. Since an automated system cannot tell  
13 if the responses given are valid, gibberish, mere noises, exhibit  
14 confusion or a change in the customer's decision, or are otherwise  
15 inappropriate, a human must review them to determine that the  
16 verification of the provider change is valid. WebNet does not do  
17 this for all verifications. (RT p.7)

18 Q. Rule 25-4.118(12), Florida Administrative Code, requires that  
19 providers maintain a toll-free number for accepting complaints  
20 regarding unauthorized carrier changes, which may be separate from  
21 its other customer service numbers, as WebNet's is, and must be  
22 answered 24 hours a day, seven days a week. The customer must be  
23 notified of this number in the information package mailed to the  
24 customer or provided on their first bill. Does the toll-free  
25 number provided to WebNet customers, as described by witness Lewis

1 | in his testimony, comply with this rule? (RT pp.9-10)

2 | A. No. From the information contained in the 58 complaint files at  
3 | issue in this docket, it appears WebNet does not provide  
4 | information packages to its customers. (EXH MW-2) This number  
5 | should then be provided on the customer's first bill. However,  
6 | witness Lewis states that the contract between the LEC and the  
7 | billing aggregator allows only for one toll-free number, the one  
8 | that is to be placed on every bill for billing inquiries. (RT  
9 | p.10) When the customer calls this number with a slamming  
10 | complaint, instead of being ready to render assistance as required  
11 | by the rule, the customer is given another toll-free number to  
12 | call. (RT p.10) Since there is a separate toll-free number for  
13 | handling unauthorized carrier change complaints, and it apparently  
14 | cannot be provided with the first bill in addition to the required  
15 | toll-free number for other complaints or inquiries, then it is  
16 | incumbent upon WebNet to provide it to its new customers in an  
17 | information package.

18 | Q. In discussing WebNet's toll-free number for billing questions,  
19 | witness Lewis states that the statement, "Billing on behalf of  
20 | WNC, Billing Questions call 1-800-433-4518," appears on the bill.  
21 | (RT p.9) Is this correct?

22 | A. No. The bills included in the complaint case files have the  
23 | statement, "For ILD Teleservices, Inc. Billing Questions, Call 1  
24 | 800 433-4518." (EXH MW-2, pp.41, 175, 238) Under the heading,  
25 | "Itemized Calls," the bill says, "Service Provider - WEBNET."



1 Rule 25-4.110(14)(a), Florida Administrative Code, requires that  
2 the certificated name of the toll provider be clearly and  
3 conspicuously displayed on the bill. Neither "WNC" nor "WEBNET"  
4 is the certificated name of WebNet Communications, Inc.

5 Q. In his testimony, witness Lewis states that there is no need for  
6 a consumer to verify his or her complaint, that the carrier is  
7 held responsible, presumed guilty and not given consideration when  
8 it offers proof of its innocence. (RT pp.11-12,14) Is this true?

9 A. No. When receiving a complaint, the analyst gathers all  
10 information necessary to begin an investigation and forwards the  
11 complaint to the company. If necessary, the analyst may  
12 subsequently request additional information from the customer, the  
13 LEC, or the carrier, including such items as phone bills,  
14 Preferred Carrier histories, LOAs or TPVs. All of the information  
15 gathered is used to determine whether a violation occurred. In  
16 fact, of the 172 completed cases originally opened as slamming  
17 complaints against WebNet as of September 25, 2001, 91 were closed  
18 as either non-violations or as something other than a slamming  
19 violation. Thus, the information provided by the company is  
20 indeed carefully considered before an unauthorized carrier change  
21 violation is determined.

22 Q. In his testimony, witness Lewis describes the actions taken by the  
23 company to mitigate or undo the effects of an unauthorized carrier  
24 change that the Commission should take into consideration when  
25 determining whether fines or other remedies are appropriate for

1 an unauthorized carrier change infraction, in accordance with Rule  
2 25-4.118(13)(b). (RT pp.17-19) Do these actions fully satisfy all  
3 of the requirements of this rule?

4 A. No. It appears from the case files of the 58 complaints at issue  
5 in this docket that WebNet made all of the mandatory refunds in  
6 accordance with Rule 25-4.118(13)(b)2., Florida Administrative  
7 Code, in 29 of the 58 complaints at issue in this docket. In 22  
8 of the complaint cases, the consumer did not provide enough  
9 information for staff to determine whether the correct amount was  
10 refunded, although WebNet did make refunds in amounts ranging from  
11 \$7.62 to \$509.77. (EXH MW-2) In the remaining seven cases, it  
12 appears that WebNet did not refund the full amount required by the  
13 rule, with one complainant receiving no refund at all despite the  
14 fact that WebNet was charged with a slamming violation.

15 However, WebNet's standard procedure for responding to  
16 unauthorized carrier change complaints that witness Lewis  
17 describes in his testimony conforms neither to the Commission's  
18 rules nor to the de facto practices observed in the resolution of  
19 the 58 complaints at issue in this docket. (RT p.17) Witness  
20 Lewis states that the company promptly disconnects the customer's  
21 account, re-rates the bill to the old carrier's rates, and pays  
22 any fees associated with switching the customer to another  
23 carrier. Rule 25-4.118(8), Florida Administrative Code, requires  
24 that the company refund all 1+ charges for the first 30 days or  
25 first billing cycle, whichever is longer, and after the first 30

1 days up to 12 months, refund all 1+ charges over the rates of the  
2 preferred company of the customer.

3 WebNet took prompt action in accordance with Rule 25-  
4 4.118(13)(b)2., Florida Administrative Code, in most of the cases.  
5 However, it clearly did not follow the procedures required under  
6 Rule 25-4.118(2), Florida Administrative Code. Neither the  
7 automated TPV script provided by witness Lewis as WNC Exhibit 3  
8 nor either of the scripts heard on the 38 TPVs provided by WebNet  
9 in response to the consumer complaints were fully compliant with  
10 that rule. Also, in 20 instances, no TPV was provided at all.

11 **Q. Does the rebuttal testimony offered by witness Lewis contain any**  
12 **information that would alter staff's position with respect to the**  
13 **58 complaints at issue in Docket No. 001109-TI?**

14 **A.** No. Witness Lewis' rebuttal testimony contains no additional  
15 information that would cause staff to reclassify any of the 58  
16 violations of Rule 25-4.118, Florida Administrative Code, at issue  
17 in this docket as non-rule violations.

18 **Q. Does that conclude your testimony?**

19 **A.** Yes.  
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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  
FILED: OCTOBER 1, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **COMMISSION STAFF'S SURREBUTTAL TESTIMONY of Melinda Watts**, has been furnished by U.S. Mail this 1st day of October, 2001 to the following.

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