

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WebNet Communications, Inc.)	File No. EB-01-TC-064
)	NAL/Acct. No. 200232170002
Apparent Liability for Forfeiture)	FRN: 0006272553

ORDER OF FORFEITURE

Adopted: March 26, 2003

Released: March 31, 2003

By the Commission:

I. INTRODUCTION

1. In this Order, we assess a forfeiture of \$1,200,000 against WebNet Communications, Inc. (WebNet) for willful or repeated violations of the Communications Act of 1934, as amended (the “Act”), and our rules and orders. For the reasons set forth below, we find that WebNet willfully or repeatedly violated section 258 of the Act¹ and the Commission’s rules² and orders³ by changing the preferred carriers for 20 consumers’ telephone lines without the consumers’ authorization, a practice commonly referred to as “slamming.”⁴

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Notice of Apparent Liability (NAL) previously issued by the Commission, and need not be reiterated at length.⁵ In 2001, after receiving a high number of consumer complaints against WebNet, the Enforcement Bureau and 14

¹ Section 258 states in pertinent part that “no telecommunications carrier shall submit . . . a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.” 47 U.S.C. § 258.

² See 47 C.F.R. §§ 64.1120.

³ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carrier*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*Slamming Second Report and Order*).

⁴ “Slamming” is the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. See generally 47 C.F.R. §§ 64.1100-64.1195.

⁵ *In the Matter of WebNet Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 17 FCC Rcd 11,603 (2002) (*WebNet NAL*).

state agencies launched a joint investigation of WebNet's slamming activities.⁶ The Commission, with the help of the state agencies, reviewed 185 consumer complaints alleging slamming by WebNet. This proceeding is based on 20 of those complaints. Each of the complainants asserted that WebNet had converted his or her designated preferred carrier without authorization.

3. Following the joint federal-state investigation of the above complaints, the Commission issued the *WebNet NAL*. There the Commission determined that WebNet had apparently failed to obtain authorization before submitting 20 preferred carrier change requests, in violation of section 258 of the Act and the Commission's rules and orders against slamming. The Commission also stated that the gross deficiencies in WebNet's verification procedures suggested that WebNet apparently intentionally and egregiously violated Section 64.1120 of the Commission's rules. As a result, the Commission determined that WebNet was apparently liable for a proposed forfeiture of \$60,000 for each of the 20 violations, for a total proposed forfeiture of \$1,200,000.⁷

III. DISCUSSION

4. In its response to the *WebNet NAL*, WebNet contests the Commission's determination of apparent liability and proposal of a forfeiture penalty, as well as the amount of the proposed forfeiture. WebNet argues that it should not be found liable because: 1) the *WebNet NAL* is the equivalent of a conviction against which WebNet never had an opportunity to defend itself; 2) states have already handled the complaints with the Commission's adjudication rules; and 3) the Commission is too restrictive in its analysis of WebNet's verification process.⁸ WebNet also argues that the amount of the proposed forfeiture is excessive because: 1) the decision to increase the forfeiture amount is arbitrary and unsupported by precedent; 2) the forfeiture amount is disproportionately higher than that imposed on other carriers; and 3) the Commission did not take WebNet's remedial steps into consideration.⁹ We find none of WebNet's arguments to be persuasive.

A. WebNet is Liable for Slamming

5. WebNet claims that the issuance of the *WebNet NAL* is equal to a "conviction" against which it never had the opportunity to defend itself.¹⁰ This claim reflects a fundamental misunderstanding of the statutory framework under which the Commission issues an NAL, and the nature of an NAL itself. Section 503(b) of the Act allows the Commission to assess a forfeiture penalty only after it releases a notice of *apparent* liability,¹¹ which cannot be the basis for imposing a forfeiture penalty unless and until the recipient is afforded an opportunity to respond in writing.¹² That section 503(b) does not require the Commission to give a carrier an opportunity to address allegations in consumer complaints before issuing

⁶ Agencies in the following states participated in the investigation: Alabama, Delaware, Florida, Illinois, Maine, Maryland, Missouri, Montana, Ohio, South Carolina, South Dakota, Washington, Washington, D.C., and Wisconsin. See *WebNet NAL*, 17 FCC Rcd at 11,604, n.6.

⁷ *WebNet NAL*, 17 FCC Rcd at 11,604.

⁸ Response at 3-16.

⁹ Response at 16-24.

¹⁰ Response at 3-5, 18-19.

¹¹ 47 U.S.C. § 503(b)(4)(A).

¹² 47 U.S.C. § 503(b)(4)(C).

an NAL is, therefore, of no legal significance.¹³ Here, in accordance with the Act, the Commission gave WebNet adequate notice of its apparent violations in the *WebNet NAL*. WebNet has responded to that NAL, thereby availing itself of the statutorily prescribed process for defending against the charges raised by the NAL. Now, pursuant to section 503(b), we are deciding whether to assess a forfeiture.

6. WebNet also argues that the allegations in the complaints would have been better addressed through the adjudication of the slamming complaints instead of the forfeiture process.¹⁴ WebNet criticizes the *WebNet NAL* for not discussing whether WebNet complied with the Commission's adjudication rules to address the complaints in this case.¹⁵ WebNet misunderstands the distinction between a slamming adjudication under our rules and an enforcement action pursuant to section 503(b) of the Act.¹⁶ Sections 64.1150 through 64.1170 of the Commission's rules authorize adjudicatory proceedings to bring financial restitution to a consumer who has been slammed.¹⁷ Although each slamming allegation is adjudicated under those rules,¹⁸ that does not shield a carrier from separate enforcement action like this one, which stems from WebNet's willful or repeated violations of section 258 of the Act and section 64.1120 of our rules.¹⁹ Thus, this action, taken under authority of section 503(b) of the Act, is not undermined by any adjudication of the individual complaints.

7. In addition, WebNet argues that the *WebNet NAL* fails to take into account the restitution it has already paid to complainants at the state level.²⁰ WebNet further argues that, because the Commission has delegated enforcement power to the states, this joint federal-state investigation violates the constitutional prohibitions against double jeopardy.²¹ We disagree. In the *Slamming Reconsideration Order*, the Commission gave states the option to adjudicate consumer complaints pursuant to our slamming rules.²² As we have established above, whether the adjudication happens on a state or federal

¹³ See *In the Matter of AT&T Communications, Inc.*, Order of Forfeiture, 16 FCC Rcd 8978, 8982 (2001) (Section 503(b) of the Act does not require that a carrier be given opportunity to address allegations prior to issuance of an NAL).

¹⁴ Response at 5-6.

¹⁵ Response at 6.

¹⁶ See 47 U.S.C. § 503(b)(1).

¹⁷ See 47 C.F.R. §§ 64.1150 – 64.1170. The Commission enacted the rules in keeping with the Congressional intent of the Act that the Commission's rules should strive to make slamming victims whole. *Slamming Second Report and Order*, 14 FCC Rcd at 1531. See also *id.* at 1521 (consumers deserve some compensation for the inconvenience and confusion they experience from being slammed).

¹⁸ Consumer slamming complaints are adjudicated as informal complaints under section 1.719 of the Commission's rules. 47 C.F.R. § 1.719.

¹⁹ See 47 U.S.C. § 258; 47 C.F.R. § 64.1120.

²⁰ Response at 8-9, 50.

²¹ Response at 7-8.

²² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, First Order on Reconsideration, 15 FCC Rcd 8158, 8169-72 (2000) (*Slamming Reconsideration Order*). Consequently, our rules now provide for the referral of informal complaints to the appropriate state commission where that commission has opted to administer our slamming rules. 47 C.F.R. § 64.1150(b); *Slamming Reconsideration Order*, 15 FCC Rcd at 8172. To date, 36 states, the District of Columbia, and Puerto Rico have opted to administer our slamming adjudication rules. See <http://www.fcc.gov/slamming/>.

level, the adjudication of slamming complaints does not shield a carrier from separate liability for separate enforcement action based on those same complaints.²³ In fact, in the *Slamming Reconsideration Order* the Commission anticipated that the states adjudicating slamming cases pursuant to our rules would assist us in our enforcement actions:

To fulfill our responsibilities under section 258 of the Act and to assist our enforcement efforts, we will require states that choose to administer the Commission's rules to regularly file information with the Commission that details slamming activity in their regions. . . . Such reports will help the Commission to identify appropriate targets for slamming enforcement actions, such as forfeiture or section 214 revocation proceedings.²⁴

The *WebNet NAL* was based on consumer slamming complaints, some of which were adjudicated by states under our rules to give financial restitution to the consumers. The forfeiture proposed by the *WebNet NAL*, however, is separate and distinct from the restitution WebNet has already paid to complainants (whether at the state or federal level). Thus, contrary to WebNet's argument,²⁵ this proceeding does not "disavow" our goal of allowing states to adjudicate our slamming rules. Furthermore, because state adjudication of slamming complaints is separate from federal enforcement action on the same complaints,²⁶ this proceeding does not place WebNet in double jeopardy—a concept which, in any case, does not apply to civil administrative procedures such as this monetary forfeiture process.²⁷

8. WebNet argues that the *WebNet NAL* constitutes government censorship because it prescribes specific verification language without a rulemaking, and interprets WebNet's verification script in the most negative manner possible.²⁸ We disagree, and uphold the *WebNet NAL*'s tentative conclusion that WebNet's verification method falls egregiously short of the requirements in our rules.²⁹ Section 64.1120 requires that an independent third-party verification confirm at least six things:

the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the

²³ See *supra* para. 6.

²⁴ *Slamming Reconsideration Order*, 15 FCC Rcd at 8175.

²⁵ Response at 8.

²⁶ See *supra* text accompanying note 23.

²⁷ *Private Coast Station KXP96 and Maritime Mobile Station WAD7029 Joe Harlan Kokiak, AK*, Order, 8 FCC Rcd 7957 (Field Op. Bur., 1993). See also *New York Times Co. v. Sullivan*, 376 U.S. 254, 278 (1964) ("there is no double-jeopardy limitation applicable to civil lawsuits"); *U.S. v. Payne*, 2 F.3d 706, 710 ("the application of double jeopardy in a civil context would work an absurd result"). Double jeopardy applies only in criminal proceedings; it is a second prosecution after a first trial for the same offense. *Application of Normar Vizcarrondo for Renewal of Amateur Radio Station License NP4H and Amateur Extra Class Operator License, et. al*, Order of Revocation and Affirmation, 4 FCC Rcd 1432 (Spec. Serv. Div., 1989).

²⁸ Response at 10-13.

²⁹ The *WebNet NAL* used the four verification tapes provided to analyze WebNet's verification method. *WebNet NAL*, 17 FCC Rcd at 11,607-08.

change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved.³⁰

As the *WebNet NAL* discussed, WebNet's sample tapes revealed a verification method that effectively confirmed only the identify of the consumer—just one of the six elements required by our rules.³¹

9. In its Response, WebNet did not provide any evidence to refute the Commission's tentative conclusions that its verification method did not satisfy Commission requirements. Instead, WebNet criticizes the Commission's interpretation of its verification script. For example, WebNet claims that the following is adequate confirmation that a consumer is authorized and wants to make a carrier change: "Are you the decision-maker choosing WebNet as your long distance and local long distance provider? Please say 'yes' at the tone."³² The Commission struck down similar verification language in the *ATNC Forfeiture* because it presumed that the consumer had already authorized a preferred carrier change during the sales portion of the call: "Are you authorized to choose America's Tele-Network as your long distance and local long distance provider? Please say "YES" at the tone."³³ Furthermore, we disagree that the verification script must be evaluated in the context of the sales call and other elements in WebNet's telemarketing process.³⁴ Our verification rules require that consumers be provided an opportunity, separate from solicitation, to confirm their intention to change long-distance providers.³⁵

10. WebNet also argues that the *WebNet NAL* fails to look at its verification script "as a whole," and instead "scrutinize[s] each sentence separately" and judges the script "in the most critical way possible."³⁶ As the Commission found with a similar script in the *ATNC Forfeiture*, however, even looking "on the whole" reveals a verification script that improperly assumes, without ever asking, that a subscriber has already chosen WebNet as his or her long-distance carrier.³⁷ WebNet's verification script reads as follows:

³⁰ 47 C.F.R. § 64.1120(c)(3)(iii). *See also WebNet NAL*, 17 FCC Rcd at 11,606. Subsequent to WebNet's slamming violations, the Commission determined in the Third Order on Reconsideration that a third-party verification need not elicit the name of the displaced carrier. *See in the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, para. 57 (rel. March 17, 2003).

³¹ *See WebNet NAL*, 17 FCC Rcd at 11,606-07.

³² *See* Response at 11; *See also WebNet NAL*, 17 FCC Rcd at 11,605. We note that, by lumping "long distance and local long distance" into the same sentence, this verification script does not effectively obtain separate authorization for each service sold, as required by our rules. *See* 47 CFR § 64.1120(b). Another verification script that WebNet apparently uses for "confirmation" is even more deficient: "Are you authorized to make decisions for your telephone? Please say 'yes' at the tone." *See WebNet NAL*, 17 FCC Rcd at 11,607.

³³ *See In the Matter of America's Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22,350, 22,352 (2001) (*ATNC Forfeiture*).

³⁴ Response at 12.

³⁵ *See In the Matter of America's Tele-Network Corp.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 5788, 5796 (2001) (*ATNC NAL*).

³⁶ Response at 14.

³⁷ *See ATNC Forfeiture*, 16 FCC Rcd at 22,353.

Thank you for choosing WebNet as your long distance and local long distance provider. You have been selected to receive \$100 just for trying our new 7 cent calling plan for all your interstate calls in the continental United States for 180 days. Restrictions may apply, void where prohibited. Please answer the following questions. Please state your name and address. Are you the decision-maker choosing WebNet as your long distance and local long distance provider? Please say “yes” at the tone. For security purposes, state your date of birth or your mother’s maiden name at the tone.³⁸

We now confirm the Commission’s tentative finding in the *WebNet NAL* that this verification script, as well as the other scripts used by WebNet,³⁹ reveal “a pattern of verification that falls egregiously short of the requirements in our rules.”⁴⁰

11. WebNet asserts that the *WebNet NAL* violates the First Amendment by dictating the specific content for verification scripts.⁴¹ At the same time, WebNet complains that the Commission has not explained specifically how to meet the requirement that verifications be “clear and conspicuous.”⁴² Prior to establishing minimum content requirements, the Commission defined and effectively applied the requirement that third-party verifications must be clear and conspicuous. For example, in the *ATNC* case, the Commission found that a verification script similar to WebNet’s did not obtain a clear and conspicuous confirmation of a carrier change, “*i.e.* an unambiguous, definitive, direct response from the consumer that he or she is confirming a [change in] telephone service.”⁴³ At the time of WebNet’s alleged slamming violations, the Commission had added minimum content requirements to the verification rules.⁴⁴ As stated above,⁴⁵ at a minimum, third-party verifications must confirm six things. Hence, the Commission has not dictated the exact language that needs to appear in third-party-verification scripts;⁴⁶ rather, the Commission has simply set forth the minimum information that third-party verifications need to confirm. The record here confirms that WebNet’s script did not provide this

³⁸ See *WebNet NAL*, 17 FCC Rcd at 11,605.

³⁹ See *WebNet NAL*, 17 FCC Rcd at 11,607.

⁴⁰ See *WebNet NAL*, 17 FCC Rcd at 11,607-08.

⁴¹ Response at 14-16. WebNet cites no legal authority, and provides no legal analysis for this argument.

⁴² Response at 15.

⁴³ See *ATNC NAL*, 16 FCC Rcd at 5795-96; *ATNC Forfeiture*, 16 FCC Rcd at 22,353. This “clear and conspicuous” requirement was previously codified at 47 C.F.R. § 64.1120(c)(3). See 64 FR 47691 (Aug. 3, 2000).

⁴⁴ In the *Slamming Third Report and Order*, the Commission adopted minimum content requirements to provide guidance for third-party verifiers, and to assist the Commission in evaluating carriers’ verification methods. *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15,996, 16,016 (2000) (*Slamming Third Report and Order*). These requirements went into effect on April 2, 2001--before any of the violations for which WebNet is liable. Compare 66 Fed. Reg. 12,892 (2001) (effective date of minimum content requirements: April 2, 2001) with *WebNet NAL*, 17 FCC Rcd at 11,612 (Appendix A, earliest conversion date: June 21, 2001).

⁴⁵ See *supra* para. 8.

⁴⁶ While adopting the minimum content requirements, the Commission expressly declined to mandate specific language to be used in third-party verifications. *Slamming Third Report and Order*, 15 FCC Rcd at 16,016.

minimum information, as required by our rules.⁴⁷ These minimum information requirements do not, therefore, inhibit WebNet's speech in an unconstitutional manner.⁴⁸

B. The Amount of the Forfeiture is Proper

12. As discussed in the *WebNet NAL*,⁴⁹ Commission rules establish a standard forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.⁵⁰ Furthermore, based on the Act, our rules and guidelines allow an upward adjustment of the forfeiture amount based on the particular facts and circumstances of the violation(s).⁵¹ These include the egregiousness of the misconduct, ability or inability to pay, whether the violation was intentional, whether substantial harm resulted from the violations, history of compliance with Commission requirements, whether the violator realized substantial economic gain from the misconduct, and whether the violation is repeated or continuous.⁵²

13. WebNet contends that the *WebNet NAL* fails to adequately show the factual analysis that led to the upward adjustment of the forfeiture amount.⁵³ WebNet also points to its delivery of some verification tapes as proof that it complied with Commission rules.⁵⁴ We disagree, and find that the *WebNet NAL* properly applied the factors for the upward adjustment of the forfeiture amount. As the *WebNet NAL* pointed out, the absence of verification tapes in 16 of the 20 cases demonstrated that WebNet either failed to verify those supposed authorizations or failed to keep audio records of the verification for the two years required by our rules.⁵⁵ Failure to meet any of these requirements demonstrates a disregard for the Commission's entire verification process.⁵⁶ The four tapes WebNet delivered revealed a verification method that fell grossly short of the requirements in our rules--confirming only one of the six elements that our rules require.⁵⁷ The tapes also revealed a

⁴⁷ See *WebNet NAL*, 17 FCC Rcd at 11,606-07.

⁴⁸ See *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, 9568-69 (1995) (finding that it is permissible government regulation of commercial speech under the First Amendment for our rules to specify the minimum information that a letter of agency must include).

⁴⁹ See *WebNet NAL*, 17 FCC Rcd at 11,608-09.

⁵⁰ 47 CFR § 1.80(b)(4).

⁵¹ See 47 U.S.C. § 503(b)(2)(D). See also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17100-01 (1997) (*Forfeiture Policy Statement*); *recon denied* 15 FCC Rcd 303 (1999). As provided by the Commission's rules, the Commission and its staff retain the discretion to issue a higher or lower forfeiture, as permitted by statute. See 47 C.F.R. § 1.80(b)(4).

⁵² See 47 C.F.R. § 1.80(b)(4).

⁵³ Response at 16-18.

⁵⁴ Response at 18.

⁵⁵ *WebNet NAL*, 17 FCC Rcd at 11,608, 11,609-10.

⁵⁶ *WebNet NAL*, 17 FCC Rcd at 11,609-10.

⁵⁷ See *WebNet NAL*, 17 FCC Rcd at 11,606-07, 11,609-10. See also *ATNC Forfeiture Order*, 16 FCC Rcd at 22,355 (verification tapes produced by ATNC merely underscored the confusion inherent in its defective verification process).

verification method seemingly designed to confuse consumers about whether or not they were making a preferred carrier change.⁵⁸ Accordingly, we affirm the *WebNet NAL*'s tentative conclusion that WebNet's intentional and egregious failure to comply with our verification rules justifies an increase in the forfeiture amount to \$60,000 for each of the 20 violations, for a total forfeiture of \$1,200,000.⁵⁹

14. WebNet further argues that the "excessive" penalty proposed in the NAL violates due process because the Commission did not disclose how it decided which complaints to use.⁶⁰ WebNet misunderstands our forfeiture process. Section 503(b) of the Act neither requires us to issue a forfeiture for every violation we receive, nor requires us to reveal how we select complaints for an enforcement action.⁶¹ Nevertheless, WebNet received due process in this case. The *WebNet NAL* listed the complaints that support this action,⁶² stated the proposed fine for WebNet's apparent violations of the Act and our rules,⁶³ and gave WebNet a chance to respond.⁶⁴ In its response, WebNet neither identified any facts or circumstances to persuade us to reconsider the *WebNet NAL*, nor showed what complaints the Commission should have used in the *WebNet NAL*. Accordingly, we are not persuaded that we should reduce or rescind the forfeiture amount on this basis.⁶⁵

15. WebNet also contends that the decision to increase the proposed forfeiture is inconsistent with Commission precedent. First, WebNet argues that the Commission has typically increased forfeitures only in cases involving forged Letters of Authorization (LOAs) or evidence of deceptive marketing practices.⁶⁶ This is simply not true. The *ATNC* case involved neither deceptive marketing practices, nor forged LOAs. Nevertheless the Commission increased the forfeiture because, as in Webnet's case, it found a deficient verification process indicative of an intentional failure to follow our

⁵⁸ *WebNet NAL*, 17 FCC Rcd at 11,609.

⁵⁹ *See WebNet NAL*, 17 FCC Rcd at 11,610.

⁶⁰ Response at 19.

⁶¹ *See, e.g.*, 47 USCA § 503(b)(3)(A) ("At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission . . .") (emphasis added). Furthermore, because of the broad prosecutorial discretion we have in enforcement proceedings, we are under no obligation to reveal our decision-making process. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (noting that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.); *New York State Dept. of Law v. F.C.C.*, 984 F.2d 1209, 1213 (D.C.Cir. 1993) ("As a general matter, the FCC is best positioned to weigh the benefits of pursuing an adjudication against the costs to the agency (including financial and opportunity costs) and the likelihood of success"); *In re: Notices of Apparent Liability for Forfeitures Of Emery Telephone*, Order, 15 FCC Rcd 7181, 7186 (1999) (the Commission is a regulatory agency with broad prosecutorial discretion in enforcement proceedings).

⁶² *See WebNet NAL*, 17 FCC Rcd at 11,612.

⁶³ *See WebNet NAL*, 17 FCC Rcd at 11,610.

⁶⁴ *See WebNet NAL*, 17 FCC Rcd at 11,611.

⁶⁵ In addition, we retain discretion to pursue further action on any other complaints received against WebNet. *See, e.g., In the Matter of Vista Group International, Inc.*, Apparent Liability for Forfeiture, 14 FCC Rcd. 13,814, 13,816 (1999) (while choosing 18 complaints for enforcement action, the Commission retains discretion to pursue further action with respect to any of the complaints it has received against Vista).

⁶⁶ Response at 19-22.

verification rules.⁶⁷ WebNet further asserts that in situations similar to this case, where deficiencies were found in the verification process, the Commission did not increase the forfeiture.⁶⁸ However, the facts of WebNet's case are different from the two cases it cites.⁶⁹ Because the details of the violations in these two cases differ from those in WebNet's case, they do not provide a basis to challenge the proposed forfeiture here.⁷⁰

16. In addition, WebNet asserts that the *WebNet NAL* fails to take into account WebNet's gross revenues as representative of its ability to pay compared to larger carriers.⁷¹ We disagree with WebNet's argument. First, section 503(b) of the Act does not require that the financial impact of forfeiture for one carrier be equal to or even proportionate to that of other carriers.⁷² Furthermore, although WebNet is correct that a carrier's gross revenues should be taken into account to determine the total forfeiture amount,⁷³ it has not produced any evidence that it will not be able to pay the total forfeiture proposed in the *WebNet NAL*.⁷⁴ Our rules require that any request to reduce or remove a forfeiture must include a detailed factual statement, plus other documentation and affidavits that may be relevant.⁷⁵ WebNet has not, however, produced any tax returns or other documentation to prove that it

⁶⁷ *ATNC Forfeiture*, 16 FCC Rcd at 22,354. Furthermore, the fact that WebNet's case does not involve deceptive marketing practices or forged LOAs does not weaken the Commission's rationale for increasing the forfeiture consistent with factors set out in the statute, the Commission's rules, and the *Forfeiture Policy Statement*, i.e., that WebNet egregiously failed to follow our verification rules. *Id.*

⁶⁸ Response at 20-22.

⁶⁹ *See In the Matter of Minimum Rate Pricing, Inc.*, Notice of Apparent Liability, 12 FCC Rcd 17,638 (1997) (*MRP NAL*); *in the Matter of Minimum Rate Pricing, Inc.*, Order Adopting Consent Decree, 13 FCC Rcd 24,525 (1998); *in the Matter of Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297 (2000) (*LDDI MO&O*). Neither *Minimum Rate Pricing, Inc.* nor *Long Distance Direct, Inc.* involved a grossly deficient verification process like the one WebNet designed and/or implemented. The *MRP* proceeding involved a carrier's failure to secure an LOA prior to changing a consumer's preferred long-distance carrier, as well as tariff provisions that enabled the carrier to engage in slamming. *MRP NAL*, 12 FCC Rcd at 17,644-45. *LDDI* involved consumers being switched to an unauthorized long-distance carrier and incurring unauthorized charges after the consumers called The Psychic Friends Network (a joint marketing partner with the unauthorized long-distance carrier). *LDDI MO&O*, 15 FCC Rcd at 3298-99.

⁷⁰ *See ATNC Forfeiture*, 16 FCC Rcd at 22,355 (unreasonable to expect the Commission to handle forfeitures in the same way where the details of the violations are different).

⁷¹ Response at 22-23.

⁷² *See, e.g.*, 47 USCA § 503(b)(3)(A) ("At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission . . .") (emphasis added). *See also in the Matter of Amer-I-Net Services Corporation*, Order of Forfeiture, 15 FCC Rcd 3118, 3122-23 (2000) (rejecting the argument that a forfeiture fine should be reduced because it is disproportionate compared to other Commission orders).

⁷³ *See, e.g., LDDI MO&O*, 15 FCC Rcd at 3305 ("[w]e have repeatedly held that a carrier's gross revenues are the best indicator of its ability to pay a forfeiture").

⁷⁴ *See ATNC Forfeiture*, 16 FCC Rcd at 22,357 (no basis for reducing small carrier's forfeiture amount where carrier failed to produce evidence of its inability to pay).

⁷⁵ 47 C.F.R. § 1.80(f)(3). The rules give respondents "a reasonable period of time (usually 30 days from the date of the notice[of apparent liability])" to produce this evidence. *Id.* Moreover, the *WebNet NAL* specifically indicated that WebNet would "have the opportunity to submit further evidence and arguments . . . to show that no

(continued...)

will not be able to pay the forfeiture.⁷⁶ Accordingly, we find no basis for reducing the total forfeiture amount on these grounds.⁷⁷

17. Finally, WebNet argues that we should decrease the forfeiture because of the remedial steps it has taken to address its unauthorized preferred carrier changes, and because it has ceased all marketing activities to re-assess its telemarketing and verification procedures.⁷⁸ We disagree. As the Commission has previously found,⁷⁹ WebNet's remedial steps, such as training and monitoring telemarketing employees, and instituting a validation department,⁸⁰ are not so different from standard industry practice that they warrant a decrease in the forfeiture amount. Thus, as the Commission found in the *Coleman Forfeiture* and *ATNC Forfeiture*,⁸¹ we find no basis for reducing the total forfeiture amount on these grounds.

IV. CONCLUSION

18. After reviewing the information filed by WebNet in its Response, we find that WebNet has failed to identify facts or circumstances to persuade us that there is any basis for reconsidering the *WebNet NAL*. Further, WebNet has not shown any mitigating circumstances sufficient to warrant a reduction of the forfeiture penalty.

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forfeiture should be imposed or that some lesser amount should be assessed." *WebNet NAL*, 17 FCC Rcd at 11,610 (emphasis added).

⁷⁶ The Commission has viewed tax returns as adequate indicators of gross revenues. *See In the Matter of Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24,385, 24,389 (2000) (*Coleman Forfeiture*).

⁷⁷ We observe that the proposed upward adjustment per egregious violation was actually greater in the *AT&T NAL* and *Qwest NAL* than in the *WebNet NAL*. In both the *AT&T NAL* and *Qwest NAL*, the Commission proposed adjusting the forfeiture amount for the egregious violations (involving forgery) to \$80,000 per violation (a 100% increase). *See In the Matter of AT&T Communications, Inc.*, Notice of Apparent Liability, 16 FCC Rcd 438, 452 (2000) (*AT&T NAL*) (proposed \$640,000 forfeiture: \$80,000 for each of the 2 egregious violations, and \$40,000 for each of the 12 remaining violations); *In the Matter of Qwest Communications International*, Notice of Apparent Liability, 14 FCC Rcd 18,202, 18,215-16 (1999) (*Qwest NAL*) (proposed \$2,080,000 forfeiture: \$80,000 for each of the 22 egregious violations, and \$40,000 for each of the 8 remaining violations). In the *WebNet NAL*, by contrast, the Commission proposed increasing the forfeiture amount for WebNet's egregious violations by only 50%, for a total forfeiture of \$1,200,000 for 20 violations, or \$60,000 per violation. *WebNet NAL*, 17 FCC Rcd at 11,610. Unlike in the *AT&T NAL* and *Qwest NAL*, all of WebNet's violations were found to be egregious. *See also ATNC Forfeiture*, 16 FCC Rcd at 22,356-57 (finding that ATNC received a lower "per-slam" fine for egregious violations than AT&T and Qwest).

⁷⁸ Response at 23-24.

⁷⁹ *See Coleman Forfeiture*, 15 FCC Rcd at 24,388 (finding remedial steps to address unauthorized preferred carrier changes and cessation of telemarketing services insufficient to reduce forfeiture). *See also ATNC Forfeiture*, 16 FCC Rcd at 22,355-56 (citing *Coleman Forfeiture*, finding remedial measures to be an insufficient basis to reduce forfeiture).

⁸⁰ In addition, WebNet has revised its telemarketing scripts to eliminate possible confusion, and has terminated problem telemarketing employees. Response at 24.

⁸¹ *Coleman Forfeiture*, 15 FCC Rcd at 24,388. *ATNC Forfeiture*, 16 FCC Rcd at 22,355-56.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that WebNet Communications, Inc. SHALL FORFEIT to the United States Government the sum of \$1,200,000 for violating section 258 of the Act, 47 U.S.C. § 258, as well as the Commission's rules and orders governing preferred carrier conversions.⁸²

20. IT IS FURTHER ORDERED that a copy of this Order of Forfeiture SHALL BE SENT by certified mail to WebNet Communications, Inc. in care of Charles H. Helein, Esq., The Helein Law Group, P.C., 8180 Greensboro Drive, Suite 700, McLean, Virginia 22102, and to 8260 Greensboro Drive, Suite 240, McLean, VA 22102, attention: Moleaka Williams, Regulatory Department.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸² The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. WebNet should include the reference "NAL/Acct. No. 200232170002" on WebNet's check or money order. Such remittance must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.